

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1126
101ST GENERAL ASSEMBLY

2247H.02C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 382.010, 382.110, and 382.230, RSMo, and to enact in lieu thereof five new sections relating to insurance holding companies.

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

Section A. Sections 382.010, 382.110, and 382.230, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 382.010, 382.110, 382.176, 382.177, and 382.230, to read as follows:

382.010. As used in sections 382.010 to 382.300, the following words and terms have the meanings indicated unless the context clearly requires otherwise:

(1) An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified;

(2) "Control", "controlling", "controlled by", or "under common control with", the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by section 382.170 that control does not exist in fact. The director may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect;

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

18 (3) "Director", the director of the department of commerce and insurance, his or her
19 deputies, or the department of commerce and insurance, as appropriate;

20 (4) "Enterprise risk", any activity, circumstance, event, or series of events involving one
21 or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse
22 effect upon the financial condition or liquidity of the insurer or its insurance holding company
23 system as a whole including, but not limited to, anything that would cause the insurer's
24 risk-based capital to fall into company action level as set forth in section 375.1255 or would
25 cause the insurer to be in hazardous financial condition as set forth in section 375.539;

26 (5) "Groupwide supervisor", the regulatory official authorized to engage in conducting
27 and coordinating groupwide supervisory activities who is determined or acknowledged by the
28 director, under section 382.227, to have sufficient significant contacts with the internationally
29 active insurance group;

30 (6) "Insurance holding company system", two or more affiliated persons, one or more
31 of which is an insurer;

32 (7) "Insurer", an insurance company as defined in section 375.012, including a reciprocal
33 or interinsurance exchange, and which is qualified and licensed by the department of commerce
34 and insurance of Missouri to transact the business of insurance in this state; but it shall not
35 include any company organized and doing business under chapter 377, 378, or 380, agencies,
36 authorities, or instrumentalities of the United States, its possessions and territories, the
37 Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of
38 a state;

39 (8) "Internationally active insurance group", an insurance holding company system that
40 includes an insurer registered under sections 382.100 to 382.180, and meets the following
41 criteria:

42 (a) Premiums written in at least three countries;

43 (b) The percentage of gross premiums written outside the United States is at least ten
44 percent of the insurance holding company system's total gross written premiums; and

45 (c) Based on a three-year rolling average, the total assets of the insurance holding
46 company system are at least fifty billion dollars, or the total gross written premiums of the
47 insurance holding company system are at least ten billion dollars;

48 (9) **"NAIC", the National Association of Insurance Commissioners;**

49 (10) **"National Association of Insurance Commissioners (NAIC) group capital**
50 **calculation instructions", the group capital calculation instructions as adopted by the**
51 **NAIC and as amended by the NAIC from time to time in accordance with the procedures**
52 **adopted by the NAIC;**

53 **(11) "NAIC liquidity stress test framework", a separate NAIC publication that**
54 **includes a history of the NAIC's development of regulatory liquidity stress testing, the**
55 **scope criteria applicable for a specific data year, and the liquidity stress test instructions**
56 **and reporting such scope criteria, instructions and reporting template being as adopted by**
57 **the NAIC and as amended by the NAIC from time to time in accordance with procedures**
58 **adopted by the NAIC;**

59 **(12) "Person", an individual, corporation, limited liability company, partnership,**
60 **association, joint stock company, trust, unincorporated organization, or any similar entity, or any**
61 **combination of the foregoing acting in concert, but shall not include any joint venture partnership**
62 **exclusively engaged in owning, managing, leasing, or developing real or tangible personal**
63 **property;**

64 **(13) "Scope criteria", as detailed in the NAIC liquidity stress test framework, the**
65 **designated exposure bases along with minimum magnitudes of such exposure bases for the**
66 **specified data year used to establish a preliminary list of insurers considered scoped into**
67 **the NAIC liquidity stress test framework for that data year;**

68 ~~[(10)]~~ **(14)** A "securityholder" of a specified person is one who owns any security of that
69 person, including common stock, preferred stock, debt obligations, and any other security
70 convertible into or evidencing the right to acquire any of the foregoing;

71 ~~[(11)]~~ **(15)** A "subsidiary" of a specified person is an affiliate controlled by that person
72 directly, or indirectly through one or more intermediaries;

73 ~~[(12)]~~ **(16)** The term "voting security" includes any security convertible into or
74 evidencing a right to acquire a voting security.

