

SECOND REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 1278**  
**92ND GENERAL ASSEMBLY**

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Reported from the Committee on Financial Services March 4, 2004, with recommendation that the House Committee Substitute for House Bill No. 1278 Do Pass.

STEPHEN S. DAVIS, Chief Clerk

3304L.03C

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**AN ACT**

To repeal sections 374.160, 375.246, 375.772, 375.773, 375.774, 375.775, 375.776, 375.778, 375.779, 375.1220, 376.421, 376.424, 376.426, 376.816, 376.960, 376.961, 376.966, 376.975, 376.980, 376.986, 379.110, 379.815, 379.825, 379.930, 379.938, 379.940, 379.942, 379.943, 379.952, 382.210, 384.043, 384.062, and 384.065, RSMo, and to enact in lieu thereof thirty-nine new sections relating to insurance, with an effective date.

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

Section A. Sections 374.160, 375.246, 375.772, 375.773, 375.774, 375.775, 375.776, 2 375.778, 375.779, 375.1220, 376.421, 376.424, 376.426, 376.816, 376.960, 376.961, 376.966, 3 376.975, 376.980, 376.986, 379.110, 379.815, 379.825, 379.930, 379.938, 379.940, 379.942, 4 379.943, 379.952, 382.210, 384.043, 384.062, and 384.065, RSMo, are repealed and thirty-nine 5 new sections enacted in lieu thereof, to be known as sections 374.160, 375.246, 375.772, 6 375.773, 375.774, 375.775, 375.776, 375.778, 375.779, 375.1220, 376.421, 376.424, 376.426, 7 376.433, 376.450, 376.451, 376.452, 376.771, 376.794, 376.816, 376.960, 376.961, 376.966, 8 376.975, 376.980, 376.986, 376.1600, 379.110, 379.815, 379.825, 379.930, 379.938, 379.940, 9 379.943, 379.952, 382.210, 384.043, 384.062, and 384.065, to read as follows:

374.160. 1. The expenses of [examinations,] valuations or proceedings against any 2 company, and for dissolving or settling the affairs of companies are to be paid by the company, 3 or as provided by law. The state shall not be responsible in any manner for the payment of any 4 such expenses, or any charges connected therewith.

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

5           2. All other expenses of the department of insurance now or hereafter incurred and  
6 unpaid, or that may be hereafter incurred, including the salaries of the director and deputy  
7 director, shall be paid out of the state treasury in the manner provided by law.

8           3. The director shall assess the **direct expenses incurred by examiners** of any  
9 examination against the company examined and shall order that the examination expenses be  
10 paid into the insurance examiners fund created by section 374.162. **Any such assessment shall**  
11 **include an itemized report prepared by the director or the director's designee that**  
12 **indicates the direct expenses incurred by the examiners. The report shall include the**  
13 **amount of time spent by each examiner whose expenses are included in the report and the**  
14 **rate of pay for each examiner. Each examiner whose direct expenses are included in the**  
15 **report shall complete a written form that verifies and attests to the direct expenses**  
16 **incurred by such examiner during the examination. The entire detailed report, including**  
17 **the examiners' forms described in this subsection, shall be submitted to the examined**  
18 **company and an appropriate representative of such company shall verify the accuracy of**  
19 **the report prior to any assessment against the examined company.** The director shall also  
20 assess an additional amount equal to [fifteen] **ten** percent of the [total expenses of the  
21 examination] **direct expenses incurred by the examiners**, to be paid for the supervision and  
22 support of the examiners, **including information systems, technical support, and education.**  
23 **No such support services shall be separately billed as a direct expense under this section.**  
24 The insurance examiner's sick leave fund created by sections 374.261 to 374.267 shall be  
25 combined with the insurance examiners fund. The director shall pay from the insurance  
26 examiners fund the compensation of insurance examiners pursuant to section 374.115[,] **and** any  
27 expenses to be paid from such sick leave fund under sections 374.261 to 374.267, and expenses  
28 incurred for supervision and support of the examiners. The general assembly shall annually  
29 provide appropriations sufficient to distribute all receipts into the insurance examiners fund. The  
30 provisions of section 33.080, RSMo, relating to the transfer of unexpended balances to the  
31 general revenue fund shall not apply to the insurance examiners fund.

32           4. If any company shall refuse to pay the expenses of any examination, valuation or  
33 proceeding assessed by the director pursuant to this section, the company shall be liable for  
34 double the amount of such expenses and all costs of collection, including attorney's fees. The  
35 company shall not be entitled to a credit, pursuant to section 148.400, RSMo, for any [fees,  
36 expenses or] costs ordered pursuant to this subsection other than in the amount of the expenses  
37 originally assessed by the director. All amounts collected pursuant to this subsection shall be  
38 credited to the insurance examiners fund.

39           **5. For examinations conducted within the state of Missouri, each employee or other**  
40 **authorized agent of the department of insurance may be provided a per diem for expenses**

41 **or be reimbursed for actual expenses incurred by such employee or agent, or may receive**  
42 **the amount provided for members of the general assembly pursuant to section 21.145,**  
43 **RSMo, whichever is less. A company shall only be assessed examination expenses for**  
44 **employee or agent expenses, including travel reimbursement, pursuant to subsection 3 of**  
45 **this section in amounts prescribed in this subsection.**

375.246. 1. Credit for reinsurance shall be allowed a domestic ceding insurer as either  
2 an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer  
3 meets the requirements of subdivisions (1) to (5) of this subsection. Credit shall be allowed  
4 pursuant to subdivision (1), (2) or (3) of this subsection only as respects cessions of those kinds  
5 or classes of business which the assuming insurer is licensed or otherwise permitted to write or  
6 assume in its state of domicile or, in the case of a United States branch of an alien assuming  
7 insurer, in the state through which it is entered and licensed to transact insurance or reinsurance.  
8 Credit shall be allowed pursuant to subdivision (3) or (4) of this subsection only if the applicable  
9 requirements of subdivision (6) have been satisfied.

10 (1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is  
11 licensed to transact insurance in this state;

12 (2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is  
13 accredited as a reinsurer in this state. An accredited reinsurer is one that:

14 (a) Files with the director evidence of its submission to this state's jurisdiction;

15 (b) Submits to the authority of the department of insurance to examine its books and  
16 records;

17 (c) Is licensed to transact insurance or reinsurance in at least one state, or in the case of  
18 a United States branch of an alien assuming insurer is entered through and licensed to transact  
19 insurance or reinsurance in at least one state;

20 (d) Files annually with the director a copy of its annual statement filed with the insurance  
21 department of its state of domicile and a copy of its most recent audited financial statement; and

22 (e) Maintains a surplus as regards policyholders in an amount not less than twenty  
23 million dollars and whose accreditation has not been denied by the director within ninety days  
24 of its submission; or

25 (f) Maintains a surplus as regards policyholders in an amount less than twenty million  
26 dollars and whose accreditation has been approved by the director.

27

28 No credit shall be allowed a domestic ceding insurer if the assuming insurer's accreditation has  
29 been revoked by the director after notice and hearing;

30 (3) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is  
31 domiciled in, or in the case of a United States branch of an alien assuming insurer is entered

32 through, a state that employs standards regarding credit for reinsurance substantially similar to  
33 those applicable under this statute and the assuming insurer or United States branch of an alien  
34 assuming insurer:

35 (a) Maintains a surplus as regards policyholders in an amount not less than twenty  
36 million dollars; except that this paragraph does not apply to reinsurance ceded and assumed  
37 pursuant to pooling arrangements among insurers in the same holding company system; and

38 (b) Submits to the authority of the department of insurance to examine its books and  
39 records;

40 (4) (a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that  
41 maintains a trust fund in a qualified United States financial institution, as defined in subdivision  
42 (2) of subsection 3 of this section, for the payment of the valid claims of its United States ceding  
43 insurers, their assigns and successors in interest. To enable the director to determine the  
44 sufficiency of the trust fund, the assuming insurer shall report annually to the director  
45 information substantially the same as that required to be reported on the National Association  
46 of Insurance Commissioners' annual statement form by licensed insurers. The assuming insurer  
47 shall submit to examination of its books and records by the director.

48 (b) Credit for reinsurance shall not be granted pursuant to this subdivision unless the  
49 form of the trust and any amendments to the trust have been approved by:

50 a. The commissioner or director of the state agency regulating insurance in the state  
51 where the trust is domiciled; or

52 b. The commissioner or director of another state who, pursuant to the terms of the trust  
53 instrument, has accepted principal regulatory oversight of the trust.

54 (c) The form of the trust and any trust amendments shall also be filed with the  
55 commissioner or director in every state in which the ceding insurer beneficiaries of the trust are  
56 domiciled. The trust instrument shall provide that contested claims shall be valid and  
57 enforceable upon the final order of any court of competent jurisdiction in the United States. The  
58 trust shall vest legal title to its assets in its trustees for the benefit of the assuming insurer's  
59 United States ceding insurers, their assigns and successors in interest. The trust and the  
60 assuming insurer shall be subject to examination as determined by the director.

61 (d) The trust shall remain in effect for as long as the assuming insurer has outstanding  
62 obligations due under the reinsurance agreements subject to the trust. No later than February  
63 twenty-eighth of each year the trustees of the trust shall report to the director in writing the  
64 balance of the trust and listing the trust's investments at the preceding year end and shall certify  
65 the date of termination of the trust, if so planned, or certify that the trust will not expire prior to  
66 the next following December thirty-first.

67 (e) The following requirements apply to the following categories of assuming insurers:

68           a. The trust fund for a single assuming insurer shall consist of funds in trust in an amount  
69 not less than the assuming insurer's liabilities attributable to reinsurance ceded by the United  
70 States ceding insurers, and, in addition, the assuming insurer shall maintain a trustee surplus  
71 of not less than twenty million dollars;

72           b. In the case of a group of incorporated and individual unincorporated underwriters:

73           (i) For reinsurance ceded under reinsurance agreements with an inception, amendment  
74 or renewal date on or after August 1, 1995, the trust shall consist of a trustee account in an  
75 amount not less than the group's several liabilities attributable to business ceded by United States  
76 domiciled ceding insurers to any member of the group;

77           (ii) For reinsurance ceded under reinsurance agreements with an inception date on or  
78 before July 31, 1995, and not amended or renewed after that date, notwithstanding the other  
79 provisions of this section, the trust shall consist of a trustee account in an amount not less than  
80 the group's several insurance and reinsurance liabilities attributable to business in the United  
81 States; and

82           (iii) In addition to these trusts, the group shall maintain in trust a trustee surplus of  
83 which one hundred million dollars shall be held jointly for the benefit of the United States  
84 domiciled ceding insurers of any member of the group for all years of account;

85           c. The incorporated members of the group shall not be engaged in any business other  
86 than underwriting as a member of the group and shall be subject to the same level of regulation  
87 and solvency control by the group's domiciliary regulator as are the unincorporated members;

88           d. Within ninety days after its financial statements are due to be filed with the group's  
89 domiciliary regulator, the group shall provide to the director an annual certification by the  
90 group's domiciliary regulator of the solvency of each underwriter member; or if a certification  
91 is unavailable, financial statements, prepared by independent public accountants, of each  
92 underwriter member of the group;

93           (5) Credit:

94           (a) Shall be allowed when the reinsurance is ceded to an assuming insurer not meeting  
95 the requirements of subdivision (1), (2), (3) or (4) of this subsection, but only as to the insurance  
96 of risks located in a jurisdiction of the United States where the reinsurance is required by  
97 applicable law or regulation of that jurisdiction;

98           (b) May be allowed in the discretion of the director when the reinsurance is ceded to an  
99 assuming insurer not meeting the requirements of subdivision (1), (2), (3) or (4) of this  
100 subsection, but only as to the insurance of risks located in a foreign country where the  
101 reinsurance is required by applicable law or regulation of that country;

102 (6) If the assuming insurer is not licensed or accredited to transact insurance or  
103 reinsurance in this state, the credit permitted by subdivisions (3) and (4) of this subsection shall  
104 not be allowed unless the assuming insurer agrees in the reinsurance agreements:

105 (a) That in the event of the failure of the assuming insurer to perform its obligations  
106 under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding  
107 insurer shall submit to the jurisdiction of the courts of this state, will comply with all  
108 requirements necessary to give such courts jurisdiction, and will abide by the final decisions of  
109 such courts or of any appellate courts in this state in the event of an appeal; and

110 (b) To designate the director or a designated attorney as its true and lawful attorney upon  
111 whom may be served any lawful process in any action, suit or proceeding instituted by or on  
112 behalf of the ceding company. This paragraph is not intended to conflict with or override the  
113 obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation  
114 is created in the agreement and the jurisdiction and situs of the arbitration is, with respect to any  
115 receivership of the ceding company, any jurisdiction of the United States;

116 (7) If the assuming insurer does not meet the requirements of subdivision (1), (2) or (3)  
117 of this subsection, the credit permitted by subdivision (4) of this subsection shall not be allowed  
118 unless the assuming insurer agrees in the trust agreements to the following conditions:

119 (a) Notwithstanding any other provisions in the trust instrument, if the trust fund is  
120 inadequate because it contains an amount less than the amount required by paragraph (e) of  
121 subdivision (4) of this subsection, or if the grantor of the trust has been declared insolvent or  
122 placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its  
123 state or country of domicile, the trustee shall comply with an order of the commissioner or  
124 director with regulatory oversight over the trust or with an order of a court of competent  
125 jurisdiction directing the trustee to transfer to the commissioner or director with regulatory  
126 oversight all of the assets of the trust fund;

127 (b) The assets shall be distributed by and claims shall be filed with and valued by the  
128 commissioner or director with regulatory oversight in accordance with the laws of the state in  
129 which the trust is domiciled that are applicable to the liquidation of domestic insurance  
130 companies;

131 (c) If the commissioner or director with regulatory oversight determines that the assets  
132 of the trust fund or any part thereof are not necessary to satisfy the claims of the United States  
133 ceding insurers of the grantor of the trust, the assets or part thereof shall be returned by the  
134 commissioner or director with regulatory oversight to the trustee for distribution in accordance  
135 with the trust agreement; and

136 (d) The grantor shall waive any right otherwise available to it under United States law  
137 that is inconsistent with this subsection.

138           2. An asset or reduction from liability for the reinsurance ceded by a domestic insurer  
139 to an assuming insurer not meeting the requirements of subsection 1 of this section shall be  
140 allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction  
141 shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held  
142 in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security  
143 for the payment of obligations thereunder, if the security is held in the United States subject to  
144 withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a  
145 trust, held in a qualified United States financial institution, as defined in subdivision (2) of  
146 subsection 3 of this section. This security may be in the form of:

147           (1) Cash;

148           (2) Securities listed by the securities valuation office of the National Association of  
149 Insurance Commissioners and qualifying as admitted assets;

150           (3) (a) Clean, irrevocable, unconditional letters of credit, as defined in subdivision (1)  
151 of subsection 3 of this section, issued or confirmed by a qualified United States financial  
152 institution no later than December thirty-first of the year for which filing is being made, and in  
153 the possession of, or in trust for, the ceding company on or before the filing date of its annual  
154 statement.

155           (b) Letters of credit meeting applicable standards of issuer acceptability as of the dates  
156 of their issuance or confirmation, notwithstanding the issuing or confirming institution's  
157 subsequent failure to meet applicable standards of issuer acceptability, shall continue to be  
158 acceptable as security until their expiration, extension, renewal, modification or amendment,  
159 whichever first occurs;

160           (4) Any other form of security acceptable to the director.

161           3. (1) For purposes of subdivision (3) of subsection 2 of this section, a "qualified United  
162 States financial institution" means an institution that:

163           (a) Is organized or, in the case of a United States office of a foreign banking  
164 organization, licensed under the laws of the United States or any state thereof;

165           (b) Is regulated, supervised and examined by federal or state authorities having  
166 regulatory authority over banks and trust companies; and

167           (c) Has been determined by either the director, or the securities valuation office of the  
168 National Association of Insurance Commissioners, to meet such standards of financial condition  
169 and standing as are considered necessary and appropriate to regulate the quality of financial  
170 institutions whose letters of credit will be acceptable to the director.

171           (2) A "qualified United States financial institution" means, for purposes of those  
172 provisions of this law specifying those institutions that are eligible to act as a fiduciary of a trust,  
173 an institution that:

174 (a) Is organized, or in the case of a United States branch or agency office of a foreign  
175 banking organization, licensed under the laws of the United States or any state thereof and has  
176 been granted authority to operate with fiduciary powers; and

177 (b) Is regulated, supervised and examined by federal or state authorities having  
178 regulatory authority over banks and trust companies.

179 4. The director may adopt rules and regulations implementing the provisions of this  
180 section.

181 5. (1) The director shall disallow any credit as an asset or as a deduction from liability  
182 for any reinsurance found by him to have been arranged for the purpose principally of deception  
183 as to the ceding company's financial condition as of the date of any financial statement of the  
184 company. Without limiting the general purport of this provision, reinsurance of any substantial  
185 part of the company's outstanding risks contracted for in fact within four months prior to the date  
186 of any such financial statement and canceled in fact within four months after the date of such  
187 statement, or reinsurance under which the assuming insurer bears no substantial insurance risk  
188 or substantial risk of net loss to itself, shall prima facie be deemed to have been arranged for the  
189 purpose principally of deception within the intent of this provision.

190 (2) (a) The director shall also disallow as an asset or deduction from liability to any  
191 ceding insurer any credit for reinsurance unless the reinsurance is payable to the ceding company,  
192 and if it be [impaired or] insolvent to its receiver, by the assuming insurer on the basis of the  
193 liability of the ceding company under the contracts reinsured without diminution because of the  
194 insolvency of the ceding company.

195 (b) Such payments shall be made directly to the ceding insurer or to its domiciliary  
196 liquidator except:

197 a. Where the contract of insurance or reinsurance specifically provides for payment to  
198 the named insured, assignee or named beneficiary of the policy issued by the ceding insurer in  
199 the event of the insolvency of the ceding insurer; or

200 b. Where the assuming insurer, with the consent of it and the direct insured or insureds  
201 in an assumption reinsurance transaction subject to sections 375.1280 to 375.1295, has assumed  
202 such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the  
203 payees under such policies and in substitution for the obligations of the ceding insurer to such  
204 payees.

205 (c) Notwithstanding paragraphs (a) and (b) of this subdivision, in the event that a life and  
206 health insurance guaranty association has made the election to succeed to the rights and  
207 obligations of the insolvent insurer under the contract of reinsurance, then the reinsurer's liability  
208 to pay covered reinsured claims shall continue under the contract of reinsurance, subject to the  
209 payment to the reinsurer of the reinsurance premiums for such coverage. Payment for such



210 reinsured claims shall only be made by the reinsurer pursuant to the direction of the guaranty  
211 association or its designated successor. Any payment made at the direction of the guaranty  
212 association or its designated successor by the reinsurer will discharge the reinsurer of all further  
213 liability to any other party for such claim payment.

214 (d) The reinsurance agreement may provide that the domiciliary liquidator of an  
215 insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a  
216 claim against such ceding insurer on the contract reinsured within a reasonable time after such  
217 claim is filed in the liquidation proceeding. During the pendency of such claim, any assuming  
218 insurer may investigate such claim and interpose, at its own expense, in the proceeding where  
219 such claim is to be adjudicated any defenses which it deems available to the ceding insurer, or  
220 its liquidator. Such expense may be filed as a claim against the insolvent ceding insurer to the  
221 extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as  
222 a result of the defense undertaken by the assuming insurer. Where two or more assuming  
223 insurers are involved in the same claim and a majority in interest elect to interpose a defense to  
224 such claim, the expense shall be apportioned in accordance with the terms of the reinsurance  
225 agreement as though such expense had been incurred by the ceding insurer.

226 6. To the extent that any reinsurer of an insurance company in liquidation would have  
227 been required under any agreement pertaining to reinsurance to post letters of credit or other  
228 security prior to an order of liquidation to cover such reserves reflected upon the last financial  
229 statement filed with a regulatory authority immediately prior to receivership, such reinsurer shall  
230 be required to post letters of credit or other security to cover reserves after a company has been  
231 placed in liquidation or receivership. If a reinsurer shall fail to post letters of credit or other  
232 security as required by a reinsurance agreement or the provisions of this subsection, the director  
233 may consider disallowing as a credit or asset, in whole or in part, any future reinsurance ceded  
234 to such reinsurer by a ceding insurance company that is incorporated under the laws of the state  
235 of Missouri.

236 7. The provisions of section 375.420 shall not apply to any action, suit or proceeding by  
237 a ceding insurer against an assuming insurer arising out of a contract of reinsurance effectuated  
238 in accordance with the laws of Missouri.

239 8. The provisions of this section shall become effective on January 1, 2003, and shall be  
240 applicable to the financial statements of a reinsurer as of December 31, 2002.

375.772. 1. There is created a nonprofit unincorporated legal entity to be known as the  
2 "Missouri Property and Casualty Insurance Guaranty Association", hereinafter referred to as  
3 "association". All member insurers shall be and remain members of the association as a  
4 condition of their authority to transact insurance in this state. The association shall perform its

5 functions under a plan of operation and through a board of directors established by section  
6 375.776.

