

SECOND REGULAR SESSION

HOUSE BILL NO. 2487

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GOSEN.

6262H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 325.010, 325.015, 325.020, 325.025, 325.030, 325.035, 325.055, 374.046, 374.048, and 374.049, RSMo, and to enact in lieu thereof fifteen new sections relating to public adjusters, with penalty provisions.

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

Section A. Sections 325.010, 325.015, 325.020, 325.025, 325.030, 325.035, 325.055, 2 374.046, 374.048, and 374.049, RSMo, are repealed and fifteen new sections enacted in lieu 3 thereof, to be known as sections 325.010, 325.015, 325.018, 325.020, 325.025, 325.030, 4 325.035, 325.041, 325.042, 325.051, 325.054, 325.055, 374.046, 374.048, and 374.049, to read 5 as follows:

325.010. As used in sections 325.010 to 325.055, unless the context clearly requires 2 another meaning, the following words and phrases mean:

3 (1) "Director", the director of the department of insurance, financial institutions and 4 professional registration;

5 (2) "Public adjuster", any person, partnership, association [or] , corporation, **limited** 6 **liability company, limited liability partnership, or other legal entity** engaging in the 7 adjustment or settlement of claims for losses or damages arising out of policies of fire or allied 8 lines of insurances; but does not include persons, partnerships, associations [or] , corporations, 9 **limited liability companies, limited liability partnerships, or other legal entities** engaged in 10 the adjustment or settlement of claims for losses or damages arising out of other types of policies 11 for casualty insurance; and does not include attorneys at law; and does not include an agent or 12 employee of an issuer of policies of insurance against loss or damage by fire or allied [casualty]

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.

13 **lines**; nor to an insurance [broker] **producer** acting as an adjuster without compensation for a
14 client for whom he **or she** is acting as [broker] **producer**;

15 (3) "Public adjuster solicitor", any person, other than clerical employees, employed by
16 a public adjuster who solicits or aids in securing any contract for adjustment for a public adjuster,
17 or who acts for or with a public adjuster in making settlements or adjustments of claims.

325.015. No person, partnership, association or corporation shall[,] :

2 (1) Directly or indirectly, act as a public adjuster or public adjuster solicitor within this
3 state[, or receive for or because of services rendered in the adjustment of any claim or claims for
4 loss or damage by fire or other casualty within the provisions of fire or allied insurance policies
5 any money or commission or other thing of value,] ;

6 (2) **Enter into a contract authorizing the public adjuster or public adjuster solicitor**
7 **to negotiate or effect the settlement of a claim for a fee or compensation;**

8 (3) **Advocate on behalf of an insured or offer assistance to the insured to prepare,**
9 **file, or complete an insurance claim; or**

10 (4) **Advertise or solicit for employment as a public adjuster or public adjuster**
11 **solicitor of such insurance claims**

12

13 without first securing a license to act as a public adjuster or public adjuster solicitor from the
14 director as hereinafter prescribed. No such license shall permit the holder thereof to engage in
15 the practice of law or to conduct law business as defined in section 484.010.

325.018. 1. Any applicant refused a license or the renewal of a license by order of
2 **the director under this chapter may file a petition with the administrative hearing**
3 **commission alleging that the director has refused the license or renewal of the license. The**
4 **administrative hearing commission shall conduct hearings and make findings of fact and**
5 **conclusions of law in determining whether the applicant may be disqualified by statute.**
6 **Notwithstanding section 621.120, the director shall retain discretion in refusing a license**
7 **or renewal and such discretion shall not transfer to the administrative hearing commission.**

8 **2. If a proceeding is instituted to revoke or suspend a license of any person under**
9 **this section, the director shall refer the matter to the administrative hearing commission**
10 **by directing the filing of a complaint. The administrative hearing commission shall**
11 **conduct hearings and make findings of fact and conclusions of law in such cases. The**
12 **director shall have the burden of proving cause for discipline. If cause is found, the**
13 **administrative hearing commission shall submit its findings of fact and conclusions of law**
14 **to the director, who may determine appropriate discipline.**

15 **3. Hearing procedures before the director or the administrative hearing**
16 **commission, judicial review of the decisions and orders of the director and of the**

17 **administrative hearing commission, and all other procedural matters under this chapter**
18 **shall be governed by the provisions of chapter 536. Hearings before the administrative**
19 **hearing commission shall also be governed by the provisions of chapter 621.**

325.020. 1. Any person, partnership, association [or] , corporation, **limited liability**
2 **company, limited liability partnership, or other legal entity** desiring to be licensed as a public
3 adjuster or public adjuster solicitor shall submit an application therefor to the director upon
4 forms adopted by the director, and shall file corporate surety bond in the amount of ten thousand
5 dollars and, for each employee engaged as a public adjuster or **public adjuster** solicitor, **shall**
6 **file** a separate corporate surety bond in the amount of one thousand dollars; said bonds shall be
7 conditioned upon a satisfactory accounting of any funds received in settlement of losses or
8 claims for holders of insurance policies within the provisions of sections 325.010 to 325.055;
9 provided, however, that the aggregate liability of the surety for all breaches of the conditions of
10 the bond shall, in no event, exceed the sum of such bond. The surety on the bond shall have the
11 right to cancel such bond upon giving thirty days' notice to the director and thereafter shall be
12 relieved of liability for any breach of condition occurring after the effective date of said
13 cancellation.

