HB 795 [CCS SS SCS HCS HB 795, 972, 1128 & 1161]

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

Changes various provisions related to county government.

AN ACT to repeal sections 49.272, 49.650, 50.339, 50.515, 50.740, 50.1110, 50.1140, 50.1250, 52.269, 52.271, 64.520, 64.805, 64.825, 64.930, 67.478, 67.481, 67.484, 67.487, 67.490, 67.493, 67.793, 67.799, 67.1360, 67.1401, 67.1706, 67.1754, 89.410, 137.100, 137.298, 137.720, 144.030, 144.615, 144.757, 144.759, 193.265, 229.340, 245.015, 245.060, 245.095, 246.305, 260.831, 304.010, 321.554, 321.556, 389.610, 393.760, 475.275, 479.020, 488.426, 488.429, 493.050, and 644.032, RSMo, and to enact in lieu thereof sixty-two new sections relating to county government, with penalty provisions, a termination date for a certain section, and an emergency clause for certain sections.

SECTION

A. Enacting clause.
49.272. County counselor may impose fine for certain violations of rules, regulations or ordinances, amount (Boone, Cass, and Greene Counties).
49.650. Certain county ordinances and resolutions authorized relating to county property and affairs — submission to voters — certain restrictions for counties of the third classification.
50.339. Cole County and Cape Girardeau salary commission authorized to equalize salaries on a one-time basis.
50.515. County governing body may impose administrative service fee, when, rate — limit on fee in counties of the third classification.
50.740. Commission to revise and amend estimates (counties of the third and fourth classification).
50.1110. Options in lieu of normal annuity, election — survivorship benefit.
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59.331. Social security number not to be included in certain documents for recording, exceptions.
64.520. County planning commission — members — term — expenses — chairman (counties of the second and third class).
64.805. County planning commission — members — terms — expenses — chairman.
64.825. Regulation of subdivisions in unincorporated areas — procedure — bonds.
64.930. Sports complex commissioners — terms — vacancies — compensation and expenses.
67.320. County orders, violations may be brought in circuit court, when — county municipal court to be approved, appointment of judges, procedures (Jefferson County).
67.793. Petition to create a regional recreational district — filed where — content — hearing.
67.799. Regional recreational district may levy property or sales tax, purpose — rate of tax — election, ballot form — tax, how collected — qualified voters defined.
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67.2000. Creation of an exhibition center and recreational facility district, petition, hearing, ballot form — board of trustees, powers — trust fund created — sales tax authorization, procedure — dissolution of district (Buchanan, Camden, Cole, Greene, Jefferson, Miller, Morgan, Newton, and Wright counties).
67.2500. Establishment of a district, where — definitions (St. Charles County).
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70.225. Emergency dispatching system, eligible for membership in local government retirement system, when (St. Louis County).
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137.100. Certain property exempt from taxes.
137.298. Cities may pass ordinance to include charges for outstanding parking tickets on personal property tax bill — personal property tax receipt, issued when — cities may enter into agreements with county to include outstanding vehicle-related fees and fines on personal property tax bill.
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144.030. Exemptions from state and local sales and use taxes.
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245.015. Owners may form levee district, where — articles of incorporation to be filed in circuit court.
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321.554. Adjustment in total operating levy of district based on sales tax revenue, exceptions — general reassessment, effect of.
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488.426. Deposit required in civil actions — exemptions — surcharge to remain in effect — additional fee for adoption and small claims court (Franklin County).
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644.032. Sales tax for purpose of storm water control or local parks or both may be imposed by any county or municipality — tax, how calculated — voter approval — ballot form — effective when — failure of tax, resubmission, when — revenue may be used for parks located outside of county or municipality, when.

1. Employment of county engineer by county commission not required.
2. Leasehold revenue bonds, federal desegregation, board of fund commissioners to determine whether redemption os financially feasible.

67.478. Title.
67.481. Definitions.
67.484. St. Louis County authorized to form community comeback trust, purposes, formation — board, composition, nomination, powers, duties, restrictions — funding, local sales tax, bond issuance, validity, payment.
67.487. Community comeback plan, notification, development, distribution, annual revision and adoption — reports and audits required — advisory committee to be established by the board.
67.490. Petitions, contents, review, criteria, approval by board as proposal, public hearing — procedure if funds sought, additional review, findings by board required when — select neighborhood action program, eligible projects.
67.493. Funds, minimum to be used for SNAP grant program and priority comeback projects, other uses.

B. Emergency clause.

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

SECTION A. ENACTING CLAUSE. — Sections 49.272, 49.650, 50.339, 50.515, 50.740, 50.1110, 50.1140, 50.1250, 52.269, 52.271, 64.520, 64.805, 64.825, 64.930, 67.478, 67.481, 67.484, 67.487, 67.490, 67.493, 67.793, 67.799, 67.1360, 67.1401, 67.1706, 67.1754, 89.410, 137.100, 137.298, 137.720, 144.030, 144.615, 144.757, 144.759, 193.265, 229.340, 245.015, 245.060, 245.095, 246.305, 260.831, 304.010, 321.554, 321.556, 389.610, 393.760, 475.275, 479.020, 488.426, 488.429, 493.050, and 644.032, RSMo, are repealed and sixty-two new sections enacted in lieu thereof, to be known as sections 49.272, 49.650, 50.339, 50.515, 50.740, 50.1110, 50.1140, 50.1250, 52.269, 52.271, 59.331, 64.520, 64.805, 64.825, 64.930, 67.320, 67.793, 67.799, 67.1360, 67.1401, 67.1706, 67.1754, 67.2000, 67.2500, 67.2505, 67.2510, 67.2515, 67.2520, 67.2525, 67.2530, 70.225, 89.410, 137.100, 137.298, 137.720, 138.011, 144.030, 144.615, 144.757, 144.759, 190.306, 193.265, 229.340, 245.015, 245.060, 245.095, 246.305, 260.831, 304.010, 321.554, 321.556, 389.610, 393.760, 475.275, 479.020, 488.426, 488.429, 493.050, 537.550, 644.032, 1, and 2, to read as follows:

49.272. COUNTY COUNSELOR MAY IMPOSE FINE FOR CERTAIN VIOLATIONS OF RULES, REGULATIONS OR ORDINANCES, AMOUNT (BOONE, CASS, AND GREENE COUNTIES). — The county commission of any county of the first classification without a charter form of government and with more than one hundred thirty-five thousand four hundred but less than one hundred thirty-five thousand five hundred inhabitants**, and in any county of the first classification without a charter form of government having a population of at least eighty-two thousand inhabitants, but less than eighty-two thousand one hundred inhabitants, and any county of the first classification with more than two hundred forty thousand three hundred but less than two hundred forty thousand four hundred inhabitants,** which has an appointed county counselor and which adopts or has adopted rules, regulations or ordinances under authority of a statute which prescribes or authorizes a violation of such rules, regulations or ordinances to be a misdemeanor punishable as provided by law, may by rule, regulation or ordinance impose a civil fine not to exceed one thousand dollars for each violation. Any fines imposed and collected under such rules, regulations or ordinances shall be payable to the county general fund to be used to pay for the cost of enforcement of such rules, regulations or ordinances.

49.650. CERTAIN COUNTY ORDINANCES AND RESOLUTIONS AUTHORIZED RELATING TO COUNTY PROPERTY AND AFFAIRS — SUBMISSION TO VOTERS — CERTAIN RESTRICTIONS FOR COUNTIES OF THE THIRD CLASSIFICATION. — 1. The governing authority of each county **[**of the first, second, or fourth classification**]** without a charter form of government shall have the power to adopt ordinances or resolutions relating to its property, affairs, and local government for which no provision has been made in the constitution of this state or state statute regarding the following:

(1) County roads controlled by the county;

(2) Emergency management, as it specifically relates to the actual occurrence of a natural or man-made disaster of major proportions within the county when the safety and welfare of the inhabitants of such county are jeopardized;

(3) Nuisance abatement, excluding agricultural and horticultural property as defined in section 137.016, RSMo;

(4) Storm water control, excluding agricultural and horticultural property as defined in section 137.016, RSMo;

(5) The promotion of economic development for job creation purposes; **[**and**]**

(6) Parks and recreation**; and**

(7) Protection of the environment from the risks posed by methamphetamine production. Nothing in this subdivision shall be construed to allow a noncharter county

to adopt an ordinance or resolution regulating the sale or display at any retail outlet of any drug having an active ingredient of ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers. Each county shall have the authority by ordinance to authorize specified officeholders to receive donations for specified purposes to defray costs of administration of programs set forth in said ordinance.

If any such ordinance, order, or resolution conflicts with a municipal, fire protection district, or ambulance district ordinance, the provisions of such municipality, fire protection district, or ambulance district shall prevail within the corporate boundaries of the municipality, of such municipality, fire protection district, or ambulance district. All ordinances adopted pursuant to this section shall remain effective until repealed or amended by the governing authority, except that the general assembly shall have the power to further define, broaden, limit, or otherwise regulate the power of each such county to adopt ordinances, resolutions, or regulations.

2. The governing body of each county **[**of the first, second, or fourth classification**]** without a charter form of government may submit to the qualified voters of the county any ordinance, resolution, or regulation proposed pursuant to this section for the approval of the qualified voters of the county. Any ordinance, resolution, or regulation submitted to the qualified voters pursuant to this section shall become effective if a majority of the qualified voters voting on the ordinance, resolution, or regulation are in favor of its adoption, but no ordinance, resolution, or regulation shall become effective if a majority of the qualified voters voting on the ordinance, resolution, or regulation are opposed to its adoption.

3. Notwithstanding any other provision of this section to the contrary, no tax or fee shall be submitted to the voters of the county unless the tax or fee has been authorized by statute by the general assembly.

4. No county of the first, second, **third,** or fourth classification shall have the power to adopt any ordinance, resolution, or regulation pursuant to this section governing any railroad company, telecommunications or wireless companies, public utilities, rural electric cooperatives, or municipal utilities.

5. No county commission of any county of the third classification shall enact an ordinance with regard to agricultural operations under this section. Any zoning ordinance adopted by any county of the third classification before August 28, 2004, shall be exempt from this subsection.

50.339. COLE COUNTY AND CAPE GIRARDEAU SALARY COMMISSION AUTHORIZED TO EQUALIZE SALARIES ON A ONE-TIME BASIS. — 1. In any county of the first classification with more than seventy-one thousand three hundred but less than seventy-one thousand four hundred inhabitants, the salary commission at its meeting in 2003 and at any meeting held in 2004 may equalize the base salary for each office to an amount not greater than that set by law as the maximum compensation. Nothing in this section shall be construed to prevent offices which have additional compensation specified in law from receiving such compensation or from having such compensation added to the base compensation in excess of the equalized salary.

2. Notwithstanding any provision of section 50.343 to the contrary, in any county of the first classification with more than sixty-eight thousand six hundred but less than sixty-eight thousand seven hundred inhabitants, the salary commission may meet in the year 2004 to determine whether to equalize the base salary for the office of treasurer with the base salaries of other county officers at an amount not greater than the amount set as the maximum compensation in subdivision (1) of subsection 1 of section 50.343.

50.515. COUNTY GOVERNING BODY MAY IMPOSE ADMINISTRATIVE SERVICE FEE, WHEN, RATE — LIMIT ON FEE IN COUNTIES OF THE THIRD CLASSIFICATION. — The governing body of any county may, by order of such governing body, impose an administrative service fee on the county park fund or the county road and bridge fund, or any specific purpose capital

improvements fund, authorized pursuant to the provisions of section 67.547, 67.550 or 67.700, RSMo. Such administrative service fee shall only be imposed to recoup expenditures made from the county general revenue fund to provide administrative services to the county park fund or the county road and bridge fund, or any specific purpose capital improvements fund authorized pursuant to section 67.547, 67.550 or 67.700, RSMo, including, but limited to, accounting, bookkeeping, legal services, auditing, investment control, fiscal management, and revenue collection. Any administrative service fee imposed under this section shall be imposed at a rate which will only generate revenue sufficient to recoup actual expenditures made from the general revenue fund of the county to provide administrative services to the fund against which such service fee is imposed, including both direct and indirect expenditures as determined by an independent audit; provided, that no administrative service fee shall exceed three percent of the total budget of the fund on which such fee is imposed**, except in any county of the third classification, in which no administrative service fee shall exceed five percent of the total budget of the fund on which such fee is imposed**.

50.740. COMMISSION TO REVISE AND AMEND ESTIMATES (COUNTIES OF THE THIRD AND FOURTH CLASSIFICATION). — 1. It is hereby made the first duty of the county commission in counties of classes three and four at its regular **[**February**]** **January** term to go over the estimates and revise and amend the same in such way as to promote efficiency and economy in county government. The commission may alter or change any estimate as public interest may require and to balance the budget, first giving the person preparing supporting data an opportunity to be heard. After the county commission shall have revised the estimate it shall be the duty of the clerk of said commission forthwith to enter such revised estimate on the record of the said commission and the commission shall forthwith enter thereon its approval.

2. The county clerk shall within five days after the date of approval of such budget estimate, file a certified copy thereof with the county treasurer, taking **[**his**]** **a** receipt therefor, and he shall also forward a certified copy thereof to the state auditor by registered mail. The county treasurer shall not pay nor enter protest on any warrant **except payroll** for the current year until such budget estimate shall have been so filed. If any county treasurer shall pay or enter for protest any warrant **except payroll** before the budget estimate shall have been filed, as by sections 50.525 to 50.745 provided, **[**he**]** **the county treasurer** shall be liable on **[**his**]** **the** official bond for such act. Immediately upon receipt of the estimated budget the state auditor shall send to the county clerk **[**his**]** **the** receipt therefor by registered mail.

3. Any order of the county commission of any county authorizing **[**and/or**]** **or** directing the issuance of any warrant contrary to any provision of this law shall be void and of no binding force or effect; and any county clerk, county treasurer, or other officer participating in the issuance or payment of any such warrant shall be liable therefor upon **[**his**]** **the** official bond.

50.1110. OPTIONS IN LIEU OF NORMAL ANNUITY, ELECTION — SURVIVORSHIP BENEFIT. — 1. The normal annuity of a member shall be paid to a member during his or her lifetime. Upon the member's death no further payments shall be made.

2. In lieu of the normal annuity otherwise payable to a member, the member may elect in the member's application for retirement to receive the actuarial equivalent of the member's normal annuity in reduced monthly payments for life during retirement with the provision that upon the member's death, either one hundred percent, seventy-five percent or fifty percent of the reduced normal annuity, as elected by the member, shall be continued throughout the life of and paid to the member's beneficiary.

3. The election may be made only in the application for retirement and such application shall be filed prior to the date on which the retirement of the member is to be effective. A member shall not be permitted to change the form of benefit elected or the designated beneficiary after benefits commence to him, even if the designated beneficiary dies before the member.

4. If a member dies after completing eight or more years of creditable service, the surviving spouse shall be entitled to survivorship benefits under the fifty-percent annuity option as set forth in this section. If the member was age sixty-two or older at death, the surviving spouse's benefit will commence the first day of the month following the member's death. If the member was under age sixty-two at death, the surviving spouse's benefits will commence on the first day of the month following the date the member would have attained age sixty-two had the member lived. Alternatively, the surviving spouse may elect to receive the actuarial equivalent benefit payable on the first day of any month following the date of the member's death and prior to the date the member would have attained age sixty-two, reduced for early commencement.

5. Actuarial equivalence shall be determined in accordance with assumptions adopted by the board after consulting with the actuary of the retirement system.

6. If a member dies prior to retirement and after completing eight or more years service and there is no surviving spouse, the member's designated beneficiary shall be entitled to receive a refund of the member's contributions under section 50.1040, RSMo. If there is no designated beneficiary, the contributions shall be paid to the member's estate.

50.1140. TERMINATION OF EMPLOYMENT, FORFEIT OF RIGHTS, REFUND — DEFERRED ANNUITY PERMANENT, WHEN — PAYMENT OF ACCUMULATED CONTRIBUTIONS — RESTORATION OF CREDITABLE SERVICE. — 1. Upon termination of employment, any member with less than eight years of creditable service shall forfeit all rights in the fund, including the member's accrued creditable service as of the date of the member's termination of employment, but may receive any refund of contributions to which the member is entitled pursuant to subsection 3 of this section.

2. A member who terminates employment with at least eight years of creditable service shall be entitled to an annuity from the fund, determined in accordance with the formula described in section 50.1060. The member may elect to defer the receipt of his or her annuity, until the member's attainment of age sixty-two, or the member may elect to begin receiving his or her annuity on the first day of any month following the later of the date of termination of employment or age fifty-five. If the member begins receiving an annuity before age sixty-two and termination of employment occurs on or after age fifty-five, the annuity shall be reduced by four-tenths of one percent for each month the commencement date of the annuity precedes age sixty-two, and an additional three-tenths of one percent for each month the commencement date of the annuity precedes age sixty.

3. In the event a member ceases to be a member other than by death before the date the member becomes vested in the system, the member shall be paid, upon his or her written application filed with the board, the member's accumulated contributions standing to his or her credit in the members' deposit fund.

4. A former member who has forfeited creditable service may have the creditable service restored by again becoming an employee, completing a total of eight years of uninterrupted creditable service, and purchasing the forfeited service **[**at the rate of two percent, or one percent if in LAGERS, of compensation plus interest equal to the current prime rate plus two percent from the date of payment of the refund**]** **by paying into the fund the forfeited amount previously refunded to the participant or credited to the participant's county plus interest equal to the current prime rate plus two percent**.

50.1250. FORFEITURE OF CONTRIBUTIONS, WHEN — REVERSION OF FORFEITURES — DISTRIBUTION OF CONTRIBUTION ACCOUNT, WHEN — DEATH OF A MEMBER, EFFECT OF. — 1. If a member has less than five years of creditable service upon termination of employment, the member shall forfeit the portion of his or her defined contribution account attributable to board matching contributions or county matching contributions pursuant to section 50.1230. The proceeds of such forfeiture shall be applied towards matching contributions made by the board for the calendar year in which the forfeiture occurs. If the board does not approve a matching

contribution, then forfeitures shall revert to the county employees' retirement fund. The proceeds of such forfeiture with respect to county matching contributions shall be applied toward matching contributions made by the respective county in accordance with rules prescribed by the board.

2. A member shall be eligible to receive a distribution of the member's defined contribution account **[**as soon as administratively feasible following termination of employment, or may choose to receive the account balance at a later time, but no later than his or her required beginning date. The member's account balance shall be paid in a single sum**] in such form selected by the member as permitted under and in accordance with the rules and regulations formulated and adopted by the board from time to time, and commencing as soon as administratively feasible following separation from service, unless the member elects to receive the account balance at a later time, but no later than his or her required beginning date. Notwithstanding the foregoing, if the value of a member's defined contribution account balance is five thousand dollars or less at the time of the member's separation from service, without respect to any board matching contributions or employer matching contribution which might be allocated following the member's separation from service, then his or her defined contribution account shall be distributed to the member in a single sum as soon as administratively feasible following his or her separation from service**. The amount of the distribution shall be the amount determined as of the valuation date described in section 50.1240, if the member has at least five years of creditable service. If the member has less than five years of creditable service upon his or her **[**termination of employment**] separation from service**, then the amount of the distribution shall equal the portion of the member's defined contribution account attributable to the member's seed contributions pursuant to section 50.1220, if any, determined as of the valuation date.

3. If the member dies before receiving the member's account balance, the member's designated beneficiary shall receive the member's defined contribution account balance, as determined as of the immediately preceding valuation date, in a single sum. The member's beneficiary shall be his or her spouse, if married, or his or her estate, if not married, unless the member designates an alternative beneficiary in accordance with procedures established by the board.

52.269. COMPENSATION OF COUNTY COLLECTOR — TRAINING PROGRAM, ATTENDANCE REQUIRED, WHEN, EXPENSES, COMPENSATION — CERTAIN FEES MAY BE RETAINED (CERTAIN COUNTIES). — 1. In all counties, except first classification counties having a charter form of government and first classification counties not having a charter form of government and not containing any part of a city with a population of three hundred thousand or more, the county collector shall receive an annual salary which shall be paid in equal monthly installments by the county. The salary shall be computed on an assessed valuation basis as provided in this subsection. The assessed valuation factor shall be the amount as shown for the year next preceding the annual salary computation. A county collector subject to the provisions of this section shall not receive an annual compensation less than the total compensation being received by the county collector in that county for services rendered or performed for the period beginning March 1, 1987, and ending February 29, 1988. The county collector shall receive the same percentage adjustments provided by the county salary commissions for county officers in that county pursuant to section 50.333, RSMo. The provisions of this section shall not permit or require a reduction in the amount of compensation being paid for the office of county collector on January 1, 1997, or less than the total compensation being received for the services rendered or performed for the period beginning March 1, 1987, and ending February 29, 1988. The salary shall be computed on the basis of the following schedule:

Assessed Valuation	Salary
$18,000,000 to 40,999,999	$29,000
41,000,000 to 53,999,999	30,000
54,000,000 to 65,999,999	32,000

66,000,000 to 85,999,999	34,000
86,000,000 to 99,999,999	36,000
100,000,000 to 130,999,999	38,000
131,000,000 to 159,999,999	40,000
160,000,000 to 189,999,999	41,000
190,000,000 to 249,999,999	41,500
250,000,000 to 299,999,999	43,000
300,000,000 or more	45,000

2. Two thousand dollars of the salary authorized in this section shall be payable to the collector only if the collector has completed at least twenty hours of classroom instruction each calendar year relating to the operations of the collector's office when approved by a professional association of the county collectors of Missouri unless exempted from the training by the professional association. The professional association approving the program shall provide a certificate of completion to each collector who completes the training program and shall send a list of certified collectors to the treasurer of each county. Expenses incurred for attending the training session may be reimbursed to the county collector in the same manner as other expenses as may be appropriated for that purpose.

3. Any provision of law to the contrary notwithstanding, any fee provided for in section 52.250 or 52.275, when collected on ditch and levee taxes, shall not be collected on behalf of the county and deposited into the county general revenue fund. Such fee shall be retained by the collector as compensation for his services, in addition to any amount provided for such collector in this section. **[**Any fee which may be retained by the collector under the terms of such contract may be retained in addition to all other compensation provided by law.**]**

4. Except as provided in subsection 3 of this section, after the next general election following January 1, 1988, all fees collected by the collector shall be collected on behalf of the county and deposited in the county general revenue fund.

52.271. DEPUTIES AND ASSISTANTS, COMPENSATION. — 1. **Notwithstanding any provisions of law to the contrary, or any other provision of law in conflict with the provisions of this section,** the county collector in each county **[**of the third class**] shall be allowed to employ not less than one full-time deputy and** is entitled to employ **such number of** deputies and assistants **as may be necessary to promptly and correctly perform the duties of the collector's office**, and for the deputies and assistants is allowed not less than the amount allowed in **[**1992 or 1993**] 2001 or 2002**, whichever is greater.

2. For the purpose of computing the various amounts under the provisions of subsection 1 of this section, the salary of the county collector is the total compensation provided in section 52.269.

59.331. SOCIAL SECURITY NUMBER NOT TO BE INCLUDED IN CERTAIN DOCUMENTS FOR RECORDING, EXCEPTIONS. — The preparer of a document shall not include an individual's federal social security number in a document that is prepared and presented for recording in the office of the recorder of deeds. This section does not apply to state or federal tax liens, military separation or discharge papers, and other documents required by law to contain such information that are filed or recorded in the office of the recorder of deeds.

64.520. COUNTY PLANNING COMMISSION — MEMBERS — TERM — EXPENSES — CHAIRMAN (COUNTIES OF THE SECOND AND THIRD CLASS). — Such county planning commission shall consist of the county highway engineer **or head of the highway department**, and one resident of the county appointed by the county commission, from the unincorporated part of each township in the county, except that no such **[**freeholder**] resident** shall be appointed from a township in which there is no unincorporated area. The township representatives are

hereinafter referred to as appointed members. The term of each appointed member shall be four years or until his successor takes office, except that the terms shall be overlapping and that the respective terms of the members first appointed may be less than four years. The term of the county highway engineer shall be only for the duration of his tenure of official position. All members of the county planning commission shall serve as such without compensation, except that an attendance fee as reimbursement for expenses for hearings, and for not to exceed two administrative meetings per month, may be paid to the appointed members of the planning commission in an amount, as set by the county commission, not to exceed **[**fifteen**]** **twenty-five** dollars for each meeting. The planning commission shall elect its chairman, who shall serve for one year.

64.805. COUNTY PLANNING COMMISSION — MEMBERS — TERMS — EXPENSES — CHAIRMAN. — The county planning commission shall consist of the county highway engineer, and one resident of the county appointed by the county commission, from the unincorporated part of each township in the county, except that no such person shall be appointed from a township in which there is no unincorporated area. The township representatives are hereinafter referred to as appointed members. The term of each appointed member shall be four years or until his successor takes office, except that the terms shall be overlapping and that the respective terms of the members first appointed may be less than four years. The term of the county highway engineer shall be only for the duration of his tenure of official position. All members of the county planning commission shall serve as such without compensation, except that an attendance fee as reimbursement for expenses, for not to exceed four meetings per year, may be paid to the appointed members of the county planning commission in an amount, as set by the county commission, not to exceed **[**ten**]** **twenty-five** dollars per meeting. The planning commission shall elect its chairman, who shall serve for one year.

64.825. REGULATION OF SUBDIVISIONS IN UNINCORPORATED AREAS — PROCEDURE — BONDS. — The county planning commission may also prepare, with the approval of the county commission, as parts of the official master plan or otherwise, sets of regulations governing subdivisions of land in unincorporated areas, and amend or change same from time to time as herein provided, which regulations may provide for the proper location and width of streets, building lines, open spaces, safety, recreation, and for the avoidance of congestion of population, including minimum width and area of lots. Such regulations may also include the extent to which and the manner in which streets shall be graded and improved, and the extent to which water, sewer and other utility services shall be provided, to protect public health and general welfare. Such regulations may provide that in lieu of the immediate completion or installation of the work, the county planning commission may accept bond for the county commission in the amount and with surety **bond, cash bond, cash deposit with the county treasurer, letter of credit, or certificate of deposit** and conditions satisfactory to the county commission, providing for and securing to the county commission the actual construction of the improvements and utilities within a period specified by the county planning commission, and the county commission shall have power to enforce the bond**, surety bond, cash bond, cash deposit with the county treasurer, letter of credit, or certificate of deposit** by all proper remedies. The subdivision regulations shall be adopted, changed or amended, certified and filed as provided in section 64.815. The subdivision regulations shall be adopted, changed or amended only after a public hearing has been held thereon, public notice of which shall be given in the manner as provided for the hearing in section 64.815.

64.930. SPORTS COMPLEX COMMISSIONERS — TERMS — VACANCIES — COMPENSATION AND EXPENSES. — 1. The county sports complex authority shall consist of five commissioners who shall be qualified voters of the state of Missouri, and residents of such county. The commissioners of the county commission by a majority vote thereof shall submit

a panel of nine names to the governor who shall select with the advice and consent of the senate five commissioners from such panel, no more than three of which shall be of any one political party, who shall constitute the members of such authority; provided, however, that no elective or appointed official of any political subdivision of the state of Missouri shall be a member of the county sports complex authority.

2. The authority shall elect from its number a chairman and may appoint such officers and employees as it may require for the performance of its duties and fix and determine their qualifications, duties and compensation. No action of the authority shall be binding unless taken at a meeting at which at least three members are present and unless a majority of the members present at such meeting shall vote in favor thereof.

3. Such sports complex commissioners shall serve in the following manner: One for two years, one for three years, one for four years, one for five years, and one for six years. Successors shall hold office for terms of five years, or for the unexpired terms of their predecessors. Each sports complex commissioner shall hold office until his successor has been appointed and qualified.

4. In the event a vacancy exists a new panel of three names shall be submitted by majority vote of the county commission to the governor for appointment. All such vacancies shall be filled within thirty days from the date thereof. **If the county commission has not submitted a panel of three names to the governor within thirty days of the expiration of a commissioner's term, the governor shall immediately make an appointment to the commission with the advice and consent of the senate. In the event the governor does not appoint a replacement, no commissioner shall continue to serve beyond the expiration of that commissioner's term.**

5. The compensation of the sports complex commissioners to be paid by the authority shall be determined by the sports complex commissioners, but in no event shall exceed the sum of three thousand dollars per annum. In addition, the sports complex commissioners shall be reimbursed by the authority for the actual and necessary expenses incurred in the performance of their duties. **No commissioner shall continue to serve beyond the expiration of that commissioner's term.**

67.320. COUNTY ORDERS, VIOLATIONS MAY BE BROUGHT IN CIRCUIT COURT, WHEN — COUNTY MUNICIPAL COURT TO BE APPROVED, APPOINTMENT OF JUDGES, PROCEDURES (JEFFERSON COUNTY). — 1. Any county of the first classification with more than one hundred ninety-eight thousand but less than one hundred ninety-nine thousand two hundred inhabitants may prosecute and punish violations of its county orders in the circuit court of such counties in the manner and to the extent herein provided or in a county municipal court if creation of a county municipal court is approved by order of the county commission. The county may adopt orders with penal provisions consistent with state law but only in the areas of traffic violations, solid waste management and animal control. Any county municipal court established pursuant to the provisions of this section shall have jurisdiction over violations of that county's orders and the ordinances of municipalities with which the county has a contract to prosecute and punish violations of municipal ordinances of the municipality.

2. In any county which has elected to establish a county municipal court pursuant to this section, the judges for such court shall be appointed by the county commission of such county, subject to confirmation by the legislative body of such county in the same manner as confirmation for other county appointed officers. The number of judges appointed, and qualifications for their appointment, shall be established by order of the commission.

3. The practice and procedure of each prosecution shall be conducted in compliance with all of the terms and provisions of sections 66.010 to 66.140, RSMo, except as provided for in this section.

4. Any use of the term ordinance in sections 66.010 to 66.140, RSMo, shall be synonymous with the term order for purposes of this section.

67.793. PETITION TO CREATE A REGIONAL RECREATIONAL DISTRICT — FILED WHERE — CONTENT — HEARING. — 1. Whenever the creation of a regional recreational district is desired, one hundred or more persons residing in the proposed district may file with the county clerk in which the greater part of the proposed district's population resides a petition requesting the creation of the regional recreational district. In case the proposed district is situated in two or more counties, the petition shall be filed in the office of the county clerk of the county in which the greater part of the proposed district's population resides, and the governing body of that county shall set the petition for public hearing and conduct such hearing. The petition shall set forth:

(1) A description of the territory to be embraced in the proposed district;

(2) The names of the municipalities located within the proposed district;

(3) The name of the proposed district;

(4) The population of the proposed district;

(5) The assessed valuation of the proposed district;

(6) The type and rate of tax proposed to be levied; and

(7) A request that the question be submitted to the voters residing within the limits of the proposed regional recreational district whether they will establish a regional recreational district pursuant to the provisions of sections 67.792 to 67.799 to be known as ". . . Regional Recreational District" for the purpose of establishing, operating and maintaining public parks, neighborhood trails and recreational facilities within the boundaries of the district.

2. Whenever one hundred or more persons residing in an area contiguous to an existing regional recreational district desire to become part of that contiguous district, such persons may file a petition with the county clerk of the county in which the greater part of the population within the proposed addition to the district resides, and the governing body of that county shall set the petition for public hearing and conduct such hearing. The petition for the addition to a district shall set forth the same facts required for the creation of such a district pursuant to subdivisions (1) to (7) of subsection 1 of this section, except that:

(1) Subdivision (6) of subsection 1 of this section shall only permit the imposition of a tax on the real property located within the addition to the district; and

(2) Subdivision (7) of subsection 1 of this section shall, in the petition for the addition, be a request that the question be submitted to the voters residing within the limits of the proposed addition to the ". . . . . regional recreational district" as to whether or not they will become a part of the ". . . . . regional recreational district" for the purpose of establishing, operating and maintaining public parks, neighborhood trails and recreational facilities within the boundaries of such district.

3. The petition shall, after having been filed pursuant to this section, receive a hearing by the governing body of the county of filing pursuant to section 67.794.

4. The governing body of any county otherwise eligible to participate in a regional recreational district may directly authorize, by ordinance, the creation of a regional recreational district or an addition to an existing regional recreational district without the submission of a petition. The governing body of each such county shall, upon the enactment of such ordinance, submit the question of its approval to the voters in such county. If less than an entire county is proposed to participate in such a regional recreational district, the question may be submitted to the **registered and qualified** voters residing in the proposed **[**area, provided, that any regional recreational district which is supported by a sales tax shall be approved by the voters of the entire county**] district, or if no registered and qualified voters reside in the proposed district, to the owners of the real property located within the proposed district. Any ordinance adopted by the governing body creating a regional recreational district supported by a sales tax but with no registered and qualified voters residing within the proposed district**

boundaries shall be unanimously approved by the owners of real property within the proposed district. The proposed district shall consist only of those counties, or portions of counties, where the governing body has approved an ordinance to create a district.

67.799. REGIONAL RECREATIONAL DISTRICT MAY LEVY PROPERTY OR SALES TAX, PURPOSE — RATE OF TAX — ELECTION, BALLOT FORM — TAX, HOW COLLECTED — QUALIFIED VOTERS DEFINED. — 1. A regional recreational district may, by a majority vote of its board of directors, impose an annual property tax for the establishment and maintenance of public parks and recreational facilities and grounds within the boundaries of the regional recreational district not to exceed sixty cents per year on each one hundred dollars of assessed valuation on all property within the district, except that no such tax shall become effective unless the board of directors of the district submits to the voters of the district, at a county or state general, primary or special election, a proposal to authorize the tax.

2. The question shall be submitted in substantially the following form:

Shall a . . . . . cent tax per one hundred dollars assessed valuation be levied for public parks and recreational facilities?

[ ] YES [ ] NO

If a majority of the votes cast on the proposal by the qualified voters voting thereon are in favor of the proposal, then the tax shall become effective. If a majority of the votes cast by the qualified voters voting are opposed to the proposal, then the board of directors shall have no power to impose the tax unless and until the board of directors of the district submits another proposal to authorize the tax and such proposal is approved by a majority of the qualified voters voting thereon.

3. The property tax authorized in subsections 1 and 2 of this section shall be levied and collected in the same manner as other ad valorem property taxes are levied and collected.

4. (1) A regional recreational district may, by a majority vote of its board of directors, impose a tax not to exceed one-half of one cent on all retail sales subject to taxation pursuant to sections 144.010 to 144.525, RSMo, for the purpose of funding the creation, operation and maintenance of public parks, recreational facilities and grounds within the boundaries of a regional recreational district. The tax authorized by this subsection shall be in addition to all other sales taxes allowed by law. No tax pursuant to this subsection shall become effective unless the board of directors submits to the voters of the district, at a county or state general, primary or special election, a proposal to authorize the tax, and such tax shall become effective only after the majority of the voters voting on such tax approve such tax. **[**Only whole counties participating in a regional recreational district shall be able to impose a sales tax pursuant to this subsection.**]**

(2) In the event the district seeks to impose a sales tax pursuant to this subsection, the question shall be submitted in substantially the following form:

Shall a . . . . cent sales tax be levied on all retail sales within the district for public parks and recreational facilities?

[ ] YES [ ] NO

If a majority of the votes cast on the proposal by the qualified voters voting thereon are in favor of the proposal, then the tax shall become effective. If a majority of the votes cast by the qualified voters voting are opposed to the proposal, then the board of directors shall have no power to impose the tax unless and until another proposal to authorize the tax is submitted to the voters of the district and such proposal is approved by a majority of the qualified voters voting thereon. The provisions of sections 32.085 and 32.087, RSMo, shall apply to any tax approved pursuant to this subsection.

5. As used in this section, "qualified voters" or "voters" means any individuals residing within the proposed district who are eligible to be registered voters and who have registered to vote under chapter 115, RSMo, or, if no individuals eligible and registered to vote reside within the proposed district, all of the owners of real property located within

the proposed district who have unanimously petitioned for or consented to the adoption of an ordinance by the governing body imposing a tax authorized in this section. If the owner of the property within the proposed district is a political subdivision or corporation of the state, the governing body of such political subdivision or corporation shall be considered the owner for purposes of this section.

67.1360. TRANSIENT GUESTS TO PAY TAX FOR FUNDING THE PROMOTION OF TOURISM, CERTAIN CITIES AND COUNTIES, VOTE REQUIRED. — The governing body of:

(1) A city with a population of more than seven thousand and less than seven thousand five hundred;

(2) A county with a population of over nine thousand six hundred and less than twelve thousand which has a total assessed valuation of at least sixty-three million dollars, if the county submits the issue to the voters of such county prior to January 1, 2003;

(3) A third class city which is the county seat of a county of the third classification without a township form of government with a population of at least twenty-five thousand but not more than thirty thousand inhabitants;

(4) Any fourth class city having, according to the last federal decennial census, a population of more than one thousand eight hundred fifty inhabitants but less than one thousand nine hundred fifty inhabitants in a county of the first classification with a charter form of government and having a population of greater than six hundred thousand but less than nine hundred thousand inhabitants;

(5) Any city having a population of more than three thousand but less than eight thousand inhabitants in a county of the fourth classification having a population of greater than forty-eight thousand inhabitants;

(6) Any city having a population of less than two hundred fifty inhabitants in a county of the fourth classification having a population of greater than forty-eight thousand inhabitants;

(7) Any fourth class city having a population of more than two thousand five hundred but less than three thousand inhabitants in a county of the third classification having a population of more than twenty-five thousand but less than twenty-seven thousand inhabitants;

(8) Any third class city with a population of more than three thousand two hundred but less than three thousand three hundred located in a county of the third classification having a population of more than thirty-five thousand but less than thirty-six thousand;

(9) Any county of the second classification without a township form of government and a population of less than thirty thousand;

(10) Any city of the fourth class in a county of the second classification without a township form of government and a population of less than thirty thousand;

(11) Any county of the third classification with a township form of government and a population of at least twenty-eight thousand but not more than thirty thousand;

(12) Any city of the fourth class with a population of more than one thousand eight hundred but less than two thousand in a county of the third classification with a township form of government and a population of at least twenty-eight thousand but not more than thirty thousand;

(13) Any city of the third class with a population of more than seven thousand two hundred but less than seven thousand five hundred within a county of the third classification with a population of more than twenty-one thousand but less than twenty-three thousand;

(14) Any fourth class city having a population of more than two thousand eight hundred but less than three thousand one hundred inhabitants in a county of the third classification with a township form of government having a population of more than eight thousand four hundred but less than nine thousand inhabitants;

(15) Any fourth class city with a population of more than four hundred seventy but less than five hundred twenty inhabitants located in a county of the third classification with a population of more than fifteen thousand nine hundred but less than sixteen thousand inhabitants;

(16) Any third class city with a population of more than three thousand eight hundred but less than four thousand inhabitants located in a county of the third classification with a population of more than fifteen thousand nine hundred but less than sixteen thousand inhabitants;

(17) Any fourth class city with a population of more than four thousand three hundred but less than four thousand five hundred inhabitants located in a county of the third classification without a township form of government with a population greater than sixteen thousand but less than sixteen thousand two hundred inhabitants;

(18) Any fourth class city with a population of more than two thousand four hundred but less than two thousand six hundred inhabitants located in a county of the first classification without a charter form of government with a population of more than fifty-five thousand but less than sixty thousand inhabitants;

(19) Any fourth class city with a population of more than two thousand five hundred but less than two thousand six hundred inhabitants located in a county of the third classification with a population of more than nineteen thousand one hundred but less than nineteen thousand two hundred inhabitants;

(20) Any county of the third classification without a township form of government with a population greater than sixteen thousand but less than sixteen thousand two hundred inhabitants;

(21) Any county of the second classification with a population of more than forty-four thousand but less than fifty thousand inhabitants;

(22) Any third class city with a population of more than nine thousand five hundred but less than nine thousand seven hundred inhabitants located in a county of the first classification without a charter form of government and with a population of more than one hundred ninety-eight thousand but less than one hundred ninety-eight thousand two hundred inhabitants;

(23) Any city of the fourth classification with more than five thousand two hundred but less than five thousand three hundred inhabitants located in a county of the third classification without a township form of government and with more than twenty-four thousand five hundred but less than twenty-four thousand six hundred inhabitants; **[**or**]**

(24) Any third class city with a population of more than nineteen thousand nine hundred but less than twenty thousand in a county of the first classification without a charter form of government and with a population of more than one hundred ninety-eight thousand but less than one hundred ninety-eight thousand two hundred inhabitants;

(25) Any city of the fourth classification with more than two thousand six hundred but less than two thousand seven hundred inhabitants located in any county of the third classification without a township form of government and with more than fifteen thousand three hundred but less than fifteen thousand four hundred inhabitants; or

(26) Any county of the third classification without a township form of government and with more than fourteen thousand nine hundred but less than fifteen thousand inhabitants;

may impose a tax on the charges for all sleeping rooms paid by the transient guests of hotels, motels, bed and breakfast inns and campgrounds and any docking facility which rents slips to recreational boats which are used by transients for sleeping, which shall be at least two percent, but not more than five percent per occupied room per night, except that such tax shall not become effective unless the governing body of the city or county submits to the voters of the city or county at a state general, primary or special election, a proposal to authorize the governing body of the city or county to impose a tax pursuant to the provisions of this section and section 67.1362. The tax authorized by this section and section 67.1362 shall be in addition to any charge paid to the owner or operator and shall be in addition to any and all taxes imposed by law and the proceeds of such tax shall be used by the city or county solely for funding the promotion of tourism. Such tax shall be stated separately from all other charges and taxes.

67.1401. COMMUNITY IMPROVEMENT DISTRICT ACT, DEFINITIONS. — 1. Sections 67.1401 to 67.1571 shall be known and may be cited as the "Community Improvement District Act".

2. For the purposes of sections 67.1401 to 67.1571, the following words and terms mean:

(1) "Approval" or "approve", for purposes of elections pursuant to sections 67.1401 to 67.1571, a simple majority of those qualified voters voting in the election;

(2) "Assessed value", the assessed value of real property as reflected on the tax records of the county clerk of the county in which the property is located, or the collector of revenue if the property is located in a city not within a county, as of the last completed assessment;

(3) "Blighted area", an area which:

(a) By reason of the predominance of defective or inadequate street layout, insanitary or unsafe conditions, deterioration of site improvements, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, retards the provision of housing accommodations or constitutes an economic or social liability or a menace to the public health, safety, morals or welfare in its present condition and use; or

(b) Has been declared blighted or found to be a blighted area pursuant to Missouri law including, but not limited to, chapter 353, RSMo, sections 99.800 to 99.865, RSMo, or sections 99.300 to 99.715, RSMo;

(4) "Board", if the district is a political subdivision, the board of directors of the district, or if the district is a not-for-profit corporation, the board of directors of such corporation;

(5) "Director of revenue", the director of the department of revenue of the state of Missouri;

(6) "District", a community improvement district, established pursuant to sections 67.1401 to 67.1571;

(7) "Election authority", the election authority having jurisdiction over the area in which the boundaries of the district are located pursuant to chapter 115, RSMo;

(8) "Municipal clerk", the clerk of the municipality;

(9) "Municipality", any city located in a county of the first classification or second classification, **any unincorporated area that is located in any county with a charter form of government and with more than one million inhabitants,** any city not within a county and any county;

(10) "Obligations", bonds, loans, debentures, notes, special certificates, or other evidences of indebtedness issued by a district to carry out any of its powers, duties or purposes or to refund outstanding obligations;

(11) "Owner", for real property, the individual or individuals or entity or entities who own the fee of real property or their legally authorized representative; for business organizations and other entities, the owner shall be deemed to be the individual which is legally authorized to represent the entity in regard to the district;

(12) "Per capita", one head count applied to each individual, entity or group of individuals or entities having fee ownership of real property within the district whether such individual, entity or group owns one or more parcels of real property in the district as joint tenants, tenants in common, tenants by the entirety or tenants in partnership;

(13) "Petition", a petition to establish a district as it may be amended in accordance with the requirements of section 67.1421;

(14) "Qualified voters",

(a) For purposes of elections for approval of real property taxes:

a. Registered voters; or

b. If no registered voters reside in the district, the owners of one or more parcels of real property which is to be subject to such real property taxes and is located within the district per the tax records for real property of the county clerk, or the collector of revenue if the district is located in a city not within a county, as of the thirtieth day prior to the date of the applicable election;

(b) For purposes of elections for approval of business license taxes or sales taxes:

a. Registered voters; or

b. If no registered voters reside in the district, the owners of one or more parcels of real property located within the district per the tax records for real property of the county clerk as of the thirtieth day before the date of the applicable election; and

(c) For purposes of the election of directors of the board, registered voters and owners of real property which is not exempt from assessment or levy of taxes by the district and which is located within the district per the tax records for real property of the county clerk, or the collector of revenue if the district is located in a city not within a county, of the thirtieth day prior to the date of the applicable election; and

(15) "Registered voters", persons who reside within the district and who are qualified and registered to vote pursuant to chapter 115, RSMo, pursuant to the records of the election authority as of the thirtieth day prior to the date of the applicable election.

67.1706. DISTRICT TO DEVELOP, OPERATE AND MAINTAIN SYSTEM OF INTERCONNECTING TRAILS AND PARKS — POWER TO CONTRACT WITH OTHER PARKS. — The metropolitan district shall have as its **[**primary**]** duty the development, operation and maintenance of a public system of interconnecting trails and parks throughout the counties comprising the district. **Nothing in this section shall restrict the district's entering into and initiating projects dealing with parks not necessarily connected to trails.** The metropolitan district shall supplement but shall not substitute for the powers and responsibilities of the other parks and recreation systems within the metropolitan district **or other conservation and environmental regulatory agencies** and shall have the power to contract with other parks and recreation systems as well as with other public and private entities. **Nothing in this section shall give the metropolitan district authority to regulate water quality, watershed or land use issues in the counties comprising the district.**

67.1754. SALES TAX, HOW ALLOCATED. — The sales tax authorized in sections 67.1712 to 67.1721 shall be collected and allocated as follows:

(1) Fifty percent of the sales taxes collected from each county shall be deposited in the metropolitan park and recreational fund to be administered by the board of directors of the district to pay costs associated with the establishment, administration, operation and maintenance of public recreational facilities, parks, and public recreational grounds associated with the district. Costs for office administration beginning in the second fiscal year of district operations may be up to but shall not exceed fifteen percent of the amount deposited pursuant to this subdivision;

(2) Fifty percent of the sales taxes collected from each county shall be returned to the source county for park purposes, except that forty percent of such fifty percent amount shall be reserved for distribution to municipalities within the county in the form of grant revenue sharing funds. Each county in the district shall establish its own process for awarding the grant proceeds to its municipalities for park purposes **provided the purposes of such grants are consistent with the purpose of the district**. In the case of a county of the first classification with a charter form of government having a population of at least nine hundred thousand inhabitants, such grant proceeds shall be awarded to municipalities by a municipal grant commission as described in section 67.1757.

67.2000. CREATION OF AN EXHIBITION CENTER AND RECREATIONAL FACILITY DISTRICT, PETITION, HEARING, BALLOT FORM — BOARD OF TRUSTEES, POWERS — TRUST FUND CREATED — SALES TAX AUTHORIZATION, PROCEDURE — DISSOLUTION OF DISTRICT (BUCHANAN, CAMDEN, COLE, GREENE, JEFFERSON, MILLER, MORGAN, NEWTON, AND WRIGHT COUNTIES). — 1. This section shall be known as the "Exhibition Center and Recreational Facility District Act".

2. Whenever not less than fifty owners of real property located within any county of the first classification with more than seventy-one thousand three hundred but less than seventy-one thousand four hundred inhabitants, or any county of the first classification with more than one hundred ninety-eight thousand but less than one hundred ninety-nine thousand two hundred inhabitants, or any county of the first classification with more than eighty-five thousand nine hundred but less than eighty-six thousand inhabitants, or any county of the second classification with more than fifty-two thousand six hundred but less than fifty-two thousand seven hundred inhabitants, or any county of the first classification with more than one hundred four thousand six hundred but less than one hundred four thousand seven hundred inhabitants, or any county of the third classification without a township form of government and with more than seventeen thousand nine hundred but less than eighteen thousand inhabitants, or any county of the first classification with more than thirty-seven thousand but less than thirty-seven thousand one hundred inhabitants, or any county of the third classification without a township form of government and with more than twenty-three thousand five hundred but less than twenty-three thousand six hundred inhabitants, or any county of the third classification without a township form of government and with more than nineteen thousand three hundred but less than nineteen thousand four hundred inhabitants, or any county of the first classification with more than two hundred forty thousand three hundred but less than two hundred forty thousand four hundred inhabitants, desire to create an exhibition center and recreational facility district, the property owners shall file a petition with the governing body of each county located within the boundaries of the proposed district requesting the creation of the district. The district boundaries may include all or part of the counties described in this section. The petition shall contain the following information:

(1) The name and residence of each petitioner and the location of the real property owned by the petitioner;

(2) A specific description of the proposed district boundaries, including a map illustrating the boundaries; and

(3) The name of the proposed district.

3. Upon the filing of a petition pursuant to this section, the governing body of any county described in this section may, by resolution, approve the creation of a district. Any resolution to establish such a district shall be adopted by the governing body of each county located within the proposed district, and shall contain the following information:

(1) A description of the boundaries of the proposed district;

(2) The time and place of a hearing to be held to consider establishment of the proposed district;

(3) The proposed sales tax rate to be voted on within the proposed district; and

(4) The proposed uses for the revenue generated by the new sales tax.

4. Whenever a hearing is held as provided by this section, the governing body of each county located within the proposed district shall:

(1) Publish notice of the hearing on two separate occasions in at least one newspaper of general circulation in each county located within the proposed district, with the first publication to occur not more than thirty days before the hearing, and the second publication to occur not more than fifteen days or less than ten days before the hearing;

(2) Hear all protests and receive evidence for or against the establishment of the proposed district; and

(3) Rule upon all protests, which determinations shall be final.

5. Following the hearing, if the governing body of each county located within the proposed district decides to establish the proposed district, it shall adopt an order to that effect; if the governing body of any county located within the proposed district decides to not establish the proposed district, the boundaries of the proposed district shall not include that county. The order shall contain the following:

(1) The description of the boundaries of the district;

(2) A statement that an exhibition center and recreational facility district has been established;

(3) The name of the district;

(4) The uses for any revenue generated by a sales tax imposed pursuant to this section; and

(5) A declaration that the district is a political subdivision of the state.

6. A district established pursuant to this section may, at a general, primary, or special election, submit to the qualified voters within the district boundaries a sales tax of one-fourth of one percent, for a period not to exceed twenty-five years, on all retail sales within the district, which are subject to taxation pursuant to sections 144.010 to 144.525, RSMo, to fund the acquisition, construction, maintenance, operation, improvement, and promotion of an exhibition center and recreational facilities. The ballot of submission shall be in substantially the following form:

Shall the ..... (name of district) impose a sales tax of one-fourth of one percent to fund the acquisition, construction, maintenance, operation, improvement, and promotion of an exhibition center and recreational facilities, for a period of ..... (insert number of years)?

[ ] YES [ ] NO

If you are in favor of the question, place an "X" in the box opposite "YES". If you are opposed to the question, place an "X" in the box opposite "NO".

If a majority of the votes cast in the portion of any county that is part of the proposed district favor the proposal, then the sales tax shall become effective in that portion of the county that is part of the proposed district on the first day of the first calendar quarter immediately following the election. If a majority of the votes cast in the portion of a county that is a part of the proposed district oppose the proposal, then that portion of such county shall not impose the sales tax authorized in this section until after the county governing body has submitted another such sales tax proposal and the proposal is approved by a majority of the qualified voters voting thereon. However, if a sales tax proposal is not approved, the governing body of the county shall not resubmit a proposal to the voters pursuant to this section sooner than twelve months from the date of the last proposal submitted pursuant to this section. If the qualified voters in two or more counties that have contiguous districts approve the sales tax proposal, the districts shall combine to become one district.

7. There is hereby created a board of trustees to administer any district created and the expenditure of revenue generated pursuant to this section consisting of four individuals to represent each county approving the district, as provided in this subsection. The governing body of each county located within the district, upon approval of that county's sales tax proposal, shall appoint four members to the board of trustees; at least one shall be an owner of a nonlodging business located within the taxing district, or their designee, at least one shall be an owner of a lodging facility located within the district, or their designee, and all members shall reside in the district except that one nonlodging business owner, or their designee, and one lodging facility owner, or their designee, may reside outside the district. Each trustee shall be at least twenty-five years of age and a resident of this state. Of the initial trustees appointed from each county, two shall hold office for two years, and two shall hold office for four years. Trustees appointed after expiration of the initial terms shall be appointed to a four-year term by the governing body of the county the trustee represents, with the initially appointed trustee to remain in office until a successor is appointed, and shall take office upon being appointed. Each trustee may be reappointed. Vacancies shall be filled in the same manner in which the trustee vacating the office was originally appointed. The trustees shall not receive compensation for their services, but may be reimbursed for their actual and necessary expenses. The board shall

elect a chair and other officers necessary for its membership. Trustees may be removed if:

(1) By a two-thirds vote, the board moves for the member's removal and submits such motion to the governing body of the county from which the trustee was appointed; and

(2) The governing body of the county from which the trustee was appointed, by a majority vote, adopts the motion for removal.

8. The board of trustees shall have the following powers, authority, and privileges:

(1) To have and use a corporate seal;

(2) To sue and be sued, and be a party to suits, actions, and proceedings;

(3) To enter into contracts, franchises, and agreements with any person or entity, public or private, affecting the affairs of the district, including contracts with any municipality, district, or state, or the United States, and any of their agencies, political subdivisions, or instrumentalities, for the funding, including without limitation interest rate exchange or swap agreements, planning, development, construction, acquisition, maintenance, or operation of a single exhibition center and recreational facilities or to assist in such activity. "Recreational facilities", means locations explicitly designated for public use where the primary use of the facility involves participation in hobbies or athletic activities;

(4) To borrow money and incur indebtedness and evidence the same by certificates, notes, or debentures, to issue bonds and use any one or more lawful funding methods the district may obtain for its purposes at such rates of interest as the district may determine. Any bonds, notes, and other obligations issued or delivered by the district may be secured by mortgage, pledge, or deed of trust of any or all of the property and income of the district. Every issue of such bonds, notes, or other obligations shall be payable out of property and revenues of the district and may be further secured by other property of the district, which may be pledged, assigned, mortgaged, or a security interest granted for such payment, without preference or priority of the first bonds issued, subject to any agreement with the holders of any other bonds pledging any specified property or revenues. Such bonds, notes, or other obligations shall be authorized by resolution of the district board, and shall bear such date or dates, and shall mature at such time or times, but not in excess of thirty years, as the resolution shall specify. Such bonds, notes, or other obligations shall be in such denomination, bear interest at such rate or rates, be in such form, either coupon or registered, be issued as current interest bonds, compound interest bonds, variable rate bonds, convertible bonds, or zero coupon bonds, be issued in such manner, be payable in such place or places, and be subject to redemption as such resolution may provide, notwithstanding section 108.170, RSMo. The bonds, notes, or other obligations may be sold at either public or private sale, at such interest rates, and at such price or prices as the district shall determine;

(5) To acquire, transfer, donate, lease, exchange, mortgage, and encumber real and personal property in furtherance of district purposes;

(6) To refund any bonds, notes or other obligations of the district without an election. The terms and conditions of refunding obligations shall be substantially the same as those of the original issue, and the board shall provide for the payment of interest at not to exceed the legal rate, and the principal of such refunding obligations in the same manner as is provided for the payment of interest and principal of obligations refunded;

(7) To have the management, control and supervision of all the business and affairs of the district, and the construction, installation, operation, and maintenance of district improvements therein; to collect rentals, fees, and other charges in connection with its services or for the use of any of its facilities;

(8) To hire and retain agents, employees, engineers, and attorneys;

(9) To receive and accept by bequest, gift, or donation any kind of property;

(10) To adopt and amend bylaws and any other rules and regulations not in conflict with the constitution and laws of this state, necessary for the carrying on of the business, objects, and affairs of the board and of the district; and

(11) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted by this section.

9. There is hereby created the "Exhibition Center and Recreational Facility District Sales Tax Trust Fund", which shall consist of all sales tax revenue collected pursuant to this section. The director of revenue shall be custodian of the trust fund, and moneys in the trust fund shall be used solely for the purposes authorized in this section. Moneys in the trust fund shall be considered nonstate funds pursuant to section 15, article IV, constitution of Missouri. The director of revenue shall invest moneys in the trust fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the trust fund. All sales taxes collected by the director of revenue pursuant to this section on behalf of the district, less one percent for the cost of collection which shall be deposited in the state's general revenue fund after payment of premiums for surety bonds as provided in section 32.087, RSMo, shall be deposited in the trust fund. The director of revenue shall keep accurate records of the amount of moneys in the trust fund which was collected in the district imposing a sales tax pursuant to this section, and the records shall be open to the inspection of the officers of each district and the general public. Not later than the tenth day of each month, the director of revenue shall distribute all moneys deposited in the trust fund during the preceding month to the district. The director of revenue may authorize refunds from the amounts in the trust fund and credited to the district for erroneous payments and overpayments made, and may redeem dishonored checks and drafts deposited to the credit of the district.

10. The sales tax authorized by this section is in addition to all other sales taxes allowed by law. Except as modified in this section, all provisions of sections 32.085 and 32.087, RSMo, apply to the sales tax imposed pursuant to this section.

11. Any sales tax imposed pursuant to this section shall not extend past the initial term approved by the voters unless an extension of the sales tax is submitted to and approved by the qualified voters in each county in the manner provided in this section. Each extension of the sales tax shall be for a period not to exceed twenty years. The ballot of submission for the extension shall be in substantially the following form:

Shall the ..... (name of district) extend the sales tax of one-fourth of one percent for a period of ..... (insert number of years) years to fund the acquisition, construction, maintenance, operation, improvement, and promotion of an exhibition center and recreational facilities?

[ ] YES [ ] NO

If you are in favor of the question, place an "X" in the box opposite "YES". If you are opposed to the question, place an "X" in the box opposite "NO".

If a majority of the votes cast favor the extension, then the sales tax shall remain in effect at the rate and for the time period approved by the voters. If a sales tax extension is not approved, the district may submit another sales tax proposal as authorized in this section, but the district shall not submit such a proposal to the voters sooner than twelve months from the date of the last extension submitted.

12. Once the sales tax authorized by this section is abolished or terminated by any means, all funds remaining in the trust fund shall be used solely for the purposes approved in the ballot question authorizing the sales tax. The sales tax shall not be abolished or terminated while the district has any financing or other obligations outstanding; provided that any new financing, debt, or other obligation or any restructuring or refinancing of an existing debt or obligation incurred more than ten years after voter approval of the sales tax provided in this section or more than ten years after any voter approved extension thereof shall not cause the extension of the sales tax provided in this section or

cause the final maturity of any financing or other obligations outstanding to be extended. Any funds in the trust fund which are not needed for current expenditures may be invested by the district in the securities described in subdivisions (1) to (12) of subsection 1 of section 30.270, RSMo, or repurchase agreements secured by such securities. If the district abolishes the sales tax, the district shall notify the director of revenue of the action at least ninety days before the effective date of the repeal, and the director of revenue may order retention in the trust fund, for a period of one year, of two percent of the amount collected after receipt of such notice to cover possible refunds or overpayment of the sales tax and to redeem dishonored checks and drafts deposited to the credit of such accounts. After one year has elapsed after the effective date of abolition of the sales tax in the district, the director of revenue shall remit the balance in the account to the district and close the account of the district. The director of revenue shall notify the district of each instance of any amount refunded or any check redeemed from receipts due the district.

13. In the event that the district is dissolved or terminated by any means, the governing bodies of the counties in the district shall appoint a person to act as trustee for the district so dissolved or terminated. Before beginning the discharge of duties, the trustee shall take and subscribe an oath to faithfully discharge the duties of the office, and shall give bond with sufficient security, approved by the governing bodies of the counties, to the use of the dissolved or terminated district, for the faithful discharge of duties. The trustee shall have and exercise all powers necessary to liquidate the district, and upon satisfaction of all remaining obligations of the district, shall pay over to the county treasurer of each county in the district and take receipt for all remaining moneys in amounts based on the ratio the levy of each county bears to the total levy for the district in the previous three years or since the establishment of the district, whichever time period is shorter. Upon payment to the county treasurers, the trustee shall deliver to the clerk of the governing body of any county in the district all books, papers, records, and deeds belonging to the dissolved district.

67.2500. ESTABLISHMENT OF A DISTRICT, WHERE — DEFINITIONS (ST. CHARLES COUNTY). — 1. The governing body of any city, town, or village that is within a first class county with a charter form of government with a population over two hundred fifty thousand that adjoins a first class county with a charter form of government with a population over nine hundred thousand, may establish a theater, cultural arts, and entertainment district in the manner provided in section 67.2505.

2. Sections 67.2500 to 67.2530 shall be known as the "Theater, Cultural Arts, and Entertainment District Act".

3. As used in sections 67.2500 to 67.2530, the following terms mean:

(1) "District", a theater, cultural arts, and entertainment district organized under this section;

(2) "Qualified electors", "qualified voters", or "voters", registered voters residing within the district or subdistrict, or proposed district or subdistrict, who have registered to vote pursuant to chapter 115, RSMo, or, if there are no persons eligible to be registered voters residing in the district or subdistrict, proposed district or subdistrict, property owners, including corporations and other entities, that are owners of real property;

(3) "Registered voters", persons qualified and registered to vote pursuant to chapter 115, RSMo; and

(4) "Subdistrict", a subdivision of a district, but not a separate political subdivision, created for the purposes specified in subsection 5 of section 67.2505.

67.2505. PURPOSE OF DISTRICT — NAME — SIZE — SUBDISTRICTS PERMITTED — PROCEDURE FOR ESTABLISHMENT OF A DISTRICT. — 1. A district may be created to fund, promote, and provide educational, civic, musical, theatrical, cultural, concerts, lecture

series, and related or similar entertainment events or activities, and to fund, promote, plan, design, construct, improve, maintain, and operate public improvements, transportation projects, and related facilities in the district.

2. A district is a political subdivision of the state.

3. The name of a district shall consist of a name chosen by the original petitioners, preceding the words "theater, cultural arts, and entertainment district".

4. The district shall include a minimum of fifty contiguous acres.

5. Subdistricts shall be formed for the purpose of voting upon proposals for the creation of the district or subsequent proposed subdistrict, voting upon the question of imposing a proposed sales tax, and for representation on the board of directors, and for no other purpose.

6. Whenever the creation of a district is desired, one or more registered voters from each subdistrict of the proposed district, or one or more property owners who collectively own one or more parcels of real estate comprising at least a majority of the land situated in the proposed subdistricts within the proposed district, may file a petition requesting the creation of a district with the governing body of the city, town, or village within which the proposed district is to be established. The petition shall contain the following information:

(1) The name, address, and phone number of each petitioner and the location of the real property owned by the petitioner;

(2) The name of the proposed district;

(3) A legal description of the proposed district, including a map illustrating the district boundaries, which shall be contiguous, and the division of the district into at least five, but not more than fifteen, subdistricts that shall contain, or are projected to contain upon full development of the subdistricts, approximately equal populations;

(4) A statement indicating the number of directors to serve on the board, which shall be not less than five or more than fifteen;

(5) A request that the district be established;

(6) A general description of the activities that are planned for the district;

(7) A proposal for a sales tax to fund the district initially, pursuant to the authority granted in sections 67.2500 to 67.2530, together with a request that the imposition of the sales tax be submitted to the qualified voters within the district;

(8) A statement that the proposed district shall not be an undue burden on any owner of property within the district and is not unjust or unreasonable;

(9) A request that the question of the establishment of the district be submitted to the qualified voters of the district;

(10) A signed statement that the petitioners are authorized to submit the petition to the governing body; and

(11) Any other items the petitioners deem appropriate.

7. Upon the filing of a petition pursuant to this section, the governing body of any city, town, or village described in this section may pass a resolution containing the following information:

(1) A description of the boundaries of the proposed district and each subdistrict;

(2) The time and place of a hearing to be held to consider establishment of the proposed district;

(3) The timeframe and manner for the filing of protests;

(4) The proposed sales tax rate to be voted upon within the subdistricts of the proposed district;

(5) The proposed uses for the revenue to be generated by the new sales tax; and

(6) Such other matters as the governing body may deem appropriate.

8. Prior to the governing body certifying the question of the district's creation and imposing a sales tax for approval by the qualified electors, a hearing shall be held as

provided by this subsection. The governing body of the municipality approving a resolution as set forth in subsection 7 of this section shall:

(1) Publish notice of the hearing, which shall include the information contained in the resolution cited in subsection 7 of this section, on two separate occasions in at least one newspaper of general circulation in the county where the proposed district is located, with the first publication to occur not more than thirty days before the hearing, and the second publication to occur not more than fifteen days or less than ten days before the hearing;

(2) Hear all protests and receive evidence for or against the establishment of the proposed district; and

(3) Consider all protests, which determinations shall be final.

The costs of printing and publication of the notice shall be paid by the petitioners. If the district is organized pursuant to sections 67.2500 to 67.2530, the petitioners may be reimbursed for such costs out of the revenues received by the district.

9. Following the hearing, the governing body of any city, town, or village within which the proposed district will be located may order an election on the questions of the district creation and sales tax funding for voter approval and certify the questions to the municipal clerk. The election order shall include the date on which the ballots will be mailed to qualified electors, which shall be not sooner than the eighth Tuesday from the issuance of the order. The election regarding the incorporation of the district and the imposing of the sales tax shall follow the procedure set forth in section 67.2520, and shall be held pursuant to the order and certification by the governing body. Only those subdistricts approving the question of creating the district and imposing the sales tax shall become part of the district.

10. If the results of the election conducted in accordance with section 67.2520 show that a majority of the votes cast were in favor of organizing the district and imposing the sales tax, the governing body may establish the proposed district in those subdistricts approving the question of creating the district and imposing the sales tax, by adopting an ordinance to that effect. The ordinance establishing the district shall contain the following:

(1) The description of the boundaries of the district and each subdistrict;

(2) A statement that a theater, cultural arts, and entertainment district has been established;

(3) A declaration that the district is a political subdivision of the state;

(4) The name of the district;

(5) The date on which the sales tax election in the subdistricts was held, and the result of the election;

(6) The uses for any revenue generated by a sales tax imposed pursuant to this section;

(7) A certification to the newly created district of the election results, including the election concerning the sales tax; and

(8) Such other matters as the governing body deems appropriate.

11. Any subdistrict that does not approve the creation of the district and imposing the sales tax shall not be a part of the district and the sales tax shall not be imposed until after the district board of directors has submitted another proposal for the inclusion of the area into the district and such proposal and the sales tax proposal are approved by a majority of the qualified voters in the subdistrict voting thereon. Such subsequent elections shall be conducted in accordance with section 67.2520; provided, however, that the district board of directors may place the question of the inclusion of a subdistrict within a district and the question of imposing a sales tax before the voters of a proposed subdistrict, and the municipal clerk, or circuit clerk if the district is formed by the circuit court, shall conduct the election. In subsequent elections, the election judges shall certify the election results to the district board of directors.

67.2510. ALTERNATIVE PROCEDURE FOR ESTABLISHMENT OF A DISTRICT. — As a complete alternative to the procedure establishing a district set forth in section 67.2505, a circuit court with jurisdiction over any city, town, or village that is within a first class county with a charter form of government with a population over two hundred fifty thousand that adjoins a first class county with a charter form of government with a population over nine hundred thousand, may establish a theater, cultural arts, and entertainment district in the manner provided in section 67.2515.

67.2515. PETITION, CONTENTS, NOTICE — HEARING — DISTRICT DECLARED ORGANIZED, WHEN. — 1. Whenever the creation of a theater, cultural arts, and entertainment district is desired, one or more registered voters from each subdistrict of the proposed district, or if there are no registered voters in a subdistrict, one or more property owners who collectively own one or more parcels of real estate comprising at least a majority of the land situated in the proposed subdistricts within the proposed district may file a petition with the circuit court requesting the creation of a theater, cultural arts, and entertainment district. The petition shall contain the following information:

(1) The name, address, and phone number of each petitioner and the location of the real property owned by the petitioner;

(2) The name of the proposed district;

(3) A legal description of the proposed district, including a map illustrating the district boundaries, which shall be contiguous, and the division of the district into at least five, but not more than fifteen, subdistricts that shall contain, or are projected to contain upon full development of the subdistricts, approximately equal populations;

(4) A statement indicating the number of directors to serve on the board, which shall be not less than five or more than fifteen;

(5) A request that the district be established;

(6) A general description of the activities that are planned for the district;

(7) A proposal for a sales tax to fund the district initially, pursuant to the authority granted in sections 67.2500 to 67.2530, together with a request that the imposing of the sales tax be submitted to the qualified voters within the district;

(8) A statement that the proposed district shall not be an undue burden on any owner of property within the district and is not unjust or unreasonable;

(9) A request that the question of the establishment of the district be submitted to the qualified voters of the district;

(10) A signed statement that the petitioners are authorized to submit the petition to the circuit court; and

(11) Any other items the petitioners deem appropriate.

2. The circuit clerk of the county in which the petition is filed pursuant to this section shall present the petition to the judge, who shall thereupon set the petition for hearing not less than thirty days nor more than forty days after the filing. The judge shall cause publication of the notice of the hearing on two separate occasions in at least one newspaper of general circulation in the county where the proposed district is located, with the first publication to occur not more than thirty days before the hearing, and the second publication to occur not more than fifteen days or less than ten days before the hearing. The notice shall recite the following information:

(1) A description of the boundaries of the proposed district and each subdistrict;

(2) The time and place of a hearing to be held to consider establishment of the proposed district;

(3) The timeframe and manner for the filing of the petitions or answers in the case;

(4) The proposed sales tax rate to be voted on within the subdistricts of the proposed district;

(5) The proposed uses for the revenue generated by the new sales tax; and

(6) Such other matters as the circuit court may deem appropriate.

The costs of printing and publication of the notice shall be paid by the petitioners. If the district is organized pursuant to sections 67.2500 to 67.2530, the petitioners may be reimbursed for such costs out of the revenues received by the district.

3. Any registered voter or owner of real property within the proposed district may join in or file a petition supporting or answer opposing the creation of the district and seeking a judgment respecting these same issues; provided, however, that all pleadings must be filed with the court no later than five days before the case is heard.

4. The court shall hear the case without a jury. If the court determines the petition is defective or the proposed district or its plan of operation is unconstitutional, it shall enter its judgment to that effect and shall refuse to incorporate the district as requested in the pleadings. If the court determines the petition is not legally defective and the proposed district and plan of operation are not unconstitutional, the court shall order an election on the questions of the district creation and sales tax funding for voter approval and certify the questions to the circuit clerk. The election order shall include the date on which the ballots will be mailed to qualified electors, which shall be not sooner than the eighth Tuesday from the issuance of the order. The election regarding the incorporation of the district and the imposing the sales tax shall follow the procedure set forth in section 67.2520, and shall be held pursuant to the order and certification by the circuit judge. Only those subdistricts approving the question of creating the district and imposing the sales tax shall become part of the district.

5. If the results of the election conducted in accordance with section 67.2520 show that a majority of the votes cast were in favor of organizing the district and imposing the sales tax, the circuit judge shall establish the proposed district in those subdistricts approving the question of creating the district and imposing the sales tax by issuing an order to that effect. The court shall determine and declare the district organized and incorporated and issue an order that includes the following:

(1) The description of the boundaries of the district and each subdistrict;

(2) A statement that a theater, cultural arts, and entertainment district has been established;

(3) A declaration that the district is a political subdivision of the state;

(4) The name of the district;

(5) The date on which the sales tax election in the subdistricts was held, and the result of the election;

(6) The uses for any revenue generated by a sales tax imposed pursuant to this section;

(7) A certification to the newly created district of the election results, including the election concerning the sales tax; and

(8) Such other matters as the circuit court deems appropriate.

6. Any subdistrict that does not approve the creation of the district and imposing the sales tax shall not be a part of the district and the sales tax shall not be imposed until after the district board of directors has submitted another proposal for the inclusion of the area into the district and such proposal and the sales tax proposal are approved by a majority of the qualified voters in the subdistrict voting thereon. Such subsequent elections shall be conducted in accordance with section 67.2520; provided, however, that the district board of directors may place the question of the inclusion of a subdistrict within a district and the question of imposing a sales tax in the proposed subdistrict before the voters of a proposed subdistrict, and the circuit clerk shall conduct the subsequent election. In subsequent elections, the election judges shall certify the election results to the district board of directors.

7. Any party having filed a petition or answer to a petition may appeal the circuit court's order or judgment in the same manner as provided for other appeals. Any order

either refusing to incorporate the district or incorporating the district shall be a final judgment for purposes of appeal.

67.2520. ELECTION CONDUCTED, WHEN — SALES TAX VOTE, AMOUNT — BALLOT FORM. — 1. If a governing body or circuit court judge has certified the question regarding the district creation and sales tax funding for voter approval, the municipal clerk in which the district is located, or the circuit clerk if the order and certification has been by a circuit judge, shall conduct the election. The questions shall be submitted to the qualified voters of each subdistrict within the district boundaries who have filed an application pursuant to this section. The municipal clerk, or the circuit clerk if the district is being formed by the circuit court, shall publish notice of the election in at least one newspaper of general circulation in the county where the proposed district is located, with the publication to occur not more than fifteen days but not less than ten days before the date when applications for ballots will be accepted. The notice shall include a description of the district boundaries, the timeframe and manner of applying for a ballot, the questions to be voted upon, and where and when applications for ballots will be accepted. The municipal clerk, or circuit clerk if the district is being formed by the circuit court, shall also send a notice of the election to all registered voters in the proposed district, which shall include the information in the published notice. The costs of printing and publication of the notice, and mailing of the notices to registered voters, shall be paid by the petitioners. If the district is organized pursuant to sections 67.2500 to 67.2530, the petitioners may be reimbursed for such costs out of the revenues received by the district.

2. For elections held in subdistricts pursuant to this section, if all the owners of property in a subdistrict joined in the petition for formation of the district, such owners may cast their ballot by unanimous petition approving any measure submitted to them as subdistrict voters pursuant to this section. Each owner shall receive one vote per acre owned. Fractional votes shall be allowed. The petition shall be submitted to the municipal clerk, or the circuit court clerk if the district is being formed by the circuit court, who shall verify the authenticity of all signatures thereon. The filing of a unanimous petition shall constitute an election in the subdistrict under this section and the results of said election shall be entered pursuant to this section.

3. The sales tax shall be not more than one-half of one percent on all retail sales within the district, which are subject to taxation pursuant to section 67.2530, to fund, promote, and provide educational, civic, musical, theatrical, cultural, concerts, lecture series, and related or similar entertainment events or activities, and to fund, promote, plan, design, construct, improve, maintain, and operate public improvements, transportation projects, and related facilities in the district.

4. Application for a ballot shall be made as provided in this subsection:

(1) Persons entitled to apply for a ballot in an election shall be:

(a) A resident registered voter of the district; or

(b) If there are no registered voters in a subdistrict, a person, including a corporation or other entity, which owns real property within the subdistrict. Each voter which is not an individual shall determine how to cast its vote as provided for in its articles of incorporation, articles of organization, articles of partnership, bylaws, or other document which sets forth an appropriate mechanism for the determination of the entity's vote. If a voter has no such mechanism, then its vote shall be cast as determined by a majority of the persons who run the day-to-day affairs of the voter. Each property owner shall receive one vote;

(2) Only persons entitled to apply for a ballot in elections pursuant to this subsection shall apply. Such persons shall apply with the municipal clerk, or the circuit clerk if the district is formed by the circuit court. Each person applying shall provide:

(a) Such person's name, address, mailing address, and phone number;

(b) An authorized signature; and

(c) Evidence that such person is entitled to vote. Such evidence shall be a copy of:

a. For resident individuals, proof of registration from the election authority;

b. For owners of real property, a tax receipt or deed or other document which evidences an equitable ownership, and identifies the real property by location;

(3) Applications for ballot applications shall be made not later than the fourth Tuesday before the ballots are mailed to qualified electors. The ballot of submission shall be in substantially the following form:

"Shall there be organized in ..... (here specifically describe the proposed district boundaries), within the state of Missouri, a district, to be known as the "..... Theater, Cultural Arts, and Entertainment District" for the purpose of funding, promoting, and providing educational, civic, musical, theatrical, cultural, concerts, lecture series, and related or similar entertainment events or activities, and funding, promoting, planning, designing, constructing, improving, maintaining, and operating public improvements, transportation projects, and related facilities in the district?

[ ] YES [ ] NO

If you are in favor of the question, place an "X" in the box opposite "YES". If you are opposed to the question, place an "X" in the box opposite "NO".

Shall the ..... (name of district) impose a sales tax of ..... (insert rate) to fund, promote, and provide educational, civic, musical, theatrical, cultural, concerts, lecture series, and related or similar entertainment events or activities, and to fund, promote, plan, design, construct, improve, maintain, and operate public improvements, transportation projects, and related facilities in the district?

[ ] YES [ ] NO

If you are in favor of the question, place an "X" in the box opposite "YES". If you are opposed to the question, place an "X" in the box opposite "NO";

(4) Not sooner than the fourth Tuesday after the deadline for applying for ballots, the municipal clerk, or the circuit clerk if the district is being formed by the circuit court, shall mail a ballot to each qualified voter who applied for a ballot pursuant to this subsection along with a return addressed envelope directed to the municipal clerk or the circuit clerk's office, with a sworn affidavit on the reverse side of such envelope for the voter's signature. Such affidavit shall be in the following form:

"I hereby declare under penalties of perjury that I am qualified to vote, or to affix my authorized signature in the name of an entity which is entitled to vote, in this election.

Authorized Signature .....

Printed Name of Voter Signature of notary or other officer authorized to administer oaths.

..... Mailing Address of Voter (if different)

Subscribed and sworn to before me this ..... day of....., 20.."

(5) Each qualified voter shall have one vote, except as provided for in section 67.2520. Each voted ballot shall be signed with the authorized signature as provided for in this subsection;

(6) Voted ballots shall be returned to the municipal clerk, or the clerk of the circuit court if the district is being formed by the circuit court, by mail or hand delivery no later than 5:00 p.m. on the fourth Tuesday after the date for mailing the ballots. The municipal clerk, or circuit clerk if the district is being formed by the circuit court, shall transmit all voted ballots to a team of judges of not less than four, with an equal number from each of the two major political parties. The judges shall be selected by the city, town, or village, or the circuit clerk, from lists compiled by the county election authority. Upon receipt of the voted ballots the judges shall verify the authenticity of the ballots, canvass the votes, and certify the results. Certification by the election judges shall be final and shall be immediately transmitted to the governing body of the city, town, or village for further

action, or the circuit judge for further action if the district is being formed by the circuit court. Any voter who applied for such election may contest the result in the same manner as provided in chapter 115, RSMo.

67.2525. BOARD OF DIRECTORS, QUALIFICATIONS — SUBDIVISION OF DISTRICT, HOW — POWERS AND DUTIES OF THE BOARD. — 1. Each member of the board of directors shall have the following qualifications:

(1) As to those subdistricts in which there are registered voters, a resident registered voter in the subdistrict that he or she represents, or be a property owner or, as to those subdistricts in which there are not registered voters who are residents, a property owner or representative of a property owner in the subdistrict he or she represents;

(2) Be at least twenty-one years of age and a registered voter in the district.

2. The district shall be subdivided into at least five, but not more than fifteen subdistricts, which shall be represented by one representative on the district board of directors. All board members shall have terms of four years, including the initial board of directors. All members shall take office upon being appointed and shall remain in office until a successor is appointed by the mayor or chairman of the municipality in which the district is located, or elected by the property owners in those subdistricts without registered voters.

3. For those subdistricts which contain one or more registered voters, the mayor or chairman of the city, town, or village shall, with the consent of the governing body, appoint a registered voter residing in the subdistrict to the board of directors.

4. For those subdistricts which contain no registered voters, the property owners who collectively own one or more parcels of real estate comprising more than half of the land situated in each subdistrict shall meet and shall elect a representative to serve upon the board of directors. The clerk of the city, town, or village in which the petition was filed shall, unless waived in writing by all property owners in the subdistrict, give notice by causing publication to be made once a week for two consecutive weeks in a newspaper of general circulation in the county, the last publication of which shall be at least ten days before the day of the meeting required by this section, to call a meeting of the owners of real property within the subdistrict at a day and hour specified in a public place in the city, town, or village in which the petition was filed for the purpose of electing members of the board of directors.

5. The property owners, when assembled, shall organize by the election of a temporary chairman and secretary of the meeting who shall conduct the election. An election shall be conducted for each subdistrict, with the eligible property owners voting in that subdistrict. At the election, each acre of real property within the subdistrict shall represent one share, and each owner, including corporations and other entities, may have one vote in person or for every acre of real property owned by such person within the subdistrict. Each voter which is not an individual shall determine how to cast its vote as provided for in its articles of incorporation, articles of organization, articles of partnership, bylaws, or other document which sets forth an appropriate mechanism for the determination of the entity's vote. If a voter has no such mechanism, then its vote shall be cast as determined by a majority of the persons who run the day-to-day affairs of the voter. The results of the meeting shall be certified by the temporary chairman and secretary to the municipal clerk if the district is established by a municipality described in this section, or to the circuit clerk if the district is established by a circuit court.

6. Successor boards shall be appointed or elected, depending upon the presence or absence of resident registered voters, by the mayor or chairman of a city, town, or village described in this section, or the property owners as set forth above; provided, however, that elections held by the property owners after the initial board is elected shall be certified

to the municipal clerk of the city, town, or village where the district is located and the board of directors of the district.

7. Should a vacancy occur on the board of directors, the mayor or chairman of the city, town, or village if there are registered voters within the subdistrict, or a majority of the owners of real property in a subdistrict if there are not registered voters in the subdistrict, shall have the authority to appoint or elect, as set forth in this section, an interim director to complete any unexpired term of a director caused by resignation or disqualification.

8. The board shall possess and exercise all of the district's legislative and executive powers, including:

(1) The power to fund, promote and provide educational, civic, musical, theatrical, cultural, concerts, lecture series, and related or similar entertainment events or activities, and fund, promote, plan, design, construct, improve, maintain, and operate public improvements, transportation projects, and related facilities within the district;

(2) The power to accept and disburse tax or other revenue collected in the district; and

(3) The power to receive property by gift or otherwise.

9. Within thirty days after the selection of the initial directors, the board shall meet. At its first meeting and annually thereafter the board shall elect a chairman from its members.

10. The board shall appoint an executive director, district secretary, treasurer, and such other officers or employees as it deems necessary.

11. At the first meeting, the board, by resolution, shall define the first and subsequent fiscal years of the district, and shall adopt a corporate seal.

12. A simple majority of the board shall constitute a quorum. If a quorum exists, a majority of those voting shall have the authority to act in the name of the board, and approve any board resolution.

13. At the first meeting, the board, by resolution, shall receive the certification of the election regarding the sales tax, and may impose the sales tax in all subdistricts approving the imposing sales tax. In those subdistricts that approve the sales tax, the sales tax shall become effective on the first day of the first calendar quarter immediately following the action by the district board of directors imposing the tax.

14. Each director shall devote such time to the duties of the office as the faithful discharge thereof and may require and be reimbursed for his actual expenditures in the performance of his duties on behalf of the district. Directors may be compensated, but such compensation shall not exceed one hundred dollars per month.

15. In addition to all other powers granted by sections 67.2500 to 67.2530, the district shall have the following general powers:

(1) To sue and be sued in its own name, and to receive service of process, which shall be served upon the district secretary;

(2) To fix compensation of its employees and contractors;

(3) To enter into contracts, franchises, and agreements with any person or entity, public or private, affecting the affairs of the district, including contracts with any municipality, district, or state, or the United States, and any of their agencies, political subdivisions, or instrumentalities, for the funding, including without limitation, interest rate exchange or swap agreements, planning, development, construction, acquisition, maintenance, or operation of a district facility or to assist in such activity;

(4) To acquire, develop, construct, equip, transfer, donate, lease, exchange, mortgage, and encumber real and personal property in furtherance of district purposes;

(5) To collect and disburse funds for its activities;

(6) To collect taxes and other revenues;

(7) To borrow money and incur indebtedness and evidence the same by certificates, notes, bonds, debentures, or refunding of any such obligations for the purpose of paying all or any part of the cost of land, construction, development, or equipping of any facilities or operations of the district;

(8) To own or lease real or personal property for use in connection with the exercise of powers pursuant to this subsection;

(9) To provide for the election or appointment of officers, including a chairman, treasurer, and secretary. Officers shall not be required to be residents of the district, and one officer may hold more than one office;

(10) To hire and retain agents, employees, engineers, and attorneys;

(11) To enter into entertainment contracts binding the district and artists, agencies, or performers, management contracts, contracts relating to the booking of entertainment and the sale of tickets, and all other contracts which relate to the purposes of the district;

(12) To contract with a local government, a corporation, partnership, or individual regarding funding, promotion, planning, designing, constructing, improving, maintaining, or operating a project or to assist in such activity;

(13) To contract for transfer to a city, town, or village such district facilities and improvements free of cost or encumbrance on such terms set forth by contract;

(14) To exercise such other powers necessary or convenient for the district to accomplish its purposes which are not inconsistent with its express powers.

16. A district may at any time authorize or issue notes, bonds, or other obligations for any of its powers or purposes. Such notes, bonds, or other obligations:

(1) Shall be in such amounts as deemed necessary by the district, including costs of issuance thereof;

(2) Shall be payable out of all or any portion of the revenues or other assets of the district;

(3) May be secured by any property of the district which may be pledged, assigned, mortgaged, or otherwise encumbered for payment;

(4) Shall be authorized by resolution of the district, and if issued by the district, shall bear such date or dates, and shall mature at such time or times, but not in excess of forty years, as the resolution shall specify;

(5) Shall be in such denomination, bear interest at such rates, be in such form, be issued as current interest bonds, compound interest bonds, variable rate bonds, convertible bonds, or zero coupon bonds, be issued in such manner, be payable in such place or places and subject to redemption as such resolution may provide; and

(6) May be sold at either public or private sale, at such interest rates, and at such price or prices as the district shall determine.

The provisions of this subsection are applicable to the district notwithstanding the provisions of section 108.170, RSMo.

67.2530. REFUND OF DISTRICT INDEBTEDNESS, WHEN, HOW — IMPOSITION OF A SALES TAX AUTHORIZED — DEPOSIT AND USE OF SALES TAX REVENUE — REPEAL OF SALES TAX, BALLOT FORM. — 1. Any note, bond, or other indebtedness of the district may be refunded at any time by the district by issuing refunding bonds in such amount as the district may deem necessary. Such bonds shall be subject to, and shall have the benefit of the foregoing provisions regarding notes, bonds, and other obligations. Without limiting the generality of the foregoing, refunding bonds may include amounts necessary to finance any premium, unpaid interest, and costs of issuance in connection with the refunding bonds. Any such refunding may be effected whether the bonds to be refunded then shall have matured or thereafter shall mature, either by sale of the refunding bonds and the application of the proceeds thereof to the payment of the obligations being refunded or the

exchange of the refunding bonds for the obligations being refunded with the consent of the holders of the obligations being refunded.

2. Notes, bonds, or other indebtedness of the district shall be exclusively the responsibility of the district payable solely out of the district funds and property and shall not constitute a debt or liability of the state of Missouri or any agency or political subdivision of the state. Any notes, bonds, or other indebtedness of the district shall state on their face that they are not obligations of the state of Missouri or any agency or political subdivision thereof other than the district.

3. Any district may by resolution impose a district sales tax of up to one half of one percent on all retail sales made in such district that are subject to taxation pursuant to the provisions of sections 144.010 to 144.525, RSMo. Upon voter approval, and receiving the necessary certifications from the governing body of the municipality in which the district is located, or from the circuit court if the district was formed by the circuit court, the board of directors shall have the power to impose a sales tax at its first meeting, or any meeting thereafter. Voter approval of the question of the imposing sales tax shall be in accordance with section 67.2520 of this section. The sales tax shall become effective in those subdistricts that approve the sales tax on the first day of the first calendar quarter immediately following the passage of a resolution by the board of directors imposing the sales tax.

4. In each district in which a sales tax has been imposed in the manner provided by this section, every retailer shall add the tax imposed by the district pursuant to this section to the retailer's sale price, and when so added, such tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as the purchase price.

5. In order to permit sellers required to collect and report the sales tax authorized by this section to collect the amount required to be reported and remitted, but not to change the requirements of reporting or remitting tax or to serve as a levy of the tax, and in order to avoid fractions of pennies, the district may establish appropriate brackets which shall be used in the district imposing a tax pursuant to this section in lieu of those brackets provided in section 144.285, RSMo.

6. All revenue received by a district from the sales tax authorized by this section shall be deposited in a special trust fund and shall be used solely for the purposes of the district. Any funds in such special trust fund which are not needed for the district's current expenditures may be invested by the district board of directors in accordance with applicable laws relating to the investment of other district funds.

7. The sales tax may be imposed at a rate of up to one half of one percent on the receipts from the sale at retail of all tangible personal property or taxable services at retail within the district adopting such tax, if such property and services are subject to taxation by the state of Missouri pursuant to the provisions of sections 144.010 to 144.525, RSMo. Any district sales tax imposed pursuant to this section shall be imposed at a rate that shall be uniform throughout the subdistricts approving the sales tax.

8. The resolution imposing the sales tax pursuant to this section shall impose upon all sellers a tax for the privilege of engaging in the business of selling tangible personal property or rendering taxable services at retail to the extent and in the manner provided in sections 144.010 to 144.525, RSMo, and the rules and regulations of the director of revenue issued pursuant thereto; except that the rate of the tax shall be the rate imposed by the resolution as the sales tax and the tax shall be reported and returned to and collected by the district.

9. (1) On and after the effective date of any sales tax imposed pursuant to this section, the district shall perform all functions incident to the administration, collection, enforcement, and operation of the tax. The sales tax imposed pursuant to this section shall

be collected and reported upon such forms and under such administrative rules and regulations as may be prescribed by the district.

(2) All such sales taxes collected by the district shall be deposited by the district in a special fund to be expended for the purposes authorized in this section. The district shall keep accurate records of the amount of money which was collected pursuant to this section, and the records shall be open to the inspection of officers of each district and the general public.

(3) The district may contract with the municipality that the district is within for the municipality to collect any revenue received by the district and, after deducting the cost of such collection, but not to exceed one percent of the total amount collected, deposit such revenue in a special trust account. Such revenue and interest may be applied by the municipality to expenses, costs, or debt service of the district at the direction of the district as set forth in a contract between the municipality and the district.

10. (1) All applicable provisions contained in sections 144.010 to 144.525, RSMo, governing the state sales tax, sections 32.085 and 32.087, RSMo, and section 32.057, RSMo, the uniform confidentiality provision, shall apply to the collection of the tax imposed by this section, except as modified in this section.

(2) All exemptions granted to agencies of government, organizations, persons, and to the sale of certain articles and items of tangible personal property and taxable services pursuant to the provisions of sections 144.010 to 144.525, RSMo, are hereby made applicable to the imposition and collection of the tax imposed by this section.

(3) The same sales tax permit, exemption certificate, and retail certificate required by sections 144.010 to 144.525, RSMo, for the administration and collection of the state sales tax shall satisfy the requirements of this section, and no additional permit or exemption certificate or retail certificate shall be required; except that the district may prescribe a form of exemption certificate for an exemption from the tax imposed by this section.

(4) All discounts allowed the retailer pursuant to the provisions of the state sales tax laws for the collection of and for payment of taxes pursuant to such laws are hereby allowed and made applicable to any taxes collected pursuant to the provisions of this section.

(5) The penalties provided in section 32.057, RSMo, and sections 144.010 to 144.525, RSMo, for violation of those sections are hereby made applicable to violations of this section.

(6) For the purpose of a sales tax imposed by a resolution pursuant to this section, all retail sales shall be deemed to be consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or the retailer's agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. In the event a retailer has more than one place of business in this state which participates in the sale, the sale shall be deemed to be consummated at the place of business of the retailer where the initial order for the tangible personal property is taken, even though the order must be forwarded elsewhere for acceptance, approval of credit, shipment, or billing. A sale by a retailer's employee shall be deemed to be consummated at the place of business from which the employee works.

(7) Subsequent to the initial approval by the voters and implementation of a sales tax in the district, the rate of the sales tax may be increased, but not to exceed a rate of one-half of one percent on retail sales as provided in this subsection. The election shall be conducted in accordance with section 67.2520; provided, however, that the district board of directors may place the question of the increase of the sales tax before the voters of the district by resolution, and the municipal clerk of the city, town, or village which originally conducted the incorporation of the district, or the circuit clerk of the court which originally conducted the incorporation of the district, shall conduct the subsequent

election. In subsequent elections, the election judges shall certify the election results to the district board of directors. The ballot of submission shall be in substantially the following form:

"Shall ..... (name of district) increase the ..... (insert amount) percent district sales tax now in effect to..... (insert amount) in the ..... (name of district)?

[ ] YES [ ] NO

If you are in favor of the question, place an "X" in the box opposite "YES". If you are opposed to the question, place an "X" in the box opposite "NO".

If a majority of the votes cast on the proposal by the qualified voters of the district voting thereon are in favor of the increase, the increase shall become effective December thirty-first of the calendar year in which such increase was approved.

11. (1) There shall not be any election as provided for in this section while the district has any financing or other obligations outstanding.

(2) The board, when presented with a petition signed by at least one-third of the registered voters in a district that voted in the last gubernatorial election, or signed by at least two-thirds of property owners of the district, calling for an election to dissolve and repeal the tax shall submit the question to the voters using the same procedure by which the imposing tax was voted. The ballot of submission shall be in substantially the following form:

"Shall ..... (name of district) dissolve and repeal the ..... (insert amount) percent district sales tax now in effect in the ..... (name of district)?

[ ] YES [ ] NO

If you are in favor of the question, place an "X" in the box opposite "YES". If you are opposed to the question, place an "X" in the box opposite "NO"."

Such subsequent elections for the repeal of the sales tax shall be conducted in accordance with section 67.2520; provided, however, that the district board of directors may place the question of the repeal of the sales tax before the voters of the district, and the municipal clerk of the city, town, or village which originally conducted the incorporation of the district, or the circuit clerk of the court which originally conducted the incorporation of the district, shall conduct the subsequent election. In subsequent elections the election judges shall certify the election results to the district board of directors.

(3) If a majority of the votes cast on the proposal by the qualified voters of the district voting thereon are in favor of repeal, that repeal shall become effective December thirty-first of the calendar year in which such repeal was approved or after the repayment of the district's indebtedness, whichever occurs later.

12. (1) At such time as the board of directors of the district determines that further operation of the district is not in the best interests of the inhabitants of the district, and that the district should dissolve, the board shall submit for a vote in an election held throughout the district the question of whether the district should be abolished. The question shall be submitted in substantially the following form:

"Shall the ..... theater, cultural arts, and entertainment district be abolished?

[ ] YES [ ] NO

If you are in favor of the question, place an "X" in the box opposite "YES". If you are opposed to the question, place an "X" in the box opposite "NO"."

(2) The district board shall not propose the question to abolish the district while there are outstanding claims or causes of action pending against the district, while the district liabilities exceed its assets, while indebtedness of the district is outstanding, or while the district is insolvent, in receivership or under the jurisdiction of the bankruptcy court. Prior to submitting the question to abolish the district to a vote of the entire district, the state auditor shall audit the district to determine the financial status of the district, and whether the district may be abolished pursuant to law. The vote on the abolition of the

district shall be conducted by the municipal clerk of the city, town, or village in which the district is located. The procedure shall be the same as in section 67.2520, except that the question shall be determined by the qualified voters of the entire district. No individual subdistrict may be abolished, except at such time as the district is abolished.

(3) While the district still exists, it shall continue to accrue all revenues to which it is entitled at law.

(4) Upon receipt by the board of directors of the district of the certification by the city, town, or village in which the district is located that the majority of those voting within the entire district have voted to abolish the district, and if the state auditor has determined that the district's financial condition is such that it may be abolished pursuant to law, then the board of directors of the district shall:

(a) Sell any remaining district real or personal property it wishes, and then transfer the proceeds and any other real or personal property owned by the district to the city, town, or village in which the district is located, including revenues due and owing the district, for its further use and disposition;

(b) Terminate the employment of any remaining district employees, and otherwise conclude its affairs;

(c) At a public meeting of the district, declare by a resolution of the board of directors passed by a majority vote that the district has been abolished effective that date;

(d) Cause copies of that resolution under seal to be filed with the secretary of state and the city, town, or village in which the district is located. Upon the completion of the final act specified in this subsection, the legal existence of the district shall cease.

(5) The legal existence of the district shall not cease for a period of two years after voter approval of the abolition.

70.225. EMERGENCY DISPATCHING SYSTEM, ELIGIBLE FOR MEMBERSHIP IN LOCAL GOVERNMENT RETIREMENT SYSTEM, WHEN (ST. LOUIS COUNTY). — 1. Notwithstanding the provisions of section 70.600 to the contrary, a centralized emergency dispatching system created by a joint municipal agreement under section 70.220 existing within any county with a charter form of government and with more than one million inhabitants, may be considered a political subdivision for the purposes of sections 70.600 to 70.755, and employees of the centralized emergency dispatching system shall be eligible for membership in the Missouri local government employees' retirement system upon the centralized emergency dispatching system becoming an employer as defined in subdivision (11) of section 70.600.

2. Any political subdivision participating in a centralized emergency dispatching system granted membership under subsection 1 of this section, shall be subject to the delinquent recovery procedures under section 70.735 for any contribution payments due the system. Any political subdivision withdrawing from membership shall be subject to payments for any unfunded liabilities existing for its past and current employees. Any political subdivision becoming a new member shall be subject to the same terms and conditions then existing including liabilities in proportion to all participating political subdivisions.

89.410. REGULATIONS GOVERNING SUBDIVISION OF LAND, LIMITATIONS, CONTENTS — PUBLIC HEARING — ESCROW FUNDS, WHEN RELEASED. — 1. The planning commission shall recommend and the council may by ordinance adopt regulations governing the subdivision of land within its jurisdiction. The regulations, in addition to the requirements provided by law for the approval of plats, may provide requirements for the coordinated development of the city, town or village; for the coordination of streets within subdivisions with other existing or planned streets or with other features of the city plan or official map of the city, town or village; for adequate open spaces for traffic, recreation, light and air; and for a distribution of population and

traffic; provided that, the city, town or village may only impose requirements **[**and**]** **for** the posting of bonds **[**regarding**], letters of credit or** escrows for subdivision-related **[**regulations**] improvements** as provided for in subsections 2 to **[**4**] 5** of this section.

2. The regulation may include requirements as to the extent and the manner in which the streets of the subdivision or any designated portions thereto shall be graded and improved as well as including requirements as to the extent and manner of the installation of all utility facilities. Compliance with all of these requirements is a condition precedent to the approval of the plat. The regulations or practice of the council may provide for the tentative approval of the plat previous to the improvements and utility installations; but any tentative approval shall not be entered on the plat. The regulations may provide that, in lieu of the completion of the work and installations previous to the final approval of a plat, the council **[**may**] shall** accept **[**a**], at the option of the developer, an escrow secured with cash or an irrevocable letter of credit deposited with the city, town, or village. The city, town, or village may accept a surety** bond **[**or escrow**], and such bond shall be** in an amount and with surety and other reasonable conditions, providing for and securing the actual construction and installation of the improvements and utilities within a period specified by the council and expressed in the bond**[**; provided that,**].** The release of **any** such escrow**, letter of credit, or bond** by the city, town or village shall be as specified in this section. The council may enforce the **escrow or** bond by all appropriate legal and equitable remedies. The regulations may provide, in lieu of the completion of the work and installations previous to the final approval of a plat, for an assessment or other method whereby the council is put in an assured position to do the work and make the installations at the cost of the owners of the property within the subdivision. The regulations may provide for the dedication, reservation or acquisition of lands and open spaces necessary for public uses indicated on the city plan and for appropriate means of providing for the compensation, including reasonable charges against the subdivision, if any, and over a period of time and in a manner as is in the public interest.

3. **The regulations shall provide that in the event a developer who has posted an escrow, or letter of credit, or bond with a city, town, or village in accordance with subsection 2 of this section transfers title of the subdivision property prior to full release of the escrow, letter of credit, or bond, the municipality shall accept a replacement escrow or letter of credit from the successor developer in the form allowed in subsection 2 of this section and in the amount of the escrow or letter of credit held by the city, town, or village at the time of the property transfer, and upon receipt of the replacement escrow or letter of credit, the city, town, or village shall release the original escrow or letter of credit in full and release the prior developer from all further obligations with respect to the subdivision improvements if the successor developer assumes all of the outstanding obligations of the previous developer. The city, town, or village may accept a surety bond from the successor developer in the form allowed in subsection 2 of this section and in the amount of the bond held by the city, town, or village at the time of the property transfer, and upon receipt of the replacement bond, the city, town, or village shall release the original bond in full, and release the prior developer from all further obligations with respect to the subdivision improvements.**

4. The regulations shall provide that any escrow **or bond** amount held by the city, town or village to secure actual construction and installation on each component of the improvements or utilities shall be released within thirty days of completion of each category of improvement or utility work to be installed, minus a maximum retention of five percent which shall be released upon completion of all improvements and utility work. **The city, town, or village shall inspect each category of improvement or utility work within twenty business days after a request for such inspection.** Any such category of improvement or utility work shall be deemed to be completed upon certification by the city, town or village that the project is complete in accordance with the ordinance of the city, town or village including the filing of all documentation and certifications required by the city, town or village, in complete and acceptable

form. The release shall be deemed effective when the escrow funds **or bond amount** are duly posted with the United States Postal Service or other agreed-upon delivery service or when the escrow funds **or bond amount** are hand delivered to an authorized person or place as specified by the owner or developer.

[4.**]** **5.** If the city, town or village has not released the escrow funds **or bond amount** within thirty days as provided in this section **or provided a timely inspection of the improvements or utility work after request for such inspection**, the city, town or village shall pay the owner or developer in addition to the escrow funds due the owner or developer, interest at the rate of one and one-half percent per month calculated from the expiration of the thirty-day period until the escrow funds **or bond amount** have been released. Any owner or developer aggrieved by the city's, town's or village's failure to observe the requirements of this section may bring a civil action to enforce the provisions of this section. In any civil action or part of a civil action brought pursuant to this section, the court may award the prevailing party or the city, town or village the amount of all costs attributable to the action, including reasonable attorneys' fees.

[5.**]** **6.** Nothing in this section shall apply to performance, maintenance and payment bonds required by cities, towns or villages.

[6.**]** **7.** Before adoption of its subdivision regulations or any amendment thereof, a duly advertised public hearing thereon shall be held by the council.

8. The provisions of subsection 2 of this section requiring the acceptance of an escrow secured by cash or an irrevocable letter of credit, rather than a surety bond, at the option of the developer, all of the provisions of subsection 3 of this section, and the provisions of subsections 4 and 5 of this section regarding an inspection of improvements or utility work within twenty business days shall not apply to any home rule city with more than four hundred thousand inhabitants and located in more than one county.

9. Notwithstanding the provisions of section 290.210, RSMo, to the contrary, improvements secured by escrow, letter of credit, or bond as provided in this section shall not be subject to the terms of sections 290.210 to 290.340, RSMo, unless they are paid for wholly or in part out of public funds.

137.100. CERTAIN PROPERTY EXEMPT FROM TAXES. — The following subjects are exempt from taxation for state, county or local purposes:

(1) Lands and other property belonging to this state;

(2) Lands and other property belonging to any city, county or other political subdivision in this state, including market houses, town halls and other public structures, with their furniture and equipments, and on public squares and lots kept open for health, use or ornament;

(3) Nonprofit cemeteries;

(4) The real estate and tangible personal property which is used exclusively for agricultural or horticultural societies organized in this state, including not-for-profit agribusiness associations;

(5) All property, real and personal, actually and regularly used exclusively for religious worship, for schools and colleges, or for purposes purely charitable and not held for private or corporate profit, except that the exemption herein granted does not include real property not actually used or occupied for the purpose of the organization but held or used as investment even though the income or rentals received therefrom is used wholly for religious, educational or charitable purposes;

(6) Household goods, furniture, wearing apparel and articles of personal use and adornment, as defined by the state tax commission, owned and used by a person in his home or dwelling place; **[**and**]**

(7) Motor vehicles leased for a period of at least one year to this state or to any city, county, or political subdivision**; and**

(8) Real or personal property leased or otherwise transferred by an interstate compact agency created pursuant to sections 70.370 to 70.430, RSMo, or sections 238.010 to 238.100, RSMo, to another for which or whom such property is not exempt when

immediately after the lease or transfer, the interstate compact agency enters into a leaseback or other agreement that directly or indirectly gives such interstate compact agency a right to use, control, and possess the property; provided, however, that in the event of a conveyance of such property, the interstate compact agency must retain an option to purchase the property at a future date or, within the limitations period for reverters, the property must revert back to the interstate compact agency. Property will no longer be exempt under this subdivision in the event of a conveyance as of the date, if any, when:

(a) The right of the interstate compact agency to use, control, and possess the property is terminated;

(b) The interstate compact agency no longer has an option to purchase or otherwise acquire the property; and

(c) There is no provisions for reverter of the property within the limitation period for reverters.

137.298. CITIES MAY PASS ORDINANCE TO INCLUDE CHARGES FOR OUTSTANDING PARKING TICKETS ON PERSONAL PROPERTY TAX BILL — PERSONAL PROPERTY TAX RECEIPT, ISSUED WHEN — CITIES MAY ENTER INTO AGREEMENTS WITH COUNTY TO INCLUDE OUTSTANDING VEHICLE-RELATED FEES AND FINES ON PERSONAL PROPERTY TAX BILL. — 1. Other provisions of law to the contrary notwithstanding, any city may by ordinance include as a charge on bills issued for personal property taxes any outstanding parking violations issued on any vehicle for which personal property tax is to be paid and, if required by ordinance, such charge shall be collected with and in the same payment as personal property taxes are collected by the collector of revenue of such city. No personal property tax bill shall be considered paid unless all charges for parking violations are also paid in full and the collector of revenue shall not issue a paid personal property receipt until all such charges are paid.

2. Any city or city not within a county may enter into a contract or cooperative agreement with the county governing body and county collector of any county with a charter form of government or any county of the first classification to include as a charge on bills issued for personal property taxes any outstanding vehicle-related fees and fines, including traffic violations, assessed or issued on any vehicle for which personal property tax is to be paid. For the purpose of this section, vehicle-related fees and fines shall include, but not be limited to, traffic violation fines, parking violation fines, towing and vehicle immobilization fees, and any late payment penalties and court costs associated with adjudication or collection of those fines. No personal property tax bill shall be considered paid unless all charges for parking violations and other vehicle-related fees and fines are also paid in full, and the county collector shall not issue a paid personal property tax receipt until all such charges are paid. Any contract or cooperative agreement shall be in writing, signed by the city, county governing body, and county collector, and shall set forth the provisions and terms agreed to by the parties.

137.720. PERCENTAGE OF AD VALOREM PROPERTY TAX COLLECTIONS TO BE DEDUCTED FOR DEPOSIT IN COUNTY ASSESSMENT FUND — ADDITIONAL DEDUCTION (ST. LOUIS CITY AND ALL COUNTIES). — 1. A percentage of all ad valorem property tax collections allocable to each taxing authority within the county and the county shall be deducted from the collections of taxes each year and shall be deposited into the assessment fund of the county as required pursuant to section 137.750. The percentage shall be one-half of one percent for all counties of the first and second classification and cities not within a county and one percent for counties of the third and fourth classification.

2. For counties of the first classification, counties with a charter form of government, and any city not within a county, an additional one-eighth of one percent of all ad valorem property tax collections shall be deducted from the collections of taxes each year and shall

be deposited into the assessment fund of the county as required pursuant to section 137.750, and for counties of the second, third, and fourth classification, an additional one-quarter of one percent of all ad valorem property tax collections shall be deducted from the collections of taxes each year and shall be deposited into the assessment fund of the county as required pursuant to section 137.750, provided that such additional amounts shall not exceed one hundred thousand dollars in any year for any county of the first classification and any county with a charter form of government and fifty thousand dollars in any year for any county of the second, third, or fourth classification.

3. The county shall bill any taxing authority collecting its own taxes. The county may also provide additional moneys for the fund. To be eligible for state cost-share funds provided pursuant to section 137.750, every county shall provide from the county general revenue fund, an amount equal to an average of the three most recent years of the amount provided from general revenue to the assessment fund, except that a lesser amount shall be acceptable if unanimously agreed upon by the county assessor, county governing body and the state tax commission. The county shall deposit the county general revenue funds in the assessment fund as agreed to in its original or amended maintenance plan, state reimbursement funds shall be withheld until the amount due is properly deposited in such fund.

4. Four years following the effective date, the state tax commission shall conduct a study to determine the impact of increased fees on assessed valuation.

5. Any increase to the portion of property tax collections deposited into the county assessment funds provided for in subsection 2 of this section shall be disallowed in any year in which the state tax commission certifies an equivalent sales ratio for the county of less than or equal to thirty-one and two-thirds percent pursuant to the provisions of section 138.395, RSMo.

6. The provisions of subsections 2, 4, and 5 of this section shall expire on December 31, 2009.

138.011. BOARD OF EQUALIZATION MEMBERS, RESTRICTION ON BEING CERTAIN LOCAL OFFICIALS OR SCHOOL BOARD MEMBERS (CHARTER COUNTIES). — No member of any board of equalization in any county with a charter form of government shall be an official of any city, town, or village in the county, a member of any school board in the county, or an employee of any school district within the county. Each member shall have some level of experience as determined by the governing authority of the county as a real estate broker, real estate appraiser, home builder, property developer, lending officer, or investor in real estate before their appointment to the board.

144.030. EXEMPTIONS FROM STATE AND LOCAL SALES AND USE TAXES. — 1. There is hereby specifically exempted from the provisions of sections 144.010 to 144.525 and from the computation of the tax levied, assessed or payable pursuant to sections 144.010 to 144.525 such retail sales as may be made in commerce between this state and any other state of the United States, or between this state and any foreign country, and any retail sale which the state of Missouri is prohibited from taxing pursuant to the Constitution or laws of the United States of America, and such retail sales of tangible personal property which the general assembly of the state of Missouri is prohibited from taxing or further taxing by the constitution of this state.

2. There are also specifically exempted from the provisions of the local sales tax law as defined in section 32.085, RSMo, section 238.235, RSMo, and sections 144.010 to 144.525 and 144.600 to 144.745 and from the computation of the tax levied, assessed or payable pursuant to the local sales tax law as defined in section 32.085, RSMo, section 238.235, RSMo, and sections 144.010 to 144.525 and 144.600 to 144.745:

(1) Motor fuel or special fuel subject to an excise tax of this state, unless all or part of such excise tax is refunded pursuant to section 142.584, RSMo; or upon the sale at retail of fuel to be consumed in manufacturing or creating gas, power, steam, electrical current or in furnishing

water to be sold ultimately at retail; or feed for livestock or poultry; or grain to be converted into foodstuffs which are to be sold ultimately in processed form at retail; or seed, limestone or fertilizer which is to be used for seeding, liming or fertilizing crops which when harvested will be sold at retail or will be fed to livestock or poultry to be sold ultimately in processed form at retail; economic poisons registered pursuant to the provisions of the Missouri pesticide registration law (sections 281.220 to 281.310, RSMo) which are to be used in connection with the growth or production of crops, fruit trees or orchards applied before, during, or after planting, the crop of which when harvested will be sold at retail or will be converted into foodstuffs which are to be sold ultimately in processed form at retail;

(2) Materials, manufactured goods, machinery and parts which when used in manufacturing, processing, compounding, mining, producing or fabricating become a component part or ingredient of the new personal property resulting from such manufacturing, processing, compounding, mining, producing or fabricating and which new personal property is intended to be sold ultimately for final use or consumption; and materials, including without limitation, gases and manufactured goods, including without limitation, slagging materials and firebrick, which are ultimately consumed in the manufacturing process by blending, reacting or interacting with or by becoming, in whole or in part, component parts or ingredients of steel products intended to be sold ultimately for final use or consumption;

(3) Materials, replacement parts and equipment purchased for use directly upon, and for the repair and maintenance or manufacture of, motor vehicles, watercraft, railroad rolling stock or aircraft engaged as common carriers of persons or property;

(4) Replacement machinery, equipment, and parts and the materials and supplies solely required for the installation or construction of such replacement machinery, equipment, and parts, used directly in manufacturing, mining, fabricating or producing a product which is intended to be sold ultimately for final use or consumption; and machinery and equipment, and the materials and supplies required solely for the operation, installation or construction of such machinery and equipment, purchased and used to establish new, or to replace or expand existing, material recovery processing plants in this state. For the purposes of this subdivision, a "material recovery processing plant" means a facility which converts recovered materials into a new product, or a different form which is used in producing a new product, and shall include a facility or equipment which is used exclusively for the collection of recovered materials for delivery to a material recovery processing plant but shall not include motor vehicles used on highways. For purposes of this section, the terms "motor vehicle" and "highway" shall have the same meaning pursuant to section 301.010, RSMo;

(5) Machinery and equipment, and parts and the materials and supplies solely required for the installation or construction of such machinery and equipment, purchased and used to establish new or to expand existing manufacturing, mining or fabricating plants in the state if such machinery and equipment is used directly in manufacturing, mining or fabricating a product which is intended to be sold ultimately for final use or consumption;

(6) Tangible personal property which is used exclusively in the manufacturing, processing, modification or assembling of products sold to the United States government or to any agency of the United States government;

(7) Animals or poultry used for breeding or feeding purposes;

(8) Newsprint, ink, computers, photosensitive paper and film, toner, printing plates and other machinery, equipment, replacement parts and supplies used in producing newspapers published for dissemination of news to the general public;

(9) The rentals of films, records or any type of sound or picture transcriptions for public commercial display;

(10) Pumping machinery and equipment used to propel products delivered by pipelines engaged as common carriers;

(11) Railroad rolling stock for use in transporting persons or property in interstate commerce and motor vehicles licensed for a gross weight of twenty-four thousand pounds or

more or trailers used by common carriers, as defined in section 390.020, RSMo, solely in the transportation of persons or property in interstate commerce;

(12) Electrical energy used in the actual primary manufacture, processing, compounding, mining or producing of a product, or electrical energy used in the actual secondary processing or fabricating of the product, or a material recovery processing plant as defined in subdivision (4) of this subsection, in facilities owned or leased by the taxpayer, if the total cost of electrical energy so used exceeds ten percent of the total cost of production, either primary or secondary, exclusive of the cost of electrical energy so used or if the raw materials used in such processing contain at least twenty-five percent recovered materials as defined in section 260.200, RSMo. For purposes of this subdivision, "processing" means any mode of treatment, act or series of acts performed upon materials to transform and reduce them to a different state or thing, including treatment necessary to maintain or preserve such processing by the producer at the production facility;

(13) Anodes which are used or consumed in manufacturing, processing, compounding, mining, producing or fabricating and which have a useful life of less than one year;

(14) Machinery, equipment, appliances and devices purchased or leased and used solely for the purpose of preventing, abating or monitoring air pollution, and materials and supplies solely required for the installation, construction or reconstruction of such machinery, equipment, appliances and devices, and so certified as such by the director of the department of natural resources, except that any action by the director pursuant to this subdivision may be appealed to the air conservation commission which may uphold or reverse such action;

(15) Machinery, equipment, appliances and devices purchased or leased and used solely for the purpose of preventing, abating or monitoring water pollution, and materials and supplies solely required for the installation, construction or reconstruction of such machinery, equipment, appliances and devices, and so certified as such by the director of the department of natural resources, except that any action by the director pursuant to this subdivision may be appealed to the Missouri clean water commission which may uphold or reverse such action;

(16) Tangible personal property purchased by a rural water district;

(17) All amounts paid or charged for admission or participation or other fees paid by or other charges to individuals in or for any place of amusement, entertainment or recreation, games or athletic events, including museums, fairs, zoos and planetariums, owned or operated by a municipality or other political subdivision where all the proceeds derived therefrom benefit the municipality or other political subdivision and do not inure to any private person, firm, or corporation;

(18) All sales of insulin and prosthetic or orthopedic devices as defined on January 1, 1980, by the federal Medicare program pursuant to Title XVIII of the Social Security Act of 1965, including the items specified in Section 1862(a)(12) of that act, and also specifically including hearing aids and hearing aid supplies and all sales of drugs which may be legally dispensed by a licensed pharmacist only upon a lawful prescription of a practitioner licensed to administer those items, including samples and materials used to manufacture samples which may be dispensed by a practitioner authorized to dispense such samples and all sales of medical oxygen, home respiratory equipment and accessories, hospital beds and accessories and ambulatory aids, all sales of manual and powered wheelchairs, stairway lifts, Braille writers, electronic Braille equipment and, if purchased by or on behalf of a person with one or more physical or mental disabilities to enable them to function more independently, all sales of scooters, reading machines, electronic print enlargers and magnifiers, electronic alternative and augmentative communication devices, and items used solely to modify motor vehicles to permit the use of such motor vehicles by individuals with disabilities or sales of over-the-counter or nonprescription drugs to individuals with disabilities;

(19) All sales made by or to religious and charitable organizations and institutions in their religious, charitable or educational functions and activities and all sales made by or to all

elementary and secondary schools operated at public expense in their educational functions and activities;

(20) All sales of aircraft to common carriers for storage or for use in interstate commerce and all sales made by or to not-for-profit civic, social, service or fraternal organizations, including fraternal organizations which have been declared tax-exempt organizations pursuant to Section 501(c)(8) or (10) of the 1986 Internal Revenue Code, as amended, solely in their civic or charitable functions and activities and all sales made to eleemosynary and penal institutions and industries of the state, and all sales made to any private not-for-profit institution of higher education not otherwise excluded pursuant to subdivision (19) of this subsection or any institution of higher education supported by public funds, and all sales made to a state relief agency in the exercise of relief functions and activities;

(21) All ticket sales made by benevolent, scientific and educational associations which are formed to foster, encourage, and promote progress and improvement in the science of agriculture and in the raising and breeding of animals, and by nonprofit summer theater organizations if such organizations are exempt from federal tax pursuant to the provisions of the Internal Revenue Code and all admission charges and entry fees to the Missouri state fair or any fair conducted by a county agricultural and mechanical society organized and operated pursuant to sections 262.290 to 262.530, RSMo;

(22) All sales made to any private not-for-profit elementary or secondary school, all sales of feed additives, medications or vaccines administered to livestock or poultry in the production of food or fiber, all sales of pesticides used in the production of crops, livestock or poultry for food or fiber, all sales of bedding used in the production of livestock or poultry for food or fiber, all sales of propane or natural gas, electricity or diesel fuel used exclusively for drying agricultural crops, natural gas used in the primary manufacture or processing of fuel ethanol as defined in section 142.028, RSMo, and all sales of farm machinery and equipment, other than airplanes, motor vehicles and trailers. As used in this subdivision, the term "feed additives" means tangible personal property which, when mixed with feed for livestock or poultry, is to be used in the feeding of livestock or poultry. As used in this subdivision, the term "pesticides" includes adjuvants such as crop oils, surfactants, wetting agents and other assorted pesticide carriers used to improve or enhance the effect of a pesticide and the foam used to mark the application of pesticides and herbicides for the production of crops, livestock or poultry. As used in this subdivision, the term "farm machinery and equipment" means new or used farm tractors and such other new or used farm machinery and equipment and repair or replacement parts thereon, and supplies and lubricants used exclusively, solely, and directly for producing crops, raising and feeding livestock, fish, poultry, pheasants, chukar, quail, or for producing milk for ultimate sale at retail and one-half of each purchaser's purchase of diesel fuel therefor which is:

(a) Used exclusively for agricultural purposes;

(b) Used on land owned or leased for the purpose of producing farm products; and

(c) Used directly in producing farm products to be sold ultimately in processed form or otherwise at retail or in producing farm products to be fed to livestock or poultry to be sold ultimately in processed form at retail;

(23) Except as otherwise provided in section 144.032, all sales of metered water service, electricity, electrical current, natural, artificial or propane gas, wood, coal or home heating oil for domestic use and in any city not within a county, all sales of metered or unmetered water service for domestic use;

(a) "Domestic use" means that portion of metered water service, electricity, electrical current, natural, artificial or propane gas, wood, coal or home heating oil, and in any city not within a county, metered or unmetered water service, which an individual occupant of a residential premises uses for nonbusiness, noncommercial or nonindustrial purposes. Utility service through a single or master meter for residential apartments or condominiums, including service for common areas and facilities and vacant units, shall be deemed to be for domestic use.

Each seller shall establish and maintain a system whereby individual purchases are determined as exempt or nonexempt;

(b) Regulated utility sellers shall determine whether individual purchases are exempt or nonexempt based upon the seller's utility service rate classifications as contained in tariffs on file with and approved by the Missouri public service commission. Sales and purchases made pursuant to the rate classification "residential" and sales to and purchases made by or on behalf of the occupants of residential apartments or condominiums through a single or master meter, including service for common areas and facilities and vacant units, shall be considered as sales made for domestic use and such sales shall be exempt from sales tax. Sellers shall charge sales tax upon the entire amount of purchases classified as nondomestic use. The seller's utility service rate classification and the provision of service thereunder shall be conclusive as to whether or not the utility must charge sales tax;

(c) Each person making domestic use purchases of services or property and who uses any portion of the services or property so purchased for a nondomestic use shall, by the fifteenth day of the fourth month following the year of purchase, and without assessment, notice or demand, file a return and pay sales tax on that portion of nondomestic purchases. Each person making nondomestic purchases of services or property and who uses any portion of the services or property so purchased for domestic use, and each person making domestic purchases on behalf of occupants of residential apartments or condominiums through a single or master meter, including service for common areas and facilities and vacant units, under a nonresidential utility service rate classification may, between the first day of the first month and the fifteenth day of the fourth month following the year of purchase, apply for credit or refund to the director of revenue and the director shall give credit or make refund for taxes paid on the domestic use portion of the purchase. The person making such purchases on behalf of occupants of residential apartments or condominiums shall have standing to apply to the director of revenue for such credit or refund;

(24) All sales of handicraft items made by the seller or the seller's spouse if the seller or the seller's spouse is at least sixty-five years of age, and if the total gross proceeds from such sales do not constitute a majority of the annual gross income of the seller;

(25) Excise taxes, collected on sales at retail, imposed by Sections 4041, 4061, 4071, 4081, 4091, 4161, 4181, 4251, 4261 and 4271 of Title 26, United States Code. The director of revenue shall promulgate rules pursuant to chapter 536, RSMo, to eliminate all state and local sales taxes on such excise taxes;

(26) Sales of fuel consumed or used in the operation of ships, barges, or waterborne vessels which are used primarily in or for the transportation of property or cargo, or the conveyance of persons for hire, on navigable rivers bordering on or located in part in this state, if such fuel is delivered by the seller to the purchaser's barge, ship, or waterborne vessel while it is afloat upon such river;

(27) All sales made to an interstate compact agency created pursuant to sections 70.370 to 70.430, RSMo, or sections 238.010 to 238.100, RSMo, in the exercise of the functions and activities of such agency as provided pursuant to the compact;

(28) Computers, computer software and computer security systems purchased for use by architectural or engineering firms headquartered in this state. For the purposes of this subdivision, "headquartered in this state" means the office for the administrative management of at least four integrated facilities operated by the taxpayer is located in the state of Missouri;

(29) All livestock sales when either the seller is engaged in the growing, producing or feeding of such livestock, or the seller is engaged in the business of buying and selling, bartering or leasing of such livestock;

(30) All sales of barges which are to be used primarily in the transportation of property or cargo on interstate waterways;

(31) Electrical energy or gas, whether natural, artificial or propane, which is ultimately consumed in connection with the manufacturing of cellular glass products;

(32) Notwithstanding other provisions of law to the contrary, all sales of pesticides or herbicides used in the production of crops, aquaculture, livestock or poultry;

(33) Tangible personal property purchased for use or consumption directly or exclusively in the research and development of prescription pharmaceuticals consumed by humans or animals;

(34) All sales of grain bins for storage of grain for resale;

(35) All sales of feed which are developed for and used in the feeding of pets owned by a commercial breeder when such sales are made to a commercial breeder, as defined in section 273.325, RSMo, and licensed pursuant to sections 273.325 to 273.357, RSMo;

(36) All purchases by a contractor on behalf of an entity located in another state, provided that the entity is authorized to issue a certificate of exemption for purchases to a contractor under the provisions of that state's laws. For purposes of this subdivision, the term "certificate of exemption" shall mean any document evidencing that the entity is exempt from sales and use taxes on purchases pursuant to the laws of the state in which the entity is located. Any contractor making purchases on behalf of such entity shall maintain a copy of the entity's exemption certificate as evidence of the exemption. If the exemption certificate issued by the exempt entity to the contractor is later determined by the director of revenue to be invalid for any reason and the contractor has accepted the certificate in good faith, neither the contractor or the exempt entity shall be liable for the payment of any taxes, interest and penalty due as the result of use of the invalid exemption certificate. Materials shall be exempt from all state and local sales and use taxes when purchased by a contractor for the purpose of fabricating tangible personal property which is used in fulfilling a contract for the purpose of constructing, repairing or remodeling facilities for the following:

(a) An exempt entity located in this state, if the entity is one of those entities able to issue project exemption certificates in accordance with the provisions of section 144.062; or

(b) An exempt entity located outside the state if the exempt entity is authorized to issue an exemption certificate to contractors in accordance with the provisions of that state's law and the applicable provisions of this section;

(37) Tangible personal property purchased for use or consumption directly or exclusively in research or experimentation activities performed by life science companies and so certified as such by the director of the department of economic development or the director's designees; except that, the total amount of exemptions certified pursuant to this section shall not exceed one million three hundred thousand dollars in state and local taxes per fiscal year. For purposes of this subdivision, the term "life science companies" means companies whose primary research activities are in agriculture, pharmaceuticals, biomedical or food ingredients, and whose North American Industry Classification System (NAICS) Codes fall under industry 541710 (biotech research or development laboratories), 621511 (medical laboratories) or 541940 (veterinary services). The exemption provided by this subdivision shall expire on June 30, 2003**;**

(38) All sales or other transfers of tangible personal property to a lessor, who leases the property under a lease of one year or longer executed or in effect at the time of the sale or other transfer, to an interstate compact agency created pursuant to sections 70.370 to 70.430, RSMo, or sections 238.010 to 238.100, RSMo.

144.615. EXEMPTIONS. — There are specifically exempted from the taxes levied in sections 144.600 to 144.745:

(1) Property, the storage, use or consumption of which this state is prohibited from taxing pursuant to the constitution or laws of the United States or of this state;

(2) Property, the gross receipts from the sale of which are required to be included in the measure of the tax imposed pursuant to the Missouri sales tax law;

(3) Tangible personal property, the sale **or other transfer** of which, if made in this state, would be exempt from or not subject to the Missouri sales tax pursuant to the provisions of **[**subsections**]** **subsection** 2 **[**and 3**]** of section 144.030;

(4) Motor vehicles, trailers, boats, and outboard motors subject to the tax imposed by section 144.440;

(5) Tangible personal property which has been subjected to a tax by any other state in this respect to its sales or use; provided, if such tax is less than the tax imposed by sections 144.600 to 144.745, such property, if otherwise taxable, shall be subject to a tax equal to the difference between such tax and the tax imposed by sections 144.600 to 144.745;

(6) Tangible personal property held by processors, retailers, importers, manufacturers, wholesalers, or jobbers solely for resale in the regular course of business;

(7) Personal and household effects and farm machinery used while an individual was a bona fide resident of another state and who thereafter became a resident of this state, or tangible personal property brought into the state by a nonresident for his own storage, use or consumption while temporarily within the state.

144.757. LOCAL USE TAX TO FUND COMMUNITY COMEBACK PROGRAM — RATE OF TAX — ST. LOUIS COUNTY — BALLOT OF SUBMISSION — NOTICE TO DIRECTOR OF REVENUE — REPEAL OR REDUCTION OF LOCAL SALES TAX, EFFECT ON LOCAL USE TAX. — 1. Any county or municipality, except municipalities within a county **[**of the first classification**]** having a charter form of government with a population in excess of nine hundred thousand may, by a majority vote of its governing body, impose a local use tax if a local sales tax is imposed as defined in section 32.085, RSMo, at a rate equal to the rate of the local sales tax in effect in such county or municipality; provided, however, that no ordinance or order enacted pursuant to sections 144.757 to 144.761 shall be effective unless the governing body of the county or municipality submits to the voters thereof at a municipal, county or state general, primary or special election **[**prior to August 7, 1996, or after December 31, 1996,**]** a proposal to authorize the governing body of the county or municipality to impose a local use tax pursuant to sections 144.757 to 144.761. Municipalities within a county **[**of the first classification**]** having a charter form of government with a population in excess of nine hundred thousand may, upon voter approval received pursuant to paragraph (b) of subdivision (2) of subsection 2 of this section, impose a local use tax at the same rate as the local municipal sales tax with the revenues from all such municipal use taxes to be distributed pursuant to subsection 4 of section 94.890, RSMo. The municipality shall within thirty days of the approval of the use tax imposed pursuant to paragraph (b) of subdivision (2) of subsection 2 of this section select one of the distribution options permitted in subsection 4 of section 94.890, RSMo, for distribution of all municipal use taxes.

2. (1) The ballot of submission, except for counties and municipalities described in subdivisions (2) and (3) of this subsection, shall contain substantially the following language:

Shall the ..... (county or municipality's name) impose a local use tax at the same rate as the total local sales tax rate, currently ..... (insert percent), provided that if the local sales tax rate is reduced or raised by voter approval, the local use tax rate shall also be reduced or raised by the same action? A use tax return shall not be required to be filed by persons whose purchases from out-of-state vendors do not in total exceed two thousand dollars in any calendar year.

[ ] YES [ ] NO

If you are in favor of the question, place an "X" in the box opposite "Yes". If you are opposed to the question, place an "X" in the box opposite "No".

(2) (a) The ballot of submission in a county **[**of the first classification**]** having a charter form of government with a population in excess of nine hundred thousand shall contain substantially the following language:

For the purposes of **[**preventing neighborhood decline, demolishing old deteriorating and vacant buildings, rehabilitating historic structures, cleaning polluted sites, promoting reinvestment in neighborhoods by creating the (name of county) Community Comeback Program; and for the purposes of**]** **economic development and** enhancing local government services**[**;**]**, shall the county **[**governing body**]** be authorized to collect a local use tax equal to the total of the existing county sales tax rate of (insert tax rate), provided that if the county sales tax is repealed, reduced

or raised by voter approval, the local use tax rate shall also be repealed, reduced or raised by the same voter action? **[**The Community Comeback Program**]** **Fifty percent of the revenue shall be used for economic development, including retention, creation, and attraction of better paying jobs, and fifty percent shall be used for enhancing local government services. The county** shall be required to **[**submit**]** **make available** to the public **[**a**]** **an audited** comprehensive financial report detailing the management and use of **economic development** funds each year.

A use tax is the equivalent of a sales tax on purchases from out-of-state sellers by in-state buyers and on certain taxable business transactions. A use tax return shall not be required to be filed by persons whose purchases from out-of-state vendors do not in total exceed two thousand dollars in any calendar year.

[ ] YES [ ] NO

If you are in favor of the question, place an "X" in the box opposite "Yes". If you are opposed to the question, place an "X" in the box opposite "No".

(b) The ballot of submission in a municipality within a county **[**of the first classification**]** having a charter form of government with a population in excess of nine hundred thousand shall contain substantially the following language:

Shall the municipality be authorized to impose a local use tax at the same rate as the local sales tax by a vote of the governing body, provided that if any local sales tax is repealed, reduced or raised by voter approval, the respective local use tax shall also be repealed, reduced or raised by the same action? A use tax return shall not be required to be filed by persons whose purchases from out-of-state vendors do not in total exceed two thousand dollars in any calendar year.

[ ] YES [ ] NO

If you are in favor of the question, place an "X" in the box opposite "Yes". If you are opposed to the question, place an "X" in the box opposite "No".

(3) The ballot of submission in any city not within a county shall contain substantially the following language:

Shall the ..... (city name) impose a local use tax at the same rate as the local sales tax, currently at a rate of ..... (insert percent) which includes the capital improvements sales tax and the transportation tax, provided that if any local sales tax is repealed, reduced or raised by voter approval, the respective local use tax shall also be repealed, reduced or raised by the same action? A use tax return shall not be required to be filed by persons whose purchases from out-of-state vendors do not in total exceed two thousand dollars in any calendar year.

[ ] YES [ ] NO

If you are in favor of the question, place an "X" in the box opposite "Yes". If you are opposed to the question, place an "X" in the box opposite "No".

(4) If any of such ballots are submitted on August 6, 1996, and if a majority of the votes cast on the proposal by the qualified voters voting thereon are in favor of the proposal, then the ordinance or order and any amendments thereto shall be in effect October 1, 1996, provided the director of revenue receives notice of adoption of the local use tax on or before August 16, 1996. If any of such ballots are submitted after December 31, 1996, and if a majority of the votes cast on the proposal by the qualified voters voting thereon are in favor of the proposal, then the ordinance or order and any amendments thereto shall be in effect on the first day of the calendar quarter which begins at least forty-five days after the director of revenue receives notice of adoption of the local use tax. If a majority of the votes cast by the qualified voters voting are opposed to the proposal, then the governing body of the county or municipality shall have no power to impose the local use tax as herein authorized unless and until the governing body of the county or municipality shall again have submitted another proposal to authorize the governing body of the county or municipality to impose the local use tax **[**pursuant to sections 144.757 to 144.761**]** and such proposal is approved by a majority of the qualified voters voting thereon.

3. The local use tax may be imposed at the same rate as the local sales tax then currently in effect in the county or municipality upon all transactions which are subject to the taxes imposed pursuant to sections 144.600 to 144.745 within the county or municipality adopting such tax; provided, however, that if any local sales tax is repealed or the rate thereof is reduced or raised by voter approval, the local use tax rate shall also be deemed to be repealed, reduced or raised by the same action repealing, reducing or raising the local sales tax.

4. For purposes of sections 144.757 to 144.761 **[**and sections 67.478 to 67.493, RSMo**]**, the use tax may be referred to or described as the equivalent of a sales tax on purchases made from out-of-state sellers by in-state buyers and on certain intrabusiness transactions. Such a description shall not change the classification, form or subject of the use tax or the manner in which it is collected.

144.759. COLLECTION OF ADDITIONAL LOCAL USE TAX FOR ECONOMIC DEVELOPMENT — DEPOSIT IN LOCAL USE TAX TRUST FUND, NOT PART OF STATE REVENUE — DISTRIBUTION TO COUNTIES AND MUNICIPALITIES — REFUNDS — NOTIFICATION TO DIRECTOR OF REVENUE ON ABOLISHMENT OF TAX — ECONOMIC DEVELOPMENT DEFINED. — 1. All local use taxes collected by the director of revenue pursuant to sections 144.757 to 144.761 on behalf of any county or municipality, less one percent for cost of collection, which shall be deposited in the state's general revenue fund after payment of premiums for surety bonds as provided in section 32.087, RSMo, shall be deposited with the state treasurer in a local use tax trust fund, which fund shall be separate and apart from the local sales tax trust funds. The moneys in such local use tax trust fund shall not be deemed to be state funds and shall not be commingled with any funds of the state. The director of revenue shall keep accurate records of the amount of money in the trust fund which was collected in each county or municipality imposing a local use tax, and the records shall be open to the inspection of officers of the county or municipality and to the public. No later than the tenth day of each month, the director of revenue shall distribute all moneys deposited in the trust fund during the preceding month, except as provided in subsection 2 of this section, to the county or municipality treasurer, or such other officer as may be designated by the county or municipality ordinance or order, of each county or municipality imposing the tax authorized by sections 144.757 to 144.761, the sum due the county or municipality as certified by the director of revenue.

2. The director of revenue shall distribute all moneys which would be due any county **[**of the first classification**]** having a charter form of government and having a population of nine hundred thousand or more to the county treasurer or such other officer as may be designated by county ordinance, who shall distribute such moneys as follows: the portion of the use tax imposed by the county which equals one-half the rate of sales tax in effect for such county shall be disbursed to the county **[**community comeback trust authorized pursuant to sections 67.478 to 67.493, RSMo**]** **treasurer for expenditure for economic development purposes, as defined in this section, subject to any qualifications and regulations adopted by ordinance of the county. Such ordinance shall require an audited comprehensive financial report detailing the management and use of economic development funds each year. Such ordinance shall require that the county and the municipal league of the county jointly prepare an economic development strategy to guide expenditures of funds and conduct an annual review of the strategy**. The treasurer or such other officer as may be designated by county ordinance shall distribute one-third of the balance to the county and to each city, town and village in group B according to section 66.620, RSMo, as modified by this section, a portion of the **two-thirds** remainder of such balance equal to the percentage ratio that the population of each such city, town or village bears to the total population of all such group B cities, towns and villages. For the purposes of this subsection, population shall be determined by the last federal decennial census or the latest census that determines the total population of the county and all political subdivisions therein. For the purposes of this subsection, each city, town or village in group A according to section 66.620, RSMo, but whose per capita sales tax receipts during the

preceding calendar year pursuant to sections 66.600 to 66.630, RSMo, were less than the per capita countywide average of all sales tax receipts during the preceding calendar year, shall be treated as a group B city, town or village until the per capita amount distributed to such city, town or village equals the difference between the per capita sales tax receipts during the preceding calendar year and the per capita countywide average of all sales tax receipts during the preceding calendar year.

3. The director of revenue may authorize the state treasurer to make refunds from the amounts in the trust fund and credited to any county or municipality for erroneous payments and overpayments made, and may redeem dishonored checks and drafts deposited to the credit of such counties or municipalities. If any county or municipality abolishes the tax, the county or municipality shall notify the director of revenue of the action at least ninety days prior to the effective date of the repeal, and the director of revenue may order retention in the trust fund, for a period of one year, of two percent of the amount collected after receipt of such notice to cover possible refunds or overpayment of the tax and to redeem dishonored checks and drafts deposited to the credit of such accounts. After one year has elapsed after the effective date of abolition of the tax in such county or municipality, the director of revenue shall authorize the state treasurer to remit the balance in the account to the county or municipality and close the account of that county or municipality. The director of revenue shall notify each county or municipality of each instance of any amount refunded or any check redeemed from receipts due the county or municipality.

4. Except as modified in sections 144.757 to 144.761, all provisions of sections 32.085 and 32.087, RSMo, applicable to the local sales tax, except for subsection 12 of section 32.087, RSMo, and all provisions of sections 144.600 to 144.745 shall apply to the tax imposed pursuant to sections 144.757 to 144.761, and the director of revenue shall perform all functions incident to the administration, collection, enforcement, and operation of the tax.

5. As used in this section, "economic development" means:

(1) Expenditures for infrastructure and sites for business development or for public infrastructure projects;

(2) Purchase, assembly, clearance, demolition, environmental remediation, planning, redesign, reconstruction, rehabilitation, construction, modification or expansion of land, structures and facilities, public or private, either in connection with a reinvestment project in areas with underused, derelict, economically challenged, or environmentally troubled sites, or in connection with business attraction, retention, creation, or expansion;

(3) Expenditures related to business district activities such as facade improvements, landscaping, street lighting, sidewalk construction, trash receptacles, park benches, and other public improvements;

(4) Expenditures for the provision of workforce training and educational support in connection with job creation, retention, attraction, and expansion;

(5) Development and operation of business incubator facilities, and related entrepreneurship support programs;

(6) Capitalization or guarantee of small business loan or equity funds;

(7) Expenditures for business development activities including attraction, creation, retention, and expansion; and

(8) Related administration expenses of economic and community development programs, provided that such expenses shall not exceed five percent of annual revenues.

190.306. DISSOLUTION OF EMERGENCY TELEPHONE SERVICE NOT REQUIRED, WHEN (CHRISTIAN COUNTY). — No provision in this chapter shall be construed to require any municipality within any county of the third classification without a township form of government and with more than fifty-four thousand two hundred but less than fifty-four thousand three hundred inhabitants that has established an emergency telephone service

to dissolve the service in the event that the county in which the municipality is located establishes an emergency telephone service and moves to a higher county classification.

193.265. FEES FOR CERTIFICATION AND OTHER SERVICES — DISTRIBUTION — SERVICES FREE, WHEN. — 1. For the issuance of a certification or copy of a **[**vital**]** **death** record, the applicant shall pay a fee of **[**ten**]** **thirteen** dollars **[**to the state department of revenue**]** **for the first certification or copy and a fee of ten dollars for each additional copy ordered at that time**. **[**For each vital records fee collected from August 28, 1992, to June 30, 1996, the director of revenue shall credit four dollars to the general revenue fund, three dollars to the children's trust fund as established pursuant to section 210.173, RSMo, two dollars to the Missouri public health services fund established in section 192.900, RSMo, and one dollar shall be deposited in the "Endowed Care Cemetery Audit Fund", which is hereby created in the state treasury. Money in the endowed care cemetery audit fund shall be available by appropriation to the division of professional registration to pay its expenses in administering sections 214.270 to 214.410, RSMo. All interest earned on money deposited in the endowed care cemetery audit fund shall be credited to the endowed care cemetery audit fund. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, money placed in the endowed care cemetery audit fund shall not be transferred and placed to the credit of general revenue until the amount in the fund at the end of the biennium exceeds three times the amount of the appropriation from the endowed care cemetery audit fund for the preceding fiscal year. The money deposited in the public health services fund pursuant to this section shall be deposited in a separate account in the fund, and moneys in such account, upon appropriation, shall be used to automate and improve the state vital records system and allow local registrars to issue computer-generated certificates of birth and death records of persons who are born or who die in Missouri**]** **For the issuance of a certification or copy of a birth, marriage, divorce, or fetal death record, the applicant shall pay a fee of fifteen dollars. All fees shall be deposited to the state department of revenue**. Beginning **[**July 1, 1996**]** **August 28, 2004**, for each vital records fee collected, the director of revenue shall credit four dollars to the general revenue fund, five dollars to the children's trust fund **[**and**],** one dollar shall be credited to the endowed care cemetery audit fund**, and three dollars for the first copy of death records and five dollars for birth, marriage, divorce, and fetal death records shall be credited to the Missouri public services health fund established in section 192.900, RSMo**. **Money in the endowed care cemetery audit fund shall be available by appropriation to the division of professional registration to pay its expenses in administering sections 214.270 to 214.410, RSMo. All interest earned on money deposited in the endowed care cemetery audit fund shall be credited to the endowed care cemetery fund. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, money placed in the endowed care cemetery audit fund shall not be transferred and placed to the credit of general revenue until the amount in the fund at the end of the biennium exceeds three times the amount of the appropriation from the endowed care cemetery audit fund for the preceding fiscal year. The money deposited in the public health services fund under this section shall be deposited in a separate account in the fund, and moneys in such account, upon appropriation, shall be used to automate and improve the state vital records system, and develop and maintain an electronic birth and death registration system which shall be implemented no later than December 31, 2009.** For any search of the files and records, when no record is found, the state shall be entitled to a fee equal to the amount for a certification of a vital record for a five-year search to be paid by the applicant. For the processing of each legitimation, adoption, court order or recording after the registrant's twelfth birthday, the state shall be entitled to a fee equal to the amount for a certification of a vital record. Except whenever a certified copy or copies of a vital record is required to perfect any claim of any person on relief, or any dependent of any person who was on relief for any claim upon the government of the state or United States, the state registrar shall,

upon request, furnish a certified copy or so many certified copies as are necessary, without any fee or compensation therefor.

2. For the issuance of a certification of a **[**birth or**]** death record by the local registrar, the applicant shall pay a fee of **[**ten**]** **thirteen** dollars **[**to the official county health agency**]** **for the first certification or copy and a fee of ten dollars for each additional copy ordered at that time. For the issuance of a certification or copy of a birth, marriage, divorce, or fetal death record, the applicant shall pay a fee of fifteen dollars. All fees shall be deposited to the official city or county health agency**. A certified copy of a death record by the local registrar can only be issued within twenty-four hours of receipt of the record by the local registrar. Computer-generated certifications of death records may be issued by the local registrar after twenty-four hours of receipt of the records. The fees paid to the official county health agency shall be retained by the local agency for local public health purposes.

229.340. FEE MAY BE REQUIRED. — Each applicant for a permit under the provisions of sections 229.300 to 229.370 may be required by the county highway engineer to pay a fee in an amount determined by the county commission by order of record, not to exceed the sum of **[**three**]** **seven** dollars for each such application, which fee is to be paid into a special fund in the county treasury and to be used for the purpose of paying the expenses incident to the provisions of sections 229.300 to 229.370. Any balance on hand in such fund at the end of the fiscal year of such county shall be paid into the special county road and bridge fund of such county.

245.015. OWNERS MAY FORM LEVEE DISTRICT, WHERE — ARTICLES OF INCORPORATION TO BE FILED IN CIRCUIT COURT. — **1.** The owners of a majority of the acreage in any contiguous body of swamp, wet or overflowed land or other property in the nature of individual or corporate franchises in this state, or land subject to overflow, wash or bank erosion, **[**situate**]** **located** in one or more counties or in **[**a third or fourth class**]** **any** city, town, or village in this state **[**or in any city in this state under sixty thousand population operating under a special charter**]** **not located within any county with a charter form of government and with more than two hundred fifty thousand but less than three hundred fifty thousand inhabitants, or in any city, town, or village of the third or fourth classification which is located within any county with a charter form of government and with more than two hundred fifty thousand but less than three hundred fifty thousand inhabitants**, may form a levee district for the purpose of having such land and other property reclaimed and protected from the effects of overflow and other water, for sanitary or agricultural purposes, or from the effect of wash or bank erosion, or when the same may be conducive to the public health, convenience or welfare, or of public utility or benefit, by levee, or otherwise, and for that purpose they may make and sign articles of association in which shall be stated: The name of the district, and the number of years the same is to continue; the boundary lines of the proposed levee district; the names as listed on the county assessor's records of the owners of land or other individual or corporate franchise property in **[**said**]** **such** district, together with a plat of the district showing the lands to be covered in the district; **[**said**]** **such** articles shall further state that the owners of real estate and other such property within **[**said**]** **the** district whose names are subscribed to **[**said**]** **such** articles are willing to and do obligate themselves to pay the tax or taxes which may be assessed against their respective lands or other property to pay the expense of organizing, and of making and maintaining the improvements that may be necessary to effect the reclamation or protection of **[**said**]** **such** lands or other such property, so formed into a levee district, and to reclaim and to protect the same from the effects of overflow and other water, or from bank erosion or wash, and **[**said**]** **the** articles of association shall contain a petition praying that the lands and other property described therein be declared a levee district under the provisions of this law. After **[**said**]** **the** articles of association and petition have been so signed the same shall be filed in the office of the circuit clerk of the county in which such lands and other property are **[**situate**]** **located**; or, if such lands and other property be composed of tracts

or parcels [situate] **located** in two or more different counties then in the office of the clerk of the circuit court of the county in which [there are situate] more of [said] **such** lands and other property **are located** than in any other county; provided, that in the event any work is to be done upon any navigable stream, the consent of the federal government shall be obtained to make such improvement or improvements before the actual work on the improvements shall be begun.

2. The modifications to this section, as enacted by the ninety-second general assembly, second regular session, shall not be construed to enhance or limit the current law, and any interpretation thereof, with regard to where a levee district may or may not be formed within any county with a charter form of government and with more than two hundred fifty thousand but less than three hundred fifty thousand inhabitants nor any city, town, village or other political subdivision contained therein.

245.060. ELECTION OF BOARD OF SUPERVISORS — TERM OF OFFICE. — Within thirty days after any levee district shall have been organized and incorporated under the provisions of section 245.025 the circuit clerk of the court organizing [said] **such** district shall, upon giving notice by causing publication to be made once a week for two consecutive weeks in some newspaper published in each county in which lands of the district are [situate] **located**, the last insertion to be at least ten days before the day of such meeting, call a meeting of the owners of real estate or other property [situate] **located** in [said] **such** district, including the authorized representative of any corporation which owns real estate or other property [situate] **located** in [said] **such** district, at a day and hour specified in some public place in the county in which the district was organized, for the purpose of electing a board of five supervisors, to be composed of owners of real estate in [said] **the** district, which may include the authorized representative of any corporation which owns real estate or other property in [said] **the** district, two of whom at least shall be residents of the county or counties in which [said] **the** district is [situate] **located**, or some adjoining counties; the landowners, when assembled, shall organize by the election of a chairman and secretary of the meeting, who shall conduct the election; at such election each and every acre of land and each and every mile of right-of-way of every corporation owning a franchise in the district shall represent one share, and each owner shall be entitled to one vote in person or by proxy for every acre of land or mile of right-of-way owned by him **or her** in such district, and the five persons receiving the highest number of votes shall be declared elected as supervisors; and [said] **the** supervisors shall immediately by lot determine the terms of their office, which shall be respectively one, two, three, four and five years, and they shall serve until their successors shall have been elected and qualified; provided, that if the levee district be located **wholly** within a third or fourth class city of this state, or within any city in this state under fifty thousand population operating under a special charter then the owner of each lot, tract, parcel or subdivision thereof, as set forth in the final decree of the court creating and incorporating [said] **such** levee district, shall be entitled to one vote, in person or by proxy, for each lot, tract, parcel or subdivision thereof, owned by him **or her**.

245.095. POWERS AND DUTIES OF SUPERVISORS. — **1.** In order to effect the leveeing, protection and reclamation of the land and other property in the district subject to tax, the board of supervisors is authorized and empowered to straighten, widen, change the course and line of any levee in or out of [said] **such** district; to fill up any creek, drain, channel, river, watercourse or natural stream; and to divert or divide the flow of water in or out of [said] **the** district; to construct and maintain sewers, levees, dikes, dams, sluices, revetments, drainage ditches, pumping stations, syphons and any other works and improvements deemed necessary to preserve and maintain the works in or out of [said] **the** district; to construct roadways over levees and embankments; to construct any and all of [said] **such** works and improvements across, through or over any public highway, railroad right-of-way, track, grade, fill or cut in or out of [said] **the** district; to remove any fence, building or other improvements in or out of [said] **the** district, and shall have the right to hold, control and acquire by donation or purchase, and if need

be, condemn any land, easement, railroad or other right-of-way, sluice or franchise in or out of **[**said**]** **the** district for right-of-way, or for any of the purposes herein provided, or for material to be used in constructing and maintaining **[**said**]** **such** works and improvements for leveeing, protecting and reclaiming the lands in **[**said**]** **the** district. **[**Said**]** **The** board shall also have the right to condemn for the use of the district, any land or property within or without **[**said**]** **the** district not acquired or condemned by the court on the report of the commissioners assessing benefits and damages and shall follow the procedure that is now provided by law for the appropriation of land or other property taken for telegraph, telephone and railroad rights-of-way.

2. In addition to the powers granted in subsection 1 of this section, in any levee district formed under the laws of this state having an assessed valuation of real property of twenty-five million dollars or greater and located, in whole or in part, in any county with a charter form of government and with more than one million inhabitants, the board of supervisors is authorized to construct and maintain waterlines and any other works and improvements deemed necessary to preserve and maintain the works in or out of the district.

246.305. ALTERNATIVE LEVEE DISTRICT, CERTAIN COUNTIES — VOTING RIGHTS — APPORTIONMENT OF TAXES. — 1. In any levee district formed pursuant to the laws of this state having assessed valuation of real property of twenty-five million dollars or greater, which is located in whole or in part in a county **[**having over nine hundred thousand in population**]** **with a charter form of government and with more than one million inhabitants** according to the last decennial census, the board of supervisors may by order, resolution or ordinance, following a public hearing thereon called upon notice as provided in section 245.060, RSMo, adopt the following alternative **[**procedures**]** **procedure** with respect to voting rights **[**and apportionment of installment taxes**]**:

[(1)**]** Voting by landowners of the levee district shall be determined on the basis of the assessed benefits of the property owned and the owner of each piece of property shall receive one vote per ten thousand dollars of assessed benefits, rounded to the next lowest amount in cases where assessed benefits do not evenly tally. In cases where the assessed benefits of a piece of property are below ten thousand dollars, the owner shall be entitled to one vote**[**;**]**.

[(2)**]** **2. In any levee district formed under the laws of this state, the board of supervisors may, by order, resolution, or ordinance, following a public hearing thereon called upon notice as provided in section 245.060, RSMo, adopt the procedure in this subsection with respect to the apportionment of installment taxes.** After the making of a readjustment of the assessment of benefits pursuant to section 245.197, RSMo, then the board of supervisors shall reapportion and levy on each tract of land or other property in the district the taxes imposed under section 245.180, 245.190 or 245.198, RSMo, in proportion to the benefits assessed as readjusted and not in excess thereof. In case bonds have been issued as provided in sections 245.010 to 245.280, RSMo, then the amount of interest which will accrue on such bonds shall be included and added to said taxes as reapportioned and levied based upon the benefits assessed as readjusted. The secretary of the board of supervisors, as soon as said tax has been reapportioned, shall, at the expense of the district, prepare a list of all taxes as reapportioned and levied, in the form of a well-bound book, which book shall be endorsed and named "Readjusted Levee Tax Record of ..... District .....", which endorsement shall also be printed or written at the top of each page of said book, and shall be signed and certified by the president and secretary of the board of supervisors, attested by the seal of the district, and the same shall thereafter become a permanent record in the office of **[**said**]** **the** secretary. The **[**said**]** board of supervisors shall each year thereafter determine, order and levy the amount of the annual installment of the total taxes levied under section 245.180, 245.190 or 245.198, RSMo, based upon such reapportionment, which shall in all other respects be due and collected as provided in section 245.185, RSMo.

260.831. COLLECTION OF FEE BY OPERATOR, PAYMENT REQUIRED — SEPARATE SURCHARGE, TRANSMITTAL OF FUNDS. — 1. Each operator of a solid waste sanitary or demolition landfill in any county wherein a landfill fee has been approved by the voters pursuant to section 260.830 shall collect a charge equal to the charge authorized by the voters in such election, not to exceed one dollar and fifty cents per ton or its volumetric equivalent of solid waste accepted. Such fee shall be collected in addition to any fee authorized or imposed pursuant to the provisions of section 260.330, and shall be paid to such operator by all political subdivisions, municipalities, corporations, entities or persons disposing of solid waste or demolition waste, whether pursuant to contract or otherwise, and notwithstanding that any such contract may provide for collection, transportation and disposal of such waste at a fixed fee. Any such contract providing for collections, transportation and disposal of such waste at a fixed fee which is in force on August 28, 2003, shall be renegotiated by the parties to the contract to include the additional fee imposed by this section. Each such operator shall submit the charge, less collection costs, to the governing body of the county, which shall dedicate such funds for use by the industrial development authority within the county and such funds shall be used by the **county commission or** authority for economic development within the county. Collection costs shall be the same as established by the department of natural resources pursuant to section 260.330, and shall not exceed two percent of the amount collected pursuant to this section.

2. The charges established in this section shall be enumerated separately from any disposal fee charged by the landfill. After January 1, 1994, the fee authorized under section 260.830 and this section shall be stated as a separate surcharge on each individual solid waste collection customer's invoice and shall also **[**name the**]** **indicate whether the county commission or** economic development authority **[**which**]** receives the funds. Moneys transmitted to the governing body of the county shall be no less than the amount collected less collection costs and in a form, manner and frequency as the governing body may prescribe. Failure to collect such charge shall not relieve the operator from responsibility for transmitting an amount equal to the charge to the governing body.

304.010. DEFINITIONS — MAXIMUM SPEED LIMITS — CITIES, TOWNS, VILLAGES, CERTAIN COUNTIES, MAY SET SPEED LIMIT, HOW SET — SLOWER SPEEDS SET, WHEN — VIOLATIONS, PENALTY. — 1. As used in this section, the following terms mean:

(1) "Expressway", a divided highway of at least ten miles in length with four or more lanes which is not part of the federal interstate system of highways which has crossovers or accesses from streets, roads or other highways at the same grade level as such divided highway;

(2) "Freeway", a limited access divided highway of at least ten miles in length with four or more lanes which is not part of the federal interstate system of highways which does not have any crossovers or accesses from streets, roads or other highways at the same grade level as such divided highway within such ten miles of divided highway;

(3) "Rural interstate", that part of the federal interstate highway system that is not located in an urban area;

(4) "Urbanized area", an area of fifty thousand population at a density at or greater than one thousand persons per square mile.

2. Except as otherwise provided in this section, the uniform maximum speed limits are and no vehicle shall be operated in excess of the speed limits established pursuant to this section:

(1) Upon the rural interstates and freeways of this state, seventy miles per hour;

(2) Upon the rural expressways of this state, sixty-five miles per hour;

(3) Upon the interstate highways, freeways or expressways within the urbanized areas of this state, sixty miles per hour;

(4) All other roads and highways in this state not located in an urbanized area and not provided for in subdivisions (1) to (3) of this subsection, sixty miles per hour;

(5) All other roads provided for in subdivision (4) of this subsection shall not include any state two-lane road which is identified by letter. Such lettered roads shall not exceed fifty-five

miles per hour unless set at a higher speed as established by the department of transportation, except that no speed limit shall be set higher than sixty miles per hour;

(6) For the purposes of enforcing the speed limit laws of this state, it is a rebuttable presumption that the posted speed limit is the legal speed limit.

3. On any state road or highway where the speed limit is not set pursuant to a local ordinance, the highways and transportation commission may set a speed limit higher or lower than the uniform maximum speed limit provided in subsection 2 of this section, if a higher or lower speed limit is recommended by the department of transportation. The department of public safety, where it believes for safety reasons, or to expedite the flow of traffic a higher or lower speed limit is warranted, may request the department of transportation to raise or lower such speed limit, except that no speed limit shall be set higher than seventy miles per hour.

4. Notwithstanding the provisions of section 304.120 or any other provision of law to the contrary, cities, towns and villages may regulate the speed of vehicles on state roads and highways within such cities', towns' or villages' corporate limits by ordinance with the approval of the state highways and transportation commission. Any reduction of speed in cities, towns or villages shall be designed to expedite the flow of traffic on such state roads and highways to the extent consistent with public safety. The commission may declare any ordinance void if it finds that such ordinance is:

(1) Not primarily designed to expedite traffic flow; and

(2) Primarily designed to produce revenue for the city, town or village which enacted such ordinance.

If an ordinance is declared void, the city, town or village shall have any future proposed ordinance approved by the highways and transportation commission before such ordinance may take effect.

5. The county commission of any county of the second, third or fourth classification may set the speed limit or the weight limit or both the speed limit and the weight limit on roads or bridges on any county, township or road district road in the county and, with the approval of the state highways and transportation commission, on any state road or highway not within the limits of any incorporated city, town or village, lower than the uniform maximum speed limit as provided in subsection 2 of this section where the condition of the road or the nature of the area requires a lower speed. **The maximum speed limit set by the county commission of any county of the second, third, or fourth classification for any road under the commission's jurisdiction shall not exceed fifty-five miles per hour if such road is properly marked by signs indicating such speed limit. If the county commission does not mark the roads with signs indicating the speed limit, the speed limit shall be fifty miles per hour.** The commission shall send copies of any order establishing a speed limit or weight limit on roads and bridges on a county, township or road district road in the county to the chief engineer of the state department of transportation, the superintendent of the state highway patrol and to any township or road district maintaining roads in the county. After the roads have been properly marked by signs indicating the speed limits and weight limits set by the county commission, the speed limits and weight limits shall be of the same effect as the speed limits provided for in subsection 1 of this section and shall be enforced by the state highway patrol and the county sheriff as if such speed limits and weight limits were established by state law.

6. The county commission of any county of the second, third, or fourth classification may by ordinance set a countywide speed limit on roads within unincorporated areas of any county, township, or road district in the county and may establish reasonable speed regulations for motor vehicles within the limit of such county. No person who is not a resident of such county and who has not been within the limits thereof for a continuous period of more than forty-eight hours shall be convicted of a violation of such ordinances, unless it is shown by competent evidence that there was posted at the place where the boundary of such county road enters the county a sign displaying in black letters not less than four inches high and one inch wide on a white background the speed fixed by such

county so that such signs may be clearly seen by operators and drivers from their vehicles upon entering such county. The commission shall send copies of any order establishing a countywide speed limit on a county, township, or road district road in the county to the chief engineer of the Missouri department of transportation, the superintendent of the state highway patrol, and to any township or road district maintaining roads in the county. After the boundaries of the county roads entering the county have been properly marked by signs indicating the speed limits set by the county commission, the speed limits shall be of the same effect as the speed limits provided for in subsection 1 of this section and shall be enforced by the state highway patrol and the county sheriff as if such speed limits were established by state law.

[6.**]** **7.** All road signs indicating speed limits or weight limits shall be uniform in size, shape, lettering and coloring and shall conform to standards established by the department of transportation.

[7.**]** **8.** The provisions of this section shall not be construed to alter any speed limit set below fifty-five miles per hour by any ordinance of any county, city, town or village of the state adopted before March 13, 1996.

[8.**]** **9.** The speed limits established pursuant to this section shall not apply to the operation of any emergency vehicle as defined in section 304.022.

[9.**]** **10.** A violation of the provisions of this section shall not be construed to relieve the parties in any civil action on any claim or counterclaim from the burden of proving negligence or contributory negligence as the proximate cause of any accident or as the defense to a negligence action.

[10.**]** **11.** Any person violating the provisions of this section is guilty of a class C misdemeanor, unless such person was exceeding the posted speed limit by twenty miles per hour or more then it is a class B misdemeanor.

321.554. ADJUSTMENT IN TOTAL OPERATING LEVY OF DISTRICT BASED ON SALES TAX REVENUE, EXCEPTIONS — GENERAL REASSESSMENT, EFFECT OF. — 1. **Except in any county of the first classification with more than two hundred forty thousand three hundred but less than two hundred forty thousand four hundred inhabitants, or any county of the first classification with more than seventy-three thousand seven hundred but less than seventy-three thousand eight hundred inhabitants, or any county of the first classification with more than one hundred eighty-four thousand but less than one hundred eighty-eight thousand inhabitants, or any county with a charter form of government and with more than one million inhabitants, or any county with a charter form of government and with more than two hundred fifty thousand but less than three hundred fifty thousand inhabitants,** when the revenue from the ambulance or fire protection district sales tax is collected for distribution pursuant to section 321.552, the board of the ambulance or fire protection district, after determining its budget for the year pursuant to section 67.010, RSMo, and the rate of levy needed to produce the required revenue and after making any other adjustments to the levy that may be required by any other law, shall reduce the total operating levy of the district in an amount sufficient to decrease the revenue it would have received therefrom by an amount equal to fifty percent of the previous fiscal year's sales tax receipts. Loss of revenue, due to a decrease in the assessed valuation of real property located within the ambulance or fire protection district as a result of general reassessment, and from state-assessed railroad and utility distributable property based upon the previous fiscal year's receipts shall be considered in lowering the rate of levy to comply with this section in the year of general reassessment and in each subsequent year. In the event that in the immediately preceding year the ambulance or fire protection district actually received more or less sales tax revenue than estimated, the ambulance or fire protection district board may adjust its operating levy for the current year to reflect such increase or decrease. The director of revenue shall certify the amount

payable from the ambulance or fire protection district sales tax trust fund to the general revenue fund to the state treasurer.

