

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 106

AN ACT

To repeal sections 361.097, 362.044, 362.247, 362.250, and 369.049, RSMo, and to enact in lieu thereof seven new sections relating to financial institutions.

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

Section A. Sections 361.097, 362.044, 362.247, 362.250, and 369.049, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 361.097, 362.044, 362.247, 362.250, 362.765, 369.049, and 369.705, to read as follows:

361.097. 1. The state banking and savings and loan board shall consist of five members who shall be appointed by the governor, the senate concurring. No person shall be eligible for appointment unless he or she is a resident of this state. One member shall be an attorney at law and a member of the Missouri Bar in good standing. ~~Two~~ Three members shall each have had at least five years of active bank or association management experience in institutions chartered under chapters 362 or 369 in this state. ~~One~~ member shall have had at least five years of active management experience in this state of one or more associations as defined in chapter 369.] One member shall be an individual who is not involved in the administration of a financial institution. Not more than three members of the board shall be members of the same political party.

2. The term of office of each member of the state banking and savings and loan board shall be six years. The board shall select its own chairman and secretary. The members of the state banking and savings and loan board

shall hold office for the respective terms for which they are appointed and until their successors shall qualify. Vacancies on such board shall be filled by appointment for the unexpired term in the same manner as in the case of an original appointment.

362.044. 1. Stockholders' meetings may be held at such place, within this state, as may be prescribed in the bylaws. In the absence of any such provisions, all meetings shall be held at the principal banking house of the bank or trust company. Stockholders' meetings may be conducted electronically if electronic meetings are authorized in the bylaws.

2. An annual meeting of stockholders for the election of directors shall be held on a day which each bank or trust company shall fix by its bylaws; and if no day be so provided, then on the second Monday of January.

3. Special meetings of the stockholders may be called by the directors or upon the written request of the owners of a majority of the stock.

4. [Notice of annual or special stockholders' meetings shall state the place, day and hour of the meeting, and shall be published at least ten days prior to the meeting and once a week after the first publication with the last publication being not more than seven days before the day fixed for such meeting, in some daily or weekly newspaper printed and published in the city or town in which the bank or trust company is located, and if there be none, then in some newspaper printed and published in the county in which the bank or trust company is located, and if there be none, then in some newspaper printed and published in an adjoining county.] A written or printed copy of the notice shall be delivered personally [or mailed] by mail or electronically to each stockholder at least ten but not more than fifty

days prior to the day fixed for the meeting, and shall state, in addition to the place, day and hour, the purpose of any special meeting or an annual meeting at which the stockholders will consider a change in the par value of the corporation stock, the issuance of preferred shares, a change in the number of directors, an increase or reduction of the capital stock of the bank or trust company, a change in the length of the corporate life, an extension or change of its business, a change in its articles to avail itself of the privileges and provisions of this chapter, or any other change in its articles in any way not inconsistent with the provisions of this chapter. Any stockholder may waive notice by causing to be delivered to the secretary during, prior to or after the meeting a written, signed waiver of notice, or by attending such meeting except where a stockholder attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

5. Unless otherwise provided in the articles of incorporation, a majority of the outstanding shares entitled to vote at any meeting represented in person or by proxy shall constitute a quorum at a meeting of stockholders; provided, that in no event shall a quorum consist of less than a majority of the outstanding shares entitled to vote, but less than a quorum shall have the right successively to adjourn the meeting to a specified date no longer than ninety days after the adjournment, and no notice need be given of the adjournment to shareholders not present at the meeting. Every decision of a majority of the quorum shall be valid as a corporate act of the bank or trust company unless a larger vote is required by this chapter.

6. (1) The stockholders of the bank or trust company may approve business by proxy and cancel any stockholders' meeting, provided:

(a) The stockholders are sent notice of such stockholders' meeting and a proxy referred to in this section;

(b) Within such proxy the stockholders are given the opportunity to approve or disapprove the cancellation of such stockholders' meeting;

(c) At least eighty percent of such bank or trust company's stock is voted by proxy; and

(d) All stockholders voting by proxy vote to cancel such stockholders' meeting.

