

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 238
94TH GENERAL ASSEMBLY

Reported from the Committee on Insurance Policy March 5, 2007 with recommendation that House Committee Substitute for House Bill No. 238 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

0057L.05C

AN ACT

To amend chapter 379, RSMo, by adding thereto fifty new sections relating to the regulation of captive insurance companies.

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

Section A. Chapter 379, RSMo, is amended by adding thereto fifty new sections, to be known as sections 379.1300, 379.1302, 379.1304, 379.1306, 379.1308, 379.1310, 379.1312, 379.1314, 379.1316, 379.1318, 379.1320, 379.1322, 379.1324, 379.1326, 379.1328, 379.1330, 379.1332, 379.1336, 379.1338, 379.1340, 379.1342, 379.1344, 379.1346, 379.1348, 379.1350, 379.1351, 379.1353, 379.1356, 379.1359, 379.1361, 379.1364, 379.1367, 379.1370, 379.1373, 379.1376, 379.1379, 379.1382, 379.1385, 379.1388, 379.1391, 379.1394, 379.1397, 379.1400, 379.1403, 379.1406, 379.1409, 379.1412, 379.1415, 379.1418, and 379.1421, to read as follows:

379.1300. As used in sections 379.1300 to 379.1350, the following terms shall mean:

(1) "Affiliated company", any company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management;

(2) "Alien captive insurance company", any insurance company formed to write insurance business for its parents and affiliates and licensed under the laws of an alien

jurisdiction that imposes statutory or regulatory standards in a form acceptable to the director on companies transacting the business of insurance in such jurisdiction;

(3) "Annuity", a contract issued for a valuable consideration under which the obligations are assumed with respect to periodic payments for a specified term or terms or where the making or continuance of all or of some of such payments, or the amount of any such payments, is dependent upon the continuance of human life;

(4) "Association", any legal association of individuals, corporations, limited liability companies, partnerships, associations, or other entities that has been in continuous existence for at least one year, the member organizations of which or which does itself, whether or not in conjunction with some or all of the member organizations:

(a) Own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer; or

(b) Have complete voting control over an association captive insurance company incorporated as a mutual insurer;

(5) "Association captive insurance company", any company that insures risks of the member organizations of the association and their affiliated companies;

(6) "Branch business", any insurance business transacted by a branch captive insurance company in this state;

(7) "Branch captive insurance company", any alien captive insurance company licensed by the director to transact the business of insurance in this state through a business unit with a principal place of business in this state;

(8) "Branch operations", any business operations of a branch captive insurance company in this state;

(9) "Captive insurance company", any pure captive insurance company, association captive insurance company, or industrial insured captive insurance company formed or licensed under sections 379.1300 to 379.1350. For purposes of sections 379.1300 to 379.1350, a branch captive insurance company shall be a pure captive insurance company with respect to operations in this state, unless otherwise permitted by the director;

(10) "Controlled unaffiliated business", any company:

(a) That is not in the corporate system of a parent and affiliated companies;

(b) That has an existing contractual relationship with a parent or affiliated company; and

(c) Whose risks are managed by a pure captive insurance company in accordance with section 379.1338;

(11) "Director", the director of the department of insurance;

(12) "Excess workers' compensation insurance", in the case of an employer that has

insured or self-insured its workers' compensation risks in accordance with applicable state or federal law, insurance in excess of a specified per-incident or aggregate limit established by the director;

(13) "Industrial insured", an insured:

(a) Who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer;

(b) Whose aggregate annual premiums for insurance on all risks total at least twenty-five thousand dollars; and

(c) Who has at least twenty-five full-time employees;

(14) "Industrial insured captive insurance company", any company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies;

(15) "Industrial insured group", any group of industrial insureds that collectively:

(a) Own, control, or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer; or

(b) Have complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer;

(16) "Member organization", any individual, corporation, limited liability company, partnership, association, or other entity that belongs to an association;

(17) "Mutual corporation", a corporation organized without stockholders and includes a nonprofit corporation with members;

(18) "Parent", a corporation, limited liability company, partnership, other entity, or individual, that directly or indirectly owns, controls, or holds with power to vote more than fifty percent of the outstanding voting:

(a) Securities of a pure captive insurance company organized as a stock corporation;
or

(b) Membership interests of a pure captive insurance company organized as a nonprofit corporation;

(19) "Pure captive insurance company", any company that insures risks of its parent and affiliated companies or controlled unaffiliated business.

379.1302. 1. Any captive insurance company, when permitted by its articles of association, charter, or other organizational document, may apply to the director for a license to do any and all insurance and annuity contracts comprised in section 376.010, RSMo, and subsection 1 of section 379.010, other than workers' compensation and employers' liability; provided, however, that:

(1) No pure captive insurance company shall insure any risks other than those of its

parent and affiliated companies or controlled unaffiliated business;

(2) No association captive insurance company shall insure any risks other than those of the member organizations of its association and their affiliated companies;

(3) No industrial insured captive insurance company shall insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies;

(4) No captive insurance company shall provide personal motor vehicle or homeowner's insurance coverage or any component thereof;

(5) No captive insurance company shall accept or cede reinsurance except as provided in section 379.1320;

(6) Any captive insurance company may provide excess workers' compensation insurance to its parent and affiliated companies, unless prohibited by the federal law or laws of the state having jurisdiction over the transaction. Any captive insurance company, unless prohibited by federal law, may reinsure workers' compensation of a qualified self-insured plan of its parent and affiliated companies; provided this act shall not divest the division of workers' compensation of any jurisdiction authorized by law over workers' compensation self-insured plans;

(7) Any captive insurance company which insures life and accident and health risks described in section 376.010, RSMo, and subdivision (4) of subsection 1 of section 379.010, shall comply with all applicable state and federal laws; and

(8) No captive insurance company shall transact business as a risk retention group under sections 375.1080 to 375.1105, RSMo.

2. No captive insurance company shall do any insurance business in this state unless:

(1) It first obtains from the director a license authorizing it to do insurance business in this state;

(2) Its board of directors or committee of managers holds at least one meeting each year in this state;

(3) It maintains its principal place of business in this state;

(4) It appoints a registered agent to accept service of process and to otherwise act on its behalf in this state; provided that, whenever such registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the secretary of state shall be an agent of such captive insurance company upon whom any process, notice, or demand may be served; and

(5) It holds at least thirty-five percent of its assets either directly in this state or through a financial institution located in this state and approved by the director.