2. Except that, in the first year in which any sales tax is collected pursuant to section 321.552, the collector shall not reduce the tax rate as defined in section 137.073, RSMo.

3. In a year of general reassessment, as defined by section 137.073, RSMo, or assessment maintenance as defined by section 137.115, RSMo, in which an ambulance or fire protection district in reliance upon the information then available to it relating to the total assessed valuation of such ambulance or fire protection district revises its property tax levy pursuant to section 137.073 or 137.115, RSMo, and it is subsequently determined by decisions of the state tax commission or a court pursuant to sections 138.430 to 138.433, RSMo, or due to clerical errors or corrections in the calculation or recordation of assessed valuations that the assessed valuation of such ambulance or fire protection district has been changed, and but for such change the ambulance or fire protection district would have adopted a different levy on the date of its original action, then the ambulance or fire protection district may adjust its levy to an amount to reflect such change in assessed valuation, including, if necessary, a change in the levy reduction required by this section to the amount it would have levied had the correct assessed valuation been known to it on the date of its original action, provided:

(1) The ambulance or fire protection district first levies the maximum levy allowed without a vote of the people by article X, section 11(b) of the constitution; and

(2) The ambulance or fire protection district first adopts the tax rate ceiling otherwise authorized by other laws of this state; and

(3) The levy adjustment or reduction may include a one-time correction to recoup lost revenues the ambulance or fire protection district was entitled to receive during the prior year.

321.556. REPEAL OF SALES TAX, PROCEDURE, EXCEPTIONS — BALLOT LANGUAGE. — 1. **Except in any county of the first classification with more than two hundred forty thousand three hundred but less than two hundred forty thousand four hundred inhabitants, or any county of the first classification with more than seventy-three thousand seven hundred but less than seventy-three thousand eight hundred inhabitants, or any county of the first classification with more than one hundred eighty-four thousand but less than one hundred eighty-eight thousand inhabitants, or any county with a charter form of government and with more than one million inhabitants, or any county with a charter form of government and with more than two hundred fifty thousand but less than three hundred fifty thousand inhabitants,** the governing body of any ambulance or fire protection district, when presented with a petition signed by at least twenty percent of the registered voters in the ambulance or fire protection district that voted in the last gubernatorial election, calling for an election to repeal the tax pursuant to section 321.552, shall submit the question to the voters using the same procedure by which the imposition of the tax was voted. The ballot of submission shall be in substantially the following form:

"Shall ..... (insert name of ambulance or fire protection district) repeal the ..... (insert amount up to one-half) of one percent sales tax now in effect in the ..... (insert name of ambulance or fire protection district) and reestablish the property tax levy in the district to the rate in existence prior to the enactment of the sales tax?

[ ] YES [ ] NO

If you are in favor of the question, place an "X" in the box opposite "Yes". If you are opposed to the question, place an "X" in the box opposite "No"."

2. If a majority of the votes cast on the proposal by the qualified voters of the district voting thereon are in favor of repeal, that repeal shall become effective December thirty-first of the calendar year in which such repeal was approved.

389.610. RAILROAD CROSSINGS CONSTRUCTION AND MAINTENANCE, HIGHWAYS AND TRANSPORTATION COMMISSION TO HAVE EXCLUSIVE POWER TO REGULATE AND PROVIDE

STANDARDS — APPORTIONMENT OF COST. — 1. No public road, highway or street shall be constructed across the track of any railroad corporation, nor shall the track of any railroad corporation be constructed across a public road, highway or street, nor shall the track of any railroad corporation be constructed across the track of any other railroad or street railroad corporation at grade nor shall the track of a street railroad corporation be constructed across the tracks of a railroad corporation at grade, without having first secured the permission of the **state** highways and transportation commission, except that this subsection shall not apply to the replacement of lawfully existing tracks. The commission shall have the right to refuse its permission or to grant it upon such terms and conditions as it may prescribe.

2. Every railroad corporation shall construct and maintain good and sufficient crossings and crosswalks where its railroad crosses public roads, highways, streets or sidewalks now or hereafter to be opened.

3. The **state** highways and transportation commission shall make and enforce reasonable rules and regulations pertaining to the construction and maintenance of all public grade crossings. These rules and regulations shall establish minimum standards for:

(1) The materials to be used in the crossing surface;

(2) The length and width of the crossing;

(3) The approach grades;

(4) The party or parties responsible for maintenance of the approaches and the crossing surfaces.

4. The **state** highways and transportation commission shall have the exclusive power to determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, apportionment of expenses, use and warning devices of each crossing of a public road, street or highway by a railroad or street railroad, and of one railroad or street railroad by another railroad or street railroad. In order to facilitate such determinations, the **state** highways and transportation commission may adopt pertinent provisions of The Manual on Uniform Traffic Control Devices for Streets and Highways or other national standards.

5. The **state** highways and transportation commission shall have the exclusive power to alter or abolish any crossing, at grade or otherwise, of a railroad or street railroad by a public road, highway or street whenever **state** the highways and transportation commission finds that public necessity will not be adversely affected and public safety will be promoted by so altering or abolishing such crossing, and to require, where, in its judgment it would be practicable, a separation of grades at any crossing heretofore or hereafter established, and to prescribe the terms upon which such separation shall be made. **When a road authority lawfully closes or vacates a roadway which provided access to a railroad crossing, the state highways and transportation commission shall issue an order authorizing removal of the crossing by the railroad within thirty days of being notified of such action by the roadway authority or railroad.**

6. The **state** highways and transportation commission shall have the exclusive power to prescribe the proportion in which the expense of the construction, installation, alteration or abolition of such crossings, the separation of grades, and the continued maintenance thereof, shall be divided between the railroad, street railroad, and the state, county, municipality or other public authority in interest.

7. Any agreement entered into after October 13, 1963, between a railroad or street railroad and the state, county, municipality or other public authority in interest, as to the apportionment of any cost mentioned in this section shall be final and binding upon the filing with the **state** highways and transportation commission of an executed copy of such agreement. If such parties are unable to agree upon the apportionment of the cost, the **state** highways and transportation commission shall apportion the cost among the parties according to the benefits accruing to each. In determining such benefits, the **state** highways and transportation commission shall consider all relevant factors including volume, speed and type of vehicular traffic, volume, speed and type

of train traffic, and advantages to the public and to such railroad or street railroad resulting from the elimination of delays and the reduction of hazard at the crossing.

8. Upon application of any person, firm or corporation, the **state** highways and transportation commission shall determine if an existing private crossing has become or a proposed private crossing will become utilized by the public to the extent that it is necessary to protect or promote the public safety. The **state** highways and transportation commission shall consider all relevant factors including but not limited to volume, speed, and type of vehicular traffic, and volume, speed, and type of train traffic. If it be determined that it is necessary to protect and promote the public safety, the **state** highways and transportation commission shall prescribe the nature and type of crossing protection or warning device for such crossing, the cost of which shall be apportioned by the **state** highways and transportation commission among the parties according to the benefits accruing to each. In the event such crossing protection or warning device as prescribed by the **state** highways and transportation commission is not installed, maintained or operated, the crossing shall be closed to the public.

9. The exclusive power of the **state** highways and transportation commission pursuant to this section shall be subject to review, determination, and prescription by the administrative hearing commission, upon application to **[**that**]** **the administrative hearing** commission by any interested party **in accordance with section 621.040, RSMo**. Upon filing of an application pursuant to this subsection, the administrative hearing commission is vested with the exclusive power of the **state** highways and transportation commission otherwise provided in this section, with reference to matters reviewed, determined or prescribed by the administrative hearing commission.

393.760. ELECTION ON ISSUANCE OF BONDS — REQUIRED ACTIONS — NOTICE — CONDUCT OF ELECTION — FORM OF BALLOT — ALTERNATIVE VOTING PROCEDURES. — 1. The commission shall, in accordance with the provisions of chapter 115, RSMo, order an election to be held whereby the qualified electors in each contracting municipality participating in the project shall approve or disapprove the issuance of the bonds as provided for in the resolution of the commission. The commission may not order such an election until it has engaged and received a report from an independent consulting engineer as defined in section 327.181, RSMo, for the purpose of determining the economic and engineering feasibility of any proposed project the costs of which are to be financed through the issuance of bonds. The report of the consulting engineer shall be provided to and approved by the legislative body and executive of each contracting municipality participating in the project and such report shall be open to public inspection and shall be the subject of a public hearing in each municipality participating in the project. Notice of the time and place of each such hearing shall be published in a daily newspaper of general circulation within each municipality. Interested parties may appear and fully participate in such hearings.

2. The commission shall notify the election authority or authorities responsible for conducting elections within each contracting municipality participating in the project in accordance with chapter 115, RSMo.

3. The question shall be submitted in substantially the following form:

OFFICIAL BALLOT

Should a resolution to approve the issuance of revenue bonds by the joint municipal (water) (sewer) (power) (gas) commission in an amount not to exceed $..... for the purpose of ..... be approved?

[ ] YES [ ] NO

If you are in favor of the resolution, place an "X" in the box opposite "Yes". If you are opposed to the question, place an "X" in the box opposite "No".

4. If the resolution to issue the bonds is approved by at least a majority of the qualified electors voting thereon in each of the contracting municipalities participating in the project, the commission shall declare the result of the election and cause the bonds to be issued.

5. The municipalities participating in the project shall bear all expenses associated with the elections in such contracting municipalities.

6. In lieu of the public voting procedure set forth in subsections 1 to 5 of this section, in the case of purchasing or leasing, constructing, installing, and operating reservoirs, pipelines, wells, check dams, pumping stations, water purification plants, and other facilities for the production, wholesale distribution, and utilization of water, the commission may provide for a vote by the governing body of each contracting municipality. Such vote shall require the approval of three-quarters of all governing bodies of the contracting municipalities. The commission may not order such a vote until it has engaged and received a report from an independent consulting engineer as defined in section 327.181, RSMo, for the purpose of determining the economic and engineering feasibility of any proposed project the costs of which are to be financed through the issuance of bonds. The report of the consulting engineer shall be provided to and approved by the legislative body and executive of each contracting municipality participating in the project and such report shall be open to public inspection and shall be the subject of a public hearing in each municipality participating in the project. Notice of the time and place of each such hearing shall be published in a daily newspaper of general circulation within each municipality. Interested parties may appear and fully participate in such hearings. Each contracting municipality shall vote by ordinance or resolution and such ordinance or resolution shall approve the issuance of revenue bonds by the joint municipal water commission in an amount not to exceed a specified amount.

475.275. VERIFICATION OF SECURITIES HELD BY CONSERVATOR — POOLED ACCOUNTS, DEFINED, RESTRICTIONS ON — AUDIT OF POOLED ACCOUNTS, WHEN. — 1. The conservator, at the time of filing any settlement with the court, shall exhibit all securities or investments held by him to an officer of the bank or other depositary wherein the securities or investments are held for safekeeping or to an authorized representative of the corporation which is surety on his bond, or to the judge or clerk of a court of record in this state, or upon request of the conservator or other interested party, to any other reputable person designated by the court, who shall certify in writing that he has examined the securities or investments and identified them with those described in the account and shall note any omission or discrepancies. If the depositary is the conservator, the certifying officer shall not be the officer verifying the account. The conservator may exhibit the securities or investments to the judge of the court, who shall endorse on the account and copy thereof, a certificate that the securities or investments shown therein as held by the conservator were each in fact exhibited to him and that those exhibited to him were the same as those in the account and noting any omission or discrepancy. The certificate, and the certificate of an official of the bank in which are deposited any funds for which the conservator is accountable, showing the amount on deposit, shall be prepared and signed in duplicate and one of each shall be filed by the conservator with his account.

2. (1) As used in this section, "pooled account" means any account maintained by a fiduciary for more than one principal and established to manage and invest the funds of such principals. No fiduciary shall place funds into a pooled account unless the account meets the following criteria:

(a) The pooled account is maintained at a bank or savings and loan institution;

(b) The pooled account is titled in such a way as to reflect that the account is being held by a fiduciary in a custodial capacity;

(c) The fiduciary maintains, or causes to be maintained, records containing information as to the name and ownership interest of each principal in the pooled account;

(d) The fiduciary's records contain a statement of all accretions and disbursements; and

(e) The fiduciary's records are maintained in the ordinary course of business and in good faith.

(2) The public administrator of any county with a charter form of government and with more than six hundred thousand but less than seven hundred thousand inhabitants serving as conservator and using pooled accounts for the investing and management of conservatorship funds shall have any such accounts audited on at least an annual basis by an independent certified public accountant. The audit shall review the records of the receipts and disbursements of each estate account. Upon completion of the investigation, the certified public accountant shall render a report to the judge of record in this state showing the receipts, disbursements, and account balances as to each estate as well as the total assets on deposit in the pooled account on the last calendar day of each year. The county shall provide for the expense of the audit. If the public administrator has provided the judge with the audit required by this subsection, the public administrator shall not be required to obtain the written certification of an officer of a bank or other depository on any estate asset maintained within the pooled account as required in subsection 1 of this section.

479.020. MUNICIPAL JUDGES, SELECTION, TENURE, JURISDICTION, QUALIFICATIONS, COURSE OF INSTRUCTION. — 1. Any city, town or village, including those operating under a constitutional or special charter, may, and cities with a population of four hundred thousand or more shall, provide by ordinance or charter for the selection, tenure and compensation of a municipal judge or judges consistent with the provisions of this chapter who shall have original jurisdiction to hear and determine all violations against the ordinances of the municipality. The method of selection of municipal judges shall be provided by charter or ordinance. Each municipal judge shall be selected for a term of not less than two years as provided by charter or ordinance.

2. Except where prohibited by charter or ordinance, the municipal judge may be a part-time judge and may serve as municipal judge in more than one municipality.

3. No person shall serve as a municipal judge of any municipality with a population of seven thousand five hundred or more or of any municipality in a county of the first class with a charter form of government unless the person is licensed to practice law in this state unless, prior to January 2, 1979, such person has served as municipal judge of that same municipality for at least two years.

4. Notwithstanding any other statute, a municipal judge need not be a resident of the municipality or of the circuit in which the municipal judge serves except where ordinance or charter provides otherwise. Municipal judges shall be residents of Missouri.

5. Judges selected under the provisions of this section shall be municipal judges of the circuit court and shall be divisions of the circuit court of the circuit in which the municipality, or major geographical portion thereof, is located. The judges of these municipal divisions shall be subject to the rules of the circuit court which are not inconsistent with the rules of the supreme court. The presiding judge of the circuit shall have general administrative authority over the judges and court personnel of the municipal divisions within the circuit. **[**Notwithstanding the foregoing provisions of this subsection, in any city with a population of over four hundred thousand with full-time municipal judges who are subject to a plan of merit selection and retention, such municipal judges and court personnel of the municipal divisions shall not be subject to court management and case docketing in the municipal divisions by the presiding judge or the rules of the circuit court of which the municipal divisions are a part.**]**

6. No municipal judge shall hold any other office in the municipality which the municipal judge serves as judge. The compensation of any municipal judge and other court personnel shall not be dependent in any way upon the number of cases tried, the number of guilty verdicts reached or the amount of fines imposed or collected.

7. Municipal judges shall be at least twenty-one years of age. No person shall serve as municipal judge after that person has reached that person's seventy-fifth birthday.

8. Within six months after selection for the position, each municipal judge who is not licensed to practice law in this state shall satisfactorily complete the course of instruction for municipal judges prescribed by the supreme court. The state courts administrator shall certify to the supreme court the names of those judges who satisfactorily complete the prescribed course. If a municipal judge fails to complete satisfactorily the prescribed course within six months after the municipal judge's selection as municipal judge, the municipal judge's office shall be deemed vacant and such person shall not thereafter be permitted to serve as a municipal judge, nor shall any compensation thereafter be paid to such person for serving as municipal judge.

488.426. DEPOSIT REQUIRED IN CIVIL ACTIONS — EXEMPTIONS — SURCHARGE TO REMAIN IN EFFECT — ADDITIONAL FEE FOR ADOPTION AND SMALL CLAIMS COURT (FRANKLIN COUNTY). — 1. The judges of the circuit court, en banc, in any circuit in this state may require any party filing a civil case in the circuit court, at the time of filing the suit, to deposit with the clerk of the court a surcharge in addition to all other deposits required by law or court rule. Sections 488.426 to 488.432 shall not apply to proceedings when costs are waived or are to be paid by the county or state or any city.

2. The surcharge in effect on August 28, 2001, shall remain in effect until changed by the circuit court. The circuit court in any circuit, except the circuit court in Jackson County, may change the fee to any amount not to exceed fifteen dollars. The circuit court in Jackson County may change the fee to any amount not to exceed twenty dollars. A change in the fee shall become effective and remain in effect until further changed.

3. Sections 488.426 to 488.432 shall not apply to proceedings when costs are waived or are paid by the county or state or any city.

4. In addition to any fee authorized by subsection 1 of this section, any county of the first classification with more than ninety-three thousand eight hundred but less than ninety-three thousand nine hundred inhabitants may impose an additional fee of ten dollars excluding cases concerning adoption and those in small claims court.

488.429. FUND PAID TO TREASURER DESIGNATED BY CIRCUIT JUDGE — USE OF FUND FOR LAW LIBRARY, AND COURTROOM RENOVATION AND TECHNOLOGY ENHANCEMENT IN CERTAIN COUNTIES. — 1. Moneys collected pursuant to section 488.426 shall be payable to the judges of the circuit court, en banc, of the county from which such surcharges were collected, or to such person as is designated by local circuit court rule as treasurer of said fund, and said fund shall be applied and expended under the direction and order of the judges of the circuit court, en banc, of any such county for the maintenance and upkeep of the law library maintained by the bar association in any such county, or such other law library in any such county as may be designated by the judges of the circuit court, en banc, of any such county; provided, that the judges of the circuit court, en banc, of any such county, and the officers of all courts of record of any such county, shall be entitled at all reasonable times to use the library to the support of which said funds are applied.

2. In any county of the first classification without a charter form of government and with a population of at least two hundred thousand, such fund may also be applied and expended for that county's or circuit's family services and justice fund.

3. In any county **[**of the third classification without a township form of government and with more than forty thousand eight hundred but less than forty thousand nine hundred inhabitants, in any county of the third classification without a township form of government and with more than forty thousand four hundred but less than forty thousand five hundred inhabitants, in any county of the third classification without a township form of government and with more than thirteen thousand four hundred but less than thirteen thousand five hundred inhabitants, in any county of the third classification without a township form of government and with more than thirteen thousand five hundred but less than thirteen thousand six hundred inhabitants, in any county of the third classification without a township form of government and

with more than twenty-three thousand two hundred fifty but less than twenty-three thousand three hundred fifty inhabitants, in any county of the third classification without a township form of government and with more than eleven thousand seven hundred fifty but less than eleven thousand eight hundred fifty inhabitants, in any county of the third classification without a township form of government and with more than thirty-seven thousand two hundred but less than thirty-seven thousand three hundred inhabitants, in any county of the fourth classification with more than fifty-five thousand six hundred but less than fifty-five thousand seven hundred inhabitants, or in any county of the first classification with more than ninety-three thousand eight hundred but less than ninety-three thousand nine hundred inhabitants**]**, **other than a county participating in the nonpartisan court plan,** such fund may also be applied and expended for courtroom renovation and technology enhancement **[**in those counties**], or for debt service on county bonds for such renovation or enhancement projects**.

4. This section shall expire on December 31, 2014.

493.050. PUBLIC ADVERTISEMENTS AND ORDERS OF PUBLICATION PUBLISHED ONLY IN CERTAIN NEWSPAPERS. — 1. All public advertisements and orders of publication required by law to be made and all legal publications affecting the title to real estate, shall be published in some daily, triweekly, semiweekly or weekly newspaper of general circulation in the county where located and which shall have been admitted to the post office as periodicals class matter in the city of publication; shall have been published regularly and consecutively for a period of three years, except that a newspaper of general circulation may be deemed to be the successor to a defunct newspaper of general circulation, and subject to all of the rights and privileges of said prior newspaper under this statute, if the successor newspaper shall begin publication no later than thirty consecutive days after the termination of publication of the prior newspaper; shall have a list of bona fide subscribers voluntarily engaged as such, who have paid or agreed to pay a stated price for a subscription for a definite period of time; provided, that when a public notice, required by law, to be published once a week for a given number of weeks, shall be published in a daily, triweekly, semiweekly or weekly newspaper, the notice shall appear once a week, on the same day of each week, and further provided, that every affidavit to proof of publication shall state that the newspaper in which such notice was published has complied with the provisions of this section; provided further, that the duration of consecutive publication provided for in this section shall not affect newspapers which have become legal publications prior to September 6, 1937; provided, however, that when any newspaper shall be forced to suspend publication in any time of war, due to the owner or publisher being inducted into the armed forces of the United States, the newspaper may be reinstated within one year after actual hostilities have ceased, with all the benefits provided pursuant to the provisions of this section, upon the filing with the secretary of state of notice of intention of such owner or publisher, the owner's surviving spouse or legal heirs, to republish such newspaper, setting forth the name of the publication, its volume and number, its frequency of publication, and its readmission to the post office where it was previously entered as periodicals class mail matter, and when it shall have a list of bona fide subscribers voluntarily engaged as such who have paid or agreed to pay a stated price for subscription for a definite period of time. All laws or parts of laws in conflict with this section except sections 493.070 to 493.120, are hereby repealed.

2. If a county is served by only one newspaper that has been published regularly and consecutively for a period of two years and meets all other publication, postal, and subscription requirements pursuant to this section, such newspaper shall be qualified to publish all public advertisements and orders of publication required by law and all legal publications affecting the title to real estate. The provisions of this subsection shall terminate on June 30, 2006.

537.550. LIMITATION ON LIABILITY FOR INJURY OR DEATH AT FAIRS OR FESTIVALS — SIGNS TO BE POSTED, CONTENT. — 1. No county, city or village with ten thousand or

fewer inhabitants that organizes, sponsors, or conducts any fair, festival, or similar gathering shall be liable, except as provided in sections 537.600 to 537.650, for an injury or death of any person attending the event, and no person attending the event shall make any claim against, or recover from, any such county, city or village for injury, loss, damage, or death of the person attending the event.

2. Each county, city or village governed by this section shall post and maintain signs which contain the warning notice specified in this section. The signs shall be placed in a clearly visible location at major entrances to the event and throughout the event location as determined by the governing authority of the county, city or village. The signs described in this section shall be in black letters on a white background with each letter to be a minimum of one inch in height and contain substantially the following warning notice:

WARNING

Under Missouri Law, (enter county, city or village name) is not liable for an injury to or the death of any person resulting from the inherent risks of participating in or observing any activities at this event pursuant to the Revised Statutes of Missouri.

644.032. SALES TAX FOR PURPOSE OF STORM WATER CONTROL OR LOCAL PARKS OR BOTH MAY BE IMPOSED BY ANY COUNTY OR MUNICIPALITY — TAX, HOW CALCULATED — VOTER APPROVAL — BALLOT FORM — EFFECTIVE WHEN — FAILURE OF TAX, RESUBMISSION, WHEN — REVENUE MAY BE USED FOR PARKS LOCATED OUTSIDE OF COUNTY OR MUNICIPALITY, WHEN. — 1. The governing body of any municipality or county may impose, by ordinance or order, a sales tax in an amount not to exceed one-half of one percent on all retail sales made in such municipality or county which are subject to taxation under the provisions of sections 144.010 to 144.525, RSMo. The tax authorized by this section and section 644.033 shall be in addition to any and all other sales taxes allowed by law, except that no ordinance or order imposing a sales tax under the provisions of this section and section 644.033 shall be effective unless the governing body of the municipality or county submits to the voters of the municipality or county, at a municipal, county or state general, primary or special election, a proposal to authorize the governing body of the municipality or county to impose a tax**, provided that the tax authorized by this section shall not be imposed on the sales of food, as defined in section 144.014, RSMo, when imposed by any county with a charter form of government and with more than one million inhabitants**.

2. The ballot of submission shall contain, but need not be limited to, the following language:

Shall the municipality (county) of ..... impose a sales tax of ..... (insert amount) for the purpose of providing funding for ..... (insert either storm water control, or local parks, or storm water control and local parks) for the municipality (county)?

[ ] YES [ ] NO

If a majority of the votes cast on the proposal by the qualified voters voting thereon are in favor of the proposal, then the ordinance or order and any amendments thereto shall be in effect on the first day of the second quarter after the director of revenue receives notice of adoption of the tax. If a majority of the votes cast by the qualified voters voting are opposed to the proposal, then the governing body of the municipality or county shall not impose the sales tax authorized in this section and section 644.033 until the governing body of the municipality or county resubmits another proposal to authorize the governing body of the municipality or county to impose the sales tax authorized by this section and section 644.033 and such proposal is approved by a majority of the qualified voters voting thereon; however, in no event shall a proposal pursuant to this section and section 644.033 be submitted to the voters sooner than twelve months from the date of the last proposal pursuant to this section and section 644.033.

3. All revenue received by a municipality or county from the tax authorized under the provisions of this section and section 644.033 shall be deposited in a special trust fund and shall

be used to provide funding for storm water control or for local parks, or both, within such municipality or county, provided that such revenue may be used for local parks outside such municipality or county if the municipality or county is engaged in a cooperative agreement pursuant to section 70.220, RSMo.

4. Any funds in such special trust fund which are not needed for current expenditures may be invested by the governing body in accordance with applicable laws relating to the investment of other municipal or county funds.

SECTION 1. EMPLOYMENT OF COUNTY ENGINEER BY COUNTY COMMISSION NOT REQUIRED. — Nothing in chapter 61, RSMo, shall require the county commission to hire a county engineer. The county commission may hire and authorize an individual to perform those duties the individual is qualified for, based upon the individual's education and training.

SECTION 2. LEASEHOLD REVENUE BONDS, FEDERAL DESEGREGATION, BOARD OF FUND COMMISSIONERS TO DETERMINE WHETHER REDEMPTION IS FINANCIALLY FEASIBLE. — The board of fund commissioners shall determine whether any governmental entity has sufficient fund balances to redeem leasehold revenue bonds obligated under a federal desegregation action. If the board of fund commissioners determines that any governmental entity has sufficient fund balances to redeem or otherwise pay off such leasehold revenue bonds, the state board of education shall certify, under subdivision (5) of subsection 2 of section 160.415, RSMo, that no amount is needed by such governmental entity to repay such bonds.

[67.478. TITLE. — Sections 144.757 to 144.761, RSMo, and sections 67.478 to 67.493 shall be known and may be cited as the "Community Comeback Act".**]**

[67.481. DEFINITIONS. — As used in sections 144.757 to 144.761, RSMo, and sections 67.478 to 67.493, the following terms mean:

(1) "Community comeback plan" and "plan", a comprehensive countywide plan adopted by the community comeback trust board and the governing body of the county that identifies potential areas for reinvestment, projects and strategies to promote neighborhood reinvestment throughout the county, and that clearly identifies on a map the priority comeback communities. The plan shall be a five-year strategic and operating plan, complete with goals, objectives, targets and mechanisms or methods of measuring accomplishments, revised annually;

(2) "Community comeback program", "community comeback trust" and "trust", a fund held in the treasury of the county which shall be the repository for all taxes and other moneys raised pursuant to sections 144.757 to 144.761, RSMo, and sections 67.478 to 67.493, and authorized by the governing body of the county for the purposes of promoting neighborhood reinvestment;

(3) "Community comeback program board", "community comeback trust board" and "board", the entity established pursuant to sections 67.478 to 67.493 that is responsible for administering the comeback community trust;

(4) "Community comeback trust citizen advisory committee" and "advisory committee", an eleven-member committee established pursuant to sections 67.478 to 67.493 that is responsible for advising the community comeback fund board on the best methods of promoting neighborhood reinvestment;

(5) "Eligible expenses", costs qualified for funding through the community comeback trust which are:

(a) Incurred for the purchase, assembly, clearance, demolition and environmental remediation of land, structures and facilities, public or private, either as part of a neighborhood reinvestment project or to prepare sites for future use in areas with underutilized, derelict, economically challenged or environmentally troubled sites;

(b) Related to planning, redesign, clearance, reconstruction, structure rehabilitation, site remediation, construction, modification, expansion, remodeling, structural alteration, replacement or renovation of any structure in a priority comeback community;

(c) Expended for capital improvements or infrastructure improvements to facilitate economic development;

(d) Expended for residential redevelopment including, but not limited to, buyouts, land-assembly costs, infrastructure improvements and costs associated with preparing sites for housing construction; professional service expenses such as architectural, planning, engineering, design, marketing or other related expenses;

(e) Related to community improvement district or special business district expenses such as facade improvements, landscaping, street lighting, sidewalk construction, trash receptacles, park benches and other public improvements;

(f) Expenses related to facilitating transit-oriented developments, home improvement and home buyer loan programs; and

(g) Expenses eligible for funding through the select neighborhood action program;

(6) "Neighborhood reinvestment project" and "project", the planning, development, redesign, clearance, reconstruction or rehabilitation or any combination thereof in order to improve those residential, commercial, industrial, public or other structures or spaces and the infrastructure serving them as may be appropriate or necessary in the interest of the general welfare;

(7) "Petition", a petitioner's request for funding made to the community comeback trust;

(8) "Petitioner", the governing body of any municipality, the governing body of the county, any land clearance for redevelopment authority within the county organized pursuant to chapter 99, RSMo, or any not-for-profit economic development organization with a governing board not less than two-thirds of the members of which are appointed by the chief elected official of the county or by one or more organizations with governing boards appointed by the chief elected official;

(9) "Priority comeback community", an area in a county which encompasses an entire United States census block group and has a median household income below the median household income for such entire county;

(10) "Priority comeback project", a funding proposal submitted to a community comeback trust by a petitioner whose area is substantially within a priority comeback community;

(11) "Proposal", a petitioner's funding request for the eligible expenses of a neighborhood reinvestment project submitted to a trust by a petitioner;

(12) "Select neighborhood action program" and "SNAP", a grant program, administered and funded pursuant to subsection 5 of section 67.490;

(13) "Select neighborhood action program applicant" and "SNAP applicant", a neighborhood organization or not-for-profit organization whose mission is consistent with the community comeback plan. The organization shall have a municipal sponsor or a county sponsor if the area is unincorporated. The organization shall have been in existence for at least six months and meet at least once a year in order to be eligible for a SNAP grant;

(14) "SNAP grant", an endowment of money by the board to a SNAP applicant pursuant to subsection 5 of section 67.490.**]**

[67.484. ST. LOUIS COUNTY AUTHORIZED TO FORM COMMUNITY COMEBACK TRUST, PURPOSES, FORMATION — BOARD, COMPOSITION, NOMINATION, POWERS, DUTIES, RESTRICTIONS — FUNDING, LOCAL SALES TAX, BOND ISSUANCE, VALIDITY, PAYMENT. — 1. A community comeback trust may be created, incorporated and managed pursuant to this section by any county of the first classification with a charter form of government and a population of at least nine hundred thousand inhabitants according to the last decennial census, and may exercise the powers given to such trust pursuant to sections 67.478 to 67.493. A trust may sue and be sued, issue general revenue bonds and receive county use tax revenue pursuant

to the limitations of this section. A trust shall have as its primary duties the prevention of neighborhood decline, the demolition of old deteriorating and vacant buildings, rehabilitating historic structures, the cleaning of polluted sites and the promotion of neighborhood reinvestment where such investment is essential to reverse or stabilize a stagnant or declining pattern in household income, assessed values, occupancies and related characteristics.

2. The governing body of the county is hereby authorized to impose by ordinance a local use tax pursuant to sections 144.757 to 144.761, RSMo, for the purpose of funding the creation, operation and maintenance of a community comeback trust, as well as to provide revenue to the county and municipalities authorized to receive moneys generated by said tax pursuant to section 144.759, RSMo. The governing body of the county enacting such an ordinance shall submit to the voters of such county a proposal to approve its ordinance imposing the tax. Such ordinance shall become effective only after the majority of the voters voting on such ordinance approve such ordinance. The question shall be submitted to the voters in the county pursuant to section 144.757, RSMo.

3. (1) The community comeback trust board shall be composed of seven members as provided in this subsection. No member shall be an elected official, employee or contractor of the county or any municipality within the county or of any organization representing the county or any municipality within the county. Board members shall be citizens of the United States and shall reside within the county. No two members of the board shall be residents of the same county council district of such county. No member shall receive compensation for performance of board duties. No member shall be financially interested directly or indirectly in any contract entered into by the trust or by any petitioner. In the event that any property owned by a board member or the immediate family member of such board member is located in a priority comeback community, the member shall disclose such information to the board and abstain from any formal or informal actions regarding any project in that neighborhood.

(2) The chief elected official of any municipality wholly within the county and any member of the governing body of the county shall nominate individuals to serve on the board by providing a list of nominees to the county executive who shall appoint the members. Of the total members, at least four shall be residents of municipalities within the county and at least one shall have each of the following professions: a professional architect or engineer; an urban planner or design professional; a developer or builder; and an accountant or an attorney.

(3) The seat of a member shall be automatically vacated when the member changes his or her residence so as to no longer conform to the terms of the requirements of the member's appointment. The board shall promptly notify the county executive of such a change of residence, the pending expiration of any member's term, any member's need to vacate his or her seat or any vacancy on the board. A member whose term has expired shall continue to serve until the successor is appointed and qualified.

(4) Upon the passage of an ordinance by the governing body of the county establishing the community comeback trust, the governing body of the county shall, within ten days, send by United States mail written notice of the passage of the ordinance to the chief elected officials of each municipality wholly in the county.

(5) Each of the nominating authorities described in subdivision (2) of this subsection shall, within forty-five days of the passage of the ordinance establishing the board or within fourteen days of being notified of a board vacancy by the county executive, submit its list of nominees to the county executive. The county executive shall appoint members within sixty days of the passage of the ordinance or within thirty days of being notified by the board of a vacancy on the board. If a list of nominees is not submitted by the time specified, the county executive shall appoint the members using the criteria set forth in this section.

(6) At the first meeting of the board appointed after the effective date of the ordinance, the members shall choose by lot the length of their terms. Three shall serve for one year, two for two years, and two for three years. All succeeding members shall serve terms of three years.

Terms shall end on December thirty-first of the respective year. No member shall serve more than two consecutive full terms. Full terms shall include any term longer than two years.

4. The board, its employees and subcontractors shall be subject to the regulation of conflicts of interest as defined in sections 105.450 to 105.498, RSMo, and to the requirements for open meetings and records pursuant to chapter 610, RSMo. The board shall enact and adopt all rules, regulations and procedures that are reasonably necessary to achieve the objectives of sections 67.478 to 67.493, and not inconsistent therewith, no sooner than twenty-seven calendar days after notifying all municipalities and the county of the proposed rule, regulation or procedure enactment or change. Notice may be given by ordinary mail, by electronic mail or by publishing in at least one newspaper of general circulation qualified to publish legal notices. No new or amended rule, regulation or procedure shall apply retroactively to any proposal pending before the trust without the agreement of the petitioner. The board shall have the exclusive control of the expenditures of all money collected to the credit of the trust, subject to annual appropriations by the governing body of the county. The county government shall provide the trust staff. No more than five percent of the trust's annual budget shall be used for the trust's annual administrative expenses.

5. The trust is authorized to issue bonds, notes or other obligations for any proposal, and to refund such bonds, notes or obligations, as provided in subsection 3 of this section; and to receive and liquidate property, both real and personal, or money which has been granted, donated, devised or bequeathed to the district. The trust shall not have any power of eminent domain.

6. (1) Bonds issued pursuant to this section shall be issued pursuant to a resolution adopted by five-sevenths of the board which shall set out the estimated cost to the trust of the proposed improvements, and shall further set out the amount of the bonds to be issued, their purpose or purposes, their date or dates, denomination or denominations, rate or rates of interest, time or times of payment, both of principal and of interest, place or places of payment and all other details in connection with such bonds. Any such bonds may be subject to such provision for redemption prior to maturity, with or without premium, and at such times and upon such conditions as may be provided by the resolution.

(2) Notwithstanding the provisions of section 108.170, RSMo, such bonds shall bear interest at rate or rates determined by the trust, shall mature within a period not exceeding twenty years and may be sold at public or private sale for not less than ninety-five percent of the principal amount of such bonds. Bonds issued by the trust shall possess all of the qualities of negotiable instruments pursuant to the laws of this state.

(3) Such bonds may be payable to the bearer, may be registered or coupon bonds, and, if payable to bearer, may contain such registration provisions as to either principal and interest, or principal only, as may be provided in the resolution authorizing such bonds, which resolution may also provide for the exchange of registered and coupon bonds. Such bonds and any coupons attached thereto shall be signed in such manner and by such officers of the district as may be provided by the resolution authorizing the bonds. The trust may provide for the replacement of any bond which has become mutilated, destroyed or lost.

(4) Bonds issued by the trust shall be payable as to principal, interest and redemption premium, if any, out of all or any part of the trust fund, including revenues derived from use taxes. Neither the board members nor any person executing the bonds shall be personally liable on such bonds by reason of the issuance of such bonds. Bonds issued pursuant to this section shall not constitute a debt, liability or obligation of this state, or any political subdivision of this state, nor shall any such obligations be a pledge of the faith and credit of this state, but shall be payable solely from the revenues and assets held by the trust. The issuance of bonds pursuant to this section shall not directly, indirectly or contingently obligate this state or any political subdivision of this state to levy any form of taxation for such bonds or to make any appropriation for their payment. Each obligation or bond issued pursuant to this section shall contain on its face a statement to the effect that the trust shall not be obligated to pay such bond nor interest on

such bond except from the revenues received by the trust or assets of the trust lawfully pledged for such trust, and that neither the faith or credit nor the taxing power of this state or of any political subdivision of this state is pledged to the payment of the principal of or the interest on such obligation or bond. The proceeds of such bonds shall be disbursed in such manner and pursuant to such restrictions as the trust may provide in the resolution authorizing the issuance of such bonds.

(5) The trust may issue negotiable refunding bonds for the purpose of refunding, extending or unifying the whole or any part of such bonds then outstanding, or any bonds, notes or other obligations issued by any other public agency, public body or political subdivision in connection with any facilities or land to be acquired, leased or subleased by the trust, which refunding bonds shall not exceed the amount necessary to refund the principal of the outstanding bonds to be refunded and the accrued interest on such bonds to the date of such refunding, together with any redemption premium, amounts necessary to establish reserve and escrow funds and all costs and expenses incurred in connection with the refunding. The board shall provide for the payment of interest and principal of such refunding bonds in the same manner as was provided for the payment of interest and principal of the bonds refunded.

(6) In the event that any of the members or officers of the trust whose names appear on any bonds or coupons shall cease to be on the board or cease to be an officer before the delivery of such bonds, such signatures shall remain valid and sufficient for all purposes, the same as if such board members or officers had remained in office until such delivery.

(7) The trust is hereby declared to be performing a public function and bonds of the trust are declared to be issued for an essential public and governmental purpose, and, accordingly, interest on such bonds and income from such bonds shall be exempt from income taxation by this state. All purchases in excess of ten thousand dollars shall be made pursuant to the lowest and best bid standard as provided in section 34.040, RSMo, or pursuant to the lowest and best proposal standard as provided in section 34.042, RSMo. The board of the trust shall have the same discretion, powers and duties as the commissioner of administration has in sections 34.040 and 34.042, RSMo.**]**

[67.487. COMMUNITY COMEBACK PLAN, NOTIFICATION, DEVELOPMENT, DISTRIBUTION, ANNUAL REVISION AND ADOPTION — REPORTS AND AUDITS REQUIRED — ADVISORY COMMITTEE TO BE ESTABLISHED BY THE BOARD. — 1. Within fourteen days of the first meeting of the first board appointed following the effective date of the ordinance, the board shall notify by mail the chief elected officials of all municipalities wholly within the county, the chief elected official of the county and all the members of the governing body of the county of the requirement to conduct a planning process and adopt a community comeback plan.

2. The board shall solicit full citizen, county and municipal involvement in developing the plan. The board shall conduct public hearings throughout the county to seek input regarding the plan, and may convene meetings with the appropriate staff of the county and municipalities in order to seek input and to coordinate the logistics of producing the plan. A copy of the plan shall be sent to the chief elected official of every municipality wholly within the county, the chief elected official of the county and each member of the governing body of the county.

3. The board and the governing body of the county shall annually revise and adopt a plan.

4. Each plan shall include a map of the county, as well as a text enumerating the efforts expected each year in the various subregions of the county. Each plan shall address the factors that are causing or are likely to cause one or more of the following:

(1) Assessed values below the county average;

(2) Median household incomes below the county median;

(3) An unemployment rate above the county average;

(4) A reduction in the number of jobs with an emphasis upon those jobs paying average or above-average salaries;

(5) Failure to keep pace with the average growth rate in home values in the metropolitan area or county; and

(6) A high vacancy rate among residential, commercial and industrial properties.

5. Each plan shall include an analysis of the condition of the housing stock in the various subregions of the county, a market analysis of the home-buying market with a focus on the impediments to attracting home buyers to those subregions and an analysis of the physical infrastructure needs that prevent economic growth.

6. The board may consider the following factors when determining the appropriate areas and strategies for investment:

(1) Buildings that are unsafe or unhealthy for occupancy due to code violations, dilapidation, defective design, faulty utilities or any other negative conditions;

(2) Factors that prevent or substantially hinder the economically viable use of buildings or lots, such as substandard design, inadequate size, lack of parking or any other conditions;

(3) Incompatible uses that prevent economic development;

(4) Subdivided lots of irregular form and shape and inadequate size for proper usefulness that have multiple ownership;

(5) Depreciated or stagnant property values, including properties that contain hazardous wastes;

(6) Abnormally high business vacancies, abnormally low lease rates, high turnover rates, abandoned buildings, or excessive vacant lots within an area developed for urban use and served by utilities;

(7) The existence of conditions that are not conducive to public safety; and

(8) The lack of necessary commercial facilities normally found in neighborhoods.

7. Each plan shall outline specific strategies to address the problems facing the various subregions and neighborhoods within the county. The plan shall also discuss the partnerships that can be made with federal, state and local governments, as well as businesses, labor organizations, nonprofit groups, religious and other groups and citizens to help implement the plan. These strategies shall include estimated costs and time lines for completion.

8. The board shall produce an annual report focusing on the accomplishments of the trust relative to the goals set forth in the plan, the goals for the next year and the challenges facing the trust. The annual report shall be given to the chief elected officials of all the municipalities wholly within the county, the chief elected official of the county, the members of the governing board of the county and the public libraries within the county, and shall be posted on the county Internet web site.

9. Every year, the board shall commission an independent financial audit, the report of which shall be distributed in the same manner as the annual report pursuant to subsection 8 of this section.

10. Every five years, the board shall commission an independent management audit. The management audit shall include a comprehensive analysis of development trends, factors and practices along with specific recommendations to improve the trust's ability to achieve its mission. The management audit shall be reviewed by the advisory committee which may offer constructive advice on enhancing practices in order to achieve the goals of the program. The management audit shall be distributed in the same manner as the annual report pursuant to subsection 8 of this section. The board is authorized to take any necessary and proper steps to address the issues and recommendations contained within the management audit.

11. (1) The board shall establish an eleven-member advisory committee that shall meet four times each year and shall advise petitioners, staff and the board. The advisory committee members shall be appointed by the county executive. At least six of the advisory committee's members shall be nominated by the municipal league within the county and at least three shall be nominated by the members of the governing body of the county. No advisory committee member shall receive compensation for performance of duties as a committee member.

(2) At least one of the advisory committee members shall be a university professor well-versed in regional development issues. At least two of the advisory committee members shall be municipal officials from communities that have undertaken redevelopment programs as part of larger planning efforts. At least one of the advisory committee members shall be an attorney with experience in redevelopment activities. At least two of the advisory committee members shall be residents of priority comeback communities who have been active in advocating effective redevelopment policies. At least one of the advisory committee members shall be a private professional familiar with the factors influencing business location decisions. At least one of the advisory committee members shall be an individual familiar with education and training practices and workforce needs, with an understanding of how labor availability impacts business location decisions. At least one of the advisory committee members shall be a planner from the private sector knowledgeable in the area of strategic planning and the principles of multiyear rolling plans.

(3) The advisory committee shall promptly notify the county executive of the pending expiration of any member's term or any vacancy on the advisory committee. A member whose term has expired shall continue to serve until his or her successor is appointed and qualified.

(4) The board shall establish the advisory committee by resolution at the board's first meeting. The board shall, within ten days of the passage of the resolution establishing the advisory committee, send by United States mail written notice of the passage of the resolution to the county's municipal league and the members of the governing body of the county. The municipal league and the members of the governing board of the county shall, within forty-five days of the passage of the resolution establishing the advisory committee or within fourteen days of being notified of a vacancy by the county executive, submit its list of nominees to the county executive. The county executive shall appoint members within sixty days of the passage of the resolution or within thirty days of being notified by the committee of a vacancy on the advisory committee. If a list of nominees is not submitted by the time specified, the county executive shall appoint the members using the criteria set forth in this section before the sixtieth day from the passage of the resolution or before the thirtieth day from being notified of a vacancy on the existing advisory committee.

(5) At the advisory committee's first meeting, the members shall choose by lot the length of their terms. Two shall serve for one year, three for two years, three for three years and three for four years. All succeeding committee members shall serve for four years. Terms shall end on December thirty-first of the respective year.

(6) The committee members shall be subject to the regulation of conflicts of interest as defined in sections 105.450 to 105.498, RSMo, and to the requirements for open meetings and records pursuant to chapter 610, RSMo.**]**

[67.490. PETITIONS, CONTENTS, REVIEW, CRITERIA, APPROVAL BY BOARD AS PROPOSAL, PUBLIC HEARING — PROCEDURE IF FUNDS SOUGHT, ADDITIONAL REVIEW, FINDINGS BY BOARD REQUIRED WHEN — SELECT NEIGHBORHOOD ACTION PROGRAM, ELIGIBLE PROJECTS. — 1. The board shall in a timely manner adopt rules setting forth basic guidelines for acceptance and evaluation of petitions, including a common understandable format, as well as appropriate supporting material, maps, plans and data. The board shall begin to accept petitions one month after the adoption of the plan by the governing body of the county pursuant to section 67.487. The board shall review all petitions submitted by any petitioner. Review shall begin no later than thirty days after submission of the petition to the commission. In order to qualify as a proposal, a petition shall address the criteria set forth in subsection 4 of this section. For the purposes of this subsection, the term "pending" means any proposal submitted to the board which has not yet been approved by the board.

2. When practical, a petition shall be initially submitted to the advisory committee for constructive review and comment in a manner likely to result in a proposal that addresses a strategy outlined in the plan.

3. The board shall hold a public hearing concerning the petition, which may be on the same day as a scheduled meeting of the board.

4. (1) In reviewing any petition for funding, the board shall first determine if funds are sought for eligible expenses for a neighborhood reinvestment project. If the petition seeks such funds, the board shall certify such petition as a proposal subject to further review unless the board finds that the petition seeks funds for expenses that do not qualify as eligible expenses, or seeks funds for an endeavor other than a neighborhood reinvestment project. If the board finds that funds are sought for ineligible expenses or for an ineligible endeavor, the board need not take any further action and shall notify the petitioner in writing of all deficiencies that prevent the petition from being a proposal. If the board determines that there is a minor error or discrepancy in a petition, the board, with the petitioner's concurrence, may make such changes to the petition as are necessary to rectify the error that prevents the petition from being certified as a proposal subject to further review. Within six months of certification of a petition as a proposal, the board shall issue a finding approving or disapproving such proposal. In disapproving any proposal, the board shall issue a document indicating the reasons that the proposal was disapproved.

(2) If the board determines that a proposal is a priority comeback project consistent with the strategies and priorities set forth in the community comeback plan and that the project is well-planned, realistic, creative, resourceful, benefits the local community and is cost-effective, then the board shall award funding. If the board determines that a proposal is a priority comeback project, but is inconsistent with the strategies and priorities in the community comeback plan, the board may award funding if it finds that the project is well-planned, realistic, creative, resourceful, benefits the local community, is cost-effective and addresses the reinvestment needs of neighborhoods by one or more of the following:

(a) Reducing or removing impediments to attracting home buyers;

(b) Providing the necessary physical infrastructure needed to promote significant job growth;

(c) Reducing or removing any such factor or factors that constitute an economic or social liability or a menace to the public health, safety, morals, or welfare in its present condition and use.

(3) If the board determines that a proposal, which is not a priority comeback project, is consistent with the strategies and priorities set forth in the community comeback plan and is well-planned, realistic, creative, resourceful, benefits the local community and is cost-effective, the board may award funding if the board adds such proposal to the plan. If the board determines that a proposal, which is not a priority comeback project, is inconsistent with the strategies and priorities in the community comeback plan, the board may award funding if it finds that the project is well-planned, realistic, creative, resourceful, benefits the local community, is cost-effective and addresses the reinvestment needs of neighborhoods by one or more of the following:

(a) Reducing or removing impediments to attracting home buyers;

(b) Providing the necessary physical infrastructure needed to promote significant job growth;

(c) Reducing or removing any such factor or factors that constitute an economic or social liability or a menace to the public health, safety, morals or welfare in its present condition and use.

(4) The board, the advisory committee and the staff of both may advise petitioners on issues related to petitions or proposals. The board may meet informally, subject to the requirements of chapter 610, RSMo, with representatives of potential petitioners with regard to future petitions and plans.

5. The board shall establish a select neighborhood action program. SNAP applicants shall provide a ten-percent cash or in-kind match to be eligible for a SNAP grant. Project categories eligible for SNAP grant funding shall be:

(1) Neighborhood beautification projects which enhance the appearance of the overall neighborhood. Such projects include, but are not limited to, tree and flower plantings, cleanups, entranceway landscaping, community gardens, public art and neighborhood identification signs/banners;

(2) Neighborhood organization or capacity projects which create or increase membership in a neighborhood organization promoting community betterment. Such projects include, but are not limited to, neighborhood newsletters, neighborhood marketing brochures, neighborhood meetings and special events, and technology such as web site development;

(3) Neighborhood-school partnership projects which benefit a school and the adjacent neighborhood. Involvement of both the school and the neighborhood in planning, implementation and maintenance must be substantiated. Partnership projects include, but are not limited to, youth and community programs that promote safety, culture or the environment and that are beneficial to both the school and the neighborhood;

(4) Capital purchase projects which include the acquisition of equipment or property. Such projects include, but are not limited to, land acquisition, playground equipment, bicycle racks and major supplies;

(5) Neighborhood improvement projects which benefit the local infrastructure in a neighborhood, and include construction of sidewalks or installation of streetlights.

6. Project categories ineligible for SNAP grant funding shall be:

(1) Projects accomplished in more than twelve months;

(2) Projects that duplicate existing private or public programs;

(3) Projects that require ongoing services, or requests to support continual operating budgets; and

(4) Projects that conflict with the community comeback plan.

7. When making SNAP grant funding decisions, the board shall consider the level of neighborhood participation including the percentage of residents who are involved in planning and implementing the idea, the diversity of parties involved or that will benefit, and the amount of neighborhood opposition; the community benefit of the project, including the number of people who will benefit from the project and the overall quality of the project.**]**

[67.493. FUNDS, MINIMUM TO BE USED FOR SNAP GRANT PROGRAM AND PRIORITY COMEBACK PROJECTS, OTHER USES. — Of the funds available to the trust, a minimum of five percent of the funds, not to exceed an unallocated balance of five hundred thousand dollars rolled over from the previous fiscal year, shall be set aside annually for the SNAP grant program. Of the remaining funds seventy-five percent calculated on a rolling three-year average shall be set aside for priority comeback projects. The balance of the funds shall be used to indirectly or directly benefit priority comeback communities or residents of those areas by utilizing such funds to:

(1) Promote job preparation and job creation in areas easily accessed by residents of priority comeback communities;

(2) Improve neighborhoods adjacent to priority comeback communities that are unlikely to be improved without such funding; and

(3) Abate through low-interest home improvement loan programs or similar mechanisms the functional or marketable obsolescence of any owner-occupied residential structure over twenty-five years old which is located within a census block group below one hundred ten percent of the median income level for the metropolitan statistical area for this state; provided that, there is a significant threat of economic decline within the area without intervention by the trust.**]**

SECTION B. EMERGENCY CLAUSE. — Because immediate action is necessary to protect the economic welfare of the citizens of this state, sections 137.100, 144.030, 144.615, and 493.050 of this act are deemed necessary for the immediate preservation of the public health,

welfare, peace, and safety and are hereby declared to be an emergency act within the meaning of the constitution and shall be in full force and effect upon its passage and approval.

Approved July 2, 2004

HB 798 [SCS HCS HB 798]

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

Authorizes certain counties to use moneys from law library funds for courtroom renovation and technology enhancement.

AN ACT to repeal section 488.429, RSMo, and to enact in lieu thereof one new section relating to civil case surcharges.

SECTION

A. Enacting clause.

488.429. Fund paid to treasurer designated by circuit judge — use of fund for law library, and courtroom renovation and technology enhancement in certain counties.

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

SECTION A. ENACTING CLAUSE. — Section 488.429, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 488.429, to read as follows:

488.429. FUND PAID TO TREASURER DESIGNATED BY CIRCUIT JUDGE — USE OF FUND FOR LAW LIBRARY, AND COURTROOM RENOVATION AND TECHNOLOGY ENHANCEMENT IN CERTAIN COUNTIES. — 1. Moneys collected pursuant to section 488.426 shall be payable to the judges of the circuit court, en banc, of the county from which such surcharges were collected, or to such person as is designated by local circuit court rule as treasurer of said fund, and said fund shall be applied and expended under the direction and order of the judges of the circuit court, en banc, of any such county for the maintenance and upkeep of the law library maintained by the bar association in any such county, or such other law library in any such county as may be designated by the judges of the circuit court, en banc, of any such county; provided, that the judges of the circuit court, en banc, of any such county, and the officers of all courts of record of any such county, shall be entitled at all reasonable times to use the library to the support of which said funds are applied.

2. In **[**any county of the first classification without a charter form of government and with a population of at least two hundred thousand**]** **addition**, such fund may also be applied and expended for that county's or circuit's family services and justice fund.

3. In any county **[**of the third classification without a township form of government and with more than forty thousand eight hundred but less than forty thousand nine hundred inhabitants, in any county of the third classification without a township form of government and with more than forty thousand four hundred but less than forty thousand five hundred inhabitants, in any county of the third classification without a township form of government and with more than thirteen thousand four hundred but less than thirteen thousand five hundred inhabitants, in any county of the third classification without a township form of government and with more than thirteen thousand five hundred but less than thirteen thousand six hundred inhabitants, in any county of the third classification without a township form of government and with more than twenty-three thousand two hundred fifty but less than twenty-three thousand

three hundred fifty inhabitants, in any county of the third classification without a township form of government and with more than eleven thousand seven hundred fifty but less than eleven thousand eight hundred fifty inhabitants, in any county of the third classification without a township form of government and with more than thirty-seven thousand two hundred but less than thirty-seven thousand three hundred inhabitants, in any county of the fourth classification with more than fifty-five thousand six hundred but less than fifty-five thousand seven hundred inhabitants, or in any county of the first classification with more than ninety-three thousand eight hundred but less than ninety-three thousand nine hundred inhabitants**] other than a county on the nonpartisan court plan**, such fund may also be applied and expended for courtroom renovation and technology enhancement **[**in those counties**], or for debt service on county bonds for such renovation or enhancement projects**.

Approved July 2, 2004

HB 822 [SCS HB 822]

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

Prohibits certain local orders and ordinances related to amateur radio antennae.

AN ACT to amend chapter 67, RSMo, by adding thereto one new section relating to amateur radio antenna regulations.

SECTION
A. Enacting clause.
67.329. Local ordinances regulating amateur radio antennas authorized, limitations, requirements — historic preservation considerations allowed.

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

SECTION A. ENACTING CLAUSE. — Chapter 67, RSMo, is amended by adding thereto one new section, to be known as section 67.329, to read as follows:

67.329. LOCAL ORDINANCES REGULATING AMATEUR RADIO ANTENNAS AUTHORIZED, LIMITATIONS, REQUIREMENTS — HISTORIC PRESERVATION CONSIDERATIONS ALLOWED. — 1. No political subdivision shall enact or enforce any order or ordinance that does not comply with the limited preemption of the Federal Communications Commission Amateur Radio Preemption order, published at 101 F.C.C. 2d 952 (1985), or any regulation related to amateur radio service adopted under 47 CFR Part 97. Any order or ordinance relating to the placement, screening, or height of an amateur radio antenna based on health, safety, or aesthetic considerations shall reasonably accommodate amateur communications and represent the minimal practicable regulation to accomplish the political subdivision's legitimate purpose. To the extent not preempted by federal law, nothing in this section shall prohibit a political subdivision from adopting an order or ordinance prohibiting amateur radio communications equipment from interfering with the reception of broadcast radio or television signals.

2. The provisions of this section do not prohibit a political subdivision from taking action to protect or preserve a historic, a historical, or an architectural district that is established by the political subdivision or pursuant to state or federal law.

Approved June 24, 2004

HB 826 [SCS HB 826 AND HCS HB 883]

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

Designates various portions of highways and bridges as memorials.

AN ACT to amend chapters 227 and 234, RSMo, by adding thereto three new sections relating to memorial highways.

SECTION

A. Enacting clause.
227.346. U.S. Submarine Veterans' Memorial Highway designated for portion of Interstate 70 in Saline County.
227.347. Laura Ingalls Wilder Memorial Highway designated for a portion of Highway A between the city of Mansfield and the city of Macomb.
234.707. Brown-Stinson Memorial Bridge designated for bridge number A4975 located in Franklin County.

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

SECTION A. ENACTING CLAUSE. — Chapters 227 and 237, RSMo, are amended by adding thereto three new sections, to be known as sections 227.346, 227.347, and 234.707, to read as follows:

227.346. U.S. SUBMARINE VETERANS' MEMORIAL HIGHWAY DESIGNATED FOR PORTION OF INTERSTATE 70 IN SALINE COUNTY. — The portion of interstate highway 70 between mile marker 69 in any county of the fourth classification with more than twenty-three thousand seven hundred but less than twenty-three thousand eight hundred inhabitants and east to mile marker 123 in any county of the first classification with more than one hundred thirty-five thousand four hundred but less than one hundred thirty-five thousand five hundred inhabitants, except where otherwise designated, shall be designated the "U.S. Submarine Veterans' Memorial Highway", and shall represent in its fifty-four mile stretch the fifty-four submarines lost during war and the Cold War. The department of transportation shall erect and maintain appropriate signs designating such highway, with the cost of such signs to be paid by the submarine veterans' association.

227.347. LAURA INGALLS WILDER MEMORIAL HIGHWAY DESIGNATED FOR A PORTION OF HIGHWAY A BETWEEN THE CITY OF MANSFIELD AND THE CITY OF MACOMB. — The portion of highway A beginning at the intersection of business route 60 on the town square in the city of Mansfield and proceeding east to its intersection with highway K in the city of Macomb, except where otherwise designated, shall be designated the "Laura Ingalls Wilder Memorial Highway" in dedication to the author and her contribution to the state of Missouri. The department of transportation shall erect and maintain appropriate signs commemorating this portion of highway A at its discretion, and the Laura Ingalls Wilder Museum shall pay for all such signs.

234.707. BROWN-STINSON MEMORIAL BRIDGE DESIGNATED FOR BRIDGE NUMBER A4975 LOCATED IN FRANKLIN COUNTY. — The bridge, bridge number A4975, located at log mile 1.067 on Missouri Route 30 within Franklin County shall be designated the "Brown-Stinson Memorial Bridge".

Approved July 2, 2004

HB 833 [SS SCS HCS HB 833]

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

Authorizes creation of various exhibition centers and recreational facilities districts.

AN ACT to repeal sections 67.478, 67.481, 67.484, 67.487, 67.490, 67.493, 67.793, 67.799, 67.1706, 67.1754, 144.757, 144.759, and 644.032, RSMo, and to enact in lieu thereof fifteen new sections relating to counties.

SECTION

A. Enacting clause.
67.793. Petition to create a regional recreational district — filed where — content — hearing.
67.799. Regional recreational district may levy property or sales tax, purpose — rate of tax — election, ballot form — tax, how collected — qualified voters defined.
67.1706. District to develop, operate and maintain system of interconnecting trails and parks — power to contract with other parks.
67.1754. Sales tax, how allocated.
67.2000. Creation of an exhibition center and recreational facility district, petition, hearing, ballot form — board of trustees, powers — trust fund created — sales tax authorization, procedure — dissolution of district (Buchanan, Camden, Cole, Greene, Jefferson, Miller, Morgan, Newton, and Wright counties).
67.2500. Establishment of a district, where — definitions (St. Charles County).
67.2505. Purpose of district — name — size — subdistricts permitted — procedure for establishment of a district.
67.2510. Alternative procedure for establishment of a district.
67.2515. Petition, contents, notice — hearing — district declared organized, when.
67.2520. Election conducted, when — sales tax vote, amount — ballot form.
67.2525. Board of directors, qualifications — subdivision of district, how — powers and duties of the board.
67.2530. Refund of district indebtedness, when, how — imposition of a sales tax authorized — deposit and use of sales tax revenue — repeal of sales tax, ballot form.
144.757. Local use tax to fund community comeback program — rate of tax — St. Louis County — ballot of submission — notice to director of revenue — repeal or reduction of local sales tax, effect on local use tax.
144.759. Collection of additional local use tax for economic development — deposit in local use tax trust fund, not part of state revenue — distribution to counties and municipalities — refunds — notification to director of revenue on abolishment of tax — economic development defined.
644.032. Sales tax for purpose of storm water control or local parks or both may be imposed by any county or municipality — tax, how calculated — voter approval — ballot form — effective when — failure of tax, resubmission, when — revenue may be used for parks located outside of county or municipality, when.
67.478. Title.
67.481. Definitions.
67.484. St. Louis County authorized to form community comeback trust, purposes, formation — board, composition, nomination, powers, duties, restrictions — funding, local sales tax, bond issuance, validity, payment.
67.487. Community comeback plan, notification, development, distribution, annual revision and adoption — reports and audits required — advisory committee to be established by the board.
67.490. Petitions, contents, review, criteria, approval by board as proposal, public hearing — procedure if funds sought, additional review, findings by board required when — select neighborhood action program, eligible projects.
67.493. Funds, minimum to be used for SNAP grant program and priority comeback projects, other uses.

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

SECTION A. ENACTING CLAUSE. — Sections 67.478, 67.481, 67.484, 67.487, 67.490, 67.493, 67.793, 67.799, 67.1706, 67.1754, 144.757, 144.759, and 644.032, RSMo, are repealed and fifteen new sections enacted in lieu thereof, to be known as sections 67.793, 67.799, 67.1706, 67.1754, 67.2000, 67.2500, 67.2505, 67.2510, 67.2515, 67.2520, 67.2525, 67.2530, 144.757, 144.759, and 644.032, to read as follows:

67.793. PETITION TO CREATE A REGIONAL RECREATIONAL DISTRICT — FILED WHERE — CONTENT — HEARING. — 1. Whenever the creation of a regional recreational district is desired, one hundred or more persons residing in the proposed district may file with the county clerk in which the greater part of the proposed district's population resides a petition requesting the creation of the regional recreational district. In case the proposed district is situated in two or more counties, the petition shall be filed in the office of the county clerk of the county in which the greater part of the proposed district's population resides, and the governing body of that county shall set the petition for public hearing and conduct such hearing. The petition shall set forth:

(1) A description of the territory to be embraced in the proposed district;

(2) The names of the municipalities located within the proposed district;

(3) The name of the proposed district;

(4) The population of the proposed district;

(5) The assessed valuation of the proposed district;

(6) The type and rate of tax proposed to be levied; and

(7) A request that the question be submitted to the voters residing within the limits of the proposed regional recreational district whether they will establish a regional recreational district pursuant to the provisions of sections 67.792 to 67.799 to be known as ". . . Regional Recreational District" for the purpose of establishing, operating and maintaining public parks, neighborhood trails and recreational facilities within the boundaries of the district.

2. Whenever one hundred or more persons residing in an area contiguous to an existing regional recreational district desire to become part of that contiguous district, such persons may file a petition with the county clerk of the county in which the greater part of the population within the proposed addition to the district resides, and the governing body of that county shall set the petition for public hearing and conduct such hearing. The petition for the addition to a district shall set forth the same facts required for the creation of such a district pursuant to subdivisions (1) to (7) of subsection 1 of this section, except that:

(1) Subdivision (6) of subsection 1 of this section shall only permit the imposition of a tax on the real property located within the addition to the district; and

(2) Subdivision (7) of subsection 1 of this section shall, in the petition for the addition, be a request that the question be submitted to the voters residing within the limits of the proposed addition to the ". . . . . regional recreational district" as to whether or not they will become a part of the ". . . . . regional recreational district" for the purpose of establishing, operating and maintaining public parks, neighborhood trails and recreational facilities within the boundaries of such district.

3. The petition shall, after having been filed pursuant to this section, receive a hearing by the governing body of the county of filing pursuant to section 67.794.

4. The governing body of any county otherwise eligible to participate in a regional recreational district may directly authorize, by ordinance, the creation of a regional recreational district or an addition to an existing regional recreational district without the submission of a petition. The governing body of each such county shall, upon the enactment of such ordinance, submit the question of its approval to the voters in such county. If less than an entire county is proposed to participate in such a regional recreational district, the question may be submitted to the **registered and qualified** voters residing in the proposed [area, provided, that any regional recreational district which is supported by a sales tax shall be approved by the voters of the entire county] **district, or if no registered and qualified voters reside in the proposed district, to the owners of the real property located within the proposed district. Any ordinance adopted by the governing body creating a regional recreational district supported by a sales tax but with no registered and qualified voters residing within the proposed district boundaries shall be unanimously approved by the owners of real property within the proposed district**. The proposed district shall consist only of those counties, or portions of counties, where the governing body has approved an ordinance to create a district.

67.799. REGIONAL RECREATIONAL DISTRICT MAY LEVY PROPERTY OR SALES TAX, PURPOSE — RATE OF TAX — ELECTION, BALLOT FORM — TAX, HOW COLLECTED — QUALIFIED VOTERS DEFINED. — 1. A regional recreational district may, by a majority vote of its board of directors, impose an annual property tax for the establishment and maintenance of public parks and recreational facilities and grounds within the boundaries of the regional recreational district not to exceed sixty cents per year on each one hundred dollars of assessed valuation on all property within the district, except that no such tax shall become effective unless the board of directors of the district submits to the voters of the district, at a county or state general, primary or special election, a proposal to authorize the tax.

2. The question shall be submitted in substantially the following form:

Shall a . . . . . cent tax per one hundred dollars assessed valuation be levied for public parks and recreational facilities?

YES NO

If a majority of the votes cast on the proposal by the qualified voters voting thereon are in favor of the proposal, then the tax shall become effective. If a majority of the votes cast by the qualified voters voting are opposed to the proposal, then the board of directors shall have no power to impose the tax unless and until the board of directors of the district submits another proposal to authorize the tax and such proposal is approved by a majority of the qualified voters voting thereon.

3. The property tax authorized in subsections 1 and 2 of this section shall be levied and collected in the same manner as other ad valorem property taxes are levied and collected.

4. (1) A regional recreational district may, by a majority vote of its board of directors, impose a tax not to exceed one-half of one cent on all retail sales subject to taxation pursuant to sections 144.010 to 144.525, RSMo, for the purpose of funding the creation, operation and maintenance of public parks, recreational facilities and grounds within the boundaries of a regional recreational district. The tax authorized by this subsection shall be in addition to all other sales taxes allowed by law. No tax pursuant to this subsection shall become effective unless the board of directors submits to the voters of the district, at a county or state general, primary or special election, a proposal to authorize the tax, and such tax shall become effective only after the majority of the voters voting on such tax approve such tax. [Only whole counties participating in a regional recreational district shall be able to impose a sales tax pursuant to this subsection.]

(2) In the event the district seeks to impose a sales tax pursuant to this subsection, the question shall be submitted in substantially the following form:

Shall a . . . . cent sales tax be levied on all retail sales within the district for public parks and recreational facilities?

YES NO

If a majority of the votes cast on the proposal by the qualified voters voting thereon are in favor of the proposal, then the tax shall become effective. If a majority of the votes cast by the qualified voters voting are opposed to the proposal, then the board of directors shall have no power to impose the tax unless and until another proposal to authorize the tax is submitted to the voters of the district and such proposal is approved by a majority of the qualified voters voting thereon. The provisions of sections 32.085 and 32.087, RSMo, shall apply to any tax approved pursuant to this subsection.

5. As used in this section, "qualified voters" or "voters" means any individuals residing within the proposed district who are eligible to be registered voters and who have registered to vote under chapter 115, RSMo, or, if no individuals eligible and registered to vote reside within the proposed district, all of the owners of real property located within the proposed district who have unanimously petitioned for or consented to the adoption of an ordinance by the governing body imposing a tax authorized in this section. If the owner of the property within the proposed district is a political subdivision or

corporation of the state, the governing body of such political subdivision or corporation shall be considered the owner for purposes of this section.

67.1706. DISTRICT TO DEVELOP, OPERATE AND MAINTAIN SYSTEM OF INTERCONNECTING TRAILS AND PARKS — POWER TO CONTRACT WITH OTHER PARKS. — The metropolitan district shall have as its **[**primary**]** duty the development, operation and maintenance of a public system of interconnecting trails and parks throughout the counties comprising the district. **Nothing in this section shall restrict the district's entering into and initiating projects dealing with parks not necessarily connected to trails.** The metropolitan district shall supplement but shall not substitute for the powers and responsibilities of the other parks and recreation systems within the metropolitan district **or other conservation and environmental regulatory agencies** and shall have the power to contract with other parks and recreation systems as well as with other public and private entities. **Nothing in this section shall give the metropolitan district authority to regulate water quality, watershed or land use issues in the counties comprising the district.**

67.1754. SALES TAX, HOW ALLOCATED. — The sales tax authorized in sections 67.1712 to 67.1721 shall be collected and allocated as follows:

(1) Fifty percent of the sales taxes collected from each county shall be deposited in the metropolitan park and recreational fund to be administered by the board of directors of the district to pay costs associated with the establishment, administration, operation and maintenance of public recreational facilities, parks, and public recreational grounds associated with the district. Costs for office administration beginning in the second fiscal year of district operations may be up to but shall not exceed fifteen percent of the amount deposited pursuant to this subdivision;

(2) Fifty percent of the sales taxes collected from each county shall be returned to the source county for park purposes, except that forty percent of such fifty percent amount shall be reserved for distribution to municipalities within the county in the form of grant revenue sharing funds. Each county in the district shall establish its own process for awarding the grant proceeds to its municipalities for park purposes **provided the purposes of such grants are consistent with the purpose of the district**. In the case of a county of the first classification with a charter form of government having a population of at least nine hundred thousand inhabitants, such grant proceeds shall be awarded to municipalities by a municipal grant commission as described in section 67.1757.

67.2000. CREATION OF AN EXHIBITION CENTER AND RECREATIONAL FACILITY DISTRICT, PETITION, HEARING, BALLOT FORM — BOARD OF TRUSTEES, POWERS — TRUST FUND CREATED — SALES TAX AUTHORIZATION, PROCEDURE — DISSOLUTION OF DISTRICT (BUCHANAN, CAMDEN, COLE, GREENE, JEFFERSON, MILLER, MORGAN, NEWTON, AND WRIGHT COUNTIES). — 1. This section shall be known as the "Exhibition Center and Recreational Facility District Act".

2. Whenever not less than fifty owners of real property located within any county of the first classification with more than eighty-five thousand nine hundred but less than eighty-six thousand inhabitants, or any county of the second classification with more than fifty-two thousand six hundred but less than fifty-two thousand seven hundred inhabitants, or any county of the first classification with more than one hundred four thousand six hundred but less than one hundred four thousand seven hundred inhabitants, or any county of the third classification without a township form of government and with more than seventeen thousand nine hundred but less than eighteen thousand inhabitants, or any county of the first classification with more than thirty-seven thousand but less than thirty-seven thousand one hundred inhabitants, or any county of the third classification without a township form of government and with more than twenty-three thousand five hundred but less than twenty-three thousand six hundred

inhabitants, or any county of the third classification without a township form of government and with more than nineteen thousand three hundred but less than nineteen thousand four hundred inhabitants, or any county of the first classification with more than seventy-one thousand three hundred but less than seventy-one thousand four hundred inhabitants, or any county of the first classification with more than one hundred ninety-eight thousand but less than one hundred ninety-nine thousand two hundred inhabitants, desire to create an exhibition center and recreational facility district, the property owners shall file a petition with the governing body of each county located within the boundaries of the proposed district requesting the creation of the district. The district boundaries may include all or part of the counties described in this section. The petition shall contain the following information:

(1) The name and residence of each petitioner and the location of the real property owned by the petitioner;

(2) A specific description of the proposed district boundaries, including a map illustrating the boundaries; and

(3) The name of the proposed district.

3. Upon the filing of a petition pursuant to this section, the governing body of any county described in this section may, by resolution, approve the creation of a district. Any resolution to establish such a district shall be adopted by the governing body of each county located within the proposed district, and shall contain the following information:

(1) A description of the boundaries of the proposed district;

(2) The time and place of a hearing to be held to consider establishment of the proposed district;

(3) The proposed sales tax rate to be voted on within the proposed district; and

(4) The proposed uses for the revenue generated by the new sales tax.

4. Whenever a hearing is held as provided by this section, the governing body of each county located within the proposed district shall:

(1) Publish notice of the hearing on two separate occasions in at least one newspaper of general circulation in each county located within the proposed district, with the first publication to occur not more than thirty days before the hearing, and the second publication to occur not more than fifteen days or less than ten days before the hearing;

(2) Hear all protests and receive evidence for or against the establishment of the proposed district; and

(3) Rule upon all protests, which determinations shall be final.

5. Following the hearing, if the governing body of each county located within the proposed district decides to establish the proposed district, it shall adopt an order to that effect; if the governing body of any county located within the proposed district decides to not establish the proposed district, the boundaries of the proposed district shall not include that county. The order shall contain the following:

(1) The description of the boundaries of the district;

(2) A statement that an exhibition center and recreational facility district has been established;

(3) The name of the district;

(4) The uses for any revenue generated by a sales tax imposed pursuant to this section; and

(5) A declaration that the district is a political subdivision of the state.

6. A district established pursuant to this section may, at a general, primary, or special election, submit to the qualified voters within the district boundaries a sales tax of one-fourth of one percent, for a period not to exceed twenty-five years, on all retail sales within the district, which are subject to taxation pursuant to sections 144.010 to 144.525, RSMo, to fund the acquisition, construction, maintenance, operation, improvement, and

promotion of an exhibition center and recreational facilities. The ballot of submission shall be in substantially the following form:

Shall the ..... (name of district) impose a sales tax of one-fourth of one percent to fund the acquisition, construction, maintenance, operation, improvement, and promotion of an exhibition center and recreational facilities, for a period of ..... (insert number of years)?

YES NO

If you are in favor of the question, place an "X" in the box opposite "YES". If you are opposed to the question, place an "X" in the box opposite "NO".

If a majority of the votes cast in the portion of any county that is part of the proposed district favor the proposal, then the sales tax shall become effective in that portion of the county that is part of the proposed district on the first day of the first calendar quarter immediately following the election. If a majority of the votes cast in the portion of a county that is a part of the proposed district oppose the proposal, then that portion of such county shall not impose the sales tax authorized in this section until after the county governing body has submitted another such sales tax proposal and the proposal is approved by a majority of the qualified voters voting thereon. However, if a sales tax proposal is not approved, the governing body of the county shall not resubmit a proposal to the voters pursuant to this section sooner than twelve months from the date of the last proposal submitted pursuant to this section. If the qualified voters in two or more counties that have contiguous districts approve the sales tax proposal, the districts shall combine to become one district.

7. There is hereby created a board of trustees to administer any district created and the expenditure of revenue generated pursuant to this section consisting of four individuals to represent each county approving the district, as provided in this subsection. The governing body of each county located within the district, upon approval of that county's sales tax proposal, shall appoint four members to the board of trustees; at least one shall be an owner of a nonlodging business located within the taxing district, or their designee, at least one shall be an owner of a lodging facility located within the district, or their designee, and all members shall reside in the district except that one nonlodging business owner, or their designee, and one lodging facility owner, or their designee, may reside outside the district. Each trustee shall be at least twenty-five years of age and a resident of this state. Of the initial trustees appointed from each county, two shall hold office for two years, and two shall hold office for four years. Trustees appointed after expiration of the initial terms shall be appointed to a four-year term by the governing body of the county the trustee represents, with the initially appointed trustee to remain in office until a successor is appointed, and shall take office upon being appointed. Each trustee may be reappointed. Vacancies shall be filled in the same manner in which the trustee vacating the office was originally appointed. The trustees shall not receive compensation for their services, but may be reimbursed for their actual and necessary expenses. The board shall elect a chair and other officers necessary for its membership. Trustees may be removed if:

(1) By a two-thirds vote, the board moves for the member's removal and submits such motion to the governing body of the county from which the trustee was appointed; and

(2) The governing body of the county from which the trustee was appointed, by a majority vote, adopts the motion for removal.

8. The board of trustees shall have the following powers, authority, and privileges:

(1) To have and use a corporate seal;

(2) To sue and be sued, and be a party to suits, actions, and proceedings;

(3) To enter into contracts, franchises, and agreements with any person or entity, public or private, affecting the affairs of the district, including contracts with any

municipality, district, or state, or the United States, and any of their agencies, political subdivisions, or instrumentalities, for the funding, including without limitation interest rate exchange or swap agreements, planning, development, construction, acquisition, maintenance, or operation of a single exhibition center and recreational facilities or to assist in such activity. "Recreational facilities", means locations explicitly designated for public use where the primary use of the facility involves participation in hobbies or athletic activities;

(4) To borrow money and incur indebtedness and evidence the same by certificates, notes, or debentures, to issue bonds and use any one or more lawful funding methods the district may obtain for its purposes at such rates of interest as the district may determine. Any bonds, notes, and other obligations issued or delivered by the district may be secured by mortgage, pledge, or deed of trust of any or all of the property and income of the district. Every issue of such bonds, notes, or other obligations shall be payable out of property and revenues of the district and may be further secured by other property of the district, which may be pledged, assigned, mortgaged, or a security interest granted for such payment, without preference or priority of the first bonds issued, subject to any agreement with the holders of any other bonds pledging any specified property or revenues. Such bonds, notes, or other obligations shall be authorized by resolution of the district board, and shall bear such date or dates, and shall mature at such time or times, but not in excess of thirty years, as the resolution shall specify. Such bonds, notes, or other obligations shall be in such denomination, bear interest at such rate or rates, be in such form, either coupon or registered, be issued as current interest bonds, compound interest bonds, variable rate bonds, convertible bonds, or zero coupon bonds, be issued in such manner, be payable in such place or places, and be subject to redemption as such resolution may provide, notwithstanding section 108.170, RSMo. The bonds, notes, or other obligations may be sold at either public or private sale, at such interest rates, and at such price or prices as the district shall determine;

(5) To acquire, transfer, donate, lease, exchange, mortgage, and encumber real and personal property in furtherance of district purposes;

(6) To refund any bonds, notes, or other obligations of the district without an election. The terms and conditions of refunding obligations shall be substantially the same as those of the original issue, and the board shall provide for the payment of interest at not to exceed the legal rate, and the principal of such refunding obligations in the same manner as is provided for the payment of interest and principal of obligations refunded;

(7) To have the management, control, and supervision of all the business and affairs of the district, and the construction, installation, operation, and maintenance of district improvements therein; to collect rentals, fees, and other charges in connection with its services or for the use of any of its facilities;

(8) To hire and retain agents, employees, engineers, and attorneys;

(9) To receive and accept by bequest, gift, or donation any kind of property;

(10) To adopt and amend bylaws and any other rules and regulations not in conflict with the constitution and laws of this state, necessary for the carrying on of the business, objects, and affairs of the board and of the district; and

(11) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted by this section.

9. There is hereby created the "Exhibition Center and Recreational Facility District Sales Tax Trust Fund", which shall consist of all sales tax revenue collected pursuant to this section. The director of revenue shall be custodian of the trust fund, and moneys in the trust fund shall be used solely for the purposes authorized in this section. Moneys in the trust fund shall be considered nonstate funds pursuant to section 15, article IV, Constitution of Missouri. The director of revenue shall invest moneys in the trust fund in the same manner as other funds are invested. Any interest and moneys earned on such

investments shall be credited to the trust fund. All sales taxes collected by the director of revenue pursuant to this section on behalf of the district, less one percent for the cost of collection which shall be deposited in the state's general revenue fund after payment of premiums for surety bonds as provided in section 32.087, RSMo, shall be deposited in the trust fund. The director of revenue shall keep accurate records of the amount of moneys in the trust fund which was collected in the district imposing a sales tax pursuant to this section, and the records shall be open to the inspection of the officers of each district and the general public. Not later than the tenth day of each month, the director of revenue shall distribute all moneys deposited in the trust fund during the preceding month to the district. The director of revenue may authorize refunds from the amounts in the trust fund and credited to the district for erroneous payments and overpayments made, and may redeem dishonored checks and drafts deposited to the credit of the district.

10. The sales tax authorized by this section is in addition to all other sales taxes allowed by law. Except as modified in this section, all provisions of sections 32.085 and 32.087, RSMo, apply to the sales tax imposed pursuant to this section.

11. Any sales tax imposed pursuant to this section shall not extend past the initial term approved by the voters unless an extension of the sales tax is submitted to and approved by the qualified voters in each county in the manner provided in this section. Each extension of the sales tax shall be for a period not to exceed twenty years. The ballot of submission for the extension shall be in substantially the following form:

Shall the ..... (name of district) extend the sales tax of one-fourth of one percent for a period of ..... (insert number of years) years to fund the acquisition, construction, maintenance, operation, improvement, and promotion of an exhibition center and recreational facilities?

YES NO

If you are in favor of the question, place an "X" in the box opposite "YES". If you are opposed to the question, place an "X" in the box opposite "NO".

If a majority of the votes cast favor the extension, then the sales tax shall remain in effect at the rate and for the time period approved by the voters. If a sales tax extension is not approved, the district may submit another sales tax proposal as authorized in this section, but the district shall not submit such a proposal to the voters sooner than twelve months from the date of the last extension submitted.

12. Once the sales tax authorized by this section is abolished or terminated by any means, all funds remaining in the trust fund shall be used solely for the purposes approved in the ballot question authorizing the sales tax. The sales tax shall not be abolished or terminated while the district has any financing or other obligations outstanding; provided that any new financing, debt, or other obligation or any restructuring or refinancing of an existing debt or obligation incurred more than ten years after voter approval of the sales tax provided in this section or more than ten years after any voter approved extension thereof shall not cause the extension of the sales tax provided in this section or cause the final maturity of any financing or other obligations outstanding to be extended. Any funds in the trust fund which are not needed for current expenditures may be invested by the district in the securities described in subdivisions (1) to (12) of subsection 1 of section 30.270, RSMo, or repurchase agreements secured by such securities. If the district abolishes the sales tax, the district shall notify the director of revenue of the action at least ninety days before the effective date of the repeal, and the director of revenue may order retention in the trust fund, for a period of one year, of two percent of the amount collected after receipt of such notice to cover possible refunds or overpayment of the sales tax and to redeem dishonored checks and drafts deposited to the credit of such accounts. After one year has elapsed after the effective date of abolition of the sales tax in the district, the director of revenue shall remit the balance in the account to the district and

close the account of the district. The director of revenue shall notify the district of each instance of any amount refunded or any check redeemed from receipts due the district.

13. In the event that the district is dissolved or terminated by any means, the governing bodies of the counties in the district shall appoint a person to act as trustee for the district so dissolved or terminated. Before beginning the discharge of duties, the trustee shall take and subscribe an oath to faithfully discharge the duties of the office, and shall give bond with sufficient security, approved by the governing bodies of the counties, to the use of the dissolved or terminated district, for the faithful discharge of duties. The trustee shall have and exercise all powers necessary to liquidate the district, and upon satisfaction of all remaining obligations of the district, shall pay over to the county treasurer of each county in the district and take receipt for all remaining moneys in amounts based on the ratio the levy of each county bears to the total levy for the district in the previous three years or since the establishment of the district, whichever time period is shorter. Upon payment to the county treasurers, the trustee shall deliver to the clerk of the governing body of any county in the district all books, papers, records, and deeds belonging to the dissolved district.

67.2500. ESTABLISHMENT OF A DISTRICT, WHERE — DEFINITIONS (ST. CHARLES COUNTY). — 1. The governing body of any city, town, or village that is within a first class county with a charter form of government with a population over two hundred fifty thousand that adjoins a first class county with a charter form of government with a population over nine hundred thousand, may establish a theater, cultural arts, and entertainment district in the manner provided in section 67.2505.

2. Sections 67.2500 to 67.2530 shall be known as the "Theater, Cultural Arts, and Entertainment District Act".

3. As used in sections 67.2500 to 67.2530, the following terms mean:

(1) "District", a theater, cultural arts, and entertainment district organized under this section;

(2) "Qualified electors", "qualified voters", or "voters", registered voters residing within the district or subdistrict, or proposed district or subdistrict, who have registered to vote pursuant to chapter 115, RSMo, or, if there are no persons eligible to be registered voters residing in the district or subdistrict, proposed district or subdistrict, property owners, including corporations and other entities, that are owners of real property;

(3) "Registered voters", persons qualified and registered to vote pursuant to chapter 115, RSMo; and

(4) "Subdistrict", a subdivision of a district, but not a separate political subdivision, created for the purposes specified in subsection 5 of section 67.2505.

67.2505. PURPOSE OF DISTRICT — NAME — SIZE — SUBDISTRICTS PERMITTED — PROCEDURE FOR ESTABLISHMENT OF A DISTRICT. — 1. A district may be created to fund, promote, and provide educational, civic, musical, theatrical, cultural, concerts, lecture series, and related or similar entertainment events or activities, and to fund, promote, plan, design, construct, improve, maintain, and operate public improvements, transportation projects, and related facilities in the district.

2. A district is a political subdivision of the state.

3. The name of a district shall consist of a name chosen by the original petitioners, preceding the words "theater, cultural arts, and entertainment district".

4. The district shall include a minimum of fifty contiguous acres.

5. Subdistricts shall be formed for the purpose of voting upon proposals for the creation of the district or subsequent proposed subdistrict, voting upon the question of imposing a proposed sales tax, and for representation on the board of directors, and for no other purpose.

6. Whenever the creation of a district is desired, one or more registered voters from each subdistrict of the proposed district, or one or more property owners who collectively own one or more parcels of real estate comprising at least a majority of the land situated in the proposed subdistricts within the proposed district, may file a petition requesting the creation of a district with the governing body of the city, town, or village within which the proposed district is to be established. The petition shall contain the following information:

(1) The name, address, and phone number of each petitioner and the location of the real property owned by the petitioner;

(2) The name of the proposed district;

(3) A legal description of the proposed district, including a map illustrating the district boundaries, which shall be contiguous, and the division of the district into at least five, but not more than fifteen, subdistricts that shall contain, or are projected to contain upon full development of the subdistricts, approximately equal populations;

(4) A statement indicating the number of directors to serve on the board, which shall be not less than five or more than fifteen;

(5) A request that the district be established;

(6) A general description of the activities that are planned for the district;

(7) A proposal for a sales tax to fund the district initially, pursuant to the authority granted in sections 67.2500 to 67.2530, together with a request that the imposition of the sales tax be submitted to the qualified voters within the district;

(8) A statement that the proposed district shall not be an undue burden on any owner of property within the district and is not unjust or unreasonable;

(9) A request that the question of the establishment of the district be submitted to the qualified voters of the district;

(10) A signed statement that the petitioners are authorized to submit the petition to the governing body; and

(11) Any other items the petitioners deem appropriate.

7. Upon the filing of a petition pursuant to this section, the governing body of any city, town, or village described in this section may pass a resolution containing the following information:

(1) A description of the boundaries of the proposed district and each subdistrict;

(2) The time and place of a hearing to be held to consider establishment of the proposed district;

(3) The timeframe and manner for the filing of protests;

(4) The proposed sales tax rate to be voted upon within the subdistricts of the proposed district;

(5) The proposed uses for the revenue to be generated by the new sales tax; and

(6) Such other matters as the governing body may deem appropriate.

8. Prior to the governing body certifying the question of the district's creation and imposing a sales tax for approval by the qualified electors, a hearing shall be held as provided by this subsection. The governing body of the municipality approving a resolution as set forth in section 67.2520 shall:

(1) Publish notice of the hearing, which shall include the information contained in the resolution cited in section 67.2520, on two separate occasions in at least one newspaper of general circulation in the county where the proposed district is located, with the first publication to occur not more than thirty days before the hearing, and the second publication to occur not more than fifteen days or less than ten days before the hearing;

(2) Hear all protests and receive evidence for or against the establishment of the proposed district; and

(3) Consider all protests, which determinations shall be final.

The costs of printing and publication of the notice shall be paid by the petitioners. If the district is organized pursuant to sections 67.2500 to 67.2530, the petitioners may be reimbursed for such costs out of the revenues received by the district.

9. Following the hearing, the governing body of any city, town, or village within which the proposed district will be located may order an election on the questions of the district creation and sales tax funding for voter approval and certify the questions to the municipal clerk. The election order shall include the date on which the ballots will be mailed to qualified electors, which shall be not sooner than the eighth Tuesday from the issuance of the order. The election regarding the incorporation of the district and the imposing of the sales tax shall follow the procedure set forth in section 67.2520, and shall be held pursuant to the order and certification by the governing body. Only those subdistricts approving the question of creating the district and imposing the sales tax shall become part of the district.

10. If the results of the election conducted in accordance with section 67.2520 show that a majority of the votes cast were in favor of organizing the district and imposing the sales tax, the governing body may establish the proposed district in those subdistricts approving the question of creating the district and imposing the sales tax, by adopting an ordinance to that effect. The ordinance establishing the district shall contain the following:

(1) The description of the boundaries of the district and each subdistrict;

(2) A statement that a theater, cultural arts, and entertainment district has been established;

(3) A declaration that the district is a political subdivision of the state;

(4) The name of the district;

(5) The date on which the sales tax election in the subdistricts was held, and the result of the election;

(6) The uses for any revenue generated by a sales tax imposed pursuant to this section;

(7) A certification to the newly created district of the election results, including the election concerning the sales tax; and

(8) Such other matters as the governing body deems appropriate.

11. Any subdistrict that does not approve the creation of the district and imposing the sales tax shall not be a part of the district and the sales tax shall not be imposed until after the district board of directors has submitted another proposal for the inclusion of the area into the district and such proposal and the sales tax proposal are approved by a majority of the qualified voters in the subdistrict voting thereon. Such subsequent elections shall be conducted in accordance with section 67.2520; provided, however, that the district board of directors may place the question of the inclusion of a subdistrict within a district and the question of imposing a sales tax before the voters of a proposed subdistrict, and the municipal clerk, or circuit clerk if the district is formed by the circuit court, shall conduct the election. In subsequent elections, the election judges shall certify the election results to the district board of directors.

67.2510. ALTERNATIVE PROCEDURE FOR ESTABLISHMENT OF A DISTRICT. — As a complete alternative to the procedure establishing a district set forth in section 67.2505, a circuit court with jurisdiction over any city, town, or village that is within a first class county with a charter form of government with a population over two hundred fifty thousand that adjoins a first class county with a charter form of government with a population over nine hundred thousand, may establish a theater, cultural arts, and entertainment district in the manner provided in section 67.2515.

67.2515. PETITION, CONTENTS, NOTICE — HEARING — DISTRICT DECLARED ORGANIZED, WHEN. — 1. Whenever the creation of a theater, cultural arts, and

entertainment district is desired, one or more registered voters from each subdistrict of the proposed district, or if there are no registered voters in a subdistrict, one or more property owners who collectively own one or more parcels of real estate comprising at least a majority of the land situated in the proposed subdistricts within the proposed district may file a petition with the circuit court requesting the creation of a theater, cultural arts, and entertainment district. The petition shall contain the following information:

(1) The name, address, and phone number of each petitioner and the location of the real property owned by the petitioner;

(2) The name of the proposed district;

(3) A legal description of the proposed district, including a map illustrating the district boundaries, which shall be contiguous, and the division of the district into at least five, but not more than fifteen, subdistricts that shall contain, or are projected to contain upon full development of the subdistricts, approximately equal populations;

(4) A statement indicating the number of directors to serve on the board, which shall be not less than five or more than fifteen;

(5) A request that the district be established;

(6) A general description of the activities that are planned for the district;

(7) A proposal for a sales tax to fund the district initially, pursuant to the authority granted in sections 67.2500 to 67.2530, together with a request that the imposing of the sales tax be submitted to the qualified voters within the district;

(8) A statement that the proposed district shall not be an undue burden on any owner of property within the district and is not unjust or unreasonable;

(9) A request that the question of the establishment of the district be submitted to the qualified voters of the district;

(10) A signed statement that the petitioners are authorized to submit the petition to the circuit court; and

(11) Any other items the petitioners deem appropriate.

2. The circuit clerk of the county in which the petition is filed pursuant to this section shall present the petition to the judge, who shall thereupon set the petition for hearing not less than thirty days nor more than forty days after the filing. The judge shall cause publication of the notice of the hearing on two separate occasions in at least one newspaper of general circulation in the county where the proposed district is located, with the first publication to occur not more than thirty days before the hearing, and the second publication to occur not more than fifteen days or less than ten days before the hearing. The notice shall recite the following information:

(1) A description of the boundaries of the proposed district and each subdistrict;

(2) The time and place of a hearing to be held to consider establishment of the proposed district;

(3) The timeframe and manner for the filing of the petitions or answers in the case;

(4) The proposed sales tax rate to be voted on within the subdistricts of the proposed district;

(5) The proposed uses for the revenue generated by the new sales tax; and

(6) Such other matters as the circuit court may deem appropriate.

The costs of printing and publication of the notice shall be paid by the petitioners. If the district is organized pursuant to sections 67.2500 to 67.2530, the petitioners may be reimbursed for such costs out of the revenues received by the district.

3. Any registered voter or owner of real property within the proposed district may join in or file a petition supporting or answer opposing the creation of the district and seeking a judgment respecting these same issues; provided, however, that all pleadings must be filed with the court no later than five days before the case is heard.

4. The court shall hear the case without a jury. If the court determines the petition is defective or the proposed district or its plan of operation is unconstitutional, it shall enter

its judgment to that effect and shall refuse to incorporate the district as requested in the pleadings. If the court determines the petition is not legally defective and the proposed district and plan of operation are not unconstitutional, the court shall order an election on the questions of the district creation and sales tax funding for voter approval and certify the questions to the circuit clerk. The election order shall include the date on which the ballots will be mailed to qualified electors, which shall be not sooner than the eighth Tuesday from the issuance of the order. The election regarding the incorporation of the district and the imposing the sales tax shall follow the procedure set forth in section 67.2520, and shall be held pursuant to the order and certification by the circuit judge. Only those subdistricts approving the question of creating the district and imposing the sales tax shall become part of the district.

5. If the results of the election conducted in accordance with section 67.2520 show that a majority of the votes cast were in favor of organizing the district and imposing the sales tax, the circuit judge shall establish the proposed district in those subdistricts approving the question of creating the district and imposing the sales tax by issuing an order to that effect. The court shall determine and declare the district organized and incorporated and issue an order that includes the following:

(1) The description of the boundaries of the district and each subdistrict;

(2) A statement that a theater, cultural arts, and entertainment district has been established;

(3) A declaration that the district is a political subdivision of the state;

(4) The name of the district;

(5) The date on which the sales tax election in the subdistricts was held, and the result of the election;

(6) The uses for any revenue generated by a sales tax imposed pursuant to this section;

(7) A certification to the newly created district of the election results, including the election concerning the sales tax; and

(8) Such other matters as the circuit court deems appropriate.

6. Any subdistrict that does not approve the creation of the district and imposing the sales tax shall not be a part of the district and the sales tax shall not be imposed until after the district board of directors has submitted another proposal for the inclusion of the area into the district and such proposal and the sales tax proposal are approved by a majority of the qualified voters in the subdistrict voting thereon. Such subsequent elections shall be conducted in accordance with section 67.2520; provided, however, that the district board of directors may place the question of the inclusion of a subdistrict within a district and the question of imposing a sales tax in the proposed subdistrict before the voters of a proposed subdistrict, and the circuit clerk shall conduct the subsequent election. In subsequent elections, the election judges shall certify the election results to the district board of directors.

7. Any party having filed a petition or answer to a petition may appeal the circuit court's order or judgment in the same manner as provided for other appeals. Any order either refusing to incorporate the district or incorporating the district shall be a final judgment for purposes of appeal.

67.2520. ELECTION CONDUCTED, WHEN — SALES TAX VOTE, AMOUNT — BALLOT FORM. — 1. If a governing body or circuit court judge has certified the question regarding the district creation and sales tax funding for voter approval, the municipal clerk in which the district is located, or the circuit clerk if the order and certification has been by a circuit judge, shall conduct the election. The questions shall be submitted to the qualified voters of each subdistrict within the district boundaries who have filed an application pursuant to this section. The municipal clerk, or the circuit clerk if the district is being formed by

the circuit court, shall publish notice of the election in at least one newspaper of general circulation in the county where the proposed district is located, with the publication to occur not more than fifteen days but not less than ten days before the date when applications for ballots will be accepted. The notice shall include a description of the district boundaries, the timeframe and manner of applying for a ballot, the questions to be voted upon, and where and when applications for ballots will be accepted. The municipal clerk, or circuit clerk if the district is being formed by the circuit court, shall also send a notice of the election to all registered voters in the proposed district, which shall include the information in the published notice. The costs of printing and publication of the notice, and mailing of the notices to registered voters, shall be paid by the petitioners. If the district is organized pursuant to sections 67.2500 to 67.2530, the petitioners may be reimbursed for such costs out of the revenues received by the district.

2. For elections held in subdistricts pursuant to this section, if all the owners of property in a subdistrict joined in the petition for formation of the district, such owners may cast their ballot by unanimous petition approving any measure submitted to them as subdistrict voters pursuant to this section. Each owner shall receive one vote per acre owned. Fractional votes shall be allowed. The petition shall be submitted to the municipal clerk, or the circuit court clerk if the district is being formed by the circuit court, who shall verify the authenticity of all signatures thereon. The filing of a unanimous petition shall constitute an election in the subdistrict under this section and the results of said election shall be entered pursuant to this section.

3. The sales tax shall be not more than one-half of one percent on all retail sales within the district, which are subject to taxation pursuant to section 67.2530, to fund, promote, and provide educational, civic, musical, theatrical, cultural, concerts, lecture series, and related or similar entertainment events or activities, and to fund, promote, plan, design, construct, improve, maintain, and operate public improvements, transportation projects, and related facilities in the district.

4. Application for a ballot shall be made as provided in this subsection:

(1) Persons entitled to apply for a ballot in an election shall be:

(a) A resident registered voter of the district; or

(b) If there are no registered voters in a subdistrict, a person, including a corporation or other entity, which owns real property within the subdistrict. Each voter which is not an individual shall determine how to cast its vote as provided for in its articles of incorporation, articles of organization, articles of partnership, bylaws, or other document which sets forth an appropriate mechanism for the determination of the entity's vote. If a voter has no such mechanism, then its vote shall be cast as determined by a majority of the persons who run the day-to-day affairs of the voter. Each property owner shall receive one vote;

(2) Only persons entitled to apply for a ballot in elections pursuant to this subsection shall apply. Such persons shall apply with the municipal clerk, or the circuit clerk if the district is formed by the circuit court. Each person applying shall provide:

(a) Such person's name, address, mailing address, and phone number;

(b) An authorized signature; and

(c) Evidence that such person is entitled to vote. Such evidence shall be a copy of:

a. For resident individuals, proof of registration from the election authority;

b. For owners of real property, a tax receipt or deed or other document which evidences an equitable ownership, and identifies the real property by location;

(3) Applications for ballot applications shall be made not later than the fourth Tuesday before the ballots are mailed to qualified electors. The ballot of submission shall be in substantially the following form:

"Shall there be organized in ..... (here specifically describe the proposed district boundaries), within the state of Missouri, a district, to be known as the "..... Theater,

Cultural Arts, and Entertainment District" for the purpose of funding, promoting, and providing educational, civic, musical, theatrical, cultural, concerts, lecture series, and related or similar entertainment events or activities, and funding, promoting, planning, designing, constructing, improving, maintaining, and operating public improvements, transportation projects, and related facilities in the district?

[ ] YES [ ] NO

If you are in favor of the question, place an "X" in the box opposite "YES". If you are opposed to the question, place an "X" in the box opposite "NO".

Shall the ..... (name of district) impose a sales tax of ..... (insert rate) to fund, promote, and provide educational, civic, musical, theatrical, cultural, concerts, lecture series, and related or similar entertainment events or activities, and to fund, promote, plan, design, construct, improve, maintain, and operate public improvements, transportation projects, and related facilities in the district?

[ ] YES [ ] NO

If you are in favor of the question, place an "X" in the box opposite "YES". If you are opposed to the question, place an "X" in the box opposite "NO";

(4) Not sooner than the fourth Tuesday after the deadline for applying for ballots, the municipal clerk, or the circuit clerk if the district is being formed by the circuit court, shall mail a ballot to each qualified voter who applied for a ballot pursuant to this subsection along with a return addressed envelope directed to the municipal clerk or the circuit clerk's office, with a sworn affidavit on the reverse side of such envelope for the voter's signature. Such affidavit shall be in the following form:

"I hereby declare under penalties of perjury that I am qualified to vote, or to affix my authorized signature in the name of an entity which is entitled to vote, in this election.

Authorized Signature . . . . . .

Printed Name of Voter Signature of notary or other officer authorized to administer oaths.

..... Mailing Address of Voter (if different)

Subscribed and sworn to before me this ..... day of ....., 20.."

(5) Each qualified voter shall have one vote, except as provided for in section 67.2520. Each voted ballot shall be signed with the authorized signature as provided for in this subsection;

(6) Voted ballots shall be returned to the municipal clerk, or the clerk of the circuit court if the district is being formed by the circuit court, by mail or hand delivery no later than 5:00 p.m. on the fourth Tuesday after the date for mailing the ballots. The municipal clerk, or circuit clerk if the district is being formed by the circuit court, shall transmit all voted ballots to a beam of judges of not less than four, with an equal number from each of the two major political parties. The judges shall be selected by the city, town, or village, or the circuit clerk, from lists compiled by the county election authority. Upon receipt of the voted ballots the judges shall verify the authenticity of the ballots, canvass the votes, and certify the results. Certification by the election judges shall be final and shall be immediately transmitted to the governing body of the city, town, or village for further action, or the circuit judge for further action if the district is being formed by the circuit court. Any voter who applied for such election may contest the result in the same manner as provided in chapter 115, RSMo.

67.2525. BOARD OF DIRECTORS, QUALIFICATIONS — SUBDIVISION OF DISTRICT, HOW — POWERS AND DUTIES OF THE BOARD. — 1. Each member of the board of directors shall have the following qualifications:

(1) As to those subdistricts in which there are registered voters, a resident registered voter in the subdistrict that he or she represents, or be a property owner or, as to those

subdistricts in which there are not registered voters who are residents, a property owner or representative of a property owner in the subdistrict he or she represents;

(2) Be at least twenty-one years of age and a registered voter in the district.

2. The district shall be subdivided into at least five, but not more than fifteen subdistricts, which shall be represented by one representative on the district board of directors. All board members shall have terms of four years, including the initial board of directors. All members shall take office upon being appointed and shall remain in office until a successor is appointed by the mayor or chairman of the municipality in which the district is located, or elected by the property owners in those subdistricts without registered voters.

3. For those subdistricts which contain one or more registered voters, the mayor or chairman of the city, town, or village shall, with the consent of the governing body, appoint a registered voter residing in the subdistrict to the board of directors.

4. For those subdistricts which contain no registered voters, the property owners who collectively own one or more parcels of real estate comprising more than half of the land situated in each subdistrict shall meet and shall elect a representative to serve upon the board of directors. The clerk of the city, town, or village in which the petition was filed shall, unless waived in writing by all property owners in the subdistrict, give notice by causing publication to be made once a week for two consecutive weeks in a newspaper of general circulation in the county, the last publication of which shall be at least ten days before the day of the meeting required by this section, to call a meeting of the owners of real property within the subdistrict at a day and hour specified in a public place in the city, town, or village in which the petition was filed for the purpose of electing members of the board of directors.

5. The property owners, when assembled, shall organize by the election of a temporary chairman and secretary of the meeting who shall conduct the election. An election shall be conducted for each subdistrict, with the eligible property owners voting in that subdistrict. At the election, each acre of real property within the subdistrict shall represent one share, and each owner, including corporations and other entities, may have one vote in person or for every acre of real property owned by such person within the subdistrict. Each voter which is not an individual shall determine how to cast its vote as provided for in its articles of incorporation, articles of organization, articles of partnership, bylaws, or other document which sets forth an appropriate mechanism for the determination of the entity's vote. If a voter has no such mechanism, then its vote shall be cast as determined by a majority of the persons who run the day-to-day affairs of the voter. The results of the meeting shall be certified by the temporary chairman and secretary to the municipal clerk if the district is established by a municipality described in this section, or to the circuit clerk if the district is established by a circuit court.

6. Successor boards shall be appointed or elected, depending upon the presence or absence of resident registered voters, by the mayor or chairman of a city, town, or village described in this section, or the property owners as set forth above; provided, however, that elections held by the property owners after the initial board is elected shall be certified to the municipal clerk of the city, town, or village where the district is located and the board of directors of the district.

7. Should a vacancy occur on the board of directors, the mayor or chairman of the city, town, or village if there are registered voters within the subdistrict, or a majority of the owners of real property in a subdistrict if there are not registered voters in the subdistrict, shall have the authority to appoint or elect, as set forth in this section, an interim director to complete any unexpired term of a director caused by resignation or disqualification.

8. The board shall possess and exercise all of the district's legislative and executive powers, including:

(1) The power to fund, promote and provide educational, civic, musical, theatrical, cultural, concerts, lecture series, and related or similar entertainment events or activities, and fund, promote, plan, design, construct, improve, maintain, and operate public improvements, transportation projects, and related facilities within the district;

(2) The power to accept and disburse tax or other revenue collected in the district; and

(3) The power to receive property by gift or otherwise.

9. Within thirty days after the selection of the initial directors, the board shall meet. At its first meeting and annually thereafter the board shall elect a chairman from its members.

10. The board shall appoint an executive director, district secretary, treasurer, and such other officers or employees as it deems necessary.

11. At the first meeting, the board, by resolution, shall define the first and subsequent fiscal years of the district, and shall adopt a corporate seal.

12. A simple majority of the board shall constitute a quorum. If a quorum exists, a majority of those voting shall have the authority to act in the name of the board, and approve any board resolution.

13. At the first meeting, the board, by resolution, shall receive the certification of the election regarding the sales tax, and may impose the sales tax in all subdistricts approving the imposing sales tax. In those subdistricts that approve the sales tax, the sales tax shall become effective on the first day of the first calendar quarter immediately following the action by the district board of directors imposing the tax.

14. Each director shall devote such time to the duties of the office as the faithful discharge thereof and may require and be reimbursed for his actual expenditures in the performance of his duties on behalf of the district. Directors may be compensated, but such compensation shall not exceed one hundred dollars per month.

15. In addition to all other powers granted by sections 67.2500 to 67.2530, the district shall have the following general powers:

(1) To sue and be sued in its own name, and to receive service of process, which shall be served upon the district secretary;

(2) To fix compensation of its employees and contractors;

(3) To enter into contracts, franchises, and agreements with any person or entity, public or private, affecting the affairs of the district, including contracts with any municipality, district, or state, or the United States, and any of their agencies, political subdivisions, or instrumentalities, for the funding, including without limitation, interest rate exchange or swap agreements, planning, development, construction, acquisition, maintenance, or operation of a district facility or to assist in such activity;

(4) To acquire, develop, construct, equip, transfer, donate, lease, exchange, mortgage, and encumber real and personal property in furtherance of district purposes;

(5) To collect and disburse funds for its activities;

(6) To collect taxes and other revenues;

(7) To borrow money and incur indebtedness and evidence the same by certificates, notes, bonds, debentures, or refunding of any such obligations for the purpose of paying all or any part of the cost of land, construction, development, or equipping of any facilities or operations of the district;

(8) To own or lease real or personal property for use in connection with the exercise of powers pursuant to this subsection;

(9) To provide for the election or appointment of officers, including a chairman, treasurer, and secretary. Officers shall not be required to be residents of the district, and one officer may hold more than one office;

(10) To hire and retain agents, employees, engineers, and attorneys;

(11) To enter into entertainment contracts binding the district and artists, agencies, or performers, management contracts, contracts relating to the booking of entertainment and the sale of tickets, and all other contracts which relate to the purposes of the district;

(12) To contract with a local government, a corporation, partnership, or individual regarding funding, promotion, planning, designing, constructing, improving, maintaining, or operating a project or to assist in such activity;

(13) To contract for transfer to a city, town, or village such district facilities and improvements free of cost or encumbrance on such terms set forth by contract;

(14) To exercise such other powers necessary or convenient for the district to accomplish its purposes which are not inconsistent with its express powers.

16. A district may at any time authorize or issue notes, bonds, or other obligations for any of its powers or purposes. Such notes, bonds, or other obligations:

(1) Shall be in such amounts as deemed necessary by the district, including costs of issuance thereof;

(2) Shall be payable out of all or any portion of the revenues or other assets of the district;

(3) May be secured by any property of the district which may be pledged, assigned, mortgaged, or otherwise encumbered for payment;

(4) Shall be authorized by resolution of the district, and if issued by the district, shall bear such date or dates, and shall mature at such time or times, but not in excess of forty years, as the resolution shall specify;

(5) Shall be in such denomination, bear interest at such rates, be in such form, be issued as current interest bonds, compound interest bonds, variable rate bonds, convertible bonds, or zero coupon bonds, be issued in such manner, be payable in such place or places and subject to redemption as such resolution may provide; and

(6) May be sold at either public or private sale, at such interest rates, and at such price or prices as the district shall determine.

The provisions of this subsection are applicable to the district notwithstanding the provisions of section 108.170, RSMo.

67.2530. REFUND OF DISTRICT INDEBTEDNESS, WHEN, HOW — IMPOSITION OF A SALES TAX AUTHORIZED — DEPOSIT AND USE OF SALES TAX REVENUE — REPEAL OF SALES TAX, BALLOT FORM. — 1. Any note, bond, or other indebtedness of the district may be refunded at any time by the district by issuing refunding bonds in such amount as the district may deem necessary. Such bonds shall be subject to, and shall have the benefit of the foregoing provisions regarding notes, bonds, and other obligations. Without limiting the generality of the foregoing, refunding bonds may include amounts necessary to finance any premium, unpaid interest, and costs of issuance in connection with the refunding bonds. Any such refunding may be effected whether the bonds to be refunded then shall have matured or thereafter shall mature, either by sale of the refunding bonds and the application of the proceeds thereof to the payment of the obligations being refunded or the exchange of the refunding bonds for the obligations being refunded with the consent of the holders of the obligations being refunded.

2. Notes, bonds, or other indebtedness of the district shall be exclusively the responsibility of the district payable solely out of the district funds and property and shall not constitute a debt or liability of the state of Missouri or any agency or political subdivision of the state. Any notes, bonds, or other indebtedness of the district shall state on their face that they are not obligations of the state of Missouri or any agency or political subdivision thereof other than the district.

3. Any district may by resolution impose a district sales tax of up to one half of one percent on all retail sales made in such district that are subject to taxation pursuant to the provisions of sections 144.010 to 144.525, RSMo. Upon voter approval, and receiving the

necessary certifications from the governing body of the municipality in which the district is located, or from the circuit court if the district was formed by the circuit court, the board of directors shall have the power to impose a sales tax at its first meeting, or any meeting thereafter. Voter approval of the question of the imposing sales tax shall be in accordance with section 67.2520 of this section. The sales tax shall become effective in those subdistricts that approve the sales tax on the first day of the first calendar quarter immediately following the passage of a resolution by the board of directors imposing the sales tax.

4. In each district in which a sales tax has been imposed in the manner provided by this section, every retailer shall add the tax imposed by the district pursuant to this section to the retailer's sale price, and when so added, such tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as the purchase price.

5. In order to permit sellers required to collect and report the sales tax authorized by this section to collect the amount required to be reported and remitted, but not to change the requirements of reporting or remitting tax or to serve as a levy of the tax, and in order to avoid fractions of pennies, the district may establish appropriate brackets which shall be used in the district imposing a tax pursuant to this section in lieu of those brackets provided in section 144.285, RSMo.

6. All revenue received by a district from the sales tax authorized by this section shall be deposited in a special trust fund and shall be used solely for the purposes of the district. Any funds in such special trust fund which are not needed for the district's current expenditures may be invested by the district board of directors in accordance with applicable laws relating to the investment of other district funds.

7. The sales tax may be imposed at a rate of up to one half of one percent on the receipts from the sale at retail of all tangible personal property or taxable services at retail within the district adopting such tax, if such property and services are subject to taxation by the state of Missouri pursuant to the provisions of sections 144.010 to 144.525, RSMo. Any district sales tax imposed pursuant to this section shall be imposed at a rate that shall be uniform throughout the subdistricts approving the sales tax.

8. The resolution imposing the sales tax pursuant to this section shall impose upon all sellers a tax for the privilege of engaging in the business of selling tangible personal property or rendering taxable services at retail to the extent and in the manner provided in sections 144.010 to 144.525, RSMo, and the rules and regulations of the director of revenue issued pursuant thereto; except that the rate of the tax shall be the rate imposed by the resolution as the sales tax and the tax shall be reported and returned to and collected by the district.

9. (1) On and after the effective date of any sales tax imposed pursuant to this section, the district shall perform all functions incident to the administration, collection, enforcement, and operation of the tax. The sales tax imposed pursuant to this section shall be collected and reported upon such forms and under such administrative rules and regulations as may be prescribed by the district.

(2) All such sales taxes collected by the district shall be deposited by the district in a special fund to be expended for the purposes authorized in this section. The district shall keep accurate records of the amount of money which was collected pursuant to this section, and the records shall be open to the inspection of officers of each district and the general public.

(3) The district may contract with the municipality that the district is within for the municipality to collect any revenue received by the district and, after deducting the cost of such collection, but not to exceed one percent of the total amount collected, deposit such revenue in a special trust account. Such revenue and interest may be applied by the

municipality to expenses, costs, or debt service of the district at the direction of the district as set forth in a contract between the municipality and the district.

10. (1) All applicable provisions contained in sections 144.010 to 144.525, RSMo, governing the state sales tax, sections 32.085 and 32.087, RSMo, and section 32.057, RSMo, the uniform confidentiality provision, shall apply to the collection of the tax imposed by this section, except as modified in this section.

(2) All exemptions granted to agencies of government, organizations, persons, and to the sale of certain articles and items of tangible personal property and taxable services pursuant to the provisions of sections 144.010 to 144.525, RSMo, are hereby made applicable to the imposition and collection of the tax imposed by this section.

(3) The same sales tax permit, exemption certificate, and retail certificate required by sections 144.010 to 144.525, RSMo, for the administration and collection of the state sales tax shall satisfy the requirements of this section, and no additional permit or exemption certificate or retail certificate shall be required; except that the district may prescribe a form of exemption certificate for an exemption from the tax imposed by this section.

(4) All discounts allowed the retailer pursuant to the provisions of the state sales tax laws for the collection of and for payment of taxes pursuant to such laws are hereby allowed and made applicable to any taxes collected pursuant to the provisions of this section.

(5) The penalties provided in section 32.057, RSMo, and sections 144.010 to 144.525, RSMo, for violation of those sections are hereby made applicable to violations of this section.

(6) For the purpose of a sales tax imposed by a resolution pursuant to this section, all retail sales shall be deemed to be consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or the retailer's agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. In the event a retailer has more than one place of business in this state which participates in the sale, the sale shall be deemed to be consummated at the place of business of the retailer where the initial order for the tangible personal property is taken, even though the order must be forwarded elsewhere for acceptance, approval of credit, shipment, or billing. A sale by a retailer's employee shall be deemed to be consummated at the place of business from which the employee works.

(7) Subsequent to the initial approval by the voters and implementation of a sales tax in the district, the rate of the sales tax may be increased, but not to exceed a rate of one-half of one percent on retail sales as provided in this subsection. The election shall be conducted in accordance with section 67.2520; provided, however, that the district board of directors may place the question of the increase of the sales tax before the voters of the district by resolution, and the municipal clerk of the city, town, or village which originally conducted the incorporation of the district, or the circuit clerk of the court which originally conducted the incorporation of the district, shall conduct the subsequent election. In subsequent elections, the election judges shall certify the election results to the district board of directors. The ballot of submission shall be in substantially the following form:

"Shall ..... (name of district) increase the ..... (insert amount) percent district sales tax now in effect to..... (insert amount) in the ..... (name of district)?

[ ] YES [ ] NO

If you are in favor of the question, place an "X" in the box opposite "YES". If you are opposed to the question, place an "X" in the box opposite "NO".

If a majority of the votes cast on the proposal by the qualified voters of the district voting thereon are in favor of the increase, the increase shall become effective December thirty-first of the calendar year in which such increase was approved.

11. (1) There shall not be any election as provided for in this section while the district has any financing or other obligations outstanding.

(2) The board, when presented with a petition signed by at least one-third of the registered voters in a district that voted in the last gubernatorial election, or signed by at least two-thirds of property owners of the district, calling for an election to dissolve and repeal the tax shall submit the question to the voters using the same procedure by which the imposing tax was voted. The ballot of submission shall be in substantially the following form:

"Shall ..... (name of district) dissolve and repeal the ..... (insert amount) percent district sales tax now in effect in the ..... (name of district)?

[ ] YES [ ] NO

If you are in favor of the question, place an "X" in the box opposite "YES". If you are opposed to the question, place an "X" in the box opposite "NO".

Such subsequent elections for the repeal of the sales tax shall be conducted in accordance with section 67.2520; provided, however, that the district board of directors may place the question of the repeal of the sales tax before the voters of the district, and the municipal clerk of the city, town, or village which originally conducted the incorporation of the district, or the circuit clerk of the court which originally conducted the incorporation of the district, shall conduct the subsequent election. In subsequent elections the election judges shall certify the election results to the district board of directors.

(3) If a majority of the votes cast on the proposal by the qualified voters of the district voting thereon are in favor of repeal, that repeal shall become effective December thirty-first of the calendar year in which such repeal was approved or after the repayment of the district's indebtedness, whichever occurs later.

12. (1) At such time as the board of directors of the district determines that further operation of the district is not in the best interests of the inhabitants of the district, and that the district should dissolve, the board shall submit for a vote in an election held throughout the district the question of whether the district should be abolished. The question shall be submitted in substantially the following form:

"Shall the ..... theater, cultural arts, and entertainment district be abolished?

[ ] YES [ ] NO

If you are in favor of the question, place an "X" in the box opposite "YES". If you are opposed to the question, place an "X" in the box opposite "NO".

(2) The district board shall not propose the question to abolish the district while there are outstanding claims or causes of action pending against the district, while the district liabilities exceed its assets, while indebtedness of the district is outstanding, or while the district is insolvent, in receivership or under the jurisdiction of the bankruptcy court. Prior to submitting the question to abolish the district to a vote of the entire district, the state auditor shall audit the district to determine the financial status of the district, and whether the district may be abolished pursuant to law. The vote on the abolition of the district shall be conducted by the municipal clerk of the city, town, or village in which the district is located. The procedure shall be the same as in section 67.2520, except that the question shall be determined by the qualified voters of the entire district. No individual subdistrict may be abolished, except at such time as the district is abolished.

(3) While the district still exists, it shall continue to accrue all revenues to which it is entitled at law.

(4) Upon receipt by the board of directors of the district of the certification by the city, town, or village in which the district is located that the majority of those voting within the entire district have voted to abolish the district, and if the state auditor has determined

that the district's financial condition is such that it may be abolished pursuant to law, then the board of directors of the district shall:

(a) Sell any remaining district real or personal property it wishes, and then transfer the proceeds and any other real or personal property owned by the district to the city, town, or village in which the district is located, including revenues due and owing the district, for its further use and disposition;

(b) Terminate the employment of any remaining district employees, and otherwise conclude its affairs;

(c) At a public meeting of the district, declare by a resolution of the board of directors passed by a majority vote that the district has been abolished effective that date;

(d) Cause copies of that resolution under seal to be filed with the secretary of state and the city, town, or village in which the district is located. Upon the completion of the final act specified in this subsection, the legal existence of the district shall cease.

(5) The legal existence of the district shall not cease for a period of two years after voter approval of the abolition.

144.757. LOCAL USE TAX TO FUND COMMUNITY COMEBACK PROGRAM — RATE OF TAX — ST. LOUIS COUNTY — BALLOT OF SUBMISSION — NOTICE TO DIRECTOR OF REVENUE — REPEAL OR REDUCTION OF LOCAL SALES TAX, EFFECT ON LOCAL USE TAX. — 1. Any county or municipality, except municipalities within a county **[**of the first classification**]** having a charter form of government with a population in excess of nine hundred thousand may, by a majority vote of its governing body, impose a local use tax if a local sales tax is imposed as defined in section 32.085, RSMo, at a rate equal to the rate of the local sales tax in effect in such county or municipality; provided, however, that no ordinance or order enacted pursuant to sections 144.757 to 144.761 shall be effective unless the governing body of the county or municipality submits to the voters thereof at a municipal, county or state general, primary or special election **[**prior to August 7, 1996, or after December 31, 1996,**]** a proposal to authorize the governing body of the county or municipality to impose a local use tax pursuant to sections 144.757 to 144.761. Municipalities within a county **[**of the first classification**]** having a charter form of government with a population in excess of nine hundred thousand may, upon voter approval received pursuant to paragraph (b) of subdivision (2) of subsection 2 of this section, impose a local use tax at the same rate as the local municipal sales tax with the revenues from all such municipal use taxes to be distributed pursuant to subsection 4 of section 94.890, RSMo. The municipality shall within thirty days of the approval of the use tax imposed pursuant to paragraph (b) of subdivision (2) of subsection 2 of this section select one of the distribution options permitted in subsection 4 of section 94.890, RSMo, for distribution of all municipal use taxes.

2. (1) The ballot of submission, except for counties and municipalities described in subdivisions (2) and (3) of this subsection, shall contain substantially the following language:

Shall the ..... (county or municipality's name) impose a local use tax at the same rate as the total local sales tax rate, currently ..... (insert percent), provided that if the local sales tax rate is reduced or raised by voter approval, the local use tax rate shall also be reduced or raised by the same action? A use tax return shall not be required to be filed by persons whose purchases from out-of-state vendors do not in total exceed two thousand dollars in any calendar year.

[ ] YES [ ] NO

If you are in favor of the question, place an "X" in the box opposite "Yes". If you are opposed to the question, place an "X" in the box opposite "No".

(2) (a) The ballot of submission in a county **[**of the first classification**]** having a charter form of government with a population in excess of nine hundred thousand shall contain substantially the following language:

For the purposes of **[**preventing neighborhood decline, demolishing old deteriorating and vacant buildings, rehabilitating historic structures, cleaning polluted sites, promoting reinvestment in neighborhoods by creating the (name of county) Community Comeback Program; and for the

purposes of**]** **economic development and** enhancing local government services**[**;**],** shall the county **[**governing body**]** be authorized to collect a local use tax equal to the total of the existing county sales tax rate of (insert tax rate), provided that if the county sales tax is repealed, reduced or raised by voter approval, the local use tax rate shall also be repealed, reduced or raised by the same voter action? **[**The Community Comeback Program**]** **Fifty percent of the revenue shall be used for economic development, including retention, creation, and attraction of better paying jobs, and fifty percent shall be used for enhancing local government services. The county** shall be required to **[**submit**]** **make available** to the public **[**a**]** **an audited** comprehensive financial report detailing the management and use of **economic development** funds each year.

A use tax is the equivalent of a sales tax on purchases from out-of-state sellers by in-state buyers and on certain taxable business transactions. A use tax return shall not be required to be filed by persons whose purchases from out-of-state vendors do not in total exceed two thousand dollars in any calendar year.

[ ] YES [ ] NO

If you are in favor of the question, place an "X" in the box opposite "Yes". If you are opposed to the question, place an "X" in the box opposite "No".

(b) The ballot of submission in a municipality within a county **[**of the first classification**]** having a charter form of government with a population in excess of nine hundred thousand shall contain substantially the following language:

Shall the municipality be authorized to impose a local use tax at the same rate as the local sales tax by a vote of the governing body, provided that if any local sales tax is repealed, reduced or raised by voter approval, the respective local use tax shall also be repealed, reduced or raised by the same action? A use tax return shall not be required to be filed by persons whose purchases from out-of-state vendors do not in total exceed two thousand dollars in any calendar year.

[ ] YES [ ] NO

If you are in favor of the question, place an "X" in the box opposite "Yes". If you are opposed to the question, place an "X" in the box opposite "No".

(3) The ballot of submission in any city not within a county shall contain substantially the following language:

Shall the ..... (city name) impose a local use tax at the same rate as the local sales tax, currently at a rate of ..... (insert percent) which includes the capital improvements sales tax and the transportation tax, provided that if any local sales tax is repealed, reduced or raised by voter approval, the respective local use tax shall also be repealed, reduced or raised by the same action? A use tax return shall not be required to be filed by persons whose purchases from out-of-state vendors do not in total exceed two thousand dollars in any calendar year.

[ ] YES [ ] NO

If you are in favor of the question, place an "X" in the box opposite "Yes". If you are opposed to the question, place an "X" in the box opposite "No".

(4) If any of such ballots are submitted on August 6, 1996, and if a majority of the votes cast on the proposal by the qualified voters voting thereon are in favor of the proposal, then the ordinance or order and any amendments thereto shall be in effect October 1, 1996, provided the director of revenue receives notice of adoption of the local use tax on or before August 16, 1996. If any of such ballots are submitted after December 31, 1996, and if a majority of the votes cast on the proposal by the qualified voters voting thereon are in favor of the proposal, then the ordinance or order and any amendments thereto shall be in effect on the first day of the calendar quarter which begins at least forty-five days after the director of revenue receives notice of adoption of the local use tax. If a majority of the votes cast by the qualified voters voting are opposed to the proposal, then the governing body of the county or municipality shall have no power to impose the local use tax as herein authorized unless and until the governing body of the county or municipality shall again have submitted another proposal to authorize the governing body of the county or municipality to impose the local use tax **[**pursuant to sections

144.757 to 144.761**]** and such proposal is approved by a majority of the qualified voters voting thereon.

3. The local use tax may be imposed at the same rate as the local sales tax then currently in effect in the county or municipality upon all transactions which are subject to the taxes imposed pursuant to sections 144.600 to 144.745 within the county or municipality adopting such tax; provided, however, that if any local sales tax is repealed or the rate thereof is reduced or raised by voter approval, the local use tax rate shall also be deemed to be repealed, reduced or raised by the same action repealing, reducing or raising the local sales tax.

4. For purposes of sections 144.757 to 144.761 **[**and sections 67.478 to 67.493, RSMo**]**, the use tax may be referred to or described as the equivalent of a sales tax on purchases made from out-of-state sellers by in-state buyers and on certain intrabusiness transactions. Such a description shall not change the classification, form or subject of the use tax or the manner in which it is collected.

144.759. COLLECTION OF ADDITIONAL LOCAL USE TAX FOR ECONOMIC DEVELOPMENT — DEPOSIT IN LOCAL USE TAX TRUST FUND, NOT PART OF STATE REVENUE — DISTRIBUTION TO COUNTIES AND MUNICIPALITIES — REFUNDS — NOTIFICATION TO DIRECTOR OF REVENUE ON ABOLISHMENT OF TAX — ECONOMIC DEVELOPMENT DEFINED. — 1. All local use taxes collected by the director of revenue pursuant to sections 144.757 to 144.761 on behalf of any county or municipality, less one percent for cost of collection, which shall be deposited in the state's general revenue fund after payment of premiums for surety bonds as provided in section 32.087, RSMo, shall be deposited with the state treasurer in a local use tax trust fund, which fund shall be separate and apart from the local sales tax trust funds. The moneys in such local use tax trust fund shall not be deemed to be state funds and shall not be commingled with any funds of the state. The director of revenue shall keep accurate records of the amount of money in the trust fund which was collected in each county or municipality imposing a local use tax, and the records shall be open to the inspection of officers of the county or municipality and to the public. No later than the tenth day of each month, the director of revenue shall distribute all moneys deposited in the trust fund during the preceding month, except as provided in subsection 2 of this section, to the county or municipality treasurer, or such other officer as may be designated by the county or municipality ordinance or order, of each county or municipality imposing the tax authorized by sections 144.757 to 144.761, the sum due the county or municipality as certified by the director of revenue.

2. The director of revenue shall distribute all moneys which would be due any county **[**of the first classification**]** having a charter form of government and having a population of nine hundred thousand or more to the county treasurer or such other officer as may be designated by county ordinance, who shall distribute such moneys as follows: the portion of the use tax imposed by the county which equals one-half the rate of sales tax in effect for such county shall be disbursed to the county **[**community comeback trust authorized pursuant to sections 67.478 to 67.493, RSMo**]** **treasurer for expenditure for economic development purposes, as defined in this section, subject to any qualifications and regulations adopted by ordinance of the county. Such ordinance shall require an audited comprehensive financial report detailing the management and use of economic development funds each year. Such ordinance shall require that the county and the municipal league of the county jointly prepare an economic development strategy to guide expenditures of funds and conduct an annual review of the strategy**. The treasurer or such other officer as may be designated by county ordinance shall distribute one-third of the balance to the county and to each city, town and village in group B according to section 66.620, RSMo, as modified by this section, a portion of the **two-thirds** remainder of such balance equal to the percentage ratio that the population of each such city, town or village bears to the total population of all such group B cities, towns and villages. For the purposes of this subsection, population shall be determined by the last federal decennial census or the latest census that determines the total population of the county and all

political subdivisions therein. For the purposes of this subsection, each city, town or village in group A according to section 66.620, RSMo, but whose per capita sales tax receipts during the preceding calendar year pursuant to sections 66.600 to 66.630, RSMo, were less than the per capita countywide average of all sales tax receipts during the preceding calendar year, shall be treated as a group B city, town or village until the per capita amount distributed to such city, town or village equals the difference between the per capita sales tax receipts during the preceding calendar year and the per capita countywide average of all sales tax receipts during the preceding calendar year.

3. The director of revenue may authorize the state treasurer to make refunds from the amounts in the trust fund and credited to any county or municipality for erroneous payments and overpayments made, and may redeem dishonored checks and drafts deposited to the credit of such counties or municipalities. If any county or municipality abolishes the tax, the county or municipality shall notify the director of revenue of the action at least ninety days prior to the effective date of the repeal, and the director of revenue may order retention in the trust fund, for a period of one year, of two percent of the amount collected after receipt of such notice to cover possible refunds or overpayment of the tax and to redeem dishonored checks and drafts deposited to the credit of such accounts. After one year has elapsed after the effective date of abolition of the tax in such county or municipality, the director of revenue shall authorize the state treasurer to remit the balance in the account to the county or municipality and close the account of that county or municipality. The director of revenue shall notify each county or municipality of each instance of any amount refunded or any check redeemed from receipts due the county or municipality.

4. Except as modified in sections 144.757 to 144.761, all provisions of sections 32.085 and 32.087, RSMo, applicable to the local sales tax, except for subsection 12 of section 32.087, RSMo, and all provisions of sections 144.600 to 144.745 shall apply to the tax imposed pursuant to sections 144.757 to 144.761, and the director of revenue shall perform all functions incident to the administration, collection, enforcement, and operation of the tax.

5. As used in this section, "economic development" means:

(1) Expenditures for infrastructure and sites for business development or for public infrastructure projects;

(2) Purchase, assembly, clearance, demolition, environmental remediation, planning, redesign, reconstruction, rehabilitation, construction, modification or expansion of land, structures and facilities, public or private, either in connection with a reinvestment project in areas with underused, derelict, economically challenged, or environmentally troubled sites, or in connection with business attraction, retention, creation, or expansion;

(3) Expenditures related to business district activities such as facade improvements, landscaping, street lighting, sidewalk construction, trash receptacles, park benches, and other public improvements;

(4) Expenditures for the provision of workforce training and educational support in connection with job creation, retention, attraction, and expansion;

(5) Development and operation of business incubator facilities, and related entrepreneurship support programs;

(6) Capitalization or guarantee of small business loan or equity funds;

(7) Expenditures for business development activities including attraction, creation, retention, and expansion; and

(8) Related administration expenses of economic and community development programs, provided that such expenses shall not exceed five percent of annual revenues.

644.032. SALES TAX FOR PURPOSE OF STORM WATER CONTROL OR LOCAL PARKS OR BOTH MAY BE IMPOSED BY ANY COUNTY OR MUNICIPALITY — TAX, HOW CALCULATED — VOTER APPROVAL — BALLOT FORM — EFFECTIVE WHEN — FAILURE OF TAX, RESUBMISSION, WHEN — REVENUE MAY BE USED FOR PARKS LOCATED OUTSIDE OF COUNTY

OR MUNICIPALITY, WHEN. — 1. The governing body of any municipality or county may impose, by ordinance or order, a sales tax in an amount not to exceed one-half of one percent on all retail sales made in such municipality or county which are subject to taxation under the provisions of sections 144.010 to 144.525, RSMo. The tax authorized by this section and section 644.033 shall be in addition to any and all other sales taxes allowed by law, except that no ordinance or order imposing a sales tax under the provisions of this section and section 644.033 shall be effective unless the governing body of the municipality or county submits to the voters of the municipality or county, at a municipal, county or state general, primary or special election, a proposal to authorize the governing body of the municipality or county to impose a tax**, provided, that the tax authorized by this section shall not be imposed on the sales of food, as defined in section 144.014, RSMo, when imposed by any county with a charter form of government and with more than one million inhabitants**.

2. The ballot of submission shall contain, but need not be limited to, the following language:

Shall the municipality (county) of ..... impose a sales tax of ..... (insert amount) for the purpose of providing funding for ..... (insert either storm water control, or local parks, or storm water control and local parks) for the municipality (county)?

[ ] YES [ ] NO

If a majority of the votes cast on the proposal by the qualified voters voting thereon are in favor of the proposal, then the ordinance or order and any amendments thereto shall be in effect on the first day of the second quarter after the director of revenue receives notice of adoption of the tax. If a majority of the votes cast by the qualified voters voting are opposed to the proposal, then the governing body of the municipality or county shall not impose the sales tax authorized in this section and section 644.033 until the governing body of the municipality or county resubmits another proposal to authorize the governing body of the municipality or county to impose the sales tax authorized by this section and section 644.033 and such proposal is approved by a majority of the qualified voters voting thereon; however, in no event shall a proposal pursuant to this section and section 644.033 be submitted to the voters sooner than twelve months from the date of the last proposal pursuant to this section and section 644.033.

3. All revenue received by a municipality or county from the tax authorized under the provisions of this section and section 644.033 shall be deposited in a special trust fund and shall be used to provide funding for storm water control or for local parks, or both, within such municipality or county, provided that such revenue may be used for local parks outside such municipality or county if the municipality or county is engaged in a cooperative agreement pursuant to section 70.220, RSMo.

4. Any funds in such special trust fund which are not needed for current expenditures may be invested by the governing body in accordance with applicable laws relating to the investment of other municipal or county funds.

[67.478. TITLE. — Sections 144.757 to 144.761, RSMo, and sections 67.478 to 67.493 shall be known and may be cited as the "Community Comeback Act".**]**

[67.481. DEFINITIONS. — As used in sections 144.757 to 144.761, RSMo, and sections 67.478 to 67.493, the following terms mean:

(1) "Community comeback plan" and "plan", a comprehensive countywide plan adopted by the community comeback trust board and the governing body of the county that identifies potential areas for reinvestment, projects and strategies to promote neighborhood reinvestment throughout the county, and that clearly identifies on a map the priority comeback communities. The plan shall be a five-year strategic and operating plan, complete with goals, objectives, targets and mechanisms or methods of measuring accomplishments, revised annually;

(2) "Community comeback program", "community comeback trust" and "trust", a fund held in the treasury of the county which shall be the repository for all taxes and other moneys raised

pursuant to sections 144.757 to 144.761, RSMo, and sections 67.478 to 67.493, and authorized by the governing body of the county for the purposes of promoting neighborhood reinvestment;

(3) "Community comeback program board", "community comeback trust board" and "board", the entity established pursuant to sections 67.478 to 67.493 that is responsible for administering the comeback community trust;

(4) "Community comeback trust citizen advisory committee" and "advisory committee", an eleven-member committee established pursuant to sections 67.478 to 67.493 that is responsible for advising the community comeback fund board on the best methods of promoting neighborhood reinvestment;

(5) "Eligible expenses", costs qualified for funding through the community comeback trust which are:

(a) Incurred for the purchase, assembly, clearance, demolition and environmental remediation of land, structures and facilities, public or private, either as part of a neighborhood reinvestment project or to prepare sites for future use in areas with underutilized, derelict, economically challenged or environmentally troubled sites;

(b) Related to planning, redesign, clearance, reconstruction, structure rehabilitation, site remediation, construction, modification, expansion, remodeling, structural alteration, replacement or renovation of any structure in a priority comeback community;

(c) Expended for capital improvements or infrastructure improvements to facilitate economic development;

(d) Expended for residential redevelopment including, but not limited to, buyouts, land-assembly costs, infrastructure improvements and costs associated with preparing sites for housing construction; professional service expenses such as architectural, planning, engineering, design, marketing or other related expenses;

(e) Related to community improvement district or special business district expenses such as facade improvements, landscaping, street lighting, sidewalk construction, trash receptacles, park benches and other public improvements;

(f) Expenses related to facilitating transit-oriented developments, home improvement and home buyer loan programs; and

(g) Expenses eligible for funding through the select neighborhood action program;

(6) "Neighborhood reinvestment project" and "project", the planning, development, redesign, clearance, reconstruction or rehabilitation or any combination thereof in order to improve those residential, commercial, industrial, public or other structures or spaces and the infrastructure serving them as may be appropriate or necessary in the interest of the general welfare;

(7) "Petition", a petitioner's request for funding made to the community comeback trust;

(8) "Petitioner", the governing body of any municipality, the governing body of the county, any land clearance for redevelopment authority within the county organized pursuant to chapter 99, RSMo, or any not-for-profit economic development organization with a governing board not less than two-thirds of the members of which are appointed by the chief elected official of the county or by one or more organizations with governing boards appointed by the chief elected official;

(9) "Priority comeback community", an area in a county which encompasses an entire United States census block group and has a median household income below the median household income for such entire county;

(10) "Priority comeback project", a funding proposal submitted to a community comeback trust by a petitioner whose area is substantially within a priority comeback community;

(11) "Proposal", a petitioner's funding request for the eligible expenses of a neighborhood reinvestment project submitted to a trust by a petitioner;

(12) "Select neighborhood action program" and "SNAP", a grant program, administered and funded pursuant to subsection 5 of section 67.490;

(13) "Select neighborhood action program applicant" and "SNAP applicant", a neighborhood organization or not-for-profit organization whose mission is consistent with the community comeback plan. The organization shall have a municipal sponsor or a county sponsor if the area is unincorporated. The organization shall have been in existence for at least six months and meet at least once a year in order to be eligible for a SNAP grant;

(14) "SNAP grant", an endowment of money by the board to a SNAP applicant pursuant to subsection 5 of section 67.490.**]**

[67.484. ST. LOUIS COUNTY AUTHORIZED TO FORM COMMUNITY COMEBACK TRUST, PURPOSES, FORMATION — BOARD, COMPOSITION, NOMINATION, POWERS, DUTIES, RESTRICTIONS — FUNDING, LOCAL SALES TAX, BOND ISSUANCE, VALIDITY, PAYMENT. — 1. A community comeback trust may be created, incorporated and managed pursuant to this section by any county of the first classification with a charter form of government and a population of at least nine hundred thousand inhabitants according to the last decennial census, and may exercise the powers given to such trust pursuant to sections 67.478 to 67.493. A trust may sue and be sued, issue general revenue bonds and receive county use tax revenue pursuant to the limitations of this section. A trust shall have as its primary duties the prevention of neighborhood decline, the demolition of old deteriorating and vacant buildings, rehabilitating historic structures, the cleaning of polluted sites and the promotion of neighborhood reinvestment where such investment is essential to reverse or stabilize a stagnant or declining pattern in household income, assessed values, occupancies and related characteristics.

2. The governing body of the county is hereby authorized to impose by ordinance a local use tax pursuant to sections 144.757 to 144.761, RSMo, for the purpose of funding the creation, operation and maintenance of a community comeback trust, as well as to provide revenue to the county and municipalities authorized to receive moneys generated by said tax pursuant to section 144.759, RSMo. The governing body of the county enacting such an ordinance shall submit to the voters of such county a proposal to approve its ordinance imposing the tax. Such ordinance shall become effective only after the majority of the voters voting on such ordinance approve such ordinance. The question shall be submitted to the voters in the county pursuant to section 144.757, RSMo.

3. (1) The community comeback trust board shall be composed of seven members as provided in this subsection. No member shall be an elected official, employee or contractor of the county or any municipality within the county or of any organization representing the county or any municipality within the county. Board members shall be citizens of the United States and shall reside within the county. No two members of the board shall be residents of the same county council district of such county. No member shall receive compensation for performance of board duties. No member shall be financially interested directly or indirectly in any contract entered into by the trust or by any petitioner. In the event that any property owned by a board member or the immediate family member of such board member is located in a priority comeback community, the member shall disclose such information to the board and abstain from any formal or informal actions regarding any project in that neighborhood.

(2) The chief elected official of any municipality wholly within the county and any member of the governing body of the county shall nominate individuals to serve on the board by providing a list of nominees to the county executive who shall appoint the members. Of the total members, at least four shall be residents of municipalities within the county and at least one shall have each of the following professions: a professional architect or engineer; an urban planner or design professional; a developer or builder; and an accountant or an attorney.

(3) The seat of a member shall be automatically vacated when the member changes his or her residence so as to no longer conform to the terms of the requirements of the member's appointment. The board shall promptly notify the county executive of such a change of residence, the pending expiration of any member's term, any member's need to vacate his or her

seat or any vacancy on the board. A member whose term has expired shall continue to serve until the successor is appointed and qualified.

(4) Upon the passage of an ordinance by the governing body of the county establishing the community comeback trust, the governing body of the county shall, within ten days, send by United States mail written notice of the passage of the ordinance to the chief elected officials of each municipality wholly in the county.

(5) Each of the nominating authorities described in subdivision (2) of this subsection shall, within forty-five days of the passage of the ordinance establishing the board or within fourteen days of being notified of a board vacancy by the county executive, submit its list of nominees to the county executive. The county executive shall appoint members within sixty days of the passage of the ordinance or within thirty days of being notified by the board of a vacancy on the board. If a list of nominees is not submitted by the time specified, the county executive shall appoint the members using the criteria set forth in this section.

(6) At the first meeting of the board appointed after the effective date of the ordinance, the members shall choose by lot the length of their terms. Three shall serve for one year, two for two years, and two for three years. All succeeding members shall serve terms of three years. Terms shall end on December thirty-first of the respective year. No member shall serve more than two consecutive full terms. Full terms shall include any term longer than two years.

4. The board, its employees and subcontractors shall be subject to the regulation of conflicts of interest as defined in sections 105.450 to 105.498, RSMo, and to the requirements for open meetings and records pursuant to chapter 610, RSMo. The board shall enact and adopt all rules, regulations and procedures that are reasonably necessary to achieve the objectives of sections 67.478 to 67.493, and not inconsistent therewith, no sooner than twenty-seven calendar days after notifying all municipalities and the county of the proposed rule, regulation or procedure enactment or change. Notice may be given by ordinary mail, by electronic mail or by publishing in at least one newspaper of general circulation qualified to publish legal notices. No new or amended rule, regulation or procedure shall apply retroactively to any proposal pending before the trust without the agreement of the petitioner. The board shall have the exclusive control of the expenditures of all money collected to the credit of the trust, subject to annual appropriations by the governing body of the county. The county government shall provide the trust staff. No more than five percent of the trust's annual budget shall be used for the trust's annual administrative expenses.

5. The trust is authorized to issue bonds, notes or other obligations for any proposal, and to refund such bonds, notes or obligations, as provided in subsection 3 of this section; and to receive and liquidate property, both real and personal, or money which has been granted, donated, devised or bequeathed to the district. The trust shall not have any power of eminent domain.

6. (1) Bonds issued pursuant to this section shall be issued pursuant to a resolution adopted by five-sevenths of the board which shall set out the estimated cost to the trust of the proposed improvements, and shall further set out the amount of the bonds to be issued, their purpose or purposes, their date or dates, denomination or denominations, rate or rates of interest, time or times of payment, both of principal and of interest, place or places of payment and all other details in connection with such bonds. Any such bonds may be subject to such provision for redemption prior to maturity, with or without premium, and at such times and upon such conditions as may be provided by the resolution.

(2) Notwithstanding the provisions of section 108.170, RSMo, such bonds shall bear interest at rate or rates determined by the trust, shall mature within a period not exceeding twenty years and may be sold at public or private sale for not less than ninety-five percent of the principal amount of such bonds. Bonds issued by the trust shall possess all of the qualities of negotiable instruments pursuant to the laws of this state.

(3) Such bonds may be payable to the bearer, may be registered or coupon bonds, and, if payable to bearer, may contain such registration provisions as to either principal and interest, or

principal only, as may be provided in the resolution authorizing such bonds, which resolution may also provide for the exchange of registered and coupon bonds. Such bonds and any coupons attached thereto shall be signed in such manner and by such officers of the district as may be provided by the resolution authorizing the bonds. The trust may provide for the replacement of any bond which has become mutilated, destroyed or lost.

(4) Bonds issued by the trust shall be payable as to principal, interest and redemption premium, if any, out of all or any part of the trust fund, including revenues derived from use taxes. Neither the board members nor any person executing the bonds shall be personally liable on such bonds by reason of the issuance of such bonds. Bonds issued pursuant to this section shall not constitute a debt, liability or obligation of this state, or any political subdivision of this state, nor shall any such obligations be a pledge of the faith and credit of this state, but shall be payable solely from the revenues and assets held by the trust. The issuance of bonds pursuant to this section shall not directly, indirectly or contingently obligate this state or any political subdivision of this state to levy any form of taxation for such bonds or to make any appropriation for their payment. Each obligation or bond issued pursuant to this section shall contain on its face a statement to the effect that the trust shall not be obligated to pay such bond nor interest on such bond except from the revenues received by the trust or assets of the trust lawfully pledged for such trust, and that neither the faith or credit nor the taxing power of this state or of any political subdivision of this state is pledged to the payment of the principal of or the interest on such obligation or bond. The proceeds of such bonds shall be disbursed in such manner and pursuant to such restrictions as the trust may provide in the resolution authorizing the issuance of such bonds.

(5) The trust may issue negotiable refunding bonds for the purpose of refunding, extending or unifying the whole or any part of such bonds then outstanding, or any bonds, notes or other obligations issued by any other public agency, public body or political subdivision in connection with any facilities or land to be acquired, leased or subleased by the trust, which refunding bonds shall not exceed the amount necessary to refund the principal of the outstanding bonds to be refunded and the accrued interest on such bonds to the date of such refunding, together with any redemption premium, amounts necessary to establish reserve and escrow funds and all costs and expenses incurred in connection with the refunding. The board shall provide for the payment of interest and principal of such refunding bonds in the same manner as was provided for the payment of interest and principal of the bonds refunded.

(6) In the event that any of the members or officers of the trust whose names appear on any bonds or coupons shall cease to be on the board or cease to be an officer before the delivery of such bonds, such signatures shall remain valid and sufficient for all purposes, the same as if such board members or officers had remained in office until such delivery.

(7) The trust is hereby declared to be performing a public function and bonds of the trust are declared to be issued for an essential public and governmental purpose, and, accordingly, interest on such bonds and income from such bonds shall be exempt from income taxation by this state. All purchases in excess of ten thousand dollars shall be made pursuant to the lowest and best bid standard as provided in section 34.040, RSMo, or pursuant to the lowest and best proposal standard as provided in section 34.042, RSMo. The board of the trust shall have the same discretion, powers and duties as the commissioner of administration has in sections 34.040 and 34.042, RSMo.**]**

[67.487. COMMUNITY COMEBACK PLAN, NOTIFICATION, DEVELOPMENT, DISTRIBUTION, ANNUAL REVISION AND ADOPTION — REPORTS AND AUDITS REQUIRED — ADVISORY COMMITTEE TO BE ESTABLISHED BY THE BOARD. — 1. Within fourteen days of the first meeting of the first board appointed following the effective date of the ordinance, the board shall notify by mail the chief elected officials of all municipalities wholly within the county, the chief elected official of the county and all the members of the governing body of the county of the requirement to conduct a planning process and adopt a community comeback plan.

2. The board shall solicit full citizen, county and municipal involvement in developing the plan. The board shall conduct public hearings throughout the county to seek input regarding the plan, and may convene meetings with the appropriate staff of the county and municipalities in order to seek input and to coordinate the logistics of producing the plan. A copy of the plan shall be sent to the chief elected official of every municipality wholly within the county, the chief elected official of the county and each member of the governing body of the county.

3. The board and the governing body of the county shall annually revise and adopt a plan.

4. Each plan shall include a map of the county, as well as a text enumerating the efforts expected each year in the various subregions of the county. Each plan shall address the factors that are causing or are likely to cause one or more of the following:

(1) Assessed values below the county average;

(2) Median household incomes below the county median;

(3) An unemployment rate above the county average;

(4) A reduction in the number of jobs with an emphasis upon those jobs paying average or above-average salaries;

(5) Failure to keep pace with the average growth rate in home values in the metropolitan area or county; and

(6) A high vacancy rate among residential, commercial and industrial properties.

5. Each plan shall include an analysis of the condition of the housing stock in the various subregions of the county, a market analysis of the home-buying market with a focus on the impediments to attracting home buyers to those subregions and an analysis of the physical infrastructure needs that prevent economic growth.

6. The board may consider the following factors when determining the appropriate areas and strategies for investment:

(1) Buildings that are unsafe or unhealthy for occupancy due to code violations, dilapidation, defective design, faulty utilities or any other negative conditions;

(2) Factors that prevent or substantially hinder the economically viable use of buildings or lots, such as substandard design, inadequate size, lack of parking or any other conditions;

(3) Incompatible uses that prevent economic development;

(4) Subdivided lots of irregular form and shape and inadequate size for proper usefulness that have multiple ownership;

(5) Depreciated or stagnant property values, including properties that contain hazardous wastes;

(6) Abnormally high business vacancies, abnormally low lease rates, high turnover rates, abandoned buildings, or excessive vacant lots within an area developed for urban use and served by utilities;

(7) The existence of conditions that are not conducive to public safety; and

(8) The lack of necessary commercial facilities normally found in neighborhoods.

7. Each plan shall outline specific strategies to address the problems facing the various subregions and neighborhoods within the county. The plan shall also discuss the partnerships that can be made with federal, state and local governments, as well as businesses, labor organizations, nonprofit groups, religious and other groups and citizens to help implement the plan. These strategies shall include estimated costs and time lines for completion.

8. The board shall produce an annual report focusing on the accomplishments of the trust relative to the goals set forth in the plan, the goals for the next year and the challenges facing the trust. The annual report shall be given to the chief elected officials of all the municipalities wholly within the county, the chief elected official of the county, the members of the governing board of the county and the public libraries within the county, and shall be posted on the county Internet web site.

9. Every year, the board shall commission an independent financial audit, the report of which shall be distributed in the same manner as the annual report pursuant to subsection 8 of this section.

10. Every five years, the board shall commission an independent management audit. The management audit shall include a comprehensive analysis of development trends, factors and practices along with specific recommendations to improve the trust's ability to achieve its mission. The management audit shall be reviewed by the advisory committee which may offer constructive advice on enhancing practices in order to achieve the goals of the program. The management audit shall be distributed in the same manner as the annual report pursuant to subsection 8 of this section. The board is authorized to take any necessary and proper steps to address the issues and recommendations contained within the management audit.

11. (1) The board shall establish an eleven-member advisory committee that shall meet four times each year and shall advise petitioners, staff and the board. The advisory committee members shall be appointed by the county executive. At least six of the advisory committee's members shall be nominated by the municipal league within the county and at least three shall be nominated by the members of the governing body of the county. No advisory committee member shall receive compensation for performance of duties as a committee member.

(2) At least one of the advisory committee members shall be a university professor well-versed in regional development issues. At least two of the advisory committee members shall be municipal officials from communities that have undertaken redevelopment programs as part of larger planning efforts. At least one of the advisory committee members shall be an attorney with experience in redevelopment activities. At least two of the advisory committee members shall be residents of priority comeback communities who have been active in advocating effective redevelopment policies. At least one of the advisory committee members shall be a private professional familiar with the factors influencing business location decisions. At least one of the advisory committee members shall be an individual familiar with education and training practices and workforce needs, with an understanding of how labor availability impacts business location decisions. At least one of the advisory committee members shall be a planner from the private sector knowledgeable in the area of strategic planning and the principles of multiyear rolling plans.

(3) The advisory committee shall promptly notify the county executive of the pending expiration of any member's term or any vacancy on the advisory committee. A member whose term has expired shall continue to serve until his or her successor is appointed and qualified.

(4) The board shall establish the advisory committee by resolution at the board's first meeting. The board shall, within ten days of the passage of the resolution establishing the advisory committee, send by United States mail written notice of the passage of the resolution to the county's municipal league and the members of the governing body of the county. The municipal league and the members of the governing board of the county shall, within forty-five days of the passage of the resolution establishing the advisory committee or within fourteen days of being notified of a vacancy by the county executive, submit its list of nominees to the county executive. The county executive shall appoint members within sixty days of the passage of the resolution or within thirty days of being notified by the committee of a vacancy on the advisory committee. If a list of nominees is not submitted by the time specified, the county executive shall appoint the members using the criteria set forth in this section before the sixtieth day from the passage of the resolution or before the thirtieth day from being notified of a vacancy on the existing advisory committee.

(5) At the advisory committee's first meeting, the members shall choose by lot the length of their terms. Two shall serve for one year, three for two years, three for three years and three for four years. All succeeding committee members shall serve for four years. Terms shall end on December thirty-first of the respective year.

(6) The committee members shall be subject to the regulation of conflicts of interest as defined in sections 105.450 to 105.498, RSMo, and to the requirements for open meetings and records pursuant to chapter 610, RSMo.**]**

[67.490. PETITIONS, CONTENTS, REVIEW, CRITERIA, APPROVAL BY BOARD AS PROPOSAL, PUBLIC HEARING — PROCEDURE IF FUNDS SOUGHT, ADDITIONAL REVIEW, FINDINGS BY BOARD REQUIRED WHEN — SELECT NEIGHBORHOOD ACTION PROGRAM, ELIGIBLE PROJECTS. — 1. The board shall in a timely manner adopt rules setting forth basic guidelines for acceptance and evaluation of petitions, including a common understandable format, as well as appropriate supporting material, maps, plans and data. The board shall begin to accept petitions one month after the adoption of the plan by the governing body of the county pursuant to section 67.487. The board shall review all petitions submitted by any petitioner. Review shall begin no later than thirty days after submission of the petition to the commission. In order to qualify as a proposal, a petition shall address the criteria set forth in subsection 4 of this section. For the purposes of this subsection, the term "pending" means any proposal submitted to the board which has not yet been approved by the board.

2. When practical, a petition shall be initially submitted to the advisory committee for constructive review and comment in a manner likely to result in a proposal that addresses a strategy outlined in the plan.

3. The board shall hold a public hearing concerning the petition, which may be on the same day as a scheduled meeting of the board.

4. (1) In reviewing any petition for funding, the board shall first determine if funds are sought for eligible expenses for a neighborhood reinvestment project. If the petition seeks such funds, the board shall certify such petition as a proposal subject to further review unless the board finds that the petition seeks funds for expenses that do not qualify as eligible expenses, or seeks funds for an endeavor other than a neighborhood reinvestment project. If the board finds that funds are sought for ineligible expenses or for an ineligible endeavor, the board need not take any further action and shall notify the petitioner in writing of all deficiencies that prevent the petition from being a proposal. If the board determines that there is a minor error or discrepancy in a petition, the board, with the petitioner's concurrence, may make such changes to the petition as are necessary to rectify the error that prevents the petition from being certified as a proposal subject to further review. Within six months of certification of a petition as a proposal, the board shall issue a finding approving or disapproving such proposal. In disapproving any proposal, the board shall issue a document indicating the reasons that the proposal was disapproved.

(2) If the board determines that a proposal is a priority comeback project consistent with the strategies and priorities set forth in the community comeback plan and that the project is well-planned, realistic, creative, resourceful, benefits the local community and is cost-effective, then the board shall award funding. If the board determines that a proposal is a priority comeback project, but is inconsistent with the strategies and priorities in the community comeback plan, the board may award funding if it finds that the project is well-planned, realistic, creative, resourceful, benefits the local community, is cost-effective and addresses the reinvestment needs of neighborhoods by one or more of the following:

(a) Reducing or removing impediments to attracting home buyers;

(b) Providing the necessary physical infrastructure needed to promote significant job growth;

(c) Reducing or removing any such factor or factors that constitute an economic or social liability or a menace to the public health, safety, morals, or welfare in its present condition and use.

(3) If the board determines that a proposal, which is not a priority comeback project, is consistent with the strategies and priorities set forth in the community comeback plan and is well-planned, realistic, creative, resourceful, benefits the local community and is cost-effective, the board may award funding if the board adds such proposal to the plan. If the board determines that a proposal, which is not a priority comeback project, is inconsistent with the strategies and priorities in the community comeback plan, the board may award funding if it finds that the project is well-planned, realistic, creative, resourceful, benefits the local community, is

cost-effective and addresses the reinvestment needs of neighborhoods by one or more of the following:

(a) Reducing or removing impediments to attracting home buyers;

(b) Providing the necessary physical infrastructure needed to promote significant job growth;

(c) Reducing or removing any such factor or factors that constitute an economic or social liability or a menace to the public health, safety, morals or welfare in its present condition and use.

(4) The board, the advisory committee and the staff of both may advise petitioners on issues related to petitions or proposals. The board may meet informally, subject to the requirements of chapter 610, RSMo, with representatives of potential petitioners with regard to future petitions and plans.

5. The board shall establish a select neighborhood action program. SNAP applicants shall provide a ten-percent cash or in-kind match to be eligible for a SNAP grant. Project categories eligible for SNAP grant funding shall be:

(1) Neighborhood beautification projects which enhance the appearance of the overall neighborhood. Such projects include, but are not limited to, tree and flower plantings, cleanups, entranceway landscaping, community gardens, public art and neighborhood identification signs/banners;

(2) Neighborhood organization or capacity projects which create or increase membership in a neighborhood organization promoting community betterment. Such projects include, but are not limited to, neighborhood newsletters, neighborhood marketing brochures, neighborhood meetings and special events, and technology such as web site development;

(3) Neighborhood-school partnership projects which benefit a school and the adjacent neighborhood. Involvement of both the school and the neighborhood in planning, implementation and maintenance must be substantiated. Partnership projects include, but are not limited to, youth and community programs that promote safety, culture or the environment and that are beneficial to both the school and the neighborhood;

(4) Capital purchase projects which include the acquisition of equipment or property. Such projects include, but are not limited to, land acquisition, playground equipment, bicycle racks and major supplies;

(5) Neighborhood improvement projects which benefit the local infrastructure in a neighborhood, and include construction of sidewalks or installation of streetlights.

6. Project categories ineligible for SNAP grant funding shall be:

(1) Projects accomplished in more than twelve months;

(2) Projects that duplicate existing private or public programs;

(3) Projects that require ongoing services, or requests to support continual operating budgets; and

(4) Projects that conflict with the community comeback plan.

7. When making SNAP grant funding decisions, the board shall consider the level of neighborhood participation including the percentage of residents who are involved in planning and implementing the idea, the diversity of parties involved or that will benefit, and the amount of neighborhood opposition; the community benefit of the project, including the number of people who will benefit from the project and the overall quality of the project.**]**

[67.493. FUNDS, MINIMUM TO BE USED FOR SNAP GRANT PROGRAM AND PRIORITY COMEBACK PROJECTS, OTHER USES. — Of the funds available to the trust, a minimum of five percent of the funds, not to exceed an unallocated balance of five hundred thousand dollars rolled over from the previous fiscal year, shall be set aside annually for the SNAP grant program. Of the remaining funds seventy-five percent calculated on a rolling three-year average shall be set aside for priority comeback projects. The balance of the funds shall be used to indirectly or

directly benefit priority comeback communities or residents of those areas by utilizing such funds to:

(1) Promote job preparation and job creation in areas easily accessed by residents of priority comeback communities;

(2) Improve neighborhoods adjacent to priority comeback communities that are unlikely to be improved without such funding; and

(3) Abate through low-interest home improvement loan programs or similar mechanisms the functional or marketable obsolescence of any owner-occupied residential structure over twenty-five years old which is located within a census block group below one hundred ten percent of the median income level for the metropolitan statistical area for this state; provided that, there is a significant threat of economic decline within the area without intervention by the trust.**]**

Approved July 2, 2004

HB 841 [SCS HB 841]

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

Prohibits use of glass containers on certain vessels on state waterways.

AN ACT to amend chapter 306, RSMo, by adding thereto two new sections relating to containers on watercraft, with a penalty provision.

SECTION

A. Enacting clause.
306.114. Grant of suspended imposition of sentence, requirements — validity of chemical tests — restrictions upon withdrawal of blood, procedure, no civil liability.
306.325. Vessels on navigable waterways, restrictions on transporting of foodstuffs and beverages — violation, penalty.

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

SECTION A. ENACTING CLAUSE. — Chapter 306, RSMo, is amended by adding thereto two new sections, to be known as sections 306.114 and 306.325, to read as follows:

306.114. GRANT OF SUSPENDED IMPOSITION OF SENTENCE, REQUIREMENTS — VALIDITY OF CHEMICAL TESTS — RESTRICTIONS UPON WITHDRAWAL OF BLOOD, PROCEDURE, NO CIVIL LIABILITY. — 1. No person convicted of or pleading guilty to a violation of section 306.111 or 306.112 shall be granted a suspended imposition of sentence, unless such person is placed on probation for a minimum of two years and a record of the conviction or plea of guilty is entered into the records of the Missouri uniform law enforcement system maintained by the Missouri state highway patrol.

