FIRST REGULAR SESSION

SENATE BILL NO. 386

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CLAY.

Read 1st time February 2, 1999, and 1,000 copies ordered printed.

S1706.01I

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 362.247, 362.925, 365.010, 365.020, 456.040, 475.092 and 511.030, RSMo 1994, and sections 30.270, 143.471, 362.275, 362.550, 362.610, 408.035, 456.520 and 475.093, RSMo Supp. 1998, relating to banking, and to enact in lieu thereof seventeen new sections relating to the same subject.

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

Section A. Sections 362.247, 362.925, 365.010, 365.020, 456.040, 475.092 and 511.030, RSMo 1994, and sections 30.270, 143.471, 362.275, 362.550, 362.610, 408.035, 456.520 and 475.093, RSMo Supp. 1998, are repealed and seventeen new sections enacted in lieu thereof, to be known as sections 30.270, 135.805, 143.471, 362.247, 362.275, 362.550, 362.610, 365.010, 365.020, 365.200, 408.035, 427.195, 456.040, 456.520, 475.092, 475.093 and 511.030, to read as follows:

30.270. 1. For the security of the moneys deposited by the state treasurer pursuant to the provisions of this chapter, the state treasurer shall, from time to time, submit a list of acceptable securities to be approved by the governor and state auditor if satisfactory to them, and the state treasurer shall require of the selected and approved banks or financial institutions as security for the safekeeping and payment of deposits, securities from the list provided for in this section, which list may include only securities of the following kind and character:

(1) Bonds or other obligations of the United States;

(2) Bonds or other obligations of the state of Missouri including revenue bonds issued by state agencies or by state authorities created by legislative enactment;

(3) Bonds of any city in this state having a population of not less than two thousand;

(4) Bonds of any county in this state;

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

(5) Approved registered bonds of any school district situated in this state;

(6) Approved registered bonds of any special road district in this state;

(7) State bonds of any state;

(8) Notes, bonds, debentures or other similar obligations issued by the federal land banks, federal intermediate credit banks, or banks for cooperatives or any other obligations issued pursuant to the provisions of an act of the Congress of the United States known as the Farm Credit Act of 1971, and acts amendatory thereto;

(9) Bonds of the federal home loan banks;

(10) Any bonds or other obligations guaranteed as to payment of principal and interest by the government of the United States or any agency or instrumentality thereof;

(11) Bonds of any political subdivision established pursuant to the provisions of section 30, article VI, of the Constitution of Missouri;

(12) Tax anticipation notes issued by any county of the first classification;

(13) A surety bond issued by an insurance company licensed pursuant to the laws of the state of Missouri whose claims-paying ability is rated in the highest category by at least one nationally recognized statistical rating agency. The face amount of such surety bond shall be at least equal to the portion of the deposit to be secured by the surety bond;

(14) An irrevocable standby letter of credit issued by a Federal Home Loan Bank possessing the highest rating issued by at least one nationally recognized statistical rating agency**;**

(15) A custodial account, provided such collateral within the custodial account consists solely of qualified investments pursuant to subdivisions (1) to (12) of this subsection, the equity in such securities is one hundred percent owned by a financial institution pledging such securities, such securities may be assigned and liquidated by the state treasurer, and such securities otherwise qualify for this section, except that only the custodial receipts for such securities need be delivered to the state treasurer and such receipt may indicate the portion of such security or securities actually pledged. Such securities may be held in book entry form in a federal reserve bank, a bank or trust company, or other qualified custodian of securities, which is mutually acceptable to both the financial institution pledging the custodial account and the state treasurer.

2. Securities deposited shall be in an amount valued at market equal at least to one hundred percent of the aggregate amount on time deposit as well as on demand deposit with the particular financial institution less the amount, if any, which is insured either by the Federal Deposit Insurance Corporation or by the Federal Savings and Loan Insurance Corporation or by the National Credit Unions Share Insurance Fund**, except as otherwise provided in this section**.

3. The securities**, custodial receipts** or book entry receipts shall be delivered to the state

treasurer and receipted for by the state treasurer and retained by the treasurer or by financial institutions that the governor, state auditor and treasurer agree upon. The state treasurer shall from time to time inspect the securities**, custodial receipts** and book entry receipts and see that they are actually held by the state treasury or by the financial institutions selected as the state depositaries. The governor and the state auditor may inspect or request an accounting of the securities**, custodial receipts** or book entry receipts, and if in any case, or at any time, the securities are not satisfactory security for deposits made as provided by law, they may require additional security to be given that is satisfactory to them.

4. Any securities deposited pursuant to this section may from time to time be withdrawn and other securities described in the list provided for in subsection 1 of this section may be substituted in lieu of the withdrawn securities with the consent of the treasurer; but a sufficient amount of securities to secure the deposits shall always be held by the treasury or in the selected depositaries.

5. If a financial institution of deposit fails to pay a deposit, or any part thereof, pursuant to the terms of its contract with the state treasurer, the state treasurer shall forthwith convert the securities into money and disburse the same according to law.

6. Any financial institution making deposits of bonds with the state treasurer pursuant to the provisions of this chapter may cause the bonds to be endorsed or stamped as it deems proper, so as to show that they are deposited as collateral and are not transferable except upon the conditions of this chapter or upon the release by the state treasurer.