382.110. 1. Every insurer subject to registration shall file a registration statement on a
2 form provided by the director containing current information about:

3 (1) The capital structure, general financial condition, ownership and management of the
4 insurer and any person controlling the insurer;

5 (2) The identity of every member of the insurance holding company system;

6 (3) The following agreements in force, relationships subsisting, and transactions
7 currently outstanding between the insurer and its affiliates:

8 (a) Loans, other investments, or purchases, sales or exchanges of securities of the
9 affiliates by the insurer or of the insurer by its affiliates;

10 (b) Purchases, sales, or exchanges of assets;

11 (c) Transactions not in the ordinary course of business;

12 (d) Guarantees or undertakings for the benefit of an affiliate which result in an actual
13 contingent exposure of the insurer's assets to liability, other than insurance contracts entered into
14 in the ordinary course of the insurer's business;

- 15 (e) All management and service contracts and all cost-sharing arrangements; ~~and~~
16 (f) Reinsurance agreements;
17 (g) Dividends and other distributions to shareholders; and
18 (h) Consolidated tax allocation agreements;
- 19 (4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling
20 affiliate, for a loan made to any member of the insurance holding company system;
- 21 (5) Financial statements of or within an insurance holding company system, including
22 all affiliates, if requested by the director. Financial statements may include, but are not limited
23 to, annual audited financial statements filed with the United States Securities and Exchange
24 Commission (SEC) under the Securities Act of 1933, as amended, or the Securities Exchange
25 Act of 1934, as amended. An insurer required to file financial statements under this subdivision
26 may satisfy such requirement by providing the director with the most recently filed parent
27 corporation financial statements that have been filed with the SEC;
- 28 (6) Statements that the insurer's board of directors oversees corporate governance and
29 internal controls and that the insurer's officers or senior management have approved,
30 implemented, and continue to maintain and monitor corporate governance and internal control
31 procedures;
- 32 (7) Other matters concerning transactions between registered insurers and any affiliates
33 as may be included from time to time in any registration forms adopted or approved by the
34 director; and
- 35 (8) Any other information required by the director by rule.
- 36 2. All registration statements shall contain a summary outlining all items in the current
37 registration statement representing changes from the prior registration statement.
- 38 3. No information need be disclosed on the registration statement filed pursuant to
39 subsection 1 of this section if such information is not material for the purposes of that subsection.
40 Unless the director by rule, regulation or order provides otherwise, sales, purchases, exchanges,
41 loans or extensions of credit, or investments, involving one-half of one percent or less of an
42 insurer's admitted assets as of the thirty-first day of December next preceding shall not be
43 deemed material for purposes of subsection 1 of this section. **The definition of "materiality"**
44 **used in this subsection shall not apply to the group capital calculation or the liquidity stress**
45 **test framework.**
- 46 4. Any person within an insurance holding company system subject to registration shall
47 be required to provide complete and accurate information to an insurer, where such information
48 is reasonably necessary to enable the insurer to comply with the provisions of sections 382.010
49 to 382.300.

382.176. 1. Except as provided in subdivisions (1) to (7) of this section, the ultimate
2 controlling person of every insurer subject to registration shall file an annual group capital
3 calculation as directed by the lead state director. The report shall be completed in
4 accordance with the NAIC group capital calculation instructions, which may permit the
5 lead state director to allow a controlling person who is not the ultimate controlling person
6 to file the group capital calculation. The report shall be filed with the lead state director
7 of the insurance holding company system as determined by the director in accordance with
8 the procedures within the Financial Analysis Handbook adopted by the NAIC. The
9 following insurance holding company systems are exempt from filing the group capital
10 calculation:

11 (1) An insurance holding company system that has only one insurer within its
12 holding company structure, that only writes business and is only licensed in its domestic
13 state, and assumes no business from any other insurer;

14 (2) An insurance holding company system that is required to perform a group
15 capital calculation specified by the United States Federal Reserve Board. The lead state
16 director shall request the calculation from the Federal Reserve Board under the terms of
17 information sharing agreements in effect. If the Federal Reserve Board cannot share the
18 calculation with the lead state director, the insurance holding company system is not
19 exempt from the group capital calculation filing;

