

SECOND REGULAR SESSION
[PERFECTED]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 931

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR KLARICH.

Offered February 18, 2002.

Senate Substitute adopted, February 18, 2002.

Taken up for Perfection February 18, 2002. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

3681S.06P

AN ACT

To repeal sections 59.042, 347.143, 351.055, 351.120, 351.140, 351.145, 351.150, 351.155, 351.182, 351.385, 351.400, 351.455, 355.856, 356.211, 400.9-102, 400.9-109, 400.9-303, 400.9-311, 400.9-313, 400.9-317, 400.9-323, 400.9-406, 400.9-407, 400.9-408, 400.9-409, 400.9-504, 400.9-509, 400.9-513, 400.9-525, 400.9-602, 400.9-608, 400.9-611, 400.9-613, 400.9-615, 400.9-625, 400.9-628, 400.9-710, 417.210 and 575.060, RSMo, relating to business and commerce, and to enact in lieu thereof forty-three new sections relating to the same subject, with penalty provisions.

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

Section A. Sections 59.042, 347.143, 351.055, 351.120, 351.140, 351.145, 351.150, 351.155, 351.182, 351.385, 351.400, 351.455, 355.856, 356.211, 400.9-102, 400.9-109, 400.9-303, 400.9-311, 400.9-313, 400.9-317, 400.9-323, 400.9-406, 400.9-407, 400.9-408, 400.9-409, 400.9-504, 400.9-509, 400.9-513, 400.9-525, 400.9-602, 400.9-608, 400.9-611, 400.9-613, 400.9-615, 400.9-625, 400.9-628, 400.9-710, 417.210 and 575.060, RSMo, are repealed and forty-three new sections enacted in lieu thereof, to be known as sections 59.040, 59.042, 347.143, 351.055, 351.056, 351.120, 351.140, 351.145, 351.150, 351.155, 351.182, 351.247, 351.385, 351.400, 351.431, 351.455, 355.856, 356.211, 400.9-102, 400.9-109, 400.9-303, 400.9-311, 400.9-313, 400.9-317, 400.9-323, 400.9-406, 400.9-407, 400.9-408, 400.9-409, 400.9-504, 400.9-509, 400.9-

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

513, 400.9-525, 400.9-602, 400.9-608, 400.9-611, 400.9-613, 400.9-615, 400.9-625, 400.9-628, 400.9-710, 417.210 and 575.060, to read as follows:

59.040. 1. In a county of the third class, the question of combining the offices of circuit clerk and recorder or separating the offices may be submitted to the voters of the county by the county commission and shall be submitted by the county commission upon the petition of voters who comprise at least eight percent of the voters of the county as determined by the total vote for governor at the last preceding general election at which a governor was elected.

2. If the two offices are separate and the question is to combine the two offices, the question shall be submitted in substantially the following form:

Shall the offices of the circuit clerk and recorder in(name of county) county be combined?

3. If the two offices are combined and the question is to separate the two offices, the question shall be submitted in substantially the following form:

Shall the offices of circuit clerk and recorder in(name of county) county be separated?

4. The submission of the question provided for in this section may be made at the November election in 2004, or any fourth year thereafter. Any consolidation or separation brought about as a result of the provisions of this section shall not become effective until the expiration of the term of office of the officers affected.

59.042. In any county where the offices of the clerk of the circuit court and the recorder of deeds are combined, the governing body of said county [by public vote,] may, **by their own action in public session or under the provisions of 59.040**, authorize the separation of the two offices. Thereafter the recorder of deeds shall be elected pursuant to section 59.020.

347.143. 1. A limited liability company may be dissolved involuntarily by a decree of the circuit court for the county in which the registered office of the limited liability company is situated in an action filed by the attorney general when it is established that the limited liability company:

- (1) Has procured its articles of organization through fraud;
- (2) Has exceeded or abused the authority conferred upon it by law;
- (3) Has carried on, conducted, or transacted its business in a fraudulent or illegal manner; or
- (4) By the abuse of its powers contrary to the public policy of the state, has become liable to be dissolved.

2. On application by or for a member, the circuit court for the county in which the registered office of the limited liability company is located may decree dissolution of a limited liability company whenever:

(1) The members are deadlocked in the management of the affairs of the limited liability company and the members are unable to break the deadlock; or

(2) It is not reasonably practicable to carry on the business in conformity with the operating agreement.

351.055. The articles of incorporation shall set forth:

(1) The name of the corporation;

(2) The address, including street and number, if any, of its initial registered office in this state, and the name of its initial registered agent at such address;

(3) The aggregate number of shares which the corporation shall have the authority to issue, and the number of shares of each class, if any, that are to have a par value and the par value of each share of each such class, and the number of shares of each class, if any, that are to be without par value and also a statement of the preferences, qualifications, limitations, restrictions, and the special or relative rights including convertible rights, if any, in respect of the shares of each class;

(4) The extent, if any, to which the preemptive right of a shareholder to acquire additional shares is limited or denied;

(5) The name and place of residence of each incorporator;

(6) Either (a) the number of directors to constitute the first board of directors and a statement to the effect that thereafter the number of directors shall be fixed by, or in the manner provided in, the bylaws of the corporation, and that any changes shall be reported to the secretary of state within thirty calendar days of such change, or (b) the number of directors to constitute the board of directors, except that the number of directors to constitute the board of directors must be stated in the articles of incorporation if the corporation is to have less than three directors. The persons to constitute the first board of directors may, but need not, be named;

(7) The number of years the corporation is to continue, which may be any number or perpetual;

(8) The purposes for which the corporation is formed;

(9) If the incorporators, the directors pursuant to subsection 1 of section 351.090 or the shareholders pursuant to subsection 2 of section 351.090 choose to do so, a provision eliminating or limiting the personal liability of a director to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director (a) for any breach of the director's duty of loyalty to the corporation or its shareholders, (b) for acts or omissions not in subjective good faith or which involve intentional misconduct or a knowing violation of law, (c) pursuant to section 351.345 or (d) for any transaction from which the director derived an improper personal benefit. No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior

to the date when such provision becomes effective. **On motion to dismiss, a person challenging the applicability of such a provision shall plead facts challenging such applicability with particularity, and on motion for summary judgment shall have the burden of proving that the provision does not apply.** All references in this subdivision to a director shall also be deemed to refer (e) to a member of the governing body of a corporation which is not authorized to issue capital stock and (f) to such other person or persons, if any, who, pursuant to a provision of the articles of incorporation in accordance with this chapter, exercise or perform any of the powers or duties otherwise conferred or imposed upon the board of directors by this chapter;

(10) Any other provisions, not inconsistent with law, which the incorporators, the directors pursuant to subsection 1 of section 351.090 or the shareholders pursuant to subsection 2 of section 351.090 may choose to insert.

351.056. Every corporation may in its articles of incorporation confer upon the holders of any bonds, debentures, or other obligations issued or to be issued by the corporation the power to vote in respect to the corporate affairs and management of the corporation to the extent and in the manner provided in the articles of incorporation and may confer upon such holders of bonds, debentures or other obligations the same right of inspection of its books, accounts and other records, and also any other rights, which the shareholders of the corporation have or may have by reason of this chapter or of its articles of incorporation. If the articles of incorporation so provide, such holders of bonds, debentures or other obligations shall be deemed to be shareholders, and their bonds, debentures or other obligations shall be deemed to be shares of stock, for the purpose of any provision of this chapter which requires the vote of shareholders as a prerequisite to any corporate action and the articles of incorporation may divest the holders of capital stock, in whole or in part, of their right to vote on any corporate matter whatsoever, except as set forth in section 351.093.

351.120. **1.** Every corporation organized pursuant to the laws of this state, including corporations organized pursuant to or subject to this chapter, and every foreign corporation licensed to do business in this state, whether such license shall have been issued pursuant to this chapter or not, other than corporations exempted from taxation by the laws of this state, shall file an annual corporation registration report [stating its].