7. Any financial institution which qualifies to hold state deposits with a composite rating of 1 or 2 under the Capital, Assets, Management, Earnings, Liquidity, and Sensitivity Rating System of the Federal Financial Institutions Examination Counsel or such other comparable financial institution rating system, may accept state deposits, and pledge at least eighty percent of the value of such state deposits, minus any amount which is insured by an agency of the federal government, and the state deposit collateral regime shall be referred to below as greater collateral when one hundred percent is required; and lesser collateral when only eighty percent is required, as follows:

(1) Any financial institution which qualifies for such lesser collateral for public funds, shall within thirty days, and from time to time thereafter as public funds are deposited, notify the state treasurer of the lesser collateral required, and authorize and direct the appropriate financial institution principal regulator, or other comparable financial institution rating organization, to immediately contact the state to confirm such rating, and shall renotify the state treasurer should the rating change, and that such new rating requires greater collateral for public funds. Any state financial institution principal regulator shall comply with this request;

(2) Any financial institution which qualifies for such greater collateral for public

funds has an independent duty, notwithstanding that this may be an ongoing duty of the state financial institution regulator, and shall within thirty days, and from time to time thereafter, as public funds are deposited, notify the state treasurer of the greater collateral required, and authorize and direct the appropriate financial institution principal regulator or other comparable financial institution rating organization, to immediately contact the state to confirm that such rating category requires greater collateral for public funds. Any state financial institution principal regulator shall comply with this request;

(3) When the Capital, Assets, Management, Earnings, Liquidity, and Sensitivity Rating System rating categories are used, the division of finance or other financial institution principal regulator shall send notice to the state by certified mail, return receipt requested, within five business days to insure that the state is on official notice that Capital, Assets, Management, Earnings, Liquidity, and Sensitivity Rating System ratings have changed and additional collateral for public funds are necessary. Such regulator shall not disclose the Capital, Assets, Management, Earnings, Liquidity, and Sensitivity Rating System rating categories authorized in this section to anyone but the state treasurer, unless otherwise permitted by law. When additional collateral is not provided, as otherwise provided in this section, the state shall remove the public funds from such financial institution. When the Capital, Assets, Management, Earnings, Liquidity, and Sensitivity Rating System rating categories are disclosed to the state treasurer, such rating information shall subject the state treasurer to the confidentiality requirements of section 361.080, RSMo, or other financial institutions' specific confidentiality requirements for such information.

135.805. Subchapter S corporation shareholders of a bank or 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 liability, 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.

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 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 sections 143.005 to 143.998 as it has for federal 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 Missouri nonresident adjusted gross income and his nonresident shareholder modification by applying the provisions of this subsection. Items shall be determined to be from sources within this state under 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 federal adjusted gross income, as such part is determined under 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 **[**results**]** **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 this chapter shall be allowed, provided the bank otherwise complies with section 135.805, RSMo, against each S corporation shareholders' state income tax as follows:

(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 under 26 U.S.C. Section 1362, and such credit shall be allocated to the qualifying shareholders 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, but 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 via other communication medium, the bank or trust company shall count directors who are not physically present, 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 Capital, Assets, Management, Earnings, Liquidity, and Sensitivity Rating System of the Federal Financial Institutions Examination Counsel; 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;

(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 he or she participated in such board meeting, and was able to clearly hear such board meeting discussion from its beginning to end.

4. The commissioner of the division of finance may promulgate additional regulations, reasonable in scope, and pursuant to chapter 536, RSMo, to provide for the integrity of the board of directors operations when directors who are not physically

present and counted toward such boards 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 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 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 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 debtors'**

identity on the information required in this subsection may be redacted or 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 are 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 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. Provided the board ratifies such poll as provided for 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.

362.550. 1. When any trust company organized under 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 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 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 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, depositary 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 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 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 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 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 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**]** **As** 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**]**.

[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.**]**

365.010. **[**This chapter**]** **Sections 365.010 to 365.160** 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;

(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, 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 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 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 purpose 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 pursuant to this section must first qualify as a retail seller pursuant to the Missouri motor vehicle time sales law.

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

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

(2) Business loan of five thousand dollars or more;

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

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

2. Notwithstanding any other provision of law to the contrary, this chapter shall apply to credit transactions made primarily for personal, family, or household purposes or secured by personal, family, or household collateral, or by any combination of both such collateral and purpose; credit extended for business, investments, and other purposes shall not be subject to the provisions of this chapter, except this limitation shall not extend to this section, sections 408.570 to 408.600 and sections 408.675 to 408.700.

3. To protect the parties to the agreement, the creditor may request that the debtor indicate in writing that such credit either is for personal, family, or household purposes or secured by such collateral, or if otherwise, as provided in subsection 2 of this section. A debtor may claim the protection of the appropriate loan category in this chapter for all residential real estate which is titled in the debtor's name or the debtor uses personally.

427.195. 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, 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 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 who are also financial institutions, including commercial banks, savings and loan associations, and credit unions, their subsidiaries and affiliates, 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 powers including the powers granted by this chapter, a trustee has a duty to act with due regard to his 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 or** to advise or assist the trustee in the performance of his 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 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 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 subsections 1 and 2 of this section also meet the standards established by the division of finance under 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 under a state plan under 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 the decedent's estate.**

3. Before approving a protective arrangement or other transaction under 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 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 law to the contrary, the trustees 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 under a state plan under 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 trustees 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 402.225, 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.

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**] the plaintiff or defendant** 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 under 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 under the provisions of chapter 475, RSMo.

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