

SECOND REGULAR SESSION

# HOUSE BILL NO. 2611

98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE SHULL.

6605H.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal section 374.205, RSMo, and to enact in lieu thereof one new section relating to an affidavit requirement for insurers.

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

Section A. Section 374.205, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 374.205, to read as follows:

374.205. 1. (1) The director or any of the director's examiners may conduct an examination pursuant to sections 374.202 to 374.207 of any company as often as the director in his or her sole discretion deems appropriate, but shall, at a minimum, conduct a financial examination of every insurer licensed in this state at least once every five years. In scheduling and determining the nature, scope and frequency of examinations, the director may consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, consumer complaints, and other criteria as set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners and in effect when the director exercises discretion pursuant to this section.

(2) For purposes of completing an examination of any company pursuant to sections 374.202 to 374.207, the director may examine or investigate any person, or the business of any person, insofar as such examination or investigation is, in the sole discretion of the director, necessary or material to the examination of the company.

(3) In lieu of a financial examination pursuant to section 374.207 of any foreign or alien insurer licensed in this state, the director may accept a financial examination report on the company as prepared by the insurance department or other appropriate agency for the company's

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 state of domicile or port-of-entry state until January 1, 1994. After January 1, 1994, such reports  
19 may only be accepted if such insurance department or other appropriate agency was at the time  
20 of the examination accredited pursuant to the National Association of Insurance Commissioners'  
21 Financial Regulation Standards and Accreditation Program or the examination is performed  
22 under the supervision of an accredited insurance department or other appropriate agency or with  
23 the participation of one or more examiners who are employed by such an accredited state  
24 insurance department or other appropriate agency and who, after a review of the examination  
25 workpapers and report, state under oath that the examination was performed in a manner  
26 consistent with the standards and procedures required by their insurance department or other  
27 appropriate agency.

28         2. (1) Upon determining that an examination should be conducted, the director or the  
29 director's designee shall issue an examination warrant appointing one or more examiners to  
30 perform the examination and instructing them as to the scope of the examination. In conducting  
31 the examination, the examiner shall observe those guidelines and procedures set forth in the  
32 Examiners' Handbook adopted by the National Association of Insurance Commissioners. The  
33 director may also employ such other guidelines or procedures as the director may deem  
34 appropriate.

35         (2) Every company or person from whom information is sought, its officers, directors  
36 and agents shall provide to the examiners appointed pursuant to subdivision (1) of this  
37 subsection timely, convenient and free access at all reasonable hours at its offices to all books,  
38 records, accounts, papers, documents and any or all computer or other recordings relating to the  
39 property, assets, business and affairs of the company being examined. The company or person  
40 being examined shall provide within ten calendar days any record requested by an examiner  
41 during a market conduct examination, unless such company or person demonstrates to the  
42 satisfaction of the director that the requested record cannot be provided within ten calendar days  
43 of the request. All policy records for each policy issued shall be maintained for the duration of  
44 the current policy term plus two calendar years and all claim files shall be maintained for the  
45 calendar year in which the claim is closed plus three calendar years. The officers, directors,  
46 employees and agents of the company or person shall facilitate the examination and aid in the  
47 examination so far as it is in their power to do so. The refusal of any company, by its officers,  
48 directors, employees or agents, to submit to examination or to comply with any reasonable  
49 written request of the examiners shall be grounds for suspension or refusal of, or nonrenewal of,  
50 any license or authority held by the company to engage in an insurance or other business subject  
51 to the director's jurisdiction. Any such proceeding for suspension, revocation or refusal of any  
52 license or authority shall be conducted pursuant to section 374.046.

53 (3) The director or any of the director's examiners may issue subpoenas to administer  
54 oaths and to examine under oath any person as to any matter pertinent to the examination. Upon  
55 the failure or refusal of any person to obey a subpoena, the director may petition a court of  
56 competent jurisdiction, and upon proper showing, the court may enter an order compelling the  
57 witness to appear and testify or produce documentary evidence. Failure to obey the court order  
58 shall be punishable as contempt of court. Such subpoenas may also be enforced pursuant to the  
59 provisions of sections 375.881 and 375.1162.

60 (4) When making an examination pursuant to sections 374.202 to 374.207, the director  
61 may retain attorneys, appraisers, independent actuaries, independent certified public accountants  
62 or other professionals and specialists as examiners, the cost of which shall be borne directly by  
63 the company which is the subject of the examination.

64 (5) The provisions of sections 374.202 to 374.207 shall not be construed to limit the  
65 director's authority to terminate or suspend any examination in order to pursue other legal or  
66 regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions  
67 made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

68 (6) Nothing contained in sections 374.202 to 374.207 shall be construed to limit the  
69 director's authority to use and, if appropriate, to make public any final or preliminary  
70 examination report, any examiner or company workpapers or other documents, or any other  
71 information discovered or developed during the course of any examination in the furtherance of  
72 any legal or regulatory action which the director may, in his or her sole discretion, deem  
73 appropriate.

74 3. (1) All examination reports shall be comprised of only facts appearing upon the  
75 books, records, or other documents of the company, its agents or other persons examined, or as  
76 ascertained from the testimony of its officers or agents or other persons examined concerning its  
77 affairs, and such conclusions and recommendations as the examiners find reasonably warranted  
78 from the facts.

