

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 386
90TH GENERAL ASSEMBLY

Reported from the Committee on Banks and Financial Institutions, April 28, 1999, with recommendation that the House Committee Substitute for Senate Committee Substitute for Senate Bill No. 386 Do Pass.

ANNE C. WALKER, Chief Clerk

L1706.05C

AN ACT

To repeal sections 362.247, 362.680, 362.925, 362.930, 365.010, 365.020, 370.107, 374.070, 456.040, 475.092 and 511.030, RSMo 1994, and sections 143.471, 362.077, 362.275, 362.550, 362.610, 374.205, 400.3-312, 456.520, 475.093, 483.310 and 620.010, RSMo Supp. 1998, relating to financial institutions, and to enact in lieu thereof thirty-seven new sections relating to the same subject, with penalty provisions and with an emergency clause for certain sections.

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

Section A. Sections 362.247, 362.680, 362.925, 362.930, 365.010, 365.020, 374.070, 456.040, 475.092 and 511.030, RSMo 1994, and sections 143.471, 362.275, 362.550, 362.610, 374.205, 400.3-312, 456.520, 475.093 and 483.310, RSMo Supp. 1998, are repealed and thirty-four new sections enacted in lieu thereof, to be known as sections 143.471, 362.247, 362.275, 362.550, 362.610, 362.680, 362.930, 365.010, 365.020, 365.200, 374.070, 374.205, 400.3-312, 408.620, 427.200, 456.040, 456.520, 475.092, 475.093, 483.310, 511.030, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13, to read as follows:

143.471. 1. An S corporation, as defined by section 1361 (a)(1) of the Internal Revenue Code, shall not be subject to the taxes imposed by section 143.071, or other sections imposing income tax on corporations.

2. A shareholder of an S corporation shall determine [his] **such shareholder's S** corporation modification and pro rata share, including its character, by applying the following:

(1) Any modification described in sections 143.121 and 143.141 which relates to an item of S corporation income, gain, loss, or deduction shall be made in accordance with the shareholder's pro rata share, for federal income tax purposes, of the item to which the modification relates. Where a shareholder's pro rata share of any such item is not required to be taken into account separately for federal income tax purposes, the shareholder's pro rata share of such item shall be determined in accordance with his pro rata share, for federal income tax purposes, of S corporation taxable income or loss generally;

(2) Each item of S corporation income, gain, loss, or deduction shall have the same character for a shareholder [under] **pursuant to** sections 143.005 to 143.998 as it has for federal

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

income tax purposes. Where an item is not characterized for federal income tax purposes, it shall have the same character for a shareholder as if realized directly from the source from which realized by the S corporation or incurred in the same manner as incurred by the S corporation.

3. A nonresident shareholder of an S corporation shall determine [his] **such shareholder's** Missouri nonresident adjusted gross income and his **or her** nonresident shareholder modification by applying the provisions of this subsection. Items shall be determined to be from sources within this state [under] **pursuant to** regulations of the director of revenue in a manner consistent with the division of income provisions of section 143.451, section 143.461, or section 32.200, RSMo (Multistate Tax Compact). In determining the adjusted gross income of a nonresident shareholder of any S corporation, there shall be included only that part derived from or connected with sources in this state of the shareholder's pro rata share of items of S corporation income, gain, loss or deduction entering into [his] **shareholder's** federal adjusted gross income, as such part is determined [under] **pursuant to** regulations prescribed by the director of revenue in accordance with the general rules in section 143.181. Any modification described in subsections 2 and 3 of section 143.121 and in section 143.141, which relates to an item of S corporation income, gain, loss, or deduction shall be made in accordance with the shareholder's pro rata share, for federal income tax purposes, of the item to which the modification relates, but limited to the portion of such item derived from or connected with sources in this state.

4. The director of revenue shall permit S corporations to file composite returns and to make composite payments of tax on behalf of its nonresident shareholders not otherwise required to file a return. If the nonresident shareholder's filing requirements result solely from one or more interests in any other partnerships or subchapter S corporations, that nonresident shareholder may be included in the composite return.

5. If an S corporation pays or credits amounts to any of its nonresident individual shareholders as dividends or as their share of the S corporation's undistributed taxable income for the taxable year, the S corporation shall either timely file with the department of revenue an agreement as provided in subsection 6 of this section or withhold Missouri income tax as provided in subsection 7 of this section. An S corporation that timely files an agreement as provided in subsection 6 of this section with respect to a nonresident shareholder for a taxable year shall be considered to have timely filed such an agreement for each subsequent taxable year. An S corporation that does not timely file such an agreement for a taxable year shall not be precluded from timely filing such an agreement for subsequent taxable years. An S corporation is not required to deduct and withhold Missouri income tax for a nonresident shareholder if:

(1) The nonresident shareholder not otherwise required to file a return agrees to have the Missouri income tax due paid as part of the S corporation's composite return;

(2) The nonresident shareholder not otherwise required to file a return had Missouri assignable federal adjusted gross income from the S corporation of less than twelve hundred dollars;

(3) The S corporation is liquidated or terminated;

(4) Income was generated by a transaction related to termination or liquidation; or

(5) No cash or other property was distributed in the current and prior taxable year.

6. The agreement referred to in subdivision (1) of subsection 5 of this section is an agreement of a nonresident shareholder of the S corporation to:

(1) File a return in accordance with the provisions of section 143.481 and to make timely

payment of all taxes imposed on the shareholder by this state with respect to income of the S corporation; and

(2) Be subject to personal jurisdiction in this state for purposes of the collection of income taxes, together with related interest and penalties, imposed on the shareholder by this state with respect to the income of the S corporation.

The agreement will be considered timely filed for a taxable year, and for all subsequent taxable years, if it is filed at or before the time the annual return for such taxable year is required to be filed pursuant to section 143.511.

7. The amount of Missouri income tax to be withheld is determined by multiplying the amount of dividends or undistributed income allocable to Missouri that is paid or credited to a nonresident shareholder during the taxable year by the highest rate used to determine a Missouri income tax liability for an individual, except that the amount of the tax withheld may be determined based on withholding tables provided by the director of revenue if the shareholder submits a Missouri withholding allowance certificate.

8. An S corporation shall be entitled to recover for a shareholder on whose behalf a tax payment was made pursuant to this section, if such shareholder has no tax liability.

9. With respect to S corporations that are banks or bank holding companies, a pro rata share of the tax credit for the tax payable pursuant to chapter 148, RSMo, shall be allowed against each S corporation shareholders' state income tax as follows, provided the bank otherwise complies with section 1 of this act:

(1) The credit allowed by this subsection shall be equal to the bank tax calculated pursuant to chapter 148, RSMo, based on bank income in 1999 and after, on a bank that makes an election pursuant to 26 U.S.C. section 1362, and such credit shall be allocated to the qualifying shareholder according to stock ownership, determined by multiplying a fraction, where the numerator is the shareholder's stock, and the denominator is the total stock issued by such bank or bank holding company;

(2) The tax credit authorized in this subsection shall be permitted only to the shareholders that qualify as S corporation shareholders, provided the stock at all times during the taxable period qualifies as S corporation stock as defined in 26 U.S.C. section 1361, and such stock is held by the shareholder during the taxable period. The credit created by this section on a yearly basis is available to each qualifying shareholder, including shareholders filing joint returns. A bank holding company is not allowed this credit, except that, such credit shall flow through to such bank holding company's qualified shareholders, and be allocated to such shareholders under the same conditions; and

(3) In the event such shareholder cannot use all or part of the tax credit in the taxable period of receipt, such shareholder may carry forward such tax credit for a period of the lesser of five years or until used, provided such credits are used as soon as the taxpayer has Missouri taxable income.

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 Council (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 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. 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. 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, RSMo.

362.275. 1. The board of directors of every bank and trust company organized or doing business [under] pursuant to this chapter shall hold a regular meeting at least once each month, or, upon application to and acceptance by the director of finance, at such other times, not less frequently than once each calendar quarter as the director of finance shall approve, which approval may be rescinded at any time. There shall be submitted to the meeting a list giving the aggregate of loans, discounts, acceptances and advances, including overdrafts, to each individual, partnership, corporation or person whose liability to the bank or trust company has been created, extended, renewed or increased since the cut-off date prior to the regular meeting by more than an amount to be determined by the board of directors, which minimum amount shall not exceed five percent of the bank's legal loan limit, except the minimum amount shall in no case be less than ten thousand dollars, and a second list of the aggregate indebtedness of each borrower whose aggregate indebtedness exceeds five times [said] such minimum amount, except the aggregate indebtedness shall in no case be less than fifty thousand dollars; and a third list showing all paper past due thirty days or more; and a fourth list showing the aggregate of the then existing indebtedness and liability to the bank or trust company of each of the directors, officers, and employees thereof. The information called for in the second, third, and fourth lists shall be submitted as of the date of the regular meeting or as of a reasonable date prior thereto. If there

is collateral to the indebtedness, it shall be described as of the date of the lists. No bills payable shall be made, and no bills shall be rediscounted by the bank or trust company except with the consent or ratification of the board of directors; provided, however, that if the bank or trust company [be] is a member of the federal reserve system, rediscounts may be made to it by the officers in accordance with its rules, a list of all rediscounts to be submitted to the next regular meeting of the board. The director of finance may require, by order, that the board of directors of a bank or trust company approve or disapprove every purchase or sale of securities and every discount, loan, acceptance, renewal or other advance including every overdraft over an amount to be specified in the director's order and may also require that the board of directors review, at each monthly meeting, a list of the aggregate indebtedness of each borrower whose aggregate indebtedness exceeds an amount to be specified in the director's order. The minutes of the meeting shall indicate the compliance with the requirements of this section. **Furthermore, the debtor's identity on the information required in this subsection, may be masked by code to conceal the actual debtor's identity only for information mailed to or otherwise provided directors who are not physically present at the board meeting. The code used shall be revealed to all directors at the beginning of each board meeting for which this procedure is used.**

2. The board of directors may ratify a poll taken by the bank or trust company's senior officers on any issue in need of immediate action and ultimate board approval, provided:

(1) The vote by poll meets or exceeds a majority of the board of directors unless a greater number of votes for board action is required by the bank or trust company's articles of agreement, bylaws or the law;

(2) Any director who is a member of the board and has a pecuniary interest in the board's action, recuses himself or herself from the poll, takes no part, and does not vote on the board ratification of such issue; and

(3) Such poll is made available by director's name and vote to the board prior to the board's vote on ratification.

3. If the board ratifies such poll as provided in subsection 2 of this section, the ratification shall have the same force and effect as the board originally approving such action at a board meeting, as of the date the poll is approved.

362.550. 1. When any trust company organized [under] **pursuant to** the laws of this state shall have been nominated as personal representative of the last will of any deceased person, the court or officer authorized [under] **pursuant to** the law of this state to grant letters testamentary thereon shall, upon proper application, grant letters testamentary thereon to the trust company or to its successor by merger.

2. When application is made for the appointment of a personal representative on the estate of any deceased person, and there is no person entitled to the letters, or if there [be] is one so entitled then, on the application of the person, the court or officer making the appointment may grant letters of administration with will annexed to any trust company.

3. Any trust company may be appointed conservator, trustee, personal representative, receiver, assignee or in any other fiduciary capacity, in the manner now provided by law for appointment of individuals to any such office. On the application of any natural person acting in any such office, or on the application of any natural persons acting jointly in any such office, any trust company may be appointed by the court or officer having jurisdiction in the place and stead

of the person or persons; or on the application of the person or persons any trust company may be appointed to the office to act jointly with the person or persons theretofore appointed, or appointed at the same time; provided, the appointment shall not increase the compensation to be paid the joint fiduciaries over the amount [under] **pursuant to** the law payable to a fiduciary acting alone.

