

FIRST REGULAR SESSION

# HOUSE BILL NO. 962

## 95TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE MOLENDORP.

2273L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 374.456, 375.020, 382.400, 382.402, 382.405, 382.407, 382.409, 384.025, 384.031, 384.043, 384.051, 384.057, and 384.062, RSMo, and to enact in lieu thereof eleven new sections relating to insurance producers and brokers.

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

Section A. Sections 374.456, 375.020, 382.400, 382.402, 382.405, 382.407, 382.409, 384.025, 384.031, 384.043, 384.051, 384.057, and 384.062, RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 375.020, 382.400, 382.402, 382.405, 382.407, 382.409, 384.025, 384.043, 384.051, 384.057, and 384.062, to read as follows:

375.020. 1. Beginning January 1, 2008, each insurance producer, unless exempt pursuant to section 375.016, licensed to sell insurance in this state shall successfully complete courses of study as required by this section. Any person licensed to act as an insurance producer shall, during each two years, attend courses or programs of instruction or attend seminars equivalent to a minimum of sixteen hours of instruction. Of the sixteen hours' training required in this subsection, the hours need not be divided equally among the lines of authority in which the producer has qualified. The courses or programs attended by the producer during each two-year period shall include instruction on Missouri law, products offered in any line of authority in which the producer is qualified, producers' duties and obligations to the department, and business ethics, including sales suitability. Course credit shall be given to members of the general assembly as determined by the department.

2. Subject to approval by the director, the courses or programs of instruction which shall be deemed to meet the director's standards for continuing educational requirements shall include, but not be limited to, the following:

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

- 15 (1) American College Courses (CLU, ChFC);  
16 (2) Life Underwriters Training Council (LUTC);  
17 (3) Certified Insurance Counselor (CIC);  
18 (4) Chartered Property and Casualty Underwriter (CPCU);  
19 (5) Insurance Institute of America (IIA);  
20 (6) Any other professional financial designation approved by the director by rule;  
21 (7) An insurance-related course taught by an accredited college or university or qualified  
22 instructor who has taught a course of insurance law at such institution;
- 23 (8) A course or program of instruction or seminar developed or sponsored by any  
24 authorized insurer, recognized producer association or insurance trade association, **or any other**  
25 **entity engaged in the business of providing education courses to producers.** A local  
26 producer group may also be approved if the instructor receives no compensation for services.
- 27 3. A person teaching any approved course of instruction or lecturing at any approved  
28 seminar shall qualify for the same number of classroom hours as would be granted to a person  
29 taking and successfully completing such course, seminar or program.
- 30 4. Excess hours accumulated during any two-year period may be carried forward to the  
31 two-year period immediately following the two-year period in which the course, program or  
32 seminar was held.
- 33 5. For good cause shown, the director may grant an extension of time during which the  
34 educational requirements imposed by this section may be completed, but such extension of time  
35 shall not exceed the period of one calendar year. The director may grant an individual waiver  
36 of the mandatory continuing education requirement upon a showing by the licensee that it is not  
37 feasible for the licensee to satisfy the requirements prior to the renewal date. Waivers may be  
38 granted for reasons including, but not limited to:
- 39 (1) Serious physical injury or illness;  
40 (2) Active duty in the armed services for an extended period of time;  
41 (3) Residence outside the United States; or  
42 (4) The licensee is at least seventy years of age.
- 43 6. Every person subject to the provisions of this section shall furnish in a form  
44 satisfactory to the director, written certification as to the courses, programs or seminars of  
45 instruction taken and successfully completed by such person. Every provider of continuing  
46 education courses authorized in this state shall, within thirty working days of a licensed producer  
47 completing its approved course, provide certification to the director of the completion in a format  
48 prescribed by the director.
- 49 7. The provisions of this section shall not apply to those natural persons holding licenses  
50 for any kind or kinds of insurance for which an examination is not required by the law of this

51 state, nor shall they apply to any limited lines insurance producer license or restricted license as  
52 the director may exempt.