7 2. As used in sections 375.771 to 375.779, the following terms mean:

8 (1) "Account", any one of the four accounts established by section 375.773;

9 (2) **"Affiliate", a person who directly or indirectly through one or more  
10 intermediaries controls, is controlled by, or is under common control with another person;**

11 (3) **"Affiliate of an insolvent insurer", a person who directly or indirectly through  
12 one or more intermediaries controls, is controlled by, or is under common control with an  
13 insolvent insurer on December thirty-first of the year immediately preceding the date the  
14 insurer becomes an insolvent insurer;**

15 (4) **"Association", the Missouri property and casualty insurance guaranty  
16 association;**

17 (5) **"Claimant", any insured making a first-party claim or any person instituting  
18 a liability claim, provided that no person who is an affiliate of the insolvent insurer may  
19 be a claimant;**

20 (6) **"Control", the possession, direct or indirect, of the power to direct or cause the  
21 direction of the management and policies of a person, whether through the ownership of  
22 voting securities, by contract other than a commercial contract for goods or  
23 nonmanagement services, or otherwise, unless the power is the result of an official position  
24 with the corporate office held by the person. Control shall be presumed to exist if any  
25 person, directly or indirectly, owns, controls, holds the power to vote, or holds proxies  
26 representing ten percent or more of the voting securities of any other person. Such  
27 presumption may be rebutted by a showing that control does not exist in fact;**

28 (7) **"Covered claim", an unpaid claim including those for unearned premiums, presented  
29 by a claimant within the time specified in accordance with subsection 1 and subdivision (2)  
30 of subsection 2 of section [375.670, and which arises] 375.775, and is for a loss arising out of  
31 and is within the coverage of an insurance policy to which sections 375.771 to 375.779 apply  
32 [issued by a member insurer, if such insurer becomes an insolvent insurer after September 28,  
33 1971,] made by a person insured under such policy or by a person suffering injury or for  
34 which a person insured under such policy is legally liable, if:**

35 (a) **The policy is issued by a member insurer and such member insurer becomes an  
36 insolvent insurer after August 28, 2004; and**

37 (b) **The claimant or insured is a resident of this state at the time of the insured event[;],  
38 or the claim is a first-party claim by an insured for damage to property and the property  
39 from which the claim arises is permanently located in this state[.] or in the case of an unearned  
40 premium, the policyholder is a resident of this state at the time the policy is issued. The**

41 **residency of the claimant, insured, or policyholder, other than an individual, is the state**  
42 **in which its principal place of business is located at the time of the insured event;**

43 (c) "Covered claim" shall not include:

44 a. Any amount awarded as punitive or exemplary damages, **or which is a fine or**  
45 **penalty;**

46 b. **Any amount** sought as a return of premium under any retrospective rating plan[.]; or

47 c. **Any amount** due any reinsurer, insurer, insurance pool, or underwriting association,  
48 **health maintenance organization, hospital plan corporation, health services corporation,**  
49 **or self-insurer** as subrogation recoveries, **reinsurance recoveries, contribution, indemnity,**  
50 or otherwise[, and]. To the extent of any amount due any reinsurer, insurer, insurance pool, or  
51 underwriting association, **health maintenance organization, hospital plan corporation, health**  
52 **services corporation, or self-insurer** as subrogation recoveries or otherwise there shall be no  
53 right of recovery by any person against a tortfeasor insured of an insolvent insurer, except that  
54 such limitation shall not apply with respect to those amounts that exceed the limits of the policy  
55 issued such tortfeasor by the insolvent insurer[. "Covered claim" shall not include];

56 d. A claim by or against an insured of an insolvent insurer, if such insured has a net  
57 worth of more than twenty-five million dollars on the [date the insurer became an insolvent  
58 insurer] **later of the end of the insured's most recent fiscal year or the December thirty-first**  
59 **of the year next preceding the date the insurer becomes an insolvent insurer; provided that**  
60 **an insured's net worth on such date shall be deemed to include the aggregate net worth of**  
61 **the insured and all of its affiliates as calculated on a consolidated basis;**

62 e. **Any first-party claim by an insured which is an affiliate of the insolvent insurer;**

63 f. **Supplementary payment obligations incurred prior to the final order of**  
64 **liquidation, including but not limited to adjustment fees and expenses, fees for medical cost**  
65 **containment services, including but not limited to medical case management fees,**  
66 **attorney's fees and expenses, court costs, penalties, and bond premiums;**

67 g. **Any claims for interest;**

68 h. **Any amount that constitutes a portion of a covered claim that is within an**  
69 **insured's deductible or self-insured retention;**

70 i. **Any fee or other amount sought by or on behalf of an attorney or other provider**  
71 **of goods or services retained by an insured or claimant in connection with the assertion or**  
72 **prosecuting of any claim, covered or otherwise, against the association;**

73 j. **Any amount that constitutes a claim under a policy issued by an insolvent insurer**  
74 **with a deductible or self-insured retention of three hundred thousand dollars or more.**  
75 **However, such a claim shall be considered a covered claim, if, as of the deadline set forth**

76 **for the filing of claims against the insolvent insurer or its liquidator, the insured is a debtor**  
77 **under 11 U.S.C. Section 701, et seq.;**

78 **k. Any amount to the extent that it is covered by any insurance that is available to**  
79 **the claimant or the insured, whether such other insurance is primary, pro rata, or excess.**  
80 **In all such instances, the association's obligations to the insured or claimant shall not be**  
81 **deemed to be other insurance;**

82 [(3)] **(8)** "Insolvent insurer", an insurer licensed to transact insurance in this state, either  
83 at the time the policy was issued or when the insured event occurred, and against whom [an] **a**  
84 **final** order of liquidation with a finding of insolvency has been entered by a court of competent  
85 jurisdiction in the insurer's state of domicile or of this state under the provisions of sections  
86 375.950 to 375.990 **or sections 375.1150 to 375.1246**, and which **such** order of liquidation has  
87 not been stayed or been the subject of a writ of supersedeas or other comparable order;

88 **(9) "Insured", any named insured, additional insured, vendor, lessor, or any other**  
89 **party identified as an insured under the policy;**

90 [(4)] **(10)** "Member insurer", any person who writes any kind of insurance to which  
91 sections 375.771 to 375.779 apply, including the exchange of reciprocal or interinsurance  
92 contracts, and possesses a certificate of authority to transact the business of insurance in this state  
93 issued by the director of the department of insurance [except an insurer which was insolvent on  
94 September 28, 1971]. Whether or not approved by the director of the department of insurance  
95 for the placing of lines of insurance by [brokers] **producers** so authorized under the provisions  
96 of chapter 384, RSMo, an insurance company not licensed to do business in this state shall not  
97 be a member insurer. Missouri mutual and extended Missouri mutual insurance companies  
98 doing business under chapter 380, RSMo, shall be considered member insurers for the purposes  
99 of sections 375.771 to 375.779, and a special account shall be established applicable only to such  
100 companies;

101 [(5)] **(11)** "Net direct written premiums", direct gross premiums written in this state on  
102 insurance policies to which sections 375.771 to 375.779 apply, less return premiums thereon and  
103 dividends paid or credited to policyholders on such direct business. "Net direct written  
104 premiums" does not include premiums on contracts between insurers or reinsurers;

105 [(6)] **(12)** "Net worth", the total assets of a person less the total liabilities against those  
106 assets. Where the person is one who prepares an annual report to shareholders such report for  
107 the fiscal year immediately preceding the date of insolvency of the insurance carrier shall be used  
108 to determine net worth. If the person is one who does not prepare such an annual report, but does  
109 prepare an annual financial report for management which reflects net worth, then such report for  
110 the fiscal year immediately preceding the date of insolvency of the insurance carrier shall be used  
111 to determine net worth;

112           **(13) "Ocean marine insurance", includes marine insurance that insures against**  
113 **maritime perils or risks and other related perils or risks which are usually insured against**  
114 **by traditional marine insurance, such as hull and machinery, marine builders' risks, and**  
115 **marine protection and indemnity. Such perils and risks insured against include, without**  
116 **limitation, loss, damage, or expense or legal liability of the insured arising out of an**  
117 **incident related to ownership, operation, chartering, maintenance, use, repair, or**  
118 **construction of any vessel, craft, or instrumentality in use in ocean or inland waters for**  
119 **commercial purposes, including liability of the insured for personal injury, illness, or death**  
120 **for loss or damage to the property of the insured or another person;**

121           **[(7)] (14) "Person", any individual, corporation, partnership, association or voluntary**  
122 **organization, municipality, or political subdivision;**

123           **(15) "Political subdivision", the same meaning as such term is defined in section**  
124 **70.210, RSMo;**

125           **(16) "Self-insurer", a person that covers its liability through a qualified individual**  
126 **or group self-insurance program or any other formal program created for the specific**  
127 **purpose of covering liabilities typically covered by insurance.**

          375.773. 1. For purposes of administration and assessment, the association shall be  
2 divided into four separate accounts:

3           (1) The workers' compensation insurance account;

4           (2) The automobile insurance account;

5           (3) The Missouri mutual and extended Missouri mutual insurance company account; and

6           (4) The account for all other insurance to which sections 375.771 to 375.779 apply.

7           2. Sections 375.771 to 375.779 shall apply to all kinds of direct insurance[, except life,  
8 accident and sickness, title, surety, disability, credit, mortgage guaranty, ocean marine insurance,  
9 and assessment insurance written under the provisions of chapter 383, RSMo], **but shall not be**  
10 **applicable to the following:**

11           **(1) Life, annuity, accident, and health or disability insurance;**

12           **(2) Mortgage guaranty, financial guaranty, or other forms of insurance offering**  
13 **protection against investment risk;**

14           **(3) Fidelity or surety bonds, or any other bonding obligations;**

15           **(4) Credit insurance, vendors' single-interest insurance, or collateral protection**  
16 **insurance, or any similar insurance protecting the interest of a creditor arising out of a**  
17 **creditor-debtor transaction;**

18           **(5) Insurance of warranties or service contracts, including insurance that provides**  
19 **for the repair, replacement, or service of goods or property, or indemnification for repair,**  
20 **replacement, or service for the operational or structural failure of the goods or property**

21 **due to a defect in material, workmanship, or normal wear and tear, or provides**  
22 **reimbursement for the liability incurred by the issuers of agreements or service contracts**  
23 **that provide such benefits;**

24 **(6) Title insurance;**

25 **(7) Ocean marine insurance;**

26 **(8) Any transaction or combination of transactions between a person, including**  
27 **affiliates of such person, and an insurer, including affiliates of such insurer, which involves**  
28 **the transfer of investment or credit risk unaccompanied by the transfer of insurance risk;**

29 **(9) That portion of any insurance provided or guaranteed by any government;**

30 **(10) Insurance written by a company formed and operating under the provisions**  
31 **of sections 383.010 to 383.040, RSMo.**

375.774. 1. The association shall issue to each insurer paying an assessment under  
2 sections 375.771 to 375.779 a certificate of contribution, in appropriate form and terms as  
3 prescribed by the director, for the amount so paid. All outstanding certificates shall be of equal  
4 dignity and priority without reference to amounts or dates of issue.

5 2. A certificate of contribution [issued before September 1, 1991,] may be shown by the  
6 insurer in its financial statements as an admitted asset for such amount and period of time, as  
7 follows:

8 (1) One hundred percent for the calendar year of issuance;

9 (2) Sixty-six and two-thirds percent for the first calendar year after the year of issuance;

10 (3) Thirty-three and one-third percent for the second year after the year of issuance which  
11 shall be the last year each such certificate shall be carried as an asset[;

12 (4) An insurer shall not show a certificate of contribution issued on and after September  
13 1, 1991, in its financial statements as an admitted asset].

14 3. The insurer shall be entitled to a credit against the premium tax liability under sections  
15 148.310 to 148.461, RSMo, for contributions paid to the association. This tax credit shall be  
16 taken over a period of the three successive tax years beginning after the year of contribution at  
17 the rate of thirty-three and one-third percent, per year, of the contribution paid to the association,  
18 and such credit shall not be subject to subsection 1 of section 375.916.

19 4. Any sums recovered by the association representing sums which have theretofore been  
20 written off by contributing insurers and offset against premium taxes as provided in subsection  
21 3 of this section shall be paid by the association to the director of revenue who shall handle such  
22 funds in the same manner as provided in section 148.380, RSMo.

23 5. The association shall be exempt from payment of all fees and all capitation or poll and  
24 excise taxes levied by this state or any of its political subdivisions and the real and personal  
25 property of the association is hereby declared to be property actually and regularly used

26 exclusively for purposes purely charitable and not held for private or corporate profit within the  
27 meaning of subdivision (5) of section 137.100, RSMo 1986.

375.775. 1. The association shall[:

2 (1)] Be obligated to the extent of the covered claims existing prior to the date of a final  
3 order of liquidation or a judicial determination by a court of competent jurisdiction in the  
4 insurer's domiciliary state that an insolvent insurer exists and arising within thirty days from the  
5 date or at the time of the first such order or determination, or before the policy expiration date  
6 if less than thirty days after such date, or before or at the time the insured replaces the policy or  
7 causes its cancellation, if he does so within thirty days of such date[, but obligation shall include  
8 only that amount of each covered claim which is in excess of one hundred dollars and is less than  
9 three hundred thousand dollars, except that the association shall pay the full amount of any  
10 covered claim arising out of a workers' compensation policy]. **Such obligation shall be**  
11 **satisfied by paying to the claimant an amount as follows:**

12 (1) **The full amount of a covered claim for benefits under workers' compensation**  
13 **insurance coverage;**

14 (2) **An amount not exceeding twenty-five thousand dollars per policy for a covered**  
15 **claim for the return of unearned premium;**

16 (3) **An amount not exceeding three hundred thousand dollars per claim for all other**  
17 **covered claims.**

18 2. In no event shall the association be obligated to an insured or claimant in an amount  
19 in excess of the face amount or the limits of the policy from which a claim arises or be obligated  
20 for the payment of unearned premium in excess of the amount of [ten] **twenty-five** thousand  
21 dollars, or to an insured or claimant on any covered claim until it receives confirmation from the  
22 receiver or liquidator of an insolvent insurer that the claim is within the coverage of an  
23 applicable policy of the insolvent insurer, except that within the sole discretion of the  
24 association, if the association deems it has sufficient evidence from other sources, including any  
25 claim forms which may be propounded by the association, that the claim is within the coverage  
26 of an applicable policy of the insolvent insurer, it shall proceed to process the claim, pursuant  
27 to its statutory obligations, without such confirmation by the receiver or liquidator:

28 [(a)] (1) All covered claims shall be filed with the association on the claim information  
29 form required by this paragraph no later than the final date first set by the court for the filing of  
30 claims against the liquidator or receiver of an insolvent insurer, except that if the time first set  
31 by the court for filing claims is one year or less from the date of insolvency, and an extension of  
32 the time to file claims is granted by the court, claims may be filed with the association no later  
33 than the new date set by the court or within one year of the date of insolvency, whichever first  
34 occurs. In no event shall the association be obligated on a claim filed after such date or on one

35 not filed on the required form. A claim information form shall consist of a statement verified  
36 under oath by the claimant which includes all of the following:

37 [a.] (a) The particulars of the claim;

38 [b.] (b) A statement that the sum claimed is justly owing and that there is no setoff,  
39 counterclaim, or defense to said claim;

40 [c.] (c) The name and address of the claimant and the attorney who represents the  
41 claimant, if any; and

42 [d.] (d) If the claimant is an insured, that the insured's net worth did not exceed  
43 twenty-five million dollars on the date the insurer became an insolvent insurer.

44

45 The association may require that a prescribed form be used and may require that other  
46 information and documents be included. A covered claim shall not include any claim not  
47 described in a timely filed claim information form even though the existence of the claim was  
48 not known to the claimant at the time a claim information form was filed;

49 [(b)] (2) In the case of claims arising from a member insurer subject to a final order of  
50 liquidation issued on or after September 1, 2000, the provisions of [paragraph (a) of subdivision  
51 (1) of subsection 1] **subdivision (1) of subsection 2** of this section shall not apply and in lieu  
52 thereof, such claims shall be governed by this [paragraph] **subdivision**. All covered claims shall  
53 be filed with the association, liquidator or receiver [no later than the final date first set by the  
54 court for the filing of claims against the liquidator or receiver of an insolvent insurer, except that  
55 if the time first set by the court for filing claims is one year or less from the date of the  
56 insolvency, and an extension of the time to file claims is granted by the court, claims may be  
57 filed no later than the new date set by the court or within one year of the date of insolvency,  
58 whichever first occurs]. **Notwithstanding any other provisions of sections 375.771 to**  
59 **375.779, a covered claim shall not include a claim filed after the earlier of eighteen months**  
60 **after the date of the order of liquidation, or the final date set by the court for the filing of**  
61 **claims against the liquidator or receiver of an insolvent insurer.** The association may require  
62 [that the prescribed forms be used and may require] that other information and documents be  
63 included in confirming the existence of a covered claim or in determining eligibility of any  
64 claimant. Such information may include, but is not limited to:

65 [a.] (a) The particulars of the claim;

66 [b.] (b) A statement that the sum claimed is justly owing and that there is [not] **no** setoff,  
67 counterclaim, or defense to said claim;

68 [c.] (c) The name and address of the claimant and the attorney who represents the  
69 claimant, if any; and

70 [d.] (d) A verification under oath of such requested information.



71 In no event shall the association be obligated on a claim filed with the association, liquidator or  
72 receiver for protection afforded under the insured's policy for incurred but not reported losses.  
73 A covered claim shall not include any claim that is not filed prior to the final date for filing  
74 claims, even though the existence of the claims was not known to the claimant prior to such final  
75 date;

76 [(c)] **3.** In the case of claims arising from bodily injury, sickness or disease, the amount  
77 of any such award shall not exceed the claimant's reasonable expenses incurred for necessary  
78 medical, surgical, X-ray, dental services and comparable services for individuals who, in the  
79 exercise of their constitutional rights, rely on spiritual means alone for healing in accordance  
80 with the tenets and practices of a recognized church or religious denomination by a duly  
81 accredited practitioner thereof, including prosthetic devices and necessary ambulance, hospital,  
82 professional nursing, and any amounts lost or to be lost by reason of claimant's inability to work  
83 and earn wages or salary or their equivalent, except that the association shall pay the full amount  
84 of any covered claim arising out of a workers' compensation policy. Such award may also  
85 include payments in fact made to others, not members of claimant's household, which were  
86 reasonably incurred to obtain from such other persons ordinary and necessary services for the  
87 production of income in lieu of those services the claimant would have performed for himself  
88 had he not been injured. Verdicts as respect only those civil actions as may be brought to recover  
89 damages as provided in this section shall specifically set out the sums applicable to each item  
90 in this section for which an award may be made[;].

91 **4. In the case of claims arising from a member insurer subject to a final order of**  
92 **liquidation dated on or after August 28, 2004, the provisions of subsection 3 of this section**  
93 **shall not apply.**

94 **5. Notwithstanding any other provision of sections 375.771 to 375.779, except in the**  
95 **case of a claim for benefits under workers' compensation coverage, any obligation of the**  
96 **association to or on behalf of the insured and its affiliates on covered claims shall cease**  
97 **when ten million dollars has been paid in the aggregate by the association and any one or**  
98 **more associations similar to the association in any other state or states to or on behalf of**  
99 **such insured, its affiliates, and additional insureds on covered claims or allowed claims**  
100 **arising under the policy or policies of any one insolvent insurer.**

101 **6. If the association determines that there may be more than one claimant having**  
102 **a covered claim or allowed claim against the association, or any associations similar to the**  
103 **association in other states, under the policy or policies of any one solvent insurer, the**  
104 **association may establish a plan to allocate amounts payable by the association in such**  
105 **manner as the association in its discretion deems equitable.**

106            [(2)] **7. The association shall** be deemed the insurer **only** to the extent of its obligations  
107 on the covered claims and to such extent, **subject to the limitations provided in sections**  
108 **375.771 to 375.779**, shall have all rights, duties, and obligations of the insolvent insurer as if the  
109 insurer had not become insolvent[;], **including but not limited to the right to pursue and**  
110 **retain salvage and subrogation recoverable on paid covered claim obligations. The**  
111 **association shall not be deemed the insolvent insurer for any purpose relating to the issue**  
112 **of whether the association is amenable to the personal jurisdiction of the courts of any**  
113 **states. However, any obligation to defend an insured shall cease upon:**

114            (1) **The association's payment by settlement releasing the insured or on a judgment**  
115 **of an amount equal to the lesser of the association's covered claim obligation limit or the**  
116 **applicable policy limit; or**

117            (2) **The association's tender of such amount.**

118            [(3)] **8. The association shall** allocate claims paid and expenses incurred among the four  
119 accounts separately, and assess member insurers separately for each account amounts necessary  
120 to pay the obligations of the association under [subdivision (1) of this] subsection **1 of this**  
121 **section** to an insolvency, the expenses of handling covered claims subsequent to an insolvency,  
122 the cost of examinations under subdivision [(6) of this subsection] **(3) of subsection 9 of this**  
123 **section**, and other expenses authorized by sections 375.771 to 375.779. The assessments of each  
124 member insurer shall be in the proportion that the net direct written premiums of the member  
125 insurer for the preceding calendar year on the kinds of insurance in the account bears to the net  
126 direct written premiums of all member insurers for the preceding calendar year of the kinds of  
127 insurance in the account. **Each member insurer's assessment may be rounded to the nearest**  
128 **ten dollars.** Each member insurer shall be notified of the assessment not later than thirty days  
129 before it is due. No member insurer may be assessed in any year on any account an amount  
130 greater than [one] **two** percent of that member insurer's net direct written premiums for the  
131 preceding calendar year on the kinds of insurance in the account. If the maximum assessment,  
132 together with the other assets of the association in any account, does not provide in any one year  
133 in any account an amount sufficient to make all necessary payments from that account, the funds  
134 available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds  
135 become available. The association may defer, in whole or in part, the assessment of any member  
136 insurer, if the assessment would cause the member insurer's financial statement to reflect  
137 amounts of capital or surplus less than the minimum amounts required for a certificate of  
138 authority by any jurisdiction in which the member insurer is authorized to transact insurance.  
139 Deferred assessments shall be paid when such payment will not reduce capital or surplus below  
140 required minimums. Such payments shall be refunded to those companies receiving larger  
141 assessments by virtue of such deferment, or, in the discretion of any such company, credited

142 against future assessments. No dividends shall be paid stockholders or policyholders of a  
143 member insurer so long as all or part of any assessment against such insurer remains deferred.  
144 Each member insurer may set off against any assessment, authorized payments made on covered  
145 claims and expenses incurred in the payment of such claims by the member insurer if they are  
146 chargeable to the account for which the assessment is made. Assessments made under sections  
147 375.771 to 375.779 and section 375.916 shall not be subject to subsection 1 of section 375.916;

148 **[(4)] 9. The association shall:**

149 **(1)** Handle claims through its employees or through one or more insurers or other  
150 persons designated as servicing facilities. Designation of a servicing facility is subject to the  
151 approval of the director, but such designation may be declined by a member insurer;

152 **[(5)] (2)** Reimburse each servicing facility for obligations of the association paid by the  
153 facility and for actual expenses incurred by the facility while handling claims on behalf of the  
154 association and shall pay the other expenses of the association authorized by this section;

155 **[(6)] (3)** Be subject to examination and regulation by the director. The board of directors  
156 shall submit, not later than March thirtieth of each year, a financial report for the preceding  
157 calendar year in a form approved by the director; and

158 **[(7)** Be considered to have been designated commissioner pursuant to subsection 2 of  
159 section 375.670, and it shall proceed to investigate, hear, settle, and determine covered claims  
160 unless the claimant shall, within thirty days from the date the claim is presented, present a written  
161 demand that such claim be processed in the liquidation proceedings as a claim not covered by  
162 sections 375.771 to 375.779] **(4) Proceed to investigate, settle, and determine covered claims.**

163 **[2.] 10.** The association may:

164 **(1)** Appear in, defend and appeal any action on a claim brought against the association;

165 **(2)** Employ or retain such persons as are necessary to handle claims and perform other  
166 duties of the association;

167 **(3) Act as a servicing facility for other similar entities created by similar laws in this**  
168 **state or other states;**

169 **(4)** Borrow funds necessary to effect the purposes of sections 375.771 to 375.779 in  
170 accord with the plan of operation;

171 **[(4)] (5)** Sue or be sued. **Such power to sue includes the power and right to intervene**  
172 **as a party before any court that has jurisdiction over an insolvent insurer as defined in**  
173 **section 375.772;**

174 **[(5)] (6)** Negotiate and become a party to such contracts as are necessary to carry out the  
175 purpose of sections 375.771 to 375.779;

176 **[(6)] (7)** Perform such other acts as are necessary or proper to effectuate the purpose of  
177 sections 375.771 to 375.779;

178            [(7)] **(8)** Refund to the member insurers in proportion to the contribution of each member  
179 insurer to that account that amount by which the assets of the account exceed the liabilities, if,  
180 at the end of any calendar year, the board of directors finds that the assets of the association in  
181 any account exceed the liabilities of that account as estimated by the board of directors for the  
182 coming year; and

183            [(8)] **(9)** Become a member of the National [Committee] **Conference** on Insurance  
184 Guaranty Funds.

375.776. 1. The board of directors, subject to the supervision of the director, shall:

2            (1) Establish a plan of operation whereby the duties of the association under section  
3 375.775 will be performed;

4            (2) Establish procedures for handling assets of the association;

5            (3) Establish regular places and times for meetings of the board of directors;

6            (4) Establish procedures for records to be kept of all financial transactions of the  
7 association, its agents, and the board of directors;

8            (5) Provide that any member insurer aggrieved by any final action or decision of the  
9 association may appeal to the director within thirty days after the action or decision;

10           (6) Establish the procedures whereby selections for the board of directors will be  
11 submitted to the director; and

12           (7) Have and exercise such additional powers necessary or proper for the execution of  
13 the powers and duties of the association.