2. Chemical tests of a person's blood, breath, or saliva to be considered valid under the provisions of sections 306.111 to 306.119 shall be performed according to methods and devices approved by the department of health and senior services by licensed medical personnel or by a person possessing a valid permit issued by the department of health and senior services for this purpose. **In addition, any state, county, or municipal law enforcement officer who is certified pursuant to chapter 590, RSMo, may, prior to arrest, administer a portable chemical test to any person suspected of operating any vessel in violation of section 306.111**

or 306.112. A portable chemical test shall be admissible as evidence of probable cause to arrest and as exculpatory evidence, but shall not be admissible as evidence of blood alcohol content. The provisions of section 306.116 shall not apply to a test administered prior to arrest pursuant to this section.

3. The department of health and senior services shall approve satisfactory techniques, devices, equipment, or methods to conduct tests required by sections 306.111 to 306.119, and shall establish standards as to the qualifications and competence of individuals to conduct analyses and to issue permits which shall be subject to termination, suspension or revocation by the department of health and senior services.

4. A licensed physician, registered nurse, or trained medical technician, acting at the request and direction of a law enforcement officer, shall withdraw blood for the purpose of determining the alcohol content of the blood, unless the medical personnel, in the exercise of good faith medical judgment, believes such procedure would endanger the life or health of the person in custody. Blood may be withdrawn only by such medical personnel, but such restriction shall not apply to the taking of a breath test or a saliva specimen. In withdrawing blood for the purpose of determining the alcohol content in the blood, only a previously unused and sterile needle and sterile vessel shall be used and the withdrawal shall otherwise be in strict accord with accepted medical practices. A nonalcoholic antiseptic shall be used for cleansing the skin prior to a venapuncture. Upon the request of the person who is tested, full information concerning the test taken at the direction of the law enforcement officer shall be made available to him.

5. No person who administers any test pursuant to the provisions of sections 306.111 to 306.119 upon the request of a law enforcement officer, no hospital in or with which such person is employed or is otherwise associated or in which such test is administered, and no other person, firm, or corporation by whom or with which such person is employed or is in any way associated, shall be civilly liable for damages to the person tested, except for negligence in administering of the test or for willful and wanton acts or omissions.

6. Any person who is dead, unconscious or who is otherwise in a condition rendering him incapable of refusing to take a test as provided in sections 306.111 to 306.119 shall be deemed not to have withdrawn the consent provided by section 306.116 and the test or tests may be administered.

306.325. VESSELS ON NAVIGABLE WATERWAYS, RESTRICTIONS ON TRANSPORTING OF FOODSTUFFS AND BEVERAGES — VIOLATION, PENALTY. — 1. As used in this section, the following terms mean:

(1) "Navigable waterway", any navigable river, lake, or other body of water located wholly or partly within this state and used by any vessel;

(2) "Vessel", any canoe, kayak, or other watercraft which is easily susceptible to swamping, tipping, or rolling, but does not include any houseboat, party barge, runabout, ski boat, bass boat, excursion gambling boat as defined in section 313.800, RSMo, or similar watercraft not easily susceptible to swamping, tipping, or rolling.

2. Any person entering, traveling upon, or otherwise using navigable or non-navigable waterways by vessel or innertube and transporting foodstuffs or beverages shall:

(1) Use a cooler, icebox, or similar nonglass container, and shall not use, other than containers for substances prescribed by a licensed physician, any glass container for beverages on a vessel within the banks of navigable waterways;

(2) Use a cooler, icebox, or similar nonglass container sealed in a way which prevents the contents from spilling into the water;

(3) Carry and affix to the vessel a container or bag suitable for containing refuse, waste, and trash materials and which is capable of being securely closed;

(4) Transport all refuse, waste, and trash materials to a place in which such materials may be safely and lawfully disposed; and

(5) Shall safely secure any glass containers to protect them from breakage or discharge into any stream.

3. Any person who violates the provisions of this section is guilty of a class C misdemeanor.

Approved June 30, 2004

HB 855 [SS SCS HCS HB 855]

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

Requires health insurers to treat mental health in the same manner as other medical services.

AN ACT to repeal sections 376.779, 376.810, 376.811, 376.826, 376.836, and 376.840, RSMo, and to enact in lieu thereof six new sections relating to insurance coverage for mental health.

SECTION

A. Enacting clause.
376.779. Health insurance policies to offer coverage for treatment of alcoholism — exclusions.
376.810. Definitions for policy requirements for chemical dependency.
376.811. Coverage required for chemical dependency by all insurance and health service corporations — minimum standards — offer of coverage may be accepted or rejected by policyholders, companies may offer as standard coverage — mental health benefits provided, when — exclusions.
376.826. Definitions.
376.836. Effective date — study conducted by director, contents, report to general assembly — exclusions — expiration date.
376.1550. Mental health coverage, requirements — definitions — exclusions.
376.840. Mental illness coverage for all state employee health plans.

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

SECTION A. ENACTING CLAUSE. — Sections 376.779, 376.810, 376.811, 376.826, 376.836, and 376.840, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 376.779, 376.810, 376.811, 376.826, 376.836, and 376.1550, to read as follows:

376.779. HEALTH INSURANCE POLICIES TO OFFER COVERAGE FOR TREATMENT OF ALCOHOLISM — EXCLUSIONS. — 1. All **[**group health insurance policies providing coverage on an expense-incurred basis, all group service or indemnity contracts issued by a not-for-profit health service corporation, all self-insured group health benefit plans, of any type or description, and all such**]** health plans or policies that are individually underwritten or provide for such coverage for specific individuals and the members of their families **[**as nongroup policies**]**, which provide for hospital treatment, shall provide coverage, while confined in a hospital or in a residential or nonresidential facility certified by the department of mental health, for treatment of alcoholism on the same basis as coverage for any other illness, except that coverage may be limited to thirty days in any policy or contract benefit period. All **[**Missouri group contracts issued or renewed, and all**]** Missouri individual contracts issued on or after **[**December 31, 1980**]** **January 1, 2005**, shall be subject to this section. Coverage required by this section shall be included in the policy or contract and payment provided as for other coverage in the same policy

or contract notwithstanding any construction or relationship of interdependent contracts or plans affecting coverage and payment of reimbursement prerequisites under the policy or contract.

2. Insurers, corporations or groups providing coverage may approve for payment or reimbursement vendors and programs providing services or treatment required by this section. Any vendor or person offering services or treatment subject to the provisions of this section and seeking approval for payment or reimbursement shall submit to the department of mental health a detailed description of the services or treatment program to be offered. The department of mental health shall make copies of such descriptions available to insurers, corporations or groups providing coverage under the provisions of this section. Each insurer, corporation or group providing coverage shall notify the vendor or person offering service or treatment as to its acceptance or rejection for payment or reimbursement; provided, however, payment or reimbursement shall be made for any service or treatment program certified by the department of mental health. Any notice of rejection shall contain a detailed statement of the reasons for rejection and the steps and procedures necessary for acceptance. Amended descriptions of services or treatment programs to be offered may be filed with the department of mental health. Any vendor or person rejected for approval of payment or reimbursement may modify their description and treatment program and submit copies of the amended description to the department of mental health and to the insurer, corporation or group which rejected the original description.

3. The department of mental health may issue rules necessary to carry out the provisions of this section. No rule or portion of a rule promulgated under the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

4. All substance abuse treatment programs in Missouri receiving funding from the Missouri department of mental health must be certified by the department.

5. This section shall not apply to a supplemental insurance policy, including a life care contract, accident-only policy, specified disease policy, hospital policy providing a fixed daily benefit only, Medicare supplement policy, long-term care policy, hospitalization-surgical care policy, short-term major medical policy of six months or less duration, or any other supplemental policy as determined by the director of the department of insurance.

376.810. DEFINITIONS FOR POLICY REQUIREMENTS FOR CHEMICAL DEPENDENCY. — As used in sections 376.810 to 376.814, the following terms mean:

(1) "Chemical dependency", the psychological or physiological dependence upon and abuse of drugs, including alcohol, characterized by drug tolerance or withdrawal and impairment of social or occupational role functioning or both;

(2) "Community mental health center", a legal entity certified by the department of mental health or accredited by a nationally recognized organization, through which a comprehensive array of mental health services are provided to individuals;

(3) "Day program services", a structured, intensive day or evening treatment or partial hospitalization program, certified by the department of mental health or accredited by a nationally recognized organization;

(4) "Episode", a distinct course of chemical dependency treatment separated by at least thirty days without treatment;

(5) "Health insurance policy", all **[**group health insurance policies providing coverage on an expense-incurred basis, all group service or indemnity contracts issued by a not for profit health services corporation, all self-insured group health benefit plans of any type or description to the extent that regulation of such plans is not preempted by federal law, and all such**]** health insurance policies or contracts that are individually underwritten or provide such coverage for specific individuals and members of their families **[**as nongroup policies**]**, which provide for hospital treatment. For the purposes of subsection 2 of section 376.811, "health insurance

policy" shall also include any **[**group or individual contract**]** **individually underwritten coverage** issued by a health maintenance organization. The provisions of sections 376.810 to 376.814 shall not apply to policies which provide coverage for a specified disease only, other than for mental illness or chemical dependency;

(6) "Licensed professional", a licensed physician specializing in the treatment of mental illness, a licensed psychologist, a licensed clinical social worker or a licensed professional counselor. Only prescription rights under this act shall apply to medical **[**physician's**]** **physicians** and doctors of osteopathy;

(7) "Managed care", the determination of availability of coverage under a health insurance policy through the use of clinical standards to determine the medical necessity of an admission or treatment, and the level and type of treatment, and appropriate setting for treatment, with required authorization on a prospective, concurrent or retrospective basis, sometimes involving case management;

(8) "Medical detoxification", hospital inpatient or residential medical care to ameliorate acute medical conditions associated with chemical dependency;

(9) "Nonresidential treatment program", program certified by the department of mental health involving structured, intensive treatment in a nonresidential setting;

(10) "Recognized mental illness", those conditions classified as "mental disorders" in the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders, but shall not include mental retardation;

(11) "Residential treatment program", program certified by the department of mental health involving residential care and structured, intensive treatment;

(12) "Social setting detoxification", a program in a supportive nonhospital setting designed to achieve detoxification, without the use of drugs or other medical intervention, to establish a plan of treatment and provide for medical referral when necessary.

376.811. COVERAGE REQUIRED FOR CHEMICAL DEPENDENCY BY ALL INSURANCE AND HEALTH SERVICE CORPORATIONS — MINIMUM STANDARDS — OFFER OF COVERAGE MAY BE ACCEPTED OR REJECTED BY POLICYHOLDERS, COMPANIES MAY OFFER AS STANDARD COVERAGE — MENTAL HEALTH BENEFITS PROVIDED, WHEN — EXCLUSIONS. — 1. Every insurance company and health services corporation doing business in this state shall offer in all health insurance policies, benefits or coverage for chemical dependency meeting the following minimum standards:

(1) Coverage for outpatient treatment through a nonresidential treatment program, or through partial- or full-day program services, of not less than twenty-six days per policy benefit period;

(2) Coverage for residential treatment program of not less than twenty-one days per policy benefit period;

(3) Coverage for medical or social setting detoxification of not less than six days per policy benefit period;

(4) The coverages set forth in this subsection may be subject to a separate lifetime frequency cap of not less than ten episodes of treatment, except that such separate lifetime frequency cap shall not apply to medical detoxification in a life-threatening situation as determined by the treating physician and subsequently documented within forty-eight hours of treatment to the reasonable satisfaction of the insurance company or health services corporation; and

(5) The coverages set forth in this subsection **[**shall be**]**:

(a) **Shall be** subject to the same coinsurance, co-payment and deductible factors as apply to physical illness;

(b) **May be** administered pursuant to a managed care program established by the insurance company or health services corporation; and

(c) **May deliver** covered services **[**may be delivered**]** through a system of contractual arrangements with one or more providers, hospitals, nonresidential or residential treatment programs, or other mental health service delivery entities certified by the department of mental health, or accredited by a nationally recognized organization, or licensed by the state of Missouri.

2. In addition to the coverages set forth in subsection 1 of this section, every insurance company, health services corporation and health maintenance organization doing business in this state shall offer in all health insurance policies, benefits or coverages for recognized mental illness, excluding chemical dependency, meeting the following minimum standards:

(1) Coverage for outpatient treatment, including treatment through partial- or full-day program services, for mental health services for a recognized mental illness rendered by a licensed professional to the same extent as any other illness;

(2) Coverage for residential treatment programs for the therapeutic care and treatment of a recognized mental illness when prescribed by a licensed professional and rendered in a psychiatric residential treatment center licensed by the department of mental health or accredited by the Joint Commission on Accreditation of Hospitals to the same extent as any other illness;

(3) Coverage for inpatient hospital treatment for a recognized mental illness to the same extent as for any other illness, not to exceed ninety days per year;

(4) The coverages set forth in this subsection shall be subject to the same coinsurance, co-payment, deductible, annual maximum and lifetime maximum factors as apply to physical illness; and

(5) The coverages set forth in this subsection may be administered pursuant to a managed care program established by the insurance company, health services corporation or health maintenance organization, and covered services may be delivered through a system of contractual arrangements with one or more providers, community mental health centers, hospitals, nonresidential or residential treatment programs, or other mental health service delivery entities certified by the department of mental health, or accredited by a nationally recognized organization, or licensed by the state of Missouri.

3. The offer required by sections 376.810 to 376.814 may be accepted or rejected by the group or individual policyholder or contract holder and, if accepted, shall fully and completely satisfy and substitute for the coverage under section 376.779. Nothing in sections 376.810 to 376.814 shall prohibit an insurance company, health services corporation or health maintenance organization from including all or part of the coverages set forth in sections 376.810 to 376.814 as standard coverage in their policies or contracts issued in this state.

4. Every insurance company, health services corporation and health maintenance organization doing business in this state shall offer in all health insurance policies mental health benefits or coverage as part of the policy or as a supplement to the policy. Such mental health benefits or coverage shall include at least two sessions per year to a licensed psychiatrist, licensed psychologist, licensed professional counselor, or licensed clinical social worker acting within the scope of such license and under the following minimum standards:

(1) Coverage and benefits in this subsection shall be for the purpose of diagnosis or assessment, but not dependent upon findings; and

(2) Coverage and benefits in this subsection shall not be subject to any conditions of preapproval, and shall be deemed reimbursable as long as the provisions of this subsection are satisfied; and

(3) Coverage and benefits in this subsection shall be subject to the same coinsurance, co-payment and deductible factors as apply to regular office visits under coverages and benefits for physical illness.

5. If the group or individual policyholder or contract holder rejects the offer required by this section, then the coverage shall be governed by the mental health and chemical dependency insurance act as provided in sections 376.825 to **[**376.835**]** **376.836**.

6. This section shall not apply to a supplemental insurance policy, including a life care contract, accident-only policy, specified disease policy, hospital policy providing a fixed

daily benefit only, Medicare supplement policy, long-term care policy, hospitalization-surgical care policy, short-term major medical policy of six months or less duration, or any other supplemental policy as determined by the director of the department of insurance.

376.826. DEFINITIONS. — For the purposes of sections 376.825 to **[**376.840**]** **376.836** the following terms shall mean:

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

(2) "Health insurance policy" or "policy", all **[**group health insurance policies providing coverage on an expense-incurred basis, all group service or indemnity contracts issued by a not for profit health services corporation, all self-insured group health benefit plans of any type or description to the extent that regulation of such plans is not preempted by federal law, and all such**]** health insurance policies or contracts that are individually underwritten or provide such coverage for specific individuals and members of their families **[**as nongroup policies**]**, which provide for hospital treatments. The term shall also include any **[**group or individual contract**]** **individually underwritten coverage** issued by a health maintenance organization. The provisions of sections 376.825 to **[**376.840**]** **376.836** shall not apply to policies which provide coverage for a specified disease only, other than for mental illness or chemical dependency;

(3) "Insurer", an entity licensed by the department of insurance to offer a health insurance policy;

(4) "Mental illness", the following disorders contained in the International Classification of Diseases (ICD-9-CM):

(a) Schizophrenic disorders and paranoid states (295 and 297, except 297.3);

(b) Major depression, bipolar disorder, and other affective psychoses (296);

(c) Obsessive compulsive disorder, post-traumatic stress disorder and other major anxiety disorders (300.0, 300.21, 300.22, 300.23, 300.3 and 309.81);

(d) Early childhood psychoses, and other disorders first diagnosed in childhood or adolescence (299.8, 312.8, 313.81 and 314);

(e) Alcohol and drug abuse (291, 292, 303, 304, and 305, except 305.1); and

(f) Anorexia nervosa, bulimia and other severe eating disorders (307.1, 307.51, 307.52 and 307.53);

(g) Senile organic psychotic conditions (290);

(5) "Rate", "term", or "condition", any lifetime limits, annual payment limits, episodic limits, inpatient or outpatient service limits, and out-of-pocket limits. This definition does not include deductibles, co-payments, or coinsurance prior to reaching any maximum out-of-pocket limit. Any out-of-pocket limit under a policy shall be comprehensive for coverage of mental illness and physical conditions.

376.836. EFFECTIVE DATE — STUDY CONDUCTED BY DIRECTOR, CONTENTS, REPORT TO GENERAL ASSEMBLY — EXCLUSIONS — EXPIRATION DATE. — 1. The provisions of sections 376.825 to **[**376.840**]** **376.836** apply to applications for coverage made on or after January 1, **[**2000**]** **2005**, and to health insurance policies issued or renewed on or after such date to residents of this state. Multiyear group policies need not comply until the expiration of their current multiyear term unless the policyholder elects to comply before that time.

2. **[**The director shall perform a study to assess the impact of the mental health and substance abuse insurance act on insurers, business interests, providers, and consumers of mental health and substance abuse treatment services. The director shall report the findings of this study to the general assembly by January 1, 2004.**]** **This section shall not apply to a supplemental insurance policy, including a life care contract, accident-only policy, specified disease policy, hospital policy providing a fixed daily benefit only, Medicare supplement policy, long-term care policy, hospitalization-surgical care policy, short-term major medical policy**

of six months or less duration, or any other supplemental policy as determined by the director of the department of insurance.

3. The provisions of sections 376.825 to 376.836 shall expire on January 1, 2011.

376.1550. MENTAL HEALTH COVERAGE, REQUIREMENTS — DEFINITIONS — EXCLUSIONS. — 1. Notwithstanding any other provision of law to the contrary, each health carrier that offers or issues health benefit plans which are delivered, issued for delivery, continued, or renewed in this state on or after January 1, 2005, shall provide coverage for a mental health condition, as defined in this section, and shall comply with the following provisions:

(1) A health benefit plan shall provide coverage for treatment of a mental health condition and shall not establish any rate, term, or condition that places a greater financial burden on an insured for access to treatment for a mental health condition than for access to treatment for a physical health condition. Any deductible or out-of-pocket limits required by a health carrier or health benefit plan shall be comprehensive for coverage of all health conditions, whether mental or physical;

(2) The coverages set forth is this subsection:

(a) May be administered pursuant to a managed care program established by the health carrier; and

(b) May deliver covered services through a system of contractual arrangements with one or more providers, hospitals, nonresidential or residential treatment programs, or other mental health service delivery entities certified by the department of mental health, or accredited by a nationally recognized organization, or licensed by the state of Missouri;

(3) A health benefit plan that does not otherwise provide for management of care under the plan or that does not provide for the same degree of management of care for all health conditions may provide coverage for treatment of mental health conditions through a managed care organization; provided that the managed care organization is in compliance with rules adopted by the department of insurance that assure that the system for delivery of treatment for mental health conditions does not diminish or negate the purpose of this section. The rules adopted by the director shall assure that:

(a) Timely and appropriate access to care is available;

(b) The quantity, location, and specialty distribution of health care providers is adequate; and

(c) Administrative or clinical protocols do not serve to reduce access to medically necessary treatment for any insured.

(4) Coverage for treatment for chemical dependency shall comply with sections 376.779, 376.810 to 376.814, and 376.825 to 376.836 and for the purposes of this subdivision the term "health insurance policy" as used in sections 376.779, 376.810 to 376.814, and 376.825 to 376.836, the term "health insurance policy" shall include group coverage.

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

(1) "Chemical dependency", the psychological or physiological dependence upon and abuse of drugs, including alcohol, characterized by drug tolerance or withdrawal and impairment of social or occupational role functioning or both;

(2) "Health benefit plan", the same meaning as such term is defined in section 376.1350;

(3) "Health carrier", the same meaning as such term is defined in section 376.1350;

(4) "Mental health condition", any condition or disorder defined by categories listed in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders except for chemical dependency;

(5) "Managed care organization", any financing mechanism or system that manages care delivery for its members or subscribers, including health maintenance organizations and any other similar health care delivery system or organization;

(6) "Rate, term, or condition", any lifetime or annual payment limits, deductibles, copayments, coinsurance, and other cost-sharing requirements, out-of-pocket limits, visit limits, and any other financial component of a health benefit plan that affects the insured.

3. This section shall not apply to a health plan or policy that is individually underwritten or provides such coverage for specific individuals and members of their families pursuant to section 376.779, sections 376.810 to 376.814, and sections 376.825 to 376.836, a supplemental insurance policy, including a life care contract, accident-only policy, specified disease policy, hospital policy providing a fixed daily benefit only, Medicare supplement policy, long-term care policy, hospitalization-surgical care policy, short-term major medical policies of six months or less duration, or any other supplemental policy as determined by the director of the department of insurance.

4. Notwithstanding any other provision of law to the contrary, all health insurance policies that cover state employees, including the Missouri consolidated health care plan, shall include coverage for mental illness. Multiyear group policies need not comply until the expiration of their current multiyear term unless the policyholder elects to comply before that time.

5. The provisions of this section shall not be violated if the insurer decides to apply different limits or exclude entirely from coverage the following:

(1) Marital, family, educational, or training services unless medically necessary and clinically appropriate;

(2) Services rendered or billed by a school or halfway house;

(3) Care that is custodial in nature;

(4) Services and supplies that are not immediately nor clinically appropriate; or

(5) Treatments that are considered experimental.

6. The director shall grant a policyholder a waiver from the provisions of this section if the policyholder demonstrates to the director by actual experience over any consecutive twenty-four-month period that compliance with this section has increased the cost of the health insurance policy by an amount that results in a two percent increase in premium costs to the policyholder. The director shall promulgate rules establishing a procedure and appropriate standards for making such a demonstration. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

[376.840. MENTAL ILLNESS COVERAGE FOR ALL STATE EMPLOYEE HEALTH PLANS. — Notwithstanding the provision of subsection 1 of section 376.827, all health insurance policies which cover state employees including the Missouri consolidated health care plan shall include coverage for mental illness. Multiyear group policies need not comply until the expiration of their current multiyear term unless the policyholder elects to comply before that time.**]**

Approved June 28, 2004

HB 869 [HB 869]

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

Amends various provisions regarding the licensure of veterinarians.

AN ACT to repeal sections 340.200, 340.246, 340.262, 340.306, 340.312, and 340.320, RSMo, and to enact in lieu thereof eight new sections relating to veterinarians.

SECTION

A. Enacting clause.
340.200. Definitions.
340.217. Practice of veterinary medicine across state lines defined — license not required, when.
340.246. Provisional licensure, requirements — term.
340.255. Inactive license status, procedure.
340.262. Renewal of expired license, requirements — waiver of fees, when.
340.306. Waiver of examination, when — grade score transfer permitted, when.
340.312. Technician certification, inactive status, when — notification of termination of employment — continuing education required, when.
340.320. Practice as technician after revocation, penalty — application for renewal.

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

SECTION A. ENACTING CLAUSE. — Sections 340.200, 340.246, 340.262, 340.306, 340.312, and 340.320, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 340.200, 340.217, 340.246, 340.255, 340.262, 340.306, 340.312, and 340.320, to read as follows:

340.200. DEFINITIONS. — When used in sections 340.200 to 340.330, the following terms mean:

(1) "Accredited school of veterinary medicine", any veterinary college or division of a university or college that offers the degree of doctor of veterinary medicine or its equivalent and is accredited by the American Veterinary Medical Association (AVMA);

(2) "Animal", any wild, exotic or domestic, living or dead animal or mammal other than man, including birds, fish and reptiles;

(3) "Applicant", an individual who files an application to be licensed to practice veterinary medicine or to be registered as a veterinary technician;

(4) "Appointed member of the board", regularly appointed members of the Missouri veterinary medical board, not including the state veterinarian who serves on the board ex officio;

(5) "Board", the Missouri veterinary medical board;

(6) "Consulting veterinarian", a veterinarian licensed in another state, country or territory who gives advice or demonstrates techniques to a licensed Missouri veterinarian or group of licensed Missouri veterinarians;

(7) "ECFVG certificate", a certificate issued by the American Veterinary Medical Association Educational Commission for Foreign Veterinary Graduates or its successor. The certificate must indicate that the holder of the certificate has demonstrated knowledge and skill equivalent to that possessed by a graduate of an accredited school of veterinary medicine;

(8) "Emergency", when an animal has been placed in a life-threatening condition and immediate treatment is necessary to sustain life or where death is imminent and action is necessary to relieve pain or suffering;

(9) "Faculty member", full professors, assistant professors, associate professors, clinical instructors and residents but does not include interns or adjunct appointments;

(10) "Foreign veterinary graduate", any person, including foreign nationals and American citizens, who has received a professional veterinary medical degree from an AVMA listed

veterinary college located outside the boundaries of the United States, its territories or Canada, that is not accredited by the AVMA;

(11) "License", any permit, approval, registration or certificate issued or renewed by the board;

(12) "Licensed veterinarian", an individual who is validly and currently licensed to practice veterinary medicine in Missouri as determined by the board in accordance with the requirements and provisions of sections 340.200 to 340.330;

(13) "Minimum standards", standards as set by board rule and which establish the minimum requirements for the practice of veterinary medicine in the state of Missouri as are consistent with the intent and purpose of sections 340.200 to 340.330;

(14) "Person", any individual, firm, partnership, association, joint venture, cooperative or corporation or any other group or combination acting in concert; whether or not acting as principal, trustee, fiduciary, receiver, or as any kind of legal or personal representative or as the successor in interest, assigning agent, factor, servant, employee, director, officer or any other representative of such person;

(15) "Practice of veterinary medicine", to represent directly, indirectly, publicly or privately an ability and willingness to do any act described in subdivision **[**(24)**] (28)** of this section;

(16) "Provisional license", a license issued to a person while that person is engaged in a veterinary candidacy program;

(17) "Registered veterinary technician", a person who is formally trained for the specific purpose of assisting a licensed veterinarian with technical services under the appropriate level of supervision as is consistent with the particular delegated animal health care task;

(18) "Supervision":

(a) "Immediate supervision", the licensed veterinarian is in the immediate area and within audible and visual range of the animal patient and the person treating the patient;

(b) "Direct supervision", the licensed veterinarian is on the premises where the animal is being treated and is quickly and easily available and the animal has been examined by a licensed veterinarian at such times as acceptable veterinary medical practice requires consistent with the particular delegated animal health care task;

(c) "Indirect supervision", the licensed veterinarian need not be on the premises but has given either written or oral instructions for the treatment of the animal patient or treatment protocol has been established and the animal has been examined by a licensed veterinarian at such times as acceptable veterinary medical practice requires consistent with the particular delegated health care task; provided that the patient is not in a surgical plane of anesthesia and the licensed veterinarian is available for consultation on at least a daily basis;

(19) "Supervisor", a licensed veterinarian employing or utilizing the services of a registered veterinary technician, veterinary intern, temporary provisional licensee, veterinary medical student, unregistered assistant or any other individual working under that veterinarian's supervision;

(20) "Temporary license", any temporary permission to practice veterinary medicine issued by the board pursuant to section 340.248;

(21) "Unregistered assistant", any individual who is not a registered veterinary technician or licensed veterinarian and is employed by a licensed veterinarian;

(22) "Veterinarian", "doctor of veterinary medicine", "DVM", "VMD", or equivalent title, a person who has received a doctor's degree in veterinary medicine from an accredited school of veterinary medicine or holds a ECFVG certificate issued by the AVMA;

(23) "Veterinarian-client-patient relationship", the veterinarian has assumed the responsibility for making medical judgments regarding the health of the animal and the need for medical treatment, and the client, owner or owner's agent has agreed to follow the instructions of the veterinarian. There is sufficient knowledge of the animal by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal. Veterinarian-client-patient relationship means that the veterinarian has recently seen and is

personally acquainted with the keeping and care of the animal by virtue of an examination or by medically appropriate and timely visits to the premises where the animal is kept. The practicing veterinarian is readily available for follow-up care in case of adverse reactions or failure of the prescribed course of therapy;

(24) "Veterinary candidacy program", a program by which a person who has received a doctor of veterinary medicine or equivalent degree from an accredited school of veterinary medicine can obtain the practical experience required for licensing in Missouri pursuant to sections 340.200 to 340.330;

(25) "Veterinary facility", any place or unit from which the practice of veterinary medicine is conducted, including but not limited to the following:

(a) "Veterinary or animal hospital or clinic", a facility that meets or exceeds all physical requirements and minimum standards as established by board rule for veterinary facilities; provides quality examination, diagnostic and health maintenance services for medical and surgical treatment of animals and is equipped to provide housing and nursing care for animals during illness or convalescence;

(b) "Specialty practice or clinic", a facility that provides complete specialty service by a licensed veterinarian who has advanced training in a specialty and is a diplomate of an approved specialty board. A specialty practice or clinic shall meet all minimum standards which are applicable to a specialty as established by board rule;

(c) "Central hospital", a facility that meets all requirements of a veterinary or animal hospital or clinic as defined in paragraph (a) of this subdivision and other requirements as established by board rule, and which provides specialized care, including but not limited to twenty-four-hour nursing care and specialty consultation on permanent or on-call basis. A central hospital shall be utilized primarily on referral from area veterinary hospitals or clinics;

(d) "Satellite, outpatient or mobile small animal clinic", a supportive facility owned by or associated with and has ready access to a full-service veterinary hospital or clinic or a central hospital providing all mandatory services and meeting all physical requirements and minimum standards as established by sections 340.200 to 340.330 or by board rule;

(e) "Large animal mobile clinic", a facility that provides examination, diagnostic and preventive medicine and minor surgical services for large animals not requiring confinement or hospitalization;

(f) "Emergency clinic", a facility established to receive patients and to treat illnesses and injuries of an emergency nature;

(26) "Veterinary candidate", a person who has received a doctor of veterinary medicine or equivalent degree from an accredited school or college of veterinary medicine and who is working under the supervision of a board-approved licensed veterinarian;

(27) "Veterinary intern", a person who has received a doctor of veterinary medicine or equivalent degree from an accredited school or college of veterinary medicine and who is participating in additional clinical training in veterinary medicine to prepare for AVMA-recognized certification or specialization;

(28) "Veterinary medicine", the science of diagnosing, treating, changing, alleviating, rectifying, curing or preventing any animal disease, deformity, defect, injury or other physical or mental condition, including, but not limited to, the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthesia or other therapeutic or diagnostic substance or technique on any animal, including, but not limited to, acupuncture, dentistry, animal psychology, animal chiropractic, theriogenology, surgery, both general and cosmetic surgery, any manual, mechanical, biological or chemical procedure for testing for pregnancy or for correcting sterility or infertility or to render service or recommendations with regard to any of the procedures in this paragraph;

(29) "Veterinary student preceptee", a person who is pursuing a veterinary degree in an accredited school of veterinary medicine which has a preceptor program and who has completed the academic requirements of such program.

340.217. PRACTICE OF VETERINARY MEDICINE ACROSS STATE LINES DEFINED — LICENSE NOT REQUIRED, WHEN. — 1. No person registered as a veterinarian in Missouri shall engage in the practice of veterinary medicine, as authorized in this chapter, across state lines, except as herein provided.

2. For purposes of this chapter, the "practice of veterinary medicine across state lines" means:

(1) The rendering of a written or otherwise documented veterinary medical opinion concerning the diagnosis or treatment of a patient within this state by a veterinarian located outside this state as a result of transmission of individual patient data by electronic, telephonic, or other means from within this state or any other state to such veterinarian or veterinarian's agent; or

(2) The rendering of treatment to a patient within this state by a veterinarian located outside this state as a result of transmission of individual patient data by electronic, telephonic, or other means from within this state or any other state to such veterinarian or veterinarian's agent.

3. A veterinarian located outside this state shall not be required to obtain a license when:

(1) In consultation with a veterinarian licensed to practice veterinary medicine in this state; and

(2) The veterinarian licensed in this state retains the ultimate authority and responsibility for the diagnosis and/or treatment in the care of the patient located within this state; or

(3) Evaluating a patient or rendering an oral, written, or otherwise documented veterinary medical opinion when providing testimony or records for the purpose of any civil or criminal action before any judicial or administrative proceeding in this state or other forum in this state.

340.246. PROVISIONAL LICENSURE, REQUIREMENTS — TERM. — A provisional license may be issued to a qualified applicant for licensure pending examination results and completion of the veterinary candidacy program, **or who has otherwise applied for licensure by grade transfer, reciprocity, or examination,** if the applicant meets all other required qualifications for licensure in sections 340.200 to 340.330; provided that the applicant is working under the supervision of a licensed veterinarian in good standing. Such supervision shall be consistent with the delegated animal health care task. A provisional license shall expire one year after the date of issuance. **A provisional license shall not be issued to individuals applying for faculty licensure.**

340.255. INACTIVE LICENSE STATUS, PROCEDURE. — Any veterinarian licensed under sections 340.200 to 340.330 who is not practicing or involved in any aspect, administrative or otherwise, of veterinary medicine in Missouri, as defined in section 340.200, may request that his or her license be placed on an inactive status. Any veterinarian requesting his or her license to be placed on an inactive status shall file an affirmation with the board stating that he or she will not engage in the practice or be involved in any aspect, administrative or otherwise, of veterinary medicine in Missouri. To renew such inactive license, the person shall submit an application for licensure renewal, pay the renewal fee, and submit approved continuing education hours as required by rule of the board.

340.262. RENEWAL OF EXPIRED LICENSE, REQUIREMENTS — WAIVER OF FEES, WHEN. — If a person is otherwise eligible to renew his or her license, the person may renew an expired license within two years of the date of expiration. To renew such expired license, the person shall submit an application for renewal, pay the renewal fee, pay a delinquent renewal fee **[**and**],** pay a penalty fee **[**as established by the board**], and submit approved continuing education hours as required by rule of the board**. Upon a finding of extenuating circumstances, the

board may waive the payment of the penalty fee; however, nothing in this section shall be construed as requiring such waiver. If more than two years have lapsed since the date the license expired, the license may not be renewed. The holder of such expired license must apply under the procedures for a new license pursuant to sections 340.200 to 340.330.

340.306. WAIVER OF EXAMINATION, WHEN — GRADE SCORE TRANSFER PERMITTED, WHEN. — **1.** The board may issue a certificate of registration to an applicant, without examination, if the applicant submits proof, satisfactory to the board, that the applicant:

(1) Is currently registered in another state, territory, district or province of the United States or Canada having standards for admission substantially the same as the standards in Missouri, and that the standards were in effect at the time the applicant was first admitted to practice in the other state, territory, district or province of the United States or Canada; and

(2) Has been employed and supervised by a licensed veterinarian for a period of at least five consecutive years preceding the applicant's application to practice as a veterinary technician in Missouri.

2. If the applicant has not been licensed in another state, territory, district, or province of the United States or Canada for five consecutive years, the board may determine that the applicant is eligible for licensure by grade score transfer. For a previous examination score to be transferred for a current licensing period, the score must be received within the five-year period immediately preceding the application. If such passing score is not received within three attempts, the board may require the applicant to appear before the board and/or submit evidence that the applicant has completed continuing education.

340.312. TECHNICIAN CERTIFICATION, INACTIVE STATUS, WHEN — NOTIFICATION OF TERMINATION OF EMPLOYMENT — CONTINUING EDUCATION REQUIRED, WHEN. — 1. If the technician leaves the employment or supervision of the licensed veterinarian and is not employed by or supervised by another licensed veterinarian within thirty days of the termination of his or her employment, the technician's certificate shall be placed on inactive status. It is the responsibility of the technician to inform the executive director within thirty days of termination of his or her employment. It is grounds for revocation of the technician's certificate if he or she fails to notify the executive director of such termination.

2. Any veterinary technician in the state of Missouri whose certificate has been on inactive status **[**for at least five continuous years**]** will be required to **[**take**]** **complete the required** continuing education **[**as required by the board**]** **credits in accordance with rules of the board**, pay all fees and meet all other requirements of sections 340.200 to 340.330 and board rules for registration as a veterinary technician.

340.320. PRACTICE AS TECHNICIAN AFTER REVOCATION, PENALTY — APPLICATION FOR RENEWAL. — 1. Any person who practices as a veterinary technician after his or her certificate has been revoked pursuant to section 340.318 is in violation of sections 340.200 to 340.330 and subject to criminal prosecution as provided for under sections 340.200 to 340.330. Such criminal penalty shall be in addition to and not in lieu of any penalty or other discipline provided for under sections 340.200 to 340.330.

2. If a person is otherwise eligible to renew his or her certificate, such person may renew an expired certificate within **[**one year**]** **two years** of the date of expiration by submitting an application for renewal, payment of the renewal fee, payment of delinquent renewal fees and payment of a penalty fee as established by the board. A certificate may not be renewed if **[**one year has**]** **two years have** lapsed since the date the certificate expired. Such holder of an expired certificate must make application for a new certificate.

Approved June 21, 2004

HB 895 [HCS HB 895]

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

Creates dissolution procedures for road districts in Jasper County.

AN ACT to repeal section 233.295, RSMo, and to enact in lieu thereof one new section relating to dissolution of certain road districts, with an emergency clause.

SECTION
A. Enacting clause.
233.295. Dissolution of road district — petition — notice — disincorporation of district, petition, election, ballot form, certain counties, Christian, Jasper.
B. Emergency clause.

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

SECTION A. ENACTING CLAUSE. — Section 233.295, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 233.295, to read as follows:

233.295. DISSOLUTION OF ROAD DISTRICT — PETITION — NOTICE — DISINCORPORATION OF DISTRICT, PETITION, ELECTION, BALLOT FORM, CERTAIN COUNTIES, CHRISTIAN, JASPER. — 1. Whenever a petition, signed by the owners of a majority of the acres of land, within a road district organized under the provisions of sections 233.170 to 233.315 shall be filed with the county commission of any county in which such district is situated, setting forth the name of the district and the number of acres owned by each signer of such petition and the whole number of acres in such district, the county commission shall have power, if in its opinion the public good will be thereby advanced, to disincorporate such road district. No such road district shall be disincorporated until notice is published in at least one newspaper of general circulation in the county where the district is situated for four weeks successively prior to the hearing of such petition.

2. In any county with a population of at least thirty-two thousand inhabitants which adjoins a county of the first classification which contains a city with a population of one hundred thousand or more inhabitants that adjoins no other county of the first classification, whenever a petition signed by at least fifty registered voters residing within the district organized under the provisions of sections 233.170 to 233.315 is filed with the county clerk of the county in which the district is situated, setting forth the name of the district and requesting the disincorporation of such district, the county clerk shall certify for election the following question to be voted upon by the eligible voters of the district:

Shall the..... incorporated road district organized under the provisions of sections 233.170 to 233.315, RSMo, be dissolved?

YES NO

If a majority of the persons voting on the question are in favor of the proposition, then the county commission shall disincorporate the road district.

3. The petition filed pursuant to subsection 2 of this section shall be submitted to the clerk of the county no later than eight weeks prior to the next countywide election at which the question will be voted upon.

4. Notwithstanding other provisions of this section to the contrary, in any county of the first classification with more than one hundred four thousand six hundred but less than one hundred four thousand seven hundred inhabitants, any petition to disincorporate a road district organized under sections 233.170 to 233.315 shall be presented to the county commission or similar authority. The petition shall be signed by

the lesser of fifty or a majority of the registered voters residing within the district, shall state the name of the district, and shall request the disincorporation of the district. If a petition is submitted as authorized in this section, and it is the opinion of the county commission that the public good will be advanced by the disincorporation after providing notice and a hearing as required in section 233.295, then the county commission shall disincorporate the road district. This subsection shall not apply to any road district located in two counties.

SECTION B. EMERGENCY CLAUSE. — Because immediate action is necessary to provide fiscal relief to certain incorporated road districts, section A 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 A of this act shall be in full force and effect upon its passage and approval.

Approved May 7, 2004

HB 904 [HB 904]

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

Repeals the Uniform Commercial Code provisions relating to bulk transfers.

AN ACT to repeal sections 400.1-105, 400.6-101, 400.6-102, 400.6-103, 400.6-104, 400.6-105, 400.6-107, 400.6-108, 400.6-109, 400.6-110, and 400.6-111, RSMo, and to enact in lieu thereof one new section relating to bulk transfers.

SECTION

A. Enacting clause.
400.001-105. Territorial application of the act — parties' power to choose applicable law.
400.006-101. Short title.
400.006-102. "Bulk transfers" — transfers of equipment — enterprises subject to this article — bulk transfer subject to this article.
400.006-103. Transfers excepted from this article.
400.006-104. Schedule of property, list of creditors.
400.006-105. Notice to creditors.
400.006-107. The notice.
400.006-108. Auction sales — "auctioneer".
400.006-109. What creditors protected.
400.006-110. Subsequent transfers.
400.006-111. Limitation of actions and levies.

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

SECTION A. ENACTING CLAUSE. — Sections 400.1-105, 400.6-101, 400.6-102, 400.6-103, 400.6-104, 400.6-105, 400.6-107, 400.6-108, 400.6-109, 400.6-110, and 400.6-111, RSMo, are repealed and one new section enacted in lieu thereof, to be known as section 400.1-105, to read as follows:

400.001-105. TERRITORIAL APPLICATION OF THE ACT — PARTIES' POWER TO CHOOSE APPLICABLE LAW. — (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the

law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this chapter applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this chapter specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 400.2-402.

Applicability of the Article on Leases. Sections 400.2A-105 and 400.2A-106.

Applicability of the Article on Bank Deposits and Collections. Section 400.4-102.

Letter of credit. Section 400.5-116.

[Bulk transfers subject to the Article on Bulk Transfers. Section 400.6-102.**]**

Applicability of the Article on Investment Securities. Section 400.8-110.

Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests. Sections 400.9-301 through 400.9-307.

[400.006-101. SHORT TITLE. — This article shall be known and may be cited as "Uniform Commercial Code — Bulk Transfers".**]**

[400.006-102. "BULK TRANSFERS" — TRANSFERS OF EQUIPMENT — ENTERPRISES SUBJECT TO THIS ARTICLE — BULK TRANSFER SUBJECT TO THIS ARTICLE. — (1) A "bulk transfer" is any transfer in bulk and not in the ordinary course of the transferor's business of a major part of the materials, supplies, merchandise or other inventory (section 400.9-109) of an enterprise subject to this article.

(2) A transfer of a substantial part of the equipment (section 400.9-109) of such an enterprise is a bulk transfer if it is made in connection with a bulk transfer of inventory, but not otherwise.

(3) The enterprises subject to this article are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell.

(4) Except as limited by the following section all bulk transfers of goods located within this state are subject to this article.**]**

[400.006-103. TRANSFERS EXCEPTED FROM THIS ARTICLE. — The following transfers are not subject to this article:

(1) Those made to give security for the performance of an obligation;

(2) General assignments for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;

(3) Transfers in settlement or realization of a lien or other security interest;

(4) Sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process;

(5) Sales made in the course of judicial or administrative proceedings for the dissolution or reorganization of a corporation and of which notice is sent to the creditors of the corporation pursuant to order of the court or administrative agency;

(6) Transfers to a person maintaining a known place of business in this state who becomes bound to pay the debts of a transferor in full and gives public notice of that fact, and who is solvent after becoming so bound;

(7) A transfer to a new business enterprise organized to take over and continue the business, if public notice of the transaction is given and the new enterprise assumes the debts of the transferor and he receives nothing from the transaction except an interest in the new enterprise junior to the claims of creditors;

(8) Transfers of property which is exempt from execution.

Public notice under subsection (6) or subsection (7) may be given by publishing once a week for two consecutive weeks in a newspaper of general circulation where the transferor had its

principal place of business in this state an advertisement including the names and addresses of the transferor and transferee and the effective date of the transfer.**]**

[400.006-104. SCHEDULE OF PROPERTY, LIST OF CREDITORS. — (1) Except as provided with respect to auction sales (section 400.6-108), a bulk transfer subject to this article is ineffective against any creditor of the transferor unless:

(a) The transferee requires the transferor to furnish a list of his existing creditors prepared as stated in this section; and

(b) The parties prepare a schedule of the property transferred sufficient to identify it; and

(c) The transferee preserves the list and schedule for six months next following the transfer and permits inspection of either or both and copying therefrom at all reasonable hours by any creditor of the transferor, or files the list and schedule in the office of the recorder of deeds of the county in which the transferor resides.

(2) The list of creditors must be signed and sworn to or affirmed by the transferor or his agent. It must contain the names and business addresses of all creditors of the transferor, with the amounts when known, and also the names of all persons who are known to the transferor to assert claims against him even though such claims are disputed. If the transferor is the obligor of an outstanding issue of bonds, debentures or the like as to which there is an indenture trustee, the list of creditors need include only the name and address of the indenture trustee and the aggregate outstanding principal amount of the issue.

(3) Responsibility for the completeness and accuracy of the list of creditors rests on the transferor, and the transfer is not rendered ineffective by errors or omissions therein unless the transferee is shown to have had knowledge.**]**

[400.006-105. NOTICE TO CREDITORS. — In addition to the requirements of section 400.6-104, any bulk transfer subject to this article except one made by auction sale (section 400.6-108) is ineffective against any creditor of the transferor unless at least ten days before he takes possession of the goods or pays for them, whichever happens first, the transferee gives notice of the transfer in the manner and to the persons hereafter provided (section 400.6-107).**]**

[400.006-107. THE NOTICE. — (1) The notice to creditors (section 400.6-105) shall state:

(a) that a bulk transfer is about to be made; and

(b) the names and business addresses of the transferor and transferee, and all other business names and addresses used by the transferor within three years last past so far as known to the transferee; and

(c) whether or not all the debts of the transferor are to be paid in full as they fall due as a result of the transaction, and if so, the address to which creditors should send their bills.

(2) If the debts of the transferor are not to be paid in full as they fall due or if the transferee is in doubt on that point then the notice shall state further:

(a) the location and general description of the property to be transferred and the estimated total of the transferor's debts;

(b) the address where the schedule of property and list of creditors (section 400.6-104) may be inspected;

(c) whether the transfer is to pay existing debts and if so the amount of such debts and to whom owing;

(d) whether the transfer is for new consideration and if so the amount of such consideration and the time and place of payment.

(3) The notice in any case shall be delivered personally or sent by registered or certified mail to all the persons shown on the list of creditors furnished by the transferor (section 400.6-104) and to all other persons who are known to the transferee to hold or assert claims against the transferor.**]**

[400.006-108. AUCTION SALES — "AUCTIONEER". — (1) A bulk transfer is subject to this article even though it is by sale at auction, but only in the manner and with the results stated in this section.

(2) The transferor shall furnish a list of his creditors and assist in the preparation of a schedule of the property to be sold, both prepared as before stated (section 400.6-104).

(3) The person or persons other than the transferor who direct, control or are responsible for the auction are collectively called the "auctioneer". The auctioneer shall:

(a) receive and retain the list of creditors and prepare and retain the schedule of property for the period stated in this article (section 400.6-104);

(b) give notice of the auction personally or by registered or certified mail at least ten days before it occurs to all persons shown on the list of creditors and to all other persons who are known to him to hold or assert claims against the transferor.

(4) Failure of the auctioneer to perform any of these duties does not affect the validity of the sale or the title of the purchasers, but if the auctioneer knows that the auction constitutes a bulk transfer such failure renders the auctioneer liable to the creditors of the transferor as a class for the sums owing to them from the transferor up to but not exceeding the net proceeds of the auction. If the auctioneer consists of several persons their liability is joint and several.**]**

[400.006-109. WHAT CREDITORS PROTECTED. — The creditors of the transferor mentioned in this article are those holding claims based on transactions or events occurring before the bulk transfer, but creditors who become such after notice to creditors is given (sections 400.6-105 and 400.6-107) are not entitled to notice.**]**

[400.006-110. SUBSEQUENT TRANSFERS. — When the title of a transferee to property is subject to a defect by reason of his noncompliance with the requirements of this article, then:

(1) a purchaser of any of such property from such transferee who pays no value or who takes with notice of such noncompliance takes subject to such defect, but

(2) a purchaser for value in good faith and without such notice takes free of such defect.**]**

[400.006-111. LIMITATION OF ACTIONS AND LEVIES. — No action under this article shall be brought nor levy made more than six months after the date on which the transferee took possession of the goods unless the transfer has been concealed. If the transfer has been concealed, actions may be brought or levies made within six months after its discovery.**]**

Approved June 25, 2004

HB 916 [SCS HB 916]

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

Revises the crime of identity theft and creates a new crime of trafficking in stolen identities.

AN ACT to repeal sections 570.223 and 575.120, RSMo, and to enact in lieu thereof three new sections relating to identity theft, with penalty provisions.

SECTION

A. Enacting clause.
570.223. Identity theft — penalty — restitution — other civil remedies available — exempted activities.
570.224. Trafficking in stolen identities, crime of — possession of documents, exemptions — violation, penalty.
575.120. False impersonation — penalties.

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

SECTION A. ENACTING CLAUSE. — Sections 570.223 and 575.120, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 570.223, 570.224, and 575.120, to read as follows:

570.223. IDENTITY THEFT — PENALTY — RESTITUTION — OTHER CIVIL REMEDIES AVAILABLE — EXEMPTED ACTIVITIES. — 1. A person commits the crime of identity theft if he **or she** knowingly and with the intent to deceive or defraud obtains, possesses, transfers, uses, or attempts to obtain, transfer or use, one or more means of identification not lawfully issued for his **or her** use.

2. **[**Identity theft is punishable by up to six months in jail for the first offense; up to one year in jail for the second offense; and one to five years imprisonment for the third or subsequent offense.**] The term "means of identification" as used in this section includes, but is not limited to, the following:**

(1) Social Security numbers;

(2) Drivers license numbers;

(3) Checking account numbers;

(4) Savings account numbers;

(5) Credit card numbers;

(6) Debit card numbers;

(7) Personal identification (PIN) code;

(8) Electronic identification numbers;

(9) Digital signatures;

(10) Any other numbers or information that can be used to access a person's financial resources;

(11) Biometric data;

(12) Fingerprints;

(13) Passwords;

(14) Parent's legal surname prior to marriage;

(15) Passports; or

(16) Birth certificates.

3. **A person found guilty of identity theft shall be punished as follows:**

(1) Identity theft or attempted identity theft which does not result in the theft or appropriation of credit, money, goods, services, or other property is a class B misdemeanor;

(2) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property not exceeding five hundred dollars in value is a class A misdemeanor;

(3) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding five hundred dollars and not exceeding one thousand dollars in value is a class D felony;

(4) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding one thousand dollars and not exceeding ten thousand dollars in value is a class C felony;

(5) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding ten thousand dollars and not exceeding one hundred thousand dollars in value is a class B felony;

(6) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding one hundred thousand dollars in value is a class A felony.

4. In addition to the provisions of subsection **[**2**]** **3** of this section, the court may order that the defendant make restitution to any victim of the offense. Restitution may include payment for any costs, including attorney fees, incurred by the victim:

(1) In clearing the credit history or credit rating of the victim; and

(2) In connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising from the actions of the defendant.

5. In addition to the criminal penalties in subsections 3 and 4 of this section, any person who commits an act made unlawful by subsection 1 of this section shall be liable to the person to whom the identifying information belonged for civil damages of up to five thousand dollars for each incident, or three times the amount of actual damages, whichever amount is greater. A person damaged as set forth in subsection 1 of this section may also institute a civil action to enjoin and restrain future acts that would constitute a violation of subsection 1 of this section. The court, in an action brought under this subsection, may award reasonable attorneys' fees to the plaintiff.

6. If the identifying information of a deceased person is used in a manner made unlawful by subsection 1 of this section, the deceased person's estate shall have the right to recover damages pursuant to subsection 5 of this section.

7. Any person charged with identity theft shall be prosecuted:

(1) In the county in which the offense is committed; or

(2) If the offense is committed partly in one county and partly in another, or if the elements of the offense occur in more than one county, then in any of the counties where any element of the offense occurred; or

(3) In the county in which the defendant resides; or

(4) In the county in which the victim resides; or

(5) In the county in which the property obtained or attempted to be obtained was located.

Civil actions under this section must be brought within five years from the date on which the identity of the wrongdoer was discovered or reasonably should have been discovered.

8. Civil action pursuant to this section does not depend on whether a criminal prosecution has been or will be instituted for the acts that are the subject of the civil action. The rights and remedies provided by this section are in addition to any other rights and remedies provided by law.

9. Sections 570.223 and 570.224 shall not apply to the following activities:

(1) A person obtains the identity of another person to misrepresent his or her age for the sole purpose of obtaining alcoholic beverages, tobacco, going to a gaming establishment, or another privilege denied to minors;

(2) A person obtains means of identification or information in the course of a bona fide consumer or commercial transaction;

(3) A person exercises, in good faith, a security interest or right of offset by a creditor or financial institution;

(4) A person complies, in good faith, with any warrant, court order, levy, garnishment, attachment, or other judicial or administrative order, decree, or directive, when any party is required to do so.

10. Notwithstanding the provisions of subdivisions (1) or (2) of subsection 3 of this section, every person who has previously pled guilty to or been found guilty of identity theft or attempted identity theft, and who subsequently pleads guilty to or is found guilty of identity theft or attempted identity theft of credit, money, goods, services, or other property not exceeding five hundred dollars in value is guilty of a class D felony and shall be punished accordingly.

11. The value of property or services is its highest value by any reasonable standard at the time the identity theft is committed. Any reasonable standard includes, but is not limited to market value within the community, actual value, or replacement value.

12. If credit, property, or services are obtained by two or more acts from the same person or location, or from different persons by two or more acts which occur in approximately the same location or time period so that the identity thefts are attributable to a single scheme, plan, or conspiracy, the acts may be considered as a single identity theft and the value may be the total value of all credit, property, and services involved.

13. In a criminal proceeding pursuant to this section, venue will be proper in any county where the person whose means of identification or financial information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.

14. A person who commits the crime of identity theft for the purpose of committing a terrorist act as defined by existing federal law, or for the purpose of aiding or abetting another in committing a terrorist act shall be guilty of a Class A felony.

15. A person who commits the crime of identity theft for the purpose of voting, obtaining another person's voting privileges, or altering the results of an election or aiding or abetting another in obtaining another person's voting privileges or altering the result of an election shall be guilty of a Class C felony.

570.224. TRAFFICKING IN STOLEN IDENTITIES, CRIME OF — POSSESSION OF DOCUMENTS, EXEMPTIONS — VIOLATION, PENALTY. — 1. A person commits the crime of trafficking in stolen identities when such person manufactures, sells, transfers, purchases, or possesses, with intent to sell or transfer means of identification or identifying information, for the purpose of committing identity theft. In determining possession of five or more identification documents of the same person, or possession of identifying information of five or more separate persons for the purposes of evidence pursuant to this subsection, the following do not apply:

(1) The possession of his or her own identification documents;

(2) The possession of the identification documents of a person who has consented to the person at issue possessing his or her identification documents.

2. Unauthorized possession of means of identification of five or more separate persons, shall be evidence that the identities are possessed with intent to manufacture, sell, or transfer means of identification or identifying information for the purpose of committing identity theft.

3. Trafficking in stolen identities is a class B felony.

575.120. FALSE IMPERSONATION — PENALTIES. — 1. A person commits the crime of false impersonation if **[**he**]** **such person**:

(1) Falsely represents himself **or herself** to be a public servant with purpose to induce another to submit to his **or her** pretended official authority or to rely upon his **or her** pretended official acts, and

(a) Performs an act in that pretended capacity; or

(b) Causes another to act in reliance upon his **or her** pretended official authority; **[**or**]**

(2) Falsely represents himself **or herself** to be a person licensed to practice or engage in any profession for which a license is required by the laws of this state with purpose to induce another to rely upon such representation, and

(a) Performs an act in that pretended capacity; or

(b) Causes another to act in reliance upon such representation**; or**

(3) Upon being arrested, falsely represents himself or herself, to a law enforcement officer, with the first and last name, date of birth, or Social Security number, or a substantial number of identifying factors or characteristics as that of another person that results in the filing of a report or record of arrest or conviction for an infraction, misdemeanor, or felony that contains the first and last name, date of birth, and Social Security number, or a substantial number of identifying factors or characteristics to that

of such other person as to cause such other person to be identified as the actual person arrested or convicted.

2. **If a violation of subdivision (3) of subsection 1 of this section is discovered prior to any conviction of the person actually arrested for an underlying charge, then the prosecuting attorney, bringing any action on the underlying charge, shall notify the court thereof, and the court shall order the false-identifying factors ascribed to the person actually arrested as are contained in the arrest and court records amended to correctly and accurately identify the defendant and shall expunge the incorrect and inaccurate identifying factors from the arrest and court records.**

3. If a violation of subdivision (3) of subsection 1 of this section is discovered after any conviction of the person actually arrested for an underlying charge, then the prosecuting attorney of the county in which the conviction occurred shall file a motion in the underlying case with the court to correct the arrest and court records after discovery of the fraud upon the court. The court shall order the false identifying factors ascribed to the person actually arrested as are contained in the arrest and court records amended to correctly and accurately identify the defendant and shall expunge the incorrect and inaccurate identifying factors from the arrest and court records.

4. Any person who is the victim of a false impersonation and whose identity has been falsely reported in arrest or conviction records may move for expungement and correction of said records under the procedures set forth in section 610.123, RSMo. Upon a showing that a substantial number of identifying factors of the victim was falsely ascribed to the person actually arrested or convicted, the court shall order the false identifying factors ascribed to the person actually arrested as are contained in the arrest and court records amended to correctly and accurately identify the defendant and shall expunge the incorrect and inaccurate factors from the arrest and court records.

5. False impersonation is a class B misdemeanor unless the person represents himself to be a law enforcement officer in which case false impersonation is a class A misdemeanor.

Approved May 10, 2004

HB 923 [HB 923]

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

Amends the requirements of the Missouri Family Trust.

AN ACT to repeal sections 402.199, 402.200, 402.205, 402.215, and 402.217, RSMo, and to enact in lieu thereof five new sections relating to the Missouri family trust.

SECTION

A. Enacting clause.
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Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 402.199, 402.200, 402.205, 402.215, and 402.217, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 402.199, 402.200, 402.205, 402.215, and 402.217, to read as follows:

402.199. DECLARATION OF POLICY — PURPOSE OF MISSOURI FAMILY TRUST. — 1. The general assembly hereby finds and declares the following:

(1) It is an essential function of state government to provide basic support for persons with a mental or physical impairment that substantially limits one or more major life activities, whether the impairment is congenital or acquired by accident, injury or disease;

(2) The cost of providing basic support for persons with a mental or physical impairment is difficult for many to afford and they are forced to rely upon the government to provide such support;

(3) Families and friends of persons with a mental or physical impairment desire to supplement, but not replace, the basic support provided by state government and other governmental programs;

(4) The cost of medical, social or other supplemental services is often provided by families and friends of persons with mental or physical impairments, for the lifetime of such persons;

(5) It is in the best interest of the people of this state to encourage, enhance and foster the ability of families and friends of Missouri residents **and residents of adjacent states** with mental or physical impairments to supplement, but not to replace, the basic support provided by state government and other governmental programs and to provide for medical, social or other supplemental services for such persons;

(6) Permitting and assisting families and friends of Missouri residents **and residents of adjacent states** with mental or physical impairments to supplement, but not to replace, the basic support provided by state government and other governmental programs and to provide medical, social or other supplemental services for such persons as necessary and desirable for the public health, safety and welfare of this state.

2. In light of the findings and declarations described in subsection 1 of this section, the general assembly declares the purpose of the Missouri family trust to be the encouragement, enhancement and fostering of the provision of medical, social or other supplemental services for persons with a mental or physical impairment by family and friends of such persons.

402.200. DEFINITIONS. — As used in sections 402.199 to 402.220, the following terms mean:

(1) "Board of trustees", the Missouri family trust board of trustees;

(2) "Charitable trust", the trust established to provide benefits for individuals, as set forth in section 402.215;

(3) "Department", the department of mental health;

(4) "Disability", a mental or physical impairment that substantially limits one or more major life activities, whether the impairment is congenital or acquired by accident, injury or disease, and where the impairment is verified by medical findings;

(5) "Life beneficiary" **or "beneficiary"**, a designated beneficiary of the Missouri family trust;

(6) "Net income", the earnings received on investments less administrative expenses and fees;

(7) "Principal balance", the fair market value of all contributions made to a particular account, less distributions, determined as of the end of the calendar month immediately preceding the occurrence giving rise to any determination of principal balance;

(8) "Requesting party", the party desiring arbitration;

(9) "Responding party", the other party in arbitration of a dispute regarding benefits to be provided by the trust;

(10) "Successor trust", the trust established upon distribution by the board of trustees pursuant to notice of withdrawal or termination and administered as set forth in section 402.215;

(11) "Trust", the Missouri family trust established pursuant to sections 402.200 to 402.220;

(12) "Trustee", a member of the Missouri family trust board of trustees.

402.205. TRUST, WHO MAY PARTICIPATE — TRUST BENEFITS NOT TO AFFECT STATE BENEFITS — CLASSIFICATION OF ASSETS OF BOARD — TAX EXEMPTION. — 1. The families, friends and guardians of persons who have a disability or are eligible for services provided by the department of mental health, or both, may participate in a trust which may supplement the care, support, and treatment of such persons pursuant to the provisions of sections 402.199 to 402.220. Neither the contribution to the trust for the benefit of a life beneficiary nor the use of trust income to provide benefits shall in any way reduce, impair or diminish the benefits to which such person is otherwise entitled by law; and the administration of the trust shall not be taken into consideration in appropriations for the department of mental health to render services required by law.

2. Unless otherwise prohibited by federal statutes or regulations, all state agencies shall disregard the trust as a resource when determining eligibility **of Missouri residents** for assistance under chapter 208, RSMo.

3. The assets of the board of trustees and assets held in trust pursuant to the provisions of sections 402.199 to 402.220 shall not be considered state money, assets of the state or revenue for any purposes of the state constitution or statutes. The property of the board of trustees and its income and operations shall be exempt from all taxation by the state or any of its political subdivisions.

402.215. BOARD OF TRUSTEES, DUTIES — PROVISIONS FOR TRUST DOCUMENTS. — 1. The board of trustees is authorized and directed to establish and administer the Missouri family trust **and to advise, consult with, and render services to departments and agencies of the state of Missouri and to other nonprofit organizations which qualify as organizations pursuant to Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and which provide services to Missouri residents with a disability**. The board shall be authorized to execute all documents necessary to establish and administer the trust including the formation of a not-for-profit corporation created pursuant to chapter 355, RSMo, and to qualify as an organization pursuant to Section 501(c)(3) of the United States Internal Revenue Code **of 1986, as amended**.

2. The trust documents shall include and be limited by the following provisions:

(1) The Missouri family trust shall be authorized to accept contributions from any source including trustees, personal representatives, personal custodians pursuant to chapter 404, RSMo, and other fiduciaries, **[**other than directly**] and, subject to the provisions of subdivision (11) of this subsection,** from the life beneficiaries and their respective spouses, to be held, administered, managed, invested and distributed in order to facilitate the coordination and integration of private financing for individuals who have a disability or are eligible for services provided by the Missouri department of mental health, or both, while maintaining the eligibility of such individuals for government entitlement funding. All contributions, and the earnings thereon, shall be administered as one trust fund; however, separate accounts shall be established for each designated beneficiary. The income earned, after deducting administrative expenses, shall be credited to the accounts of the respective life beneficiaries in proportion to the principal balance in the account for each such life beneficiary, to the total principal balances in the accounts for all life beneficiaries.

(2) Every donor may designate a specific person as the life beneficiary of the contribution made by such donor. In addition, each donor may name a cotrustee, including the donor, and a successor or successors to the cotrustee, to act with the trustees of the trust on behalf of the designated life beneficiary; provided, however, a life beneficiary shall not be eligible to be a

cotrustee or a successor cotrustee; provided, however, that court approval of the specific person designated as life beneficiary and as cotrustee or successor trustee shall be required in connection with any trust created pursuant to section 473.657, RSMo, or section 475.093, RSMo.

(3) The **[**trust**]** **cotrustee**, with the consent of the **[**cotrustee**]** **trust**, shall **from time to time, but not less frequently than** annually **[**agree on**]** **determine** the amount of income or principal or income and principal to be used to provide noncash benefits and the nature and type of benefits to be provided for the life beneficiary. Any net income which is not used shall be added to principal annually. **[**In the event that the trust and the donor, serving as the cotrustee, shall be unable to agree either on the amount of income or principal or income and principal to be used for or the benefits to be provided, then none of the income or principal shall be used.**]** In the event that the trust and the cotrustee**[**, other than the donor,**]** shall be unable to agree either on the amount of income or principal or income and principal to be used or the benefits to be provided, then either the trust or the cotrustee shall have the right to request that the matter be resolved by arbitration **which shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association**. The requesting party shall send a written request for arbitration to the responding party and shall in such request set forth the name, address and telephone number of such requesting party's arbitrator. The responding party shall, within ten days after receipt of the request for arbitration, set forth in writing to the requesting party the name, address and telephone number of the responding party's arbitrator. Copies of the request for arbitration and response shall be sent to the director of the department. If the two designated arbitrators shall be unable to agree upon a third arbitrator within ten days after the responding party shall have identified such party's arbitrator, then the director of the department shall designate the third arbitrator by written notice to the requesting and responding parties' arbitrators. The three arbitrators shall meet**, conduct a hearing,** and render a decision within thirty days after the appointment of the third arbitrator. A decision of a majority of the arbitrators shall be binding upon the requesting and responding parties. Each party shall pay the fees and expenses of such party's arbitrator and the fees and expenses of the third arbitrator shall be borne equally by the parties. **Judgment on the arbitrators' award may be entered in any court of competent jurisdiction.**

(4) Any donor, during his or her lifetime, except for a trust created pursuant to section 473.657, RSMo, or section 475.093, RSMo, may revoke any gift made to the trust; provided, however, any donor may, at any time, voluntarily waive the right to revoke. In the event that at the time the donor shall have revoked his or her gift to the trust the life beneficiary shall not have received any benefits provided by use of trust income or principal, then an amount equal to one hundred percent of the principal balance shall be returned to the donor. Any undistributed net income shall be distributed to the charitable trust. In the event that at the time the donor shall have revoked his or her gift to the trust the life beneficiary shall have received any benefits provided by the use of trust income or principal, then an amount equal to ninety percent of the principal balance shall be returned to the donor. The balance of the principal balance together with all undistributed net income, shall be distributed to the charitable trust.

(5) Any acting cotrustee, except a cotrustee of a trust created pursuant to section 473.657, RSMo, or section 475.093, RSMo, other than the original donor of a life beneficiary's account, shall have the right, for good and sufficient reason upon written notice to the trust and the department stating such reason, to withdraw all or a portion of the principal balance. In such event, the applicable portion, as set forth **[**below**]** **in subdivision (7) of this subsection**, of the principal balance shall then be distributed to the successor trust and the balance of the principal balance together with any undistributed net income, shall be distributed to the charitable trust.

(6) In the event that a life beneficiary for whose benefit a contribution or contributions shall have been made to the family trust, **[**except a cotrustee of a trust created pursuant to section 473.657, RSMo, or section 475.093, RSMo,**]** shall **[**move from the state of Missouri or otherwise**]** cease to be eligible for services provided by the department of mental health and neither the donor nor the then acting cotrustee**, except a cotrustee of a trust created pursuant**

to section 473.657, RSMo, or section 475.093, RSMo, shall revoke or withdraw **[**all**]** **the applicable portion, as set for in subdivision (7) of this subsection,** of the principal balance, then the board of trustees may, by written notice to such donor or acting cotrustee, terminate the trust as to such beneficiary and thereupon shall distribute the applicable portion, as set forth **[**herein**]** **in subdivision (7) of this subsection**, of the principal balance, to the trustee of the successor trust to be held, administered and distributed by such trustee in accordance with the provisions of the successor trust described in subdivision **[**(10)**]** **(12)** of this subsection.

(7) If at the time of withdrawal or termination as provided in subdivision (6) of this subsection of a life beneficiary's account from the trust either the life beneficiary shall not have received any benefits provided by the use of the trust income or principal or the life beneficiary shall have received benefits provided by the use of trust income or principal for a period of not more than five years from the date a contribution shall have first been made to the trust for such life beneficiary, then an amount equal to ninety percent of the principal balance shall be distributed to the successor trust, and the balance of the principal balance together with all undistributed net income, shall be distributed to the charitable trust; provided, however, if the life beneficiary at the time of such withdrawal by the cotrustee or termination as provided above shall have received any benefits provided by the use of trust income or principal for a period of more than five years from the date a contribution shall have first been made to the trust for such life beneficiary, then an amount equal to seventy-five percent of the principal balance shall be distributed to the successor trust, and the balance of the principal balance together with all undistributed net income, shall be distributed to the charitable trust.

(8) Subject to the provisions of subdivision (9) of this subsection, if the life beneficiary dies before receiving any benefits provided by the use of trust income or principal, then an amount equal to one hundred percent of the principal balance shall be distributed to such person or persons as the donor shall have designated. Any undistributed net income shall be distributed to the charitable trust. If at the time of death of the life beneficiary, the life beneficiary shall have been receiving benefits provided by the use of trust income or principal or income and principal, then, in such event, an amount equal to seventy-five percent of the principal balance shall be distributed to such person or persons as the donor designated, and the balance of the principal balance, together with all undistributed net income, shall be distributed to the charitable trust.

(9) In the event the trust is created as a result of a distribution from a personal representative of an estate of which the life beneficiary is a distributee, then if the life beneficiary dies before receiving any benefits provided by the use of trust income or principal, an amount equal to one hundred percent of the principal balance shall be distributed to such person or persons who are the life beneficiary's heirs at law. **[**The balance, if any, of the principal balance, together with all**]** **Any** undistributed income shall be distributed to the charitable trust. If at the time of death of the life beneficiary the life beneficiary shall have been receiving benefits provided by the use of trust income or principal or income and principal, then, an amount equal to seventy-five percent of the principal balance shall be distributed to such person or persons who are the life beneficiary's heirs at law. The balance of the principal balance, together with all undistributed income shall be distributed to the charitable trust. **If there are no heirs at the time of either such distribution, the then-principal balance together with all undistributed income shall be distributed to the charitable trust.**

(10) In the event the trust is created as a result of the recovery of damages by reason of a personal injury to the life beneficiary, then if the life beneficiary dies before receiving any benefits provided by the use of trust income or principal, the state of Missouri shall receive all amounts remaining in the life beneficiary's account up to an amount equal to the total medical assistance paid on behalf of such life beneficiary under a state plan under Title 42 of the United States Code, and then to the extent there is any amount remaining in the life beneficiary's account, an amount equal to one hundred percent of the principal balance shall be distributed to such person or persons who are the life beneficiary's heirs at law. **If there are no heirs,** the balance, if any, of the principal balance, together with all undistributed income shall be

distributed to the charitable trust. If at the time of death of the life beneficiary the life beneficiary should have been receiving benefits provided by the use of trust income or principal or income and principal then the state of Missouri shall receive all amounts remaining in the life beneficiary's account up to an amount equal to the total medical assistance paid on behalf of such life beneficiary under a state plan under Title 42 of the United States Code, and then to the extent there is any amount remaining in the life beneficiary's account, an amount equal to seventy-five percent of the principal balance shall be distributed to such person or persons who are the life beneficiary's heirs at law**[.] and the balance of the principal balance together with all undistributed income shall be distributed to the charitable trust. If there are no heirs,** the balance of the principal balance, together with all undistributed income, shall be distributed to the charitable trust.

(11) **In the event an account is established with the assets of the beneficiary by the beneficiary, a family member, the beneficiary's guardian, or pursuant to a court order, all in accordance with Title 42 of the United States Code Section 1396p(d)(4)(C), then upon the death of the life beneficiary the state of Missouri shall receive all amounts remaining in the life beneficiary's account up to an amount equal to the total medical assistance paid on behalf of such life beneficiary under a state plan under Title 42 of the United States Code, and then to the extent there is any amount remaining in the life beneficiary's account, an amount equal to seventy-five percent of the principal balance shall be distributed to such person or persons who are the life beneficiary's heirs at law and the balance of the principal balance together with all undistributed income shall be distributed to the charitable trust. If there are no heirs, the balance of the principal balance together with all undistributed income shall be distributed to the charitable trust.**

(12) Notwithstanding the provisions of subdivisions (4) to (8) of this subsection to the contrary, the donor may voluntarily agree to a smaller percentage of the principal balance in any account established by such donor than is provided in this subsection to be returned to the donor or distributed to the successor trust, as the case may be; and a corresponding larger percentage of the principal balance in such account to be distributed either to the charitable trust or to a designated restricted account within the charitable trust.

(13) Upon receipt of a notice of withdrawal from a designated cotrustee, other than the original donor, and a determination by the board of trustees that the reason for such withdrawal is good and sufficient, or upon the issuance of notice of termination by the board of trustees, the board of trustees shall distribute and pay over to the designated trustee of the successor trust the applicable portion of the principal balance **as set forth in subdivision (7) of this subsection**; provided, however, that court approval of distribution to a successor trustee shall be required in connection with any trust created pursuant to section 473.657, RSMo, or section 475.093, RSMo. The designated trustee of the successor trust shall hold, administer and distribute the principal and income of the successor trust, in the discretion of such trustee, for the maintenance, support, health, education and general well-being of the beneficiary, recognizing that it is the purpose of the successor trust to supplement, not replace, any government benefits for the beneficiary's basic support to which such beneficiary may be entitled and to increase the quality of such beneficiary's life by providing the beneficiary with those amenities which cannot otherwise be provided by public assistance or entitlements or other available sources. Permissible expenditures include, but are not limited to, more sophisticated dental, medical and diagnostic work or treatment than is otherwise available from public assistance, private rehabilitative training, supplementary education aid, entertainment, periodic vacations and outings, expenditures to foster the interests, talents and hobbies of the beneficiary, and expenditures to purchase personal property and services which will make life more comfortable and enjoyable for the beneficiary but which will not defeat his or her eligibility for public assistance. Expenditures may include payment of the funeral and burial costs of the beneficiary. The designated trustee, in his or her discretion, may make payments from time to time for a

person to accompany the beneficiary on vacations and outings and for the transportation of the beneficiary or of friends and relatives of the beneficiary to visit the beneficiary. Any undistributed income shall be added to the principal from time to time. Expenditures shall not be made for the primary support or maintenance of the beneficiary, including basic food, shelter and clothing, if, as a result, the beneficiary would no longer be eligible to receive public benefits or assistance to which the beneficiary is then entitled. After the death and burial of the beneficiary, the remaining balance of the successor trust shall be distributed to such person or persons as the donor shall have designated.

[(12)**] (14)** The charitable trust shall be administered as part of the family trust, but as a separate account. The income attributable to the charitable trust shall be used to provide benefits for individuals who have a disability or who are eligible for services provided by or through the department and who either have no immediate family or whose immediate family, in the reasonable opinion of the trustees, is financially unable to make a contribution to the trust sufficient to provide benefits for such individuals, while maintaining such individuals' eligibility for government entitlement funding. **The trustees may from time to time determine to use part of the principal of the charitable trust to provide such benefits.** As used in this section, the term "immediate family" includes parents, children and siblings. The individuals to be beneficiaries of the charitable trust shall be recommended to the trustees by the department and others from time to time. The trustees shall annually **[**agree on**] determine** the amount of charitable trust income **or principal** to be used to provide benefits and the nature and type of benefits to be provided for each identified beneficiary of the charitable trust. Any income not used shall be added to principal annually.

(15) Any person, with the consent of the board of trustees, may establish a restricted account within the charitable trust and shall be permitted to determine, with the consent of the board of trustees, the beneficiaries of such restricted account provided such beneficiaries qualify as participants of the trust as set forth in subsection 1 of section 402.205.

402.217. RESTRICTIONS — INCOME NOT SUBJECT TO SEIZURE — CERTAIN INTERESTS IN INCOME NOT ALIENABLE. — 1. No beneficiary shall have any vested or property rights or interests in the family trust, nor shall any beneficiary have the power to anticipate, assign, convey, alienate, or otherwise encumber any interest in the income or principal of the family trust , nor shall such income or the principal or any interest of any beneficiary thereunder be liable for any debt incurred by such beneficiary, nor shall the principal or income of the family trust be subject to seizure by any creditor or any beneficiary under any writ or proceeding in law or in equity.

2. Except for the right of a donor to revoke any gift made to the trust, pursuant to subdivision (4) of subsection 2 of section 402.215, and the right of any acting cotrustee, other than the original donor, to withdraw all or a portion of the **[**original contribution**] principal balance**, pursuant to subdivision (5) of subsection 2 of section 402.215, neither the donor nor any acting cotrustee shall have the right to sell, assign, convey, alienate or otherwise encumber, for consideration or otherwise, any interest in the income or principal of the family trust, nor shall such income or the principal or any interest of any beneficiary thereunder be liable for any debt incurred by the donor or any acting cotrustee, nor shall the principal or income of the family trust be subject to seizure by any creditor of any donor or any acting cotrustee under any writ or proceeding in law or in equity.

Approved June 24, 2004

HB 928 [SCS HCS HB 928 AND HCS HB 1123 AND HCS HB 1280]

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

Changes various provisions related to driver's licenses and motor vehicles.

AN ACT to repeal sections 301.041, 301.2999, 302.178, 390.136, 390.340, 622.095, and 622.618, RSMo, and to enact in lieu thereof five new sections relating to motor vehicles, with penalty provisions.

SECTION

A. Enacting clause.
301.041. Reciprocity agreement, registered commercial vehicles — procedures — failure to display plates, penalty — director may promulgate rules — validity of previously issued plates.
301.2999. Limitation on special license plates, organization authorizing use of its emblem for a fee.
302.178. Intermediate driver's license, issued to whom, requirements, limitations, fee, duration, point assessment — penalty, application for full driving privileges, requirements — exceptions — rulemaking authority, procedure.
390.136. Motor carriers, regulatory license required — annual, issued when — emergency or temporary license for seventy-two hours — fees — out-of-state agreements, effect — violation, penalty.
622.095. Division authorized to contract with other jurisdictions — uniform administration of certain interstate vehicles — powers — base state registration fund established — properly registered vehicle operation allowed — fees may be staggered and prorated.
390.340. Annual licenses required by 390.136, period of effectiveness, fees, when due.
622.618. Motor carriers, license required — annual, issued when — annual license fees.

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

SECTION A. ENACTING CLAUSE. — Sections 301.041, 301.2999, 302.178, 390.136, 390.340, 622.095, and 622.618, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 301.041, 301.2999, 302.178, 390.136, and 622.095, to read as follows:

301.041. RECIPROCITY AGREEMENT, REGISTERED COMMERCIAL VEHICLES — PROCEDURES — FAILURE TO DISPLAY PLATES, PENALTY — DIRECTOR MAY PROMULGATE RULES — VALIDITY OF PREVIOUSLY ISSUED PLATES. — 1. All commercial motor vehicles and trailers registered pursuant to this section or to be operated under **reciprocity** agreements **[**as provided for in sections 301.271 to 301.279**]** shall be registered annually**, or in the discretion of the state highways and transportation commission, staggered in such manner as to be registered for a one-year period beginning on the first day of a quarter during such year and in such manner as the commission may determine by regulation. To facilitate the transition from an annual registration to a staggered registration, the commission shall inquire of all registrations as to which calendar quarter the registrant wishes to use as the beginning date of the registration once the transition to staggered registration is complete. If the registrant does not respond by the date selected by the commission, or if no quarter is selected, the registrant shall remain on a calendar year registration. The commission may issue prorated registrations pursuant to this section for periods of greater than or less than one year during the transition to a nonannual year registration, but no registration shall exceed eighteen months nor be less than six months. The commission may issue a prorated, by quarter, partial year registration at any time for additions to a fleet made after an initial registration of such fleet, or such other reasons as approved by the commission or its designee upon the request of the registrant**.

2. An application for renewal registration pursuant to this section shall be made with all required documents on or before **[**October first of each year**]** **the first day of the month that is three calendar months immediately prior to the beginning date of the registration**.

Renewal applications received after [October first] **the first day of the third calendar month immediately prior to the registration** shall be assessed a penalty of one hundred dollars. The [director or his or her] **commission's** designee may waive the penalty pursuant to this subsection for good cause.

3. Fees for commercial motor vehicles and trailers renewed pursuant to this section shall be paid no later than [December first of each year] **the first day of the month that is one calendar month immediately prior to the beginning date of the registration** except for payments made on an installment basis as provided in subsection 4 of this section. Renewal application fees not paid by [December first] **the first day of the month immediately prior to the registration** shall be assessed a penalty of fifty dollars per vehicle, but in no case shall such penalty exceed one hundred fifty dollars per application. The [director or his or her] **commission's** designee may, for good cause, waive or reduce any penalties assessed pursuant to this subsection.

4. Any owner of a commercial motor vehicle or trailer operated pursuant to this section or **reciprocity** agreements [provided in sections 301.271 to 301.279] may elect to pay the Missouri portion of the annual registration fee in two equal installments, except that no such installment shall be less than one hundred dollars. The first installment shall be payable on or before [December first] **the first day of the month immediately prior to the beginning date of the registration**, and the second installment shall be payable on or before [June first of that registration year] **the first day of the sixth month of that registration one-year period**. Every owner electing to pay on an installment basis shall file [with the director of the department of revenue, on or before December first] **on or before the first day of the month immediately prior to the beginning date of the registration**, a surety bond, certificate of deposit or irrevocable letter of credit as defined in section 400.5-103, RSMo, to guarantee the payment of the second installment. The bond or certificate or letter of credit shall be in an amount equal to the payment guaranteed. **The commission may require such installments to be filed at other times of the year if a nonannual registration is issued pursuant to subsection 1 of this section.**

[5. If a new application for registration of a commercial vehicle or trailer is made other than as specified in subsection 1 of this section, the registration fee shall be prorated as follows:

(1) For applications made between April first and June thirtieth, the applicant shall pay three-fourths of the annual registration fee;

(2) For applications made between July first and September thirtieth, the applicant shall pay one-half of the annual registration fee; and

(3) For applications made after October first of the current registration year, the applicant shall pay one-fourth of the annual registration fee.

6.] **5.** Any applicant who fails to timely renew his or her registration with all required documents pursuant to this section or who fails to timely pay any fees and penalties owed pursuant to this section shall not be issued a temporary registration for a motor vehicle or a trailer issued pursuant to this section or under **reciprocity** agreements [as provided for in sections 301.271 and 301.279]. Nothing in this section shall prohibit the issuance of temporary registration credentials for additions to the registrant's fleet subsequent to renewal.

[7.] **6.** The applicant for registration pursuant to this section shall affix the registration plate issued [by the director] to the front of the vehicle in accordance with the provisions of section 301.130. Any vehicle required to be registered pursuant to this section shall display the plate issued to that vehicle no later than December thirty-first of each year **or the last day of the quarter preceding the quarter in which the registration begins, as applicable**. Failure to display the registration [plates] **plate** required by this section shall constitute a class A misdemeanor.

[8.] **7.** The [director of revenue] **commission** may prescribe rules and regulations for the effective administration of this section.

[9.**]** **8.** Any current registration or plate for which all fees have been paid for a commercial trailer previously issued pursuant to **reciprocity** agreements **[**provided for in sections 301.271 and 301.277**]** shall remain valid even if such agreements no longer require apportionment of such trailers under such agreements, and such trailers may continue to be registered pursuant to this section.

[10.**]** **9.** Notwithstanding any other law to the contrary, the **[**highway reciprocity**]** commission shall have the authority pursuant to this chapter to issue permanent and temporary registrations on commercial trailers whether or not the registration is issued pursuant to **reciprocity** agreements **[**as provided in sections 301.271 to 301.279**]**. The provisions of subsection 1 of section 301.190 shall not apply to registrations issued pursuant to this subsection, provided the carrier or person to whom the registration is issued has at least one tractor as defined in section 301.010 registered with the state of Missouri pursuant to this section.

[11.**]** **10.** Commercial trailer plates issued pursuant to this section shall in all other respects conform to and have the same requirements as those issued pursuant to subsection 3 of section 301.067. Such plates may contain the legend **[**"HRC TLR"**]** **"COMM TRL"** in preference to the words "SHOW-ME STATE".

301.2999. LIMITATION ON SPECIAL LICENSE PLATES, ORGANIZATION AUTHORIZING USE OF ITS EMBLEM FOR A FEE. — 1. No specialized license plate shall be issued after January 1, 2002, by the director of revenue which proposes to raise revenue or funds for an organization which authorizes the use of its emblem for a fee unless such organization:

(1) Is a governmental entity; or

(2) Is an organization registered pursuant to section 501(c) of the 1986 Internal Revenue Code, as amended, or an equivalent law which applies to such not-for-profit entity.

2. Any organization which raises revenues or funds through the sponsorship of specialized license plates issued pursuant to the provisions of this chapter enacted prior to January 1, 2002, shall have until January 1, 2004, to comply with the provisions of this section. The director shall verify that all organizations that are paid fees for the use of their emblems for specialized license plates are complying with the provisions of this section. The director shall require all organizations which receive revenues for or funds for the use of their emblems to verify their status as a governmental entity or a qualified not-for-profit organization as provided in subsection 1 of this section, in a format prescribed by the director. Any specialized license plates issued prior to January 1, 2004, shall remain valid for the period in which they were registered, regardless of the status of the sponsoring organization.

3. Any moneys received by an organization authorizing the use of its emblem or insignia for a specialized license plate shall only be used by such organization to carry out the organization's charitable mission. Such moneys shall not be used for salaries or any administrative costs of the organization. No individual member of any organization authorizing the use of its emblem or insignia for a specialized license plate shall derive any personal pecuniary gain from any fees the organization collects.

4. The director of revenue shall not authorize the manufacture of the material to produce such specialized license plates with the individual seal, logo, or emblem until such time **as** the director has received **[**one**]** **two** hundred applications for such plates**[**. An organization shall be exempt from the provisions of this subsection if it**]** **and the organization** deposits with the department of revenue **[**the actual cost of producing the initial issuance of such plates and the director receives at least ten applications for such plates**]** **a fee of up to five thousand dollars to defray the cost for issuing, developing, and programming the implementation of the specialty plate**.

5. The provisions of this section shall not apply to any special license plates which bears the emblem or insignia of a branch of the U.S. military or a military organization.

302.178. INTERMEDIATE DRIVER'S LICENSE, ISSUED TO WHOM, REQUIREMENTS, LIMITATIONS, FEE, DURATION, POINT ASSESSMENT — PENALTY, APPLICATION FOR FULL DRIVING PRIVILEGES, REQUIREMENTS — EXCEPTIONS — RULEMAKING AUTHORITY, PROCEDURE. — 1. Beginning January 1, 2001, any person between the ages of sixteen and eighteen years who is qualified to obtain a license pursuant to sections 302.010 to 302.340 may apply for, and the director shall issue, an intermediate driver's license entitling the applicant, while having such license in his or her possession, to operate a motor vehicle of the appropriate class upon the highways of this state in conjunction with the requirements of this section. An intermediate driver's license shall be readily distinguishable from a license issued to those over the age of eighteen. All applicants for an intermediate driver's license shall:

(1) Successfully complete the examination required by section 302.173;

(2) Pay the fee required by subsection 3 of this section;

(3) Have had a temporary instruction permit issued pursuant to subsection 1 of section 302.130 for at least a six-month period or a valid license from another state; and

(4) Have a parent, grandparent, legal guardian, or, if the applicant is a participant in a federal residential job training program, a driving instructor employed by a federal residential job training program, sign the application stating that the applicant has completed at least twenty hours of supervised driving experience under a temporary instruction permit issued pursuant to subsection 1 of section 302.130, or, if the applicant is an emancipated minor, the person over twenty-one years of age who supervised such driving. For purposes of this section, the term "emancipated minor" means a person who is at least sixteen years of age, but less than eighteen years of age, who:

(a) Marries with the consent of the legal custodial parent or legal guardian pursuant to section 451.080, RSMo;

(b) Has been declared emancipated by a court of competent jurisdiction;

(c) Enters active duty in the armed forces;

(d) Has written consent to the emancipation from the custodial parent or legal guardian; or

(e) Through employment or other means provides for such person's own food, shelter and other cost-of-living expenses;

(5) Have had no alcohol-related enforcement contacts as defined in section 302.525 during the preceding twelve months; and

(6) Have no nonalcoholic traffic convictions for which points are assessed pursuant to section 302.302, within the preceding six months.

2. An intermediate driver's license grants the licensee the same privileges to operate that classification of motor vehicle as a license issued pursuant to section 302.177, except that no person shall operate a motor vehicle on the highways of this state under such an intermediate driver's license between the hours of 1:00 a.m. and 5:00 a.m. unless accompanied by a person described in subsection 1 of section 302.130; except the licensee may operate a motor vehicle without being accompanied if the travel is to or from a school or educational program or activity, a regular place of employment or in emergency situations as defined by the director by regulation. Each intermediate driver's license shall be restricted by requiring that the driver and all passengers in the licensee's vehicle wear safety belts at all times. This safety belt restriction shall not apply to a person operating a motorcycle.

3. Notwithstanding the provisions of section 302.177 to the contrary, the fee for an intermediate driver's license shall be five dollars and such license shall be valid for a period of two years.

4. Any intermediate driver's licensee accumulating six or more points in a twelve-month period may be required to participate in and successfully complete a driver-improvement program approved by the director of the department of public safety. The driver-improvement program ordered by the director of revenue shall not be used in lieu of point assessment.

5. (1) An intermediate driver's licensee who has, for the preceding twelve-month period, had no alcohol-related enforcement contacts, as defined in section 302.525 and no traffic

convictions for which points are assessed, upon reaching the age of eighteen years may apply for and receive without further examination, other than a vision test as prescribed by section 302.173, a license issued pursuant to this chapter granting full driving privileges. Such person shall pay the required fee for such license as prescribed in section 302.177.

(2) **If an intermediate driver's license expires on a Saturday, Sunday, or legal holiday, such license shall remain valid for the five business days immediately following the expiration date. In no case shall a licensee whose intermediate driver's license expires on a Saturday, Sunday, or legal holiday be guilty of an offense of driving with an expired or invalid driver's license if such offense occurred within five business days immediately following an expiration date that occurs on a Saturday, Sunday, or legal holiday.**

(3) The director of revenue shall deny an application for a full driver's license until the person has had no traffic convictions for which points are assessed for a period of twelve months prior to the date of application for license or until the person is eligible to apply for a six-year driver's license as provided for in section 302.177, provided the applicant is otherwise eligible for full driving privileges. An intermediate driver's license shall expire when the licensee is eligible and receives a full driver's license as prescribed in subdivision (1) of this section.

6. No person upon reaching the age of eighteen years whose intermediate driver's license and driving privilege is denied, suspended, canceled or revoked in this state or any other state, for any reason may apply for a full driver's license until such license or driving privilege is fully reinstated. Any such person whose intermediate driver's license has been revoked pursuant to the provisions of sections 302.010 to 302.540 shall, upon receipt of reinstatement of the revocation from the director, pass the complete driver examination, apply for a new license, and pay the proper fee before again operating a motor vehicle upon the highways of this state.

7. A person shall be exempt from the intermediate licensing requirements if the person has reached the age of eighteen years and meets all other licensing requirements.

8. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2000, shall be invalid and void.

390.136. MOTOR CARRIERS, REGULATORY LICENSE REQUIRED — ANNUAL, ISSUED WHEN — EMERGENCY OR TEMPORARY LICENSE FOR SEVENTY-TWO HOURS — FEES — OUT-OF-STATE AGREEMENTS, EFFECT — VIOLATION, PENALTY. — 1. No motor carrier, except as provided in section 390.030, shall operate any motor vehicle unless such vehicle shall be accompanied by an annual or seventy-two-hour**, regulatory** license issued by the **[**motor carrier and railroad safety division of the department of economic development**] state highways and transportation commission;** provided that when a motor carrier uses a truck-tractor for pulling trailers or semitrailers, such motor carrier may elect to license either the truck-tractor, trailer or semitrailer. The fee for each such **[**annual**] regulatory** license shall be ten dollars **per year** and shall be due and payable **[**on or before the last day of February of each calendar year**] as provided in this section**. Such **[**annual**]** license shall be issued **[**after October first of each year**]** in such form and shall be used pursuant to such reasonable rules and regulations as **[**the division of motor carrier and railroad safety may, by general order or otherwise, prescribe**] may be prescribed by the commission**.

2. Any **[**annual**] regulatory** license issued to a motor carrier for use in driveaway operations, as defined in this section, shall be issued to such motor carrier without reference to any particular vehicle and may be used interchangeably by the holder thereof on any motor

vehicle or combinations thereof moving in driveaway operations under such carrier's **property carrier registration,** certificate**,** or permit.

3. In case of emergency, temporary, unusual or a peak demand for transportation, additional vehicles as described in subsection 1 of this section may be operated upon issuance **[**by the division**]** of a seventy-two-hour license for each vehicle so operated. The license fee for each such additional vehicle shall be the sum of five dollars for each seventy-two consecutive hours, or any portion thereof. Such licenses shall be issued**, renewed, and staggered** in such form and shall be used pursuant to such reasonable rules and regulations as the **[**division may, by general order or otherwise,**] commission may** prescribe. No such additional vehicle which has been licensed pursuant to this subsection shall be operated without being accompanied by such license.

4. The **[**division, upon**] commission shall collect the applicable license fee prior to** the issuance of such license or licenses provided for in this section, **and** shall **[**notify the director of revenue, who shall**]** receive the license fee or fees and immediately deposit the same **[**with the state treasurer in**] to the credit of** the state **[**highway**] highways and transportation** department fund except **as otherwise provided in section 622.095, RSMo, or** when an agreement has been negotiated with another jurisdiction whereby prepayment is not required. In such cases, **section 622.095, RSMo, if applicable, or** the **[**term**] terms** of the agreement shall prevail.

5. Any person operating as a motor carrier who violates or fails to comply with any of the provisions of this section shall be adjudged guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars.

6. The **[**provisions of this section shall become effective for the 1989 registration year, and the**]** regulatory **license** fee **provided in this section** may be paid at any state weigh station.

7. The commission shall prescribe, for every regulatory license issued pursuant to this section, an effective date and an expiration date. Notwithstanding any provision of law to the contrary, the commission may stagger the issuance of licenses pursuant to this section to begin at quarterly intervals during any calendar year. Not later than the expiration date of the current license, or as otherwise prescribed, each motor carrier shall pay the regulatory license fee for each vehicle that the carrier will operate during the next yearly period. The commission may issue partial or over one-year licenses during the transition from an annual license, to accommodate motor carriers in adding vehicles to their operations during the year, to coordinate the dates for a single carrier's licensing of multiple licenses, or for such other reasons as approved by the commission.

622.095. DIVISION AUTHORIZED TO CONTRACT WITH OTHER JURISDICTIONS — UNIFORM ADMINISTRATION OF CERTAIN INTERSTATE VEHICLES — POWERS — BASE STATE REGISTRATION FUND ESTABLISHED — PROPERLY REGISTERED VEHICLE OPERATION ALLOWED — FEES MAY BE STAGGERED AND PRORATED. — 1. In addition to its other powers, the **[**division of motor carrier and railroad safety**] state highways and transportation commission** may negotiate and enter into fair and equitable cooperative agreements or contracts with other states, the District of Columbia, territories and possessions of the United States, foreign countries, and any of their officials, agents or instrumentalities, to promote cooperative action and mutual assistance between the participating jurisdictions with regard to the uniform administration and registration, through a single base jurisdiction for each registrant, of **[**interstate commerce commission**] federal motor carrier safety administration** operating authority and exempt operations by motor vehicles operated in interstate commerce. Notwithstanding any other provision of law to the contrary, and in accordance with the provisions of such agreements or contracts between participating jurisdictions, the **[**division**] commission** may:

(1) Delegate to other participating jurisdictions the authority and responsibility to collect and pay over **[**to the division**]** statutory registration, administration or license fees; to receive, approve and maintain the required proof of public liability insurance coverage; to receive, process, maintain and transmit registration information and documentation; to issue evidence of proper

registration in lieu of **[**interstate**]** **certificates, licenses, or** permits **[**under section 390.071, RSMo; to**]** **which the commission may** issue motor vehicle licenses or identifiers in lieu of **[**annual**]** **regulatory** licenses under section 390.136, RSMo; and to suspend or revoke any **credential,** approval, registration, **certificate, permit,** license or identifier referred to in this section, as agents on behalf of the **[**division**]** commission with regard to motor vehicle operations by persons having a base jurisdiction other than this state;

(2) Assume the authority and responsibility on behalf of other jurisdictions participating in such agreements or contracts to collect and direct the department of revenue to pay over to the appropriate jurisdictions statutory registration, administration or license fees, and to perform all other activities described in subdivision (1) of this subsection, on its own behalf or as an agent on behalf of other participating jurisdictions, with regard to motor vehicle operations in interstate commerce by persons having this state as their base jurisdiction;

(3) Establish or modify dates for the payment of fees and the issuance of annual motor vehicle licenses or identifiers in conformity with such agreements or contracts, notwithstanding any provisions of section 390.136, RSMo, to the contrary; and

(4) Modify, cancel or terminate any of the agreements or contracts.

2. Notwithstanding the provisions of section 390.136, RSMo, statutory registration, administration or license fees collected by the **[**division**]** **commission** on behalf of other jurisdictions under such agreements or contracts are hereby designated as "nonstate funds" within the meaning of section 15, article IV, Constitution of Missouri, and shall be immediately transmitted to the department of revenue of the state for deposit to the credit of a special fund which is hereby created and designated as the "Base State Registration Fund". The **[**division**]** **commission** shall **[**not less frequently than once each month**]** direct the payment of, and the director of revenue shall pay, the fees so collected to the appropriate other jurisdictions. All income derived from the investment of the base state registration fund by the director of revenue shall be credited to the **[**highway**]** **state highways and transportation** department fund.

3. "Base jurisdiction", as used in this section, means the jurisdiction participating in such agreements or contracts where the registrant has its principal place of business.

4. Every person who has properly registered his **or her** interstate **[**commerce commission**]** operating authority or exempt operations with his **or her** base jurisdiction and maintains such registration in force in accordance with such agreements or contracts is authorized to operate in interstate commerce within this state any motor vehicle which is accompanied by a valid annual license or identifier issued by his base jurisdiction in accordance with such agreements or contracts, notwithstanding any provision of section 390.071, 390.126 or 390.136, RSMo, or rules of the **[**division**]** **commission** to the contrary.

5. Notwithstanding any provision of law to the contrary, the commission may stagger and prorate the payment and collection of license fees pursuant to this section for the purposes of:

(1) Coordinating the issuance of regulatory licenses under this section with the issuance of other motor carrier credentials; and

(2) Complying with any federal law or regulation.

[390.340. ANNUAL LICENSES REQUIRED BY 390.136, PERIOD OF EFFECTIVENESS, FEES, WHEN DUE. — Notwithstanding any provisions of section 390.136, to the contrary, beginning with the first calendar year after August 28, 1996, the annual licenses required pursuant to section 390.136, with reference to motor vehicles operated by motor carriers shall be effective from January first to December thirty-first of the year for which they are issued, and the annual license fees for each calendar year shall be due and payable on or before the thirty-first day of December in the year immediately preceding the year for which they are issued. The division shall begin issuing the annual licenses on August first of each year for the succeeding calendar year, but this shall not preclude the division from continuing to issue the current year's licenses as needed for the remainder of the current calendar year.**]**

[622.618. MOTOR CARRIERS, LICENSE REQUIRED — ANNUAL, ISSUED WHEN — ANNUAL LICENSE FEES. — Notwithstanding any provisions of section 390.136, RSMo, to the contrary, beginning with the first calendar year after August 28, 1996, the annual licenses required pursuant to section 390.136, RSMo, with reference to motor vehicles operated by motor carriers shall be effective from January first to December thirty-first of the year for which they are issued, and the annual license fees for each calendar year shall be due and payable on or before the thirty-first day of December in the year immediately preceding the year for which they are issued. The division shall begin issuing the annual licenses on August first of each year for the succeeding calendar year, but this shall not preclude the division from continuing to issue the current year's licenses as needed for the remainder of the current calendar year.**]**

Approved June 25, 2004

HB 938 [SCS HB 938]

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

Modifies the requirements for annuity contracts.

AN ACT to repeal section 376.671, RSMo, and to enact in lieu thereof two new sections relating to annuity contracts, with an expiration date.

SECTION

A. Enacting clause.
376.669. Annuity contract requirements — paid-up annuity benefits, how calculated — cash surrender benefits, how calculated — applicable, when.
376.671. Provisions which shall be contained in annuity contracts — expiration date.

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

SECTION A. ENACTING CLAUSE. — Section 376.671, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 376.669 and 376.671, to read as follows:

376.669. ANNUITY CONTRACT REQUIREMENTS — PAID-UP ANNUITY BENEFITS, HOW CALCULATED — CASH SURRENDER BENEFITS, HOW CALCULATED — APPLICABLE, WHEN. — **1. This section shall not apply to any reinsurance, group annuity purchased under a retirement plan, or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code of 1986, as amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which shall be delivered outside this state through an agent or other representative of the company issuing the contract.**

2. In the case of contracts issued on or after the effective date of this section as defined in subsection 11 of this section, no contract of annuity, except as stated in subsection 1 of this section, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the director are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:

(1) That upon cessation of payment of considerations under a contract, or upon the written request of the contract owner, the company shall grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in subsections 4, 5, 6, 7 and 9 of this section;

(2) If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the company shall pay in lieu of a paid-up annuity benefit a cash surrender benefit of such amount as is specified in subsections 4, 5, 7 and 9 of this section. The company may reserve the right to defer the payment of the cash surrender benefit for a period not to exceed six months after demand therefor with surrender of the contract after making written request and receiving written approval of the director. The request shall address the necessity and equitability to all policyholders of the deferral;

(3) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of the benefits; and

(4) A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which the benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this subsection, a deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from prior considerations paid would be less than twenty dollars monthly, the company may at its option terminate the contract by payment in cash of the then present value of the portion of the paid-up annuity benefit, calculated on the basis on the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by this payment shall be relieved of any further obligation under the contract.

3. The minimum values as specified in subsections 4, 5, 6, 7 and 9 of this section of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.

(1) The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at rates of interest as indicated in subdivision (3) of this subsection of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of paragraphs (a) to (d) below:

(a) Any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest as indicated in subdivision (3) of this subsection; and

(b) An annual contract charge of fifty dollars, accumulated at rates of interest as indicated in subdivision (3) of this subsection;

(c) Any premium tax paid by the company for the contract, accumulated at rates of interest as indicated in subdivision (3) of this subsection; and

(d) The amount of any indebtedness to the company on the contract, including interest due and accrued.

(2) The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount equal to eighty-seven and one-half percent of the gross considerations credited to the contract during that contract year.

(3) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of three percent per annum and the following, which shall be specified in the contract if the interest rate will be reset:

(a) The five-year Constant Maturity Treasury Rate reported by the Federal Reserve as of a date, or average over a period, rounded to the nearest one-twentieth of one percent, specified in the contract no longer than fifteen months prior to the contract issue date or redetermination date under paragraph (d) of this subdivision;

(b) Reduced by one hundred twenty-five basis points;

(c) Where the resulting interest rate is not less than one percent; and

(d) The interest rate shall apply for an initial period and may be redetermined for additional periods. The redetermination date, basis and period, if any, shall be stated in the contract. The basis is the date or average over a specified period that produces the value of the five-year Constant Maturity Treasury Rate to be used at each redetermination date.

(4) During the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in paragraph (b) of subdivision (3) of this subsection by up to an additional one hundred basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date thereafter, of the additional reduction shall not exceed the market value of the benefit. The director may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. Lacking such a demonstration that is acceptable to the director, the director may disallow or limit the additional reduction.

(5) The director may adopt rules to implement the provisions of subdivision (4) of this subsection and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts that the director determines adjustments are justified.

4. Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Present value shall be computed using the mortality table, if any, and the interest rates specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

5. For contracts that provide cash surrender benefits, the cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit that would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one percent higher than the interest rate specified in the contract for accumulating the net considerations to determine maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

6. For contracts that do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on

the basis of the interest rate specified in the contract for accumulating the net considerations to determine maturity value, and increased by any additional amounts credited by the company to the contract. For contracts that do not provide any death benefits prior to the commencement of any annuity payments, present values shall be calculated on the basis of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

7. For the purpose of determining the benefits calculated under subsections 5 and 6 of this section, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

8. A contract that does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

9. Any paid-up annuity, cash surrender, or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

10. For a contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of subsections 4, 5, 6, 7 and 9 of this section, additional benefits payable in the event of total and permanent disability, as reversionary annuity or deferred reversionary annuity benefits, or as other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all such additional benefits shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this section. The inclusion of such benefits shall not be required in any paid-up benefits, unless the additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

11. Notwithstanding the provisions of section 376.671, after the effective date of this section, a company may elect to apply the provisions of this section in lieu of section 376.671 to annuity contracts on a contract form-by-contract form basis before July 1, 2006. In all other instances, this section shall become operative with respect to annuity contracts issued by the company after July 1, 2006.

376.671. PROVISIONS WHICH SHALL BE CONTAINED IN ANNUITY CONTRACTS — EXPIRATION DATE. — 1. This section shall not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any

contract which shall be delivered outside this state through an agent or other representative of the company issuing the contract.

2. In the case of contracts issued on or after the operative date of this section as defined in subsection 11 **of this section**, no contract of annuity, except as stated in subsection 1 **of this section**, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the director are at least as favorable to the contractholder, upon cessation of payment of considerations under the contract:

(1) That upon cessation of payment of considerations under a contract, the company will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in subsections 4, 5, 6, 7, and 9 **of this section**;

(2) If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the company will pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in subsections 4, 5, 7, and 9 **of this section**. The company shall reserve the right to defer the payment of such cash surrender benefit for a period of six months after demand therefor with surrender of the contract;

(3) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits;

(4) A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this section, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to such period would be less than twenty dollars monthly, the company may at its option terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

3. The minimum values as specified in subsections 4, 5, 6, 7, and 9 **of this section** of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.

(1) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payment shall be equal to an accumulation up to such time at a rate of interest of three percent per annum of percentages of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of

(a) Any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three percent per annum; and

(b) The amount of any indebtedness to the company on the contract, including interest due and accrued and increased by any existing additional amounts credited by the company to the contract. The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of thirty dollars and less a collection charge of one dollar and twenty-five cents per consideration credited to the contract during that contract year. The percentages of net considerations shall be sixty-five percent of the net consideration for the first

contract year and eighty-seven and one-half percent of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five percent of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five percent;

(2) With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two exceptions:

(a) The portion of the net consideration for the first contract year to be accumulated shall be the sum of sixty-five percent of the net consideration for the first contract year plus twenty-two and one-half percent of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years;

(b) The annual contract charge shall be the lesser of thirty dollars or ten percent of the gross annual consideration;

(3) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to ninety percent, and the net consideration shall be the gross consideration less a contract charge of seventy-five dollars;

(4) Notwithstanding any other provision of this subsection, for any contract issued on or after July 1, 2002, and before July 1, **[**2004**]** **2006**, the interest rate at which net considerations, prior withdrawals, and partial surrenders shall be accumulated, for the purpose of determining minimum nonforfeiture amounts, shall be one and one-half percent per annum.

4. Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

5. For contracts which provide cash surrender benefits, such cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one percent higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

6. For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amounts credited by the company to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the basis of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit.

However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

7. For the purpose of determining the benefits calculated under subsections 5 and 6 **of this section**, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity date, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

8. Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

9. Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

10. For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of subsections 4, 5, 6, 7, and 9 **of this section**, additional benefits payable in the event of total and permanent disability, as reversionary annuity or deferred reversionary annuity benefits, or as other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this section. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

11. After September 28, 1979, any company may file with the director a written notice of its election to comply with the provisions of this section after a specified date before September 28, 1981. After the filing of such notice, then upon such specified date, which shall be the operative date of this section for such company, this section shall become operative with respect to annuity contracts thereafter issued by such company. If a company makes no such election, the operative date of this section for such company shall be September 28, 1981.

12. The provisions of this section shall expire on July 1, 2006.

Approved June 21, 2004

HB 947 [HCS HB 947]

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

Allows Cameron, Boonville, Sikeston, and Kirksville to require removal of weeds or trash on private property.

AN ACT to repeal section 71.285, RSMo, and to enact in lieu thereof one new section relating to nuisances.

SECTION
A. Enacting clause.
71.285. Weeds or trash, city may cause removal and issue tax bill, when — certain cities may order abatement and remove weeds or trash, when — section not to apply to certain cities, when — city official may order abatement in certain cities — removal of weeds or trash, costs.

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

SECTION A. ENACTING CLAUSE. — Section 71.285, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 71.285, to read as follows:

71.285. WEEDS OR TRASH, CITY MAY CAUSE REMOVAL AND ISSUE TAX BILL, WHEN — CERTAIN CITIES MAY ORDER ABATEMENT AND REMOVE WEEDS OR TRASH, WHEN — SECTION NOT TO APPLY TO CERTAIN CITIES, WHEN — CITY OFFICIAL MAY ORDER ABATEMENT IN CERTAIN CITIES — REMOVAL OF WEEDS OR TRASH, COSTS. — 1. Whenever weeds or trash, in violation of an ordinance, are allowed to grow or accumulate, as the case may be, on any part of any lot or ground within any city, town or village in this state, the owner of the ground, or in case of joint tenancy, tenancy by entireties or tenancy in common, each owner thereof, shall be liable. The marshal or other city official as designated in such ordinance shall give a hearing after ten days' notice thereof, either personally or by United States mail to the owner or owners, or **[**his or her or their**]** **the owner's** agents, or by posting such notice on the premises; thereupon, the marshal or other designated city official may declare the weeds or trash to be a nuisance and order the same to be abated within five days; and in case the weeds or trash are not removed within the five days, the marshal or other designated city official shall have the weeds or trash removed, and shall certify the costs of same to the city clerk, who shall cause a special tax bill therefor against the property to be prepared and to be collected by the collector, with other taxes assessed against the property; and the tax bill from the date of its issuance shall be a first lien on the property until paid and shall be prima facie evidence of the recitals therein and of its validity, and no mere clerical error or informality in the same, or in the proceedings leading up to the issuance, shall be a defense thereto. Each special tax bill shall be issued by the city clerk and delivered to the collector on or before the first day of June of each year. Such tax bills if not paid when due shall bear interest at the rate of eight percent per annum. Notwithstanding the time limitations of this section, any city, town or village located in a county of the first classification may hold the hearing provided in this section four days after notice is sent or posted, and may order at the hearing that the weeds or trash shall be abated within five business days after the hearing and if such weeds or trash are not removed within five business days after the hearing, the order shall allow the city to immediately remove the weeds or trash pursuant to this section. Except for lands owned by a public utility, rights-of-way, and easements appurtenant or incidental to lands controlled by any railroad, the department of transportation, the department of natural resources or the department of conservation, the provisions of this subsection shall not apply to any city with a population of at least seventy thousand inhabitants which is located in a county of the first classification with a population of less than one hundred thousand inhabitants which adjoins a county with a population of less than one hundred thousand inhabitants that contains part of a city with a population of three hundred fifty thousand or more inhabitants, any city with a population of one hundred thousand or more inhabitants which is located within a county of the first classification that adjoins no other county of the first classification, or any city, town or village located within a county of the first classification with a charter form of government with a population of nine hundred thousand or more inhabitants, or any city with a population of three hundred fifty thousand or more inhabitants which is located in more than one county, or the City of St. Louis, where such city, town or village establishes its own procedures for abatement of weeds or trash, and such city may charge its costs of collecting the tax bill, including attorney fees, in the event a lawsuit is required to enforce a tax bill.

2. Except as provided in subsection 3 of this section, if weeds are allowed to grow, or if trash is allowed to accumulate, on the same property in violation of an ordinance more than once during the same growing season in the case of weeds, or more than once during a calendar year in the case of trash, in any city with a population of three hundred fifty thousand or more inhabitants which is located in more than one county, in the City of St. Louis, in any city, town or village located in a county of the first classification with a charter form of government with a population of nine hundred thousand or more inhabitants, in any fourth class city located in a county of the first classification with a charter form of government and a population of less than three hundred thousand, or in any home rule city with more than one hundred thirteen thousand two hundred but less than one hundred thirteen thousand three hundred inhabitants located in a county with a charter form of government and with more than six hundred thousand but less than seven hundred thousand inhabitants, the marshal or other designated city official may order that the weeds or trash be abated within five business days after notice is sent to or posted on the property. In case the weeds or trash are not removed within the five days, the marshal or other designated city official may have the weeds or trash removed and the cost of the same shall be billed in the manner described in subsection 1 of this section.

3. If weeds are allowed to grow, or if trash is allowed to accumulate, on the same property in violation of an ordinance more than once during the same growing season in the case of weeds, or more than once during a calendar year in the case of trash, in any city with a population of three hundred fifty thousand or more inhabitants which is located in more than one county, in the City of St. Louis, in any city, town or village located in a county of the first classification with a charter form of government with a population of nine hundred thousand or more inhabitants, in any fourth class city located in a county of the first classification with a charter form of government and a population of less than three hundred thousand, in any home rule city with more than one hundred thirteen thousand two hundred but less than one hundred thirteen thousand three hundred inhabitants located in a county with a charter form of government and with more than six hundred thousand but less than seven hundred thousand inhabitants **[**or**],** in any third class city with a population of at least ten thousand inhabitants but less than fifteen thousand inhabitants with the greater part of the population located in a county of the first classification, **in any city of the third classification with more than sixteen thousand nine hundred but less than seventeen thousand inhabitants, or in any city of the third classification with more than eight thousand but fewer than nine thousand inhabitants,** the marshal or other designated official may, without further notification, have the weeds or trash removed and the cost of the same shall be billed in the manner described in subsection 1 of this section. The provisions of subsection 2 and this subsection do not apply to lands owned by a public utility and lands, rights-of-way, and easements appurtenant or incidental to lands controlled by any railroad.

4. The provisions of this section shall not apply to any city with a population of one hundred thousand or more inhabitants which is located within a county of the first classification that adjoins no other county of the first classification where such city establishes its own procedures for abatement of weeds or trash, and such city may charge its costs of collecting the tax bill, including attorney fees, in the event a lawsuit is required to enforce a tax bill.

Approved June 24, 2004

HB 950 [HCS HB 950 & 948]

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

Modifies the classification of counties.

AN ACT to repeal sections 48.020 and 48.030, RSMo, and to enact in lieu thereof two new sections relating to classifications of counties.

SECTION
A. Enacting clause.
48.020. Classification of counties into four classes for purpose of organization and power — classification, how determined.
48.030. Change in classification, when effective.

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

SECTION A. ENACTING CLAUSE. — Sections 48.020 and 48.030, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 48.020 and 48.030, to read as follows:

48.020. CLASSIFICATION OF COUNTIES INTO FOUR CLASSES FOR PURPOSE OF ORGANIZATION AND POWER — CLASSIFICATION, HOW DETERMINED. — All counties of this state are hereby classified, for the purpose of establishing organization and powers in accordance with the provisions of section 8, article VI, Constitution of Missouri, into four classifications determined as follows:

Classification 1. All counties having an assessed valuation of **[**four hundred fifty**]** **six hundred** million dollars and over shall automatically be in the first classification after that county has maintained such valuation for the time period required by section 48.030; however, any county of the second classification which, on August 13, 1988, has had an assessed valuation of at least four hundred million dollars for at least one year may, by resolution of the governing body of the county, elect to be classified as a county of the first classification after it has maintained such valuation for the period of time required by the provisions of section 48.030.

Classification 2. All counties having an assessed valuation of **[**three**]** **four** hundred **fifty** million dollars and less than the assessed valuation necessary for that county to be in the first classification shall automatically be in the second classification after that county has maintained such valuation for the time period required by section 48.030.

Classification 3. All counties having an assessed valuation of less than the assessed valuation necessary for that county to be in the second classification shall automatically be in the third classification.

Classification 4. All counties which have attained the second classification prior to August 13, 1988, and which would otherwise return to the third classification after August 13, 1988, because of changes in assessed valuation shall remain a county in the second classification and shall operate under the laws of this state applying to the second classification.

48.030. CHANGE IN CLASSIFICATION, WHEN EFFECTIVE. — **1. Other than as otherwise provided for in this section,** after September 28, 1979, no county shall move from a lower class to a higher class or from a higher class to a lower class until the assessed valuation of the county is such as to place it in the other class for five successive years**[**; but,**]**.

2. No second class county shall become a third class county until the assessed valuation of the county is such as to place it in the third class for at least five successive years and until the assessed valuations for calendar year 1985 have been entered on the tax rolls of each county in accordance with subsections 6 and 7 of section 137.115, RSMo.

3. Notwithstanding the provisions of subsection 1 of this section, a county may become a first class county at any time after the assessed valuation of the county is such as to be a first class county and the governing body of the county elects to change classifications. The effective date of such change of classification shall be in accordance with the provisions of this section.

4. The change from one classification to another shall become effective at the beginning of the county fiscal year following the next general election after the certification by the state equalizing agency for the required number of successive years that the county possesses an assessed valuation placing it in another class. If a general election is held between the date of the certification and the end of the current fiscal year, the change of classification shall not become effective until the beginning of the county fiscal year following the next succeeding general election.

Approved March 15, 2004

HB 959 [CCS#2 SCS HCS HB 959]

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

Establishes the Higher Education Deposit Program, revises other laws relating to banking, and revises the crime of identity theft.

AN ACT To repeal sections 33.103, 166.415, 166.435, 408.032, 408.140, 408.190, 408.232, 443.130, 506.290, 513.430, 513.440, and 541.033, RSMo, and sections 570.223 and 570.224 as truly agreed to and finally passed by the second regular session of the ninety-second general assembly in senate committee substitute for house bill no. 916, and to enact in lieu thereof thirty-four new sections relating to banking, with penalty provisions.

SECTION

A. Enacting clause.
33.103. Deductions authorized to be made from state employees' compensation — debts owed to state, child support payments, tuition programs, cafeteria plan, requirements.
166.415. Missouri higher education savings program, created, board, members, proxies, powers and duties, investments.
166.435. State tax exemption.
166.500. Citation of law.
166.505. Program established as alternative to Missouri higher education savings program.
166.510. Definitions.
166.515. Program created, Missouri higher education savings program board to administer, powers and duties — investment of funds.
166.520. Deposit program participation agreements, terms and conditions — contribution limits — minimum holding time for contributions.
166.525. Prompt investment of moneys paid by participation agreements, use of moneys.
166.530. Cancellation of agreements, penalty.
166.540. Assets used for program purposes only.
166.545. Rulemaking authority.
166.550. Review of program by state auditor, when.
166.555. Program moneys not part of total state revenues.
166.556. Confidentiality requirements.
166.557. Sunset provision.
362.191. State employee compensation deductions authorized for investment by office of administration.
369.176. State employee compensation deductions authorized for investment by office of administration.
408.032. Recording fees.
408.140. Additional charges or fees prohibited, exceptions — no finance charges if purchases are paid for within certain time limit, exception.
408.178. Deferral of monthly loan payments, fee authorized for certain loans.
408.190. Certain loans exempt from sections 408.120 to 408.180, and 408.200.
408.232. Rates and terms.
408.480. Changes to certain sections remedial only.
427.225. Name of financial institution, deceptive use of, when — cause of action may be brought by whom — financial institution defined.

432.047.	Credit agreements, actions not to be maintained, when — credit agreement defined.
443.130.	Liability for failing to satisfy — demand by certified mail required.
506.290.	Venue for actions.
513.430.	Property exempt from attachment — benefits from certain employee plans, exception — bankruptcy proceeding, fraudulent transfers, exception — construction of section.
513.440.	Other property exempt — provisions — exceptions.
541.033.	Offenses, where prosecuted.
570.223.	Identity theft — penalty — restitution — other civil remedies available — exempted activities.
570.224.	Trafficking in stolen identities, crime of — possession of documents, exemptions — violation, penalty.
1.	Board of fund commissioners and board of public buildings, additional authority.
570.223.	Identity theft — penalty — restitution — other civil remedies available — exempted activities.
570.224.	Trafficking in stolen identities, crime of — possession of documents, exemptions — violation, penalty.

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

SECTION A. ENACTING CLAUSE. — Sections 33.103, 166.415, 166.435, 408.032, 408.140, 408.190, 408.232, 443.130, 506.290, 513.430, 513.440, and 541.033, RSMo, and sections 570.223 and 570.224 as truly agreed to and finally passed by the second regular session of the ninety-second general assembly in senate committee substitute for house bill no. 916, are repealed and thirty-four new sections enacted in lieu thereof, to be known as sections 33.103, 166.415, 166.435, 166.500, 166.505, 166.510, 166.515, 166.520, 166.525, 166.530, 166.540, 166.545, 166.550, 166.555, 166.556, 166.557, 362.191, 369.176, 408.032, 408.140, 408.178, 408.190, 408.232, 408.480, 427.225, 432.047, 443.130, 506.290, 513.430, 513.440, 541.033, 570.223, 570.224, and 1, to read as follows:

33.103. DEDUCTIONS AUTHORIZED TO BE MADE FROM STATE EMPLOYEES' COMPENSATION — DEBTS OWED TO STATE, CHILD SUPPORT PAYMENTS, TUITION PROGRAMS, CAFETERIA PLAN, REQUIREMENTS. — 1. Whenever the employees of any state department, division or agency establish any voluntary retirement plan, or participate in any group hospital service plan, group life insurance plan, medical service plan or other such plan, or if they are members of an employee collective bargaining organization, or if they participate in a group plan for uniform rental, the commissioner of administration may deduct from such employees' compensation warrants the amount necessary for each employee's participation in the plan or collective bargaining dues, provided that such dues deductions shall be made only from those individuals agreeing to such deductions. Before such deductions are made, the person in charge of the department, division or agency shall file with the commissioner of administration an authorization showing the names of participating employees, the amount to be deducted from each such employee's compensation, and the agent authorized to receive the deducted amounts. The amount deducted shall be paid to the authorized agent in the amount of the total deductions by a warrant issued as provided by law.

2. The commissioner of administration may, in the same manner, deduct from any state employee's compensation warrant:

(1) Any amount authorized by the employee for the purchase of shares in a state employees' credit union in Missouri;

(2) Any amount authorized by the employee for contribution to a fund resulting from a united, joint community-wide solicitation or to a fund resulting from a nationwide solicitation by charities rendering services or otherwise fulfilling charitable purposes if the fund is administered in a manner requiring public accountability and public participation in policy decisions;

(3) Any amount authorized by the employee for the payment of dues in an employee association;

(4) Any amount determined to be owed by the employee to the state in accordance with guidelines established by the commissioner of administration which shall include notice to the employee and an appeal process;

(5) Any amount voluntarily assigned by the employee for payment of child support obligations determined pursuant to chapter 452 or 454, RSMo; **[**and**]**

(6) Any amount authorized by the employee for contributions to any "qualified state tuition program" pursuant to Section 529 of the Internal Revenue Code of 1986, as amended, sponsored by the state of Missouri**; and**

(7) Any amount authorized by the employee for the investment in deposits in a state employee's bank or savings and loan association in this state.

3. The commissioner of administration may establish a cafeteria plan in accordance with Section 125 of Title 26 United States Code for state employees. The commissioner of administration must file a written plan document to be filed in accordance with chapter 536, RSMo. Employees must be furnished with a summary plan description one hundred twenty days prior to the effective date of the plan. In connection with such plans, the commissioner may:

(1) Include as an option in the plan any employee benefit, otherwise available to state employees, administered by a statutorily created retirement system;

(2) Provide and administer, or select companies on the basis of competitive bids or proposals to provide or administer, any group insurance, or other plan which may be included as part of a cafeteria plan, provided such plan is not duplicative of any other plan, otherwise available to state employees, administered by a statutorily created retirement system; and

(3) Reduce each participating employee's compensation warrant by the amount necessary for each employee's participation in the cafeteria plan, provided that such salary reduction shall be made only with respect to those individuals agreeing to such reduction. No such reduction in salary for the purpose of participation in a cafeteria plan shall have the effect of reducing the compensation amount used in calculating the state employee's retirement benefit under a statutorily created retirement system or reducing the compensation amount used in calculating the state employee's compensation or wages for purposes of any workers' compensation claim governed by chapter 287, RSMo.

4. Employees may authorize deductions as provided in this section in writing or by electronic enrollment.

166.415. MISSOURI HIGHER EDUCATION SAVINGS PROGRAM, CREATED, BOARD, MEMBERS, PROXIES, POWERS AND DUTIES, INVESTMENTS. — 1. There is hereby created the "Missouri Higher Education Savings Program". The program shall be administered by the Missouri higher education savings program board which shall consist of the Missouri state treasurer who shall serve as chairman, the commissioner of the department of higher education, the commissioner of the office of administration, the director of the department of economic development **[**and**],** two persons having demonstrable experience and knowledge in the areas of finance or the investment and management of public funds, one of whom is selected by the president pro tem of the senate and one of whom is selected by the speaker of the house of representatives**[**.**], and one person having demonstrable experience and knowledge in the area of banking or deposit rate determination and placement of depository certificates of deposit or other deposit investments. Such member shall be appointed by the governor with the advice and consent of the senate.** The **[**two**] three** appointed members shall be appointed to serve for terms of four years from the date of appointment, or until their successors shall have been appointed and shall have qualified. The members of the board shall be subject to the conflict of interest provisions of section 105.452, RSMo. Any member who violates the conflict of interest provisions shall be removed from the board. In order to establish and administer the savings program, the board, in addition to its other powers and authority, shall have the power and authority to:

(1) Develop and implement the Missouri higher education savings program and, notwithstanding any provision of sections 166.400 to 166.455 to the contrary, the savings programs and services consistent with the purposes and objectives of sections 166.400 to 166.455;

(2) Promulgate reasonable rules and regulations and establish policies and procedures to implement sections 166.400 to 166.455, to permit the savings program to qualify as a "qualified state tuition program" pursuant to Section 529 of the Internal Revenue Code and to ensure the savings program's compliance with all applicable laws;

(3) Develop and implement educational programs and related informational materials for participants, either directly or through a contractual arrangement with a financial institution for investment services, and their families, including special programs and materials to inform families with young children regarding methods for financing education and training beyond high school;

(4) Enter into agreements with any financial institution, the state or any federal or other agency or entity as required for the operation of the savings program pursuant to sections 166.400 to 166.455;

(5) Enter into participation agreements with participants;

(6) Accept any grants, gifts, legislative appropriations, and other moneys from the state, any unit of federal, state, or local government or any other person, firm, partnership, or corporation for deposit to the account of the savings program;

(7) Invest the funds received from participants in appropriate investment instruments to achieve long-term total return through a combination of capital appreciation and current income;

(8) Make appropriate payments and distributions on behalf of beneficiaries pursuant to participation agreements;

(9) Make refunds to participants upon the termination of participation agreements pursuant to the provisions, limitations, and restrictions set forth in sections 166.400 to 166.455 and the rules adopted by the board;

(10) Make provision for the payment of costs of administration and operation of the savings program;

(11) Effectuate and carry out all the powers granted by sections 166.400 to 166.455, and have all other powers necessary to carry out and effectuate the purposes, objectives and provisions of sections 166.400 to 166.455 pertaining to the savings program; and

(12) Procure insurance, guarantees or other protections against any loss in connection with the assets or activities of the savings program.

2. Any member of the board may designate a proxy for that member who will enjoy the full voting privileges of that member for the one meeting so specified by that member. No more than three proxies shall be considered members of the board for the purpose of establishing a quorum.

3. Four members of the board shall constitute a quorum. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board. No action shall be taken by the board except upon the affirmative vote of a majority of the members present.

4. The board shall meet within the state of Missouri at the time set at a previously scheduled meeting or by the request of any four members of the board. Notice of the meeting shall be delivered to all other trustees in person or by depositing notice in a United States post office in a properly stamped and addressed envelope not less than six days prior to the date fixed for the meeting. The board may meet at any time by unanimous mutual consent. There shall be at least one meeting in each quarter.

5. The funds shall be invested only in those investments which a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims, as provided in section 105.688, RSMo. The board may delegate to duly appointed investment counselors authority to act in place of the board in the investment and reinvestment of all or part of the moneys and may also delegate to such counselors the authority to act in place of the board in the holding, purchasing, selling, assigning, transferring or disposing of any or all of the securities and investments in which such moneys shall have been invested, as well as the proceeds of such investments and such moneys. Such investment

counselors shall be registered as investment advisors with the United States Securities and Exchange Commission. In exercising or delegating its investment powers and authority, members of the board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. No member of the board shall be liable for any action taken or omitted with respect to the exercise of, or delegation of, these powers and authority if such member shall have discharged the duties of his or her position in good faith and with that degree of diligence, care and skill which a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.

6. No investment transaction authorized by the board shall be handled by any company or firm in which a member of the board has a substantial interest, nor shall any member of the board profit directly or indirectly from any such investment.

7. No trustee or employee of the savings program shall receive any gain or profit from any funds or transaction of the savings program. Any trustee, employee or agent of the savings program accepting any gratuity or compensation for the purpose of influencing such trustee's, employee's or agent's action with respect to the investment or management of the funds of the savings program shall thereby forfeit the office and in addition thereto be subject to the penalties prescribed for bribery.

166.435. STATE TAX EXEMPTION. — 1. **Notwithstanding any law to the contrary,** the assets of the savings program held by the board and the assets of any **[**similar savings program**] deposit program authorized in section 166.500 and** qualified pursuant to Section 529 of the Internal Revenue Code and any income therefrom shall be exempt from all taxation by the state or any of its political subdivisions. Income earned or received from the **[**fund by any participant or beneficiary**] savings program or deposit program** shall not be subject to state income tax **imposed pursuant to chapter 143, RSMo,** and shall be eligible for any benefits provided in accordance with Section 529 of the Internal Revenue Code. The exemption from taxation pursuant to this section shall apply only to assets and income maintained, accrued, or expended pursuant to the requirements of the savings program established pursuant to sections 166.400 to 166.455, **[**the provisions of this section**] and the deposit program established pursuant to section 166.500 to 166.566,** and Section 529 of the Internal Revenue Code, and no exemption shall apply to assets and income expended for any other purposes. Annual contributions **made to the savings program held by the board and the deposit program** up to and including eight thousand dollars **[**made to the savings program**] for the participant taxpayer,** shall be subtracted **[**from**] in determining** Missouri adjusted gross income pursuant to section 143.121, RSMo.

2. If any deductible contributions to or earnings from any **[**savings account**] such program referred to in this section** are distributed and not used to pay qualified higher education expenses or are not held for the minimum length of time established by the **[**board**] appropriate Missouri state authority**, the amount so distributed shall be added to the Missouri adjusted gross income of the participant, or, if the participant is not living, the beneficiary.

3. The provisions of this section shall apply to tax years beginning on or after January 1, 1999**, and the provisions of this section with regard to sections 166.500 to 166.556 shall apply to tax years beginning on or after January 1, 2004**.

166.500. CITATION OF LAW. — Sections 166.500 to 166.556 shall be known and may be cited as the "Missouri Higher Education Deposit Program".

166.505. PROGRAM ESTABLISHED AS ALTERNATIVE TO MISSOURI HIGHER EDUCATION SAVINGS PROGRAM. — Notwithstanding the provisions of sections 166.400 to 166.456 to the contrary, the higher education deposit program is established as a nonexclusive alternative

to the Missouri higher education savings program, and any participant may elect to participate in both programs subject to aggregate Missouri program limitations.

166.510. DEFINITIONS. — As used in sections 166.500 to 166.556, except where the context clearly requires another interpretation, the following terms mean:

(1) "Beneficiary", any individual designated by a participation agreement to benefit from payments for qualified higher education expenses at an eligible educational institution;

(2) "Benefits", the payment of qualified higher education expenses on behalf of a beneficiary from a deposit account during the beneficiary's attendance at an eligible educational institution;

(3) "Board", the Missouri higher education savings program board established in section 166.415;

(4) "Eligible educational institution", an institution of postsecondary education as defined in Section 529(e)(5) of the Internal Revenue Code;

(5) "Financial institution", a depository institution and any intermediary that brokers certificates of deposits;

(6) "Internal Revenue Code", the Internal Revenue Code of 1986, as amended;

(7) "Missouri higher education deposit program" or "deposit program", the program created pursuant to sections 166.500 to 166.556;

(8) "Participant", a person who has entered into a participation agreement pursuant to sections 166.500 to 166.556 for the advance payment of qualified higher education expenses on behalf of a beneficiary;

(9) "Participation agreement", an agreement between a participant and the board pursuant to and conforming with the requirements of sections 166.500 to 166.556;

(10) "Qualified higher education expenses", the qualified costs of tuition and fees and other expenses for attendance at an eligible educational institution, as defined in Section 529(e)(3) of the Internal Revenue Code of 1986, as amended.

166.515. PROGRAM CREATED, MISSOURI HIGHER EDUCATION SAVINGS PROGRAM BOARD TO ADMINISTER, POWERS AND DUTIES — INVESTMENT OF FUNDS. — 1. There is hereby created the "Missouri Higher Education Deposit Program". The program shall be administered by the Missouri higher education savings program board.

2. In order to establish and administer the deposit program, the board, in addition to its other powers and authority, shall have the power and authority to:

(1) Develop and implement the Missouri higher education deposit program and, notwithstanding any provision of sections 166.500 to 166.556 to the contrary, the deposit programs and services consistent with the purposes and objectives of sections 166.500 to 166.556;

(2) Promulgate reasonable rules and regulations and establish policies and procedures to implement sections 166.500 to 166.556, to permit the deposit program to qualify as a qualified state tuition program pursuant to Section 529 of the Internal Revenue Code and to ensure the deposit program's compliance with all applicable laws;

(3) Develop and implement educational programs and related informational materials for participants, either directly or through a contractual arrangement with a financial institution or other entities for deposit educational services, and their families, including special programs and materials to inform families with children of various ages regarding methods for financing education and training beyond high school;

(4) Enter into an agreement with any financial institution, entity, or business clearinghouse for the operation of the deposit program pursuant to sections 166.500 to 166.556; providing however, that such institution, entity, or clearinghouse shall be a private for-profit or not-for-profit entity and not a government agency. No more than one

board member may have a direct interest in such institution, entity, or clearinghouse. Such institution, entity, or clearinghouse shall implement the board's policies and administer the program for the board and with electing depository institutions and others;

(5) Enter into participation agreements with participants;

(6) Accept any grants, gifts, legislative appropriations, and other moneys from the state, any unit of federal, state, or local government or any other person, firm, partnership, or corporation for deposit to the account of the deposit program;

(7) Invest the funds received from participants in appropriate investment instruments to be held by depository institutions or directly deposit such funds in depository institutions as provided by the board and elected by the participants;

(8) Make appropriate payments and distributions on behalf of beneficiaries pursuant to participation agreements;

(9) Make refunds to participants upon the termination of participation agreements pursuant to the provisions, limitations, and restrictions set forth in sections 166.500 to 166.556 and the rules adopted by the board;

(10) Make provision for the payment of costs of administration and operation of the deposit program;

(11) Effectuate and carry out all the powers granted by sections 166.500 to 166.556, and have all other powers necessary to carry out and effectuate the purposes, objectives, and provisions of sections 166.500 to 166.556 pertaining to the deposit program;

(12) Procure insurance, guarantees, or other protections against any loss in connection with the assets or activities of the deposit program, as the members in their best judgment deem necessary;

(13) To both adopt and implement various methods of transferring money by electronic means to efficiently transfer funds to depository institutions for deposit, and in addition or in the alternative, to allow funds to be transferred by agent agreements, assignment, or otherwise, provided such transfer occurs within two business days;

(14) To both adopt and implement methods and policies designed to obtain the maximum insurance of such funds for each participant permitted and provided for by the Federal Deposit Insurance Corporation, or any other federal agency insuring deposits, and taking into consideration the law and regulation promulgated by such federal agencies for deposit insurance.

3. The funds shall be invested only in those investments which a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, as provided in section 105.688, RSMo, as a means to hold funds until they are placed in a Missouri depository institution as a deposit. The board may delegate to duly appointed representatives of financial institutions authority to act in place of the board in the investment and reinvestment of all or part of the moneys and may also delegate to such representatives the authority to act in place of the board in the holding, purchasing, selling, assigning, transferring, or disposing of any or all of the investments in which such moneys shall have been invested, as well as the proceeds of such investments and such moneys, however, such investments shall be limited to certificates of deposit and other deposits in federally insured depository institutions. Such representatives shall be registered as "qualified student deposit advisors on section 529 plans" with the board and such board shall, by rule, develop and administer qualification tests from time to time to provide representatives the opportunity to qualify for this program. In exercising or delegating its investment powers and authority, members of the board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. No member of the board shall be liable for any action taken or omitted with respect to the exercise of, or delegation of, these powers and authority if such member shall have discharged the duties of his or her position in good faith and with that degree of diligence, care, and skill which

a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.

4. No board member or employee of the deposit program shall personally receive any gain or profit from any funds or transaction of the deposit program as a result of his or her membership of the board. Any board member, employee, or agent of the deposit program accepting any gratuity or compensation for the purpose of influencing such board member's, employee's, or agent's action with respect to choice of intermediary, including any financial institution, entity, or clearinghouse, for the funds of the deposit program shall thereby forfeit the office and in addition thereto be subject to the penalties prescribed for bribery. However, a board member who is regularly employed directly or indirectly by a financial institution may state that institution's interest and absent himself or herself from voting.

5. Depository institutions originating the deposit program shall be the agent of the board and offer terms for certificates of deposit and other deposits in such program as permitted by the board, subject to a uniform interest rate disclosure as defined in federal regulations of the Board of Governors of the Federal Reserve System, specifically Federal Reserve Regulation DD, as amended from time to time. The board shall establish various deposit opportunities based on amounts deposited and length of time held that are uniformly available to all depository institutions that elect to participate in the program, and the various categories of fixed or variable rates shall be the only interest rates available under this program. A depository institution that originates the deposit as agent for the board and participates in the program shall receive back and continue to hold the certificate of deposit or other deposit, provided such depository institution continues to comply with requirements and regulations prescribed by the board. Such deposit and certificate of deposit shall be titled in the name of the clearing entity for the benefit of the participant, and shall be insured as permitted by any agency of the federal government that insures deposits in depository institutions. Any depository institution or intermediary that fails to comply with these provisions shall forfeit its right to participate in this program; provided however, the board shall be the sole and exclusive judge of compliance except as otherwise provided by provisions in Section 529 of the Internal Revenue Code and the Internal Revenue Service enforcement of such section.

166.520. DEPOSIT PROGRAM PARTICIPATION AGREEMENTS, TERMS AND CONDITIONS — CONTRIBUTION LIMITS — MINIMUM HOLDING TIME FOR CONTRIBUTIONS. — 1. The board may enter into deposit program participation agreements with participants on behalf of beneficiaries pursuant to the provisions of sections 166.500 to 166.556, including the following terms and conditions:

(1) A participation agreement shall stipulate the terms and conditions of the deposit program in which the participant makes contributions;

(2) A participation agreement shall specify the method for calculating the return on the contribution made by the participant as otherwise provided in sections 166.500 to 166.556;

(3) The execution of a participation agreement by the board shall not guarantee that the beneficiary named in any participation agreement will be admitted to an eligible educational institution, be allowed to continue to attend an eligible educational institution after having been admitted or will graduate from an eligible educational institution;

(4) A participation agreement shall disclose to participants the risk associated with depositing moneys with the board, including information on federal insured deposit availability and coverage and penalties for withdrawal before the deposit has matured;

(5) Participation agreements shall be organized and presented in a way and with language that is easily understandable by the general public; and

(6) A participation agreement shall clearly and prominently disclose to participants the existence of any fee or similar charge assessed against the accounts of the participants for administration or services.

2. The board shall establish the maximum amount which may be contributed annually by a participant with respect to a beneficiary.

3. The board shall establish a total contribution limit for deposit accounts established under the deposit program with respect to a beneficiary to permit the deposit program to qualify as a qualified state tuition program pursuant to Section 529 of the Internal Revenue Code. No contribution may be made to a deposit account for a beneficiary if it would cause the balance of all deposit accounts of the beneficiary to exceed the total contribution limit established by the board. The board may establish other requirements that it deems appropriate to provide adequate safeguards to prevent contributions on behalf of a beneficiary from exceeding what is necessary to provide for the qualified higher education expenses of the beneficiary.

4. The board shall establish the minimum length of time that contributions and earnings must be held by the deposit program to qualify pursuant to section 166.435. Any contributions or earnings that are withdrawn or distributed from a deposit account prior to the expiration of the minimum length of time, as established by the board, shall be subject to a penalty pursuant to section 166.530.

166.525. PROMPT INVESTMENT OF MONEYS PAID BY PARTICIPATION AGREEMENTS, USE OF MONEYS. — All money paid by a participant in connection with participation agreements shall be deposited as received and shall be promptly invested by the board or may be directly deposited by the board's agents. Contributions and earnings thereon accumulated on behalf of participants in the deposit program may be used, as provided in the participation agreement, for qualified higher education expenses.

166.530. CANCELLATION OF AGREEMENTS, PENALTY. — Any participant may cancel a participation agreement at will. The board shall impose a penalty equal to or greater than ten percent of the earnings of an account for any distribution that is not:

(1) Used exclusively for qualified higher education expenses of the designated beneficiary;

(2) Made because of death or disability of the designated beneficiary;

(3) Made because of the receipt of scholarship by the designated beneficiary;

(4) A rollover distribution, as defined in Section 529(c)(3)(C)(i) of the Internal Revenue Code; or

(5) Held in the fund for the minimum length of time established by the board.

166.540. ASSETS USED FOR PROGRAM PURPOSES ONLY. — The assets of the deposit program shall at all times be preserved, invested, and expended only for the purposes set forth in this section and in accordance with the participation agreements, and no property rights therein shall exist in favor of the state.

166.545. RULEMAKING AUTHORITY. — Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is promulgated pursuant to sections 166.500 to 166.556 shall become effective only if it has been promulgated pursuant to the provisions of chapter 536, RSMo. All rulemaking authority delegated prior to August 28, 2004, is of no force and effect and repealed; however, nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to August 28, 2004, if it fully complied with the provisions of chapter 536, RSMo. Sections 166.500 to 166.556 and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to

disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

166.550. REVIEW OF PROGRAM BY STATE AUDITOR, WHEN. — The Missouri state auditor shall, on a semiannual basis, review the financial status and investment policy of the program as well as the participation rate in the program. The auditor shall also review the continued viability of the program and the administration of the program by the board. The auditor shall report the findings annually to the board, which shall subsequently disclose such findings at a public meeting.

166.555. PROGRAM MONEYS NOT PART OF TOTAL STATE REVENUES. — Money accruing to and deposited in individual deposit accounts shall not be part of total state revenues as defined in sections 17 and 18, article X, Constitution of Missouri, and the expenditure of such revenues shall not be an expense of state government under section 20, article X, Constitution of Missouri.

166.556. CONFIDENTIALITY REQUIREMENTS. — All personally identifiable information concerning participants and beneficiaries of accounts established within the Missouri higher education deposit program pursuant to sections 166.500 to 166.556 shall be confidential, and any disclosure of such information shall be restricted to purposes directly connected with the administration of the program.

166.557. SUNSET PROVISION. — Pursuant to section 23.253, RSMo, of the Missouri Sunset Act:

(1) The provisions of the new program authorized under sections 166.500 to 166.557 shall automatically sunset six years after the effective date of sections 166.500 to 166.557 unless reauthorized by an act of the general assembly; and

(2) If such program is reauthorized, the program authorized under sections 166.500 to 166.557 shall automatically sunset twelve years after the effective date of the reauthorization of sections 166.500 to 166.557; and

(3) Sections 166.500 to 166.557 shall terminate on September first of the calendar year immediately following the calendar year in which the program authorized under sections 166.500 to 166.557 is sunset.

362.191. STATE EMPLOYEE COMPENSATION DEDUCTIONS AUTHORIZED FOR INVESTMENT BY OFFICE OF ADMINISTRATION. — Notwithstanding any other provision of law, the commissioner of administration may, in the same manner as provided in section 33.103, RSMo, deduct from any state employee's compensation warrant any amount authorized by the employee for the investments in deposits in any bank which is located in this state, or has a state charter, and is insured by an agency of the United States government.

369.176. STATE EMPLOYEE COMPENSATION DEDUCTIONS AUTHORIZED FOR INVESTMENT BY OFFICE OF ADMINISTRATION. — Notwithstanding any other provision of law, the commissioner of administration may, in the same manner as provided in section 33.103, RSMo, deduct from any state employee's compensation warrant any amount authorized by the employee for the investments in deposits in any savings and loan association or savings bank which is located in this state, or has a state charter, and is insured by an agency of the United States government.

408.032. RECORDING FEES. — 1. Notwithstanding any provisions of law to the contrary, the recording fees, including actual fees paid to a third party by a creditor, may include the following:

(1) Any fee paid in processing the debtor's liens as provided in section 136.055, RSMo;

(2) Any fee paid to a third party for expediting the debtor's motor vehicle or other title or lien with the department of revenue, provided:

(a) The creditor does not control the third party; and

(b) Both creditor and third party do not share common ownership.

2. Either fee provided for in subdivisions (1) and (2) of subsection 1 of this section may be charged such debtor, and is not included as interest or service charges for the purposes of state usury laws; except that the expeditor fee as provided in subdivision (2) of subsection 1 of this section may not exceed **[**six**]** **fifteen** dollars.

408.140. ADDITIONAL CHARGES OR FEES PROHIBITED, EXCEPTIONS — NO FINANCE CHARGES IF PURCHASES ARE PAID FOR WITHIN CERTAIN TIME LIMIT, EXCEPTION. — 1. No further or other charge or amount whatsoever shall be directly or indirectly charged, contracted for or received for interest, service charges or other fees as an incident to any such extension of credit except as provided and regulated by sections 367.100 to 367.200, RSMo, and except:

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

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

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

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

(5) Charges or premiums for insurance written in connection with any loan against loss of or damage to property or against liability arising out of ownership or use of property as provided in section 367.170, RSMo; however, notwithstanding any other provision of law, with the consent of the borrower, such insurance may cover property all or part of which is pledged as security for the loan, and charges or premiums for insurance providing life, health, accident, or involuntary unemployment coverage;

(6) Charges assessed by any institution for processing a refused instrument plus a handling fee of not more than twenty-five dollars;

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

(8) Provided the debtor agrees in writing, the lender may collect a fee in advance for allowing the debtor to defer up to three monthly loan payments, so long as the fee is no more

than the lesser of fifty dollars or ten percent of the loan payments deferred, no extensions are made until the first loan payment is collected and no more than one deferral in a twelve-month period is agreed to and collected on any one loan; this subdivision applies to nonprecomputed loans only and does not affect any other subdivision;

(9) If the open-end credit contract is tied to a transaction account in a depository institution, such account is in the institution's assets and such contract provides for loans of thirty-one days or longer which are "open-end credit", as such term is defined in the federal Consumer Credit Protection Act and regulations thereunder, the creditor may charge a credit advance fee of the lesser of twenty-five dollars or five percent of the credit advanced from time to time from the line of credit; such credit advance fee may be added to the open-end credit outstanding along with any interest, and shall not be considered the unlawful compounding of interest as that term is defined in section 408.120.

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

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

408.178. DEFERRAL OF MONTHLY LOAN PAYMENTS, FEE AUTHORIZED FOR CERTAIN LOANS. — Notwithstanding any other law to the contrary, on loans with an original amount of six hundred dollars or more, and provided the debtor agrees in writing, the lender may collect a fee in advance for allowing the debtor to defer monthly loan payments, so long as the fee on each deferred period is no more than the lesser of fifty dollars or ten percent of the loan payments deferred, however, a minimum fee of twenty-five dollars is permitted, and no extensions are made until the first loan payment is collected on any one loan. This section applies to nonprecomputed loans only.

408.190. CERTAIN LOANS EXEMPT FROM SECTIONS 408.120 TO 408.180, AND 408.200. — Sections 408.120 to 408.180 and 408.200 shall not apply to any loan on which the rate or amount of interest **and fees** charged or received **[**is**] are** lawful **under Missouri law** without regard to the rates permitted in section 408.100 **and the fees permitted in sections 408.140, 408.145, and 408.178**.

408.232. RATES AND TERMS. — 1. With respect to a second mortgage loan, any person, firm or corporation may charge, contract for, and receive interest in any manner at rates agreed to by the parties computed on unpaid balances of the principal for the time actually outstanding.

2. The term of the loan, for purposes of this section, commences with the date the loan is made. Differences in the lengths of months are disregarded, and a day may be counted as one-thirtieth of a month and one-three hundred sixtieth of a year. When a second mortgage loan contract provides for monthly installments, the first installment may be payable at any time within one month and fifteen days of the date of the loan.

3. For revolving loans, charges may be computed at a daily rate of one-thirtieth of the monthly rate on actual daily balances or at a monthly rate on the average daily balance in each monthly billing cycle.

4. Sections 408.231 to 408.241 shall not apply to any loans on which the rate of interest **and fees** charged **[**is**] are** lawful **under Missouri law** without regard to the rates permitted in subsection 1 of this section **and the fees permitted in section 408.233**.

408.480. CHANGES TO CERTAIN SECTIONS REMEDIAL ONLY. — The changes in sections 408.140, 408.145, 408.190, and 408.232 are remedial and should be given that construction; however, this section shall have no effect, favorably or unfavorably, on any case filed in court prior to January 1, 2004.

427.225. NAME OF FINANCIAL INSTITUTION, DECEPTIVE USE OF, WHEN — CAUSE OF ACTION MAY BE BROUGHT BY WHOM — FINANCIAL INSTITUTION DEFINED. — 1. Deceptive use of a financial institution's name in notification or solicitation occurs when a business, or a person acting on its behalf, engages in the following activity:

(1) Through advertisement, solicitation, or other notification, either verbally or through any other means, informs a consumer of the availability of any type of goods or services that are not free;

(2) The name of an unrelated and unaffiliated financial institution is mentioned in any manner;

(3) The goods or services mentioned are not actually provided by the unrelated and unaffiliated financial institution whose name is mentioned;

(4) The business on whose behalf the notification or solicitation is made does not have a consensual right to mention the name of the unrelated and unaffiliated financial institution; and

(5) Neither the actual name nor trade name of the business on whose behalf the notification or solicitation is being made is stated, nor the actual name or trade name of any actual provider of the goods or services is stated, so as to clearly identify for the consumer a name that is distinguishable and separate from the name of the unrelated and unaffiliated financial institution whose name is mentioned in any manner in the notification or solicitation, and thereby a misleading implication or ambiguity is created, such that a consumer who is the recipient of the advertisement, solicitation or notification may reasonably but erroneously believe:

(a) That the goods or services whose availability is mentioned are made available by or through the unrelated and unaffiliated financial institution whose name is mentioned; or

(b) That the unrelated and unaffiliated financial institution whose name is mentioned is the one communicating with the consumer.

2. Deceptive use of another's name in notification or solicitation occurs when a business, or a person acting on its behalf, engages in the following activity:

(1) Falsely states or implies that any person, product or service is recommended or endorsed by a named third-person financial institution; or

(2) Falsely states that information about the consumer, including but not limited to, the name, address, or phone number of the consumer has been provided by a third-person financial institution, whether that person is named or unnamed.

3. Only the financial institution whose name is deceptively used, as provided in this section, may bring a private civil action and recover a minimum amount of ten thousand dollars, court costs, and attorney fees plus any damages such financial institution may prove at trial.

4. For the purposes of this section, a financial institution includes a commercial bank, savings and loan association, savings bank, credit union, mortgage banker, or consumer finance company, or an institution chartered pursuant to the provisions of an act of the United States known as the Farm Credit Act of 1971.

432.047. CREDIT AGREEMENTS, ACTIONS NOT TO BE MAINTAINED, WHEN — CREDIT AGREEMENT DEFINED. — 1. For the purposes of this section, the term "credit agreement" means an agreement to lend or forbear repayment of money, to otherwise extend credit, or to make any other financial accommodation.

2. A debtor may not maintain an action upon or a defense, regardless of legal theory in which it is based, in any way related to a credit agreement unless the credit agreement is in writing, provides for the payment of interest or for other consideration, and sets forth the relevant terms and conditions.

3. (1) If a written credit agreement has been signed by a debtor, subsection 2 of this section shall not apply to any credit agreement between such debtor and creditor unless such written credit agreement contains the following language in boldface ten point type: "Oral agreements or commitments to loan money, extend credit or to forbear from enforcing repayment of a debt including promises to extend or renew such debt are not enforceable, regardless of the legal theory upon which it is based that is in any way related to the credit agreement. To protect you (borrower(s)) and us (creditor) from misunderstanding or disappointment, any agreements we reach covering such matters are contained in this writing, which is the complete and exclusive statement of the agreement between us, except as we may later agree in writing to modify it."

(2) Notwithstanding any other law to the contrary in chapter 432, the provisions of this section shall apply to commercial credit agreements only and shall not apply to credit agreements for personal, family, or household purposes.

4. Nothing contained in this section shall affect the enforceability by a creditor of any promissory note, guaranty, security agreement, deed of trust, mortgage, or other instrument, agreement, or document evidencing or creating an obligation for the payment of money or other financial accommodation, lien, or security interest.

443.130. LIABILITY FOR FAILING TO SATISFY — DEMAND BY CERTIFIED MAIL REQUIRED. — 1. If **[**any such person**] the secured party**, **[**thus**]** receiving satisfaction **for the debt secured pursuant to this chapter,** does not, within **[**fifteen business**] forty-five** days after request and tender of costs, **[**deliver to the person making satisfaction**] submit for recording** a sufficient deed of release, such **[**person**] secured party** shall **[**forfeit**] be liable** to the **[**party aggrieved**] mortgagor for the lesser of an amount of three hundred dollars a day for each day, after the forty-fifth day, that the secured party fails to submit for recording a sufficient deed of release or** ten percent **[**upon**] of** the amount of the security instrument, **[**absolutely, and any other damages such person may be able to prove such person has sustained,**] plus court costs and attorney fees** to be recovered in any court of competent jurisdiction. **[**A business day is any day except Saturday, Sunday and legal holidays.**] In the event a document submitted for recording by a secured party is rejected for recording for any reason, such secured party shall have sixty days following receipt of notice that the document has been rejected in which to submit a recordable and sufficient deed of release.**

2. To qualify under this section, the mortgagor **or his or her agent** shall provide the request in the form of a demand letter to the **[**mortgagee, cestui qui trust, or assignee**] secured party** by certified mail, return receipt requested **or in another form that provides evidence of the date of receipt to the mortgagor**. The letter shall include good and sufficient evidence that the debt secured by the deed of trust was satisfied with good funds, and the expense of filing and recording the release was advanced.

3. In any action against such person who fails to release the lien as provided in **[**subsection**] subsections** 1 **and 2** of this section, the plaintiff, or his **or her** attorney, shall prove at trial that the plaintiff notified the holder of the note by certified mail, return receipt requested**, or as otherwise permitted by subsection 2 of this section**.

506.290. VENUE FOR ACTIONS. — **1.** Any suit under the provisions of sections 506.200 to 506.320 shall be filed in the county in which the cause of action accrues or in the county where the plaintiff resides, and if there be other defendants in such action who are residents of the state of Missouri, then such action shall be brought in any county in which any one of said

defendants resides, or in the county within which the plaintiff resides and the defendant may be found.

2. Any civil suit under the provisions of section 570.223, RSMo, for a person charged with identity theft may be filed:

(1) In the county in which the offense is committed;

(2) If the offense is committed partly in one county and partly in another, or if the elements of the offense occur in more than one county, then in any of the counties where any element of the offense occurred;

(3) In the county in which the defendant resides;

(4) In the county in which the victim resides; or

(5) In the county in which the property obtained or attempted to be obtained was located.

513.430. PROPERTY EXEMPT FROM ATTACHMENT — BENEFITS FROM CERTAIN EMPLOYEE PLANS, EXCEPTION — BANKRUPTCY PROCEEDING, FRAUDULENT TRANSFERS, EXCEPTION — CONSTRUCTION OF SECTION. — 1. The following property shall be exempt from attachment and execution to the extent of any person's interest therein:

(1) Household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments that are held primarily for personal, family or household use of such person or a dependent of such person, not to exceed **[**one**]** **three** thousand dollars in value in the aggregate;

(2) **A wedding ring not to exceed one thousand five hundred dollars in value and other** jewelry held primarily for the personal, family or household use of such person or a dependent of such person, not to exceed five hundred dollars in value in the aggregate;

(3) Any other property of any kind, not to exceed in value **[**four**]** **six** hundred dollars in the aggregate;

(4) Any implements, professional books or tools of the trade of such person or the trade of a dependent of such person not to exceed **[**two**]** **three** thousand dollars in value in the aggregate;

(5) Any motor vehicle **in the aggregate**, not to exceed **[**one**]** **three** thousand dollars in value;

(6) Any mobile home used as the principal residence **but not on or attached to real property in which the debtor has a fee interest**, not to exceed **[**one**]** **five** thousand dollars in value;

(7) Any one or more unmatured life insurance contracts owned by such person, other than a credit life insurance contract;

(8) The amount of any accrued dividend or interest under, or loan value of, any one or more unmatured life insurance contracts owned by such person under which the insured is such person or an individual of whom such person is a dependent; provided, however, that if proceedings under Title 11 of the United States Code are commenced by or against such person, the amount exempt in such proceedings shall not exceed in value one hundred fifty thousand dollars in the aggregate less any amount of property of such person transferred by the life insurance company or fraternal benefit society to itself in good faith if such transfer is to pay a premium or to carry out a nonforfeiture insurance option and is required to be so transferred automatically under a life insurance contract with such company or society that was entered into before commencement of such proceedings. No amount of any accrued dividend or interest under, or loan value of, any such life insurance contracts shall be exempt from any claim for child support. Notwithstanding anything to the contrary, no such amount shall be exempt in such proceedings under any such insurance contract which was purchased by such person within one year prior to the commencement of such proceedings;

(9) Professionally prescribed health aids for such person or a dependent of such person;

(10) Such person's right to receive:

(a) A Social Security benefit, unemployment compensation or a local public assistance benefit;

(b) A veteran's benefit;

(c) A disability, illness or unemployment benefit;

(d) Alimony, support or separate maintenance, not to exceed **[**five**]** **seven** hundred **fifty** dollars a month;

(e) Any payment under a stock bonus plan, pension plan, disability or death benefit plan, profit-sharing plan, nonpublic retirement plan or any plan described, defined, or established pursuant to section 456.072, RSMo, the person's right to a participant account in any deferred compensation program offered by the state of Missouri or any of its political subdivisions, or annuity or similar plan or contract on account of illness, disability, death, age or length of service, to the extent reasonably necessary for the support of such person and any dependent of such person unless:

a. Such plan or contract was established by or under the auspices of an insider that employed such person at the time such person's rights under such plan or contract arose;

b. Such payment is on account of age or length of service; and

c. Such plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408, 408A or 409 of the Internal Revenue Code of 1986, as amended, (26 U.S.C. 401(a), 403(a), 403(b), 408, 408A or 409);

except that any such payment to any person shall be subject to attachment or execution pursuant to a qualified domestic relations order, as defined by Section 414(p) of the Internal Revenue Code of 1986, as amended, issued by a court in any proceeding for dissolution of marriage or legal separation or a proceeding for disposition of property following dissolution of marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of marital property at the time of the original judgment of dissolution;

(f) Any money or assets, payable to a participant or beneficiary from, or any interest of any participant or beneficiary in, a retirement plan or profit-sharing plan that is qualified under Section 401(a), 403(a), 403(b), 408, 408A or 409 of the Internal Revenue Code of 1986, as amended, except as provided in this paragraph. Any plan or arrangement described in this paragraph shall not be exempt from the claim of an alternate payee under a qualified domestic relations order; however, the interest of any and all alternate payees under a qualified domestic relations order shall be exempt from any and all claims of any creditor, other than the state of Missouri through its division of family services. As used in this paragraph, the terms "alternate payee" and "qualified domestic relations order" have the meaning given to them in Section 414(p) of the Internal Revenue Code of 1986, as amended.

If proceedings under Title 11 of the United States Code are commenced by or against such person, no amount of funds shall be exempt in such proceedings under any such plan, contract, or trust which is fraudulent as defined in section 456.630, RSMo, and for the period such person participated within three years prior to the commencement of such proceedings. For the purposes of this section, when the fraudulently conveyed funds are recovered and after, such funds shall be deducted and then treated as though the funds had never been contributed to the plan, contract, or trust;

(11) The debtor's right to receive, or property that is traceable to, a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

2. Nothing in this section shall be interpreted to exempt from attachment or execution for a valid judicial or administrative order for the payment of child support or maintenance any money or assets, payable to a participant or beneficiary from, or any interest of any participant or beneficiary in, a retirement plan which is qualified pursuant to Section 408A of the Internal Revenue Code of 1986, as amended.

513.440. OTHER PROPERTY EXEMPT — PROVISIONS — EXCEPTIONS. — Each head of a family may select and hold, exempt from execution, any other property, real, personal or mixed, or debts and wages, not exceeding in value the amount of **[**eight hundred fifty dollars plus two**]** **one thousand two hundred fifty dollars plus three** hundred fifty dollars for each of such person's unmarried dependent children under the age of eighteen years **or dependent as defined by the Internal Revenue Code of 1986, as amended, determined to be disabled by the Social Security Administration**, except ten percent of any debt, income, salary or wages due such head of a family.

541.033. OFFENSES, WHERE PROSECUTED. — **1.** Persons accused of committing offenses against the laws of this state, except as may be otherwise provided by law, shall be prosecuted:

(1) In the county in which the offense is committed; or

(2) If the offense is committed partly in one county and partly in another, or if the elements of the crime occur in more than one county, then in any of the counties where any element of the offense occurred.

2. Persons accused of committing the offenses of identity theft against the laws of this state in sections 570.223, 570.224, and 575.120, RSMo, shall be prosecuted:

(1) In the county in which the offense is committed;

(2) If the offense is committed partly in one county and partly in another, or if the elements of the offense occur in more than one county, then in any of the counties where any element of the offense occurred;

(3) In the county in which the victim resides; or

(4) In the county in which the property obtained or attempted to be obtained was located.

570.223. IDENTITY THEFT — PENALTY — RESTITUTION — OTHER CIVIL REMEDIES AVAILABLE — EXEMPTED ACTIVITIES. — 1. A person commits the crime of identity theft if he **or she** knowingly and with the intent to deceive or defraud obtains, possesses, transfers, uses, or attempts to obtain, transfer or use, one or more means of identification not lawfully issued for his **or her** use.