4. Any natural person or persons heretofore or hereafter appointed as guardian, trustee, personal representative, receiver, assignee, or in any other fiduciary capacity, desiring to have their bond under the office reduced, or desiring to be appointed under a reduced bond, the person or persons may apply to the court to have their appointment put or made under such limitation of powers and upon such terms and conditions as to the deposits of assets by the person or persons with any trust company, under such reduced bond to be given by the person or persons as the court or judge shall prescribe, and the court or judge may make any proper order in the premises.

5. Any investments made by any trust company of money received by it in any fiduciary capacity shall be at its sole risk, and for all losses of such money the capital stock and property of the company shall be absolutely liable, unless the investments are such as are proper when made by an individual acting in such fiduciary capacity, or such as are permitted under and by the instrument or order creating or defining the trust. Any trust company in the exercise of its fiduciary powers as personal representative, guardian, trustee or other fiduciary capacity, may retain and continue to hold, as an investment of an estate, trust or other account administered by it as fiduciary, any shares of the capital stock, and other securities or obligations, of the trust company so acting, and of any parent company or affiliated company of such trust company, which stock, securities and obligations have been transferred to or deposited with such fiduciary by the creator or creators of such fiduciary account or other donors or grantors, or received by it in exchange for, or as dividends upon, or purchased by the exercise of subscription rights, including rights to purchase fractional shares, in respect of, any other stock, securities or obligations so transferred to or deposited with it, or which have been purchased by such fiduciary pursuant to a requirement of the instrument or order governing such account or pursuant to the direction of such person or persons other than the trust company having power to direct such fiduciary with respect to such purchases; but except as herein provided, including the exercise of subscription rights, no such trust company shall purchase as an investment for any fiduciary account, in the exercise of its own discretion, any stock or other securities or obligations, other than deposit accounts, savings certificates or certificates of deposits, issued by such trust company, or its parent or affiliated companies. This subsection shall not be construed to prohibit a trust company, in the exercise of its own discretion, from purchasing as an investment, for any fiduciary account, securities or obligations of any state or political subdivision thereof which meet investment standards which shall be established by the director of the division of finance, even though such obligations are underwritten by such trust company or its parent or affiliated companies.

6. The court or officer may make orders respecting the trusts and require any trust company to render all accounts which the court or officer might lawfully require if the personal representative, guardian, trustee, receiver, depository or the trust company acting in any other fiduciary capacity, were a natural person.

7. Upon the appointment of a trust company to any fiduciary office, no official oath shall be required.

8. Property or securities received or held by a trust company in any fiduciary capacity shall be a special deposit in the trust company, and the accounts thereof shall be kept separate from each other and separate from the company's individual business. The property or securities held in trust shall not be mingled with the investments of the capital stock or other property belonging to the trust company or be liable for the debts or obligations thereof. For the purpose of this section, the corporation shall have a trust department, in which all business authorized by subsection 2 of section 362.105 is kept separate and distinct from its general business.

9. The accounts, securities and all records of any trust company relating to a trust committed to it shall be open for the inspection of all persons interested in the trust.

10. When any trust company organized [under] **pursuant to** the laws of this state shall have been appointed personal representative of the estate of any deceased person, or guardian, trustee, receiver, assignee, or in any other fiduciary capacity, in the manner provided by law for appointment to any such office, and if the trust company has heretofore merged or consolidated with or shall hereafter merge or consolidate with any other trust company organized [under] **pursuant to** the laws of this state, then, at the option of the first mentioned company, and upon the filing by it, with the court having jurisdiction of the estate being administered, of a certificate of the merger or consolidation, together with a statement that the other trust company is to thereafter administer the estate held by it and an acceptance by the latter trust company of the trust to be administered, the certificate, statement and acceptance to be executed by the president or vice president of the respective companies and to have affixed thereto the corporate seals of the respective companies, attested by the secretary thereof, and further upon the approval of the court and the giving of such bond as may be required, all the rights, privileges, title and interest in and to all property of whatsoever kind, whether real, personal or mixed, and things in action belonging to the trust estate, and every right, privilege or asset of conceivable value or benefit then existing which would inure to the estate under an unmerged or consolidated existence of the first mentioned company, shall be fully and finally and without right of reversion transferred to and vested in the corporation into which it is merged or with which it is consolidated, without further act or deed, and the last mentioned corporation shall have and hold the same in its own right as fully as the same was possessed and held by the corporation from which it was, by operation of the provisions of this section, transferred, and the corporation shall succeed to all the relations, obligations and liabilities, and shall execute and perform all the trusts and obligations devolving upon it, in the same manner as though it had itself assumed the relation or trust.

11. Notwithstanding any other provisions of law to the contrary, a bank, trust company or affiliate thereof, when acting as a trustee, investment advisor, custodian, or otherwise in a fiduciary capacity with respect to the investment and reinvestment of assets may invest and reinvest the assets, subject to the standards contained in section 456.520, RSMo, in the securities of any open-end or closed-end management investment company or investment trust registered [under] **pursuant to** the federal Investment Company Act of 1940 as amended (15 U.S.C. sections 80a-1, et seq.) (collectively, "mutual funds"). Such investment and reinvestment of assets may be made notwithstanding that such bank, trust company, or affiliate provides services to the investment company or trust as investment advisor, sponsor, distributor, custodian, transfer agent, registrar, or otherwise, and receives reasonable remuneration for such services. Such bank or trust company or affiliate thereof is entitled to receive fiduciary fees with respect to such assets. For such services the bank or trust company or affiliate thereof shall be entitled only to the normal fiduciary fee but neither a bank, trust company nor affiliate shall be required to reduce

or waive its compensation for services provided in connection with the investment and management of assets because the fiduciary invests, reinvests or retains assets in a mutual fund. **The provisions of this subsection apply to any trust, advisory, custody or other fiduciary relationship established before or after August 28, 1999, unless the governing instrument refers to this section and provides otherwise.**

12. As used in this section, the term "trust company" applies to any state or national bank or trust company qualified to act as fiduciary in this state.

362.610. Any bank, banks, trust company or trust companies, organized [under] **pursuant to** the laws of this state, may be merged in any other such bank or trust company, or may be consolidated with any other such bank, banks, trust company or trust companies, to form a consolidated corporation [under] **pursuant to** this chapter, on compliance with the provisions of sections 362.610 to 362.810; except that the consolidated corporation shall not be a bank unless one of the parties to the consolidation or merger was a bank, or upon compliance with the provisions of section 362.118, and the consolidated corporation shall not be a trust company unless one of the parties to the consolidation or merger was a trust company, or upon compliance with the provisions of section 362.117. [In the event that] **Since** federal law permits out-of-state banks to merge with a national bank headquartered in Missouri [on and after June 1, 1997, then], any out-of-state bank or trust company may be merged or consolidated with any Missouri bank or trust company, and any Missouri bank or trust company may merge or consolidate with any out-of-state bank or trust company, upon compliance with the provisions of [this chapter] **section 362.077.**

362.680. 1. In case of approval by the finance director, the agreement, except as provided in subsection 3 of this section, shall within sixty days after the date of the approval be submitted to the stockholders of each bank and trust company which is a party to the merger or consolidation.

2. The meeting of the stockholders of each bank and trust company for the purpose shall be called upon notice given as provided in section 362.044.

3. In the event that the director of the division of finance determines that one of the banks which is a party to the merger is in imminent danger of failing and that the merger is necessary to prevent such failure, or that one of the banks which is a party to the merger was formed to take over assets and liabilities of a failed bank, or that the parties to the merger are wholly owned[, except for directors' qualifying shares.] by a bank holding company, he **or she** shall issue an order to such effect and the merger shall take effect immediately upon the issuance of his **or her** order approving the merger. In such a case, the agreement of merger, along with a copy of the order of the director of the division of finance approving the merger, shall be filed in the office of the recorder of deeds in the county or counties in which the respective banks are located. No stockholders' meeting need be held but any stockholder of either bank shall be entitled to exercise the right of a dissenting stockholder [under] **pursuant to** section 362.730.

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

(1) "Adjoining-state bank holding company", any bank holding company, other than a Missouri bank holding company, the principal operations of which are conducted in one of the states adjoining Missouri and which is not directly or indirectly controlled by another company the principal operations of which are conducted in a state other than Missouri or a state adjoining Missouri;

(2) "Bank", any institution which accepts demand deposits and makes loans;

(3) "Bank holding company" shall have the meaning set forth either in section 362.910 or the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. Section 1841;

(4) "Company" shall have the meaning set forth in section 362.910;

(5) "Control" shall have the meaning set forth either in section 362.910 or the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. Section 1841. "Control" may be acquired by acquisition of voting securities, by purchase of assets, by merger or consolidation, by contract or otherwise;

(6) "Deposits", with respect to a bank, all deposits held by all banking offices of such bank as shown in the most recent report of condition or similar report of such bank filed with the appropriate federal regulatory authority; excluding, however, all deposits, if any, of banks or companies also controlled by the bank holding company which controls such bank;

(7) "Missouri bank", any bank which has its principal banking office in Missouri;

(8) "Missouri bank holding company", any bank holding company which controls a Missouri bank, provided that a bank holding company which acquired control of all of its Missouri bank subsidiaries pursuant to subsection 2 of this section shall not be deemed to be a Missouri bank holding company unless its principal operations are conducted in Missouri;

(9) "Principal operations", the state in which the principal operations of a bank holding company are conducted shall be deemed to be the state in which the total deposits of all banks which it controls are the largest;

(10) "Subsidiary", with respect to a bank holding company, any company or bank controlled by such bank holding company.

2. Notwithstanding any other law of this state to the contrary, an adjoining-state bank holding company may, with the approval of the director of the division of finance who shall act within sixty days of receipt of the application, acquire control of one or more Missouri banks or Missouri bank holding companies, if the laws of the state in which the principal operations of such adjoining-state bank holding company are conducted permit Missouri bank holding companies to acquire control of one or more banks which have their principal banking offices in such state or bank holding companies which conduct their principal operations in such state, under conditions which are substantially the same, but no adjoining-state bank holding company, Missouri bank holding company, or any other company may establish or acquire a bank in this state unless such bank is a "bank" as that term is defined in the Federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. 1841(c). The adjoining-state bank holding company shall file with the director of the Missouri division of finance a copy of the application it is required to file with the board of governors of the Federal Reserve System together with such information as shall be necessary to satisfy the director that the conditions of reciprocity set forth in this subsection are met and the acquiring holding company will not exceed the limits imposed by section 362.915, and the acquisition will not impair the safety and soundness of the bank or banks acquired. If control of a bank holding company which controls one or more Missouri banks is acquired by a bank holding company which

conducts its principal operations in a state other than Missouri or a state adjoining Missouri, such acquiring bank holding company shall, within one year after the effective date of such acquisition of control, divest itself of any bank located in Missouri, control of which it acquires as a result of such acquisition.

3. The provisions of this section are severable. In the event that a court of competent jurisdiction shall enter a decision finding any provision of this section unconstitutional or otherwise invalid and if such decision remains in force after all appeals therefrom have been exhausted, all remaining provisions of this section shall remain in full force and effect notwithstanding such decision and such decision shall not be given retroactive effect by any court and shall not invalidate any acquisitions completed in reliance on any provisions of this section prior to the date when all such appeals have been exhausted.

4. Any bank, bank holding company, company, or any subsidiary of any of them which violates any provision of sections 362.910 to 362.940, is guilty of a misdemeanor and, upon conviction, shall be fined not more than one thousand dollars for each day during which the violation continues.