2. The annual corporate registration report shall state the corporate name, the name of its registered agent and such agent's Missouri address, giving street and number, or building and number, or both, as the case may require, the name and correct business or residence address of its officers and directors, and the mailing address of the corporation's principal place of business or corporate headquarters.

3. The annual [corporation] **corporate** registration report shall be due on the date that the corporation's franchise tax report is due as required in section 147.020, RSMo, or within thirty days of the date of incorporation of the corporation[; but]. Any extension of time for filing the franchise tax report shall not apply to the due date of the annual corporation registration report. Any corporation that is not required to file a franchise tax report shall still be required to file an annual corporation registration report.

4. In the event of any change in the names and addresses of the officers and directors set forth in an annual registration report following the required date of its filing and the date of the next such required report, the corporation may correct such information by filing a certificate of correction pursuant to section 351.049.

5. A corporation may change the corporation's registered office or registered agent with the filing of the corporation's annual registration report. To change the corporation's registered agent with the filing of the annual registration report, the corporation must include the new registered agent's written consent to the appointment as registered agent and a written consent stating that such change in registered agents was authorized by resolution duly adopted by the board of directors. The written consent must be signed by the new registered agent and must include such agent's address. If the annual corporate registration report is not completed correctly, the secretary of state may reject the filing of such report.

6. A corporation's annual registration report must be filed in a format as prescribed by the secretary of state.

351.140. Each registration required by section 351.120 shall be on a form to be supplied by the secretary of state and shall be [signed] **executed** subject to the penalties of making a false declaration under section 575.060, RSMo, by the president, a vice president, the secretary, an assistant secretary, the treasurer or an assistant treasurer of the corporation. Whenever any corporation is in the hands of an assignee or receiver, it shall be the duty of such assignee or receiver, or one of them, if there be more than one, to register such corporation and otherwise comply with the requirements of this chapter. The forms shall bear a notice stating that false statements made therein are punishable under section 575.060, RSMo.

351.145. It shall be the duty of the secretary of state to [provide blank corporate registration forms] **send notice that the annual corporate registration report is due** to each corporation in this state required to register[, addressed]. **The notice shall be directed** to its registered office as disclosed originally by its articles of incorporation or by its application for a certificate of authority to transact business in this state and thereafter as disclosed by its registration for the year preceding, as provided by law[, or addressed to the president or a vice president at the principal place of business or corporate headquarters of the corporation as the same appears in the records of the secretary of state]. **The secretary of state may provide**

a form of the annual corporate registration report for filing in a format and medium prescribed by the secretary of state.

351.150. No corporation shall be excused for its failure to comply with the provisions of this chapter by reason of failure to receive the [blanks] **notice** in section 351.145 required to be [mailed] **given** by the secretary of state.

351.155. It shall be the duty of the secretary of state to furnish [duplicate blanks] **forms of annual corporate registration reports** to any corporation upon request [of its president, or secretary] **to any representative of the corporation**, but no such [duplicate blanks] **form of the annual corporate registration report** shall be furnished unless the name of the corporation for which they are desired shall accompany the request.

351.182. 1. Subject to any provisions in the articles of incorporation, every corporation may create and issue, whether or not in connection with the issue and sale of any shares of stock or other securities of the corporation, rights or options entitling the holders thereof to purchase from the corporation any shares of its capital stock of any class or classes, such rights or options to be evidenced by or in such instrument or instruments as is approved by the board of directors. If, at the time the corporation issues rights or options, there is insufficient authorized and unissued shares to provide the shares needed if and when the rights or options are exercised, the granting of the rights or options shall not be invalid solely by reason of the lack of sufficient authorized but unissued shares.

2. The terms upon which any such shares may be purchased from the corporation upon the exercise of any such right or option, shall be as stated in the articles of incorporation, or in a resolution adopted by the board of directors providing for the creation and issue of such rights or options, and, in every case, shall be set forth or incorporated by reference in the instrument or instruments evidencing such rights or options. Such terms may include, but not be limited to:

- (1) The duration of such rights or options, which may be limited or unlimited;
- (2) The price or prices at which any such shares may be purchased from the corporation upon the exercise of any such right or option;
- (3) The holders by whom such rights or options may be exercised;
- (4) The conditions to or which may preclude or limit the exercise, transfer or receipt of such rights or options, or which may invalidate or void such rights or options, including without limitation conditions based upon a specified number or percentage of outstanding shares, rights, options, convertible securities, or obligations of the corporation as to which any person or persons or their transferees own or offer to acquire; and
- (5) The conditions upon which such rights or options may be redeemed.

Such terms may be made dependent upon facts ascertainable outside the documents evidencing the rights, or the resolution providing for the issue of the rights or options adopted by the board of directors, if the manner in which the facts shall operate upon the exercise of the rights or

options is clearly and expressly set forth in the document evidencing the rights or options, or in the resolution. In the absence of actual fraud in the transaction, the judgment of the directors as to the consideration for the issuance of such rights or options and the sufficiency thereof and the terms of such rights or options shall be conclusive. In case the shares of stock of the corporation to be issued upon the exercise of such rights or options shall be shares having a par value, the price or prices so to be received therefor shall not be less than the par value thereof. In case the shares of stock so to be issued shall be shares of stock without par value, the consideration therefor shall be determined in the manner provided in section 351.185. Nothing contained in subsection 1 of section 351.180 shall be deemed to limit the authority of the board of directors to determine, in its sole discretion, the terms of the rights or options issuable pursuant to this section.

3. The board of directors may, by a resolution adopted by the board, authorize one or more officers of the corporation to do one or both of the following:

(1) Designate officers and employees of the corporation or of any of its subsidiaries to be recipients of such rights or options created by the corporation; and

(2) Determine the number of such rights or options to be received by such officers and employees;

provided, however that the resolution so authorizing such officer or officers shall specify the total number of rights or options such officer or officers may so award. The board of directors may not authorize an officer to designate himself or herself as a recipient of any such rights or options.

351.247. 1. An agreement authorized by this section shall be:

(1) Set forth in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement, or in a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation;

(2) Subject to amendment only by all persons who are shareholders at the time of the amendment, unless the amendment seeks to add, alter or delete a provision or provisions of the agreement not inconsistent with one or more provisions of this chapter; and

(3) Valid for the term set forth in the agreement, or if no such term is so set forth, for ten years.

2. An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of this chapter in that it:

(1) Eliminates the board of directors or restricts the discretion or powers of the board of directors;

(2) Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to limitations set forth in section 351.220;

(3) Establishes who shall be directors or officers of a corporation, or their terms of office or manner of selection or removal;

(4) Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(5) Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation or among any of them;

(6) Transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;

(7) Requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency; or

(8) Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors and the corporation, or among any of them and is not contrary to public policy.

3. The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares, or in the case of uncertificated shares, on any required information statement. If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or required information statement shall not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to rescission of the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or required information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, any required information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within ninety days after the discovery of the existence of the agreement or two years after the time of

purchase of the shares whichever is earlier.

4. An agreement authorized by this section shall cease to be effective when shares of the corporation are listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any reference to it.

5. An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

6. The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation as if it were a partnership or if it results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

7. Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

8. The provisions of section 351.845, regardless of the articles of incorporation, authorize the action contemplated therein and sections 351.850, 351.855, 351.860 and 351.865 shall be incorporated by reference in any agreement among shareholders authorized by this section.