14           2. The plan of operation may provide that any or all powers and duties of the association,  
15 except those under [subdivision (3) of subsection 1 and subdivision (3) of subsection 2]  
16 **subsection 8 and subdivision (4) of subsection 10** of section 375.775, are delegated to a  
17 corporation, association, or organization which performs or will perform functions similar to  
18 those of this association, or its equivalent, in two or more states. Such a corporation, association  
19 or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid  
20 for its performance of any other functions of the association. A delegation under this section  
21 shall take effect only with the approval of both the board of directors and the director, and may  
22 be made only to a corporation, association, or organization which extends protection not  
23 substantially less favorable and effective than that provided by sections 375.771 to 375.779.

24           3. The board of directors of the association shall consist of seven persons serving terms  
25 as established in the plan of operation. The members of the board shall be selected by member  
26 insurers subject to the approval of the director. Not less than four of the members shall represent  
27 domestic insurers. Vacancies on the board shall be filled for the remaining period of the term  
28 by appointment of the director. If no members are selected within sixty days, the director shall  
29 appoint the initial members of the board of directors.

30 4. Members of the board shall receive no remuneration.

31 5. To aid in the detection and prevention of insurer insolvencies:

32 (1) It shall be the duty of the board of directors, upon majority vote, to notify the director  
33 of any information indicating any member insurer may be insolvent or in a financial condition  
34 hazardous to the policyholders or the public;

35 (2) The board of directors may, upon majority vote, make reports and recommendations  
36 to the director upon any matter germane to the solvency, liquidation, rehabilitation or  
37 conservation of any member insurer. Such reports and recommendations shall not be considered  
38 public documents; and

39 (3) The board of directors shall, at the conclusion of any insurer insolvency in which the  
40 association was obligated to pay covered claims, prepare a report on the history and causes of  
41 such insolvency, based on the information available to the association, and submit such report  
42 to the director.

375.778. 1. Any person having a claim against [his] **an insurer, regardless of whether**  
2 **such insurer is a member insurer**, under any provision in [his] **an insurance policy, other than**  
3 **the policy of the insolvent insurer, which arises out of the same facts, injury, or loss that**  
4 **gave rise to the covered claim against the association and** which is also a covered claim shall  
5 [first] be required to **first** exhaust his **or her** right under such policy[. Any amount payable on  
6 a covered claim under sections 375.771 to 375.779 shall be reduced by the amount of such  
7 recovery under the claimant's insurance policy] **or policies of insurance. Such other policies**  
8 **of insurance shall include, but not be limited to, liability coverage, health and accident**  
9 **insurance, hospitalization and other medical expense coverage, health care coverage by a**  
10 **health maintenance organization or health services corporation, or any amount payable**  
11 **by or on behalf of a self-insured plan, workers' compensation benefits, disability insurance,**  
12 **uninsured motorist coverage, and underinsured motorist coverage. The association's**  
13 **obligation pursuant to subsection 1 of section 375.775 shall be reduced by the amount**  
14 **recovered or recoverable, whichever is greater under any such other insurance policy or**  
15 **policies. To the extent the association's obligation pursuant to subsection 1 of section**  
16 **375.775 is reduced by the application of the section, the liability of the person insured by**  
17 **the insolvent insurer's policy for the claim shall be reduced in the same amount.**

18 2. Any person having a claim which may be recovered under more than one insurance  
19 guaranty association or its equivalent shall first seek recovery from the association of the place  
20 of residence of the insured except that if it is a first party claim for damage to property with a  
21 permanent location, from the association of the location of the property, and if it is a workers'  
22 compensation claim, from the association of the residence of the claimant. Any recovery under

23 sections 375.771 to 375.779 shall be reduced by the amount of the recovery from any other  
24 insurance guaranty association or its equivalent.

25 **3. Any person having a claim or legal right of recovery against any governmental**  
26 **insurance or guaranty program that is also a covered claim shall be required to exhaust**  
27 **first such rights under that program. Any amount payable on a covered claim by the**  
28 **association shall be reduced by the amount of recovery under the program.**

29 **4. The association shall have no duty to provide a separate defense at its cost to an**  
30 **insured of an insolvent insurer as to any issue arising out of the coverage of this section.**

31 **5. (1)** Any person recovering under sections 375.771 to 375.779 shall be deemed to have  
32 assigned his **or her** rights under the policy to the association to the extent of his **or her** recovery  
33 from the association. Every insured or claimant seeking the protection of sections 375.771 to  
34 375.779 shall cooperate with the association to the same extent as such person would have been  
35 required to cooperate with the insolvent insurer.

36 **(2)** [Any person eligible to recover a covered claim under sections 375.771 to 375.779  
37 shall have the right to assign such rights of recovery to the agent of the insolvent member insurer.

38 **(3)]** The association shall periodically file with the receiver or liquidator of the insolvent  
39 insurer statements of the covered claims paid by the association and estimates of anticipated  
40 claims on the association which shall preserve the rights of the association against the assets of  
41 the insolvent insurer.

42 **[4.** All proceedings in which the insolvent insurer is a party or is obligated to defend a  
43 party in any court in this state shall be stayed for sixty days from the date the insolvency is  
44 determined. In addition, the association, upon application to any court in which the insolvent  
45 insurer is a party or is obligated to defend a party and upon showing that the association first  
46 received notice from the insured or claimant of such claim or lawsuit not more than twenty days  
47 prior to making the application, shall be granted a continuance of not less than sixty days from  
48 any trial setting.]

49 **6. All proceedings in which the insolvent insurer is a party or is obligated to defend**  
50 **a party in any court of this state shall, subject to waiver by the association in specific cases**  
51 **involving covered claims, be stayed until the last day fixed by the court for the filing of**  
52 **claims and such additional time thereafter as may be determined by the court from the**  
53 **date the insolvency is determined or an ancillary proceeding is instituted in the state,**  
54 **whichever is later, to permit proper defense by the association of all pending causes of**  
55 **action.**

56 **7.** As to any covered claims arising from a judgment under any decision, verdict or  
57 finding based on the default of the insolvent insurer or its failure to defend an insured, the  
58 association, either on its own behalf or on behalf of such insured, may apply to have such

59 judgment, order, decision, verdict or finding set aside by the same court or administrator that  
60 made such judgment, order, decision, verdict or finding and shall be permitted to defend against  
61 such claim on the merits, **even if the time otherwise provided by law for setting aside a**  
62 **default judgment has expired.**

63 [5.] **8.** With respect to a subrogation claim arising out of payment for property damage  
64 caused by a tortfeasor insured by an insolvent insurer, the insurer making such payment shall not  
65 be entitled to any right of recovery against such tortfeasor in excess of the proceeds recovered  
66 from the assets of the insolvent insurer of such tortfeasor; provided that, such limitation shall not  
67 apply with respect to property damage in excess of the limits of liability of the policy issued such  
68 tortfeasor by the insolvent insurer.

69 [6.] **9.** The liquidator, receiver, or statutory receiver of an insolvent member insurer  
70 covered by sections 375.771 to 375.779 shall permit access by the board of directors of the  
71 association or its authorized representative to such of the insolvent insurer's records which are  
72 necessary for the board in carrying out its functions under sections 375.771 to 375.779 with  
73 regard to covered claims. In addition, the liquidator, receiver, or statutory receiver shall provide  
74 the board or its representatives with copies of such records upon the request by the board and at  
75 the expense of the board.

375.779. 1. There shall be no liability on the part of and no cause of action of any nature  
2 shall arise against any member insurer, the association or its agents [or], employees, **or any**  
3 **servicing agent acting at the direction of the association,** the board of directors **or any person**  
4 **servicing as a representative of any director,** or the director **of the department of insurance**  
5 or [his] **the director's** representatives for any action taken by them in the performance of their  
6 powers and duties under sections 375.771 to 375.779.

7 2. It is an unfair trade practice for any insurer or [agent] **producer** to make use in any  
8 manner of the protection given policyholders by sections 375.771 to 375.779 as a reason for  
9 buying insurance from [him] **such insurer or producer.** If a policy exceeds the limitations of  
10 coverage under sections 375.771 to 375.779, the insurer shall prominently inscribe on an  
11 endorsement to the insurance contract the limitations of coverage provided by the guaranty  
12 association.

375.1220. 1. The liquidator shall review all claims duly filed in the liquidation and shall  
2 make such further investigation as the liquidator shall deem necessary. The liquidator may  
3 compound, compromise or in any other manner negotiate the amount for which claims will be  
4 allowed, under the supervision of the court, except where the liquidator is required by law to  
5 accept claims as settled by any person or organization. Unresolved disputes shall be determined  
6 pursuant to section 375.1214. No claim under a policy of insurance shall be allowed for any  
7 amount in excess of the applicable policy limits or without regard to policy deductibles.

8           2. If the fixing or liquidation of any claim or claims would unduly delay the  
9 administration of the liquidation or if the administrative expense of processing and adjudication  
10 of a claim or group of claims of a similar type would be unduly excessive when compared with  
11 the moneys which are estimated to be available for distribution with respect to such claim or  
12 group of claims, the determination and allowance of such claim or claims may be made by an  
13 estimate. Any such estimate shall be based upon an actuarial evaluation made with reasonable  
14 actuarial certainty or upon another accepted method of valuing claims with reasonable certainty.

15           3. The estimation of contingent liabilities permitted by subsection 2 of this section or any  
16 other section of this chapter may be used for the purpose of fixing a creditor's claim in the estate,  
17 and for determining the percentage of partial or final dividend payments to be paid to creditors  
18 with reported allowed claims. However, nothing in subsection 2 of this section or any other  
19 section in this chapter shall be construed as authorizing the receiver, or any other entity, to  
20 compel payment from a reinsurer on the basis of estimated incurred but not reported losses and,  
21 except with respect to claims made pursuant to section 375.1212, outstanding reserves. Nothing  
22 in this subsection shall be construed to impair any obligation arising pursuant to any insurance  
23 agreement.

24           4. Notwithstanding the provisions of this section or any other section of this chapter to  
25 the contrary, the liquidator may negotiate a voluntary commutation and release of all obligations  
26 arising from reinsurance contracts or other agreements.

27           5. The provisions of subsection 3 of this section shall not apply to and have no force and  
28 effect regarding any formal delinquency proceeding in which, prior to August 28, 1999, the court  
29 in which such proceeding was or is pending issued any order or decree construing or applying  
30 the provisions of this section.

31           [6. Subsections 3 and 5 of this section shall terminate on December 31, 2005.]

376.421. 1. Except as provided in subsection 2 of this section, no policy of group health  
2 insurance shall be delivered in this state unless it conforms to one of the following descriptions:

3           (1) A policy issued to an employer, or to the trustees of a fund established by an  
4 employer, which employer or trustees shall be deemed the policyholder, to insure employees of  
5 the employer for the benefit of persons other than the employer, subject to the following  
6 requirements:

7           (a) The employees eligible for insurance under the policy shall be all of the employees  
8 of the employer, or all of any class or classes thereof. The policy may provide that the term  
9 "employees" shall include the employees of one or more subsidiary corporations, and the  
10 employees, individual proprietors, and partners of one or more affiliated corporations,  
11 proprietorships or partnerships, if the business of the employer and of such affiliated  
12 corporations, proprietorships or partnerships is under common control. The policy may provide



13 that the term "employees" shall include the individual proprietor or partners if the employer is  
14 an individual proprietorship or partnership. The policy may provide that the term "employees"  
15 shall include retired employees, former employees and directors of a corporate employer. A  
16 policy issued to insure the employees of a public body may provide that the term "employees"  
17 shall include elected or appointed officials;

18 (b) The premium for the policy shall be paid either from the employer's funds or from  
19 funds contributed by the insured employees, or from both. Except as provided in paragraph (c)  
20 of this subdivision, a policy on which no part of the premium is to be derived from funds  
21 contributed by the insured employees must insure all eligible employees, except those who reject  
22 such coverage in writing; and

23 (c) An insurer may exclude or limit the coverage on any person [as to whom evidence  
24 of individual insurability is not satisfactory to the insurer in a policy insuring fewer than ten  
25 employees and in a policy insuring ten or more employees if:

26 a. Application is not made within thirty-one days after the date of eligibility for  
27 insurance; or

28 b. The person voluntarily terminated the insurance while continuing to be eligible for  
29 insurance under the policy; or

30 c. After the expiration of an open enrollment period during which the person could have  
31 enrolled for the insurance or could have elected another level of benefits under the policy] **only**  
32 **to the extent authorized by sections 376.450 to 376.452;**

33 (2) A policy issued to a creditor or its parent holding company or to a trustee or trustees  
34 or agent designated by two or more creditors, which creditor, holding company, affiliate, trustee,  
35 trustees or agent shall be deemed the policyholder, to insure debtors of the creditor or creditors  
36 with respect to their indebtedness subject to the following requirements:

37 (a) The debtors eligible for insurance under the policy shall be all of the debtors of the  
38 creditor or creditors, or all of any class or classes thereof. The policy may provide that the term  
39 "debtors" shall include:

40 a. Borrowers of money or purchasers or lessees of goods, services, or property for which  
41 payment is arranged through a credit transaction;

42 b. The debtors of one or more subsidiary corporations; and

43 c. The debtors of one or more affiliated corporations, proprietorships or partnerships if  
44 the business of the policyholder and of such affiliated corporations, proprietorships or  
45 partnerships is under common control;

46 (b) The premium for the policy shall be paid either from the creditor's funds or from  
47 charges collected from the insured debtors, or from both. Except as provided in paragraph (c)

48 of this subdivision, a policy on which no part of the premium is to be derived from funds  
49 contributed by insured debtors specifically for their insurance must insure all eligible debtors;

50 (c) An insurer may exclude any debtors as to whom evidence of individual insurability  
51 is not satisfactory to the insurer in a policy insuring fewer than ten debtors and in a policy  
52 insuring ten or more debtors if:

53 a. Application is not made within thirty-one days after the date of eligibility for  
54 insurance; or

55 b. The person voluntarily terminated the insurance while continuing to be eligible for  
56 insurance under the policy; or

57 c. After the expiration of an open enrollment period during which the person could have  
58 enrolled for the insurance or could have elected another level of benefits under the policy;

59 (d) The total amount of insurance payable with respect to an indebtedness shall not  
60 exceed the greater of the scheduled or actual amount of unpaid indebtedness to the creditor. The  
61 insurer may exclude any payments which are delinquent on the date the debtor becomes disabled  
62 as defined in the policy;

63 (e) The insurance may be payable to the creditor or to any successor to the right, title,  
64 and interest of the creditor. Such payment or payments shall reduce or extinguish the unpaid  
65 indebtedness of the debtor to the extent of each such payment and any excess of insurance shall  
66 be payable to the insured or the estate of the insured;

67 (f) Notwithstanding the preceding provisions of this subdivision, insurance on  
68 agricultural credit transaction commitments may be written up to the amount of the loan  
69 commitment, and insurance on educational credit transaction commitments may be written up  
70 to the amount of the loan commitment less the amount of any repayments made on the loan;

71 (3) A policy issued to a labor union or similar employee organization, which shall be  
72 deemed to be the policyholder, to insure members of such union or organization for the benefit  
73 of persons other than the union or organization or any of its officials, representatives, or agents,  
74 subject to the following requirements:

75 (a) The members eligible for insurance under the policy shall be all of the members of  
76 the union or organization, or all of any class or classes thereof;

77 (b) The premium for the policy shall be paid either from funds of the union or  
78 organization or from funds contributed by the insured members specifically for their insurance,  
79 or from both. Except as provided in paragraph (c) of this subdivision, a policy on which no part  
80 of the premium is to be derived from funds contributed by the insured members specifically for  
81 their insurance must insure all eligible members, except those who reject such coverage in  
82 writing;

83 (c) An insurer may exclude or limit the coverage on any person [as to whom evidence  
84 of individual insurability is not satisfactory to the insurer in a policy insuring fewer than ten  
85 members and in a policy insuring ten or more members if:

86 a. Application is not made within thirty-one days after the date of eligibility for  
87 insurance; or

88 b. The person voluntarily terminated the insurance while continuing to be eligible for  
89 insurance under the policy; or

90 c. After the expiration of an open enrollment period during which the person could have  
91 enrolled for the insurance or could have elected another level of benefits under the policy] **only**  
92 **to the extent authorized by sections 376.450 to 376.452;**

93 (4) A policy issued to a trust, or to the trustee of a fund, established or adopted by two  
94 or more employers, or by one or more labor unions or similar employee organizations, or by one  
95 or more employers and one or more labor unions or similar employee organizations, which trust  
96 or trustee shall be deemed the policyholder, to insure employees of the employers or members  
97 of the unions or organizations for the benefit of persons other than the employers or the unions  
98 or organizations, subject to the following requirements:

99 (a) The persons eligible for insurance shall be all of the employees of the employers or  
100 all of the members of the unions or organizations, or all of any class or classes thereof. The  
101 policy may provide that the term "employees" shall include the employees of one or more  
102 subsidiary corporations, and the employees, individual proprietors, and partners of one or more  
103 affiliated corporations, proprietorships or partnerships if the business of the employer and of such  
104 affiliated corporations, proprietorships or partnerships is under common control. The policy may  
105 provide that the term "employees" shall include the individual proprietor or partners if the  
106 employer is an individual proprietorship or partnership. The policy may provide that the term  
107 "employees" shall include retired employees, former employees and directors of a corporate  
108 employer. The policy may provide that the term "employees" shall include the trustees or their  
109 employees, or both, if their duties are principally connected with such trusteeship;

110 (b) The premium for the policy shall be paid from funds contributed by the employer or  
111 employers of the insured persons or by the union or unions or similar employee organizations,  
112 or by both, or from funds contributed by the insured persons or from both the insured persons  
113 and the employer or union or similar employee organization. Except as provided in paragraph  
114 (c) of this subdivision, a policy on which no part of the premium is to be derived from funds  
115 contributed by the insured persons specifically for their insurance, must insure all eligible  
116 persons except those who reject such coverage in writing;

117 (c) An insurer may exclude or limit the coverage on any person [as to whom evidence  
118 of individual insurability is not satisfactory to the insurer] **only to the extent authorized by**  
119 **sections 376.450 to 376.452;**

120 (5) A policy issued to an association or to a trust or to the trustees of a fund established,  
121 created and maintained for the benefit of members of one or more associations. The association  
122 or associations shall have at the outset a minimum of one hundred persons; shall have been  
123 organized and maintained in good faith for purposes other than that of obtaining insurance; shall  
124 have been in active existence for at least two years; shall have a constitution and bylaws which  
125 provide that the association or associations shall hold regular meetings not less than annually to  
126 further the purposes of the members; shall, except for credit unions, collect dues or solicit  
127 contributions from members; and shall provide the members with voting privileges and  
128 representation on the governing board and committees. The policy shall be subject to the  
129 following requirements:

130 (a) The policy may insure members of such association or associations, employees  
131 thereof, or employees of members, or one or more of the preceding, or all of any class or classes  
132 thereof for the benefit of persons other than the employee's employer;

133 (b) The premium for the policy shall be paid from funds contributed by the association  
134 or associations or by employer members, or by both, or from funds contributed by the covered  
135 persons or from both the covered persons and the association, associations, or employer  
136 members;

137 (c) Except as provided in paragraph (d) of this subdivision, a policy on which no part of  
138 the premium is to be derived from funds contributed by the covered persons specifically for their  
139 insurance must insure all eligible persons, except those who reject such coverage in writing;

140 (d) An insurer may exclude or limit the coverage on any person [as to whom evidence  
141 of individual insurability is not satisfactory to the insurer] **only to the extent authorized by**  
142 **sections 376.450 to 376.452;**

143 (6) A policy issued to a credit union or to a trustee or trustees or agent designated by two  
144 or more credit unions, which credit union, trustee, trustees or agent shall be deemed the  
145 policyholder, to insure members of such credit union or credit unions for the benefit of persons  
146 other than the credit union or credit unions, trustee or trustees, or agent or any of their officials,  
147 subject to the following requirements:

148 (a) The members eligible for insurance shall be all of the members of the credit union  
149 or credit unions, or all of any class or classes thereof;

150 (b) The premium for the policy shall be paid by the policyholder from the credit union's  
151 funds and, except as provided in paragraph (c) of this subdivision, must insure all eligible  
152 members;

153 (c) An insurer may exclude or limit the coverage on any member [as to whom evidence  
154 of individual insurability is not satisfactory to the insurer] **only to the extent authorized by**  
155 **sections 376.450 to 376.452;**

156 (7) A policy issued to cover persons in a group where that group is specifically described  
157 by a law of this state as one which may be covered for group life insurance. The provisions of  
158 such law relating to eligibility and evidence of insurability shall apply.

