

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 1009
91ST GENERAL ASSEMBLY

Reported from the Committee on Insurance, May 2, 2002, with recommendation that the House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 1009 Do Pass.

TED WEDEL, Chief Clerk

2551L.05C

AN ACT

To repeal sections 375.330, 375.345, 376.307, 376.311, 376.671, 376.951, 376.952, 376.955, 376.957, and 379.080 RSMo, and to enact in lieu thereof fourteen new sections relating to investments by insurance companies.

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

Section A. Sections 375.330, 375.345, 376.307, 376.311, 376.671, 376.951, 376.952,
2 376.955, 376.957, and 379.080, RSMo, are repealed and fourteen new sections enacted in lieu
3 thereof, to be known as sections 375.330, 375.345, 376.307, 376.311, 376.671, 376.951,
4 376.952, 376.955, 376.957, 376.1121, 376.1124, 376.1127, 376.1130, and 379.080, to read as
5 follows:

375.330. 1. No insurance company formed under the laws of this state shall be permitted
2 to purchase, hold or convey real estate, excepting for the purpose and in the manner herein set
3 forth, to wit:

4 (1) Such as shall be necessary for its accommodation in the transaction of its business;
5 provided that before the purchase of real estate for any such purpose, the approval of the director
6 of the department of insurance must be first had and obtained, and [in no event shall] **except**
7 **with the approval of the director**, the value of such real estate, together with all appurtenances
8 thereto, purchased for such purpose[:

9 (a) If a stock company, exceed the amount of its capital stock;

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

10 (b) If a fire or casualty company, but not a stock company, exceed sixty percent of its
11 surplus or ten percent of its admitted assets, as shown by its last annual statement preceding the
12 date of acquisition, as filed with the director of the department of insurance, whichever is the
13 lesser; or

14 (c) If any other type or kind of insurance company, exceed sixty percent of its surplus
15 or five percent of its admitted assets, as shown by its last annual statement, whichever is the
16 lesser] **shall not exceed twenty percent of the insurance company's capital and surplus as**
17 **shown by its last annual statement;** or

18 (2) Such as shall have been mortgaged in good faith by way of security for loans
19 previously contracted, or for moneys due; or

20 (3) Such as shall have been conveyed to it in satisfaction of debts contracted in the
21 course of its dealings; or

22 (4) Such as shall have been purchased at sales upon the judgments, decrees or mortgages
23 obtained or made for such debts; or

24 (5) Such as shall be necessary and proper for carrying on its legitimate business under
25 the provisions of the Urban Redevelopment Corporations Act; or

26 (6) Such as shall have been acquired under the provisions of the Urban Redevelopment
27 Corporations Act permitting such company to purchase, own, hold or convey real estate; or

28 (7) Such real estate, or any interest therein, as may be acquired or held by it by purchase,
29 lease or otherwise, as an investment for the production of income, which real estate or interest
30 therein may thereafter be held, improved, developed, maintained, managed, leased, sold or
31 conveyed by it as real estate necessary and proper for carrying on its legitimate business; or

32 (8) A reciprocal or interinsurance exchange may, in its own name, purchase, sell,
33 mortgage, hold, encumber, lease, convey, or otherwise affect the title to real property for the
34 purposes and objects of the reciprocal or interinsurance exchange. Such deeds, notes, mortgages
35 or other documents relating to real property may be executed by the attorney in fact of the
36 reciprocal or interinsurance exchange. This provision shall be retroactive and shall apply to real
37 estate owned or sold by a reciprocal insurer prior to August 28, 1990.

38 2. The investments acquired under subdivision (7) of subsection 1 of this section may
39 be in either existing or new business or industrial properties, or for new residential properties or
40 new housing purposes.

41 3. Provided, no such insurance company shall invest more than ten percent of its
42 admitted assets, as shown by its last annual statement preceding the date of acquisition, as filed
43 with the director of the department of insurance of the state of Missouri, in the total amount of
44 real estate acquired under subdivision (7) of subsection 1, nor more under subdivision (7) of
45 subsection 1 than one percent of its admitted assets or ten percent of its capital and surplus,

46 whichever is greater, in any one property, nor more under subdivision (7) of subsection 1 than
47 one percent of its admitted assets or ten percent of its capital and surplus, whichever is greater,
48 in total properties leased or rented to any one individual, partnership or corporation.

49 4. It shall not be lawful for any company incorporated as aforesaid to purchase, hold or
50 convey real estate in any other case or for any other purpose; and all such real estate acquired in
51 payment of a debt, by foreclosure or otherwise, and real estate exchanged therefor, shall be sold
52 and disposed of within ten years after such company shall have acquired absolute title to the
53 same, unless the company owning such real estate or interest therein shall elect to hold it
54 pursuant to subdivision (7) of subsection 1.

55 5. The director of the department of insurance may, for good cause shown, extend the
56 time for holding such real estate acquired in paying of a debt, by foreclosure or otherwise, and
57 real estate exchanged therefor, and not held by the company under subdivision (7) of subsection
58 1, for such period as he may find to be to the best interests of the policyholders of said company.

59 6. If a life insurance company depositing under section 376.170, RSMo, becomes the
60 owner of real estate pursuant to this section, the company may execute its own deed for the real
61 estate to the director of the department of insurance, as trustee. The deed may be deposited with
62 the director as proper security, under and according to the provisions of sections 376.010 to
63 376.670, RSMo, the value to be subject to the approval of the director.

375.345. 1. As used in this section, the following words and terms mean:

2 (1) ["Call option", an exchange-traded option contract under which the holder has the
3 right to buy (or to make a cash settlement in lieu thereof) a fixed number of shares of stock, a
4 fixed amount of an underlying security, or an index of underlying securities at a stated price on
5 or before a fixed expiration date;

6 (2) "Commodity Futures Trading Commission", the federal regulatory agency charged
7 and empowered under the Commodity Futures Trading Commission Act of 1974, as amended,
8 with the regulation of futures trading in commodities;

9 (3) "Financial futures contract", an exchange-traded agreement to make or take delivery
10 of (or to make cash settlement in lieu thereof) a fixed amount of an underlying security, or an
11 index of underlying securities, on a specified date or during a specified period of time, or a call
12 or put option on such an agreement, made through a registered futures commission merchant on
13 a board of trade which has been designated by the Commodity Futures Trading Commission as
14 a contract market. Such financial futures contracts shall include the following categories:
15 United States treasury bills, bonds and notes; securities or pools of securities issued by the
16 Government National Mortgage Association; bank certificates of deposit; Standard and Poor's
17 500 Stock Price Index; NYSE Composite Index; KC Value Line Index; and such other
18 agreements which have been approved by and which are governed by the rules and regulations

19 of the Commodity Futures Trading Commission and the respective contract markets on which
20 such financial futures contracts are traded;

21 (4) "Margin", any type of deposit or settlement made or required to be made with a
22 futures commission merchant, clearinghouse, or safekeeping agent to insure performance of the
23 terms of the financial futures contract. For the purposes of this section, "margin" includes initial,
24 maintenance and variation margins as such terms are commonly and customarily employed in
25 the futures industry;

26 (5) "Put option", an exchange-traded option contract under which the holder has the right
27 to sell (or to make a cash settlement in lieu thereof) a fixed number of shares of stock, fixed
28 amount of an underlying security, or an index of underlying securities at a stated price on or
29 before a fixed expiration date;

30 (6) "Securities and Exchange Commission", the federal regulatory agency charged and
31 empowered under the Securities Exchange Act of 1934, as amended, with the regulation of
32 trading in securities; and

33 (7) "Underlying security", the security subject to being purchased or sold upon exercise
34 of a call option or put option, or the security subject to delivery under a financial futures
35 contract.] **"Admitted assets", assets permitted to be reported as admitted assets on the
36 statutory financial statement of the insurance company most recently required to be filed
37 with the director, but excluding assets of separate accounts, the investments of which are
38 not subject to the provisions of law governing the general investment account of the
39 insurance company;**