20 (3) An insurance holding company system whose non-U.S. group-wide supervisor
21 is located within a reciprocal jurisdiction as described in section 375.246 that recognizes
22 the U.S. state regulatory approach to group supervision and group capital;

23 (4) An insurance holding company system:

24 (a) That provides information to the lead state that meets the requirements for
25 accreditation under the NAIC financial standards and accreditation program, either
26 directly or indirectly through the group-wide supervisor, who has determined such
27 information is satisfactory to allow the lead state to comply with the NAIC group
28 supervision approach, as detailed in the Financial Analysis Handbook adopted by the
29 NAIC; and

30 (b) Whose non-U.S. group-wide supervisor who is not in a reciprocal jurisdiction
31 recognizes and accepts, as specified by the director in regulation, the group capital
32 calculation as the worldwide group capital assessment for U.S. insurance groups that
33 operate in that jurisdiction.

34 2. Notwithstanding the provisions of subdivision (3) and (4) of subsection 1 of this
35 section, a lead state director shall require the group capital calculation for U.S. operations
36 of any non-U.S. based insurance holding company system where, after any necessary

37 consultation with other supervisors or officials, it is deemed appropriate by the lead state
38 director for prudential oversight and solvency monitoring purposes or for ensuring the
39 competitiveness of the insurance marketplace.

40 **3. Notwithstanding the exemptions from filing the group capital calculation stated**
41 **in subdivisions (1) to (4) of subsection 1 of this section, the lead state director has the**
42 **discretion to exempt the ultimate controlling person from filing the annual group capital**
43 **calculation or to accept a limited group capital filing or report in accordance with criteria**
44 **as specified in regulations promulgated by the director.**

45 **4. If the lead state director determines that an insurance holding company system**
46 **no longer meets one or more of the requirements for an exemption from filing the group**
47 **capital calculation under this section, the insurance holding company system shall file the**
48 **group capital calculation at the next annual filing date unless given an extension by the**
49 **lead state director based on reasonable grounds shown.**

382.177. The ultimate controlling person of every insurer subject to registration
2 **and also scoped into the NAIC liquidity stress test framework shall file the results of a**
3 **specific year's liquidity stress test. The filing shall be made to the lead state insurance**
4 **director of the insurance holding company system as determined by the procedures within**
5 **the Financial Analysis Handbook adopted by the NAIC:**

6 **(1) The NAIC liquidity stress test framework includes scope criteria applicable to**
7 **a specific data year. These scope criteria are reviewed at least annually by the NAIC's**
8 **financial stability task force or its successor. Any change to the NAIC liquidity stress test**
9 **framework or to the data year for which the scope criteria are to be measured shall be**
10 **effective on January first of the year following the calendar year in which such changes are**
11 **adopted. Insurers meeting at least one threshold of the scope criteria are considered**
12 **scoped into the NAIC liquidity stress test framework for the specified data year unless the**
13 **lead state insurance director, in consultation with the NAIC financial stability task force**
14 **or its successor, determines the insurer shall not be scoped into the framework for that**
15 **data year. Similarly, insurers that do not trigger at least one threshold of the scope criteria**
16 **are considered scoped out of the NAIC liquidity stress test framework for the specified**
17 **data year, unless the lead state insurance director, in consultation with the NAIC financial**
18 **stability task force or its successor, determines the insurer shall be scoped into the**
19 **framework for that data year. Regulators wish to avoid having insurers scoped into and**
20 **out of the NAIC liquidity stress test framework on a frequent basis, the lead state**
21 **insurance director, in consultation with the financial stability task force or its successor,**
22 **shall assess this concern as part of the determination for an insurer.**

23 **(2) The performance of, and filing of the results from, a specific year's liquidity**
24 **stress test shall comply with the NAIC liquidity stress test framework's instructions and**
25 **reporting templates for that year and any lead state insurance director determinations, in**
26 **conjunction with the financial stability task force or its successor, provided within the**
27 **framework.**