3. (1) Before receiving a license, a captive insurance company shall:

(a) File with the director a certified copy of its organizational documents, a statement under oath of its president and secretary showing its financial condition, and any other statements or documents required by the director; and

(b) Submit to the director for approval a description of the coverages, deductibles, coverage limits, and rates, together with such additional information as the director may reasonably require. In the event of any subsequent material change in any item in such description, the captive insurance company shall submit to the director for approval an appropriate revision and shall not offer any additional kinds of insurance until a revision of such description is approved by the director. The captive insurance company shall inform the director of any material change in rates within thirty days of the adoption of such change.

(2) Each applicant captive insurance company shall also file with the director evidence of the following:

(a) The amount and liquidity of its assets relative to the risks to be assumed;

(b) The adequacy of the expertise, experience, and character of the person or persons who will manage it;

(c) The overall soundness of its plan of operation;

(d) The adequacy of the loss prevention programs of its insureds; and

(e) Such other factors deemed relevant by the director in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

(3) Information submitted under this subsection shall be and remain confidential, and shall not be made public by the director or an employee or agent of the director without the written consent of the company; except that:

(a) Such information may be discoverable by a party in a civil action or contested case to which the captive insurance company that submitted such information is a party, upon a showing by the party seeking to discover such information that:

a. The information sought is relevant to and necessary for the furtherance of such action or case;

b. The information sought is unavailable from other nonconfidential sources; and

c. A subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the director; and

(b) The director may, in the director's discretion, disclose such information to a public officer having jurisdiction over the regulation of insurance in another state, provided that:

a. Such public official shall agree in writing to maintain the confidentiality of such information; and

b. The laws of the state in which such public official serves require such information to be and to remain confidential; and

(c) The director may disclose information to the director of the division of workers' compensation regarding any captive insurance company issuing excess workers' compensation insurance provided that the director of the division of workers' compensation agrees in writing to maintain the confidentiality of such information provided by the director.

(4) Each captive insurance company shall pay to the director a nonrefundable fee of seven thousand five hundred dollars for examining, investigating, and processing its application for license, and the director is authorized to retain legal, financial, and examination services from outside the department, the reasonable cost of which may be charged against the applicant. The provisions of sections 374.160 to 374.162 and sections 374.202 to 374.207, RSMo, shall apply to examinations, investigations, and processing conducted under the authority of this section. In addition, each captive insurance company shall pay a license fee for renewal for each year thereafter of seven thousand five hundred dollars. Each captive insurance company may deduct the license and renewal fee paid from the premium taxes payable under section 379.1326.

(5) If the director is satisfied that the documents and statements that such captive insurance company has filed comply with the provisions of sections 379.1300 to 379.1350, the director may grant a license authorizing it to do insurance business in this state until April first, which license may be renewed.

379.1304. No captive insurance company shall adopt a name that is the same, deceptively similar, or likely to be confused with or mistaken for any other existing business name registered in the state of Missouri.

379.1306. 1. No captive insurance company shall be issued a license unless it shall possess and thereafter maintain unimpaired paid-in capital and surplus of:

(1) In the case of a pure captive insurance company, not less than two hundred fifty thousand dollars;

(2) In the case of an association captive insurance company, not less than seven hundred fifty thousand dollars; and

(3) In the case of an industrial insured captive insurance company, not less than five hundred thousand dollars.

2. The director may prescribe additional capital and surplus based upon the type, volume, and nature of insurance business transacted.

3. Capital and surplus may be in the form of cash or an irrevocable letter of credit issued by a bank chartered by the state of Missouri or a member bank of the Federal Reserve System, and approved by the director.

379.1308. No captive insurance company shall pay a dividend out of, or other distribution with respect to, capital or surplus without the prior approval of the director. Approval of an ongoing plan for the payment of dividends or other distributions shall be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by or determined in accordance with formulas approved by the director. Notwithstanding the provisions of section 355.661, RSMo, a captive insurance company organized under chapter 355, RSMo, may make such distributions as are in conformity with its purposes and approved by the director.

379.1310. 1. A pure captive insurance company may be incorporated as a stock insurer with its capital divided into shares and held by the stockholders, as a nonprofit corporation with one or more members, or as a manager-managed limited liability company.

2. An association captive insurance company or an industrial insured captive insurance company may be:

(1) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders;

(2) Incorporated as a mutual insurer without capital stock, the governing body of which is elected by its insureds; or

(3) Organized as a manager-managed limited liability company.

3. A captive insurance company incorporated or organized in this state shall have not less than three incorporators or three organizers of whom not less than one shall be a resident of this state.

4. In the case of a captive insurance company:

(1) Formed as a corporation, before the articles of incorporation are transmitted to the secretary of state, the incorporators shall petition the director to issue a certificate setting forth the director's finding that the establishment and maintenance of the proposed corporation will promote the general good of the state. In arriving at such a finding the director shall consider:

(a) The character, reputation, financial standing and purposes of the incorporators;

(b) The character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and

(c) Such other aspects as the director shall deem advisable.

The articles of incorporation, such certificate, and the organization fee shall be transmitted to the secretary of state, who shall thereupon record both the articles of incorporation and the certificate;

(2) Formed as a limited liability company, before the articles of organization are

transmitted to the secretary of state, the organizers shall petition the director to issue a certificate setting forth the director's finding that the establishment and maintenance of the proposed company will promote the general good of the state. In arriving at such a finding, the director shall consider the items set forth in paragraphs (a) to (c) of subdivision (1) of this subsection.

5. The capital stock of a captive insurance company incorporated as a stock insurer may be authorized with no par value.

6. In the case of a captive insurance company:

(1) Formed as a corporation, at least one of the members of the board of directors shall be a resident of this state;

(2) Formed as a limited liability company, at least one of the managers shall be a resident of this state.

7. Other than captive insurance companies formed as limited liability companies under chapter 347, RSMo, or as nonprofit corporations under chapter 355, RSMo, captive insurance companies formed as corporations under sections 379.1300 to 379.1350 shall have the privileges and be subject to chapter 351, RSMo, as well as the applicable provisions contained in sections 379.1300 to 379.1308. In the event of conflict between the provisions of such general corporation law and sections 379.1300 to 379.1350, sections 379.1300 to 379.1350 shall control.

