

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 835

AN ACT

To repeal sections 95.280, 95.285, 95.355, 408.035, 408.140, and 442.210, RSMo, and to enact in lieu thereof four new sections relating to financial institutions.

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

Section A. Sections 95.280, 95.285, 95.355, 408.035, 408.140, and 442.210, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 110.075, 408.035, 408.140, and 442.210, to read as follows:

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

(1) "Depository", banking institution headquartered in or maintaining a full-service branch in this state which is selected by a municipality to hold and manage public funds;

(2) "Governing body", any city council, board of aldermen, or board of trustees;

(3) "Municipal depositories", any state-chartered or federally chartered banking institution as defined in Article IV, Section 15 of the Constitution of Missouri;

(4) "Municipality", any city or village in this state;

(5) "Public funds", funds owned or controlled by a municipality, including tax revenues, fees, grants, and other sources of income.

2. All municipalities shall select depositories through a competitive process in accordance with the provisions in this section. The governing body of each municipality shall develop and publish a request for proposals which shall outline the requirements for selecting

one or more municipal depositories. Such requirements shall address or include the following matters:

(1) The municipality shall use due diligence for determining the financial stability and soundness of the depository based on publicly available financial reports and other public sources;

(2) Safe custody and liquidity of public funds, including deposit insurance coverage and pledge of collateral or investment in appropriate government securities as authorized for public funds;

(3) Interest rates and fees offered;

(4) Services offered, including online banking, cash management, deposit sweep and repurchase accounts, investment in a common trust fund in eligible securities for municipalities and political subdivision, and other banking service options;

(5) Compliance with all applicable state and federal banking regulations;

(6) Convenient and efficient treasury functions, including if the location of the depository institution shall be required to be located within the municipality or in the same county as the municipality.

3. Banking institutions interested in becoming the municipal depository shall respond to the municipality's request for proposals within the time frame specified by the municipality in the request.

4. The governing body shall evaluate the proposals based on the criteria outlined in the request for proposals and select a banking institution that best meets the municipality's needs and objectives.

5. The selected banking institution shall enter into a contract with the municipality outlining the terms and conditions of the depository relationship, including, but

not limited to, the interest rates, fees, and services to be provided.

6. Municipalities shall maintain records of the selection process, including all proposals received by the municipality for a period of two years.

408.035. Notwithstanding the provisions of any other law to the contrary, it is lawful for the parties to agree in writing to any rate of interest, fees, and other terms and conditions in connection with any:

(1) Loan to a corporation, general partnership, limited partnership or limited liability company;

(2) Extension of credit primarily for agricultural, business, or commercial purposes;

(3) Real estate loan, other than residential real estate loans [and loans of less than five thousand dollars secured by real estate used for an agricultural activity]; or

(4) Loan of five thousand dollars or more secured solely by certificates of stock, bonds, bills of exchange, certificates of deposit, warehouse receipts, or bills of lading pledged as collateral for the repayment of such loans.

408.140. 1. No further or other charge or amount whatsoever shall be directly or indirectly charged, contracted for or received for interest, service charges or other fees as an incident to any such extension of credit except as provided and regulated by sections 367.100 to 367.200 and except:

(1) On loans for thirty days or longer which are other than "open-end credit" as such term is defined in the federal Consumer Credit Protection Act and regulations thereunder, a fee, not to exceed ten percent of the principal amount loaned not to exceed one hundred dollars may be charged by the lender; however, no such fee shall be permitted on any extension, refinance, restructure or

renewal of any such loan, unless any investigation is made on the application to extend, refinance, restructure or renew the loan;

(2) The lawful fees actually and necessarily paid out by the lender to any public officer for filing, recording, or releasing in any public office any instrument securing the loan, and reasonable and bona fide third-party fees incurred for remote or electronic filing, which fees may be collected when the loan is made or at any time thereafter; however, premiums for insurance in lieu of perfecting a security interest required by the lender may be charged if the premium does not exceed the fees which would otherwise be payable;

(3) If the contract so provides, a charge for late payment on each installment or minimum payment in default for a period of not less than fifteen days in an amount not to exceed five percent of each installment due or the minimum payment due or fifteen dollars, whichever is greater, not to exceed fifty dollars. If the contract so provides, a charge for late payment on each twenty-five dollars or less installment in default for a period of not less than fifteen days shall not exceed five dollars;