53 8. The provisions of this section shall not apply to a life insurance producer who is  
54 limited by the terms of a written agreement with the insurer to transact only specific life  
55 insurance policies having an initial face amount of five thousand dollars or less, or annuities  
56 having an initial face amount of ten thousand dollars or less, that are designated by the purchaser  
57 for the payment of funeral or burial expenses. The director may require the insurer entering into  
58 the written agreements with the insurance producers pursuant to this subsection to certify as to  
59 the representations of the insurance producers.

60 9. Rules and regulations necessary to implement and administer this section shall be  
61 promulgated by the director, including, but not limited to, rules and regulations regarding the  
62 following:

63 (1) Course content and hour credits: the insurance advisory board established by section  
64 375.019 shall be utilized by the director to assist him in determining acceptable content of  
65 courses, programs and seminars to include classroom equivalency;

66 (2) Filing fees for course approval: every applicant seeking approval by the director of  
67 a continuing education course under this section shall pay to the director a filing fee of fifty  
68 dollars per course. Fees shall be waived for state and local insurance producer groups. Such fee  
69 shall accompany any application form required by the director. Courses shall be approved for  
70 a period of no more than one year. Applicants holding courses intended to be offered for a  
71 longer period must reapply for approval. Courses approved by the director prior to August 28,  
72 1993, for which continuous certification is sought should be resubmitted for approval sixty days  
73 before the anniversary date of the previous approval.

74 10. All funds received pursuant to the provisions of this section shall be transmitted by  
75 the director to the department of revenue for deposit in the state treasury to the credit of the  
76 insurance dedicated fund. All expenditures necessitated by this section shall be paid from funds  
77 appropriated from the insurance dedicated fund by the legislature.

382.400. As used in sections 382.400 to [382.410] **382.409**, the following terms mean:

2 (1) "Accredited state", a state in which the insurance department or regulatory agency  
3 has qualified as meeting the minimum financial regulatory standards promulgated and  
4 established from time to time by the National Association of Insurance Commissioners;

5 (2) ["Broker", an insurance broker or brokers as defined in section 375.012, RSMo;

6 (3)] "Control" or "controlled" has the meaning prescribed by section 382.010;

7 [(4)] (3) "Controlled insurer", a licensed insurer which is controlled, directly or  
8 indirectly, by a [broker] **producer**;

9            [(5)] (4) "Controlling [broker] **producer**", a [broker] **producer** who, directly or  
10 indirectly, controls an insurer;

11            [(6)] (5) "Licensed insurer" or "insurer", any person, firm, association or corporation duly  
12 licensed to transact a property or casualty insurance business in this state. The following are not  
13 licensed insurers for the purposes of sections 382.400 to 382.410:

14            (a) All risk retention groups as defined in the federal Superfund Amendments  
15 Reauthorization Act of 1986, as amended, and the federal Risk Retention Act, 15 U.S.C. section  
16 3901, et seq., as amended, and sections 375.1080 to 375.1105, RSMo;

17            (b) All residual market pools and joint underwriting authorities or associations; and

18            (c) All captive insurers. For the purposes of sections 382.400 to 382.410, "captive  
19 insurers" are insurance companies owned by another organization whose exclusive purpose is  
20 to insure risks of the parent organization and affiliated companies or, in the case of groups and  
21 associations, insurance organizations owned by the insureds whose exclusive purpose is to insure  
22 risks to member organizations and group members and their affiliates;

23            (6) "**Producer**", an insurance broker or brokers or any other person, firm,  
24 association, or corporation, when for any compensation, commission, or other thing of  
25 value, the person, firm, association, or corporation acts or aids in any manner in soliciting,  
26 negotiating, or procuring the making of an insurance contract on behalf of an insured  
27 other than the person, firm, association, or corporation.