40 (2) **"Cap", an agreement obligating the seller to make payments to the buyer, with
41 each payment based on the amount by which a reference price, level, performance, or value
42 of one or more underlying interests exceeds a predetermined number, sometimes called the
43 strike rate or strike price;**

44 (3) **"Collar", an agreement to receive payments as the buyer of an option, cap, or
45 floor and to make payments as the seller of a different option, cap, or floor;**

46 (4) **"Counterparty exposure amount":**

47 (a) **The amount of credit risk attributable to an over-the-counter derivative
48 instrument. The amount of credit risk equals:**

49 **a. The market value of the over-the-counter derivative instrument if the liquidation
50 of the derivative instrument would result in a final cash payment to the insurance
51 company; or**

52 **b. Zero if the liquidation of the derivative instrument would not result in a final
53 cash payment to the insurance company;**

54 (b) **If over-the-counter derivative instruments are entered into under a written**

55 master agreement which provides for netting of payments owed by the respective parties,
56 and the domicile of the counterparty is either within the United States or within a foreign
57 jurisdiction listed in the Purposes and Procedures of the Securities Valuation Office as
58 eligible for netting, the net amount of credit risk shall be the greater of zero or the net sum
59 of:

60 a. The market value of the over-the-counter derivative instruments entered into
61 under the agreement, the liquidation of which would result in a final cash payment to the
62 insurance company; and

63 b. The market value of the over-the-counter derivative instruments entered into
64 under the agreement, the liquidation of which would result in a final cash payment by the
65 insurance company to the business entity;

66 (c) For open transactions, market value shall be determined at the end of the most
67 recent quarter of the insurance company's fiscal year and shall be reduced by the market
68 value of acceptable collateral held by the insurance company or placed in escrow by one
69 or both parties;

70 (5) "Derivative instrument", an agreement, option, instrument, or a series or
71 combination thereof that makes, takes delivery of, assumes, relinquishes, or makes a cash
72 settlement in lieu of a specified amount of one or more underlying interests, or that has a
73 price, performance, value, or cash flow based primarily upon the actual or expected price,
74 level, performance, value or cash flow of one or more underlying interests. Derivative
75 instruments also include options, warrants used in a hedging transaction and not attached
76 to another financial instrument, caps, floors, collars, swaps, forwards, futures and any
77 other agreements, options or instruments substantially similar thereto, and any other
78 agreements, options, or instruments permitted under rules or orders promulgated by the
79 director;

80 (6) "Derivative transaction", a transaction involving the use of one or more
81 derivative instruments;

82 (7) "Director", the director of the department of insurance of this state;

83 (8) "Floor", an agreement obligating the seller to make payments to the buyer in
84 which each payment is based on the amount by which a predetermined number, sometimes
85 called the floor rate or price, exceeds a reference price, level, performance, or value of one
86 or more underlying interests;

87 (9) "Forward", an agreement other than a future to make or take delivery of, or
88 effect a cash settlement based on the actual or expected price, level, performance or value
89 of, one or more underlying interests, but not including spot transactions effected within
90 customary settlement periods, when issued purchases or other similar cash market

91 transactions;

92 (10) "Future", an agreement traded on an exchange to make or take delivery of,
93 or effect a cash settlement based on the actual or expected price, level, performance or
94 value of one or more underlying interests and which includes an insurance future;

95 (11) "Hedging transaction", a derivative transaction that is entered into and
96 maintained to reduce:

97 (a) The risk of economic loss due to a change in the value, yield, price, cash flow or
98 quantity of assets or liabilities that the insurance company has acquired or incurred or
99 anticipates acquiring or incurring;

100 (b) The currency exchange rate risk or the degree of exposure as to assets or
101 liabilities that the insurance company has acquired or incurred or anticipates acquiring
102 or incurring; or

103 (c) Risk through such other derivative transactions as may be specified to constitute
104 hedging transactions by rules or orders adopted by the director;

105 (12) "Income generation transaction":

106 (a) A derivative transaction involving the writing of covered call options, covered
107 put options, covered caps or covered floors that is intended to generate income or enhance
108 return; or

109 (b) Such other derivative transactions as may be specified to constitute income
110 generation transactions in rules or orders adopted by the director;

111 (13) "Initial margin", the amount of cash, securities or other consideration initially
112 required to be deposited to establish a futures position;

113 (14) "NAIC", the National Association of Insurance Commissioners;

114 (15) "Option", an agreement giving the buyer the right to buy or receive, sell or
115 deliver, enter into, extend, terminate or effect a cash settlement based on the actual or
116 expected price, level, performance or value of one or more underlying interests;

117 (16) "Over-the-counter derivative instrument", a derivative instrument entered
118 into with a business entity other than through an exchange or clearinghouse;

119 (17) "Potential exposure", the amount determined in accordance with the NAIC
120 Annual Statement Instructions;

121 (18) "Replication transaction", a derivative transaction effected either separately
122 or in conjunction with cash market investments included in the insurer's investment
123 portfolio and intended to replicate the investment characteristic of another authorized
124 transaction, investment or instrument or to operate as a substitute for cash market
125 transactions. A derivative transaction that is entered into as a hedging transaction or an
126 income generation transaction shall not be considered a replication transaction;

127 **(19) "SVO", the Securities Valuation Office of the NAIC or any successor office**
128 **established by the NAIC;**

129 **(20) "Swap", an agreement to exchange or to net payments at one or more times**
130 **based on the actual or expected price, level, performance or value of one or more**
131 **underlying interests;**

132 **(21) "Underlying interest", the assets, liabilities, other interests, or a combination**
133 **thereof underlying a derivative instrument, such as any one or more securities, currencies,**
134 **rates, indices, commodities or derivative instruments;**

135 **(22) "Warrant", an instrument that gives the holder the right to purchase an**
136 **underlying financial instrument at a given price and time or at a series of prices and times**
137 **outlined in the warrant agreement.**

138 2. [The purchase and sale of put options or call options may take place] **An insurance**
139 **company may, directly or indirectly through an investment subsidiary, engage in derivative**
140 **transactions pursuant to this section** under the following conditions:

141 (1) [An insurance company may purchase put options or sell call options with regard to
142 underlying securities owned by the insurance company, underlying securities which the insurance
143 company may reasonably expect to obtain through exercise of warrants or conversion rights
144 owned by the insurance company at the time the put option is purchased or the call option is sold,
145 or to reduce the economic risk associated with an insurance company asset or liability, group of
146 such assets or liabilities, or assets, liabilities or groups of assets or liabilities reasonably expected
147 to be acquired or incurred by the insurance company in the normal course of business. Such
148 assets or liabilities must be subject to an economic risk, such as changing interest rates or prices.

149 (2) An insurance company may sell put options or purchase call options to reduce the
150 economic risk associated with an insurance company asset or liability, group of such assets or
151 liabilities, or assets, liabilities or groups of assets or liabilities reasonably expected to be acquired
152 or incurred by the insurance company in the normal course of business, or to offset obligations
153 and rights of the insurance company under other options held by the insurance company
154 pertaining to the same underlying securities, or index of underlying securities.

155 (3) An insurance company may purchase or sell put options or call options only on
156 underlying securities, or an index of underlying securities, which are eligible for investment by
157 an insurance company under the laws of the state of Missouri.

158 (4) An insurance company may purchase or sell put or call options only through an
159 exchange which is registered with the Securities and Exchange Commission as a national
160 securities exchange pursuant to the provisions of the Securities Exchange Act of 1934, as
161 amended.

162 (5) An insurance company shall not purchase call options or sell put options, if such

163 purchase or sale could result in the acquisition of an amount of underlying securities which,
164 when aggregated with current holdings, exceeds applicable limitations imposed under the laws
165 of the state of Missouri for investment in those particular underlying securities by the type or
166 kind of insurance company involved.

