FIRST REGULAR SESSION

[TRULY AGREED TO AND FINALLY PASSED**]**

HOUSE COMMITTEE SUBSTITUTE FOR

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 386

90TH GENERAL ASSEMBLY

1999

L 1706.05T

AN ACT

To repeal sections 95.530, 164.161, 362.247, 362.680, 362.925, 362.930, 365.010, 365.020, 370.107, 374.070, 375.1205, 375.1220, 379.316, 379.321, 379.425, 379.888, 456.040, 475.092 and 511.030, RSMo 1994, and sections 143.471, 165.051, 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, an emergency clause for certain sections and with a termination date for a certain section.

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

Section A. Sections 95.530, 164.161, 362.247, 362.680, 362.925, 362.930, 365.010, 365.020, 374.070, 375.1205, 375.1220, 379.316, 379.321, 379.425, 379.888, 456.040, 475.092 and 511.030, RSMo 1994, and sections 143.471, 165.051, 362.275, 362.550, 362.610, 374.205, 400.3-312, 456.520, 475.093 and 483.310, RSMo Supp. 1998, are repealed and thirty-four new sections enacted in lieu thereof, to be known as sections 95.530, 143.471, 164.161, 165.051, 362.247, 362.275, 362.550, 362.610, 362.680, 362.930, 365.010, 365.020, 365.200, 374.070, 374.205, 375.1205, 375.1220, 379.316, 379.321, 379.362, 379.425, 379.888, 400.3-312, 408.620, 427.200, 456.040, 456.520, 475.092, 475.093, 483.310, 511.030, 1, 2 and 3, to read as follows:

95.530. In all cities not within a county, the mayor, the comptroller and the treasurer shall constitute the funds committee, and the treasurer, by virtue of his office, shall serve as chairman of such committee. The committee shall annually select a bank or banks, or trust company or trust companies, or credit union or credit unions, savings and loan or savings and loans, which has

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

its principal place of business in Missouri referred to hereafter as "listed institutions", for the current deposit of the city's funds, which in their opinion will be most commensurate with the safety thereof. The treasurer, as chairman, shall supervise the business of the committee and maintain records of committee proceedings, and shall call annual meetings or any other meeting as often as the business of the city may require. The treasurer shall be a member of any financial planning or decision making body or committee furthering the needs of the city's financial business, except the legislative and appropriating bodies. The treasurer, by virtue of his office, shall sit on any committee or group which deals with the issuance of bonds of the city or any agency or instrumentality thereof. The treasurer shall serve as the chief investment and cash management officer of the city and, as such, act as the sole investment authority on any investments of public funds held by the city or any instrumentality thereof, including funds derived from proceeds from the issuance of bonds and funds from proceeds from lease/purchase agreements. Such investments shall be made in a manner consistent with investment policies approved by the funds commission, and with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of capital and income to be derived. The treasurer shall ensure the safety of all funds held by the city or any instrumentalities thereof and, upon the approval of the funds commission and reasonable notice, may assume control of any accounts not managed in compliance with state law, serve as the custodian of any funds held in such accounts and take any other measures reasonably required to ensure the preservation of public funds and compliance with applicable law. The funds commission, also known as the "funds committee", shall approve all financial institutions for any banking services required by the city pursuant to investment policies and evaluation criteria set by the treasurer and approved by the funds commission. At least once per year, the treasurer and the city's external auditors shall report to the comptroller on the city's compliance with this section. Any state or municipally created agency **[**or**],** city-wide elected officials **or any instrumentality thereof** working in cooperation with the city in the collection, management, investment or disbursement of governmental funds, shall annually report a listing of all listed institutions accounts, including a list of all pledged collateral, to the fund committee. **Any financial institution acting as a depository or custodian of public funds for any state or municipally created agency, city-wide elected official or any instrumentality thereof working in the collection, management, investment or disbursement of governmental funds for a city located not within a county shall annually report to the funds committee**. Such **agencies,** elected officials and **[**agencies**] instrumentalities** shall, during the interim period, report any change or transfer or establishment of new accounts or changes in collateral to the fund committee within ten days of doing so. **Financial institutions, when requested by the funds committee, shall verify such information**. Before any deposit shall