8. Captive insurance companies formed under sections 379.1300 to 379.1350:

(1) As limited liability companies shall have the privileges and be subject to the provisions of chapter 347, RSMo, as well as the applicable provisions contained in sections 379.1300 to 379.1350. In the event of a conflict between chapter 347, RSMo, and sections 379.1300 to 379.1350, sections 379.1300 to 379.1350 shall control; or

(2) As nonprofit corporations shall have the privileges and be subject to the provisions of chapter 355, RSMo, as well as the applicable provisions contained in sections 379.1300 to 379.1350. In the event of conflict between chapter 355, RSMo, and sections 379.1300 to 379.1350, sections 379.1300 to 379.1350 shall control.

9. The provisions of section 375.355, RSMo, sections 379.980 to 379.988, and chapter 382, RSMo, pertaining to mergers, consolidations, conversions, mutualizations, redomestications, and mutual holding companies shall apply in determining the procedures to be followed by captive insurance companies in carrying out any of the transactions described therein; except that:

(1) The director may waive or modify the requirements for public notice and hearing in accordance with rules which the director may adopt addressing categories of transactions. If a notice of public hearing is required, but no one requests a hearing, then the director may cancel the hearing;

(2) An alien insurer may be a party to a merger authorized under this subsection, if approved by the director.

10. The articles of incorporation or bylaws of a captive insurance company formed as a corporation may authorize a quorum of its board of directors to consist of no fewer than one-third of the full board of directors determined, provided that a quorum shall not consist of fewer than two directors.

379.1312. 1. Captive insurance companies shall not be required to make any annual report except as provided in sections 379.1300 to 379.1350.

2. Prior to March first of each year, each captive insurance company shall submit to the director a report of its financial condition, verified by oath of two of its executive officers. Each captive insurance company shall report using generally accepted accounting principles, unless the director approves the use of statutory accounting principles, with any appropriate or necessary modifications or adaptations thereof required or approved or accepted by the director for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the director. Except as otherwise provided, each association captive insurance company shall file its report in the form required by section 375.041, RSMo. The director shall by rule propose the forms in which pure captive insurance companies and industrial insured captive insurance companies shall report. Subdivision (3) of subsection 2 of section 379.1302 shall apply to each report filed under this section.

3. Any pure captive insurance company or an industrial insured captive insurance company may make written application for filing the required report on a fiscal year end. If an alternative reporting date is granted:

(1) The annual report is due sixty days after the fiscal year end; and

(2) In order to provide sufficient detail to support the premium tax return, the pure captive insurance company or industrial insured captive insurance company shall file prior to March first of each year for each calendar year end, its balance sheet, income statement and statement of cash flows, verified by oath of two of its executive officers.

379.1314. 1. At least once every three years and whenever the director determines it to be prudent, the director shall personally, or by some competent person appointed by the director, visit each captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with the provisions of sections 379.1300 to 379.1350. The director may enlarge such three-year period to five years, provided the captive insurance company is subject to a comprehensive annual audit during such period of a scope satisfactory to the director by independent auditors approved by the director. The expenses and charges of the examination shall be paid to the state by the company or companies examined and the

director shall issue his or her warrants for the proper charges incurred in all examinations, as provided in sections 374.160 and 374.162, RSMo.

2. The provisions of sections 374.202 to 374.207, RSMo, shall apply to examinations conducted under this section.

3. All examination reports, preliminary examination reports or results, working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the director or any other person in the course of an examination made under this section are confidential and are not subject to subpoena and shall not be made public by the director or an employee or agent of the director without the written consent of the company, except to the extent provided in this subsection. Nothing in this subsection shall prevent the director from using such information in furtherance of the director's regulatory authority under this title. The director may, in the director's discretion, grant access to such information to public officers having jurisdiction over the regulation of insurance in any other state or country, or to law enforcement officers of this state or any other state or agency of the federal government at any time, so long as such officers receiving the information agree in writing to hold it in a manner consistent with this section.

379.1316. 1. The license of a captive insurance company may be suspended or revoked by the director for any of the following reasons:

(1) Insolvency or impairment of capital or surplus;

(2) Failure to meet the requirements of section 379.1306;

(3) Refusal or failure to submit an annual report, as required by sections 379.1300 to 379.1350, or any other report or statement required by law or by lawful order of the director;

(4) Failure to comply with the provisions of its own charter, bylaws, or other organizational document;

(5) Failure to submit to or pay the cost of examination or any legal obligation relative thereto, as required by sections 379.1300 to 379.1350;

(6) Use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public or to its policyholders; or

(7) Failure otherwise to comply with the laws of this state.

2. Notwithstanding any other provision of sections 379.1300 to 379.1350, if the director finds upon examination, hearing, or other evidence that any captive insurance company has violated any provision of subsection 1 of this section, the director may suspend or revoke such company's license if the director deems it in the best interest of the public and the policyholders of such captive insurance company.

379.1318. 1. Association captive insurance companies shall comply with the

investment requirements contained in chapter 375, RSMo, and sections 379.080 and 379.082, as applicable. Investments of association captive insurance companies shall be valued in accordance with the valuation procedures established by the National Association of Insurance Commissioners for insurance companies, except to the extent it is inconsistent with accounting standards in use by the company and approved by the director. Notwithstanding any other provision of sections 379.1300 to 379.1350, the director may approve the use of alternative reliable methods of valuation and rating.

2. No pure captive insurance company or industrial insured captive insurance company shall be subject to any restrictions on allowable investments whatever, including those limitations contained in sections 379.080 and 379.082; provided, however, that the director may prohibit or limit any investment that threatens the solvency or liquidity of any such company.

3. No pure captive insurance company shall make a loan to or an investment in its parent company or affiliates without prior written approval of the director, and any such loan or investment shall be evidenced by documentation approved by the director.

379.1320. 1. Any captive insurance company may provide reinsurance, comprised in section 376.010, RSMo, and subsection 1 of section 379.010, on risks ceded by any other insurer.

2. Any captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to reinsurers complying with the provisions of section 375.246, RSMo.

3. For all purposes of sections 379.1300 to 379.1350, insurance by a captive insurance company of any workers' compensation qualified self-insured plan of its parent and affiliates shall be deemed to be reinsurance.

4. In addition to reinsurers authorized under the provisions of section 375.246, RSMo, a captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to a pool, exchange, or association acting as a reinsurer which has been authorized by the director. The director may require any other documents, financial information, or other evidence that such a pool, exchange, or association will be able to provide adequate security for its financial obligations. The director may deny authorization or impose any limitations on the activities of a reinsurance pool, exchange, or association that, in the director's judgment, are necessary and proper to provide adequate security for the ceding captive insurance company and for the protection and consequent benefit of the public at large.