382.402. Sections 382.400 to [382.410] **382.409** shall apply to licensed insurers either  
2 domiciled in this state or domiciled in a state that is not an accredited state having in effect laws  
3 substantially similar to the provisions of sections 382.400 to [382.410] **382.409**. All provisions  
4 of this chapter, to the extent they are not superseded by sections 382.400 to [382.410] **382.409**,  
5 shall continue to apply to all parties within holding company systems subject to sections 382.400  
6 to [382.410] **382.409**.

382.405. 1. (1) The provisions of this section shall apply if in any calendar year the  
2 aggregate amount of gross written premium on business placed with a controlled insurer by  
3 controlling [broker] **producer** is equal to or greater than five percent of the admitted assets of  
4 the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of  
5 September thirtieth of the prior year.

6            (2) Notwithstanding the provisions of subdivision (1) of this subsection, the provisions  
7 of this section shall not apply if:

8            (a) The controlling [broker] **producer**:

9            a. Places insurance only with the controlled insurer, or only with the controlled insurer  
10 and a number of members of the controlled insurer's holding company system, or the controlled

11 insurer's parent, affiliate or subsidiary and receives no compensation based upon the amount of  
12 premiums written in connection with such insurance; and

13       b. Accepts insurance placements only from nonaffiliated subproducers, and not directly  
14 from insureds; and

15       (b) The controlled insurer, except for insurance business written through a residual  
16 market facility such as the joint underwriting association prescribed by section 303.200, RSMo,  
17 accepts insurance business only from a controlling [broker] **producer**, a [broker] **producer**  
18 controlled by the controlled insurer, or a [broker] **producer** that is a subsidiary of the controlled  
19 insurer.

20       2. A controlled insurer shall not accept business from a controlling [broker] **producer**  
21 and a controlling [broker] **producer** shall not place business with a controlled insurer unless  
22 there is a written contract between the controlling [broker] **producer** and the insurer specifying  
23 the responsibilities of each party, which contract has been approved by the board of directors of  
24 the insurer and contains the following minimum provisions:

25       (1) The controlled insurer may terminate the contract for cause, upon written notice to  
26 the controlling [broker] **producer**. The controlled insurer shall suspend the authority of the  
27 controlling [broker] **producer** to write business during the pendency of any dispute regarding  
28 the cause for the termination;

29       (2) The controlling broker shall render accounts to the controlled insurer detailing all  
30 material transactions, including information necessary to support all commissions, charges and  
31 other fees received by, or owing to, the controlling broker;

32       (3) The controlling [broker] **producer** shall remit all funds due under the terms of the  
33 contract to the controlled insurer on at least a monthly basis. The due date shall be fixed so that  
34 premiums or installments thereof collected shall be remitted no later than ninety days after the  
35 effective date of any policy placed with the controlled insurer under the contract;

36       (4) All funds collected for the controlled insurer's account shall be held by the  
37 controlling [broker] **producer** in a fiduciary capacity, in one or more appropriately identified  
38 bank accounts in banks that are members of the Federal Reserve System, in accordance with the  
39 provisions of applicable insurance law; however, funds of a controlling [broker] **producer** not  
40 required to be licensed in this state shall be maintained in compliance with the requirements of  
41 the controlling [broker's] **producer's** domiciliary jurisdiction;

42       (5) The controlling [broker] **producer** shall maintain separately identifiable records of  
43 business written for the controlled insurer;

44       (6) The contract shall not be assigned in whole or in part by the controlling [broker]  
45 **producer**;

46 (7) The controlled insurer shall provide the controlling [broker] **producer** with its  
47 underwriting standards, rules and procedures, manuals setting forth the rates to be charged, and  
48 the conditions for the acceptance or rejection of risks. The controlling [broker] **producer** shall  
49 adhere to the standards, rules, procedures, rates and conditions. The standards, rules, procedures,  
50 rates and conditions shall be the same as those applicable to comparable business placed with  
51 the controlled insurer by a [broker] **producer** other than the controlling [broker] **producer**;

