

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 392**  
**98TH GENERAL ASSEMBLY**

1536H.04C

D. ADAM CRUMBLISS, Chief Clerk

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**AN ACT**

To repeal section 378.633, RSMo, and to enact in lieu thereof seven new sections relating to the regulation of insurance.

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

Section A. Section 378.633, RSMo, is repealed and seven new sections enacted in lieu thereof, to be known as sections 324.023, 374.015, 374.018, 375.1605, 376.791, 378.633, and 379.1640, to read as follows:

**324.023. 1. Notwithstanding any law to the contrary, any board or commission established under chapters 330, 331, 332, 334, 335, 336, 337, 338, 340, and 345 may, at its discretion, issue oral or written opinions addressing topics relating to the qualifications, functions, or duties of any profession licensed by the specific board or commission issuing such guidance. Any such opinion is for educational purposes only, is in no way binding on the licensees of the respective board or commission, and cannot be used as the basis for any discipline against any licensee under chapters 330, 331, 332, 334, 335, 336, 337, 338, 340, and 345. No board or commission may address topics relating to the qualifications, functions, or duties of any profession licensed by a different board or commission.**

**2. The recipient of an opinion given under this section shall be informed that the opinion is for educational purposes only, is in no way binding on the licensees of the board, and cannot be used as the basis for any discipline against any licensee under chapters 330, 331, 332, 334, 335, 336, 337, 338, 340, and 345.**

**374.015 1. For purposes of this section, "insurer" shall mean any person, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance including producers, adjusters and third-party administrators, health services corporations, health maintenance organizations,**

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.

5 health carriers, prepaid limited health care service plans, dental, optometric, and other  
6 similar health service plans. "Insurer" shall also include all companies organized,  
7 incorporated, or doing business under the provisions of chapters 325, 354, and 374 to 385.

8 2. For purposes of this section, "bulletin" shall mean an informal written  
9 communication to inform or educate the insurance industry and the general public about  
10 a regulatory topic or issue. A bulletin is informational in nature and is not an evaluation  
11 of specific facts and circumstances.

12 3. Notwithstanding any law to the contrary, the director may at his or her  
13 discretion issue bulletins addressing the business of insurance in this state.

14 4. Bulletins do not have the force or effect of law and shall not be considered  
15 statements of general applicability that would require promulgation by rule.

16 5. Such bulletins shall not be binding on the department or an insurer. The  
17 director may revise or withdraw any previously issued bulletin; however such revision or  
18 withdrawal shall be prospective in nature. The effective date for such bulletin which was  
19 withdrawn or revised shall be ninety days after the date the revision or withdrawal notice  
20 is published and, where applicable, shall apply to new policies issued and policies that  
21 renew on or after that date.

374.018 1. For purposes of this section, "no-action letter" shall mean a letter that  
2 states the intention of the department to not take enforcement actions under section  
3 374.046 with respect to the requesting insurer, based on the specific facts then presented  
4 and applicable law, as of the date a no-action letter is issued.

5 2. For purposes of this section, "insurer" shall mean all insurance companies  
6 organized, incorporated, or doing business under the provisions of chapter 354, 376, 379,  
7 or 380.

8 3. Notwithstanding any law to the contrary, the director may at his or her  
9 discretion issue no-action letters addressing the business of insurance in this state.

10 4. No-action letters shall not be considered statements of general applicability that  
11 would require promulgation by rule.

12 5. Insurers who seek guidance may submit a written request for a no-action letter  
13 to the department.

14 6. An insurer is under an affirmative obligation to make full, true, and accurate  
15 disclosure of all information related to the activities for which the no-action letter is  
16 requested. Each request shall be accompanied by all relevant supplementary information  
17 including, but not limited to, background information regarding the request, policies,  
18 procedures, and applicable marketing materials. Each request shall also include complete  
19 copies of documents, and shall identify all provisions of law applicable to the request.

20           7. The insurer requesting the no-action letter shall provide the department with any  
21 additional information or documents the department requests for its review of the matter.

22           8. The insurer may withdraw the request for a no-action letter prior to the issuance  
23 of the no-action letter.

24           9. The department shall act on the no-action letter request within ninety days after  
25 it receives all information necessary to complete its review.

26           10. At the completion of its review of a request for a no-action letter the department  
27 shall do one of the following:

28           (1) Issue a no-action letter;

29           (2) Decline to issue a no-action letter; or

30           (3) Take such other action as the department considers appropriate.

31           11. A no-action letter shall be effective as of the date it is issued.