167 (6) The premiums paid for all option contracts purchased, less the premiums received
168 for all option contracts sold, plus amounts calculated pursuant to subdivision (3) of subsection
169 3 of this section, shall not at any one time exceed in the aggregate five percent of the insurance
170 company's admitted assets.

171 3. The purchase and sale of financial futures contracts may take place under the
172 following conditions:

173 (1) An insurance company may purchase or sell financial futures contracts for the
174 purpose of hedging against the economic risk associated with an insurance company asset or
175 liability, group of such assets or liabilities, or assets, liabilities or groups of assets or liabilities
176 reasonably expected to be acquired or incurred by the insurance company in its normal course
177 of business. Such assets or liabilities must be subject to an economic risk, such as changing
178 interest rates or prices.

179 (2) An insurance company shall not purchase or sell financial futures contracts or options
180 on such contracts, if such purchase or sale could result in the acquisition of an amount of
181 underlying securities which, when aggregated with current holdings, exceeds applicable
182 limitations imposed under the laws of the state of Missouri for investment in those particular
183 underlying securities by the type or kind of insurance company involved.

184 (3) For all purchased or sold financial futures contracts together, plus amounts calculated
185 pursuant to subdivision (6) of subsection 2 of this section, an insurance company shall not invest
186 at any one time an aggregate amount of more than five percent of its admitted assets. For the
187 purposes of transactions in financial futures contracts, such admitted assets limitation shall be
188 calculated by taking the net asset value of the property used to margin the financial futures
189 contract positions, plus option premiums paid on financial futures contracts, less option
190 premiums received on financial futures contracts.

191 4.] **In general:**

192 (a) **An insurance company may use derivative instruments pursuant to this chapter**
193 **to engage in hedging transactions and certain income generation transactions;**

194 (b) **Upon request, an insurance company shall demonstrate to the director, the**
195 **intended hedging characteristics and the ongoing effectiveness of the derivative transaction**
196 **or combination of the transactions through cash flow testing or other appropriate analyses;**

197 (2) **An insurance company shall only maintain its position in any outstanding**
198 **derivative instrument used as part of a hedging transaction for as long as the hedging**

199 **transaction continues to be effective;**

200 **(3) An insurance company may enter into hedging transactions if as a result of and**
201 **after giving effect to the transaction:**

202 **(a) The aggregate statement value of options, caps, floors and warrants not**
203 **attached to another financial instrument purchased and used in hedging transactions then**
204 **engaged in by the insurer does not exceed seven and one-half percent of its admitted assets;**

205 **(b) The aggregate statement value of options, caps and floors written in hedging**
206 **transactions then engaged in by the insurer does not exceed three percent of its admitted**
207 **assets; and**

208 **(c) The aggregate potential exposure of collars, swaps, forwards and futures used**
209 **in hedging transactions then engaged in by the insurer does not exceed six and one-half**
210 **percent of its admitted assets;**

211 **(4) An insurance company may only enter into the following types of income**
212 **generation transactions if as a result of and after giving effect to an income generation**
213 **transaction, the aggregate statement value of the fixed income assets that are subject to call**
214 **or that generate the cash flows for payments under the caps or floors, plus the face value**
215 **of fixed income securities underlying a derivative instrument subject to call, plus the**
216 **amount of the purchase obligations under the puts, shall not exceed ten percent of its**
217 **admitted assets:**

218 **(a) Sales of covered call options on noncallable fixed income securities, callable**
219 **fixed income securities if the option expires by its terms prior to the end of the noncallable**
220 **period, or derivative instruments based on fixed income securities;**

221 **(b) Sales of covered call options on equity securities if the insurance company holds**
222 **in its portfolio or can immediately acquire through the exercise of options, warrants or**
223 **conversion rights already owned, the equity securities subject to call during the complete**
224 **term of the call option sold;**

225 **(c) Sales of covered puts on investments that the insurance company is permitted**
226 **to acquire under the applicable insurance laws of the state, if the insurance company has**
227 **escrowed or entered into a custodian agreement segregating cash or cash equivalents with**
228 **a market value equal to the amount of its purchase obligations under the put during the**
229 **complete term of the put option sold; or**

230 **(d) Sales of covered caps or floors if the insurance company holds in its portfolio**
231 **the investments generating the cash flow to make the required payments under the caps**
232 **or floors during the complete term that the cap or floor is outstanding;**

233 **(5) An insurance company may use derivative instruments for replication**
234 **transactions only after the director promulgates reasonable rules that set forth methods**

235 **of disclosure, reserving for risk-based capital, and determining the asset valuation reserve**
236 **for these instruments. Any asset being replicated is subject to all the provisions and**
237 **limitations on the making thereof specified in chapters 375, 376, and 379, RSMo, with**
238 **respect to investments by the insurer as if the transaction constituted a direct investment**
239 **by the insurer in the replicated asset;**

240 **(6) An insurance company shall include all counterparty exposure amounts in**
241 **determining compliance with this state's single-entity investment limitations;**

242 **(7) The director may approve, by rule or order, additional transaction conditions**
243 **involving the use of derivative instruments for other risk management purposes.**

244 **3.** Written investment policies and recordkeeping procedures shall be approved by the
245 board of directors of the insurance company or by a committee authorized by such board before
246 the insurance company may engage in the practices and activities authorized by this section.
247 These policies and procedures must be specific enough to define and control permissible and
248 suitable investment strategies with regard to [put options, call options, and financial futures
249 contracts] **derivative transactions** with a view toward the protection of the policyholders. The
250 minutes of any such committee shall be recorded and regular reports of such committee shall be
251 submitted to the board of directors.

252 [5.] **4.** The director [of the department of insurance] may promulgate **reasonable** rules[,
253 guidelines] and regulations **pursuant to the provisions of chapter 536, RSMo, not**
254 **inconsistent with this section and any other insurance laws of this state,** establishing
255 standards and requirements relating to practices and activities authorized in this section,
256 **including, but not limited to, rules which impose financial solvency standards, valuation**
257 **standards, and reporting requirements.**

376.307. 1. Notwithstanding any direct or implied prohibitions in chapter 375 or 376,
2 RSMo, the capital, reserve and surplus funds of all life insurance companies of whatever kind
3 and character organized or doing business under chapter 375 or 376, RSMo, may be invested in
4 any investments which do not otherwise qualify under any other provision of chapter 375 or 376,
5 RSMo, provided, however, the investments authorized by this section are not eligible for deposit
6 with the department of insurance and shall be subject to all the limitations set forth in subsection
7 2.

8 2. No such life insurance company shall [invest in] **own** such investments in an amount
9 in excess of the following limitations, to be based upon its admitted assets, capital and surplus
10 as shown in its last annual statement [preceding the date of the acquisition of such investment,
11 all as] filed with the director of the department of insurance of the state of Missouri:

12 (1) The aggregate amount of all such investments under this section shall not exceed the
13 lesser of (a) eight percent of its admitted assets or (b) the amount of its capital and surplus in

14 excess of nine hundred thousand dollars; and

15 (2) The amount of any one such investment under this section shall not exceed one
16 percent of its admitted assets.

17 3. If, subsequent to its acquisition hereunder, any such investment shall become
18 specifically authorized or permitted under any other section contained in chapter 375 or 376,
19 RSMo, any such company may thereafter consider such investment as held under such other
20 applicable section and not under this section.

376.311. 1. In addition to the investments permitted by other provisions of the laws, the
2 capital reserve and surplus of all life insurance companies of whatever kind and character,
3 organized or doing business pursuant to this chapter, may be invested in an investment pool
4 meeting the requirements set out below, and any other provision of law relating to investments
5 made by life insurance companies.