be made by the treasurer in any listed institution, the institution shall give a bond in an amount equal to the deposit, with good and sufficient sureties, to be approved by the unanimous vote of the members of the funds committee, for the safekeeping and prompt payment of such funds, or any part thereof, when demanded by the treasurer, and shall at all times keep the sureties on such bond satisfactory to the funds committee. In lieu of or in addition to such bond, listed institutions may, with the unanimous consent of the members of the funds committee, deposit with the treasurer of such city or with some other mutually satisfactory depositary in such city, in escrow, bonds or treasury certificates of the United States or other interest-bearing obligations guaranteed as to both principal and interest by the United States or agency or instrumentality thereof in accordance with the approved collateral securities maintained and approved by the state treasurer, or bonds of the state of Missouri or of any city not within a county, of a par value equal to the amount of such deposit, or any part of such deposit not protected by such bond. The securities so deposited shall, in case of default by any such listed institution, be taken possession of by the funds committee, and to the extent required to make good such default, be sold for the benefit of such city. Any securities so deposited may, with the unanimous consent of the members of the funds committee, be withdrawn, and others of equal value and amount substituted therefor. As the amount of such funds on deposit is reduced, listed institutions, when not in default, shall be permitted to withdraw the excess of collateral, except that there shall at no time be a less amount in par value of collateral than the amount at such time of deposits. The securities so deposited or any substitute therefor, shall, upon default, be exhausted before recourse shall be had against the securities upon any bond executed by listed institutions for the protection of such deposits. In lieu of or in addition to such deposit of city funds in listed institutions, the treasurer may invest funds belonging to such city and not immediately needed for the purpose to which such funds or any of them may be applicable, in **[**obligations of the United States government or any agency or instrumentality thereof, or bonds of the state of Missouri, any city not within a county, or time certificates of deposit, except that no such bonds or treasury certificates of the United States or bonds of the state of Missouri, any city not within a county, or time certificates of deposit shall be purchased by the treasurer at any time at a price in excess of the par value thereof**] accordance with section 15, article IV of the Missouri Constitution**. In addition, the treasurer may enter into repurchase agreements maturing and becoming payable within ninety days secured by United States Treasury obligations or obligations of the United States government agencies or instrumentalities of any maturity as provided by law.

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 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.

164.161. **[**1.**]** The loans authorized by sections 164.121 to 164.141 shall not be contracted for a longer period than twenty years, and the entire amount of the loans shall at no time exceed, including the present indebtedness of the district, **[**in**]** the **maximum** aggregate **[**ten percent**] percentage, as set forth in Article VI, Section 26(b) of the Missouri Constitution,** of the value of taxable tangible property therein as shown by the last completed assessment for state and county purposes. The rate of interest upon the bonds shall, in no case, exceed the highest legal rate allowed by contract. Before or at the time of issuing the bonds, the board of directors shall provide for the collection of an annual tax sufficient to pay the interest and principal of the bonds as they fall due, and to retire them within twenty years from date contracted.

[2. Bonds of an urban district shall be disposed of at the best price obtainable, not less than ninety-five percent of the par value thereof.**]**

165.051. If any school district has money in the teachers', incidental, capital projects or debt service fund not needed within a reasonable period of time for the purpose for which the money was received, the school board in the district, if it deems it advisable, may invest the funds in either open time deposits or certificates of deposit secured under the provisions of sections 110.010 and 110.020, RSMo; or in bonds, redeemable at maturity at par, of the state of Missouri, of the United States, or of any wholly owned corporation of the United States; or in other short term obligations of the United States, **[**including**] or in** any instrument permitted by law for the investment of state moneys. No open time deposits shall be made or bonds purchased to mature beyond the date that the funds are needed for the purpose for which they were received by the

school district. Interest accruing from the investment of the surplus funds in such deposits or bonds shall be credited to the fund from which the money was invested.

