FIRST REGULAR SESSION

HOUSE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 282

98TH GENERAL ASSEMBLY

1377H.02C D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 375.534, 375.1070, 375.1072, 379.118, 379.120, and 379.470, RSMo, and to enact in lieu thereof fourteen new sections relating to property and casualty insurance procedures.

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

Section A. Sections 375.534, 375.1070, 375.1072, 379.118, 379.120, and 379.470, RSMo, are repealed and fourteen new sections enacted in lieu thereof, to be known as sections 301.645, 374.015, 374.018, 375.534, 375.1070, 375.1072, 375.1074, 375.1078, 375.1605, 379.118, 379.120, 379.470, 379.473, and 379.1706, to read as follows:

301.645. 1. If an insurance company has paid or is paying a total loss claim on a motor vehicle or trailer, the registered owner or owners of a motor vehicle or trailer may use an electronic signature in a similar form as that prescribed in sections 432.200 to 432.295 on a limited power of attorney, affidavit, or other document to authorize the insurance company to assign ownership of such motor vehicle or trailer. A power of attorney, affidavit, or other similar document executed with an electronic signature for the authority to execute the assignment of a certificate of ownership by an insurance company under the authority of this section shall not require notarization.

2. The director of the department of revenue may promulgate rules and regulations to implement and administer the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, 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 and, if applicable, section 536.028. This section and chapter 536 are nonseverable, and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are

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.

subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2015, shall be invalid and void.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Issue a no-action letter;

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

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

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

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

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

375.534. 1. In addition to other foreign investments permitted by Missouri law for the type or kind of insurance company involved, the capital, reserves and surplus of all insurance companies of whatever kind and character organized under the laws of this state, having admitted assets of not less than one hundred million dollars, may be invested in securities, investments

and deposits issued, guaranteed or assumed by a foreign government or foreign corporation, or located in a foreign country, whether denominated in United States dollars or in foreign currency, subject to the following conditions:

(1) Such securities, investments and deposits shall be of substantially the same kind, class and quality of like United States investments eligible for investment by an insurance company under Missouri law;

(2) An insurance company shall not invest or deposit in the aggregate more than **[**five**]** **twenty** percent of its admitted assets under this section, except that an insurance company may reinvest or redeposit any income or profits generated by investments permitted under this section; **[**and**]**

(3) **The aggregate amount of foreign investments then held by the insurer under this subsection in a single foreign jurisdiction shall not exceed ten percent of its admitted assets as to a foreign jurisdiction that has a sovereign debt rating of SVO "1" or five percent of its admitted assets as to any other foreign jurisdiction; and**

(4) Such securities, investments and deposits shall be aggregated with United States investments of the same class in determining compliance with percentage limitations imposed under Missouri law for investments in that class for the type or kind of insurance company involved.

2. This section shall not apply to an insurer organized under chapter 376.

375.1070. **[**1. Sections 375.1070 to 375.1075 may be cited as the "Investments in Medium and Lower Quality Obligations Law".

2.**]** Sections 375.1070 to **[**375.1075**]** **375.1078** shall not apply to an insurer organized under chapter 376.

375.1072. As used in sections 375.1070 to **[**375.1075**]** **375.1078**, the following terms mean:

(1) "Admitted assets", the amount thereof as of the last day of the most recently concluded annual statement year, computed in the same manner as admitted assets in section 379.080 for insurers other than life;

(2) "Aggregate amount of medium to lower quality obligations", the aggregate statutory statement value thereof;

(3) "Institution", a corporation, a joint-stock company, an association, a trust, a business partnership, a business joint venture or similar entity;

(4) "Medium to lower quality obligations", obligations which are rated three, four, five and six by the Securities Valuation Office of the National Association of Insurance Commissioners.

375.1074. Except as otherwise specified by Missouri law, no domestic insurer shall acquire an investment directly or indirectly through an investment subsidiary if, as a result of and after giving effect to the investment, the insurer would hold more than five percent of its admitted assets in the investments of all kinds issued, assumed, accepted, insured, or guaranteed by a single person.

375.1078. 1. No insurer shall acquire, directly or indirectly through an investment subsidiary, a Canadian investment otherwise permitted under Missouri law if, after giving effect to the investment, the aggregate amount of the investments then held by the insurer would exceed twenty-five percent of its admitted assets.

2. For any insurer that is authorized to do business in Canada or that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in Canada and denominated in Canadian currency, the limitations of subsection 1 of this section shall be increased by the greater of:

(1) The amount the insurer is required by applicable Canadian law to invest in Canada or to be denominated in Canadian currency; or

(2) One hundred twenty-five percent of the amount of the insurer's reserves and other obligations under contracts on risks resident or located in Canada.