(4) If the contract so provides, a charge for late payment for a single payment note in default for a period of not less than fifteen days in an amount not to exceed five percent of the payment due; provided that, the late charge for a single payment note shall not exceed fifty dollars;

(5) Charges or premiums for insurance written in connection with any loan against loss of or damage to property or against liability arising out of ownership or use of property as provided in section 367.170; however, notwithstanding any other provision of law, with the consent of the borrower, such insurance may cover property all or

part of which is pledged as security for the loan, and charges or premiums for insurance providing life, health, accident, or involuntary unemployment coverage;

(6) Reasonable towing costs and expenses of retaking, holding, preparing for sale, and selling any personal property in accordance with the uniform commercial code - secured transactions, sections 400.9-101 to 400.9-809;

(7) A reasonable service fee not to exceed the amount permitted under subdivision (2) of subsection 6 of section 570.120 for any check, draft, order, or like instrument that is returned unpaid by a financial institution, plus an amount equal to the actual fees charged by the financial institution for each check, draft, order, or like instrument returned unpaid;

(8) If the contract or promissory note, signed by the borrower, provides for attorney fees, and if it is necessary to bring suit, such attorney fees may not exceed fifteen percent of the amount due and payable under such contract or promissory note, together with any court costs assessed. The attorney fees shall only be applicable where the contract or promissory note is referred for collection to an attorney, and is not handled by a salaried employee of the holder of the contract;

(9) If the open-end credit contract is tied to a transaction account in a depository institution, such account is in the institution's assets and such contract provides for loans of thirty-one days or longer which are "open-end credit", as such term is defined in the federal Consumer Credit Protection Act and regulations thereunder, the creditor may charge a credit advance fee of up to the lesser of seventy-five dollars or ten percent of the credit advanced from time to time from the line of credit; such credit advance fee may be added to the open-end credit

outstanding along with any interest, and shall not be considered the unlawful compounding of interest as specified under section 408.120;

(10) A deficiency waiver addendum, guaranteed asset protection, or a similar product purchased as part of a loan transaction with collateral and at the borrower's consent, provided the cost of the product is disclosed in the loan contract, is reasonable, and the requirements of section 408.380 are met;

(11) A convenience fee for payments using an alternative payment channel that accepts a debit or credit card not present transaction, nonface-to-face payment, provided that:

(a) The person making the payment is notified of the convenience fee; and

(b) The fee is fixed or flat, except that the fee may vary based upon method of payment used;

(12) A charge equal to the cost of the credit report.

2. Other provisions of law to the contrary notwithstanding, an open-end credit contract under which a credit card is issued by a company, financial institution, savings and loan or other credit issuing company whose credit card operations are located in Missouri may charge an annual fee, provided that no finance charge shall be assessed on new purchases other than cash advances if such purchases are paid for within twenty-five days of the date of the periodic statement therefor.

3. Notwithstanding any other provision of law to the contrary, in addition to charges allowed pursuant to section 408.100, an open-end credit contract provided by a company, financial institution, savings and loan or other credit issuing company which is regulated pursuant to this chapter may charge an annual fee not to exceed fifty dollars.

442.210. 1. The certificate of acknowledgment shall state the act of acknowledgment, and that the person making the same was personally known to at least one judge of the court, or to the officer granting the certificate, to be the person whose name is subscribed to the instrument as a party thereto, or was proved to be such by at least two witnesses, whose names and places of residence shall be inserted in the certificate; and the following forms of acknowledgment may be used in the case of conveyances or other written instruments affecting real estate; and any acknowledgment so taken and certificate shall be sufficient to satisfy all requirements of law relating to the execution or recording of such instruments (begin in all cases by a caption, specifying the state and place where the acknowledgment is taken):

(1) In case of natural persons acting in their own right

On this _____ day of _____, 20_____,
before me personally appeared A B (or A B and C
D), to me known to be the person (or persons)
described in and who executed the foregoing
instrument, and acknowledged that he (or they)
executed the same as his (or their) free act and
deed.

(2) In the case of natural persons acting by attorney

On this _____ day of _____, 20_____,
before me personally appeared A B, to me known
to be the person who executed the foregoing
instrument in behalf of C D, and acknowledged
that he executed the same as the free act and
deed of C D.