9. This section shall apply to all agreements entered into either prior to or after the effective date of this section.

351.385. Each corporation shall have power:

(1) To have succession by its corporate name for the period limited in its articles of incorporation or perpetually where there is no such limitations;

(2) To sue and be sued, complain and defend in any court of law or equity;

(3) To have a corporate seal which may be altered at pleasure and to use the same by causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced;

(4) To purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in, sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its real or personal property, or any interest therein, or other assets,

wherever situated; and to hold for any period of time, real estate acquired in payment of a debt, by foreclosure or otherwise, or real estate exchanged therefor;

(5) To be a general or limited partner;

(6) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships, or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof;

(7) To make contracts and guarantees, including but not limited to guarantees of the capital stock, bonds, other securities, evidences of indebtedness and other debts and obligations issued by any other corporation of this or any other state, or issued by any state or other political subdivision thereof; to incur liabilities; to borrow money at such rates of interest as the corporation may determine without regard to the restrictions of any usury law of this state; to issue its notes, bonds, and other obligations; to issue notes or bonds, secured or unsecured, which by their terms are convertible into shares of stock of any class, upon such terms and conditions and at such rates or prices as may be provided in such notes or bonds and the indenture or mortgage under which they are issued; and to secure any of its obligations by mortgage, pledge, or deed of trust of all or any of its property, franchises, and income;

(8) To invest its surplus funds from time to time and to lend money and to take and hold real and personal property as security for the payment of funds so invested or loaned;

(9) To conduct its business, carry on its operations, and have offices within and without this state, and to exercise in any other state, territory, district, or possession of the United States, or in any foreign country, the powers granted by this chapter;

(10) To elect or appoint directors, officers and agents of the corporation, define their duties and fix their compensation, and to indemnify directors, officers and employees to the extent and in the manner permitted by law;

(11) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation, and to adopt emergency bylaws and exercise emergency powers as permitted by law;

(12) To transact any lawful business in aid of the United States in the prosecution of war, to make donations to associations and organizations aiding in war activities, and to lend money to the state or federal government for war purposes;

(13) To cease its corporate activities and surrender its corporate franchise;

(14) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is formed;

(15) To make contributions to any corporation organized for civic, charitable, benevolent,

scientific or educational purposes, or to any incorporated or unincorporated association, community chest or community fund, not operated or used for profit to its members but operated for the purposes of raising funds for and of distributing funds to other civic, charitable, benevolent, scientific or educational organizations or agencies;

(16) To renounce, in its articles of incorporation or by action of its board of directors, any interest or expectancy of the corporation in, or in being offered an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the corporation or one or more of its officers, directors or stockholders.

351.400. 1. A sale, lease, or exchange or other disposition other than by mortgage, deed of trust or pledge, of all, or substantially all, the property and assets, with or without the goodwill, of a corporation, if not made in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist, in whole or in part, of money or property, real or personal, including shares of any other corporation, domestic or foreign, as may be authorized in the following manner:

(1) The board of directors may adopt a resolution recommending such sale, lease or exchange or other disposition and directing the submission thereof to a vote at a meeting of shareholders entitled to vote thereat, which may be either an annual or a special meeting, except that such proposed sale, lease or exchange need not be adopted by the board of directors and may be directly submitted to any annual or special meeting of shareholders;

(2) Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease or exchange, or other disposition of all, or substantially all, of the property and assets of the corporation shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided by this chapter for the giving of notice of meetings of shareholders; if such meeting be an annual meeting, such purpose may be included in the notice of such annual meeting;

(3) At such meeting the shareholders may authorize such sale, lease or exchange, or other disposition and fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote at such meeting;

(4) After such authorization by a vote of shareholders, the board of directors nevertheless, in its discretion, may abandon such sale, lease, exchange, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders.

2. No approval of the shareholders is required, unless the articles of incorporation otherwise provide to:

(1) Sell, lease, exchange, or otherwise dispose of any or all of the corporation's property and assets, with or without the goodwill, in the usual and regular course of business;

(2) Mortgage, encumber by deed of trust, or pledge, any or all of the corporation's property and assets, with or without goodwill;

(3) Transfer any or all of the corporation's property and assets, with or without goodwill, to one or more corporations or other entities, and not subject to section 351.017, all of the shares or interests of which are owned by the corporation;

(4) Distribute property and assets pro rata to the holders of one or more classes or series of the corporation's shares; or

(5) Sell, lease, exchange, or otherwise dispose of all or substantially all of its property and assets with or without goodwill if:

(a) The corporation is insolvent and a sale of cash or its equivalent is deemed advisable by the board of directors to meet the liabilities of the corporation; or

(b) The corporation was incorporated for the purpose of liquidating such property and assets.

3. Property and assets shall be deemed to be less than substantially all of a corporation's property and assets if the fair value of the property and assets as of the date of the most recent available financial information does not exceed two-thirds of the fair value of all of the property and assets of the corporation, and the annual revenues of the corporation for the most recent fiscal year for which such financial information is available represented or produced by such property and assets do not exceed two-thirds of the total revenues of the corporation for that period. This subsection is intended merely to create an irrebuttable presumption with respect to transactions described in this subsection and shall not create any inference that the sale of property and assets exceeding the amounts described in this subsection is the sale of substantially all of the property and assets of the corporation.

4. As used in subsection 2 of this section, the term "insolvent" means the corporation would not be able to pay its debts as they become due in the usual course of business, or the corporation's total assets would be less than the sum of its total liabilities.

351.431. After the plan of merger or consolidation is approved as provided in section 351.425, unless the plan of merger or consolidation provides otherwise, and at any time before issuance of the certificate of merger or consolidation as provided in section 351.435, the plan of merger or consolidation may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan for merger or consolidation or, if none set forth, in the

manner determined by the board of directors.

351.455. 1. If a shareholder of a corporation which is a party to a merger or consolidation [shall file with such corporation, prior to or], **and in the case of a shareholder owning voting stock is entitled to vote** at the meeting of shareholders at which the plan of merger or consolidation is submitted to a vote, **shall file with such corporation prior to or at such meeting** a written objection to such plan of merger or consolidation, and shall not vote in favor thereof, and such shareholder, within twenty days after the merger or consolidation is effected, shall make written demand on the surviving or new corporation for payment of the fair value of his shares as of the day prior to the date on which the vote was taken approving the merger or consolidation, the surviving or new corporation shall pay to such shareholder, upon surrender of his certificate or certificates representing said shares, the fair value thereof. Such demand shall state the number and class of the shares owned by such dissenting shareholder. Any shareholder failing to make demand within the twenty day period shall be conclusively presumed to have consented to the merger or consolidation and shall be bound by the terms thereof.

2. If within thirty days after the date on which such merger or consolidation was effected the value of such shares is agreed upon between the dissenting shareholder and the surviving or new corporation, payment therefor shall be made within ninety days after the date on which such merger or consolidation was effected, upon the surrender of his certificate or certificates representing said shares. Upon payment of the agreed value the dissenting shareholder shall cease to have any interest in such shares or in the corporation.

3. If within such period of thirty days the shareholder and the surviving or new corporation do not so agree, then the dissenting shareholder may, within sixty days after the expiration of the thirty day period, file a petition in any court of competent jurisdiction within the county in which the registered office of the surviving or new corporation is situated, asking for a finding and determination of the fair value of such shares, and shall be entitled to judgment against the surviving or new corporation for the amount of such fair value as of the day prior to the date on which such vote was taken approving such merger or consolidation, together with interest thereon to the date of such judgment. The judgment shall be payable only upon and simultaneously with the surrender to the surviving or new corporation of the certificate or certificates representing said shares. Upon the payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares, or in the surviving or new corporation. Such shares may be held and disposed of by the surviving or new corporation as it may see fit. Unless the dissenting shareholder shall file such petition within the time herein limited, such shareholder and all persons claiming under him shall be conclusively presumed to have approved and ratified the merger or consolidation, and shall be bound by the terms thereof.

4. The right of a dissenting shareholder to be paid the fair value of his shares as herein

provided shall cease if and when the corporation shall abandon the merger or consolidation.

5. When the remedy provided for pursuant to this section is available with respect to a transaction, it shall be the exclusive remedy of the shareholder as to that transaction except in the case of fraud or lack of authorization for the transaction.