379.1322. No captive insurance company shall be required to join a rating organization.

379.1324. No captive insurance company shall be permitted to join or contribute

financially to any plan, pool, association, or guaranty, or insolvency fund in this state, nor shall any such captive insurance company or any insured or affiliate thereof receive any benefit from any such plan, pool, association, or guaranty, or insolvency fund for claims arising out of the operations of such captive insurance company.

379.1326. 1. Each captive insurance company shall pay to the director of revenue, on or before May first of each year, a premium tax at the rate of thirty-eight-hundredths of one percent on the first twenty million dollars and two hundred eighty-five-thousandths of one percent on the next twenty million dollars and nineteen-hundredths of one percent on the next twenty million dollars and seventy-two-thousandths of one percent on each dollar thereafter on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company during the year ending December thirty-first next preceding, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums which shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders; provided, however, that no tax shall be due or payable as to considerations received for annuity contracts.

2. Each captive insurance company shall pay to the director of revenue on or before May first of each year a premium tax at the rate of two hundred fourteen-thousandths of one percent on the first twenty million dollars of assumed reinsurance premium, and one hundred forty-three-thousandths of one percent on the next twenty million dollars and forty-eight-thousandths of one percent on the next twenty million dollars and twenty-four-thousandths of one percent of each dollar thereafter. However, no reinsurance premium tax applies to premiums for risks or portions of risks which are subject to taxation on a direct basis under subsection 1 of this section. No reinsurance premium tax shall be payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control if such transaction is part of a plan to discontinue the operations of such other insurer, and if the intent of the parties to such transaction is to renew or maintain such business with the captive insurance company.

3. The annual minimum aggregate tax to be paid by a captive insurance company calculated under subsections 1 and 2 of this section shall be seven thousand five hundred dollars, and the annual maximum aggregate tax shall be two hundred thousand dollars.

4. Every captive insurance company shall, on or before February first each year, make a return on a form provided by the director, verified by the affidavit of the company's president and secretary or other authorized officers, to the director stating the amount of all direct premiums received and assumed reinsurance premiums received, whether in cash or in notes, during the year ending on December thirty-first next preceding. Upon receipt of

such returns, the director of the department of insurance shall verify the same and certify the amount of tax due from the various companies on the basis and at the rate provided in subsections 1 to 3 of this section, and shall certify the same to the director of revenue, on or before March thirty-first of each year. The director of revenue shall immediately thereafter notify and assess each company the amount of tax due.

5. A captive insurance company failing to make returns as required by subsection 4 of this section or failing to pay within the time required all taxes assessed by this section, shall be subject to the provisions of sections 148.375 and 148.410, RSMo.

6. Two or more captive insurance companies under common ownership and control shall be taxed, as though they were a single captive insurance company.

7. For the purposes of this section, "common ownership and control" shall mean:

(1) In the case of stock corporations, the direct or indirect ownership of eighty percent or more of the outstanding voting stock of two or more corporations by the same shareholder or shareholders; and

(2) In the case of mutual or nonprofit corporations, the direct or indirect ownership of eighty percent or more of the surplus and the voting power of two or more corporations by the same member or members.

8. The tax provided for in this section shall constitute all taxes collectible under the laws of this state from any captive insurance company, and no other occupation tax or other taxes shall be levied or collected from any captive insurance company by the state or any county, city, or municipality within this state, except ad valorem taxes on real and personal property used in the production of income.

9. The state treasurer shall annually transfer the premium tax revenues collected under this section to the general revenue fund, except as provided in section 379.1332.

10. The tax provided for in this section shall be calculated on an annual basis, notwithstanding policies or contracts of insurance or contracts of reinsurance issued on a multi-year basis. In the case of multi-year policies or contracts, the premium shall be prorated for purposes of determining the tax under this section.

11. A captive insurance company may deduct from premium taxes payable to this state, in addition to all other credits allowed by law, license fees and renewal fees payable under section 379.1302. A deduction for fees which exceeds a captive insurance company's premium tax liability for the same year shall not be refundable, but may be carried forward to any subsequent tax year, not to exceed five years, until the full deduction is claimed.

379.1328. The director may promulgate rules under section 374.045, RSMo, and from time to time amend such rules relating to captive insurance companies as are necessary to enable the director to carry out the provisions of sections 379.1300 to 379.1350.

379.1330. No provisions of the insurance laws of this state, other than those

contained in sections 379.1300 to 379.1350 or contained in specific references contained therein, shall apply to captive insurance companies.

379.1332. 1. (1) The insurance dedicated fund under section 374.150, RSMo, shall be adequately funded through the collection of fees and taxes for the purpose of providing the financial means for the director of insurance to administer sections 379.1300 to 379.1350 and for reasonable expenses incurred in promoting the captive insurance industry in Missouri. All fees and assessments received by the department for the administration of sections 379.1300 to 379.1350 shall be paid into the fund. In addition, the transfer of twenty percent of the premium tax under section 375.1014, RSMo, shall be made to the insurance dedicated fund until two hundred thousand dollars has been transferred. Thereafter, up to ten percent of the premium tax under section 379.1326 may be transferred to the insurance dedicated fund for the administration of sections 379.1300 to 379.1350, and up to two percent of the premium tax under section 379.1326 may be transferred to the department of economic development, with approval of the commissioner of administration, for promotional expenses. All fees received by the department from reinsurers who assume risk solely from captive insurance companies and are subject to the provisions of section 375.246, RSMo, shall be deposited into the insurance dedicated fund.

(2) All payments from the insurance dedicated fund for the maintenance of staff and expenses associated with the administration of sections 379.1300 to 379.1350, including contractual services as necessary, shall be disbursed from the state treasury only upon warrants issued by the director, after receipt of proper documentation regarding services rendered and expenses incurred.

2. The director may anticipate receipts to the insurance dedicated fund through the administration of sections 379.1300 to 379.1350 and issue warrants based thereon.

379.1336. Except as otherwise provided in sections 379.1300 to 379.1350, the terms and conditions set forth in sections 375.1150 to 375.1246, RSMo, pertaining to insurance reorganizations, receiverships and injunctions shall apply in full to captive insurance companies formed or licensed under sections 379.1300 to 379.1350.

379.1338. The director may promulgate rules under section 374.045, RSMo, establishing standards to ensure that a parent or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the pure captive insurance company; provided, however, that, until such time as rules under this section are adopted, the director may approve the coverage of such risks by a pure captive insurance company.

379.1340. 1. A branch captive may be established in this state in accordance with the provisions of sections 379.1300 to 379.1350. In addition to the general provisions of sections 379.1300 to 379.1350, the provisions of sections 379.1340 to 379.1350 shall apply to branch

captive insurance companies.