(2) No business shall be voted on by proxy other than that expressly set out and clearly explained by the proxy material. If such stockholders' meeting is cancelled by proxy, notice of such cancellation shall be sent to all stockholders at least five days prior to the date originally set for such stockholders' meeting. The corporate secretary shall reflect all proxy votes by subject and in chronological order in the board of directors' minute book. The notice for such stockholders' meeting shall state the effective date of any of the following: new directors' election, change in corporate structure and any other change requiring stockholder approval.

7. The voting shareholder or shareholders of the bank or trust company may transact all business required at an annual or special stockholders' meeting by unanimous written consent.

362.247. 1. A majority of the full board of directors shall constitute a quorum for the transaction of business unless another number is required by the articles of agreement, the bylaws or by law. The act of a majority of

the directors present at a meeting at which a quorum is present shall be the act of the board of directors unless the act of a greater number is required by the articles of agreement, the bylaws or by law.

2. When the board of directors meets by telephonic conference call or video conferencing, the bank or trust company may include in a quorum directors who are not physically present but are allowed to vote, provided the bank and directors meet the applicable requirements of this section as follows:

(1) The bank or trust company has a composite rating of 1 or 2 under the CAMELS (Capital, Assets, Management, Earnings, Liquidity, and Sensitivity) rating system of the Federal Financial Institution Examination Counsel (FFIEC); and

(2) The bank or trust company's board meeting will not be attended by representatives of the bank or trust company's state or federal bank regulator.

3. Any director who is not physically present within the common area for the meeting and wishes to be counted toward a quorum for such meeting shall [sign an affidavit under penalty of perjury] confirm that such director:

(1) Received formal notice of the board meeting for which he or she is attending or waived such notice as otherwise provided by law;

(2) Received the board meeting information required for each board of director's meeting as provided by section 362.275; and

(3) Was alone when participating in such board meeting or was in the physical presence of no one not a director of such bank or trust company, and was able to clearly hear such board meeting discussion from its beginning to end.

4. The confirmation of directors participating in the board meeting telephonically or by video conferencing shall be recorded by the secretary in the minutes at the meeting.

[4.] 5. Notwithstanding the provisions of subsections 2 and 3 of this section to the contrary, the director of the division of finance may promulgate alternative or additional regulations, reasonable in scope, to provide for the integrity of the board of directors' operations when directors who are not physically present and counted toward such board's quorum, provided the regulations balance the integrity of such board's operation with the bank or trust company's interest in minimizing the cost of compliance with such regulation.

[5.] 6. The sole remedy when the bank, trust company or director fails to follow the procedures for directors who are not physically present and counted toward the board's quorum as provided in this section shall be limited to such action as the division of finance may bring under its enforcement authority as provided in chapter 361.

362.250. 1. Every person elected director of a bank or trust company shall, within thirty days after election, qualify himself as director by filing with the officers of the bank or trust company an oath that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of the bank or trust company, and will not knowingly violate, or willingly permit to be violated, any of the provisions of law applicable to the bank or trust company.

2. The oath shall be subscribed by the director making it, and certified by an officer authorized by law to administer oaths, and the fact of the oath having been made and filed with the officers of the bank or trust company shall be noted on the records of the acts of the directors.

3. The oath, subscribed by the director making it, and certified by the officer before whom it is taken, shall be [immediately transmitted to the director of finance and shall be filed and preserved in his office] retained with the official records of the board of directors.

4. Failure to comply with this provision within the time specified shall work a forfeiture of the position; provided, however, that the director of finance may, for cause deemed sufficient by him, extend the time; and when any vacancy occurs by this failure the board of directors shall, at the next regular meeting thereafter, enter the fact of the vacancy upon their records and promptly proceed to elect some competent person to fill the vacancy for the unexpired term.

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

(1) "Nonbank", an entity that is not a bank, trust company, savings and loan association, or savings bank;

(2) "Nonbank affiliate", shall include one or more non-bank business entities of which a bank holding company holds control as defined in section 362.910;

(3) "Nonbank subsidiary", shall include one or more non-bank business entities of which the bank or trust company holds control as defined in section 362.910.

2. Upon approval by the director of finance, a bank or trust company chartered under this chapter may merge with one or more of its nonbank subsidiaries or nonbank affiliates pursuant to an agreement of merger, and provided that the bank or trust company is the surviving institution.