2. **[**Identity theft is punishable by up to six months in jail for the first offense; up to one year in jail for the second offense; and one to five years imprisonment for the third or subsequent offense**]** **The term "means of identification" as used in this section includes, but is not limited to, the following:**

(1) Social Security numbers;

(2) Drivers license numbers;

(3) Checking account numbers;

(4) Savings account numbers;

(5) Credit card numbers;

(6) Debit card numbers;

(7) Personal identification (PIN) code;

(8) Electronic identification numbers;

(9) Digital signatures;

(10) Any other numbers or information that can be used to access a person's financial resources;

(11) Biometric data;

(12) Fingerprints;

(13) Passwords;

(14) Parent's legal surname prior to marriage;

(15) Passports; or

(16) Birth certificates.

3. **A person found guilty of identity theft shall be punished as follows:**

(1) Identity theft or attempted identity theft which does not result in the theft or appropriation of credit, money, goods, services, or other property is a class B misdemeanor;

(2) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property not exceeding five hundred dollars in value is a class A misdemeanor;

(3) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding five hundred dollars and not exceeding ten thousand dollars in value is a class C felony;

(4) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding ten thousand dollars and not exceeding one hundred thousand dollars in value is a class B felony;

(5) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding one hundred thousand dollars in value is a class A felony.

4. In addition to the provisions of subsection **[**2**] 3** of this section, the court may order that the defendant make restitution to any victim of the offense. Restitution may include payment for any costs, including attorney fees, incurred by the victim:

(1) In clearing the credit history or credit rating of the victim; and

(2) In connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising from the actions of the defendant.

5. In addition to the criminal penalties in subsections 3 and 4 of this section, any person who commits an act made unlawful by subsection 1 of this section shall be liable to the person to whom the identifying information belonged for civil damages of up to five thousand dollars for each incident, or three times the amount of actual damages, whichever amount is greater. A person damaged as set forth in subsection 1 of this section may also institute a civil action to enjoin and restrain future acts that would constitute a violation of subsection 1 of this section. The court, in an action brought under this subsection, may award reasonable attorneys' fees to the plaintiff.

6. If the identifying information of a deceased person is used in a manner made unlawful by subsection 1 of this section, the deceased person's estate shall have the right to recover damages pursuant to subsection 5 of this section.

7. Civil actions under this section must be brought within five years from the date on which the identity of the wrongdoer was discovered or reasonably should have been discovered.

8. Civil action pursuant to this section does not depend on whether a criminal prosecution has been or will be instituted for the acts that are the subject of the civil action. The rights and remedies provided by this section are in addition to any other rights and remedies provided by law.

9. Sections 570.223 and 570.224 shall not apply to the following activities:

(1) A person obtains the identity of another person to misrepresent his or her age for the sole purpose of obtaining alcoholic beverages, tobacco, going to a gaming establishment, or another privilege denied to minors;

(2) A person obtains means of identification or information in the course of a bona fide consumer or commercial transaction;

(3) A person exercises, in good faith, a security interest or right of offset by a creditor or financial institution;

(4) A person complies, in good faith, with any warrant, court order, levy, garnishment, attachment, or other judicial or administrative order, decree, or directive, when any party is required to do so.

(5) A person is otherwise authorized by law to engage in the conduct that is the subject of the prosecution.

10. Notwithstanding the provisions of subdivisions (1) or (2) of subsection 3 of this section, every person who has previously pled guilty to or been found guilty of identity theft or attempted identity theft, and who subsequently pleads guilty to or is found guilty of identity theft or attempted identity theft of credit, money, goods, services, or other property not exceeding five hundred dollars in value is guilty of a class D felony and shall be punished accordingly.

11. The value of property or services is its highest value by any reasonable standard at the time the identity theft is committed. Any reasonable standard includes, but is not limited to market value within the community, actual value, or replacement value.

12. If credit, property, or services are obtained by two or more acts from the same person or location, or from different persons by two or more acts which occur in approximately the same location or time period so that the identity thefts are attributable to a single scheme, plan, or conspiracy, the acts may be considered as a single identity theft and the value may be the total value of all credit, property, and services involved.

570.224. TRAFFICKING IN STOLEN IDENTITIES, CRIME OF — POSSESSION OF DOCUMENTS, EXEMPTIONS — VIOLATION, PENALTY. — 1. A person commits the crime of trafficking in stolen identities when such person manufactures, sells, transfers, purchases, or possesses, with intent to sell or transfer means of identification as defined in subsection 2 of section 570.223, for the purpose of committing identity theft.

2. Possession of five or more means of identification of the same person or possession of means of identification of five or more separate persons shall be evidence that the identities are possessed with intent to manufacture, sell, or transfer means of identification for the purpose of committing identity theft. In determining possession of five or more means of identification of the same person, or possession of means of identification of five or more separate persons for the purposes of evidence pursuant to this subsection, the following do not apply:

(1) The possession of his or her own identification documents;

(2) The possession of the identification documents of a person who has consented to the person at issue possessing his or her identification documents.

3. Trafficking in stolen identities is a class B felony.

SECTION 1. BOARD OF FUND COMMISSIONERS AND BOARD OF PUBLIC BUILDINGS, ADDITIONAL AUTHORITY. — 1. "Public entity", as used in this section, shall mean the board of fund commissioners of the state and the state board of public buildings.

2. Any public entity as defined in subsection 1 of this section may:

(1) Execute and perform any obligations under any instruments, contracts, or agreements convenient or necessary to incur obligations with interest calculated at a fixed or variable rate, provided that no more than twenty percent of the debt of the public entity to be outstanding on the day after the issuance of any variable rate debt shall be variable rate debt; and

(2) Obtain without any requirement for bidding, but with compliance with the public entity's policies, credit enhancement or other financing arrangements and execute and perform any obligations under any related contracts and agreements convenient or necessary to facilitate such enhancement or financing arrangements including but not limited to arrangements such as municipal bond insurance; surety bonds; liquidity facilities; forward agreements; tender agreements; remarketing agreements; option agreements; interest rate swap, exchange, cap, lock or floor agreements; letters of credit; and purchase agreements.

3. All financial arrangements entered into under the provisions of this section shall be fully enforceable as valid and binding contracts as and to the extent provided herein and by other applicable law.

4. Nothing in this section shall be applied or interpreted to diminish the power any public entity may otherwise have under any other provisions of law.

[570.223. IDENTITY THEFT — PENALTY — RESTITUTION — OTHER CIVIL REMEDIES AVAILABLE — EXEMPTED ACTIVITIES. — 1. A person commits the crime of identity theft if he or she knowingly and with the intent to deceive or defraud obtains, possesses, transfers, uses, or attempts to obtain, transfer or use, one or more means of identification not lawfully issued for his **or her** use.

2. **[**Identity theft is punishable by up to six months in jail for the first offense; up to one year in jail for the second offense; and one to five years imprisonment for the third or subsequent offense.**] The term "means of identification" as used in this section includes, but is not limited to, the following:**

(1) Social Security numbers;

(2) Drivers license numbers;

(3) Checking account numbers;

(4) Savings account numbers;

(5) Credit card numbers;

(6) Debit card numbers;

(7) Personal identification (PIN) code;

(8) Electronic identification numbers;

(9) Digital signatures;

(10) Any other numbers or information that can be used to access a person's financial resources;

(11) Biometric data;

(12) Fingerprints;

(13) Passwords;

(14) Parent's legal surname prior to marriage;

(15) Passports; or

(16) Birth certificates.

3. **A person found guilty of identity theft shall be punished as follows:**

(1) Identity theft or attempted identity theft which does not result in the theft or appropriation of credit, money, goods, services, or other property is a class B misdemeanor;

(2) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property not exceeding five hundred dollars in value is a class A misdemeanor;

(3) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding five hundred dollars and not exceeding one thousand dollars in value is a class D felony;

(4) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding one thousand dollars and not exceeding ten thousand dollars in value is a class C felony;

(5) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding ten thousand dollars and not exceeding one hundred thousand dollars in value is a class B felony;

(6) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding one hundred thousand dollars in value is a class A felony.

4. In addition to the provisions of subsection **[**2**] 3** of this section, the court may order that the defendant make restitution to any victim of the offense. Restitution may include payment for any costs, including attorney fees, incurred by the victim:

(1) In clearing the credit history or credit rating of the victim; and

(2) In connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising from the actions of the defendant.

5. In addition to the criminal penalties in subsections 3 and 4 of this section, any person who commits an act made unlawful by subsection 1 of this section shall be liable to the person to whom the identifying information belonged for civil damages of up to five thousand dollars for each incident, or three times the amount of actual damages, whichever amount is greater. A person damaged as set forth in subsection 1 of this section may also institute a civil action to enjoin and restrain future acts that would constitute a violation of subsection 1 of this section. The court, in an action brought under this subsection, may award reasonable attorneys' fees to the plaintiff.

6. If the identifying information of a deceased person is used in a manner made unlawful by subsection 1 of this section, the deceased person's estate shall have the right to recover damages pursuant to subsection 5 of this section.

7. Any person charged with identity theft shall be prosecuted:

(1) In the county in which the offense is committed; or

(2) If the offense is committed partly in one county and partly in another, or if the elements of the offense occur in more than one county, then in any of the counties where any element of the offense occurred; or

(3) In the county in which the defendant resides; or

(4) In the county in which the victim resides; or

(5) In the county in which the property obtained or attempted to be obtained was located. Civil actions under this section must be brought within five years from the date on which the identity of the wrongdoer was discovered or reasonably should have been discovered.

8. Civil action pursuant to this section does not depend on whether a criminal prosecution has been or will be instituted for the acts that are the subject of the civil action. The rights and remedies provided by this section are in addition to any other rights and remedies provided by law.

9. Sections 570.223 and 570.224 shall not apply to the following activities:

(1) A person obtains the identity of another person to misrepresent his or her age for the sole purpose of obtaining alcoholic beverages, tobacco, going to a gaming establishment, or another privilege denied to minors;

(2) A person obtains means of identification or information in the course of a bona fide consumer or commercial transaction;

(3) A person exercises, in good faith, a security interest or right of offset by a creditor or financial institution;

(4) A person complies, in good faith, with any warrant, court order, levy, garnishment, attachment, or other judicial or administrative order, decree, or directive, when any party is required to do so.

10. Notwithstanding the provisions of subdivisions (1) or (2) of subsection 3 of this section, every person who has previously pled guilty to or been found guilty of identity theft or attempted identity theft, and who subsequently pleads guilty to or is found guilty of identity theft or attempted identity theft of credit, money, goods, services, or other property not exceeding five hundred dollars in value is guilty of a class D felony and shall be punished accordingly.

11. The value of property or services is its highest value by any reasonable standard at the time the identity theft is committed. Any reasonable standard includes, but is not limited to market value within the community, actual value, or replacement value.

12. If credit, property, or services are obtained by two or more acts from the same person or location, or from different persons by two or more acts which occur in approximately the same location or time period so that the identity thefts are attributable

to a single scheme, plan, or conspiracy, the acts may be considered as a single identity theft and the value may be the total value of all credit, property, and services involved.

13. In a criminal proceeding pursuant to this section, venue will be proper in any county where the person whose means of identification or financial information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.

14. A person who commits the crime of identity theft for the purpose of committing a terrorist act as defined by existing federal law, or for the purpose of aiding or abetting another in committing a terrorist act shall be guilty of a Class A felony.

15. A person who commits the crime of identity theft for the purpose of voting, obtaining another person's voting privileges, or altering the results of an election or aiding or abetting another in obtaining another person's voting privileges or altering the result of an election shall be guilty of a Class C felony.]

[570.224. TRAFFICKING IN STOLEN IDENTITIES, CRIME OF — POSSESSION OF DOCUMENTS, EXEMPTIONS — VIOLATION, PENALTY. — 1. A person commits the crime of trafficking in stolen identities when such person manufactures, sells, transfers, purchases, or possesses, with intent to sell or transfer means of identification or identifying information, for the purpose of committing identity theft. In determining possession of five or more identification documents of the same person, or possession of identifying information of five or more separate persons for the purposes of evidence pursuant to this subsection, the following do not apply:

(1) The possession of his or her own identification documents;

(2) The possession of the identification documents of a person who has consented to the person at issue possessing his or her identification documents.

2. Unauthorized possession of means of identification of five or more separate persons, shall be evidence that the identities are possessed with intent to manufacture, sell, or transfer means of identification or identifying information for the purpose of committing identity theft.

3. Trafficking in stolen identities is a class B felony.]

Approved June 14, 2004

HB 960 [SCS HB 960]

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

Designates various portions of highways and bridges as memorials.

AN ACT to amend chapters 227 and 234, RSMo, by adding thereto four new sections relating to memorial highways.

SECTION

A. Enacting clause.
227.339. Trooper Russell Harper Memorial Highway designated for a portion of U.S. Highway 60.
227.351. Trooper Dennis H. Marriott Memorial Highway designated for a portion of U.S. Highway 54 located in Cole County.
227.357. Trooper Wayne W. Allman Memorial Bridge designated for the bridge on State Route 7 in Cass County.
234.707. Brown-Stinson Memorial Bridge designated for bridge number A4975 located in Franklin County.

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

SECTION A. ENACTING CLAUSE. — Chapters 227 and 234, RSMo, are amended by adding thereto four new sections, to be known as sections 227.339, 227.351, 227.357, and 234.707, to read as follows:

227.339. TROOPER RUSSELL HARPER MEMORIAL HIGHWAY DESIGNATED FOR A PORTION OF U.S. HIGHWAY 60. — The portion of U.S. Highway 60 one mile east of U.S. Highway 65 to the U.S. Highway 60 and U.S. Highway 65 intersection shall be designated the "Trooper Russell Harper Memorial Highway". Costs for such designation shall be paid by the Missouri Troopers' Association.

227.351. TROOPER DENNIS H. MARRIOTT MEMORIAL HIGHWAY DESIGNATED FOR A PORTION OF U.S. HIGHWAY 54 LOCATED IN COLE COUNTY. — The portion of U.S. Highway 54 located within a county of the first classification with more than seventy-one thousand three hundred but less than seventy-one thousand four hundred inhabitants from the highway 179 intersection to a location one mile south of such intersection shall be designated the "Trooper Dennis H. Marriott Memorial Highway". The costs for such designation shall be paid by the Missouri Troopers' Association.

227.357. TROOPER WAYNE W. ALLMAN MEMORIAL BRIDGE DESIGNATED FOR THE BRIDGE ON STATE ROUTE 7 IN CASS COUNTY. — The bridge on state route 7 crossing over state route B in Cass County shall be designated the "Trooper Wayne W. Allman Memorial Bridge".

234.707. BROWN-STINSON MEMORIAL BRIDGE DESIGNATED FOR BRIDGE NUMBER A4975 LOCATED IN FRANKLIN COUNTY. — The bridge, bridge number A4975, located at log mile 1.067 on Missouri Route 30 within Franklin County shall be designated the "Brown-Stinson Memorial Bridge".

Approved July 2, 2004

HB 970 [HB 970]

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

Amends various provisions regarding licensure of dentists and dental hygienists.

AN ACT to repeal sections 332.171, 332.181, 332.261, 332.321, and 332.341, RSMo, and to enact in lieu thereof five new sections relating to dentists and dental hygienists.

SECTION

A. Enacting clause.
332.069. Practice of dentistry across state lines, restrictions — no license required, when.
332.171. Specialist license, fee, issued when — evaluation committee established, compensation.
332.181. License to practice dentistry, application, fee, renewal, requirements.
332.261. License as dental hygienist, application, fee, renewal — renewal and reinstatement procedure.
332.321. Refusal to issue or renew, revocation or suspension of license, grounds for, procedure — additional disciplinary actions.
332.341. Charges, how brought — insufficiency, effect of — hearing, how held.

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

SECTION A. ENACTING CLAUSE. — Sections 332.171, 332.181, 332.261, 332.321, and 332.341, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 332.069, 332.171, 332.181, 332.261, and 332.321, to read as follows:

332.069. PRACTICE OF DENTISTRY ACROSS STATE LINES, RESTRICTIONS — NO LICENSE REQUIRED, WHEN. — 1. Any person or entity not licensed to practice dentistry in Missouri shall not engage in the practice of dentistry, as defined in section 332.171, across state lines except as provided in this section.

2. For purposes of this chapter, the "practice of dentistry across state lines" means:

(1) The rendering of any written or otherwise documented dental opinion concerning the diagnosis or treatment of a patient within this state by a dentist located outside this state as a result of transmission of individual patient data by electronic, telephonic, or other means from within this state or any other state to such dentist or dentist's agent; or

(2) The rendering of treatment to a patient within this state by a dentist located outside this state as a result of transmission of individual patient data by electronic, telephonic, or other means from within this state or any other state to such dentist or dentist's agent.

3. A dentist located outside this state shall not be required to obtain a license in this state when:

(1) A consultation is requested by a licensed dentist in this state who retains ultimate authority and responsibility for the diagnosis or treatment of a patient located within this state; and

(2) The consultation request is not due to a contractual agreement to authorize or request consultations from a person or entity not licensed to practice dentistry in Missouri; or

(3) Evaluating a patient or rendering an oral, written, or otherwise documented dental opinion when providing testimony or records for the purpose of any civil or criminal action before any judicial or administrative proceeding of this state or other forum in this state.

332.171. SPECIALIST LICENSE, FEE, ISSUED WHEN — EVALUATION COMMITTEE ESTABLISHED, COMPENSATION. — 1. The board shall upon application **[**and without examination**]** issue a specialist's **[**certificate**] license** to any **[**registered and**]** currently licensed dentist in Missouri who has been certified in any specialty by an **[**American**] examining** board recognized by the American Dental Association**[**; but**].** Any such application shall be accompanied by the required **[**specialty**]** fee.

2. Any **[**registered and**]** currently licensed dentist in Missouri who **has completed a dental specialty program accredited by the Council on Dental Accreditation but** is not eligible **[**to apply**] for specialty licensure** under subsection 1 **[**above**] of this section**, may apply to the board for **[**certification**] specialty licensure** in one of the **[**special areas approved**] specialty areas recognized** by the American Dental Association **[**for specialty practice**]**. Each such application shall be accompanied by the required **[**specialty**]** fee. The board shall establish by rule the minimum requirements for specialty **[**certification**] licensure** under this subsection. **The board shall issue a specialty license to an applicant under this subsection if the applicant meets the requirements of this subsection.**

3. **[**An examination committee, appointed by the board, consisting of three dentists who have been certified by an American board approved by the American Dental Association as having met the standards set by that association for the specialty for which application is made, shall examine each applicant for a specialty at the time and place fixed by the board in a manner to thoroughly test his qualifications in the specialty applied for, and report to the board as to whether the applicant is qualified in the specialty.

4. In the event any applicant fails to pass the examination and is reported by the examining committee as not qualified, he may upon application to the board be reexamined by the committee at such time and place as the board may specify, but any such applicant shall pay a reexamination fee equivalent to the specialty fee**] The board shall grant a license in one of the specialty areas recognized by the American Dental Association to a dentist who has been certified or licensed and is practicing in another state, province, or territory if the applicant meets the following requirements and the application is accompanied by the required fee:**

(1) The applicant currently holds a Missouri license to practice dentistry or obtains such license under sections 332.131 and 332.181, or under section 332.211;

(2) The applicant meets the educational requirements for specialty licensure required of original applicants for specialty licensure in the state of Missouri as required in subsections 1 and 2 of this section;

(3) The applicant meets such other minimum requirements for specialty licensure under this subsection as may be required by the board.

4. The board may establish a committee for each American Dental Association recognized specialty applied for consisting of at least two dentists appointed by the board who hold valid Missouri specialty licenses in the recognized specialty and who are current diplomats of an American specialty board recognized by the American Dental Association. Each committee shall assist the board in evaluating an applicant for specialty licensure in the recognized specialty for which that committee was established and assume such other duties as established by rule of the board.

5. Each member of **[**each examining**] a specialty** committee appointed by the board as provided in this section shall receive as compensation an amount set by the board, not to exceed fifty dollars**[**,**]** for each day spent in the performance of his **or her** duties on the committee and each member shall be reimbursed for all actual and necessary expenses incurred in the performance of his **or her** duties.

6. **[**The board shall issue to each applicant who has been recommended as qualified by the examining committee, as provided in subsection 3 of this section, a certificate of registration to practice dentistry in the specialty in which he has been so recommended.

7. The board may also grant without examination a certificate of registration and a license in one of the specialty areas recognized by the American Dental Association to a dentist who has been so certified and/or licensed in another state, if the applicant meets the following requirements:

(1) Applicant must either currently hold a Missouri license to practice dentistry or obtain one through the provisions of sections 332.131 and 332.181, or through the provisions of section 332.211;

(2) Applicant must have taken and passed an examination equivalent to that given in Missouri and have been granted a specialty license in another state. It is the obligation of the applicant to provide proper documentation which must include the content and grades received in each portion of the examination and be certified by the state which administered the examination. Determination as to whether an examination taken in another state is equivalent to that given in Missouri will be made by the current Missouri specialty examining committee in the appropriate specialty area;

(3) Applicant must have met the same educational requirements for certification and licensure under this subsection as required of original applicants in the state of Missouri, as established by rule by the board.

8. All such certificates shall be subject to revocation and suspension for the causes set forth in section 332.321 and each certificate holder shall renew his regular license as provided in section 332.181 and shall pay the regular renewal fee provided therefor and shall also renew his specialty license and shall pay a specialty renewal fee**] All specialty licenses shall be subject to discipline for cause as set forth in section 332.321, and each specialty license holder shall**

renew his or her specialty license or licenses as provided for in section 332.181 and shall pay the renewal fee provided therefore.

7. The board shall issue to each applicant who has been recommended as qualified by the specialty committee, as provided in subsection 4 of this section, a license to practice dentistry in the specialty for which he or she has been so recommended.

332.181. LICENSE TO PRACTICE DENTISTRY, APPLICATION, FEE, RENEWAL, REQUIREMENTS. — 1. No person shall engage in the practice of dentistry in Missouri without having first secured a license as provided for in this chapter.

2. Any person desiring a license to practice dentistry in Missouri shall **pay the required fee and** make application to the board on a form prescribed by the board pursuant to section 332.141. An application for licensure shall be active for one year after the date it is received by the board. The application becomes void if not completed within such one-year period.

3. All persons once licensed to practice dentistry in Missouri shall renew his or her license to practice dentistry in Missouri on or before the license renewal date and shall display his or her license for each current licensing period in the office in which he or she practices or offers to practice dentistry.

4. Effective with the licensing period beginning on December 1, 2002, a license shall be renewed every two years. **[**The board shall not renew the license of any dentist unless the licensee provides satisfactory evidence that he or she has completed fifty hours of continuing education within a two-year period.**]** **To renew a license, each dentist shall submit satisfactory evidence of completion of fifty hours of continuing education during the two-year period immediately preceding the renewal period. Each dentist shall maintain documentation of completion of the required continuing education hours as provided by rule. Failure to obtain the required continuing education hours, submit satisfactory evidence, or maintain documentation is a violation of section 332.321. As provided by rule,** the board may **waive and/or** extend the time requirements for completion of continuing education **[**up to six months**]** for reasons related to health, military service, foreign residency or for other good cause. All requests for **waivers and/or** extensions of time shall be made in writing and submitted to the board before the renewal date. **[**The board may waive the requirements for continuing education for retired or disabled dentists or for other good cause.**]**

5. Any licensed dentist who fails to renew his or her license on or before the renewal date may apply to the board for renewal of his or her license within four years subsequent to the date of the license expiration**[**, provided that any such applicant shall pay a reinstatement fee for the license.

6. The license of any dentist who fails to renew within four years of the time his or her license has expired shall be void. The dentist may reapply for a license, provided that, unless application is made pursuant to section 332.211, he or she shall pay the same fees and be examined in the same manner as an original applicant for licensure as a dentist. A currently licensed dentist in Missouri may apply to the board to be placed on an inactive list of dentists, and during the time his or her name remains on the inactive list, he or she shall not practice dentistry. If a dentist wishes to be removed from the inactive list, unless he or she applies pursuant to section 332.211, he or she shall apply for a current license and pay the license fees for the years between the date of the entry of his or her name on the inactive list and the date of issuance of his current license. If the dentist has been on the inactive list for more than four years, he or she shall be examined in the same manner as an original applicant for licensure as a dentist.

7. A currently licensed dentist in Missouri who does not maintain a practice in this state or does not reside in this state may apply to the board to be placed on an out-of-state licensee list of dentists. Any dentist applying to be so licensed shall accompany his or her application with a fee not greater than the licensure fee for a licensee who maintains a practice in this state or who resides in this state. The required fee shall be established by the board, by rule, as with other

licensing fees**]**. **To renew an expired license, the person shall submit an application for renewal, pay the renewal fee and renewal penalty fee as set by rule, and submit satisfactory evidence of completion of at least fifty hours of continuing education for each renewal period that his or her license was expired as provided by rule. The required hours must be obtained within four years prior to renewal. The license of any dentist who fails to renew within four years of the time his or her license has expired shall be void. The dentist may apply for a new license; provided that, unless application is made under section 332.321, the dentist shall pay the same fees and be examined in the same manner as an original applicant for licensure as a dentist.**

332.261. LICENSE AS DENTAL HYGIENIST, APPLICATION, FEE, RENEWAL — RENEWAL AND REINSTATEMENT PROCEDURE. — 1. No person shall engage in the practice of dental hygiene without having first secured a license as provided for in this chapter.

2. Any person desiring a license to practice dental hygiene in Missouri shall **pay the required fee and** make application to the board on a form prescribed by the board pursuant to section 332.241. An application for licensure shall be active for one year after the date it is received by the board. The application becomes void if not completed within such one-year period.

3. All persons once licensed to practice as a dental hygienist in Missouri shall renew his or her license to practice on or before the renewal date and shall display his or her license for each current licensing period in the office in which he or she practices or offers to practice as a dental hygienist.

4. Effective with the licensing period beginning on December 1, 2002, a license shall be renewed every two years. **[**The board shall not renew the license of any hygienist unless the licensee provides satisfactory evidence that he or she has completed thirty hours of continuing education within a two-year period.**]** **To renew a license, each dental hygienist shall submit satisfactory evidence of completion of thirty hours of continuing education during the two-year period immediately preceding the renewal period. Each dental hygienist shall maintain documentation of completion of the required continuing education hours as provided by rule. Failure to obtain the required continuing education hours, submit satisfactory evidence, or maintain documentation is a violation of section 332.321 and may subject the licensee to discipline. As provided by rule,** the board may **waive and/or** extend the time requirements for completion of the continuing education **[**up to six months**]** for reasons related to health, military service, foreign residency or for other good cause. All requests for **waivers and/or** extensions of time shall be made in writing and submitted to the board before the renewal date. **[**The board may waive the requirements for continuing education for retired or disabled hygienists or for other good cause.**]**

5. Any licensed dental hygienist who fails to renew his or her license on or before the renewal date may apply to the board for renewal of his or her license within four years subsequent to the date of the license expiration**[**, provided that any such applicant shall pay a reinstatement fee for the license.

6. The license of any dental hygienist who fails to renew within four years of the time that his or her license expired shall be void. The dental hygienist may apply for a new license, provided that, unless application is made pursuant to section 332.281, he or she shall pay the same fees and be examined in the same manner as an original applicant for licensure as a dental hygienist. A currently licensed dental hygienist in Missouri may apply to the board to be placed on an inactive list of dental hygienists, and during the time his or her name remains on the inactive list, he or she shall not practice as a dental hygienist. If a dental hygienist wishes to be removed from the inactive list, unless he or she applies pursuant to section 332.281, he or she shall apply for a current license and pay the license fees for the years between the date of the entry of his or her name on the inactive list and the date of issuance of his or her current license.

If the dental hygienist has been on the inactive list for more than four years, he or she shall be examined in the same manner as an original applicant for licensure as a dental hygienist.

7. A currently licensed dental hygienist in Missouri who does not practice in this state or who does not reside in this state may apply to the board to be placed on an out-of-state registration list of dental hygienists. Any dental hygienist applying to be so licensed shall accompany his or her application with a fee not greater than the license fee for a licensee who practices in this state or resides in this state. The required fee shall be established by the board, by rule, as with other licensing fees**]**. **To renew an expired license, the person shall submit an application for renewal, pay the renewal fee and renewal penalty fee as set by rule, and submit satisfactory evidence of completion of at least thirty hours of continuing education for each renewal period that his or her license was expired as provided by rule. The required hours must be obtained within four years prior to renewal. The license of any dental hygienist who fails to renew within four years of the time his or her license has expired shall be void. The dental hygienist may reapply for a license; provided that, unless application is made under section 332.281, the dental hygienist shall pay the same fees and be examined in the same manner as an original applicant for licensure as a dental hygienist.**

332.321. REFUSAL TO ISSUE OR RENEW, REVOCATION OR SUSPENSION OF LICENSE, GROUNDS FOR, PROCEDURE — ADDITIONAL DISCIPLINARY ACTIONS. — 1. The board may refuse to issue or renew a permit or license required pursuant to this chapter for one or any combination of causes stated in subsection 2 of this section or the board may, as a condition to issuing or renewing any such permit or license, require a person to submit himself or herself for identification, intervention, treatment or rehabilitation by the well-being committee as provided in section 332.327. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any permit or license required by this chapter or any person who has failed to renew or has surrendered his or her permit or license for any one or any combination of the following causes:

(1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution pursuant to the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated pursuant to this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or any offense involving moral turpitude, whether or not sentence is imposed;

(3) Use of fraud, deception, misrepresentation or bribery in securing any permit or license issued pursuant to this chapter or in obtaining permission to take any examination given or required pursuant to this chapter;

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation; or increasing charges when a patient utilizes a third-party payment program; or for repeated irregularities in billing a third party for services rendered to a patient. For the purposes of this subdivision, irregularities in billing shall include:

(a) Reporting charges for the purpose of obtaining a total payment in excess of that usually received by the dentist for the services rendered;

(b) Reporting incorrect treatment dates for the purpose of obtaining payment;

(c) Reporting charges for services not rendered;

(d) Incorrectly reporting services rendered for the purpose of obtaining payment that is greater than that to which the person is entitled;

(e) Abrogating the co-payment or deductible provisions of a third-party payment contract. Provided, however, that this paragraph shall not prohibit a discount, credit or reduction of charges provided under an agreement between the licensee and an insurance company, health service corporation or health maintenance organization licensed pursuant to the laws of this state; or governmental third-party payment program; or self-insurance program organized, managed or funded by a business entity for its own employees or labor organization for its members;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of, or relating to one's ability to perform, the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or any lawful rule or regulation adopted pursuant to this chapter;

(7) Impersonation of any person holding a permit or license or allowing any person to use his or her permit, license or diploma from any school;

(8) Disciplinary action against the holder of a license or other right to practice any profession regulated by this chapter imposed by another state, province, territory, federal agency or country upon grounds for which discipline is authorized in this state;

(9) A person is finally adjudicated incapacitated or disabled by a court of competent jurisdiction;

(10) Assisting or enabling any person to practice or offer to practice, by lack of supervision or in any other manner, any profession licensed or regulated by this chapter who is not registered and currently eligible to practice pursuant to this chapter;

(11) Issuance of a permit or license based upon a material mistake of fact;

(12) Failure to display a valid certificate, permit or license if so required by this chapter or by any rule promulgated hereunder;

(13) Violation of any professional trust or confidence;

(14) Use of any advertisement or solicitation that is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed. False, misleading or deceptive advertisements or solicitations shall include, but not be limited to:

(a) Promises of cure, relief from pain or other physical or mental condition, or improved physical or mental health;

(b) Any misleading or deceptive statement offering or promising a free service. Nothing herein shall be construed to make it unlawful to offer a service for no charge if the offer is announced as part of a full disclosure of routine fees including consultation fees;

(c) Any misleading or deceptive claims of patient cure, relief or improved condition; superiority in service, treatment or materials; new or improved service, treatment or material; or reduced costs or greater savings. Nothing herein shall be construed to make it unlawful to use any such claim if it is readily verifiable by existing documentation, data or other substantial evidence. Any claim that exceeds or exaggerates the scope of its supporting documentation, data or evidence is misleading or deceptive;

(d) Any announced fee for a specified service where that fee does not include the charges for necessary related or incidental services, or where the actual fee charged for that specified service may exceed the announced fee, but it shall not be unlawful to announce only the maximum fee that can be charged for the specified service, including all related or incidental services, modified by the term "up to" if desired;

(e) Any announcement in any form including the term "specialist" or the phrase "limited to the specialty of" unless each person named in conjunction with the term or phrase, or responsible for the announcement, holds a valid Missouri certificate and license evidencing that the person is a specialist in that area;

(f) Any announcement containing any of the terms denoting recognized specialties, or other descriptive terms carrying the same meaning, unless the announcement clearly designates by list

each dentist not licensed as a specialist in Missouri who is sponsoring or named in the announcement, or employed by the entity sponsoring the announcement, after the following clearly legible or audible statement: "Notice: the following dentist(s) in this practice is (are) not licensed in Missouri as specialists in the advertised dental specialty(s) of .....";

(g) Any announcement containing any terms denoting or implying specialty areas that are not recognized by the American Dental Association;

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government;

(16) Failure or refusal to properly guard against contagious, infectious or communicable diseases or the spread thereof;

(17) Failing to maintain his or her office or offices, laboratory, equipment and instruments in a safe and sanitary condition;

(18) Accepting, tendering or paying "rebates" to or "splitting fees" with any other person; provided, however, that nothing herein shall be so construed as to make it unlawful for a dentist practicing in a partnership or as a corporation organized pursuant to the provisions of chapter 356, RSMo, to distribute profits in accordance with his or her stated agreement;

(19) Administering, or causing or permitting to be administered, nitrous oxide gas in any amount to himself or herself, or to another unless as an adjunctive measure to patient management;

(20) Being unable to practice as a dentist, specialist or hygienist with reasonable skill and safety to patients by reasons of professional incompetency, or because of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or as a result of any mental or physical condition. In enforcing this subdivision the board shall, after a hearing before the board, upon a finding of probable cause, require the dentist or specialist or hygienist to submit to a reexamination for the purpose of establishing his or her competency to practice as a dentist, specialist or hygienist, which reexamination shall be conducted in accordance with rules adopted for this purpose by the board, including rules to allow the examination of the dentist's, specialist's or hygienist's professional competence by at least three dentists or fellow specialists, or to submit to a mental or physical examination or combination thereof by at least three physicians. One examiner shall be selected by the dentist, specialist or hygienist compelled to take examination, one selected by the board, and one shall be selected by the two examiners so selected. Notice of the physical or mental examination shall be given by personal service or registered mail. Failure of the dentist, specialist or hygienist to submit to the examination when directed shall constitute an admission of the allegations against him or her, unless the failure was due to circumstances beyond his or her control. A dentist, specialist or hygienist whose right to practice has been affected pursuant to this subdivision shall, at reasonable intervals, be afforded an opportunity to demonstrate that he or she can resume competent practice with reasonable skill and safety to patients.

(a) In any proceeding pursuant to this subdivision, neither the record of proceedings nor the orders entered by the board shall be used against a dentist, specialist or hygienist in any other proceeding. Proceedings pursuant to this subdivision shall be conducted by the board without the filing of a complaint with the administrative hearing commission;

(b) When the board finds any person unqualified because of any of the grounds set forth in this subdivision, it may enter an order imposing one or more of the following: denying his or her application for a license; permanently withholding issuance of a license; administering a public or private reprimand; placing on probation, suspending or limiting or restricting his or her license to practice as a dentist, specialist or hygienist for a period of not more than five years; revoking his or her license to practice as a dentist, specialist or hygienist; requiring him or her to submit to the care, counseling or treatment of physicians designated by the dentist, specialist or hygienist compelled to be treated; or requiring such person to submit to identification, intervention, treatment or rehabilitation by the well-being committee as provided in section 332.327. For the purpose of this subdivision, "license" includes the certificate of registration, or license, or both, issued by the board.

3. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2, for disciplinary action are met, the board may, singly or in combination:

(1) Censure or place the person or firm named in the complaint on probation on such terms and conditions as the board deems appropriate for a period not to exceed five years; or

(2) Suspend the license, certificate or permit for a period not to exceed three years; or

(3) Revoke the license, certificate, or permit. In any order of revocation, the board may provide that the person shall not apply for licensure for a period of not less than one year following the date of the order of revocation; or

(4) Cause the person or firm named in the complaint to make restitution to any patient, or any insurer or third-party payer who shall have paid in whole or in part a claim or payment for which they should be reimbursed, where restitution would be an appropriate remedy, including the reasonable cost of follow-up care to correct or complete a procedure performed or one that was to be performed by the person or firm named in the complaint; or

(5) Request the attorney general to bring an action in the circuit court of competent jurisdiction to recover a civil penalty on behalf of the state in an amount to be assessed by the court.

4. **If the board concludes that a dentist or dental hygienist has committed an act or is engaging in a course of conduct that would be grounds for disciplinary action and constitutes a clear and present danger to the public health and safety, the board may file a complaint before the administrative hearing commission requesting an expedited hearing and specifying the conduct that gives rise to the danger and the nature of the proposed restriction or suspension of the dentist's or dental hygienist's license. Within fifteen days after service of the complaint on the dentist or dental hygienist, the administrative hearing commission shall conduct a preliminary hearing to determine whether the alleged conduct of the dentist or dental hygienist appears to constitute a clear and present danger to the public health and safety that justifies that the dentist's or dental hygienist's license be immediately restricted or suspended. The burden of proving that a dentist or dental hygienist is a clear and present danger to the public health and safety shall be upon the Missouri dental board. The administrative hearing commission shall issue its decision immediately after the hearing and shall either grant to the board the authority to suspend or restrict the license or dismiss the action.**

5. If the administrative hearing commission grants temporary authority to the board to restrict or suspend a dentist's or dental hygienist's license, the dentist or dental hygienist named in the complaint may request a full hearing before the administrative hearing commission. A request for a full hearing shall be made within thirty days after the administrative hearing commission issues a decision. The administrative hearing commission shall, if requested by a dentist or dental hygienist named in the complaint, set a date to hold a full hearing under chapter 621, RSMo, regarding the activities alleged in the initial complaint filed by the board. The administrative hearing commission shall set the date for full hearing within ninety days from the date its decision was issued. Either party may request continuances, which shall be granted by the administrative hearing commission upon a showing of good cause by either party or consent of both parties. If a request for a full hearing is not made within thirty days, the authority to impose discipline becomes final and the board shall set the matter for hearing in accordance with section 621.110, RSMo.

6. If the administrative hearing commission dismisses without prejudice the complaint filed by the board under subsection 4 of this section or dismisses the action based on a finding that the board did not meet its burden of proof establishing a clear and present danger, such dismissal shall not bar the board from initiating a subsequent action on the same grounds in accordance with this chapter and chapters 536 and 621, RSMo.

7. Notwithstanding any other provisions of section 332.071 or of this section, a currently licensed dentist in Missouri may enter into an agreement with individuals and organizations to provide dental health care, provided such agreement does not permit or compel practices that violate any provision of this chapter.

[5.**] 8.** At all proceedings for the enforcement of these or any other provisions of this chapter the board shall, as it deems necessary, select, in its discretion, either the attorney general or one of the attorney general's assistants designated by the attorney general or other legal counsel to appear and represent the board at each stage of such proceeding or trial until its conclusion.

[6.**] 9.** If at any time when any discipline has been imposed pursuant to this section or pursuant to any provision of this chapter, the licensee removes himself or herself from the state of Missouri, ceases to be currently licensed pursuant to the provisions of this chapter, or fails to keep the Missouri dental board advised of his or her current place of business and residence, the time of his or her absence, or unlicensed status, or unknown whereabouts shall not be deemed or taken as any part of the time of discipline so imposed.

[332.341. CHARGES, HOW BROUGHT — INSUFFICIENCY, EFFECT OF — HEARING, HOW HELD. — 1. Any person or other entity who believes that a registered and licensed dentist or a registered and licensed dental hygienist has so acted or failed to act that his certificate of registration or license or both should, under the provisions of this chapter, be suspended or revoked, or who believes that any applicant for a certificate of registration or license to practice dentistry or to practice as a dental hygienist is not entitled thereto under the provisions of this chapter, may file a complaint with the secretary-treasurer of the board.

2. If the complaint so filed does not contain statements of fact which if true would authorize, under the provisions of this chapter, suspension or revocation of the accused's certificate or license, or does not contain statements of fact which if true would authorize, under the provisions of this chapter, the refusal to issue a certificate or license to an applicant, the board shall either forthwith dismiss the charge or the charges or, within its discretion, cause an investigation to be made of the charges contained in the complaint; after which investigation the board shall either dismiss the charge or charges or proceed against the accused by written complaint as hereinafter provided.

3. If the complaint so filed contains statements of fact which if true would authorize, under the provisions of this chapter, the revocation or suspension of an accused's certificate or license, or both, the board shall cause an investigation to be made of the charge or charges contained in the complaint and unless the investigation discloses the falsity of the facts upon which the charge or charges in the complaint are based, the board shall file with and in the administrative hearing commission a written complaint against the accused setting forth the cause or causes for which his certificate of registration or license or both should be suspended or revoked. Thereafter the board shall be governed by and shall proceed in accordance with the provisions of chapter 621, RSMo.

4. If the charges contained in the complaint filed with the board (after the investigation as aforesaid), if true, would constitute a cause or causes for which, under the provisions of this chapter, an accused's license should not be issued or renewed or a cause or causes for which under the provisions of this chapter a certificate of registration should not be issued, the board shall cause an investigation to be made of the charge or charges and unless the investigation discloses the falsity of the facts upon which the charge or charges contained in the complaint are based, the board shall refuse to permit an applicant to be examined upon his qualifications for licensure or shall refuse to issue a certificate or license or to renew a license, as the case may require.

5. The provisions of this section shall not be so construed as to prevent the board on its own initiative from instituting and conducting investigations and based thereon to make written complaints in and to the hearing commission.

6. If for any reason the provisions of chapter 621, RSMo, become inapplicable to the board, then, and in that event, the board shall proceed to charge, adjudicate and otherwise act in accordance with the provisions of chapter 536, RSMo.**]**

Approved July 2, 2004

HB 975 [HB 975]

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

Revises certain provisions governing land trusts.

AN ACT to repeal sections 141.710, 141.760, and 141.790, RSMo, and to enact in lieu thereof three new sections relating to land trusts.

SECTION

A. Enacting clause.
141.710. Beneficiaries of land trust (charter counties and certain first class counties).
141.760. Administration of delinquent tax lands by trust (charter counties and certain first class counties).
141.790. Proceeds of sale of real estate disposed of by a land trust — distribution (charter counties and certain first class counties).

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

SECTION A. ENACTING CLAUSE. — Sections 141.710, 141.760, and 141.790, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 141.710, 141.760, and 141.790, to read as follows:

141.710. BENEFICIARIES OF LAND TRUST (CHARTER COUNTIES AND CERTAIN FIRST CLASS COUNTIES). — The beneficiaries of the land trust shall be the taxing authorities **[**and tax bill owners or holders, if any, which held or owned tax bills against the respective parcel of real estate sold to the land trust at sheriff's foreclosure sale included in the judgment of the court, and their respective interests in each parcel of real estate shall be to the extent and in the proportion and according to the priorities determined by the court on the basis which the principal amount of their respective tax bills bore to the total principal amount of all of the tax bills described in the judgment**] which impose real estate taxes on the land trust property at the time of its sale**.

141.760. ADMINISTRATION OF DELINQUENT TAX LANDS BY TRUST (CHARTER COUNTIES AND CERTAIN FIRST CLASS COUNTIES). — It shall be the duty of such land trust to administer the tax delinquent lands, as follows:

(1) Such land trust shall immediately assume possession and control of all real estate acquired by it under the provisions of sections 141.210 to 141.810, cause the land commissioner to proceed to inventory **[**and appraise**]** such land, and thereafter keep and maintain a perpetual inventory of such real estate.

(2) It shall, upon recommendation of the land commissioner, classify such land as to its use, into the following three classifications:

(a) Suitable for private use;

(b) Suitable for public use;

(c) Not usable in its present condition or situation and held as a public land reserve.

(3) Such land trust shall make every effort to return land in classification (a) to such private ownership and use as soon as possible; to offer land classified in class (b) to any public body which shall indicate a need or a use therefor; the price and terms, in each case, to be in the sole discretion of the land trustees, subject to the provisions of subdivision (4) hereof; and shall study and make recommendations to taxing authorities as to possible use of real estate classified in class (c). In furtherance of this object such land trust shall have access to any and all records in any city or county office at any time and may call upon any and all city and county officers, departments, boards, planning commissions or other commissions for studies, statistics or recommendations. Such land trust shall prepare a list of all land in class (a), which list shall be corrected and amended from time to time in the discretion of the trustees. Such trustees may make a charge, not to exceed **[**one dollar**]** **the actual cost of documentation and duplication**, for each copy of such list which money shall be used to help defray the costs of preparing such list. Any person may purchase a copy of such list. Any real estate agent or broker licensed to do business in the county may when authorized by the trustees sell any such property upon the terms and conditions imposed by the trustees, and the trustees are authorized and empowered to pay reasonable real estate commissions; and provided, that nothing herein shall prohibit the trustees from selling or exchanging any such real estate directly to or with any purchaser.

(4) Such land trustees shall have power, and it shall be their duty, to manage, maintain, protect, rent, lease, repair, insure, alter, sell, trade, exchange or otherwise dispose of any such real estate, on such terms and conditions as may be determined in the sole discretion of the trustees. Said trustees may sell for cash or for terms of not less than ten percent cash at time of purchase, and the balance to be paid within not more than fifteen years from the time of such purchasing agreement, with interest at a legal rate, which sale shall be represented by contract for a deed or by purchaser's note, secured by mortgage or deed of trust on such real estate. Such land trustees may assemble tracts or parcels of real estate for public parks or other public purposes and to such end may exchange parcels, and otherwise effectuate such purposes by agreement with any taxing authority.

(5) Such land trust shall adopt rules and regulations in harmony with sections 141.210 to 141.810, and shall keep records of all its transactions, which records shall be open to inspection of any taxing authority in the county at any time. There shall be an annual audit of the affairs, accounts, expenses, and financial transactions of such land trust by certified public accountants as of December thirty-first of each year, which accountants shall be employed by the trustees on or before November first of each year, and certified copies thereof shall be furnished to the appointing authorities described in section 141.720, and shall be available for public inspection at the offices of such appointing authorities.

141.790. PROCEEDS OF SALE OF REAL ESTATE DISPOSED OF BY A LAND TRUST — DISTRIBUTION (CHARTER COUNTIES AND CERTAIN FIRST CLASS COUNTIES). — **[**1. Such land trust shall set up accounts on its books relating to the operation, management, or other expense of each individual parcel of real estate.

2.**]** When any parcel of real estate is sold or otherwise disposed of by the land trust, the proceeds therefrom shall be applied and distributed in the following order:

(1) To the payment of the expenses of sale;

(2) **[**To the payment of any penalties, attorney's fees or costs which were included in the judgment originally entered against said parcel of real estate, plus its proportional part of the costs of sheriff's foreclosure sale, as shown on the books of the collector;

(3) To the payment of the costs of the care, improvement, operation, and management of such parcel of real estate as determined by the land trustees and apportioned to such parcel;

(4)**]** The balance to be retained by the land trust to pay the salaries and other expenses of such land trust and of its employees, incident to the administration of sections 141.210 to 141.810, including any expenditures authorized by section 141.760, as provided for in its annual budget;

[(5)**] (3)** Any funds in excess of those necessary to meet the expenses of the annual budget of the land trust in any fiscal year, and including a reasonable sum to carry over into the next fiscal year to assure that sufficient funds will be available to meet initial expenses for that next fiscal year, may be paid to the respective taxing authorities **[**and tax bill owners, if any, in the proportion that the principal amounts of the tax bills of each such party bears to the total principal amount of all the tax bills included in the original judgment relating to such parcel of real estate and in the order of their respective priorities. After deduction of all sums charged to each account for various expenses,**] which, at the time of the distribution, are taxing the real property from which the proceeds are being distributed. The distributions shall be in proportion to the amounts of the taxes levied on the properties by the taxing authorities;** distribution shall be made **[**to the respective taxing authorities and to tax bill owners having an interest in such parcel of real estate,**]** on January first and July first of each year, and at such other times as the land trustees in their discretion may determine.

Approved July 2, 2004

HB 978 [CCS#3 SS HS HCS HB 978]

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

Creates the Small Business Regulatory Fairness Board to serve as liaison between state agencies and small businesses.

AN ACT to repeal sections 324.010 and 536.010, RSMo, and to enact in lieu thereof seven new sections relating to small businesses.

SECTION

A. Enacting clause.
324.010. No delinquent taxes, condition for renewal of certain professional licenses.
536.010. Definitions.
536.300. Proposed rules, effect on small business to be determined, exceptions — impact statement to be prepared, when, contents.
536.305. Small business regulatory fairness board established, members, terms, expenses, meetings.
536.310. Authority of board.
536.315. State agencies to consider board recommendations, response.
536.325. Waiver or reduction of administrative penalties, when — inapplicability, when.

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

SECTION A. ENACTING CLAUSE. — Sections 324.010 and 536.010, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 324.010, 536.010, 536.300, 536.305, 536.310, 536.315, and 536.325, to read as follows:

324.010. NO DELINQUENT TAXES, CONDITION FOR RENEWAL OF CERTAIN PROFESSIONAL LICENSES. — All governmental entities issuing professional licenses, certificates, registrations, or permits pursuant to sections 209.319 to 209.339, RSMo, sections 214.270 to 214.516, RSMo, sections 256.010 to 256.453, RSMo, section 375.014, RSMo, sections 436.005 to 436.071, RSMo, and chapter 317, RSMo, and chapters 324 to 346, RSMo, shall provide the director of revenue with the name and Social Security number of each applicant for licensure with or licensee of such entities within one month of the date the application is filed or at least one month prior to the anticipated renewal of a licensee's license. If such licensee is delinquent

on any state taxes or has failed to file state income tax returns in the last three years, the director shall then send notice to each such entity and licensee. In the case of such delinquency or failure to file, the licensee's license shall be **[**revoked**]** **suspended** within ninety days after notice of such delinquency or failure to file, unless the director of revenue verifies that such delinquency or failure has been remedied or arrangements have been made to achieve such remedy. **The director of revenue shall, within ten business days of notification to the governmental entity issuing the professional license that the delinquency has been remedied or arrangements have been made to remedy such delinquency, send written notification to the licensee that the delinquency has been remedied.** Tax liability paid in protest or reasonably founded disputes with such liability shall be considered paid for the purposes of this section.

536.010. DEFINITIONS.— For the purpose of this chapter:

(1) **"Affects small business", any requirement imposed upon a small business or minority small business through a state agency's proposed or adopted rule that will cause direct and significant economic burden upon a small business or minority small business;**

(2) "Agency" means any administrative officer or body existing under the constitution or by law and authorized by law or the constitution to make rules or to adjudicate contested cases;

(3) "Board", the small business regulatory fairness board;

[(2)**]** **(4)** "Contested case" means a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing;

[(3)**]** **(5)** The term "decision" includes decisions and orders whether negative or affirmative in form;

[(4)**]** **(6)** "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of an existing rule, but does not include:

(a) A statement concerning only the internal management of an agency and which does not substantially affect the legal rights of, or procedures available to, the public or any segment thereof;

(b) A declaratory ruling issued pursuant to section 536.050, or an interpretation issued by an agency with respect to a specific set of facts and intended to apply only to that specific set of facts;

(c) An intergovernmental, interagency, or intraagency memorandum, directive, manual or other communication which does not substantially affect the legal rights of, or procedures available to, the public or any segment thereof;

(d) A determination, decision, or order in a contested case;

(e) An opinion of the attorney general;

(f) Those portions of staff manuals, instructions or other statements issued by an agency which set forth criteria or guidelines to be used by its staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution, or settlement of cases, when the disclosure of such statements would enable law violators to avoid detection, facilitate disregard of requirements imposed by law, or give a clearly improper advantage to persons who are in an adverse position to the state;

(g) A specification of the prices to be charged for goods or services sold by an agency as distinguished from a license fee, or other fees;

(h) A statement concerning only the physical servicing, maintenance or care of publicly owned or operated facilities or property;

(i) A statement relating to the use of a particular publicly owned or operated facility or property, the substance of which is indicated to the public by means of signs or signals;

(j) A decision by an agency not to exercise a discretionary power;

(k) A statement concerning only inmates of an institution under the control of the department of corrections and human resources or the division of youth services, students enrolled in an educational institution, or clients of a health care facility, when issued by such an agency;

(l) Statements or requirements establishing the conditions under which persons may participate in exhibitions, fairs or similar activities, managed by the state or an agency of the state;

(m) Income tax or sales forms, returns and instruction booklets prepared by the state department of revenue for distribution to taxpayers for use in preparing tax returns**[.];**

(7) "Small business", a for-profit enterprise consisting of fewer than fifty full or part-time employees;

[(5)**]** **(8)** "State agency" means each board, commission, department, officer or other administrative office or unit of the state other than the general assembly, the courts, the governor, or a political subdivision of the state, existing under the constitution or statute, and authorized by the constitution or statute to make rules or to adjudicate contested cases.

536.300. PROPOSED RULES, EFFECT ON SMALL BUSINESS TO BE DETERMINED, EXCEPTIONS — IMPACT STATEMENT TO BE PREPARED, WHEN, CONTENTS. — 1. Prior to submitting proposed rules for adoption, amendment, revision, or repeal, the state agency shall determine whether the proposed rulemaking affects small businesses and , if so, the availability and practicability of less restrictive alternatives that could be implemented to achieve the same results of the proposed rulemaking. This requirement shall not apply to emergency rulemaking pursuant to section 536.025 or to constitutionally authorized rulemaking pursuant to Article IV, Section 45 of the Missouri Constitution. This requirement shall be in addition to the fiscal note requirement of sections 536.200 to 536.210.

2. If the proposed rules affect small businesses, the state agency shall prepare a small business impact statement to be submitted to the secretary of state and the joint committee on administrative rules with the proposed rules. A copy of the proposed rules and the small business impact statement shall also be filed with the board on the same date as they are filed with the secretary of state. The statement shall provide a reasonable determination of the following:

(1) The methods the agency considered or used to reduce the impact on small businesses such as consolidation, simplification, differing compliance, or reporting requirements, less stringent deadlines, performance rather than design standards, exemption, or any other mitigating techniques;

(2) How the agency involved small businesses in the development of the proposed rules;

(3) The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used, if such costs are capable of determination;

(4) A description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected, except in cases where the state agency has filed a fiscal note that complies with all of the provisions of section 536.205; and

(5) In dollar amounts, the increase in the level of direct costs, such as fees or administrative penalties, and indirect costs, such as reporting, record keeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance if such costs are capable of determination, except in cases where the state agency has filed a fiscal note that complies with all of the provisions of section 536.205;

3. Any proposed rule that is required to have a small business impact statement but does not include such a statement shall be invalid and the secretary of state should not

publish the rule until such time as the statement is provided. If the state agency determines that its proposed rule does not affect small business, the state agency shall so certify this finding in the transmittal letter to the secretary of state, stating that it has determined that such proposed rule will not have an economic impact on small businesses and the secretary of state shall publish the rule.

4. Sections 536.300 to 536.310 shall not apply where the proposed rule is being promulgated on an emergency basis, where the rule is federally mandated, or where the rule substantially codifies existing federal or state law. Notwithstanding the provisions of this section, federally mandated regulations are subject to the federal Regulatory Flexibility Act as amended by the Small Business Regulatory and Enforcement Fairness Act of 1996, P.L. 96-354, as amended by P.L. 104.121. Any federally mandated regulations that do not comply with these acts shall be subject to this section.

536.305. SMALL BUSINESS REGULATORY FAIRNESS BOARD ESTABLISHED, MEMBERS, TERMS, EXPENSES, MEETINGS. — 1. There is hereby established the "Small Business Regulatory Fairness Board". The department of economic development shall provide staff support for the board.

2. The board shall be composed of nine members appointed in the following manner:

(1) One member who is the chair of the minority business advocacy commission;

(2) One member appointed by the president pro tempore of the senate;

(3) One member appointed by the minority leader of the senate;

(4) One member appointed by the speaker of the house of representatives;

(5) One member appointed by the minority leader of the house of representatives; and

(6) Four members appointed by the governor.

3. Each member of the board, except for the public members and the chair of the minority business advocacy commission, shall be a current or former owner or officer of a small business. All members of the board shall represent a variety of small businesses, both rural and urban, and from a variety of geographical areas of this state, provided that no more than two members shall represent the same type of small business.

4. Members of the board shall serve a term of three years and may be reappointed at the conclusion of the term. No member shall serve more than three consecutive terms. Appointments shall be made so that one-third of the membership of the board shall terminate each year. The governor shall appoint the initial chairperson of the board and a majority of the board shall elect subsequent chairpersons. The chairperson shall serve as chair for a term of not more than two years.

5. Members of the board shall serve without compensation, but may be reimbursed for reasonable and necessary expenses relating to their performance of duties, according to the rules and regulations of travel issued by the office of administration. Members will be required to submit an expense account form in order to obtain reimbursement for expenses incurred.

6. The board shall meet as often as necessary, as determined by the chairperson of the board. All meetings of the board will be conducted in accordance with the governmental bodies and records act, chapter 610, RSMo, including closed sessions. Notice will be posted and will be provided to the joint committee on administrative rules. Minutes of the meetings shall be provided to all members, the office of the governor, and the joint committee on administrative rules.

536.310. AUTHORITY OF BOARD.— 1. The board may:

(1) Provide state agencies with input regarding rules that adversely affect small businesses;

(2) Solicit input and conduct hearings from small business owners and state agencies regarding any rules proposed by a state agency; and

(3) Provide an evaluation report to the governor and the general assembly, including any recommendations and evaluations of state agencies regarding regulatory fairness for Missouri's small businesses. The report shall include comments from small businesses, state agency responses, and a summary of any public testimony on rules brought before the board for consideration.

2. In any inquiry conducted by the board because of a request from a small business owner, the board may make recommendations to the state agency. If the board makes recommendations, such recommendations shall be based on any of the following grounds:

(1) The rule creates an undue barrier to the formation, operation, and expansion of small businesses in a manner that significantly outweighs the rule's benefits to the public; or

(2) New or significant economic information indicates the proposed rule would create an undue impact on small businesses; or

(3) Technology, economic conditions, or other relevant factors justifying the purpose for the rule has changed or no longer exists; or

(4) If the rule was adopted after August 28, 2004, whether the actual effect on small businesses was not reflected in or significantly exceeded the small business impact statement submitted prior to the adoption of the rules.

536.315. STATE AGENCIES TO CONSIDER BOARD RECOMMENDATIONS, RESPONSE. — Any state agency receiving recommendations from the board shall promptly consider such recommendations and may file a response with the board within sixty days of receiving the board's recommendations. If the state agency determines that no action shall be taken on the board's recommendations, the agency should explain its reasons for its determination. If the state agency determines that the board's recommendations merit adoption, amendment or repeal of a rule, the agency should indicate this in its response.

536.325. WAIVER OR REDUCTION OF ADMINISTRATIVE PENALTIES, WHEN — INAPPLICABILITY, WHEN. — 1. Any state agency authorized to assess administrative penalties or administrative fines upon a small business may consider waiving or reducing any administrative penalty or administrative fine for a violation of any statute, ordinance, or rules by a small business under the following conditions:

(1) The small business corrects the violation within thirty days after receipt of a notice of violation or citation;

(2) The violation was unintentional or the result of excusable neglect;

(3) The violation was the result of an excusable misunderstanding of a state agency's interpretation of a rule; or

(4) The small business self-identifies the violation.

2. Subsection 1 of this section shall not apply when:

(1) A small business fails to exercise good faith in complying with the statute, ordinance, or rule;

(2) A violation involves willful or criminal conduct;

(3) The violation is deemed by the state agency to be egregious;

(4) A violation results in serious health, safety, or environmental impact;

(5) The penalty or fine is assessed pursuant to a federal law or regulation for which no waiver or reduction is authorized by the federal law or regulation; or

(6) There is a continuing pattern of similar violations by the small business.

Approved June 30, 2004

HB 980 [SS#2 HCS HB 980]

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

Requires a regulatory impact report for certain environmental rulemaking processes.

AN ACT to amend chapter 640, RSMo, by adding thereto three new sections relating to environmental regulation.

SECTION

A. Enacting clause.
640.015. Environmental conditions or standards, rules to cite specific law or authority relied upon — regulatory impact report required, contents, procedure, not required when — section not applicable, when.
640.018. Permit restrictions by department of natural resources prohibited in absence of statutory authority — permit issuance procedures — denial of permit, basis to be detailed — approval of permit not to be altered for one year, when.
1. Federal Clean Water Act and federal Safe Drinking Water Act, tax refunds in violation of — department of natural resources to identify other appropriated funds to department for transfer to the state general revenue fund.

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

SECTION A. ENACTING CLAUSE. — Chapter 640, RSMo, is amended by adding thereto three new sections, to be known as sections 640.015, 640.018, and 1, to read as follows:

640.015. ENVIRONMENTAL CONDITIONS OR STANDARDS, RULES TO CITE SPECIFIC LAW OR AUTHORITY RELIED UPON — REGULATORY IMPACT REPORT REQUIRED, CONTENTS, PROCEDURE, NOT REQUIRED WHEN — SECTION NOT APPLICABLE, WHEN. — 1. All provisions of the law to the contrary notwithstanding, all rules that prescribe environmental conditions or standards promulgated by the department of natural resources, a board or a commission, pursuant to authorities granted in this chapter and chapters 260, 278, 319, 444, 643, and 644, RSMo, the hazardous waste management commission in chapter 260, RSMo, the state soil and water districts commission in chapter 278, RSMo, the land reclamation commission in chapter 444, RSMo, the safe drinking water commission in this chapter, the air conservation commission in chapter 643, RSMo, and the clean water commission in chapter 644, RSMo, shall cite the specific section of law or legal authority. The rule shall also be based on the regulatory impact report provided in this section.

2. The regulatory impact report required by this section shall include:

(1) A report on the peer-reviewed scientific data used to commence the rulemaking process;

(2) A description of persons who will most likely be affected by the proposed rule, including persons that will bear the costs of the proposed rule and persons that will benefit from the proposed rule;

(3) A description of the environmental and economic costs and benefits of the proposed rule;

(4) The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenue;

(5) A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction, which includes both economic and environmental costs and benefits;

(6) A determination of whether there are less costly or less intrusive methods for achieving the proposed rule;

(7) A description of any alternative method for achieving the purpose of the proposed rule that were seriously considered by the department and the reasons why they were rejected in favor of the proposed rule;

(8) An analysis of both short-term and long-term consequences of the proposed rule;

(9) An explanation of the risks to human health, public welfare, or the environment, addressed by the proposed rule;

(10) The identification of the sources of scientific information used in evaluating the risk and a summary of such information;

(11) A description and impact statement of any uncertainties and assumptions made in conducting the analysis on the resulting risk estimate;

(12) A description of any significant countervailing risks that may be caused by the proposed rule; and

(13) The identification of at least one, if any, alternative regulatory approaches that will produce comparable human health, public welfare, or environmental outcomes.

3. The department, board, or commission shall develop the regulatory impact report required by this section using peer reviewed and published data or when the peer-reviewed data is not reasonably available, a written explanation shall be filed at the time of the rule promulgation notice explaining why the peer-reviewed data was not available to support the regulation. If the peer-reviewed data is not available, the department must provide all scientific references and the types, amount, and sources of scientific information that was used to develop the rule at the time of the rule promulgation notice.

4. The department, board, or commission shall publish in at least one newspaper of general circulation, qualified pursuant to chapter 493, RSMo, with an average circulation of twenty thousand or more and on the department, board, or commission website a notice of availability of any regulatory impact report conducted pursuant to this section and shall make such assessments and analyses available to the public by posting them on the department, board, or commission website. The department, board, or commission shall allow at least sixty days for the public to submit comments and shall post all comments and respond to all significant comments prior to promulgating the rule.

5. The department, board, or commission shall file a copy of the regulatory impact report with the joint committee on administrative rules concurrently with the filing of the proposed rule pursuant to section 536.024, RSMo.

6. If the department, board, or commission fails to conduct the regulatory impact report as required for each proposed rule pursuant to this section, such rule shall be void unless the written explanation delineating why the peer-reviewed data was not available has been filed at the time of the rule promulgation notice.

7. Any other provision of this section to the contrary notwithstanding, the department, board, or commission referenced in subsection 1 of this section may adopt a rule, without conducting a regulatory impact report if the director of the department determines that immediate action is necessary to protect human health, public welfare, or the environment; provided, however, in doing so, the department, board, or commission shall be required to provide written justification as to why it deviated from conducting a regulatory impact report and shall complete the regulatory impact report within one hundred eighty days of the adoption of the rule.

8. The provisions of this section shall not apply if the department adopts environmental protection agency rules and rules from other applicable federal agencies without variance.

640.018. PERMIT RESTRICTIONS BY DEPARTMENT OF NATURAL RESOURCES PROHIBITED IN ABSENCE OF STATUTORY AUTHORITY — PERMIT ISSUANCE PROCEDURES — DENIAL OF PERMIT, BASIS TO BE DETAILED — APPROVAL OF PERMIT NOT TO BE ALTERED

FOR ONE YEAR, WHEN. — 1. The department of natural resources shall not place in any permit any requirement, provision, stipulation, or any other restriction which is not prescribed or authorized by regulation or statute, unless the requirement, provision, stipulation, or other restriction is pursuant to the authority addressed in statute.

2. Prior to submitting a permit to public comment the department of natural resources shall deliver such permit to the permit applicant at the contact address on the permit application for final review. In the interest of expediting permit issuance, permit applicants may waive the opportunity to review draft permits prior to public notice. The permit applicant shall have ten days to review the permit for errors. Upon receipt of the applicant's review of the permit, the department of natural resources shall correct the permit where nonsubstantive drafting errors exist. The department of natural resources shall make such changes within ten days and submit the permit for public comment. If the permit applicant is not provided the opportunity to review permits prior to submission for public comment, the permit applicant shall have the authority to correct drafting errors in their permits after they are issued without paying any fee for such changes or modifications.

3. In any matter where a permit is denied by the department of natural resources pursuant to authorities granted in this chapter and chapters 260, 278, 319, 444, 643, and 644, RSMo, the hazardous waste management commission in chapter 260, RSMo, the state soil and water districts commission in chapter 278, RSMo, the land reclamation commission in chapter 444, RSMo, the safe drinking water commission in this chapter, the air conservation commission in chapter 643, RSMo, and the clean water commission in chapter 644, RSMo, such denial shall clearly state the basis for such denial.

4. Once a permit or action has been approved by the department, the department shall not revoke or change, without written permission from the permittee, the decision for a period of one year or unless the department determines that immediate action is necessary to protect human health, public welfare, or the environment.

SECTION 1. FEDERAL CLEAN WATER ACT AND FEDERAL SAFE DRINKING WATER ACT, TAX REFUNDS IN VIOLATION OF — DEPARTMENT OF NATURAL RESOURCES TO IDENTIFY OTHER APPROPRIATED FUNDS TO DEPARTMENT FOR TRANSFER TO THE STATE GENERAL REVENUE FUND. — 1. If a refund mandated under article X, section 18, of the Missouri Constitution from the following funds:

(1) The water and wastewater loan fund established pursuant to section 644.122, RSMo;

(2) The water pollution permit fee subaccount of the natural resources protection fund established in section 640.220;

(3) The water and wastewater loan revolving funds; or

(4) Any fund established by the office of administration for the sole purpose of receiving and distributing state match bond proceeds for the department of natural resources' state revolving fund programs established pursuant to the federal Clean Water Act, the federal Safe Drinking Water Act, or any federal regulation authorized under either federal act, would violate the federal Clean Water Act, the federal Safe Drinking Water Act, or any federal regulation authorized under either federal act, the department of natural resources shall identify an equal amount from other funds appropriated to the department.

2. The commissioner of administration shall transfer the funds identified by the department, that would otherwise be transferred from the funds identified in subsection 1 of this section, to the state general revenue fund for any refund that occurs after August 28, 2004.

Approved July 9, 2004

HB 985 [HCS HB 985]

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

Revises laws on the practice of real estate.

AN ACT to repeal sections 339.010, 339.020, 339.030, 339.040, 339.060, 339.100, 339.105, 339.120, 339.130, 339.150, 339.160, 339.170, 339.180, 339.600, 339.603, 339.605, 339.606, 339.607, 339.608, 339.610, 339.612, 339.614, 339.617, 339.710, 339.760, 339.780, and 339.800, RSMo, and to enact in lieu thereof seventeen new sections relating to real estate agents, with penalty provisions.

SECTION

A. Enacting clause.
339.010. Definitions — applicability of chapter.
339.020. Brokers and salespersons, unlawful to act without license.
339.030. Business entities may be licensed, when, fee.
339.040. Licenses granted to whom — examination — qualifications — fee — temporary broker's license, when — renewal, requirements.
339.060. Fees, amount, set how — term of licenses.
339.100. Investigation of certain practices, procedure — subpoenas — formal complaints — revocation or suspension of licenses — digest may be published.
339.105. Separate bank escrow accounts required — service charges for account may be made by personal deposit by broker, amount allowed.
339.120. Commission, created — members, qualifications, terms, compensation — powers and duties — rulemaking authority, procedure.
339.130. Legal status of commission.
339.150. No fee to be paid to unlicensed person — exception when broker refuses to pay for services rendered knowing the person was unlicensed, effect.
339.160. Real estate brokers and salespersons may not bring legal action for compensation unless licensed.
339.170. Penalty for violation.
339.180. Practice without a license — endangering welfare of others — injunction, procedure.
339.710. Definitions.
339.760. Written agreement, adoption by designated broker, scope.
339.780. Brokerage services, written agreements for, parties to, authorizations by designated broker — written agreements, limited agency, single agent, dual agent or subagent.
339.800. Compensation of designated broker, paid by whom, sharing compensation — payment establishing agency — agreement by seller or buyer on sharing compensation.
339.600. Definitions — exempt businesses and persons acting as escrow agent for real estate.
339.603. Registration with commission required to act as escrow agent — injunction ordered for unlawfully engaging in escrow activities.
339.605. Registration qualifications — application forms furnished by commission — grounds for refusal of registration.
339.606. Rules authorized — duty of commission — fees, amount, how set.
339.607. Renewal every two years — renewal fee.
339.608. Escrow agent administration fund created — fees collected by commission deposited in fund — purpose of fund — lapse into general revenue, prohibited.
339.610. Third-party expenses deposited by escrow agent, when — funds in escrow account to be expended, when.
339.612. Audit of escrow accounts and records — escrow agent liable to intended payee for misused funds — powers of commission to enforce.
339.614. Audit records to be available to escrow agent, not open to public, exception.
339.617. Investigation and subpoena powers of commission — administrative hearing procedure — violations, registration cancellation, when.

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

SECTION A. ENACTING CLAUSE. — Sections 339.010, 339.020, 339.030, 339.040, 339.060, 339.100, 339.105, 339.120, 339.130, 339.150, 339.160, 339.170, 339.180, 339.600, 339.603, 339.605, 339.606, 339.607, 339.608, 339.610, 339.612, 339.614, 339.617, 339.710,

339.760, 339.780, and 339.800, RSMo, are repealed and seventeen new sections enacted in lieu thereof, to be known as sections 339.010, 339.020, 339.030, 339.040, 339.060, 339.100, 339.105, 339.120, 339.130, 339.150, 339.160, 339.170, 339.180, 339.710, 339.760, 339.780, and 339.800, to read as follows:

339.010. DEFINITIONS — APPLICABILITY OF CHAPTER. — 1. A "real estate broker" is any person, partnership, association**,** or corporation, foreign or domestic who, for another, and for a compensation or valuable consideration, **[**as a whole or partial vocation,**]** does, or attempts to do, any or all of the following:

(1) Sells, exchanges, purchases, rents, or leases real estate;

(2) Offers to sell, exchange, purchase, rent or lease real estate;

(3) Negotiates or offers or agrees to negotiate the sale, exchange, purchase, rental or leasing of real estate;

(4) Lists or offers or agrees to list real estate for sale, lease, rental or exchange;

(5) Buys, sells, offers to buy or sell or otherwise deals in options on real estate or improvements thereon;

(6) Advertises or holds himself or herself out as a licensed real estate broker while engaged in the business of buying, selling, exchanging, renting, or leasing real estate;

(7) Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, leasing or rental of real estate;

(8) Assists or directs in the negotiation of any transaction calculated or intended to result in the sale, exchange, leasing or rental of real estate;

(9) Engages in the business of charging to an unlicensed person an advance fee in connection with any contract whereby the real estate broker undertakes to promote the sale of that person's real estate through its listing in a publication issued for such purpose intended to be circulated to the general public;

(10) Performs any of the foregoing acts as an employee of, or on behalf of, the owner of real estate, or interest therein, or improvements affixed thereon, for compensation.

2. A "real estate salesperson" is any person, who for a compensation or valuable consideration becomes associated, either as an independent contractor or employee, either directly or indirectly, with a real estate broker to do any of the things above mentioned**[**, as a whole or partial vocation**]**. The provisions of sections 339.010 to 339.180 **and sections 339.710 to 339.860** shall not be construed to deny a real estate salesperson who is compensated solely by commission the right to be associated with a broker as an independent contractor.

3. The term "commission" as used in sections 339.010 to 339.180 **and sections 339.710 to 339.860** means the Missouri real estate commission.

4. "Real estate" for the purposes of sections 339.010 to 339.180 **and sections 339.710 to 339.860** shall mean, and include, leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold or nonfreehold, and **[**whether**]** the real estate is situated in this state **[**or elsewhere**]**.

5. The provisions of sections 339.010 to 339.180 **and sections 339.710 to 339.860** shall not apply to:

(1) Any person, partnership**, association,** or corporation who as owner **[**or**],** lessor**, or lessee** shall perform any of the acts described in subsection 1 of this section with reference to property owned or leased by them, or to the regular employees thereof, provided such owner **[**or**],** lessor**, or lessee** is not engaged in the real estate business **[**as a vocation**]**;

(2) Any licensed attorney-at-law;

(3) An auctioneer employed by the owner of the property;

(4) Any person acting as receiver, trustee in bankruptcy, administrator, executor, or guardian or while acting under a court order or under the authority of a will, trust instrument or deed of trust or as a witness in any judicial proceeding or other proceeding conducted by the state or any governmental subdivision or agency;

(5) Any person employed or retained to manage real property by, for, or on behalf of, the agent or the owner, of any real estate shall be exempt from holding a license, if the person is limited to one or more of the following activities:

(a) Delivery of a lease application, a lease, or any amendment thereof, to any person;

(b) Receiving a lease application, lease, or amendment thereof, a security deposit, rental payment, or any related payment, for delivery to, and made payable to, a broker or owner;

(c) Showing a rental unit to any person, as long as the employee is acting under the direct instructions of the broker or owner, including the execution of leases or rental agreements;

(d) Conveying information prepared by a broker or owner about a rental unit, a lease, an application for lease, or the status of a security deposit, or the payment of rent, by any person;

(e) Assisting in the performance of brokers' or owners' functions, administrative, clerical or maintenance tasks;

(f) If the person described in this section is employed or retained by, for, or on behalf of a real estate broker, the real estate broker shall be subject to discipline under this chapter for any conduct of the person that violates this chapter or the regulations promulgated thereunder;

(6) Any officer or employee of a federal agency or the state government or any political subdivision thereof performing official duties;

(7) Railroads and other public utilities regulated by the state of Missouri, or their subsidiaries or affiliated corporations, or to the officers or regular employees thereof, unless performance of any of the acts described in subsection 1 of this section is in connection with the sale, purchase, lease or other disposition of real estate or investment therein unrelated to the principal business activity of such railroad or other public utility or affiliated or subsidiary corporation thereof;

(8) Any bank, trust company, savings and loan association, credit union, insurance company, mortgage banker, or farm loan association organized under the laws of this state or of the United States when engaged in the transaction of business on its own behalf and not for others;

(9) Any newspaper **[**or**],** magazine **[**or**],** periodical **[**of general circulation**], or Internet site** whereby the advertising of real estate is incidental to **[**the**] its** operation **[**of that publication**]** or to any form of communications regulated or licensed by the Federal Communications Commission or any successor agency or commission;

(10) Any developer selling Missouri land owned by the developer **[**if such developer has on file with the commission a certified copy of a currently effective statement of record on file with the Office of Interstate Land Sales pursuant to Sections 1704 through 1706 of Title 15 of the United States Code or a current statement from the Office of Interstate Land Sales of the United States Department of Housing and Urban Development approving the documentation (together with a copy of such documentation) submitted to that office with respect to real estate falling within the scope of subsection 1702(a)(10) of Title 15 of the United States Code**]**;

(11) Any employee acting on behalf of a nonprofit community, or regional economic development association, agency or corporation which has as its principal purpose the general promotion and economic advancement of the community at large, provided that such entity:

(a) Does not offer such property for sale, lease, rental or exchange on behalf of another person or entity;

(b) Does not list or offer or agree to list such property for sale, lease, rental or exchange; or

(c) Receives no fee, commission or compensation, either monetary or in kind, that is directly related to sale or disposal of such properties. An economic developer's normal annual compensation shall be excluded from consideration as commission or compensation related to sale or disposal of such properties; or

(12) Any neighborhood association, as that term is defined in section 441.500, RSMo, that without compensation, either monetary or in kind, provides to prospective purchasers or lessors of property the asking price, location, and contact information regarding properties in and near

the association's neighborhood, including any publication of such information in a newsletter, **[**web**]** **Internet** site, or other medium.

339.020. BROKERS AND SALESPERSONS, UNLAWFUL TO ACT WITHOUT LICENSE. — It shall be unlawful for any person, partnership, association**,** or corporation, foreign or domestic, to act as a real estate broker or real estate salesperson, or to advertise or assume to act as such without a license first procured from the commission.

339.030. BUSINESS ENTITIES MAY BE LICENSED, WHEN, FEE. — A corporation, partnership**,** or association shall be granted a license when individual licenses have been issued to every member, partner or officer of such partnership, association**,** or corporation who actively participates in its brokerage business and to every person who acts as a salesperson for such partnership, association**,** or corporation and when the required fee is paid.

339.040. LICENSES GRANTED TO WHOM — EXAMINATION — QUALIFICATIONS — FEE — TEMPORARY BROKER'S LICENSE, WHEN — RENEWAL, REQUIREMENTS. — 1. Licenses shall be granted only to persons who present, and corporations, associations**,** or partnerships whose officers, associates, or partners present, satisfactory proof to the commission that they:

(1) Are persons of good moral character; and

(2) Bear a good reputation for honesty, integrity, and fair dealing; and

(3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

2. In order to determine an applicant's qualifications to receive a license under sections 339.010 to 339.180 **and sections 339.710 to 339.860**, the commission shall hold oral or written examinations at such times and places as the commission may determine.

3. Each applicant for a broker or salesperson license shall be at least eighteen years of age and shall pay the broker examination fee or the salesperson examination fee.

4. Each applicant for a broker license shall be required to have satisfactorily completed the salesperson license examination prescribed by the commission. For the purposes of this section only, the commission may permit a person who is not associated with a licensed broker to take the salesperson examination.

5. Each application for a broker license shall include a certificate from the applicant's broker or brokers that the applicant has been actively engaged in the real estate business as a licensed salesperson for at least one year immediately preceding the date of application, or, in lieu thereof, shall include a certificate from a school accredited by the commission under the provisions of section 339.045 that the applicant has, within six months prior to the date of application, successfully completed the prescribed broker curriculum or broker correspondence course offered by such school, except that the commission may waive all or part of the educational requirements set forth in this subsection when an applicant presents proof of other educational background or experience acceptable to the commission.

6. Each application for a salesperson license shall include a certificate from a school accredited by the commission under the provisions of section 339.045 that the applicant has, within six months prior to the date of application, successfully completed the prescribed salesperson curriculum or salesperson correspondence course offered by such school, except that the commission may waive all or part of the educational requirements set forth in this subsection when an applicant presents proof of other educational background or experience acceptable to the commission.

7. **[**The commission shall require**]** **The commission may issue a temporary work permit pending final review and printing of the license to an applicant who appears to have satisfied the requirements for licenses. The commission may, at its discretion, withdraw the work permit at any time.**

8. Every active broker, salesperson, officer **[**or**],** partner **[**to present upon license renewal**], or associate shall provide upon request to the commission** evidence that during the two years preceding he **or she** has completed twelve hours of real estate instruction in courses approved by the commission. The commission may, by rule and regulation, provide for individual waiver of this requirement.

[8.**]** **9.** Each entity that provides continuing education required under the provisions of subsection **[**7**]** **8** of this section may make available **[**videotapes and audiotapes of**]** instruction courses that the entity conducts **through means of distance delivery**. The commission shall by rule set standards for **[**the production of**]** such **[**taped**]** courses**[**, which may include the requirement that individuals purchasing such tapes also purchase an accompanying written study document. The commission shall authorize individuals required to complete instruction under the provisions of this subsection to fulfill such continuing education requirements by utilizing such videotape and audiotape courses**]**. The commission may by regulation require the individual completing such **[**videotape or audiotape**]** **distance delivered** course to complete an examination on the contents of the course. Such examination shall be designed to ensure that the licensee displays adequate knowledge of the subject matter of the course, and shall be designed by the entity producing the **[**taped**]** course and approved by the commission.

[9.**]** **10.** In the event of the death or incapacity of a licensed broker, or of one or more of the licensed partners **[**or**],** officers**, or associates** of a real estate partnership **[**or**],** corporation**, or association** whereby the affairs of the broker, partnership, or corporation cannot be carried on, the commission may issue, without examination or fee, to the legal representative or representatives of the deceased or incapacitated individual, or to another individual approved by the commission, a temporary broker license which shall authorize such individual to continue for a period to be designated by the commission to transact business for the sole purpose of winding up the affairs of the broker, partnership or corporation under the supervision of the commission.

339.060. FEES, AMOUNT, SET HOW — TERM OF LICENSES. — 1. The commission shall set the amount of the fees which sections 339.010 to 339.180 **and sections 339.710 to 339.860** authorize and require by rules and regulations promulgated pursuant to section 536.021, RSMo. The fees shall be set at a level to produce revenue which shall not substantially exceed the cost and expense of administering sections 339.010 to 339.180 **and sections 339.710 to 339.860**.

2. Every license granted under sections 339.010 to 339.180 **and sections 339.710 to 339.860** shall be renewed each licensing period and the commission shall issue a new license upon receipt of the **[**written**]** **properly completed** application of the applicant and the required renewal fee.

339.100. INVESTIGATION OF CERTAIN PRACTICES, PROCEDURE — SUBPOENAS — FORMAL COMPLAINTS — REVOCATION OR SUSPENSION OF LICENSES — DIGEST MAY BE PUBLISHED. — 1. The commission may, upon its own motion, and shall upon **receipt of a** written complaint filed by any person, investigate any **[**business transaction**]** **real estate-related activity** of a **[**person, partnership or corporation**]** **licensee** licensed under sections 339.010 to 339.180 **and sections 339.710 to 339.860 or an individual or entity acting as or representing themselves as a real estate licensee**. In conducting such investigation, **if the questioned activity or written complaint involves an affiliated licensee, the commission may forward a copy of the information received to the affiliated licensee's designated broker.** The commission shall have the power to hold an investigatory hearing to determine whether there is a probability **[**that the licensee has performed or attempted to perform any act or practice declared unlawful pursuant to**]** **of a violation of** sections 339.010 to 339.180 **and sections 339.710 to 339.860**. **[**In conducting such a hearing,**]** The commission shall have the power to issue a subpoena to compel the production of records and papers bearing on the complaint. The commission shall have the power to issue a subpoena and to compel any person in this state to

come before the commission to offer testimony or any material specified in the subpoena. Subpoenas and subpoenas duces tecum issued pursuant to this section shall be served in the same manner as subpoenas in a criminal case. The fees and mileage of witnesses shall be the same as that allowed in the circuit court in civil cases.

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by **[**law when the commission believes there is a probability that a licensee has performed or attempted to perform any**]** **the provisions of chapter 621, RSMo, against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination** of the following acts:

(1) Failure to maintain and deposit in a special account, separate and apart from his **or her** personal or other business accounts, all moneys belonging to others entrusted to him **or her** while acting as a real estate broker**[**, or as escrow agent,**]** or as the temporary custodian of the funds of others, until the transaction involved is consummated or terminated, unless all parties having an interest in the funds have agreed otherwise in writing;

(2) Making substantial misrepresentations or false promises or suppression, concealment or omission of material facts in the conduct of his **or her** business or pursuing a flagrant and continued course of misrepresentation through agents, salespersons, advertising or otherwise in any transaction;

(3) Failing within a reasonable time to account for or to remit any moneys, valuable documents or other property, coming into his **or her** possession, which belongs to others;

(4) Representing to any lender, guaranteeing agency, or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon;

(5) Failure to **timely** deliver**[**, immediately at the time of signing,**]** a duplicate original of any and all instruments to any party or parties executing the same where the instruments have been prepared by the licensee or under his **or her** supervision or are within his **or her** control, including, but not limited to, the instruments relating to the employment of the licensee or to any matter pertaining to the consummation of a lease, listing agreement or the purchase, sale, exchange or lease of property, or any type of real estate transaction in which he **or she** may participate as a licensee;

(6) Acting for more than one party in a transaction without the knowledge of all parties for whom he **or she** acts, or accepting a commission or valuable consideration for services from more than one party in a real estate transaction without the knowledge of all parties to the transaction;

(7) Paying a commission or valuable consideration to any person for acts or services performed in violation of sections 339.010 to 339.180 **and sections 339.710 to 339.860**;

(8) Guaranteeing or having authorized or permitted any licensee to guarantee future profits which may result from the resale of real property;

(9) Having been finally adjudicated and been found guilty of the violation of any state or federal statute which governs the sale or rental of real property or the conduct of the real estate business as defined in subsection 1 of section 339.010;

(10) Obtaining a certificate or registration of authority, permit or license for himself **or herself** or anyone else by false or fraudulent representation, fraud or deceit;

(11) Representing a real estate broker other than the broker with whom associated without the express **[**knowledge and**]** **written** consent of **[**that**]** **the** broker**[**, or**]** **with whom associated;**

(12) Accepting a commission or valuable consideration for the performance of any of the acts referred to in section 339.010 from any person except the broker with whom associated **at the time the commission or valuable consideration was earned**;

[(12)**]** **(13)** Using prizes, money, gifts or other valuable consideration as inducement to secure customers **or clients** to purchase, lease, sell or list property when the awarding of such prizes, money, gifts or other valuable consideration is conditioned upon the purchase, lease, sale

or listing; or soliciting, selling or offering for sale real property by offering free lots, or conducting lotteries or contests, or offering prizes for the purpose of influencing a purchaser or prospective purchaser of real property;

[(13)**] (14)** Placing a sign on or advertising any property offering it for sale or rent without the **written** consent of the owner or his **or her** duly authorized agent;

[(14)**] (15)** Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 **and sections 339.710 to 339.860**, or of any lawful rule adopted pursuant to sections 339.010 to 339.180 **and sections 339.710 to 339.860**;

[(15)**] (16)** Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

[(16)**] (17)** Failure to **[**submit**] timely inform seller of** all written **[**bona fide**]** offers **[**to a seller when such offers are received prior to the seller accepting an offer in writing and until the licensee has knowledge of such acceptance**] unless otherwise instructed in writing by the seller**;

[(17)**] (18)** Been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of this state or any other state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

[(18)**] (19)** Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, **[**or**]** demonstrates bad faith or **[**gross**]** incompetence**, misconduct, or gross negligence**;

[(19)**] (20)** Disciplinary action against the holder of a license or other right to practice any profession regulated under sections 339.010 to 339.180 **and sections 339.710 to 339.860** granted by another state, territory, federal agency, or country upon grounds for which revocation, suspension, or probation is authorized in this state;

[(20)**] (21)** Been found by a court of competent jurisdiction of having used any controlled substance, as defined in chapter 195, RSMo, to the extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by sections 339.010 to 339.180 **and sections 339.710 to 339.860**;

[(21)**] (22)** Been finally adjudged insane or incompetent by a court of competent jurisdiction;

[(22)**] (23)** Assisting or enabling any person to practice or offer to practice any profession licensed or regulated under sections 339.010 to 339.180 **and sections 339.710 to 339.860** who is not registered and currently eligible to practice under sections 339.010 to 339.180 **and sections 339.710 to 339.860**;

[(23)**] (24)** Use of any advertisement or solicitation which is knowingly false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed.

3. After the filing of such complaint, the proceedings will be conducted in accordance with the provisions of law relating to the administrative hearing commission. A finding of the administrative hearing commissioner that the licensee has performed or attempted to perform one or more of the foregoing acts shall be grounds for the suspension or revocation of his license by the commission, or the placing of the licensee on probation on such terms and conditions as the real estate commission shall deem appropriate.

4. The commission may prepare a digest of the decisions of the administrative hearing commission which concern complaints against licensed brokers or salespersons and cause such digests to be mailed to all licensees periodically. Such digests may also contain reports as to new or changed rules adopted by the commission and other information of significance to licensees.

339.105. SEPARATE BANK ESCROW ACCOUNTS REQUIRED — SERVICE CHARGES FOR ACCOUNT MAY BE MADE BY PERSONAL DEPOSIT BY BROKER, AMOUNT ALLOWED. — 1. Each broker who holds funds belonging to another shall maintain such funds in a separate bank account in a financial institution which shall be designated an escrow or trust account. This requirement includes funds in which he or she may have some future interest or claim. Such funds shall be deposited promptly unless all parties having an interest in the funds have agreed otherwise in writing. No broker shall commingle his or her personal funds or other funds in this account with the exception that a broker may deposit and keep a sum not to exceed one thousand dollars in the account from his or her personal funds, which sum shall be specifically identified and deposited to cover service charges related to the account.

2. Each broker shall notify the commission **[**of the name**]** of his or her intent not to maintain an escrow account, or the name of the financial institution in which each escrow or trust account is maintained, the name and number of each such account, and shall file written authorization directed to each financial institution to allow the commission or its authorized representative to examine each such account; such notification and authorization shall be submitted on forms provided therefor by the commission. A broker shall notify the commission within ten business days of any change of his or her intent to maintain an escrow account, the financial institution, account numbers, or change in account status.

3. In conjunction with each escrow or trust account a broker shall maintain books, records, contracts and other necessary documents so that the adequacy of said account may be determined at any time. The account and other records shall be provided to the commission and its duly authorized agents for inspection at all times during regular business hours at the broker's usual place of business.

4. Whenever the ownership of any escrow moneys received by a broker pursuant to this section is in dispute by the parties to a real estate sales transaction, the broker shall report and deliver the moneys to the state treasurer within three hundred sixty-five days of the date of the initial projected closing date in compliance with sections 447.500 to 447.595, RSMo. The parties to a real estate sales transaction may agree in writing that the funds are not in dispute and shall notify the broker who is holding the funds.

5. A broker shall not be entitled to any money or other money paid to him or her in connection with any real estate sales transaction as part or all of his or her commission or fee until the transaction has been consummated or terminated, unless agreed in writing by all parties to the transaction.

6. When, through investigations or otherwise, the commission has reasonable cause to believe that a licensee has acted, is acting or is about to act in violation of this section, the commission may, through the attorney general or any assistants designated by the attorney general, proceed in the name of the commission to institute suit to enjoin any act or acts in violation of this section.

7. Any such suit shall be commenced in either the county in which the defendant resides or in the county in which the defendant has acted, is acting or is about to act in violation of this section.

8. In such proceeding, the court shall have power to issue such temporary restraining or injunction orders, without bond, which are necessary to protect the public interest. Any action brought under this section shall be in addition to and not in lieu of any other provisions of this chapter. In such action, the commission or the state need not allege or prove that there is no adequate remedy at law or that any individual has suffered any economic injury as a result of the activity sought to be enjoined.

339.120. COMMISSION, CREATED — MEMBERS, QUALIFICATIONS, TERMS, COMPENSATION — POWERS AND DUTIES — RULEMAKING AUTHORITY, PROCEDURE. — 1. There is hereby created the "Missouri Real Estate Commission", to consist of seven persons, citizens of the United States and residents of this state for at least one year prior to their

appointment, for the purpose of carrying out and enforcing the provisions of sections 339.010 to 339.180 **and sections 339.710 to 339.860**. The commission shall be appointed by the governor with the advice and consent of the senate. All members, except one voting public member, of the commission must have had at least ten years' experience as a real estate broker prior to their appointment. The terms of the members of the commission shall be for five years, and until their successors are appointed and qualified. Members to fill vacancies shall be appointed by the governor for the unexpired term. The president of the Missouri Association of Realtors in office at the time shall, at least ninety days prior to the expiration of the term of the board member, other than the public member, or as soon as feasible after the vacancy on the board otherwise occurs, submit to the director of the division of professional registration a list of five Realtors qualified and willing to fill the vacancy in question, with the request and recommendation that the governor appoint one of the five persons so listed, and with the list so submitted, the president of the Missouri Association of Realtors shall include in his or her letter of transmittal a description of the method by which the names were chosen by that association. The commission shall organize annually by selecting from its members a chairman. The commission may do all things necessary and convenient for carrying into effect the provisions of sections 339.010 to 339.180 **and sections 339.710 to 339.860**, and may promulgate necessary rules compatible with the provisions of sections 339.010 to 339.180 **and sections 339.710 to 339.860**. Each member of the commission shall receive as compensation an amount set by the commission not to exceed **[**fifty**]** **seventy-five** dollars for each day devoted to the affairs of the commission, and shall be entitled to reimbursement of his or her expenses necessarily incurred in the discharge of his or her official duties. The governor may remove any commissioner for cause.

2. The public member shall be at the time of his or her appointment a citizen of the United States; a resident of this state for a period of one year and a registered voter; a person who is not and never was a member of any profession licensed or regulated pursuant to sections 339.010 to 339.180 **and sections 339.710 to 339.860** or the spouse of such person; and a person who does not have and never has had a material, financial interest in either the providing of the professional services regulated by sections 339.010 to 339.180 **and sections 339.710 to 339.860**, or an activity or organization directly related to any profession licensed or regulated pursuant to sections 339.010 to 339.180 **and sections 339.710 to 339.860**. All members, including public members, shall be chosen from lists submitted by the director of the division of professional registration. The duties of the public member shall not include the determination of the technical requirements to be met for licensure or whether any person meets such technical requirements or of the technical competence or technical judgment of a licensee or a candidate for licensure.

3. The commission shall employ such board personnel, as defined in subdivision (4) of subsection 15 of section 620.010, RSMo, as it shall deem necessary to discharge the duties imposed by the provisions of sections 339.010 to 339.180 **and sections 339.710 to 339.860**.

4. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in sections 339.010 to 339.180 **and sections 339.710 to 339.860** shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. All rulemaking authority delegated prior to August 28, 1999, is of no force and effect and repealed. Nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to August 28, 1999, if it fully complied with all applicable provisions of law. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

339.130. LEGAL STATUS OF COMMISSION. — The commission may sue and be sued in its official name, and shall have a seal which shall be affixed to **[**all licenses,**]** certified copies of

records and papers on file, and to such other instruments as the commission may direct, and all courts shall take judicial notice of such seal. Copies of records and proceedings of the commission, and of all papers on file in its office, certified under the said seal shall be received as evidence in all courts of record. The office of the commission shall be at Jefferson City.

339.150. NO FEE TO BE PAID TO UNLICENSED PERSON — EXCEPTION WHEN BROKER REFUSES TO PAY FOR SERVICES RENDERED KNOWING THE PERSON WAS UNLICENSED, EFFECT. — 1. No real estate broker shall knowingly employ or engage any person to perform any service to the broker for which licensure as a real estate broker or a real estate sales person is required pursuant to sections 339.010 to 339.180 **and sections 339.710 to 339.860**, unless such a person is a licensed real estate salesperson or a licensed real estate broker as required by section 339.020, or a person regularly engaged in the real estate brokerage business outside of the state of Missouri. Any such action shall be unlawful as provided by section 339.100 and shall be grounds for investigation, complaint, proceedings and discipline as provided by section 339.100.

2. No real estate licensee shall pay any part of a fee, commission or other compensation received by the licensee to any person for any service rendered by such person to the licensee in buying, selling, exchanging, leasing, renting or negotiating a loan upon any real estate, unless such a person is a licensed real estate salesperson regularly associated with such a broker, or a licensed real estate broker, or a person regularly engaged in the real estate brokerage business outside of the state of Missouri.

3. Notwithstanding the provisions of subsections 1 and 2 of this section, any real estate broker who shall refuse to pay any person for services rendered by such person to the broker, with the consent, knowledge and acquiescence of the broker that such person was not licensed as required by section 339.020, in buying, selling, exchanging, leasing, renting or negotiating a loan upon any real estate for which services a license is required, and who is employed or engaged by such broker to perform such services, shall be liable to such person for the reasonable value of the same or similar services rendered to the broker, regardless of whether or not the person possesses or holds any particular license, permit or certification at the time the service was performed. Any such person may bring a civil action for the reasonable value of his services rendered to a broker notwithstanding the provisions of section 339.160.

339.160. REAL ESTATE BROKERS AND SALESPERSONS MAY NOT BRING LEGAL ACTION FOR COMPENSATION UNLESS LICENSED. — No person, partnership, corporation**,** or association engaged within this state in the business or acting in the capacity of a real estate broker or real estate salesperson shall bring or maintain an action in any court in this state for the recovery of compensation for services rendered in the buying, selling, exchanging, leasing, renting or negotiating a loan upon any real estate without alleging and proving that such person, partnership, corporation, or association was a licensed real estate broker or salesperson at the time when the alleged cause of action arose.

339.170. PENALTY FOR VIOLATION. — Any person or corporation knowingly violating any provision of sections 339.010 to 339.180 **and sections 339.710 to 339.860** shall be guilty of a class B misdemeanor. Any officer or agent of a corporation, or member or agent of a partnership or association, who shall knowingly and personally participate in or be an accessory to any violation of sections 339.010 to 339.180 **and sections 339.710 to 339.860**, shall be guilty of a class B misdemeanor. This section shall not be construed to release any person from civil liability or criminal prosecution under any other law of this state. The commission may cause complaint to be filed for violation of section 339.020 in any court of competent jurisdiction, and perform such other acts as may be necessary to enforce the provisions hereof.

339.180. PRACTICE WITHOUT A LICENSE — ENDANGERING WELFARE OF OTHERS — INJUNCTION, PROCEDURE. — 1. It shall be unlawful for any person **or entity** not licensed under

this chapter to perform any act for which a real estate **[**broker or salesperson**]** license is required. Upon application by the **[**board**]** **commission**, and the necessary burden having been met, a court of general jurisdiction may grant an injunction, restraining order or other order as may be appropriate to enjoin a person **or entity** from:

(1) Offering to engage or engaging in the performance of any acts or practices for which a **[**certificate of registration or authority,**]** permit or license is required by this chapter upon a showing that such acts or practices were performed or offered to be performed without a **[**certificate of registration or authority,**]** permit or license; or

(2) Engaging in any practice or business authorized by a **[**certificate of registration or authority,**]** permit or license issued pursuant to this chapter upon a showing that the holder presents a substantial probability of serious danger to the health, safety or welfare of any **[**resident of this state or client or patient of the licensee**]** **person with, or who is considering obtaining, a legal interest in real property in this state**.

2. Any such action shall be commenced either in the county in which such conduct occurred or in the county in which the defendant resides.

3. Any action brought under this section shall be in addition to and not in lieu of any penalty provided by this chapter and may be brought concurrently with other actions to enforce this chapter.

339.710. DEFINITIONS. — For purposes of sections 339.710 to 339.860, the following terms mean:

(1) "Adverse material fact", a fact related to the **[**physical condition of the**]** property not reasonably ascertainable or known to a party which negatively affects the value of the property. Adverse material facts may include matters pertaining to:

(a) Environmental hazards affecting the property;

(b) Physical condition of the property which adversely affects the value of the property;

(c) Material defects in the property;

(d) Material defects in the title to the property;

(e) Material limitation of the party's ability to perform under the terms of the contract;

(2) "Affiliated licensee", any broker or salesperson who works under the supervision of a designated broker;

(3) "Agent", a person or entity acting pursuant to the provisions of this chapter;

(4) "Broker disclosure form", the current form prescribed by the commission for presentation to a seller, landlord, buyer or tenant who has not entered into a written agreement for brokerage services;

(5) "Brokerage relationship", the relationship created between a designated broker, the broker's affiliated licensees, and a client relating to the performance of services of a broker as defined in section 339.010, and sections 339.710 to 339.860. If a designated broker makes an appointment of an affiliated licensee or affiliated licensees pursuant to section 339.820, such brokerage relationships are created between the appointed licensee or licensees and the client. Nothing in this subdivision shall:

(a) Alleviate the designated broker from duties of supervision of the appointed licensee or licensees; or

(b) Alter the designated broker's underlying contractual agreement with the client;

(6) "Client", a seller, landlord, buyer, or tenant who has entered into a brokerage relationship with a licensee pursuant to sections 339.710 to 339.860;

(7) "Commercial real estate", any real estate other than real estate containing one to four residential units, real estate on which no buildings or structures are located, or real estate classified as agricultural and horticultural property for assessment purposes pursuant to section 137.016, RSMo. Commercial real estate does not include single family residential units including condominiums, townhouses, or homes in a subdivision when that real estate is sold,

leased, or otherwise conveyed on a unit-by-unit basis even though the units may be part of a larger building or parcel of real estate containing more than four units;

(8) "Commission", the Missouri real estate commission;

(9) "Confidential information", information obtained by the licensee from the client and designated as confidential by the client, information made confidential by sections 339.710 to 339.860 or any other statute or regulation, or written instructions from the client unless the information is made public or becomes public by the words or conduct of the client to whom the information pertains or by a source other than the licensee;

(10) "Customer", an actual or potential seller, landlord, buyer, or tenant in a real estate transaction in which a licensee is involved but who has not entered into a brokerage relationship with **[**a**]** **the** licensee;

(11) "Designated agent", a licensee named by a designated broker as the limited agent of a client as provided for in section 339.820;

(12) "Designated broker", any individual licensed as a broker who is operating pursuant to the definition of "real estate broker" as defined in section 339.010, or any individual licensed as a broker who is appointed by a partnership, association, limited liability corporation, or a corporation engaged in the real estate brokerage business to be responsible for the acts of the partnership, association, limited liability corporation, or corporation. Every real estate partnership, association, or limited liability corporation, or corporation shall appoint a designated broker;

(13) "Designated transaction broker", a licensee named by a designated broker or deemed appointed by a designated broker as the transaction broker for a client pursuant to section 339.820;

(14) "Dual agency", a form of agency which may result when an agent licensee or someone affiliated with the agent licensee represents another party to the same transaction;

(15) "Dual agent", a limited agent who, with the written consent of all parties to a contemplated real estate transaction, has entered into an agency brokerage relationship, and not a transaction brokerage relationship, with and therefore represents both the seller and buyer or both the landlord and tenant;

(16) "Licensee", a real estate broker or salesperson as defined in section 339.010;

(17) "Limited agent", a licensee whose duties and obligations to a client are those set forth in sections 339.730 to 339.750;

(18) "Ministerial acts", those acts that a licensee may perform for a person or entity that are informative in nature and do not rise to the level which requires the creation of a brokerage relationship. Examples of these acts include, but are not limited to:

(a) Responding to telephone inquiries by consumers as to the availability and pricing of brokerage services;

(b) Responding to telephone inquiries from a person concerning the price or location of property;

(c) Attending an open house and responding to questions about the property from a consumer;

(d) Setting an appointment to view property;

(e) Responding to questions of consumers walking into a licensee's office concerning brokerage services offered on particular properties;

(f) Accompanying an appraiser, inspector, contractor, or similar third party on a visit to a property;

(g) Describing a property or the property's condition in response to a person's inquiry;

(h) Showing a customer through a property being sold by an owner on his or her own behalf; or

(i) Referral to another broker or service provider;

(19) "Residential real estate", all real property improved by a structure that is used or intended to be used primarily for residential living by human occupants and that contains not

more than four dwelling units or that contains single dwelling units owned as a condominium or in a cooperative housing association, and vacant land classified as residential property. The term "cooperative housing association" means an association, whether incorporated or unincorporated, organized for the purpose of owning and operating residential real property in Missouri, the shareholders or members of which, by reason of their ownership of a stock or membership certificate, a proprietary lease, or other evidence of membership, are entitled to occupy a dwelling unit pursuant to the terms of a proprietary lease or occupancy agreement;

(20) "Single agent", a licensee who has entered into a brokerage relationship with and therefore represents only one party in a real estate transaction. A single agent may be one of the following:

(a) "Buyer's agent", which shall mean a licensee who represents the buyer in a real estate transaction;

(b) "Seller's agent", which shall mean a licensee who represents the seller in a real estate transaction; and

(c) "Landlord's agent", which shall mean a licensee who represents a landlord in a leasing transaction;

(d) "Tenant's agent", which shall mean a licensee who represents the tenant in a leasing transaction;

(21) "Subagent", a designated broker, together with the broker's affiliated licensees, engaged by another designated broker, together with the broker's affiliated or appointed affiliated licensees, to act as a limited agent for a client, or a designated broker's unappointed affiliated licensees engaged by the designated broker, together with the broker's appointed affiliated licensees, to act as a limited agent for a client. A subagent owes the same obligations and responsibilities to the client pursuant to sections 339.730 to 339.740 as does the client's designated broker;

(22) "Transaction broker", any licensee acting pursuant to sections 339.710 to 339.860, who:

(a) Assists the parties to a transaction without an agency or fiduciary relationship to either party and is, therefore, neutral, serving neither as an advocate or advisor for either party to the transaction;

(b) Assists one or more parties to a transaction and who has not entered into a specific written agency agreement to represent one or more of the parties; or

(c) Assists another party to the same transaction either solely or through licensee affiliates.

Such licensee shall be deemed to be a transaction broker and not a dual agent, provided that, notice of assumption of transaction broker status is provided to the buyer and seller immediately upon such default to transaction broker status, to be confirmed in writing prior to execution of the contract.

339.760. WRITTEN AGREEMENT, ADOPTION BY DESIGNATED BROKER, SCOPE. — **[**1.**]** Every designated broker **who has affiliated licensees** shall adopt a written policy which identifies and describes the relationships in which the designated broker and affiliated licensees may engage with any seller, landlord, buyer, or tenant as part of any real estate brokerage activities.

[2. A designated broker shall not be required to offer or engage in more than one of the brokerage relationships enumerated in section 339.720.**]**

339.780. BROKERAGE SERVICES, WRITTEN AGREEMENTS FOR, PARTIES TO, AUTHORIZATIONS BY DESIGNATED BROKER — WRITTEN AGREEMENTS, LIMITED AGENCY, SINGLE AGENT, DUAL AGENT OR SUBAGENT. — 1. All written agreements for brokerage services on behalf of a seller, landlord, buyer, or tenant shall be entered into by the designated broker on behalf of that broker and affiliated licensees, except that the designated broker may

authorize affiliated licensees in writing to enter into the written agreements on behalf of the designated broker.

2. Before engaging in any of the activities enumerated in section 339.010, a designated broker intending to establish a limited agency relationship with a seller or landlord shall enter into a written agency agreement with the party to be represented. The agreement shall include a licensee's duties and responsibilities specified in section 339.730 and the terms of compensation and shall specify whether an offer of subagency may be made to any other designated broker.

3. Before or while engaging in any acts enumerated in section 339.010, except ministerial acts defined in section 339.710, a designated broker acting as a single agent for a buyer or tenant shall enter into a written agency agreement with the buyer or tenant. The agreement shall include a licensee's duties and responsibilities specified in section 339.740 and the terms of compensation **[**and shall specify whether an offer of subagency may be made to any other designated broker**]**.

4. Before engaging in any of the activities enumerated in section 339.010, a designated broker intending to act as a dual agent shall enter into a written agreement with the seller and buyer or landlord and tenant permitting the designated broker to serve as a dual agent. The agreement shall include a licensee's duties and responsibilities specified in section 339.750 and the terms of compensation.

5. Before engaging in any of the activities enumerated in section 339.010, a designated broker intending to act as a subagent shall enter into a written agreement with the designated broker for the client. If a designated broker has made a unilateral offer of subagency, another designated broker can enter into the subagency relationship by the act of disclosing to the customer that he or she is a subagent of the client. If a designated broker has made an appointment pursuant to section 339.820, an affiliated licensee that has been excluded by such appointment may enter into the subagency relationship by the act of disclosing to the customer that he or she is a subagent of the client.

6. A designated broker who intends to act as a transaction broker and who expects to receive compensation from the party he or she assists shall enter into a written transaction brokerage agreement with such party or parties contracting for the broker's service. The transaction brokerage agreement shall include a licensee's duties and responsibilities specified in section 339.755 and the terms of compensation.

7. Nothing contained in this section shall prohibit the public from entering into written contracts with any broker which contain duties, obligations, or responsibilities which are in addition to those specified in this section.

339.800. COMPENSATION OF DESIGNATED BROKER, PAID BY WHOM, SHARING COMPENSATION — PAYMENT ESTABLISHING AGENCY — AGREEMENT BY SELLER OR BUYER ON SHARING COMPENSATION. — 1. In any real estate transaction, the designated broker's compensation may be paid by the seller, the landlord, the buyer, the tenant, or a third party or by sharing the compensation between designated brokers.

2. Payment of compensation by itself shall not establish an agency relationship or transaction brokerage relationship between the party who paid the compensation and the designated broker or any affiliated licensee.

3. A seller or landlord may agree that a designated broker may share with another designated broker the compensation paid by the seller or landlord.

4. A buyer or tenant may agree that a designated broker may share with another designated broker the compensation paid by the buyer or tenant.

5. A designated broker may be compensated by more than one party for services in a transaction with the knowledge of all the parties at or before the time of entering into a written contract to buy, sell, or lease.

6. Nothing contained in this section shall relieve the licensee from the requirement of obtaining a written agreement for brokerage services or other written agreement addressing compensation.

[339.600. DEFINITIONS — EXEMPT BUSINESSES AND PERSONS ACTING AS ESCROW AGENT FOR REAL ESTATE. — 1. As used in sections 339.600 to 339.610, the following terms mean:

(1) "Commission", the Missouri real estate commission;

(2) "Escrow agent", any person, partnership, association or corporation, foreign or domestic, who performs any of the following functions: closings or settlements or any function related thereto in sales, exchanges or other transfers of real property.

2. A person or entity who meets the definition of escrow agent as provided in subsection 1 of this section is exempt from the provisions of sections 339.600 to 339.610 if such person is:

(1) A person or entity doing business under the laws of this state or the United States as a bank, trust company, savings and loan association, credit union, commercial or consumer finance company, industrial loan company, insurance company or title insurance company or title insurance agency;

(2) An attorney at law;

(3) A person or entity licensed pursuant to this chapter rendering services in the performance of his or her duties as a real estate broker or salesperson;

(4) A mortgage loan company which is subject to licensing, supervision or auditing by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation or the United States Veterans' Administration or the Government National Mortgage Association or the United States Department of Housing and Urban Development or a successor of any of such agencies or entities, as an approved seller or servicer; or

(5) The United States, the state of Missouri or any state, any political subdivision of this state or any agency, division or corporate instrumentality thereof.**]**

[339.603. REGISTRATION WITH COMMISSION REQUIRED TO ACT AS ESCROW AGENT — INJUNCTION ORDERED FOR UNLAWFULLY ENGAGING IN ESCROW ACTIVITIES. — 1. It is unlawful for any person, partnership, association or corporation, foreign or domestic, to act as an escrow agent, or to advertise or attempt to act as such without being properly registered with the commission.

2. Upon application by the commission and upon proof by a preponderance of the evidence, a court of general jurisdiction may grant an injunction, restraining order or other order as may be appropriate to enjoin a person from unlawfully engaging or attempting to engage in the activities identified in sections 339.600 to 339.610.**]**

[339.605. REGISTRATION QUALIFICATIONS — APPLICATION FORMS FURNISHED BY COMMISSION — GROUNDS FOR REFUSAL OF REGISTRATION. — 1. A person, partnership, association or corporation, incorporated pursuant to the laws of Missouri, may be registered as an escrow agent pursuant to sections 339.600 to 339.610, if such person, partners of the partnership, members of the association or officers of the corporation are at least eighteen years of age, of good moral character and are competent to transact the business of an escrow agent in such manner as to safeguard the interest of the public. The commission shall require proof that such persons meet the qualifications as provided in this subsection.

2. A corporation, partnership or association may be registered if every partner of the partnership, every member of the association, or every officer of the corporation who actively participates in its escrow business has been registered and the corporation, partnership or association has paid all the required fees.

3. Applications for registration shall be submitted in writing on forms furnished by the commission and accompanied by such information and recommendations as the commission may require.

4. The commission may refuse to register any person, partnership, association or corporation if the person, partner, member or a direct or indirect controlling stockholder has been found guilty of, or pleaded guilty to, stealing, forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud or any similar offense.**]**

[339.606. RULES AUTHORIZED — DUTY OF COMMISSION — FEES, AMOUNT, HOW SET. — The commission may promulgate rules and regulations and perform all duties necessary for carrying out the provisions of sections 339.600 to 339.610. The commission shall set the amount of the fees which are authorized pursuant to sections 339.600 to 339.610 by rules and regulations promulgated pursuant to section 536.021, RSMo. The fees shall be set at a level to produce revenue which shall not substantially exceed the cost and expense of administering sections 339.600 to 339.610.**]**

[339.607. RENEWAL EVERY TWO YEARS — RENEWAL FEE. — Each registration granted pursuant to sections 339.600 to 339.610 shall be renewed every two years and the commission shall issue a new registration upon receipt of a proper renewal application and the required renewal fee.**]**

[339.608. ESCROW AGENT ADMINISTRATION FUND CREATED — FEES COLLECTED BY COMMISSION DEPOSITED IN FUND — PURPOSE OF FUND — LAPSE INTO GENERAL REVENUE, PROHIBITED. — The fees collected pursuant to the provisions of sections 339.600 to 339.610 shall be collected by the Missouri real estate commission and shall be sent to the director of the department of revenue for deposit in the state treasury in the "Escrow Agent Administration Fund" which is hereby created. The commission shall administer the fund and shall use the moneys in the fund solely for the administration and enforcement of sections 339.600 to 339.610. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any unexpended balance in the fund at the end of the biennium shall not be transferred to the general revenue fund, but shall remain in the escrow agent administration fund.**]**

[339.610. THIRD-PARTY EXPENSES DEPOSITED BY ESCROW AGENT, WHEN — FUNDS IN ESCROW ACCOUNT TO BE EXPENDED, WHEN. — Any funds received by an escrow agent from any person that are to be used for third-party expenses shall be deposited no later than five banking days after receipt in an escrow account in any federally insured bank, savings and loan association or credit union. The funds in such escrow account shall be expended for the intended use by the escrow agent within ninety days after the obligations of the third party have been completed.**]**

[339.612. AUDIT OF ESCROW ACCOUNTS AND RECORDS — ESCROW AGENT LIABLE TO INTENDED PAYEE FOR MISUSED FUNDS — POWERS OF COMMISSION TO ENFORCE. — The commission or its designated agent may inspect and audit the escrow accounts or accounting records of any escrow agent at any time during normal business hours to determine if escrow funds are being expended and disbursed in a timely fashion and for the intended use. If the commission determines that such escrow funds have been used for any purpose other than the intended purposes, the escrow agent is liable to the intended payee of the funds for any misappropriated funds and the Missouri real estate commission shall cause legal proceedings to be held in any court of competent jurisdiction to enforce the provisions of this section and sections 339.610, 339.614, and 339.617. The commission's authority to instigate legal proceedings to enforce the provisions of this section is in addition to the authority to file a complaint with the administrative hearing commission.**]**

[339.614. AUDIT RECORDS TO BE AVAILABLE TO ESCROW AGENT, NOT OPEN TO PUBLIC, EXCEPTION. — The records of any inspection or audit made pursuant to the authority in section 339.612 shall be made available to the escrow agent and the parties to the transaction but shall not be considered open to the public unless public money is directly involved or a court of competent jurisdiction orders that such records be opened.**]**

[339.617. INVESTIGATION AND SUBPOENA POWERS OF COMMISSION — ADMINISTRATIVE HEARING PROCEDURE — VIOLATIONS, REGISTRATION CANCELLATION, WHEN. — 1. The commission may, upon its own motion or upon a written complaint filed by any person, investigate any business transaction, regulated by the provisions of sections 339.600 to 339.610, of any person, partnership, association or corporation registered pursuant to the provisions of sections 339.600 to 339.610. The commission may use all investigatory and subpoena powers provided in section 339.100 in investigating such business transaction. The commission may file a complaint with the administrative hearing commission and the proceedings shall be conducted as provided in chapter 621, RSMo. If the administrative hearing commission finds that the escrow agent is not in compliance with sections 339.610 to 339.617 or is operating in an unsafe or unsound manner, the commission may cancel the registration of such escrow agent. If the registration of any escrow agent is canceled pursuant to this subsection, such escrow agent may not accept any referral of business which is regulated by the provisions of sections 339.600 to 339.610.

2. No real estate licensee may knowingly refer escrow or real estate closing business to any escrow agent which does not hold a current registration pursuant to sections 339.600 to 339.610.**]**

Approved July 2, 2004

HB 988 [HCS HB 988]

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

Increases number of county political party committee members in Jackson County.

AN ACT to repeal section 115.607, RSMo, and to enact in lieu thereof one new section relating to county political party committee representation.

SECTION
A. Enacting clause.
115.607. County committee, eligibility requirements, selection of.

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

SECTION A. ENACTING CLAUSE. — Section 115.607, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 115.607, to read as follows:

115.607. COUNTY COMMITTEE, ELIGIBILITY REQUIREMENTS, SELECTION OF. — 1. No person shall be elected or shall serve as a member of a county committee who is not, for one year next before the person's election, both a registered voter of and a resident of the county and the committee district from which the person is elected if such district shall have been so long established, and if not, then of the district or districts from which the same shall have been taken. Except as provided in subsections 2, 3, 4, 5, and 6 of this section, the membership of a county committee of each established political party shall consist of a man and a woman elected from each township or ward in the county.

2. In each county of the first classification containing the major portion of a city which has over three hundred thousand inhabitants, two members of the committee, a man and a woman, shall be elected from each ward in the city. Any township entirely contained in the city shall have no additional representation on the county committee. The election authority for the county shall, not later than six months after the decennial census has been reported to the President of

the United States, divide the most populous township outside the city into eight subdistricts of contiguous and compact territory and as nearly equal in population as practicable. The subdistricts shall be numbered from one upward consecutively, which numbers shall, insofar as practicable, be retained upon reapportionment. Two members of the county committee, a man and a woman, shall be elected from each such subdistrict. **Six members of the committee, three men and three women, shall be elected from the second and third most populous townships outside the city.** Four members of the committee, two men and two women, shall be elected from **[**each**]** **the** other **[**township**]** **townships** outside the city.

3. In any city which has over three hundred thousand inhabitants, the major portion of which is located in a county with a charter form of government, for the portion of the city located within such county and notwithstanding section 82.110, RSMo, it shall be the duty of the election authority, not later than six months after the decennial census has been reported to the President of the United States, to divide such cities into not less than twenty-four nor more than twenty-five wards after each decennial census. Wards shall be so divided that the number of inhabitants in any ward shall not exceed any other ward of the city and within the same county, by more than five percent, measured by the number of the inhabitants determined at the preceding decennial census.

4. In each county of the first classification containing a portion, but not the major portion, of a city which has over three hundred thousand inhabitants, ten members of the committee, five men and five women, shall be elected from the district of each state representative wholly contained in the county in the following manner: Within six months after each legislative reapportionment, the election authority shall divide each legislative district wholly contained in the county into five committee districts of contiguous territory as compact and as nearly equal in population as may be; two members of the committee, a man and a woman, shall be elected from each committee district. The election authority shall divide the area of the county located within legislative districts not wholly contained in the county into similar committee districts; two members of the committee, a man and a woman, shall be elected from each committee district.

5. In each city not situated in a county, two members of the committee, a man and a woman, shall be elected from each ward.

6. In all counties with a charter form of government and a population of over nine hundred thousand inhabitants, the county committee persons shall be elected from each township. Within ninety days after August 28, 2002, and within six months after each decennial census has been reported to the President of the United States, the election authority shall divide the county into twenty-eight compact and contiguous townships containing populations as nearly equal in population to each other as is practical.

7. If any election authority has failed to adopt a reapportionment plan by the deadline set forth in this section, the county commission, sitting as a reapportionment commission, shall within sixty days after the deadline, adopt a reapportionment plan. Changes of township, ward, or precinct lines shall not affect the terms of office of incumbent party committee members elected from districts as constituted at the time of their election.

Approved June 24, 2004

HB 994 [HB 994]

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

Extends the expiration date for the Thirtieth Judicial Circuit surcharge to 2010 and removes the requirement that the laws must be adopted prior to January 1, 1997.

AN ACT to repeal section 488.2205, RSMo, and to enact in lieu thereof one new section relating to court costs in the thirtieth judicial circuit.

SECTION
A. Enacting clause.
488.2205. 30th judicial circuit to collect surcharge, when — use of funds — expiration.

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

SECTION A. ENACTING CLAUSE. — Section 488.2205, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 488.2205, to read as follows:

488.2205. 30TH JUDICIAL CIRCUIT TO COLLECT SURCHARGE, WHEN — USE OF FUNDS — EXPIRATION. — 1. In addition to all court fees and costs prescribed by law, a surcharge of up to ten dollars shall be assessed as costs in each court proceeding filed in any court within the thirtieth judicial circuit in all criminal cases including violations of any county or municipal ordinance or any violation of a criminal or traffic law of the state, including an infraction, except that no such surcharge shall be collected in any proceeding in any court when the proceeding or defendant has been dismissed by the court or when costs are to be paid by the state, county or municipality. For violations of the general criminal laws of the state or county ordinances, no such surcharge shall be collected unless it is authorized, by order, ordinance or resolution **[**adopted prior to January 1, 1997,**]** by the county government where the violation occurred. For violations of municipal ordinances, no such surcharge shall be collected unless it is authorized, by order, ordinance or resolution **[**adopted prior to January 1, 1997,**]** by the municipal government where the violation occurred. Such surcharges shall be collected and disbursed by the clerk of each respective court responsible for collecting court costs in the manner provided by sections 488.010 to 488.020, and shall be payable to the treasurer of the county where the violation occurred.

2. Each county shall use all funds received pursuant to this section only to pay for the costs associated with the construction, maintenance and operation of the county judicial facility and the circuit juvenile detention center including, but not limited to, utilities, maintenance and building security. The county shall maintain records identifying such operating costs, and any moneys not needed for the operating costs of the county judicial facility shall be transmitted quarterly to the general revenue fund of the county.

3. This section shall expire and be of no force and effect on and after January 1, **[**2005**]** **2010**.

Approved June 25, 2004

HB 996 [SCS HB 996 AND HB 1142 AND HCS HB 1201 AND HB 1489]

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

Changes various provisions related to motor vehicles.

AN ACT to repeal sections 301.010, 304.013, 304.156, 307.172, 307.366, 307.375, and 643.315, RSMo, and to enact in lieu thereof eight new sections relating to motor vehicles, with penalty provisions.

SECTION

A. Enacting clause.
301.010. Definitions.
304.013. All-terrain vehicles, prohibited on highways, rivers or streams of this state, exceptions, operational requirements — special permits — prohibited uses — penalty.
304.029. Operation of low-speed vehicles on highway, permitted when — exemptions.
304.156. Notice to towing company, owner or lienholder, when — storage charges, when authorized — search of vehicle for ownership documents — petition, determination of wrongful taking — possessory lien, new title, how issued — sale of abandoned property by municipality or county, requirements — towing company, new title when.
307.172. Altering passenger motor vehicle by raising front or rear of vehicle prohibited, when — bumpers front and rear required, when — violations not to pass inspection — penalty — certain vehicles exempt.
307.366. Motor vehicle emissions tested, when, mandated by Congress for nonattainment areas designated by governor — exempt vehicles — certificate — motor vehicle dealers may sell with or without inspection, procedure, penalty — fee — waiver — failure to pass, result — fund created, source, use and investment of funds — inspection stations, duties — highway patrol, duties — violation, penalty.
307.375. Inspection of school buses — items covered — violations, when corrected, notice to patrol — spot checks authorized.
643.315. Motor vehicles subject to program, when, exceptions — reciprocity with other states — dealer inspection, return of motor vehicle for failing inspection, options, violation.

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

SECTION A. ENACTING CLAUSE. — Sections 301.010, 304.013, 304.156, 307.172, 307.366, 307.375, and 643.315, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 301.010, 304.013, 304.029, 304.156, 307.172, 307.366, 307.375, and 643.315, to read as follows:

301.010. DEFINITIONS. — As used in this chapter and sections 304.010 to 304.040, 304.120 to 304.260, RSMo, and sections 307.010 to 307.175, RSMo, the following terms mean:

(1) "All-terrain vehicle", any motorized vehicle manufactured and used exclusively for off-highway use which is fifty inches or less in width, with an unladen dry weight of **[**six hundred**]** **one thousand** pounds or less, traveling on three, four or more low pressure tires, with a seat designed to be straddled by the operator, **or with a seat designed to carry more than one person,** and handlebars for steering control;

(2) "Automobile transporter", any vehicle combination designed and used specifically for the transport of assembled motor vehicles;

(3) "Axle load", the total load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes forty inches apart, extending across the full width of the vehicle;

(4) "Boat transporter", any vehicle combination designed and used specifically to transport assembled boats and boat hulls;

(5) "Body shop", a business that repairs physical damage on motor vehicles that are not owned by the shop or its officers or employees by mending, straightening, replacing body parts, or painting;

(6) "Bus", a motor vehicle primarily for the transportation of a driver and eight or more passengers but not including shuttle buses;

(7) "Commercial motor vehicle", a motor vehicle designed or regularly used for carrying freight and merchandise, or more than eight passengers but not including vanpools or shuttle buses;

(8) "Cotton trailer", a trailer designed and used exclusively for transporting cotton at speeds less than forty miles per hour from field to field or from field to market and return;

(9) "Dealer", any person, firm, corporation, association, agent or subagent engaged in the sale or exchange of new, used or reconstructed motor vehicles or trailers;

(10) "Director" or "director of revenue", the director of the department of revenue;

(11) "Driveaway operation", the movement of a motor vehicle or trailer by any person or motor carrier other than a dealer over any public highway, under its own power singly, or in a

fixed combination of two or more vehicles, for the purpose of delivery for sale or for delivery either before or after sale;

(12) "Dromedary", a box, deck, or plate mounted behind the cab and forward of the fifth wheel on the frame of the power unit of a truck tractor-semitrailer combination. A truck tractor equipped with a dromedary may carry part of a load when operating independently or in a combination with a semitrailer;

(13) "Farm tractor", a tractor used exclusively for agricultural purposes;

(14) "Fleet", any group of ten or more motor vehicles owned by the same owner;

(15) "Fleet vehicle", a motor vehicle which is included as part of a fleet;

(16) "Fullmount", a vehicle mounted completely on the frame of either the first or last vehicle in a saddlemount combination;

(17) "Gross weight", the weight of vehicle and/or vehicle combination without load, plus the weight of any load thereon;

(18) "Hail-damaged vehicle", any vehicle, the body of which has become dented as the result of the impact of hail;

(19) "Highway", any public thoroughfare for vehicles, including state roads, county roads and public streets, avenues, boulevards, parkways or alleys in any municipality;

(20) "Improved highway", a highway which has been paved with gravel, macadam, concrete, brick or asphalt, or surfaced in such a manner that it shall have a hard, smooth surface;

(21) "Intersecting highway", any highway which joins another, whether or not it crosses the same;

(22) "Junk vehicle", a vehicle which is incapable of operation or use upon the highways and has no resale value except as a source of parts or scrap, and shall not be titled or registered;

(23) "Kit vehicle", a motor vehicle assembled by a person other than a generally recognized manufacturer of motor vehicles by the use of a glider kit or replica purchased from an authorized manufacturer and accompanied by a manufacturer's statement of origin;

(24) "Land improvement contractors' commercial motor vehicle", any not-for-hire commercial motor vehicle the operation of which is confined to:

(a) An area that extends not more than a radius of one hundred miles from its home base of operations when transporting its owner's machinery, equipment, or auxiliary supplies to or from projects involving soil and water conservation, or to and from equipment dealers' maintenance facilities for maintenance purposes; or

(b) An area that extends not more than a radius of twenty-five miles from its home base of operations when transporting its owner's machinery, equipment, or auxiliary supplies to or from projects not involving soil and water conservation. Nothing in this subdivision shall be construed to prevent any motor vehicle from being registered as a commercial motor vehicle or local commercial motor vehicle;

(25) "Local commercial motor vehicle", a commercial motor vehicle whose operations are confined solely to a municipality and that area extending not more than fifty miles therefrom, or a commercial motor vehicle whose property-carrying operations are confined solely to the transportation of property owned by any person who is the owner or operator of such vehicle to or from a farm owned by such person or under the person's control by virtue of a landlord and tenant lease; provided that any such property transported to any such farm is for use in the operation of such farm;

(26) "Local log truck", a commercial motor vehicle which is registered pursuant to this chapter to operate as a motor vehicle on the public highways of this state, used exclusively in this state, used to transport harvested forest products, operated solely at a forested site and in an area extending not more than a fifty-mile radius from such site, carries a load with dimensions not in excess of twenty-five cubic yards per two axles with dual wheels, and is not operated on the national system of interstate and defense highways described in Title 23, Section 103(e) of the United States Code, does not have more than four axles and does not pull a trailer which has more than two axles. A local log truck may not exceed the limits required by law, however, if

the truck does exceed such limits as determined by the inspecting officer, then notwithstanding any other provisions of law to the contrary, such truck shall be subject to the weight limits required by such sections as licensed for eighty thousand pounds;

(27) "Local transit bus", a bus whose operations are confined wholly within a municipal corporation, or wholly within a municipal corporation and a commercial zone, as defined in section 390.020, RSMo, adjacent thereto, forming a part of a public transportation system within such municipal corporation and such municipal corporation and adjacent commercial zone;

(28) "Log truck", a vehicle which is not a local log truck and is used exclusively to transport harvested forest products to and from forested sites which is registered pursuant to this chapter to operate as a motor vehicle on the public highways of this state for the transportation of harvested forest products;

(29) "Major component parts", the rear clip, cowl, frame, body, cab, front-end assembly, and front clip, as those terms are defined by the director of revenue pursuant to rules and regulations or by illustrations;

(30) "Manufacturer", any person, firm, corporation or association engaged in the business of manufacturing or assembling motor vehicles, trailers or vessels for sale;

(31) "Mobile scrap processor", a business located in Missouri or any other state that comes onto a salvage site and crushes motor vehicles and parts for transportation to a shredder or scrap metal operator for recycling;

(32) "Motor change vehicle", a vehicle manufactured prior to August, 1957, which receives a new, rebuilt or used engine, and which used the number stamped on the original engine as the vehicle identification number;

(33) "Motor vehicle", any self-propelled vehicle not operated exclusively upon tracks, except farm tractors;

(34) "Motor vehicle primarily for business use", any vehicle other than a recreational motor vehicle, motorcycle, motortricycle, or any commercial motor vehicle licensed for over twelve thousand pounds:

(a) Offered for hire or lease; or

(b) The owner of which also owns ten or more such motor vehicles;

(35) "Motorcycle", a motor vehicle operated on two wheels;

(36) "Motorized bicycle", any two-wheeled or three-wheeled device having an automatic transmission and a motor with a cylinder capacity of not more than fifty cubic centimeters, which produces less than three gross brake horsepower, and is capable of propelling the device at a maximum speed of not more than thirty miles per hour on level ground;

(37) "Motortricycle", a motor vehicle operated on three wheels, including a motorcycle while operated with any conveyance, temporary or otherwise, requiring the use of a third wheel. A motortricycle shall not be included in the definition of all-terrain vehicle;

(38) "Municipality", any city, town or village, whether incorporated or not;

(39) "Nonresident", a resident of a state or country other than the state of Missouri;

(40) "Non-USA-std motor vehicle", a motor vehicle not originally manufactured in compliance with United States emissions or safety standards;

(41) "Operator", any person who operates or drives a motor vehicle;

(42) "Owner", any person, firm, corporation or association, who holds the legal title to a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this law;

(43) "Public garage", a place of business where motor vehicles are housed, stored, repaired, reconstructed or repainted for persons other than the owners or operators of such place of business;

(44) "Rebuilder", a business that repairs or rebuilds motor vehicles owned by the rebuilder, but does not include certificated common or contract carriers of persons or property;

(45) "Reconstructed motor vehicle", a vehicle that is altered from its original construction by the addition or substitution of two or more new or used major component parts, excluding motor vehicles made from all new parts, and new multistage manufactured vehicles;

(46) "Recreational motor vehicle", any motor vehicle designed, constructed or substantially modified so that it may be used and is used for the purposes of temporary housing quarters, including therein sleeping and eating facilities which are either permanently attached to the motor vehicle or attached to a unit which is securely attached to the motor vehicle. Nothing herein shall prevent any motor vehicle from being registered as a commercial motor vehicle if the motor vehicle could otherwise be so registered;

(47) "Rollback or car carrier", any vehicle specifically designed to transport wrecked, disabled or otherwise inoperable vehicles, when the transportation is directly connected to a wrecker or towing service;

(48) "Saddlemount combination", a combination of vehicles in which a truck or truck tractor tows one or more trucks or truck tractors, each connected by a saddle to the frame or fifth wheel of the vehicle in front of it. The "saddle" is a mechanism that connects the front axle of the towed vehicle to the frame or fifth wheel of the vehicle in front and functions like a fifth wheel kingpin connection. When two vehicles are towed in this manner the combination is called a double saddlemount combination. When three vehicles are towed in this manner, the combination is called a triple saddlemount combination;

(49) "Salvage dealer and dismantler", a business that dismantles used motor vehicles for the sale of the parts thereof, and buys and sells used motor vehicle parts and accessories;

(50) "Salvage vehicle", a motor vehicle, semitrailer or house trailer which, by reason of condition or circumstance, has been declared salvage, either by its owner, or by a person, firm, corporation, or other legal entity exercising the right of security interest in it, or by an insurance company as a result of settlement of a claim for loss due to damage or theft; or a vehicle, ownership of which is evidenced by a salvage title; or abandoned property which is titled pursuant to section 304.155, RSMo, or section 304.157, RSMo, and designated with the words "salvage/abandoned property";

(51) "School bus", any motor vehicle used solely to transport students to or from school or to transport students to or from any place for educational purposes;

(52) "Shuttle bus", a motor vehicle used or maintained by any person, firm, or corporation as an incidental service to transport patrons or customers of the regular business of such person, firm, or corporation to and from the place of business of the person, firm, or corporation providing the service at no fee or charge. Shuttle buses shall not be registered as buses or as commercial motor vehicles;

(53) "Special mobile equipment", every self-propelled vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including farm equipment, implements of husbandry, road construction or maintenance machinery, ditch-digging apparatus, stone crushers, air compressors, power shovels, cranes, graders, rollers, well-drillers and wood-sawing equipment used for hire, asphalt spreaders, bituminous mixers, bucket loaders, ditchers, leveling graders, finished machines, motor graders, road rollers, scarifiers, earth-moving carryalls, scrapers, drag lines, concrete pump trucks, rock-drilling and earth-moving equipment. This enumeration shall be deemed partial and shall not operate to exclude other such vehicles which are within the general terms of this section;

(54) "Specially constructed motor vehicle", a motor vehicle which shall not have been originally constructed under a distinctive name, make, model or type by a manufacturer of motor vehicles. The term "specially constructed motor vehicle" includes kit vehicles;

(55) "Stinger-steered combination", a truck tractor-semitrailer wherein the fifth wheel is located on a drop frame located behind and below the rearmost axle of the power unit;

(56) "Tandem axle", a group of two or more axles, arranged one behind another, the distance between the extremes of which is more than forty inches and not more than ninety-six inches apart;

(57) "Tractor", "truck tractor" or "truck-tractor", a self-propelled motor vehicle designed for drawing other vehicles, but not for the carriage of any load when operating independently. When attached to a semitrailer, it supports a part of the weight thereof;

(58) "Trailer", any vehicle without motive power designed for carrying property or passengers on its own structure and for being drawn by a self-propelled vehicle, except those running exclusively on tracks, including a semitrailer or vehicle of the trailer type so designed and used in conjunction with a self-propelled vehicle that a considerable part of its own weight rests upon and is carried by the towing vehicle. The term "trailer" shall not include cotton trailers as defined in subdivision (8) of this section and shall not include manufactured homes as defined in section 700.010, RSMo;

(59) "Truck", a motor vehicle designed, used, or maintained for the transportation of property;

(60) "Truck-tractor semitrailer-semitrailer", a combination vehicle in which the two trailing units are connected with a B-train assembly which is a rigid frame extension attached to the rear frame of a first semitrailer which allows for a fifth-wheel connection point for the second semitrailer and has one less articulation point than the conventional "A dolly" connected truck-tractor semitrailer-trailer combination;

(61) "Truck-trailer boat transporter combination", a boat transporter combination consisting of a straight truck towing a trailer using typically a ball and socket connection with the trailer axle located substantially at the trailer center of gravity rather than the rear of the trailer but so as to maintain a downward force on the trailer tongue;

(62) "Used parts dealer", a business that buys and sells used motor vehicle parts or accessories, but not including a business that sells only new, remanufactured or rebuilt parts. "Business" does not include isolated sales at a swap meet of less than three days;

(63) "Vanpool", any van or other motor vehicle used or maintained by any person, group, firm, corporation, association, city, county or state agency, or any member thereof, for the transportation of not less than eight nor more than forty-eight employees, per motor vehicle, to and from their place of employment; however, a vanpool shall not be included in the definition of the term "bus" or "commercial motor vehicle" as defined by subdivisions (6) and (7) of this section, nor shall a vanpool driver be deemed a "chauffeur" as that term is defined by section 302.010, RSMo; nor shall use of a vanpool vehicle for ride-sharing arrangements, recreational, personal, or maintenance uses constitute an unlicensed use of the motor vehicle, unless used for monetary profit other than for use in a ride-sharing arrangement;

(64) "Vehicle", any mechanical device on wheels, designed primarily for use, or used, on highways, except motorized bicycles, vehicles propelled or drawn by horses or human power, or vehicles used exclusively on fixed rails or tracks, or cotton trailers or motorized wheelchairs operated by handicapped persons;

(65) "Wrecker" or "tow truck", any emergency commercial vehicle equipped, designed and used to assist or render aid and transport or tow disabled or wrecked vehicles from a highway, road, street or highway rights-of-way to a point of storage or repair, including towing a replacement vehicle to replace a disabled or wrecked vehicle;

(66) "Wrecker or towing service", the act of transporting, towing or recovering with a wrecker, tow truck, rollback or car carrier any vehicle not owned by the operator of the wrecker, tow truck, rollback or car carrier for which the operator directly or indirectly receives compensation or other personal gain.

304.013. ALL-TERRAIN VEHICLES, PROHIBITED ON HIGHWAYS, RIVERS OR STREAMS OF THIS STATE, EXCEPTIONS, OPERATIONAL REQUIREMENTS — SPECIAL PERMITS — PROHIBITED USES — PENALTY. — 1. No person shall operate an all-terrain vehicle, as defined in section 301.010, RSMo, upon the highways of this state, except as follows:

(1) All-terrain vehicles owned and operated by a governmental entity for official use;

(2) All-terrain vehicles operated for agricultural purposes or industrial on-premises purposes between the official sunrise and sunset on the day of operation;

(3) All-terrain vehicles operated by handicapped persons for short distances occasionally only on the state's secondary roads when operated between the hours of sunrise and sunset;

(4) Governing bodies of cities may issue special permits to licensed drivers for special uses of all-terrain vehicles on highways within the city limits. Fees of fifteen dollars may be collected and retained by cities for such permits;

(5) Governing bodies of counties may issue special permits to licensed drivers for special uses of all-terrain vehicles on county roads within the county. Fees of fifteen dollars may be collected and retained by the counties for such permits.

2. No person shall operate an off-road vehicle within any stream or river in this state, except that off-road vehicles may be operated within waterways which flow within the boundaries of land which an off-road vehicle operator owns, or for agricultural purposes within the boundaries of land which an off-road vehicle operator owns or has permission to be upon, or for the purpose of fording such stream or river of this state at such road crossings as are customary or part of the highway system. All law enforcement officials or peace officers of this state and its political subdivisions or department of conservation agents or department of natural resources park rangers shall enforce the provisions of this subsection within the geographic area of their jurisdiction.

3. A person operating an all-terrain vehicle on a highway pursuant to an exception covered in this section shall have a valid operator's or chauffeur's license, except that a handicapped person operating such vehicle pursuant to subdivision (3) of subsection 1 of this section, but shall not be required to have passed an examination for the operation of a motorcycle, and the vehicle shall be operated at speeds of less than thirty miles per hour. When operated on a highway, an all-terrain vehicle shall have a bicycle safety flag, which extends not less than seven feet above the ground, attached to the rear of the vehicle. The bicycle safety flag shall be triangular in shape with an area of not less than thirty square inches and shall be day-glow in color.

4. No persons shall operate an all-terrain vehicle:

(1) In any careless way so as to endanger the person or property of another;

(2) While under the influence of alcohol or any controlled substance;

(3) Without a securely fastened safety helmet on the head of an individual who operates an all-terrain vehicle or who is being towed or otherwise propelled by an all-terrain vehicle, unless the individual is at least eighteen years of age.

5. No operator of an all-terrain vehicle shall carry a passenger, except for agricultural purposes. **The provisions of this subsection shall not apply to any all-terrain vehicle in which the seat of such vehicle is designed to carry more than one person.**

6. A violation of this section shall be a class C misdemeanor. In addition to other legal remedies, the attorney general or county prosecuting attorney may institute a civil action in a court of competent jurisdiction for injunctive relief to prevent such violation or future violations and for the assessment of a civil penalty not to exceed one thousand dollars per day of violation.

304.029. OPERATION OF LOW-SPEED VEHICLES ON HIGHWAY, PERMITTED WHEN — EXEMPTIONS. — 1. Notwithstanding any other law to the contrary, a low-speed vehicle may be operated upon a highway in the state if it meets the requirements of this section. Every person operating a low-speed vehicle shall be granted all the rights and shall be subject to all the duties applicable to the driver of any other motor vehicle except as to the special regulations in this section and except as to those provisions which by their nature can have no application.

2. The operator of a low-speed vehicle shall observe all traffic laws and local ordinances regarding the rules of the road. A low-speed vehicle shall not be operated on a street or a highway with a posted speed limit greater than thirty-five miles per hour.

The provisions of this subsection shall not prohibit a low-speed vehicle from crossing a street or highway with a posted speed limit greater than thirty-five miles per hour.

3. A low-speed vehicle shall be exempt from the requirements of sections 307.350 to 307.402, RSMo, for purposes of titling and registration. Low-speed vehicles shall comply with the standards in 49 C.F.R. 571.500, as amended.

4. Every operator of a low-speed vehicle shall maintain financial responsibility on such low-speed vehicle as required by chapter 303, RSMo, if the low-speed vehicle is to be operated upon the highways of this state.

5. Each person operating a low-speed vehicle on a highway in this state shall possess a valid driver's license issued pursuant to chapter 302, RSMo.

6. For purposes of this section a "low-speed vehicle" shall have the meaning ascribed to it in 49 C.F.R., section 571.3, as amended.

7. All low-speed vehicles shall be manufactured in compliance with the National Highway Traffic Safety Administration standards for low-speed vehicles in 49 C.F.R. 571.500, as amended.

8. Nothing in this section shall prevent county or municipal governments from adopting more stringent local ordinances governing low-speed vehicle operation if the governing body of the county or municipality determines that such ordinances are necessary in the interest of public safety. The department of transportation may prohibit the operation of low-speed vehicles on any highway under its jurisdiction if it determines that the prohibition is necessary in the interest of public safety.

304.156. NOTICE TO TOWING COMPANY, OWNER OR LIENHOLDER, WHEN — STORAGE CHARGES, WHEN AUTHORIZED — SEARCH OF VEHICLE FOR OWNERSHIP DOCUMENTS — PETITION, DETERMINATION OF WRONGFUL TAKING — POSSESSORY LIEN, NEW TITLE, HOW ISSUED — SALE OF ABANDONED PROPERTY BY MUNICIPALITY OR COUNTY, REQUIREMENTS — TOWING COMPANY, NEW TITLE WHEN. — 1. Within five working days of receipt of the crime inquiry and inspection report under section 304.155 or the abandoned property report under section 304.157, the director of revenue shall search the records of the department of revenue, or initiate an inquiry with another state, if the evidence presented indicated the abandoned property was registered or titled in another state, to determine the name and address of the owner and lienholder, if any. After ascertaining the name and address of the owner and lienholder, if any, the department shall, within fifteen working days, notify the towing company. Any towing company which comes into possession of abandoned property pursuant to section 304.155 or 304.157 and who claims a lien for recovering, towing or storing abandoned property shall give notice to the title owner and to all persons claiming a lien thereon, as disclosed by the records of the department of revenue or of a corresponding agency in any other state. The towing company shall notify the owner and any lienholder within ten business days of the date of mailing indicated on the notice sent by the department of revenue, by certified mail, return receipt requested. The notice shall contain the following:

(1) The name, address and telephone number of the storage facility;

(2) The date, reason and place from which the abandoned property was removed;

(3) A statement that the amount of the accrued towing, storage and administrative costs are the responsibility of the owner, and that storage and/or administrative costs will continue to accrue as a legal liability of the owner until the abandoned property is redeemed;

(4) A statement that the storage firm claims a possessory lien for all such charges;

(5) A statement that the owner or holder of a valid security interest of record may retake possession of the abandoned property at any time during business hours by proving ownership or rights to a secured interest and paying all towing and storage charges;

(6) A statement that, should the owner consider that the towing or removal was improper or not legally justified, the owner has a right to request a hearing as provided in this section to contest the propriety of such towing or removal;

(7) A statement that if the abandoned property remains unclaimed for thirty days from the date of mailing the notice, title to the abandoned property will be transferred to the person or firm in possession of the abandoned property free of all prior liens; and

(8) A statement that any charges in excess of the value of the abandoned property at the time of such transfer shall remain a liability of the owner.

2. A towing company may only assess reasonable storage charges for abandoned property towed without the consent of the owner. Reasonable storage charges shall not exceed the charges for vehicles which have been towed with the consent of the owner on a negotiated basis. Storage charges may be assessed only for the time in which the towing company complies with the procedural requirements of sections 304.155 to 304.158.

3. In the event that the records of the department of revenue fail to disclose the name of the owner or any lienholder of record, the department shall notify the towing company which shall attempt to locate documents or other evidence of ownership on or within the abandoned property itself. The towing company must certify that a physical search of the abandoned property disclosed that no ownership documents were found and a good faith effort has been made. For purposes of this section, "good faith effort" means that the following checks have been performed by the company to establish the prior state of registration and title:

(1) Check of the abandoned property for any type of license plates, license plate record, temporary permit, inspection sticker, decal or other evidence which may indicate a state of possible registration and title;

(2) Check the law enforcement report for a license plate number or registration number if the abandoned property was towed at the request of a law enforcement agency;

(3) Check the tow ticket/report of the tow truck operator to see if a license plate was on the abandoned property at the beginning of the tow, if a private tow; and

(4) If there is no address of the owner on the impound report, check the law enforcement report to see if an out-of-state address is indicated on the driver license information.

4. If no ownership information is discovered, the director of revenue shall be notified in writing and title obtained in accordance with subsection 7 of this section.

5. (1) The owner of the abandoned property removed pursuant to the provisions of section 304.155 or 304.157 or any person claiming a lien, other than the towing company, within ten days after the receipt of notification from the towing company pursuant to subsection 1 of this section may file a petition in the associate circuit court in the county where the abandoned property is stored to determine if the abandoned property was wrongfully taken or withheld from the owner. The petition shall name the towing company among the defendants. The petition may also name the agency ordering the tow or the owner, lessee or agent of the real property from which the abandoned property was removed. The director of revenue shall not be a party to such petition but a copy of the petition shall be served on the director of revenue who shall not issue title to such abandoned property pursuant to this section until the petition is finally decided.

(2) Upon filing of a petition in the associate circuit court, the owner or lienholder may have the abandoned property released upon posting with the court a cash or surety bond or other adequate security equal to the amount of the charges for towing and storage to ensure the payment of such charges in the event he does not prevail. Upon the posting of the bond and the payment of the applicable fees, the court shall issue an order notifying the towing company of the posting of the bond and directing the towing company to release the abandoned property. At the time of such release, after reasonable inspection, the owner or lienholder shall give a receipt to the towing company reciting any claims for loss or damage to the abandoned property or the contents thereof.

(3) Upon determining the respective rights of the parties, the final order of the court shall provide for immediate payment in full of recovery, towing, and storage fees by the abandoned property owner or lienholder or the owner, lessee, or agent thereof of the real property from which the abandoned property was removed.

6. A towing and storage lien shall be enforced as provided in subsection 7 of this section.

7. Thirty days after the notification form has been mailed to the abandoned property owner and holder of a security agreement and the property is unredeemed and no satisfactory arrangement has been made with the lienholder in possession for continued storage, and the owner or holder of a security agreement has not requested a hearing as provided in subsection 5 of this section, the lienholder in possession may apply to the director of revenue for a certificate. The application for title shall be accompanied by:

(1) An affidavit from the lienholder in possession that he has been in possession of the abandoned property for at least thirty days and the owner of the abandoned property or holder of a security agreement has not made arrangements for payment of towing and storage charges;

(2) An affidavit that the lienholder in possession has not been notified of any application for hearing as provided in this section;

(3) A copy of the abandoned property report or crime inquiry and inspection report;

(4) A copy of the thirty-day notice given by certified mail to any owner and person holding a valid security interest and a copy of the certified mail receipt indicating that the owner and lienholder of record was sent a notice as required in this section; and

(5) A copy of the envelope or mailing container showing the address and postal markings indicating that the notice was "not forwardable" or "address unknown".

8. If notice to the owner and holder of a security agreement has been returned marked "not forwardable" or "addressee unknown", the lienholder in possession shall comply with subsection 3 of this section.

9. Any municipality or county may adopt an ordinance regulating the removal and sale of abandoned property provided such ordinance is consistent with sections 304.155 to 304.158**, and, for a home rule city with more than four hundred thousand inhabitants and located in more than one county, includes the following provisions:**

(1) That the department of revenue records must be searched to determine the registered owner or lienholder of the abandoned property;

(2) That if a registered owner or lienholder is disclosed in the records, that the owner and lienholder or owner or lienholder are mailed a notice by the governmental agency, by U.S. mail, advising of the towing and impoundment;

(3) That if the vehicle is older than six years and more than fifty percent damaged by collision, fire, or decay, and has a fair market value of less than two hundred dollars as determined by using any nationally recognized appraisal book or method, it must be held no less than ten days after the notice is sent pursuant to this subsection before being sold to a licensed salvage or scrap business; provided however where a title is required under this chapter an affidavit from a certified appraiser attesting that the value of the vehicle is less than two hundred dollars.

(4) That all other vehicles must be held no less than thirty days after the notice is sent pursuant to this subsectionbefore they may be sold.

10. Any municipality or county which has physical possession of the abandoned property and which sells abandoned property in accordance with a local ordinance may transfer ownership by means of a bill of sale signed by the municipal or county clerk or deputy and sealed with the official municipal or county seal. Such bill of sale shall contain the make and model of the abandoned property, the complete abandoned property identification number and the odometer reading of the abandoned property if available and shall be lawful proof of ownership for any dealer registered under the provisions of section 301.218, RSMo, or section 301.560, RSMo, or for any other person. Any dealer or other person purchasing such property from a municipality or county shall apply within thirty days of purchase for a certificate. Anyone convicted of a violation of this section shall be guilty of an infraction.

11. Any persons who have towed abandoned property prior to August 28, 1996, may, until January 1, 2000, apply to the department of revenue for a certificate. The application shall be accompanied by:

(1) A notarized affidavit explaining the circumstances by which the abandoned property came into their possession, including the name of the owner or possessor of real property from which the abandoned property was removed;

(2) The date of the removal;

(3) The current location of the abandoned property;

(4) An inspection of the abandoned property as prescribed by the director; and

(5) A copy of the thirty-day notice given by certified mail to any owner and person holding a valid security interest of record and a copy of the certified mail receipt.

12. If the director is satisfied with the genuineness of the application and supporting documents submitted pursuant to this section, the director shall issue one of the following:

(1) An original certificate of title if the vehicle owner has obtained a vehicle examination certificate as provided in section 301.190, RSMo, which indicates that the vehicle was not previously in a salvaged condition or rebuilt;

(2) An original certificate of title designated as prior salvage if the vehicle examination certificate as provided in section 301.190, RSMo, indicates the vehicle was previously in a salvage condition or rebuilt;

(3) A salvage certificate of title designated with the words "salvage/abandoned property" or junking certificate based on the condition of the abandoned property as stated in the abandoned property report or crime inquiry and inspection report;

(4) Notwithstanding the provisions of section 301.573, RSMo, to the contrary, if satisfied with the genuineness of the application and supporting documents, the director shall issue an original title to abandoned property previously issued a salvage title as provided in this section, if the vehicle examination certificate as provided in section 301.190, RSMo, does not indicate the abandoned property was previously in a salvage condition or rebuilt.

13. If abandoned property is insured and the insurer of property regards the property as a total loss and the insurer satisfies a claim by the owner for the property, then the insurer or lienholder shall claim and remove the property from the storage facility or make arrangements to transfer the title, and such transfer of title subject to agreement shall be in complete satisfaction of all claims for towing and storage, to the towing company or storage facility. The owner of the abandoned vehicle, lienholder or insurer, to the extent the vehicle owner's insurance policy covers towing and storage charges, shall pay reasonable fees assessed by the towing company and storage facility. The property shall be claimed and removed or title transferred to the towing company or storage facility within thirty days of the date that the insurer paid a claim for the total loss of the property or is notified as to the location of the abandoned property, whichever is the later event. Upon request, the insurer of the property shall supply the towing company and storage facility with the name, address and phone number of the insurance company and of the insured and with a statement regarding which party is responsible for the payment of towing and storage charges under the insurance policy.

307.172. ALTERING PASSENGER MOTOR VEHICLE BY RAISING FRONT OR REAR OF VEHICLE PROHIBITED, WHEN — BUMPERS FRONT AND REAR REQUIRED, WHEN — VIOLATIONS NOT TO PASS INSPECTION — PENALTY — CERTAIN VEHICLES EXEMPT. — 1. No person shall operate any passenger motor vehicle upon the public streets or highways of this state, the body of which has been altered in such a manner that the front or rear of the vehicle is raised at such an angle as to obstruct the vision of the operator of the street or highway in front or to the rear of the vehicle.

2. Every motor vehicle which is licensed in this state and operated upon the public streets or highways of this state shall be equipped with front and rear bumpers if such vehicle was equipped with bumpers as standard equipment. This subsection shall not apply to motor vehicles designed or modified primarily for off-highway purposes while such vehicles are in tow or to motorcycles or motor driven cycles, or to motor vehicles registered as historic motor vehicles when the original design of such vehicles did not include bumpers nor shall the provisions of this

subsection prohibit the use of drop bumpers. The superintendent of the Missouri state highway patrol shall adopt rules and regulations relating to bumper standards. Maximum bumper heights of both the front and rear bumpers of motor vehicles shall be determined by weight category of gross vehicle weight rating (GVWR) measured from a level surface to the highest point of the bottom of the bumper when the vehicle is unloaded and the tires are inflated to the manufacturer's recommended pressure. Maximum bumper heights are as follows:

	Maximum front bumper height	Maximum rear bumper height
Motor vehicles except commercial motor vehicles	22 inches	22 inches
commercial motor vehicles (GVWR)		
4,500 lbs and under	24 inches	26 inches
4,501 lbs through 7,500 lbs	27 inches	29 inches
7,501 lbs through 9,000 lbs	28 inches	30 inches
9001 lbs through 11,500 lbs	**29 inches**	**31 inches**

3. A motor vehicle in violation of this section shall not be approved during any motor vehicle safety inspection required pursuant to sections 307.350 to 307.390.

4. Any person knowingly violating the provisions of this section is guilty of a class C misdemeanor.

307.366. MOTOR VEHICLE EMISSIONS TESTED, WHEN, MANDATED BY CONGRESS FOR NONATTAINMENT AREAS DESIGNATED BY GOVERNOR — EXEMPT VEHICLES — CERTIFICATE — MOTOR VEHICLE DEALERS MAY SELL WITH OR WITHOUT INSPECTION, PROCEDURE, PENALTY — FEE — WAIVER — FAILURE TO PASS, RESULT — FUND CREATED, SOURCE, USE AND INVESTMENT OF FUNDS — INSPECTION STATIONS, DUTIES — HIGHWAY PATROL, DUTIES — VIOLATION, PENALTY. — 1. This enactment of the emissions inspection program is a mandate of the United States Congress pursuant to the federal Clean Air Act, as amended, 42 U.S.C. 7401, et seq. In any portion of an area designated by the governor as a nonattainment area, as defined in the federal Clean Air Act, as amended, 42 U.S.C.A. Section 7501, and located within the area described in subsection 1 of section 643.305, RSMo, certain motor vehicles shall be tested and approved prior to sale or transfer and biennially thereafter to determine that the emissions system is functioning within the emission standards as specified by the Missouri air conservation commission and as required to attain the national health standards for air quality. For such biennial testing, any such vehicle manufactured as an even-numbered model year vehicle shall be tested and approved in each even-numbered calendar year and any such vehicle manufactured as an odd-numbered model year vehicle shall be tested and approved in each odd-numbered calendar year. The motor vehicles to be tested shall be all motor vehicles except those specifically exempted pursuant to subdivisions (1) to (3) of subsection 1 of section 307.350 and those exempted pursuant to this section.

2. The provisions of this section shall not apply to:

(1) Motor vehicles with a manufacturer's gross vehicle weight rating in excess of eight thousand five hundred pounds;

(2) Motorcycles and motortricycles;

(3) Model year vehicles **manufactured twenty-six years or more** prior to **[**1971**] the current model year**;

(4) School buses;

(5) Diesel-powered vehicles;

(6) Motor vehicles registered in the area covered by this section but which are based and operated exclusively in an area of this state not subject to the provisions of this section if the owner of such vehicle presents to the director a sworn affidavit that the vehicle will be based and operated outside the covered area;

(7) New and unused motor vehicles, of model years of the current calendar year and of any calendar year within two years of such calendar year, which have an odometer reading of less than six thousand miles at the time of original sale by a motor vehicle manufacturer or licensed motor vehicle dealer to the first user; and

(8) Motor vehicles owned by a person who resides in a county of the first classification without a charter form of government with a population of less than one hundred thousand inhabitants according to the most recent decennial census who has completed an emission inspection pursuant to section 643.315, RSMo.

Each official inspection station which conducts emissions inspections within the area referred to in subsection 1 of this section shall indicate the gross vehicle weight rating of the motor vehicle on the inspection certificate if the vehicle is exempt from the emissions inspection pursuant to subdivision (1) of this subsection.

3. (1) At the time of sale, a licensed motor vehicle dealer, as defined in section 301.550, RSMo, may choose to sell a motor vehicle subject to the inspection requirements of this section either:

(a) With prior inspection and approval as provided in subdivision (2) of this subsection; or

(b) Without prior inspection and approval as provided in subdivision (3) of this subsection.

(2) If the dealer chooses to sell the vehicle with prior inspection and approval, the dealer shall disclose, in writing, prior to sale, whether the vehicle obtained approval by meeting the emissions standards established pursuant to this section or by obtaining a waiver pursuant to subsection 6 of this section. A vehicle sold pursuant to this subdivision by a licensed motor vehicle dealer shall be inspected and approved within the one hundred twenty days immediately preceding the date of sale, and, for the purpose of registration of such vehicle, such inspection shall be considered timely.

(3) If the dealer chooses to sell the vehicle without prior inspection and approval, the purchaser may return the vehicle within ten days of the date of purchase, provided that the vehicle has no more than one thousand additional miles since the time of sale, if the vehicle fails, upon inspection, to meet the emissions standards specified by the commission and the dealer shall have the vehicle inspected and approved without the option for a waiver of the emissions standard and return the vehicle to the purchaser with a valid emissions certificate and sticker within five working days or the purchaser and dealer may enter into any other mutually acceptable agreement. If the dealer chooses to sell the vehicle without prior inspection and approval, the dealer shall disclose conspicuously on the sales contract and bill of sale that the purchaser has the option to return the vehicle within ten days, provided that the vehicle has no more than one thousand additional miles since the time of sale, to have the dealer repair the vehicle and provide an emissions certificate and sticker within five working days if the vehicle fails, upon inspection, to meet the emissions standards established by the commission, or enter into any mutually acceptable agreement with the dealer. A violation of this subsection shall be an unlawful practice as defined in section 407.020, RSMo. No emissions inspection shall be required pursuant to this section for the sale of any motor vehicle which may be sold without a certificate of inspection and approval, as provided pursuant to subsection 2 of section 307.380.

4. A fee not to exceed twenty-four dollars may be charged for an automobile emissions and air pollution control inspection in order to attain the national health standards for air quality. Such fee shall be conspicuously posted on the premises of each such inspection station. The official emissions inspection station shall issue a certificate of inspection and an approval sticker or seal certifying the emissions system is functioning properly. The certificate or approval issued shall bear the legend: "This cost is mandated by your United States Congress.". No owner shall be charged an additional fee after having corrected defects or unsafe conditions in the

automobile's emissions and air pollution control system if the reinspection is completed within twenty consecutive days, excluding Saturdays, Sundays and holidays, and if such follow-up inspection is made by the station making the initial inspection.

5. The air conservation commission shall establish, by rule, a waiver amount which may be lower for older model vehicles and which shall be no greater than seventy-five dollars for model year vehicles prior to 1981 and no greater than two hundred dollars for model year vehicles of 1981 and all subsequent model years.

6. An owner whose vehicle fails upon reinspection to meet the emission standards specified by the Missouri air conservation commission shall be issued a certificate of inspection and an approval sticker or seal by the official emissions inspection station that provided the inspection if the vehicle owner furnishes a complete, signed affidavit satisfying the requirements of this subsection and the cost of emissions repairs and adjustments is equal to or greater than the waiver amount established by the air conservation commission pursuant to this section. The air conservation commission shall establish, by rule, a form and a procedure for verifying that repair and adjustment was performed on a failing vehicle prior to the granting of a waiver and approval. The waiver form established pursuant to this subsection shall be an affidavit requiring:

(1) A statement signed by the repairer that the specified work was done and stating the itemized charges for the work; and

(2) A statement signed by the inspector that an inspection of the vehicle verified, to the extent practical, that the specified work was done.