79 (2) No later than sixty days following completion of the examination, the examiner in  
80 charge shall file with the department a verified written report of examination under oath. Upon  
81 receipt of the verified report, the department shall transmit the report to the company examined,  
82 together with a notice which shall afford the company examined a reasonable opportunity of not  
83 more than thirty days to make a written submission or rebuttal with respect to any matters  
84 contained in the examination report.

85 (3) Within thirty days of the end of the period allowed for the receipt of written  
86 submissions or rebuttals, the director shall fully consider and review the report, together with any  
87 written submissions or rebuttals and any relevant portions of the examiner's workpapers and  
88 either initiate legal action or enter an order:

89 (a) Adopting the examination report as filed or with modification or corrections. If the  
90 examination report reveals that the company is operating in violation of any law, regulation or  
91 prior order of the director, the director may order the company to take any action the director  
92 considers necessary and appropriate to cure such violation;

93 (b) Rejecting the examination report with directions to the examiners to reopen the  
94 examination for purposes of obtaining additional data, documentation or information, and  
95 refiling pursuant to subsection 1 of this section;

96 (c) Calling for an investigatory hearing with no less than twenty days' notice to the  
97 company for purposes of obtaining additional documentation, data, information and testimony;  
98 or

99 (d) Calling for such regulatory action as the director deems appropriate, provided that  
100 this order shall be a confidential internal order directing the department to take certain action.

101 (4) All orders entered pursuant to paragraph (a) of subdivision (3) of this subsection shall  
102 be accompanied by findings and conclusions resulting from the director's consideration and  
103 review of the examination report, relevant examiner workpapers and any written submissions or  
104 rebuttals. Any such order shall be considered a final administrative decision and may be  
105 appealed pursuant to section 536.150 and shall be served upon the company by certified mail,  
106 together with a copy of the adopted examination report. Within thirty days of the issuance of the  
107 adopted report, the company shall file affidavits executed by each of its directors stating under  
108 oath that they have received a copy of the adopted report and related orders. **In lieu of the**  
109 **preceding affidavit requirement, in the case of an adopted market conduct report, rather**  
110 **than an adopted financial examination report, the company may file an affidavit executed**  
111 **by its general counsel or chief legal officer stating under oath that the general counsel or**  
112 **chief legal officer has received a copy of the adopted market conduct report and related**  
113 **orders.** Any hearing conducted pursuant to paragraph (c) of subdivision (3) of this subsection  
114 by the director or authorized representative shall be conducted as a nonadversarial confidential  
115 investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies or  
116 disputed issues apparent upon the face of the filed examination report or raised by or as a result  
117 of the director's review of relevant workpapers or by the written submission or rebuttal of the  
118 company. Within twenty days of the conclusion of any such hearing, the director shall enter an  
119 order pursuant to paragraph (a) of subdivision (3) of this subsection. In conducting a hearing  
120 pursuant to paragraph (c) of subdivision (3) of this subsection:

121 (a) The director shall not appoint an examiner as an authorized representative to conduct  
122 the hearing. The hearing shall proceed expeditiously with discovery by the company limited to  
123 the examiner's workpapers which tend to substantiate any assertions set forth in any written  
124 submission or rebuttal. The director or his or her representative may issue subpoenas for the

125 attendance of any witnesses or the production of any documents deemed relevant to the  
126 investigation whether under the control of the department, the company or other persons. The  
127 documents produced shall be included in the record, and testimony taken by the director or his  
128 or her representative shall be under oath and preserved for the record. The provisions of this  
129 section shall not require the department to disclose any information or records which would  
130 indicate or show the existence of any investigation or activity of a criminal justice agency; and

131 (b) The hearing shall proceed with the director or his or her representative posing  
132 questions to the persons subpoenaed. Thereafter, the company and the department may present  
133 testimony relevant to the investigation. Cross-examination shall be conducted only by the  
134 director or the director's representative. The company and the department shall be permitted to  
135 make closing statements and may be represented by counsel of their choice.

136 (5) Upon the adoption of the examination report pursuant to paragraph (a) of subdivision  
137 (3) of this subsection, the director shall continue to hold the content of the examination report  
138 as private and confidential information for a period of ten days except to the extent provided in  
139 this subdivision. Thereafter, the director may open the report for public inspection so long as  
140 no court of competent jurisdiction has stayed its publication. Nothing contained in the insurance  
141 laws of this state shall prevent or be construed as prohibiting the director from disclosing the  
142 content of an examination report, preliminary examination report or results, or any matter  
143 relating thereto, to the insurance department of this or any other state or country, or to law  
144 enforcement officials of this or any other state or agency of the federal government at any time,  
145 so long as such agency or office receiving the report or matters relating thereto agrees in writing  
146 to hold it confidential and in a manner consistent with this section. In the event the director  
147 determines that legal or regulatory action is appropriate as a result of any examination, he or she  
148 may initiate any proceedings or actions as provided by law.

149 4. All working papers, recorded information, documents and copies thereof produced by,  
150 obtained by or disclosed to the director or any person in the course of an examination made  
151 pursuant to this section shall be given confidential treatment and are not subject to subpoena and  
152 may not be made public by the director or any other person, except to the extent provided in  
153 subdivision (5) of subsection 3 of this section. Access may also be granted to the National  
154 Association of Insurance Commissioners. Such parties shall agree in writing prior to receiving  
155 the information to provide to it the same confidential treatment as required by this section, unless  
156 the prior written consent of the company to which it pertains has been obtained.

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