355.856. 1. Each domestic corporation, and each foreign corporation authorized pursuant to this chapter to transact business in this state, shall [deliver to] **file with** the secretary of state an annual **corporate registration** report on a form prescribed and furnished by the secretary of state that sets forth:

(1) The name of the corporation and the state or country under whose law it is incorporated;

(2) The address of its registered office and the name of its registered agent at the office in this state;

(3) The address of its principal office;

(4) The names and business or residence addresses of its directors and principal officers;

(5) A brief description of the nature of its activities;

(6) Whether or not it has members;

(7) If it is a domestic corporation, whether it is a public benefit or mutual benefit corporation; and

(8) If it is a foreign corporation, whether it would be a public benefit or mutual benefit corporation had it been incorporated in this state.

2. The information in the annual **corporate registration** report must be current on the date the annual **corporate registration** report is executed on behalf of the corporation.

3. The first annual **corporate registration** report must be delivered to the secretary of state no later than August thirty-first of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual **corporate registration** reports must be delivered to the secretary of state no later than August thirty-first of the following calendar years. If an annual **corporate registration** report is not filed within the time limits prescribed by this section, the secretary of state shall not accept the report unless it is accompanied by a fifteen-dollar fee. **Failure to file the annual registration report as required by this section will result in the administrative dissolution of the corporation as set forth in section 355.706.**

4. If an annual **corporate registration** report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within thirty days after the effective date of notice, it is deemed to be timely filed.

5. A corporation may change the corporation's registered office or registered agent with the filing of the corporation's annual registration report. To change the corporation's registered agent with the filing of the annual registration report, the corporation must include the new registered agent's written consent to the appointment as registered agent and a written consent stating that such change in registered agents was authorized by resolution duly adopted by the board of directors. The written consent must be signed by the new registered agent and must include such agent's address. If the annual corporate registration report is not completed correctly, the secretary of state may reject the filing of such report.

6. A corporation's annual registration report must be filed in a format and medium prescribed by the secretary of state.

356.211. 1. Each professional corporation and each foreign professional corporation shall file[, in duplicate,] with the secretary of state an annual corporation registration report [simultaneously with] **at the time** the corporation's franchise tax report [setting] **is due. Any extension of time for filing the franchise tax report shall not apply to the due date of the annual corporation registration report. Any corporation that is not required to file a franchise tax report shall still be required to file an annual corporation registration report. The corporate registration report shall set** forth the following information:

(1) The names and residence addresses of all officers, directors and shareholders of that professional corporation as of the date of the report;

(2) A statement that each officer, director and shareholder is or is not a qualified person as defined in sections 356.011 to 356.261, and setting forth the date on which any shares of the professional corporation were no longer owned by a qualified person, and any subsequent disposition thereof;

(3) A statement as to whether or not suit has been instituted to fix the fair value of any shares not owned by a qualified person, and if so, the date on which and the court in which the same was filed.

2. The report shall be made on a form to be prescribed and furnished by the secretary of state, and shall be **[signed] executed** by the president or vice president, subject to the penalties of making a false declaration under section 575.060, RSMo. The form shall bear a notice stating that false statements made therein are punishable under section 575.060, RSMoA reasonable filing fee to be set by the secretary of state shall be paid with the filing of each report, and no other fees shall be charged therefor; except that, penalty and interest fees may be imposed by the secretary of state for late filings. The report shall be filed subject to the time requirements of section 351.120, RSMo. [The duplicate original copy of the annual report shall be forwarded to each licensing authority that regulates the professional services for which the

corporation is organized to practice.]

3. If a professional corporation or foreign professional corporation shall fail to file a report qualifying with the provisions of this section when such a filing is due, then the corporation shall be subject to the provisions of chapter 351, RSMo, that are applicable to a corporation that has failed to timely file the annual report required to be filed under chapter 351, RSMo.

400.9-102. (a) In this article:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost;

(2) "Account", except as used in "account for", means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card;

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper;

(4) "Accounting", except as used in "accounting for", means a record:

(A) Authenticated by a secured party;

(B) Indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and

(C) Identifying the components of the obligations in reasonable detail;

(5) "Agricultural lien" means an interest, other than a security interest, in farm products:

(A) Which secures payment or performance of an obligation for:

(I) Goods or services furnished in connection with a debtor's farming operation; or

(ii) Rent on real property leased by a debtor in connection with its farming operation;

(B) Which is created by statute in favor of a person that:

(I) In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) Leased real property to a debtor in connection with the debtor's farming operation;
and

(C) Whose effectiveness does not depend on the person's possession of the personal property;

(6) "As-extracted collateral" means:

(A) Oil, gas, or other minerals that are subject to a security interest that:

(I) Is created by a debtor having an interest in the minerals before extraction; and

(ii) Attaches to the minerals as extracted; or

(B) Accounts arising out of the sale at the wellhead or Manihot of oil, gas, or other minerals in which the debtor had an interest before extraction;

(7) "Authenticate" means:

(A) To sign; or

(B) To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record;

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies;

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like;

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral;

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, **a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods.** The term does not include (I) charters or other contracts involving the use or hire of a vessel **or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.** If a transaction is evidenced [both by a security agreement or lease and] by **records that include** an instrument or series of instruments, the group of records taken together constitutes chattel paper;

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(A) Proceeds to which a security interest attaches;

(B) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) Goods that are the subject of a consignment;

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

(A) The claimant is an organization; or

(B) The claimant is an individual and the claim:

(I) Arose in the course of the claimant's business or profession; and

(ii) Does not include damages arising out of personal injury to or the death of an individual;

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer;

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer;

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books;

(17) "Commodity intermediary" means a person that:

(A) Is registered as a futures commission merchant under federal commodities law; or

(B) In the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law;

(18) "Communicate" means:

(A) To send a written or other tangible record;

(B) To transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule;

(19) "Consignee" means a merchant to which goods are delivered in a consignment;

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) The merchant:

(I) Deals in goods of that kind under a name other than the name of the person making delivery;

(ii) Is not an auctioneer; and

(iii) Is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) With respect to each delivery, the aggregate value of the goods is one thousand dollars or more at the time of delivery;

(C) The goods are not consumer goods immediately before delivery; and

(D) The transaction does not create a security interest that secures an obligation;

(21) "Consignor" means a person that delivers goods to a consignee in a consignment;

(22) "Consumer debtor" means a debtor in a consumer transaction;

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes;

(24) "Consumer-goods transaction" means a consumer transaction in which:

(A) An individual incurs an obligation primarily for personal, family, or household purposes; and

(B) A security interest in consumer goods secures the obligation;

(25) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes;

(26) "Consumer transaction" means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions;

(27) "Continuation statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement;

(28) "Debtor" means:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) A seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) A consignee;

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument;

(30) "Document" means a document of title or a receipt of the type described in section 400.7-201(2);

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium;

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property;

(33) "Equipment" means goods other than inventory, farm products, or consumer goods;

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) Crops grown, growing, or to be grown, including:

(I) Crops produced on trees, vines, and bushes; and

(ii) Aquatic goods produced in aquacultural operations;

(B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) Supplies used or produced in a farming operation; or

(D) Products of crops or livestock in their unmanufactured states;

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation;

(36) "File number" means the number assigned to an initial financing statement pursuant to section 400.9-519(a);

(37) "Filing office" means an office designated in section 400.9-501 as the place to file a financing statement;

(38) "Filing-office rule" means a rule adopted pursuant to section 400.9-526;

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement;

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying section 400.9-502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures;

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law;

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software;

(43) "Good faith" means honesty in fact;

(44) "Goods" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided

in connection with a transaction relating to the program if (I) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction;

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States;

(46) "Health-care insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided;

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (I) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card;