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

7 (1) "Business entity", a corporation, limited liability company, association, partnership,
8 joint stock company, joint venture, mutual fund trust, or other similar form of business
9 organization, including such an entity when organized as a not-for-profit entity;

10 (2) "Qualified bank", a national bank, state bank or trust company that at all times is no
11 less than adequately capitalized as determined by the standards adopted by the United States
12 banking regulators and that is either regulated by state banking laws or is a member of the
13 Federal Reserve System.

14 3. (1) Qualified investment pools shall invest only in investments which an insurer may
15 acquire pursuant to this chapter and other provisions of law. The insurer's proportionate interest
16 in these investments may not exceed the applicable limits of this section and other provisions of
17 law.

18 (2) An insurer shall not acquire an investment in an investment pool pursuant to this
19 subsection if, after giving effect to the investment, the aggregate amount of investments in all
20 investment pools then held by the insurer would exceed thirty percent of its assets.

21 (3) For an investment in an investment pool to be qualified pursuant to this chapter, the
22 investment pool shall not:

23 (a) Acquire securities issued, assumed, guaranteed or insured by the insurer or an
24 affiliate of the insurer;

25 (b) Borrow or incur any indebtedness for borrowed money, except for securities lending
26 and reverse repurchase transactions;

27 (c) Lend money or other assets to participants in the pool.

28 (4) For an investment pool to be qualified pursuant to this chapter, the manager of the
29 investment pool shall:

30 (a) Be organized pursuant to the laws of the United States or a state and designated as
31 the pool manager in a pooling agreement;

32 (b) Be the insurer; an affiliated insurer; **a business entity affiliated with the insurer;**
33 a qualified bank; a business entity registered pursuant to the Investment Advisors Act of 1940
34 (15 U.S.C. Sec. 80a-1 et seq.) as amended; or, in the case of a reciprocal insurer or interinsurance
35 exchange, its attorney-in-fact.

36 (5) The pool manager, or an agent designated by the pool manager, shall compile and
37 maintain detailed accounting records setting forth:

38 (a) The cash receipts and disbursements reflecting each participant's proportionate
39 investment in the investment pool;

40 (b) A complete description of all underlying assets of the investment pool including
41 amount, interest rate, maturity date (if any) and other appropriate designations; and

42 (c) Other records which, on a daily basis, allow third parties to verify each participant's
43 investments in the investment pool.

44 (6) The pool manager shall maintain the assets of the investment pool in one **or more**
45 custody [account] **accounts**, in the name of or on behalf of the investment pool, under [a] **one**
46 **or more** custody [agreement] **agreements** with a qualified bank. [All custodial agreements shall
47 be filed with the department of insurance for prior approval. The] **Each** custody agreement shall:

48 (a) State and recognize the claims and rights of each participant;

49 (b) Acknowledge that the underlying assets of the investment pool are held solely for the
50 benefit of each participant in proportion to the aggregate amount of its investments in the
51 investment pool; and

52 (c) Contain an agreement that the underlying assets of the investment pool shall not be
53 commingled with the general assets of the qualified bank or any other person.

54 (7) The pooling agreement for each investment pool shall be in writing and shall provide
55 that:

56 (a) An insurer and its [affiliated insurers] **affiliates** shall, at all times, hold one hundred
57 percent of the interests in the investment pool;

58 (b) The underlying assets of the investment pool shall not be commingled with the
59 general assets of the pool manager or any other person;

60 (c) The aggregate amount of each pool participant's interest in the investment pool shall
61 be in proportion to:

62 a. Each participant's undivided interest in the underlying assets of the investment pool;
63 and

64 b. The underlying assets of the investment pool held solely for the benefit of each
65 participant;

66 (d) A participant or, in the event of the participant's insolvency, bankruptcy or
67 receivership, its trustee, receiver, conservator or other successor-in-interest may withdraw all or
68 any portion of its investment from the investment pool under the terms of the pooling agreement;

69 (e) Withdrawals may be made on demand without penalty or other assessment on any
70 business day, but settlement of funds shall occur within a reasonable and customary period
71 thereafter, provided:

72 a. In the case of publicly traded securities, settlement shall not exceed five business days;
73 and

74 b. In the case of all other securities and investments, settlement shall not exceed ten
75 business days.

76 Distributions pursuant to this paragraph shall be calculated in each case net of all then applicable
77 fees and expenses of the investment pool.

78 (8) The pooling agreement shall provide that the pool manager shall distribute to a
79 participant, at the discretion of the pool manager:

80 (a) In cash, the then fair market value of the participant's pro rata share of each
81 underlying asset of the investment pool; or

82 (b) In-kind, a pro rata share of each underlying asset; or

83 (c) In a combination of cash and in-kind distributions, a pro rata share in each underlying
84 asset;

85 (9) The pool manager shall make the records of the investment pool available for
86 inspection by the director.

87 4. The pooling agreement and any other arrangements or agreements relating to an
88 investment pool, and any amendments thereto, shall be submitted to the department of insurance
89 for prior approval pursuant to section 382.195, RSMo. Individual financial transactions between
90 the pool and its participants in the ordinary course of the investment pool's operations shall not
91 be subject to the provisions of section 382.195, RSMo. Investment activities of pools and
92 transactions between pools and participants shall be reported annually in the registration
93 statement required by section 382.100, RSMo.

376.671. 1. This section shall not apply to any reinsurance, group annuity purchased
2 under a retirement plan or plan of deferred compensation established or maintained by an
3 employer (including a partnership or sole proprietorship) or by an employee organization, or by
4 both, other than a plan providing individual retirement accounts or individual retirement
5 annuities under section 408 of the Internal Revenue Code, as now or hereafter amended,
6 premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred
7 annuity contract after annuity payments have commenced, or reversionary annuity, nor to any
8 contract which shall be delivered outside this state through an agent or other representative of

9 the company issuing the contract.

10 2. In the case of contracts issued on or after the operative date of this section as defined
11 in subsection 11, no contract of annuity, except as stated in subsection 1, shall be delivered or
12 issued for delivery in this state unless it contains in substance the following provisions, or
13 corresponding provisions which in the opinion of the director are at least as favorable to the
14 contractholder, upon cessation of payment of considerations under the contract:

15 (1) That upon cessation of payment of considerations under a contract, the company will
16 grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified
17 in subsections 4, 5, 6, 7, and 9;

18 (2) If a contract provides for a lump sum settlement at maturity, or at any other time, that
19 upon surrender of the contract at or prior to the commencement of any annuity payments, the
20 company will pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount
21 as is specified in subsections 4, 5, 7, and 9. The company shall reserve the right to defer the
22 payment of such cash surrender benefit for a period of six months after demand therefor with
23 surrender of the contract;

24 (3) A statement of the mortality table, if any, and interest rates used in calculating any
25 minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the
26 contract, together with sufficient information to determine the amounts of such benefits;

27 (4) A statement that any paid-up annuity, cash surrender or death benefits that may be
28 available under the contract are not less than the minimum benefits required by any statute of the
29 state in which the contract is delivered and an explanation of the manner in which such benefits
30 are altered by the existence of any additional amounts credited by the company to the contract,
31 any indebtedness to the company on the contract or any prior withdrawals from or partial
32 surrenders of the contract.

33 Notwithstanding the requirements of this section, any deferred annuity contract may provide that
34 if no considerations have been received under a contract for a period of two full years and the
35 portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising
36 from considerations paid prior to such period would be less than twenty dollars monthly, the
37 company may at its option terminate such contract by payment in cash of the then present value
38 of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if
39 any, and interest rate specified in the contract for determining the paid-up annuity benefit, and
40 by such payment shall be relieved of any further obligation under such contract.

41 3. The minimum values as specified in subsections 4, 5, 6, 7, and 9 of any paid-up
42 annuity, cash surrender or death benefits available under an annuity contract shall be based upon
43 minimum nonforfeiture amounts as defined in this section.