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

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

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

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

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

375.1205. 1. Within one year of a final **[**determination of insolvency**] order of liquidation** of an insurer by a court of competent jurisdiction of this state, the liquidator **[**may**] shall** make application to the court for approval of a proposal to **[**disburse assets out of marshaled assets, from time to time as such assets become available,**] make early access disbursements out of marshaled assets** to a guaranty association or foreign guaranty association having obligations because of such insolvency. **[**If the liquidator determines that there are insufficient assets to disburse, the application required by this section shall be considered satisfied by a filing by the liquidator stating the reasons for this determination.**]**

2. Such proposal shall at least include provisions for:

(1) Reserving amounts for the payment of expenses of administration and the payment of claims of secured creditors, to the extent of the value of the security held, and claims falling within **[**classes 1 and 2**] priority class I as** established in section 375.1218;

(2) **Initial** disbursement of the assets marshaled to date**, which shall be as soon as practicable and in any case not later than one hundred twenty days after the approval of the early access plan,** and subsequent disbursement of assets **[**as they become available**] which shall be at least annually**;

(3) **[**Equitable allocation of disbursements to each of the guaranty associations and foreign guaranty associations entitled thereto;

(4)**]** The securing by the liquidator from each of the guaranty associations or foreign guaranty associations entitled to disbursements pursuant to this section of an agreement to return to the liquidator such assets, together with income earned on assets previously disbursed, as may be required to pay claims of secured creditors and claims falling within the priorities established in **[**section**] sections 375.700 and** 375.1218 in accordance with such priorities. **[**A**] No** bond or indemnity agreement shall be required of any such association; **[**and

(5)**] (4)** A full report to be made by each guaranty association or foreign guaranty association to the liquidator accounting for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on such assets and any other matter as the court may direct**[.]**; and

(5) Disbursements to guaranty associations in sums as large as possible, subject to the limitations set forth in subdivision (1) of this subsection and subsection 4 of this section. If the liquidator determines that there are insufficient assets to disburse at the time of any required disbursement, the liquidator shall make application to the court, with notice to the state insurance commissioners and guaranty associations pursuant to subsection 6 of this section, for approval of an intent not to disburse, stating the reasons for such determination.

3. [The liquidator's proposal may provide for disbursements to the guaranty association or foreign guaranty associations in amounts estimated at least equal to the claims payments made or to be made thereby for which such associations could successfully assert a claim against the liquidator, and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of such claim payments made or to be made by the association, then disbursements shall be in the amount of available assets.] **Subject only to the provisions of subdivision (4) of subsection 2 of this section, guaranty associations shall not be charged interest on assets disbursed pursuant to this section.**

4. The liquidator's proposal shall provide for disbursements to each guaranty association of foreign guaranty associations in amounts at least equal to the sum of claims payments and allocated lost adjustment expenses of each guaranty association, and a reasonable estimate of reserves for unpaid but known loss claims and allocated loss adjustment expenses expected to be paid within one year by each guaranty association. Amounts used for such calculation shall be those reported to the liquidator by each guaranty association in its most recent financial report to the liquidator. The liquidator's proposal shall further provide that if the assets available for required disbursements do not equal or exceed the amount of such claim payments to be made by the association, the required disbursements may be in the amount of available assets. Unless otherwise provided by the court, the reserves of the insolvent insurer, as reflected in its records or in the financial examination leading to the finding of insolvency, on the date of the final order of liquidation, shall be used to determine the initial disbursement to the guaranty associations. The liquidator shall liquidate the assets of the insurer in an expeditious manner, but is not required to make forced or quick sales that would result in obtaining less than market value for assets.