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

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

(1) "Collateral", any cash, letters of credit, surety bond, or any other form of security posted by the insured or by a captive insurer or reinsurer to secure the insured's obligation under the large deductible policy to pay deductible claims or to reimburse the insurer for deductible claim payments. Collateral may also secure an insured's obligation to reimburse or pay the insurer as may be required for other secured obligations;

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

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

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

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

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

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

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

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

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

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

(a) Paid by the insurer prior to the commencement of delinquency proceedings;

(b) Paid by a guaranty association upon receipt by the receiver of notice from a guaranty association of reimbursable payments; or

(c) Paid or allowed by the receiver.

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

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

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

6. (1) Subject to the provisions of this subsection, the receiver shall utilize collateral when available to secure the insured's obligation to fund or reimburse deductible claims or other secured obligations or other payment obligations. A guaranty association shall

be entitled to collateral as provided for in this subsection to the extent needed to reimburse a guaranty association for the payments of a deductible claim. Any distributions made to a guaranty association under this subsection shall not be treated as distributions under section 375.1218 or as early access payments under section 375.1205.

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

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

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

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

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

(d) Timely fund any other secured obligation; or

(e) Timely pay expenses.

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

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

379.118. 1. If any insurer proposes to cancel or to refuse to renew a policy of automobile insurance delivered or issued for delivery in this state except at the request of the named insured or for nonpayment of premium, it shall, on or before thirty days prior to the proposed effective date of the action, send written notice by certificate of mailing of its intended action to the named insured at his last known address. **Notice shall be sent by United States postal service certified mail, certificate of mailing, first class mail using intelligent mail barcode (IMb), or another mail tracking method used, approved, or accepted by the United States postal service.** Where cancellation is for nonpayment of premium at least ten days' notice of cancellation shall be given and such notice shall contain the following notice or substantially similar in bold conspicuous type: "THIS POLICY IS CANCELLED EFFECTIVE AT THE DATE AND TIME INDICATED IN THIS NOTICE. THIS IS THE FINAL NOTICE OF CANCELLATION WE WILL SEND PRIOR TO THE EFFECTIVE DATE AND TIME OF CANCELLATION INDICATED IN THIS NOTICE.". The notice shall state:

(1) The action taken;

(2) The effective date of the action;

(3) The insurer's actual reason for taking such action, the statement of reason to be sufficiently clear and specific so that a person of average intelligence can identify the basis for the insurer's decision without further inquiry. Generalized terms such as "personal habits", "living conditions", "poor morals", or "violation or accident record" shall not suffice to meet the requirements of this subdivision;

(4) That the insured may be eligible for insurance through the assigned risk plan if his insurance is to be cancelled.

2. Issuance of a notice of cancellation under subsection 1 of this section constitutes a present and unequivocal act of cancellation of the policy.

3. An insurer may reinstate a policy cancelled under subsection 1 of this section at any time after the notice of cancellation is issued if the reason for the cancellation is remedied. An insurer may send communications to the insured, including but not limited to billing notices for past due premium, offers to reinstate the policy if past due premium is paid, notices confirming cancellation of the policy, or billing notices for payment of earned but unpaid premium. The fact that a policy may be so reinstated or any such communication may be made does not invalidate or void any cancellation effectuated under subsection 1 of this section or defeat the present and unequivocal nature of acts of cancellation as described under subsection 2 of this section.

4. An insurer shall send an insured written notice of an automobile policy renewal at least fifteen days prior to the effective date of the new policy. The notice shall be sent by first class mail or may be sent electronically if requested by the policyholder, and shall contain the insured's name, the vehicle covered, the total premium amount, and the effective date of the new policy. Any request for electronic delivery of renewal notices shall be designated on the application form signed by the applicant, made in writing by the policyholder, or made in accordance with sections 432.200 to 432.295. The insurer shall comply with any subsequent request by a policyholder to rescind authorization for electronic delivery and to elect to receive renewal notices by first class mail. Any delivery of a renewal notice by electronic means shall not constitute notice of cancellation of a policy even if such notice is included with the renewal notice.

379.120. If any insurer refuses to write a policy of automobile insurance, it shall, within thirty days after such refusal, send a written explanation of such refusal to the applicant at his last known address **[**by certified mail or certificate of mailing **]**. **Notice shall be sent by United States postal service certified mail, certificate of mailing, first class mail using intelligent mail barcode (IMb), or another mail tracking method used, approved, or accepted by the United States postal service.** The explanation shall state:

(1) The insurer's actual reason for refusing to write the policy, the statement of reason to be sufficiently clear and specific so that a person of average intelligence can identify the basis

for the insurer's decision without further inquiry. Generalized terms such as "personal habits", "living conditions", "poor morals", or "violation or accident record" shall not suffice to meet the requirements of this subdivision;

(2) That the applicant may be eligible for insurance through the assigned risk plan if other insurance is not available.