(3) In the case of corporations or joint stock
associations

On this _____ day of _____, 20_____,
before me appeared A B, to me personally known,
who, being by me duly sworn (or affirmed) did
say that he is the president (or other officer
or agent of the corporation or association), of
(describing the corporation or association), and
that the seal affixed to foregoing instrument is
the corporate seal of said corporation (or
association), and that said instrument was
signed and sealed in behalf of said corporation
(or association) by authority of its board of
directors (or trustees), and said A B
acknowledged said instrument to be the free act
and deed of said corporation (or association).

2. In case the corporation or association has no
corporate seal, omit the words "the seal affixed to said
instrument is the corporate seal of said corporation (or
association), and that", and add at the end of the affidavit
clause the words "and that said corporation (or association)
has no corporate seal".

3. (In all cases add signature and title of the
officer taking the acknowledgment.)

[4. When a married woman unites with her husband in
the execution of any such instrument, and acknowledges the
same in one of the forms above sanctioned, she shall be
described in the acknowledgment as his wife, but in all
other respects her acknowledgment shall be taken and
certified as if she were sole; and no separate examination
of a married woman in respect to the execution of any
release or dower, or other instrument affecting real estate,
shall be required.]

[95.280. 1. Subject to the provisions of
section 110.030, the city council, at its
regular meetings in July of each year, may

receive sealed proposals for the deposit of the city funds from banking institutions doing business within the city that desire to be selected as the depository of the funds of the city. Notice that bids will be received shall be published by the city clerk not less than one nor more than four weeks before the meeting, in some newspaper published in the city. Any banking institution doing business in the city, desiring to bid, shall deliver to the city clerk, on or before the day of the meeting, a sealed proposal stating the rate percent upon daily balances that the banking institution offers to pay to the city for the privilege of being the depository of the funds of the city for the year next ensuing the date of the meeting; or, in the event that the selection is made for a less term than one year, as herein provided, then for the time between the date of the bid and the next regular time for the selection of a depository. It is a misdemeanor for the city clerk or other person to disclose directly or indirectly the amount of any bid to any person before the selection of the depository.

2. Notwithstanding the provisions of subsection 1 of this section to the contrary, the city council of any third class city with a population of more than fifteen thousand and less than nineteen thousand that is located in any county of the fourth classification with a population of more than forty thousand and less than forty-eight thousand three hundred, or of any city of the third classification with more than ten thousand five hundred but less than ten thousand six hundred inhabitants may receive sealed proposals for the deposit of city funds from banking institutions doing business within the city at any of the regular meetings of such city. The city shall send notice of bids to each banking institution in the city by regular mail at the time the notice is published in the newspaper in subsection 1 of this section. The banking institution selected as the depository shall be offered a depository contract for a maximum of two years. Any such city shall

follow the bid procedure established in subsection 1 of this section, except as otherwise provided in this subsection.]

[95.285. 1. Except as provided in subsection 2 of this section, upon the opening of the sealed proposals submitted, the city council shall select as the depository of the funds of the city the banking institution offering to pay to the city the largest amount for the privilege; except that the council may reject any or all bids. Within five days after the selection of the depository, the banking institution selected shall deposit the securities as required by sections 110.010 and 110.020. The rights and duties of the parties to the depository contract are as provided in section 110.010.

2. Notwithstanding any provision of section 95.280 or this section to the contrary, the contract term for any city of the third classification with more than ten thousand five hundred but less than ten thousand six hundred inhabitants shall begin on the first day of August following the receipt of the bid proposals.]

[95.355. Boards of aldermen in cities of the fourth class, at their first regular meetings in the months of January, April, July and October of each year, may select a depository for the funds of their respective cities, for the length of time and under the rules and regulations that are provided and prescribed by ordinance therefor. The rights and duties of the parties to the depository contract are as provided in section 110.010. The deposits shall be secured by deposit of securities as required by sections 110.010 and 110.020. The depository shall be a banking institution doing business within the city. If such depository cannot be selected, or such satisfactory arrangements made, the boards of aldermen may invest the moneys upon the terms and under the conditions provided by law for the loaning of county and school moneys.]