3. The agreement of merger shall be presented to and acted upon by the director of finance within thirty days of the submission of the agreement to the director. In determining whether to approve or deny the merger, the

director shall consider the purpose of the transaction, its impact on the safety and soundness of the bank or trust company, and any effect on the bank or trust company's customers. The director of finance may deny the merger if it would have a negative effect in any such respect.

4. The decision of the director of finance granting or denying any such merger may be appealed in the same manner as decisions by the director pursuant to section 362.040 may be appealed. Should the state banking and savings and loan board decision result in the approval of the agreement of merger, the board may impose such conditions and terms upon the merger as the board deems appropriate.

5. Should the agreement of merger be approved, the director of finance shall provide a certification for the effective date of the merger to the bank or trust company which the bank or trust company may present to the secretary of state or other applicable state business office to demonstrate the completion of the merger.

6. A merger authorized under this section shall not have the effect of enabling a bank or trust company to exercise any right, power, privilege, or benefit that the bank or trust company could not lawfully exercise immediately prior to such merger.

369.049. 1. The name of every association [shall] may include either the words "Savings Association", or "Savings and Loan Association", except for associations domiciled in Missouri at the time sections 369.010 to 369.369 become law that use in their name "Building and Loan Association" or "Loan and Building Association". No name shall be used which is likely to mislead the public as to the character or purpose of the association or which indicates it is authorized to perform an act or conduct any business which is forbidden to it by law. [The name of the association

shall not include the words, "National", "Federal", "United States", "Insured", "Guaranteed", "Government", or "Official".] The name of the association shall not be the same as nor deceptively similar to that of any other corporation authorized to transact business in this state, except in the case of an association formed by the reincorporation, reorganization, or consolidation of other associations, or upon the sale of the property or business of an association.

2. Notwithstanding the provisions of sections 362.421 and 362.425, any association may amend its charter to change its name or in the case of a new charter, may adopt a name, which includes the words "Savings Bank", in lieu of the words "Savings and Loan Association" or "Savings Association". For purposes of this chapter, the term "association" shall include savings banks. The procedure for adopting the name "savings bank" shall be as provided in section 369.059.

3. No person, firm, or corporation, either domestic or foreign, unless authorized to do business in this state under the provisions of sections 369.010 to 369.369 shall do business under any name or title which indicates or reasonably implies that the business is the character or kind of business carried on or transacted by an association or which is likely to lead any person to believe that the business is that of an association. Upon application by the director of the division of finance or any association, a court of competent jurisdiction may issue an injunction to restrain any such entity from violating or continuing to violate any of the foregoing provisions of this subsection.

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

(1) "Nonbank", an entity that is not a bank, trust company, savings and loan association or savings bank;

(2) "Nonbank affiliate", shall include one or more business entities of which a bank holding company or bank savings and loan holding company holds control as defined in section 362.910;

(2) "Nonbank subsidiary", shall include one or more business entities of which the savings and loan association or savings bank holds control as defined in section 362.910.

2. Upon approval by the director of finance, a savings and loan institution or savings bank chartered under this chapter may merge with one or more of its nonbank subsidiaries or nonbank affiliates pursuant to an agreement of merger, and provided that the savings and loan institution or savings bank is the surviving institution.

3. The agreement of merger shall be presented to and acted upon by the director of finance within thirty days of the submission of the agreement to the director. In determining whether to approve or deny the merger, the director shall consider the purpose of the transaction, its impact on the safety and soundness of the savings and loan institution or savings bank, and any effect on the savings and loan institution or savings bank customers. The director of finance may deny the merger if it would have a negative effect in any such respect.

4. The decision of the director of finance granting or denying any such merger may be appealed in the same manner as decisions by the director pursuant to section 362.040 may be appealed. Should the state banking and savings and loan board decision result in the approval of the agreement of merger, the board may impose such conditions and terms upon the merger as the board deems appropriate.

5. Should the agreement of merger be approved, the director of finance shall provide a certification for the effective date of the merger to the savings and loan institution or savings bank which the savings and loan institution or savings bank may present to the secretary of state or other applicable state business office to demonstrate the completion of the merger.

6. A merger authorized under this section shall not have the effect of enabling a savings and loan institution or savings bank to exercise any right, power, privilege, or benefit that the bank or trust company could not lawfully exercise immediately prior to such merger.