5. Any person who participates in a violation of any provision of sections 362.910 to 362.940 is guilty of a class A misdemeanor and, upon conviction, shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars or by imprisonment in the county jail for a term not to exceed one year, or by both such fine and imprisonment.

6. In the event that, notwithstanding the provisions of subsection 2 of this section, any bank which is not a "bank" as defined in the Federal Bank Holding Company Act of 1956, as amended, is permitted to do business in this state, such bank shall be regulated by the director of finance pursuant to rules and regulations adopted by him.]

362.930. Any court of competent jurisdiction may enjoin violations of subsection 1 of section 362.920 [or subsection 1 of section 362.925]. Any bank adversely affected by any such violation, any banking organization having statewide membership, and the director of finance shall have standing to sue in any such action.

365.010. [This chapter] **Sections 365.010 to 365.160 shall be known and** may be cited as the "Missouri Motor Vehicle Time Sales Law".

365.020. Unless otherwise clearly indicated by the context, the following words and phrases have the meanings indicated:

(1) "Cash sale price", the price stated in a retail installment contract for which the seller would have sold to the buyer, and the buyer would have bought from the seller, the motor vehicle which is the subject matter of the retail installment contract, if the sale had been a sale for cash or at a cash price instead of a retail installment transaction at a time sale price. The cash sale price may include any taxes, registration, certificate of title, license and other fees and charges for accessories and their installment and for delivery, servicing, repairing or improving the motor vehicle;

(2) "Director", the office of the director of the division of finance;

(3) "Holder" of a retail installment contract, the retail seller of the motor vehicle under the contract or, if the contract is purchased by a sales finance company or other assignee, the sales finance company or other assignee;

- (4) "Insurance company", any form of lawfully authorized insurer in this state;
- (5) "Motor vehicle", any new or used automobile, mobile home, motorcycle, truck, trailer, semitrailer, truck tractor, or bus having a cash sale price of seven thousand five hundred dollars or less primarily designed or used to transport persons or property on a public highway, road or street;
- (6) "Official fees", the fees prescribed by law for filing, recording or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction;
- (7) "Person", an individual, partnership, corporation, association, and any other group however organized;
- (8) "Principal balance", the cash sale price of the motor vehicle which is the subject matter of the retail installment transaction plus the amounts, if any, included in the sale, if a separate identified charge is made therefor and stated in the contract, for insurance and other benefits, **including any amounts paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest, lien, or lease interest on property traded in** and official fees, minus the amount of the buyer's down payment in money or goods. **Notwithstanding any law to the contrary, any amount actually paid by the seller pursuant to an agreement with the buyer to discharge a security interest, lien or lease on property traded in which was included in a contract prior to the effective date of this section is valid and legal;**
- (9) "Retail buyer" or "buyer", a person who buys a motor vehicle from a retail seller in a retail installment transaction under a retail installment contract;
- (10) "Retail installment contract" or "contract", an agreement evidencing a retail installment transaction entered into in this state pursuant to which the title to or a lien upon the motor vehicle, which is the subject matter of the retail installment transaction is retained or taken by the seller from the buyer as security for the buyer's obligation. The term includes a chattel mortgage[,] **or a conditional sales contract** [and a contract for the bailment or leasing of the motor vehicle by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become or, for no further or a merely nominal consideration, has the option of becoming, the owner of the motor vehicle upon full compliance with the provisions of the contract];
- (11) "Retail installment transaction", a sale of a motor vehicle by a retail seller to a retail buyer on time under a retail installment contract for a time sale price payable in one or more deferred installments;
- (12) "Retail seller" or "seller", a person who sells a motor vehicle, not principally for resale, to a retail buyer under a retail installment contract;
- (13) "Sales finance company", a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more sellers. The term includes but is not limited to a bank, trust company, loan and investment company, savings and loan association, financing institution, or registrant [under] **pursuant to** sections 367.100 to 367.200, RSMo, if so engaged. The term shall not include a person who makes only isolated purchases of retail installment contracts, which purchases are not being made in the course of repeated or successive purchases of retail installment contracts from the same seller;
- (14) "Time price differential", the amount, however denominated or expressed, as limited

by section 365.120, in addition to the principal balance to be paid by the buyer for the privilege of purchasing the motor vehicle on time to be paid for by the buyer in one or more deferred installments;

(15) "Time sale price", the total of the cash sale price of the motor vehicle and the amount, if any, included for insurance and other benefits if a separate identified charge is made therefor and the amounts of the official fees and time price differential.

365.200. 1. For any motor vehicle which is not subject to the Missouri motor vehicle time sales law as provided in sections 365.010 to 365.160, a seller is permitted to include in the contractual time sale of a motor vehicle the outstanding balance of a prior loan or lease of a motor vehicle used as a trade-in. For the purposes of this section, a "time sale contract" is a contract evidencing an installment transaction entered into in this state pursuant to which the title to or a lien upon the motor vehicle which is the subject of the installment transaction is retained or taken by the seller from the buyer as security for the buyer's obligation. The term includes a security agreement or a contract for the bailment or leasing of the motor vehicle by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner of a motor vehicle upon satisfying the contract. "Motor vehicle" is any new or used automobile, mobile home, motorcycle, truck, trailer, semitrailer, truck tractor or bus.

2. Any seller as provided in this section shall first qualify as a retail seller pursuant to sections 365.010 to 365.160.

374.070. 1. The office shall be a public office and the records shall be public records and shall at all times be open to the inspection of the public subject to such rules as the director shall make for their safekeeping; provided, however, that the work product of the director, [his] **the director's** employees and agents, including but not limited to work papers of examinations of companies, work papers of investigations of companies, agents, brokers and insurance agencies and confidential communications to the department of insurance, shall not be considered public records except as the director may decide otherwise[, or until the matter to which the work papers are related becomes final].

2. When requested, the director shall furnish certified copies of any paper, report, or documents on file in [his] **the director's** office to any person requesting them, upon payment of the fees allowed by law.

3. Five years after the conclusion of the transactions to which they relate, the director is authorized to destroy or otherwise dispose of all correspondence, complaints, claim files, working papers of examinations of companies, examination reports of companies made by the insurance supervisory officials of states other than Missouri, rating files, void or obsolete or superseded rate filings and schedules, individual company rating experience data, applications, requisitions, and requests for licenses, all license cards and records, all expired bonds, all records of hearings, and all similar records, papers, documents, and memoranda now or hereafter in the possession of the director.

4. Ten years after the conclusion of the transactions to which they relate, the director is authorized to destroy or otherwise dispose of all foreign companies' and alien companies' annual statements, valuation reports, tax reports, and all similar records, papers, documents and memoranda now or hereafter in the possession of the director.

5. Disposal and destruction of records shall be in accordance with sections 109.200 to

109.310, RSMo.

374.205. 1. (1) The director or any of the director's examiners may conduct an examination pursuant to sections 374.202 to 374.207 of any company as often as the director in his or her sole discretion deems appropriate, but shall, at a minimum, conduct a financial examination of every insurer licensed in this state at least once every five years. In scheduling and determining the nature, scope and frequency of examinations, the director may consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, consumer complaints, and other criteria as set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners and in effect when the director exercises discretion pursuant to this section.

(2) For purposes of completing an examination of any company pursuant to sections 374.202 to 374.207, the director may examine or investigate any person, or the business of any person, insofar as such examination or investigation is, in the sole discretion of the director, necessary or material to the examination of the company.

(3) In lieu of a financial examination pursuant to section 374.207 of any foreign or alien insurer licensed in this state, the director may accept a financial examination report on the company as prepared by the insurance department or other appropriate agency for the company's state of domicile or port-of-entry state until January 1, 1994. [Thereafter] **After January 1, 1994**, such reports may only be accepted if such insurance department or other appropriate agency was at the time of the examination accredited [under] **pursuant to** the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program or the examination is performed under the supervision of an accredited insurance department or other appropriate agency or with the participation of one or more examiners who are employed by such an accredited state insurance department or other appropriate agency and who, after a review of the examination workpapers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department or other appropriate agency.

2. (1) Upon determining that an examination should be conducted, the director or the director's designee shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners. The director may also employ such other guidelines or procedures as the director may deem appropriate.

(2) Every company or person from whom information is sought, its officers, directors and agents shall provide to the examiners appointed pursuant to subdivision (1) of this subsection timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the company being examined. The company or person being examined shall provide within ten calendar days any record requested by an examiner during a market conduct examination, unless such company or person demonstrates to the satisfaction of the director that the requested record cannot be provided within ten calendar days of the request. All policy records for each policy issued shall be maintained for the duration of the current policy term plus two calendar years and all claim files shall be maintained for the calendar year in which

the claim is closed plus three calendar years. The officers, directors, employees and agents of the company or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of any company, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension or refusal of, or nonrenewal of, any license or authority held by the company to engage in an insurance or other business subject to the director's jurisdiction. Any such proceeding for suspension, revocation or refusal of any license or authority shall be conducted pursuant to section 374.046.

(3) The director or any of the director's examiners may issue subpoenas to administer oaths and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of any person to obey a subpoena, the director may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court. Such subpoenas may also be enforced pursuant to the provisions of sections 375.881 and 375.1162, RSMo.

(4) When making an examination pursuant to sections 374.202 to 374.207, the director may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals and specialists as examiners, the cost of which shall be borne directly by the company which is the subject of the examination.

(5) The provisions of sections 374.202 to 374.207 shall not be construed to limit the director's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

(6) Nothing contained in sections 374.202 to 374.207 shall be construed to limit the director's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the director may, in his or her sole discretion, deem appropriate.

3. (1) All examination reports shall be comprised of only facts appearing upon the books, records, or other documents of the company, its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

(2) No later than sixty days following completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice which shall afford the company examined a reasonable opportunity of not more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(3) Within thirty days of the end of the period allowed for the receipt of written submissions or rebuttals, the director shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers and either initiate legal action or enter an order:

(a) Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation or

prior order of the director, the director may order the company to take any action the director considers necessary and appropriate to cure such violation;

(b) Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information, and refile pursuant to subsection 1 of this section;

(c) Calling for an investigatory hearing with no less than twenty days' notice to the company for purposes of obtaining additional documentation, data, information and testimony; or

(d) Calling for such regulatory action as the director deems appropriate, provided that this order shall be a confidential internal order directing the department to take certain action.

(4) All orders entered pursuant to paragraph (a) of subdivision (3) of this subsection shall be accompanied by findings and conclusions resulting from the director's consideration and review of the examination report, relevant examiner workpapers and any written submissions or rebuttals. Any such order shall be considered a final administrative decision and may be appealed pursuant to section 536.150, RSMo, and shall be served upon the company by certified mail, together with a copy of the adopted examination report. Within thirty days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders. Any hearing conducted pursuant to paragraph (c) of subdivision (3) of this subsection by the director or authorized representative shall be conducted as a nonadversarial confidential investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the director's review of relevant workpapers or by the written submission or rebuttal of the company. Within twenty days of the conclusion of any such hearing, the director shall enter an order pursuant to paragraph (a) of subdivision (3) of this subsection. In conducting a hearing pursuant to paragraph (c) of subdivision (3) of this subsection:

(a) The director shall not appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the company limited to the examiner's workpapers which tend to substantiate any assertions set forth in any written submission or rebuttal. The director or his or her representative may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation whether under the control of the department, the company or other persons. The documents produced shall be included in the record, and testimony taken by the director or his or her representative shall be under oath and preserved for the record. The provisions of this section shall not require the department to disclose any information or records which would indicate or show the existence of any investigation or activity of a criminal justice agency; and

(b) The hearing shall proceed with the director or his or her representative posing questions to the persons subpoenaed. Thereafter, the company and the department may present testimony relevant to the investigation. Cross-examination shall be conducted only by the director or the director's representative. The company and the department shall be permitted to make closing statements and may be represented by counsel of their choice.

