

FIRST REGULAR SESSION

HOUSE BILL NO. 709

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GOSEN.

1742H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 374, RSMo, by adding thereto two new sections relating to informational documents issued by the department of insurance, financial institutions and professional registration.

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

Section A. Chapter 374, RSMo, is amended by adding thereto two new sections, to be known as sections 374.015 and 374.018, to read as follows:

374.015 1. For purposes of this section, "insurer" shall mean any person, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance including producers, adjusters and third-party administrators, health services corporations, health maintenance organizations, health carriers, prepaid limited health care service plans, dental, optometric, and other similar health service plans. "Insurer" shall also include all companies organized, incorporated, or doing business under the provisions of chapters 325, 354, and 374 to 385.

2. For purposes of this section, "bulletin" shall mean an informal written communication to inform or educate the insurance industry and the general public about a regulatory topic or issue. A bulletin is informational in nature and is not an evaluation of specific facts and circumstances.

3. Notwithstanding any law to the contrary, the director may at his or her discretion issue bulletins addressing the business of insurance in this state.

4. Bulletins do not have the force or effect of law and shall not be considered statements of general applicability that would require promulgation by rule.

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.

16 **5. Such bulletins shall not be binding on the department or an insurer. The**
17 **director may revise or withdraw any previously issued bulletin; however such revision or**
18 **withdrawal shall be prospective in nature. The effective date for such bulletin which was**
19 **withdrawn or revised shall be ninety days after the date the revision or withdrawal notice**
20 **is published and shall apply to new policies issued and policies that renew on or after that**
21 **date.**

374.018 1. For purposes of this section, "no-action letter" shall mean a letter that
2 **states the intention of the department to not take enforcement actions under section**
3 **374.046 with respect to the requesting insurer, based on the specific facts then presented**
4 **and applicable law, as of the date a no-action letter is issued.**

5 **2. For purposes of this section, "insurer" shall mean all companies organized,**
6 **incorporated, or doing business under the provisions of chapters 354, 376, 379, or 380.**

7 **3. Notwithstanding any law to the contrary, the director may at his or her**
8 **discretion issue no-action letters addressing the business of insurance in this state.**

9 **4. No-action letters shall not be considered statements of general applicability that**
10 **would require promulgation by rule.**

11 **5. Insurers who seek guidance may submit a written request for a no-action letter**
12 **to the department.**

13 **6. An insurer is under an affirmative obligation to make full, true, and accurate**
14 **disclosure of all information related to the activities for which the no-action letter is**
15 **requested. Each request shall be accompanied by all relevant supplementary information**
16 **including, but not limited to, background information regarding the request, policies,**
17 **procedures, and applicable marketing materials. Each request shall also include complete**
18 **copies of documents, and shall identify all provisions of law applicable to the request.**

19 **7. The insurer requesting the no-action letter shall provide the department with any**
20 **additional information or documents the department requests for its review of the matter.**

21 **8. The insurer may withdraw the request for a no-action letter prior to the issuance**
22 **of the no-action letter.**

23 **9. The department shall act on the no-action letter request within ninety days after**
24 **it receives all information necessary to complete its review.**

25 **10. At the completion of its review of a request for a no-action letter the department**
26 **shall do one of the following:**

27 **(1) Issue a no-action letter;**

28 **(2) Decline to issue a no-action letter; or**

29 **(3) Take such other action as the department considers appropriate.**

30 **11. A no-action letter shall be effective as of the date it is issued.**

31 **12. As long as there is no change in any material fact or law or the discovery of a**
32 **material misrepresentation or omission made by the insurer, the department is estopped**
33 **from bringing any enforcement action under section 374.046 against the requesting insurer**
34 **concerning the specific conduct that is the subject of the no-action letter issued by the**
35 **department. However, this estoppel shall not apply to those enforcement actions related**
36 **to the financial condition of the insurer. The determination of materiality shall be in the**
37 **sole discretion of the director.**

38 **13. A no-action letter request shall be a closed record as defined in chapter 610**
39 **until the date of issuance by the department of a response to the no-action letter request.**
40 **The request for a no-action letter and the department's response shall, after the date of**
41 **issuance by the department, be considered a public record as defined in chapter 610.**
42 **Supplementary information submitted with a request for a no-action letter as required**
43 **under subsection 6 of this section that contains proprietary or trade secret information**
44 **shall be treated as a confidential closed record upon request of the insurer under chapter**
45 **610.**

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