379.470. The rates made by each insurer or rating organization shall be subject to the following provisions:

(1) Rates shall not be excessive or inadequate, as herein defined, nor shall they be unfairly discriminatory.

(2) No rate shall be held to be excessive unless such rate is unreasonably high for the insurance provided and a reasonable degree of competition does not exist in the area with respect to the classification to which such rate is applicable.

(3) No rate shall be held to be inadequate unless such rate is unreasonably low for the insurance provided and the continued use of such rate endangers the solvency of the insurer using the same, or unless such rate is unreasonably low for the insurance provided and the use of such rate by the insurer using same has, or if continued will have, the effect of destroying competition or creating a monopoly.

(4) Due consideration shall be given to past and prospective loss experience within this state and consideration may also be given to past and prospective loss experience outside this state to the extent appropriate. Each insurer and rating organization may also give consideration to physical hazards, to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and prospective expenses both countrywide and those especially applicable to this state, and to any other factors within or outside this state which the insurer or rating organization deems relevant to the making of rates.

(5) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.

(6) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses. Classifications or modifications of classification or any portion or any division thereof, of risks may be predicated upon size, expense, management,

individual experience, purpose of insurance, location or dispersion of hazard, or any other reasonable considerations, provided such classifications and modifications shall be applicable to the fullest practicable extent to all risks under the same or substantially the same circumstances or conditions. Classification rates may also be modified to produce rates for individual or special risks which are not susceptible to measurement by any established standards.

(7) Except to the extent necessary to meet the provisions of subdivision (1) of this section, uniformity among insurers in any matters within the scope of this section is not required.

(8) Any rate, rating schedule, rating system, or rating plan may return or refund a portion of its expense savings to the insured if the insured makes no reportable claim under specified coverages within a prescribed period of time established by the insurer, regardless of whether such claim is due to the fault of the insured. Such return of savings may be represented as a predetermined portion of the premium, and shall not constitute a rebate or an unfair trade practice under sections 375.930 to 375.948.

379.473. For purposes of sections 379.318 and 379.470, a rating difference that results from application of a rating plan that is intended to control rate changes applicable to a current policyholder upon renewal of the policy or the transfer of a policy in force among insurers is not excessive, inadequate, or unfairly discriminatory, and shall not be deemed an unfair trade practice under sections 375.930 to 375.948.

379.1706. 1. As used in this section, the following terms shall mean:

(1) “Digital network”, any online-enabled application, software, website, or system offered or utilized by a transportation network company that enables the prearrangement of rides with transportation network company drivers;

(2) "Online-enabled application or platform", a computer application, program, text message service, email service, or any other communications technology capable of connecting users of such technology by means of a smart phone, tablet, computer, or any other similar device;

(3) "Private passenger motor vehicle liability policy", an owner's or operator's policy of liability insurance covering any vehicle that is rated or insured under a family automobile policy, standard automobile policy, motor vehicle liability policy, personal automobile policy, or similar private passenger automobile policy written for personal use as opposed to a motor vehicle rated or insured under a commercial automobile policy;

(4) "Transportation network company" or "company", an organization including, but not limited to, a corporation, limited liability company, partnership, sole proprietor, or any other entity that provides prearranged transportation services for compensation

using an online-enabled application or platform to connect passengers with drivers using a personal vehicle.

2. Insurers that write automobile insurance in Missouri may exclude any and all coverage afforded under a private passenger motor vehicle liability policy issued to an owner or operator of a personal motor vehicle for any loss or injury that occurs while:

(1) A driver is logged on to a transportation network company's digital network; or

(2) A driver is using a motor vehicle to transport or carry persons or property for any compensation or suggested donation.

3. The right to exclude all coverage under this section may apply to any coverage included in a private passenger motor vehicle liability policy including, but not limited to:

(1) Liability coverage for bodily injury and property damage;

(2) Personal injury protection coverage;

(3) Uninsured and underinsured motorist coverage;

(4) Medical payments coverage;

(5) Comprehensive physical damage coverage; and

(6) Collision physical damage coverage.

4. Such exclusions shall apply notwithstanding any financial responsibility requirement or uninsured motorist coverage requirement under the motor vehicle financial responsibility law, chapter 303, or section 379.203, respectively. Nothing in this section implies or requires that a private passenger motor vehicle liability policy provide coverage while the driver is logged on to the transportation network company's digital network, while the driver is engaged in a prearranged ride, or while the driver otherwise uses a vehicle to transport passengers or property for compensation.

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