7. The department of revenue shall require evidence of the inspection and approval required by this section in issuing the motor vehicle annual registration in conformity with the procedure required by sections 307.350 to 307.370.

8. Each emissions inspection station located in the area described in subsection 1 of this section shall purchase from the highway patrol sufficient forms and stickers or other devices to evidence approval of the motor vehicle's emissions control system. In addition, emissions inspection stations may be required to purchase forms for use in automated analyzers from outside vendors of the inspection station's choice. The forms must comply with state regulations.

9. In addition to the fee collected by the superintendent pursuant to subsection 5 of section 307.365, the highway patrol shall collect a fee of seventy-five cents for each automobile emissions certificate issued to the applicable official emissions inspection stations, except that no charge shall be made for certificates of inspection issued to official emissions inspection stations operated by governmental entities. All fees collected by the superintendent pursuant to this section shall be deposited in the state treasury to the credit of the "Missouri Air Pollution Control Fund", which is hereby created.

10. The moneys collected and deposited in the Missouri air pollution control fund pursuant to this section shall be allocated on an equal basis to the Missouri state highway patrol and the Missouri department of natural resources, air pollution control program, and shall be expended subject to appropriation by the general assembly for the administration and enforcement of sections 307.350 to 307.390. The unexpended balance in the fund at the end of each appropriation period shall not be transferred to the general revenue fund, except as directed by the general assembly by appropriation, and the provisions of section 33.080, RSMo, relating to the transfer of funds to the general revenue fund at the end of the biennium, shall not apply to this fund. The moneys in the fund shall be invested by the treasurer as provided by law, and the interest shall be credited to the fund.

11. The superintendent of the Missouri state highway patrol shall issue such rules and regulations as are necessary to determine whether a motor vehicle's emissions control system is operating as required by subsection 1 of this section, and the superintendent and the state highways and transportation commission shall use their best efforts to seek federal funds from which reimbursement grants may be made to those official inspection stations which acquire and use the necessary testing equipment which will be required to perform the tests required by the provisions of this section.

12. The provisions of this section shall not apply in any county for any time period during which the air conservation commission has established a motor vehicle emissions inspection program pursuant to sections 643.300 to 643.355, RSMo, for such county, except where motor vehicle owners have the option of biennial testing pursuant to chapter 643, RSMo. In counties where such option is available, the emissions inspection may be conducted in stations conducting only an emissions inspection under contract to the state.

13. Notwithstanding the provisions of section 307.390, violation of this section shall be deemed a class C misdemeanor.

307.375. INSPECTION OF SCHOOL BUSES — ITEMS COVERED — VIOLATIONS, WHEN CORRECTED, NOTICE TO PATROL — SPOT CHECKS AUTHORIZED. — 1. The owner of every bus used to transport children to or from school in addition to any other inspection required by law shall submit the vehicle to an official inspection station, and obtain a certificate of inspection, sticker, seal or other device annually, but the inspection of the vehicle shall not be made more than sixty days prior to operating the vehicle during the school year. The inspection shall, in addition to the inspection of the mechanism and equipment required for all motor vehicles under the provisions of sections 307.350 to 307.390, include an inspection to ascertain that the following items are correctly fitted, adjusted, and in good working condition:

(1) All mirrors, including crossview, inside, and outside;

(2) The front and rear warning flashers;

(3) The stop signal arm;

(4) The crossing control arm on public school buses required to have them pursuant to section 304.050, RSMo;

(5) The rear bumper to determine that it is flush with the bus so that hitching of rides cannot occur;

(6) The exhaust tailpipe shall be flush with or may extend not more than two inches beyond the perimeter of the body or bumper;

(7) The emergency doors and exits to determine them to be unlocked and easily opened as required;

(8) The lettering and signing on the front, side and rear of the bus;

(9) The service door;

(10) The step treads;

(11) The aisle mats or aisle runners;

(12) The emergency equipment which shall include as a minimum, a first aid kit, flares or fuses, and a fire extinguisher;

(13) The seats, including a determination that they are securely fastened to the floor;

(14) The emergency door buzzer;

(15) All hand hold grips;

(16) The interior glazing of the bus.

2. In addition to the inspection required by subsection 1 of this section, the Missouri state highway patrol shall conduct an inspection after February first of each school year of all vehicles required to be marked as school buses under section 304.050, RSMo. This inspection shall be conducted by the Missouri highway patrol in cooperation with the department of elementary and secondary education and shall include, as a minimum, items in subsection 1 of this section and the following:

(1) The driver seat belts;

(2) The heating and defrosting systems;

(3) The reflectors;

(4) The bus steps;

(5) The aisles**;**

(6) The frame.

3. If, upon inspection, conditions which violate the standards in subsection 2 of this section are found, the owner or operator shall have them corrected in ten days and notify the superintendent of the Missouri state highway patrol or those persons authorized by the superintendent. If the defects or unsafe conditions found constitute an immediate danger, the bus shall not be used until corrections are made and the superintendent of the Missouri state highway patrol or those persons authorized by the superintendent are notified.

4. The Missouri highway patrol may inspect any school bus at any time and if such inspection reveals a deficiency affecting the safe operation of the bus, the provisions of subsection 3 of this section shall be applicable.

643.315. MOTOR VEHICLES SUBJECT TO PROGRAM, WHEN, EXCEPTIONS — RECIPROCITY WITH OTHER STATES — DEALER INSPECTION, RETURN OF MOTOR VEHICLE FOR FAILING INSPECTION, OPTIONS, VIOLATION. — 1. Except as provided in sections 643.300 to 643.355, all motor vehicles which are domiciled, registered or primarily operated in an area for which the commission has established a motor vehicle emissions inspection program pursuant to sections 643.300 to 643.355, which may include all motor vehicles owned by residents of a county of the first classification without a charter form of government with a population of less than one hundred thousand inhabitants according to the most recent decennial census who have chosen to participate in such a program in lieu of the provisions of section 307.366, RSMo, shall be inspected and approved prior to sale or transfer. In addition, any such vehicle manufactured as an even-numbered model year vehicle shall be inspected and approved under the emissions inspection program established pursuant to sections 643.300 to 643.355 in each even-numbered calendar year and any such vehicle manufactured as an odd-numbered model year vehicle shall be inspected and approved under the emissions inspection program established pursuant to sections 643.300 to 643.355 in each odd-numbered calendar year. All motor vehicles subject to the inspection requirements of sections 643.300 to 643.355 shall display a valid emissions inspection sticker, and when applicable, a valid emissions inspection certificate shall be presented at the time of registration or registration renewal of such motor vehicle.

2. No emission standard established by the commission for a given make and model year shall exceed the lesser of the following:

(1) The emission standard for that vehicle model year as established by the United States Environmental Protection Agency; or

(2) The emission standard for that vehicle make and model year as established by the vehicle manufacturer.

3. The inspection requirement of subsection 1 of this section shall apply to all motor vehicles except:

(1) Motor vehicles with a manufacturer's gross vehicle weight rating in excess of eight thousand five hundred pounds;

(2) Motorcycles and motortricycles if such vehicles are exempted from the motor vehicle emissions inspection under federal regulation and approved by the commission by rule;

(3) Model year vehicles **manufactured twenty-six years or more** prior to **[**1971**] the current model year**;

(4) Vehicles which are powered exclusively by electric or hydrogen power or by fuels other than gasoline which are exempted from the motor vehicle emissions inspection under federal regulation and approved by the commission by rule;

(5) Motor vehicles registered in an area subject to the inspection requirements of sections 643.300 to 643.355 which are domiciled and operated exclusively in an area of the state not subject to the inspection requirements of sections 643.300 to 643.355, but only if the owner of such vehicle presents to the department an affidavit that the vehicle will be operated exclusively in an area of the state not subject to the inspection requirements of sections 643.300 to 643.355

for the next twenty-four months, and the owner applies for and receives a waiver which shall be presented at the time of registration or registration renewal;

(6) New and unused motor vehicles, of model years of the current calendar year and of any calendar year within two years of such calendar year, which have an odometer reading of less than six thousand miles at the time of original sale by a motor vehicle manufacturer or licensed motor vehicle dealer to the first user; and

(7) Historic motor vehicles registered pursuant to section 301.131, RSMo.

4. The commission may, by rule, allow inspection reciprocity with other states having equivalent or more stringent testing and waiver requirements than those established pursuant to sections 643.300 to 643.355.

5. (1) At the time of sale, a licensed motor vehicle dealer, as defined in section 301.550, RSMo, may choose to sell a motor vehicle subject to the inspection requirements of sections 643.300 to 643.355 either:

(a) With prior inspection and approval as provided in subdivision (2) of this subsection; or

(b) Without prior inspection and approval as provided in subdivision (3) of this subsection.

(2) If the dealer chooses to sell the vehicle with prior inspection and approval, the dealer shall disclose, in writing, prior to sale, whether the vehicle obtained approval by meeting the emissions standards established pursuant to sections 643.300 to 643.355 or by obtaining a waiver pursuant to section 643.335. A vehicle sold pursuant to this subdivision by a licensed motor vehicle dealer shall be inspected and approved within the one hundred twenty days immediately preceding the date of sale, and, for the purpose of registration of such vehicle, such inspection shall be considered timely.

(3) If the dealer chooses to sell the vehicle without prior inspection and approval, the purchaser may return the vehicle within ten days of the date of purchase, provided that the vehicle has no more than one thousand additional miles since the time of sale, if the vehicle fails, upon inspection, to meet the emissions standards specified by the commission and the dealer shall have the vehicle inspected and approved without the option for a waiver of the emissions standard and return the vehicle to the purchaser with a valid emissions certificate and sticker within five working days or the purchaser and dealer may enter into any other mutually acceptable agreement. If the dealer chooses to sell the vehicle without prior inspection and approval, the dealer shall disclose conspicuously on the sales contract and bill of sale that the purchaser has the option to return the vehicle within ten days, provided that the vehicle has no more than one thousand additional miles since the time of sale, to have the dealer repair the vehicle and provide an emissions certificate and sticker within five working days if the vehicle fails, upon inspection, to meet the emissions standards established by the commission, or enter into any mutually acceptable agreement with the dealer. A violation of this subdivision shall be an unlawful practice as defined in section 407.020, RSMo. No emissions inspection shall be required pursuant to sections 643.300 to 643.360 for the sale of any motor vehicle which may be sold without a certificate of inspection and approval, as provided pursuant to subsection 2 of section 307.380, RSMo.

Approved July 2, 2004

HB 998 [SS HCS HB 998 & 905]

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

Requires notice of eviction for mobile home owners to vacate.

AN ACT to amend chapter 700, RSMo, by adding thereto one new section relating to manufactured homes, with penalty provisions.

SECTION
A. Enacting clause.
700.600. Notice required before landlord may evict, when — landlord prohibited from increasing rent, when.

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

SECTION A. ENACTING CLAUSE. — Chapter 700, RSMo, is amended by adding thereto one new section, to be known as section 700.600, to read as follows:

700.600. NOTICE REQUIRED BEFORE LANDLORD MAY EVICT, WHEN — LANDLORD PROHIBITED FROM INCREASING RENT, WHEN. — 1. As used in this section, the following terms mean:

(1) "Manufactured home", the same meaning as provided in section 700.010, RSMo;

(2) "Manufactured or mobile home land lease community", any area, lot, parcel, or tract held in common ownership and on which individual portions of such area, lot, parcel, or tract are leased for the placement of manufactured or mobile homes as a primary residence;

(3) "Mobile home", a residential building constructed or assembled in a factory which is not certified pursuant to the federal Housing and Urban Development (HUD) Code and which conforms to the American National Standards Institute (ANSI) standards for mobile homes.

2. A landlord of a manufactured or mobile home land lease community shall provide written notice to all of the community's tenants who own their manufactured or mobile homes at least one hundred twenty days prior to requiring such tenants to vacate the property due to a change in use of the property. In cases where more than one hundred twenty days remain on a current lease, the longer time period shall apply for purposes of providing notice pursuant to this section. The landlord shall not increase the rent, except for a rent increase based solely on an increase in property taxes, for any tenant of the manufactured or mobile home land lease community during the sixty-day period prior to providing such notice or at any time after providing such notice.

3. Nothing in this section shall be construed as prohibiting a landlord from evicting a tenant with less than one hundred twenty days' notice for any reason other than a change in use of the property.

Approved June 7, 2004

HB 1029 [SCS HB 1029 AND HB 1438 AND HB 1610]

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

Designates various portions of highways as memorials.

AN ACT to amend chapter 227, RSMo, by adding thereto four new sections relating to the designation of certain memorial highways.

SECTION
A. Enacting clause.
227.346. U.S. Submarine Veterans' Memorial Highway designated for portion of Interstate 70 in Saline County.

227.349. Veterans Highway designated for a portion of State Highway J in Lincoln County.
227.350. Deputy Steven R. Ziegler Memorial Highway designated for a portion of U.S. Highway 67 in St. Francois County.
227.353. Trooper Jesse R. Jenkins Memorial Highway designated for a portion of U.S. Highway 67 in St. Francois County.

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

SECTION A. ENACTING CLAUSE. — Chapter 227, RSMo, is amended by adding thereto four new sections, to be known as sections 227.346, 227.349, 227.350, and 227.353, to read as follows:

227.346. U.S. SUBMARINE VETERANS' MEMORIAL HIGHWAY DESIGNATED FOR PORTION OF INTERSTATE 70 IN SALINE COUNTY. — The portion of Interstate Highway 70 between mile marker 69 in any county of the fourth classification with more than twenty-three thousand seven hundred but less than twenty-three thousand eight hundred inhabitants and east to mile marker 123 in any county of the first classification with more than one hundred thirty-five thousand four hundred but less than one hundred thirty-five thousand five hundred inhabitants, except where otherwise designated, shall be designated the "U.S. Submarine Veterans' Memorial Highway", and shall represent in its fifty-four mile stretch the fifty-four submarines lost during war and the Cold War. The department of transportation shall erect and maintain appropriate signs designating such highway, with the cost of such signs to be paid by the submarine veterans' association.

227.349. VETERANS HIGHWAY DESIGNATED FOR A PORTION OF STATE HIGHWAY J IN LINCOLN COUNTY. — The portion of state highway J in Lincoln County from the intersection of state highway J and state highway 47 to the intersection of state highway J and state highway U shall be named the "Veterans Highway".

227.350. DEPUTY STEVEN R. ZIEGLER MEMORIAL HIGHWAY DESIGNATED FOR A PORTION OF U.S. HIGHWAY 67 IN ST. FRANCOIS COUNTY. — The portion of U.S. highway 67 in St. Francois County between state route 8 in Desloge and state route 32 in Leadington shall be designated the "Deputy Steven R. Ziegler Memorial Highway". Costs for such designation shall be paid by private donations.

227.353. TROOPER JESSE R. JENKINS MEMORIAL HIGHWAY DESIGNATED FOR A PORTION OF U.S. HIGHWAY 67 IN ST. FRANCOIS COUNTY. — The portion of U.S. highway 67 in St. Francois County between Desloge and Bonne Terre shall be designated the "Trooper Jesse R. Jenkins Memorial Highway". Costs for such designation shall be paid by private donations.

Approved July 2, 2004

HB 1047 [HB 1047]

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

Authorizes certain city councils to set council member salaries by ordinance.

AN ACT to repeal section 78.590, RSMo, and to enact in lieu thereof one new section relating to salary of council members in certain cities.

SECTION
A. Enacting clause.
78.590. Meetings of the council — salary determined by city council.

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

SECTION A. ENACTING CLAUSE. — Section 78.590, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 78.590, to read as follows:

78.590. MEETINGS OF THE COUNCIL — SALARY DETERMINED BY CITY COUNCIL. — Regular meetings of the council shall be held at least once every month and special meetings may be called by the mayor at **[**his**]** **the mayor's** own instance or upon written application of two members of the council. Each **[**councilman**]** **council member** shall receive a salary **[**not exceeding one hundred dollars a year**]** **as determined by ordinance of the council**, payable quarterly.

Approved June 24, 2004

HB 1055 [CCS SS HCS HB 1055]

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

Changes various provisions related to sex crimes.

AN ACT to repeal sections 43.540, 50.550, 537.046, 558.019, 559.021, 565.082, 565.083, 556.037, 566.083, 566.093, 566.140, 566.141, 573.037, 573.040, 589.400, 589.425, and 660.520, RSMo, and to enact in lieu thereof twenty new sections relating to sexual offenses, with a penalty provision.

SECTION
A. Enacting clause.
43.540. Criminal record review — definitions — patrol to conduct review, when, procedure, confidentiality, violation, penalty — patrol to provide forms.
50.550. Annual budget shall present a complete financial plan — county law enforcement restitution fund authorized.
50.565. County law enforcement restitution fund may be established, proceeds designated for deposit in, use of moneys — audit of fund.
537.046. Childhood sexual abuse, injury or illness defined — action for damages may be brought, when.
556.037. Time limitations for prosecutions for sexual offenses involving a person under eighteen.
558.019. Prior felony convictions, minimum prison terms — prison commitment defined — dangerous felony, minimum term prison term, how calculated — sentencing commission created, members, duties — recommended sentences, distribution — report — expenses — cooperation with commission — restorative justice methods — restitution fund.
559.021. Conditions of probation — compensation of victims — free work, public or charitable — defendant not an employee for workers' compensation purposes — payment to county restitution fund, when.
565.082. Assault of a law enforcement officer or emergency personnel in the second degree, definition, penalty.
565.083. Assault of a law enforcement officer or emergency personnel in the third degree, definition, penalty.
566.083. Sexual misconduct involving a child, penalty.
566.093. Sexual misconduct, second degree, penalties.
566.140. Treatment and rehabilitation program for perpetrators of sexual offenses, when — assessment or counseling services, provision of, restrictions.
566.141. All probation or parole to be conditioned on receiving appropriate treatment.
566.147. Certain offenders not to establish residency within one thousand feet of a school or child-care facility.
573.037. Possession of child pornography.
573.040. Furnishing pornographic materials to minors.

589.400. Registration of certain offenders with chief law officers of county of residence — time limitation — cities may request copy of registration.
589.415. Probation and parole officers to notify law enforcement of sex offender change of residence, when — probation officer defined.
589.425. Failure to register, penalty — subsequent violations, penalty.
660.520. State technical assistance team for child sexual abuse cases, duties — counties may develop team, members — availability of records.

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

SECTION A. ENACTING CLAUSE. — Sections 43.540, 50.550, 537.046, 558.019, 559.021, 565.082, 565.083, 556.037, 566.083, 566.093, 566.140, 566.141, 573.037, 573.040, 589.400, 589.425, and 660.520, RSMo, are repealed and twenty new sections enacted in lieu thereof, to be known as sections 43.540, 50.550, 50.565, 537.046, 556.037, 558.019, 559.021, 565.082, 565.083, 566.083, 566.093, 566.140, 566.141, 566.147, 573.037, 573.040, 589.400, 589.415, 589.425, and 660.520, RSMo, to read as follows:

43.540. CRIMINAL RECORD REVIEW — DEFINITIONS — PATROL TO CONDUCT REVIEW, WHEN, PROCEDURE, CONFIDENTIALITY, VIOLATION, PENALTY — PATROL TO PROVIDE FORMS. — 1. As used in this section, the following terms mean:

(1) "Authorized state agency", a division of state government or an office of state government designated by the statutes of Missouri to issue or renew a license, permit, certification, or registration of authority to a qualified entity;

(2) "Care", the provision of care, treatment, education, training, instruction, supervision, or recreation;

(3) "Missouri criminal record review", a review of criminal history records **[**or**]** **and** sex offender registration records pursuant to sections 589.400 to 589.425, RSMo, maintained by the Missouri state highway patrol in the Missouri criminal records repository;

(4) "National criminal record review", a review of the criminal history records maintained by the Federal Bureau of Investigation;

(5) "Patient or resident", a person who by reason of age, illness, disease or physical or mental infirmity receives or requires care or services furnished by a provider, as defined in this section, or who resides or boards in, or is otherwise kept, cared for, treated or accommodated in a facility as defined in section 198.006, RSMo, for a period exceeding twenty-four consecutive hours;

(6) "Provider", a person who:

(a) Has or may have unsupervised access to children, the elderly, or persons with disabilities; and

(b) Is employed by or seeks employment with a qualified entity; or

(c) Volunteers or seeks to volunteer with a qualified entity; or

(d) Owns or operates a qualified entity;

(7) "Qualified entity", a person, business, or organization, whether public or private, for profit, not for profit, or voluntary, that provides care, placement, or educational services for children, the elderly, or persons with disabilities as patients or residents, including a business or organization that licenses or certifies others to provide care or placement services;

(8) "Youth services agency", any public or private agency, school, or association which provides programs, care or treatment for or which exercises supervision over minors.

2. A qualified entity may obtain a Missouri criminal record review of a provider from the highway patrol by furnishing information on forms and in the manner approved by the highway patrol.

3. A qualified entity may request a Missouri criminal record review and a national criminal record review of a provider through an authorized state agency. No authorized state agency is required by this section to process Missouri or national criminal record reviews for a qualified entity, however, if an authorized state agency agrees to process Missouri and national criminal

record reviews for a qualified entity, the qualified entity shall provide to the authorized state agency on forms and in a manner approved by the highway patrol the following:

(1) Two sets of fingerprints of the provider;

(2) A statement signed by the provider which contains:

(a) The provider's name, address, and date of birth;

(b) Whether the provider has been convicted of or has pled guilty to a crime which includes a suspended imposition of sentence;

(c) If the provider has been convicted of or has pled guilty to a crime, a description of the crime, and the particulars of the conviction or plea;

(d) The authority of the qualified entity to check the provider's criminal history;

(e) The right of the provider to review the report received by the qualified entity; and

(f) The right of the provider to challenge the accuracy of the report. If the challenge is to the accuracy of the criminal record review, the challenge shall be made to the highway patrol.

4. The authorized state agency shall forward the required forms and fees to the highway patrol. The results of the record review shall be forwarded to the authorized state agency who will notify the qualified entity. The authorized state agency may assess a fee to the qualified entity to cover the cost of handling the criminal record review and may establish an account solely for the collection and dissemination of fees associated with the criminal record reviews.

5. Any information received by an authorized state agency or a qualified entity pursuant to the provisions of this section shall be used solely for internal purposes in determining the suitability of a provider. The dissemination of criminal history information from the Federal Bureau of Investigation beyond the authorized state agency or related governmental entity is prohibited. All criminal record check information shall be confidential and any person who discloses the information beyond the scope allowed is guilty of a class A misdemeanor.

6. The highway patrol shall make available or approve the necessary forms, procedures, and agreements necessary to implement the provisions of this section.

50.550. ANNUAL BUDGET SHALL PRESENT A COMPLETE FINANCIAL PLAN — COUNTY LAW ENFORCEMENT RESTITUTION FUND AUTHORIZED. — 1. The annual budget shall present a complete financial plan for the ensuing budget year. It shall set forth all proposed expenditures for the administration, operation and maintenance of all offices, departments, commissions, courts and institutions; the actual or estimated operating deficits or surpluses from prior years; all interest and debt redemption charges during the year and expenditures for capital projects.

2. The budget shall contain adequate provisions for the expenditures necessary for the care of insane pauper patients in state hospitals, for the cost of holding elections and for the costs of holding circuit court in the county that are chargeable against the county, for the repair and upkeep of bridges other than on state highways and not in any special road district, and for the salaries, office expenses and deputy and clerical hire of all county officers and agencies.

3. In addition, the budget shall set forth in detail the anticipated income and other means of financing the proposed expenditures.

4. All receipts of the county for operation and maintenance shall be credited to the general fund, and all expenditures for these purposes shall be charged to this fund; except, that receipts from the special tax levy for roads and bridges shall be kept in a special fund and expenditures for roads and bridges may be charged to the special fund.

5. All receipts from the sale of bonds for any purpose shall be credited to the bond fund created for the purpose, and all expenditures for this purpose shall be charged to the fund. All receipts for the retirement of any bond issue shall be credited to a retirement fund for the issue, and all payments to retire the issue shall be charged to the fund. All receipts for interest on outstanding bonds and all premiums and accrued interest on bonds sold shall be credited to the interest fund, and all payments of interest on the bonds shall be charged to the interest fund.

6. Subject to the provisions of section 50.565 the county commission may create a fund to be known as "The County Law Enforcement Restitution Fund".

7. The county commission may create other funds as are necessary from time to time.

50.565. COUNTY LAW ENFORCEMENT RESTITUTION FUND MAY BE ESTABLISHED, PROCEEDS DESIGNATED FOR DEPOSIT IN, USE OF MONEYS — AUDIT OF FUND. — 1. A county commission may establish by ordinance or order a fund whose proceeds may be expended only for the purposes provided for in subsection 3 of this section. The fund shall be designated as a county law enforcement restitution fund and shall be under the supervision of a board of trustees consisting of two citizens of the county appointed by the presiding commissioner of the county, two citizens of the county appointed by the sheriff of the county, and one citizen of the county appointed by the county coroner or medical examiner. The citizens so appointed shall not be current or former employees of the sheriff's department, the office of the prosecuting attorney for the county, or the county treasurer's office. If a county does not have a coroner or medical examiner, the county treasurer shall appoint one citizen to the board of trustees.

2. Money from the county law enforcement restitution fund shall only be expended upon the approval of a majority of the members of the county law enforcement restitution fund's board of trustees and only for the purposes provided for by subsection 3 of this section.

3. Money from the county law enforcement restitution fund shall only be expended for the following purposes:

(1) Narcotics investigation, prevention, and intervention;

(2) Purchase of law enforcement related equipment and supplies for the sheriff's office;

(3) Matching funds for federal or state law enforcement grants;

(4) Funding for the reporting of all state and federal crime statistics or information; and

(5) Any law enforcement related expense, including those of the prosecuting attorney, approved by the board of trustees for the county law enforcement restitution fund that is reasonably related to investigation, charging, preparation, trial, and disposition of criminal cases before the courts of the state of Missouri.

4. The county commission may not reduce any law enforcement agency's budget as a result of funds the law enforcement agency receives from the county law enforcement restitution fund. The restitution fund is to be used only as a supplement to the law enforcement agency's funding received from other county, state, or federal funds.

5. County law enforcement restitution funds shall be audited as are all other county funds.

6. No court may order the assessment and payment authorized by this section if the plea of guilty or the finding of guilt is to the charge of speeding, careless and imprudent driving, any charge of violating a traffic control signal or sign, or any charge which is a class C misdemeanor or an infraction. No assessment and payment ordered pursuant to this section may exceed three hundred dollars for any charged offense.

537.046. CHILDHOOD SEXUAL ABUSE, INJURY OR ILLNESS DEFINED — ACTION FOR DAMAGES MAY BE BROUGHT, WHEN. — 1. As used in this section, the following terms mean:

(1) "Childhood sexual abuse", any act committed by the defendant against the plaintiff which act occurred when the plaintiff was under the age of eighteen years and which act would have been a violation of section 566.030, 566.040, 566.050, 566.060, 566.070, 566.080, 566.090, 566.100, 566.110, or 566.120, RSMo, or section 568.020, RSMo;

(2) "Injury" or "illness", either a physical injury or illness or a psychological injury or illness. A psychological injury or illness need not be accompanied by physical injury or illness.

2. In any civil action for recovery of damages suffered as a result of childhood sexual abuse, **[**the time for commencement of the action shall be within five years**]** **the action shall be**

commenced within ten years of the date the plaintiff attains the age of **[**eighteen**]** **twenty-one** or within three years of the date the plaintiff discovers or reasonably should have discovered that the injury or illness was caused by child sexual abuse, whichever later occurs.

3. This section shall apply to any action commenced on or after August 28, 1990, including any action which would have been barred by the application of the statute of limitation applicable prior to that date.

556.037. TIME LIMITATIONS FOR PROSECUTIONS FOR SEXUAL OFFENSES INVOLVING A PERSON UNDER EIGHTEEN. — **Notwithstanding** the provisions of section 556.036, **[**to the contrary notwithstanding,**]** prosecutions for unlawful sexual offenses involving a person eighteen years of age or under must be commenced within **[**ten**]** **twenty** years after the victim reaches the age of eighteen **unless the prosecutions are for forcible rape, attempted forcible rape, forcible sodomy, or attempted forcible sodomy in which case such prosecutions may be commenced at any time**.

558.019. PRIOR FELONY CONVICTIONS, MINIMUM PRISON TERMS — PRISON COMMITMENT DEFINED — DANGEROUS FELONY, MINIMUM TERM PRISON TERM, HOW CALCULATED — SENTENCING COMMISSION CREATED, MEMBERS, DUTIES — RECOMMENDED SENTENCES, DISTRIBUTION — REPORT — EXPENSES — COOPERATION WITH COMMISSION — RESTORATIVE JUSTICE METHODS — RESTITUTION FUND. — 1. This section shall not be construed to affect the powers of the governor under article IV, section 7, of the Missouri Constitution. This statute shall not affect those provisions of section 565.020, RSMo, section 558.018 or section 571.015, RSMo, which set minimum terms of sentences, or the provisions of section 559.115, RSMo, relating to probation.

2. The provisions of subsections 2 to 5 of this section shall be applicable to all classes of felonies except those set forth in chapter 195, RSMo, and those otherwise excluded in subsection 1 of this section. For the purposes of this section, "prison commitment" means and is the receipt by the department of corrections of an offender after sentencing. For purposes of this section, prior prison commitments to the department of corrections shall not include commitment to a regimented discipline program established pursuant to section 217.378, RSMo. Other provisions of the law to the contrary notwithstanding, any offender who has pleaded guilty to or has been found guilty of a felony other than a dangerous felony as defined in section 556.061, RSMo, and is committed to the department of corrections shall be required to serve the following minimum prison terms:

(1) If the offender has one previous prison commitment to the department of corrections for a felony offense, the minimum prison term which the offender must serve shall be forty percent of his or her sentence or until the offender attains seventy years of age, and has served at least thirty percent of the sentence imposed, whichever occurs first;

(2) If the offender has two previous prison commitments to the department of corrections for felonies unrelated to the present offense, the minimum prison term which the offender must serve shall be fifty percent of his or her sentence or until the offender attains seventy years of age, and has served at least forty percent of the sentence imposed, whichever occurs first;

(3) If the offender has three or more previous prison commitments to the department of corrections for felonies unrelated to the present offense, the minimum prison term which the offender must serve shall be eighty percent of his or her sentence or until the offender attains seventy years of age, and has served at least forty percent of the sentence imposed, whichever occurs first.

3. Other provisions of the law to the contrary notwithstanding, any offender who has pleaded guilty to or has been found guilty of a dangerous felony as defined in section 556.061, RSMo, and is committed to the department of corrections shall be required to serve a minimum prison term of eighty-five percent of the sentence imposed by the court or until the offender

attains seventy years of age, and has served at least forty percent of the sentence imposed, whichever occurs first.

4. For the purpose of determining the minimum prison term to be served, the following calculations shall apply:

(1) A sentence of life shall be calculated to be thirty years;

(2) Any sentence either alone or in the aggregate with other consecutive sentences for crimes committed at or near the same time which is over seventy-five years shall be calculated to be seventy-five years.

5. For purposes of this section, the term "minimum prison term" shall mean time required to be served by the offender before he or she is eligible for parole, conditional release or other early release by the department of corrections. Except that the board of probation and parole, in the case of consecutive sentences imposed at the same time pursuant to a course of conduct constituting a common scheme or plan, shall be authorized to convert consecutive sentences to concurrent sentences, when the board finds, after hearing with notice to the prosecuting or circuit attorney, that the sum of the terms results in an unreasonably excessive total term, taking into consideration all factors related to the crime or crimes committed and the sentences received by others similarly situated.

6. (1) A sentencing advisory commission is hereby created to consist of eleven members. One member shall be appointed by the speaker of the house. One member shall be appointed by the president pro tem of the senate. One member shall be the director of the department of corrections. Six members shall be appointed by and serve at the pleasure of the governor from among the following: the public defender commission; private citizens; a private member of the Missouri Bar; the board of probation and parole; and a prosecutor. Two members shall be appointed by the supreme court, one from a metropolitan area and one from a rural area. All members shall be appointed to a four-year term. All members of the sentencing commission appointed prior to August 28, 1994, shall continue to serve on the sentencing advisory commission at the pleasure of the governor.

(2) The commission shall study sentencing practices in the circuit courts throughout the state for the purpose of determining whether and to what extent disparities exist among the various circuit courts with respect to the length of sentences imposed and the use of probation for offenders convicted of the same or similar crimes and with similar criminal histories. The commission shall also study and examine whether and to what extent sentencing disparity among economic and social classes exists in relation to the sentence of death and if so, the reasons therefor sentences are comparable to other states, if the length of the sentence is appropriate, and the rate of rehabilitation based on sentence. It shall compile statistics, examine cases, draw conclusions, and perform other duties relevant to the research and investigation of disparities in death penalty sentencing among economic and social classes.

(3) The commission shall establish a system of recommended sentences, within the statutory minimum and maximum sentences provided by law for each felony committed under the laws of this state. This system of recommended sentences shall be distributed to all sentencing courts within the state of Missouri. The recommended sentence for each crime shall take into account, but not be limited to, the following factors:

(a) The nature and severity of each offense;

(b) The record of prior offenses by the offender;

(c) The data gathered by the commission showing the duration and nature of sentences imposed for each crime; and

(d) The resources of the department of corrections and other authorities to carry out the punishments that are imposed.

(4) The commission shall study alternative sentences, prison work programs, work release, home-based incarceration, probation and parole options, and any other programs and report the feasibility of these options in Missouri.

(5) The commission shall publish and distribute its recommendations on or before July 1, 2004. The commission shall study the implementation and use of the recommendations until July 1, 2005, and return a report to the governor, the speaker of the house of representatives, and the president pro tem of the senate. Following the July 1, 2005, report, the commission shall revise the recommended sentences every two years.

(6) The governor shall select a chairperson who shall call meetings of the commission as required or permitted pursuant to the purpose of the sentencing commission.

(7) The members of the commission shall not receive compensation for their duties on the commission, but shall be reimbursed for actual and necessary expenses incurred in the performance of these duties and for which they are not reimbursed by reason of their other paid positions.

(8) The circuit and associate circuit courts of this state, the office of the state courts administrator, the department of public safety, and the department of corrections shall cooperate with the commission by providing information or access to information needed by the commission. The office of the state courts administrator will provide needed staffing resources.

7. Courts shall retain discretion to lower or exceed the sentence recommended by the commission as otherwise allowable by law, and to order restorative justice methods, when applicable.

8. If the imposition or execution of a sentence is suspended, the court may order any or all of the following restorative justice methods, or any other method that the court finds just or appropriate:

(1) Restitution to any victim **or a statutorily created fund** for costs incurred as a result of the offender's actions;

(2) Offender treatment programs;

(3) Mandatory community service;

(4) Work release programs in local facilities; and

(5) Community-based residential and nonresidential programs.

9. The provisions of this section shall apply only to offenses occurring on or after August 28, 2003.

10. Pursuant to subdivision (1) of subsection 8 of this section, the court may order the assessment and payment of a designated amount of restitution to a county law enforcement restitution fund established by the county commission pursuant to section 50.565, RSMo. Such contribution shall not exceed three hundred dollars for any charged offense. Any restitution moneys deposited into the county law enforcement restitution fund pursuant to this section shall only be expended pursuant to the provisions of section 50.565, RSMo.

11. A judge may order payment to a restitution fund only if such fund had been created by ordinance or resolution of a county of the state of Missouri prior to sentencing. A judge shall not have any direct supervisory authority or administrative control over any fund to which the judge is ordering a defendant to make payment.

12. A defendant who fails to make a payment to a county law enforcement restitution fund may not have his or her probation revoked solely for failing to make such payment unless the judge, after evidentiary hearing, makes a finding supported by a preponderance of the evidence that the defendant either willfully refused to make the payment or that the defendant willfully, intentionally, and purposefully failed to make sufficient bona fide efforts to acquire the resources to pay.

559.021. CONDITIONS OF PROBATION — COMPENSATION OF VICTIMS — FREE WORK, PUBLIC OR CHARITABLE — DEFENDANT NOT AN EMPLOYEE FOR WORKERS' COMPENSATION PURPOSES — PAYMENT TO COUNTY RESTITUTION FUND, WHEN. — 1. The conditions of probation shall be such as the court in its discretion deems reasonably necessary to ensure that

the defendant will not again violate the law. When a defendant is placed on probation he shall be given a certificate explicitly stating the conditions on which he is being released.

2. In addition to such other authority as exists to order conditions of probation, the court may order such conditions as the court believes will serve to compensate the victim, any dependent of the victim, **any statutorily created fund for costs incurred as a result of the offender's actions,** or society. Such conditions may include **restorative justice methods pursuant to section 217.777, RSMo, or any other method that the court finds just or appropriate including**, but **[**shall**]** not **[**be**]** limited to:

(1) Restitution to the victim or any dependent of the victim, **or statutorily created fund for costs incurred as a result of the offender's actions** in an amount to be determined by the judge; **[**and**]**

(2) The performance of a designated amount of free work for a public or charitable purpose, or purposes, as determined by the judge**;**

(3) Offender treatment programs;

(4) Work release programs in local facilities; and

(5) Community-based residential and nonresidential programs.

3. The defendant may refuse probation conditioned on the performance of free work. If he does so, the court shall decide the extent or duration of sentence or other disposition to be imposed and render judgment accordingly. Any county, city, person, organization, or agency, or employee of a county, city, organization or agency charged with the supervision of such free work or who benefits from its performance shall be immune from any suit by the defendant or any person deriving a cause of action from him if such cause of action arises from such supervision of performance, except for an intentional tort or gross negligence. The services performed by the defendant shall not be deemed employment within the meaning of the provisions of chapter 288, RSMo. A defendant performing services pursuant to this section shall not be deemed an employee within the meaning of the provisions of chapter 287, RSMo.

4. **In addition to such other authority as exists to order conditions of probation, in the case of a plea of guilty or a finding of guilt, the court may order the assessment and payment of a designated amount of restitution to a county law enforcement restitution fund established by the county commission pursuant to section 50.565, RSMo. Such contribution shall not exceed three hundred dollars for any charged offense. Any restitution moneys deposited into the county law enforcement restitution fund pursuant to this section shall only be expended pursuant to the provisions of section 50.565, RSMo.**

5. A judge may order payment to a restitution fund only if such fund had been created by ordinance or resolution of a county of the state of Missouri prior to sentencing. A judge shall not have any direct supervisory authority or administrative control over any fund to which the judge is ordering a defendant to make payment.

6. A defendant who fails to make a payment to a county law enforcement restitution fund may not have his or her probation revoked solely for failing to make such payment unless the judge, after evidentiary hearing, makes a finding supported by a preponderance of the evidence that the defendant either willfully refused to make the payment or that the defendant willfully, intentionally, and purposefully failed to make sufficient bona fide efforts to acquire the resources to pay.

7. The court may modify or enlarge the conditions of probation at any time prior to the expiration or termination of the probation term.

565.082. ASSAULT OF A LAW ENFORCEMENT OFFICER OR EMERGENCY PERSONNEL IN THE SECOND DEGREE, DEFINITION, PENALTY. — 1. A person commits the crime of assault of a law enforcement officer or emergency personnel in the second degree if such person:

(1) Knowingly causes or attempts to cause physical injury to a law enforcement officer or emergency personnel by means of a deadly weapon or dangerous instrument;

(2) **Knowingly causes or attempts to cause physical injury to a law enforcement officer or emergency personnel by means other than a deadly weapon or dangerous instrument;**

(3) Recklessly causes serious physical injury to a law enforcement officer or emergency personnel; or

[(3)**] (4)** While in an intoxicated condition or under the influence of controlled substances or drugs, operates a motor vehicle in this state and when so operating, acts with criminal negligence to cause physical injury to a law enforcement officer or emergency personnel**;**

(5) Acts with criminal negligence to cause physical injury to a law enforcement officer or emergency personnel by means of a deadly weapon or dangerous instrument;

(6) Purposely or recklessly places a law enforcement officer or emergency personnel in apprehension of immediate serious physical injury; or

(7) Acts with criminal negligence to create a substantial risk of death or serious physical injury to a law enforcement officer or emergency personnel.

2. As used in this section, "emergency personnel" means any paid or volunteer firefighter, emergency room or trauma center personnel, or emergency medical technician as defined in subdivisions (15), (16), and (17) of section 190.100, RSMo.

3. Assault of a law enforcement officer or emergency personnel in the second degree is a class B felony **unless committed pursuant to subdivision (2), (5), (6), or (7) of subsection 1 of this section in which case it is a class C felony**.

565.083. ASSAULT OF A LAW ENFORCEMENT OFFICER OR EMERGENCY PERSONNEL IN THE THIRD DEGREE, DEFINITION, PENALTY. — 1. A person commits the crime of assault of a law enforcement officer or emergency personnel in the third degree if:

(1) Such person **[**attempts to cause or**]** recklessly causes physical injury to a law enforcement officer or emergency personnel;

(2) **[**With criminal negligence such person causes physical injury to a law enforcement officer or emergency personnel by means of a deadly weapon;

(3)**]** Such person purposely places a law enforcement officer or emergency personnel in apprehension of immediate physical injury;

[(4) With criminal negligence such person creates a grave risk of death or serious physical injury to a law enforcement officer or emergency personnel; or

(5)**] (3)** Such person knowingly causes or attempts to cause physical contact with a law enforcement officer or emergency personnel without the consent of the law enforcement officer or emergency personnel.

2. As used in this section, "emergency personnel" means any paid or volunteer firefighter, emergency room or trauma center personnel, or emergency medical technician as defined in subdivisions (15), (16), and (17) of section 190.100, RSMo.

3. Assault of a law enforcement officer or emergency personnel in the third degree is a class A misdemeanor.

566.083. SEXUAL MISCONDUCT INVOLVING A CHILD, PENALTY. — 1. A person commits the crime of sexual misconduct involving a child if the person:

(1) Knowingly exposes the person's genitals to a child less than fourteen years of age in a manner that would cause a reasonable adult to believe that the conduct is likely to cause affront or alarm to a child less than fourteen years of age;

(2) Knowingly exposes the person's genitals to a child less than fourteen years of age for the purpose of arousing or gratifying the sexual desire of any person, including the child; or

(3) Coerces **or induces** a child less than fourteen years of age to expose the child's genitals for the purpose of arousing or gratifying the sexual desire of any person, including the child.

2. As used in this section, the term "sexual act" means any of the following, whether performed or engaged in either with any other person or alone: sexual or anal intercourse,

masturbation, bestiality, sadism, masochism, fetishism, fellatio, cunnilingus, any other sexual activity or nudity, if such nudity is to be depicted for the purpose of sexual stimulation or gratification of any individual who may view such depiction.

3. Violation of this section is a class D felony **unless the actor has previously pleaded guilty to or been convicted of an offense pursuant to this chapter or the actor has previously pleaded guilty to or has been convicted of an offense against the laws of another state or jurisdiction which would constitute an offense under this chapter, in which case it is a class C felony.**

566.093. SEXUAL MISCONDUCT, SECOND DEGREE, PENALTIES. — 1. A person commits the crime of sexual misconduct in the second degree if **[**he**]** **such person**:

(1) Exposes his **or her** genitals under circumstances in which he **or she** knows that his **or her** conduct is likely to cause affront or alarm; **[**or**]**

(2) Has sexual contact in the presence of a third person or persons under circumstances in which he **or she** knows that such conduct is likely to cause affront or alarm**; or**

(3) Has sexual intercourse or deviate sexual intercourse in a public place in the presence of a third person.

2. Sexual misconduct in the second degree is a class B misdemeanor unless the actor has previously been convicted of an offense under this chapter, in which case it is a class A misdemeanor.

566.140. TREATMENT AND REHABILITATION PROGRAM FOR PERPETRATORS OF SEXUAL OFFENSES, WHEN — ASSESSMENT OR COUNSELING SERVICES, PROVISION OF, RESTRICTIONS. — **1.** Any person who has pleaded guilty to or been found guilty of violating the provisions of this chapter, and is granted a suspended imposition or execution of sentence or placed under the supervision of the board of probation and parole shall be required to participate in **and successfully complete** a program of treatment, education and rehabilitation designed for perpetrators of sexual offenses. Persons required to attend a program pursuant to this section may be charged a reasonable fee to cover the costs of such program.

2. No person who provides assessment services or who makes a report, finding, or recommendation for any probationer to attend any counseling or program of treatment, education or rehabilitation as a condition or requirement of probation, following the probationer's plea of guilty to or a finding of guilt of violating any provision of this chapter or chapter 565, RSMo, may be related within the third degree of consanguinity or affinity to any person who has a financial interest, whether direct or indirect, in the counseling or program of treatment, education or rehabilitation or any financial interest, whether direct or indirect, in any private entity which provides the counseling or program of treatment, education or rehabilitation. Any person who violates this subsection shall thereafter:

(1) Immediately remit to the state of Missouri any financial income gained as a direct or indirect result of the action constituting the violation;

(2) Be prohibited from providing assessment or counseling services or any program of treatment, education or rehabilitation to, for, on behalf of, at the direction of, or in contract with the state board of probation and parole or any office thereof; and

(3) Be prohibited from having any financial interest, whether direct or indirect, in any private entity which provides assessment or counseling services or any program of treatment, education or rehabilitation to, for, on behalf of, at the direction of, or in contract with the state board of probation and parole or any office thereof.

566.141. ALL PROBATION OR PAROLE TO BE CONDITIONED ON RECEIVING APPROPRIATE TREATMENT. — Any person who is convicted of or pleads guilty or nolo contendere to any sexual offense involving a child shall be required as a condition of probation or parole to be involved in **and successfully complete** an appropriate treatment program. **Any**

person involved in such a program shall be required to follow all directives of the treatment program provider.

566.147. CERTAIN OFFENDERS NOT TO ESTABLISH RESIDENCY WITHIN ONE THOUSAND FEET OF A SCHOOL OR CHILD-CARE FACILITY. — 1. Any person who has pleaded guilty or nolo contendere to, or been convicted of, or been found guilty of violating any of the provisions of this chapter or the provisions of section 565.253, RSMo, invasion of privacy; subsection 2 of section 568.020, RSMo, incest; section 568.045, RSMo, endangering the welfare of a child in the first degree; subsection 2 of section 568.080, RSMo, use of a child in a sexual performance; section 568.090, RSMo, promoting a sexual performance by a child; section 573.023, RSMo, sexual exploitation of a minor; section 573.025, RSMo, promoting child pornography in the first degree; section 573.035, RSMo, promoting child pornography in the second degree; section 573.037, RSMo, possession of child pornography, or section 573.040, RSMo, furnishing pornographic material to minors; shall not establish residency within one thousand feet of any public school as defined in section 160.011, RSMo, or any private school giving instruction in a grade or grades not higher than the twelfth grade, or child care facility as defined in section 210.201, RSMo, which is in existence at the time such residency is established.

2. If such person has already established a residence and a public school, a private school, or child care facility is subsequently built or placed within one thousand feet of such person's residence, then such person shall, within one week of the opening of such public school, private school, or child care facility, notify the county sheriff where such public school, private school, or child care facility is located that he or she is now residing within one thousand feet of such public school, private school, or child care facility and shall provide verifiable proof to the sheriff that he or she resided there prior to the opening of such public school, private school, or child care facility.

3. Violation of the provisions of subsection 1 of this section is a class D felony except that the second or any subsequent violation is a class B felony. Violation of the provisions of subsection 2 of this section is a class A misdemeanor except that the second or subsequent violations is a class D felony.

573.037. POSSESSION OF CHILD PORNOGRAPHY. — 1. A person commits the crime of possession of child pornography if, knowing of its content and character, such person possesses any obscene material that has a child as one of its participants or portrays what appears to be a child as an observer or participant of sexual conduct.

2. Possession of child pornography is a class **[**A misdemeanor**] D felony** unless the person has pleaded guilty to or has been found guilty of an offense under this section, in which case it is a class **[**D**] C** felony.

573.040. FURNISHING PORNOGRAPHIC MATERIALS TO MINORS. — 1. A person commits the crime of furnishing pornographic material to minors if, knowing its content and character, he or she:

(1) Furnishes any material pornographic for minors, knowing that the person to whom it is furnished is a minor or acting in reckless disregard of the likelihood that such person is a minor; or

(2) Produces, presents, directs or participates in any performance pornographic for minors that is furnished to a minor knowing that any person viewing such performance is a minor or acting in reckless disregard of the likelihood that a minor is viewing the performance; or

(3) Furnishes, produces, presents, directs, participates in any performance or otherwise makes available material that is pornographic for minors via computer, electronic transfer, Internet or computer network if the person made the matter available to a specific individual known by the defendant to be a minor.

2. Furnishing pornographic material to minors is a class A misdemeanor unless the person has pleaded guilty to or has been found guilty of an offense **committed at a different time** pursuant to this **[**section committed at a different time**] chapter, chapter 566 or chapter 568, RSMo**, in which case it is a class D felony.

589.400. REGISTRATION OF CERTAIN OFFENDERS WITH CHIEF LAW OFFICERS OF COUNTY OF RESIDENCE — TIME LIMITATION — CITIES MAY REQUEST COPY OF REGISTRATION. — 1. Sections 589.400 to 589.425 shall apply to:

(1) Any person who, since July 1, 1979, has been or is hereafter convicted of, been found guilty of, or pled guilty **or nolo contendere** to committing, or attempting to commit, a felony offense of chapter 566, RSMo, or any offense of chapter 566, RSMo, where the victim is a minor; or

(2) Any person who, since July 1, 1979, has been or is hereafter convicted of, been found guilty of, or pled guilty **or nolo contendere** to committing, or attempting to commit one or more of the following offenses: kidnapping, pursuant to section 565.110, RSMo; felonious restraint; promoting prostitution in the first degree; promoting prostitution in the second degree; promoting prostitution in the third degree; **sexual exploitation of a minor; promoting child pornography in the first degree; promoting child pornography in the second degree; possession of child pornography; furnishing pornographic material to minors; public display of explicit sexual material; coercing acceptance of obscene material; promoting obscenity in the first degree; promoting pornography for minors or obscenity in the second degree;** incest; abuse of a child, pursuant to section 568.060, RSMo; use of a child in a sexual performance; or promoting sexual performance by a child; and committed or attempted to commit the offense against a victim who is a minor, defined for the purposes of sections 589.400 to 589.425 as a person under eighteen years of age; or

(3) Any person who, since July 1, 1979, has been committed to the department of mental health as a criminal sexual psychopath; or

(4) Any person who, since July 1, 1979, has been found not guilty as a result of mental disease or defect of any offense listed in subdivision (1) or (2) of this subsection; or

(5) Any person who is a resident of this state who has, since July 1, 1979, or is hereafter convicted of, been found guilty of, or pled guilty to or nolo contendere in any other state**, foreign country,** or under federal **or military** jurisdiction to committing, or attempting to commit, an offense which, if committed in this state, would be a violation of chapter 566, RSMo, or a felony violation of any offense listed in subdivision (2) of this subsection or has been or is required to register in another state or has been or is required to register under federal or military law; or

(6) Any person who has been or is required to register in another state or has been or is required to register under federal or military law and who works or attends school or training on a full-time or on a part-time basis in Missouri. "Part-time" in this subdivision means for more than fourteen days in any twelve-month period.

2. Any person to whom sections 589.400 to 589.425 apply shall, within ten days of conviction, release from incarceration, or placement upon probation, register with the chief law enforcement official of the county in which such person resides unless such person has already registered in that county for the same offense. Any person to whom sections 589.400 to 589.425 apply if not currently registered in their county of residence shall register with the chief law enforcement official of such county within ten days of August 28, 2003. The chief law enforcement official shall forward a copy of the registration form required by section 589.407 to a city, town, village, or campus law enforcement agency located within the county of the chief law enforcement official, if so requested. Such request may ask the chief law enforcement official to forward copies of all registration forms filed with such official. The chief law enforcement official may forward a copy of such registration form to any city, town, village, or campus law enforcement agency, if so requested.

3. The registration requirements of sections 589.400 through 589.425 are lifetime registration requirements unless all offenses requiring registration are reversed, vacated or set aside or unless the registrant is pardoned of the offenses requiring registration.

4. For processing an initial sex offender registration the chief law enforcement officer of the county may charge the offender registering a fee of up to ten dollars.

5. For processing any change in registration required pursuant to section 589.414 the chief law enforcement official of the county may charge the person changing their registration a fee of five dollars for each change made after the initial registration.

589.415. PROBATION AND PAROLE OFFICERS TO NOTIFY LAW ENFORCEMENT OF SEX OFFENDER CHANGE OF RESIDENCE, WHEN — PROBATION OFFICER DEFINED. — 1. Any probation officer or parole officer assigned to a sexual offender who is required to register pursuant to sections 589.400 to 589.425, shall notify the appropriate law enforcement officials whenever the officer has reason to believe that the offender will be changing his or her residence. Upon obtaining the new address where the offender expects to reside, the officer shall report such address to the chief law enforcement official with whom the offender last registered and the chief law enforcement official of the county having jurisdiction over the new residence, if different. The officer shall also inform the offender of the offender's duty to register. However, nothing in this section shall affect the offender's duty to register, pursuant to sections 589.400 to 589.425.

2. As used in this section, the term "probation officer" includes any agent of a private entity assigned to provide probation supervision services to an offender due to the offender's status as a sexual offender who is required to register pursuant to sections 589.400 to 589.425, RSMo.

589.425. FAILURE TO REGISTER, PENALTY — SUBSEQUENT VIOLATIONS, PENALTY. — 1. Any person who is required to register pursuant to sections 589.400 to 589.425 and does not meet all requirements of sections 589.400 to 589.425 is guilty of a class A misdemeanor**, unless the person has been convicted pursuant to chapter 566 of an unclassified felony, class A felony, class B felony, or any felony involving a child under the age of fourteen, in which case the person is guilty of a class D felony**.

2. Any person who commits a second or subsequent violation of subsection 1 of this section is guilty of a class D felony**, unless the person has been convicted pursuant to chapter 566 of an unclassified felony, class A felony, class B felony, or any felony involving a child under the age of fourteen, in which case the person is guilty of a class C felony**.

660.520. STATE TECHNICAL ASSISTANCE TEAM FOR CHILD SEXUAL ABUSE CASES, DUTIES — COUNTIES MAY DEVELOP TEAM, MEMBERS — AVAILABILITY OF RECORDS. — 1. There is hereby established in the department of social services a special team, to be known as the "state technical assistance team", to assist in cases of child abuse, child neglect, child sexual abuse, child exploitation**, child pornography,** or child fatality. It shall be the priority of the team to focus on those cases in which more than one report has been received. **[**The director of family services shall be held accountable for cases reported and filed with the division.**]** The team shall:

(1) Provide **[**training, expertise and assistance to county**]** **assistance, expertise, and training to child protection agencies and** multidisciplinary teams for the investigation and prosecution of child abuse, child neglect, child sexual abuse, child exploitation**, child pornography,** or child fatality cases;

(2) Assist in the investigation of child abuse, child neglect, child sexual abuse, child exploitation**, child pornography,** or child fatality cases, upon the request of a local**, county, state, or federal** law enforcement agency, **county, state, or federal** prosecutor, **[**division of family services staff,**]** a representative of the family courts, medical examiner, coroner **[**or**],** juvenile officer**, or department of social services staff**. Upon being requested to assist in an

investigation, the state technical assistance team shall notify **[**all**]** **appropriate** parties specified in this subdivision of the team's involvement. **[**Where assistance has been requested by a local law enforcement agency,**]** State technical assistance team investigators **[**certified**]** **licensed** as peace officers by the director of the department of public safety pursuant to chapter 590, RSMo, shall be deemed to be peace officers within the **[**jurisdiction of the requesting law enforcement agency,**]** **state of Missouri** while acting **[**at the request of the law enforcement agency**]** **in an investigation or on behalf of a child**. The power of arrest of a state technical assistance team investigator acting as a peace officer shall be limited to offenses involving child abuse, child neglect, child sexual abuse, child exploitation **[**or**]****, child pornography,** child fatality**, or in situations of imminent danger to the investigator or another person**;

(3) Assist county multidisciplinary teams to develop and implement protocols for the investigation and prosecution of child abuse, child neglect, child sexual abuse, child exploitation**, child pornography,** or child fatality cases.

2. The team may call upon the expertise of the office of the attorney general, the Missouri office of prosecution services, the **[**missing persons unit of the**]** state highway patrol, the department of health and senior services, the department of mental health or any other agency **or institution**.

3. Each county may develop a multidisciplinary team for the purpose of determining the appropriate investigative and therapeutic action to be initiated on complaints referenced in subsection 1 of this section reported to the **children's** division **[**of family services**]**. The multidisciplinary team may include, but is not limited to, a prosecutor, or his or her representative, an investigator from the **children's** division **[**of family services**]**, a physician, a representative from a mental health care services agency and a representative of the police agency of primary jurisdiction.

4. **[**The division of family services shall provide training and assistance to county multidisciplinary teams and shall assist in the investigation of child abuse, child neglect, child sexual abuse, child exploitation or child fatality cases upon the request of local law enforcement agencies, the local multidisciplinary team, or the local prosecutor.

5.**]** All reports and records made and maintained by the state technical assistance team or local law enforcement relating to criminal investigations conducted pursuant to this section, including arrests, shall be available in the same manner as law enforcement records, as set forth in sections 610.100 to 610.200, RSMo, and to the individuals identified in subdivision (13) of subsection 2 of section 210.150, RSMo. All other records shall be available in the same manner as provided for in section 210.150, RSMo.

Approved June 14, 2004

HB 1070 [HB 1070]

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

Gives boards of education of school districts authority to adopt an emergency preparedness plan to address the use of school resources in an emergency.

AN ACT to amend chapter 160, RSMo, by adding thereto one new section relating to emergency preparedness plans for schools.

SECTION

A. Enacting clause.

160.480. Emergency preparedness plans — school boards may adopt, use of facilities and resources — review by the board, when.

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

SECTION A. ENACTING CLAUSE. — Chapter 160, RSMo, is amended by adding thereto one new section, to be known as section 160.480, to read as follows:

160.480. EMERGENCY PREPAREDNESS PLANS — SCHOOL BOARDS MAY ADOPT, USE OF FACILITIES AND RESOURCES — REVIEW BY THE BOARD, WHEN. — 1. The board of education of each school district in this state is authorized to adopt an emergency preparedness plan to address the use of school resources, including school facilities, commodity foods, school buses, and equipment if a natural disaster or other community emergency occurs.

2. The emergency preparedness plan may authorize the superintendent or other designated school officials to approve use of school resources to provide relief to the community if an emergency occurs.

3. Food assistance may be provided using commodities distributed by the United States Department of Agriculture consistent with the standards for emergency congregate feeding under such program.

4. The use of school resources under this section shall be subject to review by the board of education within thirty days of authorization or as soon as reasonably possible.

Approved June 25, 2004

HB 1071 [SCS HB 1071, 801, 1275 & 989]

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

Authorizes conveyance of various portions of state property.

AN ACT to authorize the governor to convey certain tracts of land, with an emergency clause for certain sections.

SECTION

1. Governor authorized to convey the National Guard Armory Building in Lawrence County to Pierce City.
2. Governor authorized to convey land in Pettis County.
3. Governor authorized to convey the National Guard Armory located in Newton County to the city of Neosho.
4. Governor authorized to convey the National Guard Armory Building located in Dent County to the city of Salem.
5. Governor authorized to convey a National Guard parking lot located in Dent County to the city of Salem.
6. Governor authorized to convey land near the National Guard Armory Building in Joplin to the city of Joplin.
7. Governor authorized to convey the Felix Building and parking lots located in Jackson County to the Truman Medical Center.

B. Emergency clause.

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

SECTION 1. GOVERNOR AUTHORIZED TO CONVEY THE NATIONAL GUARD ARMORY BUILDING IN LAWRENCE COUNTY TO PIERCE CITY. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, and convey all interest in fee simple

absolute in a tract of land owned by the state in the county of Lawrence known as the National Guard Armory Building to Pierce City. The property to be conveyed is more particularly described as follows:

ALL LOTS NUMBERED TWELVE (12), THIRTEEN (13), FOURTEEN (14) AND FIFTEEN (15) IN BLOCK NUMBERED TWENTY (20) OF THE ORIGINAL SURVEY OF THE CITY OF PIERCE CITY, (OR PIERCE CITY), MISSOURI.

2. Consideration for the conveyance described in this section shall be for the sum of one dollar.

3. The attorney general shall approve the form of the instrument of conveyance.

4. Upon the conveyance of the property described in this section, the building known as the National Guard Armory Building shall be known and called the Ray A. Carver Building, and shall be known by no other name as long as the building continues to exist.

SECTION 2. GOVERNOR AUTHORIZED TO CONVEY LAND IN PETTIS COUNTY. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, and convey all interest in fee simple absolute in a tract of land owned by the state in the county of Pettis. The property to be conveyed is more particularly described as follows:

BEGINNING AT A POINT IN THE WEST LINE OF THOMPSON BOULEVARD, 680.0 FEET NORTH OF THE NORTH LINE OF MISSOURI STATE ROUTE "Y" IN THE CITY OF SEDALIA, MISSOURI, SAID POINT BEING THE NORTHEAST CORNER OF A TRACT DESCRIBED IN BOOK 156 PAGE 497; THENCE SOUTH 64°34' WEST, ALONG THE NORTH LINE OF SAID TRACT, 65.19 FEET; THENCE NORTH 87°17'18" EAST, 60.15 FEET TO A POINT ON THE WEST LINE OF SAID THOMPSON BOULEVARD, 25.18 FEET SOUTH OF THE POINT OF BEGINNING; THENCE NORTH 02°45' WEST, ALONG SAID WEST LINE, 25.18 FEET TO THE POINT OF BEGINNING.

2. The commissioner of administration shall set the terms and conditions for the sale of the property, as the department deems reasonable.

3. The attorney general shall approve the form of the instrument of conveyance.

SECTION 3. GOVERNOR AUTHORIZED TO CONVEY THE NATIONAL GUARD ARMORY LOCATED IN NEWTON COUNTY TO THE CITY OF NEOSHO. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, and convey all interest in fee simple absolute in property known as the National Guard Armory owned by the state in the county of Newton to the city of Neosho. The property to be conveyed is more particularly described as follows:

All that part of the North half of Lot Two (2) of the Southwest fractional quarter of Section Nineteen (19) Township Twenty-five (25) Range Thirty-one (31) described as beginning at a point where the North line of Brook street in Neosho, Mo. intersects the West line of Jefferson Street in said City, said point being fifty (50) feet North of the Northeast corner of Block Seven (7) of McCord's Addition to Neosho, Mo., and running thence North one hundred and nineteen (119) feet to the Southeast corner of a tract of land now owned and occupied by A.W. Fullerton, thence West one hundred and sixty (160) feet more or less, to a point fifty (50) feet South of a point one hundred and ninety (190) feet South of a point on the North line of the Southwest fractional quarter of Section Nineteen (19) eight hundred and ninety-seven (897) feet East of the Northwest corner thereof, thence South one hundred and nineteen (119) feet to the North line of Brook Street in Neosho, Mo., thence East one hundred and sixty (160) feet more or less to the place of beginning. It is understood and agreed that the Clyde

Burdick Post No. 163 of the American Legion at Neosho, Mo. shall have perpetual easement in the use of the building, and, or, of any building to be constructed on the above premises, and the use of said premises, so long as such does not conflict with the interest of the above grantee in using said building and premises as an armory.

2. The deed shall establish a perpetual easement for the benefit of the Clyde Burdick Post No. 163 of the American Legion at Neosho, Missouri, in the use of any building on or to be constructed on the premises, and the use of the premises, so long as such does not conflict with the interest of the grantee in using the building and premises while owned by a public governmental body.

3. Consideration for the conveyance described in subsection 1 of this section shall be for the sum of one dollar.

4. The attorney general shall approve the form of the instrument of conveyance.

SECTION 4. GOVERNOR AUTHORIZED TO CONVEY THE NATIONAL GUARD ARMORY BUILDING LOCATED IN DENT COUNTY TO THE CITY OF SALEM. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, and convey to the city of Salem all interest in fee simple absolute in property owned by the state in the county of Dent, known as the National Guard Armory Building, in the city of Salem. The property to be conveyed is more particularly described as follows:

All that part of the Southeast quarter of the Northwest quarter of Section Thirteen (13), Township Thirty four (34) North, Range Six (6) West, described as follows: Beginning at a point on the north right-of-way line of State Highway "J" that is 438.5 feet east of the west line of said Southeast quarter of the Northwest quarter, thence north 387 feet, thence east 225 feet, thence south 387 feet, more or less, to the north right-of-way line of State Highway "J", thence westerly along said north right-of-way line of State Highway "J" to the place of beginning.

2. The commissioner of administration shall set the terms and conditions for the sale as the commissioner deems reasonable. Such terms and conditions may include, but are not limited to, the number of appraisals required, the time, place, and terms of the sale. Consideration for the conveyance shall be the sum of five dollars.

3. The attorney general shall approve the form of the instrument of conveyance.

SECTION 5. GOVERNOR AUTHORIZED TO CONVEY A NATIONAL GUARD PARKING LOT LOCATED IN DENT COUNTY TO THE CITY OF SALEM. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, and convey to the city of Salem all interest in fee simple absolute in property owned by the state in the county of Dent, now used as a parking lot for the motor vehicles of the National Guard, in the city of Salem. The property to be conveyed is more particularly described as follows:

A part of the Northeast Quarter of the Southwest Quarter of Section 13, Township 34 North, Range 6 West, described as follows: Beginning at a point on the North line of said forty which is 260 feet East of the Northwest corner thereof; thence South 340 feet to the North property line of land conveyed to Housing Authority of the City of Salem, Missouri; thence East 400 feet; thence North 80 feet; thence West 50 feet; thence North 260 feet to the North line of said forty; thence west to the place of beginning.

2. The commissioner of administration shall set the terms and conditions for the sale as the commissioner deems reasonable. Such terms and conditions may include, but are not limited to, the number of appraisals required, the time, place, and terms of the sale. Consideration for the conveyance shall be the sum of five dollars.

3. The attorney general shall approve the form of the instrument of conveyance.

SECTION 6. GOVERNOR AUTHORIZED TO CONVEY LAND NEAR THE NATIONAL GUARD ARMORY BUILDING IN JOPLIN TO THE CITY OF JOPLIN. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, and convey all interest in fee simple absolute in a tract of land owned by the state in the county of Newton near the National Guard Armory Building in Joplin to the City of Joplin. The property to be conveyed is more particularly described as follows:

Part of the Northeast Quarter of Section 21, Township 27, Range 33, City of Joplin, Newton County, Missouri, described as follows: Commencing at the Northwest corner of the Northeast Quarter of said Section 21; thence South 01 degrees, 42 minutes, 35 seconds West along the west line of said Northeast Quarter 50.01 feet; thence South 89 degrees, 36 minutes, 28 seconds East and parallel with the North line of said Northeast Quarter 1404.01 feet to the Point of Beginning; thence South 01 degrees, 42 minutes, 35 seconds West 500.0 feet; thence South 89 degrees, 36 minutes, 28 seconds East 8.88 feet; thence North to the Point of Beginning and containing 2,220 square feet, more or less.

2. Consideration for the conveyance described in this section shall be for the sum of one dollar.

3. The attorney general shall approve the form of the instrument of conveyance.

SECTION 7. GOVERNOR AUTHORIZED TO CONVEY THE FELIX BUILDING AND PARKING LOTS LOCATED IN JACKSON COUNTY TO THE TRUMAN MEDICAL CENTER. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, and convey all interest in fee simple absolute in property owned by the state in Jackson County known as the Felix Building and parking lots as provided in subsection 2 of this section to the Truman Medical Center. The property to be conveyed is as follows:

THE PROPERTY KNOWN AS THE FELIX BUILDING:

Lots 1, 2, 3, 4, 5, 6, 7, and 8 and the West 7.5 feet of Lot 9 and Lots 24, 25, 26, 27, and 28, together with the West 162.5 feet of the alley between Charlotte Street and Campbell Street next South of 22nd Street lying North of and adjacent to said Lot 24, GRANDVIEW SUBDIVISION OF BLOCK 11, BOUTON'S ADDITION, a Subdivision in Kansas City, Jackson County, Missouri, according to the recorded plat thereof; and

THE PROPERTY KNOWN AS THE GATED PARKING LOT:

All lots 25, 26, and 27, except part in alley, HOME PARK, all of Block 5 BOUTON'S ADDITION, except part in alley, together with that part of the South half of 21st Street, as said Street was vacated by Ordinance No. 21525, passed May 17, 1957, from the East line of the North-South alley next West of Charlotte Street to the West line of Charlotte Street lying North of and adjoining Block 5, BOUTON'S ADDITION, both subdivisions in Kansas City, Jackson County, Missouri, said part being described as follows:

The South 15 feet of the South half of said vacated 21st Street.

Subject to restrictions, easements, covenants, and reservations now of record but including all the underlying fee title owned by Grantor to streets and alleys adjoining the described land.

2. The sale price of the property shall be one million dollars. The commissioner of administration shall set the terms and conditions for the transfer or sale as the commissioner deems reasonable. Such terms and conditions may also include, but are not limited to, the time, place, and terms of the sale. All costs and fees directly related to such sale shall be paid from the proceeds of such sale. All proceeds received for such sale in excess of the costs shall be used to assist in the funding of the construction or repair or maintenance of state facilities.

3. The attorney general shall approve as to the instrument of conveyance.

SECTION B. EMERGENCY CLAUSE. — Because of the devastation caused by the May 4, 2003, tornadoes and the need to rebuild this devastated community by allowing the transfer of property to enhance the city's ability to function as an effective political subdivision and because immediate action is necessary to maintain an existing facility which includes a telecommunications resource center and to allow for use of the building for summer youth activities, sections 1, 4, and 5 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 sections 1, 4, and 5 of this act shall be in full force and effect upon its passage and approval.

Approved June 16, 2004

HB 1074 [HCS HB 1074 & 1129]

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

Makes it a crime to burn a cross with the intent to intimidate any person or group of persons.

AN ACT to amend chapter 565, RSMo, by adding thereto one new section relating to cross burning, with a penalty provision.

SECTION
A. Enacting clause.
565.095. Cross burning prohibited, penalty — intent defined.

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

SECTION A. ENACTING CLAUSE. — Chapter 565, RSMo, is amended by adding thereto one new section, to be known as section 565.095, to read as follows:

565.095. CROSS BURNING PROHIBITED, PENALTY — INTENT DEFINED. — 1. It shall be unlawful for any person or persons with the intent to intimidate any person or group of persons, to burn, or cause to be burned, a cross. Any person who shall violate any provision of this section shall be guilty of a class A misdemeanor for a first offense and a class D felony for a second or subsequent offense.

2. For purposes of this section, a person acts with the intent to intimidate when he or she intentionally places or attempts to place another person in fear of physical injury or fear of damage to property.

Approved June 14, 2004

HB 1090 [HCS HB 1090]

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

Allows property insurance for real estate transferred by beneficiary deed to automatically continue with the grantee for a specified period of time.

AN ACT to amend chapter 379, RSMo, by adding thereto one new section relating to property insurance for real property transferring upon death.

SECTION
A. Enacting clause.
379.808. Insurance policies on certain real property — beneficiary deemed insured, duration, others covered not affected, when.

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

SECTION A. ENACTING CLAUSE. — Chapter 379, RSMo, is amended by adding thereto one new section, to be known as section 379.808, to read as follows:

379.808. INSURANCE POLICIES ON CERTAIN REAL PROPERTY — BENEFICIARY DEEMED INSURED, DURATION, OTHERS COVERED NOT AFFECTED, WHEN. — In addition to any other coverage provided under an insurance policy on real property transferred by a deed described in section 461.025, RSMo, the designated grantee beneficiary shall be deemed to be an insured party under the policy for the period from the date of the owner's death until the first to occur of:

(1) The date that is thirty days after the owner's death;

(2) The end of the policy period, determined as if the owner was still living; or

(3) The date the designated grantee beneficiary obtains alternative coverage.

Nothing in this section shall affect any coverage provided under the policy to household members or others who are deemed to be insureds upon the death of the owner.

Approved June 21, 2004

HB 1107 [HB 1107]

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

Permits owners of property adjacent to transportation districts to petition to be added to the district.

AN ACT to amend chapter 238, RSMo, by adding thereto one new section relating to property adjacent to certain transportation districts.

SECTION
A. Enacting clause.
238.208. Annexation of property adjacent to a transportation district, procedure.

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

SECTION A. ENACTING CLAUSE. — Chapter 238, RSMo, is amended by adding thereto one new section, to be known as section 238.208, to read as follows:

238.208. ANNEXATION OF PROPERTY ADJACENT TO A TRANSPORTATION DISTRICT, PROCEDURE. — The owners of property adjacent to a transportation district formed under the Missouri transportation development district act may petition the court by unanimous petition to add their property to the district. If the property owners within the transportation development district unanimously approve of the addition of property, the

adjacent properties in the petition shall be added to the district. Any property added under this section shall be subject to all projects, taxes, and special assessments in effect as of the date of the court order adding the property to the district. The owners of the added property shall be allowed to vote at the next election scheduled for the district to fill vacancies on the board and on any other question submitted to them by the board under this chapter. The owners of property added under this section shall have one vote per acre in the same manner as provided in subdivision (2) of subsection 2 of section 238.220.

Approved June 21, 2004

HB 1114 [HB 1114]

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

Allows survivors of peace officers and firefighters killed in the line of duty to receive special license plates.

AN ACT to amend chapter 301, RSMo, by adding thereto two new sections relating to special license plates.

SECTION
A. Enacting clause.
301.3128. To Protect and Serve special license plates, application, fee.
301.3129. Firefighters, special license plates — fee, appearance of plate, application procedure — definition of person eligible for plate — rulemaking authority.

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

SECTION A. ENACTING CLAUSE. — Chapter 301, RSMo, is amended by adding thereto two new sections, to be known as sections 301.3128 and 301.3129, to read as follows:

301.3128. TO PROTECT AND SERVE SPECIAL LICENSE PLATES, APPLICATION, FEE. — 1. Any person, as defined by subsection 3 of this section, may apply for special license plates for any motor vehicle such person owns, either solely or jointly, other than an apportioned motor vehicle or a commercial motor vehicle licensed in excess of eighteen thousand pounds gross weight. Any person desiring a special license plate as provided by this section shall make an application for the special license plates on a form provided by the director of revenue and furnish proof of eligibility as the director may require.

2. Upon payment of a fifteen-dollar fee in addition to the registration fee and other documents which may be required by law, the department of revenue shall issue to the vehicle owner a personalized license plate which shall bear an insignia depicting a yellow rose superimposed over the outline of a badge and shall bear the words "TO PROTECT AND SERVE" in place of the words "SHOW-ME STATE". Such license plates shall be made with fully reflective material with a common color scheme and design, shall be clearly visible at night, and shall be aesthetically attractive, as prescribed by section 301.130. Notwithstanding the provisions of section 301.144, no additional fee shall be charged for the personalization of license plates pursuant to this section.

3. As used in this section the term "person" shall mean:

(1) A person wounded in the line of duty as a peace officer; or

(2) A surviving spouse, parent, brother, sister, or adult child, including an adopted child or stepchild, of a person killed in the line of duty as a peace officer.

4. As used in this section, the term "peace officer" has the same meaning assigned by section 590.010, RSMo.

5. The director of revenue shall make necessary rules and regulations for the administration of this section, and shall design all necessary forms required by this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

301.3129. FIREFIGHTERS, SPECIAL LICENSE PLATES — FEE, APPEARANCE OF PLATE, APPLICATION PROCEDURE — DEFINITION OF PERSON ELIGIBLE FOR PLATE — RULEMAKING AUTHORITY. — 1. Any person, as defined by subsection 3 of this section, may apply for special license plates for any motor vehicle such person owns, either solely or jointly, other than an apportioned motor vehicle or a commercial motor vehicle licensed in excess of eighteen thousand pounds gross weight. Any person desiring a special license plate as provided by this section shall make an application for the special license plates on a form provided by the director of revenue and furnish proof of eligibility as the director may require.

2. Upon payment of a fifteen-dollar fee in addition to the registration fee and other documents which may be required by law, the department of revenue shall issue to the vehicle owner a personalized license plate which shall bear an insignia designed by the director or the director's designee and shall bear the words "FIREFIGHTERS MEMORIAL" in place of the words "SHOW-ME STATE". Such license plates shall be made with fully reflective material with a common color scheme and design, shall be clearly visible at night, and shall be aesthetically attractive, as prescribed by section 301.130. Notwithstanding the provisions of section 301.144, no additional fee shall be charged for the personalization of license plates pursuant to this section.

3. As used in this section the term "person" shall mean:

(1) A person wounded in the line of duty as a firefighter; or

(2) A surviving spouse, parent, brother, sister, or adult child, including an adopted child or stepchild, of a person killed in the line of duty as a firefighter.

4. The director of revenue shall make necessary rules and regulations for the administration of this section, and shall design all necessary forms required by this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

Approved July 1, 2004

HB 1115 [HCS HB 1115]

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

Prevents frivolous lawsuits against food manufacturers, packers, distributors, sellers, marketers, etc.

AN ACT to amend chapter 537, RSMo, by adding thereto one new section relating to the commonsense consumption act, with an effective date.

SECTION

A. Enacting clause.
537.900. Citation — definitions — immunity from liability for claims relating to weight gain or obesity, when, exceptions — petition, contents — effective date.
B. Effective date.

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

SECTION A. ENACTING CLAUSE. — Chapter 537, RSMo, is amended by adding thereto one new section, to be known as section 537.900, to read as follows:

537.900. CITATION — DEFINITIONS — IMMUNITY FROM LIABILITY FOR CLAIMS RELATING TO WEIGHT GAIN OR OBESITY, WHEN, EXCEPTIONS — PETITION, CONTENTS — EFFECTIVE DATE. — 1. This section may be known as the "Commonsense Consumption Act".

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

(1) "Claim", any claim by or on behalf of a natural person, as well as any derivative or other claim arising therefrom asserted by or on behalf of any other person;

(2) "Generally known condition allegedly caused by or allegedly likely to result from long-term consumption", a condition generally known to result or to likely result from the cumulative effect of consumption and not from a single instance of consumption;

(3) "Knowing or willful violation of federal or state law", that:

(a) The conduct constituting the violation was committed with the intent to deceive or injure consumers or with actual knowledge that such conduct was injurious to consumers; and

(b) The conduct constituting the violation was not required by regulations, orders, rules, or other pronouncements of, or statutes administered by, a federal, state, or local government agency;

(4) "Other person", any individual, corporation, company, association, firm, partnership, society, joint-stock company, or any other entity, including any governmental entity or private attorney general.

3. Except as exempted in subsection 4 of this section, a manufacturer, packer, distributor, carrier, holder, seller, marketer, retailer, or advertiser of a food, as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(f)), as amended, but shall not include alcoholic beverages, or an association of one or more such entities shall not be subject to civil liability under any state law, including all statutes, regulations, rules, common law, public policies, court or administrative decisions or decrees, or other state actions having the effect of law, for any claim arising out of weight gain, obesity, or a health condition associated with weight gain or obesity.

4. The provisions of subsection 3 of this section shall not preclude civil liability where the claim of weight gain, obesity, health condition associated with weight gain or obesity, or other generally known condition allegedly caused by or allegedly likely to result from long-term consumption of food is based on:

(1) A material violation of an adulteration or misbranding requirement prescribed by statute or regulation of the state of Missouri or the United States and the claimed injury was proximately caused by such violation; or

(2) Any other material violation of federal or state law applicable to the manufacturing, marketing, distribution, advertising, labeling, or sale of food, provided that such violation is knowing and willful, and the claimed injury was proximately caused by such violation.

The provisions of subsection 3 of this section shall not preclude civil liability for breach of express contract or express warranty in connection with the purchase of food.

5. In any action exempted under subdivision (1) or (2) of subsection 4 of this section, the petition initiating such action shall state with particularity the following: the statute, regulation, or other state or federal law that was allegedly violated, the facts that are alleged to constitute a material violation of such statute or regulation, and the facts alleged to demonstrate that such violation proximately caused actual injury to the plaintiff. In any action exempted under subdivision (2) of subsection 4 of this section, the petition initiating such action shall also state with particularity facts sufficient to support a reasonable inference that the violation occurred with the intent to deceive or injure consumers or with the actual knowledge that such violation was injurious to consumers. For purposes of applying this section the pleading requirements under this section are deemed part of state substantive law and not merely procedural provisions.

6. In any action exempted under subsection 4 of this section, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence, resolve the motion to dismiss, or to prevent undue prejudice to that party. During the pendency of any stay of discovery under this subsection and unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the petition shall treat all documents, data compilations, including electronically recorded or stored data, and tangible objects that are in the custody or control of such party that are relevant to the allegations as if they were the subject of a continuing request for production of documents from an opposing party under the Missouri rules of civil procedure.

7. The provisions of this section shall apply to all covered claims pending on or filed after the effective date of this section, regardless of when the claim arose.

SECTION B. EFFECTIVE DATE. — Section A of this act shall become effective on January 1, 2005.

Approved June 25, 2004

HB 1126 [HB 1126]

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

Changes the procedure for detachment from certain watershed districts.

AN ACT to repeal section 278.258, RSMo, and to enact in lieu thereof one new section relating to detachment from watershed districts.

SECTION

A. Enacting clause.

278.258. Detachment from watershed subdistrict, procedure — certification by trustees.

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

SECTION A. ENACTING CLAUSE. — Section 278.258, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 278.258, to read as follows:

278.258. DETACHMENT FROM WATERSHED SUBDISTRICT, PROCEDURE — CERTIFICATION BY TRUSTEES. — 1. After a watershed subdistrict has been organized and the organization tax pursuant to section 278.250 has been levied, any county in the subdistrict which has not adopted the annual tax pursuant to section 278.250 may detach from the subdistrict upon approval of such detachment of a majority of the qualified voters **[**residing**]** **voting on the proposed detachment** within such subdistrict in such county; however, before such detachment the watershed district trustees shall make arrangements for the county to pay any outstanding indebtedness for services or works of improvement rendered by the subdistrict in such county.

2. Following the entry in the official minutes of the trustees of the watershed district of the detachment of the county, the watershed district trustees shall certify this fact on a separate form, authentic copies of which shall be recorded with the recorder of deeds in each county in which any portion of the watershed subdistrict lies and with the state soil and water districts commission.

Approved June 30, 2004

HB 1136 [SCS HCS HB 1136]

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

Enacts the Disposition of Fetal Remains Act.

AN ACT to repeal sections 193.165 and 193.255, RSMo, and to enact in lieu thereof eight new sections relating to miscarriages and stillbirths.

SECTION

A. Enacting clause.
193.165. Spontaneous fetal death report — release of reports — application for certificate of birth resulting in stillbirth, procedure.
193.255. Certified copies of vital records, issuance — probative value — cooperation with federal agencies and other states — issuance of certificate of birth resulting in stillbirth, when.
194.375. Citation of law — definitions.
194.378. Final disposition of fetal remains, mother has right to determine.
194.381. Means of disposition.
194.384. Written standards required for protection of mother's right to determine final disposition.
194.387. Miscarriage — mother's right to determine final disposition of remains — counseling made available, when.
194.390. Right to legal abortion not affected.

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

SECTION A. ENACTING CLAUSE. — Sections 193.165 and 193.255, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 193.165, 193.255, 194.375, 194.378, 194.381, 194.384, 194.387, and 194.390 to read as follows:

193.165. SPONTANEOUS FETAL DEATH REPORT — RELEASE OF REPORTS — APPLICATION FOR CERTIFICATE OF BIRTH RESULTING IN STILLBIRTH, PROCEDURE. — 1. Each spontaneous fetal death of twenty completed weeks gestation or more, calculated from the date the last normal menstrual period began to the date of delivery, or a weight of three hundred fifty grams or more, which occurs in this state shall be reported within seven days after delivery to the local registrar or as otherwise directed by the state registrar.

2. When a dead fetus is delivered in an institution, the person in charge of the institution or his or her designated representative shall prepare and file the report.

3. When a dead fetus is delivered outside an institution, the physician in attendance at or immediately after delivery shall prepare and file the report.

4. When a spontaneous fetal death required to be reported by this section occurs without medical attendance at or immediately after the delivery or when inquiry is required by the medical examiner or coroner, the medical examiner or coroner shall investigate the cause of spontaneous fetal death and shall prepare and file the report within seven days.

5. When a spontaneous fetal death occurs in a moving conveyance and the fetus is first removed from the conveyance in this state or when a dead fetus is found in this state and the place of the spontaneous fetal death is unknown, the spontaneous fetal death shall be reported in this state. The place where the fetus was first removed from the conveyance or the dead fetus was found shall be considered the place of the spontaneous fetal death.

6. **[**The spontaneous fetal death report required pursuant to this section is a statistical report to be used only for medical and health purposes and shall not be incorporated into the permanent official records of the system of vital statistics. A schedule for the disposition of these reports may be provided by department rules.**]** Notwithstanding any provision of law to the contrary, individuals with direct and tangible interest, as defined by the department of health and senior services, may receive the spontaneous fetal death report.

7. In the event of a spontaneous fetal death, regardless of whether such death occurs before or after the effective date of this subsection, either parent, or if both parents are deceased, a sibling of the stillborn child, shall have the right to file an application with the state registrar and other custodians of vital records requesting a certificate of birth resulting in stillbirth. The certificate shall be based upon the information available from the spontaneous fetal death report filed pursuant to this section.

193.255. CERTIFIED COPIES OF VITAL RECORDS, ISSUANCE — PROBATIVE VALUE — COOPERATION WITH FEDERAL AGENCIES AND OTHER STATES — ISSUANCE OF CERTIFICATE OF BIRTH RESULTING IN STILLBIRTH, WHEN. — 1. The state registrar and other custodians of vital records authorized by the state registrar to issue certified copies of vital records upon receipt of application shall issue a certified copy of any vital record in his custody or a part thereof to any applicant having a direct and tangible interest in the vital record. Each copy issued shall show the date of registration, and copies issued from records marked "Delayed" or "Amended" shall be similarly marked and show the effective date. The documentary evidence used to establish a delayed certificate shall be shown on all copies issued. All forms and procedures used in the issuance of certified copies of vital records in the state shall be provided or approved by the state registrar.

2. A certified copy of a vital record or any part thereof, issued in accordance with subsection 1 of this section, shall be considered for all purposes the same as the original and shall be prima facie evidence of the facts stated therein, provided that the evidentiary value of a certificate or record filed more than one year after the event, or a record which has been amended, shall be determined by the judicial or administrative body or official before whom the certificate is offered as evidence.

3. The federal agency responsible for national vital statistics may be furnished such copies or data from the system of vital statistics as it may require for national statistics, provided such federal agency share in the cost of collecting, processing, and transmitting such data, and

provided further that such data shall not be used for other than statistical purposes by the federal agency unless so authorized by the state registrar.

4. Federal, state, local and other public or private agencies may, upon request, be furnished copies or data of any other vital statistics not obtainable under subsection 1 of this section for statistical or administrative purposes upon such terms or conditions as may be prescribed by regulation, provided that such copies or data shall not be used for purposes other than those for which they were requested unless so authorized by the state registrar.

5. The state registrar may, by agreement, transmit copies of records and other reports required by sections 193.005 to 193.325 to offices of vital statistics outside this state when such records or other reports relate to residents of those jurisdictions or persons born in those jurisdictions. This agreement shall require that the copies be used for statistical and administrative purposes only, and the agreement shall further provide for the retention and disposition of such copies. Copies received by the department from offices of vital statistics in other states shall be handled in the same manner as prescribed in this section.

6. No person shall prepare or issue any certificate which purports to be an original, certified copy, or copy of a vital record except as authorized herein or by regulations adopted hereunder.

7. Upon application from either parent, or if both parents are deceased, the sibling of the stillborn child, pursuant to subsection 7 of section 193.165, the state registrar or other custodians of vital records shall issue to such applicant a certificate of birth resulting in stillbirth. The certificate shall be based upon the information available from the spontaneous fetal death report filed pursuant to section 193.165. Any certificate of birth resulting in stillbirth issued shall conspicuously include, in no smaller than 12-point type, the statement "This is not proof of a live birth." No certificate of birth resulting in stillbirth shall be issued to any person other than a parent, or if both parents are deceased, the sibling of the stillborn child who files an application pursuant to section 193.165. The state registrar or other custodians of vital records is authorized to charge a minimal fee to such applicant to cover the actual costs of providing the certificate pursuant to this section.

8. Any parent, or if both parents are deceased, any sibling of the stillborn child may file an application for a certificate of birth resulting in stillbirth for a birth that resulted in stillbirth prior to August 28, 2004.

194.375. CITATION OF LAW — DEFINITIONS. — 1. Sections 194.375 to 194.390 shall be known and may be cited as the "Disposition of Fetal Remains Act".

2. As used in sections 194.375 to 194.390, the following terms mean:

(1) "Final disposition", the burial, cremation, or other disposition of the remains of a human fetus following a spontaneous fetal demise occurring after a gestation period of less than twenty completed weeks;

(2) "Remains of a human fetus", the fetal remains or fetal products of conception of a mother after a miscarriage, regardless of the gestational age or whether the remains have been obtained by spontaneous or accidental means.

194.378. FINAL DISPOSITION OF FETAL REMAINS, MOTHER HAS RIGHT TO DETERMINE. — In every instance of fetal death, the mother has the right to determine the final disposition of the remains of the fetus, regardless of the duration of the pregnancy. The mother may choose any means of final disposition authorized by law or by the director of the department of health and senior services.

194.381. MEANS OF DISPOSITION. — 1. The final disposition of the remains of a human fetus may be by cremation, interment by burial, incineration in an approved medical waste incinerator, or other means authorized by the director of the department of health and senior services. The disposition shall be in accordance with state law or

administrative rules providing for the disposition. If the remains are disposed of by incineration, the remains shall be incinerated separately from other medical waste.

2. No religious service or ceremony is required as part of the final disposition of the remains of a human fetus.

194.384. WRITTEN STANDARDS REQUIRED FOR PROTECTION OF MOTHER'S RIGHT TO DETERMINE FINAL DISPOSITION. — Every hospital, outpatient birthing clinic, and any other health care facility licensed to operate in this state shall adopt written standards for the final disposition of the remains of a human fetus as provided in sections 194.375 to 194.390 for protection of a mother's right pursuant to section 194.378 and for notice as required in section 194.387.

194.387. MISCARRIAGE — MOTHER'S RIGHT TO DETERMINE FINAL DISPOSITION OF REMAINS — COUNSELING MADE AVAILABLE, WHEN. — 1. Within twenty-four hours after a miscarriage occurs spontaneously or accidentally at a hospital, outpatient birthing clinic, or any other health care facility, the facility shall disclose to the mother of the miscarried fetus, both orally and in writing, the mother's right to determine the final disposition of the remains of the fetus. The facility's disclosure shall include giving the mother a copy of the facility's written standards adopted pursuant to section 194.384.

2. The facility shall make counseling concerning the death of the fetus available to the mother. The facility may provide the counseling or refer the mother to another provider of appropriate counseling services.

194.390. RIGHT TO LEGAL ABORTION NOT AFFECTED. — Nothing in sections 194.375 to 194.390 shall be construed to prohibit a woman's ability to obtain a legal abortion.

Approved July 2, 2004

HB 1149 [HB 1149]

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

Designates a bridge over a portion of Interstate 44 in Phelps County the "Trooper Mike L. Newton Memorial Bridge".

AN ACT to amend chapter 227, RSMo, by adding thereto one new section relating to the Trooper Mike L. Newton Memorial Bridge.

SECTION
A. Enacting clause.
227.348. Trooper Mike L. Newton Memorial Bridge designated for Interstate 44 bridge located in Phelps County.

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

SECTION A. ENACTING CLAUSE. — Chapter 227, RSMo, is amended by adding thereto one new section, to be known as section 227.348, to read as follows:

227.348. TROOPER MIKE L. NEWTON MEMORIAL BRIDGE DESIGNATED FOR INTERSTATE 44 BRIDGE LOCATED IN PHELPS COUNTY. — The bridge on eastbound and westbound Interstate 44 crossing the Little Piney Creek in Phelps County shall be

designated the "Trooper Mike L. Newton Memorial Bridge". The department of transportation shall erect and maintain appropriate signs commemorating such bridge, with costs to be paid for by the Missouri State Troopers' Association.

Approved July 2, 2004

HB 1167 [HB 1167]

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

Creates a special license plate for members of the Missouri Foxtrotting Horse Breed Association.

AN ACT to amend chapter 301, RSMo, by adding thereto one new section relating to special license plates.

SECTION
A. Enacting clause.
301.3126. Fox trotter — state horse special license plates, application, fee.

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

SECTION A. ENACTING CLAUSE. — Chapter 301, RSMo, is amended by adding thereto one new section, to be known as section 301.3126, to read as follows:

301.3126. FOX TROTTER — STATE HORSE SPECIAL LICENSE PLATES, APPLICATION, FEE. — 1. Any member of the Missouri Foxtrotting Horse Breed Association may receive special license plates as prescribed by this section, for any motor vehicle such person owns, either solely or jointly, other than an apportioned motor vehicle or a commercial motor vehicle licensed in excess of eighteen thousand pounds gross weight, after an annual payment of an emblem-use authorization fee to the Missouri Foxtrotting Horse Breed Association of which the person is a member. The Missouri Foxtrotting Horse Breed Association hereby authorizes the use of its official emblem to be affixed on multiyear personalized license plates as provided in this section. Any contribution to the Missouri Foxtrotting Horse Breed Association derived from this section, except reasonable administrative costs, shall be used solely for the purposes of the Missouri Foxtrotting Horse Breed Association. Any member of the Missouri Foxtrotting Horse Breed Association may annually apply for the use of the emblem.

2. Upon annual application and payment of a twenty-five dollar emblem-use contribution to the Missouri Foxtrotting Horse Breed Association, the organization shall issue to the vehicle owner, without further charge, an emblem-use authorization statement, which shall be presented by the owner to the department of revenue at the time of registration of a motor vehicle. Upon presentation of the annual statement, payment of a fifteen dollar fee in addition to the registration fee and documents which may be required by law, the department of revenue shall issue to the vehicle owner a personalized license plate which shall bear the emblem of the Missouri Foxtrotting Horse Breed Association and shall bear the words "FOXTROTTER -STATE HORSE" in place of the words "SHOW-ME STATE". Such license plates shall be made with fully reflective material with a common color scheme and design, shall be clearly visible at night, and shall be aesthetically attractive, as prescribed by section 301.130.

3. A vehicle owner, who was previously issued a plate with the Missouri Foxtrotting Horse Breed Association emblem authorized by this section but who does not provide an emblem-use authorization statement at a subsequent time of registration, shall be issued a new plate which does not bear the Missouri Foxtrotting Horse Breed Association emblem, as otherwise provided by law. The director of revenue shall make necessary rules and regulations for the administration of this section, and shall design all necessary forms required by this section. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.

Approved July 1, 2004

HB 1171 [HCS HB 1171]

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

Facilitates joint municipal utility projects.

AN ACT to repeal sections 393.705, 393.710, 393.715, 393.720, 393.725, 393.730, 393.740, 393.745, 393.760, and 393.770, RSMo, and to enact in lieu thereof ten new sections relating to joint municipal utility projects.

SECTION

A. Enacting clause.
393.705. Definitions.
393.710. Municipalities, public water supply districts and sewer districts may form commission — purposes — contents of contract — board of directors.
393.715. Powers of commission — purchase of private water utility serving outside municipal limits, effect — successorship, continued and new service authorized, when.
393.720. Commissions to be bodies public and corporate.
393.725. Bonds issued to be revenue bonds only — form of bonds.
393.730. Requirements of resolution authorizing bonds.
393.740. Certain taxes applicable.
393.745. Refunding bonds may be issued.
393.760. Election on issuance of bonds — required actions — notice — conduct of election — form of ballot — alternative voting procedures.
393.770. Purchase agreements authorized — terms — not to constitute debt.

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

SECTION A. ENACTING CLAUSE. — Sections 393.705, 393.710, 393.715, 393.720, 393.725, 393.730, 393.740, 393.745, 393.760, and 393.770, RSMo, are repealed and ten new sections enacted in lieu thereof, to be known as sections 393.705, 393.710, 393.715, 393.720, 393.725, 393.730, 393.740, 393.745, 393.760, and 393.770, to read as follows:

393.705. DEFINITIONS. — As used in sections 393.700 to 393.770, the following terms shall, unless the context clearly indicates otherwise, have the following meanings:

(1) "Bond" or "bonds", any bonds, interim certificates, notes, debentures or other obligations of a commission issued pursuant to sections 393.700 to 393.770;

(2) "Commission", any joint municipal utility commission established by a joint contract pursuant to sections 393.700 to 393.770;

(3) "Contracting municipality", each municipality which is a party to a joint contract establishing a commission pursuant to sections 393.700 to 393.770, a water supply district

formed pursuant to the provisions of chapter 247, RSMo, or a sewer district formed pursuant to the provisions of chapter 204, RSMo, or chapter 249, RSMo;

(4) "Joint contract", the contract entered into among or by and between two or more of the following contracting entities for the purpose of establishing a commission:

(a) Municipalities;

(b) Public water supply districts;

(c) Sewer districts;

(d) Nonprofit water companies; or

(e) Nonprofit sewer companies;

(5) **"Participating municipality", a municipality, public water supply district, or sewer district acting in concert with a commission in the development of a project but providing separate financing to acquire an individual interest in the project;**

(6) "Person", a natural person, cooperative or private corporation, association, firm, partnership, or business trust of any nature whatsoever, organized and existing pursuant to the laws of any state or of the United States and any municipality or other municipal corporation, governmental unit, or public corporation created under the laws of this state or the United States, and any person, board, or other body declared by the laws of any state or the United States to be a department, agency or instrumentality thereof;

[(6)**] (7)** "Project", the purchasing, construction, extending or improving of any **utility facility or property including without limitation** revenue-producing water, sewage, gas or electric light works, heating or power plants, **transmission and distribution systems, and all other types of utilities and revenue-producing facilities as deemed appropriate by the governing bodies of the contracting or participating municipalities,** including all real and personal property of any nature whatsoever to be used in connection therewith, together with all parts thereof and appurtenances thereto, **[**used or useful in the generation, production, transmission, distribution excluding retail sales, purchase, sale, exchange, transport and treatment of sewage or interchange of water, sewage, electric power and energy,**]** or any interest therein or right to capacity thereof and the acquisition of fuel of any kind for any such purposes.

393.710. MUNICIPALITIES, PUBLIC WATER SUPPLY DISTRICTS AND SEWER DISTRICTS MAY FORM COMMISSION — PURPOSES — CONTENTS OF CONTRACT — BOARD OF DIRECTORS. — 1. Municipalities, public water supply districts, and sewer districts may, by joint contract, establish a **[**separate**]** governmental entity to be known as a joint municipal utility commission, to effect the joint development of **[**water, sewer, gas, or electric light works, heating and power plants, or production, distribution and transmission of electric power and energy**] a project or projects** in whole or in part for the benefit of the inhabitants of such municipalities**, public water supply districts and sewer districts**.

2. Any joint contract establishing a commission under this section shall specify:

(1) The name and purpose of the commission and the functions or services to be provided by the commission;

(2) The establishment and organization of a governing body of a commission which shall be a board of directors in which all powers of the commission are vested. The joint contract may provide for the creation by the board of an executive committee of the board to which the powers and duties **of the board** may be delegated as the board **or state statute** shall specify;

(3) The number of directors, the manner of their appointment, terms of office and compensation, if any, and the procedure for filling vacancies on the board. Each contracting municipality, public water supply district, and sewer district shall have the power to appoint one member and an alternate to the board of directors and shall be entitled to remove that member and alternate at will;

(4) The manner of selection of the officers of the commission and their duties;

(5) The voting requirements for action by the board, but, unless specifically provided otherwise, a majority of directors shall constitute a quorum and a majority of the quorum shall be necessary for any action taken by the board;

(6) The duties of the board which shall include the obligation to comply or to cause compliance with this section and the laws of the state and, in addition, with each and every term, provision and covenant in the joint contract creating the commission on its part to be kept or performed;

(7) The manner in which additional municipalities, public water supply districts, and sewer districts may become parties to the joint contract;

(8) The manner of financing the **[**district**]** **commission** and of establishing and maintaining a budget and annual audit for the **[**district**]** **commission**;

(9) The ownership interests of the contracting municipality electric cooperative associations, municipally owned or public utilities in a project or the manner of determining such ownership interest, which ownership interest shall be subject to any mortgage of a project pursuant to section 393.735;

(10) Provisions for the disposition, division or distribution of any property or assets of the commission on dissolution; and

(11) The term of the joint contract, which may be a definite period or until rescinded or terminated, and the method, if any, by which the joint contract may be rescinded or terminated so long as the commission has no bonds outstanding, unless provision for full payment of such bonds, by escrow or otherwise, has been made pursuant to the terms of the bonds or the resolution, trust indenture or security instrument securing the bonds.

3. A commission shall, if the joint contract so provides, be the successor to any nonprofit corporation, agency, or another entity theretofore organized by the contracting municipalities to provide the same function, service or facility, and the commission shall be entitled to all rights and privileges and shall assume all obligations and liabilities of such other entity under existing contracts to which such other entity is a party.

393.715. POWERS OF COMMISSION — PURCHASE OF PRIVATE WATER UTILITY SERVING OUTSIDE MUNICIPAL LIMITS, EFFECT — SUCCESSORSHIP, CONTINUED AND NEW SERVICE AUTHORIZED, WHEN. — 1. The general powers of a commission to the extent provided in section 393.710 **to be exercised for the benefit of its contracting members** shall include the power to:

(1) Plan, develop, acquire, construct, reconstruct, operate, manage, dispose of, participate in, maintain, repair, extend or improve one or more projects, either exclusively or jointly or by participation with electric cooperative associations, municipally owned or public utilities or acquire any interest in or any rights to capacity of a project, within or outside the state, and act as an agent, or designate one or more other persons participating in a project to act as its agent, in connection with the planning, acquisition, construction, operation, maintenance, repair, extension or improvement of such project;

(2) Acquire, sell, distribute and process fuels necessary to the production of electric power and energy; provided, however, the commission shall not have the power or authority to erect, own, use or maintain a transmission line which is parallel or generally parallel to another transmission line in place within a distance of two miles, which serves the same general area sought to be served by the commission unless the public service commission finds that it is not feasible to utilize the transmission line which is in place;

(3) Acquire by purchase or lease, construct, install, and operate reservoirs, pipelines, wells, check dams, pumping stations, water purification plants, and other facilities for the production, wholesale distribution, and utilization of water and to own and hold such real and personal property as may be necessary to carry out the purposes of its organization; provided, however, that a commission shall not sell or distribute water, at retail or wholesale, within the certificated area of a water corporation which is subject to the jurisdiction of the public service commission unless the sale or distribution of water is within the boundaries of a public water supply district or municipality which is a contracting municipality in the commission and the commission has

obtained the approval of the public service commission prior to commencing such said sale or distribution of water;

(4) Acquire by purchase or lease, construct, install, and operate lagoons, pipelines, wells, pumping stations, sewage treatment plants and other facilities for the treatment and transportation of sewage and to own and hold such real and personal property as may be necessary to carry out the purposes of its organization;

(5) Enter into operating, franchises, exchange, interchange, pooling, wheeling, transmission and other similar agreements with any person;

(6) Make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the commission;

(7) Employ agents and employees;

(8) Contract with any person, within or outside the state, for the construction of any project or for any interest therein or any right to capacity thereof, without advertising for bids, preparing final plans and specifications in advance of construction, or securing performance and payment of bonds, except to the extent and on such terms as its board of directors **or executive committee** shall determine. Any contract entered into pursuant to this subdivision shall contain a provision that the requirements of sections 290.210 to 290.340, RSMo, shall apply;

(9) Purchase, sell, exchange, transmit, treat, dispose or distribute water, sewage, gas, heat or electric power and energy, or any by-product resulting therefrom, within and outside the state, in such amounts as it shall determine to be necessary and appropriate to make the most effective use of its powers and to meet its responsibilities, and to enter into agreements with any person with respect to such purchase, sale, exchange, treatment, disposal or transmission, on such terms and for such period of time as its board of directors **or executive committee** shall determine. A commission may not sell or distribute water, gas, heat or power and energy, or sell sewage service at retail to ultimate customers outside the boundary limits of its contracting municipalities except pursuant to subsection 2 or 3 of this section;

(10) Acquire, own, hold, use, lease, as lessor or lessee, sell or otherwise dispose of, mortgage, pledge, or grant a security interest in any real or personal property, commodity or service or interest therein;

(11) Exercise the powers of eminent domain for public use as provided in chapter 523, RSMo, except that the power of eminent domain shall not be exercised against any electric cooperative association, municipally owned or public utility;

(12) Incur debts, liabilities or obligations including the issuance of bonds pursuant to the authority granted in section 27 of article VI of the Missouri Constitution;

(13) Sue and be sued in its own name;

(14) Have and use a corporate seal;

(15) Fix, maintain and revise fees, rates, rents and charges for functions, services, facilities or commodities provided by the commission;

(16) Make, and from time to time, amend and repeal, bylaws, rules and regulations not inconsistent with this section to carry into effect the powers and purposes of the commission;

(17) Notwithstanding the provisions of any other law, invest any funds held in reserve or sinking funds, or any funds not required for immediate disbursement, including the proceeds from the sale of any bonds, in such obligations, securities and other investments as the commission deems proper;

(18) Join organizations, membership in which is deemed by the board of directors **or its executive committee** to be beneficial to accomplishment of the commission's purposes;

(19) Exercise any other powers which are deemed necessary and convenient by the commission to effectuate the purposes of the commission; and

(20) Do and perform any acts and things authorized by this section under, through or by means of an agent or by contracts with any person.

2. When a municipality purchases a privately owned water utility and a commission is created pursuant to sections 393.700 to 393.770, the commission may continue to serve those

locations previously receiving water from the private utility even though the location receives such service outside the geographical area of the municipalities forming the commission. New water service may be provided in such areas if the site to receive such service is located within one-fourth of a mile from a site serviced by the privately owned water utility.

3. When a commission created by any of the contracting entities listed in subdivision (4) of section 393.705 becomes a successor to any nonprofit water corporation, nonprofit sewer corporation or other nonprofit agency or entity organized to provide water or sewer service, the commission may continue to serve, as well as provide new service to, those locations and areas previously receiving water or sewer service from such nonprofit entity, regardless of whether or not such location receives such service outside the geographical service area of the contracting entities forming such commission; provided that such locations and areas previously receiving water and sewer service from such nonprofit entity are not located within:

(1) Any county of the first classification with a population of more than six hundred thousand and less than nine hundred thousand;

(2) The boundaries of any sewer district established pursuant to article VI, section 30(a) of the Missouri Constitution; or

(3) The certificated area of a water or sewer corporation that is subject to the jurisdiction of the public service commission.

393.720. COMMISSIONS TO BE BODIES PUBLIC AND CORPORATE. — Any commission established by joint contract under sections 393.700 to 393.770 shall constitute a **[**political subdivision and**]** body public and corporate of the state, exercising public powers**[**, separate from the contracting municipalities**] for the benefit of its contracting members and in order to carry out the public purposes and the public functions of its contracting members**. It shall have the duties, privileges, immunities, rights, liabilities and disabilities of **its contracting members and as** a public body politic and corporate but shall not have taxing power **separate from that of its members** nor shall it have the benefit of the doctrine of sovereign immunity.

393.725. BONDS ISSUED TO BE REVENUE BONDS ONLY — FORM OF BONDS. — 1. Bonds issued pursuant to sections 393.700 to 393.770 by a commission shall be payable, as to the principal and interest, solely from the net revenues derived **[**by the commission**]** from the operation of **any one or more of** the **[**commission's project or**]** projects **financed by the commission**, after providing for the costs of operation and maintenance of the **[**commission's**]** project or projects, or from any other funds made available to the commission from sources other than from proceeds of taxation.

2. Each bond issued pursuant to the provisions of sections 393.700 to 393.770 shall contain a statement that such bond is not an indebtedness of the state, or of any political subdivision thereof, other than the joint municipal utility commission, or of the contracting municipalities, the contracting public water supply districts or the contracting sewer districts, but shall be special obligations of the commission only and that neither the faith and credit nor the taxing power of the state or of any political subdivision thereof, or of the contracting municipalities, contracting public water supply districts or contracting sewer districts is pledged to the payment of or the interest on such bonds. The bonds shall not be deemed to be an indebtedness within the meaning of any constitutional or statutory limitation upon the incurring of indebtedness. Neither the members of the board of directors of a commission nor any person executing the bonds shall be liable personally on the bonds by reason of the lawful issuance thereof.

3. A commission, subject to the provisions of **[**section 393.760**] sections 393.700 to 393.770**, may from time to time issue its bonds in such principal amounts as it deems necessary to provide sufficient funds to purchase, construct, extend or improve a project, including the establishment or increase of reserves, interest accrued during construction of such project and for a period not exceeding one year after the completion of construction of such project, and the

payment of all other costs or expenses of the commission incident to and necessary or convenient to carry out its corporate purposes and powers.

4. Bonds of a commission shall be authorized by resolution of the board of directors **or by resolution of its executive committee if the board has delegated such authority** and may be issued under such resolution or under a trust indenture or other security instrument, as authorized by the resolution, in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form, either coupon, registered or both, carry such conversion or registration privileges, have such rank or priority, **be payable from any one or more projects,** be executed in such manner, be payable in such medium of payment, at such place or places within or without the state, and be subject to such terms of redemption, with or without premium, as such resolution, trust indenture or other security instrument may provide, and without limitation by the provisions of any other law limiting amounts, maturities or interest rates.

5. The bonds shall be sold at public sale or at private sale as the commission may provide and at such price or prices as the commission shall determine. The decision of the commission shall be conclusive.

6. The bonds may be signed by manual or facsimile signatures as determined by resolution of the board **or by resolution of the executive committee if the board has delegated such authority**. In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such obligations, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the officers had remained in office until such delivery.

7. Pending preparation of definitive bonds, a commission may issue temporary bonds which shall be exchanged for the definitive bonds when such bonds shall have been executed and are available for delivery.

8. All bonds issued under the provisions of sections 393.700 to 393.770 shall be negotiable instruments pursuant to the provisions of the uniform commercial code of the state.

393.730. REQUIREMENTS OF RESOLUTION AUTHORIZING BONDS. — 1. The resolution authorizing any issuance of bonds hereunder shall make provision for the payment of the bonds by fixing such rates, fees and charges for water, sewer, gas, heat, electric power and energy and all other services **provided by the project** sufficient to pay the interest and principal of the bonds when due, to provide for a sinking fund sufficient to retire the bonds, and to provide and maintain reasonable reserves. Such rates, fees and charges shall also be sufficient to pay the costs of operation, improvement and maintenance of the **[**water, sewer, gas, heat or electric power facilities**]** **project**.

2. The resolution and trust indenture under which any bonds shall be issued shall constitute a contract with the holders of the bonds, and may contain provisions, among others, as to:

(1) The terms and provisions of the bonds;

(2) As provided in section 393.735, the mortgage or pledge of and the grant of a security interest in any real or personal property and all or any part of the revenues from any project or projects or any revenue-producing contract or contracts made by the commission with any person to secure the payment of bonds, subject to such agreements with the holders of bonds as may then exist;

(3) The custody, collection, securing, investment and payment of any revenues, assets, money, funds or property with respect to which the commission may have any rights or interest;

(4) The purposes to which the proceeds from the sale of any bonds then or thereafter to be issued may be applied, **[**and**]** the pledge of such proceeds to secure the payment of the bonds **and the net revenue of the project or projects which may be pledged to the payment of bonds**;

(5) Limitations on the issuance of any additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds;

(6) The rank or priority of any bonds with respect to any lien or security;

(7) The creation of special funds or moneys to be held in trust or otherwise for operating expenses, payment, or redemption of bonds, reserves or other purposes, and the use and disposition of moneys held in such funds;

(8) The procedure by which the terms of any contract with or for the benefit of the holders of bonds may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(9) The definition of the acts or omissions to act which shall constitute a default in the duties of the commission to holders of its bonds, and the rights and remedies of such holders in the event of such default including, if the commission shall so determine, the right to accelerate the due date of the bonds or the right to appoint a receiver or receivers of the property or revenues subject to the lien of the resolution and trust indenture;

(10) Any other or additional agreements with or for the benefit of the holders of bonds or any covenants or restrictions necessary or desirable to safeguard the interests of such holders;

(11) The custody of any of its properties or investments, the safekeeping thereof, the insurance to be carried thereon, and the use and disposition of insurance proceeds;

(12) The vesting in a trustee or trustees, within or outside the state, of such properties, rights, powers, and duties in trust as the commission may determine, or limiting or abrogating the rights of the holders of any bonds to appoint a trustee, or limiting the rights, powers, and duties of such trustee; and

(13) Appointing and providing for the duties and obligations of a paying agent or paying agents or other fiduciaries within or outside the state.

393.740. CERTAIN TAXES APPLICABLE. — 1. All bonds issued pursuant to sections 393.700 to 393.770 and all income or interest thereon shall be exempt from all state taxes, except estate and transfer taxes.

2. All property, real and tangible personal, except for properties acquired exclusively for water supply districts, acquired by the bonds issued pursuant to sections 393.700 and 393.770 or otherwise acquired by a commission shall be subject to taxation for state, county, and municipal and other local purposes only to the same extent as if such property was owned directly by each **contracting or** participating municipality **in such proportion or manner as specified by contract among all contracting or participating municipalities party to a project or if not specified** in proportion to the percentage of each municipality's interest or participation in the facility or property.

393.745. REFUNDING BONDS MAY BE ISSUED. — Any commission governed by the provisions of sections 393.700 to 393.770 having issued bonds under sections 393.700 to 393.770 may from time to time as authorized by resolution of the commission **or by resolution of its executive committee if the board has delegated such authority** issue refunding bonds for the purpose of refunding, extending and unifying the whole or any part of its valid outstanding indebtedness.

393.760. ELECTION ON ISSUANCE OF BONDS — REQUIRED ACTIONS — NOTICE — CONDUCT OF ELECTION — FORM OF BALLOT — ALTERNATIVE VOTING PROCEDURES. — 1. **[**The commission**]** **Each participating municipality** shall, in accordance with the provisions of chapter 115, RSMo, order an election to be held whereby the qualified electors in **[**each contracting**]** **such participating** municipality **[**participating in the project**]** shall approve or disapprove the issuance of **[**the**]** **its** bonds **[**as provided for in the resolution of the commission**]** **to finance its individual interest in the project**. The **[**commission**]** **participating municipality** may not order such an election until it has **[**engaged and**]** received a report from an independent consulting engineer as defined in section 327.181, RSMo, for the purpose of determining the economic and engineering feasibility of any proposed project the costs of which

are to be financed through the issuance of bonds. The report of the consulting engineer shall be provided to and approved by the legislative body and executive of each **[**contracting**]** **such participating** municipality **[**participating in the project**]** and such report shall be open to public inspection and shall be the subject of a public hearing in each **participating** municipality **[**participating in the project**]**. Notice of the time and place of each such hearing shall be published in a daily newspaper of general circulation within each **such participating** municipality. Interested parties may appear and fully participate in such hearings.

2. **[**The commission**]** **Each participating municipality** shall notify the election authority or authorities responsible for conducting elections within **[**each contracting**]** **such participating** municipality **[**participating in the project**]** in accordance with chapter 115, RSMo.

3. The question shall be submitted in substantially the following form:

OFFICIAL BALLOT

[Should a resolution to approve the issuance of**]** **Shall (name of participating municipality) issue its (type)** revenue bonds **[**by the joint municipal (water) (sewer) (power) (gas) commission**]** in an amount not to exceed $..... for the purpose of **[**..... be approved**]** **paying its share of the cost of participating in (describe project)**?

Yes No

If you are in favor of the resolution, place an "X" in the box opposite "Yes". If you are opposed to the question, place an "X" in the box opposite "No".

4. If the **[**resolution to issue**]** **issuance of** the bonds is approved by at least a majority of the qualified electors voting thereon in **[**each of the contracting municipalities participating in the project**]** **the participating municipality**, the **[**commission**]** **participating municipality** shall declare the result of the election and cause the bonds to be issued.

5. **[**The municipalities participating in the project**]** **Each participating municipality** shall bear all expenses associated with the elections in such **[**contracting municipalities**]** **participating municipality**.

393.770. PURCHASE AGREEMENTS AUTHORIZED — TERMS — NOT TO CONSTITUTE DEBT. — 1. The contracting municipalities may provide in the joint contract for payment to the commission of funds for commodities to be procured and services to be rendered by the commission. The contracting municipalities**, participating municipalities,** and other persons may enter into purchase agreements with the commission for the purchase, sale, exchange or transmission of water, sewage service, gas, heat or any right to capacity or interest in such electric power and energy **and any other services provided by the project** whereby the purchaser is obligated to make payments in amounts which shall be sufficient to enable the commission to meet its expenses, interest and principal payments, whether at maturity or upon sinking fund redemption, for its bonds, reasonable reserves for debt service, operation and maintenance and renewals and replacements and the requirements of any rate covenant with respect to debt service coverage contained in any resolution, trust indenture or other security instrument. Purchase agreements may contain such other terms and conditions as the commission and the purchasers may determine, including provisions whereby the purchaser is obligated to pay for water, sewage service, gas, heat **[**or**],** power**, or any other services provided by the project** irrespective of whether water, sewage service, gas, heat **[**or**],** energy**, or any other service** is produced or delivered to the purchaser or whether any project contemplated by any such agreement is completed, operable or operating, and notwithstanding suspension, interruption, interference, reduction or curtailment of the output of such project. Such agreements may be for a term covering the life of a project or for any other term, or for an indefinite period. The joint contract or a purchase agreement may provide that if one or more of the purchasers default in the payment of its obligations under any such purchase agreement, the remaining purchasers which also have such agreements shall be required to accept and pay for and shall be entitled proportionately to use or otherwise dispose of the water, sewage service, gas, heat **[**or**],** energy**, or other service** to be purchased by the defaulting purchaser.

2. The obligations of a **contracting or participating** municipality under a purchase agreement with a commission or arising out of the default by any other purchaser with respect to such an agreement shall not be construed to constitute debt of the **contracting or participating** municipality. To the extent provided in the purchase agreement, such obligations shall constitute special obligations of the **contracting or participating** municipality, payable solely from the revenues and other moneys derived by the **contracting or participating** municipality from its municipal utility and shall be treated as expenses of operating a municipal utility.

Approved June 25, 2004

HB 1179 [HCS HB 1179]

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

Revises surcharge in criminal cases so that the money collected may also be used to pay for any expenses related to housing costs or fees for prisoners.

AN ACT to repeal section 488.5026, RSMo, and to enact in lieu thereof one new section relating to a surcharge in criminal cases.

SECTION
A. Enacting clause.
488.5026. Two-dollar surcharge for all criminal cases, funds to be deposited in inmate security fund.

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

SECTION A. ENACTING CLAUSE. — Section 488.5026, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 488.5026, to read as follows:

488.5026. TWO-DOLLAR SURCHARGE FOR ALL CRIMINAL CASES, FUNDS TO BE DEPOSITED IN INMATE SECURITY FUND. — 1. Upon approval of the governing body of a city, county, or a city not within a county, a surcharge of two dollars shall be assessed as costs in each court proceeding filed in any court in any city, county, or city not within a county adopting such a surcharge, in all criminal cases including violations of any county ordinance or any violation of criminal or traffic laws of the state, including an infraction and violation of a municipal ordinance; except that no such fee shall be collected in any proceeding in any court when the proceeding or the defendant has been dismissed by the court or when costs are to be paid by the state, county, or municipality. A surcharge of two dollars shall be assessed as costs in a juvenile court proceeding in which a child is found by the court to come within the applicable provisions of subdivision (3) of subsection 1 of section 211.031, RSMo.

2. Notwithstanding any other provision of law, the moneys collected by clerks of the courts pursuant to the provisions of subsection 1 of this section shall be collected and disbursed in accordance with sections 488.010 to 488.020, and shall be payable to the treasurer of the governmental unit authorizing such surcharge.

3. The treasurer shall deposit funds generated by the surcharge into the "Inmate Security Fund". Funds deposited shall be utilized to develop biometric **[**identification**]** **verification** systems to ensure that inmates can be properly identified and tracked within the local jail system. **Upon the installation of the biometric verification system, funds in the inmate security**

fund may be used for the maintenance of the biometric verification system, and to pay for any expenses related to custody and housing and other expenses for prisoners.

Approved June 21, 2004

HB 1182 [CCS SS SCS HCS HB 1182]

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

Changes various provisions related to incentive tax credits.

AN ACT to repeal sections 100.710, 100.850, 137.100, 144.030, 144.615, 148.330, 348.430, and 348.432, RSMo, and to enact in lieu thereof eight new sections relating to tax credits, with an emergency clause.

SECTION

A. Enacting clause.
100.710. Definitions.
100.850. Assessments remittal, job development assessment fee — company records available to board, when — when remitted assessment ceases — tax credit amount, cap, claiming credit — refunds.
137.100. Certain property exempt from taxes.
144.030. Exemptions from state and local sales and use taxes.
144.615. Exemptions.
148.330. Returns, assessment of tax, procedure — notice to company — taxes, how paid — suspension of delinquents, apportionment of money — county, defined.
348.430. Agricultural product utilization contributor tax credit — definitions — requirements — limitations.
348.432. New generation cooperative incentive tax credit — definitions — requirements — limitations.
B. Emergency clause.

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

SECTION A. ENACTING CLAUSE. — Sections 100.710, 100.850, 137.100, 144.030, 144.615, 148.330, 348.430, and 348.432, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 100.710, 100.850, 137.100, 144.030, 144.615, 148.330, 348.430, and 348.432, to read as follows:

100.710. DEFINITIONS. — As used in sections 100.700 to 100.850, the following terms mean:

(1) "Assessment", an amount of up to five percent of the gross wages paid in one year by an eligible industry to all eligible employees in new jobs, or up to ten percent if the economic development project is located within a distressed community as defined in section 135.530, RSMo;

(2) "Board", the Missouri development finance board as created by section 100.265;

(3) "Certificates", the revenue bonds or notes authorized to be issued by the board pursuant to section 100.840;

(4) "Credit", the amount agreed to between the board and an eligible industry, but not to exceed the assessment attributable to the eligible industry's project;

(5) "Department", the Missouri department of economic development;

(6) "Director", the director of the department of economic development;

(7) "Economic development project":

(a) The acquisition of any real property by the board, the eligible industry, or its affiliate; or

(b) The fee ownership of real property by the eligible industry or its affiliate; and

(c) For both paragraphs (a) and (b) of this subdivision, "economic development project" shall also include the development of the real property including construction, installation, or equipping of a project, including fixtures and equipment, and facilities necessary or desirable for improvement of the real property, including surveys; site tests and inspections; subsurface site work; excavation; removal of structures, roadways, cemeteries and other surface obstructions; filling, grading and provision of drainage, storm water retention, installation of utilities such as water, sewer, sewage treatment, gas, electricity, communications and similar facilities; off-site construction of utility extensions to the boundaries of the real property; and the acquisition, installation, or equipping of facilities on the real property, for use and occupancy by the eligible industry or its affiliates;

(8) "Eligible employee", a person employed on a full-time basis in a new job at the economic development project averaging at least thirty-five hours per week who was not employed by the eligible industry or a related taxpayer in this state at any time during the twelve-month period immediately prior to being employed at the economic development project. For an essential industry, a person employed on a full-time basis in an existing job at the economic development project averaging at least thirty-five hours per week may be considered an eligible employee for the purposes of the program authorized by sections 100.700 to 100.850;

(9) "Eligible industry", a business located within the state of Missouri which is engaged in interstate or intrastate commerce for the purpose of manufacturing, processing or assembling products, conducting research and development, or providing services in interstate commerce, office industries, or agricultural processing, but excluding retail, health or professional services. "Eligible industry" does not include a business which closes or substantially reduces its operation at one location in the state and relocates substantially the same operation to another location in the state. This does not prohibit a business from expanding its operations at another location in the state provided that existing operations of a similar nature located within the state are not closed or substantially reduced. This also does not prohibit a business from moving its operations from one location in the state to another location in the state for the purpose of expanding such operation provided that the board determines that such expansion cannot reasonably be accommodated within the municipality in which such business is located, or in the case of a business located in an incorporated area of the county, within the county in which such business is located, after conferring with the chief elected official of such municipality or county and taking into consideration any evidence offered by such municipality or county regarding the ability to accommodate such expansion within such municipality or county. An eligible industry must:

(a) Invest a minimum of fifteen million dollars, or ten million dollars for an office industry, in an economic development project; and

(b) Create a minimum of one hundred new jobs for eligible employees at the economic development project or a minimum of five hundred jobs if the economic development project is an office industry or a minimum of two hundred new jobs if the economic development project is an office industry located within a distressed community as defined in section 135.530, RSMo**, in the case of an approved company for a project for a world headquarters of a business whose primary function is tax return preparation in any home rule city with more than four hundred thousand inhabitants and located in more than one county, create a minimum of one hundred new jobs for eligible employees at the economic development project**. An industry that meets the definition of "essential industry" may be considered an eligible industry for the purposes of the program authorized by sections 100.700 to 100.850;

(10) "Essential industry", a business that otherwise meets the definition of eligible industry except an essential industry shall:

(a) Be a targeted industry;

(b) Be located in a home rule city with more than twenty-six thousand but less than twenty-seven thousand inhabitants located in any county with a charter form of government and with more than one million inhabitants;

(c) Have maintained at least two thousand jobs at the proposed economic development project site each year for a period of four years preceding the year in which application for the program authorized by sections 100.700 to 100.850 is made and during the year in which said application is made;

(d) For the duration of the certificates, retain at the proposed economic development project site the level of employment that existed at the site in the taxable year immediately preceding the year in which application for the program authorized by sections 100.700 to 100.850 is made; and

(e) Invest a minimum of five hundred million dollars in the economic development project by the end of the third year after the issuance of the certificates under this program;

(11) "New job", a job in a new or expanding eligible industry not including jobs of recalled workers, replacement jobs or jobs that formerly existed in the eligible industry in the state. For an essential industry, an existing job may be considered a new job for the purposes of the program authorized by sections 100.700 to 100.850;

(12) "Office industry", a regional, national or international headquarters, a telecommunications operation, a computer operation, an insurance company, or a credit card billing and processing center;

(13) "Program costs", all necessary and incidental costs of providing program services including payment of the principal of premium, if any, and interest on certificates, including capitalized interest, issued to finance a project, and funding and maintenance of a debt service reserve fund to secure such certificates. Program costs shall include:

(a) Obligations incurred for labor and obligations incurred to contractors, subcontractors, builders and materialmen in connection with the acquisition, construction, installation or equipping of an economic development project;

(b) The cost of acquiring land or rights in land and any cost incidental thereto, including recording fees;

(c) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation or equipping of an economic development project which is not paid by the contractor or contractors or otherwise provided for;

(d) All costs of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations and supervision of construction, as well as the costs for the performance of all the duties required by or consequent upon the acquisition, construction, installation or equipping of an economic development project;

(e) All costs which are required to be paid under the terms of any contract or contracts for the acquisition, construction, installation or equipping of an economic development project; and

(f) All other costs of a nature comparable to those described in this subdivision;

(14) "Program services", administrative expenses of the board, including contracted professional services, and the cost of issuance of certificates;

(15) "Targeted industry", an industry or one of a cluster of industries that is identified by the department as critical to the state's economic security and growth and affirmed as such by the joint committee on economic development policy and planning established in section 620.602, RSMo.

100.850. ASSESSMENTS REMITTAL, JOB DEVELOPMENT ASSESSMENT FEE — COMPANY RECORDS AVAILABLE TO BOARD, WHEN — WHEN REMITTED ASSESSMENT CEASES — TAX CREDIT AMOUNT, CAP, CLAIMING CREDIT — REFUNDS. — 1. The approved company shall remit to the board a job development assessment fee, not to exceed five percent of the gross wages of each eligible employee whose job was created as a result of the economic development project, or not to exceed ten percent if the economic development project is located within a

distressed community as defined in section 135.530, RSMo, for the purpose of retiring bonds which fund the economic development project.

2. Any approved company remitting an assessment as provided in subsection 1 of this section shall make its payroll books and records available to the board at such reasonable times as the board shall request and shall file with the board documentation respecting the assessment as the board may require.

3. Any assessment remitted pursuant to subsection 1 of this section shall cease on the date the bonds are retired.

4. Any approved company which has paid an assessment for debt reduction shall be allowed a tax credit equal to the amount of the assessment. The tax credit may be claimed against taxes otherwise imposed by chapters 143 and 148, RSMo, except withholding taxes imposed under the provisions of sections 143.191 to 143.265, RSMo, which were incurred during the tax period in which the assessment was made.

5. In no event shall the aggregate amount of tax credits authorized by subsection 4 of this section exceed eleven million dollars annually. **If the approved company shall be a project for a world headquarters of a business whose primary function is tax return preparation in any home rule city with more than four hundred thousand inhabitants and located in more than one county, the aggregate amount of tax credits authorized by subsection 4 of this section shall be increased to eleven million nine hundred fifty thousand dollars annually.**

6. The director of revenue shall issue a refund to the approved company to the extent that the amount of credits allowed in subsection 4 of this section exceeds the amount of the approved company's income tax.

137.100. CERTAIN PROPERTY EXEMPT FROM TAXES. — The following subjects are exempt from taxation for state, county or local purposes:

(1) Lands and other property belonging to this state;

(2) Lands and other property belonging to any city, county or other political subdivision in this state, including market houses, town halls and other public structures, with their furniture and equipments, and on public squares and lots kept open for health, use or ornament;

(3) Nonprofit cemeteries;

(4) The real estate and tangible personal property which is used exclusively for agricultural or horticultural societies organized in this state, including not-for-profit agribusiness associations;

(5) All property, real and personal, actually and regularly used exclusively for religious worship, for schools and colleges, or for purposes purely charitable and not held for private or corporate profit, except that the exemption herein granted does not include real property not actually used or occupied for the purpose of the organization but held or used as investment even though the income or rentals received therefrom is used wholly for religious, educational or charitable purposes;

(6) Household goods, furniture, wearing apparel and articles of personal use and adornment, as defined by the state tax commission, owned and used by a person in his home or dwelling place; **[**and**]**

(7) Motor vehicles leased for a period of at least one year to this state or to any city, county, or political subdivision**; and**

(8) Real or personal property leased or otherwise transferred by an interstate compact agency created pursuant to sections 70.370 to 70.430, RSMo, or sections 238.010 to 238.100, RSMo, to another for which or whom such property is not exempt when immediately after the lease or transfer, the interstate compact agency enters into a leaseback or other agreement that directly or indirectly gives such interstate compact agency a right to use, control, and possess the property; provided, however, that in the event of a conveyance of such property, the interstate compact agency must retain an option to purchase the property at a future date or, within the limitations period for

reverters, the property must revert back to the interstate compact agency. Property will no longer be exempt under this subdivision in the event of a conveyance as of the date, if any, when:

(a) The right of the interstate compact agency to use, control, and possess the property is terminated;

(b) The interstate compact agency no longer has an option to purchase or otherwise acquire the property; and

(c) There is no provisions for reverter of the property within the limitation period for reverters.

144.030. EXEMPTIONS FROM STATE AND LOCAL SALES AND USE TAXES. — 1. There is hereby specifically exempted from the provisions of sections 144.010 to 144.525 and from the computation of the tax levied, assessed or payable pursuant to sections 144.010 to 144.525 such retail sales as may be made in commerce between this state and any other state of the United States, or between this state and any foreign country, and any retail sale which the state of Missouri is prohibited from taxing pursuant to the Constitution or laws of the United States of America, and such retail sales of tangible personal property which the general assembly of the state of Missouri is prohibited from taxing or further taxing by the constitution of this state.

2. There are also specifically exempted from the provisions of the local sales tax law as defined in section 32.085, RSMo, section 238.235, RSMo, and sections 144.010 to 144.525 and 144.600 to 144.745 and from the computation of the tax levied, assessed or payable pursuant to the local sales tax law as defined in section 32.085, RSMo, section 238.235, RSMo, and sections 144.010 to 144.525 and 144.600 to 144.745:

(1) Motor fuel or special fuel subject to an excise tax of this state, unless all or part of such excise tax is refunded pursuant to section 142.584, RSMo; or upon the sale at retail of fuel to be consumed in manufacturing or creating gas, power, steam, electrical current or in furnishing water to be sold ultimately at retail; or feed for livestock or poultry; or grain to be converted into foodstuffs which are to be sold ultimately in processed form at retail; or seed, limestone or fertilizer which is to be used for seeding, liming or fertilizing crops which when harvested will be sold at retail or will be fed to livestock or poultry to be sold ultimately in processed form at retail; economic poisons registered pursuant to the provisions of the Missouri pesticide registration law (sections 281.220 to 281.310, RSMo) which are to be used in connection with the growth or production of crops, fruit trees or orchards applied before, during, or after planting, the crop of which when harvested will be sold at retail or will be converted into foodstuffs which are to be sold ultimately in processed form at retail;

(2) Materials, manufactured goods, machinery and parts which when used in manufacturing, processing, compounding, mining, producing or fabricating become a component part or ingredient of the new personal property resulting from such manufacturing, processing, compounding, mining, producing or fabricating and which new personal property is intended to be sold ultimately for final use or consumption; and materials, including without limitation, gases and manufactured goods, including without limitation, slagging materials and firebrick, which are ultimately consumed in the manufacturing process by blending, reacting or interacting with or by becoming, in whole or in part, component parts or ingredients of steel products intended to be sold ultimately for final use or consumption;

(3) Materials, replacement parts and equipment purchased for use directly upon, and for the repair and maintenance or manufacture of, motor vehicles, watercraft, railroad rolling stock or aircraft engaged as common carriers of persons or property;

(4) Replacement machinery, equipment, and parts and the materials and supplies solely required for the installation or construction of such replacement machinery, equipment, and parts, used directly in manufacturing, mining, fabricating or producing a product which is intended to be sold ultimately for final use or consumption; and machinery and equipment, and the materials and supplies required solely for the operation, installation or construction of such machinery and

equipment, purchased and used to establish new, or to replace or expand existing, material recovery processing plants in this state. For the purposes of this subdivision, a "material recovery processing plant" means a facility which converts recovered materials into a new product, or a different form which is used in producing a new product, and shall include a facility or equipment which is used exclusively for the collection of recovered materials for delivery to a material recovery processing plant but shall not include motor vehicles used on highways. For purposes of this section, the terms "motor vehicle" and "highway" shall have the same meaning pursuant to section 301.010, RSMo;

(5) Machinery and equipment, and parts and the materials and supplies solely required for the installation or construction of such machinery and equipment, purchased and used to establish new or to expand existing manufacturing, mining or fabricating plants in the state if such machinery and equipment is used directly in manufacturing, mining or fabricating a product which is intended to be sold ultimately for final use or consumption;

(6) Tangible personal property which is used exclusively in the manufacturing, processing, modification or assembling of products sold to the United States government or to any agency of the United States government;

(7) Animals or poultry used for breeding or feeding purposes;

(8) Newsprint, ink, computers, photosensitive paper and film, toner, printing plates and other machinery, equipment, replacement parts and supplies used in producing newspapers published for dissemination of news to the general public;

(9) The rentals of films, records or any type of sound or picture transcriptions for public commercial display;

(10) Pumping machinery and equipment used to propel products delivered by pipelines engaged as common carriers;

(11) Railroad rolling stock for use in transporting persons or property in interstate commerce and motor vehicles licensed for a gross weight of twenty-four thousand pounds or more or trailers used by common carriers, as defined in section 390.020, RSMo, solely in the transportation of persons or property in interstate commerce;

(12) Electrical energy used in the actual primary manufacture, processing, compounding, mining or producing of a product, or electrical energy used in the actual secondary processing or fabricating of the product, or a material recovery processing plant as defined in subdivision (4) of this subsection, in facilities owned or leased by the taxpayer, if the total cost of electrical energy so used exceeds ten percent of the total cost of production, either primary or secondary, exclusive of the cost of electrical energy so used or if the raw materials used in such processing contain at least twenty-five percent recovered materials as defined in section 260.200, RSMo. For purposes of this subdivision, "processing" means any mode of treatment, act or series of acts performed upon materials to transform and reduce them to a different state or thing, including treatment necessary to maintain or preserve such processing by the producer at the production facility;

(13) Anodes which are used or consumed in manufacturing, processing, compounding, mining, producing or fabricating and which have a useful life of less than one year;

(14) Machinery, equipment, appliances and devices purchased or leased and used solely for the purpose of preventing, abating or monitoring air pollution, and materials and supplies solely required for the installation, construction or reconstruction of such machinery, equipment, appliances and devices, and so certified as such by the director of the department of natural resources, except that any action by the director pursuant to this subdivision may be appealed to the air conservation commission which may uphold or reverse such action;

(15) Machinery, equipment, appliances and devices purchased or leased and used solely for the purpose of preventing, abating or monitoring water pollution, and materials and supplies solely required for the installation, construction or reconstruction of such machinery, equipment, appliances and devices, and so certified as such by the director of the department of natural resources, except that any action by the director pursuant to this subdivision may be appealed to the Missouri clean water commission which may uphold or reverse such action;

(16) Tangible personal property purchased by a rural water district;

(17) All amounts paid or charged for admission or participation or other fees paid by or other charges to individuals in or for any place of amusement, entertainment or recreation, games or athletic events, including museums, fairs, zoos and planetariums, owned or operated by a municipality or other political subdivision where all the proceeds derived therefrom benefit the municipality or other political subdivision and do not inure to any private person, firm, or corporation;

(18) All sales of insulin and prosthetic or orthopedic devices as defined on January 1, 1980, by the federal Medicare program pursuant to Title XVIII of the Social Security Act of 1965, including the items specified in Section 1862(a)(12) of that act, and also specifically including hearing aids and hearing aid supplies and all sales of drugs which may be legally dispensed by a licensed pharmacist only upon a lawful prescription of a practitioner licensed to administer those items, including samples and materials used to manufacture samples which may be dispensed by a practitioner authorized to dispense such samples and all sales of medical oxygen, home respiratory equipment and accessories, hospital beds and accessories and ambulatory aids, all sales of manual and powered wheelchairs, stairway lifts, Braille writers, electronic Braille equipment and, if purchased by or on behalf of a person with one or more physical or mental disabilities to enable them to function more independently, all sales of scooters, reading machines, electronic print enlargers and magnifiers, electronic alternative and augmentative communication devices, and items used solely to modify motor vehicles to permit the use of such motor vehicles by individuals with disabilities or sales of over-the-counter or nonprescription drugs to individuals with disabilities;

(19) All sales made by or to religious and charitable organizations and institutions in their religious, charitable or educational functions and activities and all sales made by or to all elementary and secondary schools operated at public expense in their educational functions and activities;

(20) All sales of aircraft to common carriers for storage or for use in interstate commerce and all sales made by or to not-for-profit civic, social, service or fraternal organizations, including fraternal organizations which have been declared tax-exempt organizations pursuant to Section 501(c)(8) or (10) of the 1986 Internal Revenue Code, as amended, solely in their civic or charitable functions and activities and all sales made to eleemosynary and penal institutions and industries of the state, and all sales made to any private not-for-profit institution of higher education not otherwise excluded pursuant to subdivision (19) of this subsection or any institution of higher education supported by public funds, and all sales made to a state relief agency in the exercise of relief functions and activities;

(21) All ticket sales made by benevolent, scientific and educational associations which are formed to foster, encourage, and promote progress and improvement in the science of agriculture and in the raising and breeding of animals, and by nonprofit summer theater organizations if such organizations are exempt from federal tax pursuant to the provisions of the Internal Revenue Code and all admission charges and entry fees to the Missouri state fair or any fair conducted by a county agricultural and mechanical society organized and operated pursuant to sections 262.290 to 262.530, RSMo;

(22) All sales made to any private not-for-profit elementary or secondary school, all sales of feed additives, medications or vaccines administered to livestock or poultry in the production of food or fiber, all sales of pesticides used in the production of crops, livestock or poultry for food or fiber, all sales of bedding used in the production of livestock or poultry for food or fiber, all sales of propane or natural gas, electricity or diesel fuel used exclusively for drying agricultural crops, natural gas used in the primary manufacture or processing of fuel ethanol as defined in section 142.028, RSMo, and all sales of farm machinery and equipment, other than airplanes, motor vehicles and trailers. As used in this subdivision, the term "feed additives" means tangible personal property which, when mixed with feed for livestock or poultry, is to be used in the feeding of livestock or poultry. As used in this subdivision, the term "pesticides"

includes adjuvants such as crop oils, surfactants, wetting agents and other assorted pesticide carriers used to improve or enhance the effect of a pesticide and the foam used to mark the application of pesticides and herbicides for the production of crops, livestock or poultry. As used in this subdivision, the term "farm machinery and equipment" means new or used farm tractors and such other new or used farm machinery and equipment and repair or replacement parts thereon, and supplies and lubricants used exclusively, solely, and directly for producing crops, raising and feeding livestock, fish, poultry, pheasants, chukar, quail, or for producing milk for ultimate sale at retail and one-half of each purchaser's purchase of diesel fuel therefor which is:

(a) Used exclusively for agricultural purposes;

(b) Used on land owned or leased for the purpose of producing farm products; and

(c) Used directly in producing farm products to be sold ultimately in processed form or otherwise at retail or in producing farm products to be fed to livestock or poultry to be sold ultimately in processed form at retail;

(23) Except as otherwise provided in section 144.032, all sales of metered water service, electricity, electrical current, natural, artificial or propane gas, wood, coal or home heating oil for domestic use and in any city not within a county, all sales of metered or unmetered water service for domestic use;

(a) "Domestic use" means that portion of metered water service, electricity, electrical current, natural, artificial or propane gas, wood, coal or home heating oil, and in any city not within a county, metered or unmetered water service, which an individual occupant of a residential premises uses for nonbusiness, noncommercial or nonindustrial purposes. Utility service through a single or master meter for residential apartments or condominiums, including service for common areas and facilities and vacant units, shall be deemed to be for domestic use. Each seller shall establish and maintain a system whereby individual purchases are determined as exempt or nonexempt;

(b) Regulated utility sellers shall determine whether individual purchases are exempt or nonexempt based upon the seller's utility service rate classifications as contained in tariffs on file with and approved by the Missouri public service commission. Sales and purchases made pursuant to the rate classification "residential" and sales to and purchases made by or on behalf of the occupants of residential apartments or condominiums through a single or master meter, including service for common areas and facilities and vacant units, shall be considered as sales made for domestic use and such sales shall be exempt from sales tax. Sellers shall charge sales tax upon the entire amount of purchases classified as nondomestic use. The seller's utility service rate classification and the provision of service thereunder shall be conclusive as to whether or not the utility must charge sales tax;

(c) Each person making domestic use purchases of services or property and who uses any portion of the services or property so purchased for a nondomestic use shall, by the fifteenth day of the fourth month following the year of purchase, and without assessment, notice or demand, file a return and pay sales tax on that portion of nondomestic purchases. Each person making nondomestic purchases of services or property and who uses any portion of the services or property so purchased for domestic use, and each person making domestic purchases on behalf of occupants of residential apartments or condominiums through a single or master meter, including service for common areas and facilities and vacant units, under a nonresidential utility service rate classification may, between the first day of the first month and the fifteenth day of the fourth month following the year of purchase, apply for credit or refund to the director of revenue and the director shall give credit or make refund for taxes paid on the domestic use portion of the purchase. The person making such purchases on behalf of occupants of residential apartments or condominiums shall have standing to apply to the director of revenue for such credit or refund;

(24) All sales of handicraft items made by the seller or the seller's spouse if the seller or the seller's spouse is at least sixty-five years of age, and if the total gross proceeds from such sales do not constitute a majority of the annual gross income of the seller;

(25) Excise taxes, collected on sales at retail, imposed by Sections 4041, 4061, 4071, 4081, 4091, 4161, 4181, 4251, 4261 and 4271 of Title 26, United States Code. The director of revenue shall promulgate rules pursuant to chapter 536, RSMo, to eliminate all state and local sales taxes on such excise taxes;

(26) Sales of fuel consumed or used in the operation of ships, barges, or waterborne vessels which are used primarily in or for the transportation of property or cargo, or the conveyance of persons for hire, on navigable rivers bordering on or located in part in this state, if such fuel is delivered by the seller to the purchaser's barge, ship, or waterborne vessel while it is afloat upon such river;

(27) All sales made to an interstate compact agency created pursuant to sections 70.370 to 70.430, RSMo, or sections 238.010 to 238.100, RSMo, in the exercise of the functions and activities of such agency as provided pursuant to the compact;

(28) Computers, computer software and computer security systems purchased for use by architectural or engineering firms headquartered in this state. For the purposes of this subdivision, "headquartered in this state" means the office for the administrative management of at least four integrated facilities operated by the taxpayer is located in the state of Missouri;

(29) All livestock sales when either the seller is engaged in the growing, producing or feeding of such livestock, or the seller is engaged in the business of buying and selling, bartering or leasing of such livestock;

(30) All sales of barges which are to be used primarily in the transportation of property or cargo on interstate waterways;

(31) Electrical energy or gas, whether natural, artificial or propane, which is ultimately consumed in connection with the manufacturing of cellular glass products;

(32) Notwithstanding other provisions of law to the contrary, all sales of pesticides or herbicides used in the production of crops, aquaculture, livestock or poultry;

(33) Tangible personal property purchased for use or consumption directly or exclusively in the research and development of prescription pharmaceuticals consumed by humans or animals;

(34) All sales of grain bins for storage of grain for resale;

(35) All sales of feed which are developed for and used in the feeding of pets owned by a commercial breeder when such sales are made to a commercial breeder, as defined in section 273.325, RSMo, and licensed pursuant to sections 273.325 to 273.357, RSMo;

(36) All purchases by a contractor on behalf of an entity located in another state, provided that the entity is authorized to issue a certificate of exemption for purchases to a contractor under the provisions of that state's laws. For purposes of this subdivision, the term "certificate of exemption" shall mean any document evidencing that the entity is exempt from sales and use taxes on purchases pursuant to the laws of the state in which the entity is located. Any contractor making purchases on behalf of such entity shall maintain a copy of the entity's exemption certificate as evidence of the exemption. If the exemption certificate issued by the exempt entity to the contractor is later determined by the director of revenue to be invalid for any reason and the contractor has accepted the certificate in good faith, neither the contractor or the exempt entity shall be liable for the payment of any taxes, interest and penalty due as the result of use of the invalid exemption certificate. Materials shall be exempt from all state and local sales and use taxes when purchased by a contractor for the purpose of fabricating tangible personal property which is used in fulfilling a contract for the purpose of constructing, repairing or remodeling facilities for the following:

(a) An exempt entity located in this state, if the entity is one of those entities able to issue project exemption certificates in accordance with the provisions of section 144.062; or

(b) An exempt entity located outside the state if the exempt entity is authorized to issue an exemption certificate to contractors in accordance with the provisions of that state's law and the applicable provisions of this section;

(37) Tangible personal property purchased for use or consumption directly or exclusively in research or experimentation activities performed by life science companies and so certified as such by the director of the department of economic development or the director's designees; except that, the total amount of exemptions certified pursuant to this section shall not exceed one million three hundred thousand dollars in state and local taxes per fiscal year. For purposes of this subdivision, the term "life science companies" means companies whose primary research activities are in agriculture, pharmaceuticals, biomedical or food ingredients, and whose North American Industry Classification System (NAICS) Codes fall under industry 541710 (biotech research or development laboratories), 621511 (medical laboratories) or 541940 (veterinary services). The exemption provided by this subdivision shall expire on June 30, 2003**;**

(38) All sales or other transfers of tangible personal property to a lessor, who leases the property under a lease of one year or longer executed or in effect at the time of the sale or other transfer, to an interstate compact agency created pursuant to sections 70.370 to 70.430, RSMo, or sections 238.010 to 238.100, RSMo.

144.615. EXEMPTIONS. — There are specifically exempted from the taxes levied in sections 144.600 to 144.745:

(1) Property, the storage, use or consumption of which this state is prohibited from taxing pursuant to the constitution or laws of the United States or of this state;

(2) Property, the gross receipts from the sale of which are required to be included in the measure of the tax imposed pursuant to the Missouri sales tax law;

(3) Tangible personal property, the sale **or other transfer** of which, if made in this state, would be exempt from or not subject to the Missouri sales tax pursuant to the provisions of subsections 2 and 3 of section 144.030;

(4) Motor vehicles, trailers, boats, and outboard motors subject to the tax imposed by section 144.440;

(5) Tangible personal property which has been subjected to a tax by any other state in this respect to its sales or use; provided, if such tax is less than the tax imposed by sections 144.600 to 144.745, such property, if otherwise taxable, shall be subject to a tax equal to the difference between such tax and the tax imposed by sections 144.600 to 144.745;

(6) Tangible personal property held by processors, retailers, importers, manufacturers, wholesalers, or jobbers solely for resale in the regular course of business;

(7) Personal and household effects and farm machinery used while an individual was a bona fide resident of another state and who thereafter became a resident of this state, or tangible personal property brought into the state by a nonresident for his own storage, use or consumption while temporarily within the state.

148.330. RETURNS, ASSESSMENT OF TAX, PROCEDURE — NOTICE TO COMPANY — TAXES, HOW PAID — SUSPENSION OF DELINQUENTS, APPORTIONMENT OF MONEY — COUNTY, DEFINED. — 1. Every such company shall, on or before the first day of March in each year, make a return, verified by the affidavit of its president and secretary, or other authorized officers, to the director of the department of insurance stating the amount of all premiums received on account of policies issued in this state by the company, whether in cash or in notes, during the year ending on the thirty-first day of December, next preceding. Upon receipt of such returns the director of the department of insurance shall verify the same and certify the amount of tax due from the various companies on the basis and at the rates provided in section 148.320, and shall certify the same to the director of revenue together with the amount of the quarterly installments to be made as provided in subsection 2 of this section, on or before the thirtieth day of April of each year.

2. Beginning January 1, 1983, the amount of the tax due for that calendar year and each succeeding calendar year thereafter shall be paid in four approximately equal estimated quarterly installments, and a fifth reconciling installment. The first four installments shall be based upon

the tax for the immediately preceding taxable year ending on the thirty-first day of December, next preceding. The quarterly installments shall be made on the first day of March, the first day of June, the first day of September and the first day of December. Immediately after receiving certification from the director of the department of insurance of the amount of tax due from the various companies the director of revenue shall notify and assess each company the amount of taxes on its premiums for the calendar year ending on the thirty-first day of December, next preceding. The director of revenue shall also notify and assess each company the amount of the estimated quarterly installments to be made for the calendar year. If the amount of the actual tax due for any year exceeds the total of the installments made for such year, the balance of the tax due shall be paid on the first day of June of the year following, together with the regular quarterly payment due at that time. If the total amount of the tax actually due is less than the total amount of the installments actually paid, the amount by which the amount paid exceeds the amount due shall be credited against the tax for the following year and deducted from the quarterly installment otherwise due on the first day of June. If the March first quarterly installment made by a company is less than the amount assessed by the director of revenue, the difference will be due on June first, but no interest will accrue to the state on the difference unless the amount paid by the company is less than eighty percent of one-fourth of the total amount of tax assessed by the director of revenue for the immediately preceding taxable year. The state treasurer, upon receiving the moneys paid as a tax upon such premiums to the director of revenue, shall place the moneys to the credit of a fund to be known as "The County Stock Insurance Fund", which is hereby created and established. **The county stock insurance fund shall be included in the calculation of total state revenue pursuant to article X, section 18, of the Missouri Constitution.**

3. If the estimated quarterly tax installments are not so paid, the director of revenue shall certify such fact to the director of the division of insurance who shall thereafter suspend such delinquent company or companies from the further transaction of business in this state until such taxes shall be paid and such companies shall be subject to the provisions of sections 148.410 to 148.461.

4. On or before the first day of September of each year the commissioner of administration shall apportion all moneys in the county stock insurance fund to the general revenue fund of the state, to the county treasurer and to the treasurer of the school district in which the principal office of the company paying the same is located. All premium tax credits described in sections 135.500 to 135.529, RSMo, **and sections 348.430 and 348.432, RSMo,** shall only reduce the amounts apportioned to the general revenue fund of the state and shall not reduce any moneys apportioned **to any county treasurer or** to the treasurer of the school district in which the principal office of the company paying the same is located. Apportionments shall be made in the same ratio which the rates of levy for the same year for state purposes, for county purposes, and for all school district purposes, bear to each other; provided that any proceeds from such tax for prior years remaining on hand in the hands of the county collector or county treasurer undistributed on the effective date of sections 148.310 to 148.460 and any proceeds of such tax for prior years collected thereafter shall be distributed and paid in accordance with the provisions of such sections. Whenever the word "county" occurs herein it shall be construed to include the city of St. Louis.

348.430. AGRICULTURAL PRODUCT UTILIZATION CONTRIBUTOR TAX CREDIT — DEFINITIONS — REQUIREMENTS — LIMITATIONS. — 1. The tax credit created in this section shall be known as the "Agricultural Product Utilization Contributor Tax Credit".

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

(1) "Authority", the agriculture and small business development authority as provided in this chapter;

(2) "Contributor", an individual, partnership, corporation, trust, limited liability company, entity or person that contributes cash funds to the authority;

(3) "Development facility", a facility producing either a good derived from an agricultural commodity or using a process to produce a good derived from an agricultural product;

(4) "Eligible new generation cooperative", a nonprofit cooperative association formed pursuant to chapter 274, RSMo, or incorporated pursuant to chapter 357, RSMo, for the purpose of operating a development facility or a renewable fuel production facility;

(5) "Eligible new generation processing entity", a partnership, corporation, cooperative, or limited liability company organized or incorporated pursuant to the laws of this state consisting of not less than twelve members, approved by the authority, for the purpose of owning or operating within this state a development facility or a renewable fuel production facility in which producer members:

(a) Hold a majority of the governance or voting rights of the entity and any governing committee;

(b) Control the hiring and firing of management; and

(c) Deliver agricultural commodities or products to the entity for processing, unless processing is required by multiple entities;

(6) "Renewable fuel production facility", a facility producing an energy source which is derived from a renewable, domestically grown, organic compound capable of powering machinery, including an engine or power plant, and any by-product derived from such energy source.

3. For **all** tax **[**year**] years beginning on or after January 1,** 1999, a contributor who contributes funds to the authority may receive a credit against the tax **or estimated quarterly tax** otherwise due pursuant to chapter 143, RSMo, other than taxes withheld pursuant to sections 143.191 to 143.265, RSMo, chapter 148, RSMo, chapter 147, RSMo, in an amount of up to one hundred percent of such contribution. **Tax credits claimed in a taxable year may be done so on a quarterly basis and applied to the estimated quarterly tax pursuant to this subsection. If a quarterly tax credit claim or series of claims contributes to causing an overpayment of taxes for a taxable year, such overpayment shall not be refunded but shall be applied to the next taxable year.** The awarding of such credit shall be at the approval of the authority, based on the least amount of credits necessary to provide incentive for the contributions. A contributor that receives tax credits for a contribution to the authority shall receive no other consideration or compensation for such contribution, other than a federal tax deduction, if applicable, and goodwill. A contributor that receives tax credits for a contribution provided in this section may not be a member, owner, investor or lender of an eligible new generation cooperative or eligible new generation processing entity that receives financial assistance from the authority either at the time the contribution is made or for a period of two years thereafter.

4. A contributor shall submit to the authority an application for the tax credit authorized by this section on a form provided by the authority. If the contributor meets all criteria prescribed by this section and the authority, the authority shall issue a tax credit certificate in the appropriate amount. Tax credits issued pursuant to this section **[**shall initially**] may** be claimed in the taxable year in which the contributor contributes funds to the authority. **[**Any amount of credit that exceeds the tax due for a contributor's taxable year**] For all fiscal years beginning on or after July 1, 2004, tax credits allowed pursuant to this section may be carried back to any of the contributor's three prior tax years and** may be carried forward to any of the contributor's five subsequent taxable years. Tax credits issued pursuant to this section may be assigned, transferred or sold **and the new owner of the tax credit shall have the same rights in the credit as the contributor**. Whenever a certificate of tax credit is assigned, transferred, sold or otherwise conveyed, a notarized endorsement shall be filed with the authority specifying the name and address of the new owner of the tax credit or the value of the credit.

5. The funds derived from contributions in this section shall be used for financial assistance or technical assistance for the purposes provided in section 348.407, to rural agricultural business concepts as approved by the authority. The authority may provide or facilitate loans, equity investments, or guaranteed loans for rural agricultural business concepts, but limited to two million dollars per project or the net state economic impact, whichever is less. Loans, equity

investments or guaranteed loans may only be provided to feasible projects, and for an amount that is the least amount necessary to cause the project to occur, as determined by the authority. The authority may structure the loans, equity investments or guaranteed loans in a way that facilitates the project, but also provides for a compensatory return on investment or loan payment to the authority, based on the risk of the project.

6. In any given year, at least ten percent of the funds granted to rural agricultural business concepts shall be awarded to grant requests of twenty-five thousand dollars or less. No single rural agricultural business concept shall receive more than two hundred thousand dollars in grant awards from the authority. Agricultural businesses owned by minority members or women shall be given consideration in the allocation of funds.

348.432. NEW GENERATION COOPERATIVE INCENTIVE TAX CREDIT — DEFINITIONS — REQUIREMENTS — LIMITATIONS. — 1. The tax credit created in this section shall be known as the "New Generation Cooperative Incentive Tax Credit".

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

(1) "Authority", the agriculture and small business development authority as provided in this chapter;

(2) "Development facility", a facility producing either a good derived from an agricultural commodity or using a process to produce a good derived from an agricultural product;

(3) "Eligible new generation cooperative", a nonprofit cooperative association formed pursuant to chapter 274, RSMo, or incorporated pursuant to chapter 357, RSMo, for the purpose of operating a development facility or a renewable fuel production facility and approved by the authority;

(4) "Eligible new generation processing entity", a partnership, corporation, cooperative, or limited liability company organized or incorporated pursuant to the laws of this state consisting of not less than twelve members, approved by the authority, for the purpose of owning or operating within this state a development facility or a renewable fuel production facility in which producer members:

(a) Hold a majority of the governance or voting rights of the entity and any governing committee;

(b) Control the hiring and firing of management; and

(c) Deliver agricultural commodities or products to the entity for processing, unless processing is required by multiple entities;

(5) "Employee-qualified capital project", an eligible new generation cooperative with capital costs greater than fifteen million dollars which will employ at least **[**one hundred**]** **sixty** employees;

(6) "Large capital project", an eligible new generation cooperative with capital costs greater than one million dollars;

(7) "Producer member", a person, partnership, corporation, trust or limited liability company whose main purpose is agricultural production that invests cash funds to an eligible new generation cooperative or eligible new generation processing entity;

(8) "Renewable fuel production facility", a facility producing an energy source which is derived from a renewable, domestically grown, organic compound capable of powering machinery, including an engine or power plant, and any by-product derived from such energy source;

(9) "Small capital project", an eligible new generation cooperative with capital costs of no more than one million dollars.

3. Beginning tax year 1999, and ending December 31, 2002, any producer member who invests cash funds in an eligible new generation cooperative or eligible new generation processing entity may receive a credit against the tax **or estimated quarterly tax** otherwise due pursuant to chapter 143, RSMo, other than taxes withheld pursuant to sections 143.191 to 143.265, RSMo, or chapter 148, RSMo, chapter 147, RSMo, in an amount equal to the lesser of fifty percent of such producer member's investment or fifteen thousand dollars.

4. For all tax years beginning on or after January 1, 2003, any producer member who invests cash funds in an eligible new generation cooperative **or eligible new generation processing entity** may receive a credit against the tax **or estimated quarterly tax** otherwise due pursuant to chapter 143, RSMo, other than taxes withheld pursuant to sections 143.191 to 143.265, RSMo, chapter 147, RSMo, or chapter 148, RSMo, in an amount equal to the lesser of fifty percent of such producer member's investment or fifteen thousand dollars. **Tax credits claimed in a taxable year may be done so on a quarterly basis and applied to the estimated quarterly tax pursuant to subsection 3 of this section. If a quarterly tax credit claim or series of claims contributes to causing an overpayment of taxes for a taxable year, such overpayment shall not be refunded but shall be applied to the next taxable year.**

5. A producer member shall submit to the authority an application for the tax credit authorized by this section on a form provided by the authority. If the producer member meets all criteria prescribed by this section and is approved by the authority, the authority shall issue a tax credit certificate in the appropriate amount. Tax credits issued pursuant to this section **[**shall initially be claimed in the taxable year in which the producer member contributes capital to an eligible new generation cooperative or eligible new generation processing entity. Any amount of credit that exceeds the tax due for a producer member's taxable year**]** may be carried back to any of the producer member's three prior taxable years and carried forward to any of the producer member's five subsequent taxable years **regardless of the type of tax liability to which such credits are applied as authorized pursuant to subsection 3 of this section.** Tax credits issued pursuant to this section may be assigned, transferred, sold or otherwise conveyed and the new owner of the tax credit shall have the same rights in the credit as the producer member. Whenever a certificate of tax credit is assigned, transferred, sold or otherwise conveyed, a notarized endorsement shall be filed with the authority specifying the name and address of the new owner of the tax credit or the value of the credit.

6. Ten percent of the tax credits authorized pursuant to this section initially shall be offered in any fiscal year to small capital projects. If any portion of the ten percent of tax credits offered to small capital costs projects is unused in any calendar year, then the unused portion of tax credits may be offered to employee-qualified capital projects and large capital projects. If the authority receives more applications for tax credits for small capital projects than tax credits are authorized therefor, then the authority, by rule, shall determine the method of distribution of tax credits authorized for small capital projects.

7. Ninety percent of the tax credits authorized pursuant to this section initially shall be offered in any fiscal year to employee-qualified capital projects and large capital projects. If any portion of the ninety percent of tax credits offered to employee-qualified capital projects and large capital costs projects is unused in any fiscal year, then the unused portion of tax credits may be offered to small capital projects. The maximum tax credit allowed per employee-qualified capital project is three million dollars and the maximum tax credit allowed per large capital project is one million five hundred thousand dollars. If the authority approves the maximum tax credit allowed for any employee-qualified capital project or any large capital project, then the authority, by rule, shall determine the method of distribution of such maximum tax credit. In addition, if the authority receives more tax credit applications for employee-qualified capital projects and large capital projects than the amount of tax credits authorized therefor, then the authority, by rule, shall determine the method of distribution of tax credits authorized for employee-qualified capital projects and large capital projects.

SECTION B. EMERGENCY CLAUSE. — Because immediate action is necessary to protect the economic welfare of the citizens of this state, section A 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 A of this act shall be in full force and effect upon its passage and approval.

Approved June 23, 2004

HB 1187 [HB 1187]

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

Changes the procedure allowing Clay County to operate concession stands at privately operated marinas.

AN ACT to repeal section 64.342, RSMo, and to enact in lieu thereof one new section relating to park concession stands.