44 (1) With respect to contracts providing for flexible considerations, the minimum

45 nonforfeiture amount at any time at or prior to the commencement of any annuity payment shall
46 be equal to an accumulation up to such time at a rate of interest of three percent per annum of
47 percentages of the net considerations (as hereinafter defined) paid prior to such time, decreased
48 by the sum of

49 (a) Any prior withdrawals from or partial surrenders of the contract accumulated at a rate
50 of interest of three percent per annum; and

51 (b) The amount of any indebtedness to the company on the contract, including interest
52 due and accrued and increased by any existing additional amounts credited by the company to
53 the contract. The net considerations for a given contract year used to define the minimum
54 nonforfeiture amount shall be an amount not less than zero and shall be equal to the
55 corresponding gross considerations credited to the contract during that contract year less an
56 annual contract charge of thirty dollars and less a collection charge of one dollar and twenty-five
57 cents per consideration credited to the contract during that contract year. The percentages of net
58 considerations shall be sixty-five percent of the net consideration for the first contract year and
59 eighty-seven and one-half percent of the net considerations for the second and later contract
60 years. Notwithstanding the provisions of the preceding sentence, the percentage shall be
61 sixty-five percent of the portion of the total net consideration for any renewal contract year which
62 exceeds by not more than two times the sum of those portions of the net considerations in all
63 prior contract years for which the percentage was sixty-five percent;

64 (2) With respect to contracts providing for fixed scheduled considerations, minimum
65 nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually
66 in advance and shall be defined as for contracts with flexible considerations which are paid
67 annually with two exceptions:

68 (a) The portion of the net consideration for the first contract year to be accumulated shall
69 be the sum of sixty-five percent of the net consideration for the first contract year plus
70 twenty-two and one-half percent of the excess of the net consideration for the first contract year
71 over the lesser of the net considerations for the second and third contract years;

72 (b) The annual contract charge shall be the lesser of thirty dollars or ten percent of the
73 gross annual consideration;

74 (3) With respect to contracts providing for a single consideration, minimum
75 nonforfeiture amounts shall be defined as for contracts with flexible considerations except that
76 the percentage of net consideration used to determine the minimum nonforfeiture amount shall
77 be equal to ninety percent, and the net consideration shall be the gross consideration less a
78 contract charge of seventy-five dollars;

79 **(4) Notwithstanding any other provision of this subsection, for any contract issued**
80 **on or after July 1, 2002, and before July 1, 2004, the interest rate at which net**

81 **considerations, prior withdrawals, and partial surrenders shall be accumulated for the**
82 **purpose of determining minimum nonforfeiture amounts shall be one and one-half percent**
83 **per annum.**

84 4. Any paid-up annuity benefit available under a contract shall be such that its present
85 value on the date annuity payments are to commence is at least equal to the minimum
86 nonforfeiture amount on that date. Such present value shall be computed using the mortality
87 table, if any, and the interest rate specified in the contract for determining the minimum paid-up
88 annuity benefits guaranteed in the contract.

89 5. For contracts which provide cash surrender benefits, such cash surrender benefits
90 available prior to maturity shall not be less than the present value as of the date of surrender of
91 that portion of the maturity value of the paid-up annuity benefit which would be provided under
92 the contract at maturity arising from considerations paid prior to the time of cash surrender
93 reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of
94 the contract, such present value being calculated on the basis of an interest rate not more than
95 one percent higher than the interest rate specified in the contract for accumulating the net
96 considerations to determine such maturity value, decreased by the amount of any indebtedness
97 to the company on the contract, including interest due and accrued, and increased by any existing
98 additional amounts credited by the company to the contract. In no event shall any cash surrender
99 benefit be less than the minimum nonforfeiture amount at that time. The death benefit under
100 such contracts shall be at least equal to the cash surrender benefit.

101 6. For contracts which do not provide cash surrender benefits, the present value of any
102 paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not
103 be less than the present value of that portion of the maturity value of the paid-up annuity benefit
104 provided under the contract arising from considerations paid prior to the time the contract is
105 surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being
106 calculated for the period prior to the maturity date on the basis of the interest rate specified in
107 the contract for accumulating the net considerations to determine such maturity value, and
108 increased by any existing additional amounts credited by the company to the contract. For
109 contracts which do not provide any death benefits prior to the commencement of any annuity
110 payments, such present values shall be calculated on the basis of such interest rate and the
111 mortality table specified in the contract for determining the maturity value of the paid-up annuity
112 benefit. However, in no event shall the present value of a paid-up annuity benefit be less than
113 the minimum nonforfeiture amount at that time.

114 7. For the purpose of determining the benefits calculated under subsections 5 and 6, in
115 the case of annuity contracts under which an election may be made to have annuity payments
116 commence at optional maturity date, the maturity date shall be deemed to be the latest date for

117 which election shall be permitted by the contract, but shall not be deemed to be later than the
118 anniversary of the contract next following the annuitant's seventieth birthday or the tenth
119 anniversary of the contract, whichever is later.

120 8. Any contract which does not provide cash surrender benefits or does not provide death
121 benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any
122 annuity payments shall include a statement in a prominent place in the contract that such benefits
123 are not provided.

124 9. Any paid-up annuity, cash surrender or death benefits available at any time, other than
125 on the contract anniversary under any contract with fixed scheduled considerations, shall be
126 calculated with allowance for the lapse of time and the payment of any scheduled considerations
127 beyond the beginning of the contract year in which cessation of payment of considerations under
128 the contract occurs.

129 10. For any contract which provides, within the same contract by rider or supplemental
130 contract provision, both annuity benefits and life insurance benefits that are in excess of the
131 greater of cash surrender benefits or a return of the gross considerations with interest, the
132 minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits
133 for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance
134 portion computed as if each portion were a separate contract. Notwithstanding the provisions
135 of subsections 4, 5, 6, 7, and 9, additional benefits payable in the event of total and permanent
136 disability, as reversionary annuity or deferred reversionary annuity benefits, or as other policy
137 benefits additional to life insurance, endowment and annuity benefits, and considerations for all
138 such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture
139 amounts, paid-up annuity, cash surrender and death benefits that may be required by this section.
140 The inclusion of such additional benefits shall not be required in any paid-up benefits, unless
141 such additional benefits separately would require minimum nonforfeiture amounts, paid-up
142 annuity, cash surrender and death benefits.

143 11. After September 28, 1979, any company may file with the director a written notice
144 of its election to comply with the provisions of this section after a specified date before
145 September 28, 1981. After the filing of such notice, then upon such specified date, which shall
146 be the operative date of this section for such company, this section shall become operative with
147 respect to annuity contracts thereafter issued by such company. If a company makes no such
148 election, the operative date of this section for such company shall be September 28, 1981.

376.951. 1. Sections 376.951 to 376.958 **and sections 376.1121 to 376.1130** may be
2 known and cited as the "Long-term Care Insurance Act".