2. No branch captive insurance company shall do any insurance business in this state unless it maintains the principal place of business for its branch operations in this state.

379.1342. In the case of a branch captive insurance company, as security for the payment of liabilities attributable to the branch operations, the director shall require that a trust fund, funded by an irrevocable letter of credit or other acceptable asset, be established and maintained in the United States for the benefit of United States policyholders and United States ceding insurers under insurance policies issued or reinsurance contracts issued or assumed by the branch captive insurance company through its branch operations. The amount of such security shall be no less than the amount set forth in subdivision (1) of subsection 1 of section 379.1306 and the reserves on such insurance policies or such reinsurance contracts, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses, and unearned premiums with regard to business written through the branch operations; provided, however, the director may permit a branch captive insurance company that is required to post security for loss reserves on branch business by its reinsurer to reduce the funds in the trust account required by this section by the same amount so long as the security remains posted with the reinsurer. If the form of security selected is a letter of credit, the letter of credit shall be established by or issued or confirmed by a bank chartered in this state or a member bank of the Federal Reserve System.

379.1344. In the case of a captive insurance company licensed as a branch captive, the alien captive insurance company shall petition the director to issue a certificate setting forth the director's finding that, after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors of the alien captive insurance company, the licensing and maintenance of the branch operations will promote the general good of the state. The alien captive insurance company may register to do business in this state after the director's certificate is issued.

379.1346. Prior to March first of each year, or with the approval of the director within sixty days after its fiscal year end, a branch captive insurance company shall file with the director a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the alien captive insurance company is formed, verified by oath of two of its executive officers. If the director is satisfied that the annual report filed by the alien captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the alien captive insurance company, the director may waive the requirement for completion of the captive annual statement for business written in the alien jurisdiction.

379.1348. 1. The examination of a branch captive insurance company under section

379.1314 shall be of branch business and branch operations only, so long as the branch captive insurance company provides annually to the director a certificate of compliance, or its equivalent, issued by or filed with the licensing authority of the jurisdiction in which the branch captive insurance company is formed, and demonstrates to the director's satisfaction that it is operating in sound financial condition in accordance with all applicable laws and regulations of such jurisdiction.

2. As a condition of licensure, the alien captive insurance company shall grant authority to the director for examination of the affairs of the alien captive insurance company in the jurisdiction in which the alien captive insurance company is formed.

379.1350. In the case of a branch captive insurance company, the tax provided for in section 379.1326 shall apply only to the branch business of such company.

379.1351. Nothing in this act shall subject or be deemed to subject an alien captive insurance company to licensure or other regulation in this state by virtue of the fact that such alien captive insurance company insures or reinsures risks or portions of risks resident in this state.

379.1353. As used in sections 379.1353 to 379.1421, the following terms shall mean:

(1) "Affiliate", a company that controls, is controlled by or under common control with the special purpose life reinsurance captive "SPLRC" as defined in this section;

(2) "Affiliated agreements", written agreements, including an SPLRC contract, between an SPLRC and its affiliate;

(3) "Ceded reinsurance agreements", reinsurance agreements entered into by the SPLRC with affiliates or unaffiliated parties for the purpose of obtaining reinsurance for all or some portion of the risks assumed by the SPLRC under SPLRC contracts;

(4) "Ceding company", the insurer ceding business to the SPLRC under the SPLRC contact;

(5) "Department", the Missouri department of insurance, financial and professional regulation;

(6) "Director", the director of the Missouri department of insurance, financial and profession regulation or its successor agency or his or her designee;

(7) "Financial guarantee policy", a financial guarantee policy issued by an insurer licensed to issue financial guarantee insurance policies by the director;

(8) "Letters of credit", clean, irrevocable, evergreen letters of credit issued meeting the requirements of subdivision (2) of section 375.246, RSMo, and regulations issued thereunder that are issued or confirmed by a qualified United States financial institution or guaranteed by a financial guarantee insurance company authorized to issue financial guarantee insurance policies in the state of Missouri;

(9) "Organizational documents", means the SPLRC's articles of organization,

bylaws, operating agreement or other foundational document that establishes the SPLRC as a legal entity or prescribes its existence;

(10) "Permitted investments", investments as authorized by sections 376.291 to 376.307, RSMo, or as specifically authorized by the director by order;

(11) "Rule", a rule promulgated by the director in accordance with the authority granted by section 379.1421;

(12) "SPLRC" or "special purpose life insurance captive", a captive insurance company that has received a license from the director for the limited purposes provided for in sections 379.1353 to 379.1421;

(13) "SPLRC contract", a written contract between the SPLRC and the ceding company under which the SPLRC agrees to provide reinsurance protection to the ceding company for risks associated with the ceding company's written or assumed annuity, life insurance or accident and health insurance business;

(14) "State", the state of Missouri;

(15) "Surety bond", a surety bond issued by an insurer licensed to issue surety bonds by the director;

(16) "Surplus note", an unsecured subordinated debt obligation, including any contingent obligation for the repayment of a sum of money upon a written agreement that the loan or advance with interest shall be repaid only out of funds as specified in the approved plan of operation, or any approved amendment thereto;

(17) "Swap agreements", an agreement to exchange or to net payments at one or more times based on the actual or expected price, level, performance or value of one or more underlying interests.

379.1356. No provision of the Missouri insurance laws, other than those specifically referenced in sections 379.1353 to 379.1421 apply to a SPLRC, its operations, assets, investments and SPLRC contracts. In the event of a conflict between a provision of the Missouri insurance laws and sections 379.1353 to 379.1421, the provisions of sections 379.1353 to 379.1421 shall control as to the SPLRC and its operations, assets, dividends, SPLRC contracts, and surplus notes and investments. The director may exempt all, or any one, SPLRC by rule or order from the provisions of sections 379.1353 to 379.1421 that he or she determines to be inappropriate, but may not expand the application of the Missouri insurance laws, except as specifically provided for in sections 379.1353 to 379.1421.

379.1359. 1. A SPLRC, when permitted by its organizational documents, may apply to the director for a license to conduct reinsurance in this state as authorized by sections 379.1353 to 379.1421.

2. A SPLRC may only reinsure the risks of its ceding company. A SPLRC may

reinsure risks of more than one ceding company, provided all ceding companies from which a SPLRC assumes risks shall be affiliated with one another.