SECTION
A. Enacting clause.
64.342. Park concession stands or marinas, county-operated, sale of refreshments, contracting procedures, proceeds go to county park fund (Clay County).

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

SECTION A. ENACTING CLAUSE. — Section 64.342, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 64.342, to read as follows:

64.342. PARK CONCESSION STANDS OR MARINAS, COUNTY-OPERATED, SALE OF REFRESHMENTS, CONTRACTING PROCEDURES, PROCEEDS GO TO COUNTY PARK FUND (CLAY COUNTY). — 1. The county commission of any county of the first classification without a charter form of government with a population of at least one hundred fifty thousand containing part of a city with a population over three hundred fifty thousand is hereby authorized to acquire, by purchase or gift, establish, construct, own, control, lease, equip, improve, maintain, operate and regulate, in whole or in part, concession stands or marinas within any area contiguous to the lake which is used as a public park, playground, camping site or recreation area. No such lease or concession grant shall be for a longer term than twenty-five years, unless the proposed investment by the lessee or concessionaire is greater than ten million dollars, in which case the lease or concession grant may, at the county's option, be for a term not to exceed fifty years.

2. Such concession stands or marinas may offer refreshments for sale to the public using such areas and services therein relating to boating, swimming, picnicking, golfing, shooting, horseback riding, fishing, tennis and other recreational, cultural and educational uses upon such terms and under such regulations as the county may prescribe. If the county elects to bid the services authorized herein, the county shall award any contracts relating thereto to the most favorable bidder based upon the terms and regulations prescribed by the county after due opportunity for competition including advertising the proposal letting or granting in a newspaper in the county with a circulation of at least five hundred copies per issue, if there be such, and if not, in such case notice shall be posted on the bulletin board in the county courthouse. The county shall have the right to reject any and all bids.

3. All moneys derived from the operation of concession stands or marinas shall be paid into the county treasury and be credited to a "Park Fund" to be established by each county authorized under subsection 1 of this section and be used and expended by the county commission for park purposes.

4. **[**If the county owns, operates, or leases more than two such marinas, the county shall request bids for the operation of at least one marina pursuant to this section. Any lease or grant made pursuant to this section shall be made with a private individual or group of individuals or with any privately owned entity. The county may operate the marina to be leased or granted for a period not to exceed twenty-four months:

(1) From the date the county obtains ownership of more than two such marinas;

(2) If no bids are deemed by the county to be responsive or favorable; or

(3) In the event that an operator of the marina does not comply with the lease terms.

5.**]** Any county meeting the qualifications of this section shall also have any other powers granted in section 64.341, provided, such powers shall not be construed to limit any powers granted in this section.

Approved June 25, 2004

HB 1188 [SCS HB 1188]

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

Revises various statutes relating to fees and costs in criminal cases.

AN ACT to repeal sections 221.070, 488.4014, 488.5320, and 595.045, RSMo, and to enact in lieu thereof four new sections relating to the criminal justice system, with penalty provisions.

SECTION

A. Enacting clause.
221.070. Prisoners liable for cost of imprisonment.
488.4014. Court costs in certain civil and criminal cases, exceptions — collection and deposit procedure — distribution — county entitled to judgment, when.
488.5320. Charges in criminal cases, sheriffs and other officers.
595.045. Funding — costs for certain violations, amount, distribution of funds, audit — judgments in certain cases, amount — failure to pay, effect, notice — court cost deducted — insufficient funds to pay claims, procedure — interest earned, disposition.

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

SECTION A. ENACTING CLAUSE. — Sections 221.070, 488.4014, 488.5320, and 595.045, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 221.070, 488.4014, 488.5320, and 595.045, to read as follows:

221.070. PRISONERS LIABLE FOR COST OF IMPRISONMENT. — Every person who shall be committed to the common jail within any county in this state, by lawful authority, for any offense or misdemeanor, **[**if he shall be convicted thereof**]** **upon a plea of guilty or a finding of guilt for such offense**, shall bear the expense of carrying him or her to said jail, and also his or her support while in jail, before he or she shall be discharged; and the property of such person shall be subjected to the payment of such expenses, and shall be bound therefor, from the time of his commitment, and may be levied on and sold, from time to time, under the order of the court having criminal jurisdiction in the county, to satisfy such expenses.

488.4014. COURT COSTS IN CERTAIN CIVIL AND CRIMINAL CASES, EXCEPTIONS — COLLECTION AND DEPOSIT PROCEDURE — DISTRIBUTION — COUNTY ENTITLED TO JUDGMENT, WHEN. — 1. A fee of ten dollars shall be assessed in all cases in which the defendant **[**is convicted**]** **pleads guilty or is found guilty** of **[**violating**]** **a nonfelony violation of** any provision of chapters 252, 301, 302, 304, 306, 307 and 390, RSMo, and any infraction otherwise provided by law, **a fee of** twenty-five dollars **shall be assessed** in all misdemeanor cases otherwise provided by law **in which the defendant pleads guilty or is found guilty**, and **a fee of** seventy-five dollars **shall be assessed** in all felony cases **in which the defendant pleads guilty or is found guilty**, in criminal cases including violations of any county ordinance or any violation of a criminal or traffic law of the state, except that no such fees shall be collected in any

proceeding in any court when the proceeding or the defendant has been dismissed by the court or when costs are to be paid by the state, county or municipality. All fees collected under the provisions of this section shall be collected and disbursed in the manner provided by sections 488.010 to 488.020 and payable to the county treasurer who shall deposit those funds in the county treasury.

2. Counties shall be entitled to a judgment in the amount of twenty-five percent of all sums collected, pursuant to this section, on recognizances given to the state in criminal cases, which are or may become forfeited, if not more than five hundred dollars, and fifteen percent of all sums over five hundred dollars, to be paid out of the amount collected.

488.5320. CHARGES IN CRIMINAL CASES, SHERIFFS AND OTHER OFFICERS. — 1. Sheriffs, county marshals or other officers shall be allowed a charge for their services rendered in criminal cases and in all proceedings for contempt or attachment, as required by law, the sum of seventy-five dollars for each felony case or contempt or attachment proceeding, ten dollars for each misdemeanor case, and six dollars for each infraction, excluding cases disposed of by a traffic violations bureau established pursuant to law or supreme court rule. Such charges shall be charged and collected in the manner provided by sections 488.010 to 488.020 and shall be payable to the county treasury.

2. The sheriff receiving any charge pursuant to subsection 1 of this section shall reimburse the sheriff of any other county or the city of St. Louis the sum of three dollars for each pleading, writ, summons, order of court or other document served in connection with the case or proceeding by the sheriff of the other county or city, and return made thereof, to the maximum amount of the total charge received pursuant to subsection 1 of this section.

3. The charges provided in subsection 1 of this section shall be taxed as other costs in criminal proceedings immediately **[**after conviction**]** **upon a plea of guilty or a finding of guilt** of any defendant in any criminal procedure. The clerk shall tax all the costs in the case against such defendant, which shall be collected and disbursed as provided by sections 488.010 to 488.020; provided, that no such charge shall be collected in any proceeding in any court when the proceeding or the defendant has been dismissed by the court; provided further, that all costs, incident to the issuing and serving of writs of scire facias and of writs of fieri facias, and of attachments for witnesses of defendant, shall in no case be paid by the state, but such costs incurred under writs of fieri facias and scire facias shall be paid by the defendant and such defendant's sureties, and costs for attachments for witnesses shall be paid by such witnesses.

4. Mileage shall be reimbursed to sheriffs, county marshals and guards for all services rendered pursuant to this section at the rate prescribed by the Internal Revenue Service for allowable expenses for motor vehicle use expressed as an amount per mile.

595.045. FUNDING — COSTS FOR CERTAIN VIOLATIONS, AMOUNT, DISTRIBUTION OF FUNDS, AUDIT — JUDGMENTS IN CERTAIN CASES, AMOUNT — FAILURE TO PAY, EFFECT, NOTICE — COURT COST DEDUCTED — INSUFFICIENT FUNDS TO PAY CLAIMS, PROCEDURE — INTEREST EARNED, DISPOSITION. — 1. There is established in the state treasury the "Crime Victims' Compensation Fund". A surcharge of seven dollars and fifty cents shall be assessed as costs in each court proceeding filed in any court in the state in all criminal cases including violations of any county ordinance or any violation of criminal or traffic laws of the state, including an infraction and violation of a municipal ordinance; except that no such fee shall be collected in any proceeding in any court when the proceeding or the defendant has been dismissed by the court or when costs are to be paid by the state, county, or municipality. A surcharge of seven dollars and fifty cents shall be assessed as costs in a juvenile court proceeding in which a child is found by the court to come within the applicable provisions of subdivision (3) of subsection 1 of section 211.031, RSMo.

2. Notwithstanding any other provision of law to the contrary, the moneys collected by clerks of the courts pursuant to the provisions of subsection 1 of this section shall be collected

and disbursed in accordance with sections 488.010 to 488.020, RSMo, and shall be payable to the director of the department of revenue.

3. The director of revenue shall deposit annually the amount of two hundred fifty thousand dollars to the state forensic laboratory account administered by the department of public safety to provide financial assistance to defray expenses of crime laboratories if such analytical laboratories are registered with the federal Drug Enforcement Agency or the Missouri department of health and senior services. Subject to appropriations made therefor, such funds shall be distributed by the department of public safety to the crime laboratories serving the courts of this state making analysis of a controlled substance or analysis of blood, breath or urine in relation to a court proceeding.

4. The remaining funds collected under subsection 1 of this section shall be denoted to the payment of an annual appropriation for the administrative and operational costs of the office for victims of crime and, if a statewide automated crime victim notification system is established pursuant to section 650.310, RSMo, to the monthly payment of expenditures actually incurred in the operation of such system. Additional remaining funds shall be subject to the following provisions:

(1) On the first of every month, the director of revenue or the director's designee shall determine the balance of the funds in the crime victims' compensation fund available to satisfy the amount of compensation payable pursuant to sections 595.010 to 595.075, excluding sections 595.050 and 595.055;

(2) Beginning on October 1, 1996, and on the first of each month, if the balance of the funds available exceeds one million dollars plus one hundred percent of the previous twelve months' actual expenditures, excluding the immediate past calendar month's expenditures, paid pursuant to sections 595.010 to 595.075, excluding sections 595.050 and 595.055, then the director of revenue or the director's designee shall deposit fifty percent to the credit of the crime victims' compensation fund and fifty percent to the services to victims' fund established in section 595.100;

(3) Beginning on October 1, 1996, and on the first of each month, if the balance of the funds available is less than one million dollars plus one hundred percent of the previous twelve months' actual expenditures, excluding the immediate past calendar month's expenditures, paid pursuant to sections 595.010 to 595.075, excluding sections 595.050 and 595.055, then the director of revenue or the director's designee shall deposit seventy-five percent to the credit of the crime victims' compensation fund and twenty-five percent to the services to victims' fund established in section 595.100.

5. The director of revenue or such director's designee shall at least monthly report the moneys paid pursuant to this section into the crime victims' compensation fund and the services to victims fund to the division of workers' compensation and the department of public safety, respectively.

6. The moneys collected by clerks of municipal courts pursuant to subsection 1 of this section shall be collected and disbursed as provided by sections 488.010 to 488.020, RSMo. Five percent of such moneys shall be payable to the city treasury of the city from which such funds were collected. The remaining ninety-five percent of such moneys shall be payable to the director of revenue. The funds received by the director of revenue pursuant to this subsection shall be distributed as follows:

(1) On the first of every month, the director of revenue or the director's designee shall determine the balance of the funds in the crime victims' compensation fund available to satisfy the amount of compensation payable pursuant to sections 595.010 to 595.075, excluding sections 595.050 and 595.055;

(2) Beginning on October 1, 1996, and on the first of each month, if the balance of the funds available exceeds one million dollars plus one hundred percent of the previous twelve months' actual expenditures, excluding the immediate past calendar month's expenditures, paid pursuant to sections 595.010 to 595.075, excluding sections 595.050 and 595.055, then the

director of revenue or the director's designee shall deposit fifty percent to the credit of the crime victims' compensation fund and fifty percent to the services to victims' fund established in section 595.100;

(3) Beginning on October 1, 1996, and on the first of each month, if the balance of the funds available is less than one million dollars plus one hundred percent of the previous twelve months' actual expenditures, excluding the immediate past calendar month's expenditures, paid pursuant to sections 595.010 to 595.075, excluding sections 595.050 and 595.055, then the director of revenue or the director's designee shall deposit seventy-five percent to the credit of the crime victims' compensation fund and twenty-five percent to the services to victims' fund established in section 595.100.

7. These funds shall be subject to a biennial audit by the Missouri state auditor. Such audit shall include all records associated with crime victims' compensation funds collected, held or disbursed by any state agency.

8. In addition to the moneys collected pursuant to subsection 1 of this section, the court shall enter a judgment in favor of the state of Missouri, payable to the crime victims' compensation fund, of sixty-eight dollars **[**if the conviction is**] upon a plea of guilty or finding of guilt** for a class A or B felony; forty-six dollars **[**if the conviction is**] upon a plea of guilty or finding of guilt** for a class C or D felony; and ten dollars **[**if the conviction is**] upon a plea of guilty or finding of guilt** for any misdemeanor under **[**the following**]** Missouri **[**laws:

(1) Chapter 195, RSMo, relating to drug regulations;

(2) Chapter 311, RSMo, but relating only to felony violations of this chapter committed by persons not duly licensed by the supervisor of liquor control;

(3) Chapter 491, RSMo, relating to witnesses;

(4) Chapter 565, RSMo, relating to offenses against the person;

(5) Chapter 566, RSMo, relating to sexual offenses;

(6) Chapter 567, RSMo, relating to prostitution;

(7) Chapter 568, RSMo, relating to offenses against the family;

(8) Chapter 569, RSMo, relating to robbery, arson, burglary and related offenses;

(9) Chapter 570, RSMo, relating to stealing and related offenses;

(10) Chapter 571, RSMo, relating to weapons offenses;

(11) Chapter 572, RSMo, relating to gambling;

(12) Chapter 573, RSMo, relating to pornography and related offenses;

(13) Chapter 574, RSMo, relating to offenses against public order;

(14) Chapter 575, RSMo, relating to offenses against the administration of justice;

(15) Chapter 577, RSMo, relating to public safety offenses**] law except for those in chapter 252, RSMo, relating to fish and game, chapter 302, RSMo, relating to drivers' and commercial drivers' license, chapter 303, RSMo, relating to motor vehicle financial responsibility, chapter 304, RSMo, relating to traffic regulations, chapter 306, RSMo, relating to watercraft regulation and licensing, and chapter 307, RSMo, relating to vehicle equipment regulations**. Any clerk of the court receiving moneys pursuant to such judgments shall collect and disburse such crime victims' compensation judgments in the manner provided by sections 488.010 to 488.020, RSMo. Such funds shall be payable to the state treasury and deposited to the credit of the crime victims' compensation fund.

9. The clerk of the court processing such funds shall maintain records of all dispositions described in subsection 1 of this section and all dispositions where a judgment has been entered against a defendant in favor of the state of Missouri in accordance with this section; all payments made on judgments for alcohol-related traffic offenses; and any judgment or portion of a judgment entered but not collected. These records shall be subject to audit by the state auditor. The clerk of each court transmitting such funds shall report separately the amount of dollars collected on judgments entered for alcohol-related traffic offenses from other crime victims' compensation collections or services to victims collections.

10. [The clerks of the court shall report all delinquent payments to the department of revenue by October first of each year for the preceding fiscal year, and such sums may be withheld pursuant to subsection 15 of this section.

11.] The department of revenue shall maintain records of funds transmitted to the crime victims' compensation fund by each reporting court and collections pursuant to subsection [18] **16** of this section and shall maintain separate records of collection for alcohol-related offenses.

[12. Notwithstanding any other provision of law to the contrary, the provisions of subsections 9 and 10 of this section shall expire and be of no force and effect upon the effective date of the supreme court rule adopted pursuant to sections 488.010 to 488.020, RSMo.

13.] **11.** The state courts administrator shall include in the annual report required by section 476.350, RSMo, the circuit court caseloads and the number of crime victims' compensation judgments entered.

[14.] **12.** All awards made to injured victims under sections 595.010 to 595.105 and all appropriations for administration of sections 595.010 to 595.105, except sections 595.050 and 595.055, shall be made from the crime victims' compensation fund. Any unexpended balance remaining in the crime victims' compensation fund at the end of each biennium shall not be subject to the provision of section 33.080, RSMo, requiring the transfer of such unexpended balance to the ordinary revenue fund of the state, but shall remain in the crime victims' compensation fund. In the event that there are insufficient funds in the crime victims' compensation fund to pay all claims in full, all claims shall be paid on a pro rata basis. If there are no funds in the crime victims' compensation fund, then no claim shall be paid until funds have again accumulated in the crime victims' compensation fund. When sufficient funds become available from the fund, awards which have not been paid shall be paid in chronological order with the oldest paid first. In the event an award was to be paid in installments and some remaining installments have not been paid due to a lack of funds, then when funds do become available that award shall be paid in full. All such awards on which installments remain due shall be paid in full in chronological order before any other postdated award shall be paid. Any award pursuant to this subsection is specifically not a claim against the state, if it cannot be paid due to a lack of funds in the crime victims' compensation fund.

[15.] **13.** When judgment is entered against a defendant as provided in this section and such sum, or any part thereof, remains unpaid, there shall be withheld from any disbursement, payment, benefit, compensation, salary, or other transfer of money from the state of Missouri to such defendant an amount equal to the unpaid amount of such judgment. Such amount shall be paid forthwith to the crime victims' compensation fund and satisfaction of such judgment shall be entered on the court record. Under no circumstances shall the general revenue fund be used to reimburse court costs or pay for such judgment. The director of the department of corrections shall have the authority to pay into the crime victims' compensation fund from an offender's compensation or account the amount owed by the offender to the crime victims' compensation fund, provided that the offender has failed to pay the amount owed to the fund prior to entering a correctional facility of the department of corrections.

[16.] **14.** All interest earned as a result of investing funds in the crime victims' compensation fund shall be paid into the crime victims' compensation fund and not into the general revenue of this state.

[17.] **15.** Any person who knowingly makes a fraudulent claim or false statement in connection with any claim hereunder is guilty of a class A misdemeanor.

[18.] **16.** Any gifts, contributions, grants or federal funds specifically given to the division for the benefit of victims of crime shall be credited to the crime victims' compensation fund. Payment or expenditure of moneys in such funds shall comply with any applicable federal crime victims' compensation laws, rules, regulations or other applicable federal guidelines.

Approved July 2, 2004

HB 1192 [SCS HCS HB 1192]

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

Requires the Director of the Missouri Department of Agriculture to promulgate rules relating to meat inspection.

AN ACT to repeal sections 267.470, 267.472, 267.475, 267.480, 267.485, 267.490, 267.495, 267.500, 267.505, 267.510, 267.515, 267.520, 267.525, 267.531, 267.535, 267.540, 267.545, 267.550, 267.551, 267.552, 267.553, 267.554, 267.555, 267.556, and 537.115, RSMo, and to enact in lieu thereof two new sections relating to animal health and inspection.

SECTION

A. Enacting clause.
265.471. Rules, Federal Meat Inspection Act.
537.115. Food donation or distribution, limited liability, when.
267.470. Definitions.
267.472. Commercial feeders — permit, issuance, revocation, regulation of — discontinuance of licensing, when.
267.475. Cooperation with federal government — rules and regulations — powers of department.
267.480. Department to vaccinate and test animals, when.
267.485. Official calfhood vaccination, certificate — identification of vaccinated animals.
267.490. Indemnity for loss, when, how calculated — refusal of payment, when.
267.495. Agglutination tests, certificate of — branding, when.
267.500. Laboratory for agglutination tests, permit required — records and reports — revocation of permit.
267.505. Negative test required, when, exception — imported cattle, test requirements — intrastate shipments, requirements for.
267.510. Certified brucellosis free herd certificates, issuance, qualifications — extension for year.
267.515. Modified certified brucellosis free area — petitions — certification extended when — regulations in area.
267.520. Quarantined cattle subject to rules and regulations — permit required for sale or transportation.
267.525. Reactor animal kept for breeding, when.
267.531. Seizure of cattle — notice — redemption — hearing, judicial review — sale, disposition of proceeds.
267.535. Violations may be enjoined.
267.540. False certificate, misdemeanor.
267.545. Violation, misdemeanor.
267.550. Title of law.
267.551. Definitions.
267.552. Vaccine, who may administer — rules and regulations — health certificates to be issued — exceptions to calfhood vaccinations.
267.553. Female cattle and buffalo to be vaccinated, spayed, branded — exceptions — animals moved from this state in interstate commerce, exempt.
267.554. Other vaccines may be used, when.
267.555. Inheritance of female livestock — special provisions for sale.
267.556. Eligibility for indemnity payments.

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

SECTION A. ENACTING CLAUSE. — Sections 267.470, 267.472, 267.475, 267.480, 267.485, 267.490, 267.495, 267.500, 267.505, 267.510, 267.515, 267.520, 267.525, 267.531, 267.535, 267.540, 267.545, 267.550, 267.551, 267.552, 267.553, 267.554, 267.555, 267.556, and 537.115, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 265.471 and 537.115, to read as follows:

265.471. RULES, FEDERAL MEAT INSPECTION ACT. — The director shall promulgate rules:

(1) Consistent with and equal to the Federal Meat Inspection Act, the Federal Poultry Products Inspection Act, and all related federal regulations; and

(2) Necessary to implement the inspection programs authorized under sections 265.300 to 265.470.

537.115. FOOD DONATION OR DISTRIBUTION, LIMITED LIABILITY, WHEN. — 1. As used in this section, the following terms mean:

(1) "Canned food", any food commercially processed and prepared for human consumption;

(2) "Perishable food", any food which may spoil or otherwise become unfit for human consumption because of its nature, type or physical condition. This term includes, but is not limited to, fresh and processed meats, poultry, seafood, dairy products, bakery products, eggs in the shell, fresh fruits and vegetables, and foods which have been packaged, refrigerated, or frozen.

2. All other provisions of law notwithstanding, a good faith donor of canned or perishable food, which complies with chapter 196, RSMo, at the time it was donated and which is fit for human consumption at the time it is donated, to a bona fide charitable or not-for-profit organization for free distribution, shall not be subject to criminal or civil liability arising from an injury or death due to the condition of such food unless such injury or death is a direct result of the negligence, recklessness or intentional misconduct of such donor.

3. All other provisions of law notwithstanding, a bona fide charitable or not-for-profit organization which in good faith receives and distributes food, which complies with chapter 196, RSMo, at the time it was donated and which is fit for human consumption at the time it is distributed, without charge, shall not be subject to criminal or civil liability arising from an injury or death due to the condition of such food unless such injury or death is a direct result of the negligence, recklessness, or intentional misconduct of such organization.

4. Notwithstanding any other provision of law to the contrary, a good faith donor or a charitable or not-for-profit organization, who in good faith receives or distributes frozen and packaged venison without charge, shall not be subject to criminal or civil liability arising from an injury or death due to the condition of such food, except as provided in this subsection. The venison must:

(1) Come from a whitetail deer harvested in accordance with the rules and regulations of the department of conservation;

(2) Be field dressed and handled in a sanitary manner and the carcass of which remains in sound condition;

(3) Be processed in a licensed facility that is subject to the United States Department of Agriculture's mandated inspections during domesticated animal operations **or is approved by the Missouri department of agriculture meat inspection program**. Except that, the provisions of this subsection shall not apply if the injury or death is a direct result of the negligence, recklessness or intentional misconduct of such donor or the deer was harvested during a season that the deer in Missouri were found to have diseases communicable to humans. Venison handled and processed in accordance with the provisions of this section and protected by all reasonable means from foreign or injurious contamination is exempt from the provisions of chapter 196, RSMo.

5. The provisions of this section shall govern all good faith donations of canned or perishable food which is not readily marketable due to appearance, freshness, grade, surplus or other conditions, but nothing in this section shall restrict the authority of any appropriate agency to regulate or ban the use of such food for human consumption.

[267.470. DEFINITIONS. — Unless otherwise indicated by the context, when used in sections 267.470 to 267.550, the following terms have the following meanings:

(1) "Accredited approved veterinarian" means a veterinarian who has been accredited by the United States Department of Agriculture and approved by the state department of agriculture and who is duly licensed under the laws of Missouri to engage in the practice of veterinary medicine, or a veterinarian domiciled and practicing veterinary medicine in a state other than Missouri, duly licensed under the laws of the state in which he resides, accredited by the United States Department of Agriculture, and approved by the chief livestock sanitary official of that state;

(2) "Animal" means an animal of the bovine species;

(3) "Approved vaccine" or "vaccine" means vaccine containing brucella microorganisms produced under license of the United States Department of Agriculture and approved by the department for the immunization of animals against brucellosis;

(4) "Bovine brucellosis" or "brucellosis" means the disease wherein an animal of the bovine species is infected with brucella microorganisms, irrespective of the occurrence or absence of clinical symptoms of the disease;

(5) "Cattle" means animals of the bovine species;

(6) "Certified brucellosis free herd" means a herd of cattle which has met the requirements and conditions set forth in sections 267.470 to 267.550 for such status, or a herd of cattle in another state which has met those minimum requirements and conditions under the supervision of the livestock sanitary authority of the state in which said cattle are domiciled and as recommended by the United States Department of Agriculture for such status;

(7) "Commercial feeder" means any person, association, partnership or corporation maintaining premises wherein cattle of various classes are held for various feeding periods and after such period are moved to a recognized and approved slaughtering establishment or consigned to a public stockyards market under federal inspection service or a licensed market approved for the handling of such cattle and are sold for slaughter purposes only;

(8) "Department" or "department of agriculture" means the department of agriculture of the state of Missouri, and when by this law the said department of agriculture is charged to perform a duty it shall be understood to authorize the performance of such duty by the director of the department of agriculture of the state of Missouri or his duly authorized deputies, acting under the supervision of the director of the department of agriculture;

(9) "Infected animal" or "reactor" means an animal which has shown a positive reaction to the agglutination test or any other recognized test for the detection of bovine brucellosis approved by the department or if "brucella organisms" are found in the body discharges or secretions of such animal or when a previous abortion history of the animal justifies designating such animal as a reactor, with or without a positive reaction to the test;

(10) "Isolated" or "isolation" means the condition in which cattle are quarantined to a certain designated premise and maintained separately and apart from any other cattle on the premise or from cattle on adjacent premises;

(11) "Livestock sale or market" means a sale or market as defined in and licensed under chapter 277, RSMo;

(12) "Milk ring test" means a test made by using the standardized suspension of milk ring test antigen of killed brucella microorganisms in combination with proper amounts of whole milk or cream produced by a particular herd of cattle;

(13) "Modified certified brucellosis free area" means an area which has met the requirements and conditions set forth in sections 267.470 to 267.550 for such status, or an area in another state which has met those minimum requirements and conditions under the supervision of the livestock sanitary authority of the state in which such area is located and as recommended by the United States Department of Agriculture for such status;

(14) "Plan A" means test-and-slaughter, with or without calfhood vaccination, under provisions of the law;

(15) "Plan B" means testing and calfhood vaccination, with temporary retention of reactors for not longer than three years and until they can be disposed of for slaughter, under provisions of the law;

(16) "Plan C" means calfhood vaccination without test of any part of the herd and the plan is confined to those herds in which movement of animals is restricted to special permits issued by the department;

(17) "Plan D" means adult vaccination to be practiced in cases of emergency, with the approval of the department;

(18) "Public stockyards" means any public stockyards located within the state of Missouri and subject to regulations under the provisions of the Packers and Stockyards Act enacted by Congress of the United States;

(19) "Quarantine" means the condition in which cattle or other species of animals are restricted in movement and to a particular premise under such terms and conditions as may be designated in the order by the department;

(20) "Test for brucellosis" means a test recognized by the United States Department of Agriculture in the diagnosis of brucellosis.**]**

[267.472. COMMERCIAL FEEDERS — PERMIT, ISSUANCE, REVOCATION, REGULATION OF — DISCONTINUANCE OF LICENSING, WHEN. — 1. Premises maintained and operated by a commercial feeder for feeding purposes shall, when so used, be under a continuous state of quarantine and breeding animals shall not be maintained on such premises.

2. Surface drainage and any contact with cattle on adjacent premises shall be controlled in a manner designated by the state veterinarian or his representative when deemed necessary for the protection of breeding animals on the adjacent premises.

3. Commercial feeders shall make application for a permit from the department and if issued by the department may then purchase untested nonbred female cattle under the permit from any licensed market, terminal stockyards market or producer within the state for feeding purposes.

4. The department may suspend or revoke the permit for any violation of this chapter or of the rules and regulations of the department.

5. Commercial feeders shall retain all incoming permits, waybills, bills of lading, conductors' manifests, health certificates, and copies of all outgoing permits, certificates, waybills and bills of lading. Permission to enter the premises of a commercial feeder shall be granted to a duly authorized agent of the department or of the United States Department of Agriculture. The books and records of all commercial feeders shall be exhibited to such authorized persons upon demand; provided further, that all incoming and outgoing permits and bills of lading shall be surrendered to each authorized person upon demand. Complete books relating to a commercial feeding operation shall be kept in a current manner.

6. The state veterinarian may elect to discontinue the practice of licensing quarantined commercial feedlots if their existence conflicts with other disease eradication requirements.**]**

[267.475. COOPERATION WITH FEDERAL GOVERNMENT — RULES AND REGULATIONS — POWERS OF DEPARTMENT. — 1. The department is authorized and directed to cooperate with the United States Department of Agriculture and other agencies and departments of the state of Missouri in the suppression, eradication and control of bovine brucellosis in this state.

2. The department is authorized and empowered to make and adopt rules and regulations for the administration and enforcement of sections 267.470 to 267.550, and may waive the signing of individual agreements by cattle owners on areawide or countywide control and eradication programs.

3. The department in performing the duties and exercising the powers vested in it under sections 267.470 to 267.550 is empowered to enter, during usual working hours, any premises, barns, stables, sheds, vehicles, or other places where cattle are kept, or plants where milk or cream is received or collected, for the purpose of administering and enforcing the provisions of sections 267.470 to 267.550.**]**

[267.480. DEPARTMENT TO VACCINATE AND TEST ANIMALS, WHEN. — The department is hereby authorized, upon request to supply brucella vaccine, and to employ the services of veterinarians, in cooperation with the United States Department of Agriculture, to administer such vaccine to, and conduct blood tests on, animals, owned by any person or persons in the state of Missouri, who having first signified, in writing, their intention to cooperate with the

department and the United States Department of Agriculture, by signing an agreement to qualify his herd as a brucellosis certified free herd or to participate in the program for the control and eradication of brucellosis, under plan A, B, C, or D, as approved by the state and federal departments of agriculture. Such vaccine and veterinary service and testing shall be furnished without expense to the owner, as long as funds are available for that purpose.**]**

[267.485. OFFICIAL CALFHOOD VACCINATION, CERTIFICATE — IDENTIFICATION OF VACCINATED ANIMALS. — Official calfhood vaccination for brucellosis shall mean that such animals are vaccinated with an approved vaccine when such animal is of an age as may be fixed by rules and regulations of the department. Such vaccination shall be administered by an accredited veterinarian in good standing, approved by the department, who shall execute and give the owner a certificate in a form approved by the department, certifying an identification of the animal or animals, their age, the serial number of the vaccine, the expiration of the effective date of the vaccine, the dosage used, and if the animal or animals were tested for brucellosis prior to the vaccination, the result of such test. Grade animals vaccinated in compliance with this section shall be permanently identified by a tattoo symbol and a vaccination tag, both as approved by the department, and such tags may be provided at cost by the department. Registered animals shall be identified by the registration tattoo, or the registration name and number of such animal.**]**

[267.490. INDEMNITY FOR LOSS, WHEN, HOW CALCULATED — REFUSAL OF PAYMENT, WHEN. — 1. The department is hereby authorized to pay, within the limit of its appropriations, an indemnity in the manner and in the amounts herein set forth to the owner of any cattle carrying on an approved brucellosis control program in his herd, in order to reimburse such owner for a part of the loss suffered by such owner in disposing of the cattle exposed to, infected with, or reacting to a test for brucellosis.

2. The value of any cattle on which an indemnity is sought by the owner thereof shall not exceed an amount recognized by the state veterinarian and the owner as just compensation in relation to current market conditions, breeding value and other criteria of valuation for the animal destroyed. Each animal destroyed shall be identified separately on the appraisement form. The appraisement form shall be made out in triplicate, and one copy sent to the department, one copy retained by the duly authorized agent, and one copy retained by the owner.

3. Any such cattle on which an indemnity is sought shall be kept in isolation and within fifteen days of identification or branding shall be sold for slaughter and a report of the net proceeds (being the total amount received less expense of transportation, commissions and other expense of such sale) derived from the sale of such infected or reactor cattle shall be delivered by the owner to the department. The department shall determine the owner's loss by deducting the amount of the net proceeds so derived by the sale of the cattle for slaughter from the appraised value.

4. The indemnity to be paid by the department shall be an amount set at the discretion of the state veterinarian and shall not exceed breeding value of the animal. The department shall certify to the state commissioner of administration the amount to be paid by the department, and such amount shall constitute a legal claim against the state within the limits of available appropriations, and the commissioner of administration shall approve the same and cause the same to be paid by issuing his warrant on the state treasurer therefor in payment to such owner.

5. Indemnity for animals slaughtered as reactors or as infected cattle shall be paid to the owner thereof, only if the owner cooperates with the department, if requested by the state veterinarian or his agent, in carrying out recommended practices in eradicating the disease from his animals.

6. No indemnity shall be paid if, in the judgment of the state veterinarian, the animal does not qualify for indemnity or the owner is ineligible for payments.**]**

[267.495. AGGLUTINATION TESTS, CERTIFICATE OF — BRANDING, WHEN. — Every person conducting agglutination tests shall execute, in triplicate, a certificate on each test made, in the form to be prescribed by the department and one copy of said certificate of test shall be mailed or delivered to the department, and one copy shall be delivered to the owner of the animal tested, and one copy shall be retained by the person conducting the test and executing the certificate. If the animal tested shows a positive reaction to the agglutination test, the person conducting the test shall brand and tag such animal as required by rules and regulations of the department.**]**

[267.500. LABORATORY FOR AGGLUTINATION TESTS, PERMIT REQUIRED — RECORDS AND REPORTS — REVOCATION OF PERMIT. — 1. No person shall operate or conduct a laboratory in this state for the purpose of making agglutination tests, nor shall any person make such tests, without first securing from the department a permit to do so. The application for such permit shall be on a form prescribed by the department and shall set forth the name of the applicant and, if a corporation, the names of its principal officers, the location where such laboratory will be conducted, such tests made and the records thereof kept, a brief description of the training and experience of the applicant or the person in charge of making such tests, and such other information as the department may require to enable the department to determine the responsibility, qualifications and ability of the applicant to make agglutination tests.

2. If the department finds that the applicant is responsible and appears to be qualified to make such tests, it shall issue a permit to the applicant. Such permit shall be issued for the period ending on the following June thirtieth, and shall be renewable from year to year on like application.

3. Each person holding a permit to conduct such a laboratory and make such tests shall keep a record of all tests so made, including the name and address of the person for whom the tests were made, and shall report to the department the results of all tests made for persons or upon cattle located in this state. Such reports shall be made upon forms to be provided by the department and at such times as are required by sections 267.470 to 267.550 or by rules and regulations of the department.

4. If the department finds that any applicant for permit is not responsible or is not qualified to make tests, it may refuse to issue a permit or to renew a permit. If the department finds that any person holding a permit is not correctly reporting the results of the tests made by such persons or if such persons shall fail to report the results of the tests made to the department, as herein required, the department may revoke such permit or may refuse to renew any such permit.**]**

[267.505. NEGATIVE TEST REQUIRED, WHEN, EXCEPTION — IMPORTED CATTLE, TEST REQUIREMENTS — INTRASTATE SHIPMENTS, REQUIREMENTS FOR. — 1. All cattle eight months of age or over entering Missouri from any point outside the state and all cattle eight months of age or over exchanged, bartered or offered for sale or transported within the state of Missouri must have passed a negative test for brucellosis, conducted in an approved laboratory within thirty days prior to entry or within thirty days prior to sale, exchange, barter or being transported within the state. The state veterinarian may eliminate the test requirements on certain groups or classes of animals by specific regulations.

2. All cattle entering Missouri from any point outside the state shall be accompanied by an official health certificate stating that all animals listed thereon have passed a negative blood test for brucellosis within the previous thirty days or showing that they are eligible for entry into Missouri in accordance with the regulations of the department. All other shipments within the state must be accompanied by official certification of tests, vaccinations, health certificate, permits or waybills, which properly identify all the animals in the shipment or as otherwise specified in the regulations of the department.**]**

[267.510. CERTIFIED BRUCELLOSIS FREE HERD CERTIFICATES, ISSUANCE, QUALIFICATIONS — EXTENSION FOR YEAR. — A "certified brucellosis free herd" is one which has qualified for such status as herein provided. Any herd owner desiring such status must file a signed application and agreement form with the department. The department shall authorize the necessary tests in order to qualify or requalify for such status.

(1) A herd may be certified as brucellosis free when it has met all the requirements for qualifications as set out in current uniform methods and rules of the Animal and Plant Health Inspection Service of the U.S.D.A. and as required by the United States Department of Agriculture and the state department of agriculture.

(2) The certification of a herd may be extended for another year when the herd retest requirements as outlined by current department regulations have been met.

(3) "Certified brucellosis free herd" certificates which shall be valid for one year, unless revoked, will be issued by cooperating state and federal officials, to owners whose herd meets the provisions of sections 267.470 to 267.550.**]**

[267.515. MODIFIED CERTIFIED BRUCELLOSIS FREE AREA — PETITIONS — CERTIFICATION EXTENDED WHEN — REGULATIONS IN AREA. — A "modified certified brucellosis free area" may be established as provided in this section.

(1) If sixty-five percent or more of the cattle owners within an area owning sixty-five percent of the cattle in such area sign a petition requesting eradication of brucellosis on an areawide basis, and the petition is filed with the department, then all cattle owners within such area shall be required to inaugurate and carry out brucellosis control plan A.

(2) All persons responsible for obtaining signatures of cattle owners on the petitions shall submit therewith an affidavit certifying that the petitions are true and accurate as witnessed, and the petitions shall be filed with the department along with an affidavit of the county clerk of the county that the petitions contain the names of not less than sixty-five percent of the cattle owners owning sixty-five percent of the cattle within the area as disclosed by the last assessment rolls of the one or more townships therein.

(3) When the last complete test of all herds within an area indicates that the number of reactors, exclusive of officially calfhood vaccinated animals under thirty months of age and steers and spayed heifers of any age, does not exceed one percent and the herd infection does not exceed five percent, the area may be declared a "modified certified brucellosis free area" for a period of three years. Infected herds shall be quarantined until they have tested sufficiently as outlined in current brucellosis eradication regulations.

(4) The certification of an area may be extended when requirements, as jointly agreed upon by the United States Department of Agriculture and the state department of agriculture, are being carried out.

(5) The department may require the testing of all eligible cattle leaving a public stockyards market, licensed market and dealers premises for the purpose of screening beef type herds and for determining the level or rate of infection for the respective area of origin. If the total of the cattle screened or tested for the area is insufficient, then sufficient additional measures may be required by the department, including testing of herds at the farm level. The consignor of cattle shall, immediately upon delivery to a market, furnish the correct name and address of the owner of the herd or herds of origin, the county or other point of origin for all cattle in the consignment, and all dealers shall maintain records which provide such information in order to facilitate the proper screening of the herds of origin, and for the recertification of an area. Market operators and dealers shall make such information available to a representative of the department upon demand and to the veterinarian charged with testing of such cattle.

(6) The department is hereby granted the authority to enter all milk or dairy plants and cream buying stations for the purpose of collecting milk or cream for the conduct of the milk ring test. Operators of all such milk plants and cream buying stations shall maintain accurate records of all herd owners selling milk or cream to their plant and shall maintain an individual milk

sample for the department on all milk collected in bulk, and shall make such information available to a representative of the department upon demand.

(7) Cattle which have passed a negative test for brucellosis shall be maintained separate and apart from any other untested cattle when such cattle are to be offered for sale, barter, exchange or movement within thirty days from date of the test.

(8) "Area" as used in this section shall include one or more townships in any county.

(9) When the livestock owners in ninety or more counties have petitioned the department for the eradication of brucellosis on an areawide basis under the provisions of plan A, all cattle owners in the remaining counties in the state shall be required to inaugurate and carry out brucellosis eradication plan A upon notice from the department.**]**

[267.520. QUARANTINED CATTLE SUBJECT TO RULES AND REGULATIONS — PERMIT REQUIRED FOR SALE OR TRANSPORTATION. — The owner of cattle which are under quarantine shall comply with all rules and regulations adopted by the department relating to the quarantine of cattle and with all orders issued by the department pertaining to the sale, movement, transfer or transportation of such cattle. Cattle under quarantine may be sold, transferred or transported only upon a permit issued by the department; provided that infected or reactor cattle under quarantine shall not be sold, moved, or transported for any purpose except on a permit issued by the department.**]**

[267.525. REACTOR ANIMAL KEPT FOR BREEDING, WHEN. — Notwithstanding any provision in any of sections 267.470 to 267.550, the department shall allow and permit the owner of any animal which is found to be a reactor, to retain such animal in quarantine and use the animal for breeding purposes in his own herd, where necessary or desirable in order to preserve valuable breeding cattle; but the permission shall not be granted if the state veterinarian determines that the eradication program would be adversely affected and permission shall not be granted unless the United States Department of Agriculture agrees that county brucellosis status will not be affected. Such reactor animal may not be sold, transferred, or moved except on a special permit issued by the department.**]**

[267.531. SEIZURE OF CATTLE — NOTICE — REDEMPTION — HEARING, JUDICIAL REVIEW — SALE, DISPOSITION OF PROCEEDS. — 1. Cattle which are held, moved or transported in violation of the provisions of sections 267.470 to 267.550, or the rules and regulations adopted hereunder, on order of the department of agriculture shall be seized and taken into custody by an authorized agent of the department of agriculture or by any state or county law enforcement officer at the request of the department. The order, together with a notice stating the reasons for the seizure and the rights of the owner under this section, shall be served upon the custodian at the time of seizure and copies thereof shall be mailed to the owner, if a person other than the custodian, by certified mail to his address as given by the custodian within twenty-four hours after the seizure. The department shall impound and hold all cattle seized and taken into custody at the owner's expense and without liability to the department. Any cattle so seized and impounded may be redeemed by the owner and released to him by the department, provided that all such animals shall have been tested for brucellosis and any reactors shall be tagged and branded or tagged as provided by law at the owner's expense. In order to redeem such cattle the owner shall pay all expenses including the care and feeding of such cattle and the expense of testing and branding. Any reactor cattle shall be consigned by the owner to slaughter upon redemption thereof.

2. Any person aggrieved by an order of seizure and impoundment may appeal therefrom by filing with the director of the department of agriculture a petition stating in detail his objections to the order, within five days after service or mailing of the order and notice. The director, or his authorized agent, within forty-eight hours of the filing of the appeal, shall hold a hearing to determine the validity of the order and shall either affirm the order or release the

cattle. The hearing shall be conducted and judicial review of the director's decision may be had in the manner provided by chapter 536, RSMo. If an order of seizure and impoundment is determined to be invalid, the expense of caring for the cattle and the cost of the proceedings shall be borne by the department of agriculture.

3. If the cattle are not redeemed by the owner, and if no appeal is taken within five days after service or mailing of the notice and order of seizure, the department may apply to the circuit court of any county in which the cattle are impounded and the department under court order shall sell the cattle for slaughter and deduct from the net proceeds thereof all expenses of the department in connection with the seizure and impoundment of the cattle and remit the balance to the owner.**]**

[267.535. VIOLATIONS MAY BE ENJOINED. — In addition to the remedies provided for in sections 267.470 to 267.550 or by law, the prosecuting attorney of any county in which a violation of any provision of sections 267.470 to 267.550 occurs or the attorney general of the state is hereby authorized to apply to any court of competent jurisdiction for, and such court shall have jurisdiction upon hearing and for cause shown to grant, a temporary or permanent injunction to restrain any person from violating any provision of sections 267.470 to 267.550.**]**

[267.540. FALSE CERTIFICATE, MISDEMEANOR. — Any person who shall knowingly or willfully make any false certificate or falsify any statement in any certificate provided for in sections 267.470 to 267.550 shall be deemed guilty of a misdemeanor, and upon conviction shall be punished as provided by law.**]**

[267.545. VIOLATION, MISDEMEANOR. — Any person violating any provision of sections 267.470 to 267.550 shall be deemed guilty of a misdemeanor, and upon conviction shall be punished as provided by law.**]**

[267.550. TITLE OF LAW. — Sections 267.470 to 267.550 shall be cited as "The Missouri Brucellosis Control and Eradication Law".**]**

[267.551. DEFINITIONS. — As used in sections 267.551 to 267.556, the following terms shall mean:

(1) "Accredited and approved veterinarian", a veterinarian who has been accredited by the United States Department of Agriculture and approved by the department of agriculture of this state and who is duly licensed under the laws of this state to engage in the practice of veterinary medicine;

(2) "Bovine", male and female cattle or buffalo;

(3) "Director", the director of the department of agriculture of this state;

(4) "Official calfhood vaccinate", female cattle of any breed or female bison vaccinated while legal age by a veterinary services veterinarian, state veterinarian, or an accredited veterinarian with brucella abortus strain 19 vaccine;

(5) "Quarantined feedlot", a confined area under official state quarantine and approved jointly by the director of the department of agriculture and officials of the United States Federal Animal Health Office where all animals are to be classified as exposed to brucellosis;

(6) "'S' branded cattle", cattle which have been identified by branding with a hot iron bearing the letter "S" to be placed on the left jaw with a letter at least two inches high by two inches wide;

(7) "Spay", sterilization of a female animal by removal of the ovaries.**]**

[267.552. VACCINE, WHO MAY ADMINISTER — RULES AND REGULATIONS — HEALTH CERTIFICATES TO BE ISSUED — EXCEPTIONS TO CALFHOOD VACCINATIONS. — 1. Brucella abortus vaccine shall be administered to all required animals in accordance with a method to be

approved by the Missouri department of agriculture in rules and regulations to be issued by the director as otherwise provided by law.

2. The director shall issue rules and regulations regarding the required use and sale of brucella abortus vaccine. The vaccine shall only be sold to accredited and approved veterinarians who have completed a training program sponsored by the director on the use of the vaccine.

3. The director shall issue a health certificate of compliance for those animals treated pursuant to the provisions of sections 267.551 to 267.556.

4. The director, at his discretion, may rescind the provisions of sections 267.551 to 267.556 as they pertain to calfhood vaccination if the state of Missouri has maintained a class "A" status for a period of two years, as such term is defined by rules and regulations provided by the United States Department of Agriculture. However, in the event this state cannot maintain a class "A" status, and goes back to a class "B" status, then the provisions of sections 267.551 to 267.556 shall be in full force.**]**

[267.553. FEMALE CATTLE AND BUFFALO TO BE VACCINATED, SPAYED, BRANDED — EXCEPTIONS — ANIMALS MOVED FROM THIS STATE IN INTERSTATE COMMERCE, EXEMPT. — All female bovine born after January 1, 1984, and having reached the age of four months, except those animals from a certified brucellosis free herd as defined under section 267.510, shall be vaccinated as required by the director, spayed, or "S" branded prior to transfer of ownership. Such animals may move directly from a farm of origin to an approved market where the provisions of sections 267.551 to 267.556 will be complied with prior to the release of such animals from the market. Any nonvaccinated female bovine born before January 1, 1984, may, after normal testing procedures, be sold within the state. Finished fed heifers which have not been vaccinated in accordance with the provisions of sections 267.551 to 267.556, but that are moving through cattle market channels directly to slaughter, shall be exempt from the "S" branding or spaying requirement. "S" branded cattle shall only be moved to a quarantined feedlot or through cattle market channels directly to slaughter. Animals being moved from this state in interstate commerce shall be exempt from the provisions of sections 267.551 to 267.556, but shall satisfy all requirements of the state of destination. Any calves or cows brought into this state shall meet the same calfhood vaccination requirement that applies to calves and cows raised in this state. Health certificates shall be issued by the director only for calves and cows that satisfy the requirements of calfhood vaccination and to nonvaccinated calves and cows meeting the requirements of a certified brucellosis free herd as provided under section 267.510.**]**

[267.554. OTHER VACCINES MAY BE USED, WHEN. — Notwithstanding the other provisions of sections 267.551 to 267.556, the director shall be empowered to require the use of another type of vaccine developed after January 1, 1984, found to be more effective than the vaccine, brucella abortus.**]**

[267.555. INHERITANCE OF FEMALE LIVESTOCK — SPECIAL PROVISIONS FOR SALE. — 1. Notwithstanding any other provision of sections 267.551 to 267.556, any legally qualified heir or heirs who receive an interest in any female bovine from a decedent's estate or who receives a controlling interest in such livestock as the result of a death, and if said heir or heirs, or said heir or heirs' legal representative make provisions to sell such livestock herd in its entirety, such livestock shall be exempt from the provisions of section 267.553 if said livestock shall pass two successive tests as defined under chapter 267, given at least sixty days apart for the detection of the disease, brucellosis.

2. The director shall issue a health certificate of compliance for such livestock herds that favorably pass such testing.

3. If such animals shall fail testing procedures prescribed by the director, such livestock shall be treated equally with other animals that fail such testing procedures.**]**

[267.556. ELIGIBILITY FOR INDEMNITY PAYMENTS. — To be eligible for an indemnity payment under section 267.490, the owner of cattle for which the indemnity is sought must comply with the provisions of sections 267.551 to 267.556.**]**

Approved June 23, 2004

HB 1193 [SCS HS HB 1193]

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

Revises procedures for notaries public.

AN ACT to repeal sections 486.225, 486.235, 486.240, 486.260, 486.265, 486.280, 486.285, 486.295, 486.300, 486.310, 486.315, 486.330, 486.335, 486.340, 486.345, 486.350, 486.385, and 486.395, RSMo, and to enact in lieu thereof nineteen new sections relating to notaries public, with penalty provisions.

SECTION
A. Enacting clause.
486.225. Application, form of, fee — renewal.
486.235. Bond required — oath, form of.
486.240. Failure of applicant to appear and qualify, effect of.
486.260. Notary to keep journal — exceptions.
486.265. Certified copy of notary record, when given, fee — journal to be kept.
486.280. Printed information required on notary certificate.
486.285. Seal, contents, form — application — property of notary.
486.295. Change of address, notice of, effect of.
486.300. Change of name by notary, notice to secretary of state, procedure, fee — signature, how signed.
486.310. Resignation, how effective.
486.315. Removal from county of residence, effect of — amended commission, when, procedure, fee.
486.330. Form of acknowledgments.
486.335. Affirmations, form of.
486.340. Executing witness defined — form of affidavit of executing witness.
486.345. Facsimile may be certified — form of certification.
486.350. Maximum fees — overcharges or charge for absentee ballots, effect of — travel fee charged, when.
486.385. Grounds for revocation of commission.
486.395. Certification of notary's authority by the secretary of state, fee, form.
486.396. Notary seal stolen, procedure.

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

SECTION A. ENACTING CLAUSE. — Sections 486.225, 486.235, 486.240, 486.260, 486.265, 486.280, 486.285, 486.295, 486.300, 486.310, 486.315, 486.330, 486.335, 486.340, 486.345, 486.350, 486.385, and 486.395, RSMo, are repealed and nineteen new sections enacted in lieu thereof, to be known as sections 486.225, 486.235, 486.240, 486.260, 486.265, 486.280, 486.285, 486.295, 486.300, 486.310, 486.315, 486.330, 486.335, 486.340, 486.345, 486.350, 486.385, 486.395, and 486.396, to read as follows:

486.225. APPLICATION, FORM OF, FEE — RENEWAL. — 1. Upon a form prepared by the secretary of state, each applicant for appointment and commission as a notary public shall swear, under penalty of perjury, that the answers to all questions on the application are true and

complete to the best of the applicant's knowledge and that the applicant is qualified to be appointed and commissioned as a notary public. **[**The Social Security number of the applicant shall be recorded on the application.**]** The completed application form shall be filed with the secretary of state.

2. **[**With the person's application, each applicant for appointment and commission as a notary public shall submit to the secretary of state endorsements from two registered voters of this state in substantially the following form:

I, ... (name of endorser), a registered voter of this state and ..... County, believe to the best of my knowledge, the applicant is a person of good moral character and integrity and capable of performing notarial acts.

.....

(Endorser's signature and residence address)

3.**]** With the person's application, each applicant for appointment and commission as a notary public shall submit to the secretary of state**[**, payable to the director of revenue,**]** a commission fee of fifteen dollars.

[4.**]** **3.** Each applicant for appointment and commission as a notary public shall state in the application whether or not the applicant has ever been convicted of or pled guilty or nolo contendere to any felony **[**involving fraud, misrepresentation or theft**]**, **or to any misdemeanor incompatible with the duties of a notary public** and if so, shall attach a list of such convictions or pleas of guilt or nolo contendere.

4. Each applicant for a renewal appointment and commission as a notary public may apply for such renewal appointment in a manner prescribed by the secretary of state.

5. The secretary of state may prohibit, for a period not less than thirty days and not more than one year, a new applicant or renewal from reapplying for an appointment and commission as a notary public following the rejection of such applicant's application by the secretary of state.

6. Prior to submitting an application to the secretary of state, each new applicant or renewal for appointment and commission as a notary public shall read the Missouri Notary Public Handbook and complete a computer-based notary training or other notary training in a manner prescribed by the secretary of state. Each new applicant or renewal applicant shall attest to reading such handbook and receiving such training pursuant to this subsection at the time of submitting the application for appointment and commission as a notary public.

486.235. BOND REQUIRED — OATH, FORM OF. — 1. During his **or her** term of office each notary public shall maintain a surety bond in the sum of ten thousand dollars with, as surety thereon, a company qualified to write surety bonds in this state. The bond shall be conditioned upon the faithful performance of all notarial acts in accordance with this chapter. Each notary public shall notify the secretary of state of changes on or riders to the bond.

2. Before receiving his **or her** commission, each applicant shall submit to the county clerk of the county within and for which he **or she** is to be commissioned, an executed bond commencing at least **[**thirty**]** **ninety** days after the date he **or she** submitted **[**his**]** **the** application to the secretary of state with a term of four years**, which shall consist of the dates specified on the applicant's commission**.

3. Before receiving his **or her** commission, each applicant shall take the following oath in the presence of the county clerk: I, ... (name of applicant), solemnly swear, under the penalty of perjury, that I have carefully read the notary law of this state, and if appointed and commissioned as a notary public, I will uphold the Constitution of the United States and of this state and will faithfully perform to the best of my ability all notarial acts in conformance with the law. .....(signature of applicant) Subscribed and sworn to before me this ..... day of ....., **[**19**]** **20**... . .....(signature of county clerk)

4. Before receiving his **or her** commission, each applicant shall submit to the county clerk a handwritten specimen of **[**his**]** **the applicant's** official signature which contains his **or her** surname and at least the initial of **[**his**]** **the applicant's** first name.

5. Immediately after receiving the bond and official signature and witnessing the oath, the county clerk shall award to the applicant his **or her** commission as a notary public.

486.240. FAILURE OF APPLICANT TO APPEAR AND QUALIFY, EFFECT OF. — If the person for whom a commission is issued fails to appear and qualify within ninety days after the commission is issued, the county clerk shall note the failure on the commission and return it **within thirty days of such failure** to the secretary of state. The secretary of state shall immediately cancel and annul the commission. **The secretary of state may prohibit, for a period not less than thirty days and not more than one year, such person from reapplying for an appointment and commission as a notary public following the failure to appear and qualify within ninety days after the commission is issued.**

486.260. NOTARY TO KEEP JOURNAL — EXCEPTIONS. — Each notary public shall provide and keep a permanently bound journal of his **or her** notarial acts containing numbered pages**, except those notarial acts connected with judicial proceedings, and those for whose public record the law provides and the public record is publicly filed within ninety days of execution. Each notary public shall record in such journal the following: the month, day, and year of notarization; the type of notarization such as acknowledgment or jurat; the type of document; the name and address of the signer; the identification used by the signer; the notary fee; and the signature of the signer**.

486.265. CERTIFIED COPY OF NOTARY RECORD, WHEN GIVEN, FEE — JOURNAL TO BE KEPT. — Every notary shall keep a true and perfect record of his **or her** official acts **in a permanently bound journal**, except those connected with judicial proceedings, and those for whose public record the law provides**[**,**]** **and the public record as defined in section 610.010, RSMo, is publicly filed within ninety days of execution.** **[**and if required, shall give a certified copy of any record in his office, upon the payment of the fees therefor.**]** Every notary shall make and keep an exact minute, in a **[**book**]** **permanently bound journal** kept by him **or her** for that purpose, of each of his **or her** official acts, except as herein provided. **The journal is the exclusive property of the notary.**

486.280. PRINTED INFORMATION REQUIRED ON NOTARY CERTIFICATE. — On every notary certificate, a notary public shall indicate clearly and legibly**, in print not smaller than eight-point type and** by means of rubber stamp, typewriting or printing, so that it is capable of photographic reproduction:

(1) His **or her** name exactly as it appears on **[**his**]** **the** commission;

(2) The words "Notary Public", "State of Missouri", and "My commission expires ..... (commission expiration date)";

(3) The name of the county within which he **or she** is commissioned**; and**

(4) A commission number, provided that the notary public has been issued a commission number by the secretary of state. Effective August 28, 2004, the secretary of state shall issue a commission number for all new and renewal notary appointments.

486.285. SEAL, CONTENTS, FORM — APPLICATION — PROPERTY OF NOTARY. — 1. Each notary public shall provide, keep, and use a seal which is either an engraved embosser seal or a black inked rubber stamp seal to be used on the document being notarized. The seal shall contain the notary's name exactly as indicated on the commission and the words "Notary Seal", "Notary Public", and "State of Missouri" **and, after August 28, 2004, the commission number assigned by the secretary of state, provided that the notary public has been issued a**

commission number by the secretary of state, all of which shall be in print not smaller than eight-point type.

2. The indentations made by the seal embosser or printed by the black inked rubber stamp seal shall not be applied on the notarial certificate or document to be notarized in a manner that will render illegible or incapable of photographic reproduction any of the printed marks or writing on the certificate or document.

3. Every notary shall keep an official notarial seal that is the exclusive property of the notary and the seal may not be used by any other person or surrendered to an employer upon termination of employment.

486.295. CHANGE OF ADDRESS, NOTICE OF, EFFECT OF. — Any notary public who changes the address of his **or her** residence in the county within and for which he **or she** is commissioned shall forthwith mail or deliver **within thirty days of such change** a notice of the fact to the secretary of state including his **or her** old address and **[**his**]** current address. **[**The secretary of state shall notify the county clerk of the change of address.**]** The notary's commission shall remain in effect until its expiration date, unless sooner revoked.

486.300. CHANGE OF NAME BY NOTARY, NOTICE TO SECRETARY OF STATE, PROCEDURE, FEE — SIGNATURE, HOW SIGNED. — Any notary public who lawfully changes his **or her** name shall forthwith request **within thirty days of such change** an amended commission from the secretary of state and shall send **[**him**] to the secretary of state** five dollars, his **or her** current commission, and a notice of change form provided by the secretary of state, which shall include his **or her** new name and contain a specimen of his **or her** official signature. The secretary of state shall issue an amended commission to **[**him**] the notary public** in his **or her** new name and shall notify the clerk of the county within and for which the notary is commissioned. After requesting an amended commission, the notary may continue to perform notarial acts in his **or her** former name, until he **or she** receives the amended commission.

486.310. RESIGNATION, HOW EFFECTIVE. — If any notary public no longer desires to be a notary public, he **or she** shall forthwith mail or deliver to the secretary of state a letter of resignation, and his **or her** commission shall thereupon cease to be in effect. **If a notary public resigns following the receipt of a complaint by the secretary of state regarding the notary public's conduct, the secretary of state may deny any future applications by such person for appointment and commission as a notary public.**

486.315. REMOVAL FROM COUNTY OF RESIDENCE, EFFECT OF — AMENDED COMMISSION, WHEN, PROCEDURE, FEE. — If a notary public has ceased to have a residence address in the county within and for which he **or she** is commissioned, **[**his**] the** commission shall thereupon cease to be in effect, unless the secretary of state issues an amended commission. When a notary public, who has established a residence address in a county of the state other than the county in which he **or she** was first commissioned, requests an amended commission **within thirty days of changing the notary's county of residence**, delivers his **or her** current commission, notice of change form, and five dollars to the secretary of state, the secretary of state shall issue an amended commission to **[**him**] the notary public**, for the county in which his **or her** new residence is located and shall notify the county clerk of the county where the notary's new address is located. After requesting an amended commission **within thirty days of changing the notary's county of residence**, the notary may continue to perform notarial acts with certificates showing the county within and for which he **or she** is commissioned, until **[**he**] the notary** receives his **or her** amended commission.

486.330. FORM OF ACKNOWLEDGMENTS. — Except as otherwise provided in section 442.210, RSMo, certificates of acknowledgment shall be in **print not smaller than eight-point type and in** substantially the following form:

(1) By an Individual.

State of ...., County (and/or City) of ..... On this .... day of .... in the year .... before me, ... (name of notary), a Notary Public in and for said state, personally appeared ..... (name of individual), known to me to be the person who executed the within .... (type of document), and acknowledged to me that .... (he) **(she)** executed the same for the purposes therein stated.

(2) By a Partner.

State of ...., County (and/or City) of ..... On this .... day of .... in the year .... before me, ... (name of notary), a Notary Public in and for said state, personally appeared ..... (name of partner) of .... (name of partnership), known to me to be the person who executed the within ..... (type of document) in behalf of said partnership and acknowledged to me that he **or she** executed the same for the purposes therein stated. ..... (official signature and official seal of notary.)

(3) By a Corporate Officer.

State of ...., County (and/or City) of ..... On this .... day of .... in the year .... before me, ... (name of notary), a Notary Public in and for said state, personally appeared ..... (name of officer), ... (title of person, president, vice president, etc.), ... (name of corporation), known to me to be the person who executed the within ..... (type of document) in behalf of said corporation and acknowledged to me that he **or she** executed the same for the purposes therein stated. ..... (official signature and official seal of notary.)

(4) By an Attorney in Fact for Principal or Surety.

State of ...., County (and/or City) of ..... On this .... day of ...., in the year .... before me, ... (name of notary), a Notary Public in and for said state, personally appeared ..... (name of attorney in fact), Attorney in Fact for .... (name of principal or surety), known to me to be the person who executed the within ..... (type of document) in behalf of said principal (or surety), and acknowledged to me that he **or she** executed the same for the purposes therein stated. ..... (official signature and official seal of notary.)

(5) By a Public Officer, Deputy, Trustee, Administrator, Guardian or Executor.

State of ...., County (and/or City) of ..... On this .... day of ...., in the year ...., before me .... (name of notary), a Notary Public in and for said state, personally appeared ..... (name of person), ..., (person's official title) known to me to be the person who executed the within .... (type of document) in behalf of ..... (public corporation, agency, political subdivision or estate) and acknowledged to me that he **or she** executed the same for the purposes therein stated. ..... (official signature and official seal of notary.)

(6) By a United States Citizen Who is Outside of the United States. (description or location of place where acknowledgment is taken)

On this .... day of ...., in the year ...., before me ..... (name and title of person acting as a notary and refer to law or authority granting power to act as a notary), personally appeared ..... (name of citizen) known to me to be the person who executed the within ..... (type of document) and acknowledged to me that ..... (he) **(she)** executed the same for the purposes therein stated. ..... (official signature and official seal of person acting as a notary and refer to law or authority granting power to act as a notary).

(7) By An Individual Who Cannot Write His **or Her** Name.

State of ...., County (and/or City) of ..... On this .... day of .... in the year ...., before me ..... (name of notary), a Notary Public in and for said state, personally appeared .... (name of individual), known to me to be the person who, being unable to write his **or her** name, made his **or her** mark in my presence. I signed his **or her** name at his **or her** request and in **[**his**] that person's** presence on the within .... (type of document) and he **or she** acknowledged to me that he **or she** made his **or her** mark on the same for the purposes therein stated. ..... (official signature and official seal of notary.)

(8) By a Manager or Member.

State of ...., County (and/or City) of ..... On this .... day of .... in the year .... before me, ... (name of notary), a Notary Public in and for said state, personally appeared ..... (name of manager or member) of .... (name of limited liability company), known to me to be the person

who executed the within ..... (type of document) in behalf of said limited liability company and acknowledged to me that he **or she** executed the same for the purposes therein stated. ..... (official signature and official seal of notary.)

486.335. AFFIRMATIONS, FORM OF. — Affirmations shall be in **type not smaller than eight-point and in** substantially the following form:

(1) If the affirmation to be administered by the notary public is in writing and the person who took the affirmation has signed his **or her** name thereto, the notary public shall write or print under the text of the affirmation the following:

"Subscribed and affirmed before me this ..... day of ....., **[**19**]** **20**...." ..... (official signature and official seal of notary.)

(2) If the affirmation to be administered by the notary public is not in writing, the notary public shall address the affirmant substantially as follows:

"You do solemnly affirm, under the penalty of perjury, that the testimony you shall give in the matter in issue, pending between ..... and ....., shall be the truth, the whole truth, and nothing but the truth."

486.340. EXECUTING WITNESS DEFINED — FORM OF AFFIDAVIT OF EXECUTING WITNESS. — 1. As used in this section, the words "executing witness" means an individual who acts in the place of a notary.

2. An executing witness may not be related by blood or marriage or have a disqualifying interest as defined in section 486.255.

3. The affidavit of executing witness for acknowledgment by an individual who does not appear before a notary shall be in **type not smaller than eight-point and in** substantially the following form:

I, ... (name of executing witness), do solemnly affirm under the penalty of perjury, that .... (name of person who does not appear before a notary), personally known to me, has executed the within ..... (type of document) in my presence, and has acknowledged to me that ..... (he/**she**) executed the same for the purposes therein stated and requested that I sign my name on the within document as an executing witness. ..... (signature of executing witness)

Subscribed and affirmed before me this .... day of ...., **[**19**]** **20**.... ..... (official signature and official seal of notary.)

486.345. FACSIMILE MAY BE CERTIFIED — FORM OF CERTIFICATION. — 1. A notary public may certify a facsimile of a document if he **or she** receives a signed written request stating that a certified copy or facsimile, preparation of a copy, or certification of a copy of the document does not violate any state or federal law.

2. Each notary public shall retain a facsimile of each document he **or she** has certified as a facsimile of another document, together with other papers or copies relating to his **or her** notarial acts.

3. The certification of a facsimile shall be in **type not smaller than eight-point and in** substantially the following form:

State of ..... County (and/or City) of ..... I, ... (name of notary), a Notary Public in and for said state, do certify that on ..... (date) I carefully compared the attached facsimile of ..... (type of document) and the facsimile I now hold in my possession. They are complete, full, true and exact facsimiles of the document they purport to reproduce. ..... (official signature and official seal of notary.)

486.350. MAXIMUM FEES — OVERCHARGES OR CHARGE FOR ABSENTEE BALLOTS, EFFECT OF — TRAVEL FEE CHARGED, WHEN. — 1. The maximum fee in this state for notarization of each signature and the proper recording thereof in the journal of notarial acts is two dollars for each signature notarized.

2. The maximum fee in this state for certification of a facsimile of a document, and the proper recordation thereof in the journal of notarial acts is two dollars for each 8 ‖ x 11 inch page retained in the notary's file.

3. The maximum fee in this state is one dollar for any other notarial act performed.

4. No notary shall charge or collect a fee for notarizing the signature on any absentee ballot or absentee voter registration.

5. A notary public who charges more than the maximum fee specified or who charges or collects a fee for notarizing the signature on any absentee ballot or absentee voter registration is guilty of official misconduct.

6. A notary public may charge a travel fee, not to exceed the approved federal mileage rate and may charge an expedited convenience service fee not to exceed twenty-five dollars, when traveling to perform a notarial act, provided that:

(1) The notary explains to the person requesting the notarial act that the travel fee is separate from the notarial fee and is not specified or mandated by law; and

(2) The notary and the person requesting the notarial act agree upon his or her fees in advance of the notary affixing his or her official seal.

486.385. GROUNDS FOR REVOCATION OF COMMISSION. — 1. The secretary of state may **reject an application or** revoke the commission of any notary public who **prior to being commissioned or** during the current term of appointment:

(1) Submits an application for commission and appointment as a notary public which contains substantial and material misstatement of facts;

(2) Is convicted of any felony or official misconduct under this chapter;

(3) Fails to exercise the powers or perform the duties of a notary public in accordance with this chapter**, or fails otherwise to comply with the provisions of this chapter**;

(4) Is adjudged liable or agrees in a settlement to pay damages in any suit grounded in fraud, misrepresentation, impersonation, or violation of the state regulatory laws of this state, if his **or her** liability is not solely by virtue of his **or her** agency or employment relationship with another who engaged in the act for which the suit was brought;

(5) Uses false or misleading advertising wherein he **or she** represents or implies, by virtue of **[**his**]** **the** title of notary public, that he **or she** has qualifications, powers, duties, rights, or privileges that he **or she** does not possess by law;

(6) Engages in the unauthorized practice of law;

(7) Ceases to be a citizen of the United States;

(8) Ceases to be a registered voter of the county within and for which he **or she** is commissioned;

(9) Ceases to have a residence address in the county within and for which he **or she** is commissioned, unless he **or she** has been issued an amended commission;

(10) Becomes incapable of reading or writing the English language;

(11) Fails to maintain the surety bond required by section 486.235.

2. A notary's commission may be revoked under the provisions of this section **[**only**]** if action is taken subject to the rights of the notary public to notice, hearing, adjudication and appeal. **The secretary of state shall have further power and authority as is reasonably necessary to enable the secretary of state to administer this chapter efficiently and to perform the duties therein imposed upon the secretary of state, including immediate suspension of a notary upon written notice sent by certified mail if the situation is deemed to have a serious unlawful effect on the general public; provided, that the notary public shall be entitled to hearing and adjudication as soon thereafter as is practicable.**

486.395. CERTIFICATION OF NOTARY'S AUTHORITY BY THE SECRETARY OF STATE, FEE, FORM. — Upon the receipt of a written request, the notarized document and a fee of ten dollars

payable to the director of revenue, the secretary of state shall provide a certificate of authority in **type not smaller than eight-point and in** substantially the following form:

I, ... (appointing state official, or local or district office designated by appointing state official, name and title) of the State of (name of state) which office is an office of record having a seal, certify that ..... (notary's name), by whom the foregoing or annexed document was notarized, was, at the time of the notarization of the same, a Notary Public authorized by the laws of this State to act in this State and to notarize the within ..... (type of document), and I further certify that the Notary's signature on the document is genuine to the best of my knowledge, information, and belief and that such notarization was executed in accordance with the laws of this State.

In testimony whereof, I have affixed my signature and seal of this office this ..... day of ....., **[**19**]** 20....

..... (secretary of state's signature, title, jurisdiction, address and the seal affixed near the signature.)

486.396. NOTARY SEAL STOLEN, PROCEDURE. — If the notary's notary seal has been stolen, the notary shall immediately notify the secretary of state in writing to report the theft. Upon receipt of the written documentation, the secretary of state shall issue the notary a new commission number for the notary to order a new seal. The secretary of state may post notice on the secretary of state's web site notifying the general public that the notary seal of such notary with the stolen commission number is invalid and is not an acceptable notary commission number.

Approved July 1, 2004

HB 1195 [SS SCS HS HCS HB 1195]

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

Changes various provisions related to professional registration.

AN ACT to repeal sections 190.092, 190.133, 337.510, 337.615, 337.703, 337.706, and 337.715, RSMo, and to enact in lieu thereof twenty-one new sections relating to professional registration, with penalty provisions.

SECTION

A. Enacting clause.
190.092. Defibrillators, use authorized when, conditions, notice — good faith immunity from civil liability, when.
190.133. Emergency medical response agency license — limitations.
324.930. Definitions.
324.933. Board created, members, qualifications, terms, vacancies, expenses.
324.936. Exemptions from licensure requirements.
324.939. Application procedure, contents — qualifications of applicants — conditions of licensure — denial of licensure, when — fee — renewal.
324.942. Form of license, contents — posting of license — license card issued.
324.945. Agency license requirements — licensees responsible for conduct of employees and agents — maintaining of records.
324.948. Prohibited acts.
324.951. Advertisement requirements.
324.954. Sanctioning of a license, when — appeal procedure.
324.957. Board may subpoena persons and documents — enforcement of subpoenas — authority to administer oaths.
324.960. Rules.

324.965. Falsification of fingerprints, photographs, or information, penalty.
337.510. Education, experience requirements for licensure — reciprocity — provisional professional counselor license issued, when, requirements.
337.615. Education, experience requirements — reciprocity.
337.703. License required, exceptions.
337.706. License required, exception for persons licensed in other state.
337.715. Qualifications for licensure, exceptions.
1. Certain facilities not to be licensed as a hospital — expiration date.
2. Electrical contractor licenses issued by political subdivisions valid in all political subdivisions.
190.092. Defibrillators, use authorized when, conditions, notice — good faith immunity from civil liability, when.
190.133. Emergency medical response agency license — limitations.
B. Severability clause.

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

SECTION A. ENACTING CLAUSE. — Sections 190.092, 190.133, 337.510, 337.615, 337.703, 337.706, and 337.715, RSMo, are repealed and twenty-one new sections enacted in lieu thereof, to be known as sections 190.092, 190.133, 324.930, 324.933, 324.936, 324.939, 324.942, 324.945, 324.948, 324.951, 324.954, 324.957, 324.960, 324.965, 337.510, 337.615, 337.703, 337.706, 337.715, 1, and 2, to read as follows:

190.092. DEFIBRILLATORS, USE AUTHORIZED WHEN, CONDITIONS, NOTICE — GOOD FAITH IMMUNITY FROM CIVIL LIABILITY, WHEN. — 1. A person or entity who acquires an automated external defibrillator shall ensure that:

(1) Expected defibrillator users receive training by the American Red Cross or American Heart Association in cardiopulmonary resuscitation and the use of automated external defibrillators, or an equivalent nationally recognized course in defibrillator use and cardiopulmonary resuscitation;

(2) The defibrillator is maintained and tested according to the manufacturer's operational guidelines;

(3) Any person who renders emergency care or treatment on a person in cardiac arrest by using an automated external defibrillator activates the emergency medical services system as soon as possible; and

(4) Any person or entity that owns an automated external defibrillator that is for use outside of a health care facility shall have a physician review and approve the clinical protocol for the use of the defibrillator, review and advise regarding the training and skill maintenance of the intended users of the defibrillator and assure proper review of all situations when the defibrillator is used to render emergency care.

2. Any person or entity who acquires an automated external defibrillator shall notify the emergency communications district or the ambulance dispatch center of the primary provider of emergency medical services where the automated external defibrillator is to be located.

3. Any person who has had appropriate training, including a course in cardiopulmonary resuscitation, has demonstrated a proficiency in the use of an automated external defibrillator, and who gratuitously and in good faith renders emergency care when medically appropriate by use of or provision of an automated external defibrillator, without objection of the injured victim or victims thereof, shall not be held liable for any civil damages as a result of such care or treatment, where the person acts as an ordinarily reasonable, prudent person would have acted under the same or similar circumstances. The person or entity who provides appropriate training to the person using an automated external defibrillator, the person or entity responsible for the site where the automated external defibrillator is located, and the licensed physician who reviews and approves the clinical protocol, shall likewise not be held liable for civil damages resulting from the use of an automated external defibrillator, provided that all other requirements of this section have been met. Nothing in this section shall affect any claims brought pursuant to chapter 537 or 538, RSMo.

4. The provisions of this section shall apply in all counties within the state and any city not within a county.

190.133. EMERGENCY MEDICAL RESPONSE AGENCY LICENSE — LIMITATIONS. — 1. The department shall, within a reasonable time after receipt of an application, cause such investigation as the department deems necessary to be made of the applicant for an emergency medical response agency license.

2. The department shall issue a license to any emergency medical response agency which provides advanced life support if the applicant meets the requirements established pursuant to sections 190.001 to 190.245, and the rules adopted by the department pursuant to sections 190.001 to 190.245. The department may promulgate rules relating to the requirements for an emergency medical response agency including, but not limited to:

(1) A licensure period of five years;

(2) Medical direction;

(3) Records and forms; and

(4) Memorandum of understanding with local ambulance services.

3. Application for an emergency medical response agency license shall be made upon such forms as prescribed by the department in rules adopted pursuant to sections 190.001 to 190.245. The application form shall contain such information as the department deems necessary to make a determination as to whether the emergency medical response agency meets all the requirements of sections 190.001 to 190.245 and rules promulgated pursuant to sections 190.001 to 190.245.

4. No person or entity shall hold itself out as an emergency medical response agency that provides advanced life support or provide the services of an emergency medical response agency that provides advanced life support unless such person or entity is licensed by the department.

5. Only emergency medical response agencies, fire departments, and fire protection districts may provide certain ALS services with the services of EMT-Is.

6. Emergency medical response agencies functioning with the services of EMT-Is must work in collaboration with an ambulance service providing advanced life support with personnel trained to the emergency medical technician-paramedic level.

324.930. DEFINITIONS. — For the purposes of sections 324.930 to 324.965, the following terms mean:

(1) "Board", the board of licensed private fire investigator examiners;

(2) "Client", any person who engages the services of a private fire investigator;

(3) "Division", the division of fire safety within the department of public safety;

(4) "Insurance adjuster", any person who receives any consideration, either directly or indirectly, for adjusting in the disposal of any claim under or in connection with a policy of insurance or engaging in soliciting insurance adjustment business;

(5) "License", a private fire investigator license;

(6) "Licensed private fire investigator", any person who receives any consideration, either directly or indirectly, for engaging in the investigation of the origin, cause, or responsibility of fires;

(7) "Licensed private fire investigator agency", a person or firm that employs any person to engage in the investigation of fires to determine the origin, cause, and responsibility of such fires;

(8) "Licensed private fire investigation", the furnishing of, making of, or agreeing to make any investigation of a fire for the origin, cause, or responsibility of such fire;

(9) "Organization", a corporation, trust, estate, partnership, cooperation, or association;

(10) "Person", an individual;

(11) "Principal place of business", the place where the licensee maintains a permanent office which may be a residence or business address.

324.933. BOARD CREATED, MEMBERS, QUALIFICATIONS, TERMS, VACANCIES, EXPENSES. — 1. The "Board of Licensed Private Fire Investigator Examiners" is hereby created within the division of fire safety. The board shall be composed of six members appointed by the governor, with the advice and consent of the senate. The board shall consist of:

(1) The state fire marshal, or his or her designee;

(2) A representative of a private fire investigation agency;

(3) A representative of the insurance industry;

(4) A representative of the Missouri chapter of the International Association of Arson Investigators;

(5) A representative of the Professional Fire and Fraud Investigators Association;

(6) A representative of the Kansas City Arson Task Force; and

(7) One person who is an independent private fire investigator.

2. Each member of the board shall be a citizen of the United States, a resident of this state, at least thirty years of age, and shall have been actively engaged in fire investigation for the previous five years. No more than one board member shall be employed by or affiliated with the same licensed private fire investigation agency. The initial board members shall not be required to be licensed but shall obtain a license within one hundred eighty days after appointment to the board.

3. The members of the board shall be appointed for terms of three years, except those first appointed, in which case two members shall be appointed for terms of three years, two members shall be appointed for terms of two years, and two members shall be appointed for a one-year term. Any vacancy on the board shall be filled for the remainder of the unexpired term of that member. The members of the board shall serve without pay, but they shall receive per diem expenses in an equivalent amount as allowed for members of the general assembly.

324.936. EXEMPTIONS FROM LICENSURE REQUIREMENTS. — The following persons or organizations shall not be deemed to be engaging in licensed private fire investigation:

(1) Any officer or employee of the United States, this state, or a political subdivision of this state, or an entity organized under section 320.300, RSMo, while engaged in the performance of the officer's or employee's official duties;

(2) An attorney performing duties as an attorney;

(3) An investigator who is an employee of an insurance company;

(4) Insurers, agents, and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them;

(5) An insurance adjuster; or

(6) An investigator employed by and under the supervision of a licensed attorney while acting within the scope of employment, who does not represent himself or herself to be a licensed private fire investigator.

324.939. APPLICATION PROCEDURE, CONTENTS — QUALIFICATIONS OF APPLICANTS — CONDITIONS OF LICENSURE — DENIAL OF LICENSURE, WHEN — FEE — RENEWAL. — 1. Every person desiring to be licensed in this state as a licensed private fire investigator or licensed private fire investigator agency shall make an application to the board. An application for a license pursuant to the provisions of sections 324.930 to 324.965 shall be on a form prescribed by the board and accompanied by the required application fee. An application shall be verified and shall include:

(1) The full name and business address of the applicant;

(2) The name that the applicant intends to do business under;

(3) A statement as to the general nature of the business that the applicant intends to engage in;

(4) Two recent passport photographs of the applicant and two classifiable sets of the applicant's fingerprints;

(5) A verified statement of the applicant's experience qualifications; and

(6) Such other information, evidence, statements, or documents as may be required by the state fire marshal.

2. To be eligible for licensure, the applicant shall:

(1) Be at least twenty-one years of age;

(2) Be a citizen of the United States;

(3) Not have a felony conviction or a conviction of a crime involving moral turpitude;

(4) Provide proof of liability insurance with amount to be no less than one million dollars in coverage; and

(5) Comply with such other qualifications as the board shall require.

For the purposes of sections 324.930 to 324.965, the record of conviction, or a certified copy thereof, shall be conclusive evidence of such conviction, and a plea or verdict of guilty is deemed to be a conviction within the meaning thereof.

3. The board shall require as a condition of licensure that the applicant:

(1) Successfully complete a course of training approved by the state fire marshal's office;

(2) Pass a written examination as evidence of knowledge of fire investigation. Certification as a fire investigator by the state fire marshal or other agencies approved by the state fire marshal shall constitute passing a written examination;

(3) Provide a background check from an authorized state law enforcement agency. The board shall conduct a complete investigation of the background of each applicant for licensure as a licensed private fire investigator or agency to determine whether the applicant is qualified for licensure pursuant to sections 324.930 to 324.965; and

(4) Pass any other basic qualification requirements as the board shall outline.

4. The board may deny a request for a license if the applicant has:

(1) Committed any act that, if committed by a licensee, would be grounds for the suspension or revocation of a license pursuant to the provisions of sections 324.930 to 324.965;

(2) Been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere in a criminal prosecution under the laws of any state or the United States for any offense reasonably related to the qualifications, functions, or duties of any profession licensed or regulated under this chapter or for any offense an essential element of which is fraud, dishonesty, or an act of violence, or for any offense involving moral turpitude, whether or not a sentence is imposed;

(3) Been refused a license pursuant to the provisions of sections 324.930 to 324.965 or had a license revoked in this state or in any other state;

(4) Prior to being licensed, committed, aided, or abetted the commission of any act that requires a license pursuant to sections 324.930 to 324.965; and

(5) Knowingly made any false statement in the application.

5. Every application submitted pursuant to the provisions of sections 324.930 to 324.965 shall be accompanied by a fee as determined by the board as follows:

(1) A separate fee shall be paid for an individual license, agency license, and employees being licensed to work under an agency license; and

(2) If a license is issued for a period of less than two years, the fee shall be prorated for the months, or fraction thereof, for which the license is issued.

6. All fees required pursuant to this section shall be paid to and collected by the division of fire safety and transmitted to the department of revenue for deposit in the state

general revenue fund. The board shall set fees at a level to produce revenue that will not substantially exceed or fail to cover the costs and expenses of administering sections 324.930 to 324.965. These fees shall be exclusive and no municipality may require any person licensed pursuant to sections 324.930 to 324.965 to furnish any bond or pass any examination to practice as a licensed private fire investigator.

7. Renewal of a license shall be made in the manner prescribed by the board, including the payment of a renewal fee.

324.942. FORM OF LICENSE, CONTENTS — POSTING OF LICENSE — LICENSE CARD ISSUED. — 1. The board shall determine the form of the license which shall include:

(1) The name of the licensee;

(2) The name under which the licensee is to operate; and

(3) The number and date of the license.

2. The license shall be posted at all times in a conspicuous place in the principal place of business of the licensee.

3. Upon the issuance of the license, a pocket card of such size, design, and content as determined by the board shall be issued to each licensee. Such card shall be evidence that the licensee is licensed pursuant to the provisions of sections 324.930 to 324.965. When any person to whom a card is issued terminates such person's position, office, or association with the licensee, the card shall be surrendered to the licensee and within five days thereafter shall be mailed or delivered by the licensee to the board for cancellation.

324.945. AGENCY LICENSE REQUIREMENTS — LICENSEES RESPONSIBLE FOR CONDUCT OF EMPLOYEES AND AGENTS — MAINTAINING OF RECORDS. — 1. The owner of a company seeking any agency license must first be licensed as a private fire investigator. The agency may hire individuals to work for the agency whom shall conduct investigations for such agency only. Persons hired shall make application as determined by the board and shall meet all requirements set forth by the board. They shall not be required to meet any experience requirements and shall be allowed to begin work immediately. Employees shall attend an approved training program within a time to be determined by the board and will be under the direct supervision of a licensed private fire investigator until all requirements are met.

2. A licensee shall at all times be legally responsible for the good conduct of each of the licensee's employees or agents while engaged in the business of the licensee. A licensee is legally responsible for any acts committed by the licensee's employees or agents which are in violation of sections 324.930 to 324.965. A person receiving an agency license shall directly manage the agency and employees.

3. Each licensee shall maintain a record containing such information relative to the licensee's employees as may be prescribed by the board. Such licensee shall file with the board the complete address of the licensee's principal place of business including the name and number of the street. The board may require the filing of other information for the purpose of identifying such principal place of business.

324.948. PROHIBITED ACTS. — No licensee or officer, director, partner, associate, or employee of the licensee shall:

(1) Knowingly make any false report to his or her employer or client for whom information was being obtained;

(2) Cause any written report to be submitted to a client except by the licensee and the person submitting the report shall exercise diligence in ascertaining whether or not the facts and information in such report are true and correct;

(3) Use a title, wear a uniform, use an insignia or identification card, or make any statement with the intent to give an impression that such person is connected in any way

with the federal or state government or any political subdivision of the federal or state government;

(4) Appear as an assignee party in any proceeding involving claim and delivery, replevin or other possessory action, action to foreclose a chattel mortgage, mechanic's lien, materialman's lien, or any other lien;

(5) Manufacture false evidence;

(6) Allow anyone other than the individual licensed by the state to conduct an investigation; or

(7) Assign or transfer a license issued pursuant to sections 324.930 to 324.965.

324.951. ADVERTISEMENT REQUIREMENTS. — 1. Every advertisement by a licensee soliciting or advertising business shall contain the licensee's name and address as they appear in the records of the board.

2. A licensee shall not advertise or conduct business from any address in this state other than that shown on the records of the board as the licensee's principal place of business unless the licensee has received a branch office certificate for such location after compliance with the provisions of sections 324.930 to 324.965 and such additional requirements necessary for the protection of the public as the board may prescribe by regulation. A licensee shall notify the board in writing within ten days after closing or changing the location of a branch office.

324.954. SANCTIONING OF A LICENSE, WHEN — APPEAL PROCEDURE. — 1. The board may deny a request for a license, or may suspend or revoke a license issued pursuant to sections 324.930 to 324.965, or censure or place a license on probation if, after notice and opportunity for hearing in accordance with the provisions of chapter 621, RSMo, the board determines the licensee has:

(1) Made any false statement or given any false information in connection with an application for a license or a renewal or reinstatement thereof;

(2) Violated any provisions of sections 324.930 to 324.965;

(3) Violated any rule of the board adopted pursuant to the authority contained in sections 324.930 to 324.965;

(4) Been convicted of a felony or been convicted of a crime involving moral turpitude;

(5) Impersonated, or permitted or aided and abetted an employee to impersonate, a law enforcement officer or employee of the United States, or of any state or political subdivision;

(6) Committed or permitted any employee to commit any act while the license was expired that could be cause for the suspension or revocation of any license, or grounds for the denial of an application for a license;

(7) Knowingly violated, or advised, encouraged, or assisted the violation of any court order or injunction in the course of business as a licensee;

(8) Used any letterhead, advertisement, or other printed matter or in any manner representing that such person is an instrumentality of the federal or state government or any political subdivision of a federal or state government;

(9) Used a name different from that under which such person is currently licensed in any advertisement, solicitation, or contact for business; or

(10) Committed any act that is grounds for denial of an application for a license pursuant to the provisions of sections 324.930 to 324.965.

2. Any person whose license status is affected by any official action of the state fire marshal or board of licensed private fire investigator examiners, including, but not limited to, revocation, suspension, failure to renew a license, or refusal to grant a license, may seek a determination by the administrative hearing commission pursuant to the provisions of section 621.045, RSMo. After the filing of a complaint before the administrative hearing

commission, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 1 of this section, for disciplinary action are met, the board may singly or in combination censure or place the person named in the complaint on probation on such terms and conditions as the board deems appropriate for a period not to exceed five years or may suspend, for a period not to exceed three years, or revoke the license.

3. A licensed private fire investigator agency may continue under the direction of another employee if the individual holding the license is suspended or revoked as approved by the board. The board shall establish a time from within which the licensed private fire investigator agency shall identify an acceptable person who is qualified to assume control of the agency as required by the board.

324.957. BOARD MAY SUBPOENA PERSONS AND DOCUMENTS — ENFORCEMENT OF SUBPOENAS — AUTHORITY TO ADMINISTER OATHS. — 1. For the purpose of enforcing the provisions of sections 324.930 to 324.965, or in making investigations relating to any violation thereof or to the character, competency, or integrity of the applicants or licensees, or for the purpose of investigating the business, business practices, or business methods of any applicant or licensee, or of the officers, directors, partners, or associates thereof, the board shall have the power to subpoena and bring before the board any person in this state and require the production of any books, records, or papers that the board deems relative to the inquiry. A subpoena issued pursuant to this section shall be governed by this state's rules of civil procedure.

2. Any person subpoenaed who fails to obey such subpoena without reasonable cause or who without such cause refuses to be examined or to answer any legal or pertinent question as to the character or qualifications of such applicant or licensee or such applicant's or licensee's business, business practices, or methods or such violations shall be guilty of a class A misdemeanor.

3. The board may administer an oath and take the testimony of any person, or cause such person's deposition to be taken, except that any applicant or licensee or officer, director, partner, or associate thereof shall not be entitled to any fees or mileage. The testimony of witnesses in any investigative proceeding shall be under oath and willful. False swearing in such proceeding shall be perjury.

324.960. RULES. — 1. The board shall adopt such rules and regulations as may be necessary to carry out the provisions of sections 324.930 to 324.965.

2. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

324.965. FALSIFICATION OF FINGERPRINTS, PHOTOGRAPHS, OR INFORMATION, PENALTY. — Any person who knowingly falsifies the fingerprints or photographs or other information requested to be submitted pursuant to sections 324.930 to 324.965 is guilty of a class D felony. Any person who violates any other provisions of sections 324.930 to 324.965 is guilty of a class A misdemeanor.

337.510. EDUCATION, EXPERIENCE REQUIREMENTS FOR LICENSURE — RECIPROCITY — PROVISIONAL PROFESSIONAL COUNSELOR LICENSE ISSUED, WHEN, REQUIREMENTS. —

1. Each applicant for licensure as a professional counselor shall furnish evidence to the committee that:

(1) The applicant has met any one of the three following education-experience requirements:

(a) The applicant has received a doctoral degree with a major in counseling, or its equivalent, from an acceptable educational institution, as defined by division rules, and has completed at least one year of acceptable supervised counseling experience subsequent to receipt of the doctoral degree; or

(b) The applicant has received a specialist's degree with a major in counseling, or its equivalent, from an acceptable educational institution, as defined by division rules, and has completed at least one year of acceptable supervised counseling experience subsequent to receipt of the specialist's degree; or

(c) The applicant has received at least a master's degree with a major in counseling, or its equivalent, from an acceptable educational institution as defined by division rules, and has completed two years of acceptable supervised counseling experience subsequent to receipt of the master's degree. An applicant may substitute thirty semester hours of post-master's graduate study, or their equivalent, for one of the two required years of acceptable supervised counseling experience, if such hours are clearly related to the field of professional counseling and are earned from an acceptable educational institution.

(2) Upon examination, the applicant is possessed of requisite knowledge of the profession, including techniques and applications, research and its interpretation, and professional affairs and ethics.

2. **[**Any person holding a valid unrevoked, unsuspended and unexpired license as a professional counselor issued by a state having substantially the same licensing requirements as this state shall be granted a license to engage in the person's occupation in this state upon application to the committee accompanied by the appropriate fee as established by the committee pursuant to section 337.507.**]** **A licensed professional counselor who has had no violations and no suspensions and no revocation of a license to practice professional counseling in any jurisdiction may receive a license in Missouri provided said licensed professional counselor passes a written examination on Missouri laws and regulations governing the practice of professional counseling as defined in section 337.500, and meets one of the following criteria:**

(1) Is a member in good standing and holds a certification from the National Board for Certified Counselors;

(2) Is currently licensed or certified as a licensed professional counselor in another state, territory of the United States, or the District of Columbia; and

(a) Meets one of the educational standards set forth in paragraphs (a) and (b) of subdivision (1) of subsection 1 of this section;

(b) Has been licensed for the preceding five years; and

(c) Has had no disciplinary action taken against the license for the preceding five years; or

(3) Is currently licensed or certified as a professional counselor in another state, territory of the United States, or the District of Columbia that extends like privileges for reciprocal licensing or certification to persons licensed by this state with similar qualifications.

3. Any person who previously held a valid unrevoked, unsuspended license as a professional counselor in this state and who held a valid license in another state at the time of application to the committee shall be granted a license to engage in professional counseling in this state upon application to the committee accompanied by the appropriate fee as established by the committee pursuant to section 337.507.

4. The committee shall issue a license to each person who files an application and fee as required by the provisions of sections 337.500 to 337.540 and who furnishes evidence

satisfactory to the committee that the applicant has complied with the provisions of subdivisions (1) and (2) of subsection 1 of this section or with the provisions of subsection 2 or 3 of this section. The division shall issue a provisional professional counselor license to any applicant who meets all requirements of subdivisions (1) and (2) of subsection 1 of this section, but who has not completed the required one or two years of acceptable supervised counseling experience required by paragraphs (a) to (c) of subdivision (1) of subsection 1 of this section, and such applicant may reapply for licensure as a professional counselor upon completion of such acceptable supervised counseling experience.

337.615. EDUCATION, EXPERIENCE REQUIREMENTS — RECIPROCITY. — 1. Each applicant for licensure as a clinical social worker shall furnish evidence to the committee that:

(1) The applicant has a master's degree from a college or university program of social work accredited by the council of social work education or a doctorate degree from a school of social work acceptable to the committee;

(2) The applicant has twenty-four months of supervised clinical experience acceptable to the committee, as defined by rule;

(3) The applicant has achieved a passing score, as defined by the committee, on an examination approved by the committee. The eligibility requirements for such examination shall be promulgated by rule of the committee;

(4) The applicant is at least eighteen years of age, is of good moral character, is a United States citizen or has status as a legal resident alien, and has not been convicted of a felony during the ten years immediately prior to application for licensure.

2. **[**Any person not a resident of this state holding a valid unrevoked and unexpired license, certificate or registration from another state or territory of the United States having substantially the same requirements as this state for clinical social workers may be granted a license to engage in the person's occupation in this state upon application to the committee accompanied by the appropriate fee as established by the committee pursuant to section 337.612**]** **A licensed clinical social worker who has had no violations and no suspensions and no revocation of a license to practice clinical social work in any jurisdiction may receive a license in Missouri provided said clinical social worker passes a written examination on Missouri laws and regulations governing the practice of clinical social work as defined in subdivision (1) of section 337.600, and meets one of the following criteria:**

(1) Is a member in good standing and holds a certification from the Academy of Certified Social Workers;

(2) Is currently licensed or certified as a licensed clinical social worker in another state, territory of the United States, or the District of Columbia; and

(a) Who has received a masters or doctoral degree from a college or university program of social work accredited by the council of social work education;

(b) Has been licensed for the preceding five years; and

(c) Has had no disciplinary action taken against the license for the preceding five years; or

(3) Is currently licensed or certified as a clinical social worker in another state, territory of the United States, or the District of Columbia that extends like privileges for reciprocal licensing or certification to persons licensed by this state with similar qualifications.

3. The committee shall issue a license to each person who files an application and fee as required by the provisions of sections 337.600 to 337.639 and who furnishes evidence satisfactory to the committee that the applicant has complied with the provisions of subdivisions (1) to (4) of subsection 1 of this section or with the provisions of subsection 2 of this section. The committee shall issue a provisional clinical social worker license to any applicant who meets all requirements of subdivisions (1), (3) and (4) of subsection 1 of this section, but who has not completed the twenty-four months of supervised clinical experience required by subdivision (2)

of subsection 1 of this section, and such applicant may reapply for licensure as a clinical social worker upon completion of the twenty-four months of supervised clinical experience.

337.703. LICENSE REQUIRED, EXCEPTIONS. — No person shall use the title of "licensed marital and family therapist" **[**and**], "marital and family therapist", "provisional marital and family therapist", or** engage in the practice of marital and family therapy in this state unless the person is licensed as required by the provisions of sections 337.700 to 337.739. Sections 337.700 to 337.739 shall not apply to:

(1) Any person registered, certificated or licensed by this state, another state or any recognized national certification agent acceptable to the division to practice any other occupation or profession while rendering services similar in nature to marital and family therapy in the performance of the occupation or profession in which the person is registered, certificated or licensed, so long as the person does not use the title of "licensed marital and family therapist"**, "marital and family therapist", or "provisional marital and family therapist"**;

(2) The practice of any marital and family therapist who is employed by any political subdivision, school district, agency or department of the state of Missouri while discharging the therapist's duties in that capacity; and

(3) Duly ordained ministers or clergy, religious workers and volunteers or Christian Science Practitioners.

337.706. LICENSE REQUIRED, EXCEPTION FOR PERSONS LICENSED IN OTHER STATE. — 1. For a period of six months from September 1, 1995, a person may apply for licensure without examination and shall be exempt from the academic requirements of sections 337.700 to 337.739 if the division is satisfied that the applicant:

(1) Has been a resident of the state of Missouri for at least the last six months; and

(2) Holds a valid license as a marital and family therapist from another state.

2. The division may determine by administrative rule the types of documentation needed to verify that an applicant meets the qualifications provided in subsection 1 of this section.

3. After March 1, 1996, no person may engage in marital and family therapy for compensation or hold himself or herself out as a "licensed marital and family therapist"**, "marital and family therapist", or "provisional marital and family therapist"** unless the person complies with all educational and examination requirements and is licensed in accordance with the provisions of sections 337.700 to 337.739.

337.715. QUALIFICATIONS FOR LICENSURE, EXCEPTIONS. — 1. Each applicant for licensure as a marital and family therapist shall furnish evidence to the division that:

(1) The applicant has a master's degree or a doctoral degree in marital and family therapy, or its equivalent, from an acceptable educational institution accredited by a regional accrediting body or accredited by an accrediting body which has been approved by the United States Department of Education;

(2) The applicant has twenty-four months of postgraduate supervised clinical experience acceptable to the division, as the division determines by rule;

(3) Upon examination, the applicant is possessed of requisite knowledge of the profession, including techniques and applications research and its interpretation and professional affairs and ethics;

(4) The applicant is at least eighteen years of age, is of good moral character, is a United States citizen or has status as a legal resident alien, and has not been convicted of a felony during the ten years immediately prior to application for licensure.

2. **[**Any person not a resident of this state holding a valid unrevoked and unexpired license, certificate or registration from another state or territory of the United States having substantially the same or higher requirements as this state for marital and family therapists may be granted a license to engage in the person's occupation in this state upon application to the division

accompanied by the appropriate fee as established by the division pursuant to section 337.712.**] A licensed marriage and family therapist who has had no violations and no suspensions and no revocation of a license to practice marriage and family therapy in any jurisdiction may receive a license in Missouri provided said marriage and family therapist passes a written examination on Missouri laws and regulations governing the practice of professional counseling as defined in section 337.700, and meets one of the following criteria:**

(1) Is a member in good standing and holds a certification from the Academy of Marriage and Family Therapists;

(2) Is currently licensed or certified as a licensed marriage and family therapist in another state, territory of the United States, or the District of Columbia; and

(a) Meets the educational standards set forth in subdivision (1) of subsection 1 of this section;

(b) Has been licensed for the preceding five years; and

(c) Has had no disciplinary action taken against the license for the preceding five years; or

(3) Is currently licensed or certified as a marriage and family therapist in another state, territory of the United States, or the District of Columbia that extends like privileges for reciprocal licensing or certification to persons licensed by this state with similar qualifications.

3. The division shall issue a license to each person who files an application and fee as required by the provisions of sections 337.700 to 337.739, and who furnishes evidence satisfactory to the division that the applicant has complied with the provisions of subdivisions (1) to (4) of subsection 1 of this section or with the provisions of subsection 2 of this section.

SECTION 1. CERTAIN FACILITIES NOT TO BE LICENSED AS A HOSPITAL — EXPIRATION DATE. — The department of health and senior services shall not license any entity as a hospital, as the term "hospital" is defined in section 197.020, RSMo, that is devoted primarily or exclusively to surgical procedures, patients with a cardiac condition, patients with an orthopedic condition, or any other specialized category of patients or cases as may be determined by the director of the department. Nothing in this section shall prohibit licensure or certification of any entity as a hospital that is devoted primarily to care and treatment of children under the age of eighteen years, psychiatric patients, or patients undergoing rehabilitation care or to long-term care hospitals meeting the requirements described in 42 CFR sec. 412.23(e). The provisions of this section shall expire, and be of no effect, on and after August 28, 2005.

SECTION 2. ELECTRICAL CONTRACTOR LICENSES ISSUED BY POLITICAL SUBDIVISIONS VALID IN ALL POLITICAL SUBDIVISIONS. — 1. The holder of a current and active electrical contractor license issued by any political subdivision of this state, whose requirements are equal to or exceed the requirements for obtaining an electrical contractor license on August 28, 2004, in St. Louis County, shall be valid within any political subdivision of this state.

2. The provisions of this section shall not prohibit any political subdivision in this state from enforcing any code or law not contained herein, or to:

(1) Issue an electrical contractor license valid for that political subdivision, except for a person who holds a license as provided in subsection 1 of this section;

(2) Require a business license to perform electrical contracting work;

(3) Issue electrical contracting permits;

(4) Enforce codes of the political subdivision; or

(5) Inspect the work of a licensee.

3. Political subdivisions of this state that do not have the authority to issue or require electrical contractor licenses prior to August 28, 2004, shall not be granted such authority under the provisions of this section.

[190.092. DEFIBRILLATORS, USE AUTHORIZED WHEN, CONDITIONS, NOTICE — GOOD FAITH IMMUNITY FROM CIVIL LIABILITY, WHEN. — 1. A person or entity who acquires an automated external defibrillator shall ensure that:

(1) Expected defibrillator users receive training by the American Red Cross or American Heart Association in cardiopulmonary resuscitation and the use of automated external defibrillators, or an equivalent nationally recognized course in defibrillator use and cardio-pulmonary resuscitation;

(2) The defibrillator is maintained and tested according to the manufacturer's operational guidelines;

(3) Any person who renders emergency care or treatment on a person in cardiac arrest by using an automated external defibrillator activates the emergency medical services system as soon as possible; and

(4) Any person or entity that owns an automated external defibrillator that is for use outside of a health care facility shall have a physician review and approve the clinical protocol for the use of the defibrillator, review and advise regarding the training and skill maintenance of the intended users of the defibrillator and assure proper review of all situations when the defibrillator is used to render emergency care.

2. Any person or entity who acquires an automated external defibrillator shall notify the emergency communications district or the ambulance dispatch center of the primary provider of emergency medical services where the automated external defibrillator is to be located.

3. Any person who has had appropriate training, including a course in cardiopulmonary resuscitation, has demonstrated a proficiency in the use of an automated external defibrillator, and who gratuitously and in good faith renders emergency care when medically appropriate by use of or provision of an automated external defibrillator, without objection of the injured victim or victims thereof, shall not be held liable for any civil damages as a result of such care or treatment, where the person acts as an ordinarily reasonable, prudent person, or with regard to a health care professional, including the licensed physician who reviews and approves the clinical protocol, as a reasonably prudent and careful health care provider would have acted, under the same or similar circumstances. Nothing in this section shall affect any claims brought pursuant to chapter 537 or 538, RSMo.**]**

[190.133. EMERGENCY MEDICAL RESPONSE AGENCY LICENSE — LIMITATIONS. — 1. The department shall, within a reasonable time after receipt of an application, cause such investigation as the department deems necessary to be made of the applicant for an emergency medical response agency license.

2. The department shall issue a license to any emergency medical response agency which provides advanced life support if the applicant meets the requirements established pursuant to sections 190.001 to 190.245, and the rules adopted by the department pursuant to sections 190.001 to 190.245. The department may promulgate rules relating to the requirements for an emergency medical response agency including, but not limited to:

(1) A licensure period of five years;

(2) Medical direction;

(3) Records and forms; and

(4) Memorandum of understanding with local ambulance services.

3. Application for an emergency medical response agency license shall be made upon such forms as prescribed by the department in rules adopted pursuant to sections 190.001 to 190.245. The application form shall contain such information as the department deems necessary to make

a determination as to whether the emergency medical response agency meets all the requirements of sections 190.001 to 190.245 and rules promulgated pursuant to sections 190.001 to 190.245.

4. No person or entity shall hold itself out as an emergency medical response agency that provides advanced life support or provide the services of an emergency medical response agency that provides advanced life support unless such person or entity is licensed by the department.

5. Only emergency medical response agencies licensed and serving in any county of the first classification without a charter form of government and with more than one hundred eighty-four thousand but less than one hundred eighty-eight thousand inhabitants, any county with a charter form of government and with more than six hundred thousand but less than seven hundred thousand inhabitants, or any county of the first classification with more than seventy-three thousand seven hundred but less than seventy-three thousand eight hundred inhabitants will be licensed to provide certain ALS services with the services of EMT-Is.

6. Emergency medical response agencies functioning with the services of EMT-Is must work in collaboration with an ambulance service providing advanced life support with personnel trained to the emergency medical technician-paramedic level.**]**

SECTION B. SEVERABILITY CLAUSE. — If any provision of this act or the application thereof to anyone or to any circumstances is held invalid, the remainder of those sections and the application of such provisions to others or other circumstances shall not be affected thereby.

Approved July 9, 2004

HB 1198 [HCS HB 1198]

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

Allows the Director of the Department of Insurance to have a designee receive notice and approve the payment of extraordinary dividends for insurance holding companies.

AN ACT to repeal section 382.210, RSMo, and to enact in lieu thereof one new section relating to extraordinary dividends for insurance holding companies.

SECTION

A. Enacting clause.

382.210. Extraordinary dividend, notice of — payment from earned surplus, when — allowed, when.

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

SECTION A. ENACTING CLAUSE. — Section 382.210, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 382.210, to read as follows:

382.210. EXTRAORDINARY DIVIDEND, NOTICE OF — PAYMENT FROM EARNED SURPLUS, WHEN — ALLOWED, WHEN. — 1. No insurer subject to registration under section 382.100 shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until thirty days after the director has received notice of the declaration thereof and has not within such period disapproved such payment, or the director has approved the payment within such thirty-day period. For purposes of this section, **net income excludes net realized capital gains to the extent that realized capital gains exceed realized capital losses, and** an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of dividends or distributions made within the period of

twelve consecutive months ending on the date on which the proposed dividends are scheduled for payment or distribution:

(1) For life **[**insurance companies and**],** title**, and property and casualty** insurance companies, such amount exceeds the greater of ten percent of the insurer's surplus as regards policyholders as of the thirty-first day of December next preceding, or the net gain from operations of the insurer, if the insurer is a life insurer, or the net investment income, if the insurer is a title insurer**, or the net income, if the insurer is a property and casualty insurer**, for the twelve-month period ending the thirty-first day of December next preceding, but shall not include pro rata distributions of any class of the insurer's own securities;

(2) For all other insurers, such amount exceeds the lesser of ten percent of the insurer's surplus as regards policyholders as of the thirty-first day of December next preceding, or the net investment income for the twelve-month period ending the thirty-first day of December next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

2. A life **[**or**],** title**, or property and casualty** insurer subject to registration under section 382.100 may only pay a shareholder dividend from earned surplus. With the prior approval of the director, a dividend may be declared from other than earned surplus.

3. No life **[**or**],** title**, or property and casualty** insurer subject to registration under section 382.100 shall pay any extraordinary dividend unless, after the transaction is completed, the company's surplus as regards policyholders is reasonable in relation to the company's outstanding liabilities and adequate to its financial needs. In making this determination, the director shall use the factors found in section 382.200 and may consider:

(1) The quality of the company's earnings and the extent to which the reported earnings include extraordinary items; or

(2) The recent past and projected future trend in the company's surplus as regards policyholders.

4. Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the director's approval thereof, and the declaration shall confer no rights upon shareholders until the director has approved the payment of the dividend or distribution, or the director has not disapproved the payment within the thirty-day period referred to above.

Approved July 1, 2004

HB 1207 [SS HS HCS HB 1207]

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

Changes procedures for formation of certain levee districts.

AN ACT to repeal sections 245.015, 245.060, 245.095, and 246.305, RSMo, and to enact in lieu thereof four new sections relating to levee districts.

SECTION

A. Enacting clause.
245.015. Owners may form levee district, where — articles of incorporation to be filed in circuit court.
245.060. Election of board of supervisors — term of office.
245.095. Powers and duties of supervisors.
246.305. Alternative levee district, certain counties — voting rights — apportionment of taxes.

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

SECTION A. ENACTING CLAUSE. — Sections 245.015, 245.060, 245.095, and 246.305, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 245.015, 245.060, 245.095, and 246.305, to read as follows:

245.015. OWNERS MAY FORM LEVEE DISTRICT, WHERE — ARTICLES OF INCORPORATION TO BE FILED IN CIRCUIT COURT. — **1.** The owners of a majority of the acreage in any contiguous body of swamp, wet or overflowed land or other property in the nature of individual or corporate franchises in this state, or land subject to overflow, wash or bank erosion, **[**situate**]** **located** in one or more counties or in **[**a third or fourth**]** **any city, town, or village in this state not located within any county with a charter form of government and with more than two hundred fifty thousand but less than three hundred fifty thousand inhabitants, or in any third or fourth class city, town or village in this state which is located within any county with a charter form of government and with more than two hundred fifty thousand but less than three hundred fifty thousand inhabitants,** may form a levee district for the purpose of having such land and other property reclaimed and protected from the effects of overflow and other water, for sanitary or agricultural purposes, or from the effect of wash or bank erosion, or when the same may be conducive to the public health, convenience or welfare, or of public utility or benefit, by levee, or otherwise, and for that purpose they may make and sign articles of association in which shall be stated: The name of the district, and the number of years the same is to continue; the boundary lines of the proposed levee district; the names as listed on the county assessor's records of the owners of land or other individual or corporate franchise property in **[**said**]** **such** district, together with a plat of the district showing the lands to be covered in the district; **[**said**]** **such** articles shall further state that the owners of real estate and other such property within **[**said**]** **the** district whose names are subscribed to **[**said**]** **such** articles are willing to and do obligate themselves to pay the tax or taxes which may be assessed against their respective lands or other property to pay the expense of organizing, and of making and maintaining the improvements that may be necessary to effect the reclamation or protection of **[**said**]** **such** lands or other such property, so formed into a levee district, and to reclaim and to protect the same from the effects of overflow and other water, or from bank erosion or wash, and **[**said**]** **the** articles of association shall contain a petition praying that the lands and other property described therein be declared a levee district under the provisions of this law. After **[**said**]** **the** articles of association and petition have been so signed the same shall be filed in the office of the circuit clerk of the county in which such lands and other property are **[**situate**]** **located**; or, if such lands and other property be composed of tracts or parcels **[**situate**]** **located** in two or more different counties then in the office of the clerk of the circuit court of the county in which **[**there are situate**]** more of **[**said**]** **such** lands and other property **are located** than in any other county; provided, that in the event any work is to be done upon any navigable stream, the consent of the federal government shall be obtained to make such improvement or improvements before the actual work on the improvements shall be begun.

2. Any modifications to this section, as enacted by the ninety-second general assembly, second regular session, shall not be construed to enhance or limit the current law, and any interpretation thereof, with regard to where a levee district may or may not be formed within any county with a charter form of government and with more than two hundred fifty thousand but less than three hundred fifty thousand inhabitants nor any city, town, village, or other political subdivision contained therein.

245.060. ELECTION OF BOARD OF SUPERVISORS — TERM OF OFFICE. — Within thirty days after any levee district shall have been organized and incorporated under the provisions of section 245.025 the circuit clerk of the court organizing **[**said**]** **such** district shall, upon giving notice by causing publication to be made once a week for two consecutive weeks in some newspaper published in each county in which lands of the district are **[**situate**]** **located**, the last insertion to be at least ten days before the day of such meeting, call a meeting of the owners of

real estate or other property [situate] **located** in [said] **such** district, including the authorized representative of any corporation which owns real estate or other property [situate] **located** in [said] **such** district, at a day and hour specified in some public place in the county in which the district was organized, for the purpose of electing a board of five supervisors, to be composed of owners of real estate in [said] **the** district, which may include the authorized representative of any corporation which owns real estate or other property in [said] **the** district, two of whom at least shall be residents of the county or counties in which [said] **the** district is [situate] **located**, or some adjoining counties; the landowners, when assembled, shall organize by the election of a chairman and secretary of the meeting, who shall conduct the election; at such election each and every acre of land and each and every mile of right-of-way of every corporation owning a franchise in the district shall represent one share, and each owner shall be entitled to one vote in person or by proxy for every acre of land or mile of right-of-way owned by him **or her** in such district, and the five persons receiving the highest number of votes shall be declared elected as supervisors; and [said] **the** supervisors shall immediately by lot determine the terms of their office, which shall be respectively one, two, three, four and five years, and they shall serve until their successors shall have been elected and qualified; provided, that if the levee district be located **wholly** within a third or fourth class city of this state, or within any city in this state under fifty thousand population operating under a special charter then the owner of each lot, tract, parcel or subdivision thereof, as set forth in the final decree of the court creating and incorporating [said] **such** levee district, shall be entitled to one vote, in person or by proxy, for each lot, tract, parcel or subdivision thereof, owned by him **or her**.

245.095. POWERS AND DUTIES OF SUPERVISORS. — 1. In order to effect the leveeing, protection and reclamation of the land and other property in the district subject to tax, the board of supervisors is authorized and empowered to straighten, widen, change the course and line of any levee in or out of [said] **such** district; to fill up any creek, drain, channel, river, watercourse or natural stream; and to divert or divide the flow of water in or out of [said] **the** district; to construct and maintain sewers, levees, dikes, dams, sluices, revetments, drainage ditches, pumping stations, syphons and any other works and improvements deemed necessary to preserve and maintain the works in or out of [said] **the** district; to construct roadways over levees and embankments; to construct any and all of [said] **such** works and improvements across, through or over any public highway, railroad right-of-way, track, grade, fill or cut in or out of [said] **the** district; to remove any fence, building or other improvements in or out of [said] **the** district, and shall have the right to hold, control and acquire by donation or purchase, and if need be, condemn any land, easement, railroad or other right-of-way, sluice or franchise in or out of [said] **the** district for right-of-way, or for any of the purposes herein provided, or for material to be used in constructing and maintaining [said] **such** works and improvements for leveeing, protecting and reclaiming the lands in [said] **the** district. [Said] **The** board shall also have the right to condemn for the use of the district, any land or property within or without [said] **the** district not acquired or condemned by the court on the report of the commissioners assessing benefits and damages and shall follow the procedure that is now provided by law for the appropriation of land or other property taken for telegraph, telephone and railroad rights-of-way.

2. In addition to the powers granted in subsection 1 of this section, in any levee district formed under the laws of this state having an assessed valuation of real property of twenty-five million dollars or greater and located, in whole or in part, in any county with a charter form of government and with more than one million inhabitants, the board of supervisors is authorized to construct and maintain waterlines and any other works and improvements deemed necessary to preserve and maintain the works in or out of the district.

246.305. ALTERNATIVE LEVEE DISTRICT, CERTAIN COUNTIES — VOTING RIGHTS — APPORTIONMENT OF TAXES. — 1. In any levee district formed pursuant to the laws of this state

having assessed valuation of real property of twenty-five million dollars or greater, which is located in whole or in part in a county **[**having over nine hundred thousand in population**] with a charter form of government and with more than one million inhabitants** according to the last decennial census, the board of supervisors may by order, resolution or ordinance, following a public hearing thereon called upon notice as provided in section 245.060, RSMo, adopt the following alternative **[**procedures**] procedure** with respect to voting rights **[**and apportionment of installment taxes**]**:

[(1)**]** Voting by landowners of the levee district shall be determined on the basis of the assessed benefits of the property owned and the owner of each piece of property shall receive one vote per ten thousand dollars of assessed benefits, rounded to the next lowest amount in cases where assessed benefits do not evenly tally. In cases where the assessed benefits of a piece of property are below ten thousand dollars, the owner shall be entitled to one vote**[**;**]**.

[(2)**] 2. In any levee district formed under the laws of this state, the board of supervisors may, by order, resolution, or ordinance, following a public hearing thereon called upon notice as provided in section 245.060, RSMo, adopt the procedure in this subsection with respect to the apportionment of installment taxes.** After the making of a readjustment of the assessment of benefits pursuant to section 245.197, RSMo, then the board of supervisors shall reapportion and levy on each tract of land or other property in the district the taxes imposed under section 245.180, 245.190 or 245.198, RSMo, in proportion to the benefits assessed as readjusted and not in excess thereof. In case bonds have been issued as provided in sections 245.010 to 245.280, RSMo, then the amount of interest which will accrue on such bonds shall be included and added to said taxes as reapportioned and levied based upon the benefits assessed as readjusted. The secretary of the board of supervisors, as soon as said tax has been reapportioned, shall, at the expense of the district, prepare a list of all taxes as reapportioned and levied, in the form of a well-bound book, which book shall be endorsed and named "Readjusted Levee Tax Record of ..... District .....", which endorsement shall also be printed or written at the top of each page of said book, and shall be signed and certified by the president and secretary of the board of supervisors, attested by the seal of the district, and the same shall thereafter become a permanent record in the office of **[**said**] the** secretary. The **[**said**]** board of supervisors shall each year thereafter determine, order and levy the amount of the annual installment of the total taxes levied under section 245.180, 245.190 or 245.198, RSMo, based upon such reapportionment, which shall in all other respects be due and collected as provided in section 245.185, RSMo.

Approved July 7, 2004

HB 1209 [HCS HB 1209]

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

Designates the official state dinosaur.

AN ACT to amend chapter 10, RSMo, by adding thereto one new section relating to the official state dinosaur.

SECTION
A. Enacting clause.
10.095. State dinosaur.

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

SECTION A. ENACTING CLAUSE. — Chapter 10, RSMo, is amended by adding thereto one new section, to be known as section 10.095, to read as follows:

10.095. STATE DINOSAUR. — The Hypsibema missouriensis dinosaur is hereby selected for, and shall be known as, the official dinosaur of the state of Missouri.

Approved July 9, 2004

HB 1215 [SCS HCS HB 1215]

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

Revises the crime of escape from commitment.

AN ACT to repeal section 575.195, RSMo, and to enact in lieu thereof one new section relating to escape from commitment, with a penalty provision and an emergency clause.

SECTION
A. Enacting clause.
575.195. Escape from commitment — penalty.
B. Emergency clause.

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

SECTION A. ENACTING CLAUSE. — Section 575.195, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 575.195, to read as follows:

575.195. ESCAPE FROM COMMITMENT — PENALTY. — 1. A person commits the crime of escape from commitment **or detention** if he **or she** has been committed to a state mental hospital under the provisions of **[**sections 202.700 to 202.770 or of**]** sections 552.010 to 552.080, RSMo, **or of sections 632.480 to 632.513, RSMo, or has been ordered to be taken into custody, detained, or held pursuant to sections 632.480 to 632.513, RSMo,** and he **or she** escapes from **such** commitment **or detention**.

2. Escape from commitment **or detention** is a class D felony.

SECTION B. EMERGENCY CLAUSE. — Because of the immediate danger posed to the public from sexual predators escaping from mental institutions without penalty, section A 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 A of this act shall be in full force and effect upon its passage and approval.

Approved June 14, 2004

HB 1217 [SCS HB 1217]

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

Changes laws related to the St. Louis and Kansas City Police Retirement Systems.

AN ACT to repeal sections 86.223 and 86.690, RSMo, and to enact in lieu thereof two new sections relating to retirement systems of police employees within Kansas City and St. Louis.

SECTION
A. Enacting clause.
86.223. Quorum, number of trustees constituting — majority vote required, when.
86.690. Death of member prior to or following retirement, payments made, how — additional one thousand dollar funeral benefit paid, when.

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

SECTION A. ENACTING CLAUSE. — Sections 86.223 and 86.690, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 86.223 and 86.690, to read as follows:

86.223. QUORUM, NUMBER OF TRUSTEES CONSTITUTING — MAJORITY VOTE REQUIRED, WHEN. — **[**Each trustee shall be entitled to one vote in the board. Six votes shall be necessary for a decision by the trustees at any meeting of the board**] Six trustees shall constitute a quorum for the transaction of business, and any official action of the board shall be based on the majority vote of the trustees present**.

86.690. DEATH OF MEMBER PRIOR TO OR FOLLOWING RETIREMENT, PAYMENTS MADE, HOW — ADDITIONAL ONE THOUSAND DOLLAR FUNERAL BENEFIT PAID, WHEN. — 1. Upon death after August 28, 2001, of a member for any cause prior to retirement, the following amounts shall be payable subject to subsection 5 of this section, as full and final settlement of any and all claims for benefits under this retirement system:

(1) If the member has less than five years of creditable service, the member's surviving spouse shall be paid, in a lump sum, the amount of accumulated contributions and interest. If there be no surviving spouse, payment shall be made to the member's designated beneficiary, or if none, to the executor or administrator of the member's estate.

(2) If the member has at least five, but less than twenty years of creditable service, the member's surviving spouse may elect, in lieu of the lump sum settlement in subdivision (1) of this subsection, an annuity. Such annuity shall be one-half of the member's accrued annuity at date of death as computed in section 86.650. The effective date of the election shall be the latter of the first day of the month after the member's death or attainment of what would have been the member's early retirement date as provided in section 86.660.

(3) If the member has at least twenty years of creditable service, the member's surviving spouse may elect, in lieu of the lump sum settlement in subdivision (1) of this subsection, the larger of the annuity as computed in subdivision (2) of this subsection or an annuity determined on a joint and survivor's basis from the actuarial value of the member's accrued annuity at date of death.

(4) Any death of a retired member occurring before the date of first payment of the retirement annuity shall be deemed to be a death before retirement.

(5) Benefits payable pursuant to this section shall continue for the lifetime of such surviving spouse without regard to remarriage.

(6) No surviving spouse of a member who dies in service after August 28, 2001, shall be entitled to receive any benefits pursuant to sections 86.600 to 86.790 unless such spouse was married to the member at the time of the member's death in service.

2. Upon death following retirement for any cause after August 28, 2001, of a member who has not elected the optional annuity pursuant to section 86.650, the member's surviving spouse shall receive a pension payable for life, equaling one-half of the member's normal retirement allowance, computed under section 86.650, as of the member's actual retirement date, subject to adjustments provided in subsection 5 of section 86.675, if any; provided, no surviving spouse

of a member who retires after August 28, 2001, shall be entitled to receive any benefits pursuant to sections 86.600 to 86.790 unless such spouse was married to the member at the time of the member's retirement. Any surviving spouse who was married to such a member at the time of the member's retirement shall be entitled to all benefits for surviving spouses pursuant to sections 86.600 to 86.790 for the life of such surviving spouse without regard to remarriage. If there be no surviving spouse, payment of the member's accumulated contributions less the amount of any prior payments from the retirement system to the member or to any beneficiary of the member shall be made to the member's designated beneficiary or, if none, to the personal representative of the member's estate.

3. Any surviving spouse of a member who dies in service or retired prior to August 28, 2001, who otherwise qualifies for benefits pursuant to subsection 1 or 2 of this section and who has not remarried prior to August 28, 2001, but remarries thereafter, shall upon application to the retirement board be appointed by the retirement board as a special consultant on the problems of retirement, aging and other matters, and upon request of the retirement board shall give opinions in writing or orally in response to such requests, as may be required. For such services, such surviving spouse shall be compensated in an amount equal to the benefits such spouse would have received pursuant to sections 86.600 to 86.790 in the absence of such remarriage.

4. Should the total amount paid from the retirement system to a member, the member's surviving spouse, any other beneficiary of the member, and the funeral benefit under subsection 6 of this section be less than the member's accumulated contributions, an amount equal to such difference shall be paid to the member's designated beneficiary or, if none, to the personal representative of the member's estate, and such payment shall constitute full and final payment of any and all claims for benefits under the retirement system.

5. Any beneficiary of benefits pursuant to sections 86.600 to 86.790 who becomes the surviving spouse of more than one member shall be paid all benefits due a surviving spouse of that member whose entitlements produce the largest surviving spouse benefits for such beneficiary but shall not be paid surviving spouse benefits as the surviving spouse of more than one member, except that any surviving spouse for whom an election has been made for an optional annuity under subsection 2 of section 86.650 shall be entitled to every annuity for which such surviving spouse has so contracted.

6. Upon receipt of the proper proof of death of a member in service after August 28, 2003, or the death of a member in service on or after August 28, 2003, who dies after having been retired and pensioned, there shall be paid in addition to all other benefits a funeral benefit of one thousand dollars. **Any member who was retired on or before August 28, 2003, and is receiving retirement benefits from the retirement system, upon application to the retirement board, shall be appointed by the retirement board as a special consultant on the problems of retirement, aging, and other matters for the remainder of such member's life, and upon request of the retirement board shall give opinions and be available to give opinions in writing or orally, in response to such requests, as may be required. Upon receipt of the proper proof of death of such member, there shall be paid in addition to all other benefits a funeral benefit of one thousand dollars.**

Approved June 17, 2004

HB 1233 [HCS HB 1233]

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

Allows public entities that self-insure health care benefits to require reimbursement for medical claims paid when there is third-party liability.

AN ACT to amend chapter 376, RSMo, by adding thereto one new section relating to subrogation rights of public entities.

SECTION
A. Enacting clause.
376.433. Self-insurance plans for health care, public entities — subject to Medicaid rights, obligations, and remedies.

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

SECTION A. ENACTING CLAUSE. — Chapter 376, RSMo, is amended by adding thereto one new section, to be known as section 376.433, to read as follows:

376.433. SELF-INSURANCE PLANS FOR HEALTH CARE, PUBLIC ENTITIES — SUBJECT TO MEDICAID RIGHTS, OBLIGATIONS, AND REMEDIES. — 1. Any public entity which provides, furnishes, or pays for hospital, medical, surgical, or other health care services under a plan of self-insurance to an employee or to any other person covered under the public entity's plan of self-insurance shall have the same rights and obligations, and be subject to the same remedies, as the department of social services has with Medicaid, as provided in section 208.215, RSMo.

2. As used in this section, the term "public entity" shall have the same meaning ascribed to it in section 107.170, RSMo.

3. This section shall not apply to limited benefit supplemental health insurance policies paid for entirely by an employee of the public entity.

Approved June 25, 2004

HB 1246 [HCS HB 1246]

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

Changes various laws related to chiropractors.

AN ACT to repeal sections 331.010, 331.030, and 331.050, RSMo, and to enact in lieu thereof five new sections relating to chiropractors and their keeping of medical records.

SECTION
A. Enacting clause.
331.010. Practice of chiropractic, definition.
331.030. Application for license, requirements, fees — reciprocity — rulemaking, procedure.
331.050. License, renewal, requirements, fee — license lapse, reinstatement procedure — inactive license status, procedure.
331.110. Patient records required to be maintained, contents — corrections to records, procedure — obtaining records, procedure.
331.115. Missouri license not required, when.

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

SECTION A. ENACTING CLAUSE. — Sections 331.010, 331.030, and 331.050, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 331.010, 331.030, 331.050, 331.110, and 331.115, to read as follows:

331.010. PRACTICE OF CHIROPRACTIC, DEFINITION. — 1. The "practice of chiropractic" is defined as the science and art of examination, diagnosis, adjustment, manipulation and

treatment of malpositioned articulations and structures of the body, both in inpatient and outpatient settings. The adjustment, manipulation, or treatment shall be directed toward restoring and maintaining the normal neuromuscular and musculoskeletal function and health. It shall not include the use of operative surgery, obstetrics, osteopathy, podiatry, nor the administration or prescribing of any drug or medicine nor the practice of medicine. The practice of chiropractic is declared not to be the practice of medicine and operative surgery or osteopathy within the meaning of chapter 334, RSMo, and not subject to the provisions of the chapter.

2. A licensed chiropractor may practice chiropractic as defined in subsection 1 of this section by those methods commonly taught in any chiropractic college recognized and approved by the board.

3. Chiropractors may advise and instruct patients in all matters pertaining to hygiene, nutrition, and sanitary measures as taught in any chiropractic college recognized and approved by the board.

4. The practice of chiropractic may include meridian therapy/acupressure/acupuncture with certification as required by the board.

331.030. APPLICATION FOR LICENSE, REQUIREMENTS, FEES — RECIPROCITY — RULEMAKING, PROCEDURE. — 1. No person shall engage in the practice of chiropractic without having first secured a chiropractic license as provided in this chapter.

2. Any person desiring to procure a license authorizing the person to practice chiropractic in this state shall be at least twenty-one years of age and shall make application on the form prescribed by the board. The application shall contain a statement that it is made under oath or affirmation and that representations contained thereon are true and correct to the best knowledge and belief of the person signing the application, subject to the penalties of making a false affidavit or declaration, and shall give the applicant's name, address, age, sex, name of chiropractic schools or colleges which the person attended or of which the person is a graduate, and such other reasonable information as the board may require. The applicant shall give evidence satisfactory to the board of the successful completion of the educational requirements of this chapter, that the applicant is of good moral character, and that the chiropractic school or college of which the applicant is a graduate is teaching chiropractic in accordance with the requirements of this chapter. The board may make a final determination as to whether or not the school from which the applicant graduated is so teaching.

3. Before a person shall be eligible to sit for a practical examination, the applicant shall furnish evidence satisfactory to the board that the applicant has received, prior to entering chiropractic college, a minimum of sixty credit hours, leading to a baccalaureate degree, from a preprofessional college, which credit must be in those subjects, hours and course content as may be provided for by the Council on Chiropractic Education or, in the absence of the Council on Chiropractic Education or its provision for such subjects, hours and course content, as adopted by rule of the board. The examination applicant shall also provide evidence satisfactory to the board of having graduated from a chiropractic college having status with the Commission on Accreditation of the Council on Chiropractic Education or its successor. Any senior student in a chiropractic college having status with the Commission on Accreditation on the Council on Chiropractic Education or its successor, may take a practical examination administered or approved by the board under such requirements and conditions as are adopted by the board by rule, but no license shall be issued until all of the requirements for licensure have been met.

4. Each applicant shall pay upon application an application or examination fee. All moneys collected pursuant to the provisions of this chapter shall be nonrefundable and shall be collected by the director of the division of professional registration who shall transmit it to the department of revenue for deposit in the state treasury to the credit of the chiropractic board fund. Any person failing to pass a practical examination administered or approved by the board may be reexamined upon fulfilling such requirements, including the payment of a reexamination fee, as the board may by rule prescribe.

5. Every applicant for licensure by examination shall have taken and successfully passed all required and optional parts of the written examination given by the National Board of Chiropractic Examiners, including the written clinical competency examination, under such conditions as established by rule of the board, and all applicants for licensure by examination shall successfully pass a practical examination administered or approved by the board and a written examination testing the applicant's knowledge and understanding of the laws and regulations regarding the practice of chiropractic in this state. The board shall issue to each applicant who meets the standards and successful completion of the examinations, as established by rule of the board, a license to practice chiropractic. The board shall not recognize any correspondence work in any chiropractic school or college as credit for meeting the requirements of this chapter.

6. The board shall issue a license without examination to persons who have been regularly licensed to practice chiropractic in any other state, territory, or the District of Columbia, or in any foreign country, **[**provided that the licensing authority grants equivalent reciprocal licensing to Missouri licensees and**]** provided that the regulations for securing a license in the other jurisdiction are equivalent to those required for licensure in the state of Missouri, when the applicant furnishes satisfactory evidence that the applicant has continuously practiced chiropractic for at least one year immediately preceding the applicant's application to the board and that the applicant is of good moral character, and upon the payment of the reciprocity license fee as established by rule of the board. The board may require an applicant to successfully complete the special purposes examination for chiropractic (SPEC) administered by the National Board of Chiropractic Examiners if the **[**applicant's licensing authority does not grant equivalent reciprocal licensing to Missouri licensees, or if the**]** requirements for securing a license in the other jurisdiction are not equivalent to those required for licensure in the state of Missouri **at the time application is made for licensure under this subsection**.

7. Any applicant who has failed any portion of the practical examination administered or approved by the board three times shall be required to return to an accredited chiropractic college for a semester of additional study in the subjects failed, as provided by rule of the board.

8. A chiropractic physician currently licensed in Missouri shall apply to the board for certification prior to engaging in the practice of meridian therapy/ acupressure/acupuncture. Each such application shall be accompanied by the required fee. The board shall establish by rule the minimum requirements for the specialty certification under this subsection. Meridian therapy/acupressure/acupuncture shall mean methods of diagnosing and the treatment of a patient by stimulating specific points on or within the body by various methods including but not limited to manipulation, heat, cold, pressure, vibration, ultrasound, light, electrocurrent, and short-needle insertion for the purpose of obtaining a biopositive reflex response by nerve stimulation.

9. The board may through its rulemaking process authorize chiropractic physicians holding a current Missouri license to apply for certification in a specialty as the board may deem appropriate and charge a fee for application for certification, provided that:

(1) The board establishes minimum initial and continuing educational requirements sufficient to ensure the competence of applicants seeking certification in the particular specialty; and

(2) The board shall not establish any provision for certification of licensees in a particular specialty which is not encompassed within the practice of chiropractic as defined in section 331.010.

331.050. LICENSE, RENEWAL, REQUIREMENTS, FEE — LICENSE LAPSE, REINSTATEMENT PROCEDURE — INACTIVE LICENSE STATUS, PROCEDURE. — 1. All persons once licensed to practice chiropractic in this state shall pay on or before the license renewal date a renewal license fee and shall furnish to the board satisfactory evidence of the completion of the requisite number of hours, which shall not be less than twelve hours nor more than twenty-four hours per year, of

postgraduate study or not less than twenty-four hours nor more than forty-eight hours if renewal occurs biennially. The postgraduate study required shall be a course of study approved by the board. The requisite number of hours is to be determined by the board. The board may set the requisite number of hours between the range of twelve to twenty-four hours, but may not increase the number of hours in excess of twelve hours by more than four hours in any two-year period. The board shall give advance notice of one year to all chiropractors licensed in the state before increasing the number of required hours. The educational requirements may be waived by the board upon presentation to it of satisfactory evidence of the illness of the chiropractor or for other good cause. A notice that the renewal fee will be due on the renewal date shall, on or before the first day of the month immediately preceding the renewal date, be mailed to all chiropractors licensed in the state for more than three months. Each practitioner of chiropractic shall display in his or her office, in a conspicuous place, his or her renewal license together with his or her original license showing that such practitioner of chiropractic is lawfully entitled to practice chiropractic. Failure of the licensee to receive the renewal form shall not relieve the licensee of the duty to renew his or her license and pay the fee required by this chapter.

2. Any licensee who allows his or her license to lapse by failing to renew the license as provided in sections 331.010 to 331.100 may be reinstated upon satisfactory explanation of such failure to renew his or her license and the payment of a reactivation fee and the current renewal fee. Any delinquent licensee who has been out of active practice for more than **[**three**]** **five** years shall be required to return to an accredited chiropractic college for a semester of additional study in the clinical subjects prior to the board reviewing his or her request for reinstatement, and to pass a practical examination administered by the board.

3. Notwithstanding any law to the contrary any person licensed pursuant to this chapter may apply to the state board of chiropractic examiners for an inactive license status on a form furnished by the board. Upon receipt of the completed inactive status application form and the board's determination that the license meets the requirements established by rule the board shall place the license on inactive status. A person whose license is inactive or who has discontinued the practice of chiropractic because of retirement shall be allowed to practice only on himself or herself and such person's immediate family.

4. During any period of inactive status the licensee shall not be required to comply with the board's requirements for continuing education.

5. If a licensee is granted inactive status the licensee may return to active status within five years of the license being placed on inactive status by notifying the board in advance in writing, paying the appropriate fees, and meeting all established requirements of the board as defined by rule excluding the licensing examination as a condition of reinstatement.

331.110. PATIENT RECORDS REQUIRED TO BE MAINTAINED, CONTENTS — CORRECTIONS TO RECORDS, PROCEDURE — OBTAINING RECORDS, PROCEDURE. — 1. Chiropractors shall maintain an adequate and complete patient record for each patient and may maintain electronic records provided that the record-keeping format is capable of being printed for review by the state board of chiropractic examiners. An adequate and complete patient record shall include documentation of the following information:

(1) Identification of the patient including name, birth date, address, and telephone number;

(2) The date or dates the patient was seen;

(3) The current status of the patient including the reason for the visit;

(4) Observation of pertinent physical findings;

(5) Assessment and clinical impression or diagnosis, to the extent authorized by section 331.010;

(6) Plan for care and treatment or additional consultations or diagnostic testing, if necessary, to the extent authorized by section 331.010;

(7) Any informed consent for office procedures or tests, to the extent authorized by section 331.010.

2. Patient records remaining under the care, custody, and control of the licensee shall be maintained by the licensee of the board or the licensee's designee for a minimum of seven years from the date of when the last professional service was provided.

3. Any correction, addition, or change in any patient record made more than forty-eight hours after the final entry is entered in the record and signed by the chiropractor shall be clearly marked and identified as such and the date, time, and name of the person making the correction, addition, or change shall be included as well as the reason for the correction, addition, or change.

4. The board shall not initiate disciplinary action under section 331.060, against a licensee solely based on a violation of this section. If the board initiates disciplinary action against the licensee for any reason other than a violation of this section the board may allege violation of this section as an additional cause for discipline under section 331.060.

5. The board shall not obtain a medical record of a patient without written authorization from the patient to obtain the medical record or the issuance of a subpoena for the medical record of the patient.

331.115. MISSOURI LICENSE NOT REQUIRED, WHEN. — A chiropractic physician licensed outside of this state shall not be required to obtain a Missouri license when:

(1) In consultation as a result of transmission of individual patient data by electronic or other means from within this state to an out-of-state licensed chiropractor with a chiropractor licensed to practice in this state, so long as a chiropractor licensed in this state retains ultimate authority and responsibility for the diagnosis or treatment in the care of the patient located within this state; or

(2) Evaluating a patient or rendering an oral or written chiropractic opinion, in connection with providing testimony or reviewing records for the purpose of any civil, criminal, or administrative proceeding in this state.

Approved July 2, 2004

HB 1253 [SCS HCS HB 1253]

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

Modifies various insurance provisions.

AN ACT to repeal sections 375.246, 375.1198, 375.1220, and 379.825, RSMo, and to enact in lieu thereof four new sections relating to insurance.

SECTION

A. Enacting clause.
375.246. Reinsurance, when allowed as an asset or reduction from liability.
375.1198. Mutual credits or debts, setoffs allowed — exceptions.
375.1220. Claim disputes — duty of liquidator — estimates allowed, when — commutation and release.
379.825. Issuance of policy, when — appointment of liability assumed — expenses — limits on liability.

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

SECTION A. ENACTING CLAUSE. — Sections 375.246, 375.1198, 375.1220, and 379.825, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 375.246, 375.1198, 375.1220, and 379.825, to read as follows:

375.246. REINSURANCE, WHEN ALLOWED AS AN ASSET OR REDUCTION FROM LIABILITY. — 1. Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subdivisions (1) to (5) of this subsection. Credit shall be allowed pursuant to subdivision (1), (2) or (3) of this subsection only as respects cessions of those kinds or classes of business which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed pursuant to subdivision (3) or (4) of this subsection only if the applicable requirements of subdivision (6) have been satisfied.

(1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance in this state;

(2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited as a reinsurer in this state. An accredited reinsurer is one that:

(a) Files with the director evidence of its submission to this state's jurisdiction;

(b) Submits to the authority of the department of insurance to examine its books and records;

(c) Is licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least one state;

(d) Files annually with the director a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and

(e) Maintains a surplus as regards policyholders in an amount not less than twenty million dollars and whose accreditation has not been denied by the director within ninety days of its submission; or

(f) Maintains a surplus as regards policyholders in an amount less than twenty million dollars and whose accreditation has been approved by the director.

No credit shall be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the director after notice and hearing;

(3) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is domiciled in, or in the case of a United States branch of an alien assuming insurer is entered through, a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this statute and the assuming insurer or United States branch of an alien assuming insurer:

(a) Maintains a surplus as regards policyholders in an amount not less than twenty million dollars; except that this paragraph does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system; and

(b) Submits to the authority of the department of insurance to examine its books and records;

(4) (a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution, as defined in subdivision (2) of subsection 3 of this section, for the payment of the valid claims of its United States ceding insurers, their assigns and successors in interest. To enable the director to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the director information substantially the same as that required to be reported on the National Association of Insurance Commissioners' annual statement form by licensed insurers. The assuming insurer shall submit to examination of its books and records by the director.

(b) Credit for reinsurance shall not be granted pursuant to this subdivision unless the form of the trust and any amendments to the trust have been approved by:

a. The commissioner or director of the state agency regulating insurance in the state where the trust is domiciled; or

b. The commissioner or director of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

(c) The form of the trust and any trust amendments shall also be filed with the commissioner or director in every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in its trustees for the benefit of the assuming insurer's United States ceding insurers, their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the director.

(d) The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February twenty-eighth of each year the trustees of the trust shall report to the director in writing the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the next following December thirty-first.

(e) The following requirements apply to the following categories of assuming insurers:

a. The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by the United States ceding insurers, and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars;

b. In the case of a group of incorporated and individual unincorporated underwriters:

(i) For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after August 1, 1995, the trust shall consist of a trusteed account in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group;

(ii) For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of this section, the trust shall consist of a trustee account in an amount not less than the group's several insurance and reinsurance liabilities attributable to business in the United States; and

(iii) In addition to these trusts, the group shall maintain in trust a trusteed surplus of which one hundred million dollars shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account;

c. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members;

d. Within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the director an annual certification by the group's domiciliary regulator of the solvency of each underwriter member; or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the group;

(5) Credit:

(a) Shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subdivision (1), (2), (3) or (4) of this subsection, but only as to the insurance of risks located in a jurisdiction of the United States where the reinsurance is required by applicable law or regulation of that jurisdiction;

(b) May be allowed in the discretion of the director when the reinsurance is ceded to an assuming insurer not meeting the requirements of subdivision (1), (2), (3) or (4) of this subsection, but only as to the insurance of risks located in a foreign country where the reinsurance is required by applicable law or regulation of that country;

(6) If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by subdivisions (3) and (4) of this subsection shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(a) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer shall submit to the jurisdiction of the courts of this state, will comply with all requirements necessary to give such courts jurisdiction, and will abide by the final decisions of such courts or of any appellate courts in this state in the event of an appeal; and

(b) To designate the director or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the ceding company. This paragraph is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement and the jurisdiction and situs of the arbitration is, with respect to any receivership of the ceding company, any jurisdiction of the United States;

(7) If the assuming insurer does not meet the requirements of subdivision (1), (2) or (3) of this subsection, the credit permitted by subdivision (4) of this subsection shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

(a) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by paragraph (e) of subdivision (4) of this subsection, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner or director with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner or director with regulatory oversight all of the assets of the trust fund;

(b) The assets shall be distributed by and claims shall be filed with and valued by the commissioner or director with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies;

(c) If the commissioner or director with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets or part thereof shall be returned by the commissioner or director with regulatory oversight to the trustee for distribution in accordance with the trust agreement; and

(d) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this subsection.

2. An asset or reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of subsection 1 of this section shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution, as defined in subdivision (2) of subsection 3 of this section. This security may be in the form of:

(1) Cash;

(2) Securities listed by the securities valuation office of the National Association of Insurance Commissioners and qualifying as admitted assets;

(3) (a) Clean, irrevocable, unconditional letters of credit, as defined in subdivision (1) of subsection 3 of this section, issued or confirmed by a qualified United States financial institution no later than December thirty-first of the year for which filing is being made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement.

(b) Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation, notwithstanding the issuing or confirming institution's subsequent

failure to meet applicable standards of issuer acceptability, shall continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs;

(4) Any other form of security acceptable to the director.

3. (1) For purposes of subdivision (3) of subsection 2 of this section, a "qualified United States financial institution" means an institution that:

(a) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

(b) Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies; and

(c) Has been determined by either the director, or the securities valuation office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the director.

(2) A "qualified United States financial institution" means, for purposes of those provisions of this law specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:

(a) Is organized, or in the case of a United States branch or agency office of a foreign banking organization, licensed under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and

(b) Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

4. The director may adopt rules and regulations implementing the provisions of this section.

5. (1) The director shall disallow any credit as an asset or as a deduction from liability for any reinsurance found by him to have been arranged for the purpose principally of deception as to the ceding company's financial condition as of the date of any financial statement of the company. Without limiting the general purport of this provision, reinsurance of any substantial part of the company's outstanding risks contracted for in fact within four months prior to the date of any such financial statement and canceled in fact within four months after the date of such statement, or reinsurance under which the assuming insurer bears no substantial insurance risk or substantial risk of net loss to itself, shall prima facie be deemed to have been arranged for the purpose principally of deception within the intent of this provision.

(2) (a) The director shall also disallow as an asset or deduction from liability to any ceding insurer any credit for reinsurance unless the reinsurance is payable to the ceding company, and if it be **[**impaired or**]** insolvent to its receiver, by the assuming insurer on the basis of the liability of the ceding company under the contracts reinsured without diminution because of the insolvency of the ceding company.

(b) Such payments shall be made directly to the ceding insurer or to its domiciliary liquidator except:

a. Where the contract of insurance or reinsurance specifically provides for payment to the named insured, assignee or named beneficiary of the policy issued by the ceding insurer in the event of the insolvency of the ceding insurer; or

b. Where the assuming insurer, with the consent of it and the direct insured or insureds in an assumption reinsurance transaction subject to sections 375.1280 to 375.1295, has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees.

(c) Notwithstanding paragraphs (a) and (b) of this subdivision, in the event that a life and health insurance guaranty association has made the election to succeed to the rights and obligations of the insolvent insurer under the contract of reinsurance, then the reinsurer's liability to pay covered reinsured claims shall continue under the contract of reinsurance, subject to the payment to the reinsurer of the reinsurance premiums for such coverage. Payment for such

reinsured claims shall only be made by the reinsurer pursuant to the direction of the guaranty association or its designated successor. Any payment made at the direction of the guaranty association or its designated successor by the reinsurer will discharge the reinsurer of all further liability to any other party for such claim payment.

(d) The reinsurance agreement may provide that the domiciliary liquidator of an insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a claim against such ceding insurer on the contract reinsured within a reasonable time after such claim is filed in the liquidation proceeding. During the pendency of such claim, any assuming insurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated any defenses which it deems available to the ceding insurer, or its liquidator. Such expense may be filed as a claim against the insolvent ceding insurer to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer. Where two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense to such claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding insurer.

6. To the extent that any reinsurer of an insurance company in liquidation would have been required under any agreement pertaining to reinsurance to post letters of credit or other security prior to an order of liquidation to cover such reserves reflected upon the last financial statement filed with a regulatory authority immediately prior to receivership, such reinsurer shall be required to post letters of credit or other security to cover reserves after a company has been placed in liquidation or receivership. If a reinsurer shall fail to post letters of credit or other security as required by a reinsurance agreement or the provisions of this subsection, the director may consider disallowing as a credit or asset, in whole or in part, any future reinsurance ceded to such reinsurer by a ceding insurance company that is incorporated under the laws of the state of Missouri.

7. The provisions of section 375.420 shall not apply to any action, suit or proceeding by a ceding insurer against an assuming insurer arising out of a contract of reinsurance effectuated in accordance with the laws of Missouri.

8. The provisions of this section shall become effective on January 1, 2003, and shall be applicable to the financial statements of a reinsurer as of December 31, 2002.

375.1198. MUTUAL CREDITS OR DEBTS, SETOFFS ALLOWED — EXCEPTIONS. — 1. Mutual debts or mutual credits, whether arising out of one or more contracts, between the insurer and another person in connection with any action or proceeding under sections 375.1150 to 375.1246, sections 374.216 and 374.217, RSMo, and section 382.302, RSMo, shall be set off and the balance only shall be allowed or paid, except as provided in subsections 2, 3, 4, 5 and 6 of this section and section 375.1204.

2. No setoff shall be allowed in favor of any person where:

(1) The obligation of the insurer to the person would not as of the date of the filing of a petition for liquidation entitle the person to share as a claimant in the assets of the insurer; or

(2) The obligation of the insurer to the person was purchased by or transferred to the person with a view to its being used as a setoff; or

(3) The obligation of the person is to pay an assessment levied against the members or subscribers of the insurer, or is to pay a balance upon a subscription to the capital stock of the insurer, or is in any other way in the nature of a capital contribution; or

(4) The obligation of the insurer is owed to an affiliate of such person or to any entity or association, rather than the person; or

(5) The obligation of the person is owed to an affiliate of the insurer or to any other entity or association, rather than the insurer; or

(6) The obligations between the person and the insurer arise from reinsurance relationships resulting in business **[**which is both ceded to and assumed from the insurer**]** **where either the**

person or the insurer has assumed risks and obligations from the other party and then has ceded back to that party substantially the same risks and obligations.

3. **[**As soon as practicable, the receiver shall provide persons who assumed business from the insurer as reinsurers with statements of account identifying debts which are currently due and payable to the insurer. Such persons may set off against such debts only mutual credits which are currently due and payable by the insurer to such persons for the period covered by the accounting statements.

4. A person who ceded business to the insurer may set off debts due the insurer against only those mutual credits which the person has paid or which have been allowed in a delinquency proceeding.

5. Notwithstanding the foregoing, a setoff of sums due on obligations in the nature of those prescribed in subdivision (6) of subsection 2 of this section shall be allowed for those debts accruing from business written under reinsurance contracts which were entered into, renewed or extended with the express written approval of the director where Missouri is the state of domicile of the insolvent insurer and when in the judgment of the director such action is deemed necessary or advisable in order to prevent or mitigate a threatened impairment or insolvency of a domiciliary insurer, in connection with supervision or conservation proceedings pursuant to this act or otherwise in connection with the exercise of the director's regulatory responsibilities concerning a threatened impairment or insolvency without the institution of any delinquency proceedings.

6.**]** The provisions of this section shall apply to all obligations incurred under contracts entered into, renewed, or extended on or after July 1, 1992, and to any existing contract with a termination date longer than one year from January 1, 1993**[**, and shall supersede any contractual provisions which might be construed to enlarge the setoff rights of any person under any contract with the insurer; provided that the provisions of subdivision (6) of subsection 2 and subsections 3, 4 and 5 of this section shall not apply to insurers or reinsurers until such time that the director determines that substantially similar provisions are effective in a sufficient number of states so as not to place domestic insurers or reinsurers at a competitive disadvantage. The director shall promulgate a rule announcing any determination as is necessitated by this subsection**]**.

375.1220. CLAIM DISPUTES — DUTY OF LIQUIDATOR — ESTIMATES ALLOWED, WHEN — COMMUTATION AND RELEASE. — 1. The liquidator shall review all claims duly filed in the liquidation and shall make such further investigation as the liquidator shall deem necessary. 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 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 dividend 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. **Expert testimony concerning estimates of incurred but not reported losses may be received in evidence in any tribunal whether offered by the receiver or by the reinsurer, if such testimony is otherwise admissible pursuant to section 490.065, RSMo.**

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 subsection 3 of this section shall not apply to and have no force and effect regarding any formal delinquency proceeding in which, prior to August 28, 1999, the court in which such proceeding was or is pending issued any order or decree construing or applying the provisions of this section.

[6. Subsections 3 and 5 of this section shall terminate on December 31, 2005.**]**

379.825. ISSUANCE OF POLICY, WHEN — APPOINTMENT OF LIABILITY ASSUMED — EXPENSES — LIMITS ON LIABILITY. — 1. The facility, upon receipt of an application for coverage and the corresponding inspection report from the inspection bureau, shall, after it finds that the property is eligible for insurance under this program, issue a policy.

2. The facility shall apportion the liability so assumed to the insurers in the manner hereinafter provided in section 379.835.

3. Assessments upon each insurer in the program for expenses in connection with program business shall be levied and assessed by the governing committee of the facility in the manner hereinafter provided in section 379.835, subject to such minimum assessment as shall be established by the governing committee.

4. Subject to the insurable value thereof, the maximum limits of liability which may be placed through this program are: on any habitational property at one location, **[**one**]** **two** hundred thousand dollars; and on any commercial property at one location, one million dollars. The facility will endeavor to assist in placement when the requested amount of insurance exceeds the maximum limit of liability available under this program. The word "location" as used herein means real and personal property consisting of and contained in a single building or consisting of and contained in contiguous buildings under one ownership.

Approved June 24, 2004

HB 1259 [HB 1259]

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

Gives car dealers or manufacturers the right to file a complaint with the Administrative Hearing Commission if the Department of Revenue refuses to issue or renew their license.

AN ACT to repeal section 301.562, RSMo, and to enact in lieu thereof one new section relating to the licensure of motor vehicle dealers and manufacturers.

SECTION

A. Enacting clause.

301.562. License suspension, revocation, refusal to renew — procedure — grounds — complaint may be filed, when.

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

SECTION A. ENACTING CLAUSE. — Section 301.562, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 301.562, to read as follows:

301.562. LICENSE SUSPENSION, REVOCATION, REFUSAL TO RENEW — PROCEDURE — GROUNDS — COMPLAINT MAY BE FILED, WHEN. — 1. The department may refuse to issue or renew any license required pursuant to sections 301.550 to 301.573 for any one or any combination of causes stated in subsection 2 of this section. The department shall notify the applicant or licensee in writing at his **or her** last known address of the reasons for the refusal to issue or renew the license and shall advise the applicant or licensee of his **or her** right to **[**appeal the decision of the department as provided in chapter 536, RSMo**] file a complaint with the administrative hearing commission as provided by chapter 621, RSMo**.

2. The department may **[**take such disciplinary action as provided in subsection 3 of this section upon a written notice and an opportunity to be heard in substantially the same manner as provided in chapter 536, RSMo**] cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo**, against any holder of any license issued under sections 301.550 to 301.573 for any one or any combination of the following causes:

(1) The applicant or license holder was previously the holder of a license issued under sections 301.550 to 301.573, which license was revoked for cause and never reissued by the department, or which license was suspended for cause and the terms of suspension have not been fulfilled;

(2) The applicant or license holder was previously a partner, stockholder, director or officer controlling or managing a partnership or corporation whose license issued under sections 301.550 to 301.573 was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled;

(3) The applicant or license holder has, within ten years prior to the date of the application, been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions**,** or duties of any business licensed under sections 301.550 to 301.573; for any offense, an essential element of which is fraud, dishonesty**,** or an act of violence; or for any offense involving moral turpitude, whether or not sentence is imposed;

(4) Use of fraud, deception, misrepresentation**,** or bribery in securing any license issued pursuant to sections 301.550 to 301.573;

(5) Obtaining or attempting to obtain any money, commission, fee, barter, exchange**,** or other compensation by fraud, deception**,** or misrepresentation;

(6) Violation of, or assisting or enabling any person to violate any provisions of sections 301.550 to 301.573 or of any lawful rule or regulation adopted pursuant to sections 301.550 to 301.573;

(7) The applicant or license holder has filed an application for a license which, as of its effective date, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(8) The applicant or license holder has failed to pay the proper application or license fee or fails to establish or maintain a bona fide place of business;

(9) Uses or permits the use of any special license or license plate assigned to **[**him**] the license holder** for any purpose other than those permitted by law;

(10) The applicant or license holder is finally adjudged insane or incompetent by a court of competent jurisdiction;

(11) Use of any advertisement or solicitation which is false;

(12) Violations of sections 301.550 to 301.573 or violations of this chapter, sections 407.511 to 407.556, RSMo, section 578.120, RSMo, which resulted in a felony conviction or

finding of guilt or violation of any federal motor vehicle laws which result in a felony conviction or finding of guilt.

3. **Any such complaint shall be filed within one year of the date upon which the department receives notice of an alleged violation of an applicable statute or regulation. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo.** Upon a finding by the **[**department**]** **administrative hearing commission** that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the department may**, singly or in combination,** refuse to issue the person a license, issue a private reprimand, place the person on probation on such terms and conditions as the department deems appropriate for a period of one day to five years, suspend the person's license from one day to six days, or revoke the person's license for such period as the department deems appropriate. The applicant or licensee shall have the right to appeal the decision of the **administrative hearing commission and** department in the manner provided in chapter 536, RSMo.

4. Upon the suspension or revocation of any person's license issued under sections 301.550 to 301.573, the department shall recall any distinctive number plates that were issued to that licensee.

Approved July 1, 2004

HB 1268 [SS#2 SCS HS HCS HB 1268 & 1211]

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

Relating to employees.

AN ACT to repeal sections 285.300, 288.030, 288.032, 288.034, 288.036, 288.038, 288.040, 288.050, 288.060, 288.090, 288.100, 288.110, 288.120, 288.121, 288.122, 288.128, 288.290, 288.310, 288.330, 288.380, and 288.500, RSMo, and to enact in lieu thereof twenty-eight new sections relating to employees, with penalty provisions, an emergency clause and effective dates.

SECTION

A. Enacting clause.
285.300. Withholding form, completion required — forwarding to state agencies — state directory of new hires, cross-check of unemployment compensation recipients — compliance by employers with employees in two or more states.
288.030. Definitions — calculation of Missouri average annual wage.
288.032. Employer defined, exceptions.
288.034. Employment defined.
288.036. Wages defined — state taxable wage base.
288.038. Weekly benefit amount defined.
288.040. Eligibility for benefits — exceptions.
288.045. Misconduct connected with the claimant's work, when — controlled substance and blood alcohol content levels — notice — tests conducted, when — violation, penalty — testing provision not to apply, when — specimens for testing — confirmation tests — prescriptions — section not applicable, when — implementation of testing program.
288.050. Benefits denied unemployed workers, when — pregnancy, requirements for benefit eligibility.
288.060. Benefits, how paid — wage credits — benefits due decedent — benefit warrants canceled, when — electronic funds transfer system, allowed — remote claims filing procedures required, contents, duties.
288.090. Contributions required, when — payments in lieu of contributions, procedures — common paymaster arrangements.
288.100. Experience rating — employer accounts, credits and charges.
288.110. Transfer of employer accounts — successor employer liabilities.

288.120. Employer's contribution rate, how determined — exception shared work plan, how computed — surcharges for employers taxed at the maximum rate.
288.121. Rate increased when average balance in fund is less than certain amount, how — rate calculations for certain years.
288.122. If cash in fund exceeds certain amounts, contribution rate to decrease, amount — table — effective when.
288.128. Additional assessment for interest on federal advancements and proceeds of credit instruments, procedure — excess collections, use of — credit instrument and financing agreement repayment surcharge.
288.175. Debtor's federal income tax refund may be intercepted — debt defined — debtor defined.
288.290. Unemployment compensation fund, established — administration, deposit of funds — purposes — erroneous collection of interest or penalties.
288.310. Special employment security fund — use of funds — amounts transferred between funds, when.
288.330. State liability for benefits limited, authority for application and repayment of federal advances — board of unemployment fund financing created, duties, requirements, powers — disposition of unobligated funds.
288.380. Void agreements — offenses, penalties — deductions of support obligations and uncollected over-issuance of food stamps — offset for overpayment of benefits by other states, when — definitions.
288.395. Fraud or misrepresentation, penalties.
288.397. Report on summary of changes, division to provide.
288.398. Contracts with consumer reporting agencies authorized — information limited — privacy rules apply — written consent, contents — use of information limited, verified by consumer reporting agency — confidentiality safeguards required — noncompliance, liability — information obtained under false pretenses, penalty — disputes.
288.500. Shared work program created — definitions — plan, requirements — plan denied, submission of new plan, when — contribution by employer, how computed — benefits.
288.501. Missouri state unemployment council created, members, meetings, terms, duties — proposals submitted to division, when access to records — outside study authorized.
288.502. Severability clause.
B. Emergency clause.

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

SECTION A. ENACTING CLAUSE. — Sections 285.300, 288.030, 288.032, 288.034, 288.036, 288.038, 288.040, 288.050, 288.060, 288.090, 288.100, 288.110, 288.120, 288.121, 288.122, 288.128, 288.290, 288.310, 288.330, 288.380, and 288.500, RSMo, are repealed and twenty-eight new sections enacted in lieu thereof, to be known as sections 285.300, 288.030, 288.032, 288.034, 288.036, 288.038, 288.040, 288.045, 288.050, 288.060, 288.090, 288.100, 288.110, 288.120, 288.121, 288.122, 288.128, 288.175, 288.290, 288.310, 288.330, 288.380, 288.395, 288.397, 288.398, 288.500, 288.501, and 288.502, to read as follows:

285.300. WITHHOLDING FORM, COMPLETION REQUIRED — FORWARDING TO STATE AGENCIES — STATE DIRECTORY OF NEW HIRES, CROSS-CHECK OF UNEMPLOYMENT COMPENSATION RECIPIENTS — COMPLIANCE BY EMPLOYERS WITH EMPLOYEES IN TWO OR MORE STATES. — 1. Every employer doing business in the state shall require each newly hired employee to fill out a federal W-4 withholding form. A copy of each withholding form or an equivalent form containing data required by section 285.304 which may be provided in an electronic or magnetic format, shall be sent to the department of revenue by the employer within twenty days after the date the employer hires the employee or in the case of an employer transmitting a report magnetically or electronically, by two monthly transmissions, if necessary, not less than twelve days nor more than sixteen days apart. For purposes of this section, the date the employer hires the employee shall be the earlier of the date the employee signs the W-4 form or its equivalent, or the first date the employee reports to work, or performs labor or services. Such forms shall be forwarded by the department of revenue to the division of child support enforcement on a weekly basis and the information shall be entered into the database, to be known as the "State Directory of New Hires". The information reported shall be provided to the National Directory of New Hires established in 42 U.S.C. section 653, other state agencies or contractors of the division as required or allowed by federal statutes or regulations. **The division of employment security shall cross-check Missouri unemployment compensation recipients against any federal new hire database or any other database containing Missouri or other**

states' wage information which is maintained by the federal government on a weekly basis. The division of employment security shall cross-check unemployment compensation applicants and recipients with Social Security Administration data maintained by the federal government at least weekly. Effective January 1, 2007, the division of employment security shall cross-check at least monthly unemployment compensation applicants and recipients with department of revenue drivers license databases.