159 2. Group health insurance offered to a resident of this state under a group health  
160 insurance policy issued to a group other than one described in subsection 1 of this section shall  
161 be subject to the following requirements:

162 (1) No such group health insurance policy shall be delivered in this state unless the  
163 director finds that:

164 (a) The issuance of such group policy is not contrary to the best interest of the public;

165 (b) The issuance of the group policy would result in economies of acquisition or  
166 administration; and

167 (c) The benefits are reasonable in relation to the premiums charged;

168 (2) No such group health insurance coverage may be offered in this state by an insurer  
169 under a policy issued in another state unless this state or another state having requirements  
170 substantially similar to those contained in subdivision (1) of this subsection has made a  
171 determination that such requirements have been met;

172 (3) The premium for the policy shall be paid either from the policyholder's funds, or  
173 from funds contributed by the covered persons, or from both;

174 (4) An insurer may exclude or limit the coverage on any person [as to whom evidence  
175 of individual insurability is not satisfactory to the insurer] **only to the extent authorized by**  
176 **sections 376.450 to 376.452.**

376.424. Except for a policy issued under subdivision (2) of subsection 1 of section  
2 376.421, a group health insurance policy may be extended to insure the employees and members  
3 with respect to their family members or dependents, or any class or classes thereof, subject to the  
4 following:

5 (1) The premium for the insurance shall be paid either from funds contributed by the  
6 employer, union, association or other person to whom the policy has been issued or from funds  
7 contributed by the covered persons, or from both. Except as provided in subdivision (2) of this  
8 section, a policy on which no part of the premium for the family members' or dependents'  
9 coverage is to be derived from funds contributed by the covered persons must insure all eligible  
10 employees or members with respect to their family members or dependents, or any class or  
11 classes thereof;

12 (2) An insurer may exclude or limit the coverage on any family member or dependent  
13 [as to whom evidence of individual insurability is not satisfactory to the insurer], subject to  
14 sections 376.406 and 376.776 [in a policy insuring fewer than ten employees or members and  
15 in a policy insuring ten or more employees or members if:

16 a. Application is not made within thirty-one days after the date of eligibility for  
17 insurance; or

18 b. The employee or member voluntarily terminated the insurance of the family member  
19 or dependent while such family member or dependent continues to be eligible for insurance  
20 under the policy; or

21 c. After the expiration of an open enrollment period during which the family member  
22 or dependent could have been enrolled for the insurance or could have been enrolled for another  
23 level of benefits under the policy], **only to the extent authorized by sections 376.450 to**  
24 **376.452.**

376.426. No policy of group health insurance shall be delivered in this state unless it  
2 contains in substance the following provisions, or provisions which in the opinion of the director  
3 of insurance are more favorable to the persons insured or at least as favorable to the persons  
4 insured and more favorable to the policyholder; except that: Provisions in subdivisions (5), (7),  
5 (12), (15), and (16) of this section shall not apply to policies insuring debtors; standard  
6 provisions required for individual health insurance policies shall not apply to group health  
7 insurance policies; and if any provision of this section is in whole or in part inapplicable to or  
8 inconsistent with the coverage provided by a particular form of policy, the insurer, with the  
9 approval of the director, shall omit from such policy any inapplicable provision or part of a  
10 provision, and shall modify any inconsistent provision or part of the provision in such manner  
11 as to make the provision as contained in the policy consistent with the coverage provided by the  
12 policy:

13 (1) A provision that the policyholder is entitled to a grace period of thirty-one days for  
14 the payment of any premium due except the first, during which grace period the policy shall  
15 continue in force, unless the policyholder shall have given the insurer written notice of  
16 discontinuance in advance of the date of discontinuance and in accordance with the terms of the  
17 policy. The policy may provide that the policyholder shall be liable to the insurer for the payment  
18 of a pro rata premium for the time the policy was in force during such grace period;

19 (2) A provision that the validity of the policy shall not be contested, except for  
20 nonpayment of premiums, after it has been in force for two years from its date of issue, and that  
21 no statement made by any person covered under the policy relating to insurability shall be used  
22 in contesting the validity of the insurance with respect to which such statement was made after  
23 such insurance has been in force prior to the contest for a period of two years during such

24 person's lifetime nor unless it is contained in a written instrument signed by the person making  
25 such statement; except that, no such provision shall preclude the assertion at any time of defenses  
26 based upon the person's ineligibility for coverage under the policy or upon other provisions in  
27 the policy;

28 (3) A provision that a copy of the application, if any, of the policyholder shall be  
29 attached to the policy when issued, that all statements made by the policyholder or by the persons  
30 insured shall be deemed representations and not warranties and that no statement made by any  
31 person insured shall be used in any contest unless a copy of the instrument containing the  
32 statement is or has been furnished to such person or, in the event of the death or incapacity of  
33 the insured person, to the individual's beneficiary or personal representative;

34 (4) A provision setting forth the conditions, if any, under which the insurer reserves the  
35 right to require a person eligible for insurance to furnish evidence of individual insurability  
36 satisfactory to the insurer as a condition to part or all of the individual's coverage;

37 (5) A provision specifying the additional exclusions or limitations, if any, applicable  
38 under the policy with respect to a disease or physical condition of a person, not otherwise  
39 excluded from the person's coverage by name or specific description effective on the date of the  
40 person's loss, which existed prior to the effective date of the person's coverage under the policy.  
41 Any such exclusion or limitation [may only apply to a disease or physical condition for which  
42 medical advice or treatment was received by the person during the twelve months prior to the  
43 effective date of the person's coverage. In no event shall such exclusion or limitation apply to  
44 loss incurred or disability commencing after the earlier of:

45 (a) The end of a continuous period of twelve months commencing on or after the  
46 effective date of the person's coverage during all of which the person has received no medical  
47 advice or treatment in connection with such disease or physical condition; or

48 (b) The end of the two-year period commencing on the effective date of the person's  
49 coverage] **shall comply with the requirements of subsection 5 of section 376.450;**

50 (6) If the premiums or benefits vary by age, there shall be a provision specifying an  
51 equitable adjustment of premiums or of benefits, or both, to be made in the event the age of the  
52 covered person has been misstated, such provision to contain a clear statement of the method of  
53 adjustment to be used;

54 (7) A provision that the insurer shall issue to the policyholder, for delivery to each  
55 person insured, a certificate setting forth a statement as to the insurance protection to which that  
56 person is entitled, to whom the insurance benefits are payable, and a statement as to any family  
57 member's or dependent's coverage;

58 (8) A provision that written notice of claim must be given to the insurer within twenty  
59 days after the occurrence or commencement of any loss covered by the policy. Failure to give

60 notice within such time shall not invalidate nor reduce any claim if it shall be shown not to have  
61 been reasonably possible to give such notice and that notice was given as soon as was reasonably  
62 possible;

63 (9) A provision that the insurer shall furnish to the person making claim, or to the  
64 policyholder for delivery to such person, such forms as are usually furnished by it for filing proof  
65 of loss. If such forms are not furnished before the expiration of fifteen days after the insurer  
66 receives notice of any claim under the policy, the person making such claim shall be deemed to  
67 have complied with the requirements of the policy as to proof of loss upon submitting, within  
68 the time fixed in the policy for filing proof of loss, written proof covering the occurrence,  
69 character, and extent of the loss for which claim is made;

70 (10) A provision that in the case of claim for loss of time for disability, written proof of  
71 such loss must be furnished to the insurer within ninety days after the commencement of the  
72 period for which the insurer is liable, and that subsequent written proofs of the continuance of  
73 such disability must be furnished to the insurer at such intervals as the insurer may reasonably  
74 require, and that in the case of claim for any other loss, written proof of such loss must be  
75 furnished to the insurer within ninety days after the date of such loss. Failure to furnish such  
76 proof within such time shall not invalidate nor reduce any claim if it was not reasonably possible  
77 to furnish such proof within such time, provided such proof is furnished as soon as reasonably  
78 possible and in no event, except in the absence of legal capacity of the claimant, later than one  
79 year from the time proof is otherwise required;

80 (11) A provision that all benefits payable under the policy other than benefits for loss of  
81 time shall be payable not more than thirty days after receipt of proof and that, subject to due  
82 proof of loss, all accrued benefits payable under the policy for loss of time shall be paid not less  
83 frequently than monthly during the continuance of the period for which the insurer is liable, and  
84 that any balance remaining unpaid at the termination of such period shall be paid as soon as  
85 possible after receipt of such proof;

86 (12) A provision that benefits for accidental loss of life of a person insured shall be  
87 payable to the beneficiary designated by the person insured or, if the policy contains conditions  
88 pertaining to family status, the beneficiary may be the family member specified by the policy  
89 terms. In either case, payment of these benefits is subject to the provisions of the policy in the  
90 event no such designated or specified beneficiary is living at the death of the person insured. All  
91 other benefits of the policy shall be payable to the person insured. The policy may also provide  
92 that if any benefit is payable to the estate of a person, or to a person who is a minor or otherwise  
93 not competent to give a valid release, the insurer may pay such benefit, up to an amount not  
94 exceeding two thousand dollars, to any relative by blood or connection by marriage of such  
95 person who is deemed by the insurer to be equitably entitled thereto;



96 (13) A provision that the insurer shall have the right and opportunity, at the insurer's own  
97 expense, to examine the person of the individual for whom claim is made when and so often as  
98 it may reasonably require during the pendency of the claim under the policy and also the right  
99 and opportunity, at the insurer's own expense, to make an autopsy in case of death where it is not  
100 prohibited by law;

101 (14) A provision that no action at law or in equity shall be brought to recover on the  
102 policy prior to the expiration of sixty days after proof of loss has been filed in accordance with  
103 the requirements of the policy and that no such action shall be brought at all unless brought  
104 within three years from the expiration of the time within which proof of loss is required by the  
105 policy;

106 (15) A provision specifying the conditions under which the policy may be terminated.  
107 Such provision shall state that except for nonpayment of the required premium or the failure to  
108 meet continued underwriting standards, the insurer may not terminate the policy prior to the first  
109 anniversary date of the effective date of the policy as specified therein, and a notice of any  
110 intention to terminate the policy by the insurer must be given to the policyholder at least  
111 thirty-one days prior to the effective date of the termination. Any termination by the insurer shall  
112 be without prejudice to any expenses originating prior to the effective date of termination. An  
113 expense will be considered incurred on the date the medical care or supply is received;

114 (16) A provision stating that if a policy provides that coverage of a dependent child  
115 terminates upon attainment of the limiting age for dependent children specified in the policy,  
116 such policy, so long as it remains in force, shall be deemed to provide that attainment of such  
117 limiting age does not operate to terminate the hospital and medical coverage of such child while  
118 the child is and continues to be both incapable of self-sustaining employment by reason of  
119 mental or physical handicap and chiefly dependent upon the policyholder for support and  
120 maintenance. Proof of such incapacity and dependency must be furnished to the insurer by the  
121 policyholder at least thirty-one days before the child's attainment of the limiting age. The insurer  
122 may require at reasonable intervals during the two years following the child's attainment of the  
123 limiting age subsequent proof of the child's incapacity and dependency. After such two-year  
124 period, the insurer may require subsequent proof not more than once each year. This subdivision  
125 shall apply only to policies delivered or issued for delivery in this state on or after one hundred  
126 twenty days after September 28, 1985;

127 (17) In the case of a policy insuring debtors, a provision that the insurer shall furnish to  
128 the policyholder for delivery to each debtor insured under the policy a certificate of insurance  
129 describing the coverage and specifying that the benefits payable shall first be applied to reduce  
130 or extinguish the indebtedness.

376.433. 1. Any public entity which provides, furnishes, or pays for hospital, medical, surgical, or other health care services under a plan of self-insurance to an employee or to any other person covered under the public entity's plan of self-insurance may require reimbursement of any medical claims paid by the public entity's self-insured plan for which there was third-party liability. As to this right, the public entity shall be subrogated to any right or claim that the employee or covered person has against such third party to the extent of the reasonable value of the care, treatment, and benefits provided under the self-insured plan. The public entity may require the employee or covered person to assign his or her claim or cause of action against the third party to the extent of that right or claim.

2. As used in this section, the term "public entity" shall have the same meaning ascribed to it in section 107.170, RSMo.

376.450. 1. As used in sections 376.450 to 376.452, the following terms mean:

(1) "Affiliation period", a period which, under the terms of the coverage offered by a health maintenance organization, must expire before the coverage becomes effective. The organization is not required to provide health care services or benefits during such period and no premium shall be charged to the participant or beneficiary for any coverage during the period;

(2) "Bona fide association", an association which:

(a) Has been actively in existence for at least five years;

(b) Has been formed and maintained in good faith for purposes other than obtaining insurance;

(c) Does not condition membership in the association on any health status-related factor relating to an individual (including an employee of an employer or a dependent of an employee);

(d) Makes health insurance coverage offered through the association available to all members regardless of any health status-related factor relating to such members (or individuals eligible for coverage through a member); and

(e) Does not make health insurance coverage offered through the association available other than in connection with a member of the association.

(3) "COBRA continuation provision":

(a) Section 4980B of the Internal Revenue Code (26 U.S.C. Section 4980B), other than Subsection (f)(1) of that section as it relates to pediatric vaccines;

(b) Title I, Subtitle B, Part 6, excluding Section 609, of the Employee Retirement Income Security Act of 1974; or

(c) Title XXII of the Public Health Service Act, 42 U.S.C. Section 300dd, et seq.

- 25           **(4) "Creditable coverage", coverage of the individual under any of the following:**  
26           **(a) A group health plan;**  
27           **(b) Health insurance coverage;**  
28           **(c) Part A or Part B of Title XVIII of the Social Security Act ("Medicare");**  
29           **(d) Title XIX of the Social Security Act ("Medicaid"), other than coverage**  
30 **consisting solely of benefits under section 1928 of such act (the program for distribution**  
31 **of pediatric vaccines);**  
32           **(e) Chapter 55 of Title 10, United States Code (medical and dental care for**  
33 **members and certain former members of the uniformed services);**  
34           **(f) A medical care program of the Indian Health Service or of a tribal organization;**  
35           **(g) A state health benefits risk pool;**  
36           **(h) A health plan offered under Title 5, Chapter 89, of the United States Code (the**  
37 **Federal Employees Health Benefits Program);**  
38           **(i) A public health plan (established or maintained by the state or a political**  
39 **subdivision thereof providing health insurance coverage);**  
40           **(j) A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C.**  
41 **Section 2504(3)).**

42

43 **Creditable coverage does not include coverage consisting solely of excepted benefits.**

44           **(5) "Enrollment date", with respect to an individual covered under a group health**  
45 **plan, the date of enrollment of the individual in the plan or, if earlier, the first day of the**  
46 **waiting period for enrollment.**

47           **(6) "Excepted benefits":**

48           **(a) Coverage only for accident (including accidental death and dismemberment)**  
49 **insurance;**

50           **(b) Coverage only for disability income insurance;**

51           **(c) Coverage issued as a supplement to liability insurance;**

52           **(d) Liability insurance, including general liability insurance and automobile**  
53 **liability insurance;**

54           **(e) Workers' compensation or similar insurance;**

55           **(f) Automobile medical payment insurance;**

56           **(g) Credit-only insurance;**

57           **(h) Coverage for onsite medical clinics;**

58           **(i) Other similar insurance coverage, as approved by the director, under which**  
59 **benefits for medical care are secondary or incidental to other insurance benefits;**

60 (j) If provided under a separate policy, certificate or contract of insurance, any of  
61 the following:

62 a. Limited scope dental or vision benefits;

63 b. Benefits for long-term care, nursing home care, home health care, community-  
64 based care, or any combination thereof;

65 c. Other similar, limited benefits as specified by the director.

66 (k) If provided under a separate policy, certificate or contract of insurance, any of  
67 the following:

68 a. Coverage only for a specified disease or illness;

69 b. Hospital indemnity or other fixed indemnity insurance.

70 (l) If offered as a separate policy, certificate or contract of insurance, any of the  
71 following:

72 a. Medicare supplemental coverage (as defined under section 1882(g)(1) of the  
73 Social Security Act);

74 b. Coverage supplemental to the coverage provided pursuant to Chapter 55 of Title  
75 10, United States Code (CHAMPUS supplemental programs);

76 c. Similar supplemental coverage provided to coverage under a group health plan.

77 (7) "Group health insurance coverage", health insurance coverage offered in  
78 connection with a group health plan or health insurance coverage offered to an eligible  
79 group as described in section 376.421;

80 (8) "Group health plan", an employee welfare benefit plan as defined in Section  
81 3 of the Employee Retirement Income Security Act of 1974 to the extent that the plan  
82 provides medical care and items and services paid for as medical care to employees or their  
83 dependents, directly or through insurance, reimbursement, or otherwise, but not including  
84 excepted benefits;

85 (9) "Health insurance coverage", benefits consisting of medical care, including  
86 items and services paid for as medical care, that are provided directly, through insurance,  
87 reimbursement, or otherwise, under a policy, certificate, membership contract, or health  
88 services agreement offered by a health insurance issuer, but not including excepted  
89 benefits;

90 (10) "Health insurance issuer", an insurance company, health services corporation,  
91 fraternal benefit society, health maintenance organization, multiple employer welfare  
92 arrangement specifically authorized to operate in the state of Missouri, or any other entity  
93 providing a plan of health insurance or health benefits subject to state insurance  
94 regulation;

95           (11) **"Individual health insurance coverage"**, health insurance coverage offered to  
96 **individuals in the individual market, not including excepted benefits or short-term limited**  
97 **duration insurance;**

98           (12) **"Individual market"**, the market for health insurance coverage offered to  
99 **individuals other than in connection with a group health plan;**

100           (13) **"Large employer"**, in connection with a group health plan, with respect to a  
101 **calendar year and a plan year, an employer who employed an average of at least fifty-one**  
102 **employees on business days during the preceding calendar year and who employs at least**  
103 **two employees on the first day of the plan year;**

104           (14) **"Large group market"**, the health insurance market under which individuals  
105 **obtain health insurance coverage directly or through any arrangement on behalf of**  
106 **themselves and their dependents through a group health plan maintained by a large**  
107 **employer;**

108           (15) **"Late enrollee"**, a participant who enrolls in a group health plan other than  
109 **during the first period in which the individual is eligible to enroll under the plan, or a**  
110 **special enrollment period pursuant to subsection 3 of section 376.450;**

111           (16) **"Medical care"**:

112           (a) **The diagnosis, cure, mitigation, treatment, or prevention of disease or amounts**  
113 **paid for the purpose of affecting any structure or function of the body;**

114           (b) **Transportation primarily for and essential to medical care referred to in**  
115 **paragraph (a) of this subdivision; or**

116           (c) **Insurance covering medical care referred to in paragraphs (a) and (b) of this**  
117 **subdivision.**

118           (17) **"Network plan"**, health insurance coverage offered by a health insurance  
119 **issuer under which the financing and delivery of medical care, including items and services**  
120 **paid for as medical care, are provided, in whole or in part, through a defined set of**  
121 **providers under contract with the issuer;**

122           (18) **"Participant"**, a person enrolled for coverage under a group health plan;

123           (19) **"Plan sponsor"**, the entity described in Section 3 of the Employee Retirement  
124 **Income Security Act of 1974;**

125           (20) **"Preexisting condition exclusion"**, with respect to coverage, a limitation or  
126 **exclusion of benefits relating to a condition based on the fact that the condition was present**  
127 **before the date of enrollment for such coverage, whether or not any medical advice,**  
128 **diagnosis, care, or treatment was recommended or received before such date. Genetic**  
129 **information shall not be treated as a preexisting condition in the absence of a diagnosis of**  
130 **the condition related to such information;**

131           **(21) "Small group market", the health insurance market under which individuals**  
132 **obtain health insurance coverage directly or through an arrangement, on behalf of**  
133 **themselves and their dependents, through a group health plan maintained by a small**  
134 **employer as defined in subdivision (37) of section 379.930, RSMo;**

135           **(22) "Waiting period", with respect to a group health plan and an individual who**  
136 **is a potential participant in a group health plan, the period that must pass with respect to**  
137 **the individual before the individual is eligible to be covered for benefits under the terms**  
138 **of the group health plan.**

139           **2. (1) No period of creditable coverage that occurs before a sixty-three day break**  
140 **in coverage during which the individual was not covered under any creditable coverage**  
141 **need be considered for purposes of paragraph (c) of subdivision (1) of subsection 5 of**  
142 **section 376.450.**

143           **(2) Any period of time that an individual is in a waiting period for coverage under**  
144 **group health insurance coverage, or is in an affiliation period, shall not be taken into**  
145 **account in determining whether a sixty-three day break under subdivision (1) of this**  
146 **subsection has occurred.**

147           **(3) Except as provided in subdivision (4) of this subsection, for the purposes of**  
148 **applying paragraph (c) of subdivision (1) of subsection 5 of section 376.450, a health**  
149 **insurance issuer offering group health insurance coverage shall count a period of**  
150 **creditable coverage without regard to the specific benefits included in the coverage.**

151           **(4) (a) A health insurance issuer offering group health insurance coverage may**  
152 **elect to apply the provisions of paragraph (c) of subdivision (1) of subsection 5 of section**  
153 **376.450, based on coverage within any category of benefits within each of several classes**  
154 **or categories of benefits specified in regulations implementing Public Law 104-191, rather**  
155 **than as provided pursuant to subdivision (3) of this subsection. Such election shall be**  
156 **made on a uniform basis for all participants. Under such election a health insurance issuer**  
157 **shall count a period of creditable coverage with respect to any class or category of benefits**  
158 **if any level of benefits is covered within the class or category.**

159           **(b) In the case of an election with respect to health insurance coverage offered by**  
160 **a health insurance issuer in the small or large group market pursuant to this subdivision,**  
161 **the health insurance issuer shall prominently state in any disclosure statements concerning**  
162 **the coverage, and prominently state to each employer at the time of the offer or sale of the**  
163 **coverage, that the issuer has made such election, and include in such statements a**  
164 **description of the effect of this election.**

165           **(5) Periods of creditable coverage with respect to an individual may be established**  
166 **through presentation of certifications and other means as specified in Public Law 104-191**  
167 **and regulations pertinent thereto.**

168           **3. (1) A health insurance issuer offering group health insurance in connection with**  
169 **a group health plan shall permit an employee or a dependent of an employee who is eligible**  
170 **but not enrolled for coverage under the terms of the plan to enroll for coverage if:**

171           **(a) The employee or dependent was covered under a group health plan or had**  
172 **health insurance coverage at the time that coverage was previously offered to the employee**  
173 **or dependent;**

174           **(b) The employee stated in writing at the time that coverage under a group health**  
175 **plan or health insurance coverage was the reason for declining enrollment, but only if the**  
176 **plan sponsor or health insurance issuer required the statement at the time and provided**  
177 **the employee with notice of the requirement and the consequences of the requirement at**  
178 **the time;**

179           **(c) The employee's or dependent's coverage described in paragraph (a) of this**  
180 **subdivision was:**

181           **a. Under a COBRA continuation provision and was exhausted; or**

182           **b. Not under a COBRA continuation provision and was terminated as a result of**  
183 **loss of eligibility for the coverage or because employer contributions toward the cost of**  
184 **coverage were terminated; and**

185           **(d) Under the terms of the group health plan, the employee requests the enrollment**  
186 **not later than thirty days after the date of exhaustion of coverage described in**  
187 **subparagraph a. of paragraph (c) of this subdivision or termination of coverage or**  
188 **employer contributions described in subparagraph b. of paragraph (c) of this subdivision.**

189           **(2) (a) A group health plan shall provide for a dependent special enrollment period**  
190 **described in paragraph (b) of this subdivision during which an employee who is eligible**  
191 **but not enrolled and a dependent may be enrolled under the group health plan and, in the**  
192 **case of the birth or adoption of a child, the spouse of the employee may be enrolled as a**  
193 **dependent if the spouse is otherwise eligible for coverage.**

194           **(b) A dependent special enrollment period pursuant to this subdivision is a period**  
195 **of not less than thirty days that begins on the date of the marriage, birth, or adoption or**  
196 **placement for adoption.**

197           **(3) The coverage becomes effective:**

198           **(a) In the case of marriage, not later than the first day of the first month beginning**  
199 **after the date on which the completed request for enrollment is received;**

200           **(b) In the case of a dependent's birth, as of the date of birth; or**

201           **(c) In the case of a dependent's adoption or placement for adoption, the date of the**  
202 **adoption or placement for adoption.**

203           **4. A health insurance issuer offering group health insurance coverage shall provide**  
204 **a certification of creditable coverage as required by Public Law 104-191 and regulations**  
205 **pertinent thereto.**

206           **5. (1) A health insurance issuer offering group health insurance coverage may with**  
207 **respect to a participant impose a preexisting condition exclusion if:**

208           **(a) Such exclusion relates to a condition (whether physical or mental), regardless**  
209 **of the cause of the condition, for which medical advice, diagnosis, care, or treatment was**  
210 **recommended or received within the six-month period ending on the enrollment date;**

211           **(b) Such exclusion extends for a period of not more than twelve months (or eighteen**  
212 **months in the case of a late enrollee) after the enrollment date; and**

213           **(c) The period of any such preexisting condition exclusion is reduced by the**  
214 **aggregate of the periods of creditable coverage, if any, applicable to the participant as of**  
215 **the enrollment date.**

216           **(2) A health insurance issuer offering group health insurance coverage may not**  
217 **impose any preexisting condition exclusion in the case of an individual who, as of the last**  
218 **day of the thirty-day period beginning with the date of birth, is covered under creditable**  
219 **coverage.**

220           **(3) Subject to subdivision (5) of this subsection, a health insurance issuer offering**  
221 **group health insurance coverage may not impose any preexisting condition exclusion in the**  
222 **case of a child who is adopted or placed for adoption before attaining eighteen years of age**  
223 **and who, as of the last day of the thirty-day period beginning on the date of the adoption**  
224 **or placement for adoption, is covered under creditable coverage. The previous sentence**  
225 **shall not apply to coverage before the date of such adoption or placement for adoption.**

226           **(4) A health insurance issuer offering group health insurance coverage may not**  
227 **impose any preexisting condition exclusion relating to pregnancy as a preexisting**  
228 **condition.**

229           **(5) Subdivisions (2) and (3) of this subsection shall no longer apply to an individual**  
230 **after the end of the first sixty-three-day period during all of which the individual was not**  
231 **covered under any creditable coverage.**

232           **(6) In the case of group health insurance coverage offered by a health maintenance**  
233 **organization, the plan may provide for an affiliation period with respect to coverage**  
234 **through the organization only if:**

235           **(a) No preexisting condition exclusion is imposed with respect to coverage through**  
236 **the organization;**



237 (b) The period is applied uniformly without regard to any health status-related  
238 factors;

239 (c) Such period does not exceed two months (or three months in the case of a late  
240 enrollee);

241 (d) Such period begins on the enrollment date; and

242 (e) Such period runs concurrently with any waiting period.