[4.] **5**. The liquidator's proposal shall, with respect to an insolvent insurer writing life or health insurance or annuities, provide for disbursements of assets to any guaranty association or any foreign guaranty association covering life or health insurance or annuities or to any other entity or organization reinsuring, assuming or guaranteeing policies or contracts of insurance [under] **pursuant to** the laws creating such associations.

[5.] **6**. Notice of [such] **each** application shall be given to [the] **each** guaranty association or foreign guaranty associations in and to the commissioners of the insurance departments of each of the involved states. Any such notice shall be deemed to have been given when deposited in the United States mail, certified delivery, first class postage prepaid, at least thirty days prior to submission of such application to the court. Action on the application may be taken by the court provided the above required notice has been given [and provided further that the liquidator's proposal complies with subdivisions (1) and (2) of subsection 2 of this section].

7. The liquidator shall not offset the amount to be disbursed to a guaranty association or a foreign guaranty association by the amount of any special deposit or

any other statutory deposit or asset of the insolvent insurer held in this state or another state unless such deposit has been forwarded to the guaranty association.

375.1220. 1. The liquidator shall review all claims duly filed in the liquidation and shall make such further investigation as **[**he**]** **the liquidator** shall deem necessary. **[**He**]** **The liquidator** may compound, compromise or in any other manner negotiate the amount for which claims will be allowed, under the supervision of the court, except where the liquidator is required by law to accept claims as settled by any person or organization. Unresolved disputes shall be determined **[**under**]** **pursuant to** section 375.1214. No claim under a policy of insurance shall be allowed for any amount in excess of the applicable policy limits or without regard to policy deductibles.

2. If the fixing or liquidation of any claim or claims would unduly delay the administration of the liquidation or if the administrative expense of processing and adjudication of a claim or group of claims of a similar type would be unduly excessive when compared with the moneys which are estimated to be available for distribution with respect to such claim or group of claims, the determination and allowance of such claim or claims may be made by an estimate. Any such estimate shall be based upon an actuarial evaluation made with reasonable actuarial certainty or upon another accepted method of valuing claims with reasonable certainty.

3. The estimation of contingent liabilities permitted by subsection 2 of this section or any other section of this chapter may be used for the purpose of fixing a creditor's claim in the estate, and for determining the percentage of partial or final divided payments to be paid to creditors with reported allowed claims. However, nothing in subsection 2 of this section or any other section in this chapter shall be construed as authorizing the receiver, or any other entity, to compel payment from a reinsurer on the basis of estimated incurred but not reported losses and, except with respect to claims made pursuant to section 375.1212, outstanding reserves. Nothing in this subsection shall be construed to impair any obligation arising pursuant to any insurance agreement.

4. Notwithstanding the provisions of this section or any other section of this chapter to the contrary, the liquidator may negotiate a voluntary commutation and release of all obligations arising from reinsurance contracts or other agreements.

5. The provisions of this section shall not apply to and have no force and effect regarding any formal delinquency proceeding in which, prior to the effective date of this act, the court in which such proceeding was or is pending issued any order or decree construing or applying the provisions.

379.316. 1. Section 379.017 and sections 379.316 to 379.361 apply to insurance companies incorporated **[**under**]** **pursuant to** sections 379.035 to 379.355, section 379.080, sections 379.060 to 379.075, sections 379.085 to 379.095, sections 379.205 to 379.310, and to insurance companies of a similar type incorporated **[**under**]** **pursuant to** the laws of any other state of the United

States, and alien insurers licensed to do business in this state, which transact fire and allied lines, marine and inland marine insurance, to any and all combinations of the foregoing or parts thereof, and to the combination of fire insurance with other types of insurance within one policy form at a single premium, on risks or operations in this state, except:

(1) Reinsurance, other than joint reinsurance to the extent stated in section 379.331;

(2) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured **[**under**] pursuant to** marine, as distinguished from inland marine, insurance policies;

(3) Insurance against loss or damage to aircraft;

(4) All forms of motor vehicle insurance; and

(5) All forms of life, accident and health, and workers' compensation insurance.