(48) "Inventory" means goods, other than farm products, which:

- (A) Are leased by a person as lessor;
- (B) Are held by a person for sale or lease or to be furnished under a contract of service;
- (C) Are furnished by a person under a contract of service; or
- (D) Consist of raw materials, work in process, or materials used or consumed in a business;

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account;

(50) "Jurisdiction of organization", with respect to a registered organization, means the jurisdiction under whose law the organization is organized;

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit;

(52) "Lien creditor" means:

(A) A creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) An assignee for benefit of creditors from the time of assignment;

(C) A trustee in bankruptcy from the date of the filing of the petition; or

(D) A receiver in equity from the time of appointment;

(53) "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code;

(54) "Manufactured-home transaction" means a secured transaction:

(A) That creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) In which a manufactured home, other than a manufactured home held as inventory, is the primary collateral;

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation;

(56) "New debtor" means a person that becomes bound as debtor under section 400.9-203(d) by a security agreement previously entered into by another person;

(57) "New value" means (I) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation;

(58) "Noncash proceeds" means proceeds other than cash proceeds;

(59) ["Notice" means a properly filed financing statement;

(60)] "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (I) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit;

[(61)] **(60)** "Original debtor", **except as used in section 400.9-310(c)**, means a person that, as debtor, entered into a security agreement to which a new debtor has become bound

under section 400.9-203(d);

[(62)] **(61)** "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation;

[(63)] **(62)** "Person related to", with respect to an individual, means:

- (A) The spouse of the individual;
- (B) A brother, brother-in-law, sister, or sister-in-law of the individual;
- (C) An ancestor or lineal descendant of the individual or the individual's spouse; or
- (D) Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual;

[(64)] **(63)** "Person related to", with respect to an organization, means:

(A) A person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) An officer or director of, or a person performing similar functions with respect to, the organization;

(C) An officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A);

(D) The spouse of an individual described in subparagraph (A), (B), or (C); or

(E) An individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C), or (D) and shares the same home with the individual;

[(65)] **(64)** "Proceeds", **except as used in section 400.9-609(b)**, means the following property:

(A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(B) Whatever is collected on, or distributed on account of, collateral;

(C) Rights arising out of collateral;

(D) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral;

[(66)] **(65)** "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds;

[(67)] **(66)** "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to sections 400.9-620, 400.9-621 and 400.9-622;

[(68)] **(67)** "Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation;

[(69)] **(68)** "Record", except as used in "for record", "of record", "record or legal title", and "record owner", means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form;

[(70)] **(69)** "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized;

[(71)] **(70)** "Secondary obligor" means an obligor to the extent that:

(A) The obligor's obligation is secondary; or

(B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either;

[(72)] **(71)** "Secured party" means:

(A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) A person that holds an agricultural lien;

(C) A consignor;

(D) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) A person that holds a security interest arising under sections 400.2-401, 400.2-505, 400.2-711(3), 400.2A-508(5), 400.4-210 or 400.5-118;

[(73)] **(72)** "Security agreement" means an agreement that creates or provides for a security interest;

[(74)] **(73)** "Send", in connection with a record or notification, means:

(A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) To cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A);

[(75)] **(74)** "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods;

[(76)] **(75)** "State" means a state of the United States, the District of Columbia, Puerto

Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States;

[(77)] **(76)** "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property;

[(78)] **(77)** "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium;

[(79)] **(78)** "Termination statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates either that it is a termination statement or that the identified financing statement is no longer effective;

[(80)] **(79)** "Transmitting utility" means a person primarily engaged in the business of:

(A) Operating a railroad, subway, street railway, or trolley bus;

(B) Transmitting communications electrically, electromagnetically, or by light;

(C) Transmitting goods by pipeline or sewer; or

(D) Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) The following definitions in other articles apply to this article:

"Applicant"	Section 400.5-102.
"Beneficiary"	Section 400.5-102.
"Broker"	Section 400.8-102.
"Certificated security"	Section 400.8-102.
"Check"	Section 400.3-104.
"Clearing corporation"	Section 400.8-102.
"Contract for sale"	Section 400.2-106.
"Customer"	Section 400.4-104.
"Entitlement holder"	Section 400.8-102.
"Financial asset"	Section 400.8-102.
"Holder in due course"	Section 400.3-302.
"Issuer" (with respect to a letter of credit or letter-of-credit right)	Section 400.5-102.
"Issuer" (with respect to a security)	Section 400.8-201.
"Lease"	Section 400.2A-103.
"Lease agreement"	Section 400.2A-103.
"Lease contract"	Section 400.2A-103.
"Leasehold interest"	Section 400.2A-103.
"Lessee"	Section 400.2A-103.

"Lessee in ordinary course of business"	Section 400.2A-103.
"Lessor"	Section 400.2A-103.
"Lessor's residual interest"	Section 400.2A-103.
"Letter of credit"	Section 400.5-102.
"Merchant"	Section 400.2-104.
"Negotiable instrument"	Section 400.3-104.
"Nominated person"	Section 400.5-102.
"Note"	Section 400.3-104.
"Proceeds of a letter of credit"	Section 400.5-114.
"Prove"	Section 400.3-103.
"Sale"	Section 400.2-106.
"Securities account"	Section 400.8-501.
"Securities intermediary"	Section 400.8-102.
"Security"	Section 400.8-102.
"Security certificate"	Section 400.8-102.
"Security entitlement"	Section 400.8-102.
"Uncertificated security"	Section 400.8-102.

(c) This section contains general definitions and principles of construction and interpretation applicable throughout sections 400.9-103 to 400.9-708.

400.9-109. (a) Except as otherwise provided in subsections (c) and (d), this article applies to:

- (1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;
- (2) An agricultural lien;
- (3) A sale of accounts, chattel paper, payment intangibles, or promissory notes;
- (4) A consignment;
- (5) A security interest arising under section 400.2-401, 400.2-505, 400.2-711(3) or 400.2A-508(5), as provided in section 400.9-110; and
- (6) A security interest arising under section 400.4-210 or 400.5-118.

(b) The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply.

(c) This article does not apply to the extent that:

- (1) A statute, regulation, or treaty of the United States preempts this article;
- (2) **Another statute of this state expressly governs the creation, perfection, priority, or enforcement of a security interest created by this state or a governmental**

unit of this state;

(3) A statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or

[(3)] (4) The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under section 400.5-114.

(d) This article does not apply to:

- (1) A landlord's lien, other than an agricultural lien;
 - (2) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but section 400.9-333 applies with respect to priority of the lien;
 - (3) An assignment of a claim for wages, salary, or other compensation of an employee;
 - (4) A sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;
 - (5) An assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;
 - (6) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;
 - (7) An assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;
 - (8) A transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but sections 400.9-315 and 400.9-322 apply with respect to proceeds and priorities in proceeds;
 - (9) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;
 - (10) A right of recoupment or set-off, but:
 - (A) Section 400.9-340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and
 - (B) Section 400.9-404 applies with respect to defenses or claims of an account debtor;
 - (11) The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:
 - (A) Liens on real property in sections 400.9-203 and 400.9-308;
 - (B) Fixtures in section 400.9-334;
 - (C) Fixture filings in sections 400.9-501, 400.9-502, 400.9-512, 400.9-516 and 400.9-519;
- and
- (D) Security agreements covering personal and real property in section 400.9-604;

(12) An assignment of a claim arising in tort, other than a commercial tort claim, but sections 400.9-315 and 400.9-322 apply with respect to proceeds and priorities in proceeds; **or**

(13) An assignment of a deposit account in a consumer transaction, but sections 400.9-315 and 400.9-322 apply with respect to proceeds and priorities in proceeds]; or

(14) An assignment of a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. Section 104(a)(1) or (2), as amended from time to time; or

(15) An assignment of a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. Section 1396p(d)(4), as amended from time to time; or

(16) A transfer by a government or governmental subdivision or agency].