3 2. As used in sections 376.951 to 376.958 **and sections 376.1121 to 376.1130** the
4 following terms mean:

5 (1) "Applicant":

6 (a) In the case of an individual long-term care insurance policy, the person who seeks
7 to contract for benefits; and

8 (b) In the case of a group long-term care insurance policy, the proposed certificate
9 holder;

10 (2) "Certificate", any certificate [or evidence of coverage] issued under a group long-term
11 care insurance policy, which policy has been delivered or issued for delivery in this state;

12 (3) "Director", the director of the department of insurance of this state;

13 (4) "Group long-term care insurance", a long-term care insurance policy which is
14 delivered or issued for delivery in this state and issued to:

15 (a) One or more employers or labor organizations, or to a trust or to the trustees of a fund
16 established by one or more employers or labor organizations, or a combination thereof, for
17 employees or former employees or a combination thereof or for members or former members or
18 a combination thereof, of the labor organization; or

19 (b) Any professional, trade or occupational association for its members or former or
20 retired members, or combination thereof, if such association;

21 a. Is composed of individuals all of whom are or were actively engaged in the same
22 profession, trade or occupation; and

23 b. Has been maintained in good faith for purposes other than obtaining insurance; or

24 (c) An association or a trust or the trustee of a fund established, created or maintained
25 for the benefit of members of one or more associations. Prior to advertising, marketing or
26 offering such policy within this state, the association or associations, or the insurer of the
27 association or associations, shall file evidence with the director that the association or
28 associations have at the outset a minimum of one hundred persons and have been organized and
29 maintained in good faith for purposes other than that of obtaining insurance; have been in active
30 existence for at least one year; and have a constitution and bylaws which provide that:

31 a. The association or associations hold regular meetings not less than annually to further
32 purposes of the members;

33 b. Except for credit unions, the association or associations collect dues or solicit
34 contributions from members; and

35 c. The members have voting privileges and representation on the governing board and
36 committees. Thirty days after such filing the association or associations shall be deemed to
37 satisfy such organizational requirements, unless the director makes a finding that the association
38 or associations do not satisfy those organizational requirements;

39 (d) A group other than as described in paragraph (a), (b) or (c) of subdivision (4) of this
40 subsection, subject to a finding by the director that:

- 41 a. The issuance of the group policy is not contrary to the best interest of the public;
42 b. The issuance of the group policy would result in economies of acquisition or
43 administration; and
44 c. The benefits are reasonable in relation to the premiums charged;

45 (5) "Long-term care insurance", any **insurance** policy[, contract, certificate, evidence
46 of coverage] or rider advertised, marketed, offered or designed to provide coverage for not less
47 than twelve consecutive months for each covered person on an expense-incurred, indemnity,
48 prepaid or other basis; for one or more necessary or medically necessary diagnostic, preventive,
49 therapeutic, rehabilitative, maintenance of personal care services, provided in a setting other than
50 an acute care unit of a hospital. Such term includes group and individual annuities and life
51 insurance policies or riders which provide directly or which supplement long-term care
52 insurance. Such term also includes a policy or rider which provides for payment of benefits
53 based upon cognitive impairment or the loss of functional capacity. **Long-term care insurance**
54 **also includes qualified long-term care insurance contracts.** Long-term care insurance may
55 be issued by insurers; fraternal benefit societies; health services corporations; prepaid health
56 plans; [and] health maintenance organizations, **or any similar organization** to the extent they
57 are otherwise authorized **to issue life or health insurance.** Long-term care insurance shall not
58 include any insurance policy which is offered primarily to provide basic Medicare supplement
59 coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital
60 confinement indemnity coverage, major medical expense coverage, disability income or related
61 asset protection coverage, accident only coverage, specified disease or specified accident
62 coverage, or limited benefit health coverage. **With respect to life insurance, long-term care**
63 **insurance does not include life insurance policies that accelerate the death benefit**
64 **specifically for one or more of the qualifying events of terminal illness, medical conditions**
65 **requiring extraordinary medical intervention, or permanent institutional confinement, and**
66 **that provide the option of a lump-sum payment for those benefits and neither the benefits**
67 **nor the eligibility for the benefits is conditioned upon the receipt of long-term care.**
68 **Notwithstanding any other provision of sections 376.951 to 376.958 and sections 376.1121**
69 **to 376.1130 to the contrary, any product advertised, marketed, or offered as long-term care**
70 **insurance shall be subject to the provisions of sections 376.951 to 376.958 and sections**
71 **376.1121 to 376.1130;**

72 (6) "Policy", any policy, [contract, certificate, evidence of coverage,] subscriber
73 agreement, rider or endorsement delivered or issued for delivery in this state by an insurer;
74 fraternal benefit society; health services corporation; prepaid health plan [or], health maintenance
75 organization, **or any similar organization;**

76 (7) "**Qualified long-term care insurance contract**" or "**federally tax-qualified long-**

77 term care insurance contract", the portion of a life insurance contract that provides long-
78 term care insurance coverage by rider or as part of the contract that satisfies the
79 requirements of Section 7702B(b) and (e) of the Internal Revenue Code of 1986, as
80 amended. Qualified long-term care insurance contract also includes an individual or
81 group insurance contract that meets the requirements of Section 7702B(b) of the Internal
82 Revenue Code of 1986, as amended, as follows:

83 (a) The only insurance protection provided under the contract is coverage of
84 qualified long-term care services. A contract shall not fail to satisfy the requirements of
85 this paragraph by reason of payments being made on a per diem or other periodic basis
86 without regard to the expenses incurred during the period to which payments relate;

87 (b) The contract does not pay or reimburse expenses incurred for services or items
88 to the extent that the expenses are reimbursable under Title XVIII of the Social Security
89 Act, as amended, or would be so reimbursable but for the application of a deductible or
90 coinsurance amount. The requirements of this paragraph do not apply to expenses that
91 are reimbursable under Title XVIII of the Social Security Act only as a secondary payor.
92 A contract shall not fail to satisfy the requirements of this paragraph by reason of
93 payments being made on a per diem or other periodic basis without regard to the expenses
94 incurred during the period to which the payments relate;

95 (c) The contract is guaranteed renewable within the meaning of Section
96 7702B(b)(1)(C) of the Internal Revenue Code of 1986, as amended;

97 (d) The contract does not provide for a cash surrender value or other money that
98 can be paid, assigned, pledged as collateral for a loan, or borrowed except as provided in
99 paragraph (e) of this subdivision;

100 (e) All refunds of premiums and all policyholder dividends or similar amounts
101 under the contract are to be applied as a reduction in future premiums or to increase
102 future benefits, except that a refund on the event of death of the insured or a complete
103 surrender or cancellation of the contract shall not exceed the aggregate premiums paid
104 under the contract; and

105 (f) The contract meets the consumer protection provisions set forth in Section
106 7702B(g) of the Internal Revenue Code of 1986, as amended.

376.952. 1. The provisions of sections 376.951 to 376.958 and sections 376.1121 to
2 376.1130 shall apply to policies delivered or issued for delivery in this state on or after August
3 28, [1990] 2002. Sections 376.951 to 376.958 and sections 376.1121 to 376.1130 are not
4 intended to supersede the obligations of entities subject to the provisions of sections 376.951 to
5 376.958 and sections 376.1121 to 376.1130 to comply with the substance of other applicable
6 insurance laws insofar as they do not conflict with the provisions of sections 376.951 to 376.958

7 **and sections 376.1121 to 376.1130**, except that laws and regulations designed and intended to
8 apply to medicare supplement insurance policies shall not be applied to long-term care insurance.

9 2. The purposes of the provisions of sections 376.951 to 376.958 **and sections 376.1121**
10 **to 376.1130** are to promote the public interest, to promote the availability of long-term care
11 insurance policies, to protect applicants for long-term care insurance, as defined, from unfair or
12 deceptive sales or enrollment practices, to establish standards for long-term care insurance, to
13 facilitate public understanding and comparison of long-term care insurance policies, and to
14 facilitate flexibility and innovation in the development of long-term care insurance coverage.

15 3. Any policy or rider advertised, marketed or offered as long-term care or nursing home
16 insurance shall comply with the provisions of sections 376.951 to 376.958 **and sections**
17 **376.1121 to 376.1130**.

376.955. 1. The director may adopt regulations that include standards for full and fair
2 disclosure setting forth the manner, content and required disclosures for the sale of long-term
3 care insurance policies, terms of renewability, initial and subsequent conditions of eligibility,
4 nonduplication of coverage provisions, coverage of dependents, preexisting conditions,
5 termination of insurance, continuation or conversion, probationary periods, limitations,
6 exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions
7 and definitions of terms. Regulations adopted pursuant to sections 376.951 to 376.958 **and**
8 **sections 376.1121 to 376.1130** shall be in accordance with the provisions of chapter 536, RSMo.