2. Inland marine insurance shall be deemed to include insurance now or hereafter defined by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the director, or as established by general custom of the business, as inland marine insurance.

3. Commercial property and commercial casualty insurance policies which meet the exemption requirements of section 379.362 shall be exempt from those insurance laws of this state which concern the regulation by the director of the department of insurance of the policy language, policy provisions or the format of such policies, or the regulation of the rates used to calculate the amount of premium charged.

379.321. 1. Every insurer shall file with the director, except as to **commercial property or commercial casualty insurance as provided in subsection 6 of this section and as to** inland marine risks which by regulation or general custom of the business are not written according to manual rates or rating plans, every manual of classifications, rules, underwriting rules and rates, every rating plan and every modification of the foregoing which it uses and the policies and forms to which such rates are applied. Any insurer may satisfy its obligation to make any such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings and by authorizing the director to accept such filings on its behalf, provided that nothing contained in section 379.017 and sections 379.316 to 379.361 shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization or as requiring any member or subscriber to authorize the director to accept such filings on its behalf. Filing with the director by such insurer or licensed rating organization within ten days after such manuals, rating plans or modifications thereof or policies or forms are effective shall be sufficient compliance with this section.

2. Except as to **commercial property or commercial casualty insurance as provided in subsection 6 of this section and as to** contracts or policies for inland marine risks as to which filings are not required, no insurer shall make or issue a policy or contract except **[**in accordance with**] pursuant to** filings which are in effect for that insurer or **[**in accordance with

the provisions of**] pursuant to** section 379.017 and sections 379.316 to 379.361. Any rates, rating plans, rules, classifications or systems, in effect on August 13, 1972, shall be continued in effect until withdrawn by the insurer or rating organization which filed them.

3. Upon the written application of the insured, stating his **or her** reasons therefor, filed with the insurer, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

4. Every insurer which is a member of or a subscriber to a rating organization shall be deemed to have authorized the director to accept on its behalf all filings made by the rating organization which are within the scope of its membership or subscribership**,** provided**:**

(1) That any subscriber may withdraw or terminate such authorization, either generally or for individual filings, by written notice to the director and to the rating organization and may then make its own independent filings for any kinds of insurance, or subdivisions, or classes of risks, or parts or combinations of any of the foregoing, with respect to which it has withdrawn or terminated such authorization, or may request the rating organization, within its discretion, to make any such filing on an agency basis solely on behalf of the requesting subscriber; **and**

(2) That any member may proceed in the same manner as a subscriber unless the rating organization shall have adopted a rule, with the approval of the director:

(a) Requiring a member, before making an independent filing, first to request the rating organization to make such filing on its behalf and requiring the rating organization, within thirty days after receipt of such request, either**:**

a. To make such filing as a rating organization filing**[**, or**];**

b. To make such filing on an agency basis solely on behalf of the requesting member**[**,**];** or

c. To decline the request of such member; and

(b) Excluding from membership any insurer which elects to make any filing wholly independently of the rating organization.

5. Any change in a filing made **[**under the provisions of**] pursuant to** this section during the first six months of the date **[**said**] such** filing becomes effective shall be approved or disapproved by the director within ten days following **[**his**] the director's** receipt of notice of such proposed change.

6. Commercial property and commercial casualty insurance policies which meet the exemption requirements of section 379.362 shall adhere to the filing requirements of this section, provided however, that the filings for such policies shall be for informational purposes only. Therefore, all manuals of classifications, rules, underwriting rules, rates, rate plans and modifications, policy forms and other forms to which such rates are applied, shall be filed with the director for policies which meet the exemption requirements of section 379.362. Such filings shall be made with the director within thirty days after such materials are used by the insurer, but such

policies and rates need not be reviewed or approved by the department of insurance as a condition of their use. Nothing in this subsection shall require the filing of individual policies or the rates related thereto where the original policy forms, manuals, rates and rules for the insurance plan or program to which such individual policies conform have already been filed with the director.