3. A SPLRC may cede all or a portion of its assumed risks under ceded reinsurance agreements.

4. A SPLRC may mitigate its risks by purchasing or participating in hedges such as credit default swaps and total return swaps.

5. To transact business in this state, a SPLRC shall:

(1) Obtain from the director a license authorizing it to conduct reinsurance business in this state;

(2) Hold at least one meeting of its board of directors each year within the state of Missouri;

(3) Maintain its principal place of business in Missouri;

(4) Appoint a resident registered agent to accept service of process and to otherwise act on its behalf in this state;

(5) Maintain a minimum surplus in this state, in cash, in the amount of two-hundred and fifty-thousand dollars;

(6) Pay all applicable fees as required by sections 379.1353 to 379.1421.

6. To obtain a license to transact business as a SPLRC in this state, the SPLRC shall:

(1) File an application which must include the following:

(a) Certified copies of its organizational documents;

(b) A statement under oath from any of the applicant's officers as to the financial condition of the applicant as of the time the application is filed;

(c) Evidence of the applicant's assets as of the time of the application;

(d) Complete biographical sketches for each officer and director on forms created by the National Association of Insurance Commissioners;

(e) A plan of operation as described in section 379.1361;

(f) An affidavit signed by the applicant that the SPLRC will operate only in accordance with the provisions of sections 379.1353 to 379.1421 and its plan of operation;

(g) A description of the investment strategy the SPLRC will follow;

(h) A description of the source and form of the initial minimum capital proposed in the plan of operation;

(2) Demonstrate that the minimum surplus described in subdivision (5) of subsection 5 of this section is established and held in this state;

(3) Provide copies of any filings made by the ceding company with the ceding company's domiciliary insurance regulator to obtain approval for the ceding company to enter into the SPLRC contract and copies of any filings made by any affiliate of the SPLRC

to obtain regulatory approval to contribute capital to the SPLRC or to acquire direct or indirect ownership of the SPLRC;

(4) Provide copies of any letters of approval or non-disapproval received from the insurance regulator responding to any filings for which copies were provided as described in subdivision (3) of this subsection.

7. No other requirements shall be imposed upon the SPLRC to transact business, except the director may require the SPLRC to revise its plan of operation under section 379.1361 and meet all requirements imposed by a revised plan of operation as approved by the director thereunder.

8. The department shall act upon a complete application within sixty days of its filing, provided the requirements identified in subdivisions (2), (3) and (4) of subsection 6 of this section are met five days prior to the end of the sixty day period. For purposes of this subsection, an application shall be considered complete when the items listed in subdivision (1) of subsection 6 of this section are filed with the department. In the event the ceding company is not required to make filings with its domiciliary insurance regulator as described in subdivision (3) of subsection 6 of this section, no such filing shall be required under subdivision (3) of subsection 6 of this section in this state, provided the applicant provides the director with a certification signed by one of its officers attesting that no such filing is required with the ceding company's domiciliary regulator.

9. Once granted, a license under sections 379.1353 to 379.1421 shall continue until March first of each year, at this time it may be renewed at the discretion of the director.

10. A SPLRC shall pay to the director a non-refundable application fee of ten thousand dollars for processing its application for a license under sections 379.1353 to 379.1421. Such fee shall be paid at the time the application is filed with the director. Each SPLRC may take a credit for the application fee against the taxes payable under section 379.1412, notwithstanding the imposition of an annual aggregate minimum tax by section 379.1412.

11. The director may retain legal, financial, actuarial, and examination services from outside the department to review the application. The reasonable cost of such services shall be billed to and paid by the applicant.

379.1361. A SPLRC must file, as part of its application, a plan of operation to consist of a description of the contemplated financing transaction or transactions and a detailed description of transaction documents to which the SPLRC will be a party, including, but not limited to, the SPLRC contract and related transactions to which the SPLRC will be a party which must include:

(1) Draft documentation or, at the director's discretion, a written summary of all material agreements to which the SPLRC is to be a party that are to be entered into to

effectuate the SPLRC contract and the financing transaction;

(2) The purpose of the transaction;

(3) Maximum amounts;

(4) Interrelationships of the various transactions, to which the SPLRC will be a party, required to effectuate the financing;

(5) Investment strategy for the SPLRC;

(6) Description of the underwriting, reporting and claims payment methods by which losses covered by the SPLRC contract will be reported, accounted for and settled;

(7) Initial minimum capital to be held by the SPLRC;

(8) Pro-forma balance sheet and income statements illustrating the performance of the SPLRC, the SPLRC contract, and any ceded reinsurance agreements under scenarios reasonably requested by the director or specified by rule; and

(9) The pro-forma balance sheets and income statements filed under this section must be updated by the SPLRC and filed with the director in the event of a material deviation from the original or most recently filed plan of operation. The plan of operation must specify which deviations are to be considered material.

379.1364. Each SPLRC shall pay to the director a license fee for the year of registration of seven thousand five hundred dollars for processing its license. The provisions of sections 374.160 to 374.162, RSMo, and sections 375.202 to 375.207, RSMo, shall apply to examinations, investigations, and processing conducted under the authority of this section. In addition, each SPLRC shall pay a renewal fee for each year thereafter of seven thousand five hundred dollars. Each SPLRC may take a credit for the license and renewal fees paid against the taxes payable under section 379.1412, notwithstanding the imposition of an annual aggregate minimum tax by section 379.1412.

379.1367. 1. In order to approve an application and issue a license to a SPLRC under sections 379.1353 to 379.1421, the director must find that:

(1) The proposed plan of operation provides a reasonable and expected successful operation;

(2) The terms of the transactions proposed in the plan of operation to which the SPLRC is a party comply with sections 379.1353 to 379.1421; and

(3) The commissioner of the state of domicile of each ceding company has notified the director in writing or the applicant has otherwise provided assurance satisfactory to the director that such regulator has either approved or granted a nondisapproval of the SPLRC contract.

2. In evaluating the expectation of a successful operation, the director shall consider whether the proposed SPLRC and its management are of known good character and

reasonably believed not to be affiliated, directly or indirectly, with a person known to have been involved with the improper manipulation of assets, accounts or reinsurance. In the event the commissioner of the state of domicile of any ceding company is not required to review the SPLRC contract, then the approval described in subdivision (3) of subsection 1 of this section shall not be required for licensing of the SPLRC hereunder.

379.1370. A SPLRC may be established as either a stock corporation, a Missouri statutory close corporation, a limited liability company or other form of organization approved by the director.

379.1373. 1. Activities of a SPLRC must be limited to those necessary to accomplish its purpose as outlined in its plan of operation.