376.451. 1. (1) A health insurance issuer offering group health insurance coverage  
2 may not establish rules for eligibility, including continued eligibility, of any individual to  
3 enroll under the terms of the group health plan based on any of the following health status-  
4 related factors of the individual or a dependent of the individual:

5 (a) Health status;

6 (b) Medical condition, including both physical and mental illness;

7 (c) Claims experience;

8 (d) Receipt of health care;

9 (e) Medical history;

10 (f) Genetic information;

11 (g) Evidence of insurability, including conditions arising out of acts of domestic  
12 violence; or

13 (h) Disability.

14 (2) This subsection does not require a health insurance issuer offering group health  
15 insurance coverage to provide particular benefits other than those provided under the  
16 terms of the group health insurance coverage, or prevent the issuer from establishing  
17 limitations or restrictions on the amount, level, extent, or nature of the benefits or coverage  
18 for similarly situated individuals enrolled in the group health insurance coverage.

19 (3) For purposes of subdivision (1) of this subsection, rules for eligibility to enroll  
20 include rules defining any applicable waiting or affiliation period for such enrollment, and  
21 rules relating to late and special enrollments.

22 2. (1) A health insurance issuer offering health insurance coverage in connection  
23 with a group health plan may not require any individual, as a condition of enrollment or  
24 continued enrollment under the plan, to pay a premium or contribution that is greater than  
25 the premium or contribution for a similarly situated individual enrolled in the group  
26 health plan on the basis of any health status-related factor in relation to the individual or  
27 to an individual enrolled under the plan as a dependent of the individual.

28 (2) Nothing in subdivision (1) of this subsection shall be construed to:

29 (a) Restrict the amount that any employer may be charged for coverage under a  
30 group health plan; or

31           **(b) Prevent a health insurance issuer offering group health insurance coverage,**  
32 **from establishing premium discounts or rebates or modifying otherwise applicable**  
33 **copayments or deductibles in return for adherence to programs of health promotion and**  
34 **disease prevention.**

**376.452. 1. Except as provided in this section, if a health insurance issuer offers**  
2 **health insurance coverage in the large group market in connection with a group health**  
3 **plan, the health insurance issuer shall renew or continue the coverage in force at the option**  
4 **of the plan sponsor.**

5           **2. A health insurance issuer may nonrenew or discontinue health insurance**  
6 **coverage offered in connection with a group health plan in the large group market if:**

7           **(1) The plan sponsor has failed to pay premiums or contributions in accordance**  
8 **with the terms of the health insurance coverage or if the health insurance issuer has not**  
9 **received timely premium payments;**

10          **(2) The plan sponsor has performed an act or practice that constitutes fraud or has**  
11 **made an intentional misrepresentation of material fact in connection with the coverage;**

12          **(3) The plan sponsor has failed to comply with the health insurance issuer's**  
13 **minimum participation requirements;**

14          **(4) The plan sponsor has failed to comply with the health insurance issuer's**  
15 **employer contribution requirements;**

16          **(5) The health insurance issuer is ceasing to offer coverage in that group market**  
17 **in accordance with this section;**

18          **(6) In the case of a health insurance issuer that offers health insurance coverage in**  
19 **the group market through a network plan, there is no longer any enrollee under the group**  
20 **health plan who lives, resides, or works in the service area of the health insurance issuer;**

21          **(7) In the case of health insurance coverage that is made available in the small**  
22 **group market or large group market only through one or more bona fide associations, the**  
23 **membership of an employer in the bona fide association ceases, but only if coverage is**  
24 **terminated pursuant to this subdivision uniformly without regard to any health status-**  
25 **related factor of any covered individual.**

26          **3. A health insurance issuer may not discontinue offering a particular type of group**  
27 **health insurance coverage offered in the large group market unless:**

28          **(1) The issuer provides notice to each plan sponsor and participant provided**  
29 **coverage of this type in that group market of the discontinuation at least ninety days prior**  
30 **to the date of the discontinuation of the coverage;**

31           **(2) The issuer offers to each plan sponsor provided coverage of this type in the**  
32 **market the option to purchase any other health insurance coverage currently being offered**  
33 **by the health insurance issuer to a group health plan in the market; and**

34           **(3) The issuer acts uniformly without regard to the claims experience of those plan**  
35 **sponsors or any health status-related factor of any participant covered or new participant**  
36 **who may become eligible for such coverage.**

37           **4. (1) A health insurance issuer may not discontinue offering all health insurance**  
38 **coverage in the large group market unless:**

39           **(a) The issuer provides notice of discontinuation to the director and to each plan**  
40 **sponsor and participant covered at least one hundred eighty days prior to the date of the**  
41 **discontinuation of coverage; and**

42           **(b) All health insurance issued or delivered for issuance in Missouri in the large**  
43 **group market is discontinued and coverage under such health insurance is not renewed.**

44           **(2) In the case of a discontinuation pursuant to this subsection, the health insurance**  
45 **issuer may not provide for the issuance of any health insurance coverage in the large group**  
46 **market for a period of five years beginning on the date of the discontinuation of the last**  
47 **health insurance coverage not renewed.**

48           **5. At the time of coverage renewal a health insurance issuer may modify the health**  
49 **insurance coverage for a product offered to a group health plan in the large group market.**

50           **6. In the case of health insurance coverage that is made available by a health**  
51 **insurance issuer only through one or more bona fide associations, references to "plan**  
52 **sponsor" in this section is deemed, with respect to coverage provided to an employer**  
53 **member of the association, to include a reference to such employer.**

**376.771. 1. Except as provided in this section, a health insurance issuer that**  
2 **provides individual health insurance coverage to an individual shall renew or continue in**  
3 **force such coverage at the option of the individual.**

4           **2. A health insurance issuer may nonrenew or discontinue health insurance**  
5 **coverage of an individual in the individual market based only on one or more of the**  
6 **following:**

7           **(1) The individual has failed to pay premiums or contributions in accordance with**  
8 **the terms of the health insurance coverage or the issuer has not received timely premium**  
9 **payments;**

10           **(2) The individual has performed an act or practice that constitutes fraud or made**  
11 **an intentional misrepresentation of material fact under the terms of the coverage;**

12           **(3) The issuer is ceasing to offer coverage in the individual market in accordance**  
13 **with subsection 4 of this section;**

14           **(4) In the case of a health insurance issuer that offers health insurance coverage in**  
15 **the market through a network plan, the individual no longer resides, lives, or works in the**  
16 **service area (or in an area for which the issuer is authorized to do business) but only if**  
17 **such coverage is terminated pursuant to this subdivision uniformly without regard to any**  
18 **health status-related factor of covered individuals;**

19           **(5) In the case of health insurance coverage that is made available in the individual**  
20 **market only through one or more bona fide associations, the membership of the individual**  
21 **in the association (on the basis of which the coverage is provided) ceases, but only if such**  
22 **coverage is terminated pursuant to this subdivision uniformly without regard to any health**  
23 **status-related factor of covered individuals.**

24           **3. In any case in which an issuer decides to discontinue offering a particular type**  
25 **of health insurance coverage offered in the individual market, coverage of such type may**  
26 **be discontinued by the issuer only if:**

27           **(1) The issuer provides notice to each covered individual provided coverage of this**  
28 **type in such market of such discontinuation at least ninety days prior to the date of the**  
29 **discontinuation of such coverage;**

30           **(2) The issuer offers to each individual in the individual market provided coverage**  
31 **of this type, the option to purchase any other individual health insurance coverage**  
32 **currently being offered by the issuer for individuals in such market; and**

33           **(3) In exercising the option to discontinue coverage of this type and in offering the**  
34 **option of coverage pursuant to subdivision (2) of this subsection, the issuer acts uniformly**  
35 **without regard to any health status-related factor of enrolled individuals or individuals**  
36 **who may become eligible for such coverage.**

37           **4. (1) In any case in which a health insurance issuer elects to discontinue offering**  
38 **all health insurance coverage in the individual market in the state, health insurance**  
39 **coverage may be discontinued by the issuer only if:**

40           **(a) The issuer provides notice to the director of the department of insurance and**  
41 **to each individual of such discontinuation at least one hundred eighty days prior to the**  
42 **date of the expiration of such coverage; and**

43           **(b) All health insurance issued or delivered for issuance in the state in such market**  
44 **are discontinued and coverage under such health insurance coverage in such market is not**  
45 **renewed.**

46           **(2) In the case of a discontinuation pursuant to subdivision (1) of this subsection,**  
47 **the issuer shall not provide for the issuance of any health insurance coverage in the market**  
48 **and for a five-year period beginning on the date of the discontinuation of the last health**  
49 **insurance coverage not so renewed.**

50           **5. At the time of coverage renewal, a health insurance issuer may modify the health**  
 51 **insurance coverage for a policy form offered to individuals in the individual market so long**  
 52 **as such modification is consistent with applicable law and effective on a uniform basis**  
 53 **among all individuals with that policy form.**

54           **6. In applying this section in the case of health insurance coverage that is made**  
 55 **available by a health insurance issuer in the individual market to individuals only through**  
 56 **one or more associations, a reference to an individual is deemed to include a reference to**  
 57 **such an association of which the individual is a member.**

**376.794. An insurer shall provide a certification of creditable coverage as required**  
 2 **by Public Law 104-191 and regulations promulgated thereunder.**

          376.816. 1. No individual or group insurance policy providing coverage on an  
 2 expense-incurred basis, no individual or group service or indemnity contract issued by a  
 3 not-for-profit health services corporation, no health maintenance organization nor any  
 4 self-insured group health benefit plan of any type or description shall be offered, issued or  
 5 renewed in this state on or after July 10, 1991, unless the policy, plan or contract covers adopted  
 6 children of the insured, subscriber or enrollee on the same basis as other dependents.

7           2. The coverage required by subsection 1 of this section is effective:

8           (1) From the date of birth if a petition for adoption is filed within thirty days of the birth  
 9 of such child; or

10           (2) From the date of placement for the purpose of adoption if a petition for adoption is  
 11 filed within thirty days of placement of such child. Such coverage shall continue unless the  
 12 placement is disrupted prior to legal adoption and the child is removed from placement.  
 13 Coverage shall include the necessary care and treatment of medical conditions existing prior to  
 14 the date of placement.

15           3. As used in this section, "placement" means [in the physical custody of the adoptive  
 16 parent] **the assumption and retention by the insured, subscriber or enrollee of a legal**  
 17 **obligation for total or partial support of such child in anticipation of adoption of such**  
 18 **child. The child's placement with such person terminates upon the termination of such**  
 19 **legal obligation.**

          376.960. As used in sections 376.960 to 376.989, the following terms mean:

2           (1) "Benefit plan", the coverages to be offered by the pool to eligible persons pursuant  
 3 to the provisions of section 376.986;

4           (2) "Board", the board of directors of the pool;

5           (3) **"Church plan", a plan as defined in Section 3(33) of the Employee Retirement**  
 6 **Income Security Act of 1974;**

7           (4) "Director", the director of the Missouri department of insurance;

- 8            [(4)] (5) "Department", the Missouri department of insurance;
- 9            (6) **"Domestic", organized under the laws of this state and authorized to transact**
- 10 **health insurance business in this state;**
- 11            (7) **"Federally defined eligible individual", an individual:**
- 12            (a) **For whom, as of the date on which the individual seeks coverage through the**
- 13 **pool, the aggregate of the periods of creditable coverage as defined in subdivision (4) of**
- 14 **section 376.450, is eighteen or more months and whose most recent prior creditable**
- 15 **coverage was under a group health plan as defined in subdivision (8) of subsection 1 of**
- 16 **section 376.450, governmental plan as defined in Section 3(32) of the Employee Retirement**
- 17 **Income Security Act of 1974, church plan, or health insurance coverage offered in**
- 18 **connection with any such plan;**
- 19            (b) **Who is not eligible for coverage under a group health plan, Part A or Part B of**
- 20 **Title XVIII of the Social Security Act, or state plan under Title XIX of such act;**
- 21            (c) **Who does not have other health insurance coverage;**
- 22            (d) **For whom the most recent coverage within the coverage period described in**
- 23 **paragraph (a) of this subdivision was not terminated because of nonpayment of premiums**
- 24 **or fraud;**
- 25            (e) **Who, if offered the option of continuation coverage under COBRA continuation**
- 26 **provision as defined in subdivision (3) of subsection 1 of section 376.450, or under a similar**
- 27 **state program, both elected and exhausted the continuation coverage.**
- 28            (8) **"Foreign", organized under the laws of another state, but authorized to transact**
- 29 **health insurance business in this state;**
- 30            [(5)] (9) "Health insurance", any hospital and medical expense incurred policy, nonprofit
- 31 health care service for benefits other than through an insurer, nonprofit health care service plan
- 32 contract, health maintenance organization subscriber contract, preferred provider arrangement
- 33 or contract, or any other similar contract or agreement for the provisions of health care benefits.
- 34 The term "health insurance" does not include short-term, accident, fixed indemnity, limited
- 35 benefit or credit insurance, coverage issued as a supplement to liability insurance, insurance
- 36 arising out of a workers' compensation or similar law, automobile medical-payment insurance,
- 37 or insurance under which benefits are payable with or without regard to fault and which is
- 38 statutorily required to be contained in any liability insurance policy or equivalent self-insurance;
- 39            [(6)] (10) "Health maintenance organization", any person which undertakes to provide
- 40 or arrange for basic and supplemental health care services to enrollees on a prepaid basis, or
- 41 which meets the requirements of section 1301 of the United States Public Health Service Act;
- 42            (11) **"Health services corporation", any health services corporation organized**
- 43 **under sections 354.010 to 354.380, RSMo;**

44 [(7)] (12) "Hospital", a place devoted primarily to the maintenance and operation of  
45 facilities for the diagnosis, treatment or care for not less than twenty-four hours in any week of  
46 three or more nonrelated individuals suffering from illness, disease, injury, deformity or other  
47 abnormal physical condition; or a place devoted primarily to provide medical or nursing care for  
48 three or more nonrelated individuals for not less than twenty-four hours in any week. The term  
49 "hospital" does not include convalescent, nursing, shelter or boarding homes, as defined in  
50 chapter 198, RSMo;

51 [(8)] (13) "Insurance arrangement", any plan, program, contract or other arrangement  
52 under which one or more employers, unions or other organizations provide to their employees  
53 or members, either directly or indirectly through a trust or third party administration, health care  
54 services or benefits other than through an insurer;

55 [(9)] (14) "Insured", any individual resident of this state who is eligible to receive  
56 benefits from any insurer or insurance arrangement, as defined in this section;

57 [(10)] (15) "Insurer", any insurance company authorized to transact health insurance  
58 business in this state, any nonprofit health care service plan act, or any health maintenance  
59 organization;

60 [(11)] (16) "Medicare", coverage [under] **pursuant to** both Part A and Part B of Title  
61 XVIII of the Social Security Act, 42 U.S.C. 1395 et seq., as amended;

62 [(12)] (17) "Member", all insurers and insurance arrangements participating in the pool;

63 [(13)] (18) "Physician", physicians and surgeons licensed under chapter 334, RSMo, or  
64 by state board of healing arts in the state of Missouri;

65 [(14)] (19) "Plan of operation", the plan of operation of the pool, including articles,  
66 bylaws and operating rules, adopted by the board pursuant to the provisions of sections 376.961,  
67 376.962 and 376.964;

68 [(15)] (20) "Pool", the state health insurance pool created in sections 376.961, 376.962  
69 and 376.964.

376.961. 1. There is hereby created a nonprofit entity to be known as the "Missouri  
2 Health Insurance Pool". All insurers issuing health insurance in this state and insurance  
3 arrangements providing health plan benefits in this state on and after January 1, 1991, shall be  
4 members of the pool.

5 2. [The director shall give notice to all insurers and insurance arrangements of the time  
6 and place for the initial organizational meetings. The board of directors shall be selected by the  
7 pool participants, and shall consist of seven members: one member each from the three largest  
8 domestic insurance companies participating in the pool, based on premium income in Missouri;  
9 one member each from the two largest domestic health services corporations participating in the  
10 pool, based on premium income in Missouri; one member from an independent domestic health

11 maintenance organization participating in the pool; and one member from the general public who  
12 is not an insurer, or any officer, director, or employee of an insurer. Two members of the board  
13 of directors shall be of minority groups and at least one such member shall be an  
14 African-American. The board shall appoint one or more insurers to serve as administrator. Both  
15 the selection of the board of directors and the administering insurer shall be subject to approval  
16 by the director.

17 3. If, within sixty days of the organizational meeting, the board of directors is not  
18 selected or the administering insurer is not appointed, the director shall appoint the initial board  
19 and appoint an administering insurer.] **The board of directors shall consist of the following**  
20 **nine members:**

21 (1) **Two members representing domestic insurance companies;**

22 (2) **Two members representing foreign insurance companies;**

23 (3) **One member representing a domestic health maintenance organization;**

24 (4) **One member representing a foreign health maintenance organization;**

25 (5) **One member representing a health services corporation;**

26 (6) **One member from among the enrollees in the pool; and**

27 (7) **One member from the general public who is not an insurer, or an officer,**  
28 **director, or employee of an insurer.**

29

30 **No more than one officer, director, or employee of an insurer shall simultaneously serve**  
31 **as a member of the board of directors, despite the fact that the insurer falls within more**  
32 **than one of the preceding categories for board members. Two members of the board of**  
33 **directors shall be members of minority groups and at least one such member shall be**  
34 **African-American.**

35 3. **The members of the board of directors shall be elected by a majority vote of the**  
36 **current members of the board, subject to the approval of the director.**

37 4. **The board shall appoint one or more insurers or third-party administrators to**  
38 **serve as administrator.**

376.966. 1. No employee shall involuntarily lose his **or her** group coverage by decision  
2 of his **or her** employer on the grounds that such employee may subsequently enroll in the pool.  
3 The department of insurance shall have authority to promulgate rules and regulations to enforce  
4 this subsection.

5 2. **An individual person shall be eligible for benefit plan coverage if the individual**  
6 **either is and continues to be a resident of this state or is legally domiciled in this state on**  
7 **the date the individual applies for pool coverage and has been certified as eligible for**  
8 **federal trade adjustment assistance or for pension benefit guarantee corporation**



9 assistance, as provided by the federal Trade Adjustment Assistance Reform Act of 2002,  
10 and the applicant provides evidence of the following:

11 (1) That such individual person is a federally defined individual, as defined in  
12 section 376.960; or

13 (2) A notice of rejection or refusal to issue substantially similar insurance for health  
14 reasons by one insurer; or

15 (3) A refusal by an insurer to issue insurance except at a rate exceeding one  
16 hundred fifty percent of the standard risk rate calculated pursuant to subsection 4 of  
17 section 376.986.

18 3. Any individual who is a resident of this state **and not otherwise eligible pursuant**  
19 **to subsection 1 of this section** shall be eligible for pool coverage, except the following:

20 (1) Persons who have, on the date of issue of coverage by the pool, coverage under  
21 health insurance or an insurance arrangement except that this exclusion shall not apply to:

22 (a) A person who has such coverage but whose premiums have increased to [three  
23 hundred] **one hundred fifty** percent or more of rates established by the board as applicable for  
24 individual standard risks; or

25 (b) **A person who is certified as eligible under the federal Trade Adjustment**  
26 **Assistance Reform Act of 2002 and has three months of prior creditable coverage as**  
27 **described in subdivision (4) of subsection 1 of section 376.450;**

28 (2) Any person who is at the time of pool application receiving health care benefits under  
29 section 208.151, RSMo;

30 (3) [Any person having terminated coverage in the pool unless twelve months have  
31 elapsed since such termination;

32 (4) Any person on whose behalf the pool has paid out one million dollars in benefits;

33 (5) Inmates of public institutions and persons eligible for public programs;

34 [(6) Any person whose medical condition which precludes other insurance coverage is  
35 directly due to alcohol or drug abuse or self-inflicted injury;

36 (7)] (4) Any person who is eligible for continuation or conversion of insurance coverage  
37 under 29 U.S.C. 1161 to 29 U.S.C. 1168, 42 U.S.C. 300bb-1 to 42 U.S.C. 300bb-8, sections  
38 376.395 to 376.404, or section 376.428, except that this exclusion shall not apply to a person  
39 who has such coverage but whose premiums have increased to [three] **one hundred fifty** percent  
40 or more of rates established by the board as applicable for individual standard risks; or

41 [(8)] (5) Any person who is eligible for Medicare coverage.

42 [3.] 4. Any person who ceases to meet the eligibility requirements of this section **or**  
43 **maintain residency in this state** may be terminated at the end of [his] **such person's** policy  
44 period.

45 [4. Any person whose health insurance coverage is involuntarily terminated for any  
46 reason other than nonpayment of premium or any person whose premiums have increased to  
47 three hundred percent or more of rates established by the board as applicable for individual  
48 standard risks, may apply for coverage under the plan. If such coverage is applied for within  
49 sixty days after the involuntary termination and the application is approved and if premiums are  
50 paid for the entire coverage period, the effective date of the coverage shall be the date of  
51 termination of the previous coverage.]

52 **5. (1) If an insurer issues one or more of the following or takes any other action**  
53 **based wholly or partially on medical underwriting considerations which is likely to render**  
54 **any person eligible for pool coverage, the insurer shall notify all persons affected of the**  
55 **existence of the pool, as well as the eligibility requirements and methods of applying for**  
56 **pool coverage:**

57 (a) A notice of rejection or cancellation of coverage;

58 (b) A notice of reduction or limitation of coverage, including restrictive riders, if  
59 the effect of the reduction or limitation is to substantially reduce coverage compared to the  
60 coverage available to a person considered a standard risk for the type of coverage provided  
61 by the plan;

62 (c) A notice of increase in premium to an amount exceeding the premium then in  
63 effect for pool coverage having the same or similar deductible for a person of the same age,  
64 sex, and geographical location;

65 (d) A notice of premium for coverage not yet in effect which exceeds the premium  
66 then in effect for pool coverage having the same or similar deductible for a person of the  
67 same age, sex, and geographical location.

68 (2) Any notice issued under subdivision (1) of this subsection shall also state the  
69 reasons for the rejection, termination, cancellation, or imposition of underwriting  
70 restrictions.

376.975. Each member's proportion of participation in the pool shall be determined  
2 annually by the board based on annual statements and other reports deemed necessary by the  
3 board and filed by the member with it. Any deficit incurred by the pool shall be recouped by  
4 assessments apportioned as provided in subsections 1, 2, and 3 of section 376.973 by the board  
5 among members. The amount of assessments incurred by each member of the pool shall be  
6 allowed as an offset against certain taxes, and shall be subject to certain limitations, as follows:  
7 Each pool member subject to chapter 148, RSMo, may deduct from premium taxes payable for  
8 any calendar year to the state any and all assessments paid for the same year pursuant to sections  
9 376.960 to 376.989; **provided, however, that assessments paid for calendar year 2005 may**  
10 **only be deducted from premium taxes payable for calendar year 2008, assessments paid**

11 **for calendar year 2006 may only be deducted from premium taxes payable for calendar**  
12 **year 2009, and assessments paid for calendar year 2007 may only be deducted from**  
13 **premium taxes payable for calendar year 2010.** All assessments, for a fiscal year, shall not  
14 exceed the net premium tax due and payable by such member in the previous year. If the  
15 assessment exceeds any premium tax due or payable in such year, **including calendar years**  
16 **2008, 2009, and 2010,** the excess shall be a credit or offset carried forward against any premium  
17 tax due or payable in succeeding years until the excess is exhausted.