382.230. 1. All information, documents and copies thereof in the possession or control
2 of the director that are obtained by or disclosed to the director or any other person in the course
3 of an examination or investigation made under section 382.220 and all information reported or
4 provided to the director under subdivisions (13) and (14) of subsection 1 of section 382.050,
5 sections 382.100 to 382.210, and section 382.227 **are considered proprietary and to contain**
6 **trade secrets and** shall be given confidential treatment and privileges; shall not be subject to the
7 provisions of chapter 610; shall not be subject to subpoena; shall not be made public by the
8 director, the National Association of Insurance Commissioners, or any other person, except to
9 the chief insurance regulatory official of other states; and shall not be subject to discovery or
10 admissible as evidence in any private civil action. However, the director is authorized to use the
11 documents, materials, or other information in furtherance of any regulatory or legal action
12 brought as a part of the director's official duties. The director shall not otherwise make the
13 documents, materials, or other information public without the prior written consent of the insurer
14 to which it pertains unless the director, after giving the insurer and its affiliates who would be
15 affected thereby, notice and opportunity to be heard, determines that the interests of
16 policyholders, shareholders or the public will be served by the publication thereof, in which
17 event the director may publish all or any part thereof in such manner as he or she may deem
18 appropriate.

19 **(1) For purposes of the information reported and provided to the department of**
20 **commerce and insurance under section 382.176, the director shall maintain the**
21 **confidentiality of the group capital calculation and group capital ratio produced within the**
22 **calculation and any group capital information received from an insurance holding**
23 **company supervised by the Federal Reserve Board or any U.S. group-wide supervisor.**

24 **(2) For purposes of the information reported and provided to the department of**
25 **commerce and insurance under section 382.177, the director shall maintain the**
26 **confidentiality of the liquidity stress test results and supporting disclosures and any**
27 **liquidity stress test information received from an insurance holding company supervised**
28 **by the Federal Reserve Board and non-U.S. group-wide supervisors.**

29 2. Neither the director nor any person who receives documents, materials, or other
30 information while acting under the authority of the director or with whom such documents,
31 materials, or other information is shared under sections 382.010 to 382.300 shall be permitted

32 or required to testify in any private civil action concerning any confidential documents, materials,
33 or other information subject to subsection 1 of this section.

34 3. In order to assist in the performance of the director's duties, the director:

35 (1) May share documents, materials, or other information including the confidential and
36 privileged documents, materials, or other information subject to subsection 1 of this section,
37 **including proprietary and trade secret documents and materials**, with other state, federal,
38 and international financial regulatory agencies, with the National Association of Insurance
39 Commissioners [~~and its affiliates and subsidiaries~~], **with any third-party consultants**
40 **designated by the director**, and with state, federal, and international law enforcement
41 authorities including members of any supervisory college described in section 382.225; provided
42 that the recipient agrees in writing to maintain the confidentiality and privileged status of such
43 documents, materials, or other information, and has verified in writing the legal authority to
44 maintain confidentiality;

45 (2) Notwithstanding the provisions of subsection 1 of this section and subdivision (1)
46 of this subsection, may share confidential and privileged documents, materials, or other
47 information reported under section 382.175 only with the directors of states having statutes or
48 regulations substantially similar to subsection 1 of this section and who have agreed in writing
49 not to disclose such information;

50 (3) May receive documents, materials, or other information including otherwise
51 confidential and privileged documents, materials, or information, **including proprietary and**
52 **trade secret information**, from the National Association of Insurance Commissioners and its
53 affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or
54 domestic jurisdictions, and shall maintain as confidential or privileged any documents, materials,
55 or other information received with notice or the understanding that it is confidential or privileged
56 under the laws of the jurisdiction that is the source of the document, material, or other
57 information; and

58 (4) Shall enter into a written agreement with the National Association of Insurance
59 Commissioners **and any third-party consultant designated by the director** governing sharing
60 and use of information provided under sections 382.010 to 382.300 consistent with this
61 subsection that shall:

62 (a) Specify procedures and protocols regarding the confidentiality and security of
63 information shared with the National Association of Insurance Commissioners [~~and its affiliates~~
64 ~~and subsidiaries~~] **or a third-party consultant designated by the director** under sections
65 382.010 to 382.300 including procedures and protocols for sharing by the National Association
66 of Insurance Commissioners with other state, federal, and international regulators. **The**
67 **agreement shall provide that the recipient agrees, in writing, to maintain the confidentiality**

68 **and privileged status of the documents, materials, or other information and has verified,**
69 **also in writing, the legal authority to maintain such confidentiality;**

70 (b) Specify that ownership of information shared with the National Association of
71 Insurance Commissioners ~~[and its affiliates and subsidiaries]~~ **or a third-party consultant as**
72 **designated by the director** under sections 382.010 to 382.300 remains with the director and that
73 the National Association of Insurance Commissioners' **or third-party consultant's, as**
74 **designated by the director,** use of such information is subject to the direction of the director;