2. The name must not be deceptively similar to or likely to be confused with another existing business name registered in the state.

3. The SPLRC must have at least three incorporators or organizers of whom not fewer than two must be residents of the state.

4. The capital stock of a SPLRC incorporated as a stock company must be issued at not less than par value.

379.1376. A SPLRC may enter into a SPLRC contract with a ceding company, provided:

(1) The SPLRC has been granted a license to transact business as an SPLRC under sections 379.1353 to 379.1421; and

(2) The SPLRC provides the director with evidence of an approval or non-disapproval from the insurance regulatory official of the ceding company's state or country of domicile to enter into the SPLRC contract. If the ceding company's domiciliary insurance regulatory official does not customarily provide evidence of such approval or non-disapproval, the director shall approve the SPLRC's execution of such SPLRC contract if such SPLRC contract would be acceptable if an assuming insurer domiciled in this state were to propose execution of the same with its ceding company for the purpose of assuming such reinsurance and an officer of the SPLRC provides the director with a certification that terms of the SPLRC contract meet the requirements for the ceding company to obtain credit in its state of domicile for reinsurance ceded under the SPLRC contract.

379.1379. The SPLRC may enter into swap agreements for any purpose for which a Missouri domestic life insurer could enter into such a transaction under section 375.345, RSMo, or when the underlying interests are permitted investments if held directly by the SPLRC.

379.1382. 1. A SPLRC may issue securities, subject to and in accordance with applicable law, its approved plan of operation and its organizational documents. A SPLRC may enter into and perform all its obligations under any required contract to facilitate the

issuance of these securities.

2. Subject to the approval of the director, a SPLRC may:

(1) Account for the proceeds of surplus notes as surplus and not debt for purposes of statutory accounting; and

(2) Submit for prior approval of the director periodic written requests for payments of interest on and repayments of principal of surplus notes.

3. The director may approve formulas for the ongoing payment of interest payments or principal repayments, or both.

4. The obligation to repay principal or interest, or both, on the securities issued by the SPLRC must reflect the risk associated with the reinsurance obligations assumed by the SPLRC.

5. The approval given for the ongoing payment of interest or the repayment of principal related to any securities or surplus notes, as outlined in the plan of operations, may only be revoked or otherwise modified by the director in the event the performance of the insurance business assumed by the SPLRC under the SPLRC contract is demonstrated by the director to be following a scenario as to mortality, morbidity, investment, or lapse experience that will cause the SPLRC to fail to meet its obligations under the SPLRC contract.

379.1385. A SPLRC's assets must be managed in accordance with an investment management agreement filed with and approved by order of the director.

379.1388. 1. A SPLRC may recognize as an admitted asset on its financial statements filed with the director:

(1) Permitted investments;

(2) Letters of credit issued without recourse to the SPLRC;

(3) Financial guarantee policies issued for the sole benefit of the ceding company without recourse to the SPLRC by an insurer having a rating of no less than AAA by Standard and Poor's or less than Aaa by Moody's Investor Service; and

(4) Surety bonds issued for the sole benefit of the ceding company without recourse to the SPLRC by an insurer having a rating of no less than AAA by Standard and Poor's or no less than Aaa by Moody's Investors Service.

2. The assets of a SPLRC shall be valued in the same manner as the assets of a Missouri domestic life insurer. Notwithstanding the preceding, the director may by order authorize a SPLRC to value one or more of its assets through an alternative method. Letters of credit shall be valued at the amount available for drawings by the SPLRC or its ceding company as of the time of valuation. A financial guarantee policy shall be valued at the amount available to pay aggregate claims as of the time of valuation. A surety bond

shall be valued at the amount available to pay aggregate claims as of the time of valuation.

379.1391. A SPLRC shall not:

(1) Enter into a SPLRC contract with a person that is not licensed or otherwise authorized to transact the business of insurance or reinsurance in at least its state or country of domicile;

(2) Lend or otherwise invest or place in custody, trust or under management any of its assets with, or to borrow money or receive a loan from, other than according to the plan of operation filed with and approved by the director.

379.1394. 1. A SPLRC may not declare or pay dividends in any form to its owners other than in accordance with the transaction agreements.

2. Dividends may not decrease the capital of the SPLRC below the minimum initial capital requirement.

3. After giving effect to the dividends the assets of the SPLRC, including assets held in trust and letters of credit issued for the exclusive benefit of the SPLRC, must be sufficient to satisfy the director that it can meet its obligations.

4. Approval of the director for ongoing dividends of other distributions must be conditioned upon the retention at the time of each payment, of capital or surplus equal to or in excess of amounts specified by, or determined in accordance with formulas approved for the SPLRC by the director.

5. Dividends may be declared by the management of the SPLRC provided that the dividend amount or form does not violate the provisions of sections 379.1353 to 379.1421 or jeopardize the fulfillment of the obligations of the SPLRC.

379.1397. Any material changes to a SPLRC's plan of operation shall require the prior written approval of the director. However, if initially approved in the plan of operation, the subsequent issuance of securities, additional financing, substitution of a party to a swap transaction with a party of similar rating or the inclusion of additional business under a SPLRC contract, shall not be considered a material change.

379.1400. Copies of all completed affiliated agreements to which the SPLRC is a party, including but not limited to the SPLRC contract or contracts and any ceded reinsurance agreements to which the SPLRC is a party must be filed with the director within thirty days of their execution.

379.1403. 1. No later than five months after the fiscal year end of the SPLRC, the SPLRC shall file with the director an audited financial report by an independent certified public accountant of the financial statements of the SPLRC and any trust accounts established for the benefit of the ceding company to secure reserve credits for the ceding company.

2. The SPLRC shall file by March first of each year financial information using

statutory accounting principles with useful or necessary modifications or adaptations required or approved by the director, as supplemented by additional information as required by the director. Financial information must include:

- (1) Income statement;**
- (2) Balance sheet, and if required;**
- (c) A detailed listing of invested assets.**

The filing may also include RBC calculations and other adjusted capital calculations to assist the director. The statements must be prepared on forms required by the director. In addition, the director may require the filing of performance assessments of the SPLRC contract.