9 2. No long-term care insurance policy may:

10 (1) Be canceled, nonrenewed or otherwise terminated on the grounds of the age or the
11 deterioration of the mental or physical health of the insured individual or certificate holder; or

12 (2) Contain a provision establishing a new waiting period in the event existing coverage
13 is converted to or replaced by a new or other form within the same company, except with respect
14 to an increase in benefits voluntarily selected by the insured individual or group policyholder;
15 or

16 (3) Provide coverage for skilled nursing care only or provide significantly more coverage
17 for skilled care in a facility than for lower levels of care.

18 3. No long-term care insurance policy or certificate other than a policy or certificate
19 thereunder issued to a group as defined in paragraph (a) of subdivision (4) of subsection 2 of
20 section 376.951:

21 (1) Shall use a definition of preexisting condition which is more restrictive than the
22 following: "Preexisting condition" means a condition for which medical advice or treatment was
23 recommended by, or received from, a provider of health care services, within six months
24 preceding the effective date of coverage of an insured person;

25 (2) May exclude coverage for a loss or confinement which is the result of a preexisting

26 condition unless such loss or confinement begins within six months following the effective date
27 of coverage of an insured person.

28 4. The director may extend the limitation periods set forth in subdivisions (1) and (2) of
29 subsection 3 of this section as to specific age group categories in specific policy forms upon
30 findings that the extension is in the best interest of the public.

31 5. The definition of preexisting condition provided in subsection 3 of this section does
32 not prohibit an insurer from using an application form designed to elicit the complete health
33 history of an applicant, and, on the basis of the answers on that application, from underwriting
34 in accordance with that insurer's established underwriting standards. Unless otherwise provided
35 in the policy or certificate, a preexisting condition, regardless of whether it is disclosed on the
36 application, need not be covered until the waiting period described in subdivision (2) of
37 subsection 3 of this section expires. No long-term care insurance policy or certificate may
38 exclude or use waivers or riders of any kind to exclude, limit or reduce coverage or benefits for
39 specifically named or described preexisting diseases or physical conditions beyond the waiting
40 period described in subdivision (2) of subsection 3 of this section.

41 6. No long-term care insurance policy may be delivered or issued for delivery in this
42 state if such policy:

43 (1) Conditions eligibility for any benefits on a prior hospitalization requirement; or

44 (2) Conditions eligibility for benefits provided in an institutional care setting on the
45 receipt of a higher level of institutional care; or

46 (3) Conditions eligibility for any benefits [on a prior institutionalization requirement,
47 except in the case of] **other than** waiver of premium, post-confinement, post-acute care or
48 recuperative benefits **on a prior institutionalization requirement**.

49 7. A long-term care insurance policy containing post-confinement, post-acute care or
50 recuperative benefits shall clearly label in a separate paragraph of the policy or certificate entitled
51 "Limitations or Conditions on Eligibility for Benefits" such limitations or conditions, including
52 any required number of days of confinement.

53 8. A long-term care insurance policy or rider which conditions eligibility of
54 noninstitutional benefits on the prior receipt of institutional care shall not require a prior
55 institutional stay of more than thirty days.

56 9. No long-term care insurance policy or rider which provides benefits only following
57 institutionalization shall condition such benefits upon admission to a facility for the same or
58 related conditions within a period of less than thirty days after discharge from the institution.

59 10. The director may adopt regulations establishing loss ratio standards for long-term
60 care insurance policies provided that a specific reference to long-term care insurance policies is
61 contained in the regulation.

62 11. Long-term care insurance applicants shall have the right to return the policy or
63 certificate within thirty days of its delivery and to have the premium refunded if, after
64 examination of the policy or certificate, the applicant is not satisfied for any reason. Long-term
65 care insurance policies and certificates shall have a notice prominently printed on the first page
66 or attached thereto stating in substance that the applicant shall have the right to return the policy
67 or certificate within thirty days of its delivery and to have the premium refunded if, after
68 examination of the policy or certificate, other than a certificate issued pursuant to a policy issued
69 to a group defined in paragraph (a) of subdivision (4) of subsection 2 of section 376.951, the
70 applicant is not satisfied for any reason. **This subsection shall also apply to denials of**
71 **applications and any refund must be made within thirty days of the return of denial.**

 376.957. 1. An outline of coverage shall be delivered to a prospective applicant for
2 long-term care insurance at the time of initial solicitation through means which prominently
3 direct the attention of the recipient to the document and its purpose. The director shall prescribe
4 a standard format, including style, arrangement and overall appearance, and the content of an
5 outline of coverage. In the case of agent solicitations, an agent shall deliver the outline of
6 coverage prior to the presentation of an [applicant] **application** or enrollment form. In the case
7 of direct response solicitations, the outline of coverage shall be presented in conjunction with
8 any application or enrollment form. **In the case of a policy issued to a group defined in**
9 **section 376.951, an outline of coverage shall not be required to be delivered; provided that**
10 **the information described in subdivisions (1) to (6) of subsection 2 of this section is**
11 **contained in other materials relating to enrollment. Upon request, such other materials**
12 **shall be made available to the director.**

13 2. The outline of coverage shall include:

14 (1) A description of the principal benefits and coverage provided in the policy;

15 (2) A statement of the principal exclusions, reductions, and limitations contained in the
16 policy;

17 (3) A statement of the terms under which the policy or certificate, or both, may be
18 continued in force or discontinued, including any reservation in the policy of a right to change
19 the premium. Continuation or conversion provisions of group coverage shall be specifically
20 described;

21 (4) A statement that the outline of coverage is a summary only, not a contract of
22 insurance, and that the policy or group master policy contains governing contractual provisions;

23 (5) A description of the terms under which the policy or certificate may be returned and
24 premium refunded; [and]

25 (6) A brief description of the relationship of cost of care and benefits; **and**

26 (7) **A statement that discloses to the policyholder or certificate holder whether the**

27 **policy is intended to be a federally tax-qualified long-term care insurance contract under**
28 **Section 7702B(b) of the Internal Revenue Code of 1986, as amended.**

29 3. A certificate issued pursuant to a group long-term care insurance policy which policy
30 is delivered or issued for delivery in this state shall include:

31 (1) A description of the principal benefits and coverage provided in the policy;

32 (2) A statement of the principal exclusions, reductions and limitations contained in the
33 policy; and

34 (3) A statement that the group master policy determines governing contractual
35 provisions.

36 4. **If an application for a long-term care insurance contract or certificate is**
37 **approved, the issuer shall deliver the contract or certificate of insurance to the applicant**
38 **no later than thirty days after the date of approval.**

39 5. At the time of policy delivery, a policy summary shall be delivered for an individual
40 life insurance policy which provides long-term care benefits within the policy or by rider. In the
41 case of direct response solicitations, the insurer shall deliver the policy summary upon the
42 applicant's request, but regardless of request shall make such delivery no later than at the time
43 of policy delivery. In addition to complying with all applicable requirements, the summary shall
44 also include:

45 (1) An explanation of how the long-term care benefit interacts with other components
46 of the policy, including deductions from death benefits;

47 (2) An illustration of the amount of benefits, the length of benefit, and the guaranteed
48 lifetime benefits, if any, for each covered person;

49 (3) Any exclusions, reductions and limitations on benefits of long-term care; [and]

50 (4) **A statement that any long-term care inflation protection option may be required**
51 **by the laws of this state is not available under the policy; and**

52 (5) If applicable to the policy type, the summary shall also include:

53 (a) A disclosure of the effects of exercising other rights under the policy;

54 (b) A disclosure of guarantees related to long-term care costs of insurance charges [or
55 notice that such guarantees are included in the policy or rider; and];

56 (c) Current and projected maximum lifetime benefits; **and**

57 (d) **The provisions of the policy summary listed in paragraphs (a) to (c) of this**
58 **subdivision may be incorporated into a basic illustration required to be delivered in**
59 **accordance with sections 375.1509, RSMo, or into the life insurance policy summary**
60 **required to be delivered in accordance with section 376.706.**

2 **376.1121. If a claim under a long-term care insurance contract is denied, the issuer**
shall within sixty days of the date of a written request by the policyholder or certificate

3 holder or a representative thereof:

4 (1) Provide a written explanation of the reasons for the denial; and

5 (2) Make available all information directly related to the denial.