379.362. 1. Commercial property insurance and commercial casualty insurance policies shall be exempt from those provisions of sections 379.316 to 379.361, 379.420 to 379.510 and 379.888 which concern regulation by the department of policy language, policy provisions or the format of such policies, or the rates associated with such policies, for any policy for which the policyholder certifies in writing, on a certification form approved by the department, that the policyholder understands that the policy's language or the policy's rating are unregulated by the department and that the requirements of either subdivision (1) or subdivision (2) below are met:

(1) The policyholder has utilized the services of the independent insurance adviser. For purposes of this section, the term "independent insurance adviser" means a person who is qualified through education, training or experience to assess the purchaser's insurance needs and analyze the policy with or on behalf of the policyholder. Such an insurance adviser may be an employee of the policyholder or a person retained by the purchaser, provided that the independent insurance adviser shall not also be an employee of the insurer. Such an independent insurance adviser shall only be compensated for services related to the insurance transaction in question by the policyholder; or

(2) The policyholder's commercial operations meet any two of the following criteria:

(a) One hundred or more employees;

(b) A net worth of over twenty-five million dollars;

(c) Net revenues or sales of over fifty million dollars;

(d) Paid aggregate annual commercial insurance premiums of over fifty thousand dollars, excluding workers' compensation and employer's liability insurance;

(e) Is a not for profit or public entity with an annual budget or assets of at least twenty-five million dollars; or

(f) Is a municipality with a population of over fifty thousand inhabitants.

2. An insurer writing a commercial property or commercial casualty insurance policy pursuant to subsection 1 of this section shall retain a copy of the policyholder's written certification as part of the insurer's policy records of the transaction.

3. Nothing contained in subsection 1 of this section shall be construed as exempting commercial property or commercial casualty policies which meet the requirements of subsection 1 of this section from any regulatory authority of the

director of the department of insurance other than that authority related to the oversight of the policy language, policy provisions or the format of policies, or of the rates used to calculate the amount of premium charged. In particular, nothing contained in subsection 1 of this section shall limit the director's authority over excessive, inadequate or unfairly discriminatory rates.

4. The director may, by rule, require insurers providing coverage pursuant to subsection 1 of this section to retain information in such insurer's files identifying the policies providing such coverage, and to report to the department aggregate data regarding the types of such coverage written and the amounts charged for such coverage.

5. Notwithstanding the provisions of section 384.017, RSMo, commercial property or commercial casualty insurance meeting the requirements of subsection 1 of this section may be procured through a surplus lines licensee from an eligible surplus lines insurer even though the same type of coverage or quality of service is obtainable in the market from admitted insurers.

379.425. **1**. Sections 379.420 to 379.510 apply to casualty insurance, including fidelity, surety and guaranty bonds, and to all forms of motor vehicle insurance, on risks or operations in this state, except

(1) Reinsurance, other than joint reinsurance to the extent stated in section 379.460 and subsection 2 of section 379.430;

(2) Insurance against workers' compensation liability;

(3) Accident and health insurance;

(4) Insurance against loss of or damage to aircraft, or against liability, other than employers' liability, arising out of the ownership, maintenance or use of aircraft.

2. Commercial casualty insurance policies which meet the exemption requirements of section 379.362 shall be exempt from those insurance laws of this state which concern the regulation by the director of insurance of the policy language, policy provisions or the format of such policies, or regulation of the rates used to calculate the amount of premium charged.