400.9-303. (a) This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(b) Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(c) The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

(d) When a notice of lien is filed in accordance with chapter 301 [or], 306 **or 700**, RSMo, then the lien is perfected and this chapter shall not govern perfection or nonperfection or the priority of the lien even though a valid application for a certificate of title and the applicable fee was not delivered to the appropriate authority or the certificate of title was not issued by such authority.

400.9-311. (a) Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt section 400.9-310(a);

(2) Sections 301.600 to 301.661, RSMo, and section 400.2A-304; or

(3) A certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing

of a financing statement under this article. Except as otherwise provided in subsection (d) and sections 400.9-313 and 400.9-316(d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Except as otherwise provided in subsection (d) and section 400.9-316(d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this article.

(d) During any period in which collateral **subject to a statute specified in subsection (a)(2)** is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling [or leasing] goods of that kind, this section does not apply to a security interest in that collateral created by that person [as debtor].

400.9-313. (a) Except as otherwise provided in subsection (b), a secured party may perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under section [400.8-301] **400.9-301**.

(b) With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in section 400.9-316(d).

(c) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under section 400.8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) A person in possession of collateral is not required to acknowledge that it holds

possession for a secured party's benefit.

(g) If a person acknowledges that it holds possession for the secured party's benefit:

(1) The acknowledgment is effective under subsection (c) or section 400.8-301(a), even if the acknowledgment violates the rights of a debtor; and

(2) Unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) To hold possession of the collateral for the secured party's benefit; or

(2) To redeliver the collateral to the secured party.

(I) A secured party does not relinquish possession, even if a delivery under subsection (h) violates the rights of a debtor. A person to which collateral is delivered under subsection (h) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this article otherwise provides.

400.9-317. (a) **[An unperfected] A** security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under section 400.9-322; and

(2) **Except as otherwise provided in subsection (e)**, a person that becomes a lien creditor before the earlier of the time:

(A) The security interest or agricultural lien is perfected; or

(B) One of the conditions specified in section 400.9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Except as otherwise provided in sections 400.9-320 and 400.9-321, if a person files

a financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

400.9-323. (a) Except as otherwise provided in subsection (c), for purposes of determining the priority of a perfected security interest under section 400.9-322(a)(1), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

(1) Is made while the security interest is perfected only:

(A) Under section 400.9-309 when it attaches; or

(B) Temporarily under section 400.9-312(e), (f), or (g); and

(2) Is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under section 400.9-309 or 400.9-312(e), (f), or (g).

(b) Except as otherwise provided in subsection (c), a security interest is subordinate to the rights of a person that becomes a lien creditor [while the security interest is perfected only] to the extent that [it] **the security interest** secures [advances] **an advance** made more than forty-five days after the person becomes a lien creditor unless the advance is made:

(1) Without knowledge of the lien; or

(2) Pursuant to a commitment entered into without knowledge of the lien.

(c) Subsections (a) and (b) do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

(d) Except as otherwise provided in subsection (e), a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:

(1) The time the secured party acquires knowledge of the buyer's purchase; or

(2) Forty-five days after the purchase.

(e) Subsection (d) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the forty-five-day period.

(f) Except as otherwise provided in subsection (g), a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

(1) The time the secured party acquires knowledge of the lease; or

(2) Forty-five days after the lease contract becomes enforceable.

(g) Subsection (f) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five-day period.

400.9-406. (a) Subject to subsections (b) through (I), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) Subject to subsection (h), notification is ineffective under subsection (a):

(1) If it does not reasonably identify the rights assigned;

(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) Only a portion of the account, chattel paper, or general intangible has been assigned to that assignee;

(B) A portion has been assigned to another assignee; or

(C) The account debtor knows that the assignment to that assignee is limited.

(c) Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) Except as otherwise provided in subsection (e) and sections 400.2A-303 and 400.9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) Provides that the **assignment or transfer or the** creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Subsection (d) does not apply to the sale of a payment intangible or promissory note.

(f) Except as otherwise provided in sections 400.2A-303 and 400.9-407, and subject to subsections (h) and (I), a rule of law, statute, or regulation, that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment

or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account or chattel paper; or

(2) Provides that the **assignment or transfer or the** creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(I) This section does not apply to an assignment of a health-care-insurance receivable.

(j) This section prevails over any inconsistent provisions of any statutes, rules, and regulations.

400.9-407. (a) Except as otherwise provided in subsection (b), a term in a lease agreement is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of a party to the lease to the **assignment or transfer of, or the** creation, attachment, perfection, or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

(2) Provides that the **assignment or transfer or the** creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

(b) Except as otherwise provided in section 400.2A-303(7), a term described in subsection (a)(2) is effective to the extent that there is:

(1) A transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

(2) A delegation of a material performance of either party to the lease contract in violation of the term.

(c) The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of section 400.2A-303(4) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor. [Even in that

event, the creation, attachment, perfection, and enforcement of the security interest remain effective.]

400.9-408. (a) Except as otherwise provided in subsection (b), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the **assignment or transfer or the** creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(c) A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the **assignment or transfer or the** creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) would be effective under law other than this article but is ineffective under subsection (a) or (c), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) Is not enforceable against the person obligated on the promissory note or the account debtor;

(2) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e) This section prevails over any inconsistent provisions of any statutes, rules, and regulations.

400.9-409. (a) A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice:

(1) Would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or

(2) Provides that the ~~assignment or the~~ creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

(b) To the extent that a term in a letter of credit is ineffective under subsection (a) but would be effective under law other than this article or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:

(1) Is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary;

(2) Imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary; and

(3) Does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

400.9-504. A financing statement sufficiently indicates the collateral that it covers [only]

if the financing statement provides:

- (1) A description of the collateral pursuant to section 400.9-108; or
- (2) An indication that the financing statement covers all assets or all personal property.

400.9-509. (a) A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

- (1) The debtor authorizes the filing in an authenticated record **or pursuant to subsection (b) or (c)**; or
- (2) The person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

- (1) The collateral described in the security agreement; and
- (2) Property that becomes collateral under section 400.9-315(a)(2), whether or not the security agreement expressly covers proceeds.

(c) By acquiring collateral in which a security interest or agricultural lien continues under section 400.9-315(a)(1), a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under section 400.9-315(a)(2).

(d) A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

- (1) The secured party of record authorizes the filing; or
- (2) The amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by section 400.9-513(a) or (c), the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

[(d)] (e) If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection **[(c)] (d)**.

400.9-513. (a) A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

- (1) There is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or
 - (2) The debtor did not authorize the filing of the initial financing statement.
- (b) To comply with subsection (a), a secured party shall cause the secured party of record

to file the termination statement:

(1) Within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) If earlier, within twenty days after the secured party receives an authenticated demand from a debtor.

(c) In cases not governed by subsection (a), within twenty days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(1) Except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(2) The financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(3) The financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(4) The debtor did not authorize the filing of the initial financing statement.

(d) Except as otherwise provided in section 400.9-510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in section 400.9-510, for purposes of sections 400.9-519(g), 400.9-522(a), and 400.9-523(c), **[upon] the filing with the filing office of a termination statement [with the filing office, a financing statement indicating that the debtor is a transmitting utility to which the termination statement relates ceases to be effective] relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.**

400.9-525. (a) Except as otherwise provided in subsection (e), the fee for filing and indexing a record under this part, other than an initial financing statement of the kind described in section 400.9-502(c), is [the amount specified in subsection (c), if applicable, plus]:

(1) If the filing office is the secretary of state's office, then twelve dollars for the first page and one dollar for each subsequent page if the record is communicated in writing or by another medium authorized by filing-office rule, of which fee seven dollars is received and collected by the secretary of state on behalf of the **counties of this state for deposit with the county employees' retirement fund** established pursuant to section 50.1010, RSMo, provided, however, that in any charter county or city not within a county whose employees are not members of the county employees' retirement fund, the fee collected for the county employees'

retirement fund established pursuant to section 50.1010, RSMo, shall go to the general revenue fund of that charter county or city not within a county; or

(2) If the filing office is other than the secretary of state's office, then the fee otherwise allowed by law.