376.980. Each pool member exempt from chapter 148, RSMo, shall be allowed to offset  
2 against any sales or use tax on purchases due, paid, or payable in the calendar year in which such  
3 assessments are made; **provided, however, that assessments paid for calendar year 2005 may**  
4 **only be deducted from sales or use tax on purchases due, paid, or payable for calendar year**  
5 **2008, assessments paid for calendar year 2006, may only be deducted from sales or use tax**  
6 **on purchases due, paid, or payable for calendar year 2009, and assessments paid for**  
7 **calendar year 2007, may only be deducted from sales or use tax on purchases due, paid, or**  
8 **payable for calendar year 2010.** Further, such assessment, for any fiscal year, shall not exceed  
9 one percent of [nongroup] premium income, exclusive of Medicare supplement programs,  
10 received in the previous year. If the assessment exceeds the part of any sales tax or use tax due  
11 or payable in such year, the excess shall be a credit or offset carried forward against the part of  
12 any sales tax or use tax due or payable in succeeding years until the excess is exhausted. The  
13 director of revenue, in consultation with the board, shall promulgate and enforce reasonable rules  
14 and regulations and prescribe forms for the administration and enforcement of this law.

376.986. 1. The pool shall offer major medical expense coverage to every person  
2 eligible for coverage under section 376.966. The coverage to be issued by the pool and its  
3 schedule of benefits, exclusions and other limitations, shall be established by the board with the  
4 advice and recommendations of the pool members, and such plan of pool coverage shall be  
5 submitted to the director for approval. The pool shall also offer coverage for drugs and supplies  
6 requiring a medical prescription and coverage for patient education services, to be provided at  
7 the direction of a physician, encompassing the provision of information, therapy, programs, or  
8 other services on an inpatient or outpatient basis, designed to restrict, control, or otherwise cause  
9 remission of the covered condition, illness or defect.

2. In establishing the pool coverage the board shall take into consideration the levels of  
11 health insurance provided in this state and medical economic factors as may be deemed  
12 appropriate, and shall promulgate benefit levels, deductibles, coinsurance factors, exclusions and  
13 limitations determined to be generally reflective of and commensurate with health insurance  
14 provided through a representative number of insurers in this state.

15           3. Premiums charged for pool coverage may not be unreasonable in relation to the  
16 benefits provided, the risk experience and the reasonable expenses of providing the coverage.  
17 Separate schedules of premium rates based on age, sex and geographical location may apply for  
18 individual risks.

19           4. The pool shall determine the standard risk rate by calculating the average individual  
20 standard rate charged by the five insurers with the largest number of individual contracts in force.  
21 In the event five insurers do not offer comparable coverage, the standard risk rate shall be  
22 established using reasonable actuarial techniques and shall reflect anticipated experience and  
23 expenses for such coverage. Initial rates for pool coverage shall not be less than one hundred  
24 fifty percent of rates established as applicable for individual standard risks. Subsequent rates  
25 shall be established to provide fully for the expected costs of claims including recovery of prior  
26 losses, expenses of operation, investment income of claim reserves, and any other cost factors  
27 subject to the limitations described herein. In no event shall pool rates exceed [two hundred  
28 percent of rates applicable to individual standard risks] **the following:**

29           **(1) For federally defined eligible individuals, rates shall be equal to the percent of**  
30 **rates applicable to individual standard risks actuarially determined to be sufficient to**  
31 **recover the sum of the cost of benefits paid under the pool for federally defined eligible**  
32 **individuals plus the proportion of the pool's administrative expense applicable to federally**  
33 **defined eligible individuals enrolled for pool coverage, provided that such rates shall not**  
34 **exceed one hundred fifty percent of rates applicable to individual standard risks; and**

35           **(2) For all other individuals covered under the pool, one hundred fifty percent of**  
36 **rates applicable to individual standard risks.**

37

38 All rates and rate schedules shall be submitted to the director for approval.

39           5. Pool coverage established pursuant to this section shall provide an appropriate high  
40 and low deductible to be selected by the pool applicant. The deductibles and coinsurance factors  
41 may be adjusted annually in accordance with the medical component of the consumer price  
42 index.

43           6. Pool coverage shall exclude charges or expenses incurred during the first twelve  
44 months following the effective date of coverage as to any condition which, during the six-month  
45 period immediately preceding the effective date of coverage, had manifested itself in such a  
46 manner as would cause an ordinarily prudent person to seek diagnosis, care or treatment or for  
47 which medical advice, care or treatment was recommended or received as to such condition.  
48 Such preexisting condition exclusions shall be waived **as follows:**

49           **(1) To the extent to which similar exclusions, if any, have been satisfied under any prior**  
50 **health insurance coverage which was involuntarily terminated by the insurer for reasons other**

51 **than nonpayment of premium or fraud, or which was voluntarily terminated by the eligible**  
52 **person as a result of premiums that equaled or exceeded one hundred fifty percent or more**  
53 **of the rates established by the board as applicable to individual standard risks, if that**  
54 application for pool coverage is made not later than [six] **sixty-three** days following such  
55 [involuntary] termination [and, in such case], **the application is approved, the effective date**  
56 **of coverage in the pool shall be [effective from] the date on which such prior coverage was**  
57 **terminated, and the entire premium for the period commencing on the effective date of**  
58 **coverage in the pool through the end of the first full calendar month after approval of such**  
59 **application is paid within ten days after approval of the application; and**

60 **(2) In the case of a person who has been certified as eligible for federal trade**  
61 **provided by the federal Trade Adjustment Assistance Reform Act of 2002, if the person**  
62 **maintained creditable health insurance coverage for an aggregate period of three months**  
63 **prior to loss of employment with no gap in coverage greater than sixty-three days.**

64 7. Benefits otherwise payable under pool coverage shall be reduced by all amounts paid  
65 or payable **to the eligible person or to a health care provider providing services to the**  
66 **eligible person** through any other health insurance, or insurance arrangement, and by all hospital  
67 and medical expense benefits paid or payable under any workers' compensation coverage,  
68 automobile medical payment or liability insurance whether provided on the basis of fault or  
69 nonfault, **or any other liability insurance**, and by any hospital or medical benefits paid or  
70 payable under or provided pursuant to any state or federal law or program except Medicaid  
71 **(collectively "other insurance/coverage"). In the event the pool pays for services otherwise**  
72 **payable through other insurance/coverage, the pool shall have a cause of action against the**  
73 **eligible person for recovery of such amount and/or a right of subrogation against such**  
74 **other insurance/coverage with respect to such amount.** The [insurer or the] pool shall also  
75 have a cause of action against an eligible person for the recovery of the amount of benefits paid  
76 which are not for covered expenses. Benefits due from the pool may be reduced or refused as  
77 a setoff against any amount recoverable under this subsection.

78 8. Medical expenses shall include expenses for comparable benefits for those who rely  
79 solely on spiritual means through prayer for healing.

**376.1600. Any health carrier, as defined in section 376.1350, providing group health**  
2 **insurance plans or group health benefits to an employer having a group of twenty-five**  
3 **employees or more shall, upon request by the employer or the employer's agent of record,**  
4 **provide a statement of the annual claims history for each of the prior three years, or the**  
5 **total experience if the coverage has been in effect less than three years. The information**  
6 **shall be provided within thirty days of such request and shall include the total aggregate**  
7 **amount of claims paid and the total number of claims filed for each annual period. The**

8 **information may be used by the employer or the employer's agent of record for the sole**  
9 **purpose of evaluating and marketing the group insurance program. The information**  
10 **provided to the employer or the employer's agent of record shall be furnished in a manner**  
11 **that does not individually identify an employee or an employee's family member and shall**  
12 **comply with all applicable federal and state privacy laws regarding the disclosure of health**  
13 **records.**

379.110. As used in sections 379.110 to 379.120 the following words and terms mean:

2 (1) "Insurer" [means], any insurance company, association or exchange authorized to  
3 issue policies of automobile insurance in the state of Missouri[.];

4 (2) "Nonpayment of premium" [means], failure of the named insured to discharge when  
5 due any of his **or her** obligations in connection with the payment of premiums on a policy, or  
6 any installment of such premium, whether the premium is payable directly to the insurer or its  
7 agent or indirectly under any premium finance plan or extension of credit[.];

8 (3) "Policy" [means], an automobile policy providing automobile liability coverage,  
9 uninsured motorists coverage, automobile medical payments coverage, or automobile physical  
10 damage coverage insuring a private passenger automobile owned by an individual or partnership  
11 which has been in effect for more than sixty days or has been renewed. "Policy" does not mean:

12 (a) Any policy issued under an automobile assigned risk plan or automobile insurance  
13 plan;

14 (b) Any policy insuring more than four motor vehicles;

15 (c) Any policy covering the operation of a garage, automobile sales agency, repair shop,  
16 service station or public parking place;

17 (d) Any policy providing insurance only on an excess basis, or to any contract principally  
18 providing insurance to such named insured with respect to other than automobile hazards or  
19 losses even though such contract may incidentally provide insurance with respect to such motor  
20 vehicles[.];

21 (4) "Renewal" or "to renew" [means], the issuance and delivery by an insurer of a policy  
22 superseding at the end of the policy period a policy previously issued and delivered by the same  
23 insurer, such renewal policy to provide types and limits of coverage at least equal to those  
24 contained in the policy being superseded, or the issuance and delivery of a certificate or notice  
25 extending the term of a policy beyond its policy period or term with types and limits of coverage  
26 at least equal to those contained in the policy being extended; provided, however, that any policy  
27 with a policy period or term of less than [twelve] **six** months or any period with no fixed  
28 expiration date shall for the purpose of this section be considered as if written for successive  
29 policy periods or terms of [twelve] **six** months. **Nothing in this subdivision shall be construed**  
30 **as superceding the provisions of subsection 9 of section 375.918, RSMo, and the term**

31 **"third anniversary date of the initial contract", as used in subsection 9 of section 375.918,**  
32 **RSMo, means three years after the date of the initial contract.**

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

2 (1) "All-industry placement facility" (hereinafter referred to as "the facility"), the  
3 organization formed by insurers to assist applicants in securing basic property insurance, to issue  
4 policies and to administer the program and the joint reinsurance association;

5 (2) "Basic property insurance", the coverage against direct loss to real and tangible  
6 personal property at a fixed location that is provided in the standard fire policy and extended  
7 coverage endorsement, including builders' risk, and such vandalism and malicious mischief  
8 [insurance] **endorsements** and such other classes of insurance as may be added to the program  
9 with respect to the property by amendment as hereinafter provided. Basic property insurance  
10 does not include automobile risks or such types of manufacturing risks as the governing  
11 committee may exclude with the approval of the director. **Any contract, as defined in section**  
12 **375.918, RSMo, of the facility shall be subject to the provisions of section 375.918, RSMo;**

13 (3) "Commercial", basic property insurance not included under the personal lines  
14 statistical plan;

15 (4) "Director", the director of the department of insurance of the state of Missouri;

16 (5) "Habitational", basic property insurance included under the personal lines statistical  
17 plan;

18 (6) "Inspection bureau", the rating bureau or other organization designated by the facility  
19 with the approval of the director to make inspections as required under the program and to  
20 perform such other duties as may be authorized by the facility;

21 (7) "Insurer", any insurance company, reciprocal or interinsurance exchange or other  
22 organization licensed and authorized by the director to write property insurance, including the  
23 property insurance components of multiperil policies, on a direct basis, in this state;

24 (8) "Person" includes any individual or group of individuals, corporation, partnership,  
25 or association, or any other organized group of persons;

26 (9) "Premiums written", gross direct premiums (excluding that portion of premium on  
27 risks ceded to the joint reinsurance association) charged during the second preceding calendar  
28 year with respect to property in this state on all policies of basic property insurance and the basic  
29 property insurance premium components of all multiperil policies, as computed by the facility,  
30 less return premiums, dividends paid or credited to policyholders, or the unused or unabsorbed  
31 portions of premium deposits;

32 (10) "Property owner", with respect to any real, personal, or mixed real and personal  
33 property, means any person having an insurable interest in such property;

34 (11) "Secretary", the Secretary of the United States Department of Housing and Urban  
35 Development.

379.825. 1. The facility, upon receipt of an application for coverage and the  
2 corresponding inspection report from the inspection bureau, shall, after it finds that the property  
3 is eligible for insurance under this program, issue a policy.

4 2. The facility shall apportion the liability so assumed to the insurers in the manner  
5 hereinafter provided in section 379.835.

6 3. Assessments upon each insurer in the program for expenses in connection with  
7 program business shall be levied and assessed by the governing committee of the facility in the  
8 manner hereinafter provided in section 379.835, subject to such minimum assessment as shall  
9 be established by the governing committee.

10 4. Subject to the insurable value thereof, the maximum limits of liability which may be  
11 placed through this program are: on any habitational property at one location, [one] **two** hundred  
12 thousand dollars; and on any commercial property at one location, one million dollars. The  
13 facility will endeavor to assist in placement when the requested amount of insurance exceeds the  
14 maximum limit of liability available under this program. The word "location" as used herein  
15 means real and personal property consisting of and contained in a single building or consisting  
16 of and contained in contiguous buildings under one ownership.

379.930. 1. Sections 379.930 to 379.952 shall be known and may be cited as the "Small  
2 Employer Health Insurance Availability Act".

3 2. For the purposes of sections 379.930 to 379.952, **the following terms shall mean:**

4 (1) "Actuarial certification" [means], a written statement by a member of the American  
5 Academy of Actuaries or other individual acceptable to the director that a small employer carrier  
6 is in compliance with the provisions of section 379.936, based upon the person's examination,  
7 including a review of the appropriate records and of the actuarial assumptions and methods used  
8 by the small employer carrier in establishing premium rates for applicable health benefit plans;

9 (2) "Affiliate" or "affiliated" [means], any entity or person who directly or indirectly  
10 through one or more intermediaries, controls or is controlled by, or is under common control  
11 with, a specified entity or person;

12 (3) "Agent" means "insurance agent" as that term is defined in section 375.012, RSMo;

13 (4) "Base premium rate" [means], for each class of business as to a rating period, the  
14 lowest premium rate charged or that could have been charged under the rating system for that  
15 class of business, by the small employer carrier to small employers with similar case  
16 characteristics for health benefit plans with the same or similar coverage;

17 (5) ["Basic health benefit plan" means a lower cost health benefit plan developed  
18 pursuant to section 379.944;



19 (6) "Board" [means], the board of directors of the program established pursuant to  
20 sections 379.942 and 379.943;

21 [(7)] (6) "Broker" means "broker" as that term is defined in section 375.012, RSMo;

22 [(8)] (7) "Carrier" [means], any entity that provides health insurance or health benefits  
23 in this state. For the purposes of sections 379.930 to 379.952, carrier includes an insurance  
24 company, health services corporation, fraternal benefit society, health maintenance organization,  
25 multiple employer welfare arrangement specifically authorized to operate in the state of  
26 Missouri, or any other entity providing a plan of health insurance or health benefits subject to  
27 state insurance regulation;

28 [(9)] (8) "Case characteristics" [means], demographic or other objective characteristics  
29 of a small employer that are considered by the small employer carrier in the determination of  
30 premium rates for the small employer, provided that claim experience, health status and duration  
31 of coverage since issue shall not be case characteristics for the purposes of sections 379.930 to  
32 379.952;

33 [(10)] (9) "Class of business" [means], all or a separate grouping of small employers  
34 established pursuant to section 379.934;

35 **(10) "Church plan", the meaning given such term in Section 3(33) of the Employee**  
36 **Retirement Income Security Act of 1974;**

37 (11) "Committee" [means], the health benefit plan committee created pursuant to section  
38 379.944;

39 (12) "Control" shall be defined in manner consistent with chapter 382, RSMo;

40 (13) "Creditable coverage", with respect to an individual:

41 **(a) Coverage of the individual pursuant to any of the following:**

42 **a. A group health plan;**

43 **b. Health insurance coverage;**

44 **c. Part A or Part B of Title XVIII of the Social Security Act;**

45 **d. Title XIX of the Social Security Act, other than coverage consisting solely of**  
46 **benefits pursuant to Section 1928 of such act;**

47 **e. Chapter 55 of Title 10, United States Code;**

48 **f. A medical care program of the Indian Health Service or of a tribal organization;**

49 **g. A state health benefits risk pool;**

50 **h. A health plan offered pursuant to Chapter 89 of Title 5, United States Code;**

51 **i. A public health plan, as defined in federal regulations authorized by Section**  
52 **2701(c)(1)(I) of the Public Health Services Act, as amended by P.L. 104-191; and**

53 **j. A health benefit plan pursuant to Section 5(e) of the Peace Corps Act (22 U.S.C.**  
54 **2504(e));**

55           **(b) Creditable coverage shall not include coverage consisting solely of excepted**  
56 **benefits;**

57           **(c) A period of creditable coverage shall not be counted, with respect to enrollment**  
58 **of an individual if, after such period and before the enrollment date, there was a sixty-**  
59 **three-day period during all of which the individual was not covered under any creditable**  
60 **coverage;**

61           **(14) "Dependent" [means], a spouse or an unmarried child under the age of nineteen**  
62 **years; an unmarried child who is a full-time student under the age of twenty-three years and who**  
63 **is financially dependent upon the parent; or an unmarried child of any age who is medically**  
64 **certified as disabled and dependent upon the parent;**

65           **[(14)] (15) "Director" [means], the director of the department of insurance of this state;**

66           **[(15)] (16) "Eligible employee" [means], an employee who works on a full-time basis**  
67 **and has a normal work week of thirty or more hours. The term includes a sole proprietor, a**  
68 **partner of a partnership, and an independent contractor, if the sole proprietor, partner or**  
69 **independent contractor is included as an employee under a health benefit plan of a small**  
70 **employer, but does not include an employee who works on a part-time, temporary or substitute**  
71 **basis. For purposes of sections 379.930 to 379.952, a person, his spouse and his minor children**  
72 **shall constitute only one eligible employee when they are employed by the same small employer;**

73           **[(16)] (17) "Established geographic service area" [means], a geographical area, as**  
74 **approved by the director and based on the carrier's certificate of authority to transact insurance**  
75 **in this state, within which the carrier is authorized to provide coverage;**

76           **(18) "Excepted benefits":**

77           **(a) Coverage only for accident (including accidental death and dismemberment)**  
78 **insurance;**

79           **(b) Coverage only for disability income insurance;**

80           **(c) Coverage issued as a supplement to liability insurance;**

81           **(d) Liability insurance, including general liability insurance and automobile**  
82 **liability insurance;**

83           **(e) Workers' compensation or similar insurance;**

84           **(f) Automobile medical payment insurance;**

85           **(g) Credit-only insurance;**

86           **(h) Coverage for onsite medical clinics;**

87           **(i) Other similar insurance coverage, as approved by the director, under which**  
88 **benefits for medical care are secondary or incidental to other insurance benefits;**

89           **(j) If provided under a separate policy, certificate or contract of insurance, any of**  
90 **the following:**

- 91           **a. Limited scope dental or vision benefits;**
- 92           **b. Benefits for long-term care, nursing home care, home health care, community-**  
93 **based care, or any combination thereof;**
- 94           **c. Other similar, limited benefits as specified by the director.**
- 95           **(k) If provided under a separate policy, certificate or contract of insurance, any of**  
96 **the following:**
- 97           **a. Coverage only for a specified disease or illness;**
- 98           **b. Hospital indemnity or other fixed indemnity insurance.**
- 99           **(l) If offered as a separate policy, certificate or contract of insurance, any of the**  
100 **following:**
- 101           **a. Medicare supplemental coverage (as defined under section 1882(g)(1) of the**  
102 **Social Security Act);**
- 103           **b. Coverage supplemental to the coverage provided pursuant to Chapter 55 of Title**  
104 **10, United States Code (CHAMPUS supplemental programs);**
- 105           **c. Similar supplemental coverage provided to coverage under a group health plan.**  
106 **[(17)] (19) "Government plan", the meaning given such term pursuant to Section**  
107 **3(32) of the Employee Retirement Income Security Act of 1974 or any federal government**  
108 **plan;**
- 109           **(20) "Group health plan", an employee welfare benefit plan as defined in Section**  
110 **3(1) of the Employee Retirement Income Security Act of 1974 to the extent that the plan**  
111 **provides medical care, as defined in this section, and including any item or service paid for**  
112 **as medical care to an employee or the employee's dependent, as defined under the terms**  
113 **of the plan, directly or through insurance, reimbursement or otherwise. For purposes of**  
114 **sections 379.930 to 379.952:**
- 115           **(a) Any plan, fund or program which would not be, but for this subdivision, an**  
116 **employee welfare benefit plan except pursuant to the provisions of this subdivision, and**  
117 **which is established or maintained by a partnership to the extent that such plan, fund or**  
118 **program provides medical care, including any item or service paid for as medical care to**  
119 **a present or former partner in such partnership, or to the partner's dependents, as defined**  
120 **under the terms of the plan, fund or program, directly or through insurance,**  
121 **reimbursement or otherwise, shall be treated, subject to paragraph (b) of this subdivision,**  
122 **as an employee welfare benefit plan which is a group health plan;**
- 123           **(b) In the case of a group health plan, the term "employer" also includes a**  
124 **partnership in relation to any partner; and**
- 125           **(c) In the case of a group health plan, the term "participant" also includes:**

126           **a. In connection with a group health plan maintained by a partnership, an**  
127 **individual who is a partner in relation to a partnership; or**

128           **b. In connection with a group health plan maintained by a self-employed individual**  
129 **under which one or more employees are participants, the self-employed individual, if such**  
130 **individual is or may become eligible to receive a benefit under the plan or such individual's**  
131 **beneficiary may be eligible to receive any such benefit;**

132           **(d) Group health plan does not include excepted benefits;**

133           **(21) "Health benefit plan" [means], any hospital or medical policy or certificate, health**  
134 **services corporation contract, or health maintenance organization subscriber contract. Health**  
135 **benefit plan does not include a policy of individual accident and sickness insurance, or hospital**  
136 **supplemental policies having a fixed daily benefit, or accident-only, specified disease-only,**  
137 **credit, dental, vision, Medicare supplement, long-term care, or disability income insurance, or**  
138 **coverage issued as a supplement to liability insurance, worker's compensation or similar**  
139 **insurance, or automobile medical payment insurance;**

140           **(22) "Health status-related factor", any of the following:**

141           **(a) Health status;**

142           **(b) Medical condition, including both physical and mental illnesses;**

143           **(c) Claims experience;**

144           **(d) Receipt of health care;**

145           **(e) Medical history;**

146           **(f) Genetic information;**

147           **(g) Evidence of insurability, including a condition arising out of an act of domestic**  
148 **violence;**

149           **(h) Disability;**

150           **[(18)] (23) "Index rate" [means], for each class of business as to a rating period for small**  
151 **employers with similar case characteristics, the arithmetic mean of the applicable base premium**  
152 **rate and the corresponding highest premium rate;**

153           **[(19)] (24) "Late enrollee" [means], an eligible employee or dependent who requests**  
154 **enrollment in a health benefit plan of a small employer following the initial enrollment period**  
155 **for which such individual is entitled to enroll under the terms of the health benefit plan, provided**  
156 **that such initial enrollment period is a period of at least thirty days. However, an eligible**  
157 **employee or dependent shall not be considered a late enrollee if:**

158           **(a) The individual meets each of the following:**

159           **a. The individual was covered under [qualifying previous] creditable coverage at the**  
160 **time of the initial enrollment;**