2. Any employer that has employees who are employed in two or more states and transmits reports magnetically or electronically may comply with subsection 1 of this section by:

(1) Designating one of the states in which the employer has employees as the designated state that such employer shall transmit the reports; and

(2) Notifying the secretary of Health and Human Services of such designation.

288.030. DEFINITIONS — CALCULATION OF MISSOURI AVERAGE ANNUAL WAGE. — 1. As used in this chapter, unless the context clearly requires otherwise**, the following terms mean**:

(1) "Appeals tribunal" **[**means**],** a referee or a body consisting of three referees appointed to conduct hearings and make decisions on appeals from administrative determinations, petitions for reassessment, and claims referred pursuant to subsection 2 of section 288.070;

(2) "Base period" **[**means**],** the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year;

(3) "Benefit year" **[**means**],** the one-year period beginning with the first day of the first week with respect to which an insured worker first files an initial claim for determination of such worker's insured status, and thereafter the one-year period beginning with the first day of the first week with respect to which the individual, providing the individual is then an insured worker, next files such an initial claim after the end of the individual's last preceding benefit year;

(4) "Benefits" **[**means**],** the money payments payable to an insured worker, as provided in this chapter, with respect to such insured worker's unemployment;

(5) "Calendar quarter" **[**means**],** the period of three consecutive calendar months ending on March thirty-first, June thirtieth, September thirtieth, or December thirty-first;

(6) "Claimant" **[**means**],** an individual who has filed an initial claim for determination of such individual's status as an insured worker, a notice of unemployment, a certification for waiting week credit, or a claim for benefits;

(7) "Commission" **[**means**],** the labor and industrial relations commission of Missouri;

(8) "Common paymaster" **[**means**],** two or more related corporations in which one of the corporations has been designated to disburse remuneration to concurrently employed individuals of any of the related corporations;

(9) "Contributions" **[**means**],** the money payments to the unemployment compensation fund required by this chapter, exclusive of interest and penalties;

(10) "Decision" **[**means**],** a ruling made by an appeals tribunal or the commission after a hearing;

(11) "Deputy" **[**means**],** a representative of the division designated to make investigations and administrative determinations on claims or matters of employer liability or to perform related work;

(12) "Determination" **[**means**],** any administrative ruling made by the division without a hearing;

(13) "Director" **[**means**],** the administrative head of the division of employment security;

(14) "Division" **[**means**],** the division of employment security which administers this chapter;

(15) "Employing unit" **[**means**],** any individual, organization, partnership, corporation, common paymaster, or other legal entity, including the legal representatives thereof, which has or, subsequent to June 17, 1937, had in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be

employed by a single employing unit for all the purposes of this chapter. Each individual engaged to perform or to assist in performing the work of any person in the service of an employing unit shall be deemed to be engaged by such employing unit for all the purposes of this chapter, whether such individual was engaged or paid directly by such employing unit or by such person, provided the employing unit had actual or constructive knowledge of the work;

(16) "Employment office" **[**means**],** a free public employment office operated by this or any other state as a part of a state controlled system of public employment offices including any location designated by the state as being a part of the one-stop career system;

(17) "Equipment" **[**means**],** a motor vehicle, straight truck, tractor, semi-trailer, full trailer, any combination of these and any other type of equipment used by authorized carriers in the transportation of property for hire;

(18) "Fund" **[**means**],** the unemployment compensation`fund established by this chapter;

(19) "Governmental entity" **[**means**],** the state, any political subdivision thereof, any instrumentality of any one or more of the foregoing which is wholly owned by this state and one or more other states or political subdivisions and any instrumentality of this state or any political subdivision thereof and one or more other states or political subdivisions;

(20) "Initial claim" **[**means**],** an application, in a form prescribed by the division, made by an individual for the determination of the individual's status as an insured worker;

(21) "Insured work" **[**means**],** employment in the service of an employer;

(22) **(a)** As to initial claims filed after December 31, 1990, "insured worker" **[**means**],** a worker who has been paid wages for insured work in the amount of one thousand dollars or more in at least one calendar quarter of such worker's base period and total wages in the worker's base period equal to at least one and one-half times the insured wages in that calendar quarter of the base period in which the worker's insured wages were the highest, or in the alternative, a worker who has been paid wages in at least two calendar quarters of such worker's base period and whose total base period wages are at least one and one-half times the maximum taxable wage base, taxable to any one employer, in accordance with **[**subdivision (1)**]** **subsection 2** of section 288.036. For the purposes of this definition, "wages" shall be considered as wage credits with respect to any benefit year, only if such benefit year begins subsequent to the date on which the employing unit by which such wages were paid has become an employer;

(b) As to initial claims filed after December 31, 2004, wages for insured work in the amount of one thousand two hundred dollars or more, after December 31, 2005, one thousand three hundred dollars or more, after December 31, 2006, one thousand four hundred dollars or more, after December 31, 2007, one thousand five hundred dollars or more in at least one calendar quarter of such worker's base period and total wages in the worker's base period equal to at least one and one-half times the insured wages in that calendar quarter of the base period in which the worker's insured wages were the highest, or in the alternative, a worker who has been paid wages in at least two calendar quarters of such worker's base period and whose total base period wages are at least one and one-half times the maximum taxable wage base, taxable to any one employer, in accordance with subsection 2 of section 288.036;

(23) "Lessor", in a lease, **[**means**],** the party granting the use of equipment, with or without a driver to another;

(24) **"Misconduct", an act of wanton or willful disregard of the employer's interest, a deliberate violation of the employer's rules, a disregard of standards of behavior which the employer has the right to expect of his or her employee, or negligence in such degree or recurrence as to manifest culpability, wrongful intent or evil design, or show an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to the employer;**

(25) "Referee" **[**means**],** a representative of the division designated to serve on an appeals tribunal;

[(25)**] (26)** "State"**,** includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada;

[(26)**] (27) "Temporary help firm", a firm that hires its own employees and assigns them to clients to support or supplement the clients' workforce in work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects;**

(28) "Temporary employee", an employee assigned to work for the clients of a temporary help firm;

(29) (a) An individual shall be deemed "totally unemployed" in any week during which the individual performs no services and with respect to which no wages are payable to such individual;

(b) **a.** An individual shall be deemed "partially unemployed" in any week of less than full-time work if the wages payable to such individual for such week do not equal or exceed the individual's weekly benefit amount plus twenty dollars;

b. Effective for calendar year 2007 and each year thereafter, an individual shall be deemed "partially unemployed" in any week of less than full-time work if the wages payable to such individual for such week do not equal or exceed the individual's weekly benefit amount plus twenty dollars or twenty percent of his or her weekly benefit amount, whichever is greater;

(c) An individual's "week of unemployment" shall begin the first day of the calendar week in which the individual registers at an employment office except that, if for good cause the individual's registration is delayed, the week of unemployment shall begin the first day of the calendar week in which the individual would have otherwise registered. The requirement of registration may by regulation be postponed or eliminated in respect to claims for partial unemployment or may by regulation be postponed in case of a mass layoff due to a temporary cessation of work;

[(27)**] (30)** "Waiting week" **[**means**],** the first week of unemployment for which a claim is allowed in a benefit year or if no waiting week has occurred in a benefit year in effect on the effective date of a shared work plan, the first week of participation in a shared work unemployment compensation program pursuant to section 288.500.

2. The Missouri average annual wage shall be computed as of June thirtieth of each year, and shall be applicable to the following calendar year. The Missouri average annual wage shall be calculated by dividing the total wages reported as paid for insured work in the preceding calendar year by the average of mid-month employment reported by employers for the same calendar year. The Missouri average weekly wage shall be computed by dividing the Missouri average annual wage as computed in this subsection by fifty-two.

288.032. EMPLOYER DEFINED, EXCEPTIONS. — 1. After December 31, 1977, "employer" means:

(1) Any employing unit which in any calendar quarter in either the current or preceding calendar year paid for service in employment wages of one thousand five hundred dollars or more except that for the purposes of this definition, wages paid for "agricultural labor" as defined in paragraph (a) of subdivision (1) of subsection 12 of section 288.034 and for "domestic services" as defined in subdivisions (2) and **[**(12)**] (13)** of subsection 12 of section 288.034 shall not be considered;

(2) Any employing unit which for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, had in employment at least one individual (irrespective of whether the same individual was in employment in each such day); except that for the purposes of this definition, services performed in "agricultural labor" as defined in paragraph (a) of subdivision (1) of subsection 12 of section 288.034 and in "domestic services" as defined in subdivisions (2) and **[**(12)**] (13)** of subsection 12 of section 288.034 shall not be considered;

(3) Any governmental entity for which service in employment as defined in subsection 7 of section 288.034 is performed;

(4) Any employing unit for which service in employment as defined in subsection 8 of section 288.034 is performed during the current or preceding calendar year;

(5) Any employing unit for which service in employment as defined in paragraph (b) of subdivision (1) of subsection 12 of section 288.034 is performed during the current or preceding calendar year;

(6) Any employing unit for which service in employment as defined in subsection 13 of section 288.034 is performed during the current or preceding calendar year;

(7) Any individual, type of organization or employing unit which has been determined to be a successor pursuant to section 288.110;

(8) Any individual, type of organization or employing unit which has elected to become subject to this law pursuant to subdivision (1) of subsection 3 of section 288.080;

(9) Any individual, type of organization or employing unit which, having become an employer, has not pursuant to section 288.080 ceased to be an employer;

(10) Any employing unit subject to the Federal Unemployment Tax Act or which, as a condition for approval of this law for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such act, to be an employer pursuant to this law.

2. (1) Notwithstanding any other provisions of this law, any employer, individual, organization, partnership, corporation, other legal entity or employing unit that meets the definition of "lessor employing unit", as defined in subdivision (5) of this subsection, shall be liable for contributions on wages paid by the lessor employing unit to individuals performing services for client lessees of the lessor employing unit. Unless the lessor employing unit has timely complied with the provisions of subdivision (3) of this subsection, any employer, individual, organization, partnership, corporation, other legal entity or employing unit which is leasing individuals from any lessor employing unit shall be jointly and severally liable for any unpaid contributions, interest and penalties due pursuant to this law from any lessor employing unit attributable to wages for services performed for the client lessee entity by individuals leased to the client lessee entity, and the lessor employing unit shall keep separate records and submit separate quarterly contribution and wage reports for each of its client lessee entities. Delinquent contributions, interest and penalties shall be collected in accordance with the provisions of this chapter.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, any governmental entity or nonprofit organization that meets the definition of "lessor employing unit", as defined in subdivision (5) of this subsection, and has elected to become liable for payments in lieu of contributions as provided in subsection 3 of section 288.090, shall pay the division payments in lieu of contributions, interest, penalties and surcharges in accordance with section 288.090 on benefits paid to individuals performing services for the client lessees of the lessor employing unit. If the lessor employing unit has not timely complied with the provisions of subdivision (3) of this subsection, any client lessees with services attributable to and performed for the client lessees shall be jointly and severally liable for any unpaid payments in lieu of contributions, interest, penalties and surcharges due pursuant to this law. The lessor employing unit shall keep separate records and submit separate quarterly contribution and wage reports for each of its client lessees. Delinquent payments in lieu of contributions, interest, penalties and surcharges shall be collected in accordance with subsection 3 of section 288.090. The election to be liable for payments in lieu of contributions made by a governmental entity or nonprofit organization meeting the definition of "lessor employing unit", may be terminated by the division in accordance with subsection 3 of section 288.090.

(3) In order to relieve a client lessees from joint and several liability and the separate reporting requirements imposed pursuant to this subsection, any lessor employing unit may post and maintain a surety bond issued by a corporate surety authorized to do business in Missouri

in an amount equivalent to the contributions or payments in lieu of contributions for which the lessor employing unit was liable in the last calendar year in which he or she accrued contributions or payments in lieu of contributions, or one hundred thousand dollars, whichever amount is the greater, to ensure prompt payment of contributions or payments in lieu of contributions, interest, penalties and surcharges for which the lessor employing unit may be, or becomes, liable pursuant to this law. In lieu of a surety bond, the lessor employing unit may deposit in a depository designated by the director, securities with marketable value equivalent to the amount required for a surety bond. The securities so deposited shall include authorization to the director to sell any securities in an amount sufficient to pay any contributions or payments in lieu of contributions, interest, penalties and surcharges which the lessor employing unit fails to promptly pay when due. In lieu of a surety bond or securities as described in this subdivision, any lessor employing unit may provide the director with an irrevocable letter of credit, as defined in section 400.5-103, RSMo, issued by any state or federally chartered financial institution, in an amount equivalent to the amount required for a surety bond as described in this subdivision. In lieu of a surety bond, securities or an irrevocable letter of credit, a lessor employing unit may obtain a certificate of deposit issued by any state or federally chartered financial institution, in an amount equivalent to the amount required for a surety bond as described in this subdivision. The certificate of deposit shall be pledged to the director until release by the director. As used in this subdivision, the term "certificate of deposit" means a certificate representing any deposit of funds in a state or federally chartered financial institution for a specified period of time which earns interest at a fixed or variable rate, where such funds cannot be withdrawn prior to a specified time without forfeiture of some or all of the earned interest.

(4) Any lessor employing unit which is currently engaged in the business of leasing individuals to client lessees shall comply with the provisions of subdivision (3) of this subsection by September 28, 1992. Lessor employing units not currently engaged in the business of leasing individuals to client lessees shall comply with subdivision (3) of this subsection before entering into a written lease agreement with client lessees.

(5) As used in this subsection, the term "lessor employing unit" means an independently established business entity, governmental entity as defined in subsection 1 of section 288.030 or nonprofit organization as defined in subsection 3 of section 288.090 which, pursuant to a written lease agreement between the lessor employing unit and the client lessees, engages in the business of providing individuals to any other employer, individual, organization, partnership, corporation, other legal entity or employing unit referred to in this subsection as a client lessee.

(6) The provisions of this subsection shall not be applicable to private employment agencies who provide their employees to employers on a temporary help basis provided the private employment agencies are liable as employers for the payment of contributions on wages paid to temporary workers so employed.

3. After September 30, 1986, notwithstanding any provision of section 288.034, for the purpose of this law, in no event shall a for-hire motor carrier as regulated by the Missouri division of motor carrier and railroad safety or whose operations are confined to a commercial zone be determined to be the employer of a lessor as defined in section 288.030 or of a driver receiving remuneration from a lessor, provided, however, the term "for-hire motor carrier" shall in no event include an organization described in section 501(c)(3) of the Internal Revenue Code or any governmental entity.

4. The owner or operator of a beauty salon or similar establishment shall not be determined to be the employer of a person who utilizes the facilities of the owner or operator but who receives neither salary, wages or other compensation from the owner or operator and who pays the owner or operator rent or other payments for the use of the facilities.

288.034. EMPLOYMENT DEFINED. — 1. "Employment" means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied, and notwithstanding any other provisions of this section, service with respect

to which a tax is required to be paid under any federal unemployment tax law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which, as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required to be covered under this law.

2. The term "employment" shall include an individual's entire service, performed within or both within and without this state if:

(1) The service is localized in this state; or

(2) The service is not localized in any state but some of the service is performed in this state and the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state.

3. Service performed by an individual for wages shall be deemed to be employment subject to this law:

(1) If covered by an election filed and approved pursuant to subdivision (2) of subsection 3 of section 288.080;

(2) If covered by an arrangement pursuant to section 288.340 between the division and the agency charged with the administration of any other state or federal unemployment insurance law, pursuant to which all services performed by an individual for an employing unit are deemed to be performed entirely within this state.

4. Service shall be deemed to be localized within a state if the service is performed entirely within such state; or the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state; for example, is temporary or transitory in nature or consists of isolated transactions.

5. Service performed by an individual for remuneration shall be deemed to be employment subject to this law unless it is shown to the satisfaction of the division that such services were performed by an independent contractor. In determining the existence of the independent contractor relationship, the common law of agency right to control shall be applied. The common law of agency right to control test shall include but not be limited to: if the alleged employer retains the right to control the manner and means by which the results are to be accomplished, the individual who performs the service is an employee. If only the results are controlled, the individual performing the service is an independent contractor.

6. The term "employment" shall include service performed for wages as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his or her principal; or as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his or her principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations, provided:

(1) The contract of service contemplates that substantially all of the services are to be performed personally by such individual; and

(2) The individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation); and

(3) The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

7. Service performed by an individual in the employ of this state or any political subdivision thereof or any instrumentality of any one or more of the foregoing which is wholly owned by this state and one or more other states or political subdivisions, or any service performed in the employ of any instrumentality of this state or of any political subdivision thereof, and one or more other states or political subdivisions, provided that such service is excluded from

"employment" as defined in the Federal Unemployment Tax Act by Section 3306(c)(7) of that act and is not excluded from "employment" pursuant to subsection 9 of this section, shall be "employment" subject to this law.

8. Service performed by an individual in the employ of a corporation or any community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, or other organization described in Section 501(c)(3) of the Internal Revenue Code which is exempt from income tax under Section 501(a) of that code if the organization had four or more individuals in employment for some portion of a day in each of twenty different weeks whether or not such weeks were consecutive within a calendar year regardless of whether they were employed at the same moment of time shall be "employment" subject to this law.

9. For the purposes of subsections 7 and 8 of this section, the term "employment" does not apply to service performed:

(1) In the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

(2) By a duly ordained, commissioned, or licensed minister of a church in the exercise of such minister's ministry or by a member of a religious order in the exercise of duties required by such order; or

(3) In the employ of a governmental entity referred to in subdivision (3) of subsection 1 of section 288.032 if such service is performed by an individual in the exercise of duties:

(a) As an elected official;

(b) As a member of a legislative body, or a member of the judiciary, of a state or political subdivision;

(c) As a member of the state national guard or air national guard;

(d) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;

(e) In a position which, under or pursuant to the laws of this state, is designated as (i) a major nontenured policy-making or advisory position, or (ii) a policy-making or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week; or

(4) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work; or

(5) As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or

(6) By an inmate of a custodial or penal institution; or

(7) In the employ of a school, college, or university, if such service is performed (i) by a student who is enrolled and is regularly attending classes at such school, college, or university, or (ii) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that (I) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and (II) such employment will not be covered by any program of unemployment insurance.

10. The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada), if:

(1) The employer's principal place of business in the United States is located in this state; or

(2) The employer has no place of business in the United States, but:

(a) The employer is an individual who is a resident of this state; or

(b) The employer is a corporation which is organized under the laws of this state; or

(c) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(3) None of the criteria of subdivisions (1) and (2) of this subsection is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state;

(4) As used in this subsection and in subsection 11 of this section, the term "United States" includes the states, the District of Columbia and the Commonwealth of Puerto Rico.

11. An "American employer", for the purposes of subsection 10 of this section, means a person who is:

(1) An individual who is a resident of the United States; or

(2) A partnership, if two-thirds or more of the partners are residents of the United States; or

(3) A trust, if all of the trustees are residents of the United States; or

(4) A corporation organized under the laws of the United States or of any state.

12. The term "employment" shall not include:

(1) Service performed by an individual in agricultural labor;

(a) For the purposes of this subdivision, the term "agricultural labor" means remunerated service performed:

a. On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife;

b. In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

c. In connection with the production or harvesting of any commodity defined as an agricultural commodity in Section 15(g) of the Federal Agricultural Marketing Act, as amended (46 Stat. 1550, Sec. 3; 12 U.S.C. 1441j), or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

d. i. In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed;

ii. In the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of services described in item i of this subparagraph, but only if such operators produced more than one-half of the commodity with respect to which such service is performed;

iii. The provisions of items i and ii of this subparagraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

e. On a farm operated for profit if such service is not in the course of the employer's trade or business. As used in this paragraph, the term "farm" includes stock, dairy, poultry, fruit, furbearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures, used primarily for the raising of agricultural or horticultural commodities, and orchards;

(b) The term "employment" shall include service performed after December 31, 1977, by an individual in agricultural labor as defined in paragraph (a) of this subdivision when such service is performed for a person who, during any calendar quarter, paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor or for some portion of a day in a calendar year in each of twenty different calendar weeks, whether or not such weeks were consecutive, employed in agricultural labor ten or more individuals, regardless of whether they were employed at the same moment of time;

(c) For the purposes of this subsection any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be considered as employed by such crew leader:

a. If such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

b. If such individual is not in employment by such other person;

c. If any individual is furnished by a crew leader to perform service in agricultural labor for any other person and that individual is not in the employment of the crew leader:

i. Such other person and not the crew leader shall be treated as the employer of such individual; and

ii. Such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his or her own behalf or on behalf of such other person) for the service in agricultural labor performed for such other person;

d. For the purposes of this subsection, the term "crew leader" means an individual who:

i. Furnishes individuals to perform service in agricultural labor for any other person;

ii. Pays (either on his or her own behalf or on behalf of such other person) the individuals so furnished by him or her for the service in agricultural labor performed by them; and

iii. Has not entered into a written agreement with such other person under which such individual is designated as in employment by such other person;

(2) Domestic service in a private home except as provided in subsection 13 of this section;

(3) Service performed by an individual under the age of eighteen years in the delivery or distribution of newspapers or shopping news but shall not include delivery or distribution to any point for subsequent delivery or distribution;

(4) Service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by him or her at a fixed price, his or her compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him or her, whether or not he or she is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(5) Service performed by an individual in the employ of his or her son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his or her father or mother;

(6) Except as otherwise provided in this law, service performed in the employ of a corporation, community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty

to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(7) Services with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of Congress;

(8) Service performed in the employ of a foreign government;

(9) Service performed in the employ of an instrumentality wholly owned by a foreign government:

(a) If the service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and

(b) If the division finds that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof. The certification of the United States Secretary of State to the United States Secretary of Treasury shall constitute prima facie evidence of such equivalent exemption;

(10) Service covered by an arrangement between the division and the agency charged with the administration of any other state or federal unemployment insurance law pursuant to which all services performed by an individual for an employing unit during the period covered by the employing unit's approved election are deemed to be performed entirely within the jurisdiction of such other state or federal agency;

(11) Service performed in any calendar quarter in the employ of a school, college or university not otherwise excluded, if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university, and the remuneration for such service does not exceed fifty dollars (exclusive of board, room, and tuition);

(12) Service performed by an individual for a person as a licensed insurance agent, a licensed insurance broker, or an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commissions;

(13) Domestic service performed in the employ of a local college club or of a local chapter of a college fraternity or sorority, except as provided in subsection 13 of this section;

(14) Services performed after March 31, 1982, in programs authorized and funded by the Comprehensive Employment and Training Act by participants of such programs, except those programs with respect to which unemployment insurance coverage is required by the Comprehensive Employment and Training Act or regulations issued pursuant thereto;

(15) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer; except, that this subdivision shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(16) Services performed by a licensed real estate salesperson or licensed real estate broker if at least eighty percent of the remuneration, whether or not paid in cash, for the services performed rather than to the number of hours worked is directly related to sales performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for federal tax purposes;

(17) Services performed as a direct seller who is engaged in the trade or business of the delivering or distribution of newspapers or shopping news, including any services directly related to such trade or business, or services performed as a direct seller who is engaged in the trade or business of selling, or soliciting the sale of, consumer products in the home or otherwise than in, or affiliated with, a permanent, fixed retail establishment, if eighty percent or more of the remuneration, whether or not paid in cash, for the services performed rather than the number of

hours worked is directly related to sales performed pursuant to a written contract between such direct seller and the person for whom the services are performed, and such contract provides that the individual will not be treated as an employee with respect to such services for federal tax purposes;

(18) Services performed as a volunteer research subject who is paid on a per study basis for scientific, medical or drug-related testing for any organization other than one described in Section 501(c)(3) of the Internal Revenue Code or any governmental entity.

13. The term "employment" shall include domestic service as defined in subdivisions (2) and **[**(12)**] (13)** of subsection 12 of this section performed after December 31, 1977, if the employing unit for which such service is performed paid cash wages of one thousand dollars or more for such services in any calendar quarter after December 31, 1977.

14. The term "employment" shall include or exclude the entire service of an individual for an employing unit during a pay period in which such individual's services are not all excluded under the foregoing provisions, on the following basis: if the services performed during one-half or more of any pay period constitute employment as otherwise defined in this law, all the services performed during such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period do not constitute employment as otherwise defined in this law, then none of the services for such period shall be deemed to be employment. (As used in this subsection, the term "pay period" means a period of not more than thirty-one consecutive days for which a payment of remuneration is ordinarily made to the individual by the employing unit employing such individual.) This subsection shall not be applicable with respect to service performed in a pay period where any such service is excluded pursuant to subdivision **[**(7)**] (8)** of subsection 12 of this section.

15. The term "employment" shall not include the services of a full-time student who performed such services in the employ of an organized summer camp for less than thirteen calendar weeks in such calendar year.

16. For the purpose of subsection 15 of this section, an individual shall be treated as a full-time student for any period:

(1) During which the individual is enrolled as a full-time student at an educational institution; or

(2) Which is between academic years or terms if:

(a) The individual was enrolled as a full-time student at an educational institution for the immediately preceding academic year or term; and

(b) There is a reasonable assurance that the individual will be so enrolled for the immediately succeeding academic year or term after the period described in paragraph (a) of this subdivision.

17. For the purpose of subsection 15 of this section, an "organized summer camp" shall mean a summer camp which:

(1) Did not operate for more than seven months in the calendar year and did not operate for more than seven months in the preceding calendar year; or

(2) Had average gross receipts for any six months in the preceding calendar year which were not more than thirty-three and one-third percent of its average gross receipts for the other six months in the preceding calendar year.

18. The term "employment" shall not mean service performed by a remodeling salesperson acting as an independent contractor; however, if the federal Internal Revenue Service determines that a contractual relationship between a direct provider and an individual acting as an independent contractor pursuant to the provisions of this subsection is in fact an employer-employee relationship for the purposes of federal law, then that relationship shall be considered as an employer-employee relationship for the purposes of this chapter.

288.036. WAGES DEFINED — STATE TAXABLE WAGE BASE. — 1. "Wages" means all remuneration, payable or paid, for personal services including commissions and bonuses and,

except as provided in subdivision **[**(8)**]** **(7)** of this section, the cash value of all remuneration paid in any medium other than cash. Gratuities, including tips received from persons other than the employing unit, shall be considered wages only if required to be reported as wages pursuant to the Federal Unemployment Tax Act, 26 U.S.C. Sec. 3306, and shall be, for the purposes of this chapter, treated as having been paid by the employing unit. Severance pay shall be considered as wages to the extent required pursuant to the Federal Unemployment Tax Act, 26 U.S.C. Section 3306(b). Vacation pay and holiday pay shall be considered as wages for the week with respect to which it is payable. The term "wages" shall not include:

(1) **[**For the purposes of determining the amount of contributions due and contribution rates, that part of the remuneration for employment paid to an individual by an employer or the employer's predecessors which is in excess of seven thousand dollars for the calendar years 1988 through 1992, seven thousand five hundred dollars for the calendar year 1993, eight thousand five hundred dollars for the calendar years 1994, 1995 and 1996, eight thousand dollars for calendar year 1997, and eight thousand five hundred dollars for the calendar year 1998, and the state taxable wage base as determined in subsection 2 of this section for calendar year 1999, and each calendar year thereafter, unless that part of the remuneration is subject to a tax pursuant to a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund; except that:

(a) In addition to the taxable wage, as defined in this subdivision, if on December 31, 1995, or on any December thirty-first thereafter, the balance in the unemployment insurance trust fund, less any federal advances, is less than one hundred million dollars, then the amount of the taxable wage then in effect shall be increased by five hundred dollars for all succeeding calendar years;

(b) If on December 31, 1995, or any December thirty-first thereafter, the balance in the unemployment insurance trust fund, less any federal advances, is two hundred and fifty million dollars or more, then the amount of the taxable wage then in effect shall be reduced by five hundred dollars, but not below that part of the remuneration which is subject to a tax pursuant to a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund;

(2)**]** The amount of any payment made (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment) to, or on behalf of, an individual under a plan or system established by an employing unit which makes provision generally for individuals performing services for it or for a class or classes of such individuals, on account of:

(a) Sickness or accident disability, but in case of payments made to an employee or any of the employee's dependents this paragraph shall exclude from the term "wages" only payments which are received pursuant to a workers' compensation law; or

(b) Medical and hospitalization expenses in connection with sickness or accident disability; or

(c) Death;

[(3)**]** **(2)** The amount of any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employing unit to, or on behalf of, an individual performing services for it after the expiration of six calendar months following the last calendar month in which the individual performed services for such employing unit;

[(4)**]** **(3)** The amount of any payment made by an employing unit to, or on behalf of, an individual performing services for it or his or her beneficiary:

(a) From or to a trust described in 26 U.S.C. 401(a) which is exempt from tax pursuant to 26 U.S.C. 501(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such an employee and not as a beneficiary of the trust; or

(b) Under or to an annuity plan which, at the time of such payments, meets the requirements of section 404(a)(2) of the Federal Internal Revenue Code (26 U.S.C.A. Sec. 404);

[(5)**] (4)** The amount of any payment made by an employing unit (without deduction from the remuneration of the individual in employment) of the tax imposed pursuant to section 3101 of the Federal Internal Revenue Code (26 U.S.C.A. Sec. 3101) upon an individual with respect to remuneration paid to an employee for domestic service in a private home or for agricultural labor;

[(6)**] (5)** Remuneration paid in any medium other than cash to an individual for services not in the course of the employing unit's trade or business;

[(7)**] (6)** Remuneration paid in the form of meals provided to an individual in the service of an employing unit where such remuneration is furnished on the employer's premises and at the employer's convenience, except that remuneration in the form of meals that is considered wages and required to be reported as wages pursuant to the Federal Unemployment Tax Act, 26 U.S.C. Sec. 3306 shall be reported as wages as required thereunder;

[(8)**] (7)** For the purpose of determining wages paid for agricultural labor as defined in paragraph (b) of subdivision (1) of subsection 12 of section 288.034 and for domestic service as defined in subsection 13 of section 288.034, only cash wages paid shall be considered;

[(9)**] (8)** Beginning on October 1, 1996, any payment to, or on behalf of, an employee or the employee's beneficiary under a cafeteria plan, if such payment would not be treated as wages pursuant to the Federal Unemployment Tax Act.

2. The increases or decreases to the state taxable wage base for **the remainder of** calendar year **[**1999**] 2004 shall be eight thousand dollars, and the state taxable wage base in calendar year 2005**, and each calendar year thereafter, shall be determined by the provisions within this subsection. **On January 1, 2005,** the state taxable wage base for calendar year **[**1999, and**] 2005, 2006, and 2007 shall be eleven thousand dollars. The taxable wage base for calendar year 2008, and each year thereafter, shall be twelve thousand dollars. The state taxable wage base for** each calendar year thereafter**[**,**]** shall be determined by the preceding September thirtieth balance of the unemployment compensation trust fund, less any outstanding federal Title XII advances received pursuant to section 288.330**, or if the fund is not utilizing moneys advanced by the federal government, then less the principal, interest, and administrative expenses related to credit instruments issued under section 288.330, or the principal, interest, and administrative expenses related to financial agreements under subdivision (17) of subsection 2 of section 288.330, or the principal, interest, and administrative expenses related to a combination of Title XII advances, credit instruments, and financial agreements**. When the September thirtieth unemployment compensation trust fund balance, **or, if the average balance, less any federal advances of the unemployment compensation trust fund of the four preceding quarters (September thirtieth, June thirtieth, March thirty-first, and December thirty-first of the preceding calendar year) is** less any outstanding federal Title XII advances received pursuant to section 288.330, is:

(1) Less than, or equal to, three hundred **fifty** million dollars, then the wage base shall increase by **[**five hundred**] one thousand** dollars; or

(2) **[**Four**] Six** hundred fifty million or more, then the state taxable wage base for the subsequent calendar year shall be decreased by five hundred dollars. In no event, however, shall the state taxable wage base increase beyond **[**ten**] twelve** thousand **[**five hundred**]** dollars, or decrease to less than seven thousand dollars. **For calendar year 2009, the tax wage base shall be twelve thousand five hundred dollars. For calendar year 2010 and each calendar year thereafter, in no event shall the state taxable wage base increase beyond thirteen thousand dollars, or decrease to less than seven thousand dollars.**

For any calendar year, the state taxable wage base shall not be reduced to less than that part of the remuneration which is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation trust fund. **Nothing in this section shall be construed to prevent the wage base from increasing or decreasing by increments of five hundred dollars.**

288.038. WEEKLY BENEFIT AMOUNT DEFINED. — With respect to initial claims filed during calendar years **[**1998, 1999, 2000 and 2001 and each calendar year thereafter**]** **2004 and 2005**, the "maximum weekly benefit amount" means four percent of the total wages paid to an eligible insured worker during that quarter of the worker's base period in which the worker's wages were the highest, but the maximum weekly benefit amount shall not exceed **[**two hundred five dollars in the calendar year 1998, two hundred twenty dollars in the calendar year 1999, two hundred thirty-five dollars in the calendar year 2000, and**]** two hundred fifty dollars in the calendar **[**year 2001, and each calendar year thereafter**]** **years 2004 and 2005. With respect to initial claims filed during calendar years 2006 and 2007 the "maximum weekly benefit amount" means three and three-fourths percent of the total wages paid to an eligible insured worker during that quarter of the worker's base period in which the worker's wages were the highest, but the maximum weekly benefit amount shall not exceed two hundred seventy dollars in calendar year 2006 and the maximum weekly benefit amount shall not exceed two hundred eighty dollars in calendar year 2007. With respect to initial claims filed during calendar year 2008 and each calendar year thereafter, the "maximum weekly benefit amount" means four percent of the total wages paid to an eligible insured worker during the average of the two highest quarters of the worker's base period, but the maximum weekly benefit amount shall not exceed three hundred dollars in calendar year 2008, three hundred ten dollars in calendar year 2009, three hundred twenty dollars in calendar year 2010, and each calendar year thereafter**. If such benefit amount is not a multiple of one dollar, such amount shall be reduced to the nearest lower full dollar amount.

288.040. ELIGIBILITY FOR BENEFITS — EXCEPTIONS. — 1. A claimant who is unemployed and has been determined to be an insured worker shall be eligible for benefits for any week only if the deputy finds that:

(1) The claimant has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the division may prescribe;

(2) The claimant is able to work and is available for work. No person shall be deemed available for work unless such person has been and is actively and earnestly seeking work. Upon the filing of an initial or renewed claim, and prior to the filing of each weekly claim thereafter, the deputy shall notify each claimant of the number of work search contacts required to constitute an active search for work. No person shall be considered not available for work, pursuant to this subdivision, solely because he or she is a substitute teacher or is on jury duty. A claimant shall not be determined to be ineligible pursuant to this subdivision because of not actively and earnestly seeking work if:

(a) The claimant is participating in training approved pursuant to Section 236 of the Trade Act of 1974, as amended, (19 U.S.C.A. Sec. 2296, as amended); **[**or**]**

(b) The claimant is temporarily unemployed through no fault of his or her own and has a definite recall date within eight weeks of his or her first day of unemployment; however, upon application of the employer responsible for the claimant's unemployment, such eight-week period may be extended **not to exceed a total of sixteen weeks** at the discretion of the director;

(3) The claimant has reported in person to an office of the division as directed by the deputy, but at least once every four weeks, except that a claimant shall be exempted from the reporting requirement of this subdivision if:

(a) The claimant is claiming benefits in accordance with division regulations dealing with partial or temporary total unemployment; or

(b) The claimant is temporarily unemployed through no fault of his or her own and has a definite recall date within eight weeks of his or her first day of unemployment; or

(c) The claimant resides in a county with an unemployment rate, as published by the division, of ten percent or more and in which the county seat is more than forty miles from the nearest division office;

(d) The director of the division of employment security has determined that the claimant belongs to a group or class of workers whose opportunities for reemployment will not be enhanced by reporting in person, or is prevented from reporting due to emergency conditions that limit access by the general public to an office that serves the area where the claimant resides, but only during the time such circumstances exist.

Ineligibility pursuant to this subdivision shall begin on the first day of the week which the claimant was scheduled to claim and shall end on the last day of the week preceding the week during which the claimant does report in person to the division's office;

(4) Prior to the first week of a period of total or partial unemployment for which the claimant claims benefits he **or she** has been totally or partially unemployed for a waiting period of one week. No more than one waiting week will be required in any benefit year. **[**The one-week waiting period shall become compensable after unemployment during which benefits are payable for nine consecutive weeks.**] During calendar year 2008 and each calendar year thereafter, the one-week waiting period shall become compensable once his or her remaining balance on the claim is equal to or less than the compensable amount for the waiting period.** No week shall be counted as a week of total or partial unemployment for the purposes of this subsection unless it occurs within the benefit year which includes the week with respect to which the claimant claims benefits;

(5) The claimant has made a claim for benefits;

(6) The claimant is participating in reemployment services, such as job search assistance services, as directed by the deputy if the claimant has been determined to be likely to exhaust regular benefits and to need reemployment services pursuant to a profiling system established by the division, unless the deputy determines that:

(a) The individual has completed such reemployment services; or

(b) There is justifiable cause for the claimant's failure to participate in such reemployment services.

2. A claimant shall be ineligible for waiting week credit or benefits for any week for which the deputy finds he or she is or has been suspended by his or her most recent employer for misconduct connected with his or her work. **Suspensions of four weeks or more shall be treated as discharges.**

3. (1) Benefits based on "service in employment", defined in subsections 7 and 8 of section 288.034, shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this law; except that:

(a) With respect to service performed in an instructional, research, or principal administrative capacity for an educational institution, benefits shall not be paid based on such services for any week of unemployment commencing during the period between two successive academic years or terms, or during a similar period between two regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if such individual performs such services in the first of such academic years (or terms) and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms;

(b) With respect to services performed in any capacity (other than instructional, research, or principal administrative capacity) for an educational institution, benefits shall not be paid on the basis of such services to any individual for any week which commences during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a contract or a reasonable assurance that such individual will perform such services in the second of such academic years or terms;

(c) With respect to services described in paragraphs (a) and (b) of this subdivision, benefits shall not be paid on the basis of such services to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performed such services in the period immediately before such vacation period or holiday recess,

and there is reasonable assurance that such individual will perform such services immediately following such vacation period or holiday recess;

(d) With respect to services described in paragraphs (a) and (b) of this subdivision, benefits payable on the basis of services in any such capacity shall be denied as specified in paragraphs (a), (b), and (c) of this subdivision, to any individual who performed such services at an educational institution while in the employ of an educational service agency, and for this purpose the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

(2) If compensation is denied for any week pursuant to paragraph (b) or (d) of subdivision (1) of this subsection, to any individual performing services at an educational institution in any capacity (other than instructional, research or principal administrative capacity), and such individual was not offered an opportunity to perform such services for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of paragraph (b) or (d) of subdivision (1) of this subsection.

4. (1) A claimant shall be ineligible for waiting week credit, benefits or shared work benefits for any week for which he or she is receiving or has received remuneration exceeding his or her weekly benefit amount or shared work benefit amount in the form of:

(a) Compensation for temporary partial disability pursuant to the workers' compensation law of any state or pursuant to a similar law of the United States;

(b) A governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment which is based on the previous work of such claimant to the extent that such payment is provided from funds provided by a base period or chargeable employer pursuant to a plan maintained or contributed to by such employer; but, except for such payments made pursuant to the Social Security Act or the Railroad Retirement Act of 1974 (or the corresponding provisions of prior law), the provisions of this paragraph shall not apply if the services performed for such employer by the claimant after the beginning of the base period (or remuneration for such services) do not affect eligibility for or increase the amount of such pension, retirement or retired pay, annuity or similar payment.

(2) If the remuneration referred to in this subsection is less than the benefits which would otherwise be due, the claimant shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration, and, if such benefit is not a multiple of one dollar, such amount shall be lowered to the next multiple of one dollar.

(3) Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, if a claimant has contributed in any way to the Social Security Act or the Railroad Retirement Act of 1974, or the corresponding provisions of prior law, no part of the payments received pursuant to such federal law shall be deductible from the amount of benefits received pursuant to this chapter.

5. A claimant shall be ineligible for waiting week credit or benefits for any week for which or a part of which he or she has received or is seeking unemployment benefits pursuant to an unemployment insurance law of another state or the United States; provided, that if it be finally determined that the claimant is not entitled to such unemployment benefits, such ineligibility shall not apply.

6. (1) A claimant shall be ineligible for waiting week credit or benefits for any week for which the deputy finds that such claimant's total or partial unemployment is due to a stoppage of work which exists because of a labor dispute in the factory, establishment or other premises in which such claimant is or was last employed. In the event the claimant secures other employment from which he or she is separated during the existence of the labor dispute, the claimant must have obtained bona fide employment as a permanent employee for at least the major part of each of two weeks in such subsequent employment to terminate his or her ineligibility. If, in any case, separate branches of work which are commonly conducted as

separate businesses at separate premises are conducted in separate departments of the same premises, each such department shall for the purposes of this subsection be deemed to be a separate factory, establishment or other premises. This subsection shall not apply if it is shown to the satisfaction of the deputy that:

(a) The claimant is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(b) The claimant does not belong to a grade or class of workers of which, immediately preceding the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute.

(2) "Stoppage of work" as used in this subsection means a substantial diminution of the activities, production or services at the establishment, plant, factory or premises of the employing unit. This definition shall not apply to a strike where the employees in the bargaining unit who initiated the strike are participating in the strike. Such employees shall not be eligible for waiting week credit or benefits during the period when the strike is in effect, regardless of diminution, unless the employer has been found guilty of an unfair labor practice by the National Labor Relations Board or a federal court of law for an act or actions preceding or during the strike.

7. On or after January 1, 1978, benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).

8. Benefits shall not be payable on the basis of services performed by an alien, unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of Section 212(d)(5) of the Immigration and Nationality Act).

(1) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(2) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of such individual's alien status shall be made except upon a preponderance of the evidence.

288.045. MISCONDUCT CONNECTED WITH THE CLAIMANT'S WORK, WHEN — CONTROLLED SUBSTANCE AND BLOOD ALCOHOL CONTENT LEVELS — NOTICE — TESTS CONDUCTED, WHEN — VIOLATION, PENALTY — TESTING PROVISION NOT TO APPLY, WHEN — SPECIMENS FOR TESTING — CONFIRMATION TESTS — PRESCRIPTIONS — SECTION NOT APPLICABLE, WHEN — IMPLEMENTATION OF TESTING PROGRAM. — 1. If a claimant is at work with a detectible amount of alcohol or a controlled substance as defined in section 195.010, RSMo, in the claimant's system, in violation of the employer's alcohol and controlled substance workplace policy, the claimant shall have committed misconduct connected with the claimant's work.

2. For carboxy-tetrahydrocannabinol, a chemical test result of fifty nannograms per milliliter or more shall be considered a detectible amount. For alcohol, a blood alcohol content of eight-hundredths of one percent or more by weight of alcohol in the claimant's blood shall be considered a detectible amount.

3. If the test is conducted by a laboratory certified by the United States Department of Transportation, the test results and the laboratory's trial packet shall be included in the administrative record and considered as evidence.

4. For this section to be applicable, the claimant must have previously been notified of the employer's alcohol and controlled substance workplace policy by conspicuously posting the policy in the workplace, by including the policy in a written personnel policy or handbook, or by statement of such policy in a collective bargaining agreement governing employment of the employee. The policy must state that a positive test result shall be deemed misconduct and may result in suspension or termination of employment.

5. For this section to be applicable, testing shall be conducted only if sufficient cause exists to suspect alcohol or controlled substance use by the claimant. If sufficient cause exists to suspect prior alcohol or controlled substance use by the claimant, or the employer's policy clearly states that there will be random testing, then testing of the claimant may be conducted randomly.

6. Notwithstanding any provision of this chapter to the contrary, any claimant found to be in violation of this section shall be subject to the cancellation of all or part of the claimants wage credits as provided by subdivision (2) of subsection 2 of section 288.050.

7. The application of the alcohol and controlled substance testing provisions of this section shall not apply in the event that the claimant is subject to the provisions of any applicable collective bargaining agreement, which contains methods for alcohol or controlled substance testing. Nothing in this chapter is intended to authorize any employer to test any applicant or employee for alcohol or drugs in any manner inconsistent with Missouri or United States constitution, law, statute or regulation, including those imposed by the Americans with Disabilities Act and the National Labor Relations Act.

8. All specimen collection and testing for drugs and alcohol under this chapter shall be performed in accordance with the procedures provided for by the United States Department of Transportation rules for workplace drug and alcohol testing compiled at 49 C.F.R., Part 40. Any employer that performs drug testing or specimen collection shall use chain-of-custody procedures established by regulations of the United States Department of Transportation. "Specimen" means tissue, fluid, or a product of the human body capable of revealing the presence of alcohol or drugs or their metabolites. "Chain of custody" refers to the methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances, and providing for accountability at each stage in handling, testing, and storing specimens and reporting test results.

9. For this section to be applicable, the employee may request that a confirmation test on the specimen be conducted. "Confirmation test" means a second analytical procedure used to identify the presence of a specific drug or alcohol or metabolite in a specimen, which test must be different in scientific principle from that of the initial test procedure and must be capable of providing requisite specificity, sensitivity and quantitative accuracy. In the event that a confirmation test is requested, such shall be obtained from a separate, unrelated certified laboratory and shall be at the employee's expense only if said test confirms results as specified in subsection 2 of section 288.045.

10. Use of a controlled substance as defined under section 195.010, RSMo, under and in conformity with the lawful order of a healthcare practitioner, shall not be deemed to be misconduct connected with work for the purposes of this section.

11. This section shall have no effect on employers who do not avail themselves of the requirements and regulations for alcohol and controlled drug testing determinations that are required to affirm misconduct connected with work findings.

12. Any employer that initiates an alcohol and drug testing policy after January 1, 2005, shall ensure that at least sixty days elapse between a general one-time notice to all employees that an alcohol and drug testing workplace policy is being implemented and the effective date of the program.

13. (1) In applying provisions of this chapter, it is the intent of the legislature to reject and abrogate previous case law interpretations of "misconduct connected with work"

requiring a finding of evidence of impairment of work performance, including, but not limited to, the holdings contained in Baldor Electric Company v. Raylene Reasoner and Missouri Division of Employment Security, 66 S.W.3d 130 (Mo.App. E.D. 2001).

(2) In determining whether or not misconduct connected with work has occurred, neither the state, any agency of the state, nor any court of the state of Missouri shall require a finding of evidence of impairment of work performance.

14. Notwithstanding any provision of this chapter to the contrary, any claimant found to be in violation of this section shall be subject to the cancellation of all or part of the claimants wage credits as provided by subdivision (2) of subsection 2 of section 288.050.

288.050. BENEFITS DENIED UNEMPLOYED WORKERS, WHEN — PREGNANCY, REQUIREMENTS FOR BENEFIT ELIGIBILITY. — 1. Notwithstanding the other provisions of this law, a claimant shall be disqualified for waiting week credit or benefits until after the claimant has earned wages for work insured pursuant to the unemployment compensation laws of any state equal to ten times the claimant's weekly benefit amount if the deputy finds:

(1) That the claimant has left work voluntarily without good cause attributable to such work or to the claimant's employer**[**; except that**]. A temporary employee of a temporary help firm will be deemed to have voluntarily quit employment if the employee does not contact the temporary help firm for reassignment prior to filing for benefits. Failure to contact the temporary help firm will not be deemed a voluntary quit unless the claimant has been advised of the obligation to contact the firm upon completion of assignments and that unemployment benefits may be denied for failure to do so.** The claimant shall not be disqualified:

(a) If the deputy finds the claimant quit such work for the purpose of accepting a more remunerative job which the claimant did accept and earn some wages therein;

(b) If the claimant quit temporary work to return to such claimant's regular employer; or

(c) If the deputy finds the individual quit work, which would have been determined not suitable in accordance with paragraphs (a) and (b) of subdivision (3) of this subsection, within twenty-eight calendar days of the first day worked;

(d) As to initial claims filed after December 31, 1988, if the claimant presents evidence supported by competent medical proof that she was forced to leave her work because of pregnancy, notified her employer of such necessity as soon as practical under the circumstances, and returned to that employer and offered her services to that employer as soon as she was physically able to return to work, as certified by a licensed and practicing physician, but in no event later than ninety days after the termination of the pregnancy. An employee shall have been employed for at least one year with the same employer before she may be provided benefits pursuant to the provisions of this paragraph;

(2) That the claimant has retired pursuant to the terms of a labor agreement between the claimant's employer and a union duly elected by the employees as their official representative or in accordance with an established policy of the claimant's employer; or

(3) That the claimant failed without good cause either to apply for available suitable work when so directed by the deputy, or to accept suitable work when offered the claimant, either through the division or directly by an employer by whom the individual was formerly employed, or to return to the individual's customary self-employment, if any, when so directed by the deputy. **An offer of work shall be rebuttably presumed if an employer notifies the claimant in writing of such offer by sending an acknowledgment via any form of certified mail issued by the United States Postal Service stating such offer to the claimant at the claimant's last known address. Nothing in this subdivision shall be construed to limit the means by which the deputy may establish that the claimant has or has not been sufficiently notified of available work.**

(a) In determining whether or not any work is suitable for an individual, the division shall consider, among other factors and in addition to those enumerated in paragraph (b) of this subdivision, the degree of risk involved to the individual's health, safety and morals, the individual's physical fitness and prior training, the individual's experience and prior earnings, the individual's length of unemployment, the individual's prospects for securing work in the individual's customary occupation, the distance of available work from the individual's residence and the individual's prospect of obtaining local work; except that, if an individual has moved from the locality in which the individual actually resided when such individual was last employed to a place where there is less probability of the individual's employment at such individual's usual type of work and which is more distant from or otherwise less accessible to the community in which the individual was last employed, work offered by the individual's most recent employer if similar to that which such individual performed in such individual's last employment and at wages, hours, and working conditions which are substantially similar to those prevailing for similar work in such community, or any work which the individual is capable of performing at the wages prevailing for such work in the locality to which the individual has moved, if not hazardous to such individual's health, safety or morals, shall be deemed suitable for the individual;

(b) Notwithstanding any other provisions of this law, no work shall be deemed suitable and benefits shall not be denied pursuant to this law to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

a. If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

b. If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

c. If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

2. **[**Notwithstanding the other provisions of this law,**]** If a deputy finds that a claimant has been discharged for misconduct connected with the claimant's work, such claimant**[**, depending upon the seriousness of the misconduct as determined by the deputy according to the circumstances in each case,**]** shall be disqualified for waiting week credit **[**or**]** **and** benefits **[**for not less than four nor more than sixteen weeks for which the claimant claims benefits and is otherwise eligible**], and no benefits shall be paid nor shall the cost of any benefits be charged against any employer for any period of employment within the base period until the claimant has earned wages for work insured under the unemployment laws of this state or any other state as prescribed in this section.** In addition to the disqualification for benefits pursuant to this provision the division may in the more aggravated cases of misconduct, cancel all or any part of the individual's wage credits, which were established through the individual's employment by the employer who discharged such individual, according to the seriousness of the misconduct. A disqualification provided for pursuant to this subsection shall not apply to any week which occurs after the claimant has earned wages for work insured pursuant to the unemployment compensation laws of any state in an amount equal to **[**eight**] six** times the claimant's weekly benefit amount.

3. **[**A pattern of**]** Absenteeism or tardiness may constitute misconduct regardless of whether the last incident alone **[**which results in the discharge**]** constitutes misconduct. **In determining whether the degree of absenteeism or tardiness constitutes a pattern for which misconduct may be found, the division shall consider whether the discharge was the result of a violation of the employer's attendance policy, provided the employee had received knowledge of such policy prior to the occurrence of any absence or tardy upon which the discharge is based.**

4. Notwithstanding the provisions of subsection 1 of this section, a claimant may not be determined to be disqualified for benefits because the claimant is in training approved pursuant to section 236 of the Trade Act of 1974, as amended, (19 U.S.C.A. Sec. 2296, as amended), or because the claimant left work which was not "suitable employment" to enter such training. For

the purposes of this subsection "suitable employment" means, with respect to a worker, work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work at not less than eighty percent of the worker's average weekly wage as determined for the purposes of the Trade Act of 1974.

288.060. BENEFITS, HOW PAID — WAGE CREDITS — BENEFITS DUE DECEDENT — BENEFIT WARRANTS CANCELED, WHEN — ELECTRONIC FUNDS TRANSFER SYSTEM, ALLOWED — REMOTE CLAIMS FILING PROCEDURES REQUIRED, CONTENTS, DUTIES. — 1. All benefits shall be paid through employment offices in accordance with such regulations as the division may prescribe.

2. Each eligible insured worker who is totally unemployed in any week shall be paid for such week a sum equal to his **or her** weekly benefit amount.

3. Each eligible insured worker who is partially unemployed in any week shall be paid for such week a partial benefit. Such partial benefit shall be an amount equal to the difference between his **or her** weekly benefit amount and that part of his **or her** wages for such week in excess of twenty dollars, and, if such partial benefit amount is not a multiple of one dollar, such amount shall be reduced to the nearest lower full dollar amount. **For calendar year 2007 and each year thereafter, such partial benefit shall be an amount equal to the difference between his or her weekly benefit amount and that part of his or her wages for such week in excess of twenty dollars or twenty percent of his or her weekly benefit amount, whichever is greater, and, if such partial benefit amount is not a multiple of one dollar, such amount shall be reduced to the nearest lower full dollar amount.** Termination pay, severance pay or pay received by an eligible insured worker who is a member of the organized militia for training or duty authorized by section 502(a)(1) of Title 32, United States Code, **[**or who is an elected official**]** shall not be considered wages for the purpose of this subsection.

4. The division shall compute the wage credits for each individual by crediting him **or her** with the wages paid to him **or her** for insured work during each quarter of his **or her** base period or twenty-six times his **or her** weekly benefit amount, whichever is the lesser. In addition, if a claimant receives wages in the form of termination pay or severance pay and such payment appears in a base period established by the filing of an initial claim, the claimant may, at his **or her** option, choose to have such payment included in the calendar quarter in which it was paid or choose to have it prorated equally among the quarters comprising the base period of the claim. The maximum total amount of benefits payable to any insured worker during any benefit year shall not exceed twenty-six times his **or her** weekly benefit amount, or thirty-three and one-third percent of his **or her** wage credits, whichever is the lesser. For the purpose of this section, wages shall be counted as wage credits for any benefit year, only if such benefit year begins subsequent to the date on which the employing unit by whom such wages were paid has become an employer. The wage credits of an individual earned during the period commencing with the end of a prior base period and ending on the date on which he **or she** filed an allowed initial claim shall not be available for benefit purposes in a subsequent benefit year unless, in addition thereto, such individual has subsequently earned either wages for insured work in an amount equal to at least five times his **or her** current weekly benefit amount or wages in an amount equal to at least ten times his **or her** current weekly benefit amount.

5. In the event that benefits are due a deceased person and no petition has been filed for the probate of the will or for the administration of the estate of such person within thirty days after his **or her** death, the division may by regulation provide for the payment of such benefits to such person or persons as the division finds entitled thereto and every such payment shall be a valid payment to the same extent as if made to the legal representatives of the deceased.

6. The division is authorized to cancel any benefit warrant remaining outstanding and unpaid one year after the date of its issuance and there shall be no liability for the payment of any such benefit warrant thereafter.

7. The division may establish an electronic funds transfer system to transfer directly to claimants' accounts in financial institutions benefits payable to them pursuant to this chapter. To receive benefits by electronic funds transfer, a claimant shall satisfactorily complete a direct deposit application form authorizing the division to deposit benefit payments into a designated checking or savings account. Any electronic funds transfer system created pursuant to this subsection shall be administered in accordance with regulations prescribed by the division.

8. The division may issue a benefit warrant covering more than one week of benefits.

9. Prior to January 1, 2005, the division shall institute procedures including, but not limited to, name, date of birth, and social security verification matches for remote claims filing via the use of telephone or the Internet in accordance with such regulations as the division shall prescribe. At a minimum, the division shall verify the social security number and date of birth when an individual claimant initially files for unemployment insurance benefits. If verification information does not match what is on file in division databases to what the individual is stating, the division shall require the claimant to submit a division-approved form requesting an affidavit of eligibility prior to the payment of additional future benefits. The division of employment security shall cross-check unemployment compensation applicants and recipients with Social Security Administration data maintained by the federal government on the most frequent basis recommended by the United States Department of Labor, or absent a recommendation, at least monthly. The division of employment security shall cross-check at least monthly unemployment compensation applicants and recipients with department of revenue drivers license databases.

288.090. CONTRIBUTIONS REQUIRED, WHEN — PAYMENTS IN LIEU OF CONTRIBUTIONS, PROCEDURES — COMMON PAYMASTER ARRANGEMENTS. — 1. Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this law. Such contributions shall become due and be paid by each employer to the division for the fund on or before the last day of the month following each calendar quarterly period of three months except when regulation requires monthly payment. Any employer upon application, or pursuant to a general or special regulation, may be granted an extension of time, not exceeding three months, for the making of his **or her** quarterly contribution and wage reports or for the payment of such contributions. Payment of contributions due shall be made to the treasurer designated pursuant to section 288.290.

(1) In the payment of any contributions due, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent;

(2) Contributions shall not be deducted in whole or in part from the wages of individuals in employment.

2. As of June thirtieth of each year, the division shall establish an average industry contribution rate for the next succeeding calendar year for each of the industrial classification divisions listed in the **[**Standard Industrial Classification Manual furnished**]** **industrial classification system established** by the federal government. The average industry contribution rate for each standard industrial classification division shall be computed by multiplying total taxable wages paid by each employer in the industrial classification division during the twelve consecutive months ending on June thirtieth by the employer's contribution rate established for the next calendar year and dividing the aggregate product for all employers in the industrial classification division by the total of taxable wages paid by all employers in the industrial classification division during the twelve consecutive months ending on June thirtieth. Each employer will be assigned to **[**a standard**]** **an** industrial classification code division as determined by the division in accordance with the definitions contained in the **[**Standard Industrial Classification Manual**]** **industrial classification system established by the federal government**, and shall pay contributions at the average industry rate established for the preceding calendar year for the industrial classification division to which it is assigned or two and

seven-tenths percent of taxable wages paid by it, whichever is the greater, unless there have been at least twelve consecutive calendar months immediately preceding the calculation date throughout which its account could have been charged with benefits. The division shall classify all employers meeting this chargeability requirement for each calendar year in accordance with their actual experience in the payment of contributions on their own behalf and with respect to benefits charged against their accounts, with a view to fixing such contribution rates as will reflect such experience. The division shall determine the contribution rate of each such employer in accordance with sections 288.113 to 288.126. Notwithstanding the provisions of this subsection, any employing unit which becomes an employer pursuant to the provisions of subsection 7 or 8 of section 288.034 shall pay contributions equal to one percent of wages paid by it until its account has been chargeable with benefits for the period of time sufficient to enable it to qualify for a computed rate on the same basis as other employers.

3. Benefits paid to employees of any governmental entity and nonprofit organizations shall be financed in accordance with the provisions of this subsection. For the purpose of this subsection, a "nonprofit organization" is an organization (or group of organizations) described in Section 501(c)(3) of the United States Internal Revenue Code which is exempt from income tax under Section 501(a) of such code.

(1) A governmental entity which, pursuant to subsection 7 of section 288.034, or nonprofit organization which, pursuant to subsection 8 of section 288.034, is, or becomes, subject to this law on or after April 27, 1972, shall pay contributions due under the provisions of subsections 1 and 2 of this section unless it elects, in accordance with this subdivision, to pay to the division for the unemployment compensation fund an amount equal to the amount of regular benefits and of one-half of the extended benefits paid, that is attributable to service in the employ of such governmental entity or nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election; except that, with respect to benefits paid for weeks of unemployment beginning on or after January 1, 1979, any such election by a governmental entity shall be to pay to the division for the unemployment compensation fund an amount equal to the amount of all regular benefits and all extended benefits paid that is attributable to service in the employ of such governmental entity.

(a) A governmental entity or nonprofit organization which is, or becomes, subject to this law on or after April 27, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than one calendar year, provided it files with the division a written notice of its election within the thirty-day period immediately following the date of the determination of such subjectivity. The provisions of paragraphs (a) through (e) of subdivision (4) of subsection 1 of section 288.100 shall not apply in the calendar year 1998 and each calendar year thereafter, in the case of an employer who has elected to become liable for payments in lieu of contributions.

(b) A governmental entity or nonprofit organization which makes an election in accordance with paragraph (a) of this subdivision will continue to be liable for payments in lieu of contributions until it files with the division a written notice terminating its election not later than thirty days prior to the beginning of the calendar year for which such termination shall first be effective.

(c) A governmental entity or any nonprofit organization which has been paying contributions under this law for a period subsequent to January 1, 1972, may change to a reimbursable basis by filing with the division not later than thirty days prior to the beginning of any calendar year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next calendar year.

(d) The division, in accordance with such regulations as may be adopted, shall notify each governmental entity or nonprofit organization of any determination of its status of an employer and of the effective date of any election which it makes and of any termination of such election. Such determination shall be subject to appeal as is provided in subsection 4 of section 288.130.

(2) Payments in lieu of contributions shall be made in accordance with the provisions of paragraph (a) of this subdivision, as follows:

(a) At the end of each calendar quarter, or at the end of any other period as determined by the director, the division shall bill the governmental entity or nonprofit organization (or group of such organizations) which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such organization; except that, with respect to extended benefits paid for weeks of unemployment beginning on or after January 1, 1979, which are attributable to service in the employ of a governmental entity, the governmental entity shall be billed for the full amount of such extended benefits.

(b) Payment of any bill rendered under paragraph (a) of this subdivision shall be due and shall be made not later than thirty days after such bill was mailed to the last known address of the governmental entity or nonprofit organization or was otherwise delivered to it.

(c) Payments made by the governmental entity or nonprofit organization under the provisions of this subsection shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(d) Past due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that apply to past due contributions. Also, unpaid amounts in lieu of contributions, interest, penalties and surcharges are subject to the same assessment, civil action and compromise provisions of this law as apply to unpaid contributions. Further, the provisions of this law which provide for the adjustment or refund of contributions shall apply to the adjustment or refund of payments in lieu of contributions.

(3) If any governmental entity or nonprofit organization fails to timely file a required quarterly wage report, the division shall assess such entity or organization a penalty as provided in subsections 1 and 2 of section 288.160.

(4) Except as provided in subsection 4 of this section, each employer that is liable for payments in lieu of contributions shall pay to the division for the fund the amount of regular benefits plus the amount of one-half of extended benefits paid that are attributable to service in the employ of such employer; except that, with respect to benefits paid for weeks of unemployment beginning on or after January 1, 1979, a governmental entity that is liable for payments in lieu of contributions shall pay to the division for the fund the amount of all regular benefits and all extended benefits paid that are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one employer in the base period of the claim, the amount chargeable to each employer shall be obtained by multiplying the benefits paid by a ratio obtained by dividing the base period wages from such employer by the total wages appearing in the base period.

(5) Two or more employers that have become liable for payments in lieu of contributions, in accordance with the provisions of subdivision (1) of this subsection, may file a joint application to the division for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Each such application shall identify and authorize a group representative to act as the group's agent for the purposes of this subdivision. Upon approval of the application, the division shall establish a group account for such employers effective as of the beginning of the calendar quarter in which the application was received and shall notify the group's representative of the effective date of the account. Such account shall remain in effect for not less than two years and thereafter until terminated at the discretion of the director or upon application by the group. Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in such quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in such quarter bears to the total wages paid during such quarter for service performed in the employ of all

members of the group. The director shall prescribe such regulations as he **or she** deems necessary with respect to applications for establishment, maintenance and termination of group accounts that are authorized by this subdivision, for addition of new members to, and withdrawal of active members from, such accounts, and for the determination of the amounts that are payable under this subdivision by members of the group and the time and manner of such payments.

4. Any employer which elects to make payments in lieu of contributions into the unemployment compensation fund as provided in subdivision (1) of subsection 3 of this section shall not be liable to make such payments with respect to the benefits paid to any individual whose base period wages include wages for previous work not classified as insured work as defined in section 288.030 to the extent that the unemployment compensation fund is reimbursed for such benefits pursuant to Section 121 of Public Law 94-566.

5. Any employer which elects to make payments in lieu of contributions pursuant to subsection 3 of this section shall be liable for an additional surcharge to the division for the unemployment compensation trust fund in an amount equal to the interest rate on United States treasury bills, averaged for the previous four calendar quarters, multiplied by the total benefit payments charged to the employer's account. Governmental entities except cities, counties and the state of Missouri which elect to make payments in lieu of contributions pursuant to subsection 3 of this section shall be liable for an additional surcharge to the division for the unemployment compensation fund in an amount equal to one-half of the interest rate on United States treasury bills, averaged for the previous four calendar quarters, multiplied by the total benefit payments charged to the employer's account. The cumulative benefits charged plus the cumulative surcharges pursuant to this subsection for all employers electing to make payments in lieu of contributions shall not exceed the summation of total benefit payments chargeable and not chargeable for the calendar quarter. The provisions of this subsection shall not be effective after September 30, 1993.

6. Beginning October 1, 1993, through December 31, 1993, any employer which elects to make payments in lieu of contributions pursuant to subsection 3 of this section shall be liable for an additional surcharge to the division for the unemployment compensation trust fund in an amount equal to the interest rate of United States treasury bills, averaged for the previous four calendar quarters, multiplied by the total benefit payments charged to the employer's account. The cumulative benefits charged plus the cumulative surcharges pursuant to this subsection for all employers electing to make payments in lieu of contributions shall not exceed the summation of total benefit payments chargeable and not chargeable for the calendar quarter.

7. Beginning January 1, 1994, through December 31, 1995, any employer which elects to make payments in lieu of contributions pursuant to subsection 3 of this section shall be liable for an additional surcharge to the division for the unemployment compensation trust fund. The calendar year surcharge rate will be the base prime rate on corporate loans posted by at least seventy-five percent of the nation's thirty largest banks as of November thirtieth of the preceding year. The additional surcharge will be the surcharge rate multiplied by the total benefit payments charged to the employer's account. The cumulative benefits charged plus the cumulative surcharges pursuant to this subsection for all employers electing to make payments in lieu of contributions shall not exceed the summation of total benefit payments chargeable and not chargeable for the calendar quarter.

8. Beginning January 1, 1996, through December 31, 1996, any employer which elects to make payments in lieu of contributions pursuant to subsection 3 of this section shall be liable for the total benefit payments chargeable to its account pursuant to the provisions of section 288.100 plus one-third of the total benefit payments not charged to its account pursuant to paragraphs (a) through (e) of subdivision (4) of subsection 1 of section 288.100. The remaining two-thirds of the benefit payments not charged to its account pursuant to paragraphs (a) through (e) of subdivision (4) of subsection 1 of section 288.100 shall be paid by the unemployment compensation trust fund.

9. Beginning January 1, 1997, through December 31, 1997, any employer which elects to make payments in lieu of contributions pursuant to subsection 3 of this section shall be liable for the total benefit payments chargeable to its account pursuant to the provisions of section 288.100 plus two-thirds of the total benefit payments not charged to its account pursuant to paragraphs (a) through (e) of subdivision (4) of subsection 1 of section 288.100. The remaining one-third of the benefit payments not charged to its account pursuant to paragraphs (a) through (e) of subdivision (4) of subsection 1 of section 288.100 shall be paid by the unemployment compensation trust fund.

10. Beginning January 1, 1998, and each calendar year thereafter, any employer which elects to make payments in lieu of contributions pursuant to subsection 3 of this section shall be liable for all benefit payments and shall not have charges relieved pursuant to the provisions of paragraphs (a) through (e) of subdivision (4) of subsection 1 of section 288.100.

11. (1) For the purposes of this chapter, a common paymaster arrangement will not exist unless approval has been obtained from the division. To receive a division-approved common paymaster arrangement, the related corporation designated to be the common paymaster for the related corporations must notify the division in writing at least thirty days prior to the beginning of the quarter in which the common paymaster reporting is to be effective. The common paymaster shall furnish the name and account number of each corporation in the related group that will be utilizing the one corporation as the common paymaster. The common paymaster shall also notify the division at least thirty days prior to any change in the related group of corporations or termination of the common paymaster arrangement. The common paymaster shall be responsible for keeping books and records for the payroll with respect to its own employees and the concurrently employed individuals of the related corporations. In order for remuneration to be eligible for the provisions applicable to a common paymaster, the individuals must be concurrently employed and the remuneration must be disbursed through the common paymaster. The common paymaster shall have the primary responsibility for remitting all required quarterly contribution and wage reports, contributions due with respect to the remuneration it disburses as the common paymaster and/or payments in lieu of contributions. The common paymaster shall compute the contributions due as though it were the sole employer of the concurrently employed individuals. If the common paymaster fails to remit the quarterly contribution and wage reports, contributions due and/or payments in lieu of contributions, in whole or in part, it shall remain liable for submitting the quarterly contribution and wage reports and the full amount of the unpaid portion of the contributions due and/or payments in lieu of contributions. In addition, each of the related corporations using the common paymaster shall be jointly and severally liable for submitting quarterly contribution and wage reports, its share of the contributions due and/or payments in lieu of contributions, penalties, interest and surcharges which are not submitted and/or paid by the common paymaster. All contributions due, payments in lieu of contributions, penalties, interest and surcharges which are not timely paid to the division under a common paymaster arrangement shall be subject to the collection provisions of this chapter.

(2) For the purposes of this subsection, "concurrent employment" means the simultaneous existence of an employment relationship between an individual and two or more related corporations for any calendar quarter in which employees are compensated through a common paymaster which is one of the related corporations, those corporations shall be considered one employing unit and be subject to the provisions of this chapter.

(3) For the purposes of this subsection, "related corporations" means that corporations shall be considered related corporations for an entire calendar quarter if they satisfy any one of the following tests at any time during the calendar quarter:

(a) The corporations are members of a "controlled group of corporations". The term "controlled group of corporations" means:

a. Two or more corporations connected through stock ownership with a common parent corporation, if the parent corporation owns stock possessing at least fifty percent of the total

combined voting power of all classes of stock entitled to vote or at least fifty percent of the total value of shares of all classes of stock of each of the other corporations; or

b. Two or more corporations, if five or less persons who are individuals, estates or trusts own stock possessing at least fifty percent of the total combined voting power of all classes of stock entitled to vote or at least fifty percent of the total value of shares of all classes of stock of each of the other corporations; or

(b) In the case of corporations which do not issue stock, at least fifty percent of the members of one corporation's board of directors are members of the board of directors of the other corporations; or

(c) At least fifty percent of one corporation's officers are concurrently officers of the other corporations; or

(d) At least thirty percent of one corporation's employees are concurrently employees of the other corporations.

288.100. EXPERIENCE RATING — EMPLOYER ACCOUNTS, CREDITS AND CHARGES. — 1. (1) The division shall maintain a separate account for each employer which is paying contributions, and shall credit each employer's account with all contributions which each employer has paid. A separate account shall be maintained for each employer making payments in lieu of contributions to which shall be credited all such payments made. The account shall also show payments due as provided in section 288.090. The division may close and cancel such separate account after a period of four consecutive calendar years during which such employer has had no employment in this state subject to contributions. Nothing in this law shall be construed to grant any employer or individuals in the employer's service prior claims or rights to the amounts paid by the employer into the fund either on the employer's own behalf or on behalf of such individuals. Except as provided in subdivision (4) of this subsection, regular benefits and that portion of extended benefits not reimbursed by the federal government paid to an eligible individual shall be charged against the accounts of the individual's base period employers who are paying contributions subject to the provisions of subdivision (4) of subsection 3 of section 288.090. With respect to initial claims filed after December 31, 1984, for benefits paid to an individual based on wages paid by one or more employers in the base period of the claim, the amount chargeable to each employer shall be obtained by multiplying the benefits paid by a ratio obtained by dividing the base period wages from such employer by the total wages appearing in the base period. Except as provided in paragraph (a) of this subdivision, the maximum amount of extended benefits paid to an individual and charged against the account of any employer shall not exceed one-half of the product obtained by multiplying the benefits paid by a ratio obtained by dividing the base period wages from such employer by the total wages appearing in the base period.

(a) The provisions of subdivision (1) of this subsection notwithstanding, with respect to weeks of unemployment beginning after December 31, 1978, the maximum amount of extended benefits paid to an individual and charged against the account of an employer which is an employer pursuant to subdivision (3) of subsection 1 of section 288.032 and which is paying contributions pursuant to subsections 1 and 2 of section 288.090 shall not exceed the calculated entitlement for the extended benefit claim based upon the wages appearing within the base period of the extended benefit claim.

(2) Beginning as of June 30, 1951, and as of June thirtieth of each year thereafter, any unassigned surplus in the unemployment compensation fund which is five hundred thousand dollars or more in excess of five-tenths of one percent of the total taxable wages paid by all employers for the preceding calendar year as shown on the division's records on such June thirtieth shall be credited on a pro rata basis to all employer accounts having a credit balance in the same ratio that the balance in each such account bears to the total of the credit balances subject to use for rate calculation purposes for the following year in all such accounts on the same date. As used in this subdivision, the term "unassigned surplus" means the amount by

which the total cash balance in the unemployment compensation fund exceeds a sum equal to the total of all employer credit account balances. The amount thus prorated to each separate employer's account shall for tax rating purposes be considered the same as contributions paid by the employer and credited to the employer's account for the period preceding the calculation date except that no such amount can be credited against any contributions due or that may thereafter become due from such employer.

(3) At the conclusion of each calendar quarter the division shall, within thirty days, notify each employer by mail of the benefits paid to each claimant by week as determined by the division which have been charged to such employer's account subsequent to the last notice.

(4) (a) No benefits based on wages paid for services performed prior to the date of any act for which a claimant is disqualified pursuant to section 288.050 shall be chargeable to any employer directly involved in such disqualifying act.

(b) In the event the deputy has in due course determined pursuant to paragraph (a) of subdivision (1) of subsection 1 of section 288.050 that a claimant quit his **or her** work with an employer for the purpose of accepting a more remunerative job with another employer which the claimant did accept and earn some wages therein, no benefits based on wages paid prior to the date of the quit shall be chargeable to the employer the claimant quit.

(c) In the event the deputy has in due course determined pursuant to paragraph (b) of subdivision (1) of subsection 1 of section 288.050 that a claimant quit temporary work in employment with an employer to return to the claimant's regular employer, then, only for the purpose of charging base period employers, all of the wages paid by the employer who furnished the temporary employment shall be combined with the wages actually paid by the regular employer as if all such wages had been actually paid by the regular employer. Further, charges for benefits based on wages paid for part-time work shall be removed from the account of the employer furnishing such part-time work if that employer continued to employ the individual claiming such benefits on a regular recurring basis each week of the claimant's claim to at least the same extent that the employer had previously employed the claimant and so informs the division within thirty days from the date of notice of benefit charges.

(d) No charge shall be made against an employer's account in respect to benefits paid an individual if the gross amount of wages paid by such employer to such individual is four hundred dollars or less during the individual's base period on which the individual's benefit payments are based. Further, no charge shall be made against any employer's account in respect to benefits paid any individual unless such individual was in employment with respect to such employer longer than a probationary period of twenty-eight days, if such probationary period of employment has been reported to the division as required by regulation.

(e) In the event the deputy has in due course determined pursuant to paragraph (c) of subdivision (1) of subsection 1 of section **[**228.050**]** **288.050** that a claimant is not disqualified, no benefits based on wages paid for work prior to the date of the quit shall be chargeable to the employer the claimant quit.

(f) Nothing in paragraph (b), (c), (d) or (e) of this subdivision shall in any way affect the benefit amount, duration of benefits or the wage credits of the claimant.

2. The division may prescribe regulations for the establishment, maintenance, and dissolution of joint accounts by two or more employers, and shall, in accordance with such regulations and upon application by two or more employers to establish such an account, or to merge their several individual accounts in a joint account, maintain such joint account as if it constituted a single employer's account.

3. The division may by regulation provide for the compilation and publication of such data as may be necessary to show the amounts of benefits not charged to any individual employer's account classified by reason no such charge was made and to show the types and amounts of transactions affecting the unemployment compensation fund.

288.110. TRANSFER OF EMPLOYER ACCOUNTS — SUCCESSOR EMPLOYER LIABILITIES. — Any individual, type of organization or employing unit which has acquired substantially all of the business of an employer, excepting in any such case any assets retained by such employer incident to the liquidation of his obligations, and in respect to which the division finds that immediately after such change such business of the predecessor employer is continued without interruption solely by the successor, shall stand in the position of such predecessor employer in all respects, including the predecessor's separate account, actual contribution and benefit experience, annual payrolls, and liability for current or delinquent contributions, interest and penalties. If two or more individuals, organizations, or employing units acquired at approximately the same time substantially all of the business of an employer (excepting in any such case any assets retained by such employer incident to the liquidation of his obligations) and in respect to which the division finds that immediately after such change all portions of such business of the predecessor are continued without interruption solely by such successors, each such individual, organization, or employing unit shall stand in the position of such predecessor with respect to the proportionate share of the predecessor's separate account, actual contribution and benefit experience and annual payroll as determined by the portion of the predecessor's taxable payroll applicable to the portion of the business acquired, and each such individual, organization or employing unit shall be liable for current or delinquent contributions, interest and penalties of the predecessor in the same relative proportion. Further, any successor under this section which was not an employer at the time the acquisition occurred, shall pay contributions for the balance of the current rate year at the same contribution rate as the contribution rate of the predecessor whether such rate is more or less than two and seven-tenths percent, provided there was only one predecessor or there were only predecessors with identical rates. If the predecessors' rates were not identical, the division shall calculate a rate as of the date of acquisition applicable to the successor for the remainder of the rate year, which rate shall be based on the combined experience of all predecessor employers. In the event that any successor was, prior to an acquisition, an employer, and there is a difference in the contribution rate established for such calendar year applicable to any acquired or acquiring employer, the division shall make a recalculation **[**as of the date of acquisition**]** of the contribution rate applicable to any successor employer based upon the combined experience of all predecessor and successor employers**[**, which**]** **as of the date of the acquisition, unless the date of the acquisition is other than the first day of the calendar quarter. If the date of any such acquisition is other than the first day of the calendar quarter, the division shall make the recalculation of the rate on the first day of the next calendar quarter after the acquisition. When the date of the acquisition is other than the first day of a calendar quarter, the successor employer shall use its rate for the calendar quarter in which the acquisition was made. The** revised contribution rate shall apply to employment after the **[**date of any such acquisition**]** **rate recalculation**. For this purpose a calculation date different from July first may be established. When the division has determined that a successor or successors stand in the position of a predecessor employer, the predecessor's liability shall be terminated as of the date of the acquisition.

288.120. EMPLOYER'S CONTRIBUTION RATE, HOW DETERMINED — EXCEPTION SHARED WORK PLAN, HOW COMPUTED — SURCHARGES FOR EMPLOYERS TAXED AT THE MAXIMUM RATE. — 1. On each June thirtieth, or within a reasonable time thereafter as may be fixed by regulation, the balance of an employer's experience rating account, except an employer participating in a shared work plan under section 288.500, shall determine his contribution rate for the following calendar year as determined by the following table:

Percentage the Employer's Experience Rating Account is to that Employer's Average Annual Payroll		
Equals or Exceeds	Less Than	Contribution Rate
— —	-12.0	6.0%

-12.0	-11.0	5.8%
-11.0	-10.0	5.6%
-10.0	-9.0	5.4%
-9.0	-8.0	5.2%
-8.0	-7.0	5.0%
-7.0	-6.0	4.8%
-6.0	-5.0	4.6%
-5.0	-4.0	4.4%
-4.0	-3.0	4.2%
-3.0	-2.0	4.0%
-2.0	-1.0	3.8%
-1.0	0	3.6%
0	2.5	2.7%
2.5	3.5	2.6%
3.5	4.5	2.5%
4.5	5.0	2.4%
5.0	5.5	2.3%
5.5	6.0	2.2%
6.0	6.5	2.1%
6.5	7.0	2.0%
7.0	7.5	1.9%
7.5	8.0	1.8%
8.0	8.5	1.7%
8.5	9.0	1.6%
9.0	9.5	1.5%
9.5	10.0	1.4%
10.0	10.5	1.3%
10.5	11.0	1.2%
11.0	11.5	1.1%
11.5	12.0	1.0%
12.0	12.5	0.9%
12.5	13.0	0.8%
13.0	13.5	0.6%
13.5	14.0	0.4%
14.0	14.5	0.3%
14.5	15.0	0.2%
15.0	— —	0.0%

2. Using the same mathematical principles used in constructing the table provided in subsection 1 of this section, the following table has been constructed. The contribution rate for the following calendar year of any employer participating in a shared work plan under section 288.500 during the current calendar year or any calendar year during a prior three-year period shall be determined from the balance in such employer's experience rating account as of the previous June thirtieth, or within a reasonable time thereafter as may be fixed by regulation, from the following table:

Percentage the Employer's Experience Rating Account is to that Employer's Average Annual Payroll		
Equals or Exceeds	Less Than	Contribution Rate
— —	-27.0	9.0%
-27.0	-26.0	8.8%
-26.0	-25.0	8.6%
-25.0	-24.0	8.4%
-24.0	-23.0	8.2%

-23.0	-22.0	8.0%
-22.0	-21.0	7.8%
-21.0	-20.0	7.6%
-20.0	-19.0	7.4%
-19.0	-18.0	7.2%
-18.0	-17.0	7.0%
-17.0	-16.0	6.8%
-16.0	-15.0	6.6%
-15.0	-14.0	6.4%
-14.0	-13.0	6.2%
-13.0	-12.0	6.0%
-12.0	-11.0	5.8%
-11.0	-10.0	5.6%
-10.0	-9.0	5.4%
-9.0	-8.0	5.2%
-8.0	-7.0	5.0%
-7.0	-6.0	4.8%
-6.0	-5.0	4.6%
-5.0	-4.0	4.4%
-4.0	-3.0	4.2%
-3.0	-2.0	4.0%
-2.0	-1.0	3.8%
-1.0	0	3.6%
0	2.5	2.7%
2.5	3.5	2.6%
3.5	4.5	2.5%
4.5	5.0	2.4%
5.0	5.5	2.3%
5.5	6.0	2.2%
6.0	6.5	2.1%
6.5	7.0	2.0%
7.0	7.5	1.9%
7.5	8.0	1.8%
8.0	8.5	1.7%
8.5	9.0	1.6%
9.0	9.5	1.5%
9.5	10.0	1.4%
10.0	10.5	1.3%
10.5	11.0	1.2%
11.0	11.5	1.1%
11.5	12.0	1.0%
12.0	12.5	0.9%
12.5	13.0	0.8%
13.0	13.5	0.6%
13.5	14.0	0.4%
14.0	14.5	0.3%
14.5	15.0	0.2%
15.0	— —	0.0%

3. Notwithstanding the provisions of subsection 2 of section 288.090, any employer participating in a shared work plan under section 288.500, who has not had at least twelve calendar months immediately preceding the calculation date throughout which his account could have been charged with benefits shall have a contribution rate equal to the highest contribution

rate in the table in subsection 2 of this section, until such time as his account has been chargeable with benefits for the period of time sufficient to enable him to qualify for a computed rate on the same basis as other employers participating in shared work plans.

4. Employers who have been taxed at the maximum rate pursuant to this section for two consecutive years shall have a surcharge of one-quarter percent added to their contribution rate calculated pursuant to this section. In the event that an employer remains at the maximum rate pursuant to this section for a third or subsequent year, an additional surcharge of one-quarter percent shall be annually assessed, but in no case shall this surcharge cumulatively exceed one percent. Additionally, if an employer continues to remain at the maximum rate pursuant to this section an additional surcharge of one-half percent shall be assessed. In no case shall the total surcharge assessed to any employer exceed one and one-half percent in any given year.

288.121. RATE INCREASED WHEN AVERAGE BALANCE IN FUND IS LESS THAN CERTAIN AMOUNT, HOW — RATE CALCULATIONS FOR CERTAIN YEARS. — **1.** On October first of each calendar year, if the average balance, less any federal advances, of the unemployment compensation trust fund of the four preceding quarters (September thirtieth, June thirtieth, March thirty-first and December thirty-first of the preceding calendar year) is less than four hundred **fifty** million dollars, then each employer's contribution rate calculated for the four calendar quarters of the succeeding calendar year shall be increased by the percentage determined from the following table:

Balance in Trust Fund		
Less Than	Equals or Exceeds	Percentage of Increase
[$400,000,000**] $450,000,000**	**[**$350,000,000**] $400,000,000**	10%
[$350,000,000**] $400,000,000**	**[**$300,000,000**] $350,000,000**	20%
[$300,000,000**] $350,000,000**		30%

[Notwithstanding the table in this section, each employer's contribution rate calculated for the four calendar quarters of calendar year 1994 shall be increased by forty percent, instead of thirty percent, as previously indicated in the table in this section. After the forty percent increase, each employer's contribution rate for the four calendar quarters of calendar year 1994 shall be increased by adding three-tenths of one percent.**] For calendar years 2005, 2006, and 2007, the contribution rate of any employer who is paying the maximum contribution rate shall be increased by forty percent, instead of thirty percent as previously indicated in the table in this section.**

2. For calendar years 2005, 2006, and 2007, an employer's total contribution rate shall equal the employer's contribution rate plus a temporary debt indebtedness assessment equal to the amount to be determined in subdivision 6 of subsection 2 of section 288.330 added to the contribution rate plus the increase authorized under subsection 1 of this section. Any monies overcollected beyond the actual administrative, interest and principal repayment costs for the credit instruments used shall be deposited into the state unemployment insurance trust fund and credited to the employer's experience account. The temporary debt indebtedness assessment shall expire upon the last day of the fourth calendar quarter of 2007.

288.122. IF CASH IN FUND EXCEEDS CERTAIN AMOUNTS, CONTRIBUTION RATE TO DECREASE, AMOUNT — TABLE — EFFECTIVE WHEN. — On October first of each calendar year, if the average balance, less any federal advances, of the unemployment compensation trust fund of the four preceding quarters (September thirtieth, June thirtieth, March thirty-first and December thirty-first of the preceding calendar year) is more than five hundred million dollars, then each employer's contribution rate calculated for the four calendar quarters of the succeeding calendar year shall be decreased by the percentage determined from the following table:

Balance in Trust Fund		
More Than	But Less Than	Percentage of Decrease
[$500,000,000	$600,000,000**]**	
$600,000,000	**$750,000,000**	7%
[$600,000,000**]**		
$750,000,000		12%

Notwithstanding the table in this section, if the balance in the unemployment insurance compensation trust fund as calculated in this section is more than **[**six**]** **seven** hundred **fifty** million dollars, the percentage of decrease of the employer's contribution rate calculated for the four calendar quarters of the succeeding calendar year shall be no greater than ten percent for any employer whose calculated contribution rate under section 288.120 is six percent or greater.

288.128. ADDITIONAL ASSESSMENT FOR INTEREST ON FEDERAL ADVANCEMENTS AND PROCEEDS OF CREDIT INSTRUMENTS, PROCEDURE — EXCESS COLLECTIONS, USE OF — CREDIT INSTRUMENT AND FINANCING AGREEMENT REPAYMENT SURCHARGE. — 1. In addition to all other contributions due under this chapter, if the fund is utilizing moneys advanced by the federal government under the provisions of 42 U.S.C.A., section 1321 pursuant to section 288.330, **or if the fund is not utilizing moneys advanced by the federal government, then from the proceeds of credit instruments issued under section 288.330, or from the moneys advanced under financial agreements under subdivision (17) of subsection 2 of section 288.330, or a combination of credit instruments proceeds and moneys advanced under financial agreements,** each employer shall be assessed an amount solely for the payment of interest due on such federal advancements**, or if the fund is not utilizing moneys advanced by the federal government, or in the case of issuance of credit instruments for the payment of the principal, interest, and administrative expenses related to such credit instruments, or in the case of financial agreements for the payment of principal, interest, and administrative expenses related to such financial agreements, or in the case of a combination of credit instruments and financial agreements for the payment of principal, interest, and administrative expenses for both.** The rate shall be determined by dividing the interest due **on federal advancements or if the fund is not utilizing moneys advanced by the federal government, then the principal, interest, and administrative expenses related to credit instruments, or the principal, interest, and administrative expenses related to financial agreements under subdivision (17) of subsection 2 of section 288.330, or the principal, interest, and administrative expenses related to a combination of credit instruments and financial agreements** by ninety-five percent of the total taxable wages paid by all Missouri employers in the preceding calendar year. Each employer's proportionate share shall be the product obtained by multiplying such employer's total taxable wages for the preceding calendar year by the rate specified in this section. Each employer shall be notified of the amount due under this section by June thirtieth of each year and such amount shall be considered delinquent thirty days thereafter. The moneys collected from each employer for the payment of interest due on federal advances**, or if the fund is not utilizing moneys advanced by the federal government, then the payment of principal, interest, and administrative expenses related to credit instruments, or the payment of the principal, interest, and administrative expenses related to financial agreements under subdivision (17) of subsection 2 of section 288.330, or the payment of the principal, interest, and administrative expenses related to a combination of credit instruments and financial agreements,** shall be deposited in the special employment security fund.

2. If on December thirty-first of any year the money collected under this section exceeds the amount of interest due on federal advancements by one hundred thousand dollars or more, then each employer's experience rating account shall be credited with an amount which bears the same ratio to the excess moneys collected under this section as that employer's payment collected

under this section bears to the total amount collected under this section. Further, if on December thirty-first of any year the moneys collected under this section exceed the amount of interest due on the federal advancements by less than one hundred thousand dollars, the balance shall be transferred from the special employment security fund to the Secretary of the Treasury of the United States to be credited to the account of this state in the unemployment trust fund.

3. In addition to all other contributions due under this chapter, if the fund is utilizing moneys from the proceeds of credit instruments issued under section 288.330, or from the moneys advanced under financial agreements under subdivision (17) of subsection 2 of section 288.330, or a combination of credit instrument proceeds and moneys advanced under financial agreements each employer shall be assessed a "credit instrument and financing agreement repayment surcharge." The total of such surcharge shall be calculated as an amount up to 150% of the amount required in the 12 month period following the due date for the payment of such surcharge for the payment of the principal, interest, and administrative expenses related to such credit instruments, or in the case of financial agreements for the payment of principal, interest, and administrative expenses related to such financial agreements, or in the case of a combination of credit instruments and financial agreements for the payment of principal, interest, and administrative expenses for both. Each employer's proportionate share shall be the product obtained by multiplying the total statewide credit instrument and financing agreement repayment surcharge by a number obtained by dividing the employer's total taxable wages for the prior year by the total taxable wages in the state for the prior year. Each employer shall be notified of the amount due under this section by (January)thirtieth of each year and such amount shall be considered delinquent thirty days thereafter.

288.175. DEBTOR'S FEDERAL INCOME TAX REFUND MAY BE INTERCEPTED — DEBT DEFINED — DEBTOR DEFINED. — 1. Notwithstanding any other provisions to the contrary, the division may collect any debt by interception of the debtor's federal income tax refund, in the manner and to the extent allowed by federal law.

2. "Debt" shall mean any established overpayment or sum past due that is legally owed and enforceable under the Missouri employment security law, which has accrued through contract or operation of law and which has become final under state law and remains uncollected.

3. "Debtor" shall mean any individual, sole proprietorship, partnership, corporation, limited liability company, or other legal entity owing a debt.

288.290. UNEMPLOYMENT COMPENSATION FUND, ESTABLISHED — ADMINISTRATION, DEPOSIT OF FUNDS — PURPOSES — ERRONEOUS COLLECTION OF INTEREST OR PENALTIES. — 1. There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an "Unemployment Compensation Fund", which shall be administered by the division exclusively for the purposes of this law. This fund shall consist of:

(1) All contributions and payments in lieu of contributions collected under this law;

(2) Interest earned upon any moneys in the fund;

(3) Any property or securities acquired through the use of moneys belonging to the fund;

(4) All earnings of such property or securities;

(5) All voluntary contributions permitted under the law; and

(6) All funds set aside or appropriated by the Congress of the United States or any federal agency, to be deposited to the fund. All moneys in the funds shall be mingled and undivided, except that all money credited to this state's account in the Unemployment Trust Fund pursuant to Section 903 of the Social Security Act, as amended, and which has been appropriated for expenses of administration, shall be used only for the purposes set out in subsection 5 of this section and shall not be included in the cash balance in the unemployment compensation fund for the purposes of sections 288.100 and 288.113 to 288.126.

2. The director shall designate a treasurer and custodian of the fund and he **or she** shall administer the fund and shall issue his **or her** warrants upon it in accordance with such regulations as the director shall prescribe. He **or she** shall maintain within the fund three separate accounts:

(1) A clearing account;

(2) An unemployment trust fund account; and

(3) A benefit account.

To ensure that unemployment compensation trust fund moneys are utilized only for the purpose authorized, no other fund shall be established with increased employer taxes that are offset by a reduction of unemployment contributions, except for the special employment security fund created in section 288.310.

3. All moneys payable to the fund, upon their receipt by the division, shall immediately be deposited in the clearing account. Refunds of contributions or payments made necessary under the provisions of sections 288.140 and 288.340 may be paid from the clearing account or the benefit account. After clearance, all moneys in the clearing account shall be immediately deposited with the Secretary of the Treasury of the United States of America to the credit of the account of this state in the Unemployment Trust Fund, established and maintained pursuant to Section 904 of the Social Security Act, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of state moneys in the possession or custody of the state treasurer to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from the Missouri account in the federal Unemployment Trust Fund. Except as otherwise provided, moneys in the clearing and benefit accounts may be deposited in any bank or public depositary in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. Moneys in the clearing and benefit accounts shall not be commingled with other state funds but shall be maintained in separate accounts on the books of the depositary bank. All funds required by this law to be deposited in any state depositary shall be secured by such depositary to the same extent and in the same manner as is or may hereafter be required by section 30.270, RSMo, and all the amendments thereto; provided, that the division shall do those acts directed to be done by the governor, attorney general and state treasurer, or any of them, under section 30.270, RSMo, which are not inconsistent with the other provisions of this law. Collateral pledged for this purpose shall be kept separate and distinct from any collateral pledged to secure other funds of the state, or, if combined, shall be first used to satisfy and make whole the accounts herein established. The treasurer shall give a separate bond conditioned upon the faithful performance of his **or her** duties as custodian of the fund in an amount not to exceed twenty-five thousand dollars and in the form prescribed by law or approved by the attorney general. Premiums for such bonds shall be paid from the administration fund. All sums recovered for losses sustained by the fund shall be deposited therein.

4. Moneys shall be requisitioned from the Missouri account in the federal Unemployment Trust Fund solely for the payment of benefits or for refunds of contributions or payments in lieu of contributions in accordance with regulations prescribed by the director, except that money credited to this state's account pursuant to Section 903 of the Social Security Act, as amended, shall be used exclusively as provided in subsection 5 of this section. The director shall from time to time requisition from the federal Unemployment Trust Fund such amounts, not exceeding the amounts standing to the Missouri account therein, as he **or she** deems necessary for the payment of benefits and refunds for a reasonable future period. Upon its receipt the treasurer shall deposit such money in the benefit account and shall issue his **or her** warrants for the payment of benefits solely from such benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of moneys belonging to this state in their custody. All warrants issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the countersignature of the director or other duly

authorized division representative. Any balance of moneys requisitioned from the federal Unemployment Trust Fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the director, shall be redeposited with the Secretary of the Treasury of the United States of America to the credit of the Missouri account in the federal Unemployment Trust Fund as provided in subsection 3 of this section.

5. (1) Money credited to the account of this state in the Unemployment Trust Fund by the Secretary of the Treasury of the United States of America pursuant to Section 903 of the Social Security Act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this law pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned as needed after the enactment of an appropriation law which:

(a) Specifies the purpose for which such money is appropriated and the amounts appropriated therefor;

(b) Limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law; and

(c) Limits the amount which may be obligated during a twelve-month period beginning on July first and ending on the next June thirtieth to an amount which does not exceed the amount by which the aggregate of the amount transferred to the account of this state in the Unemployment Trust Fund pursuant to subsections (a) and (b) of Section 903 of the Social Security Act, as amended, exceeds the aggregate of the amounts used by this state pursuant to this subsection and charged against the amounts transferred to the account of this state in the Unemployment Trust Fund.

(2) The use of the money referred to in subdivision (1) of this subsection shall be accounted for in accordance with standards established by the Secretary of Labor.

(3) For purposes of subdivision (1) of this subsection, amounts used by this state for administration shall be chargeable against transferred amounts at the exact time the obligation is entered into.

(4) Money credited to the account of this state pursuant to Section 903 of the Social Security Act, as amended, may not be withdrawn or used except for the payment of benefits and for the payment of expenses for the administration of this law and of public employment offices pursuant to this subsection.

(5) Money appropriated as provided under subdivision (1) of this subsection for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under such appropriation and, upon requisition, shall be deposited in the unemployment compensation administration fund from which such payments shall be made. Money so deposited shall, until expended, remain a part of the unemployment compensation fund and, if it will not be expended, shall be returned promptly to the account of this state in the Unemployment Trust Fund.

(6) Money credited to the account of the state in the federal Unemployment Trust Fund by the Secretary of the Treasury of the United States of America pursuant to Title 42, Section 903 of the Social Security Act with respect to the federal fiscal years 1999, 2000 and 2001, shall be used solely for the administration of the unemployment compensation program.

6. The provisions of subsections 1, 2, 3, 4, and 5 of this section, to the extent that they relate to the federal Unemployment Trust Fund, shall be operative only so long as such federal Unemployment Trust Fund continues to exist and so long as the Secretary of the Treasury of the United States of America continues to maintain a separate book account of all funds deposited therein by contributions from employers of this state for benefit purposes, and by money credited pursuant to Section 903 of the Social Security Act, as amended, together with a proportionate share of the earnings apportioned to the Missouri account of such federal Unemployment Trust Fund, from which no other state is permitted to make or authorize withdrawals. If and when

such Unemployment Trust Fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein belonging to the unemployment compensation fund of this state shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties or securities in a manner approved by the director in accordance with the provisions of this law; provided, that such moneys shall be invested in the following readily marketable classes of securities: bonds or other interest-bearing obligations of the United States of America, or securities on which the payment of principal and interest are guaranteed by the United States of America, and bonds or other interest-bearing obligations of the state of Missouri; and provided, further, that such investments shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under the direction of the director.

7. Notwithstanding any other provision of this law, any interest or penalties found to have been erroneously collected and which is ordered to be refunded shall, if paid into the unemployment compensation fund, be refunded out of the unemployment compensation fund and, if paid into the special employment security fund, shall be refunded out of the special employment security fund; except that, in the event any interest and penalties paid into the unemployment compensation fund shall be transferred to the special employment security fund, the refund of any such interest and penalties shall be made from the special employment security fund.

288.310. SPECIAL EMPLOYMENT SECURITY FUND — USE OF FUNDS — AMOUNTS TRANSFERRED BETWEEN FUNDS, WHEN. — 1. There is hereby created in the state treasury a special fund to be known as the "Special Employment Security Fund". All interest and penalties collected under the provisions of this law, including moneys collected pursuant to section 288.128 for the payment of interest due on federal advances received pursuant to section 288.330, **or subject to appropriation, or supplemental appropriation, by the general assembly, amounts received pursuant to the credit instrument and financing agreement repayment surcharge pursuant to section 288.128 related to the payment of principal, interest, and administrative expenses related to credit instruments issued under section 288.330, or the payment of the principal, interest, and administrative expenses related to financial agreements under subdivision (17) of subsection 2 of section 288.330, or the payment of the principal, interest, and administrative expenses related to a combination of credit instruments and financial agreements** shall be paid into this fund. The moneys collected pursuant to section 288.128 shall be used **[**exclusively**]** for the payment of interest due on federal advances received pursuant to section 288.330. **Amounts received pursuant to the credit instrument and financing agreement repayment surcharge pursuant to subsection 3 of section 288.128 shall be used, following appropriation by the general assembly and exclusively for payment of principal, interest, and administrative expenses related to credit instruments issued under that section, or the payment of principal, interest, and administrative expenses related to financial agreements under subdivision (17) of subsection 2 of section 288.330, or the payment of the principal, interest, and administrative expenses related to a combination of credit instruments and financial agreements.** Such moneys, except for moneys collected pursuant to section 288.128, shall not be expended or available for expenditure in any manner which would permit their substitution for, or a corresponding reduction in, federal funds which would in the absence of such money be available to finance expenditures for the administration of the employment security law, but nothing in this section shall prevent such moneys, except for moneys collected pursuant to section 288.128, from being used as a revolving fund, to cover expenditures, necessary and proper under the law, for which federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds when received. Subject to the

approval of the director of the department of labor and industrial relations, the moneys in this fund, except for moneys collected pursuant to section 288.128, shall be used by the department of labor and industrial relations for the payment of costs of administration which are found not to have been properly and validly chargeable against federal grants or other funds received for or in the unemployment compensation administration fund. Such moneys, except for moneys collected pursuant to section 288.128, shall be available either to satisfy the obligations incurred by the department of labor and industrial relations for the division directly or by requesting the board of fund commissioners to transfer the required amount from the special employment security fund to the unemployment compensation administration fund. The board of fund commissioners shall upon receipt of a written request of the department of labor and industrial relations make any such transfer. No expenditures of this fund or transfer herein provided, except for moneys collected pursuant to section 288.128, shall be made unless and until the director of the department of labor and industrial relations finds that no other funds are available or can properly be used to finance such expenditures, except that as hereinafter authorized expenditures from such fund may be made for the purpose of acquiring lands and buildings, or for the erection of buildings on lands so acquired, which are deemed necessary by the director of the department of labor and industrial relations for the proper administration of this law. The director of the department of labor and industrial relations shall order the transfer of such funds or the payment of any such obligation and such funds shall be paid by the state treasurer on requisitions drawn by the director of the department of labor and industrial relations directing the state auditor to issue his or her warrant therefor. Any such warrant shall be drawn by the state auditor based upon bills of particulars and vouchers certified by an officer or employee designated by the director of the department of labor and industrial relations. Such certification shall among other things include a duly certified copy of the director of the department of labor and industrial relations' findings hereinbefore referred to. The moneys in this fund, except for moneys collected pursuant to section 288.128, are hereby specifically made available to replace, within a reasonable time, any moneys received by this state pursuant to section 302 of the Federal Social Security Act (42 U.S.C.A. Sec. 502), as amended, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those necessary for the proper administration of the employment security law. The moneys in this fund shall be continuously available to the director of the department of labor and industrial relations for expenditure in accordance with the provisions of this section and shall not lapse at any time or be transferred to any other fund except as herein provided.

2. The director of the department of labor and industrial relations, subject to the approval of the board of public buildings, is authorized and empowered to use all or any part of the funds in the special employment security fund, except for moneys collected pursuant to section 288.128, for the purpose of acquiring suitable office space for the division by way of purchase, lease, contract or in any other manner, including the right to use such funds or any part thereof to purchase land and erect thereon such buildings as he or she shall deem necessary or to assist in financing the construction of any building erected by the state of Missouri or any of its agencies wherein available space will be provided for the division under lease or contract between the department of labor and industrial relations and the state of Missouri or such other agency. The director of the department of labor and industrial relations may transfer from the unemployment compensation administration fund to the special employment security fund amounts not exceeding funds specifically available to the department of labor and industrial relations for that purpose, equivalent to the fair reasonable rental value of any land and buildings acquired for its use until such time as the full amount of the purchase price of such land and buildings and such cost of repair and maintenance thereof as was expended from the special employment security fund has been returned to such fund.

3. The director of the department of labor and industrial relations may also transfer from the unemployment compensation administration fund to the special employment security fund amounts not exceeding funds specifically available to the department of labor and industrial

relations for that purpose, equivalent to the fair reasonable rental value of space used by the department of labor and industrial relations in any building erected by the state of Missouri or any of its agencies until such time as the department of labor and industrial relations' proportionate amount of the purchase price of such building and the department of labor and industrial relations' proportionate amount of such costs of repair and maintenance thereof as was expended from the special employment security fund has been returned to such fund.

288.330. STATE LIABILITY FOR BENEFITS LIMITED, AUTHORITY FOR APPLICATION AND REPAYMENT OF FEDERAL ADVANCES — BOARD OF UNEMPLOYMENT FUND FINANCING CREATED, DUTIES, REQUIREMENTS, POWERS — DISPOSITION OF UNOBLIGATED FUNDS. — 1. Benefits shall be deemed to be due and payable only to the extent that moneys are available to the credit of the unemployment compensation fund and neither the state nor the division shall be liable for any amount in excess of such sums. **[**Neither the state of Missouri, nor any person or agency acting for it, may under any circumstance, by issuing bonds or otherwise borrow money from any source whatsoever to pay benefits hereunder, except as provided in 42 U.S.C.A. Section 1321.**]** The governor is authorized to apply for an advance to the state unemployment fund and to accept the responsibility for the repayment of such advance **[**in accordance with the conditions specified in Title XII of the Social Security Act, as amended,**]** in order to secure to this state and its citizens the advantages available under the provisions of **[**such title**]** **federal law.**

2. (1) The purpose of this subsection is to provide a method of providing funds for the payment of unemployment benefits or maintaining an adequate fund balance in the unemployment compensation fund, and as an alternative to borrowing or obtaining advances from the federal unemployment trust fund or for refinancing those loans or advances.

(2) For the purposes of this subsection, "credit instrument" means any type of borrowing obligation issued under this section, including any bonds, commercial line of credit note, tax anticipation note or similar instrument.

(3) (a) There is hereby created for the purposes of implementing the provisions of this subsection a body corporate and politic to be known as the "Board of Unemployment Fund Financing". The powers of the board shall be vested in five board members who shall be the governor, lieutenant governor, attorney general, director of the department of labor, and the commissioner of administration. The board shall have all powers necessary to effectuate its purposes including, without limitation, the power to provide a seal, keep records of its proceedings, provide for professional services. The governor shall serve as chair, the lieutenant governor shall serve as vice chair, and the commissioner of administration shall serve as secretary. Staff support for the board shall be provided by the commissioner of administration;

(b) Notwithstanding the provisions of any other law to the contrary:

a. No officer or employee of this state shall be deemed to have forfeited or shall forfeit his or her office or employment by reason of his or her acceptance of an appointment as a board member or for his or her service to the board;

b. Board members shall receive no compensation for the performance of their duties under this subsection, but each commissioner shall be reimbursed from the funds of the commission for his or her actual and necessary expenses incurred in carrying out his or her official duties under this subsection.

(c) In the event that any of the board members or officers of the board whose signatures or facsimile signatures appear on any credit instrument shall cease to be board members or officers before the delivery of such credit instrument, their signatures or facsimile signatures shall be valid and sufficient for all purposes as if such board members or officers had remained in office until delivery of such credit instrument.

(d) Neither the board members executing the credit instruments of the board nor any other board members shall be subject to any personal liability or accountability by reason of the issuance of the credit instruments.

(4) The board is authorized, by offering for public negotiated sale, to issue, sell, and deliver credit instruments, bearing interest at a fixed or variable rate as shall be determined by the board, which shall mature no later than three years after issuance, in the name of the board in an amount determined by the board not to exceed a total of four hundred fifty million dollars, less the principal amount of any financing agreement entered into under subdivision (17) of this subsection, for the purposes set forth in subdivision (1) of this subsection. Such credit instrument may only be issued upon the approval of a resolution authorizing such issuance by a simple majority of the members of the board, with no other proceedings required. No credit instrument may be outstanding hereunder after January 15, 2008.

(5) The board shall provide for the payment of the principal of the credit instruments, any redemption premiums, the interest on the credit instruments, and the costs attributable to the credit instruments being issued or outstanding as provided in this subsection and in section 288.310. Unless the board directs otherwise, the credit instrument shall be repaid in the same time frame and in the same amounts as would be required for loans issued pursuant to 42 U.S.C. Section 1321; however, in no case shall credit instruments be outstanding for more than three years and further provided that no credit instruments shall be outstanding hereunder after January 15, 2008.

(6) The board may irrevocably pledge money received from the credit instrument and financing agreement repayment surcharge under subsection 3 of section 288.128, and other money legally available to it, which is deposited in an account created for credit instrument repayment in the special employment security fund, provided that the general assembly has first appropriated moneys received from such surcharge and other moneys deposited in such account for the payment of credit instruments.

(7) Credit instruments issued under this section shall not constitute debts of this state or of the board or any agency, political corporation, or political subdivision of this state and are not a pledge of the faith and credit of this state, the board or of any of those governmental entities and shall not constitute an indebtedness within the meaning of any constitutional or statutory limitation upon the incurring of indebtedness. The credit instruments are payable only from revenue provided for under this chapter. The credit instruments shall contain a statement to the effect that:

(a) Neither the state nor the board nor any agency, political corporation, or political subdivision of the state shall be obligated to pay the principal or interest on the credit instruments except as provided by this section; and

(b) Neither the full faith and credit nor the taxing power of the state nor the board nor any agency, political corporation, or political subdivision of the state is pledged to the payment of the principal, premium, if any, or interest on the credit instruments.

(8) The board pledges and agrees with the owners of any credit instruments issued under this section that the state will not limit or alter the rights vested in the board to fulfill the terms of any agreements made with the owners or in any way impair the rights and remedies of the owners until the credit instruments are fully discharged.

(9) The board may prescribe the form, details, and incidents of the credit instruments and make such covenants that it its judgment are advisable or necessary to properly secure the payment thereof. If such credit instruments shall be authenticated by the bank or trust company acting as registrar for such by the manual signature of a duly authorized officer or employee thereof, the duly authorized officers of the board executing and attesting such credit instruments, may all do so by facsimile signature provided such signatures have been duly filed as provided in the uniform facsimile signature of public officials law, sections 105.273 to 105.278 RSMo, when duly authorized by resolution of the

board, and the provisions of section 108.175, RSMo, shall not apply to such credit instruments. The board may provide for the flow of funds and the establishment and maintenance of separate accounts within the special employment security fund, including the interest and sinking account, the reserve account, and other necessary accounts, and may make additional covenants with respect to the credit instruments in the documents authorizing the issuance of credit instruments including refunding credit instruments. The resolutions authorizing the issuance of credit instruments may also prohibit the further issuance of credit instruments or other obligations payable from appropriated moneys or may reserve the right to issue additional credit instruments to be payable from appropriated moneys on a parity with or subordinate to the lien and pledge in support of the credit instruments being issued and may contain other provisions and covenants as determined by the board, provided that any terms, provisions or covenants provided in any resolution of the board shall not be inconsistent with the provisions of this section.

(10) The board may issue credit instruments to refund all or any part of the outstanding credit instruments issued under this section including matured but unpaid interest. As with other credit instruments issued under this section, such refunding credit instruments may bear interest at a fixed or variable rate as determined by the board. No such refunding credit instruments may be outstanding for more than three years or after January 15, 2008.

(11) The credit instruments issued by the board, any transaction relating to the credit instruments, and profits made from the sale of the credit instruments are free from taxation by the state or by any municipality, court, special district, or other political subdivision of the state.

(12) As determined necessary by the board the proceeds of the credit instruments less the cost of issuance shall be placed in the state's unemployment compensation fund and may be used for the purposes for which that fund may otherwise be used. If those net proceeds are not placed immediately in the unemployment compensation fund they shall be held in the special employment security fund in an account designated for that purpose until they are transferred to the unemployment compensation fund provided that the proceeds of refunding credit instruments may be placed in an escrow account or such other account or instrument as determined necessary by the board.

(13) The board may enter into any contract or agreement deemed necessary or desirable to effectuate cost effective financing hereunder. Such agreements may include credit enhancement, credit support, or interest rate agreements including, but not limited to, arrangements such as municipal bond insurance; surety bonds; tax anticipation notes; liquidity facilities; forward agreements; tender agreements; remarketing agreements; option agreements; interest rate swap, exchange, cap, lock or floor agreements; letters of credit; and purchase agreements. Any fees or costs associated with such agreements shall be deemed administrative expenses for the purposes of calculating the credit instrument and financing agreement repayment surcharge under subsection 3 of section 288.128. The board, with consideration of all other costs being equal, shall give preference to Missouri headquartered financial institutions, or those out-of-state-based financial institutions with at least one hundred Missouri employees.

(14) To the extent this section conflicts with other laws the provisions of this section prevail. This section shall not be subject to the provisions of sections 23.250 to 23.298, RSMo.

(15) If the United States Secretary of Labor holds that a provision of this subsection or of any provision related to the levy or use of the credit instrument and financial agreement repayment surcharge does not conform with a federal statute or would result in the loss to the state of any federal funds otherwise available to it the board, in cooperation with the department of labor and industrial relations, may administer this subsection, and other provisions related to the credit instrument and financial agreement

repayment surcharge, to conform with the federal statute until the general assembly meets in its next regular session and has an opportunity to amend this subsection or other sections, as applicable.

(16) (a) As used in this subdivision the term "lender" means any state or national bank.

(b) The board is authorized to enter financial agreements with any lender for the purposes set forth in subdivision (1) of this subsection, or to refinance other financial agreements in whole or in part, upon the approval of the simple majority of the members of the board of a resolution authorizing such financial agreements, with no other proceedings required. The total amount of the outstanding obligation under all such agreements shall not exceed the difference of four hundred fifty million dollars and the principal amount of credit instruments issued under this subsection. In no instance shall the outstanding obligation under any financial agreement continue for more than three years, and no such financial agreement, whether entered into for refinancing purposes or otherwise, shall be outstanding after January 15, 2008. Repayment of obligations to lenders shall be made from the special employment security fund, section 288.310, subject to appropriation by the general assembly.

(c) Financial agreements entered into under this subdivision shall not constitute debts of this state or of the board or any agency, political corporation, or political subdivision of this state and are not a pledge of the faith and credit of this state, the board or of any of those governmental entities and shall not constitute an indebtedness within the meaning of any constitutional or statutory limitation upon the incurring of indebtedness. The financial agreements are payable only from revenue provided for under this chapter. The financial agreements shall contain a statement to the effect that:

a. Neither the state nor the board nor any agency, political corporation, or political subdivision of the state shall be obligated to pay the principal or interest on the financial agreements except as provided by this section; and

b. Neither the full faith and credit nor the taxing power of the state nor the board nor any agency, political corporation, or political subdivision of the state is pledged to the payment of the principal, premium, if any, or interest on the financial agreements.

(d) Neither the board members executing the financial agreements nor any other board members shall be subject to any personal liability or accountability by reason of the execution of such financial agreements.

(e) The board may prescribe the form, details and incidents of the financing agreements and make such covenants that in its judgment are advisable or necessary to properly secure the payment thereof provided that any terms, provisions or covenants provided in any such financing agreement shall not be inconsistent with the provisions of this section. If such financing agreements shall be authenticated by the bank or trust company acting as registrar for such by the manual signature of a duly authorized officer or employee thereof, the duly authorized officers of the board executing and attesting such financing agreements, may all do so by facsimile signature provided such signatures have been duly filed as provided in the uniform facsimile signature of public officials law, sections 105.273 to 105.278 RSMo, when duly authorized by resolution of the board and the provisions of section 108.175, RSMo, shall not apply to such financing agreements.

(17) Nothing in this chapter shall be construed to prohibit the officials of the state from borrowing from the government of the United States in order to pay unemployment benefits under subsection 1 of this section or otherwise.

(18) The commission may issue credit instruments to refund all or any part of the outstanding borrowing issued under this section including matured but unpaid interest.

(19) The credit instruments issued by the commission, any transaction relating to the credit instruments, and profits made from the issuance of credit are free from taxation by

the state or by any municipality, court, special district, or other political subdivision of the state.

3. In event of the suspension of this law, any unobligated funds in the unemployment compensation fund, and returned by the United States Treasurer because such Federal Social Security Act is inoperative, shall be held in custody by the treasurer and under supervision of the division until the legislature shall provide for the disposition thereof. In event no disposition is made by the legislature at the next regular meeting subsequent to suspension of said law, then all unobligated funds shall be returned ratably to those who contributed thereto.

288.380. VOID AGREEMENTS — OFFENSES, PENALTIES — DEDUCTIONS OF SUPPORT OBLIGATIONS AND UNCOLLECTED OVERISSUANCE OF FOOD STAMPS — OFFSET FOR OVERPAYMENT OF BENEFITS BY OTHER STATES, WHEN — DEFINITIONS. — 1. Any agreement by a worker to waive, release, or commute such worker's rights to benefits or any other rights pursuant to this chapter, or pursuant to an employment security law of any other state or of the federal government shall be void. Any agreement by a worker to pay all or any portion of any contributions required shall be void. No employer shall directly or indirectly make any deduction from wages to finance the employer's contributions required from him or her, or accept any waiver of any right pursuant to this chapter by any individual in his or her employ.

2. No employing unit or any agent of an employing unit or any other person shall make a false statement or representation knowing it to be false, nor shall knowingly fail to disclose a material fact to prevent or reduce the payment of benefits to any individual, nor to avoid becoming or remaining an employer, nor to avoid or reduce any contribution or other payment required from any employing unit, nor shall willfully fail or refuse to make any contributions or payments nor to furnish any required reports nor to produce or permit the inspection or copying of required records. Each such requirement shall apply regardless of whether it is a requirement of this chapter, of an employment security law of any other state or of the federal government.

3. No person shall make a false statement or representation knowing it to be false or knowingly fail to disclose a material fact, to obtain or increase any benefit or other payment pursuant to this chapter, or under an employment security law of any other state or of the federal government either for himself or herself or for any other person.

4. No person shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in such person's power so to do in obedience to a subpoena of the director, the commission, an appeals tribunal, or any duly authorized representative of any one of them.

5. No individual claiming benefits shall be charged fees of any kind in any proceeding pursuant to this chapter by the division, or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the division or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the division.

6. No employee of the division or any person who has obtained any list of applicants for work or of claimants for or recipients of benefits pursuant to this chapter shall use or permit the use of such lists for any political purpose.

7. Any person who shall willfully violate any provision of this chapter, or of an employment security law of any other state or of the federal government or any rule or regulation, the observance of which is required under the terms of any one of such laws, shall upon conviction be deemed guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment, and each such violation or each day such violation continues shall be deemed to be a separate offense.

8. In case of contumacy by, or refusal to obey a subpoena issued to, any person, any court of this state within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts

business, upon application by the director, the commission, an appeals tribunal, or any duly authorized representative of any one of them shall have jurisdiction to issue to such person an order requiring such person to appear before the director, the commission, an appeals tribunal or any duly authorized representative of any one of them, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by the court as a contempt thereof.

9. **(1) Any individual or employer who receives or denies unemployment benefits by intentionally misrepresenting, misstating, or failing to disclose any material fact has committed fraud. After the discovery of facts indicating fraud, a deputy shall make a written determination that the individual obtained or denied unemployment benefits by fraud and that the individual must promptly repay the unemployment benefits to the fund. In addition, the deputy shall assess a penalty equal to twenty-five percent of the amount fraudulently obtained or denied. If division records indicate that the individual or employer had a prior established overpayment or record of denial due to fraud, the deputy shall, on the present overpayment or determination, assess a penalty equal to one hundred percent of the amount fraudulently obtained.**

(2) Unless the individual or employer within thirty calendar days after notice of such determination of overpayment by fraud is either delivered in person or mailed to the last known address of such individual or employer files an appeal from such determination, it shall be final. Proceedings on the appeal shall be conducted in accordance with section 288.190.

(3) If the individual or employer fails to repay the unemployment benefits and penalty, assessed as a result of the deputy's determination that the individual or employer obtained or denied unemployment benefits by fraud, such sum shall be collectible in the manner provided in sections 288.160 and 288.170 for the collection of past due contributions. If the individual or employer fails to repay the unemployment benefits that the individual or employer denied or obtained by fraud, the division may offset from any future unemployment benefits otherwise payable the amount of the overpayment, or may take such steps as are necessary to effect payment from the individual or employer. Future benefits may not be used to offset the penalty due. Money received in repayment of fraudulently obtained or denied unemployment benefits and penalties shall first be applied to the unemployment benefits overpaid, then to the penalty amount due. Payments made toward the penalty amount due shall be credited to the special employment security fund.

(4) If fraud or evasion on the part of any employer is discovered by the division, the employer will be subject to the fraud provisions of subsection 4 of section 288.160.

(5) The provisions of this subsection shall become effective July 1, 2005.

10. An individual who willfully fails to disclose amounts earned during any week with respect to which benefits are claimed by him or her, willfully fails to disclose or has falsified as to any fact which would have disqualified him or her or rendered him or her ineligible for benefits during such week, or willfully fails to disclose a material fact or makes a false statement or representation in order to obtain or increase any benefit pursuant to this chapter, shall forfeit all of his or her benefit rights, and all of his or her wage credits accrued prior to the date of such failure to disclose or falsification shall be canceled, and any benefits which might otherwise have become payable to him or her subsequent to such date based upon such wage credits shall be forfeited; except that, the division may, upon good cause shown, modify such reduction of benefits and cancellation of wage credits. It shall be presumed that such failure or falsification was willful in any case in which an individual signs and certifies a claim for benefits and fails to disclose or falsifies as to any fact relative to such claim.

[10.**]** **11.** (1) Any assignment, pledge, or encumbrance of any rights to benefits which are or may become due or payable pursuant to this chapter shall be void; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for

the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessaries furnished to such individual or the individual's spouse or dependents during the time such individual was unemployed. Any waiver of any exemption provided for in this subsection shall be void; except that this section shall not apply to:

(a) Support obligations, as defined pursuant to paragraph (g) of subdivision (2) of this subsection, which are being enforced by a state or local support enforcement agency against any individual claiming unemployment compensation pursuant to this chapter; or

(b) Uncollected overissuances (as defined in section 13(c)(1) of the Food Stamp Act of 1977) of food stamp coupons;

(2) (a) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not the individual owes support obligations, as defined pursuant to paragraph (g) of this subdivision or owes uncollected overissuances of food stamp coupons (as defined in section 13(c)(1) of the Food Stamp Act of 1977). If any such individual discloses that he or she owes support obligations or uncollected overissuances of food stamp coupons, and is determined to be eligible for unemployment compensation, the division shall notify the state or local support enforcement agency enforcing the support obligation or the state food stamp agency to which the uncollected food stamp overissuance is owed that such individual has been determined to be eligible for unemployment compensation;

(b) The division shall deduct and withhold from any unemployment compensation payable to an individual who owes support obligations as defined pursuant to paragraph (g) of this subdivision or who owes uncollected food stamp overissuances:

a. The amount specified by the individual to the division to be deducted and withheld pursuant to this paragraph if neither subparagraph b. nor subparagraph c. of this paragraph is applicable; or

b. The amount, if any, determined pursuant to an agreement submitted to the division pursuant to Section 454(20)(B)(i) of the Social Security Act by the state or local support enforcement agency, unless subparagraph c. of this paragraph is applicable; or the amount (if any) determined pursuant to an agreement submitted to the state food stamp agency pursuant to Section 13(c)(3)(a) of the Food Stamp Act of 1977; or

c. Any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to properly served legal process, as that term is defined in Section 459(i) of the Social Security Act; or any amount otherwise required to be deducted and withheld from the unemployment compensation pursuant to Section 13(c)(3)(b) of the Food Stamp Act of 1977;

(c) Any amount deducted and withheld pursuant to paragraph (b) of this subdivision shall be paid by the division to the appropriate state or local support enforcement agency or state food stamp agency;

(d) Any amount deducted and withheld pursuant to paragraph (b) of this subdivision shall, for all purposes, be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the state or local support enforcement agency in satisfaction of the individual's support obligations or to the state food stamp agency to which the uncollected overissuance is owed as repayment of the individual's uncollected overissuance;

(e) For purposes of paragraphs (a), (b), (c), and (d) of this subdivision, the term "unemployment compensation" means any compensation payable pursuant to this chapter, including amounts payable by the division pursuant to an agreement pursuant to any federal law providing for compensation, assistance, or allowances with respect to unemployment;

(f) Deductions will be made pursuant to this section only if appropriate arrangements have been made for reimbursement by the state or local support enforcement agency, or the state food stamp agency, for the administrative costs incurred by the division pursuant to this section which

are attributable to support obligations being enforced by the state or local support enforcement agency or which are attributable to uncollected overissuances of food stamp coupons;

(g) The term "support obligations" is defined for purposes of this subsection as including only obligations which are being enforced pursuant to a plan described in Section 454 of the Social Security Act which has been approved by the Secretary of Health and Human Services pursuant to Part D of Title IV of the Social Security Act;

(h) The term "state or local support enforcement agency", as used in this subsection, means any agency of a state, or political subdivision thereof, operating pursuant to a plan described in paragraph (g) of this subdivision;

(i) The term "state food stamp agency" as used in this subsection, means any agency of a state, or political subdivision thereof, operating pursuant to a plan described in the Food Stamp Act of 1977;

(j) The director may prescribe the procedures to be followed and the form and contents of any documents required in carrying out the provisions of this subsection;

(k) The division shall comply with the following priority when deducting and withholding amounts from any unemployment compensation payable to an individual:

a. Before withholding any amount for child support obligations or uncollected overissuances of food stamp coupons, the division shall first deduct and withhold from any unemployment compensation payable to an individual the amount, as determined by the division, owed pursuant to subsection 11 or 12 of this section;

b. If, after deductions are made pursuant to subparagraph a. of paragraph (k) of this subdivision, an individual has remaining unemployment compensation amounts due and owing, and the individual owes support obligations or uncollected overissuances of food stamp coupons, the division shall first deduct and withhold any remaining unemployment compensation amounts for application to child support obligations owed by the individual;

c. If, after deductions are made pursuant to subparagraphs a. and b. of paragraph (k) of this subdivision, an individual has remaining unemployment compensation amounts due and owing, and the individual owes uncollected overissuances of food stamp coupons, the division shall deduct and withhold any remaining unemployment compensation amounts for application to uncollected overissuances of food stamp coupons owed by the individual.

[11.**]** **12.** Any person who, by reason of the nondisclosure or misrepresentation by such person or by another of a material fact, has received any sum as benefits pursuant to this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in such person's case, or while he or she was disqualified from receiving benefits, shall, in the discretion of the division, either be liable to have such sums deducted from any future benefits payable to such person pursuant to this chapter or shall be liable to repay to the division for the unemployment compensation fund a sum equal to the amounts so received by him or her, and such sum shall be collectible in the manner provided in sections 288.160 and 288.170 for the collection of past due contributions.

[12.**]** **13.** Any person who, by reason of any error or omission or because of a lack of knowledge of material fact on the part of the division, has received any sum of benefits pursuant to this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in such person's case, or while such person was disqualified from receiving benefits, shall after an opportunity for a fair hearing pursuant to subsection 2 of section 288.190 have such sums deducted from any further benefits payable to such person pursuant to this chapter, provided that the division may elect not to process such possible overpayments where the amount of same is not over twenty percent of the maximum state weekly benefit amount in effect at the time the error or omission was discovered. Recovering overpaid unemployment compensation benefits which are a result of error or omission on the part of the claimant shall be pursued by the division through billing and setoffs against state income tax refunds.

[13.**]** **14.** Any person who has received any sum as benefits under the laws of another state, or under any unemployment benefit program of the United States administered by another state

while any conditions for the receipt of benefits imposed by the law of such other state were not fulfilled in his or her case, shall after an opportunity for a fair hearing pursuant to subsection 2 of section 288.190 have such sums deducted from any further benefits payable to such person pursuant to this chapter, but only if there exists between this state and such other state a reciprocal agreement under which such entity agrees to recover benefit overpayments, in like fashion, on behalf of this state.

288.395. FRAUD OR MISREPRESENTATION, PENALTIES. — Any person or entity perpetrating a fraud or misrepresentation under this chapter for which a penalty has not herein been specifically provided, shall be guilty of a class A misdemeanor and, in addition, shall be liable to this state for a civil penalty not to exceed the value of the fraud. Any person or entity who has previously pled guilty to or has been found guilty of perpetrating a fraud or misrepresentation under this chapter and who subsequently violated any such provisions shall be guilty of a class D felony.

288.397. REPORT ON SUMMARY OF CHANGES, DIVISION TO PROVIDE. — The division shall send on or before September 30, 2004, to all employing units a report containing a summary of changes enacted in this act including but not limited to changes in the tax rate, contribution rate, taxable wage base, temporary solvency charges, benefit or eligibility charges, and other pertinent information to enable the employing units to comply with the changes made.

288.398. CONTRACTS WITH CONSUMER REPORTING AGENCIES AUTHORIZED — INFORMATION LIMITED — PRIVACY RULES APPLY — WRITTEN CONSENT, CONTENTS — USE OF INFORMATION LIMITED, VERIFIED BY CONSUMER REPORTING AGENCY — CONFIDENTIALITY SAFEGUARDS REQUIRED — NONCOMPLIANCE, LIABILITY — INFORMATION OBTAINED UNDER FALSE PRETENSES, PENALTY — DISPUTES. — 1. The division of employment security may contract with one or more consumer reporting agencies, with preference given to those which maintain offices within the state of Missouri, to provide secure electronic access to information provided in the quarterly wage report to the division of employment security by employing units. The consumer reporting agency shall be limited to use of such information to those permitted under Section 604 of the federal Fair Credit Reporting Act 15 U.S.C. 1681b).

2. The information provided to a consumer reporting agency shall be limited to the amount of wages reported by each employing unit, with the employing unit's name and address, for each of or up to the last eight quarters. For the purposes of this section, "consumer reporting agency" has the meaning assigned by Section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681f).

3. The information is subject to the privacy rules of this State and the federal Fair Credit Reporting Act in addition to this section. The consumer reporting agency shall require that any user of the information shall, prior to obtaining the wage report information, obtain a written consent from the individual to whom that wage report information pertains.

4. The written consent shall prominently contain language specifying the following:

(1) The consent to disclose is voluntary and refusal to consent to disclosure of state wage information shall not be the basis for the denial of credit;

(2) If consent is granted, the information shall be released to specified parties;

(3) Authorization by the individual is necessary for the release of wage and employment history information;

(4) The specific application or transaction for the sole purpose of which release is made;

(5) Division of employment security files containing wage and employment history information submitted by employers may be accessed; and

(6) The identity and address of parties authorized to receive the released information.

5. The consumer reporting agency shall require that the information released shall be used only to verify the accuracy of the wage or employment information previously provided by an individual in connection with a specific transaction to satisfy its user's standard underwriting requirements or those imposed upon the user, and to satisfy user's obligations, under applicable state or federal fair credit reporting laws.

6. The division of employment security shall establish minimum audit, security, net worth, and liability insurance standards, technological requirements, any other terms and conditions deemed necessary in the discretion of the division to safeguard the confidentiality of the information and to otherwise serve the public interest. The division shall not pay any costs associated with the establishment or maintenance of the access provided for by this subsection, including but not limited to the costs of any audits of the consumer reporting agency or users by the division. The division may void any contract authorized by this section if the contractor is not complying with this section. Except in cases of willful and wanton misconduct, the state and division is immune from any liability in connection with information provided under this section, including but not limited to liability with regard to the accuracy or use of the information. Any fees received by the division of employment security from a consumer reporting agency pursuant to this section shall be deposited in the Missouri unemployment insurance trust fund and dedicated solely for benefit payments.

7. Any person or entity who willfully fails to comply with any requirement imposed under this subsection with respect to any consumer is liable in Missouri state courts to that consumer to the same extent as provided for in Section 616 of the Federal Fair Credit Reporting Act (15 U.S.C. 1681n).

8. A consumer may bring an action in a circuit court to enjoin a violation of this act.

9. Any person who knowingly and willfully obtains information pursuant to this subsection from a consumer reporting agency under false pretenses shall be punished to the same extent as provided under Section 619 of the federal Fair Credit Reporting Act (15 U.S.C. 1681q).

10. If the completeness or accuracy of any item of information in a consumer's file at a consumer reporting agency obtained under this subsection is disputed, the dispute resolution shall be handled according to Section 611 of the Federal Fair Credit Reporting Act (15 U.S.C. 1681l).

288.500. SHARED WORK PROGRAM CREATED — DEFINITIONS — PLAN, REQUIREMENTS — PLAN DENIED, SUBMISSION OF NEW PLAN, WHEN — CONTRIBUTION BY EMPLOYER, HOW COMPUTED — BENEFITS. — 1. There is created under this section a voluntary "Shared Work Unemployment Compensation Program". In connection therewith, the division may adopt rules and establish procedures, not inconsistent with this section, which are necessary to administer this program.

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

(1) "Affected unit", a specified department, shift, or other unit of three or more employees which is designated by an employer to participate in a shared work plan;

(2) "Division", the division of employment security;

(3) "Fringe benefit", health insurance, a retirement benefit received under a pension plan, a paid vacation day, a paid holiday, sick leave, and any other analogous employee benefit that is provided by an employer;

(4) "Normal weekly hours of work", as to any individual, the lesser of forty hours or the average obtained by dividing the total number of hours worked per week in the preceding twelve-week period by the number twelve;

(5) "Participating employee", an employee who works a reduced number of hours under a shared work plan;

(6) "Participating employer", an employer who has a shared work plan in effect;

(7) "Shared work benefit", an unemployment compensation benefit that is payable to an individual in an affected unit because the individual works reduced hours under an approved shared work plan;

(8) "Shared work plan", a program for reducing unemployment under which employees who are members of an affected unit share the work remaining after a reduction in their normal weekly hours of work;

(9) "Shared work unemployment compensation program", a program designed to reduce unemployment and stabilize the work force by allowing certain employees to collect unemployment compensation benefits if the employees share the work remaining after a reduction in the total number of hours of work and a corresponding reduction in wages.

3. An employer who wishes to participate in the shared work unemployment compensation program established under this section shall submit a written shared work plan in a form acceptable to the division for approval. As a condition for approval by the division, a participating employer shall agree to furnish the division with reports relating to the operation of the shared work plan as requested by the division. The employer shall monitor and evaluate the operation of the established shared work plan as requested by the division and shall report the findings to the division.

4. The division may approve a shared work plan if:

(1) The employer has filed all reports required to be filed under this chapter for all past and current periods and has paid all contributions due for all past and current periods;

(2) The shared work plan applies to and identifies a specified affected unit;

(3) The employees in the affected unit are identified by name and Social Security number;

(4) The shared work plan reduces the normal weekly hours of work for an employee in the affected unit by not less than twenty percent and not more than forty percent;

(5) The shared work plan applies to at least ten percent of the employees in the affected unit;

(6) The shared work plan describes the manner in which the participating employer treats the fringe benefits of each employee in the affected unit; and

(7) The employer certifies that the implementation of a shared work plan and the resulting reduction in work hours is in lieu of temporary layoffs that would affect at least ten percent of the employees in the affected unit and that would result in an equivalent reduction in work hours.

5. If any of the employees who participate in a shared work plan under this section are covered by a collective bargaining agreement, the shared work plan shall be approved in writing by the collective bargaining agent.

6. No shared work plan which will subsidize seasonal employers during the off-season or subsidize employers, at least fifty percent of the employees of which have normal weekly hours of work equaling thirty-two hours or less, shall be approved by the division. **No shared work plan benefits will be initiated for pay periods when the reduced hours reflect holiday earnings already committed to be paid by the employer.**

7. The division shall approve or deny a shared work plan not later than the thirtieth day after the day on which the shared work plan is received by the division. The division shall approve or deny a plan in writing. If the division denies a plan, the division shall notify the employer of the reasons for the denial. Approval or denial of a plan by the division shall be final and such determination shall be subject to review in the manner otherwise provided by law. If approval of a plan is denied by the division, the employer may submit a new plan to the division for consideration no sooner than forty-five calendar days following the date on which the division disapproved the employer's previously submitted plan.

8. The division may revoke approval of a shared work plan and terminate the plan if it determines that the shared work plan is not being executed according to the terms and intent of the shared work unemployment compensation program, or if it is determined by the division that

the approval of the shared work plan was based, in whole or in part, upon information contained in the plan which was either false or substantially misleading.

9. Each shared work plan approved by the division shall become effective on the first day of the week in which it is approved by the division or on a later date as specified in the shared work plan. Each shared work plan approved by the division shall expire on the last day of the twelfth full calendar month after the effective date of such shared work plan.

10. An employer may modify a shared work plan created under this section to meet changed conditions if the modification conforms to the basic provisions of the shared work plan as originally approved by the division. The employer shall report the changes made to the plan in writing to the division at least seven days before implementing such changes. The division shall reevaluate the shared work plan and may approve the modified shared work plan if it meets the requirements for approval under subsection 4 of this section. The approval of a modified shared work plan shall not, under any circumstances, affect the expiration date originally set for the shared work plan. If modifications cause the shared work plan to fail to meet the requirements for approval, the division shall deny approval of the modifications as provided in subsection 7 of this section.

11. Notwithstanding any other provisions of this chapter, an individual is unemployed for the purposes of this section in any week in which the individual, as an employee in an affected unit, works less than his normal weekly hours of work in accordance with an approved shared work plan in effect for that week.

12. An individual who is otherwise entitled to receive regular unemployment insurance benefits under this chapter shall be eligible to receive shared work benefits with respect to any week in which the division finds that:

(1) The individual is employed as a member of an affected unit subject to a shared work plan that was approved before the week in question and is in effect for that week;

(2) Notwithstanding the provisions of subdivision (2) of subsection 1 of section 288.040, the individual is able to work, available for work and works all available hours with the participating employer;

(3) The individual's normal weekly hours of work have been reduced by at least twenty percent but not more than forty percent, with a corresponding reduction in wages; and

(4) The individual has served a "waiting week" as defined in section 288.030.

13. A waiting week served under the provisions of subdivision (3) of subsection 1 of section 288.040 shall serve to meet the requirements of subdivision (4) of subsection 12 of this section and a waiting week served under the provisions of subdivision (4) of subsection 12 of this section shall serve to meet the requirements of section 288.040. **[**If the waiting week becomes payable, it shall be paid according to the law governing the program under which it was served.**]** Notwithstanding any other provisions of this chapter, an individual who files a new initial claim during the pendency of the twelve-month period in which a shared work plan is in effect shall serve a waiting week whether or not the individual has served a waiting week under this subsection.

14. The division shall not deny shared work benefits for any week to an otherwise eligible individual by reason of the application of any provision of this chapter that relates to availability for work, active search for work, or refusal to apply for or accept work with an employer other than the participating employer under the plan.

15. The division shall pay an individual who is eligible for shared work benefits under this section a weekly shared work benefit amount equal to the individual's regular weekly benefit amount for a period of total unemployment less any deductible amounts under this chapter except wages received from any employer, multiplied by the full percentage of reduction in the individual's hours as set forth in the employer's shared work plan. If the shared work benefit amount calculated under this subsection is not a multiple of one dollar, the division shall round the amount so calculated to the next lowest multiple of one dollar. An individual shall be ineligible for shared work benefits for any week in which the individual performs paid work for

the participating employer in excess of the reduced hours established under the shared work plan.

16. An individual shall not be entitled to receive shared work benefits and regular unemployment compensation benefits in an aggregate amount which exceeds the maximum total amount of benefits payable to that individual in a benefit year as provided under section 288.038. Notwithstanding any other provisions of this chapter, an individual shall not be eligible to receive shared work benefits for more than twenty-six calendar weeks during the twelve-month period of the shared work plan. No week shall be counted as a week of unemployment for the purposes of this subsection unless it occurs within the twelve-month period of the shared work plan.

17. Notwithstanding any other provision of this chapter, all benefits paid under a shared work plan, which are chargeable to the participating employer or any other base period employer of a participating employee shall be charged to the account of the participating employer under the plan.

18. An individual who has received all of the shared work benefits and regular unemployment compensation benefits available in a benefit year is an exhaustee under section 288.062 and is entitled to receive extended benefits under section 288.062 if the individual is otherwise eligible under that section.

288.501. MISSOURI STATE UNEMPLOYMENT COUNCIL CREATED, MEMBERS, MEETINGS, TERMS, DUTIES — PROPOSALS SUBMITTED TO DIVISION, WHEN — ACCESS TO RECORDS — OUTSIDE STUDY AUTHORIZED. — 1. There is hereby created a "Missouri State Unemployment Council". The council shall consist of nine appointed voting members and two appointed nonvoting members. All appointees shall be persons whose training and experience qualify them to deal with the difficult problems of unemployment compensation, particularly legal, accounting, actuarial, economic, and social aspects of unemployment compensation.

(1) Three voting members shall be appointed to the council by the governor. One voting member shall be appointed on account of his or her vocation, employment, or affiliations being classed as representative of employers. One voting member shall be appointed on account of his or her vocation, employment, or affiliations being classed as representative of employees. One voting member shall be appointed to represent the public interest separate from employee or employer representation.

(2) Three voting members and one nonvoting member shall be appointed to the council by the speaker of the house of representatives. One voting member shall be appointed on account of his or her vocation, employment, or affiliations being classed as representative of employers that employ twenty or less employees. One voting member shall be appointed on account of his or her vocation, employment, or affiliations being classed as representative of employees. One voting member shall be appointed to represent the public interest separate from employee or employer representation. One nonvoting member shall be appointed from the house of representatives.

(3) Three voting members and one nonvoting member shall be appointed to the council by the president pro tem of the senate. One voting member shall be appointed on account of his or her vocation, employment, or affiliations being classed as representative of employers. One voting member shall be appointed on account of his or her vocation, employment, or affiliations being classed as representative of employees. One voting member shall be appointed to represent the public interest separate from employee or employer representation. One nonvoting member shall be appointed from the senate.

2. The council shall organize itself and select a chairperson or co-chairpersons and other officers from the nine voting members. Six voting members shall constitute a quorum and the council shall act only upon the affirmative vote of at least five of the voting members. The council shall meet no less than four times yearly. Members of the council shall serve without compensation, but are to be reimbursed the amount of actual expenses. Actual expenses shall be paid from the special employment security fund under section 288.310.

3. The division shall provide professional and clerical assistance as needed for regularly scheduled meetings.

4. Each nonvoting member shall serve for a term of four years or until he or she is no longer a member of the general assembly whichever occurs first. A nonvoting member's term shall be a maximum of four years. Each voting member shall serve for a term of three years. For the initial appointment, the governor-appointed employer representative, the speaker of the house-appointed employee representative, and the president pro tem of the senate-appointed public interest representative shall serve an initial term of one year. For the initial appointment, the governor-appointed employee representative, the speaker of the house-appointed public interest representative, and the president pro tem of the senate-appointed employer representative shall serve an initial term of two years. At the end of a voting member's term he or she may be reappointed; however, he or she shall serve no more than two terms excluding the initial term for a maximum of eight years.

5. The council shall advise the division in carrying out the purposes of this chapter. The council shall submit annually by January fifteenth to the governor and the general assembly its recommendations regarding amendments of this chapter, the status of unemployment insurance, the projected maintenance of the solvency of unemployment insurance, and the adequacy of unemployment compensation.

6. The council shall present to the division every proposal of the council for changes in this chapter and shall seek the division's concurrence with the proposal. The division shall give careful consideration to every proposal submitted by the council for legislative or administrative action and shall review each legislative proposal for possible incorporation into department of labor and industrial relations recommendations.

7. The council shall have access to only the records of the division that are necessary for the administration of this chapter and to the reasonable services of the employees of the division. It may request the director or any of the employees appointed by the director or any employee subject to this chapter, to appear before it and to testify relative to the functioning of this chapter and to other relevant matters. The council may conduct research of its own, make and publish reports, and recommend to the division needed changes in this chapter or in the rules of the division as it considers necessary.

8. The council, unless prohibited by a concurrent resolution of the general assembly, shall be authorized to commission an outside study of the solvency, adequacy, and staffing and operational efficiency of the Missouri unemployment system. The study shall be conducted every five years, the first being conducted in fiscal year 2005. The study shall be funded subject to appropriation from the special employment security fund under section 288.310.

288.502. SEVERABILITY CLAUSE. — If any provision of this act is found by a court of competent jurisdiction to be invalid or unconstitutional it is the stated intent of the legislature that the legislature would have approved the remaining portions of the act, and the remaining portions of the act shall remain in full force and effect.

SECTION B. EMERGENCY CLAUSE. — Because immediate action is necessary to reduce or avoid the need to borrow or obtain advances under 42 U.S.C., Section 1321, section A 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 sections 288.128, 288.310 and 288.330 of this Act shall be full force and effect upon passage and approval. The remaining provisions of this Act shall be in full force and effect January 1, 2005.

Approved July 1, 2004

HB 1284 [HCS HB 1284]

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

Revises the definition of "salvage vehicle" and provides that salvage titles shall be negotiable with one reassignment on back by registered dealers or insurance companies.

AN ACT to repeal sections 301.010 and 301.217, RSMo, and to enact in lieu thereof two new sections relating to salvage motor vehicles.

SECTION
A. Enacting clause.
301.010. Definitions.
301.217. Definitions — salvaged motor vehicle title may be issued, when, procedure.

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

SECTION A. ENACTING CLAUSE. — Sections 301.010 and 301.217, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 301.010 and 301.217, to read as follows:

301.010. DEFINITIONS. — As used in this chapter and sections 304.010 to 304.040, 304.120 to 304.260, RSMo, and sections 307.010 to 307.175, RSMo, the following terms mean:

(1) "All-terrain vehicle", any motorized vehicle manufactured and used exclusively for off-highway use which is fifty inches or less in width, with an unladen dry weight of six hundred pounds or less, traveling on three, four or more low pressure tires, with a seat designed to be straddled by the operator, and handlebars for steering control;

(2) "Automobile transporter", any vehicle combination designed and used specifically for the transport of assembled motor vehicles;

(3) "Axle load", the total load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes forty inches apart, extending across the full width of the vehicle;

(4) "Boat transporter", any vehicle combination designed and used specifically to transport assembled boats and boat hulls;

(5) "Body shop", a business that repairs physical damage on motor vehicles that are not owned by the shop or its officers or employees by mending, straightening, replacing body parts, or painting;

(6) "Bus", a motor vehicle primarily for the transportation of a driver and eight or more passengers but not including shuttle buses;

(7) "Commercial motor vehicle", a motor vehicle designed or regularly used for carrying freight and merchandise, or more than eight passengers but not including vanpools or shuttle buses;

(8) "Cotton trailer", a trailer designed and used exclusively for transporting cotton at speeds less than forty miles per hour from field to field or from field to market and return;

(9) "Dealer", any person, firm, corporation, association, agent or subagent engaged in the sale or exchange of new, used or reconstructed motor vehicles or trailers;

(10) "Director" or "director of revenue", the director of the department of revenue;

(11) "Driveaway operation", the movement of a motor vehicle or trailer by any person or motor carrier other than a dealer over any public highway, under its own power singly, or in a fixed combination of two or more vehicles, for the purpose of delivery for sale or for delivery either before or after sale;

(12) "Dromedary", a box, deck, or plate mounted behind the cab and forward of the fifth wheel on the frame of the power unit of a truck tractor-semitrailer combination. A truck tractor equipped with a dromedary may carry part of a load when operating independently or in a combination with a semitrailer;

(13) "Farm tractor", a tractor used exclusively for agricultural purposes;

(14) "Fleet", any group of ten or more motor vehicles owned by the same owner;

(15) "Fleet vehicle", a motor vehicle which is included as part of a fleet;

(16) "Fullmount", a vehicle mounted completely on the frame of either the first or last vehicle in a saddlemount combination;

(17) "Gross weight", the weight of vehicle and/or vehicle combination without load, plus the weight of any load thereon;

(18) "Hail-damaged vehicle", any vehicle, the body of which has become dented as the result of the impact of hail;

(19) "Highway", any public thoroughfare for vehicles, including state roads, county roads and public streets, avenues, boulevards, parkways or alleys in any municipality;

(20) "Improved highway", a highway which has been paved with gravel, macadam, concrete, brick or asphalt, or surfaced in such a manner that it shall have a hard, smooth surface;

(21) "Intersecting highway", any highway which joins another, whether or not it crosses the same;

(22) "Junk vehicle", a vehicle which is incapable of operation or use upon the highways and has no resale value except as a source of parts or scrap, and shall not be titled or registered;

(23) "Kit vehicle", a motor vehicle assembled by a person other than a generally recognized manufacturer of motor vehicles by the use of a glider kit or replica purchased from an authorized manufacturer and accompanied by a manufacturer's statement of origin;

(24) "Land improvement contractors' commercial motor vehicle", any not-for-hire commercial motor vehicle the operation of which is confined to:

(a) An area that extends not more than a radius of one hundred miles from its home base of operations when transporting its owner's machinery, equipment, or auxiliary supplies to or from projects involving soil and water conservation, or to and from equipment dealers' maintenance facilities for maintenance purposes; or

(b) An area that extends not more than a radius of twenty-five miles from its home base of operations when transporting its owner's machinery, equipment, or auxiliary supplies to or from projects not involving soil and water conservation. Nothing in this subdivision shall be construed to prevent any motor vehicle from being registered as a commercial motor vehicle or local commercial motor vehicle;

(25) "Local commercial motor vehicle", a commercial motor vehicle whose operations are confined solely to a municipality and that area extending not more than fifty miles therefrom, or a commercial motor vehicle whose property-carrying operations are confined solely to the transportation of property owned by any person who is the owner or operator of such vehicle to or from a farm owned by such person or under the person's control by virtue of a landlord and tenant lease; provided that any such property transported to any such farm is for use in the operation of such farm;

(26) "Local log truck", a commercial motor vehicle which is registered pursuant to this chapter to operate as a motor vehicle on the public highways of this state, used exclusively in this state, used to transport harvested forest products, operated solely at a forested site and in an area extending not more than a fifty-mile radius from such site, carries a load with dimensions not in excess of twenty-five cubic yards per two axles with dual wheels, and is not operated on the national system of interstate and defense highways described in Title 23, Section 103(e) of the United States Code, does not have more than four axles and does not pull a trailer which has more than two axles. A local log truck may not exceed the limits required by law, however, if the truck does exceed such limits as determined by the inspecting officer, then notwithstanding

any other provisions of law to the contrary, such truck shall be subject to the weight limits required by such sections as licensed for eighty thousand pounds;

(27) "Local transit bus", a bus whose operations are confined wholly within a municipal corporation, or wholly within a municipal corporation and a commercial zone, as defined in section 390.020, RSMo, adjacent thereto, forming a part of a public transportation system within such municipal corporation and such municipal corporation and adjacent commercial zone;

(28) "Log truck", a vehicle which is not a local log truck and is used exclusively to transport harvested forest products to and from forested sites which is registered pursuant to this chapter to operate as a motor vehicle on the public highways of this state for the transportation of harvested forest products;

(29) "Major component parts", the rear clip, cowl, frame, body, cab, front-end assembly, and front clip, as those terms are defined by the director of revenue pursuant to rules and regulations or by illustrations;

(30) "Manufacturer", any person, firm, corporation or association engaged in the business of manufacturing or assembling motor vehicles, trailers or vessels for sale;

(31) "Mobile scrap processor", a business located in Missouri or any other state that comes onto a salvage site and crushes motor vehicles and parts for transportation to a shredder or scrap metal operator for recycling;

(32) "Motor change vehicle", a vehicle manufactured prior to August, 1957, which receives a new, rebuilt or used engine, and which used the number stamped on the original engine as the vehicle identification number;

(33) "Motor vehicle", any self-propelled vehicle not operated exclusively upon tracks, except farm tractors;

(34) "Motor vehicle primarily for business use", any vehicle other than a recreational motor vehicle, motorcycle, motortricycle, or any commercial motor vehicle licensed for over twelve thousand pounds:

(a) Offered for hire or lease; or

(b) The owner of which also owns ten or more such motor vehicles;

(35) "Motorcycle", a motor vehicle operated on two wheels;

(36) "Motorized bicycle", any two-wheeled or three-wheeled device having an automatic transmission and a motor with a cylinder capacity of not more than fifty cubic centimeters, which produces less than three gross brake horsepower, and is capable of propelling the device at a maximum speed of not more than thirty miles per hour on level ground;

(37) "Motortricycle", a motor vehicle operated on three wheels, including a motorcycle while operated with any conveyance, temporary or otherwise, requiring the use of a third wheel. A motortricycle shall not be included in the definition of all-terrain vehicle;

(38) "Municipality", any city, town or village, whether incorporated or not;

(39) "Nonresident", a resident of a state or country other than the state of Missouri;

(40) "Non-USA-std motor vehicle", a motor vehicle not originally manufactured in compliance with United States emissions or safety standards;

(41) "Operator", any person who operates or drives a motor vehicle;

(42) "Owner", any person, firm, corporation or association, who holds the legal title to a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this law;

(43) "Public garage", a place of business where motor vehicles are housed, stored, repaired, reconstructed or repainted for persons other than the owners or operators of such place of business;

(44) "Rebuilder", a business that repairs or rebuilds motor vehicles owned by the rebuilder, but does not include certificated common or contract carriers of persons or property;

(45) "Reconstructed motor vehicle", a vehicle that is altered from its original construction by the addition or substitution of two or more new or used major component parts, excluding motor vehicles made from all new parts, and new multistage manufactured vehicles;

(46) "Recreational motor vehicle", any motor vehicle designed, constructed or substantially modified so that it may be used and is used for the purposes of temporary housing quarters, including therein sleeping and eating facilities which are either permanently attached to the motor vehicle or attached to a unit which is securely attached to the motor vehicle. Nothing herein shall prevent any motor vehicle from being registered as a commercial motor vehicle if the motor vehicle could otherwise be so registered;

(47) "Rollback or car carrier", any vehicle specifically designed to transport wrecked, disabled or otherwise inoperable vehicles, when the transportation is directly connected to a wrecker or towing service;

(48) "Saddlemount combination", a combination of vehicles in which a truck or truck tractor tows one or more trucks or truck tractors, each connected by a saddle to the frame or fifth wheel of the vehicle in front of it. The "saddle" is a mechanism that connects the front axle of the towed vehicle to the frame or fifth wheel of the vehicle in front and functions like a fifth wheel kingpin connection. When two vehicles are towed in this manner the combination is called a double saddlemount combination. When three vehicles are towed in this manner, the combination is called a triple saddlemount combination;

(49) "Salvage dealer and dismantler", a business that dismantles used motor vehicles for the sale of the parts thereof, and buys and sells used motor vehicle parts and accessories;

(50) "Salvage vehicle", a motor vehicle, semitrailer**,** or house trailer which**[**,**]:**

(a) Has been damaged to the extent that the total cost of repairs to rebuild or reconstruct the vehicle to its condition immediately before it was damaged for legal operation on the roads or highways exceeds seventy-five percent of the fair market value of the vehicle immediately preceding the time it was damaged;

(b) By reason of condition or circumstance, has been declared salvage, either by its owner, or by a person, firm, corporation, or other legal entity exercising the right of security interest in it**[**, or**];**

(c) Has been declared salvage by an insurance company as a result of settlement of a claim for loss due to damage or theft; **[**or**]**

(d) [A vehicle,**]** Ownership of which is evidenced by a salvage title; or

(e) Is abandoned property which is titled pursuant to section 304.155, RSMo, or section 304.157, RSMo, and designated with the words "salvage/abandoned property"**.**

The total cost of repairs to rebuild or reconstruct the vehicle shall not include the cost of repairing, replacing, or reinstalling inflatable safety restraints, tires, sound systems, or any sales tax on parts or materials to rebuild or reconstruct the vehicle. For purposes of this definition, "fair market value" means the retail value of a motor vehicle as:

a. Set forth in a current edition of any nationally recognized compilation of retail values, including automated databases, or from publications commonly used by the automotive and insurance industries to establish the values of motor vehicles;

b. Determined pursuant to a market survey of comparable vehicles with regard to condition and equipment; and

c. Determined by an insurance company using any other procedure recognized by the insurance industry, including market surveys, that is applied by the company in a uniform manner;

(51) "School bus", any motor vehicle used solely to transport students to or from school or to transport students to or from any place for educational purposes;

(52) "Shuttle bus", a motor vehicle used or maintained by any person, firm, or corporation as an incidental service to transport patrons or customers of the regular business of such person, firm, or corporation to and from the place of business of the person, firm, or corporation providing the service at no fee or charge. Shuttle buses shall not be registered as buses or as commercial motor vehicles;

(53) "Special mobile equipment", every self-propelled vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including farm equipment, implements of husbandry, road construction or maintenance machinery, ditch-digging apparatus, stone crushers, air compressors, power shovels, cranes, graders, rollers, well-drillers and wood-sawing equipment used for hire, asphalt spreaders, bituminous mixers, bucket loaders, ditchers, leveling graders, finished machines, motor graders, road rollers, scarifiers, earth-moving carryalls, scrapers, drag lines, concrete pump trucks, rock-drilling and earth-moving equipment. This enumeration shall be deemed partial and shall not operate to exclude other such vehicles which are within the general terms of this section;

(54) "Specially constructed motor vehicle", a motor vehicle which shall not have been originally constructed under a distinctive name, make, model or type by a manufacturer of motor vehicles. The term "specially constructed motor vehicle" includes kit vehicles;

(55) "Stinger-steered combination", a truck tractor-semitrailer wherein the fifth wheel is located on a drop frame located behind and below the rearmost axle of the power unit;

(56) "Tandem axle", a group of two or more axles, arranged one behind another, the distance between the extremes of which is more than forty inches and not more than ninety-six inches apart;

(57) "Tractor", "truck tractor" or "truck-tractor", a self-propelled motor vehicle designed for drawing other vehicles, but not for the carriage of any load when operating independently. When attached to a semitrailer, it supports a part of the weight thereof;

(58) "Trailer", any vehicle without motive power designed for carrying property or passengers on its own structure and for being drawn by a self-propelled vehicle, except those running exclusively on tracks, including a semitrailer or vehicle of the trailer type so designed and used in conjunction with a self-propelled vehicle that a considerable part of its own weight rests upon and is carried by the towing vehicle. The term "trailer" shall not include cotton trailers as defined in subdivision (8) of this section and shall not include manufactured homes as defined in section 700.010, RSMo;

(59) "Truck", a motor vehicle designed, used, or maintained for the transportation of property;

(60) "Truck-tractor semitrailer-semitrailer", a combination vehicle in which the two trailing units are connected with a B-train assembly which is a rigid frame extension attached to the rear frame of a first semitrailer which allows for a fifth-wheel connection point for the second semitrailer and has one less articulation point than the conventional "A dolly" connected truck-tractor semitrailer-trailer combination;

(61) "Truck-trailer boat transporter combination", a boat transporter combination consisting of a straight truck towing a trailer using typically a ball and socket connection with the trailer axle located substantially at the trailer center of gravity rather than the rear of the trailer but so as to maintain a downward force on the trailer tongue;

(62) "Used parts dealer", a business that buys and sells used motor vehicle parts or accessories, but not including a business that sells only new, remanufactured or rebuilt parts. "Business" does not include isolated sales at a swap meet of less than three days;

(63) "Vanpool", any van or other motor vehicle used or maintained by any person, group, firm, corporation, association, city, county or state agency, or any member thereof, for the transportation of not less than eight nor more than forty-eight employees, per motor vehicle, to and from their place of employment; however, a vanpool shall not be included in the definition of the term "bus" or "commercial motor vehicle" as defined by subdivisions (6) and (7) of this section, nor shall a vanpool driver be deemed a "chauffeur" as that term is defined by section 302.010, RSMo; nor shall use of a vanpool vehicle for ride-sharing arrangements, recreational, personal, or maintenance uses constitute an unlicensed use of the motor vehicle, unless used for monetary profit other than for use in a ride-sharing arrangement;

(64) "Vehicle", any mechanical device on wheels, designed primarily for use, or used, on highways, except motorized bicycles, vehicles propelled or drawn by horses or human power,

or vehicles used exclusively on fixed rails or tracks, or cotton trailers or motorized wheelchairs operated by handicapped persons;

(65) "Wrecker" or "tow truck", any emergency commercial vehicle equipped, designed and used to assist or render aid and transport or tow disabled or wrecked vehicles from a highway, road, street or highway rights-of-way to a point of storage or repair, including towing a replacement vehicle to replace a disabled or wrecked vehicle;

(66) "Wrecker or towing service", the act of transporting, towing or recovering with a wrecker, tow truck, rollback or car carrier any vehicle not owned by the operator of the wrecker, tow truck, rollback or car carrier for which the operator directly or indirectly receives compensation or other personal gain.

301.217. DEFINITIONS — SALVAGED MOTOR VEHICLE TITLE MAY BE ISSUED, WHEN, PROCEDURE. — 1. As used in sections 301.217 to 301.229, the following words and phrases mean:

(1) "Purchaser", the buyer of a salvage vehicle, including an insurance company for purposes of sections 301.217 to 301.229;

(2) "Salvage certificate of title", the title issued by the department of revenue as proof of ownership for a salvaged vehicle, and it shall not be acceptable for the purpose of registering a motor vehicle. The salvage title shall be negotiable with one reassignment on back by registered dealers **or insurance companies** only. The redeemed title shall be returned in its original form;

(3) "Salvage pool" or "salvage disposal sale", a scheduled sale at auction or by private bid of wrecked or repairable motor vehicles or trailers by insurance companies, underwriters, or dealers, either at retail or wholesale.

2. The department of revenue may issue a certificate of title for a salvaged motor vehicle at least twenty-five years old and if, in the judgment of the department of revenue it may be needed, require the applicant to file with the department of revenue a corporate surety bond in the form prescribed by the department and executed by the applicant, and executed by a person authorized to conduct a surety business in this state. The bond shall be in an amount equal to one and one-half times the value of the vehicle as determined by the department and conditioned to indemnify any prior owner and lienholder and any subsequent purchaser of the vehicle or person acquiring any security interest in it, and their respective successors in interest, against any expense, loss or damage, including reasonable attorney's fees, by reason of the issuance of the certificate of title of the vehicle or on account of any defect in or undisclosed security interest upon the right, title and interest of the applicant in and to the vehicle. Any such interested person has a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond shall be returned at the end of three years or prior thereto if the vehicle is no longer registered in this state and the currently valid certificate of title is surrendered to the department, unless the department has been notified of the pendency of an action to recover on the bond.

Approved July 2, 2004

HB 1285 [SS HS HCS HB 1285]

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

Modifies the provisions regarding car rental insurance.

AN ACT to repeal sections 226.092, 407.730 and 407.735, RSMo, and to enact in lieu thereof three new sections relating to car rental insurance.

SECTION
A. Enacting clause.
226.092. Commission may provide automobile liability insurance when — self-insured and partial self-insured plans, when.
407.730. Definitions.
407.735. Business practices, nondeceptive — collision damage waiver, terms, conditions, notice required — damages, estimates, how made — remedies.