(b) Except as otherwise provided in subsection (e), the fee for filing and indexing an initial financing statement of the kind described in section 400.9-502(c) is [the amount specified in subsection (c), if applicable, plus]:

(1) If the filing office is the secretary of state's office, then twelve dollars for the first page and one dollar for each subsequent page if the record is communicated in writing or by another medium authorized by filing-office rule, of which fee seven dollars is received and collected by the secretary of state on behalf of the **counties of this state for deposit with the county employees' retirement fund established pursuant to section 50.1010, RSMo**, provided, however, that in any charter county or city not within a county whose employees are not members of the county employees' retirement fund, the fee collected for the county employees' retirement fund established pursuant to section 50.1010, RSMo, shall go to the general revenue fund of that charter county or city not within a county; or

(2) If the filing office is other than the secretary of state's office, then the fee otherwise allowed by law.

(c) The number of names required to be indexed does not affect the amount of the fee in subsections (a) and (b).

(d) The fee for responding to a request for information from the filing office, including for communicating whether there is on file any financing statement naming a particular debtor, is:

(1) If the filing office is the secretary of state's office, then twenty-two dollars for the first page and one dollar for each subsequent page if the record is communicated in writing or by another medium authorized by filing-office rule, of which fee seven dollars is received and collected by the secretary of state on behalf of the **counties of this state for deposit with county employees' retirement fund established pursuant to section 50.1010, RSMo**, provided, however, that in any charter county or city not within a county whose employees are not members of the county employees' retirement fund, the fee collected for the county employees' retirement fund established pursuant to section 50.1010, RSMo, shall go to the general revenue fund of that charter county or city not within a county; or

(2) If the filing office is other than the secretary of state's office, then the fee otherwise allowed by law.

(e) This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under section 400.9-502(c). However, the recording

and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

(f) The [secretary of state] **department of revenue** shall administer a special trust fund, which is hereby established, to be known as the "Uniform Commercial Code Transition Fee Trust Fund", and which shall be funded by seven dollars of each of the fees received and collected pursuant to subdivisions (a), (b) and [(c)] **(d)** of this section on behalf of the **counties of this state for deposit with the** county employees' retirement fund established pursuant to section 50.1010, RSMo, or the general revenue fund of any charter county or city not within a county whose employees are not members of the county employees' retirement fund.

(1) The secretary of state shall keep **and provide to the department of revenue** accurate record of the moneys **to be deposited** in the uniform commercial code transition fee trust fund allocated to each county and city not within a county on the basis of where such record, financing statement or other document would have been filed prior to July 1, 2001, and **the department of revenue** shall distribute the moneys pursuant to subdivision (2) of this subsection on that basis.

(2) The moneys in the uniform commercial code transition fee trust fund shall be distributed to the county employees' retirement fund established pursuant to section 50.1010, RSMo, or the general revenue fund of any charter county or city not within a county whose employees are not members of the county employees' retirement fund

(3) The moneys in the uniform commercial code transition fee trust fund shall [not] be deemed to be [state funds] **"nonstate funds" to be administered by the department of revenue**, provided, however that interest, if any, earned by the money in the trust fund shall be deposited into the general revenue fund in the state treasury.

400.9-602. Except as otherwise provided in section 400.9-624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, [a secured party may not require] the debtor or obligor [to] **may not** waive or vary the rules stated in the following listed sections:

(1) Section 400.9-207(b)(4)(C), which deals with use and operation of the collateral by the secured party;

(2) Section 400.9-210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;

(3) Section 400.9-607(c), which deals with collection and enforcement of collateral;

(4) Sections 400.9-608(a) and 400.9-615(c) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

(5) Sections 400.9-608(a) and 400.9-615(d) to the extent that they require accounting for or payment of surplus proceeds of collateral;

(6) Section 400.9-609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;

(7) Sections 400.9-610(b), 400.9-611, 400.9-613 and 400.9-614, which deal with disposition of collateral;

(8) **Section 400.9-615(f), which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;**

(9) Section 400.9-616, which deals with explanation of the calculation of a surplus or deficiency;

[(9)] **(10)** Sections 400.9-620, 400.9-621 and 400.9-622, which deal with acceptance of collateral in satisfaction of obligation;

[(10)] **(11)** Section 400.9-623, which deals with redemption of collateral;

[(11)] **(12)** Section 400.9-624, which deals with permissible waivers; and

[(12)] **(13)** Sections 400.9-625 and 400.9-626, which deal with the secured party's liability for failure to comply with this article.

400.9-608. (a) If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under [this] section **400.9-607** in the following order to:

(A) The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(B) The satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(C) The satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed;

(2) If requested by a party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under paragraph (1)(C);

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under [this] section **400.9-607** unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner;

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(b) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles,

or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

400.9-611. (a) In this section, "notification date" means the earlier of the date on which:

(1) A secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

(2) The debtor and any secondary obligor waive the right to notification.

(b) Except as otherwise provided in subsection (d), a secured party that disposes of collateral under section 400.9-610 shall send to the persons specified in subsection (c) a reasonable authenticated notification of disposition.

(c) To comply with subsection (b), the secured party shall send an authenticated notification of disposition to:

(1) The debtor;

(2) Any secondary obligor; and

(3) If the collateral is other than consumer goods:

(A) Any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

(B) Any other secured party or lienholder that, ten days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(I) Identified the collateral;

(ii) Was indexed under the debtor's name as of that date; and

(iii) Was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(C) Any other secured party that, ten days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in section 400.9-311(a).

(d) Subsection (b) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) A secured party complies with the requirement for notification prescribed by subsection (c)(3)(B) if:

(1) Not later than twenty days or earlier than thirty days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c)(3)(B); and

(2) Before the notification date, the secured party:

(A) Did not receive a response to the request for information; or

(B) Received a response to the request for information and sent an authenticated

notification of disposition to each secured party **or other lienholder** named in that response whose financing statement covered the collateral.

400.9-613. Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) Describes the debtor and the secured party;

(B) Describes the collateral that is the subject of the intended disposition;

(C) States the method of intended disposition;

(D) States that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) States the time and place of a public **[sale] disposition** or the time after which any other disposition is to be made;

(2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact;

(3) The contents of a notification providing substantially the information specified in paragraph (1) are sufficient, even if the notification includes:

(A) Information not specified by that paragraph; or

(B) Minor errors that are not seriously misleading;

(4) A particular phrasing of the notification is not required;

(5) The following form of notification and the form appearing in section 400.9-614(3), when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: (Name of debtor, obligor, or other person to which the notification is sent)

From: (Name, address, and telephone number of secured party)

Name of Debtor(s): (Include only if debtor(s) are not an addressee)

(For a public disposition:)

We will sell (or lease or license, as applicable) the (describe collateral) (to the highest qualified bidder) in public as follows:

Day and Date: _____

Time: _____

Place: _____

(For a private disposition:)

We will sell (or lease or license, as applicable) the (describe collateral) privately sometime after (day and date).

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell (or lease or license, as applicable) (for a charge of \$ _____). You may request an accounting by calling us at (telephone number)

(End of Form)

400.9-615. (a) A secured party shall apply or pay over for application the cash proceeds of disposition **under section 400.9-610** in the following order to:

(1) The reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(2) The satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) The satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) The secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(B) In a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) A secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (a)(3).

(c) A secured party need not apply or pay over for application noncash proceeds of disposition under [this] section **400.9-610** unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) and permitted by subsection (c):

(1) Unless subsection (a)(4) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(2) The obligor is liable for any deficiency.