32           12. As long as there is no change in any material fact or law or the discovery of a  
33 material misrepresentation or omission made by the insurer, the department is estopped  
34 from bringing any enforcement action under section 374.046 against the requesting insurer  
35 concerning the specific conduct that is the subject of the no-action letter issued by the  
36 department. However, this estoppel shall not apply to those enforcement actions related  
37 to the financial condition of the insurer. The determination of materiality shall be in the  
38 sole discretion of the director.

39           13. A no-action letter request shall not be a public record as defined in chapter 610  
40 until the date of issuance by the department of a response to the no-action letter request.  
41 The request for a no-action letter and the department's response shall, after the date of  
42 issuance by the department, be considered a public record as defined in chapter 610. Upon  
43 request of the insurer, information submitted with a request for a no-action letter as  
44 required under this section that contains proprietary or trade secret information as defined  
45 in sections 417.450 to 417.467 shall not be considered a public record.

          375.1605. 1. The provisions of this section shall apply to workers' compensation  
2 large deductible policies issued by an insurer subject to delinquency proceedings under this  
3 chapter. This section shall not apply to first party claims or to claims funded by a  
4 guaranty association net of the deductible unless subsection 3 of this section applies. Large  
5 deductible policies shall be administered in accordance with their terms except to the  
6 extent such terms conflict with this section.

7           2. For purposes of this section, the following terms shall mean:

8           (1) "Collateral", any cash, letters of credit, surety bond, or any other form of  
9 security posted by the insured or by a captive insurer or reinsurer to secure the insured's  
10 obligation under the large deductible policy to pay deductible claims or to reimburse the

11 insurer for deductible claim payments. Collateral may also secure an insured's obligation  
12 to reimburse or pay the insurer as may be required for other secured obligations;

13 (2) "Commercially reasonable", to act in good faith using prevailing industry  
14 practices and making all reasonable efforts considering the facts and circumstances of the  
15 matter;

16 (3) "Deductible claim", any claim, including a claim for loss and defense and cost  
17 containment expense, unless such expenses are excluded, under a large deductible policy  
18 that is within the deductible;

19 (4) "Large deductible policy", any combination of one or more workers'  
20 compensation policies and endorsements issued to an insured and contracts or security  
21 agreements entered into between an insured and the insurer in which the insured has  
22 agreed with the insurer to:

23 (a) Pay directly the initial portion of any claim under the policy up to a specified  
24 dollar amount, or the expenses related to any claim; or

25 (b) Reimburse the insurer for its payment of any claim or related expenses under  
26 the policy up to the specified dollar amount of the deductible.

27

28 The term "large deductible policy" also includes policies which contain an aggregate limit  
29 on the insured's liability for all deductible claims in addition to a per-claim deductible  
30 limit. The primary purpose and distinguishing characteristic of a large deductible policy  
31 is the shifting of a portion of the ultimate financial responsibility under the large  
32 deductible policy to pay claims from the insurer to the insured, even though the obligation  
33 to initially pay claims may remain with the insurer. A large deductible shall include any  
34 policy with a deductible of fifty thousand dollars or more. Large deductible policies do not  
35 include policies, endorsements, or agreements which provide that the initial portion of any  
36 covered claim shall be self-insured and further that the insured shall have no payment  
37 obligation within the self-insured retention. Large deductible policies also do not include  
38 policies that provide for retrospectively rated premium payments by the insured or  
39 reinsurance arrangements or agreements, except to the extent such arrangements or  
40 agreements assume, secure, or pay the policyholder's large deductible obligations;

41 (5) "Other secured obligations", obligations of an insured to an insurer other than  
42 those under a large deductible policy, such as those under a reinsurance agreement or  
43 other agreement involving retrospective premium obligations, the performance of which  
44 is secured by collateral that also secures an insured's obligations under a large deductible  
45 policy.

46           **3. Unless otherwise agreed by the responsible guaranty association, all large**  
47 **deductible claims which are also “covered claims” as defined by the applicable guaranty**  
48 **association law including those that may have been funded by an insured before**  
49 **liquidation shall be turned over to the guaranty association for handling. To the extent the**  
50 **insured funds or pays the deductible claim pursuant to an agreement by the guaranty fund**  
51 **or otherwise, the insured’s funding or payment of a deductible claim will extinguish the**  
52 **obligations, if any, of the receiver or any guaranty association to pay such claim. No**  
53 **charge of any kind shall be made against the receiver or a guaranty association on the basis**  
54 **of an insured’s funding or payment of a deductible claim.**