14 2. Each application shall be signed and verified under oath by the applicant, shall contain
15 the name and address of the applicant and the address of the place where the applicant will
16 conduct an adjusting business, whether any adjuster's license has previously been issued to the
17 applicant, the applicant's occupation or business for the five years next preceding the date of the
18 application, including names and addresses of employers within this period, and such other
19 information as the director may require to enable him to determine the experience, education and
20 training of the applicant to engage in this type of business.

21 3. If the applicant is a partnership, association [or] , corporation, **limited liability**
22 **company, limited liability partnership, or other legal entity**, the application shall contain the
23 above information for each partner, member, officer or director as may be applicable. The
24 license issued shall entitle only those persons named in the application to engage in the adjusting
25 business.

325.025. 1. Each applicant **for a public adjuster or public adjuster solicitor license**
2 shall pay an initial application fee of one hundred dollars [for each individual who will act as a
3 public adjuster or public adjuster solicitor]. Each license issued shall be renewed annually on
4 the anniversary date of issuance and continue in effect until refused, revoked or suspended by
5 the director in accordance with section 325.035; except that if the annual renewal fee for the
6 license is not paid on or before the anniversary date the license terminates.

7 2. The annual renewal fee for a public adjuster's or public adjuster solicitor's license [if]
8 **is** fifty dollars for each license.

9 3. Supplemental applications may be made for others becoming associated with or
10 employed by a licensee upon the payment of the proper additional fee or fees and the filing of
11 a completed application.

 325.030. 1. The director shall issue the proper license when the requirements of sections
2 325.010 to 325.055 have been met, and a person receiving the license shall thereafter be known
3 and styled a "licensed public adjuster", or "licensed public adjuster solicitor", as the case may
4 be.

5 2. The director shall require an applicant to submit to a written examination to determine
6 his or her qualifications to engage in the adjustment business. **The examination shall test the**
7 **knowledge of the individual concerning the duties and responsibilities of a public adjuster**
8 **or public adjuster solicitor and the insurance law and regulations of this state.**
9 **Examinations required by this section shall be developed and conducted under rules**
10 **prescribed by the director.**

11 3. [Notwithstanding subsection 1, the director shall not issue a license to any person who
12 has been convicted of a felony or other crime involving fraudulent or dishonest practices; and
13 shall have the power to revoke, suspend or refuse a license as hereinafter provided] **The**
14 **director may make arrangements, including contracting with an outside testing vendor, for**
15 **developing and administering examinations.**

 325.035. 1. [Whenever the director shall be satisfied that an applicant for a license does
2 not have the necessary qualifications to engage in the public adjustment business, or when he
3 shall be satisfied that a holder of such license has engaged in false, fraudulent or misleading
4 business practices, the director may refuse to issue the license or may revoke or suspend the
5 license. Such refusal, revocation or suspension shall be accomplished pursuant to the provisions
6 of chapter 621 and shall be based on one or more of the following grounds:

7 (1) A violation of any provision of chapter 325; or

8 (2) Any ground under subdivisions (2) to (12) of subsection 1 of section 375.141.

9 2. The director may suspend the license of any holder thereof for such period as he may
10 determine proper or revoke such license if as a result of his disciplinary hearing he deems such
11 action to be necessary as being in the public interest] **The director may suspend, revoke,**
12 **refuse to issue, or refuse to renew a public adjuster or public adjuster solicitor license for**
13 **any one or more of the following causes:**

14 (1) **Intentionally providing materially incorrect, misleading, incomplete, or untrue**
15 **information in the license application;**

16 (2) **Violating any provisions of this chapter, other insurance laws, any regulation,**
17 **subpoena, or order of the director or of another insurance commissioner in any other state;**

18 **(3) Obtaining or attempting to obtain a license through material misrepresentation**
19 **or fraud;**

20 **(4) Improperly withholding, misappropriating, or converting any moneys or**
21 **properties received in the course of doing business in this state or elsewhere;**

22 **(5) Intentionally misrepresenting or concealing the terms of an insurance contract,**
23 **settlement, or claim;**

24 **(6) Having been convicted of a felony or crime involving moral turpitude;**

25 **(7) Having admitted or been found to have committed any insurance unfair trade**
26 **practice or fraud;**