(5) Upon the adoption of the examination report pursuant to paragraph (a) of subdivision (3) of this subsection, the director shall continue to hold the content of the examination report as private and confidential information for a period of ten days except to the extent provided in this subdivision. Thereafter, the director may open the [record] **report** for public inspection so

long as no court of competent jurisdiction has stayed its publication. Nothing contained in the insurance laws of this state shall prevent or be construed as prohibiting the director from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of this or any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this section. In the event the director determines that legal or regulatory action is appropriate as a result of any examination, he or she may initiate any proceedings or actions as provided by law.

4. All working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the director or any person in the course of an examination made pursuant to this section shall be given confidential treatment and are not subject to subpoena and may not be made public by the director or any other person, except to the extent provided in subdivision (5) of subsection 3 of this section. Access may also be granted to the National Association of Insurance Commissioners. Such parties shall agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section, unless the prior written consent of the company to which it pertains has been obtained.

400.3-312. (a) In this section the following shall mean:

(1) "Check", a cashier's check, teller's check, or certified check;

(2) "Claimant", a person who claims the right to receive the amount of a cashier's check, teller's check, or certified check that was lost, destroyed, or stolen;

(3) "Declaration of loss", a written statement, made under penalty of perjury, to the effect that: (i) the declarer lost possession of a check; (ii) the declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's check or teller's check; (iii) the loss of possession was not the result of a transfer by the declarer of a lawful seizure; and (iv) the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process;

(4) "Obligated bank", the issuer of a cashier's check or teller's check or the acceptor of a certified check.

(b) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if: (i) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check; (ii) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check; (iii) the communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid; and (iv) the claimant provides reasonable identification if requested by the obligated bank. Delivery of a declaration of loss is a warranty of the truth of the statement made in the declaration. If a claim is asserted in compliance with this subsection, the following rules apply:

(1) The claim becomes enforceable at the later of: (i) the time the claim is asserted; or (ii) the ninetieth day following the date of the check, in the case of a cashier's check or teller's check, or the ninetieth day following the date of the acceptance, in the case of a certified check;

(2) Until the claim becomes enforceable it has no legal effect and the obligated bank may pay the check or, in the case of teller's check, may permit the drawee to pay the check. Payment

to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check;

(3) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check;

(4) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to section [400.3-302(a)(1)] **400.4-302(a)(1)**, payment to the claimant discharges all liability of the obligated bank with respect to the check.

(c) If the obligated bank pays the amount of a check to a claimant under subsection (b)(4) and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to: (i) refund the payment to the obligated bank if the check is paid; or (ii) pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

(d) If a claimant has the right to assert a claim under subsection (b) and is also a person entitled to enforce a cashier's check, teller's check, or certified check that is lost, destroyed, or stolen, the claimant may assert rights with respect to the check either under this section or section 400.3-309.

408.620. Financial institutions, as defined in section 381.410, RSMo, which are mortgage servicers, shall pay property tax obligations which they service from escrow accounts, as defined in Title 24, Part 3500, Section 17, Code of Federal Regulations, in one annual payment before the first day of January of the year following the year for which the tax is levied. Escrow accounts established between such financial institutions and borrowers are contractually binding and may disallow the payment of property taxes more than once a year as such payments are authorized in section 139.053, RSMo.

427.200. Any person may hold personal property for lease, except as otherwise provided by law. A lease shall be in writing and may be either the functional equivalent of a loan or a true lease where the lessee pays compensation for the use of the leased property which is returned to the lessor at the end of the lease. A motor vehicle lease may include the outstanding balance of a prior loan or lease of a motor vehicle used as a trade-in, as well as other items that are capitalized or amortized during the lease term. Lease payments shall be considered in the nature of rent rather than interest, and the provisions of chapter 408, RSMo, relating to interest, shall not apply.

456.040. **1.** Whenever any person, firm or corporation, engaged in the leasing of personal property, shall require a deposit or advance payment to be made by the lessee to bind the [said] lessee to the performance of such contract, then such money so deposited, with any accruing interest thereon, shall, until returned or applied in accordance with the terms of such contract or agreement, continue to be the money of the person making the deposit and shall become and remain a trust fund in the possession of the person with whom such deposit shall be made, and the person, firm or corporation, receiving such deposit shall be the holder of such fund as trustee, and as the trustee as herein defined shall forthwith, and within seven days after the receipt of such trust fund, deposit the same in some bank or trust company in the county in which the cestui que trust shall reside or have his principal office or place of business, and such fund shall not be mingled with any other funds or assets of [said] **such** trustee. Any person, firm or corporation receiving any money in trust, as herein defined, who shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor; provided, however, that this

section and section 456.050 shall not apply to such transactions where the property used or leased is delivered to lessee at time of agreement and remains in the actual and continuous possession of lessee during the term of such agreement.

2. Subsection 1 of this section shall not apply to any lease entered into by lessors which are banks, trust companies, savings and loan associations, savings banks and credit unions, their subsidiaries and affiliates, or to any other financial institutions as defined in subdivision (4) of section 381.410, RSMo, or to other lessors in commercial lease transactions of at least twenty-five thousand dollars.

456.520. 1. From time of creation of the trust until final distribution of the assets of the trust, a trustee has the power to perform, without court authorization, every act which a prudent investor would perform for the purposes of the trust including but not limited to the powers specified in subsection 3 of this section.

2. In the exercise of [his] **the trustee's** powers including the powers granted by this chapter, a trustee has a duty to act with due regard to [his] **the trustee's** obligation as a fiduciary.

3. A trustee has the power, subject to subsections 1 and 2 of this section:

(1) To collect, hold, and retain trust assets received from a trustor until, in the judgment of the trustee, disposition of the assets should be made; and the assets may be retained even though they include an asset in which the trustee is personally interested;

(2) To receive additions to the assets of the trust;

(3) To continue or participate in the operation of any business or other enterprise, and to effect incorporations, dissolution, or other change in the form of the organization of the business or enterprise;

(4) To acquire an undivided interest in a trust asset in which the trustee, in any trust capacity, holds an undivided interest;

(5) To invest and reinvest trust assets in accordance with the provisions of the trust or as provided by law;

(6) To deposit trust funds in savings and loan associations, credit unions and banks, including a bank operated by the trustee;

(7) To acquire or dispose of an asset, for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon a trust asset or any interest therein; and to encumber, mortgage, or pledge a trust asset for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;

(8) To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;

(9) To subdivide, develop, or dedicate land to public use; or to make or obtain the vacation of plats and adjust boundaries; or to adjust differences in valuation on exchange or partition by giving or receiving consideration; or to dedicate easements to public use without consideration;

(10) To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust;

(11) To enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(12) To grant an option involving disposition of a trust asset, or to take an option for the acquisition of any asset;

- (13) To vote a security, in person or by general or limited proxy;
- (14) To pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;
- (15) To sell or exercise stock subscription or conversion rights; directly or through a committee or other agent, to consent to or oppose the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
- (16) To hold a security in the name of a nominee or in other form without disclosure of the trust, so that title to the security may pass by delivery, but the trustee is liable for any act of the nominee in connection with the security so held;
- (17) To insure the assets of the trust against damage or loss, and the trustee against liability with respect to third persons;
- (18) To borrow money **from any person including the trustee** to be repaid from **or secured by** trust assets or otherwise; to advance money for the protection of the trust, and for all expenses, losses, and liability sustained in the administration of the trust or because of the holding or ownership of any trust assets, for which advances with any interest the trustee has a lien on the trust assets as against the beneficiary;
- (19) To pay or contest any claim; to settle a claim by or against the trust by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the trust to the extent that the claim is uncollectible;
- (20) To pay taxes, assessments, compensation of the trustee, and other expenses incurred in the collection, care, administration, and protection of the trust;
- (21) To allocate items of income or expense to either trust income or principal, as provided by this chapter, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;
- (22) To pay any sum distributable to a beneficiary under legal disability, without liability to the trustee, by paying the sum to the beneficiary or by paying the sum for the use of the beneficiary;
- (23) To effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation;
- (24) To employ **or contract with** persons, including attorneys, accountants, investment advisors, or agents, even if they are associated **or affiliated** with the trustee, **to provide brokerage investment products, administrative (whether or not discretionary), custodial or other account services** to advise or assist the trustee in the performance of [his] **the trustee's** administrative duties; to act without independent investigation upon their recommendations; [and] **or** instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary;
- (25) To prosecute or defend actions, claims, or proceedings for the protection of trust assets and of the trustee in the performance of [his] **the trustee's** duties;
- (26) To execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the trustee;
- (27) To invest and reinvest trust assets in United States government obligations, either directly or in the form of securities of, or other interests in, any open-end or closed-end management type investment company or investment trust registered [under] **pursuant to** the Investment Company Act of 1940, as amended, provided that the governing instrument or order directs, requires, authorizes, or permits investment in United States government obligations, and

provided that the portfolio of such investment company or investment trust is limited to United States government obligations and to repurchase agreements fully collateralized by such obligations, and provided further that such investment company or investment trust shall take delivery of such collateral;

(28) To invest and reinvest trust assets in securities or obligations of any state or its political subdivisions, including securities or obligations that are underwritten by the trustee or an affiliate of the trustee or a syndicate in which the trustee or an affiliate of the trustee is a member which in addition to meeting the standards [under] **pursuant to** subsections 1 and 2 of this section also meet the standards established by the division of finance [under] **pursuant to** subsection 5 of section 362.550, RSMo[.];

(29) To divide any trust, before or after its initial funding, into two or more separate trusts, and to make payments or distributions that are authorized by or directed in the governing instrument from any one or more of such separate trusts.

475.092. 1. If it is established in a proceeding conducted in the manner prescribed for appointment of a conservator of the estate that a person is a minor or disabled, the court, without appointing a conservator, may authorize, direct or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the minor or disabled person.

2. When it has been established in such a proceeding that the person is a minor or disabled, the court, without appointing a conservator, may authorize, direct or ratify any contract or other transaction relating to the minor or disabled person's financial affairs or involving [his] **such person's** estate if the court determines that the transaction is in the best interests of the minor or disabled person and if such action would otherwise be within the power of the court pursuant to this chapter. **A transaction pursuant to this section may include the establishment by the court or other grantor of an inter vivos trust on behalf of the minor or disabled person provided that upon such person's death, after the payment of trustees' fees, the state of Missouri shall first receive all amounts remaining in the trust up to an amount equal to the total medical assistance paid on such person's behalf pursuant to a state plan as provided in Title 42 of the United States Code and, provided further, that any creditor of the minor or disabled person other than the state of Missouri shall also be paid all sums due for such person's care, maintenance and support, to the extent trust property is sufficient therefor, and, provided, such trust shall terminate upon such person's death and any amounts remaining in the trust after the foregoing payments shall be distributed to such decedent's estate.**

3. Before approving a protective arrangement or other transaction [under] **pursuant to** this section, the court shall consider the interests of creditors and dependents of the minor or disabled person and, in view of [his] **such person's** disability, whether [he] **such person** needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized [under] **pursuant to** this section who shall have the authority conferred by the order and serve until discharged by order after report to the court of all matters done pursuant to the order of appointment.