55           **4. To the extent a guaranty association pays any deductible claim for which the**  
56 **insurer would have been entitled to reimbursement from the insured, a guaranty**  
57 **association shall be entitled to the full amount of the reimbursement and available**  
58 **collateral as provided for under this section to the extent necessary to reimburse the**  
59 **guaranty association. Reimbursements paid to the guaranty association under this**  
60 **subsection shall not be treated as distributions under section 375.1218 or as early access**  
61 **payments under section 375.1205. To the extent that a guaranty association pays a**  
62 **deductible claim that is not reimbursed either from collateral or by insured payments, or**  
63 **incurred expenses in connection with large deductible policies that are not reimbursed**  
64 **under this section, the guaranty association shall be entitled to assert a claim for those**  
65 **amounts in the delinquency proceeding. Nothing in this subsection limits any rights of the**  
66 **receiver or a guaranty association that may otherwise exist under applicable law to obtain**  
67 **reimbursement from insureds for claims payments made by the guaranty association under**  
68 **policies of the insurer or for the guaranty association’s related expenses such as those**  
69 **affording the guaranty association the right to recover for claims payments made to or on**  
70 **behalf of high net worth insureds or claimants.**

71           **5. (1) The receiver shall have the obligation to collect reimbursements owed for**  
72 **deductible claims as provided for herein, and shall take all commercially reasonable**  
73 **actions to collect such reimbursements. The receiver shall promptly bill insureds for**  
74 **reimbursement of deductible claims:**

75           **(a) Paid by the insurer prior to the commencement of delinquency proceedings;**  
76           **(b) Paid by a guaranty association upon receipt by the receiver of notice from a**  
77 **guaranty association of reimbursable payments; or**  
78           **(c) Paid or allowed by the receiver.**

79           **(2) If the insured does not make payment within the time specified in the large**  
80 **deductible policy, or within sixty days after the date of billing if no time is specified, the**  
81 **receiver shall take all commercially reasonable actions to collect any reimbursements owed.**

82 (3) Neither the insolvency of the insurer, nor its inability to perform any of its  
83 obligations under the large deductible policy, shall be a defense to the insured's  
84 reimbursement obligation under the large deductible policy.

85 (4) Except for gross negligence, an allegation of improper handling or payment of  
86 a deductible claim by the insurer, the receiver, or any guaranty association shall not be a  
87 defense to the insured's reimbursement obligations under the large deductible policy.

88 6. (1) Subject to the provisions of this subsection, the receiver shall utilize collateral  
89 when available to secure the insured's obligation to fund or reimburse deductible claims  
90 or other secured obligations or other payment obligations. A guaranty association shall  
91 be entitled to collateral as provided for in this subsection to the extent needed to reimburse  
92 a guaranty association for the payments of a deductible claim. Any distributions made to  
93 a guaranty association under this subsection shall not be treated as distributions under  
94 section 375.1218 or as early access payments under section 375.1205.

95 (2) All claims against the collateral shall be paid in the order received and no claim  
96 of the receiver including those described in this subsection shall supersede any other claim  
97 against the collateral as described in subdivision (4) of this subsection.

98 (3) The receiver shall draw down collateral to the extent necessary in the event that  
99 the insured fails to:

100 (a) Perform its funding or payment obligations under any large deductible policy;

101 (b) Pay deductible claim reimbursements within the time specified in the large  
102 deductible policy or within sixty days after the date of the billing if no time is specified;

103 (c) Pay amounts due the estate for preliquidation obligations;

104 (d) Timely fund any other secured obligation; or

105 (e) Timely pay expenses.

106 (4) Claims that are validly asserted against the collateral shall be satisfied in the  
107 order in which such claims are received by the receiver.

108 (5) Excess collateral may be returned to the insured as determined by the receiver  
109 after a periodic review of claims paid, outstanding case reserves, and a factor for incurred  
110 but not reported claims.

376.791. 1. The provisions of subdivisions (4) and (5) of subsection 2 of section  
2 376.777 shall not apply to any individual health insurance coverage. The term "individual  
3 health insurance coverage" shall have the meaning assigned to it in section 376.450.

4 2. The director shall promulgate rules and regulations to implement and  
5 administer the provisions of this section prior to January 1, 2016. Any rule or portion of  
6 a rule, as that term is defined in section 536.010 that is created under the authority  
7 delegated in this section shall become effective only if it complies with and is subject to all

8 of the provisions of chapter 536, and, if applicable, section 536.028. This section and  
9 chapter 536 are nonseverable, and if any of the powers vested with the general assembly  
10 pursuant to chapter 536, to review, to delay the effective date, or to disapprove and annul  
11 a rule are subsequently held unconstitutional, then the grant of rule making authority and  
12 any rule proposed or adopted after August 28, 2015, shall be invalid and void.