379.1406. An SPLRC must be examined by the director at least once every five years and no more frequently than once every three years. In addition, the director may also examine an SPLRC in the event of an event of insolvency. The SPLRC shall pay to the director the expenses and costs of the examination as outlined in section 374.160, RSMo. Neither reports, copies of documents obtained nor preliminary work and working papers may be disclosed without the prior written consent of the SPLRC. Such materials shall remain confidential and are not subject to subpoena. Nothing in this section shall prevent the director from using materials created during the examination or obtained during the examination in furtherance of the director's regulatory authority granted under sections 379.1353 to 379.1421. The director may grant access to materials obtained or created during examinations conducted under this section to public officers having jurisdiction over the regulation of insurance in another state, the federal government or another country, including a securities regulatory authority, if the officers receiving the information agree in writing to hold such information in confidence and in a manner consistent with this section.

379.1409. The SPLRC shall maintain its books and records in the state and make the same available at any time for examination by the director. Notwithstanding the preceding, original books and records may be kept outside of the state, if a plan is adopted by the SPLRC and approved by the director whereby copies are maintained in the state with originals kept at another specified location. Records must be maintained for examination purposes until authorization to destroy is received from the director.

379.1412. 1. Each SPLRC shall pay to the director of revenue on or before May first of each year a premium tax at the rate of two hundred fourteen thousandths of one percent on the first twenty million dollars of assumed reinsurance premium, and one hundred forty-three thousandths of one percent on the next twenty million dollars and forty-eight thousandths of one percent on the next twenty million dollars and twenty-four thousandths of one percent of each dollar thereafter. No reinsurance premium tax shall be payable in connection with the receipt of assets in exchange for the assumption of loss reserves and

other liabilities of another insurer under common ownership and control if such transaction is part of a plan to discontinue the operations of such other insurer, and if the intent of the parties to such transaction is to renew or maintain such business with the captive insurance company.

2. The premium tax imposed by subsection 1 of this section shall constitute all taxes collectible under the laws of this state from any SPLRC, and no other occupation tax or other taxes shall be levied or collected from any captive insurance company by the state or any county, city, or municipality within this state, except ad valorem taxes on real and personal property used in the production of income.

3. The annual minimum aggregate tax to be paid by a SPLRC calculated under subsection 1 of this section shall be seven thousand five hundred dollars, and the annual maximum aggregate tax shall be two hundred thousand dollars.

4. A SPLRC may deduct from premium taxes payable to this state, in addition to all other credits allowed by law, application fees payable under section 379.1359 and license fees and renewal fees payable under section 379.1364. A deduction for fees which exceeds a SPLRC's premium tax liability for the same tax year shall not be refundable, but may be carried forward to any subsequent tax year, not to exceed five years, until the full deduction is claimed.

379.1415. Information filed with the director is confidential and may not be disclosed without the prior written consent of the SPLRC, except:

(1) Information is discoverable in civil litigation provided:

(a) The SPLRC is found by the court to be a necessary party;

(b) The party seeking the information demonstrates by a clear and convincing standard that the information sought is relevant and necessary; and

(c) Where it is unavailable from other nonconfidential sources.

(2) The director may disclose the information to insurance regulators if:

(a) The regulator agrees in writing to maintain the confidentiality of the information; and

(b) The laws of the state in which the regulator serves preserve confidentiality of the information.

(3) In addition, the director may also disclose information to the Securities Exchange Commission if:

(a) The SEC agrees in writing to maintain the confidentiality of the information; and

(b) The SEC is authorized under securities law to request the information or the director is obligated to disclose the information.

379.1418. 1. The director may apply by petition to the circuit court for an order

authorizing the director to conserve, rehabilitate or liquidate a SPLRC domiciled in this state on one or more of the following grounds:

(1) There has been embezzlement, wrongful sequestration, dissipation, or diversion of the assets of the SPLRC;

(2) The SPLRC is insolvent and the holders of a majority in outstanding principal amount of each class of SPLRC securities or surplus notes request or consent to conservation, rehabilitation or liquidation under the provisions of this section.

2. The court may not grant relief provided by subdivision (1) of subsection 1 of this section unless, after notice and a hearing, the director, who must have the burden of proof, establishes by clear and convincing evidence that relief must be granted.

3. Notwithstanding another provision in sections 379.1353 to 379.1421, rules promulgated under sections 379.1353 to 379.1421, or another applicable provision of law or rule, upon any order of conservation, rehabilitation, or liquidation of a SPLRC, the receiver shall manage the assets and liabilities of the SPLRC under the provisions of sections 379.1353 to 379.1421.

4. With respect to amounts recoverable under a SPLRC contract, the amount recoverable by the receiver must not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation, or liquidation with respect to the ceding company, notwithstanding another provision in the SPLRC contract or other documentation governing the SPLRC's transactions.

5. Notwithstanding the provisions of sections 379.1353 to 379.1421, an application or petition, or a temporary restraining order or injunction issued under the provisions of the insurance laws of a state, with respect to a ceding company, does not prohibit the transaction of a business by a SPLRC, including any payment by a SPLRC made under the SPLRC contract, the SPLRC's securities or surplus notes, or any action or proceeding against a SPLRC or its assets.

6. Notwithstanding the provisions of any Missouri insurance law to the contrary, the commencement of a summary proceeding or other interim proceeding commenced before a formal delinquency proceeding with respect to a SPLRC, and any order issued by the court does not prohibit the payment by a SPLRC made under securities issued by an SPLRC or an SPLRC contract or the SPLRC from taking any action required to make the payment.

7. Notwithstanding the provisions of the Missouri insurance laws:

(1) A receiver of a ceding company shall not void a nonfraudulent transfer by a ceding company of money or other property paid or paid pursuant to a SPLRC contract; and

(2) A receiver of a SPLRC shall not void a nonfraudulent transfer by the SPLRC of money or other property made to a ceding company pursuant to a SPLRC contract or

made to or for the benefit of any holder of a SPLRC security on account of the SPLRC security.

8. With the exception of the fulfillment of the obligations under a SPLRC contract, and notwithstanding another provision of sections 379.1353 to 379.1421 or other laws of this state, the assets of a SPLRC, including assets held in trust, letters of credit, financial guarantee policies or surety bonds, shall not be consolidated with or included in the estate of a ceding company in any delinquency proceeding against the ceding company under the provisions of sections 379.1353 to 379.1421 for any purpose including, without limitation, distribution to creditors of the ceding company.

9. Other than as set forth in this section, delinquency proceedings of a SPLRC shall be conducted under sections 375.1150 to 375.1246, RSMo.

379.1421. The director may promulgate all rules and regulations necessary to effectuate the purposes of sections 379.1353 to 379.1421. No regulations promulgated under this authority shall affect SPLRC Contracts or other transactions approved prior to the effective date of such rules. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly under chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2007, shall be invalid and void.

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