27 **(8) Using fraudulent, coercive, or dishonest practices or demonstrating**
28 **incompetence, untrustworthiness, or financial irresponsibility in the conduct of business**
29 **in this state or elsewhere;**

30 **(9) Having a public adjuster or public adjuster solicitor license, or its equivalent,**
31 **denied, suspended, or revoked in any other state, province, district, or territory;**

32 **(10) Signing the name of another to a settlement or claim or communicating or**
33 **transmitting any document related to an insurance transaction without authorization;**

34 **(11) Filing, submitting, or recording any complaint to or with any court of record**
35 **or agency of the state on behalf of an insured client;**

36 **(12) Providing legal advice to the insured including, but not limited to, legal advice**
37 **regarding the policy provisions or coverage issues;**

38 **(13) Engaging in the unauthorized practice of law as defined under section 484.020;**

39 **(14) Improperly using notes or any other reference material to complete an**
40 **examination for a public adjuster or public adjuster solicitor license;**

41 **(15) Acting as a public adjuster or public adjuster solicitor if not licensed or**
42 **accepting business from a person knowing that such person is not licensed;**

43 **(16) Failing to comply with an administrative or court order imposing a child**
44 **support obligation; or**

45 **(17) Failing to comply with any administrative or court order directing payment**
46 **of state or federal income tax.**

47 **2. In the event that the action by the director is to deny or not to renew an**
48 **application for a license, the director shall notify the applicant or licensee in writing and**
49 **advise the applicant or licensee of the reason for the denial or nonrenewal. Appeal of the**
50 **denial or nonrenewal of the application for a license shall be made under the provisions**
51 **of chapter 621.**

52 **3. The license of a public adjuster may be suspended or revoked or an application**
53 **for a license or renewal of a license refused if the director finds that a violation by an**

54 individual public adjuster or public adjuster solicitor was known or should have been
55 known by one or more of the partners, officers, or managers acting on behalf of the public
56 adjuster and the violation was neither reported to the director nor corrective action taken.
57 This subsection applies only to any public adjuster that is a partnership, association,
58 corporation, limited liability company, limited liability partnership, or other legal entity
59 other than a person.

60 4. The director may also revoke or suspend any public adjuster or public adjuster
61 solicitor license issued by the director if the licensee has failed to renew or has surrendered
62 such license.

63 5. Every public adjuster or public adjuster solicitor licensed in this state shall notify
64 the director of any change of address, on forms prescribed by the director, within thirty
65 days of the change. If the failure to notify the director of the change of address results in
66 an inability to serve the public adjuster or public adjuster solicitor with a complaint as
67 provided for by sections 621.045 to 621.198, then the director may immediately revoke the
68 license of the public adjuster or public adjuster solicitor until such time as service may be
69 obtained.

70 6. A public adjuster or public adjuster solicitor shall report to the director any
71 administrative action taken against the public adjuster or public adjuster solicitor in
72 another jurisdiction or by another governmental agency in this state within thirty days of
73 the final disposition of the matter. This report shall include a copy of the order, consent
74 order, or other relevant legal documents.

75 7. Within thirty days of filed criminal charges, a public adjuster or public adjuster
76 solicitor shall report to the director any criminal prosecution for a felony or a crime
77 involving moral turpitude of the public adjuster or public adjuster solicitor filed in any
78 jurisdiction. The report shall include a copy of the complaint, indictment, or information
79 filed and any other relevant legal documents.

325.041. 1. A public adjuster or public adjuster solicitor shall not solicit or attempt
2 to solicit an insured during the progress of a loss-producing occurrence, as defined in the
3 insured's insurance contract.

4 2. It is an unfair and deceptive insurance trade practice under the Unfair Trade
5 Practice Act, as contained in sections 375.930 to 375.948, for a public adjuster, public
6 adjuster solicitor, or any other person to:

7 (1) Circulate or disseminate any advertisement, announcement, or statement
8 containing any assertion, representation, or statement with respect to the business of
9 insurance that is untrue, deceptive, or misleading;

10 (2) Engage in any harassing, threatening, or intimidating communications in an
11 attempt to coerce a party into settling an insurance claim;

12 (3) Unnecessarily cause delay to a claimant's settlement; or

13 (4) Require, demand, or accept any fee, compensation, deposit, or other thing of
14 value prior to settlement of a claim.

15 3. A public adjuster, a public adjuster solicitor, or any person or entity acting on
16 behalf of a public adjuster or public adjuster solicitor shall not give or offer to give a
17 monetary loan or advance to a client or prospective client.