378.633. 1. Agents of societies shall be licensed in accordance with the provisions of  
2 chapter 375 regulating the licensing, revocation, suspension or termination of license of resident  
3 and nonresident agents; provided, that no person who acted in the capacity as an agent of a  
4 licensed society for a period of at least six months immediately preceding October 13, 1969,  
5 shall be required to take an examination as provided for in chapter 375 as a condition for  
6 licensure as an insurance agent.

7 2. The following individuals shall not be deemed an agent of a fraternal benefit society  
8 within the provisions of subsection 1 of this section:

9 (1) Any regular salaried officer, employee or secretary of a licensed society or any  
10 subordinate lodge thereof, who devotes substantially all of his services to activities other than  
11 the solicitation of fraternal insurance contracts from the public, and who receives for the  
12 solicitation of such contracts no commission or other compensation directly dependent upon the  
13 amount of business obtained; or

14 (2) Any member representative of any society [which insures its members against death,  
15 dismemberment and disability resulting from accident only and which pays no commission or  
16 other consideration for the collection of premiums for such contracts] who devotes, or intends  
17 to devote, less than fifty percent of his or her time to the solicitation and procurement of  
18 insurance contracts for such society. Any person who in the preceding calendar year has  
19 solicited and procured life insurance contracts on behalf of any society in an amount of  
20 insurance in excess of fifty thousand dollars, or, in the case of any other kind or kinds of  
21 insurance which the society might write, on the persons of more than twenty-five  
22 individuals and who has received or will receive a commission or other compensation  
23 therefor, shall be presumed to be devoting, or intending to devote, fifty percent or more of  
24 his or her time to the solicitation or procurement of insurance contracts for such society.

379.1640. 1. As used in this section, the following terms shall mean:

2 (1) "Department", the department of insurance, financial institutions and  
3 professional registration;

4 (2) "Director", the director of the department of insurance, financial institutions  
5 and professional registration;

6 (3) "Limited lines self-service storage insurance producer", an owner, operator,  
7 lessor, or sublessor of a self-service storage facility, or an agent or other person authorized

8 to manage the facility, duly licensed by the department of insurance, financial institutions  
9 and professional registration;

10 (4) "Offer and disseminate", provide general information, including a description  
11 of the coverage and price, as well as process the application, collect premiums, and perform  
12 other nonlicensable activities permitted by the state;

13 (5) "Self-service storage insurance", insurance coverage for the loss of, or damage  
14 to, tangible personal property in a self-service storage facility as defined in section 415.405  
15 or in transit during the rental period.

16 2. Notwithstanding any other provision of law:

17 (1) Individuals may offer and disseminate self-service storage insurance on behalf  
18 of and under the control of a limited lines self-service storage insurance producer only if  
19 the following conditions are met:

20 (a) The limited lines self-service storage insurance producer provides to purchasers  
21 of self-service storage insurance:

22 a. A description of the material terms or the actual material terms of the insurance  
23 coverage;

24 b. A description of the process for filing a claim;

25 c. A description of the review or cancellation process for the self-service storage  
26 insurance policy; and

27 d. The identity and contact information of the insurer and limited lines self-service  
28 storage insurance producer;

29 (b) At the time of licensure, the limited lines self-service storage insurance producer  
30 shall establish and maintain a register on a form prescribed by the director of each  
31 individual that offers self-service storage insurance on the limited lines self-service storage  
32 insurance producer's behalf. The register shall be maintained and updated annually by  
33 the limited lines self-service storage insurance producer and shall include the name,  
34 address, and contact information of the limited lines self-service storage insurance  
35 producer and an officer or person who directs or controls the limited lines self-service  
36 storage insurance producer's operations, and the self-service storage facility's federal tax  
37 identification number. The limited lines self-service storage insurance producer shall  
38 submit such register within thirty days upon request by the department. The limited lines  
39 self-service storage insurance producer shall also certify that each individual listed on the  
40 self-service storage register complies with 18 U.S.C. 1033;

41 (c) The limited lines self-service storage insurance producer has designated one of  
42 its employees who is a licensed individual producer as a person responsible for the business



43 entity's compliance with the self-service storage insurance laws, rules, and regulations of  
44 this state;

45 (d) An individual applying for a limited lines self-service storage insurance  
46 producer license shall make application to the director on the specified application and  
47 declare under penalty of refusal, suspension or revocation of the license that the statements  
48 made on the application are true, correct and complete to the best of the knowledge and  
49 belief of the applicant. Before approving the application, the director shall find that the  
50 individual:

51 a. Is at least eighteen years of age;