4. **Notwithstanding any other law to the contrary, the trustee of any trust created or approved by a Missouri court for a minor or disabled person prior to August 28, 1999, shall not be liable to the state of Missouri or to any creditor of such person if, on August**

28, 1999, the trust does not have sufficient assets to reimburse the state of Missouri for medical assistance paid on such person's behalf pursuant to a state plan as provided in Title 42 of the United States Code or to reimburse a creditor for sums due for such person's care, maintenance and support. Any such trust which is in existence as of August 28, 1999, shall be subject to subsection 2 of this section, as amended, notwithstanding any provisions of such trust to the contrary. The trustee shall not be liable for any distributions or payments made prior to August 28, 1999, pursuant to the terms of such trust.

475.093. 1. **If the court finds that the establishment of a trust would be in the protectee's best interest,** the court may authorize the establishment of a trust for the benefit of a protectee **pursuant to sections 402.199 to 402.255, RSMo,** if it finds that the protectee qualifies as a life beneficiary pursuant to section 402.205, RSMo, [and that] **or the court may authorize** the establishment of such [a] trust [would be in the protectee's best interest] **for the benefit of a protectee pursuant to section 475.092.**

2. A trust [may be] established **pursuant to sections 402.199 to 402.225, RSMo, will be** in the best interest of the protectee [pursuant to sections 402.199 to 402.225, RSMo], notwithstanding the fact that a sum not exceeding twenty-five percent of the principal balance as defined in subdivision (7) of section 402.200, RSMo, will be distributed to the charitable trust as prescribed by section 402.215, RSMo.

483.310. 1. Whenever any funds other than court costs collected and disbursed pursuant to subsection 2 of section 488.012, RSMo, are paid into the registry of any circuit court and the court determines, upon its own finding or after application by one of the parties, that such funds can be reasonably expected to remain on deposit for a period sufficient to provide income through investment, the court may make an order directing the clerk to deposit such funds as are described in the order in savings deposits in banks, savings and loan associations, **credit unions,** or in United States treasury bills **and invest funds only in investments permitted by the state treasurer in article IV, section 15 of the Missouri Constitution.** Deposits of such funds in any bank or savings and loan association shall not exceed the limits of the federal deposit insurance on accounts in such institution. **Additional deposits in excess of FDIC, FSLIC and NCUSIF shall be secured by government securities or in accordance with the state treasurer's investment requirements in article IV, section 15 of the Missouri Constitution.** All such accounts shall be in the name of the "Clerk of the Court as Trustee in (Style and Cause Number)", the exact name to be prescribed in the court's order. The court may prescribe a bond or other guarantee for the security of the fund. Necessary costs, including reasonable costs for administering the investment, may be paid from the income received from the investment of the trust fund. The net income so derived shall be added to and become a part of the principal.

2. In the absence of such an application by one of the parties within sixty days from the payment of such funds into the registry of the court, the clerk of the court may invest funds placed in the registry of the court in savings deposits in banks, **credit unions** or savings and loan associations carrying federal deposit insurance to the extent of the insurance or in United States treasury bills **and invest funds only in investments permitted the state treasurer in article IV, section 15 of the Missouri Constitution** and the income derived therefrom may be used by the clerk for paying the premiums on bonds of employees of the clerk, rent on safety deposit boxes, subscriptions on publications available pursuant to section 477.235, RSMo,

books and publications of the Missouri Bar and books and other publications and materials published by the state of Missouri, printing of pamphlets or booklets of the rules adopted by the court or clerk and forms used in the court which comply with the statutes of the state of Missouri and the rules of the supreme court, copies of which shall be distributed to litigants and members of the bar practicing in the court, and other expenditures of the circuit clerk's office, and the balance, if any, shall be paid into the general revenue fund of the county, except that when provision is made in a county charter for the appointment of a court administrator to perform the duties of a circuit clerk or for the appointment of a circuit clerk by the court, such income may also be used for any expenditures of the court other than expenditures for travel or entertainment. If any application for the investment of such funds is filed by one of the parties after sixty days, an order may be entered providing for investment of funds as provided in subsection 1 of this section, and the clerk shall thereupon reinvest such funds within a reasonable time thereafter in accordance with the order.

3. As used in this section and section 483.312, the term "clerk" shall mean the circuit clerk with respect to funds in those cases for which the circuit clerk is responsible for collecting court costs as provided in section 483.550 and shall also mean those clerks who are designated by or pursuant to section 483.550 to collect court costs with respect to funds in those cases for which they are so made responsible for collecting court costs.

4. If a clerk is charged by a court with collecting any moneys which are not court costs as defined by sections 488.010 to 488.020, RSMo, the clerk may use any of the procedures provided by sections 488.010 to 488.020, RSMo, to collect such funds, if not paid as ordered by the court.

5. The clerk may deposit funds in depository institutions and invest funds only in investments permitted by the state treasurer in article IV, section 15 of the Missouri Constitution.

511.030. **1.** Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may determine the ultimate rights of the parties on each side, as between themselves, and it may grant to the **plaintiff or the** defendant any affirmative **or other** relief to which he may be entitled.

2. If the court determines in any action that a plaintiff or defendant entitled to judgment or other relief is a minor or disabled person, the court may, as part of such judgment, without appointing a conservator, authorize, direct or ratify any transaction necessary or desirable to achieve any security, service or care arrangement meeting the foreseeable needs of such person which is authorized pursuant to the provisions of chapter 475, RSMo.

3. If the court determines in any action that a plaintiff or defendant entitled to judgment or other relief is a minor or disabled person, the court may, as part of such judgment, without appointing a conservator, authorize, direct or ratify any contract or other transaction relating to such person's financial affairs or involving such person's estate if the court determines that the transaction is in the best interests of such person, provided the transaction is authorized pursuant to the provisions of chapter 475, RSMo.

Section 1. 1. Sections 1 to 11 of this act shall be known and may be cited as the "Viatical Settlements Act".

2. As used in sections 1 to 11 of this act, the following terms shall mean:

(1) "Director", the director of the department of insurance;

(2) "Financing entity", an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, credit enhancer, or any person that may be a party to a viatical settlement contract and has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract, but whose sole activity related to the transaction is providing funds to effect the viatical settlement and who has an agreement in writing with a licensed viatical settlement provider to act as a participant in a financing transaction;

(3) "Financing transaction", a transaction in which a licensed viatical settlement provider or a financing entity obtains secured financing for viatical settlement contracts, viaticated policies or interests therein. For purposes of this subdivision, "secured" means that a viatical settlement provider shall remain the owner of the policy and shall agree with the financing entity that the financing entity shall be named as an irrevocable beneficiary on the policy, and such beneficiary designation shall not be changed without the written agreement of the owner, viatical settlement provider and financing entity;

(4) "Person", a legal entity including, but not limited to, an individual, partnership, limited liability company, association, trust, corporation or other legal entity;

(5) "Viatical settlement broker", a person that, on behalf of a viator and for a fee, commission or other valuable consideration, offers or attempts to negotiate viatical settlements between a viator and one or more viatical settlement providers. Irrespective of the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator. Viatical settlement broker does not include an attorney, accountant or financial planner retained to represent the viator whose compensation is paid directly by or at the direction of the viator;

(6) "Viatical settlement contract", a written agreement entered into between a viatical settlement provider and a viator. The agreement shall establish the terms under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise or bequest of the death benefit or ownership of all or a portion of the insurance policy or certificate of insurance to the viatical settlement provider. A viatical settlement contract does not include a contract for a loan or other financial transaction secured primarily by an assignment of an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the cash value of a policy;

(7) "Viatical settlement provider", a person, other than a viator, that enters into a viatical settlement contract. Viatical settlement provider includes a person that obtains financing from a financing entity for the purchase, acquisition, transfer or other assignment of one or more viatical settlement contracts, viaticated policies or interests therein, or otherwise sells, assigns, transfers, pledges, hypothecates or otherwise disposes of one or more viatical settlement contracts, viaticated policies or interests therein. Viatical settlement provider does not include:

(a) A bank, savings bank, savings and loan association, credit union or other

licensed lending institution, or other person or entity that takes an assignment of a life insurance policy as collateral for a loan;

(b) The issuer of a life insurance policy, or a group life insurance contract or certificate:

a. That is the subject of a proposed or executed viatical settlement contract; or

b. In connection with any accelerated death benefit arrangement, beneficiary designation, assignment, settlement option or other arrangement of such issuer; or

(c) A natural person who enters into no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;

(8) "Viatical settlement purchase agreement", a contract or agreement, entered into by a viatical settlement purchaser and a viatical settlement provider, to which the viator is not a party, to purchase a life insurance policy or an interest in a life insurance policy, which is entered into for the purpose of deriving an economic benefit;

(9) "Viatical settlement purchaser", a person who gives a sum of money as consideration for a life insurance policy or an interest in a life insurance policy, which is entered into for the purpose of deriving an economic benefit;

(10) "Viatical settlement representative", a person who is an authorized agent of a licensed viatical settlement provider or viatical settlement broker, as applicable, who acts or aids in any manner in the solicitation of a viatical settlement. A viatical settlement representative is deemed to represent only the viatical settlement provider or viatical settlement broker. A viatical settlement representative shall not include:

(a) An attorney, accountant, financial planner or any person exercising a power of attorney granted by a viator; or

(b) Any person who is retained to represent a viator and whose compensation is paid by or at the direction of the viator regardless of whether the viatical settlement is consummated;

(11) "Viatical settlement sales agent", a person or entity that arranges the purchase through a viatical settlement purchase agreement of a life insurance policy or an interest in a life insurance policy;

(12) "Viaticated policy", a life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract;

(13) "Viator", the owner of a life insurance policy or certificate holder under a group policy insuring the life of an individual with a catastrophic, life-threatening or chronic illness or condition who enters or seeks to enter into a viatical settlement contract.

Section 2. 1. A person shall not operate as a viatical settlement provider, viatical settlement representative or viatical settlement broker without first having obtained a license from the director of the department of insurance.

2. Application for a viatical settlement provider, viatical settlement representative or viatical settlement broker license shall be made to the director by the applicant on a form prescribed by the director and shall be accompanied by the fees specified in section 9 of this act. A viatical settlement sales agent shall obtain and maintain a licensure as a life insurance agent as otherwise provided by law.

3. Licenses may be renewed from year to year on the anniversary date upon

payment of the annual renewal fees specified in section 9 of this act. Failure to pay the fees by the renewal date shall result in the expiration of the license.

4. The applicant shall provide information on forms required by the director. The director shall have the authority, at any time, to require the applicant to fully disclose the identity of all stockholders, partners, officers, members and employees, and the director may, in the exercise of the director's discretion, refuse to issue a license in the name of a legal entity if not satisfied that any officer, employee, stockholder, partner or member thereof who may materially influence the applicant's conduct meets the standards of sections 1 to 11 of this act.

5. A license issued to a legal entity authorizes all members, officers and designated employees to act as viatical settlement providers, viatical settlement brokers or viatical settlement representatives, or viatical settlement sales agents, as applicable, pursuant to the license, and such persons shall be named in the application and any supplements to the application.

6. Upon the filing of an application and the payment of the license fee, the director shall conduct an investigation of each applicant and issue a license if the director finds that:

- (1) The applicant has provided a detailed plan of operation;
- (2) The applicant is competent and trustworthy, and intends to act in good faith in the capacity involved by the license applied for;
- (3) The applicant has a good business reputation and has had experience, training or education so as to be qualified in the business for which the license is applied for; and
- (4) A legal entity has provided a certificate of good standing from the state of its domicile.

7. The director shall not issue a license to a nonresident applicant, unless a written designation of an agent for service of process is filed and maintained with the director, or the applicant has filed with the director the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the director.