18 4. A public adjuster's written contract or agreement shall contain:

19 (1) The name, address, and license number of the public adjuster negotiating the
20 contract and, if applicable, the name, address, and license number of the public adjuster's
21 employer;

22 (2) The public adjuster's telephone and fax numbers, including area code;

23 (3) The mailing and physical addresses to which notice of cancellation and all
24 communications to the public adjuster may be delivered;

25 (4) If any part of the contract or solicitation is made via the internet, the email and
26 website addresses to which notice of contract cancellation and all communications to the
27 public adjuster may be delivered;

28 (5) The date and time the contract was signed;

29 (6) The following separate statements in twelve-point bold type on the signature
30 page of the contract:

31

32 **NOTICE: THE INSURED MAY CANCEL THIS CONTRACT BY WRITTEN NOTICE**
33 **TO THE PUBLIC ADJUSTER WITHIN 3 BUSINESS DAYS OF SIGNATURE FOR**
34 **ANY REASON.**

35

36 **YOU ARE ENTERING INTO A CONTRACT. YOU ARE BEING CHARGED A FEE**
37 **FOR THIS SERVICE.**

38

39 **YOU DO NOT HAVE TO ENTER INTO THIS CONTRACT TO MAKE A CLAIM FOR**
40 **LOSS OR DAMAGE ON A POLICY OF INSURANCE.**

41

42 **YOU MAY CONTACT THE MISSOURI DEPARTMENT OF INSURANCE,**
43 **FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION FOR**
44 **QUESTIONS ABOUT YOUR HOMEOWNER'S INSURANCE POLICY OR CLAIM**
45 **TOLL-FREE AT 800-726-7390.**

46

47 **5. A public adjuster, a public adjuster solicitor, or any person or entity acting on**
48 **behalf of a public adjuster or public adjuster solicitor shall exhibit his or her public**
49 **adjuster license to any prospective client before entering into any contract for the**
50 **performance of or before performing adjustment or settlement services.**

51 **6. (1) The written contract or agreement for the performance of adjustment or**
52 **settlement services shall detail the public adjuster's commission, including the method of**
53 **calculating compensation for the public adjuster, through an hourly rate, flat fee, or**
54 **percentage of settlement.**

55 **(2) A public adjuster shall not charge, agree to, or accept any compensation,**
56 **payment, commission, fee, or other thing of value for his or her services in excess of:**

57 **(a) Five percent of the amount of insurance claim payments by the insurer for**
58 **claims based on events that are the subject of a declaration of a state of emergency by the**
59 **governor, either on a contingency or flat-fee basis. This paragraph applies to claims made**
60 **during the period of one year after the declaration of emergency;**

61 **(b) Ten percent of the amount of all other insurance claim payments, either on a**
62 **contingency or flat-fee basis;**

63 **(c) If paying on an hourly basis for actual services rendered, seventy-five dollars**
64 **per hour, not to exceed the overall limits as specified under this subdivision.**

65 **(3) If the insurance carrier pays or commits in writing to pay to the insured the**
66 **policy limits of the insurance policy within seventy-two hours of the loss being reported to**
67 **the insurer, the public adjuster is not entitled to compensation based on a percentage of the**
68 **insurance settlement, but is entitled to reasonable compensation as specified in the written**
69 **contract or agreement for the public adjuster's actual time and expenses provided to the**
70 **insured before the claim was paid or the written commitment to pay was received.**

71 **(4) A public adjuster shall inform the insured that the insurer may not increase the**
72 **amount of its loss estimate.**

73 **7. Any violation of this section shall be deemed a level three violation under section**
74 **374.049.**

325.042. 1. If the director determines that a person has engaged, is engaging in, or
2 **has taken a substantial step toward engaging in an act, practice, or course of business**
3 **constituting a violation of any provision of sections 325.010 to 325.055 or a rule adopted**
4 **or order issued pursuant thereto, or that a person has materially aided or is materially**
5 **aiding an act, practice, omission, or course of business constituting a violation of any**
6 **provision of sections 325.010 to 325.055, or a rule adopted or order issued pursuant**
7 **thereto, the director may issue such administrative orders authorized under section**

8 **374.046.** A violation of any provision of sections 325.010 to 325.055 is a level two violation
9 under section 374.049 except as otherwise provided.

10 **2.** If the director believes that a person has engaged, is engaging in, or has taken
11 a substantial step toward engaging in an act, practice, or course of business constituting
12 a violation of any provision of sections 325.010 to 325.055 or a rule adopted or order issued
13 pursuant thereto, or that a person has materially aided or is materially aiding an act,
14 practice, omission, or course of business constituting a violation of any provision of sections
15 325.010 to 325.055 or a rule adopted or order issued pursuant thereto, the director may
16 maintain a civil action for relief or seek an injunction as authorized under section 374.048.
17 A violation of any provision of sections 325.010 to 325.055 is a level two violation under
18 section 374.049 except as otherwise provided.