161 b. The individual lost coverage under [qualifying previous] **creditable** coverage as a  
162 result of **cessation of employer contribution**, termination of employment or eligibility,  
163 **reduction in the number of hours of employment**, the involuntary termination of the  
164 [qualifying previous] **creditable** coverage, death of a spouse [or divorce;], **dissolution or legal**  
165 **separation; and**

166 c. The individual requests enrollment within thirty days after termination of the  
167 [qualifying previous] **creditable** coverage;

168 (b) The individual is employed by an employer that offers multiple health benefit plans  
169 and the individual elects a different plan during an open enrollment period; or

170 (c) A court has ordered coverage be provided for a spouse or minor or dependent child  
171 under a covered employee's health benefit plan and request for enrollment is made within thirty  
172 days after issuance of the court order;

173 [(20)] **(25) "Medical care", an amount paid for:**

174 **(a) The diagnosis, care, mitigation, treatment or prevention of disease, or for the**  
175 **purpose of affecting any structure or function of the body;**

176 **(b) Transportation primarily for and essential to medical care referred to in**  
177 **paragraph (a) of this subdivision; or**

178 **(c) Insurance covering medical care referred to in paragraphs (a) and (b) of this**  
179 **subdivision;**

180 **(26) "Network plan", a health benefit plan that requires an enrollee to use or**  
181 **creates incentives, including financial incentives, for an enrollee to use, health care**  
182 **providers managed, owned, under contract with or employed by the health carrier;**

183 **(27) "New business premium rate" [means], for each class of business as to a rating**  
184 **period, the lowest premium rate charged or offered, or which could have been charged or offered,**  
185 **by the small employer carrier to small employers with similar case characteristics for newly**  
186 **issued health benefit plans with the same or similar coverage;**

187 [(21)] **(28) "Plan of operation" [means], the plan of operation of the program established**  
188 **pursuant to sections 379.942 and 379.943;**

189 [(22)] **(29) "Plan sponsor", the meaning given such term pursuant to Section**  
190 **3(16)(B) of the Employee Retirement Income Security Act of 1974;**

191 **(30) "Premium" [means], all moneys paid by a small employer and eligible employees**  
192 **as a condition of receiving coverage from a small employer carrier, including any fees or other**  
193 **contributions associated with the health benefit plan;**

194 [(23)] **(31) "Producer" includes an insurance agent or broker;**

195 [(24)] **(32) "Professional association", an association which meets all of the**  
196 **following:**

- 197           **(a) Serves a single profession, if such profession requires a significant amount of**  
198 **education, training or experience, or a license or certificate from a state authority to**  
199 **practice such profession;**
- 200           **(b) Has been actively in existence for five years;**
- 201           **(c) Has a constitution or bylaws, or any other analogous governing document;**
- 202           **(d) Has been formed and maintained in good faith for a purpose other than**  
203 **obtaining insurance;**
- 204           **(e) Is not owned or controlled by a carrier or affiliated with a carrier;**
- 205           **(f) Does not condition membership in the association on health status or claims**  
206 **experience;**
- 207           **(g) Has at least one thousand members if it is a national association; five hundred**  
208 **members if it is a state association; or two hundred members if it is a local association;**
- 209           **(h) Any member or dependent of a member is eligible for coverage regardless of**  
210 **health status or claims experience;**
- 211           **(i) Does not offer a health benefit plan to an individual through the association**  
212 **other than in connection with a member of the association;**
- 213           **(j) Is governed by a board of directors and sponsors annual meetings of its**  
214 **members; and**
- 215           **(k) Producers may only market an association membership, accept an application**  
216 **for membership, or sign up a member in the professional association if such individual is**  
217 **actively engaged in, or directly related to, the profession represented by the professional**  
218 **association;**
- 219           **(33) "Professional association plan", a health benefit plan offered through a**  
220 **professional association that covers members of a professional association and their**  
221 **dependents in this state regardless of the situs of delivery of the policy or contract and**  
222 **meets the following:**
- 223           **(a) Conforms with the provisions of section 379.936 concerning the premium rates**  
224 **as they apply to an individual carrier and individual health benefit plan;**
- 225           **(b) Provides renewability of coverage for the members and dependents of members**  
226 **of a professional association which meets the requirements set forth in subsection 2 of**  
227 **section 379.938 as applied to an individual health benefit plan;**
- 228           **(c) Provides availability of coverage for the members and dependents of members**  
229 **of the professional association in conformance with the provisions of subdivisions (1), (2)**  
230 **and (3) of subsection 2 of section 379.940 as applied to an individual health benefit plan**  
231 **and individual carrier;**

232 (d) Is offered by a carrier that offers health benefit plan coverage to any  
233 professional association seeking health benefit plan coverage from such carrier; and

234 (e) Conforms with the preexisting condition provisions of subsection 2 of section  
235 379.940 as applied to an individual health benefit plan;

236 (34) "Program" [means], the Missouri small employer health reinsurance program  
237 created pursuant to sections 379.942 and 379.943;

238 [(25) "Qualifying previous coverage" and "qualifying existing coverage" mean benefits  
239 or coverage provided under:

240 (a) Medicare or Medicaid;

241 (b) An employer-based health insurance or health benefit arrangement that provides  
242 benefits similar to or exceeding benefits provided under the basic health benefit plan; or

243 (c) An individual health insurance policy (including coverage issued by a health  
244 maintenance organization, health services corporation or a fraternal benefit society) that provides  
245 benefits similar to or exceeding the benefits provided under the basic health benefit plan,  
246 provided that such policy has been in effect for a period of at least one year;

247 (26)] (35) "Rating period" [means], the calendar period for which premium rates  
248 established by a small employer carrier are assumed to be in effect;

249 [(27)] (36) "Restricted network provision" [means], any provision of a health benefit  
250 plan that conditions the payment of benefits, in whole or in part, on the use of health care  
251 providers that have entered into a contractual arrangement with the carrier pursuant to [section  
252 354.400, RSMo, et seq.] sections 354.400 to 354.550, RSMo, to provide health care services  
253 to covered individuals;

254 [(28)] (37) "Small employer" [means], **in connection with a group health plan with**  
255 **respect to a calendar year and a plan year**, any person, firm, corporation, partnership [or],  
256 association **or political subdivision** that is actively engaged in business that[, on at least fifty  
257 percent of its working days during the preceding calendar quarter, employed not less than three  
258 nor] **employed an average of at least two but no** more than [twenty-five] **fifty** eligible  
259 employees[, the majority of whom were employed within this state. In determining the number  
260 of eligible employees, companies that are affiliated companies, or that are eligible to file a  
261 combined tax return for purposes of state taxation, shall be considered one employer;] **on**  
262 **business days during the preceding calendar year and that employs at least two employees**  
263 **on the first day of the plan year. All persons treated as a single employer pursuant to**  
264 **subsection (b), (c), (m) or (o) of Section 414 of the Internal Revenue Code of 1986 shall be**  
265 **treated as one employer. Subsequent to the issuance of a health plan to a small employer**  
266 **and for the purpose of determining continued eligibility, the size of a small employer shall**  
267 **be determined annually. Except as otherwise specifically provided, the provisions of**

268 sections 379.930 to 379.952 that apply to a small employer shall continue to apply at least  
269 until the plan anniversary following the date the small employer no longer meets the  
270 requirements of this definition. In the case of an employer which was not in existence  
271 throughout the preceding calendar year, the determination of whether the employer is a  
272 small or large employer shall be based on the average number of employees that it is  
273 reasonably expected that the employer will employ on business days in the current  
274 calendar year. Any reference in this act to an employer shall include a reference to any  
275 predecessor of such employer;

276 [(29)] (38) "Small employer carrier" [means], a carrier that offers health benefit plans  
277 covering eligible employees of one or more small employers in this state[;

278 (30) "Standard health benefit plan" means a health benefit plan developed pursuant to  
279 section 379.944].

379.938. 1. A health benefit plan subject to sections 379.930 to 379.952 shall be  
2 renewable with respect to all eligible employees and dependents, at the option of the small  
3 employer, except in any of the following cases:

4 (1) [Nonpayment of the required premiums] **The plan sponsor fails to pay a premium**  
5 **or contribution in accordance with the terms of a health benefit plan or the health carrier**  
6 **has not received a timely premium payment;**

7 (2) [Fraud or misrepresentation of the small employer or, with respect to coverage of  
8 individual insureds, the insureds or their representatives] **The plan sponsor performs an act**  
9 **or practice that constitutes fraud, or makes an intentional misrepresentation of material**  
10 **fact under the terms of the coverage;**

11 (3) Noncompliance with the carrier's minimum participation requirements;

12 (4) Noncompliance with the carrier's employer contribution requirements;

13 (5) [Repeated misuse of a provider network provision; or] **In the case of a small**  
14 **employer carrier that offers coverage through a network plan, there is no longer any**  
15 **enrollee under the health benefit plan who lives, resides or works in the service area of the**  
16 **health insurance issuer;**

17 (6) **The small employer carrier discontinues offering a particular type of group**  
18 **health benefit plan in the state's small employer market. A type of health benefit plan may**  
19 **be discontinued by a small employer carrier in such market only if such carrier:**

20 (a) **Issues a notice to each plan sponsor and participant provided coverage of such**  
21 **type of the discontinuation at least ninety days prior to the date of discontinuation of the**  
22 **coverage;**



23           **(b) Offers to each plan sponsor provided coverage of such type the option to**  
24 **purchase any of the health benefit plans currently being offered by the small employer**  
25 **carrier in the state's small employer market; and**

26           **(c) Acts uniformly without regard to the claims experience of those plan sponsors**  
27 **or any health status-related factor relating to any participant covered or new participant**  
28 **who may become eligible for such coverage;**

29           **(7) A small employer carrier may not discontinue offering all health insurance**  
30 **coverage in the small employer market unless:**

31           **(a) The carrier provides notice of discontinuation to the director and to each plan**  
32 **sponsor and participant covered at least one hundred eighty days prior to the date of the**  
33 **discontinuation of coverage; and**

34           **(b) All health insurance issued or delivered for issuance in Missouri in the small**  
35 **employer market is discontinued and coverage under such health insurance is not renewed;**

36           [(6) The small employer carrier elects to nonrenew all of its health benefit plans  
37 delivered or issued for delivery to small employers in this state. In such a case the carrier shall:

38           (a) Provide advance notice of its decision under this subdivision to the insurance  
39 supervisory official in each state in which it is licensed; and

40           (b) Provide notice of the decision not to renew coverage to all affected small employers  
41 and to the insurance supervisory official in each state in which an affected covered individual  
42 is known to reside at least one hundred eighty days prior to the nonrenewal of any health benefit  
43 plan by the carrier. Notice to the insurance supervisory official under this paragraph shall be  
44 provided at least three working days prior to the notice to the affected small employers;

45           (7)] **(8) The director finds that the continuation of the coverage would:**

46           (a) Not be in the best interests of the policyholders or certificate holders; or

47           (b) Impair the carrier's ability to meet its contractual obligations.

48

49 In such instance the director shall assist affected small employers in finding replacement  
50 coverage.

51           2. A small employer carrier that elects not to renew a health benefit plan [under]  
52 **pursuant to** subdivision [(6)] **(7)** of subsection 1 of this section shall be prohibited from writing  
53 new business in the small employer market in this state for a period of five years from the date  
54 of notice to the director.

55           3. In the case of a small employer carrier doing business in one established geographic  
56 service area of the state, the provisions of this section shall apply only to the carrier's operations  
57 in such service area.

58           **4. A small employer carrier offering coverage through a network plan shall not be**  
59 **required to offer coverage or accept applications pursuant to subsection 1 or 2 of this**  
60 **section:**

61           **(1) To an eligible person who no longer resides, lives or works in the service area**  
62 **or in an area for which the carrier is authorized to do business, but only if coverage is**  
63 **terminated pursuant to this subdivision uniformly without regard to any health status-**  
64 **related factor of any covered individual; or**

65           **(2) To a small employer that no longer has an enrollee in such plan who lives,**  
66 **resides or works in the service area of the carrier or the area for which the carrier is**  
67 **authorized to do business.**

68           **5. In the case of health insurance coverage that is made available by a small**  
69 **employer carrier only through one or more bona fide associations, references to "plan**  
70 **sponsor" in this section is deemed, with respect to coverage provided to a small employer**  
71 **member of the association, to include a reference to such employer.**

379.940. 1. (1) Every small employer carrier shall, as a condition of transacting  
2 business in this state with small employers, actively offer to small employers [at least two health  
3 benefit plans. One plan offered by each small employer carrier shall be a basic health benefit  
4 plan and one plan shall be a standard health benefit plan] **all health benefit plans it actively**  
5 **markets to small employers in this state.**

6           (2) (a) A small employer carrier shall issue a [basic health benefit plan or a standard]  
7 health benefit plan to any eligible small employer that applies for [either] such plan and agrees  
8 to make the required premium payments and to satisfy the other reasonable provisions of the  
9 health benefit plan not inconsistent with sections 379.930 to 379.952.

10           (b) In the case of a small employer carrier that establishes more than one class of  
11 business pursuant to section 379.934, the small employer carrier shall maintain and issue to  
12 eligible small employers [at least one basic health benefit plan and at least one standard] **all**  
13 **health benefit [plan] plans** in each class of business so established. A small employer carrier  
14 may apply reasonable criteria in determining whether to accept a small employer into a class of  
15 business, provided that:

16           a. The criteria are not intended to discourage or prevent acceptance of small employers  
17 applying for a [basic or standard] health benefit plan;

18           b. The criteria are not related to the health status or claim experience of the small  
19 employer;

20           c. The criteria are applied consistently to all small employers applying for coverage in  
21 the class of business; and

22 d. The small employer carrier provides for the acceptance of all eligible small employers  
23 into one or more classes of business. The provisions of this paragraph shall not apply to a class  
24 of business into which the small employer carrier is no longer enrolling new small employers.

25 [(3) A small employer is eligible under subdivision (2) of this subsection if it employed  
26 at least three or more eligible employees within this state on at least fifty percent of its working  
27 days during the preceding calendar quarter.

28 (4) The provisions of this subsection shall be effective one hundred eighty days after the  
29 director's approval of the basic health benefit plan and the standard health benefit plan developed  
30 pursuant to section 379.944, provided that if the small employer health reinsurance program  
31 created pursuant to sections 379.942 and 379.943 is not yet in operation on such date, the  
32 provisions of this subsection shall be effective on the date that such program begins operation.]

33 2. Health benefit plans covering small employers shall comply with the following  
34 provisions:

35 (1) A health benefit plan shall not deny, exclude or limit benefits for a covered individual  
36 for losses incurred more than twelve months following the effective date of the individual's  
37 coverage due to a preexisting condition. A health benefit plan shall not define a preexisting  
38 condition more restrictively than[:

39 (a) a condition that would have caused an ordinarily prudent person to seek medical  
40 advice, diagnosis, care or treatment during the six months immediately preceding the effective  
41 date of coverage;

42 (b)] a condition for which medical advice, diagnosis, care or treatment was  
43 recommended or received during the six months immediately preceding the effective date of  
44 coverage; [or

45 (c)] **provided, however, that** a pregnancy existing on the effective date of coverage  
46 **shall not be considered a preexisting condition.**

47 (2) A health benefit plan shall waive any time period applicable to a preexisting  
48 condition exclusion or limitation period with respect to particular services for the period of time  
49 an individual was previously covered by [qualifying previous] **creditable** coverage [that  
50 provided benefits with respect to such services, provided that the qualifying previous]:

51 (a) **The creditable** coverage was continuous to a date not less than [thirty] **sixty-three**  
52 days prior to the [effective] date of **application for** the new coverage. [This subdivision does  
53 not preclude application of any waiting period applicable to all new enrollees under the health  
54 benefit plan]; **and**

55 (b) **The aggregate period of such individual's creditable coverage is not less than**  
56 **twelve months.**

57 (3) A health benefit plan may exclude coverage for late enrollees for the greater of  
58 eighteen months or provide for an eighteen-month preexisting condition exclusion, provided that  
59 if both a period of exclusion from coverage and a preexisting condition exclusion are applicable  
60 to a late enrollee, the combined period shall not exceed eighteen months from the date the  
61 individual enrolls for coverage under the health benefit plan[.];

62 **(4) A small employer carrier is prohibited from imposing any preexisting condition**  
63 **exclusion in the following cases:**

64 **(a) A small employer carrier shall not impose any preexisting condition exclusion**  
65 **relating to pregnancy as a preexisting condition;**

66 **(b) Subject to paragraph (e) of this subdivision, a small employer carrier shall not**  
67 **impose any preexisting condition exclusion in the case of an individual who, as of the last**  
68 **day of the thirty-day period beginning with the date of birth, is covered under creditable**  
69 **coverage;**

70 **(c) Subject to paragraph (e) of this subdivision, a small employer carrier shall not**  
71 **impose any preexisting condition exclusion in the case of a child who is adopted or placed**  
72 **for adoption before attaining eighteen years of age and who, as of the last day of the thirty-**  
73 **day period beginning on the date of adoption or placement for adoption, is covered under**  
74 **creditable coverage. The previous sentence shall not apply to coverage before the date of**  
75 **adoption or placement for adoption;**

76 **(d) A small employer carrier shall not impose any preexisting condition exclusion**  
77 **in the case of a condition for which medical advice, diagnosis, care or treatment was**  
78 **recommended or received for the first time while the covered person held creditable**  
79 **coverage, and the medical advice, diagnosis, care or treatment was a covered benefit under**  
80 **the plan, provided that the creditable coverage was continuous to a date not more than**  
81 **sixty-three days prior to the enrollment date of the new coverage;**

82 **(e) Paragraphs (b) and (c) of this subdivision shall no longer apply to an individual**  
83 **after the end of the first sixty-three-day period during all of which the individual was not**  
84 **covered under any creditable coverage;**

85 [(4)] **(5)** (a) Except as provided in paragraph (d) of this subdivision, requirements used  
86 by a small employer carrier in determining whether to provide coverage to a small employer,  
87 including requirements for minimum participation of eligible employees and minimum employer  
88 contributions, shall be applied uniformly among all small employers with the same number of  
89 eligible employees applying for coverage or receiving coverage from the small employer carrier.

90 (b) A small employer carrier may vary application of minimum participation  
91 requirements only by the size of the small employer group.

92 (c) a. Except as provided in paragraph (b) of this subdivision, in applying minimum  
93 participation requirements with respect to a small employer, a small employer carrier shall not  
94 consider employees or dependents who have [qualifying existing] **creditable** coverage in  
95 determining whether the applicable percentage of participation is met.

96 b. With respect to a small employer with ten or fewer eligible employees, a small  
97 employer carrier may consider employees or dependents who have coverage under another health  
98 benefit plan sponsored by such small employer in applying minimum participation requirements.

99 (d) A small employer carrier shall not increase any requirement for minimum employee  
100 participation or any requirement for minimum employer contribution applicable to a small  
101 employer at any time after the small employer has been accepted for coverage.

102 [(5)] (6) (a) If a small employer carrier offers coverage to a small employer, the small  
103 employer carrier shall offer coverage to all of the eligible employees of a small employer and  
104 their dependents. A small employer carrier shall not offer coverage to only certain individuals  
105 in a small employer group or to only part of the group, except in the case of late enrollees as  
106 provided in subdivision (3) of this subsection.

107 (b) **In accordance with the federal Health Insurance Portability and Accountability**  
108 **Act of 1996**, a small employer carrier shall not modify a [basic or standard] health benefit plan  
109 with respect to a small employer or any eligible employee or dependent through riders,  
110 endorsements or otherwise, to restrict or exclude coverage for certain diseases or medical  
111 conditions otherwise covered by the health benefit plan.

112 3. (1) A small employer carrier shall not be required to offer coverage or accept  
113 applications pursuant to subsection 1 of this section in the case of the following:

114 (a) To a small employer, where the small employer is not physically located in the  
115 carrier's established geographic service area;

116 (b) To an employee, when the employee does not work or reside within the carrier's  
117 established geographic service area; or

118 (c) Within an area where the small employer carrier reasonably anticipates, and  
119 demonstrates to the satisfaction of the director, that it will not have the capacity within its  
120 established geographic service area to deliver service adequately to the members of such groups  
121 because of its obligations to existing group policyholders and enrollees.

122 (2) A small employer carrier that cannot offer coverage pursuant to paragraph (c) of  
123 subdivision (1) of this subsection may not offer coverage in the applicable area to new cases of  
124 employer groups [with more than twenty-five eligible employees] or to any small employer  
125 groups until the later of one hundred eighty days following each such refusal or the date on  
126 which the carrier notifies the director that it has regained capacity to deliver services to small  
127 employer groups.

128           4. A small employer carrier shall not be required to provide coverage to small employers  
129 pursuant to subsection 1 of this section for any period of time for which the director determines  
130 that requiring the acceptance of small employers in accordance with the provisions of subsection  
131 1 of this section would place the small employer carrier in a financially impaired condition.

132           [5. Sections 379.930 to 379.938 and sections 379.942 to 379.950 shall become effective  
133 July 1, 1993, this section and section 379.952 shall become effective July 1, 1994.]

          379.943. 1. Within one hundred eighty days after the appointment of the initial board,  
2 the board shall submit to the director a plan of operation and thereafter any amendments thereto  
3 necessary or suitable, to assure the fair, reasonable and equitable administration of the program.  
4 The director may, after notice and hearing, approve the plan of operation if the director  
5 determines it to be suitable to assure the fair, reasonable and equitable administration of the  
6 program, and provides for the sharing of program gains or losses on an equitable and  
7 proportionate basis in accordance with the provisions of sections 379.942 and 379.943. The plan  
8 of operation shall become effective upon approval in writing by the director.

9           2. If the board fails to submit a suitable plan of operation within one hundred eighty days  
10 after its appointment, the director shall, after notice and hearing, promulgate and adopt a  
11 temporary plan of operation. The director shall amend or rescind any plan so adopted under this  
12 subsection at the time a plan of operation is submitted by the board and approved by the director.

13           3. The plan of operation shall:

14           (1) Establish procedures for handling and accounting of program assets and moneys and  
15 for an annual fiscal report to the director;

16           (2) Establish procedures for selecting an administering carrier and setting forth the  
17 powers and duties of the administering carrier;

18           (3) Establish procedures for reinsuring risks in accordance with the provisions of  
19 sections 379.942 and 379.943;

20           (4) Establish procedures for collecting assessments from reinsuring carriers to fund  
21 claims and administrative expenses incurred or estimated to be incurred by the program; and

22           (5) Provide for any additional matters necessary for the implementation and  
23 administration of the program.

24           4. The program shall have the general powers and authority granted under the laws of  
25 this state to insurance companies and health maintenance organizations licensed to transact  
26 business, except the power to issue health benefit plans directly to either groups or individuals.  
27 In addition thereto, the program shall have the specific authority to:

28           (1) Enter into contracts as necessary or proper to carry out the provisions and purposes  
29 of sections 379.930 to 379.952, including the authority, with the approval of the director, to enter

30 into contracts with similar programs in other states for the joint performance of common  
31 functions or with persons or other organizations for the performance of administrative functions;

32 (2) Sue or be sued, including taking any legal actions necessary or proper to recover any  
33 assessments and penalties for, on behalf of, or against the program or any reinsuring carriers;

34 (3) Take any legal action necessary to avoid the payment of improper claims against the  
35 program;

36 (4) Define the health benefit plans for which reinsurance will be provided, and to issue  
37 reinsurance policies, in accordance with the requirements of sections 379.930 to 379.952;

38 (5) Establish rules, conditions and procedures for reinsuring risks under the program;

39 (6) Establish actuarial functions as appropriate for the operation of the program;

40 (7) Assess carriers in accordance with the provisions of subsection 8 of this section, and  
41 to make advance interim assessments as may be reasonable and necessary for organizational and  
42 interim operating expenses. Any interim assessments shall be credited as offsets against any  
43 regular assessments due following the close of the calendar year;

44 (8) Appoint appropriate legal, actuarial and other committees as necessary to provide  
45 technical assistance in the operation of the program, policy and other contract design, and any  
46 other function within the authority of the program; and

47 (9) Borrow money to effect the purposes of the program. Any notes or other evidence  
48 of indebtedness of the program not in default shall be legal investments for carriers and may be  
49 carried as admitted assets.