376.1124. 1. For a policy or certificate that has been in force less than six months,
2 an insurer may rescind a long-term care insurance policy or certificate, or deny an
3 otherwise valid long-term care insurance claim upon a showing of misrepresentation that
4 is material to the acceptance for coverage.

5 2. For a policy or certificate that has been in force for at least six months but less
6 than two years, an insurer may rescind a long-term care insurance policy or certificate, or
7 deny an otherwise valid long-term care insurance claim upon a showing of
8 misrepresentation that is both material to the acceptance of coverage and which pertains
9 to the conditions for which benefits are sought.

10 3. After a policy or certificate has been in force for two years, such policy or
11 certificate is not contestable upon the grounds of misrepresentation alone. Such policy or
12 certificate may be contested only upon a showing that the insured knowingly and
13 intentionally misrepresented relevant facts relating to the insured's health.

14 4. No long-term care insurance policy or certificate shall be field issued based on
15 medical or health status. For purposes of this subsection, "field issued" means a policy or
16 certificate issued by an agent or third-party administrator pursuant to the underwriting
17 authority granted to the agent or third-party administrator by an insurer.

18 5. If an insurer has paid benefits under the long-term care insurance policy or
19 certificate, the benefit payments shall not be recovered by the insurer if such policy or
20 certificate is rescinded.

21 6. In the event of death of the insured, this section shall not apply to the remaining
22 death benefit of a life insurance policy that accelerates benefits for long-term care. In this
23 situation, the remaining death benefits under such policies shall be governed by the
24 contestability provisions otherwise applicable in the policy to life insurance benefits. In all
25 other situations, this section shall apply to life insurance policies that accelerate benefits
26 for long-term care.

376.1127. 1. Except as provided in subsection 2 of this section, a long-term care
2 insurance policy shall not be delivered or issued for delivery in this state unless the
3 policyholder or certificate holder has been offered the option of purchasing a policy or
4 certificate including a nonforfeiture benefit. The offer of a nonforfeiture benefit may be
5 in the form of a rider that is attached to the policy. If a policyholder or certificate holder
6 declines the nonforfeiture benefit, the insurer shall provide a contingent benefit upon lapse
7 that will be available for a specified period of time following a substantial increase in

8 premium rates.

9 **2. When a group long-term care insurance policy is issued, the offer required in**
10 **subsection 1 of this section shall be made to the group policyholder; except that, if the**
11 **policy is issued as a group long-term care insurance, as defined in section 376.951, other**
12 **than to a continuing care retirement community or other similar entity, the offering shall**
13 **be made to each proposed certificate holder.**

14 **3. The director shall promulgate rules specifying the type or types of nonforfeiture**
15 **benefits to be offered as part of long-term care insurance policies and certificates, the**
16 **standards for nonforfeiture benefits, and the rules regarding contingent benefit upon lapse,**
17 **including a determination of the specified period of time during which a contingent benefit**
18 **upon lapse will be available and the substantial premium rate increase that triggers a**
19 **contingent benefit upon lapse as described in subsection 1 of this section.**

376.1130. 1. The director shall promulgate reasonable rules to promote premium
2 **adequacy and to provide alternatives for the policyholder in the event of substantial rate**
3 **increases, and to establish minimum standards for marketing practices, agent testing,**
4 **penalties, and reporting practices for long-term care insurance.**

5 **2. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,**
6 **that is created under the authority delegated in section 376.1121 to 276.1130 shall become**
7 **effective only if it complies with and is subject to all of the provisions of chapter 536,**
8 **RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo,**
9 **are nonseverable and if any of the powers vested with the general assembly pursuant to**
10 **chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule**
11 **are subsequently held unconstitutional, then the grant of rulemaking authority and any**
12 **rule proposed or adopted after August 28, 2002, shall be invalid and void.**

 379.080. 1. (1) The amount of the minimum capital required of a stock company to
2 write the lines of business it proposes to transact or is transacting, or if the company is a mutual
3 company an amount equal to the minimum capital required of a stock company transacting the
4 same classes of business, shall be held in cash or invested in:

- 5 (a) Treasury notes or bonds of the United States;
- 6 (b) Bonds of the state of Missouri;
- 7 (c) Bonds issued by any school district of the state of Missouri;
- 8 (d) Bonds of any political subdivision of this state;

9 (2) The remainder of the capital, surplus or policyholders' surplus of these companies
10 and their other assets may be invested, to the extent allowed by this or any other provision of
11 law, in:

- 12 (a) The investments authorized by subdivision (1) of subsection 1 of this section;

- 13 (b) Loans safely secured by personal property collateral worth, at its cash market value,
14 not less than twenty percent in excess of the amount loaned thereon;
- 15 (c) Stocks, bonds or evidences of indebtedness issued by corporations organized under
16 the laws of this state, or of the United States or of any other state;
- 17 (d) Bonds or other obligations issued by multinational development banks in which the
18 United States is a member nation, including the African Development Bank;
- 19 (e) Bonds of any other state, or of any political subdivision of any other state;
- 20 (f) Mortgages or deeds of trust on unencumbered real estate in this or any other state
21 worth not less than twenty percent in excess of the amount loaned thereon;
- 22 (g) If a company is authorized to do business in a foreign country or a possession of the
23 United States or has outstanding insurance or reinsurance contracts on risks located in a foreign
24 country or United States' possession, the company may invest the remainder of its capital and
25 other assets in securities, cash or other investments payable in the currency of the foreign country
26 or possession that are of substantially the same kinds and classes as those eligible for investments
27 under this subsection, provided that such investments are made with the approval of the director.
28 The aggregate amount of the foreign investments and cash shall not exceed the greater of one and
29 one-half times the amount of the company's reserves and other obligations under the contracts
30 or the amount that the company is required by law to invest in the foreign country or possession,
31 and the aggregate amount of foreign investments and cash shall not exceed five percent of the
32 company's admitted assets. All foreign investments shall be reported to the director from time
33 to time as he directs;
- 34 (h) Loans evidenced by bonds, notes or other evidences of indebtedness guaranteed or
35 insured, but only to the extent guaranteed or insured by the United States, any state, territory or
36 possession of the United States, the District of Columbia, or by any agency, administration,
37 authority or instrumentality of any of the political units enumerated;
- 38 (i) Shares of insured state-chartered building and loan associations and federal savings
39 and loan associations, if such shares are insured by the Federal Deposit Insurance Corporation;
- 40 (j) Investments permitted by section 99.550, RSMo;
- 41 (k) Data processing equipment, automobiles, real estate and put or call options and
42 financial futures contracts to the extent allowed by this section and any other provision of law;
- 43 (l) Investments in subsidiaries to the extent allowed by section 382.020, RSMo;
- 44 (m) Any other investments not described herein provided the aggregate amount of such
45 investments shall not exceed eight percent of the admitted assets of the company;
- 46 (n) Any investments in an investment pool meeting the requirements of section 379.083
47 and any other provision of law relating to investments made by individual property and casualty
48 companies; [and]

49 (o) Any other investments expressly authorized in writing by the director of the
50 department of insurance; **and**

51 (p) **Any investment in a Missouri tax credit certificate or partnership interest which**
52 **entitles the company to receive Missouri tax credits that may be used as a credit against the**
53 **gross premium tax.**

54 2. Violation of any of the provisions of this section by an insurer is grounds for the
55 suspension or revocation of its certificate of authority by the director.