19 **3.** If the director determines that a person regulated under this chapter has
20 conducted its business fraudulently with respect to sections 325.010 to 325.055, or has as
21 a matter of business practice abused its rights under such sections, such conduct shall
22 constitute either an unfair trade practice under the provisions of sections 375.930 to
23 375.948 or an unfair claims settlement practice under the provisions of sections 375.1000
24 to 375.1018.

25 **4.** In addition to any remedies available in this section or in sections 374.046 to
26 374.049, the requirements and remedies of section 374.210 shall also apply to a person or
27 entity regulated under this chapter.

325.051. 1. No person, partnership, association, corporation, limited liability
2 company, limited liability partnership, or other legal entity, directly or indirectly, acting
3 as a public adjuster or public adjuster solicitor shall pay a commission, service fee,
4 brokerage, or other valuable consideration to a person for investigating or settling claims
5 in this state if that person is required to be licensed and is not so licensed.

6 **2.** No person, partnership, association, corporation, limited liability company,
7 limited liability partnership, or other legal entity, directly or indirectly, acting as a public
8 adjuster or public adjuster solicitor shall accept a commission, service fee, brokerage, or
9 other valuable consideration from a person for investigating or settling claims in this state
10 if that person is required to be licensed and is not so licensed.

11 **3.** A person, partnership, association, corporation, limited liability company,
12 limited liability partnership, or other legal entity, directly or indirectly, acting as a public
13 adjuster or public adjuster solicitor may pay or assign a commission, service fee,
14 brokerage, or other valuable consideration to persons who do not investigate or settle
15 claims in this state, unless the payment would violate section 379.356 or subdivision (9) of
16 section 375.936.

2 **325.054. The director may promulgate rules to implement the provisions of sections**
3 **325.010 to 325.055. Any rule or portion of a rule, as that term is defined in section 536.010,**
4 **that is created under the authority delegated in this section shall become effective only if**
5 **it complies with and is subject to all of the provisions of chapter 536 and, if applicable,**
6 **section 536.028. This section and chapter 536 are nonseverable, and if any of the powers**
7 **vested with the general assembly pursuant to chapter 536 to review, to delay the effective**
8 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**
9 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2016,**
10 **shall be invalid and void.**

2 325.055. No person, partnership, association [or] , corporation, **limited liability**
3 **company, limited liability partnership, or other legal entity**, directly or indirectly, acting as
4 a public adjuster or public adjuster solicitor licensed under the provisions of sections 325.010
5 to 325.055, may:

6 (1) Solicit, or enter into, [an agreement] **a contract** for the repair or replacement of
7 damaged property on which said public adjuster or public adjuster solicitor has been engaged to
8 adjust or settle claims for losses or damages arising out of policies of fire or allied lines of
9 insurances; **or**

10 (2) **Enter into a contract or accept or require a power of attorney that vests in the**
11 **public adjuster or public adjuster solicitor the effective authority to choose the persons**
12 **who shall perform repair work.**

13 374.046. 1. If the director determines based upon substantial and competent evidence
14 that a person has engaged, is engaging in or has taken a substantial step toward engaging in an
15 act, practice, omission, or course of business constituting a violation of the laws of this state
16 relating to insurance in this chapter, **chapter 325**, chapter 354, and chapters 375 to 385, or a rule
adopted or order issued pursuant thereto or that a person has materially aided or is materially
aiding an act, practice, omission, or course of business constituting a violation of the laws of this
state relating to insurance in this chapter, **chapter 325**, chapter 354, and chapters 375 to 385, or
a rule adopted or order issued pursuant thereto, the director may order the following relief:

1 (1) An order directing the person to cease and desist from engaging in the act, practice,
2 omission, or course of business;

3 (2) A curative order or order directing the person to take other action necessary or
4 appropriate to comply with the insurance laws of this state;

5 (3) Order a civil penalty or forfeiture as provided in section 374.049; and

6 (4) Award reasonable costs of the investigation.

7 2. In determining any relief sought, the director shall consider, among other factors,
8 whether:

- 17 (1) The violations are likely to continue or reoccur;
- 18 (2) Actual financial loss was sustained by consumers and restitution has been made;
- 19 (3) The act, practice, omission, or course of business was detected as part of a self-audit
20 or internal compliance program and immediately reported to the director; and
- 21 (4) The act, practice, omission, or course of business had previously been detected, but
22 inadequate policies and procedures were implemented to prevent reoccurrence.
- 23 3. Unless the director determines that a summary order is appropriate under subsection
24 4 of this section, the director shall provide notice of the intent to initiate administrative
25 enforcement by serving a statement of the reasons for the action upon any person subject to the
26 proceedings. A statement of reasons, together with an order to show cause why a cease and
27 desist order and other relief should not be issued, shall be served either personally or by certified
28 mail on any person named therein. The director shall schedule a time and place at least ten days
29 thereafter for hearing, and after notice of and opportunity for hearing to each person subject to
30 the order, the director may issue a final order under subsection 6 of this section.
- 31 4. If the director determines that sections 375.014, 375.144, or 375.310 are being
32 violated and consumers are being aggrieved by the violations, the order issued under subdivision
33 (1) of subsection 1 of this section may be summary and be effective on the date of issuance.
34 Upon issuance of the order, the director shall promptly serve each person subject to the order
35 with a copy of the order and a notice that the order has been entered.
- 36 5. A summary order issued under subsection 4 of this section must include a statement
37 of the reasons for the order, notice within five days after receipt of a request in a record from the
38 person that the matter will be scheduled for a hearing, and a statement whether the department
39 is seeking a civil penalty or costs of the investigation. If a person subject to the order does not
40 request a hearing and none is ordered by the director within thirty days after the date of service
41 of the order, the order becomes final as to that person by operation of law. If a hearing is
42 requested or ordered, the director, after notice of and opportunity for hearing to each person
43 subject to the order, may modify or vacate the order or extend it until final determination.
- 44 6. If a hearing is requested or ordered pursuant to subsection 3 or subsection 5 of this
45 section, a hearing before the director or a hearing officer designated by the director must be
46 provided. A final order may not be issued unless the director makes findings of fact and
47 conclusions of law in a record in accordance with the provisions of chapter 536 and procedural
48 rules promulgated by the director. The final order may make final, vacate, or modify the order
49 issued under subsection 5 of this section.
- 50 7. In a final order under subsection 6 of this section, the director may impose a civil
51 penalty or forfeiture as provided in section 374.049. No civil penalty or forfeiture may be

52 imposed against a person unless the person has engaged in the act, practice, omission, or course
53 of business constituting the violation.

54 8. In a final order under subsection 6 of this section, the director may charge the actual
55 cost of an investigation or proceeding for a violation of the insurance laws of this state or a rule
56 adopted or order issued pursuant thereto. These funds shall be paid to the director to the credit
57 of the insurance dedicated fund.

58 9. The director is authorized to issue subpoenas, compel attendance of witnesses,
59 administer oaths, hear testimony of witnesses, receive evidence, and require the production of
60 books, papers, records, correspondence, and all other written instruments or documents relevant
61 to the proceeding and authorized in contested cases under the provisions of chapter 536 and
62 procedural rules promulgated by the director.

63 10. Statements of charges, notices, orders, and other processes of the director may be
64 served by anyone duly authorized by the director either in the manner provided by law for service
65 of process in civil actions, or by registering or certifying and mailing a copy thereof to the person
66 affected by such statement, notice, order, or other process at his or its residence or principal
67 office or place of business. The verified return by the person so serving such statement, notice,
68 order, or other process setting forth the manner of such service shall be proof of the same, and
69 the return postcard receipt for such statement, notice, order, or other process, registered and
70 mailed as aforesaid, shall be proof of the service of the same.

71 11. If a petition for judicial review of a final order is not filed in accordance with section
72 374.055, the director may file a certified copy of the final order with the clerk of a court of
73 competent jurisdiction. The order so filed has the same effect as a judgment of the court and
74 may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

75 12. If a person violates or does not comply with an order under this section, the director
76 may under section 374.048 petition a court of competent jurisdiction to enforce the order. The
77 court may not require the director to post a bond in an action or proceeding under this section.
78 If the court finds, after service and opportunity for hearing, that the person was not in compliance
79 with the order, the court may, in addition to relief authorized in section 374.048, adjudge the
80 person in civil contempt of the order. A violation of or failure to comply with an order under this
81 section is a level three violation under section 374.049. The court may impose a further civil
82 penalty against the person for contempt in an amount not less than five thousand dollars but not
83 greater than one hundred thousand dollars for each violation and may grant any other relief the
84 court determines is just and proper in the circumstances.

85 13. Until the expiration of the time allowed under section 374.055 for filing a petition
86 for judicial review, if no such petition has been duly filed within such time or if a petition for
87 review has been filed within such time, then until the transcript of the record in the proceeding

88 has been filed in the circuit court of Cole County, the director may at any time, upon such notice
89 and in such manner as he shall deem proper, modify or set aside in whole or in part any order
90 issued by him under this section.

91 14. The enforcement authority of the director under this section is cumulative to any
92 other statutory authority of the director.

93 15. The director is authorized to issue administrative consent orders in the public interest
94 as complete or partial settlement of any investigation, examination, or other proceeding, which
95 curative orders may contain any provision necessary or appropriate to assure compliance with
96 the insurance laws of this state, require payment of restitution to be distributed directly or by the
97 director to any aggrieved consumers, civil penalties, or voluntary forfeiture, reimbursement for
98 costs of investigation or examination, or any other relief deemed by the director to be necessary
99 and appropriate. Any remaining matters not addressed in settlement may be submitted to the
100 director through a contested proceeding under this section.