Section 3. 1. The director may suspend, revoke or refuse to renew the license of a viatical settlement provider, viatical settlement representative, viatical settlement broker, or viatical sales agent if the director finds that:

- (1) There was any material misrepresentation in the application for the license;
- (2) The holder of the license or any officer, partner, member or key management personnel has been convicted of fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise shown to be untrustworthy or incompetent;
- (3) The viatical settlement provider demonstrates a pattern of unreasonable payments to viators;
- (4) The licensee has been found guilty of, or has pled guilty or nolo contendere to, any felony, or to a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;
- (5) The viatical settlement provider has entered into any viatical settlement contract with a viator who is a resident of this state that has not been approved pursuant to sections 1 to 11 of this act;
- (6) The viatical settlement provider demonstrates a pattern of failing to honor

contractual obligations set out in a viatical settlement contract;

(7) The licensee no longer meets the requirements for initial licensure;

(8) The viatical settlement provider has sold, assigned, transferred or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this state or to a bank, savings bank, savings and loan association, credit union or other licensed lending institution, an investment company licensed pursuant to the Investment Company Act of 1940, a commercial or consumer finance company, an insurance or reinsurance entity pursuant to a reinsurance policy or treaty, or a special purpose entity pursuant to a securitization offering; or

(9) The licensee has violated any provision of sections 1 to 11 of this act.

2. Before the director shall deny a license application or suspend, revoke or refuse to renew a license of a viatical settlement provider, viatical settlement broker, viatical settlement representative, or viatical settlement sales agent, the director shall conduct a hearing in accordance with chapter 536, RSMo, and chapter 621, RSMo.

Section 4. A person shall not use a viatical settlement contract, viatical settlement purchase agreement, or provide to a viator a disclosure statement form in this state unless filed with and approved by the director. The director shall disapprove a viatical settlement contract, viatical settlement purchase agreement, or disclosure statement form if in the director's opinion, the contract or provisions contained therein are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator or purchaser.

Section 5. 1. Every licensee shall file with the director on or before March first of each year an annual statement containing such information as the director by rule may prescribe.

2. Except as otherwise allowed or required by law, a viatical settlement provider, viatical settlement representative, viatical settlement broker, viatical settlement sales agent, insurance company, insurance agent, insurance broker, information bureau, rating agency or company, or any other person with actual knowledge of a viator's identity, shall not disclose that identity as a viator to any other person unless such disclosure:

(1) Is necessary to effect a viatical settlement between the viator and a viatical settlement provider, and the viator has provided prior written consent to the disclosure;

(2) Is necessary to effect a viatical settlement purchase agreement between the viatical settlement purchaser and a viatical settlement provider and the viator has provided prior written consent to the disclosure;

(3) Is provided in response to an investigation by the director or any other governmental officer or agency; or

(4) Is a term or condition to the transfer of a viaticated policy by one viatical settlement provider to another viatical settlement provider.

Section 6. 1. The director may, when the director deems it reasonably necessary to protect the interests of the public, examine the business and affairs of any licensee or applicant for a license. The director shall have the authority to order any licensee or applicant to produce any records, books, files or other information reasonably necessary to ascertain whether the licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the public. The expenses incurred in conducting any examination shall be paid by the licensee or applicant.

2. The name and individual identification data for all viators shall be considered private and confidential information and shall not be disclosed by the director, unless required by law.

3. Records of all transactions of viatical settlement contracts and viatical settlement purchase agreements shall be maintained by the viatical settlement provider and shall be available to the director for inspection during reasonable business hours. A viatical provider shall maintain records of each viatical settlement contract and purchase until five years after the death of the insured.

Section 7. 1. A viatical settlement provider, viatical settlement representative or viatical settlement broker shall disclose the following information to the viator no later than the time of application:

(1) Possible alternatives to viatical settlement contracts for individuals with catastrophic, life threatening or chronic illnesses, including any accelerated death benefits, policy loans or extended death benefit provisions offered pursuant to the viator's life insurance policy;

(2) Some or all of the proceeds of the viatical settlement may be free from federal income tax and from state franchise and income taxes, and that assistance should be sought from a professional tax advisor;

(3) Proceeds of the viatical settlement could be subject to the claims of creditors;

(4) Receipt of the proceeds of a viatical settlement may adversely affect the viator's eligibility for Medicaid or other government benefits or entitlements, and that advice should be obtained from the appropriate government agencies;

(5) The viator's right to rescind a viatical settlement contract fifteen calendar days after the receipt of the viatical settlement proceeds by the viator, pursuant to subsection 4 of section 8 of this act;

(6) Funds will be sent to the viator within five business days after the viatical settlement provider has received satisfactory evidence that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated pursuant to the viatical settlement contract; and

(7) Entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits, that may exist pursuant to the policy or certificate to be forfeited by the viator and assistance should be sought from a financial advisor.

2. A viatical settlement provider shall disclose the following information to the viator prior to the date the viatical settlement contract is signed by all parties:

(1) The affiliation, if any, between the viatical settlement provider and the issuer of an insurance policy to be viaticated;

(2) If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured pursuant to the policy to be viaticated, the viator shall be informed of the possible loss of coverage on other lives and be advised to consult with his or her insurance producer or the company issuing the policy for advice on the proposed viatication; and

(3) The dollar amount of the current death benefit payable to the viatical settlement provider pursuant to the policy or certificate. The viatical settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the

dollar amount of any accidental death and dismemberment benefits pursuant to the policy or certificate and the viatical settlement provider's interest in such benefits.

3. A viatical settlement provider or its viatical settlement sales agent shall disclose the following information to the viatical settlement purchaser prior to the date the viatical settlement purchase agreement is signed by all parties:

(1) No person shall misrepresent or fail to clearly and affirmatively disclose the nature of the return or the duration of the time to obtain the return of any investment related to one or more viatical settlements sold by a viatical settlement provider;

(2) The viatical settlement provider, itself or through another person, shall provide in writing, in a manner approved by the commissioner of securities, the following disclosures to any viatical settlement purchaser or purchaser prospect:

(a) That the return available under the viatical purchase is directly tied to the projected life span or date of death of one or more viators;

(b) If a return is represented, the disclosure shall indicate the projected life span or date of death of viator or viators whose life or lives are tied to the return period;

(c) If required by the terms of the viatical settlement purchase agreement, that the viatical settlement purchaser may be responsible for the payment of insurance premiums on the life of the viator or late or surrender fees or other costs related to the life insurance policy on the life of the viator or viators which may reduce the return;

(d) The amount of any trust fees or the expenses, if any, to be charged to the viatical settlement purchaser;

(e) The name and address of the person responsible for tracking the viator;

(f) There are certain risks peculiar to group policies owned by employers or their organizations. The primary risk is the possibility the owner or the insurance company may terminate the group policy. This termination will trigger the need to convert the group coverage to an individual policy. Viatical settlement providers shall disclose if there are any limitations or caps in the conversion rates and the additional premiums will have to be paid once the policy is converted, as well as identify the party responsible for the payment of such additional premiums;

(g) The person who determines the life expectancy of the viator. These parties make the determination of life expectancy based on medical evidence presented to the viatical company by the insured's physicians and/or hospital. Developments in medical treatments or unexpected changes in the viator's medical condition could affect the accuracy of such determination;

(h) Insurance companies may contest death claims for policies that have not been in effect more than two years at the date of death and the death benefit payment could be denied on various grounds. If the viator commits suicide within two years of the policy, the insurance company may not pay the death benefits;

(i) The purchase of the viatical settlement should not be considered a liquid purchase, since it is impossible to predict the exact timing of its maturity and the funds may not be available until the death of the viator;

(j) Under certain conditions, the insurance company may cancel the waiver of premium status on certain policies. In this event, premium payments will then be required and viatical settlement providers shall identify the party or parties who shall be required to make those payments.

The written disclosures required pursuant to this subsection shall be conspicuously displayed in any viatical settlement contract or purchase agreement furnished to the viator or viatical settlement purchaser by such provider and shall be in contrast in color and in not less than ten-point type or not smaller than the largest type on the page if larger than ten-point type.

Section 8. 1. Nothing contained in sections 1 to 11 of this act or in any viatical settlement contract shall be construed to modify, limit, change or create provisions in any individual or group life insurance contract or certificate regarding assignments, policy loans, beneficiary designations, settlement options or conversion privileges or to establish duties for the insurance company beyond those stated in the policy or contract.

2. A viatical settlement provider entering into a viatical settlement contract shall first obtain:

(1) If the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract;

(2) A witnessed document in which the viator consents to the viatical settlement contract, acknowledges that the insured has a catastrophic, life threatening, or chronic illness or condition, represents that the viator has a full and complete understanding of the viatical settlement contract, that he or she has a full and complete understanding of the benefits of the life insurance policy, and acknowledges that he or she has entered into the viatical settlement contract freely and voluntarily; and

(3) A document in which the insured consents to the release of his or her medical records to a viatical settlement provider or viatical settlement broker.

3. All medical information solicited or obtained by any licensee shall be subject to the applicable provisions of state law relating to confidentiality of medical information.

4. All viatical settlement contracts entered into in this state shall provide the viator with an unconditional right to rescind the contract for at least fifteen calendar days from the receipt of the viatical settlement proceeds. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment to the viatical settlement provider of all viatical settlement proceeds, conditioned on the return of such proceeds.

5. Within five business days of the date the viatical settlement provider has received the insurer's or group administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated pursuant to the viatical settlement contract, the viatical settlement provider shall pay the proceeds of the viatical settlement to the viator.

6. Failure to tender consideration to the viator for the viatical settlement contract within the five-day period described in subsection 5 of this section renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator. If the viator, prior to receipt of the settlement proceeds, elects to void, rescind or cancel the viatical settlement contract, then the entire contract shall be rescinded and shall be considered null and void.

7. Contacts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider, viatical settlement broker or viatical settlement representative after the viatical settlement has occurred shall only be made by

the viatical settlement provider or broker licensed in this state or his or her authorized representative and shall be limited to once every three months for insureds with a life expectancy of more than one year and no more than one per month for insureds with a life expectancy of one year or less. The provider or broker shall explain the procedure for such contacts at the time the viatical settlement contract is entered into. The limitations set forth in this subsection shall not apply to any contacts with an insured pursuant to a viaticated policy for reasons other than determining the insured's health status.

Section 9. 1. The director shall have the authority to:

- (1) Promulgate regulations implementing sections 1 to 11 of this act;**
- (2) Establish standards for evaluating reasonableness of payments under viatical settlement contracts and viatical settlement purchase agreements. This authority includes, but is not limited to, regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise or bequest of a benefit under a life insurance policy;**
- (3) Establish appropriate licensing requirements, fees and standards for continued licensure for viatical settlement providers, representatives, brokers and sales agents;**
- (4) Require a bond or other mechanism for financial accountability for viatical settlement providers; and**
- (5) Adopt rules governing the relationship and responsibilities of viatical settlement providers, brokers, representatives and sales agents during the viatication of a life insurance policy or certificate.**

2. No rule or portion of a rule promulgated pursuant to the authority of sections 1 to 11 of this act shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.

Section 10. A violation of sections 1 to 11 of this act shall be considered an unfair trade practice pursuant to sections 375.930 to 375.948, RSMo, subject to the penalties contained in sections 375.930 to 375.948, RSMo.

Section 11. 1. Sections 1 to 11 of this act shall become effective on January 1, 2000.

2. A viatical settlement provider, viatical settlement representative, viatical settlement broker, or viatical settlement sales agent transacting business in this state may continue to do so pending approval or disapproval of the provider's, representative's, broker's, or agent's application for a license as long as the application is filed with the director by January 1, 2000.

Section 12. Subchapter S corporation shareholders of: (i) a bank; or (ii) a bank holding company of a bank permitted to file a substitute bank franchise tax pursuant to section 148.031, RSMo, may take a tax credit against such shareholder's state income tax return, as provided in section 143.471, RSMo. Such tax credit shall be the taxpayer's pro rata share of either the franchise tax, or the tax in lieu of the franchise tax, paid by the bank as provided in chapter 148, RSMo.

