

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2524
102ND GENERAL ASSEMBLY

5267H.02C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 374.190, RSMo, and to enact in lieu thereof four new sections relating to regulating 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Section A. Section 374.190, RSMo, is repealed and four new sections enacted in lieu thereof, to be known as sections 374.190, 374.192, 380.621, and 380.631, to read as follows: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. For the purpose of making the investigations, or having the same made, the director may employ the necessary clerical, actuarial and other assistance.

4. **Notwithstanding any provision of law to the contrary, the confidentiality provisions of section 374.205, including subdivision (5) of subsection 3 of section**

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.

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.**

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

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 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 including, but not limited to, the**
8 **annual aggregate reinsurance amount set forth in subdivision (1) of section 20 CSR 200-**
9 **12.030.**

10 **3. Notwithstanding any law to the contrary, the authority expressly granted in**
11 **this section shall be the sole authority granted to the department over any Missouri**
12 **mutual insurance company operating under the provisions of this chapter, provided**
13 **however that any provisions regarding premium taxation set forth in chapter 148 that**
14 **are applicable to Missouri mutual insurance companies shall remain applicable to**
15 **Missouri mutual insurance companies and further provided however that chapter 382,**
16 **as amended, shall remain applicable to any Missouri mutual insurance company which**
17 **is a member of, or is seeking to become a member of, an "insurance holding company**
18 **system," as that term is defined in section 382.010, as amended, provided however that**
19 **any examination authorized by chapter 382 shall comply with subsection 6 below where**

20 a Missouri mutual insurance company owns, in whole or part, an affiliate subject to
21 examination. The department shall not require any company operating under the
22 provisions of this chapter to waive any rights, benefits, or requirements in this chapter,
23 nor shall it confer favorable treatment in exchange for, nor condition the granting of any
24 exception upon, any company conceding additional regulatory oversight by the
25 department. If the department and any company operating under the provisions of
26 this chapter have entered into any agreement in which the department has received
27 concessions including, but not limited to, additional regulatory oversight beyond the
28 authority expressly granted in this chapter, such agreement as it relates to the
29 department's authority is void upon the enactment of this section, but such agreement
30 shall remain in full force and effect for the stated duration of the agreement as it relates
31 to the grant of any benefits, allowances, or exemptions granted to the company by the
32 agreement.

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

40 5. Notwithstanding any law to the contrary including, but not limited to, the
41 provisions of section 380.321, the director shall not have the authority to hold a hearing
42 regarding a proposed merger of companies operating under the provisions of this
43 chapter unless the director has substantial and competent evidence to believe the
44 proposed merger will prejudice the interests of the policyholders of the companies. The
45 director shall have fifteen business days to review the petition for merger and, upon
46 substantial and competent evidence to believe the proposed merger will prejudice the
47 interests of the policyholders of the companies, send a written notice of a hearing
48 regarding the proposed merger. The written notice of hearing shall itemize the reasons
49 why the director believes the proposed merger will prejudice the policyholders of the
50 companies and it shall include a hearing date regarding the proposed merger no earlier
51 than thirty days and no later than sixty days after the notice of hearing is received by
52 the companies involved in the proposed merger.

53 6. (1) Notwithstanding the provisions of section 380.491, the department shall
54 not charge a rate exceeding a reasonable fee. A reasonable fee is determined by the
55 average market rate typically charged by third-party vendors for such services. All
56 working papers, recorded information, documents, and copies thereof produced by,

57 obtained by, or disclosed to the department or any other person in the course of an
58 examination made under this chapter shall be given confidential treatment and are not
59 subject to subpoena and shall not be made public by the department or to any other
60 person, except as follows:

61 (a) Upon adoption, the director may open the final examination report for public
62 inspection;

63 (b) The director may disclose the content of an examination report, preliminary
64 examination report or results, or any matter relating thereto, to the insurance
65 department of this or any other state or country, or to law enforcement officials of this
66 or any other state or agency of the federal government at any time, so long as such
67 agency or office receiving the report or matters relating thereto agrees in writing to hold
68 it confidential and in a manner consistent with this section; and

69 (c) In the event the director determines that legal or regulatory action is
70 appropriate as a result of any examination, he or she may initiate any proceedings or
71 actions as provided by law.

72 (2) At any time after notification of the commencement of an examination and
73 through its completion, a company may request a scheduling conference with the
74 department to discuss the following:

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

76 (b) The estimated costs of the examination;

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

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

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

82 (3) (a) No more than thirty days after the scheduling conference, the department
83 shall provide the company with a detailed written budget estimate for the examination
84 that, for each forthcoming phase of the examination, accomplishes the following:

85 a. Identifies the individuals or firms performing the examination and their daily
86 or hourly rates;

87 b. Estimates of travel, lodging, meal, and other administrative or supply costs;

88 c. Estimates the length of time to conduct on-site and off-site examination
89 activities.

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

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

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

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

102 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. A company operating under the provisions of chapter 380 is "insolvent" if it is
4 unable to pay its obligations when they are due, or if its admitted assets do not exceed its
5 liabilities plus the reserve fund or adequate guaranty fund required by section 380.021
6 or 380.271, as applicable.

7 3. Notwithstanding any provision of law to the contrary, including but not
8 limited to the specific exception in subdivision (1) of subsection 2 of section 375.1150, as
9 amended, the proceedings authorized by sections 375.1150 to 375.1246 may be applied to
10 all companies operating under the provisions of chapter 380, except that such companies
11 shall not be subject to sections 375.1160 to 375.1164. Sections 375.570 to 375.750, as
12 amended, shall apply to such proceedings.

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