101 16. (1) Any person willfully violating any provision of any cease and desist order of the
102 director after it becomes final, while the same is in force, upon conviction thereof shall be
103 punished by a fine of not more than one hundred thousand dollars, by imprisonment of up to ten
104 years, or by both such fine and imprisonment.

105 (2) In addition to any other penalty provided, violation of any cease and desist order shall
106 subject the violator to suspension or revocation of any certificate of authority or license as may
107 be applicable under the laws of this state relating to the business of insurance.

108 17. The term "person" as used in this chapter shall include any individual, partnership,
109 corporation, association or trust, or any other legal entity.

110 18. The term "order" as used in this chapter shall include a formal administrative
111 direction or command of the director issued under this section or in any contested case subject
112 to the provisions of section 536.063 or any lawful administrative proceeding subject to judicial
113 review, but shall not include department bulletins, no-action letters, advisory opinions, or any
114 other statement of general applicability that should be adopted by rule.

374.048. 1. If the director believes that a person has engaged, is engaging in or has taken
2 a substantial step toward engaging in an act, practice, omission, or course of business
3 constituting a violation of the laws of this state relating to insurance in this chapter, **chapter 325**,
4 chapter 354, and chapters 375 to 385, or a rule adopted or order issued pursuant thereto or that
5 a person has or is engaging in an act, practice, omission, or course of business that materially
6 aids a violation of the laws of this state relating to insurance in this chapter, **chapter 325**, chapter
7 354, and chapters 375 to 385, or a rule adopted or order issued pursuant thereto, the director may
8 maintain an action in the circuit court of any county of the state or any city not within a county

9 to enjoin the act, practice, omission, or course of business and to enforce compliance with the
10 laws of this state relating to insurance or a rule adopted or order issued by the director.

11 2. In an action under this section and on a proper showing, the court may:

12 (1) Issue a permanent or temporary injunction, restraining order, or declaratory
13 judgment;

14 (2) Order other appropriate or ancillary relief, which may include:

15 (a) An asset freeze, accounting, writ of attachment, writ of general or specific execution,
16 and appointment of a receiver or conservator, which may be the director, for the defendant or the
17 defendant's assets;

18 (b) Ordering the director to take charge and control of a defendant's property, including
19 accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose
20 of property;

21 (c) Imposing a civil penalty or forfeiture as provided in section 374.049;

22 (d) Upon showing financial loss, injury, or harm to identifiable consumers, imposing an
23 order of restitution or disgorgement directed to a person who has engaged in an act, practice,
24 omission, or course of business in violation of the laws or rules relating to insurance;

25 (e) Ordering the payment of prejudgment and postjudgment interest;

26 (f) Ordering reasonable costs of investigation and prosecution; and

27 (g) Ordering the payment to the insurance dedicated fund an additional amount equal to
28 ten percent of the total restitution or disgorgement ordered, or such other amount as awarded by
29 the court, which shall be appropriated to an insurance consumer education program administered
30 by the director; or

31 (3) Order such other relief as the court considers necessary or appropriate.

32 3. The director may not be required to post a bond in an action or proceeding under this
33 section.

34 4. The case may be brought in the circuit court of Cole County, any county or city not
35 within a county in which a violation has occurred, or any county or city not within a county
36 which has venue of an action against the person, partnership, or corporation under other
37 provisions of law.

38 5. The enforcement authority of the director under this section is cumulative to any other
39 authority of the director to impose orders under other provisions of the laws relating to insurance
40 in this state.

41 6. If the director determines it to be in the public interest, the director is authorized to
42 enter into a consent injunction and judgment in the settlement of any proceeding under the laws
43 of this state relating to insurance in this chapter, **chapter 325**, chapter 354, and chapters 375 to
44 385.

45 7. A "Consumer Restitution Fund" shall be created for the purpose of preserving and
46 distributing to aggrieved consumers disgorgement or restitution funds obtained through
47 enforcement proceedings brought by the director. In addition to the equitable powers of the court
48 authorized above, the court may order that such funds be paid into the consumer restitution fund
49 for distribution to aggrieved consumers. It shall be the duty of the director to distribute such
50 funds to those persons injured by the unlawful acts, practices, omissions, or courses of business
51 by the subject of the proceeding. Notwithstanding the provisions of section 33.080, any funds
52 remaining in the director's consumer restitution fund at the end of any biennium shall not be
53 transferred to the general revenue fund, but if the director is unable with reasonable efforts to
54 ascertain the aggrieved consumers, then the funds may be transferred to the insurance dedicated
55 fund to be used for consumer education.