379.888. 1. As used in sections 379.888 to 379.893**, the following terms mean**:

(1) "'A' rated risk" **[**means**],** any insurance coverage for which rates are individually determined based upon judgment because neither a rate service organization nor the insurer has yet established a manual rate based upon experience, except that if a rate service organization or the insurer acquires sufficient experience to establish, or if the insurer itself has, a manual rate for such coverage, then such coverage shall no longer be considered an "A" rated risk for each insurer;

(2) "Base rate" **[**means**],** the rate designed to reflect the average aggregate experience of

a particular market, prior to adjustment for individual risk characteristics resulting from application of any rating plan;

(3) "Classification" **[**means**],** a grouping of insurance risks according to a classification system used by an insurer;

(4) "Classification system" **[**means**],** a schedule of classifications and a rule or set of rules used by an insurer for determining the classification applicable to an insured;

(5) "Commercial casualty insurance" **[**means**],** casualty insurance for business or nonprofit interests which is not for personal, family, or household purposes;

(6) "Director" **[**means**],** the director of the department of insurance;

(7) "Rate" **[**means**],** a monetary amount applied to the units of exposure basis assigned to a classification and used by an insurer to determine the premium for an insured;

(8) "Rating plan" **[**means**],** a rule or set of rules used by an insurer to calculate premium for an insured, and the parameter values used in such calculation, after application of classification premium rates to units of exposure; **and**

(9) "Rating system" **[**means**],** a collection of rating plans to be used by an insurer, rules for determining which rating plans are applicable to an insured, a classification system, and other rules used by an insurer for determining contractual consideration for insured.

2. Every filing of commercial casualty insurance premium rates, rating plans or rating systems by an insurer or rating organization **[**must**] shall** be submitted to the director for review prior to becoming effective if it produces an increase or decrease exceeding twenty-five percent annually from changes in any:

(1) Base rates;

(2) Rating basis;

(3) Rating plans;

(4) Manual rules;

(5) Territorial definitions; or

(6) Combination of such rating system components of subdivisions (1) to (5) of this subsection.

3. Nothing in this section applies to premium increases or decreases from:

(1) Change in hazard of the insured's operation;

(2) Change in magnitude of the exposure basis for the insured, including, without limitation, changes in payroll or sales; **[**or**]**

(3) "A" rated risks**; or**

(4) Commercial casualty insurance that is exempt pursuant to section 379.362.

4. Any renewal notice of a commercial casualty insurance policy as defined in section 379.882 for any Missouri risk or portion thereof which would have the effect of increasing the premium charged to the insured due to a change in any scheduled rating factor applied to the

policy during the previous policy period shall contain or be accompanied by a notice to the insured informing the insured that any inquiry by the insured concerning the change may be directed to the agent of record or directly to the insurer. When any insured makes a request for information pursuant to this subsection, the insurer, directly or through the insurer's agent, shall inform the insured in writing in terms sufficiently clear and specific of the basis for any reduction in a scheduled rating credit or increase in a scheduled rating debit which is applied to the policy. Evidence supporting the basis for any scheduled rating credit or debit shall be retained by the insurer for the policy term plus two calendar years**[**, in accordance with**]** **pursuant to** section 374.205, RSMo. The **[**Missouri**]** department of insurance shall notify commercial casualty insurers of the requirements of this section by bulletin. **[**The provisions of this subsection shall become effective on January 1, 1999.**]**

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. 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 2. 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 3. Prior to implementing any plan to allow state lottery prize winners who are currently receiving annuity payments to receive a single cash payment in lieu

of remaining annuity payments, the state lottery commission shall submit to the president pro tempore of the senate, the speaker of the house of representatives, and the commissioner of the office of administration the details of the plan and its estimated effect on the level of total state revenues as defined in article X, section 17 of the Missouri constitution as well as the benefits of allowing financial institutions which are FDIC-insured to participate in such plan. No such plan which permits the option of receiving a single cash payment in lieu of remaining annuity payments shall be implemented unless approved by the general assembly by concurrent resolution and submitted to the governor in accordance with the provisions of article IV, section 8 of the Missouri constitution.

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 but less than $5,000,000	**$250, plus $1 per $1,000 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.

Section D. Section 375.1220.3-.5 shall terminate on December 31, 2000.