52 (8) The rates and terms of the controlling [broker's] **producer's** commissions, charges  
53 or other fees and the purposes for those charges or fees. The rates of the commissions, charges  
54 and other fees shall be no greater than those applicable to comparable business placed with the  
55 controlled insurer by [brokers] **producers** other than controlling [brokers] **producers**. For  
56 purposes of this subdivision and subdivision (7) of this subsection, examples of comparable  
57 business includes the same lines of insurance, same kinds of insurance, same kinds of risks,  
58 similar policy limits, and similar quality of business;

59 (9) If the contract provides that the controlling [broker] **producer**, on insurance business  
60 placed with the insurer, is to be compensated contingent upon the insurer's profits on that  
61 business, then such compensation shall not be determined and paid until at least five years after  
62 the premiums on liability insurance are earned and at least one year after the premiums are  
63 earned on any other insurance. In no event shall the commissions be paid until the adequacy of  
64 the controlled insurer's reserves on remaining claims has been independently verified pursuant  
65 to subsection 1 of this section;

66 (10) A limit on the controlling [broker's] **producer's** writings in relation to the controlled  
67 insurer's surplus and total writings. The insurer may establish a different limit for each line or  
68 subline of business. The controlled insurer shall notify the controlling [broker] **producer** when  
69 the applicable limit is approached and shall not accept business from the controlling [broker]  
70 **producer** if the limit is reached. The controlling [broker] **producer** shall not place business  
71 with the controlled insurer if it has been notified by the controlled insurer that the limit has been  
72 reached; and

73 (11) The controlling [broker] **producer** may negotiate but shall not bind reinsurance on  
74 behalf of the controlled insurer, except that the controlling [broker] **producer** may bind  
75 facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract  
76 with the controlled insurer contains underwriting guidelines including, but both reinsurance  
77 assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the  
78 coverages and amounts or percentages that may be reinsured and commission schedules.

79 3. Every controlled insurer shall have an audit committee of the board of directors  
80 composed of independent directors. The audit committee shall annually meet with management,  
81 the insurer's independent certified public accountants, and an independent casualty actuary or

82 other independent loss reserve specialist acceptable to the director to review the adequacy of the  
83 insurer's loss reserves.

84 4. (1) In addition to any other required loss reserve certification, the controlled insurer  
85 shall annually, on April first of each year, file with the director an opinion of an independent  
86 casualty actuary, or such other independent loss reserve specialist acceptable to the director,  
87 reporting loss ratios for each line of business written and attesting to the adequacy of loss  
88 reserves established for losses incurred and outstanding as of year-end, including incurred but  
89 not reported, on business placed by the [broker] **producer**; and

90 (2) The controlled insurer shall annually report to the director the amount of  
91 commissions paid to the [broker] **producer**, the percentage such amount represents of the net  
92 premiums written and comparable amounts and percentage paid to noncontrolling [brokers]  
93 **producers** for placements of the same kinds of insurance.

382.407. The [broker] **producer**, prior to the effective date of the policy, shall deliver  
2 written notice to the prospective insured disclosing the relationship between the [broker]  
3 **producer** and the controlled insurer, except that if the business is placed through a subproducer  
4 who is not a controlling [broker] **producer**, the controlling [broker] **producer** shall retain in his  
5 **or her** records a signed commitment from the subproducer that the subproducer is aware of the  
6 relationship between the insurer and the [broker] **producer** and that the subproducer has or will  
7 notify the insured.

382.409. 1. (1) If the director believes that the controlling [broker] **producer** or any  
2 other person has not materially complied with sections 382.400 to [382.410] **382.409**, or any  
3 regulation or order promulgated hereunder, after notice and opportunity to be heard, the director  
4 may order the controlling [broker] **producer** to cease placing business with the controlled  
5 insurer; and

6 (2) If it was found that because of such material noncompliance that the controlled  
7 insurer or any policyholder thereof has suffered any loss or damage, the director may maintain  
8 a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for  
9 recovery of compensatory damages for the benefit of the insurer or policyholder or other  
10 appropriate relief.