52 b. Has not committed any act that is a ground for denial, suspension, or revocation  
53 set forth in section 375.141;

54 c. Has paid a license fee in the sum of one hundred dollars; and

55 d. Has completed a qualified training program regarding self-service storage  
56 insurance policies, which has been filed with and approved by the director;

57 (e) Individuals applying for limited lines self-service storage insurance producer  
58 licenses shall be exempt from examination. The director may require any documents  
59 reasonably necessary to verify the information contained in an application. Within thirty  
60 working days after the change of any information submitted on the application, the self-  
61 service storage insurance producer shall notify the director of the change. No fee shall be  
62 charged for any such change. If the director has taken no action within twenty-five  
63 working days of receipt of an application, the application shall be deemed approved and  
64 the applicant may act as a licensed self-service storage insurance producer, unless the  
65 applicant has indicated a conviction for a felony or a crime involving moral turpitude;

66 (f) The limited lines self-service storage insurance producer requires each employee  
67 and authorized representative of the self-service storage insurance producer whose duties  
68 include offering and disseminating self-service storage insurance to receive a program of  
69 instruction or training, that has been reviewed and approved by the director. The training  
70 material shall, at a minimum, contain instructions on the types of insurance offered, ethical  
71 sales practices, and required disclosures to prospective customers;

72 (2) Any individual offering or disseminating self-service storage insurance shall  
73 provide to prospective purchasers brochures or other written materials that:

74 (a) Provide the identity and contact information of the insurer and the limited lines  
75 self-service storage insurance producer;

76 (b) Explain that the purchase of self-service storage insurance is not required in  
77 order to lease self-storage units;

78 (c) Explain that an unlicensed self-service storage operator is permitted to provide  
79 general information about the insurance offered by the self-service storage operator,  
80 including a description of the coverage and price, but is not qualified or authorized to  
81 answer technical questions about the terms and conditions of the insurance offered by the  
82 self-service storage operator or to evaluate the adequacy of the customer's existing  
83 insurance coverage; and

84 (d) Disclose that self-service storage insurance may provide duplication of coverage  
85 already provided by an occupant's homeowner's, renters, or other source of coverage;

86 (3) A limited lines self-service storage producer's employee or authorized  
87 representative, who is not licensed as an insurance producer, may not:

88 (a) Evaluate or interpret the technical terms, benefits, and conditions of the offered  
89 self-service storage insurance coverage;

90 (b) Evaluate or provide advice concerning a prospective purchaser's existing  
91 insurance coverage; or

92 (c) Hold themselves or itself out as a licensed insurer, licensed producer, or  
93 insurance expert;

94 (4) If self-service storage insurance is offered to the customer, premium or other  
95 charges specifically applicable to self-service storage insurance shall be listed as a separate  
96 amount and apart from other charges relating to the lease or procurement of a self-service  
97 storage unit on all documentation pertinent to the transaction.

98 3. Notwithstanding any other provision of law, a limited lines self-service storage  
99 insurance provider whose insurance-related activities, and those of its employees and  
100 authorized representatives, are limited to offering and disseminating self-service storage  
101 insurance on behalf of and under the direction of a limited lines self-service storage  
102 insurance producer meeting the conditions stated in this section is authorized to do so and  
103 receive related compensation, upon registration by the limited lines self-service storage  
104 insurance producer as described in paragraph (b) of subdivision (1) of subsection 2 of this  
105 section.

106 4. Self-service storage insurance may be provided under an individual policy or  
107 under a group or master policy.

108 5. Limited lines self-service storage insurance producers, operators, employees and  
109 authorized representatives offering and disseminating self-service storage insurance under  
110 the limited lines self-service storage insurance producer license shall be subject to the  
111 provisions of chapters 374 and 375, except as provided for in this section.

112 6. Limited lines self-service storage insurance producers, operators, employees and  
113 authorized representatives may offer and disseminate self-service storage insurance

114 **policies in an amount not to exceed three thousand dollars of coverage per customer per**  
115 **storage unit.**

116 **7. The director may promulgate rules to effectuate this section. Any rule or portion**  
117 **of a rule, as that term is defined in section 536.010, that is created under the authority**  
118 **delegated in this section shall become effective only if it complies with and is subject to all**  
119 **of the provisions of chapter 536 and, if applicable, section 536.028. This section and**  
120 **chapter 536 are nonseverable, and if any of the powers vested with the general assembly**  
121 **pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul**  
122 **a rule are subsequently held unconstitutional, then the grant of rulemaking authority and**  
123 **any rule proposed or adopted after August 28, 2015, shall be invalid and void.**

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