50 5. A small employer carrier participating in the program may reinsure an entire small  
51 employer group with the program as provided for in this subsection:

52 (1) With respect to a basic health benefit plan or a standard health benefit plan, the  
53 program shall reinsure the level of coverage provided and, with respect to other plans, the  
54 program shall reinsure up to the level of coverage provided in a basic or standard health benefit  
55 plan.

56 (2) A small employer carrier may reinsure an entire small employer group within sixty  
57 days of the commencement of the group's coverage under a health benefit plan or within thirty  
58 days after an annual renewal of a small employer group.

59 (3) (a) The program shall not reimburse a small employer carrier with respect to the  
60 claims of an employee or dependent who is part of a reinsured small employer group until the  
61 carrier has incurred an initial level of claims for such employee or dependent of five thousand  
62 dollars in a calendar year for benefits covered by the program. In addition, the small employer  
63 carrier shall be responsible for ten percent of the remaining incurred claims during a calendar  
64 year and the program shall reinsure the remainder. A small employer carrier's liability under this

65 paragraph shall not exceed a maximum limit of twenty-five thousand dollars in any one calendar  
66 year with respect to any individual who is part of a reinsured small employer group.

67 (b) The board annually shall adjust the initial level of claims and the maximum limit to  
68 be retained by the carrier to reflect increases in costs and utilization within the standard market  
69 for health benefit plans within the state. The adjustment shall not be less than the annual change  
70 in the medical component of the "Consumer Price Index for All Urban Consumers" of the federal  
71 Department of Labor, Bureau of Labor Statistics, unless the board proposes and the director  
72 approves a lower adjustment factor.

73 (4) A small employer carrier may terminate reinsurance for a small employer on any plan  
74 anniversary.

75 6. (1) The board, as part of the plan of operation, shall establish a methodology for  
76 determining premium rates to be charged by the program for reinsuring small employers and  
77 individuals pursuant to sections 379.942 and 379.943. The methodology shall include a system  
78 for classification of small employers that reflects the types of case characteristics commonly used  
79 by small employer carriers in the state. The methodology shall also include a system for  
80 classification of small employer carriers that reflects the degree to which the small employer  
81 carrier uses the cost containment features adopted by the health benefit plan committee under  
82 section 379.944. The methodology shall provide for the development of base reinsurance  
83 premium rates, which shall be multiplied by the factors set forth in subdivision (2) of this act to  
84 determine the premium rates for the program. The base reinsurance premium rates, shall be  
85 established by the board, subject to the approval of the director, and shall be set at levels which  
86 reasonably approximate gross premiums charged to small employers by small employer carriers  
87 for health benefit plans with benefits similar to the standard health benefit plan.

88 (2) Only an entire small employer group may be reinsured, and the rate for such  
89 reinsurance shall be one and one-half times the base reinsurance insurance premium rate for the  
90 group established pursuant to this subsection.

91 (3) The board periodically shall review the methodology established under subdivisions  
92 (1) and (2) of this section, including the system of classification and any rating factors, to assure  
93 that it reasonably reflects the claims experience of the program. The board may propose changes  
94 to the methodology which shall be subject to the approval of the director.

95 7. If a health benefit plan for a small employer is reinsured with the program, the  
96 premium charged to the small employer for any rating period for the coverage issued shall meet  
97 the requirements relating to premium rates set forth in section 379.936.

98 8. (1) Prior to March first of each year, the board shall determine and report to the  
99 director the program net loss for the previous calendar year, including administrative expenses



100 and incurred losses for the year, taking into account investment income and other appropriate  
101 gains and losses.

102 (2) Any net loss for the year shall be recouped by assessments of reinsuring carriers.

103 (a) The board shall establish, as part of the plan of operation, a formula by which to  
104 make assessments against reinsuring carriers and small employer carriers. The assessment  
105 formula shall be based on:

106 a. The share of each reinsuring carrier which reinsures any small employer group with  
107 the program, of the program net loss described in this subsection shall be their proportionate  
108 share, determined by premiums earned in the preceding calendar year from health benefit plans  
109 which have been ceded to the program, times one-half of the total program net loss;

110 b. Each reinsuring carrier's share of the program net loss described in this subsection  
111 shall be its proportionate share, determined by premiums earned in the preceding calendar year  
112 from all health benefit plans delivered or issued for delivery to small employers in this state by  
113 all reinsuring carriers, times one-half of the total program net loss. An assessment levied or paid  
114 by a reinsuring carrier pursuant to subparagraph a of this paragraph shall not be credited or offset  
115 against any assessment levied pursuant to this subparagraph.

116 (b) The formula established pursuant to paragraph (a) of this subdivision shall not result  
117 in any reinsuring carrier having an assessment share that is less than fifty percent nor more than  
118 one hundred fifty percent of an amount which is based on the proportion of the small employer  
119 carrier's total premiums earned in the preceding calendar year from health benefit plans delivered  
120 or issued for delivery to small employers in this state by small employer carriers to total  
121 premiums earned in the preceding calendar year from health benefit plans delivered or issued for  
122 delivery to small employers in this state by all small employer carriers.

123 (c) The director by rule and after a hearing thereon, may change the assessment formula  
124 established pursuant to paragraph (a) of this subdivision from time to time as appropriate. The  
125 director may provide for the shares of the assessment base attributable to premiums from all  
126 health benefit plans and to premiums from health benefit plans ceded to the program to vary  
127 during a transition period.

128 (d) Subject to the approval of the director, the board shall make an adjustment to the  
129 assessment formula for reinsuring carriers that are approved health maintenance organizations  
130 which are federally qualified under 42 U.S.C. section 300, et seq., to the extent, if any, that  
131 restrictions are placed on them that are not imposed on other small employer carriers.

132 (e) Premiums and benefits payable by a reinsuring carrier that are less than an amount  
133 determined by the board to justify the cost of collection shall not be considered for purposes of  
134 determining assessments.

135 (3) (a) Prior to March first of each year, the board shall determine and file with the  
136 director an estimate of the assessments needed to fund the losses incurred by the program in the  
137 previous calendar year.

138 (b) If the board determines that the assessments needed to fund the losses incurred by  
139 the program in the previous calendar year will exceed the amount specified in paragraph (c) of  
140 this subdivision, the board shall evaluate the operation of the program and report its findings,  
141 including any recommendations for changes to the plan of operation, to the director within ninety  
142 days following the end of the calendar year in which the losses were incurred. The evaluation  
143 shall include: an estimate of future assessments, the administrative costs of the program, the  
144 appropriateness of the premiums charged and the level of insurer retention under the program  
145 and the costs of coverage for small employers. If the board fails to file a report with the director  
146 within ninety days following the end of the applicable calendar year, the director may evaluate  
147 the operations of the program and implement such amendments to the plan of operation the  
148 director deems necessary to reduce future losses and assessments.

149 (c) For any calendar year, the amount specified in this paragraph is five percent of total  
150 premiums earned in the previous year from health benefit plans delivered or issued for delivery  
151 to small employers in this state by reinsuring carriers.

152 (d) a. If assessments in each of two consecutive calendar years exceed the amount  
153 specified in paragraph (c) of subdivision (3) of this subsection, the program shall be eligible to  
154 receive additional financing as provided in subparagraph b of this paragraph.

155 b. The additional financing provided for in subparagraph a of this paragraph shall be  
156 obtained from additional assessments apportioned among all carriers which are not small  
157 employer carriers; the amount of the assessment for each carrier determined by the carrier's  
158 proportionate share of premiums earned in the preceding calendar year from all health benefit  
159 plans delivered, issued for delivery or continued in this state to individuals and groups, other than  
160 small employer groups subject to sections 379.930 to 379.952, by all carriers, times the total  
161 amount of additional financing to be obtained.

162 c. The additional assessment provided by subparagraph b of this paragraph shall not  
163 exceed an amount equal to one percent of the gross premium derived by that carrier from all  
164 health benefit plans delivered, issued for delivery or continued in this state to individuals and  
165 groups, other than small employer groups subject to sections 379.930 to 379.952.

166 d. Any loss sustained by the program which is not reimbursed by additional financing  
167 obtained pursuant to this paragraph shall be carried forward to the calendar year succeeding the  
168 year in which the loss is sustained, and shall be recouped by an increase in premiums charged  
169 by the board for reinsurance of small employer groups with the program.

170 e. Additional financing received by the program pursuant to this paragraph shall be  
171 distributed to reinsuring carriers in proportion to the assessments paid by such carriers over the  
172 previous two calendar years.

173 (4) If assessments exceed net losses of the program, the excess shall be held at interest  
174 and used by the board to offset future losses or to reduce program premiums. As used in this  
175 paragraph, "future losses" includes reserves for incurred but not reported claims.

176 (5) Each carrier's proportion of the assessment shall be determined annually by the board  
177 based on annual statements and other reports deemed necessary by the board and filed by the  
178 carriers with the board.

179 (6) The plan of operation shall provide for the imposition of an interest penalty for late  
180 payment of assessments.

181 (7) A carrier may seek from the director a deferment from all or part of an assessment  
182 imposed by the board. The director may defer all or part of the assessment of a carrier if the  
183 director determines that the payment of the assessment would place the carrier in a financially  
184 impaired condition. If all or part of an assessment against a carrier is deferred, the amount  
185 deferred shall be assessed against the other participating carriers in a manner consistent with the  
186 basis for assessment set forth in this subsection. The carrier receiving such deferment shall  
187 remain liable to the program for the amount deferred and the interest penalty provided in  
188 subdivision (6) of this subsection and shall be prohibited from reinsuring any groups in the  
189 program until such time as it pays such assessments.

190 9. Neither the participation in the program as reinsuring carriers, the establishment of  
191 rates, forms or procedures, nor any other joint or collective action required by sections 379.930  
192 to 379.952 shall be the basis of any legal action, criminal or civil liability, or penalty against the  
193 program or any of its reinsuring carriers either jointly or separately, other than any action by the  
194 director to enforce the provisions of sections 379.930 to 379.952.

195 10. The board, as part of the plan of operation, shall develop standards setting forth the  
196 manner and levels of compensation to be paid to producers for the sale of basic and standard  
197 health benefit plans. In establishing such standards, the board shall take into the consideration:  
198 the need to assure the broad availability of coverages; the objectives of the program; the time and  
199 effort expended in placing the coverage; the need to provide ongoing service to the small  
200 employer; the levels of compensation currently used in the industry; and the overall costs of  
201 coverage to small employers selecting these plans.

202 11. The program shall be exempt from any and all taxes.

203 12. The director shall make an initial assessment of one thousand dollars on each  
204 insurance company authorized to transact accident or health insurance, each health services  
205 corporation, and each health maintenance organization. Initial assessments shall be made during

206 January, 1993, and shall be paid before April 1, 1993. Initial assessments shall be deposited into  
207 the department of insurance dedicated fund. Within ten days after the effective date of the  
208 program's plan of operation, the total amount of the initial assessments shall be transferred at the  
209 request of the director to the Missouri small employer health reinsurance program. The program  
210 may use such initial assessment in the same manner and for the same purposes as other  
211 assessments pursuant to sections 379.942 and 379.943.

212 **13. The program shall not accept any new risks or renew any existing risk on or**  
213 **after October 1, 2004.**

214 **14. Any program assets or moneys that exceed six hundred thousand dollars on**  
215 **August 28, 2004, shall be delivered on October 1, 2004, to the Missouri health insurance**  
216 **pool as established in sections 376.960 to 376.989, and shall be accepted by the Missouri**  
217 **health insurance pool and used for the administration and operation of the Missouri health**  
218 **insurance pool.**

219 **15. Any program assets or moneys that remain on October 1, 2005, shall be**  
220 **delivered on October 31, 2005, to the Missouri health insurance pool as established in**  
221 **sections 376.960 to 376.989, and shall be accepted by the Missouri health insurance pool**  
222 **and used for the administration and operation of the Missouri health insurance pool.**

223 **16. The provisions of this section shall expire on December 31, 2005.**

379.952. 1. Each small employer carrier shall actively market health benefit plan  
2 coverage, including the basic and standard health benefit plans, to eligible small employers in  
3 the state. [If a small employer carrier denies coverage to a small employer on the basis of the  
4 health status or claims experience of the small employer or its employees or dependents, the  
5 small employer carrier shall offer the small employer the opportunity to purchase a basic health  
6 benefit plan or a standard health benefit plan.]

7 2. (1) Except as provided in subdivision (2) of this subsection, no small employer carrier  
8 or agent or broker shall, directly or indirectly, engage in the following activities:

9 (a) Encouraging or directing small employers to refrain from filing an application for  
10 coverage with the small employer carrier because of the health status, claims experience,  
11 industry, occupation or geographic location of the small employer;

12 (b) Encouraging or directing small employers to seek coverage from another carrier  
13 because of the health status, claims experience, industry, occupation or geographic location of  
14 the small employer.

15 (2) The provisions of subdivision (1) of this subsection shall not apply with respect to  
16 information provided by a small employer carrier or agent or broker to a small employer  
17 regarding the established geographic service area or a restricted network provision of a small  
18 employer carrier.

19           3. (1) Except as provided in subdivision (2) of this subsection, no small employer carrier  
20 shall, directly or indirectly, enter into any contract, agreement or arrangement with an agent or  
21 broker that provides for or results in the compensation paid to an agent or broker for the sale of  
22 a health benefit plan to be varied because of the health status, claims experience, industry,  
23 occupation or geographic location of the small employer.

24           (2) Subdivision (1) of this subsection shall not apply with respect to a compensation  
25 arrangement that provides compensation to an agent or broker on the basis of percentage of  
26 premium, provided that the percentage shall not vary because of the health status, claims  
27 experience, industry, occupation or geographic area of the small employer.

28           4. A small employer carrier shall provide reasonable compensation, as provided under  
29 the plan of operation of the program, to an agent or broker, if any, for the sale of a basic or  
30 standard health benefit plan.

31           5. No small employer carrier shall terminate, fail to renew or limit its contract or  
32 agreement of representation with an agent or broker for any reason related to the health status,  
33 claims experience, occupation, or geographic location of the small employers placed by the agent  
34 or broker with the small employer carrier.

35           6. No small employer carrier or producer shall induce or otherwise encourage a small  
36 employer to separate or otherwise exclude an employee from health coverage or benefits  
37 provided in connection with the employee's employment.

38           7. Denial by a small employer carrier of an application for coverage from a small  
39 employer shall be in writing and shall state the reason or reasons for the denial with specificity.

40           8. The director may promulgate rules setting forth additional standards to provide for the  
41 fair marketing and broad availability of health benefit plans to small employers in this state.

42           9. (1) A violation of this section by a small employer carrier or a producer shall be an  
43 unfair trade practice [under] **pursuant to** sections 375.930 to 375.949, RSMo.

44           (2) If a small employer carrier enters into a contract, agreement or other arrangement  
45 with a third-party administrator to provide administrative marketing or other services related to  
46 the offering of health benefit plans to small employers in this state, the third-party administrator  
47 shall be subject to this section as if it were a small employer carrier.

48           **10. For purposes of health benefit plans sold to employers of exactly two eligible**  
49 **employees and health benefit plans sold to employers with more than twenty-five eligible**  
50 **employees but not more than fifty eligible employees, sections 379.930 and 379.936 shall**  
51 **become effective July 1, 2005.**

382.210. 1. No insurer subject to registration under section 382.100 shall pay any  
2 extraordinary dividend or make any other extraordinary distribution to its shareholders until  
3 thirty days after the director has received notice of the declaration thereof and has not within such

4 period disapproved such payment, or the director has approved the payment within such  
5 thirty-day period. For purposes of this section, an extraordinary dividend or distribution includes  
6 any dividend or distribution of cash or other property, whose fair market value together with that  
7 of dividends or distributions made within the period of twelve consecutive months ending on the  
8 date on which the proposed dividends are scheduled for payment or distribution[:

9 (1) For life insurance companies and title insurance companies, such amount] exceeds  
10 the greater of ten percent of the insurer's surplus as regards policyholders as of the thirty-first day  
11 of December next preceding, or the net gain from operations of the insurer, if the insurer is a life  
12 insurer, or the net investment income, if the insurer is a title insurer, **or net income if the**  
13 **insurer is other than a life or title insurer**, for the twelve-month period ending the thirty-first  
14 day of December next preceding, but shall not include pro rata distributions of any class of the  
15 insurer's own securities[;

16 (2) For all other insurers, such amount exceeds the lesser of ten percent of the insurer's  
17 surplus as regards policyholders as of the thirty-first day of December next preceding, or the net  
18 investment income for the twelve-month period ending the thirty-first day of December next  
19 preceding, but shall not include pro rata distributions of any class of the insurer's own securities].

20 2. [A life or title insurer] **Insurers** subject to registration under section 382.100 may only  
21 pay a shareholder dividend from earned surplus. With the prior approval of the director, a  
22 dividend may be declared from other than earned surplus.

23 3. No [life or title] insurer subject to registration under section 382.100 shall pay any  
24 extraordinary dividend unless, after the transaction is completed, the company's surplus as  
25 regards policyholders is reasonable in relation to the company's outstanding liabilities and  
26 adequate to its financial needs. In making this determination, the director shall use the factors  
27 found in section 382.200 and may consider:

28 (1) The quality of the company's earnings and the extent to which the reported earnings  
29 include extraordinary items; or

30 (2) The recent past and projected future trend in the company's surplus as regards  
31 policyholders.

32 4. Notwithstanding any other provision of law, an insurer may declare an extraordinary  
33 dividend or distribution which is conditional upon the director's approval thereof, and the  
34 declaration shall confer no rights upon shareholders until the director has approved the payment  
35 of the dividend or distribution, or the director has not disapproved the payment within the  
36 thirty-day period referred to above.

384.043. 1. No [agent or broker] **insurance producer** shall procure any contract of  
2 surplus lines insurance with any nonadmitted insurer, unless he possesses a current surplus lines  
3 insurance license 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[]; and

11           (4) Filed with the director, and maintains during the term of the license, in force and  
12 unimpaired, a bond in favor of this state in the penal sum of one hundred thousand dollars or in  
13 a sum equal to the tax liability for the previous tax year, whichever is smaller, aggregate liability,  
14 with corporate sureties approved by the director. The bond shall be conditioned that the surplus  
15 lines licensee will conduct business in accordance with the provisions of sections 384.011 to  
16 384.071 and will promptly remit the taxes as provided by law. No bond shall be terminated  
17 unless at least thirty days' prior written notice is given to the licensee and director].

18           3. Each surplus lines license shall be renewed annually on the anniversary date of  
19 issuance and continue in effect until refused, revoked or suspended by the director in accordance  
20 with section 384.065; except that if the annual renewal fee for the license is not paid on or before  
21 the anniversary date, the license terminates. The annual renewal fee is fifty dollars.

384.062. 1. If the tax collectible by a surplus lines licensee under the provisions of  
2 sections 384.011 to 384.071 has been collected and is not paid within the time prescribed, the  
3 same shall be recoverable in a suit brought by the director against the surplus lines licensee [and  
4 the surety on the bond filed under section 384.043].

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

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

384.065. The director may suspend, revoke, or refuse to renew the license of a surplus  
2 lines licensee after notice and hearing as provided under the applicable provisions of this state's  
3 laws upon any one or more of the following grounds:

4           (1) Removal of the resident surplus lines licensee's office from this state;

5           (2) Removal of the resident surplus lines licensee's office accounts and records from this  
6 state during the period during which such accounts and records are required to be maintained  
7 under section 384.059;

- 8 (3) Closing of the surplus lines licensee's office for a period of more than thirty business  
9 days, unless permission is granted by the director;
- 10 (4) Failure to make and file required reports;
- 11 (5) Failure to transmit required tax on surplus lines premiums;
- 12 (6) [Failure to maintain required bond;
- 13 (7)] Violation of any provision of [this act] **sections 384.011 to 384.071**; or
- 14 [(8)] (7) For any cause for which an insurance license could be denied, revoked,  
15 suspended or renewal refused under section 375.141, RSMo.

2 [379.942. 1. There is hereby created a nonprofit entity to be  
3 known as the "Missouri Small Employer Health Reinsurance  
4 Program". All small employer carriers shall participate in the  
5 program as reinsuring carriers for a minimum of three years  
6 beginning July 1, 1993. After the expiration of such three years, a  
7 small employer carrier may apply to the director to opt out of the  
8 program. The director shall decide whether to grant such an  
9 application to opt out, and shall consider in making such  
10 determination only: the carrier's financial condition and the financial  
11 condition of its guaranteeing or reinsuring corporation, if any; its  
12 history of assuming and managing risk; its ability to assume and  
13 manage the risk of enrolling small employers without the protection  
14 of the program; and its commitment to market fairly to all small  
15 employers in its service area. If the director grants such application,  
16 the small employer carrier shall participate in the program neither as  
17 a ceding nor reinsuring carrier.

18 2. (1) The program shall operate subject to the supervision  
19 and control of the board. Subject to the provisions of subdivision (2)  
20 of this subsection, the board shall consist of nine members appointed  
21 by the director plus the director or his designated representative, who  
22 shall serve as an ex officio member of the board.

23 (2) (a) In selecting the members of the board, the director  
24 shall include representatives of small employers, small employer  
25 employees or their representatives and small employer carriers and  
26 such other individuals determined to be qualified by the director. At  
27 least five of the members of the board shall be representatives of  
28 reinsuring carriers and at least one of the members of the board shall  
29 be a representative of a health maintenance organization which is a  
30 small employer carrier. All members shall be selected from  
31 individuals nominated by small employer carriers in this state  
32 pursuant to procedures and guidelines developed by the director,  
33 except that the director shall select two small employers' employees,  
including at least one representative of a labor organization.



34 (b) In the event that the program becomes eligible for  
35 additional financing pursuant to subdivision (3) of subsection 8 of  
36 section 379.943, the board shall be expanded to include two  
37 additional members who shall be appointed by the director. In  
38 selecting the additional members of the board, the director shall  
39 choose individuals who represent reinsuring carriers. The expansion  
40 of the board under this paragraph shall continue for the period that the  
41 program continues to be eligible for additional financing under  
42 subdivision (3) of subsection 8 of section 379.943.

43 (3) The initial board members shall be appointed as follows:  
44 one-third of the members to serve a term of two years; one-third of  
45 the members to serve a term of four years; and one-third of the  
46 members to serve a term of six years. Subsequent board members  
47 shall serve for a term of three years. A board member's term shall  
48 continue until his successor is appointed.

49 (4) A vacancy in the board shall be filled by the director. A  
50 board member may be removed by the director for cause.

51 3. Within sixty days of July 1, 1993, each small employer  
52 carrier shall make a filing with the director containing the carrier's net  
53 health insurance premium derived from health benefit plans delivered  
54 or issued for delivery to small employers in this state in the previous  
55 calendar year.]

Section B. The repeal of section 379.942 of section A of this act shall become effective  
2 December 31, 2005.