11 2. If an order of liquidation or rehabilitation of the controlled insurer has been entered  
12 pursuant to sections 375.1150 to 375.1246, RSMo, and the receiver appointed under that order  
13 believes that the controlling [broker] **producer** or any other person has not materially complied  
14 with sections 382.400 to [382.410] **382.409**, or any regulation or order promulgated hereunder,  
15 and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action  
16 for recovery of damages or other appropriate sanctions for the benefit of the insurer.

17           3. Nothing contained in this section shall affect the right of the director to impose any  
18 other penalties provided for by law.

19           4. Nothing contained in this section is intended to or shall in any manner alter or affect  
20 the rights of policyholders, claimants, creditors or other third parties.

          384.025. 1. If at any time the director has reason to believe that an eligible surplus lines  
2 insurer:

3           (1) Is in unsound financial condition;

4           (2) Is no longer eligible under section 384.021;

5           (3) Has willfully violated the laws of this state; or

6           (4) Does not make reasonably prompt payment of just losses and claims in this state or  
7 elsewhere; the director may declare it ineligible.

8           2. The director shall promptly [mail] **publish** notice of all such declarations [to each  
9 surplus lines licensee] **in any public electronic format.**

          384.043. 1. No insurance producer shall procure any contract of surplus lines insurance  
2 with any nonadmitted insurer, unless he **or she** possesses a current surplus lines insurance license  
3 issued by the director.

4           2. The director shall issue a surplus lines license to any qualified holder of a current  
5 resident or nonresident property and casualty insurance producer license but only when the  
6 licensee has:

7           (1) Remitted the one hundred dollar initial fee to the director;

8           (2) Submitted a completed license application on a form supplied by the director; and

9           (3) Passed a qualifying examination approved by the director, except that all holders of  
10 a license prior to July 1, 1987, shall be deemed to have passed such an examination.

11           3. Each surplus lines license shall be renewed [annually] **for a term of two years** on the  
12 **biennial** anniversary date of issuance and continue in effect until refused, revoked or suspended  
13 by the director in accordance with section 384.065; except that if the [annual] **biennial** renewal  
14 fee for the license is not paid on or before the anniversary date, the license terminates. The  
15 [annual] **biennial** renewal fee is [fifty] **one hundred** dollars.

          384.051. 1. Every insured in this state who procures or causes to be procured or  
2 continues or renews insurance in any surplus lines insurer, or any self-insurer in this state who  
3 so procures or continues with, any surplus lines insurer, excess of loss, catastrophe or other  
4 insurance, upon a subject of insurance resident, located or to be performed within this state, other  
5 than insurance procured through a surplus lines broker pursuant to sections 384.011 to 384.071,  
6 shall before March second of the year next succeeding the year in which the insurance was so  
7 procured, continued or renewed, file a written report of the same with the director on forms  
8 prescribed by the director and furnished to such an insured upon request. The report shall show:

- 9 (1) The name and address of the insured or insureds;  
10 (2) The name and address of the insurer or insurers;  
11 (3) The subject of the insurance;  
12 (4) A general description of the coverage;  
13 (5) The amount of premium currently charged therefor;  
14 (6) Such additional pertinent information as may be reasonably requested by the director.

15 2. If any such insurance covers also a subject of insurance resident, located or to be  
16 performed outside this state, for the purposes of this section, a proper pro rata portion of the  
17 entire premium payable for all such insurance shall be allocated as to the subjects of insurance  
18 resident, located or to be performed in this state.

19 3. Any insurance in a surplus lines insurer procured through negotiations or an  
20 application in whole or in part occurring or made within or from within this state, or for which  
21 premiums in whole or in part are remitted directly or indirectly from within this state, shall be  
22 deemed to be insurance procured or continued or renewed in this state within the intent of  
23 subsection 1 of this section.