75 (c) **Excluding documents, material, or information reported pursuant to section**
76 **382.177, prohibit the NAIC or a third-party consultant designated by the director from**
77 **storing the information shared under sections 382.010 to 382.300 in a permanent database**
78 **after the underlying analysis is completed;**

79 (d) Require prompt notice to be given to an insurer whose confidential information in
80 the possession of the National Association of Insurance Commissioners **or a third-party**
81 **consultant designated by the director,** under sections 382.010 to 382.300 is subject to a request
82 or subpoena to the National Association of Insurance Commissioners **or a third-party**
83 **consultant designated by the director,** for disclosure or production; ~~[and]~~

84 ~~[(d)]~~ (e) Require the National Association of Insurance Commissioners ~~[and its affiliates~~
85 ~~and subsidiaries]~~ **or third-party consultant as designated by the director** to consent to
86 intervention by an insurer in any judicial or administrative action in which the National
87 Association of Insurance Commissioners ~~[and its affiliates and subsidiaries]~~ **or third-party**
88 **consultant as designated by the director** may be required to disclose confidential information
89 about the insurer shared with the National Association of Insurance Commissioners **or a third-**
90 **party consultant designated by the director,** and its affiliates and subsidiaries under sections
91 382.010 to 382.300;

92 (f) **For documents, material, or information reporting under section 382.177, in the**
93 **case of an agreement involving a third-party consultant designated by the director, provide**
94 **for notification of the identity of the consultant to the applicable insurers.**

95 4. The sharing of information by the director under sections 382.010 to 382.300 shall not
96 constitute a delegation of regulatory or rulemaking authority, and the director is solely
97 responsible for the administration, execution, and enforcement of the provisions of sections
98 382.010 to 382.300.

99 5. No waiver of any applicable privilege or claim of confidentiality in the documents,
100 materials, or other information shall occur as a result of disclosure of such documents, materials,
101 or other information to the director under this section or as a result of sharing as authorized in
102 sections 382.010 to 382.300.

103 6. Documents, materials, or other information in the possession or control of the
104 National Association of Insurance Commissioners **or a third-party consultant designated by**
105 **the director** under sections 382.010 to 382.300 shall be confidential by law and privileged, shall
106 not be subject to disclosure under chapter 610, shall not be subject to subpoena, and shall not be
107 subject to discovery or admissible in evidence in any private civil action.

108 7. **The group capital calculation and resulting group capital ratio required under**
109 **section 382.176 and the liquidity stress test along with its results and supporting disclosures**
110 **required under section 382.177 are regulatory tools for assessing group risks and capital**
111 **adequacy and group liquidity risks, respectively, and are not intended as a means to rank**
112 **insurers or insurance holding company systems generally. Therefore, except as otherwise**
113 **may be required under sections 382.010 to 382.300, the making, publishing, disseminating,**
114 **circulating, or placing before the public, or causing directly or indirectly to be made,**
115 **published, disseminated, circulated, or placed before the public in a newspaper, magazine,**
116 **or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over**
117 **any radio or television station or any electronic means of communication available to the**
118 **public, or in any other way as an advertisement, announcement, or statement containing**
119 **a representation or statement with regard to the group capital calculation, group capital**
120 **ratio, the liquidity stress test results, or supporting disclosures for the liquidity stress test**
121 **of any insurer or any insurer group, or of any component derived in the calculation by any**
122 **insurer, broker, or other person engaged in any manner in the insurance business would**
123 **be misleading and is therefore prohibited; provided, however, that if any materially false**
124 **statement with respect to the group capital calculation, resulting group capital ratio, an**
125 **inappropriate comparison of any amount to an insurer's or insurance group's group**
126 **capital calculation or resulting group capital ratio, liquidity stress test result, supporting**
127 **disclosures for the liquidity stress test, or an inappropriate comparison of any amount to**
128 **an insurer's or insurance group's liquidity stress test result or supporting disclosures is**
129 **published in any written publication and the insurer is able to demonstrate to the director**
130 **with substantial proof the falsity of such statement or the inappropriateness, as the case**
131 **may be, then the insurer may publish announcements in a written publication if the sole**
132 **purpose of the announcement is to rebut the materially false statement.**

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