(e) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

(1) The debtor is not entitled to any surplus; and

(2) The obligor is not liable for any deficiency.

(f) The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to a transferee

other than the secured party, a person related to the secured party, or a secondary obligor if:

(1) The transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

(2) The amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(g) A secured party that receives cash proceeds of a disposition in good faith and without notice that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest under which the disposition is made:

(1) Takes the cash proceeds free of the security interest or other lien;

(2) Is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(3) Is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

400.9-625. (a) If it is established that a secured party is not proceeding in accordance with this article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) Subject to subsections (c), (d), and (f), a person is liable for damages in the amount of any loss caused by a failure to comply with this article. Loss caused by a failure to comply [with a request under section 400.9-210] may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) Except as otherwise provided in section 400.9-628:

(1) A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) for its loss; and

(2) If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus ten percent of the principal amount of the obligation or the time-price differential plus ten percent of the cash price.

(d) A debtor whose deficiency is eliminated under section 400.9-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under section 400.9-626 may not otherwise recover under subsection (b) for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(e) In addition to any damages recoverable under subsection (b), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover five hundred dollars in each case from a person that:

(1) Fails to comply with section 400.9-208;
(2) Fails to comply with section 400.9-209;
(3) Files a record that the person is not entitled to file under section 400.9-509(a);
(4) Fails to cause the secured party of record to file or send a termination statement as required by section 400.9-513(a) or (c);

(5) Fails to comply with section 400.9-616(b)(1) and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

(6) Fails to comply with section 400.9-616(b)(2).

(f) A debtor or consumer obligor may recover damages under subsection (b) and, in addition, five hundred dollars in each case from a person that, without reasonable cause, fails to comply with a request under section 400.9-210. A recipient of a request under section 400.9-210 which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under section 400.9-210, the secured party may claim a security interest only as shown in the **list or** statement included in the request as against a person that is reasonably misled by the failure.

(h) This section shall apply on and after January 1, 2003.

400.9-628. (a) Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) The secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this article; and

(2) The secured party's failure to comply with this article does not affect the liability of the person for a deficiency.

(b) A secured party is not liable because of its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:

(A) That the person is a debtor or obligor;

(B) The identity of the person; and

(C) How to communicate with the person; or

(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) That the person is a debtor; and

(B) The identity of the person.

(c) A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods

are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) A debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) An obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) A secured party is not liable to any person under section 400.9-625(c)(2) for its failure to comply with section 400.9-616.

(e) A secured party is not liable under section 400.9-625(c)(2) more than once with respect to any one secured obligation.

400.9-710. (a) In this section:

(1) "Former article 9 records" means:

a. Financing statements and other records that have been filed in the local-filing office before July 1, 2001, and that are, or upon processing and indexing will be, reflected in the index maintained, as of July 1, 2001, by the local-filing office for financing statements and other records filed in the local-filing office before July 1, 2001; and

b. The index as of July 1, 2001.

The term does not include records presented to a local-filing office for filing after July 1, 2001, whether or not the records relate to financing statements filed in the local-filing office before July 1, 2001.

(2) "Local-filing office" means a filing office, other than the office of the secretary of state, that is designated as the proper place to file a financing statement under 400.9-401 of former article 9. The term applies only with respect to a record that covers a type of collateral as to which the filing office is designated in that section as the proper place to file.

(b) Except for a record terminating a former article 9 record, a local filing office shall not accept a record presented after June 30, 2001, whether or not the record relates to a financing statement filed in the local filing office before July 1, 2001. If the record terminating such former article 9 record is in the standard form prescribed by the secretary of state, the uniform fee for filing and indexing the termination statement in the office of a county recorder shall be the same fee as set out in the former article 9 before the effective date of this act.

(c) Until June 30, [2006] **2008**, each local-filing office must maintain all former article 9 records in accordance with former article 9. A former article 9 record that is not reflected on the index maintained on July 1, 2001, by the local-filing office must be processed and indexed, and reflected on the index as of July 1, 2001, as soon as practicable but in any event no later than thirty days after July 1, 2001.

[(c)] (d) Until at least June 30, 2008, each local-filing office must respond to requests for information with respect to former article 9 records relating to a debtor and issue certificates,

in accordance with former article 9. The fees charged for responding to requests for information relating to a debtor and issuing certificates with respect to former article 9 records must be the fees in effect under former article 9 on July 1, 2001.

[(d)] **(e)** After June 30, [2006] **2008**, each local-filing office may remove and destroy, in accordance with any then applicable record retention law of this state, all former article 9 records, including the related index.

[(e)] **(f)** This section does not apply, with respect to financing statements and other records, to a filing office in which mortgages or records of mortgages on real property are required to be filed or recorded, if:

(1) The collateral is timber to be cut or as-extracted collateral; or

(2) The record is or relates to a financing statement filed as a fixture and the collateral is goods that are or are to become fixtures.

417.210. 1. Every person, general partnership, corporation, or other business organization who engages in business in this state under a fictitious name or under any name other than the true name of such person, general partnership, corporation, or other business organization shall, within five days after the beginning or engaging in business under such fictitious name, [register by verified statement of all parties concerned.] **execute the form required in this section, and shall be subject to the penalties of making a false declaration pursuant to section 575.060, RSMo, that the facts stated therein are true and that all parties concerned are duly authorized to execute such document and are otherwise required to file such document pursuant to this section** upon [blanks] **fictitious name forms** furnished by the secretary of state, such partnership or other fictitious name in the office of the secretary of state, together with the name or names and the residence of each and every person, partnership, corporation, or other business organization interested in or owning any part of the business; provided, that if the interest of any owner shall cease to exist, or any other person, partnership, corporation, or other entity shall become an owner, such fictitious name shall be reregistered within five days after any such change shall take place in the ownership of the business or any part thereof as set forth in the original registration, and such reregistration shall in all respects be made as in the case of an original registration of such fictitious name; provided, that the provisions of this section shall not apply to farmers' mutual insurance companies nor farmers' mutual telephone companies.

2. If the interest of any owner of a business conducted under a fictitious name registered as provided in this section is such that such owner may claim not to be jointly and severally liable to third parties with respect to debts and obligations incurred by such business, the registration relating to such business shall reflect the respective exact ownership interests of each owner of such business. In the case of any other business registered as provided in this section, disclosure of the respective exact ownership interests shall be optional.

3. For purposes of this section, a partnership or other entity formed for the practice of a licensed profession shall not be deemed to be engaged in the conduct of business, notwithstanding the transaction by such entity of business ancillary to the practice of such licensed profession.

575.060. 1. A person commits the crime of making a false declaration if, with the purpose to mislead a public servant in the performance of his duty, he:

(1) Submits any written false statement, which he does not believe to be true

(a) In an application for any pecuniary benefit or other consideration; or

(b) On a form bearing notice, authorized by law, that false statements made therein are punishable; or

(2) Submits or invites reliance on

(a) Any writing which he knows to be forged, altered or otherwise lacking in authenticity;

or

(b) Any sample, specimen, map, boundary mark, or other object which he knows to be false.

2. The falsity of the statement or the item under subsection 1 of this section must be as to a fact which is material to the purposes for which the statement is made or the item submitted; and the provisions of subsections 2 and 3 of section 575.040 shall apply to prosecutions under subsection 1 of this section.

3. It is a defense to a prosecution under subsection 1 of this section that the actor retracted the false statement or item but this defense shall not apply if the retraction was made after:

(1) The falsity of the statement or item was exposed; or

(2) The public servant took substantial action in reliance on the statement or item.

4. The defendant shall have the burden of injecting the issue of retraction under subsection 3 of this section.

5. **For the purpose of this section, "written" shall include filings submitted in an electronic or other format or medium approved or prescribed by the secretary of state.**

6. Making a false declaration is a class B misdemeanor.