24 4. For the general support of the government of this state there is levied upon the insured  
25 **or self-insurer** who procures insurance pursuant to subsections 1 and 3 of this section a tax at  
26 the rate of five percent of the net amount of the premium in respect of risks located in this state.  
27 Before April sixteenth of the year next succeeding the year in which the insurance was so  
28 procured, continued or renewed, the insured shall remit to the [director] **department of revenue**  
29 the amount of the tax. The [director before June first of each year shall certify and transmit to  
30 the director of revenue the sums so collected] **department of revenue shall notify the director**  
31 **of the sums collected from each insured or self-insurer.**

384.057. **1.** Before March second of each year, each surplus lines broker shall report  
2 under oath to the director on forms prescribed by him **or her** a statement showing, **with respect**  
3 **to the year ending the immediately preceding December thirty-first:**

- 4 (1) The gross amounts charged for surplus lines insurance with respect to risks located  
5 within this state, exclusive of sums collected for the payment of federal, state or local taxes;  
6 (2) The amount of net premiums with respect to the insurance. For the purpose of this  
7 section, "net premiums" means the gross amount of charges for surplus lines insurance with  
8 respect to risks located within this state, exclusive of sums collected for the payment of federal,  
9 state and local taxes, less returned premiums.

10 **2. No later than within forty-five days after the end of each calendar quarter ending**  
11 **March thirty-first, June thirtieth, September thirtieth, and December thirty-first, each**  
12 **surplus lines broker shall report under oath to the director on forms prescribed by the**  
13 **director a statement showing, with respect to each respective calendar quarter:**

14           (1) **The gross amounts charged for surplus lines insurance with respect to risks**  
15 **located within this state, exclusive of sums collected for the payment of federal, state, or**  
16 **local taxes;**

17           (2) **The amount of net premiums with respect to the insurance. For purposes of this**  
18 **section, "net premiums" means the gross amount of charges for surplus lines insurance**  
19 **with respect to risks located within the state, exclusive of sums collected for the payment**  
20 **of federal, state, or local taxes, less returned premiums.**

384.062. 1. If [the tax collectible] **any tax, penalty, or interest payable** by a surplus  
2 lines licensee under the provisions of sections 384.011 to 384.071 [has been collected and] is not  
3 paid within the time prescribed, the same shall be recoverable in a suit brought by the director  
4 against the surplus lines licensee.

5           2. All taxes, penalties, and interest or delinquent taxes levied pursuant to this chapter  
6 shall be paid to the [director] **department of revenue**, who shall [obtain such taxes, penalties  
7 and interest by civil action against the insured or the surplus lines licensee, and the director shall  
8 remit such taxes when collected to the director of revenue] **notify the director of the sums**  
9 **collected from each surplus lines licensee.** All checks and drafts remitted for the payment of  
10 such taxes, penalties and interest shall be made payable to the director of revenue.

11           3. Taxes collected pursuant to this chapter are taxes collected by the director of revenue  
12 within the meaning of section 139.031, RSMo.

[374.456. 1. The director of the department of insurance, financial  
2 institutions and professional registration shall personally report to the appropriate  
3 committees of the general assembly by March first of each year on the status of  
4 all actions initiated, maintained by the director, or which have been concluded,  
5 during the preceding year to enforce the provisions of this act. The director shall  
6 answer all questions regarding such actions, or regarding other matters that are  
7 related to the provisions of this act.

8           2. The report to the appropriate committees of the general assembly shall  
9 cover enforcement actions related to sections 354.500 to 354.636, RSMo, relating  
10 to health maintenance organizations, sections 374.500 to 374.515 relating to  
11 utilization review agents, and sections 376.1350 to 376.1399, RSMo, relating to  
12 all managed care health benefit plans.]

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[384.031. Within thirty days after the placing of any surplus lines  
2 insurance, each surplus lines licensee shall file with the director a written report,  
3 on a form prescribed by the director, which shall be kept confidential, regarding  
4 the insurance with the director, including the following:

- 5           (1) The name and address of the insured;  
6           (2) The identity of the insurer or insurers;  
7           (3) A description of the subject and location of the risk;

- 8                   (4) The amount of premium charged for the insurance; and
- 9                   (5) Such other pertinent information as the director may reasonably
- 10           require.]

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