Section 13. 1. No person shall knowingly make or cause to be made, directly or indirectly, a false statement regarding another person for the purpose of fraudulently procuring the issuance of a credit card or debit card.

2. No person shall willfully obtain personal identifying information of another

person without the authorization of that person and use that information fraudulently to obtain, or attempt to obtain, credit, goods or services in the name of the other person without the consent of that person.

3. Any person who violates the provisions of subsection 1 or 2 of this section is guilty of a class A misdemeanor.

4. As used in this section, "personal identifying information" means the name, address, telephone number, driver's license number, Social Security number, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings account number or credit card number of a person.

5. Notwithstanding subsections 1 to 4 of this section, no corporation, proprietorship, partnership, limited liability company, limited liability partnership or other business entity shall be liable under this section for accepting applications for credit cards or debit cards or for the credit cards or debit cards in any credit or debit transaction, absent clear and convincing evidence that such business entity conspired with or was a part of the fraudulent procuring of the issuance of a credit card or debit card.

Section B. Section 370.107, RSMo 1994, and sections 362.077 and 620.010, RSMo Supp. 1998, are repealed and three new sections enacted in lieu thereof, to be known as sections 362.077, 370.107 and 620.010, to read as follows:

362.077. 1. Notwithstanding any provisions of law to the contrary, a bank holding company all of whose bank subsidiaries' operations were conducted in a state or states other than the state of Missouri as of January 1, 1995, may not charter de novo a bank or trust company under Missouri law or a national bank located in Missouri, and such bank holding company may not acquire any such bank or trust company or a national bank located in Missouri that has been in continuous existence for less than five years. Such limitation in the preceding sentence on such acquisition of a bank or trust company shall not apply to the creation and acquisition of an interim bank charter created to facilitate the acquisition of an existing bank or trust company through a merger, provided such existing bank or trust company meets the requirements of the preceding sentence, and provided such acquisition by merger is completed in two years. Such limitation shall also not apply to the relocation to Missouri of the main office of a bank chartered under the law of another state, or a national bank located in another state by the creation and acquisition of an interim bank charter, provided that either category of bank, prior to January 1, 1997, had its main office in Missouri and moved such office to a contiguous state, with a branch remaining in Missouri.

2. Any state bank, trust company or national bank, already in existence in another state, which is relocated to Missouri de novo shall calculate the age of its bank charter for Missouri purposes as of the date such charter is moved to Missouri, and may not engage in an interstate acquisition or merger with the result that such charter is merged or relocated to another state with Missouri branches of such charter remaining in Missouri, until such bank or trust company's charter is at least five years old.

3. The provisions of this section are enacted to implement a state option permitting bank charter age requirements under the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law 103-328 and to clarify such age requirements.

4. The provisions of this section are severable. In the event that a court of competent jurisdiction shall enter a decision finding any provision of this section

unconstitutional or otherwise invalid and if such decision remains in force after all appeals therefrom have been exhausted, all remaining provisions of this section shall remain in full force and effect notwithstanding such decision and such decision shall not be given retroactive effect by any court.

370.107. 1. Every credit union organized [under the provisions of] **pursuant to** section 370.010 and operating [under] **pursuant to** the laws of this state shall pay to the department of revenue a fee **determined by the director** based on the total assets of the credit union as of December thirty-first of the preceding fiscal year. One-half of the fee shall be paid on or before July fifteenth, and the balance shall be paid on or before January fifteenth of the next succeeding year. The **maximum** fee shall be calculated according to the following table:

Total Assets	Fee
[Under \$25,000	\$50.00
\$25,000 or more but less than \$50,000	\$50.00 plus \$1.05 per \$1,000 for assets in excess of \$25,000.
\$50,000 or more but less than \$100,000	\$76.25 plus \$.85 per \$1,000 for assets in excess of \$50,000.
\$100,000 or more but less than \$250,000	\$118.75 plus \$.75 per \$1,000 for assets in excess of \$100,000.
\$250,000 or more but less than \$500,000	\$231.25 plus \$.70 per \$1,000 for assets in excess of \$250,000.
\$500,000 or more but less than \$1,000,000	\$406.25 plus \$.55 per \$1,000 for assets in excess of \$500,000.
\$1,000,000 or more but less than \$2,000,000	\$681.25 plus \$.40 per \$1,000 for assets in excess of \$1,000,000.
\$2,000,000 or more but less than \$5,000,000	\$1,081.25 plus \$.25 per \$1,000 for assets

in

excess of

	\$2,000,000.
\$5,000,000 or more but less than \$10,000,000	\$1,831.25 plus \$.20 per \$1,000 for assets in excess of \$5,000,000.
\$10,000,000 or more but less than \$20,000,000	\$2,831.25 plus \$.15 per \$1,000 for assets in excess of \$10,000,000.
Over \$20,000,000	\$4,331.25 plus \$.10 per \$1,000 for assets in excess of \$20,000,000.]
Under \$2,000,000	\$0.125 per \$1,000 of assets up to a maximum of \$250
\$2,000,000 or more	\$250, plus \$1 per \$1,000
but less than \$5,000,000	of assets in excess of \$2,000,000
\$5,000,000 or more but less than \$10,000,000	\$3,250, plus \$0.35 per \$1,000 of assets in excess of \$5,000,000
\$10,000,000 or more but less than \$25,000,000	\$5,000, plus \$0.20 per \$1,000 of assets in excess of \$10,000,000
\$25,000,000 or more	\$8,000, plus \$0.15 per \$1,000 of assets in excess of \$25,000,000.

[In addition to the foregoing fees, the director may assess each credit union an additional amount, the total of which assessments together with the fees above provided shall equal the budget of the office of the director of the division of credit unions when such budget exceeds the expected receipts from the fees; and this additional assessment which shall include the provisions for support services and fringe benefits shall be known as a surcharge, which shall in no state fiscal year exceed twenty-five percent of the fee paid by credit unions according to the fee schedule above; provided, however, that the percentage of surcharge assessed in any one state fiscal year shall be the same rate for all credit unions.] The shares of one credit union which are owned by another credit union shall be excluded from the assets of the first credit union for the purpose of computing the supervisory fee levied pursuant to this section. All fees assessed shall be accounted for as prepaid expenses on the books of the credit union.

2. The state treasurer shall credit such payments, including all fees and charges made pursuant to this chapter [and section 620.010, RSMo,] to a special fund to be known as the "Division of Credit Unions Fund", which is hereby created and which shall be devoted solely

and exclusively to the payment of expenditures actually incurred by the division and attributable to the regulation of credit unions. Any amount[, other than the amount assessed for support services and fringe benefits,] remaining in such fund at the end of any fiscal year [up to five percent of the amount assessed to the credit unions pursuant to this section] shall not be transferred and placed to the credit of the general revenue fund as provided in section 33.080, RSMo, but shall be used, upon appropriation by the general assembly, for the payment of such expenditures of the division in the succeeding fiscal year and shall be applied by the division to the reduction of the amount to be assessed to credit unions in such succeeding fiscal year; provided the fifteen percent for supporting services and the amount of fringe benefits and any amount remaining in the division of credit unions fund at the end of the fiscal year which exceeds five percent of the amount assessed to the credit unions pursuant to this section shall be returned to general revenue]. **In the event two or more credit unions are merged or consolidated, such excess amounts shall be credited to the surviving or new credit union.**

3. The expense of every regular and every special examination, together with the expenses of administering the laws pertaining to credit unions, including salaries, travel expenses, supplies and equipment, credit union commission expenses of administrative and clerical assistance, legal costs and any other reasonable expense in the performance of its duties, and an amount not to exceed fifteen percent of the above-estimated expenses to pay the actual costs of rent, utilities, other occupancy expenses and other supporting services furnished by any department, division or executive office of this state and an amount sufficient to cover the cost of fringe benefits shall be paid by the credit unions of this state by the payment of fees yielded by this section.

620.010. 1. There is hereby created a "Department of Economic Development" to be headed by a director appointed by the governor, by and with the advice and consent of the senate. All of the general provisions, definitions and powers enumerated in section 1 of the Omnibus State Reorganization Act of 1974 shall continue to apply to this department and its divisions, agencies and personnel.

2. The office of director of the department of business and administration, chapter 35, RSMo, and others, is abolished and all powers, duties, personnel and property of that office, not previously reassigned by executive reorganization plan no. 1 of 1973 as submitted by the governor [under] **pursuant to** chapter 26, RSMo, are transferred by type I transfer to the director of the department of economic development. The department of business and administration is hereby abolished.

3. The duties and responsibilities relating to subsection 2 of section 35.010, RSMo, are transferred by type I transfer to the personnel division, office of administration.

4. The powers, duties and functions vested in the public service commission, chapters 386, 387, 388, 389, 390, 392, and 393, RSMo, and others, and the administrative hearing commission, sections 621.015 to 621.198, RSMo, and others, are transferred by type III transfers, and the state banking board, chapter 361, RSMo, and others, and the savings and loan commission, chapter 369, RSMo, and others, are transferred by type II transfers to the department of economic development. The director of the department is directed to provide and coordinate staff and equipment services to these agencies in the interest of facilitating the work of the bodies and achieving optimum efficiency in staff services common to all the bodies. Nothing in the Reorganization Act of 1974 shall prevent the chairman of the public service commission from presenting additional budget requests or from explaining or clarifying its

budget requests to the governor or general assembly.

5. The powers, duties and functions vested in the office of the public counsel are transferred by type III transfer to the department of economic development. Funding for the general counsel's office shall be by general revenue.

6. The public service commission is authorized to employ such staff as it deems necessary for the functions performed by the general counsel other than those powers, duties and functions relating to representation of the public before the public service commission.

7. [(1)] There is hereby created a "Division of Credit Unions" in the department of economic development, to be headed by a director, nominated by the department director and appointed by the governor with the advice and consent of the senate. All the powers, duties and functions vested in the state supervisor of credit unions in chapter 370, RSMo, and the powers and duties relating to credit unions vested in the commissioner of finance in chapter 370, RSMo, are transferred to the division of credit unions of the department of economic development, by a type II transfer, and the office of the state supervisor of credit unions is abolished. The salary of the director of the division of credit unions shall be set by the director of the department within the limits of the appropriations therefor. The director of the division shall assume all the duties and functions of the state supervisor of credit unions and the commissioner of finance only where the director has duties and responsibilities relating to credit unions as set out in chapter 370, RSMo.

[(2) The expense of every regular and every special examination, together with the expenses of administering the laws pertaining to credit unions, including salaries, travel expenses, supplies and equipment, shall be paid by the credit unions of the state by the payment of fees yielded by section 370.107, RSMo. In addition, the director of the division of credit unions shall assess the several credit unions in the state the same percentage of estimated expenses to pay the costs of rent and other supporting services furnished by the state, as banks and trust companies are assessed by the commissioner of finance pursuant to subsection 1 of section 361.170, RSMo.]

8. The powers, duties and functions vested in the division of finance, chapters 361, 362, 364, 365, 367, and 408, RSMo, and others, are transferred by type II transfer to the department of economic development. There shall be a director of the division who shall be nominated by the department director and appointed by the governor with the advice and consent of the senate.