 374.049. 1. Violations of the laws of this state relating to insurance in this chapter,
2 **chapter 325**, chapter 354, and chapters 375 to 385, or a rule adopted or order issued by the
3 director, are classified for the purpose of civil penalties and forfeitures into the following five
4 classifications:

- 5 (1) Level one violations;
- 6 (2) Level two violations;
- 7 (3) Level three violations;
- 8 (4) Level four violations; and
- 9 (5) Level five violations.

10 2. An order to impose a civil penalty or forfeiture, when imposed by the director in an
11 administrative proceeding under section 374.046 on a person for any violation of the laws of this
12 state relating to insurance in this chapter, **chapter 325**, chapter 354, and chapters 375 to 385, or
13 a rule adopted or order issued by the director, shall be an order to pay an amount not exceeding
14 the following:

- 15 (1) No civil penalty or forfeiture for a level one violation;
- 16 (2) One thousand dollars per each level two violation, up to an aggregate civil penalty
17 or forfeiture of fifty thousand dollars per annum for multiple violations;
- 18 (3) Five thousand dollars per each level three violation, up to an aggregate civil penalty
19 or forfeiture of one hundred thousand dollars per annum for multiple violations;
- 20 (4) Ten thousand dollars per each level four violation, up to an aggregate civil penalty
21 or forfeiture of two hundred fifty thousand dollars per annum for multiple violations;
- 22 (5) Fifty thousand dollars per each level five violation, up to an aggregate civil penalty
23 or forfeiture of two hundred fifty thousand dollars per annum for multiple violations.

24 3. An order to impose a civil penalty or forfeiture, when imposed by the court in an
25 enforcement proceeding under section 374.048 on a person for any violation of the laws of this

26 state relating to insurance in this chapter, **chapter 325**, chapter 354, and chapters 375 to 385, or
27 a rule adopted or order issued by the director, shall be an order to pay an amount not exceeding
28 the following:

29 (1) No civil penalty or forfeiture for a level one violation;

30 (2) One thousand dollars per each level two violation, up to an aggregate civil penalty
31 or forfeiture of fifty thousand dollars per annum for multiple violations;

32 (3) Five thousand dollars per each level three violation, up to an aggregate civil penalty
33 or forfeiture of two hundred thousand dollars per annum for multiple violations;

34 (4) Twenty thousand dollars per each level four violation, up to an aggregate civil
35 penalty or forfeiture of one million dollars per annum for multiple violations;

36 (5) One million dollars per each level five violation, with no limit to civil penalties or
37 forfeitures for multiple violations.

38 4. No civil penalty or forfeiture may be imposed against a person, unless the person has
39 engaged in the act, practice, omission or course of business constituting the violation.

40 5. Any violation of the laws of this state relating to insurance in this chapter, **chapter**
41 **325**, chapter 354, and chapters 375 to 385, which is not classified or does not authorize a specific
42 range for a civil penalty or forfeiture for violations, shall be classified as a level one violation.
43 In bringing an action to enforce a rule adopted by the director, unless the conduct that violates
44 the rule also violates the enabling statute, the violation shall be classified as a level one violation
45 and shall not be subject to any provision in this section regarding the enhancement of a civil
46 penalty or forfeiture.

47 6. The civil penalties or forfeitures set forth in this section establish a maximum range.
48 The court, or the director in administrative enforcement, shall consider all of the circumstances,
49 including the nature of violations to determine whether, and to any extent, a civil penalty or
50 forfeiture is justified.

51 7. In any enforcement proceeding, the court, or director in administrative enforcement,
52 may enhance the civil penalty or forfeiture with a one-classification step increase under this
53 section, if the violation was knowing. The court, or director in administrative enforcement, may
54 enhance the civil penalty or forfeiture with a two-level increase if the violation was knowingly
55 committed in conscious disregard of the law.

56 8. In any enforcement proceeding, the court, or director in administrative enforcement,
57 may, after consideration of the factors specified in subsection 2 of section 374.046, enhance the
58 civil penalty or forfeiture with a one-classification step increase under this section, if the
59 violations resulted in actual financial loss to consumers.

60 9. In any enforcement proceeding, the court, or director in administrative enforcement,
61 shall reduce the civil penalty or forfeiture on that person with up to a two-classification step

62 reduction under this section, if prior to receiving notice of the violation from the department, the
63 person detects the violation through a self-audit or internal compliance program reasonably
64 designed to detect and prevent insurance law violations and immediately reports the violation
65 to the director.

66 10. If more than one error is caused by a single act or omission in the use of data
67 processing equipment and such errors are not known by the violator at the time the error occurs,
68 then any such errors shall be regarded as a single violation under this section.

69 11. Any civil penalty or forfeiture recovered by the director shall be paid to the treasurer
70 and then distributed to the public schools as required by Article IX, Section 7 of the Missouri
71 Constitution.

72 12. The penalties and forfeitures authorized by this section govern all actions and
73 proceedings that are instituted on the basis of conduct occurring after August 28, 2006.

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