9. All the powers, duties and functions vested in the director of the division of savings and loan supervision in chapter 369, RSMo, sections 443.700 to 443.712, RSMo, or by any other provision of law are transferred to the division of finance of the department of economic development by a type I transfer. The position of the director of the division of savings and loan supervision is hereby abolished. The director of the division of finance shall assume all the duties and functions of the director of the division of savings and loan supervision as provided in chapter 369, RSMo, sections 443.700 to 443.712, RSMo, and by any other provision of law. The division of savings and loan is hereby abolished. The powers of the savings and loan commission are hereby limited to hearing appeals from decisions of the director of the division of finance approving or denying applications to incorporate savings and loan associations or to establish branches of savings and loan associations and approving regulations pertaining to savings and loan associations. Any appeals shall be held in accordance with section 369.319, RSMo.

10. On and after August 28, 1990, the status of the division is modified under a specific type transfer [under] **pursuant to** section 1 of the Omnibus Reorganization Act of 1974. The status of the division is modified from that of a division transferred to the department of economic development [under] **pursuant to** a type II transfer, as provided for in this section, to that of an agency possessing the characteristics of a division transferred [under] **pursuant to** a type III transfer; provided, however, that the division will remain within the department of economic development. The division of insurance shall be assigned to the department of economic development as a type III division, and the director of the department of economic development shall have no supervision, authority or control over the actions or decisions of the director of the division. All authority, records, property, personnel, powers, duties, functions, matter pending and all other pertinent vestiges pertaining thereto shall be retained by the division except as modified by this section. If the division of insurance becomes a department by operation of a constitutional amendment, the department of economic development shall continue until December 31, 1991, to provide at least the same assistance as was provided in previous fiscal years for personnel, data processing support and other benefits from appropriations.

11. All the powers, duties and functions of the commerce and industrial development division and the industrial development commission, chapters 184 and 255, RSMo, and others, not otherwise transferred, are transferred by type I transfer to the department of economic development, and the industrial development commission is abolished. All powers, duties and functions of the division of commerce and industrial development and the division of community development are transferred by a type I transfer to the department of economic development, and the division of commerce and industrial development and the division of community development are abolished.

12. All the powers, duties and functions vested in the tourism commission, chapter 258, RSMo, and others, are transferred to the "Division of Tourism", which is hereby created, by type III transfer.

13. All the powers, duties and functions of the department of community affairs, chapter 251, RSMo, and others, not otherwise assigned, are transferred by type I transfer to the department of economic development, and the department of community affairs is abolished. The director of the department of economic development may assume all the duties of the director of community affairs or may establish within the department such subunits and advisory committees as may be required to administer the programs so transferred. The director of the department shall appoint all members of such committees and heads of subunits.

14. (1) There is hereby established a "Division of Professional Registration" in the department of economic development, headed by a director appointed by the director of the department with the advice and consent of the senate.

(2) The director of the division of professional registration shall promulgate rules and regulations which designate for each board or commission assigned to the division the renewal date for licenses or certificates. After the initial establishment of renewal dates, no director of the division shall promulgate a rule or regulation which would change the renewal date for licenses or certificates if such change in renewal date would occur prior to the date on which the renewal date in effect at the time such new renewal date is specified next occurs. Each board or commission shall by rule or regulation establish licensing periods of one, two, or three years. Registration fees set by a board or commission shall be effective for the entire licensing period

involved, and shall not be increased during any current licensing period. Persons who are required to pay their first registration fees shall be allowed to pay the pro rata share of such fees for the remainder of the period remaining at the time the fees are paid. Each board or commission shall provide the necessary forms for initial registration, and thereafter the director may prescribe standard forms for renewal of licenses and certificates. Each board or commission shall by rule and regulation require each applicant to provide the information which is required to keep the board's records current. Each board or commission shall issue the original license or certificate.

(3) The division shall provide clerical and other staff services relating to the issuance and renewal of licenses for all the professional licensing and regulating boards and commissions assigned to the division. The division shall perform the financial management and clerical functions as they each relate to issuance and renewal of licenses and certificates. "Issuance and renewal of licenses and certificates" means the ministerial function of preparing and delivering licenses or certificates, and obtaining material and information for the board or commission in connection with the renewal thereof. It does not include any discretionary authority with regard to the original review of an applicant's qualifications for licensure or certification, or the subsequent review of licensee's or certificate holder's qualifications, or any disciplinary action contemplated against the licensee or certificate holder. The division may develop and implement microfilming systems and automated or manual management information systems.

(4) The director of the division shall establish a system of accounting and budgeting, in cooperation with the director of the department, the office of administration, and the state auditor's office, to ensure proper charges are made to the various boards for services rendered to them. The general assembly shall appropriate to the division and other state agencies from each board's funds, moneys sufficient to reimburse the division and other state agencies for all services rendered and all facilities and supplies furnished to that board.

(5) For accounting purposes, the appropriation to the division and to the office of administration for the payment of rent for quarters provided for the division shall be made from the "Professional Registration Fees Fund", which is hereby created, and is to be used solely for the purpose defined in subdivision (4) of subsection 14 of this section. The fund shall consist of moneys deposited into it from each board's fund. Each board shall contribute a prorated amount necessary to fund the division for services rendered and rent based upon the system of accounting and budgeting established by the director of the division as provided in subdivision (4) of this subsection. Transfers of funds to the professional registration fees fund shall be made by each board on July first of each year; provided, however, that the director of the division may establish an alternative date or dates of transfers at the request of any board. Such transfers shall be made until they equal the prorated amount for services rendered and rent by the division. The provisions of section 33.080, RSMo, to the contrary notwithstanding, money in this fund shall not be transferred and placed to the credit of general revenue.

(6) The director of the division shall be responsible for collecting and accounting for all moneys received by the division or its component agencies. Any money received by a board or commission shall be promptly given, identified by type and source, to the director. The director shall keep a record by board and state accounting system classification of the amount of revenue the director receives. The director shall promptly transmit all receipts to the department of revenue for deposit in the state treasury to the credit of the appropriate fund. The director shall provide each board with all relevant financial information in a timely fashion. Each board shall

cooperate with the director by providing necessary information.

(7) All educational transcripts, test scores, complaints, investigatory reports, and information pertaining to any person who is an applicant or licensee of any agency assigned to the division of professional registration by statute or by the department of economic development are confidential and may not be disclosed to the public or any member of the public, except with the written consent of the person whose records are involved. The agency which possesses the records or information shall disclose the records or information if the person whose records or information is involved has consented to the disclosure. Each agency is entitled to the attorney-client privilege and work-product privilege to the same extent as any other person. Provided, however, that any board may disclose confidential information without the consent of the person involved in the course of voluntary interstate exchange of information, or in the course of any litigation concerning that person, or pursuant to a lawful request, or to other administrative or law enforcement agencies acting within the scope of their statutory authority. Information regarding identity, including names and addresses, registration, and currency of the license of the persons possessing licenses to engage in a professional occupation and the names and addresses of applicants for such licenses is not confidential information.

15. (1) The division of registration and examination, department of education, within chapter 161, RSMo, and others, is abolished and the following boards and commissions are transferred by specific type transfers to the division of professional registration, department of economic development: state board of accountancy, chapter 326, RSMo; state board of barber examiners, chapter 328, RSMo; state board of registration for architects, professional engineers and land surveyors, chapter 327, RSMo; state board of chiropractic examiners, chapter 331, RSMo; state board of cosmetology, chapter 329, RSMo; state board of healing arts, chapter 334, RSMo; Missouri dental board, chapter 332, RSMo; state board of embalmers and funeral directors, chapter 333, RSMo; state board of optometry, chapter 336, RSMo; advisory committee for professional counselors, chapter 337, RSMo; state board of nursing, chapter 335, RSMo; board of pharmacy, chapter 338, RSMo; state board of podiatry, chapter 330, RSMo; Missouri real estate commission, chapter 339, RSMo; and Missouri veterinary medical board chapter 340, RSMo. The governor shall appoint members of these boards by and with the advice and consent of the senate from nominees submitted by the director of the department.

(2) The boards and commissions assigned to the division shall exercise all their respective statutory duties and powers, except those clerical and other staff services involving collecting and accounting for moneys and financial management relating to the issuance and renewal of licenses, which services shall be provided by the division, within the appropriation therefor. All clerical and other staff services relating to the issuance and renewal of licenses of the individual boards and commissions are abolished. All clerical and other staff services pertaining to collecting and accounting for moneys and to financial management relative to the issuance and renewal of licenses of the individual boards and commissions are abolished. Nothing herein shall prohibit employment of professional examining or testing services from professional associations or others as required by the boards or commissions on contract. Nothing herein shall be construed to affect the power of a board or commission to expend its funds as appropriated. However, the division shall review the expense vouchers of each board. The results of such review shall be submitted to the board reviewed and to the house and senate appropriations committees annually.

(3) Notwithstanding any other provisions of law, the director of the division shall

exercise only those management functions of the boards and commissions specifically provided in the Reorganization Act of 1974, and those relating to the allocation and assignment of space, personnel other than board personnel, and equipment.

(4) "Board personnel", as used in this section or chapters 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 345 and 346, RSMo, shall mean personnel whose functions and responsibilities are in areas not related to the clerical duties involving the issuance and renewal of licenses, to the collecting and accounting for moneys, or to financial management relating to issuance and renewal of licenses; specifically included are executive secretaries (or comparable positions), consultants, inspectors, investigators, counsel, and secretarial support staff for these positions; and such other positions as are established and authorized by statute for a particular board or commission. Boards and commissions may employ legal counsel, if authorized by law, and temporary personnel if the board is unable to meet its responsibilities with the employees authorized above. Any board or commission which hires temporary employees shall annually provide the division director and the appropriation committees of the general assembly with a complete list of all persons employed in the previous year, the length of their employment, the amount of their remuneration and a description of their responsibilities.

(5) Board personnel for each board or commission shall be employed by and serve at the pleasure of the board or commission, shall be supervised as the board or commission designates, and shall have their duties and compensation prescribed by the board or commission, within appropriations for that purpose, except that compensation for board personnel shall not exceed that established for comparable positions as determined by the board or commission [under] **pursuant to** the job and pay plan of the department of economic development. Nothing herein shall be construed to permit salaries for any board personnel to be lowered except by board action.

(6) Each board or commission shall receive complaints concerning its licensees' business or professional practices. Each board or commission shall establish by rule a procedure for the handling of such complaints prior to the filing of formal complaints before the administrative hearing commission. The rule shall provide, at a minimum, for the logging of each complaint received, the recording of the licensee's name, the name of the complaining party, the date of the complaint, and a brief statement of the complaint and its ultimate disposition. The rule shall provide for informing the complaining party of the progress of the investigation, the dismissal of the charges or the filing of a complaint before the administrative hearing commission.

16. All the powers, duties and functions of the division of athletics, chapter 317, RSMo, and others, are transferred by type I transfer to the director of the department of economic development. The athletic commission is abolished.

17. The state council on the arts, chapter 185, RSMo, and others, is transferred by type II transfer to the department of economic development, and the members of the council shall be appointed by the director of the department.

18. The Missouri housing development commission, chapter 215, RSMo, is assigned to the department of economic development, but shall remain a governmental instrumentality of the state of Missouri and shall constitute a body corporate and politic.

19. All the authority, powers, duties, functions, records, personnel, property, matters pending and other pertinent vestiges of the division of manpower planning of the department of social services are transferred by a type I transfer to the "Division of Job Development and

Training", which is hereby created, within the department of economic development. The division of manpower planning within the department of social services is abolished. The provisions of section 1 of the Omnibus State Reorganization Act of 1974, Appendix B, RSMo Supp. 1984, relating to the manner and procedures for transfers of state agencies shall apply to the transfers provided in this section.

20. No rule or portion of a rule promulgated [under] **pursuant to** the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

Section C. Because immediate action is necessary to rectify problems with the credit union laws of this state, section B of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and section B of this act shall be in full force and effect upon its passage and approval.

Unofficial

Bill

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