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

SECTION A. ENACTING CLAUSE. — Sections 226.092, 407.730 and 407.735, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 226.092, 407.730 and 407.735, to read as follows:

226.092. COMMISSION MAY PROVIDE AUTOMOBILE LIABILITY INSURANCE WHEN — SELF-INSURED AND PARTIAL SELF-INSURED PLANS, WHEN. — The state highways and transportation commission is authorized, when considered by it to be in the public interest, to provide **[**as part compensation to the employee involved,**]** liability insurance covering the operation of **[**state-owned vehicles involved in the performance of operations of the**] all motor vehicles and equipment, including airplanes and boats, owned, leased, rented or operated pursuant to** commission **authorization and used in the performance of official commission or department business**. The commission is authorized to provide such insurance coverage for **[**its employees**] all authorized operators, as determined by the commission,** and the commission's liability by a plan of self-insurance **operated in accordance with commercial insurance industry standards for fleet vehicle coverage** or by a plan partially self-insured and partially insured by a contract of insurance **with an insurance company or by a plan fully insured by a contract of insurance** with an insurance company as the commission deems to be in the public interest. If the commission provides for a plan of self-insurance or partial self-insurance, it shall annually determine the amount of contribution to the plan required to pay all accrued and anticipated claims and the cost of administering the plan and shall include such amount in its budget request for contribution to the **[**highways and transportation commission automobile liability insurance**] commission's self-insurance** plan. The commission may contract for the services of such actuaries, consultants, and claims administrators as it deems necessary for the effective administration of a **[**self-insured automobile liability**] self-insurance** plan and is authorized to contract for excess insurance coverage with an insurance company authorized to write such coverage in this state. The immunity in tort actions of the **[**state and the state highways and transportation**]** commission shall not be in any way affected by this section.

407.730. DEFINITIONS. — As used in sections 407.730 to 407.748, the following terms mean:

(1) **"Authorized driver":**

(a) The renter;

(b) The renter's spouse if the spouse is a licensed driver and satisfies the car rental company's minimum age requirement;

(c) The renter's employee or co-worker if they are engaged in business activity with the person to whom the vehicle is rented, are licensed drivers, and satisfy the rental company's minimum age requirements;

(d) Any person who operates the vehicle during an emergency situation; and

(e) Any person expressly listed by the car rental company on the renter's contract as an authorized driver;

(2) "Blackout date", any date on which an advertised price is totally unavailable to the public;

(3) "Car rental company", any person or entity in the business of renting private passenger vehicles to the public;

[(2)**]** **(4)** "Clear and conspicuous", that the statement, representation or term being disclosed is of such size, color contrast, and audibility and is so presented as to be readily noticed and understood by the person to whom it is being disclosed. All language and terms should be used in accordance with their common or ordinary usage and meaning;

[(3)**]** **(5)** "Collision damage waiver", any product a consumer purchases from a car rental company in order to waive all or part of his **[**liability in the event of a collision, other damage to**]** **responsibility for damages**, or loss **[**due to theft**]** of, a rental vehicle;

[(4)**]** **(6)** "Limited time availability", that the advertised rental price is only available for a specific period of time or that the price is not available during certain blackout periods;

[(5)**]** **(7)** "Material restriction", a restriction, limitation or other requirement which significantly affects the price of, use of, or a consumer's financial responsibility for a rental car;

[(6)**]** **(8)** "Mandatory charge", any charge, fee, or surcharge consumers must generally pay in order to obtain or operate a rental vehicle;

(9) "Car rental insurance", products and services that are offered in connection with and incidental to the rental of a motor vehicle under subdivision (10) of subsection 1 of section 375.786, RSMo. This definition of optional car rental insurance or any other definition of insurance shall not include collision damage waiver;

(10) "Rental agreement", any document or combination of documents, which, when read together and incorporated by reference to each other, relate to and establish the terms and conditions of the rental of a motor vehicle by an individual; or when such a combination of documents is entered into as part of any written master, corporate, group or individual agreement setting forth the terms and conditions governing the use of a rental car rented by a car rental company;

(11) "Master rental agreement", those documents used by a car rental company for expedited service to members in a program sponsored by the car rental company in which renters establish a profile and select preferences for rental needs which establish the terms and conditions governing the use of a rental car rented by a car rental company by a participant in a master rental agreement;

[(7)**]** **(12)** "Advertisement", oral, written, graphic or pictorial statements made in the course of solicitation of business including, without limitation, any statement or representation made in a newspaper, magazine**, the car rental company's proprietary web site,** or other publication, or contained in any notice, sign, poster, display, circular, pamphlet, or letter which may collectively be called "print advertisements", or on radio or television, which may be referred to as "broadcast commercials".

407.735. BUSINESS PRACTICES, NONDECEPTIVE — COLLISION DAMAGE WAIVER, TERMS, CONDITIONS, NOTICE REQUIRED — DAMAGES, ESTIMATES, HOW MADE — REMEDIES. — 1. Any business practices utilized by car rental companies in furtherance of their business of renting vehicles to the public shall be nondeceptive, fair and shall not be unconscionable.

2. Any collision damage waiver product offered for sale to the public shall not contain any provisions that are deceptive, unfair or unconscionable. It is deceptive, unfair, and unconscionable to require a consumer to assume absolute liability for damage or loss up to the total value of a rental vehicle regardless of fault as a condition of the rental agreement, and then not include as part of any collision damage waiver product, a waiver of liability for any damage or loss which occurs as a result of the consumer's ordinary negligence, except where:

(1) The damage is caused intentionally by an authorized driver or as a result of his willful and wanton misconduct;

(2) The damage arises out of the authorized driver's operation of the vehicle while intoxicated or under the influence of any illegal or unauthorized drug;

(3) The rental transaction is based on fraudulent information supplied by the renter;

(4) The damage arises out of the use of the vehicle while committing or otherwise engaged in a criminal act in which the automobile usage is substantially related to the nature of the criminal activity;

(5) The damage arises out of the use of the vehicle to carry persons or property for hire;

(6) The damage occurs while the vehicle is operated by a person other than an authorized driver**[**. For the purposes of this subsection, "authorized driver" means the person to whom the vehicle is rented; the renter's spouse or other family members who are licensed drivers and satisfy the rental company's minimum age requirement; the renter's employer or co-worker if they are engaged in business activity with the person to whom the vehicle is rented, are licensed drivers, and satisfy the rental company's minimum age requirement; any person who operates the vehicle during an emergency situation or while parking the vehicle at a commercial establishment; and any person expressly listed by the rental company on the rental agreement as an authorized driver**] as defined in section 407.730**;

(7) The damage arises out of the use of the vehicle outside of the United States unless such use is specifically authorized by the rental agreement;

(8) Towing or pushing anything or if operation of the vehicle on an unpaved road has resulted in damage or loss which is a direct result of the road or driving conditions;

(9) Loss due to the theft of the rental vehicle. However, the renter shall be presumed to have no liability for any loss due to theft if (A) an authorized driver has possession of the ignition key furnished by the rental company or an authorized driver establishes that the ignition key furnished by the **car** rental company was not in the vehicle at the time of the theft, and (B) an authorized driver files an official report of the theft with the police or other law enforcement agency within twenty-four hours of learning of the theft and reasonably cooperates with the **car** rental company and the police or other law enforcement agency in providing information concerning the theft. The presumption set forth in this paragraph is a presumption affecting the burden of proof which the **car** rental company may rebut by establishing that an authorized driver committed, or aided and abetted the commission of, the theft.

3. Any claim resulting from damage to or loss of a rental vehicle shall be reasonably and rationally related to the actual loss incurred. The **car** rental company shall not assert or collect any claim for physical or mechanical damage to or loss of a rental vehicle which exceeds: the actual cash value of the vehicle immediately before the loss less any proceeds from the vehicle's disposal after the loss, or the actual cost to repair the damaged vehicle including all discounts or price reductions, whichever is less. Such claim shall be based on an estimate of damage or repair invoice made by an independent appraisal company, an insurance company, or a repair facility that completed or would complete the repairs. A **car** rental company's charge for loss of use shall not exceed a reasonable estimate of the actual income lost.

4. It is a deceptive and unfair practice for a car rental company or employee to **knowingly and intentionally** misrepresent any **material** element of a rental agreement transaction **[**or to fail to disclose to consumers all material facts and restrictions applicable to the rental of a vehicle or in the sale of optional products or services**] including the sale of collision damage waiver and car rental insurance**. The company shall disclose **in the rental agreement** the extent of the consumer's liability for the vehicle and **applicable mileage limitations and charges. When the consumer elects the collision damage waiver or car rental insurance,** the price for collision damage waiver and **[**applicable mileage limitations and charges**] car rental insurance shall appear on the rental agreement**. **A car rental company shall not require the purchase of collision damage waiver or car rental insurance.** No car rental company shall sell **to a consumer** or offer to sell a consumer a collision damage waiver **[**product**] or car rental insurance** as a part of the rental agreement unless the car rental company **[**first**]** provides the consumer with the following written notice:

[NOTICE: THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, A COLLISION DAMAGE WAIVER TO COVER YOUR RESPONSIBILITY FOR DAMAGE TO THE VEHICLE. BEFORE YOU DECIDE WHETHER TO PURCHASE

THE COLLISION DAMAGE WAIVER PRODUCT, YOU MAY WISH TO DETERMINE WHETHER YOUR OWN VEHICLE INSURANCE AFFORDS YOU COVERAGE FOR DAMAGE TO THE RENTAL VEHICLE AND THE AMOUNT OF THE DEDUCTIBLE UNDER YOUR OWN INSURANCE COVERAGE. THE PURCHASE OF THIS COLLISION DAMAGE WAIVER PRODUCT IS NOT MANDATORY AND MAY BE DECLINED.**] COLLISION DAMAGE WAIVER AND CAR RENTAL INSURANCE NOTICE: OUR CONTRACT OFFERS FOR AN ADDITIONAL CHARGE COLLISION DAMAGE WAIVER AND CAR RENTAL INSURANCE PRODUCTS. BEFORE DECIDING WHETHER TO PURCHASE ANY OF THESE OPTIONAL PRODUCTS, YOU MAY WISH TO DETERMINE WHETHER YOUR PERSONAL INSURANCE OR CREDIT CARD PROVIDES YOU COVERAGE DURING THE RENTAL PERIOD. THE PURCHASE OF ANY OF THESE OPTIONAL PRODUCTS IS NOT REQUIRED TO RENT A VEHICLE.**

Such notice shall be made on the face of the rental agreement as part of the written contract**[,] and** shall be set apart in boldface type and in no smaller print than 10-point type, and shall include a space for the consumer to acknowledge his receipt of this notice. **This notice requirement shall be deemed satisfied if this written notice appears in materials furnished to a consumer during the enrollment process into a master rental agreement. This notice provision is deemed complied with for all consumers who have previously enrolled into a master rental agreement prior to the effective date of this statute and no further notice shall be required.**

5. **The car rental company shall provide a notice at the rental office in the form of a sign, placard, or brochure that informs the consumer of the following:**

(1) The availability of collision damage waiver;

(2) The availability of car rental insurance;

(3) A statement that the purchase of collision damage waiver and/or car rental insurance is not required in order to rent.

The following language may be used to comply with the requirements of this section, but shall not be considered the exclusive language that may be used:

COLLISION DAMAGE WAIVER AND CAR RENTAL INSURANCE NOTICE:

Our contract offers for an additional charge optional products which provide you protection during your rental, including:

1. Collision Damage Waiver: You are responsible for all damages to or loss of the rental vehicle. A Collision Damage Waiver will relieve you of responsibility for all or part of the damage to the rental vehicle that may occur during the rental period.

2. Personal Accident Insurance: Personal Accident Insurance provides accidental death and accident medical insurance that protects you during the rental period in or out of the rental vehicle and your passengers while in the rental vehicle.

3. Personal Effects Coverage: Personal Effects Coverage protects your possessions from loss or damage during the rental period.

4. Liability Insurance: Liability Insurance provides protection to cover injuries or death to third parties or damage to a third party's property if you are at fault in an accident with the rental vehicle during the rental period.

Before deciding to purchase any of these optional products, you may wish to determine whether your personal insurance or credit card provides you coverage during the rental period.

The purchase of any of these products is not required to rent a vehicle.

6. Car rental companies shall not place a hold against a consumer's credit limit or charge a consumer's credit card in a deceptive or unfair manner, and without full and complete disclosure of such practice.

7. The remedies for any violation by a car rental company of any provision of sections 407.730 to 407.735, or for any conduct, act, or practice prescribed by any

provisions of sections 407.730 to 407.735, shall be injunctive relief and monetary damages in an amount not to exceed fifty dollars for each violation. The aggregate amount of monetary damages which may be assessed against a car rental company for violations of any provisions of sections 407.730 to 407.735, or for any conduct, act, or practice prescribed by any provisions of sections 407.730 to 407.735, shall not exceed the sum of one hundred thousand dollars in the aggregate during any calendar year.

Approved July 9, 2004

HB 1288 [CCS SS SCS HCS HB 1288]

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

Changes laws related to manufacturer's contractual agreements.

AN ACT to repeal section 301.566, RSMo, and to enact in lieu thereof eight new sections relating to contractual agreements between manufacturers and other merchants.

SECTION
A. Enacting clause.
301.566. Motor vehicle sales or shows held away from licensed place of business, allowed, when — off-site retail sale of vehicles, when — recreational vehicle dealer participation in recreational vehicle shows and vehicle exhibitions — out-of-state dealers, requirements.
407.1047. Compensation agreements between franchisors and franchisees engaged in sale of motorcycles and ATVs.
407.1360. Definitions.
407.1362. Dealership agreements, good cause needed to terminate or cancel.
407.1364. Notice of termination or cancellation, contents.
407.1366. Change in ownership, notice required.
407.1368. Repurchase required, when.
407.1370. Applicability.

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

SECTION A. ENACTING CLAUSE. — Section 301.566, RSMo, is repealed and eight new sections enacted in lieu thereof, to be known as sections 301.566, 407.1047, 407.1360, 407.1362, 407.1364, 407.1366, 407.1368, and 407.1370, to read as follows:

301.566. MOTOR VEHICLE SALES OR SHOWS HELD AWAY FROM LICENSED PLACE OF BUSINESS, ALLOWED, WHEN — OFF-SITE RETAIL SALE OF VEHICLES, WHEN — RECREATIONAL VEHICLE DEALER PARTICIPATION IN RECREATIONAL VEHICLE SHOWS AND VEHICLE EXHIBITIONS — OUT-OF-STATE DEALERS, REQUIREMENTS. — 1. A motor vehicle dealer may participate in any motor vehicle show or sale and conduct sales of motor vehicles away from the dealer's usual, licensed place of business if either the requirements of subsection 2 or 3 of this section are met or the event is conducted for not more than ten days, and if a majority of the motor vehicle dealers within a class of dealers described pursuant to subsection 3 of section 301.550 in a city or town participate or are invited and have the opportunity to participate in the event, except that a recreational motor vehicle dealer classified in subdivision (5) of subsection 3 of section 301.550 may participate in such a show or sale even if a majority of recreational motor vehicle dealers in a city or town do not participate in the event. The department shall consider such events to be proper in all respects and as if each dealer participant was conducting business at the dealer's usual business location. Nothing contained in this section

shall be construed as applying to the sale of motor vehicles or trailers through either a wholesale motor vehicle auction or public motor vehicle auction.

2. Any person, partnership, corporation or association disposing of vehicles used and titled solely in its ordinary course of business as provided in section 301.570 may sell at retail such vehicles away from that person's bona fide established place of business, thus constituting an off-site sale, by adhering to each of the following conditions with regard to each and every off-site sale conducted:

(1) Have in effect a valid license, pursuant to sections 301.550 to 301.575, from the department for the sale of used motor vehicles;

(2) No off-site sale may exceed ten days in duration, and only one sale may be held per year, per county, in counties of the third and fourth classification;

(3) Pay to the motor vehicle commission fund, pursuant to section 301.560, a permit fee of two hundred fifty dollars for each off-site sale event;

(4) Advise the department, at least ten days prior to the sale, of the date, location and duration of each off-site sale;

(5) The sale of vehicles at off-site sales shall be limited to sales by a seller of vehicles used and titled solely in its ordinary course of business, and such sales shall be held in conjunction with a credit union and limited to members of the credit union, thus constituting a private sale to be advertised to members only;

(6) Off-site sales by a seller of vehicles used and titled solely in its ordinary course of business may also be held in conjunction with other financial institutions provided that any such sale event shall be held on the premises of the financial institution, and sales shall be limited to persons who were customers of the financial institution prior to the date of the sale event. Off-site sales held with such other financial institutions shall be limited to one sale per year per institution;

(7) The sale of motor vehicles which have the designation of the current model year, except discontinued models, is prohibited at off-site sales until subsequent model year designated vehicles of the same manufacture and model are offered for sale to the public.

3. A recreational vehicle dealer, as that term is defined in section 700.010, RSMo, who is licensed in another state may participate in recreational vehicle shows or exhibits with recreational vehicles within this state, in which less than fifty dealers participate as exhibitors with permission of the dealer's licensed manufacturer if all of the following conditions exist:

(1) The show or exhibition has a minimum of ten recreational vehicle dealers licensed as motor vehicle dealers in this state;

(2) More than fifty percent of the participating recreational vehicle dealers are licensed motor vehicle dealers in this state; and

(3) The state in which the recreational vehicle is licensed is a state contiguous to Missouri and the state permits recreational vehicle dealers licensed in Missouri to participate in recreational vehicle shows in such state pursuant to conditions substantially equivalent to the conditions which are imposed on dealers from such state who participate in recreational vehicle shows in Missouri.

4. A recreational vehicle dealer licensed in another state may participate in a vehicle show or exhibition in Missouri which has, when it opens to the public, at least fifty dealers displaying recreational vehicles if the show or exhibition is trade-oriented and is predominantly funded by recreational vehicle manufacturers. All of the participating dealers who are not licensed in Missouri shall be licensed as recreational vehicle dealers by the state of their residence.

5. A recreational vehicle dealer licensed in another state who intends to participate in a vehicle show or exhibition in this state, shall send written notification of such intended participation to the department of revenue at least thirty days prior to the vehicle show or exhibition. Upon receipt of such written notification, the department of revenue shall make a determination regarding compliance with the provisions of this section. If such recreational vehicle dealer would be unable to participate in the vehicle show or exhibition in this state pursuant to this section, the department of revenue shall notify the

recreational vehicle dealer at least fifteen days prior to the vehicle show or exhibition of the inability to participate in the vehicle show or exhibition in this state, a violation of this section shall result in a fine of one thousand dollars to be assessed by the department of revenue.

407.1047. COMPENSATION AGREEMENTS BETWEEN FRANCHISORS AND FRANCHISEES ENGAGED IN SALE OF MOTORCYCLES AND ATVS. — 1. The provisions of this section shall apply to franchisors and franchisees engaged in the sale of motorcycles and all-terrain vehicles.

2. Each franchisor shall specify in writing to each of its franchisees in this state the franchisee's obligations for preparation, delivery, and warranty service on its products. The franchisor shall compensate the franchisee for warranty service required of the franchisee by the franchisor.

3. The franchisor shall provide the franchisee with the schedule of compensation to be paid to the franchisee for parts, work, and service, and the time allowance for the performance of the work and service. The schedule of compensation shall include reasonable compensation for diagnostic work, as well as repair service and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work performed. In the determination of what constitutes reasonable compensation under this section, the principal factor to be given consideration shall be the prevailing wage rates being paid by the franchisees in the community in which the franchisee is doing business, and in no event shall the compensation of a franchisee for warranty labor be less than the rates charged by the franchisee for like service to retail customers for nonwarranty service and repairs, provided that such rates are reasonable.

4. A franchisor shall not:

(1) Fail to perform any warranty obligation;

(2) Fail to include in written notices of franchisor recalls to owners of new motorcycles and all-terrain vehicles the expected date by which necessary parts and equipment will be available to franchisees for the correction of the defects; or

(3) Fail to compensate any of the franchisees in this state for repairs effected by the recall.

5. All claims made by a franchisee pursuant to this section for labor and parts shall be paid within thirty days after their approval. All claims shall be either approved or disapproved by the franchisor within thirty days after their receipt on a proper form generally used by the franchisor and containing the usually required information therein. Any claims not specifically disapproved in writing within thirty days after the receipt of the form shall be considered to be approved and payment shall be made within thirty days. A claim that has been approved and paid may not be charged back to the franchisee unless the franchisor can show that the claim was fraudulent, false, or unsubstantiated, except that a charge back for false or fraudulent claims shall not be made more than two years after payment, and a charge back for unsubstantiated claims shall not be made more than fifteen months after payment. A franchisee shall maintain all records of warranty repairs, including the related time records of its employees, for at least two years following payment of any warranty claim.

6. A franchisor shall compensate the franchisee for franchisor-sponsored sales or service promotion events, programs, or activities in accordance with established guidelines for such events, programs, or activities.

7. All claims made by a franchisee pursuant to subsection 5 of this section for promotion events, programs, or activities shall be paid within twenty-five days after their approval or program close, whichever comes later. All claims except those of the type set forth in subparagraphs (1) and (2) of this subsection shall be either approved or

disapproved by the franchisor within thirty days after their receipt on a proper form generally used by the franchisor and containing the usually required information therein. Any claim not specifically disapproved in writing within thirty days after the receipt of this form shall be considered to be approved, and payment shall be made within thirty days. The franchisor has the right to charge back any claim for twelve months after the later of either the close of the promotion event, program, or activity, or the date of the payment. The provisions of this subsection shall not apply to:

(1) Claims related to holdbacks, retail sales bonuses, or similar programs in which the franchisor accrues a certain portion of the vehicle sales price for the franchisee and then, at a later point in time pays that amount to the franchisee, in which event the franchisor shall compensate a franchisee no later than forty-five days following the payment date that the franchisor specified in the program;

(2) Claims related to franchisor's use of a "balance forward account" to make reimbursement, in which event the franchisor shall compensate a franchisee no later than seventy-five days following the date that the franchisee properly registered the manufacturer's limited warranty for the vehicle.

407.1360. DEFINITIONS. — As used in sections 407.1360 to 407.1370, the following terms shall mean:

(1) "Boat dealer", any natural person, partnership, or corporation who, for a commission or with an intent to make a profit or gain of money or other thing of value, sells, barters, exchanges, leases or rents with the option to purchase, offers, attempts to sell, or negotiates the sale of any vessel or vessel trailer, whether the vessel or vessel trailer is owned by such person;

(2) "Boat manufacturer", any person engaged in the manufacture, assembling, or modification of any vessels or vessel trailers as a regular business, including a person, partnership, or corporation which acts for and is under the control of a manufacturer or assembly in connection with the distribution of vessels or vessel trailers, except for any person so engaged in the manufacture, assembly, or modification of any vessel or vessel trailer which is headquartered in this state and not a wholly owned subsidiary of a person not headquartered in this state;

(3) "Dealer", a person who is a grantee of a dealership situated in this state;

(4) "Dealer agreement", a contract or agreement, either expressed or implied, whether oral or written, between two or more persons, by which a person is granted the right to sell or distribute goods or services or use a trade name, trademark, service mark, logotype, advertising, or other commercial symbol in which there is a community of interest in the business of offering, selling, or distributing goods or services at wholesale, retail, by lease agreement or otherwise;

(5) "Designated family member", the designated successor nominated by a boat dealer in a written document filed by the dealer with a manufacturer;

(6) "Good cause", for purposes of determining whether there is good cause for a proposed action, factors may include but not be limited to:

(a) The extent of the affected dealer's penetration in the relevant market area;

(b) The nature and extent of the dealer's investment in its business;

(c) The adequacy of the dealer's service facilities, equipment, parts, supplies, and personnel;

(d) The extent and quality of the dealer's service;

(e) The dealer's performance under the terms of its dealer agreement with the manufacturer;

(f) The dealer's compliance with the contractual requirements under the terms of the dealer agreement; or

(g) The factors as provided in section 407.1362;

(7) "Grantor", a person who grants a dealership;

(8) "Marine dealer", any natural person, partnership, or corporation who, for a commission or with an intent to make a profit or gain of money or other thing of value, sells, barters, exchanges, leases or rents with the option to purchase, offers, attempts to sell, or negotiates the sale of any vessel or vessel trailer, whether the vessel or vessel trailer is owned by such person;

(9) "Marine manufacturer", a person who is a grantee of a dealership situated in this state, except for any person so engaged in the manufacture, assembly, or modification of any vessel or vessel trailer which is headquartered in this state and not a wholly owned subsidiary of a person not headquartered in this state;

(10) "Person", a natural person, partnership, joint venture, corporation, or other entity;

(11) "Personal watercraft", a class of vessel, which is less than sixteen feet in length, propelled by machinery which is designed to be operated by a person sitting, standing or kneeling on the vessel, rather than being operated by a person sitting or standing inside the vessel;

(12) "Vessel", every motorboat and every description of motorized watercraft, and any watercraft more than twelve feet in length which is powered by sail alone or by a combination of sail and machinery, used or capable of being used as a means of transportation on water, but not any watercraft having as the only means of propulsion a paddle or oars.

407.1362. DEALERSHIP AGREEMENTS, GOOD CAUSE NEEDED TO TERMINATE OR CANCEL. — 1. No boat, marine, vessel, or personal watercraft manufacturer, directly or through any officer, agent or employee may terminate, cancel or fail to renew a dealership agreement of a boat, marine, or vessel dealership without good cause. In addition, good cause shall exist whenever:

(1) The boat, marine, vessel, or personal watercraft dealer has transferred an interest in the dealership without the manufacturer's written consent;

(2) The boat, marine, vessel, or personal watercraft dealer has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it which has not been discharged within thirty days after the filing;

(3) There has been a closeout or sale of a substantial part of the dealer's assets related to the boat, marine, vessel, or personal watercraft dealership or there has been a commencement or dissolution or liquidation of the dealership;

(4) There has been a change without the prior written approval of the manufacturer in the location of the dealer's principal place of business under the dealership agreement;

(5) The boat, marine, vessel, or personal watercraft dealer has defaulted under any chattel mortgage or other security agreement between the dealer and the boat, marine, vessel, or personal watercraft manufacturer or there has been a revocation or discontinuance of any guarantee of the dealer's present or future obligations to the boat, marine, or vessel;

(6) The boat, marine, vessel, or personal watercraft dealer has failed to operate in the normal course of business for thirty consecutive days or has otherwise abandoned his or her business, unless otherwise provided for in the dealer agreement;

(7) The boat, marine, vessel, or personal watercraft dealer has pleaded guilty to or has been convicted of a felony, or of any misdemeanor relating to the relationship between the dealer and manufacturer;

(8) The dealer has engaged in conduct which is injurious or detrimental to the dealer's customers or to the public welfare.

407.1364. NOTICE OF TERMINATION OR CANCELLATION, CONTENTS. — 1. Except as provided in this section, a boat, marine, vessel, or personal watercraft manufacturer shall provide a boat, marine, vessel, or personal watercraft dealer at least ninety days prior written notice of termination, cancellation, or nonrenewal of the dealership agreement. The notice shall state all the reasons for termination, cancellation, or nonrenewal of the dealership agreement and shall provide the said dealer the aforesaid ninety days in which to cure any claimed deficiency. If the deficiency is rectified within the aforesaid ninety days, the manufacturer's notice shall be void. However, if the dealer fails to provide the notice of intent to cure deficiencies in the prescribed time period, the termination shall take effect sixty days after the dealer's receipt of the manufacturer's notice unless the dealer has new and untitled inventory on hand, in which case, if requested by the dealer, it will take effect upon the sale of the remaining inventory but in no event later than ninety days from the manufacturer's notice of termination.

2. The notice and right to cure provisions in this section shall not apply if the reason for termination, cancellation, or nonrenewal is for good cause as defined in section 407.1360.

3. A dealer may terminate its dealer agreement at any time by giving written notice of said intentions to the manufacturer at least ninety days prior to the effective date specified for termination.

4. The ninety day notice may be reduced to sixty days' notice if the grounds for termination are due to:

(1) Conviction of or pleas of nolo contendere to a felony of a dealer, or one of its owners;

(2) The business operations of the dealer have been abandoned or closed for thirty consecutive days unless the closing is due to an act of God or other cause over which the dealer has no control;

(3) A material misrepresentation by the dealer; or

(4) The suspension, revocation, or refusal to renew the dealer's license.

5. The provisions of this section regarding notice shall not apply if the reason for termination is insolvency, the occurrence of an assignment for the benefit of creditors, or bankruptcy.

407.1366. CHANGE IN OWNERSHIP, NOTICE REQUIRED. — 1. If a boat, marine, vessel, or personal watercraft dealer desires to make a change in its ownership by the sale of the business assets, stock transfer, or otherwise, the dealer must give the manufacturer ninety days' written notice prior to the closing including all supporting documentation as may be required by the manufacturer. The manufacturer shall not refuse to agree to such proposed change or sale and may not disapprove or withhold approval of such change or sale unless the manufacturer can show that its decision is based on the manufacturer's reasonable criteria, which may include but is not limited to the prospective transferee's business experience, moral character, financial qualifications, and any criminal record.

2. It is unlawful for any manufacturer to fail to provide a boat, marine, vessel, or personal watercraft dealer an opportunity to designate, in writing, a member of the dealer's family as a successor to the dealership in the event of the death, incapacity, or retirement of the boat, marine, vessel, or personal watercraft dealer. It shall be unlawful to prevent or refuse to honor the succession to a dealership by a member of the family of the deceased, retired or incapacitated dealer unless the manufacturer has provided to the dealer written notice of its objections. Grounds for objection shall be lack of creditworthiness, conviction of a felony, lack of required licenses or business experience or other conditions which make such succession unreasonable under the circumstances, but the manufacturer shall bear the burden of showing the unreasonableness of such succession. However, no member of the family may succeed to a boat, marine, vessel, or

personal watercraft dealer if the succession to the boat, marine, vessel, or personal watercraft dealer involves, without the manufacturer's consent, a relocation of the business or an alteration of the terms and conditions of the written agreement.

3. If the manufacturer rejects a proposed change or sale, the manufacturer shall give written notice of its reasons to the boat, marine, vessel, or personal watercraft dealer within sixty days after receipt of the dealer notification and complete documentation. If no such notice is given to the boat, marine, vessel, or personal watercraft dealer, the change or sale shall be deemed approved.

407.1368. REPURCHASE REQUIRED, WHEN. — If the boat, marine, vessel, or personal watercraft dealer agreement is terminated, canceled or not renewed by the manufacturer for cause, the manufacturer shall, at the election of the boat, marine, vessel, or personal watercraft dealer, within thirty days of termination, repurchase:

(1) (a) All new, untitled current model year inventory, acquired from the manufacturer, which has not been used (except for demonstration purposes), altered or damaged to the extent that such damage must be disclosed to the consumer pursuant to section 407.1343, at one hundred percent of the net invoice cost, less transportation, applicable rebates, and discounts to the dealer;

(b) All new, untitled inventory of the prior model year, acquired from the manufacturer, provided the prior model year vessels have not been altered, used (except for demonstration purposes) or damaged to the extent that such damage must be disclosed to the consumer pursuant to section 407.1343, and were drafted on the dealer's financing source or paid within one hundred twenty days prior to the effective date of the termination, cancellation, or nonrenewal;

(c) Any other existing inventory provided the boat, marine, vessel, or personal watercraft dealer and the manufacturer have agreed on a wholesale value for such inventory.

In the event any of the vessels repurchased pursuant to this subdivision are damaged, but do not trigger the consumer disclosure requirement, the amount due the dealer shall be reduced by the cost to repair the vessels. Damage prior to delivery to dealer that is disclosed at the time of delivery will not disqualify repurchase under this provision;

(2) All current and undamaged manufacturer's accessories and proprietary parts sold to the dealer for resale, if accompanied by the original invoice, at one hundred percent of the original net price paid to the manufacturer minus a ten percent freight and restocking expenses; and

407.1370. APPLICABILITY. — The provisions of sections 407.1360 to 407.1370 shall apply to all dealership agreements entered into or renewed on or after January 1, 2005.

Approved July 9, 2004

HB 1290 [SCS HS HCS HB 1290]

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

Creates income tax refund contribution designations for certain charities.

AN ACT to amend chapter 143, RSMo, by adding thereto one new section relating to contributions to certain nonprofit organizations with the cure of a chronic illness as its primary purpose.

SECTION
A. Enacting clause.
143.605. Income tax refunds, designation of a portion of to certain charitable organizations — transfer of contributions, procedure.

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

SECTION A. ENACTING CLAUSE. — Chapter 143, RSMo, is amended by adding thereto one new section, to be known as section 143.605, to read as follows:

143.605. INCOME TAX REFUNDS, DESIGNATION OF A PORTION OF TO CERTAIN CHARITABLE ORGANIZATIONS — TRANSFER OF CONTRIBUTIONS, PROCEDURE. — 1. For all tax years beginning on or after January 1, 2004, each individual or corporation entitled to a tax refund in an amount sufficient to make an irrevocable designation under this section may designate that an amount not less than one dollar but not more than two hundred dollars, on a single or a combined return, of the refund due be credited to the American Cancer Society Heartland Division, Inc., fund, the ALS Lou Gehrig's Disease fund, the American Lung Association of Missouri fund, the Muscular Dystrophy Association fund, the Arthritis Foundation fund, the American Diabetes Association Gateway Area fund, the American Heart Association fund, the March of Dimes fund, or the National Multiple Sclerosis Society fund established in this section. The director of revenue shall establish a method that allows the contribution designations authorized by this section and the contribution designation authorized in section 143.1020 to be combined into two contribution designation boxes clearly and unambiguously printed on the first page of each income tax return form provided by this state. The method may allow for a separate instruction list for the tax return that lists each authorized contribution designation together with the designation provided in section 143.1020. Any organization to be listed on the income tax return form under this section shall have qualified as a 501(c)(3) organization as defined by the Internal Revenue Code of 1986, as amended, for at least five years, shall be a statewide organization, shall have the cure of a chronic illness as its primary purpose, and shall submit to the director of revenue an application fee of one thousand dollars, and the fee shall be deposited in the designated fund. If any individual or corporation which is not entitled to a tax refund in an amount sufficient to make a designation under this section wishes to make an irrevocable contribution to the funds established in this section, such individual or corporation may, by separate check, draft, or other negotiable instrument, send in with the payment of taxes, or may send in separately, that amount, clearly designated for which funds the individual or corporation wishes to contribute, and the department of revenue shall forward such amount to the state treasurer for deposit to the designated funds as provided in this section.

2. Moneys accruing to and deposited in the designated funds shall not be part of total state revenues as defined in sections 17 and 18, article X, Constitution of Missouri, and the expenditure of such revenues shall not be an expense of state government under section 20, article X, Constitution of Missouri.

3. The director of revenue shall transfer at least monthly all contributions designated by individuals under this section to the state treasurer for deposit to the designated funds.

4. The director of revenue shall transfer at least monthly all contributions designated by corporations under this section, less one percent of the amount in each fund at the time of the transfer for the cost of collection and handling by the department of revenue, to be deposited in the state's general revenue fund, to the state treasurer for deposit to the designated funds. The amount transferred annually to the department of revenue for the cost of collection and handling shall not exceed one hundred thousand dollars.

5. A contribution designated under this section shall only be transferred and deposited in the designated funds after all other claims against the refund from which such contribution is to be made have been satisfied.

6. (1) There is hereby created in the state treasury the "American Cancer Society, Heartland Division, Inc., Fund", which shall consist of money collected under this section. The state treasurer shall be custodian of the fund and shall approve disbursements from the fund in accordance with this section and sections 30.170 and 30.180, RSMo.

(2) There is hereby created in the state treasury the "ALS Lou Gehrig's Disease Fund", which shall consist of money collected under this section. The state treasurer shall be custodian of the fund and shall approve disbursements from the fund in accordance with this section and sections 30.170 and 30.180, RSMo.

(3) There is hereby created in the state treasury the "American Lung Association of Missouri Fund", which shall consist of money collected under this section. The state treasurer shall be custodian of the fund and shall approve disbursements from the fund in accordance with this section and sections 30.170 and 30.180, RSMo.

(4) There is hereby created in the state treasury the "Muscular Dystrophy Association Fund", which shall consist of money collected under this section. The state treasurer shall be custodian of the fund and shall approve disbursements from the fund in accordance with this section and sections 30.170 and 30.180, RSMo.

(5) There is hereby created in the state treasury the "Arthritis Foundation Fund", which shall consist of money collected under this section. The state treasurer shall be custodian of the fund and shall approve disbursements from the fund in accordance with this section and sections 30.170 and 30.180, RSMo.

(6) There is hereby created in the state treasury the "National Multiple Sclerosis Society Fund", which shall consist of money collected under this section. The state treasurer shall be custodian of the fund and shall approve disbursements from the fund in accordance with this section and sections 30.170 and 30.180, RSMo.

(7) There is hereby created in the state treasury the "American Diabetes Association Gateway Area Fund", which shall consist of money collected under this section. The state treasurer shall be custodian of the fund and shall approve disbursements from the fund in accordance with this section and sections 30.170 and 30.180, RSMo.

(8) There is hereby created in the state treasury the "American Heart Association Fund", which shall consist of money collected under this section. The state treasurer shall be custodian of the fund and shall approve disbursements from the fund in accordance with this section and sections 30.170 and 30.180, RSMo.

(9) There is hereby created in the state treasury the "March of Dimes Fund", which shall consist of money collected under this section. The state treasurer shall be custodian of the fund and shall approve disbursements from the fund in accordance with this section and sections 30.170 and 30.180, RSMo.

7. All moneys collected, transferred, and disbursed under this section shall stand appropriated, and any moneys remaining in the funds established in this section at the end of the biennium shall not revert to the credit of the general revenue fund.

8. The state treasurer shall invest moneys in the funds established in this section in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the funds.

9. The director of the department of revenue shall establish a procedure by which the moneys deposited in the funds shall be distributed semiannually to the American Cancer Society Heartland Division, Inc., the Amyotrophic Lateral Sclerosis Association, and the American Lung Association of Missouri, the Muscular Dystrophy Association, the Arthritis Foundation, the American Diabetes Association Gateway Area, the National Multiple Sclerosis Society, the American Heart Association, and the March of Dimes.

10. Any organization receiving moneys under this section shall expend such moneys solely for the support of residents of this state.

11. Any organization receiving funds under this section shall report to the director of revenue annually, on forms prescribed by the director, detailing how the funds were expended. The director shall compile such information and provide a report to the general assembly in each year such expenditures are made.

12. The director of revenue is authorized to promulgate rules and regulations necessary to administer and enforce this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

13. If an organization that has the cure of sickle cell anemia as its primary purpose is formed that meets the requirements of this section, such organization shall be included on the income tax form in accordance with the provisions of this section and there shall be created in the state treasury a fund with the name of the organization. The fund shall consist of money collected under this section. The state treasurer shall be custodian of the fund and shall approve disbursements from the fund in accordance with this section and sections 30.170 and 30.180, RSMo.

Approved June 24, 2004

HB 1291 [HB 1291]

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

Prohibits a lender of a residential mortgage from requiring a borrower to purchase homeowners' insurance coverage in an amount exceeding the replacement value of the improvement and contents.

AN ACT to repeal section 375.937, RSMo, and to enact in lieu thereof one new section relating to unfair insurance practice and fraud.

SECTION
A. Enacting clause.
375.937. Lenders, duties — prohibited acts.

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

SECTION A. ENACTING CLAUSE. — Section 375.937, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 375.937, to read as follows:

375.937. LENDERS, DUTIES — PROHIBITED ACTS. — 1. No person may require as a condition precedent to the lending of money or extension of credit, or any renewal thereof, that the person to whom such money or credit is extended or whose obligation a creditor is to acquire or finance, negotiate any contract of insurance or renewal thereof through a particular insurer or group of insurers or agent, broker or group of agents or brokers.

2. No person who lends money or extends credit may:

(1) Unreasonably reject a contract of insurance furnished by the borrower for the protection of the property securing the credit or lien. A rejection shall not be deemed unreasonable if it is based on reasonable standards, uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for rejection of an insurance contract because the contract contains coverage in addition to that required in the credit transaction;

(2) Require that any borrower, mortgagor, purchaser, insurer, broker or agent pay a separate charge, in connection with the handling of any contract of insurance required as security for a loan on real estate, or pay a separate charge to substitute the insurance policy of one insurer for that of another. This subdivision does not include the interest which may be charged on premium loans or premium advancements in accordance with the terms of the loan or credit documents;

(3) Use or disclose, without the prior written consent of the borrower, mortgagor, or purchaser taken at a time other than the making of the loan or extension of credit, information relative to a contract of insurance which is required by the credit transaction, for the purpose of replacing such insurance;

(4) Require any procedures or conditions of duly licensed agents, brokers or insurers not customarily required of those agents, brokers or insurers affiliated or in any way connected with the person who lends money or extends credit;

(5) Solicit insurance for the protection of real property, after a person indicates interest in securing a first mortgage credit extension, until such person has received a commitment in writing from the lender as to a loan or credit extension**;**

(6) As a condition of financing a residential mortgage or providing other financial arrangements for residential property, require a borrower to purchase homeowners' insurance coverage in an amount exceeding the replacement value of the improvements and contents on the real property. A violation of this subdivision shall not affect the validity of the loan, note secured by a deed of trust, mortgage, or deed of trust.

3. Every person who lends money or extends credit and who solicits insurance on real and personal property subject to subsection 2 of this section must explain to the borrower in writing that the insurance related to such credit extension may be purchased from an insurer or agent of the borrower's choice, subject only to the lender's right to reject a given insurer or agent as provided in subdivision (1) of subsection 2 of this section. Compliance with disclosures as to insurance required by truth-in-lending laws or comparable state laws shall be in compliance with this subsection. This requirement for a commitment shall not apply in cases where the premium for the required insurance is to be financed as part of the loan or extension of credit involving personal property transactions. The commitment shall contain the rate or rate formula, amount and terms of the loan, subject to the creditworthiness of the borrower, valuation of the property and the insurability to value of the property.

4. The director shall have the power to examine and investigate those insurance-related activities of any person which may be in violation of this section. Any affected person may submit to the director a complaint or material pertinent to the enforcement of this section.

5. Nothing in this section shall prevent a person who lends money or extends credit from placing insurance on real or personal property in the event the mortgagor, borrower or purchaser has failed to provide required insurance in accordance with the terms of the loan or credit document.

6. Nothing contained in this section shall apply to credit life or credit accident and health insurance.

Approved June 25, 2004

HB 1317 [HB 1317]

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

Creates special license plates for Boy Scouts of America.

AN ACT to amend chapter 301, RSMo, by adding thereto one new section relating to special license plates for Boy Scouts.

SECTION
A. Enacting clause.
301.3139. Boy Scouts of America special license plates, application, fee.

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

SECTION A. ENACTING CLAUSE. — Chapter 301, RSMo, is amended by adding thereto one new section, to be known as section 301.3139, to read as follows:

301.3139. BOY SCOUTS OF AMERICA SPECIAL LICENSE PLATES, APPLICATION, FEE. — 1. Any Boy Scout of appropriate age as prescribed by law or parent of a Boy Scout may receive special license plates as prescribed by this section, for any motor vehicle such person owns, either solely or jointly, other than an apportioned motor vehicle or a commercial motor vehicle licensed in excess of eighteen thousand pounds gross weight, after an annual payment of an emblem-use authorization fee to the Boy Scouts of America Council of which the person is a member or the parent of a member. The Boy Scouts of America hereby authorizes the use of its official emblem to be affixed on multiyear personalized license plates as provided in this section. Any contribution to the Boy Scouts of America derived from this section, except reasonable administrative costs, shall be used solely for the purposes of the Boy Scouts of America. Any Boy Scout or parent of a Boy Scout may annually apply for the use of the emblem and pay the twenty-five dollar emblem-use authorization fee at any local district council in the state.

2. Upon annual application and payment of a twenty-five dollar emblem-use contribution to the Boy Scouts of America, the organization shall issue to the vehicle owner, without further charge, an emblem-use authorization statement, which shall be presented by the owner to the department of revenue at the time of registration of a motor vehicle. Upon presentation of the annual statement, payment of a fifteen dollar fee in addition to the registration fee and documents which may be required by law, the department of revenue shall issue to the vehicle owner a personalized license plate which shall bear the emblem of the Boy Scouts of America and the words "BOY SCOUTS OF AMERICA" in place of the words "SHOW-ME STATE". Such license plates shall be made with fully reflective material with a common color scheme and design, shall be clearly visible at night, and shall be aesthetically attractive, as prescribed by section 301.130. Notwithstanding the provisions of section 301.144, no additional fee shall be charged for the personalization of license plates pursuant to this section.

3. A vehicle owner, who was previously issued a plate with the Boy Scouts of America emblem authorized by this section but who does not provide an emblem-use authorization statement at a subsequent time of registration, shall be issued a new plate which does not bear the Boy Scouts of America emblem, as otherwise provided by law. The director of revenue shall make necessary rules and regulations for the administration of this section, and shall design all necessary forms required by this section. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.

Approved July 2, 2004

HB 1321 [SCS HCS HB 1321]

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

Establishes additional regulations on neighborhood improvement districts.

AN ACT to repeal sections 67.457 and 67.469, RSMo, and to enact in lieu thereof three new sections relating to neighborhood improvement districts.

SECTION

A. Enacting clause.
67.456. Neighborhood improvement districts — duration of bond maturity — maintenance provisions required, when — assessed costs on divided property recalculated, how, restrictions.
67.457. Establishment of neighborhood improvement districts — procedure — notice of elections, contents — alternatives, petition, contents — maintenance costs, assessment.
67.469. Assessment treated as tax lien, payable upon foreclosure.

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

SECTION A. ENACTING CLAUSE. — Sections 67.457 and 67.469, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 67.456, 67.457, and 67.469, to read as follows:

67.456. NEIGHBORHOOD IMPROVEMENT DISTRICTS — DURATION OF BOND MATURITY — MAINTENANCE PROVISIONS REQUIRED, WHEN — ASSESSED COSTS ON DIVIDED PROPERTY RECALCULATED, HOW, RESTRICTIONS. — 1. The average maturity of bonds or notes issued under the neighborhood improvement district act after August 28, 2004, shall not exceed one hundred twenty percent of the average economic life of the improvements for which the bonds or notes are issued.

2. Any improvement for which a petition is filed or an election is held under section 67.457 after August 28, 2004, including improvements to or located on property owned by a city or county, shall include provisions for maintenance of the project during the term of the bonds or notes.

3. In the event that, after August 28, 2004, any parcel of property within the neighborhood improvement district is divided into more than one parcel of property after the final costs of the improvement are assessed, all unpaid final costs of the improvement assessed to the original parcel that was divided shall be recalculated and reassessed proportionally to each of the parcels resulting from the division of the original parcel, based on the assessed valuation of each resulting parcel. No parcel of property which has had the assessment against it paid in full by the property owner shall be reassessed under this section. No parcel of property shall have the initial assessment against it changed, except for any changes for special, supplemental, or additional assessments authorized under the state neighborhood improvement district act.

67.457. ESTABLISHMENT OF NEIGHBORHOOD IMPROVEMENT DISTRICTS — PROCEDURE — NOTICE OF ELECTIONS, CONTENTS — ALTERNATIVES, PETITION, CONTENTS — MAINTENANCE COSTS, ASSESSMENT. — 1. To establish a neighborhood improvement district, the governing body of any city or county shall comply with either of the procedures described in subsection 2 or 3 of this section.

2. The governing body of any city or county proposing to create a neighborhood improvement district may by resolution submit the question of creating such district to all qualified voters residing within such district at a general or special election called for that purpose. Such resolution shall set forth the project name for the proposed improvement, the

general nature of the proposed improvement, the estimated cost of such improvement, the boundaries of the proposed neighborhood improvement district to be assessed, and the proposed method or methods of assessment of real property within the district, including any provision for the annual assessment of maintenance costs of the improvement in each year **[**after**]** **during the term of** the bonds issued for the original improvement **and after such bonds** are paid in full. The governing body of the city or county may create a neighborhood improvement district when the question of creating such district has been approved by the vote of the percentage of electors within such district voting thereon that is equal to the percentage of voter approval required for the issuance of general obligation bonds of such city or county under article VI, section 26 of the constitution of this state. The notice of election containing the question of creating a neighborhood improvement district shall contain the project name for the proposed improvement, the general nature of the proposed improvement, the estimated cost of such improvement, the boundaries of the proposed neighborhood improvement district to be assessed, the proposed method or methods of assessment of real property within the district, including any provision for the annual assessment of maintenance costs of the improvement in each year after the bonds issued for the original improvement are paid in full, and a statement that the final cost of such improvement assessed against real property within the district and the amount of general obligation bonds issued therefor shall not exceed the estimated cost of such improvement, as stated in such notice, by more than twenty-five percent**, and that the annual assessment for maintenance costs of the improvements shall not exceed the estimated annual maintenance cost, as stated in such notice, by more than twenty five percent**. The ballot upon which the question of creating a neighborhood improvement district is submitted to the qualified voters residing within the proposed district shall contain a question in substantially the following form:

Shall ..... (name of city or county) be authorized to create a neighborhood improvement district proposed for the ..... (project name for the proposed improvement) and incur indebtedness and issue general obligation bonds to pay for all or part of the cost of public improvements within such district, the cost of all indebtedness so incurred to be assessed by the governing body of the ..... (city or county) on the real property benefited by such improvements for a period of ..... years, and, if included in the resolution, an assessment in each year thereafter with the proceeds thereof used solely for maintenance of the improvement?

3. As an alternative to the procedure described in subsection 2 of this section, the governing body of a city or county may create a neighborhood improvement district when a proper petition has been signed by the owners of record of at least two-thirds by area of all real property located within such proposed district. The petition, in order to become effective, shall be filed with the city clerk or county clerk. A proper petition for the creation of a neighborhood improvement district shall set forth the project name for the proposed improvement, the general nature of the proposed improvement, the estimated cost of such improvement, the boundaries of the proposed neighborhood improvement district to be assessed, the proposed method or methods of assessment of real property within the district, including any provision for the annual assessment of maintenance costs of the improvement in each year **[**after**]** **during the term of** the bonds issued for the original improvement **and after such bonds** are paid in full, a notice that the names of the signers may not be withdrawn later than seven days after the petition is filed with the city clerk or county clerk, and a notice that the final cost of such improvement assessed against real property within the district and the amount of general obligation bonds issued therefor shall not exceed the estimated cost of such improvement, as stated in such petition, by more than twenty-five percent**, and that the annual assessment for maintenance costs of the improvements shall not exceed the estimated annual maintenance cost, as stated in such petition, by more than twenty-five percent**.

4. Upon receiving the requisite voter approval at an election or upon the filing of a proper petition with the city clerk or county clerk, the governing body may by resolution or ordinance determine the advisability of the improvement and may order that the district be established and that preliminary plans and specifications for the improvement be made. Such resolution or

ordinance shall state and make findings as to the project name for the proposed improvement, the nature of the improvement, the estimated cost of such improvement, the boundaries of the neighborhood improvement district to be assessed, the proposed method or methods of assessment of real property within the district, including any provision for the annual assessment of maintenance costs of the improvement in each year after the bonds issued for the original improvement are paid in full, and shall also state that the final cost of such improvement assessed against the real property within the neighborhood improvement district and the amount of general obligation bonds issued therefor shall not, without a new election or petition, exceed the estimated cost of such improvement by more than twenty-five percent.

5. The boundaries of the proposed district shall be described by metes and bounds, streets or other sufficiently specific description. The area of the neighborhood improvement district finally determined by the governing body of the city or county to be assessed may be less than, but shall not exceed, the total area comprising such district.

6. In any neighborhood improvement district organized prior to August 28, 1994, an assessment may be levied and collected after the original period approved for assessment of property within the district has expired, with the proceeds thereof used solely for maintenance of the improvement, if the residents of the neighborhood improvement district either vote to assess real property within the district for the maintenance costs in the manner prescribed in subsection 2 of this section or if the owners of two-thirds of the area of all real property located within the district sign a petition for such purpose in the same manner as prescribed in subsection 3 of this section.

67.469. ASSESSMENT TREATED AS TAX LIEN, PAYABLE UPON FORECLOSURE. — A special assessment authorized under the provisions of sections 67.453 to 67.475 shall be a lien, from the date of the assessment, on the property against which it is assessed on behalf of the city or county assessing the same to the same extent as a tax upon real property. **Upon the foreclosure of any such lien, the entire remaining assessment shall become due and payable and shall be recoverable in such foreclosure proceeding.**

Approved June 25, 2004

HB 1347 [HCS HB 1347]

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

Creates Secretary of State's Council on Library Development and sets out guidelines for publishing formats.

AN ACT to repeal sections 37.310, 37.320, 37.360, 181.021, 181.100, 181.110, 181.120, and 181.130, RSMo, and to enact in lieu thereof eight new sections relating to the state library.

SECTION

A. Enacting clause.
37.310. Forms management unit established — agencies to cooperate.
37.320. Director, appointment, qualifications — member of state records commission — staff to be employed under system.
37.360. Unit to furnish services to whom.
181.021. Secretary of state to manage state library and Wolfner library — functions — report — receipt of property.
181.022. Secretary of state to create council on library development — purpose — terms — members.
181.100. Distribution of reports, definitions, requirements, charges, when.

181.110. Agencies to aid in publication of state publications — secretary of state to provide electronic repository, responsibilities — state library to assist with electronic repository, responsibilities — participating libraries — rulemaking authority.
181.130. Library agreements permitted, when.
181.120. Library to provide copies for state archives and historical society.

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

SECTION A. ENACTING CLAUSE. — Sections 37.310, 37.320, 37.360, 181.021, 181.100, 181.110, 181.120, and 181.130, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 37.310, 37.320, 37.360, 181.021, 181.022, 181.100, 181.110, and 181.130, to read as follows:

37.310. FORMS MANAGEMENT UNIT ESTABLISHED — AGENCIES TO COOPERATE. — A "Forms Management Unit", is hereby established within the office of administration. The unit shall develop a forms management program for state agencies, and shall implement the provisions of sections 37.300 to 37.390, 109.250 and 181.100 to **[**181.120**]** **181.110**, RSMo. Each agency shall fully cooperate with the unit, and shall furnish all requested information and assistance.

37.320. DIRECTOR, APPOINTMENT, QUALIFICATIONS — MEMBER OF STATE RECORDS COMMISSION — STAFF TO BE EMPLOYED UNDER SYSTEM. — 1. The commissioner of administration shall appoint a director as the executive head of the unit. The director must be experienced in the principles of information and forms management, archives, and the affairs and organization of state government. He shall be a person who is qualified by training and experience to administer the affairs of the unit.

2. The director shall appoint such staff as may be necessary to implement the provisions of sections 37.300 to 37.390, 109.250 and 181.100 to **[**181.120**]** **181.110**, RSMo. All staff members shall be appointed pursuant to the provisions of chapter 36, RSMo.

3. The director shall also serve as an additional voting member of the state records commission established by the provisions of section 109.250, RSMo.

37.360. UNIT TO FURNISH SERVICES TO WHOM. — The unit shall offer its services to agencies within the legislative and judicial branches of government, and to those agencies of the executive branch which are otherwise excepted from the provisions of sections 37.300 to 37.390, 109.250 and 181.100 to **[**181.120**]** **181.110**, RSMo.

181.021. SECRETARY OF STATE TO MANAGE STATE LIBRARY AND WOLFNER LIBRARY — FUNCTIONS — REPORT — RECEIPT OF PROPERTY. — The Missouri state library shall be under the control of the secretary of state and operated under rules and regulations promulgated by the secretary of state. The secretary of state shall:

(1) Direct the survey of services given by libraries which may be established or assisted under any law for state grants-in-aid to libraries;

(2) Further the coordination of library services furnished by the state with those of local libraries and other educational agencies;

(3) Publish an annual report showing conditions and progress of public library service in Missouri;

(4) Furnish information and counsel as to the best means of establishing and maintaining libraries, the selection of materials, cataloging, and other details of library management; provide assistance in organizing libraries or improving service given by them and assist library services in state institutions;

(5) Receive and administer grants from the United States under any act of Congress for public libraries, or other types of library service, and make rules and regulations in connection with such grants as may be necessary or required in the administration thereof;

(6) Receive gifts of money, books or other property which may be used or held in trust for the purposes given;

(7) Administer state grants-in-aid and encourage local support for the betterment of local library service and generally promote an effective statewide public library system;

(8) Procure and disseminate information by any means necessary within the state among individuals, communities, libraries, schools, charitable and state institutions, state departments and other organizations;

(9) Administer the Wolfner Library for the blind and physically handicapped and ensure library services to the eligible blind and physically handicapped residents of this state**;**

(10) Appoint members to the secretary of state's council on library development, as set forth in section 181.022, RSMo.

181.022. SECRETARY OF STATE TO CREATE COUNCIL ON LIBRARY DEVELOPMENT — PURPOSE — TERMS — MEMBERS. — 1. The secretary of state shall create the "Secretary's Council on Library Development" to advise the secretary of state and the state library on matters that relate to the state's libraries and library service to Missouri citizens, to recommend to the secretary of state and the state library policies and programs relating to libraries in the state, and to communicate the value of libraries.

2. Members of the secretary's council on library development shall serve three-year terms, to be served on a rotating basis as shall be established by the secretary of state.

3. The members of the secretary's council on library development shall be appointed by the secretary of state, to include members of the house of representatives, members of the senate, representatives of the public and of libraries, trustees of Missouri libraries, and users of the state libraries.

181.100. DISTRIBUTION OF REPORTS, DEFINITIONS, REQUIREMENTS, CHARGES, WHEN. — 1. **[**As used in sections 181.100 to 181.120, "state publications" shall include all multiple-produced publications of state agencies, regardless of format or purpose, with the exception of correspondence and interoffice memoranda.**]** **As used in sections 181.100 to 181.130 the following terms shall mean, unless the context requires otherwise:**

(1) "Agency", each department, office, commission, board, or other administrative office or unit of state government;

(2) "Electronic repository", a collection of electronic publications kept in a secure environment with adequate backup to protect the collection;

(3) "Format", any media used in the publication of state information including electronic, print, audio, visual, and microform;

(4) "Participating libraries", a library selected by the secretary of state to assist the public in locating and using state publications in any format; and designated to house and make available to the public publications which agencies have produced in print;

(5) "Publications", the information published by agencies intended for distribution to the legislature, agencies, political subdivisions, non-profit organizations or broad distribution to the public, including publications issued electronically or in other formats;

(6) "State Publications Access Program", a program to provide access to state publications for all citizens of Missouri through a secure repository of electronic publications available to the public through electronic networks and print collections located in libraries throughout Missouri.

2. Other provisions of law to the contrary notwithstanding, all state agencies required to issue and distribute multiple-produced annual, biannual, or periodic reports shall distribute such reports without charge only to those persons and offices listed in subsection 4 of this section. For the purposes of sections 181.100 to [181.120] **181.130**, the word "report" means a state publication which is either a printed statement by a state agency, issued at specific intervals, which describes its operations and progress, and possibly contains a statement of its future plans;

or a formal, written account of an investigation given by a person or group delegated to make the investigation. Such reports shall not be distributed to any other person, including members of the general assembly, state officeholders, other state agencies, divisions or departments, or to members of the public, except upon request.

3. No report described in subsection 2 of this section shall be distributed free of charge to any person or office, except as provided in subsection 4 of this section. Each recipient of any such report shall pay the cost of printing and postage, which cost shall be determined by the issuing agency prior to distribution of the document.

4. Each agency of state government which distributes annual, biannual, or periodic reports **printed in paper** shall provide **[**forty-five**] such** copies of each such document free of charge to the state library **as the state library shall specify**, along with a statement of the cost and address where additional copies of such report may be requested. Two copies of all reports shall be provided to the legislative library, one copy to the chief clerk of the house of representatives, one copy to the secretary of the senate, one copy to the supreme court library and one copy to the governor.

181.110. AGENCIES TO AID IN PUBLICATION OF STATE PUBLICATIONS — SECRETARY OF STATE TO PROVIDE ELECTRONIC REPOSITORY, RESPONSIBILITIES — STATE LIBRARY TO ASSIST WITH ELECTRONIC REPOSITORY, RESPONSIBILITIES — PARTICIPATING LIBRARIES — RULEMAKING AUTHORITY. — **[**The state library shall, under the direction of the secretary of state, publish monthly an official indexed list of all printed publications of all state offices, departments, divisions, boards and commissions, whether legislative, executive or judicial, and any subdivisions of each, including state-supported institutions of higher education. Such list shall state the cost of each publication contained therein. The library shall also distribute such numbers of copies of such publications as it deems necessary to certain libraries, also designated by it, which shall serve as depositories for making available to the public such publications. No publications shall be distributed to any library unless a request is made therefor.**] 1. For the purpose of providing the services described in this section, each agency shall have the following responsibilities and powers:**

(1) To submit to the state library electronically each publication created by the agency in a manner consistent with the state's enterprise architecture;

(2) To determine the format used to publish;

(3) For those publications which the agency determines shall be printed and published in paper, to supply the number of copies for participating libraries as determined by the secretary of state;

(4) To assign a designee as a contact for the state publications access program and forward this information to the secretary of state annually.

2. For the purpose of providing the services described in this section, the secretary of state shall have the following responsibilities:

(1) The secretary, through the state library, shall provide a secure electronic repository of state publications. Access to the state publications in the repository shall be provided through multiple methods of access, including the statewide online library catalog and a publicly accessible electronic network;

(2) The secretary shall create, in administrative rule, the criteria for selection of participating libraries and the responsibilities incumbent upon those libraries in serving the citizens of Missouri;

(3) The secretary shall set by administrative rule the electronic formats acceptable for submission of publications to the electronic repository;

(4) The secretary may issue and promulgate rules to enforce, implement and effectuate the powers and duties established in sections 181.100 to 181.130.

3. For the purpose of providing the services described in this section, the state library shall have the following responsibilities, all to be performed in a manner consistent with e-government:

(1) The state library shall administer the electronic repository of state publications for access by the citizens of Missouri, and receive and distribute publications in other formats, which will be housed and made available to the public by the participating libraries;

(2) The state library shall ensure the organization and classification of state publications regardless of formats and the distribution of materials in additional formats to participating libraries;

(3) The state library shall publish regularly a list of all publications of the agencies, regardless of format.

4. For the purpose of providing the services described in this section, the participating libraries shall have the following responsibilities:

(1) To ensure citizens who come to the library will be able to access publications electronically;

(2) To maintain paper copies of those state publications that agencies publish in paper that are designated by the secretary of state to be included in the Missouri state publication access program;

(3) To maintain a collection of older state publications published by the agencies in paper and designated by the secretary of state to be included in the Missouri state publication access program;

(4) To provide training for staff of other libraries to assist the public in the use of state publications;

(5) To assist agencies in the distribution of paper copies of state publications to the public.

5. All responsibilities and powers set out in this section shall be carried out consistent with the provisions of section 191.863, RSMo.

6. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this chapter shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

181.130. LIBRARY AGREEMENTS PERMITTED, WHEN. — The state library may enter into **[**depository**]** agreements with **[**public**]** **participating** libraries **[**and college and university libraries**]** which meet standards for **[**depository**]** eligibility **[**as approved**]** **to be established** by the state library.

[181.120. LIBRARY TO PROVIDE COPIES FOR STATE ARCHIVES AND HISTORICAL SOCIETY. — In addition to the distribution of the publications as aforesaid, the library shall distribute two of the forty-five copies of each publication to the state archives for preservation and two copies to the state historical society.**]**

Approved June 25, 2004

HB 1362 [HB 1362]

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

Authorizes county planning commissions to accept additional forms of security for improvements made to subdivisions in unincorporated areas.

AN ACT to repeal section 64.825, RSMo, and to enact in lieu thereof one new section relating to regulation of subdivisions in unincorporated areas.

SECTION
A. Enacting clause.
64.825. Regulation of subdivisions in unincorporated areas — procedure — bonds.

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

SECTION A. ENACTING CLAUSE. — Section 64.825, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 64.825, to read as follows:

64.825. REGULATION OF SUBDIVISIONS IN UNINCORPORATED AREAS — PROCEDURE — BONDS. — The county planning commission may also prepare, with the approval of the county commission, as parts of the official master plan or otherwise, sets of regulations governing subdivisions of land in unincorporated areas, and amend or change same from time to time as herein provided, which regulations may provide for the proper location and width of streets, building lines, open spaces, safety, recreation, and for the avoidance of congestion of population, including minimum width and area of lots. Such regulations may also include the extent to which and the manner in which streets shall be graded and improved, and the extent to which water, sewer and other utility services shall be provided, to protect public health and general welfare. Such regulations may provide that in lieu of the immediate completion or installation of the work, the county planning commission may accept bond for the county commission in the amount and with surety **bond, cash bond, cash deposit with the county treasurer, letter of credit, or certificate of deposit** and conditions satisfactory to the county commission, providing for and securing to the county commission the actual construction of the improvements and utilities within a period specified by the county planning commission, and the county commission shall have power to enforce the bond**, surety bond, cash bond, cash deposit with the county treasurer, letter of credit, or certificate of deposit** by all proper remedies. The subdivision regulations shall be adopted, changed or amended, certified and filed as provided in section 64.815. The subdivision regulations shall be adopted, changed or amended only after a public hearing has been held thereon, public notice of which shall be given in the manner as provided for the hearing in section 64.815.

Approved June 25, 2004

HB 1363 [HCS HB 1363]

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

Requires Secretary of State to maintain, operate, and acquire archival office in St. Louis.

AN ACT to amend chapter 109, RSMo, by adding thereto two new sections relating to an archival facility in St. Louis.

SECTION
A. Enacting clause.
109.400. Archival facility to be maintained, authority to enter into contracts and receive moneys.
109.410. Missouri State Archives — St. Louis Trust Fund established, use of funds.

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

SECTION A. ENACTING CLAUSE. — Chapter 109, RSMo, is amended by adding thereto two new sections, to be known as sections 109.400 and 109.410, to read as follows:

109.400. ARCHIVAL FACILITY TO BE MAINTAINED, AUTHORITY TO ENTER INTO CONTRACTS AND RECEIVE MONEYS. — 1. The secretary of state is hereby authorized:

(1) To plan, acquire, construct, develop, operate, and maintain, or to lease or sublease to or from others for acquisition, construction, development, operation, and maintenance, an archival facility in St. Louis City to preserve documents of legal, historical, and genealogical importance to the state of Missouri, and to provide educational and outreach programs sponsored by the Missouri state archives;

(2) To enter into contracts and agreements with public or private persons, partnerships, associations, entities, corporations, and cities, counties, and other subdivisions of the state of Missouri such as might be necessary to promote the planning, acquisition, construction, development, operation, or maintenance of such facility and its programs; and

(3) To receive any grants, gifts, bequests, rentals, contributions, moneys, or properties appropriated or otherwise designated for payment to the secretary of state for the planning, acquisition, construction, development, operation, or maintenance of such facility and its programs by municipalities, counties, state, or other political subdivisions or public agencies or by the federal government or any agency or officer thereof or from any other public or private source.

2. Nothing in this section shall require any local agency, entity, or subdivision to transfer any records to the state archives.

109.410. MISSOURI STATE ARCHIVES — ST. LOUIS TRUST FUND ESTABLISHED, USE OF FUNDS. — 1. There is hereby established in the state treasury a special revolving fund to be known as the "Missouri State Archives - St. Louis Trust Fund". The fund shall consist of all moneys received from federal, private, or other sources for the planning, acquisition, construction, development, operation, or maintenance of the facility and programs authorized by section 109.400. The fund shall further consist of fees generated at the St. Louis facility for copying public records and for providing public access to public records and images, including staff time required for making copies and reproducing images.

2. The state treasurer shall be custodian of the Missouri state archives - St. Louis trust fund. Moneys in the fund shall be used exclusively for the planning, acquisition, construction, development, operation, or maintenance of the facility and programs authorized by section 109.400. No moneys obtained through the provisions of this section shall be made a part of the general operating budget of the state of Missouri, nor shall they be transferred into the general revenue fund. No moneys from the state general revenue fund shall be appropriated for the purposes of funding an archival facility located in any city not within a county as provided in sections 109.400 to 109.410. Notwithstanding section 33.080, RSMo, to the contrary, any moneys remaining in the fund at the end of any biennium shall not revert to the credit of the general revenue fund. All yield, interest, income, increment, or gain received from time deposit of moneys in the state treasury to the credit of the fund shall be credited to the fund. Notwithstanding any provision of law to the contrary, no amount of moneys in the fund shall be transferred from the fund or charged for purposes of the administration of central services for the state of Missouri.

Approved July 2, 2004

HB 1364 [HB 1364]

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

Makes the filing of parenting plans for children over the age of eighteen optional in proceedings relating to child visitation, custody, or support.

AN ACT to repeal section 452.310, RSMo, and to enact in lieu thereof one new section relating to parenting plans.

SECTION

A. Enacting clause.

452.310. Petition, contents — service, how — rules to apply — defenses abolished — parenting plans submitted, when, content, exception.

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

SECTION A. ENACTING CLAUSE. — Section 452.310, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.310, to read as follows:

452.310. PETITION, CONTENTS — SERVICE, HOW — RULES TO APPLY — DEFENSES ABOLISHED — PARENTING PLANS SUBMITTED, WHEN, CONTENT, EXCEPTION. — 1. In any proceeding commenced pursuant to this chapter, the petition, a motion to modify, a motion for a family access order and a motion for contempt shall be verified. The petition in a proceeding for dissolution of marriage shall allege that the marriage is irretrievably broken and that therefore there remains no reasonable likelihood that the marriage can be preserved. The petition in a proceeding for legal separation shall allege that the marriage is not irretrievably broken and that therefore there remains a reasonable likelihood that the marriage can be preserved.

2. The petition in a proceeding for dissolution of marriage or legal separation shall set forth:

(1) The residence of each party, including the county, and the length of residence of each party in this state and in the county of residence;

(2) The date of the marriage and the place at which it is registered;

(3) The date on which the parties separated;

(4) The name, date of birth and address of each child, and the parent with whom each child has primarily resided for the sixty days immediately preceding the filing of the petition for dissolution of marriage or legal separation;

(5) Whether the wife is pregnant;

(6) The Social Security number of the petitioner, respondent and each child;

(7) Any arrangements as to the custody and support of the children and the maintenance of each party; and

(8) The relief sought.

3. Upon the filing of the petition in a proceeding for dissolution of marriage or legal separation, each child shall immediately be subject to the jurisdiction of the court in which the proceeding is commenced, unless a proceeding involving allegations of abuse or neglect of the child is pending in juvenile court. Until permitted by order of the court, neither parent shall remove any child from the jurisdiction of the court or from any parent with whom the child has primarily resided for the sixty days immediately preceding the filing of a petition for dissolution of marriage or legal separation.

4. The mere fact that one parent has actual possession of the child at the time of filing shall not create a preference in favor of such parent in any judicial determination regarding custody of the child.

5. The respondent shall be served in the manner provided by the rules of the supreme court and applicable court rules and, to avoid an interlocutory judgment of default, shall file a verified

answer within thirty days of the date of service which shall not only admit or deny the allegations of the petition, but shall also set forth:

(1) The Social Security number of the petitioner, respondent and each child;

(2) Any arrangements as to the custody and support of the child and the maintenance of each party; and

(3) The relief sought.

6. Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

7. The petitioner and respondent shall submit a proposed parenting plan, either individually or jointly, within thirty days after service of process or the filing of the entry of appearance, whichever event first occurs of a motion to modify or a petition involving custody or visitation issues. The proposed parenting plan shall set forth the arrangements that the party believes to be in the best interest of the minor children and shall include but not be limited to:

(1) A specific written schedule detailing the custody, visitation and residential time for each child with each party including:

(a) Major holidays stating which holidays a party has each year;

(b) School holidays for school-age children;

(c) The child's birthday, Mother's Day and Father's Day;

(d) Weekday and weekend schedules and for school-age children how the winter, spring, summer and other vacations from school will be spent;

(e) The times and places for transfer of the child between the parties in connection with the residential schedule;

(f) A plan for sharing transportation duties associated with the residential schedule;

(g) Appropriate times for telephone access;

(h) Suggested procedures for notifying the other party when a party requests a temporary variation from the residential schedule;

(i) Any suggested restrictions or limitations on access to a party and the reasons such restrictions are requested;

(2) A specific written plan regarding legal custody which details how the decision-making rights and responsibilities will be shared between the parties including the following:

(a) Educational decisions and methods of communicating information from the school to both parties;

(b) Medical, dental and health care decisions including how health care providers will be selected and a method of communicating medical conditions of the child and how emergency care will be handled;

(c) Extracurricular activities, including a method for determining which activities the child will participate in when those activities involve time during which each party is the custodian;

(d) Child care providers, including how such providers will be selected;

(e) Communication procedures including access to telephone numbers as appropriate;

(f) A dispute resolution procedure for those matters on which the parties disagree or in interpreting the parenting plan;

(g) If a party suggests no shared decision-making, a statement of the reasons for such a request;

(3) How the expenses of the child, including child care, educational and extraordinary expenses as defined in the child support guidelines established by the supreme court, will be paid including:

(a) The suggested amount of child support to be paid by each party;

(b) The party who will maintain or provide health insurance for the child and how the medical, dental, vision, psychological and other health care expenses of the child not paid by insurance will be paid by the parties;

(c) The payment of educational expenses, if any;

(d) The payment of extraordinary expenses of the child, if any;

(e) Child care expenses, if any;

(f) Transportation expenses, if any.

8. If the proposed parenting plans of the parties differ and the parties cannot resolve the differences or if any party fails to file a proposed parenting plan, upon motion of either party and an opportunity for the parties to be heard, the court shall enter a temporary order containing a parenting plan setting forth the arrangements specified in subsection 7 of this section which will remain in effect until further order of the court. The temporary order entered by the court shall not create a preference for the court in its adjudication of final custody, child support or visitation.

9. Within one hundred twenty days after August 28, 1998, the Missouri supreme court shall have in effect guidelines for a parenting plan form which may be used by the parties pursuant to this section in any dissolution of marriage, legal separation or modification proceeding involving issues of custody and visitation relating to the child.

10. The filing of a parenting plan for any child over the age of eighteen for whom custody, visitation, or support is being established or modified by a court of competent jurisdiction is not required. Nothing in this section shall be construed as precluding the filing of a parenting plan upon agreement of the parties or if ordered to do so by the court for any child over the age of eighteen for whom custody, visitation, or support is being established or modified by a court of competent jurisdiction.

Approved June 25, 2004

HB 1377 [HB 1377]

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

Increases the expense payments for county planning commission members.

AN ACT to repeal sections 64.520 and 64.805, RSMo, and to enact in lieu thereof two new sections relating to expenses of county planning commissions.

SECTION

A. Enacting clause.

64.520. County planning commission — members — term — expenses — chairman (counties of the second and third class).

64.805. County planning commission — members — terms — expenses — chairman.

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

SECTION A. ENACTING CLAUSE. — Sections 64.520 and 64.805, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 64.520 and 64.805, to read as follows:

64.520. COUNTY PLANNING COMMISSION — MEMBERS — TERM — EXPENSES — CHAIRMAN (COUNTIES OF THE SECOND AND THIRD CLASS). — Such county planning commission shall consist of the county highway engineer, and one resident of the county appointed by the county commission, from the unincorporated part of each township in the county, except that no such freeholder shall be appointed from a township in which there is no unincorporated area. The township representatives are hereinafter referred to as appointed members. The term of each appointed member shall be four years or until **[**his**]** **a** successor takes office, except that the terms shall be overlapping and that the respective terms of the members first appointed may be less than four years. The term of the county highway engineer shall be

only for the duration of **[**his**]** **the engineer's** tenure of official position. All members of the county planning commission shall serve as such without compensation, except that an attendance fee as reimbursement for expenses **[**for hearings, and for not to exceed two administrative meetings per month,**]** may be paid to the appointed members of the planning commission in an amount, as set by the county commission, not to exceed **[**fifteen**]** **twenty-five** dollars for each meeting. The planning commission shall elect its chairman, who shall serve for one year.

64.805. COUNTY PLANNING COMMISSION — MEMBERS — TERMS — EXPENSES — CHAIRMAN. — The county planning commission shall consist of the county highway engineer, and one resident of the county appointed by the county commission, from the unincorporated part of each township in the county, except that no such person shall be appointed from a township in which there is no unincorporated area. The township representatives are hereinafter referred to as appointed members. The term of each appointed member shall be four years or until **[**his**]** **a** successor takes office, except that the terms shall be overlapping and that the respective terms of the members first appointed may be less than four years. The term of the county highway engineer shall be only for the duration of **[**his**]** **the engineer's** tenure of official position. All members of the county planning commission shall serve as such without compensation, except that an attendance fee as reimbursement for expenses**[**, for not to exceed four meetings per year,**]** may be paid to the appointed members of the county planning commission in an amount, as set by the county commission, not to exceed **[**ten**]** **twenty-five** dollars per meeting. The planning commission shall elect its chairman, who shall serve for one year.

Approved July 1, 2004

HB 1398 [HB 1398]

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

Authorizes a bid process for selecting the depositary of city funds in Maryville.

AN ACT to repeal sections 95.280 and 95.285, RSMo, and to enact in lieu thereof two new sections relating to depositaries for city funds, with penalty provisions.

SECTION
A. Enacting clause.
95.280. Depositary for city funds, how selected.
95.285. Depositary to deposit securities — contract term for depositaries, certain cities (Maryville).

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

SECTION A. ENACTING CLAUSE. — Sections 95.280 and 95.285, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 95.280 and 95.285, to read as follows:

95.280. DEPOSITARY FOR CITY FUNDS, HOW SELECTED. — 1. Subject to the provisions of section 110.030, RSMo, the city council, at its regular meetings in July of each year, may receive sealed proposals for the deposit of the city funds from banking institutions doing business within the city that desire to be selected as the depositary of the funds of the city. Notice that bids will be received shall be published by the city clerk not less than one nor more than four

weeks before the meeting, in some newspaper published in the city. Any banking institution doing business in the city, desiring to bid, shall deliver to the city clerk, on or before the day of the meeting, a sealed proposal stating the rate percent upon daily balances that the banking institution offers to pay to the city for the privilege of being the depositary of the funds of the city for the year next ensuing the date of the meeting; or, in the event that the selection is made for a less term than one year, as herein provided, then for the time between the date of the bid and the next regular time for the selection of a depositary. It is a misdemeanor for the city clerk or other person to disclose directly or indirectly the amount of any bid to any person before the selection of the depositary.

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

95.285. DEPOSITARY TO DEPOSIT SECURITIES — CONTRACT TERM FOR DEPOSITARIES, CERTAIN CITIES (MARYVILLE). — 1. Except as provided in subsection 2 of this section, upon the opening of the sealed proposals submitted, the city council shall select as the depositary of the funds of the city the banking institution offering to pay to the city the largest amount for the privilege; except that the council may reject any or all bids. Within five days after the selection of the depositary, the banking institution selected shall deposit the securities as required by sections 110.010 and 110.020, RSMo. The rights and duties of the parties to the depositary contract are as provided in section 110.010**, RSMo**.

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

Approved July 2, 2004

HB 1399 [HCS HB 1399]

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

Modifies sections dealing with athletic trainers to require licenses in lieu of registration.

AN ACT to repeal sections 334.702, 334.704, 334.706, 334.708, 334.710, 334.712, 334.715, and 334.717, RSMo, and to enact in lieu thereof eight new sections relating to athletic trainers.

SECTION
A. Enacting clause.
334.702. Definitions.

334.704. Athletic trainers required to be licensed.
334.706. Board of healing arts, powers and duties — rules and regulations, procedure.
334.708. Qualifications of athletic trainers seeking licensure.
334.710. Licensure forms and fee — deposit of fees.
334.712. License issued, when — content.
334.715. Refusal — suspension — revocation of license, grounds — reinstatement, procedure.
334.717. Missouri athletic trainer advisory committee, appointment — members, qualifications, terms, vacancies.

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

SECTION A. ENACTING CLAUSE. — Sections 334.702, 334.704, 334.706, 334.708, 334.710, 334.712, 334.715, and 334.717, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 334.702, 334.704, 334.706, 334.708, 334.710, 334.712, 334.715, and 334.717, to read as follows:

334.702. DEFINITIONS. — As used in sections 334.700 to 334.725, unless the context clearly requires otherwise, the following terms mean:

(1) "**[**Apprentice**]** **Student** athletic trainer", a person who assists in the duties usually performed by **[**an**]** **a licensed** athletic trainer and who works under the direct supervision of a **[**registered**]** **licensed** athletic trainer;

(2) "Athlete", a person who participates in a sanctioned amateur or professional sport or recreational sport activity;

(3) "Athletic trainer", a person who meets the qualifications of section 334.708 and who, upon the direction of the team physician and/or consulting physician, practices prevention, emergency care, first aid, treatment, or physical rehabilitation of injuries incurred by athletes in the manner, means, and methods deemed necessary to effect care or rehabilitation, or both;

(4) "Board", the Missouri board for the healing arts;

(5) "Committee", the athletic trainers advisory committee;

(6) "Division", the division of professional registration of the department of economic development.

334.704. ATHLETIC TRAINERS REQUIRED TO BE LICENSED. — No person shall hold himself **or herself** out as an athletic trainer in this state unless **[**he**]** **such person** has been **[**registered**]** **licensed** as such under the provisions of sections 334.700 to 334.725.

334.706. BOARD OF HEALING ARTS, POWERS AND DUTIES — RULES AND REGULATIONS, PROCEDURE. — 1. The board shall **[**register**]** **license** applicants who meet the qualifications for athletic trainers, who file for **[**registration**]** **licensure**, and who pay all fees required for this **[**registration**]** **licensure**.

2. The board shall:

(1) Prescribe application forms to be furnished to all persons seeking **[**registration**]** **licensure** under sections 334.700 to 334.725;

(2) Prepare and conduct examinations for applicants for **[**registration**]** **licensure** under sections 334.700 to 334.725;

(3) Prescribe the form and design of the **[**registration**]** **licensure** to be issued under sections 334.700 to 334.725;

(4) Set the fee for examination, **[**registration**]** **licensure**, and renewal thereof;

(5) Keep a record of all of its proceedings regarding the Missouri athletic trainers act and of all athletic trainers **[**registered**]** **licensed** in this state;

(6) Annually prepare a roster of the names and addresses of all athletic trainers **[**registered**]** **licensed** in this state, copies of which shall be made available upon request to any person paying the fee therefor;

(7) Set the fee for the roster at an amount sufficient to cover the actual cost of publishing and distributing the roster;

(8) Appoint members of the Missouri athletic trainer advisory committee;

(9) Adopt an official seal.

3. The board may:

(1) Issue subpoenas to compel witnesses to testify or produce evidence in proceedings to deny, suspend, or revoke **[**registration**] a license**;

(2) Promulgate rules pursuant to chapter 536, RSMo, in order to carry out the provisions of sections 334.700 to 334.725;

(3) Establish guidelines for athletic trainers in sections 334.700 to 334.725.

4. No rule or portion of a rule promulgated under the authority of sections 334.700 to 334.725 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

334.708. QUALIFICATIONS OF ATHLETIC TRAINERS SEEKING LICENSURE. — 1. Any person seeking **[**registration**] licensure** under sections 334.700 to 334.725 must be a resident or in the process of establishing residency in this state and must meet at least one set of the following qualifications:

(1) Has met all of the National Athletic Trainers Association certification qualifications;

(2) Holds a degree in physical therapy with at least a minor in physical education or health which included a basic athletic training course and has spent at least two academic years, military duty included, working under the direct supervision of a certified athletic trainer;

(3) Can show proof acceptable to the board of experience and educational quality equal to that in subdivision (1), and can pass the examination for **[**registration**] licensure** under sections 334.700 to 334.725.

2. The board shall grant, without examination, **[**registration**] licensure** to any qualified nonresident athletic trainer holding a license or **[**registration**] licensure** in another state if such other state recognizes **[**registrants**] licenses** of the state of Missouri in the same manner.

334.710. LICENSURE FORMS AND FEE — DEPOSIT OF FEES. — 1. All applications for initial **[**registration**] licensure** under sections 334.700 to 334.725 shall be submitted on forms prescribed by the board and shall be accompanied by an initial **[**registration**] licensure** fee. All applications for renewal of **[**registration**] licensure** issued under sections 334.700 to 334.725 shall be submitted on forms prescribed by the board and shall be accompanied by a renewal fee.

2. All fees of any kind and character authorized to be charged by the board shall be paid to the director of revenue and shall be deposited by the state treasurer into the board for the healing arts fund, to be disbursed only in payment for expenses of maintaining the athletic trainer **[**registration**] licensure** program and for the enforcement of the provisions of sections 334.700 to 334.725.

334.712. LICENSE ISSUED, WHEN — CONTENT. — 1. Any person who meets the qualifications listed in section 334.708, submits his **or her** application and fees in accordance with section 334.710, and has not committed any act listed in section 334.715 shall be issued **[**registration**] a license** under sections 334.700 to 334.725.

2. Each **[**registration**] license** issued under sections 334.700 to 334.725 shall contain the name of the person to whom it was issued, the date on which it was issued and such other information as the board deems advisable. All **[**registrations**] licenses** issued under sections 334.700 to 334.725 shall expire on January thirtieth of each year.

334.715. REFUSAL — SUSPENSION — REVOCATION OF LICENSE, GROUNDS — REINSTATEMENT, PROCEDURE. — 1. The board may refuse to **[**register**] license** any applicant or may suspend, revoke, or refuse to renew the **[**registration**] license** of any **[**registrant**] licensee** for any one or any combination of the causes provided in section 334.100, or if the applicant or **[**registrant**] licensee**:

(1) Violated or conspired to violate any provision of sections 334.700 to 334.725 or any provision of any rule promulgated pursuant to sections 334.700 to 334.725; or

(2) Has been found guilty of unethical conduct as defined in the ethical standards of the National Athletic Trainers Association or the National Athletic Trainers Association Board of Certification as adopted and published by the committee and the board and filed with the secretary of state.

2. Upon receipt of a written application made in the form and manner prescribed by the board, the board may reinstate any **[**registration**]** **license** which has expired, been suspended or been revoked or may issue any **[**registration**]** **license** which has been denied; provided, that no application for reinstatement or issuance of **[**registration**]** **licensure** shall be considered until at least six months have elapsed from the date of denial, expiration, suspension, or revocation when the **[**registration**]** **license** to be reinstated or issued was denied issuance or renewal or was suspended or revoked for one of the causes listed in subsection 1 of this section.

334.717. MISSOURI ATHLETIC TRAINER ADVISORY COMMITTEE, APPOINTMENT — MEMBERS, QUALIFICATIONS, TERMS, VACANCIES. — 1. There is hereby created the "Missouri Athletic Trainer Advisory Committee", to be composed of five members to be appointed by the board.

2. The athletic trainer advisory committee shall:

(1) Assist the board in conducting examinations for applicants of athletic trainer **[**registration**]** **licensure**;

(2) Advise the board on all matters pertaining to the **[**registration**]** **licensure** of athletic trainers;

(3) Review all complaints and/or investigations wherein there is a possible violation of sections 334.700 to 334.725 or regulations promulgated pursuant thereto and make recommendations to the board for action;

(4) Follow the provisions of the board's administrative practice procedures in conducting all official duties.

3. Each athletic trainer advisory committee member shall:

(1) Be a citizen of the United States and a resident of the state of Missouri for five years next preceding appointment; and

(2) Be comprised of three **[**registered**]** **licensed** athletic trainers except for initial appointees; and

(3) One member shall be a physician duly licensed by the Missouri state board for the healing arts; and

(4) One member shall be a general public member.

4. Except for the initial appointees, members shall hold office for terms of six years. The board shall designate one member for a term expiring in 1984, one member for a term expiring in 1985, one member for a term expiring in 1986, one member for a term expiring in 1987, and one member for a term expiring in 1988. In the event of death, resignation, or removal of any member, the vacancy of the unexpired term shall be filled by the board in the same manner as the other appointments.

Approved July 2, 2004

HB 1403 [SCS HCS HB 1403]

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

Creates additional regulations of amusement rides.

AN ACT to repeal sections 316.203, 316.204, 316.210, 316.218, 316.230, 316.233, and 701.377, RSMo, and to enact in lieu thereof nine new sections relating to amusement rides, with penalty provisions for certain sections, and an effective date.

SECTION
A. Enacting clause.
316.203. Definitions.
316.204. Amusement ride safety board established — members — meetings, when.
316.210. Amusement ride operation, qualifications — inspection, insurance, bond, permit.
316.213. Portable amusement rides, itinerary to be filed, contents.
316.218. Penalty.
316.230. Passenger to obey rules — prohibited acts — penalty.
316.233. Passenger may not ride, when.
316.238. Rock climbing walls, subject to amusement ride regulations, when.
701.377. Fees, how set, limitation — deposit — elevator safety fund created, purpose — fees paid to political subdivisions, when, exception, state certificate.
B. Effective date.

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

SECTION A. ENACTING CLAUSE. — Sections 316.203, 316.204, 316.210, 316.218, 316.230, 316.233, and 701.377, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 316.203, 316.204, 316.210, 316.213, 316.218, 316.230, 316.233, 316.238, and 701.377, to read as follows:

316.203. DEFINITIONS. — As used in sections 316.203 to 316.233, the following terms mean:

(1) "Amusement ride", **any of the following, which is primarily for the purpose of giving its patrons amusement, pleasure, thrills, or excitement, and which is open to the general public excluding skill teaching, exercise, and team building:**

(a) Any mechanical device that carries or conveys passengers along, around or over a fixed or restricted route or course or within a defined area **[**for the purpose of giving its passengers amusement, pleasure or excitement**]**;

(b) Any dry slide over twenty feet in height excluding water slides;

(c) Any tram, open car, or combination of open cars or wagons pulled by a tractor or other motorized device, except hayrack rides, those used solely for transporting patrons to and from parking areas, or those used for guided or educational tours, but does not necessarily follow a fixed or restricted course;

(d) Any bungee cord attraction or similar elastic device;

(e) Any climbing wall over ten feet in height except for not-for-profit entities that follow the YMCA Services Corporation's Climbing Walls Safety Guidelines or the Boy Scouts of America Guidelines;

(2) **"Board", the amusement ride safety board established in section 316.204;**

(3) "Department", the department of public safety;

[(3)**]** **(4)** "Director", the director of the department of public safety;

[(4)**]** **(5)** "Operator", a person or the agent of a person who owns or controls, or has the duty to control, the operation of an amusement **[**or**]** ride or related electrical equipment;

[(5)**]** **(6)** "Owner", a person who owns, leases, controls or manages the operations of an amusement ride and may include the state or any political subdivision of the state;

[(6)**]** **(7)** "Qualified inspector", any person who is:

(a) Found by the director to possess the requisite training and experience in respect of amusement rides to perform competently the inspections required by sections 316.203 to 316.233; or

(b) Certified by the National Association of Amusement Ride Safety Officials (NAARSO) to have and maintain at least a level one certification; or

(c) Is a member of the Amusement Industry Manufacturing and Suppliers (AIMS) and meets such qualifications as are established by the board;

[(7)**]** **(8)** "Related electrical equipment", any electrical apparatus or wiring used in connection with amusement rides;

[(8)**]** **(9)** "Safety rules", the rules and regulations governing rider conduct on an amusement ride, provided such rules and regulations are prominently displayed at or near the entrance to, or loading platform for, the amusement ride;

[(9)**]** **(10)** "Serious physical injury", a patron personal injury immediately reported to the owner or operator as occurring on an amusement ride and which results in death, dismemberment, significant disfigurement or other significant injury that requires immediate in-patient admission and twenty-four-hour hospitalization under the care of a licensed physician for other than medical observation; **and**

[(10)**]** **(11)** "Serious incident", any single incident where three or more persons are immediately transported to a licensed off-site medical care facility for treatment of an injury as a result of being on or the operation of the amusement ride**[**; and

(11) "Board", the amusement ride safety board appointed as provided in sections 316.203 to 316.233**]**.

316.204. AMUSEMENT RIDE SAFETY BOARD ESTABLISHED — MEMBERS — MEETINGS, WHEN. — 1. There is hereby established an "Amusement Ride Safety Board" to be composed of nine members, one of whom shall be the state fire marshal or the marshal's designee. The remaining eight members of the board shall be appointed by the governor with the advice and consent of the senate. Each member appointed by the governor shall be appointed for a staggered term of five years or until **[**his or her**]** **a** successor is appointed. The governor shall fill any vacancy on the board for the remainder of the unexpired term with a representative of the same interest as that of the member whose term is vacant. No more than four members of the board, who are not employees of state or local government, shall be members of the same political party.

2. Three members of the board shall represent the interests of small amusement ride businesses that operate in this state. Three members of the board shall represent the interests of the fixed amusement ride parks. One member of the board shall be a resident of this state. One member of the board shall be a mechanical engineer knowledgeable of amusement rides.

3. The state fire marshal shall call the first meeting of the board within sixty days after all members have been appointed and qualified. The members from among their membership shall elect a chairperson. After the initial meeting the members shall meet at the call of the chairperson, but shall meet at least three times per year. Five members of the board shall constitute a quorum.

4. The members of the board shall receive no compensation for their services, and shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.

316.210. AMUSEMENT RIDE OPERATION, QUALIFICATIONS — INSPECTION, INSURANCE, BOND, PERMIT. — 1. A person shall not operate an amusement ride unless the owner:

(1) Has the amusement ride inspected at least once annually by a qualified inspector, whom the owner or an insurer has provided to perform such inspection, and obtains from such qualified inspector written documentation that the inspection has been made and that the amusement ride meets nationally recognized inspection standards and is covered by the insurance required by subdivision (2) of this subsection;

(2) Has:

(a) An insurance policy currently in force written by an insurance company authorized to do business in this state in an amount of not less than one million dollars per occurrence; **or**

(b) A bond in the same amount as such person's policy from paragraph (a) of this subdivision, provided that the aggregate liability of the surety under such bond shall not exceed the face amount of the bond; or

(c) Cash or other surety acceptable to the department;

(3) Files with the department the inspection report and certificate of insurance verifying the policy required by this section or a photocopy of such documentation or certificate; and

(4) Has been issued a state operating permit by the department and affixed such permit to the designated amusement ride. Such permit fee shall not exceed actual administrative costs.

2. The inspection required pursuant to subdivision (1) of subsection 1 of this section shall be conducted at a minimum to meet the manufacturer's or engineer's **[**recommendations**]** **specifications and to follow the applicable national standards**.

3. **The department or designee may conduct a spot inspection of any amusement ride without notice at any time while such amusement ride is operating or will be operating in this state. The department may order temporary suspension of an operating permit if it has been determined after a spot inspection to be hazardous or unsafe. Operation of such amusement ride shall not resume until the hazardous or unsafe condition has been corrected and subjected to reinspection by the department for an inspection fee established by rule.**

4. All fees collected pursuant to this section shall be deposited to the credit of the **[**general revenue**]** **elevator safety** fund **created pursuant to section 701.377, RSMo**.

316.213. PORTABLE AMUSEMENT RIDES, ITINERARY TO BE FILED, CONTENTS. — The owner or operator of portable amusement rides shall file an itinerary with the department on a department form no less than fifteen days before the operation of an amusement ride for use by the public. The itinerary shall include the following:

(1) The name of the amusement ride owner;

(2) The carnival, fair, or activity sponsor;

(3) The address and telephone number of the site;

(4) The dates open to the public; and

(5) The name of the contact person on site.

316.218. PENALTY. — 1. Any person who knowingly operates, causes to be operated or directs someone to operate an amusement ride in violation of sections 316.203 to 316.233 is guilty of a class A misdemeanor.

2. Any person who knowingly makes a false statement, representation, or certification in an application, record, report, or other document filed or required to be maintained under section 316.200 to 316.237 shall be guilty of a misdemeanor punishable under section 575.060, RSMo.

316.230. PASSENGER TO OBEY RULES — PROHIBITED ACTS — PENALTY. — 1. A passenger on an amusement ride shall, at a minimum:

(1) Obey the reasonable safety rules posted in accordance with sections 316.203 to 316.233 and oral instructions for an amusement ride issued by the amusement owner or such owner's employee or agent, unless:

(a) The safety rules are contrary to sections 316.203 to 316.233; or

(b) The oral instructions are contrary to sections 316.203 to 316.233 or the safety rules; and

(2) Refrain from acting in any manner that may cause or contribute to injuring such passenger or others, including:

(a) Interfering with safe operation of the amusement ride;

(b) Not engaging any safety devices that are provided;

(c) Disconnecting or disabling a safety device except at the express instruction of the operator;

(d) Altering or enhancing the intended speed, course or direction of an amusement ride;

(e) Extending arms and legs beyond the carrier or seating area except at the express direction of the ride **or attraction** operator;

(f) Throwing, dropping or expelling an object from or toward an amusement ride;

(g) Getting on or off an amusement ride except at the designated time and area, if any, at the direction of the ride operator, or in an emergency; and

(h) Unreasonably controlling the speed or direction of such passenger or an amusement ride that requires the passenger to control or direct himself or herself or a device.

2. Any person who violates the provisions of this section shall be guilty of a class A misdemeanor.

316.233. PASSENGER MAY NOT RIDE, WHEN. — An amusement ride passenger shall not get on**, enter,** or attempt to get on an amusement ride unless the passenger reasonably determines that, at a minimum, he or she:

(1) Has sufficient knowledge to use, get on**, enter,** or get off the amusement ride safely without instruction or has requested and received before getting on the ride sufficient information to get on, use**, enter,** or get off safely;

(2) Has located, reviewed and understood any signs in the vicinity of the ride and has satisfied any posted height, medical or other restrictions and abided by all rules, regulations and restrictions;

(3) Is not under the influence of alcohol or any drug that affects his or her ability to safely use the amusement ride or obey the posted rules or oral instructions; and

(4) Is authorized by the amusement owner or such owner's authorized servant, agent or employee to get on the amusement ride.

316.238. ROCK CLIMBING WALLS, SUBJECT TO AMUSEMENT RIDE REGULATIONS, WHEN. — **All rock climbing walls over ten feet tall operated in this state, except as provided in paragragh (d) and (e) of subdivision (1) of section 316.203, shall be subject to the same rules and regulations as amusement rides pursuant to sections 316.200 to 316.238.**

701.377. FEES, HOW SET, LIMITATION — DEPOSIT — ELEVATOR SAFETY FUND CREATED, PURPOSE — FEES PAID TO POLITICAL SUBDIVISIONS, WHEN, EXCEPTION, STATE CERTIFICATE. — As otherwise provided by sections 701.350 to 701.380, the **elevator safety** board shall set fees for inspection, permits, licenses, certificates, and plan review required by the provisions of sections 701.350 to 701.380. Fees shall be determined by the **elevator safety** board to provide sufficient funds for the operation of the board, except that no fee for the certificate shall exceed twenty-five dollars. The **elevator safety** board may alter the fee schedule once each year. Any funds collected pursuant to sections 701.350 to 701.380 **and sections 316.200 to 316.237, RSMo,** shall be deposited in the "Elevator Safety Fund" which is hereby created. Moneys shall be appropriated from the fund for the expense **and functions** of the **[**board**] elevator safety and amusement ride safety boards**. Any unexpended funds in the elevator safety fund at the close of the biennium shall revert to the general revenue as required by section 33.080, RSMo. A municipality or other political subdivision enforcing the provisions of sections 701.350 to 701.380 under the provisions of subsection 2 of section 701.365 and which performs the plan review, permitting, inspections, and certifications as required, the fee for that inspection shall be paid directly to the municipality or political subdivision and shall not be preempted by sections 701.350 to 701.380, except that any fee established by the **elevator safety** board for the issuance of appropriate state certificates shall be paid to the **elevator safety** board.

SECTION B. EFFECTIVE DATE. — Section A of this act shall become effective January 1, 2005.

Approved July 2, 2004

HB 1405 [HCS HB 1405]

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

Creates special license plates for Missouri DeMolay.

AN ACT to amend chapter 301, RSMo, by adding thereto two new sections relating to special license plates.

SECTION

A. Enacting clause.
301.3130. Missouri Association of State Troopers Emergency Relief Society, special license plate — emblem authorization — use of contribution fee, application procedure — rulemaking authority.
301.3148. Missouri DeMolay, special license plates — emblem authorization — use of contributions, fee, application procedure — new plates issued, when.

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

SECTION A. ENACTING CLAUSE. — Chapter 301, RSMo, is amended by adding thereto two new sections, to be known as sections 301.3130 and 301.3148, to read as follows:

301.3130. MISSOURI ASSOCIATION OF STATE TROOPERS EMERGENCY RELIEF SOCIETY, SPECIAL LICENSE PLATE — EMBLEM AUTHORIZATION — USE OF CONTRIBUTION FEE, APPLICATION PROCEDURE — RULEMAKING AUTHORITY. — 1. Any member of the Missouri Association of State Troopers Emergency Relief Society, after an annual payment of an emblem-use authorization fee to the Missouri Association of State Troopers Emergency Relief Society, may receive special license plates for any vehicle the member owns, either solely or jointly, other than an apportioned motor vehicle or a commercial motor vehicle licensed in excess of eighteen thousand pounds gross weight. The Missouri Association of State Troopers Emergency Relief Society hereby authorizes the use of its official emblem to be affixed on multiyear personalized license plates within the plate area prescribed by the director of revenue as provided in this section. Any contribution to the Missouri Association of State Troopers Emergency Relief Society derived from this section, except reasonable administrative costs, shall be used solely for the purposes of the Missouri Association of State Troopers Emergency Relief Society. Any member of the Missouri Association of State Troopers Emergency Relief Society may annually apply for the use of the emblem.

2. Upon annual application and payment of a twenty-five dollar emblem-use contribution to the Missouri Association of State Troopers Emergency Relief Society, the Missouri Association of State Troopers Emergency Relief Society shall issue to the vehicle owner, without further charge, an "emblem-use authorization statement", which shall be presented by the vehicle owner to the director of revenue at the time of registration. Upon presentation of the annual statement and payment of a fifteen dollar fee in addition to the regular registration fees, and presentation of any documents which may be required by law, the director of revenue shall issue to the vehicle owner a special license plate which shall bear the emblem of the Missouri Association of State Troopers Emergency Relief Society and the words "The MASTERS" in place of the words "SHOW-ME STATE". Such license plates shall be made with fully reflective material with a common color scheme and design of the standard license plate, shall be clearly visible at night, shall have a reflective white background in the area of the plate configuration, and shall be aesthetically attractive, as prescribed by section 301.130. Notwithstanding the provisions of section 301.144, no additional fee shall be charged for the personalization of license plates pursuant to this section.

3. A vehicle owner who was previously issued a plate with the Missouri Association of State Troopers Emergency Relief Society emblem authorized by this section, but who does not provide an emblem-use authorization statement at a subsequent time of registration, shall be issued a new plate which does not bear the Missouri Association of State Troopers Emergency Relief Society emblem, as otherwise provided by law.

4. The director of revenue shall make necessary rules and regulations for the enforcement of this section, and shall design all necessary forms required by this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

301.3148. MISSOURI DEMOLAY, SPECIAL LICENSE PLATES — EMBLEM AUTHORIZATION — USE OF CONTRIBUTIONS, FEE, APPLICATION PROCEDURE — NEW PLATES ISSUED, WHEN. — 1. Any member of Missouri DeMolay may receive special license plates as prescribed in this section after an annual payment of an emblem-use authorization fee to Missouri DeMolay. Missouri DeMolay hereby authorizes the use of its official emblem to be affixed on multiyear personalized license plates as provided in this section. Any contribution to Missouri DeMolay derived from this section, except reasonable administrative costs, shall be used solely for Missouri DeMolay scholarships and other charitable programs. Any member of Missouri DeMolay may annually apply to Missouri DeMolay for the use of the emblem.

2. Upon annual application and payment of a twenty-five dollar emblem-use contribution to Missouri DeMolay, the organization shall issue to the vehicle owner, without further charge, an emblem-use authorization statement, which shall be presented by the member to the department of revenue at the time of registration of a motor vehicle. Upon presentation of the annual statement and payment of the fee required for personalized license plates in section 301.144, and other fees and documents which may be required by law, the department of revenue shall issue a personalized license plate, which shall bear the emblem of the Missouri DeMolay, to the vehicle owner.

3. The license plate authorized by this section shall be in a form prescribed by the advisory committee established in section 301.129, except that such license plates shall be made with fully reflective material with a common color scheme and design, shall be clearly visible at night, and shall be aesthetically attractive, as prescribed by section 301.130. The bidding process used to select a vendor for the material to manufacture the license plates authorized by this section shall consider the aesthetic appearance of the plate.

4. A vehicle owner, who was previously issued a plate with the Missouri DeMolay emblem authorized by this section but who does not provide an emblem-use authorization statement at a subsequent time of registration, shall be issued a new plate which does not bear the Missouri DeMolay emblem, as otherwise provided by law. The director of revenue shall make necessary rules and regulations for the enforcement of this section, and shall design all necessary forms required by this section.

Approved July 1, 2004

HB 1407 [HB 1407]

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

Creates an administrative system for adjudicating certain municipal code violations in St. Louis city.

AN ACT to amend chapter 479, RSMo, by adding thereto one new section relating to adjudication of certain municipal code violations.

SECTION

A. Enacting clause.
479.011. Administrative adjudication of certain code violations in St. Louis City — authorization, rules requirements — tribunal designated by ordinance, procedures — evidence reviewed — imprisonment and fines limited — judicial review, lien imposed, when.

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

SECTION A. ENACTING CLAUSE. — Chapter 479, RSMo, is amended by adding thereto one new section, to be known as section 479.011, to read as follows:

479.011. ADMINISTRATIVE ADJUDICATION OF CERTAIN CODE VIOLATIONS IN ST. LOUIS CITY — AUTHORIZATION, RULES REQUIREMENTS — TRIBUNAL DESIGNATED BY ORDINANCE, PROCEDURES — EVIDENCE REVIEWED — IMPRISONMENT AND FINES LIMITED — JUDICIAL REVIEW, LIEN IMPOSED, WHEN. — 1. Any city not within a county may establish, by order or ordinance, an administrative system for adjudicating parking and other nonmoving municipal code violations consistent with applicable state law. Such administrative adjudication system shall be subject to practice, procedure, and pleading rules established by the state supreme court, circuit court, or municipal court. This section shall not be construed to affect the validity of other administrative adjudication systems authorized by state law and created before August 28, 2004.

2. The order or ordinance creating the administrative adjudication system shall designate the administrative tribunal and its jurisdiction, including the code violations to be reviewed. The administrative tribunal may operate under the supervision of the municipal court, parking commission, or other entity designated by order or ordinance and in a manner consistent with state law. The administrative tribunal shall adopt policies and procedures for administrative hearings, and filing and notification requirements for appeals to the municipal or circuit court, subject to the approval of the municipal or circuit court.

3. The administrative adjudication process authorized in this section shall ensure a fair and impartial review of contested municipal code violations, and shall afford the parties due process of law. The formal rules of evidence shall not apply in any administrative review or hearing authorized in this section. Evidence, including hearsay, may be admitted only if it is the type of evidence commonly relied upon by reasonably prudent persons in the conduct of their affairs. The code violation notice, property record, and related documentation in the proper form, or a copy thereof, shall be prima facie evidence of the municipal code violation. The officer who issued the code violation citation need not be present.

4. An administrative tribunal may not impose incarceration or any fine in excess of the amount allowed by law. Any sanction, fine or costs, or part of any fine, other sanction, or costs, remaining unpaid after the exhaustion of, or the failure to exhaust, judicial review procedures under chapter 536, RSMo, shall be a debt due and owing the city, and may be collected in accordance with applicable law.

5. Any final decision or disposition of a code violation by an administrative tribunal shall constitute a final determination for purposes of judicial review, subject to review under chapter 536, RSMo. After expiration of the judicial review period under chapter 536, RSMo, unless stayed by a court of competent jurisdiction, the administrative tribunal's decisions, findings, rules, and orders may be enforced in the same manner as a judgment entered by a court of competent jurisdiction. Upon being recorded in the manner required by state law or the Uniform Commercial Code, a lien may be imposed on the real or personal property of any defendant entering a plea of nolo contendere, pleading guilty to, or found guilty of a municipal code violation in the amount of any debt due the city under this section and enforced in the same manner as a judgment lien under a judgment of a court of competent jurisdiction.

Approved June 25, 2004

HB 1422 [HCS HB 1422]

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

Requires dentists administering anesthesia agents to have permits.

AN ACT to amend chapter 332, RSMo, by adding thereto one new section relating to dentists.

SECTION
A. Enacting clause.
332.361. Dentist may prescribe, possess and administer drugs.

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

SECTION A. ENACTING CLAUSE. — Chapter 332, RSMo, is amended by adding thereto one new section, to be known as section 332.361, to read as follows:

332.361. DENTIST MAY PRESCRIBE, POSSESS AND ADMINISTER DRUGS. — 1. All duly registered and currently licensed dentists in Missouri who prescribe and administer deep sedation or general anesthesia agents in the course of providing dental services shall possess a deep sedation or general anesthesia permit issued by the board. All duly registered and currently licensed dentists in Missouri who prescribe and administer conscious sedation agents in the course of providing dental services shall possess a conscious sedation permit issued by the board.

2. Dentists prescribing or administering deep sedation or general anesthesia or conscious sedation agents shall do so in accordance with rules set forth by the board.

3. Any dental office where deep sedation or general anesthesia or conscious sedation agents are administered shall possess a site certificate issued by the board and comply with the board's minimum standard for site certificates.

4. The board may promulgate rules specifying the criteria by which deep sedation or general anesthesia permits, conscious sedation permits, and site certificates may be issued, renewed, or revoked and standards for prescribing and administering deep sedation or general anesthesia or conscious sedation agents within the dental setting. Such rules shall only apply to entities regulated under this chapter.

5. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it

complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

Approved July 2, 2004

HB 1427 [HB 1427]

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

Modifies the provisions regarding forfeiture of controlled substances and drug paraphernalia.

AN ACT to repeal sections 195.140 and 195.410, RSMo, and to enact in lieu thereof two new sections relating to forfeiture of controlled substances and drug paraphernalia, with a penalty provision.

SECTION

A. Enacting clause.
195.140. Forfeiture of controlled substances and drug paraphernalia, when — disposal — money, records in close proximity also forfeited, rebuttable presumption — procedure.
195.410. Registration, qualifications for — suspension or revocation, grounds, procedure — limitations — duties of department.

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

SECTION A. ENACTING CLAUSE. — Sections 195.140 and 195.410, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 195.140 and 195.410, to read as follows:

195.140. FORFEITURE OF CONTROLLED SUBSTANCES AND DRUG PARAPHERNALIA, WHEN — DISPOSAL — MONEY, RECORDS IN CLOSE PROXIMITY ALSO FORFEITED, REBUTTABLE PRESUMPTION — PROCEDURE. — 1. All controlled substances, imitation controlled substances or drug paraphernalia for the administration, use or manufacture of controlled substances or imitation controlled substances and which have come into the custody of a peace officer or officer or agent of the department of health and senior services as provided by sections 195.010 to 195.320, the lawful possession of which is not established or the title to which cannot be ascertained after a hearing as prescribed in Rule 34 of Rules of Criminal Procedure for the courts of Missouri or some other appropriate hearing, shall be forfeited, and disposed of as follows:

(1) Except as in this section otherwise provided, the court or associate circuit judge having jurisdiction shall order such controlled substances, imitation controlled substances, or drug paraphernalia forfeited and destroyed. A record of the place where said controlled substances, imitation controlled substances, or drug paraphernalia were seized, of the kinds and quantities of controlled substances, imitation controlled substances, or drug paraphernalia so destroyed, and of the time, place and manner of destructions, shall be kept, and a return under oath, reporting the destruction of the controlled substances, imitation controlled substances, or drug paraphernalia shall be made to the court or associate circuit judge **[**and to the United States Commissioner of Narcotics, by the officer who destroys them.

(2) Upon written application by the department of health and senior services, the court or associate circuit judge by whom the forfeiture of such controlled substances, imitation controlled substances, or drug paraphernalia has been decreed may order the delivery of any of them, except heroin and its salts and derivatives, to said department of health and senior services, for distribution or destruction, as herein provided.

(3) Upon application by any hospital within this state, not operated for private gain, the department of health and senior services may in its discretion deliver any controlled substances, imitation controlled substances, or drug paraphernalia for the use of controlled substances or imitation controlled substances that have come into its custody by authority of this section to the applicant for medicinal use. The department of health and senior services may, from time to time, deliver excess stocks of such controlled substances, imitation controlled substances, or drug paraphernalia to the United States Commissioner of Narcotics, or may destroy them.

(4)**];**

(2) The department of health and senior services shall keep a complete record of all controlled substances, imitation controlled substances, or drug paraphernalia received and disposed of, together with the dates of such receipt and disposal, showing the exact kinds, quantities, and forms of such controlled substances, imitation controlled substances, or drug paraphernalia; the persons from whom received and to whom delivered; and by whose authority they were received, delivered or destroyed; which record shall be open to inspection by all federal or state officers charged with the enforcement of federal and state narcotic or controlled substances laws.

2. (1) Everything of value furnished, or intended to be furnished, in exchange for a controlled substance, imitation controlled substance or drug paraphernalia in violation of sections 195.010 to 195.320, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, or securities used, or intended to be used, to facilitate any violation of sections 195.010 to 195.320 shall be forfeited, except that no property shall be forfeited under this subsection to the extent of the interest of an owner by reason of any act or omission established by him to have been committed without his knowledge or consent.

(2) Any moneys, coin, or currency found in close proximity to forfeitable controlled substances, imitation controlled substances, or drug paraphernalia, or forfeitable records of the importation, manufacture, or distribution of controlled substances, imitation controlled substances or drug paraphernalia are presumed to be forfeitable under this subsection. The burden of proof shall be upon claimants of the property to rebut this presumption.

(3) All forfeiture proceedings shall be conducted pursuant to the provisions of sections 513.600 to 513.660, RSMo.

195.410. REGISTRATION, QUALIFICATIONS FOR — SUSPENSION OR REVOCATION, GROUNDS, PROCEDURE — LIMITATIONS — DUTIES OF DEPARTMENT. — 1. No registration shall be issued under section 195.405 unless and until the applicant for such registration has furnished proof satisfactory to the department of health and senior services that:

(1) The applicant is of good moral character or, if the applicant is an association or corporation, that the managing officers are of good moral character; and

(2) The applicant is properly equipped as to land, building, and paraphernalia to carry on the business described in his application.

2. No registration shall be granted to any person who has within two years been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any misdemeanor offense or within seven years for any felony offense related to controlled substances or chemicals listed in subsection 2 of section 195.400.

3. The department of health and senior services shall register an applicant to manufacture, distribute, sell, transfer, or otherwise furnish listed chemicals unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

(1) Maintenance of effective controls against diversion of controlled substances or chemicals listed in subsection 2 of section 195.400 into other than legitimate medical, scientific, or industrial channels;

(2) Compliance with applicable state and local law;

(3) Any convictions of an applicant under any federal or state laws relating to any controlled substance or chemicals listed in subsection 2 of section 195.400;

(4) Past experience in the manufacture or distribution of controlled substances or chemicals listed in subsection 2 of section 195.400 and the existence in the applicant's establishment of effective controls against diversion;

(5) Furnishing by the applicant of false or fraudulent material information in any application filed under section 195.405; and

(6) Any other factors that the department of health and senior services determines to be relevant to and consistent with the public health and safety.

4. Registration does not entitle a registrant to manufacture and distribute chemicals listed in subsection 2 of section 195.400 other than those specified in the registrant's registration.

5. A registration to manufacture, distribute, sell, transfer, or otherwise furnish or dispense a controlled substance or chemical listed in subsection 2 of section 195.400 may be suspended or revoked by the department of health and senior services upon a finding that the registrant has:

(1) Furnished false or fraudulent material information in any application filed pursuant to sections 195.405 to 195.425;

(2) Been convicted of a felony under any state or federal law relating to any controlled substance or listed chemical;

(3) Had his federal authority to manufacture, distribute or dispense controlled substances or chemicals listed in sections 195.405 to 195.425 suspended or revoked; or

(4) Violated any federal controlled substances or chemicals statute or regulation, or any provision of sections 195.005 to 195.425 or regulation promulgated pursuant to sections 195.005 to 195.425.

6. The department of health and senior services may:

(1) Warn or censure a registrant;

(2) Limit a registration to particular listed chemicals;

(3) Limit revocation or suspension of a registration to a particular listed chemical with respect to which grounds for revocation or suspension exist;

(4) Restrict or limit a registration under such terms and conditions as the department of health and senior services considers appropriate for a period of five years;

(5) Suspend or revoke a registration for a period not to exceed five years; or

(6) Deny an application for registration.

In any order of revocation, the department of health and senior services may provide that the registrant may not apply for a new registration for one to five years following the date of such order. Any stay order shall toll this time period.

7. **[**If the department of health and senior services suspends or revokes a registration, all listed chemicals owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal by the department and held pending final disposition of the case. No disposition may be made of chemicals under seal until the time for taking an appeal has elapsed or until all appeals have been concluded, unless a court, upon application therefor, orders the sale of perishable chemicals and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all chemicals may be forfeited to the state.

8.**]** The department of health and senior services shall promptly notify the Drug Enforcement Administration, United States Department of Justice or their successor agencies, of all orders suspending or revoking registration and all forfeitures of controlled substances.

[9.**] 8.** The department of health and senior services may suspend without an order to show cause, any registration simultaneously with the institution of proceedings under subsection 5 of

this section if the department of health and senior services finds that there is imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including review of such proceedings unless sooner withdrawn by the department of health and senior services, dissolved by a court of competent jurisdiction or stayed by the administrative hearing commission.

Approved June 25, 2004

HB 1433 [HS HCS HB 1433]

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

Authorizes the creation of a watershed improvement district in the Upper White River Basin.

AN ACT to repeal sections 644.076, 701.031, 701.033, 701.037, and 701.038, RSMo, and to enact in lieu thereof ten new sections relating to regulation of water and sewer systems.

SECTION

A. Enacting clause.
249.1150. District authorized, powers — resolution may be adopted by county commission for service by district — board of trustees, members, terms — maintenance plan required, when — property tax levy, ballot form — termination of tax, procedure (Barry, Christian, Douglas, Greene, Ozark, Stone, Taney, Webster, and Wright counties).
249.1152. Resolution or petition, contents — county order or ordinance, contents — hearing procedures — property tax levy, ballot form — board of trustees created, members, terms — authority of district — dissolution of a district, procedures.
249.1154. Groundwater depletion areas designated — volume monitoring may be required.
249.1155. Septic systems to be maintained or pumped every five years — proof submitted — fee.
640.635. Wastewater analysis, license required, criteria — rulemaking authority — fee, rate.
644.076. Unlawful acts prohibited — false statements and negligent acts prohibited — penalties — exception.
701.031. Disposal of sewage, who, how, exception.
701.033. Department of health and senior services — powers and duties — rules, procedure.
701.037. Violations, notice of, contents, prosecuting attorney to institute proceedings, when — emergency situation, when.
701.038. Sewage complaints, investigation by department, when — right to inspect adjoining property, procedure requiring notice, exception.

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

SECTION A. ENACTING CLAUSE. — Sections 644.076, 701.031, 701.033, 701.037, and 701.038, RSMo, are repealed and ten new sections enacted in lieu thereof, to be known as sections 249.1150, 249.1152, 249.1154, 249.1155, 640.635, 644.076, 701.031, 701.033, 701.037, and 701.038, to read as follows:

249.1150. DISTRICT AUTHORIZED, POWERS — RESOLUTION MAY BE ADOPTED BY COUNTY COMMISSION FOR SERVICE BY DISTRICT — BOARD OF TRUSTEES, MEMBERS, TERMS — MAINTENANCE PLAN REQUIRED, WHEN — PROPERTY TAX LEVY, BALLOT FORM — TERMINATION OF TAX, PROCEDURE (BARRY, CHRISTIAN, DOUGLAS, GREENE, OZARK, STONE, TANEY, WEBSTER, AND WRIGHT COUNTIES). — 1. There is hereby created within any county of the third classification without a township form of government and with more than thirty-four thousand but less than thirty-four thousand one hundred inhabitants, any county of the second classification without a township form of government and with more than fifty-four thousand two hundred but less than fifty-four

thousand three hundred inhabitants, any county of the third classification without a township form of government and with more than thirteen thousand seventy-five but less than thirteen thousand one hundred seventy-five inhabitants, any county of the first classification with more than two hundred forty thousand three hundred but less than two hundred forty thousand four hundred inhabitants, any county of the third classification without a township form of government and with more than nine thousand four hundred fifty but less than nine thousand five hundred fifty inhabitants, any county of the third classification without a township form of government and with more than twenty-eight thousand six hundred but less than twenty-eight thousand seven hundred inhabitants, any county of the first classification with more than thirty-nine thousand seven hundred but less than thirty-nine thousand eight hundred inhabitants, any county of the third classification without a township form of government and with more than thirty-one thousand but less than thirty-one thousand one hundred inhabitants, and any county of the third classification without a township form of government and with more than seventeen thousand nine hundred but less than eighteen thousand inhabitants, the Upper White River Basin Watershed Improvement District. The watershed improvement district is authorized to own, install, operate, and maintain decentralized or individual on-site wastewater treatment plants. The watershed improvement district created under this section shall be a body corporate and a political subdivision of the state of Missouri, shall be capable of suing and being sued in contract in its corporate name, and shall be capable of holding such real and personal property necessary for corporate purposes. The district shall implement procedures to regulate the area within the district and to educate property owners within the district about the requirements imposed by the district.

2. The watershed improvement district created under this section shall have the power to borrow money and incur indebtedness and evidence the same by certificates, notes, or debentures, to issue bonds and use any one or more lawful funding methods the district may obtain for its purposes at such rates of interest as the district may determine. Any bonds, notes, and other obligations issued or delivered by the district may be secured by mortgage, pledge, or deed of trust of any or all of the property within the district. Every issue of such bonds, notes, or other obligations shall be payable out of property and revenues of the district and may be further secured by other property within the district, which may be pledged, assigned, mortgaged, or a security interest granted for such payment, without preference or priority of the first bonds issued, subject to any agreement with the holders of any other bonds pledging any specified property or revenues. Such bonds, notes, or other obligations shall be authorized by resolution of the district board, and shall bear such date or dates, and shall mature at such time or times, but not in excess of thirty years, as the resolution shall specify. Such bonds, notes, or other obligations shall be in such denomination, bear interest at such rate or rates, be in such form, either coupon or registered, be issued as current interest bonds, compound interest bonds, variable rate bonds, convertible bonds, or zero coupon bonds, be issued in such manner, be payable in such place or places, and be subject to redemption as such resolution may provide, notwithstanding section 108.170, RSMo. The bonds, notes, or other obligations may be sold at either public or private sale, at such interest rates, and at such price or prices as the district shall determine.

3. The county commission of any county located within the watershed improvement district may authorize individual properties to be served by the district by adoption of a resolution or upon the filing of a petition signed by at least twenty percent of the property owners of the proposed area. The resolution or petition shall describe generally the size and location of the proposed area.

4. In the event that any property within the watershed improvement district proposed under this section lies within or is serviced by any existing sewer district formed under this chapter, chapter 204, or chapter 250, RSMo, the property shall not become

part of the watershed improvement district formed under this section unless the existing sewer district agrees to refrain from providing service or to discontinue service to the property. No property shall become part of the watershed district until the owner of that property has paid in full all outstanding costs owed to an existing sewer district formed under this chapter, chapter 204, or chapter 250, RSMo.

5. Upon the creation of the watershed improvement district as authorized by this section, a board of trustees for the district consisting of nine members shall be appointed. The governing body of each county shall appoint one member to serve on the board. No trustee shall reside in the same county as another trustee. Of the initial trustees appointed, five shall serve terms of one year, and four shall serve terms of two years, as determined by lot. After the initial appointments of the trustees, the successor trustees shall reside in the same county as the prior trustee and be elected by the resident property owners of their county within the district. Each trustee may be elected to no more than five consecutive two-year terms. Vacancies shall be filled by the board. Each trustee shall serve until a successor is elected and sworn. The trustees shall not receive compensation for their services, but may be reimbursed for their actual and necessary expenses. The board shall elect a chair and other officers necessary for its membership. The board shall enter into contracts with any person or entity for the maintenance, administrative, or support work required to administer the district. The board may charge reasonable fees and submit proposals to levy and impose property taxes to fund the operation of the district to the qualified voters in the district, but such proposals shall not become effective unless a majority of the qualified voters in the district voting on the proposals approve the proposed levy and rate of tax. The board may adopt resolutions necessary to the operation of the district.

6. No service shall be initiated to any property lying within the watershed improvement district created under this section unless the property owner elects to have the service provided by the district.

7. Any on-site wastewater treatment system installed on any property that participates in the watershed improvement district formed under this section shall meet all applicable standards for such on-site wastewater treatment systems under sections 701.025 to 701.059, RSMo, and as required by rules or regulations promulgated by the board of trustees and the appropriate state agencies.

8. Property owners participating in the watershed improvement district formed under this section shall be required as a condition of continued participation to have a maintenance plan approved by the watershed improvement district for the on-site wastewater treatment systems on their properties. Such property owners shall also execute a utilities easement to allow the district access to the system for maintenance purposes and inspections. The property owner shall provide satisfactory proof that periodic maintenance is performed on the sewage system. At a minimum the system shall be installed and maintained according to the manufacturer's recommendations. The level of satisfactory proof required and the frequency of periodic proof shall be determined by the board of trustees.

9. A district established under this section may, at a general, or primary election, submit to the qualified voters within the district boundaries a real property tax that shall not exceed five cents per one hundred dollars assessed valuation to fund the operation of the district. The ballot of submission shall be in substantially the following form:

Shall the ..... (name of district) impose a real property tax within the district at a rate of not more than ..... (insert amount) dollars per hundred dollars of assessed valuation to fund the operation of the district?

[ ] YES [ ] NO

If you are in favor of the question, place an "X" in the box opposite "YES". If you are opposed to the question, place an "X" in the box opposite "NO".

If a majority of the votes cast in each county that is part of the district favor the proposal, then the real property tax shall become effective in the district on the first day of the year following the year of the election. If a majority of the votes cast in each county that is a part of the district oppose the proposal, then that county shall not impose the real property tax authorized in this section until after the county governing body has submitted another such real property tax proposal and the proposal is approved by a majority of the qualified voters voting thereon. However, if a real property tax proposal is not approved, the governing body of the county shall not resubmit a proposal to the voters under this section sooner than twelve months from the date of the last proposal submitted under this section.

10. The real property tax authorized by this section is in addition to all other real property taxes allowed by law.

11. Once the real property tax authorized by this section is abolished or terminated by any means, all funds remaining in the trust fund shall be used solely for the purposes approved in the ballot question authorizing the tax. The tax shall not be abolished or terminated while the district has any financing or other obligations outstanding. Any funds in the trust fund which are not needed for current expenditures may be invested by the district in the securities described in subdivisions (1) to (12) of subsection 1 of section 30.270, RSMo, or repurchase agreements secured by such securities.

249.1152. RESOLUTION OR PETITION, CONTENTS — COUNTY ORDER OR ORDINANCE, CONTENTS — HEARING PROCEDURES — PROPERTY TAX LEVY, BALLOT FORM — BOARD OF TRUSTEES CREATED, MEMBERS, TERMS — AUTHORITY OF DISTRICT — DISSOLUTION OF A DISTRICT, PROCEDURES. — 1. Upon the adoption of a resolution by the governing body of any county of the third classification located within any watershed in this state, or upon the filing of a petition by the property owners residing within the portion of the watershed that is located within the county's boundaries, a watershed improvement district may be proposed as authorized in this section. The resolution or the petition shall contain the following information:

(1) The specific description of the watershed, which shall be identical to any United States geological survey designated watershed, and the proposed district within the county including a map illustrating the boundaries of both the watershed and the proposed district;

(2) The name of the proposed district;

(3) If the creation of the district is proposed by petition filed by property owners, the name and residence of each petitioner; and

(4) The purpose of the district.

2. Upon the adoption of a resolution proposing the creation of the district under this section, the governing body of the county shall, by order or ordinance, provide a hearing on the creation of the district. The order or ordinance providing a hearing on the creation of such a district shall contain the following information:

(1) A description of the boundaries of the proposed district; and

(2) The time and place of a hearing to be held to consider establishment of the proposed district.

3. Whenever a hearing is held as provided by this section, the governing body of the county approving the proposed district shall:

(1) Publish notice of the hearing on two separate occasions in at least one newspaper of general circulation in each county located within the proposed district, with the first publication to occur not more than thirty days before the hearing, and the second publication to occur not more than fifteen days or less than ten days before the hearing. The purpose of the district shall be published in the hearing notice;

(2) Hear all protests and receive evidence for or against the establishment of the proposed district; and

(3) Rule upon all protests, which determinations shall be final.

4. Following the hearing, if the governing body of any county located within the proposed district decides to establish the proposed district, the county shall adopt an order to that effect. If the governing body of any county located within the proposed district receives a petition signed by at least twenty percent of the property owners in the proposed district requesting establishment of the proposed district then the county shall adopt an order to that effect. An order adopted under this subsection shall contain the following:

(1) The description of the boundaries of the watershed, which shall be identical to any United States geological survey designated watershed, and the boundaries of the district within the county;

(2) A statement that a watershed improvement district has been established;

(3) The name of the district;

(4) A declaration that the district is a political subdivision of the state; and

(5) The purpose of the district.

5. A district established under this section may, at a general or primary election, submit to the qualified voters within the district boundaries a real property tax that shall not exceed five cents per one hundred dollars assessed valuation to fund the operation of the district. The ballot of submission shall be in substantially the following form:

Shall the ..... (name of district) impose a real property tax within the district at a rate of not more than ..... (insert amount) dollars per hundred dollars of assessed valuation to fund the operation of the district?

[ ] YES [ ] NO

If you are in favor of the question, place an "X" in the box opposite "YES". If you are opposed to the question, place an "X" in the box opposite "NO".

If a majority of the votes cast in each county that is part of the district favor the proposal, then the real property tax shall become effective in the district on the first day of the year following the year of the election. If a majority of the votes cast in each county that is a part of the district oppose the proposal, then that county shall not impose the real property tax authorized in this section until after the county governing body has submitted another such real property tax proposal and the proposal is approved by a majority of the qualified voters voting thereon. However, if a real property tax proposal is not approved, the governing body of the county shall not resubmit a proposal to the voters under this section sooner than twelve months from the date of the last proposal submitted under this section.

6. The real property tax authorized by this section is in addition to all other real property taxes allowed by law.

7. Once the real property tax authorized by this section is abolished or terminated by any means, all funds remaining in the trust fund shall be used solely for the purposes approved in the ballot question authorizing the tax. The tax shall not be abolished or terminated while the district has any financing or other obligations outstanding. Any funds in the trust fund which are not needed for current expenditures may be invested by the district in the securities described in subdivisions (1) to (12) of subsection 1 of section 30.270, RSMo, or repurchase agreements secured by such securities.

8. There is hereby created a board of trustees to administer any district created and the expenditure of revenue generated under this section. The board shall consist of at least three but not more than ten individuals from the district. The board shall be appointed by the governing body of each county in the district. The membership of the board shall to the extent practicable be in proportion to the number of people living in the watershed in each county. Each county located within the district shall be represented on the board by at least one trustee. Of the initial trustees appointed from each county, a majority shall serve terms of one year, and the remainder shall serve terms of two years, as determined by lot. After the initial appointments of the trustees, the trustees shall be elected by the

property owners within the district. Each trustee may be elected to no more than five consecutive two-year terms. Vacancies shall be filled by the board. Each trustee shall serve until a successor is elected and sworn. The trustees shall not receive compensation for their services, but may be reimbursed for their actual and necessary expenses. The board shall elect a chair and other officers necessary for its membership.

9. A watershed improvement district created under this section is authorized to own, install, operate, and maintain decentralized or individual on-site wastewater treatment plants. A watershed improvement district created under this section shall be a body corporate and a political subdivision of the state of Missouri, shall be capable of suing and being sued in contract in its corporate name, and shall be capable of holding such real and personal property necessary for corporate purposes. The district shall implement procedures to regulate the area within and consistent with the purpose of the district and to educate property owners about the requirements imposed by the district.

10. A watershed improvement district created under this section shall have the power to borrow money and incur indebtedness and evidence the same by certificates, notes, or debentures, to issue bonds and use any one or more lawful funding methods the district may obtain for its purposes at such rates of interest as the district may determine. Any bonds, notes, and other obligations issued or delivered by the district may be secured by mortgage, pledge, or deed of trust of any or all of the property within the district. Every issue of such bonds, notes, or other obligations shall be payable out of property and revenues of the district and may be further secured by other property within the district, which may be pledged, assigned, mortgaged, or a security interest granted for such payment, without preference or priority of the first bonds issued, subject to any agreement with the holders of any other bonds pledging any specified property or revenues. Such bonds, notes, or other obligations shall be authorized by resolution of the district board, and shall bear such date or dates, and shall mature at such time or times, but not in excess of thirty years, as the resolution shall specify. Such bonds, notes, or other obligations shall be in such denomination, bear interest at such rate or rates, be in such form, either coupon or registered, be issued as current interest bonds, compound interest bonds, variable rate bonds, convertible bonds, or zero coupon bonds, be issued in such manner, be payable in such place or places, and be subject to redemption as such resolution may provide, notwithstanding section 108.170, RSMo. The bonds, notes, or other obligations may be sold at either public or private sale, at such interest rates, and at such price or prices as the district shall determine.

11. The county commission of any county located within a watershed improvement district may authorize individual properties to be served by the district by adoption of a resolution or upon the filing of a petition signed by at least twenty percent of the property owners of the proposed area. The resolution or petition shall describe generally the size and location of the proposed area.

12. In the event that any property within a watershed improvement district proposed under this section lies within or is serviced by any existing sewer district formed under this chapter, chapter 204, or chapter 250, RSMo, the property shall not become part of the watershed improvement district formed under this section unless the existing sewer district agrees to refrain from providing service or to discontinue service to the property. No property shall become part of the watershed district until the owner of that property has paid in full all outstanding costs owed to an existing sewer district formed under this chapter, chapter 204, or chapter 250, RSMo.

13. No service shall be initiated to any property lying within the watershed improvement district created under this section unless the property owner elects to have the service provided by the district.

14. Any on-site wastewater treatment systems installed on any property that participates in the watershed improvement district formed under this section shall meet

all applicable standards for such on-site wastewater treatment systems under sections 701.025 to 701.059, RSMo, and as required by rules or regulations promulgated by the appropriate state agencies.

15. Property owners participating in the watershed improvement district formed under this section shall be required as a condition of continued participation to have a maintenance plan approved by the watershed improvement district for the on-site wastewater treatment systems on their properties. Such property owners shall also execute a utilities easement to allow the district access to the system for maintenance purposes and inspections. The property owner shall provide satisfactory proof that periodic maintenance is performed on the sewage system. The level of satisfactory proof required and the frequency of periodic proof shall be determined by the board of trustees.

16. In the event that the district is dissolved or terminated by any means, the governing bodies of the counties in the district shall appoint a person to act as trustee for the district so dissolved or terminated. Before beginning the discharge of duties, the trustee shall take and subscribe an oath to faithfully discharge the duties of the office, and shall give bond with sufficient security, approved by the governing bodies of the counties, to the use of the dissolved or terminated district, for the faithful discharge of duties. The trustee shall have and exercise all powers necessary to liquidate the district, and upon satisfaction of all remaining obligations of the district, shall pay over to the county treasurer of each county in the district and take receipt for all remaining moneys in amounts based on the ratio the levy of each county bears to the total levy for the district in the previous three years or since the establishment of the district, whichever time period is shorter. Upon payment to the county treasurers, the trustee shall deliver to the clerk of the governing body of any county in the district all books, papers, records, and deeds belonging to the dissolved district.

249.1154. GROUNDWATER DEPLETION AREAS DESIGNATED — VOLUME MONITORING MAY BE REQUIRED. — The governing body of any county, by order or ordinance or upon the filing of a petition signed by at least twenty percent of the property owners in an area proposed for designation under this section, may designate groundwater depletion areas within a watershed improvement district created under section 249.1150 or 249.1152 and may require well volume monitoring.

249.1155. SEPTIC SYSTEMS TO BE MAINTAINED OR PUMPED EVERY FIVE YEARS — PROOF SUBMITTED — FEE. — After August 28, 2004, any county within a watershed improvement district may require that all septic systems be maintained or pumped every five years by a licensed provider. In the event a county requires that all septic systems be so maintained or pumped the owner of any septic system shall submit proof of maintenance or pumping to the county department of health or the state department of health and senior services if appropriate which shall determine what shall constitute proof of compliance with the requirement. In addition, the county department of health or the state department of health and senior services if appropriate may charge septic tank owners a reasonable fee for monitoring compliance with the requirement.

640.635. WASTEWATER ANALYSIS, LICENSE REQUIRED, CRITERIA — RULEMAKING AUTHORITY — FEE, RATE. — Any person or laboratory performing an analysis of wastewater shall be licensed to perform the analysis by the department of natural resources. The department shall determine by rule or regulation the licensing criteria. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable

and if any of the powers vested with the general assembly under chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void. The department may require the person or laboratory obtaining a license under this section to pay a fee to the department for licensure. The fee shall be set at a level not to exceed the cost and expense of administrating this section.

644.076. UNLAWFUL ACTS PROHIBITED — FALSE STATEMENTS AND NEGLIGENT ACTS PROHIBITED — PENALTIES — EXCEPTION. — 1. It is unlawful for any person to cause or permit any discharge of water contaminants from any water contaminant or point source located in Missouri in violation of sections 644.006 to 644.141, or any standard, rule or regulation promulgated by the commission. In the event the commission or the director determines that any provision of sections 644.006 to 644.141 or standard, rules, limitations or regulations promulgated pursuant thereto, or permits issued by, or any final abatement order, other order, or determination made by the commission or the director, or any filing requirement pursuant to sections 644.006 to 644.141 or any other provision which this state is required to enforce pursuant to any federal water pollution control act, is being, was, or is in imminent danger of being violated, the commission or director may cause to have instituted a civil action in any court of competent jurisdiction for the injunctive relief to prevent any such violation or further violation or for the assessment of a penalty not to exceed ten thousand dollars per day for each day, or part thereof, the violation occurred and continues to occur, or both, as the court deems proper. A civil monetary penalty pursuant to this section shall not be assessed for a violation where an administrative penalty was assessed pursuant to section 644.079. The commission**, the chair of a watershed district's board of trustees created under section 249.1150 or 249.1152,** or the director may request either the attorney general or a prosecuting attorney to bring any action authorized in this section in the name of the people of the state of Missouri. Suit may be brought in any county where the defendant's principal place of business is located or where the water contaminant or point source is located or was located at the time the violation occurred. Any offer of settlement to resolve a civil penalty pursuant to this section shall be in writing, shall state that an action for imposition of a civil penalty may be initiated by the attorney general or a prosecuting attorney representing the department pursuant to this section, and shall identify any dollar amount as an offer of settlement which shall be negotiated in good faith through conference, conciliation and persuasion.

2. Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to sections 644.006 to 644.141 or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained pursuant to sections 644.006 to 644.141 shall, upon conviction, be punished by a fine of not more than ten thousand dollars, or by imprisonment for not more than six months, or by both.

3. Any person who willfully or negligently commits any violation set forth pursuant to subsection 1 of this section shall, upon conviction, be punished by a fine of not less than two thousand five hundred dollars nor more than twenty-five thousand dollars per day of violation, or by imprisonment for not more than one year, or both. Second and successive convictions for violation of the same provision of this section by any person shall be punished by a fine of not more than fifty thousand dollars per day of violation, or by imprisonment for not more than two years, or both.

4. The liabilities which shall be imposed pursuant to any provision of sections 644.006 to 644.141 upon persons violating the provisions of sections 644.006 to 644.141 or any standard, rule, limitation, or regulation adopted pursuant thereto shall not be imposed due to any violation caused by an act of God, war, strike, riot, or other catastrophe.

701.031. DISPOSAL OF SEWAGE, WHO, HOW, EXCEPTION. — Property owners of all buildings where people live, work or assemble shall provide for the sanitary disposal of all domestic sewage. Except as provided in this section, sewage and waste from such buildings shall be disposed of by discharging into a sewer system regulated pursuant to chapter 644, RSMo, or shall be disposed of by discharging into an on-site sewage disposal system operated as defined by rules promulgated pursuant to sections 701.025 to 701.059. **Any person installing on-site sewage disposal systems shall be registered to do so by the department of health and senior services.** The owner of a single-family residence lot consisting of three acres or more, or the owner of a residential lot consisting of ten acres or more with no single-family residence on-site sewage disposal system located within three hundred sixty feet of any other on-site sewage disposal system and no more than one single-family residence per each ten acres in the aggregate, except lots adjacent to lakes operated by the Corps of Engineers or by a public utility, shall be excluded from the provisions of sections 701.025 to 701.059 and the rules promulgated pursuant to sections 701.025 to 701.059, including provisions relating to the construction, operation, major modification and major repair of on-site disposal systems, when all points of the system are located in excess of ten feet from any adjoining property line and no effluent enters an adjoining property, contaminates surface waters or groundwater or creates a nuisance as determined by a readily available scientific method. Except as provided in this section, any construction, operation, major modification or major repair of an on-site sewage disposal system shall be in accordance with rules promulgated pursuant to sections 701.025 to 701.059, regardless of when the system was originally constructed. The provisions of subdivision (2) of subsection 1 of section 701.043 shall not apply to lots located in subdivisions under the jurisdiction of the department of natural resources which are required by a consent decree, in effect on or before May 15, 1984, to have class 1, National **[**Sewage**]** **Sanitation** Federation (NSF) aerated sewage disposal systems.

701.033. DEPARTMENT OF HEALTH AND SENIOR SERVICES — POWERS AND DUTIES — RULES, PROCEDURE. — 1. The department shall have the power and duty to:

(1) Promulgate such rules and regulations as are necessary to carry out the provisions of sections 701.025 to 701.059;

(2) Cause investigations to be made when a violation of any provision of sections 701.025 to 701.059 or the on-site sewage disposal rules promulgated under sections 701.025 to 701.059 is reported to the department;

(3) Enter at reasonable times**[**, after receiving a complaint**]** and determining probable cause that a violation exists, upon private or public property for the purpose of inspecting and investigating conditions relating to the administration and enforcement of sections 701.025 to 701.059 and the on-site sewage disposal rules promulgated under sections 701.025 to 701.059;

(4) Authorize the trial or experimental use of innovative systems for on-site sewage disposal, after consultation with the staff of the Missouri clean water commission, upon such conditions as the department may set.

2. No rule or portion of a rule promulgated under the authority of sections 701.025 to 701.059 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

701.037. VIOLATIONS, NOTICE OF, CONTENTS, PROSECUTING ATTORNEY TO INSTITUTE PROCEEDINGS, WHEN — EMERGENCY SITUATION, WHEN. — 1. Whenever the director determines**[**, after receipt of a complaint,**]** that there are reasonable grounds to believe that there has been violation of any provision of sections 701.025 to 701.059 or the rules promulgated under sections 701.025 to 701.059, the director shall give notice of such alleged violation to the person responsible, as herein provided. The notice shall:

(1) Be in writing;

(2) Include a statement of the reasons for the issuance of the notice;

(3) Allow reasonable time as determined by the director for the performance of any act it requires;

(4) Be served upon the owner, operator or contractor, as the case may require, provided that such notice or order shall be deemed to have been properly served upon such person when a copy thereof has been sent by registered or certified mail to the person's last known address, as listed in the local property tax records concerning such property, or when such person has been served with such notice by any other method authorized by the laws of this state;

(5) Contain an outline of remedial action which is required to effect compliance with sections 701.025 to 701.059 and the rules promulgated under sections 701.025 to 701.059.

2. Existing systems, as defined in section 701.025, shall not be inspected, unless the director determines**[**, upon receipt of a complaint,**]** that there are reasonable grounds to believe that there has been a violation of any provision of sections 701.025 to 701.059.

3. If an aggrieved person files a written request for a hearing within ten days of the date of receipt of a notice, a hearing shall be held within twenty days from the date of the receipt of the notice, before the department director, to review the appropriateness of the remedial action. The director shall issue a written decision within thirty calendar days of the date of the hearing. Any final decision of the director may be appealed to the administrative hearing commission in the manner provided in chapter 621, RSMo, or may at the option of the aggrieved person be appealed to the circuit court of the county wherein the offense is alleged to have occurred for a trial de novo on the merits. Any decision of the administrative hearing commission may be appealed as provided in sections 536.100 to 536.140, RSMo.

4. Any city or county that has adopted the state standard, or the department, may require a property owner to abate a nuisance or repair a malfunctioning on-site sewage disposal system on the owner's property not later than the thirtieth day from which the owner receives notification from the city, county or department of the malfunctioning system or a final written order from the director, if a hearing or hearings were held pursuant to subsections 2 and 3 of this section. If weather conditions prevent the abatement of the nuisance or repair of the system within the thirty-day period or if the owner is unable, after reasonable effort, to obtain the services of a contractor or repair service within the thirty-day period, the abatement of the nuisance or repair of the system shall be made, weather permitting, no later than sixty days after notification. Such extension for abatement or repair shall be subject to approval by the city, county or department. The department may assess an administrative penalty on the property owner of no more than fifty dollars per day for each day that the on-site sewage disposal system remains unrepaired beyond the last day permitted by this section for the abatement or repair. All administrative penalties collected by the department under the provisions of this section shall be deposited in the state treasury to the credit of the general revenue fund.

5. The prosecuting attorney of the county in which any noncompliance or violation of sections 701.025 to 701.059 or any rule promulgated under sections 701.025 to 701.059 is occurring shall, at the request of the city, county or department, institute appropriate proceedings for correction in cases of noncompliance with or violation of the provisions of sections 701.025 to 701.059 and any rules promulgated under sections 701.025 to 701.059.

6. When it is determined by the department**[**, after receipt of a complaint,**]** that an emergency exists which requires immediate action to protect the health and welfare of the public, the department is authorized to seek a temporary restraining order and injunction. Such action shall be brought at the request of the director of the department by the prosecuting attorney of the county in which the violation occurred. When such conditions are corrected and the health of the people of the state of Missouri is no longer threatened, the department shall request that such temporary restraining order and injunction be dissolved. For the purposes of this subsection, an "emergency" means any set of circumstances that constitute an imminent health hazard or the threat of an imminent health hazard as defined in section 701.025.

701.038. SEWAGE COMPLAINTS, INVESTIGATION BY DEPARTMENT, WHEN — RIGHT TO INSPECT ADJOINING PROPERTY, PROCEDURE REQUIRING NOTICE, EXCEPTION. — 1. The department of health and senior services or any of its agents may not investigate a sewage complaint except when necessary as part of a communicable disease investigation unless the complaint is received from an aggrieved party **[**or**],** an adjacent landowner**, or any two residents of the county**. The department of health and senior services or any of its agents may enter any adjoining property if necessary when they are making an inspection pursuant to this section. The necessity for entering such adjoining property shall be stated in writing and the owner of such property shall be notified before the department or any of its agents may enter, except that, if an imminent health hazard exists, such notification shall be attempted but is not required.

2. If the department or its agents make an investigation pursuant to a complaint as described in subsection 1 of this section and find that a nuisance does exist, the property owner shall comply with state and local standards when repairing or replacing the on-site sewage disposal system.

Approved June 30, 2004

HB 1440 [SCS HB 1440]

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

Changes provisions related to retirement systems.

AN ACT to repeal sections 104.020, 104.050, 104.080, 104.090, 104.103, 104.110, 104.170, 104.180, 104.255, and 251.440, RSMo, and to enact in lieu thereof twelve new sections relating to retirement.

SECTION

A. Enacting clause.
104.020. System created.
104.050. Years of service used in calculating annuity — noncompensated absences for illness and injury, effect — withdrawal before entitled to deferred annuity, relinquishes all rights — reinstatement of forfeited creditable service, when.
104.080. Member may retire when — waiver of monthly annuity, when.
104.081. Highway patrol retirement age.
104.090. Normal annuity of retired member — additional allowance to patrolmen, qualifications — survivorship options — option selected prior to retirement, death of spouse, effect — spouse as beneficiary, effect.
104.103. Annual benefit increase, when, how computed — limitation — reversion of amount of benefit — special consultant, compensation.
104.110. Disability benefits, who entitled, how calculated, terminated when — medical examination required, when — proof of application for Social Security benefits — death benefit, not payable, when — board to establish definitions — annuity benefits, accrual, election — death benefit, eligibility, when — disability and death benefits payable, when.
104.170. Officers of board of trustees, election, terms, duties — executive director, appointment, powers and duties — process to be served on executive director.
104.180. Meetings of board, quorum, compensation of employees of board — service to system deemed regular duties.
104.255. Certain surviving spouses to become consultants — compensation — not to affect survivor's benefits or eligibility for retirement — surviving spouses not receiving payments on or after September 1, 1989.
251.255. Regional planning commission deemed political subdivision — retirement system eligibility.
251.440. Dissolution of regional commission, procedure.

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

SECTION A. ENACTING CLAUSE. — Sections 104.020, 104.050, 104.080, 104.090, 104.103, 104.110, 104.170, 104.180, 104.255, and 251.440, RSMo, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 104.020, 104.050, 104.080, 104.081, 104.090, 104.103, 104.110, 104.170, 104.180, 104.255, 251.255, and 251.440, to read as follows:

104.020. SYSTEM CREATED. — There is hereby created the "**Missouri Department of** Transportation **[**Department Employees'**]** and Highway Patrol **Employees'** Retirement System", which shall be a body corporate and an instrumentality of the state. In such system shall be vested the powers and duties specified in sections 104.010 to 104.270 and such other powers as may be necessary or proper to enable it, its officers, employees, and agents to carry out fully and effectively all the purposes of sections 104.010 to 104.270.

104.050. YEARS OF SERVICE USED IN CALCULATING ANNUITY — NONCOMPENSATED ABSENCES FOR ILLNESS AND INJURY, EFFECT — WITHDRAWAL BEFORE ENTITLED TO DEFERRED ANNUITY, RELINQUISHES ALL RIGHTS — REINSTATEMENT OF FORFEITED CREDITABLE SERVICE, WHEN. — 1. Years of service and twelfths of a year are to be used in calculating any annuity. Absences taken by an employee without compensation for sickness or injury of the employee of **[**less than**] up to but not more than** twelve months **[**may**] or for leave taken by such employee without compensation pursuant to the provisions of the Family and Medical Leave Act of 1993 shall** be counted as **[**continuous**] membership** service. **[**Absences for more than twelve months' continuous duration cancel all prior service credits unless the board of trustees grants special leave to the employee affected prior to the termination of a twelve-month absence. This subsection shall not apply to injury sustained while in the line of duty.**]**

2. Any member who withdraws from service before he is entitled to deferred benefits under section 104.035 forfeits, waives, and relinquishes all accrued rights in the fund, including all accrued creditable service.

3. If a former employee has forfeited creditable service for any period he shall have the period of creditable service restored only upon the completion of one continuous year of service after he again becomes an employee.

104.080. MEMBER MAY RETIRE WHEN — WAIVER OF MONTHLY ANNUITY, WHEN. — Each member may retire **[**at**]** the **[**end**] first** of the month **following the month** during which such member shall reach normal retirement age with a normal annuity **[**except that any patrolman may retire at age fifty-five with a normal annuity and shall retire at age sixty**]**. Notwithstanding any other provisions to the contrary, **[**any member who continues his employment with the transportation department or as a civilian member of the highway patrol after attaining seventy and one-half years of age shall receive service retirement benefits during the continuation of his employment if and to the extent that payment of such service retirement benefits is required by the Internal Revenue Code of 1986, as amended, and Treasury regulations promulgated thereunder; and such service retirement benefits shall be adjusted annually for additional benefits which shall accrue by reason of such continued employment in accordance with the rules and regulations of the board of trustees**] a person receiving an annuity may waive monthly annuity payments or a cost-of-living adjustment (COLA) for periods of time, provided no waiver may be contrary to applicable federal law. A waiver shall be final as to any payment or COLA waived**.

104.081. HIGHWAY PATROL RETIREMENT AGE. — Notwithstanding any other provision of law to the contrary, any uniformed member of the highway patrol may retire at age fifty-five with four years of creditable service with a normal annuity and shall retire at age sixty.

104.090. NORMAL ANNUITY OF RETIRED MEMBER — ADDITIONAL ALLOWANCE TO PATROLMEN, QUALIFICATIONS — SURVIVORSHIP OPTIONS — OPTION SELECTED PRIOR TO RETIREMENT, DEATH OF SPOUSE, EFFECT — SPOUSE AS BENEFICIARY, EFFECT. — 1. The normal annuity of a member shall equal one and six-tenths percent of the average compensation of the member multiplied by the number of years of creditable service of such member. In addition, the normal annuity of a uniformed member of the patrol shall be increased by thirty-three and one-third percent.

2. In addition, a uniformed member of the highway patrol who is retiring with a normal annuity after attaining normal retirement age shall receive an additional sum of ninety dollars per month as a contribution by the system until such member attains the age of sixty-five years, when such contribution shall cease. To qualify for the contribution provided in this subsection by the system, the retired uniformed member of the highway patrol is made, constituted, appointed and employed by the board as a special consultant on the problems of retirement, aging and other state matters. Such additional contribution shall be reduced each month by such amount earned by the retired uniformed member of the highway patrol in gainful employment. In order to qualify for the additional contribution provided in this subsection, the retired uniformed member of the highway patrol shall have been:

(1) Hired by the Missouri state highway patrol prior to January 1, 1995; and

(2) Employed by the Missouri state highway patrol or receiving long-term disability or work-related disability benefits on the day before the effective date of the member's retirement.

3. In lieu of the annuity payable to the member pursuant to section 104.100, a member whose age at retirement is **[**fifty**]** **forty-eight** or more may elect in the member's application for retirement to receive either:

Option 1. An actuarial reduction approved by the board of the member's annuity in reduced monthly payments for life during retirement with the provision that upon the member's death the reduced annuity at date of death shall be continued throughout the life of, and be paid to, the member's spouse; or

Option 2. The member's normal annuity in regular monthly payments for life during retirement with the provision that upon the member's death a survivor's benefit equal to one-half the member's normal annuity at date of death shall be paid to the member's spouse in regular monthly payments for life; or

Option 3. An actuarial reduction approved by the board of **member's** normal annuity in reduced monthly payments for the member's life with the provision that if the member dies prior to the member's having received one hundred twenty monthly payments of the member's reduced annuity, the member's reduced allowance to which the member would have been entitled had the member lived shall be paid for the remainder of the one hundred twenty-month period to such person as the member shall have nominated by written designation duly executed and filed with the board. If there is no beneficiary surviving the **[**retirant**]** **retiree**, the reserve for such allowance for the remainder of such one hundred twenty-month period shall be paid to the **[**retirant's**]** **retiree's** estate; or

Option 4. An actuarial reduction approved by the board of the member's normal annuity in reduced monthly payments for the member's life with the provision that if the member dies prior to the member having received sixty monthly payments of the member's reduced annuity, the member's reduced allowance to which the member would have been entitled had the member lived shall be paid for the remainder of the sixty-month period to such person as the member shall have nominated by written designation duly executed and filed with the board. If there is no beneficiary surviving the **[**retirant**]** **retiree**, the reserve for such allowance for the remainder of such sixty-month period shall be paid to the **[**retirant's**]** **retiree's** estate.

4. The election may be made only in the application for retirement, and such application shall be filed at least thirty days but not more than ninety days prior to the date on which the retirement of the member is to be effective, provided that if either the member or the spouse nominated to receive the survivorship payment dies before the effective date of retirement, the

election shall not be effective. If after the reduced annuity commences, the spouse predeceases the retired member, the reduced annuity continues to the retired member during the member's lifetime.

5. Effective July 1, 2000, a member may make an election under option 1 or 2 after the date retirement benefits are initiated if the member makes the election within one year from the date of marriage or July 1, 2000, whichever is later, under any of the following circumstances:

(1) The member elected to receive a normal annuity and was not eligible to elect option 1 or 2 on the date retirement benefits were initiated; or

(2) The member's annuity reverted to a normal annuity pursuant to subsection 8 of section 104.103 and the member remarried; or

(3) The member elected option 1 or 2 but the member's spouse at the time of retirement has died and the member has remarried.

6. Any person who terminates employment or retires prior to July 1, 2000, shall be made, constituted, appointed and employed by the board as a special consultant on the problems of retirement, aging and other state matters, and for such services shall be eligible to elect to receive the benefits described in subsection 5 of this section.

7. For retirement applications filed on or after August 28, 2004, the beneficiary for either Option 1 or Option 2 of subsection 3 of this section shall be the member's spouse at the time of retirement. If the member's marriage ends after retirement as a result of a dissolution of marriage, such dissolution shall not affect the option election and the former spouse shall continue to be eligible to receive survivor benefits upon death of the member.

8. Any application for retirement shall only become effective on the first day of the month.

104.103. ANNUAL BENEFIT INCREASE, WHEN, HOW COMPUTED — LIMITATION — REVERSION OF AMOUNT OF BENEFIT — SPECIAL CONSULTANT, COMPENSATION. — 1. Each member who was employed prior to August 28, 1997, and retires on or after May 12, 1981, shall receive each year a percentage increase in the amount of benefits received by the member during the preceding year of eighty percent of the increase in the consumer price index determined in the manner hereinafter provided. Any such annual benefit increase, however, shall not exceed five percent, nor be less than four percent, and the total increase in the amount of benefits received pursuant to the provisions of this section shall not exceed sixty-five percent of the initial monthly benefit which the member received upon retirement or the benefit received immediately prior to October 1, 1986, whichever is later.

2. Each member who is employed for the first time on or after August 28, 1997, and retires shall be entitled annually to a percentage increase in the retirement benefit payable equal to eighty percent of the increase in the consumer price index. Such benefit increase, however, shall not exceed five percent of the retirement benefit payable prior to the increase.

3. Each member who is employed before August 28, 1997, and terminates employment or retires after that date shall be entitled to the annual benefit increase described in subsection 1 of this section. For such members, the annual benefit increase described in subsection 2 of this section shall not be effective until the year in which the member reaches the limit on total annual benefit increases provided by subsection 1 of this section. After that year, the member shall receive the annual benefit increase described in subsection 2 of this section.

4. Survivors of members described in subsection 2 of this section shall be entitled to the annual benefit increase described in that subsection.

5. For the purposes of this section, any increase in the consumer price index shall be determined in January of each year, based upon the percentage increase of (a) the consumer price index for the preceding calendar year over (b) the consumer price index for the calendar year immediately prior thereto. Any increase so determined shall be applied in calculating any benefit increases that become payable under this section during the calendar year in which the determination is made and in no case shall the percentage be less than zero.

6. An annual increase, if any is due under either this section or section 104.612 for special consultants with the **[**highways and**]** **Missouri department of** transportation **[**employees'**]** and highway patrol **employees'** retirement system, shall be payable monthly beginning on a date specified by the board.

7. For members who retire on or after July 1, 2000, in the event such member has chosen a joint and survivor option under the provisions of section 104.090 and the member's eligible spouse **or former spouse** precedes the member in death, the member's benefit shall revert, effective the first of the month following the death of the spouse **or former spouse** regardless of when the board receives the member's written application for the benefit provided in this subsection, to an amount equal to the member's normal annuity, as adjusted for early retirement if applicable; such benefit shall include any increases the member would have received since the date of retirement had the member elected a normal annuity. **[**In no event shall retroactive benefits be paid.**]**

8. Effective on or after July 1, 2000, any retired member who had elected a joint and survivor payment option and whose **eligible** spouse **or former spouse** precedes or preceded the member in death shall upon application to the board be made, constituted, appointed and employed by the board as a special consultant on the problems of retirement, aging and other state matters. As a special consultant under the provisions of this subsection, the member's reduced benefit will revert to a normal annuity as adjusted for early retirement if applicable, effective the first of the month following the death of the spouse **or former spouse** regardless of when the board receives the member's written application; such benefit shall include any increases the retired member would have received since the date of retirement had the member elected a normal annuity. **[**In no event shall retroactive benefits be paid.**]**

104.110. DISABILITY BENEFITS, WHO ENTITLED, HOW CALCULATED, TERMINATED WHEN — MEDICAL EXAMINATION REQUIRED, WHEN — PROOF OF APPLICATION FOR SOCIAL SECURITY BENEFITS — DEATH BENEFIT, NOT PAYABLE, WHEN — BOARD TO ESTABLISH DEFINITIONS — ANNUITY BENEFITS, ACCRUAL, ELECTION — DEATH BENEFIT, ELIGIBILITY, WHEN — DISABILITY AND DEATH BENEFITS PAYABLE, WHEN. — 1. Any employee, regardless of the length of time of creditable service, who is affirmatively found by the board to be wholly incapable of performing the duties of the employee's or any other position in the employee's department for which the employee is suited, shall be entitled to receive disability benefits. The disability benefit provided by this subsection shall equal one and six-tenths percent of the employee's average compensation multiplied by the number of years of creditable service of the member. Effective September 1, 2003, no employee is eligible for or shall request or apply for the disability benefit provided pursuant to this subsection.

2. Any uniformed member of the highway patrol, highway patrol employee or department of transportation employee, regardless of the length of time of creditable service, who is found by the board to be disabled as a result of injuries incurred in the performance of the employee's duties, shall be entitled to receive an initial disability benefit in an amount equal to seventy percent of the compensation that the employee was receiving on the date preceding the date of disability; provided, however, that the amount of the disability benefit, plus any primary Social Security disability benefits received by such member shall not exceed ninety percent of the monthly compensation such member was receiving on the date preceding the date of disability.

3. Any disability benefits payable pursuant to this section shall be decreased by any amount paid to such member for periodic disability benefits by reason of the workers' compensation laws of this state. After termination of payment under workers' compensation, however, disability benefits shall be paid in the amount required by subsections 1, 2, 7, and 9 of this section.

4. The board of trustees may require a medical examination of a disabled member at any time by a designated physician, and benefits shall be discontinued if the board finds that such member is able to perform the duties of the member's former position or if such member refuses to submit to a medical examination. Any employee who applies for disability benefits provided

pursuant to this section shall provide medical certification acceptable to the board which shall include the date the disability commenced and the expected duration of the disability.

5. Any employee who applies for disability benefits pursuant to subsections 2 and 7 of this section shall provide proof of application for Social Security disability benefits. If Social Security disability benefits are denied, the employee shall also provide proof that the employee has requested reconsideration, and upon denial of the reconsideration, that an appeal process is prosecuted.

6. The disability benefits provided in this section shall not be paid to any member who retains or regains earning capacity as determined by the board. If a member who has been receiving disability benefits again becomes an employee, the member's disability benefits shall be discontinued.

7. The board shall also provide or contract for long-term disability benefits for those members whose disability exists or is diagnosed as being of such nature as to exist for more than one year. The benefits provided or contracted for pursuant to this subsection shall be in lieu of any other benefit provided in this section. The eligibility requirements, benefit period and amount of the disability benefits provided pursuant to this subsection shall be established by the board.

8. Definitions of disability and other rules and procedures necessary for administration of the disability benefits provided pursuant to this section shall be established by the board.

9. Any member receiving disability benefits pursuant to subsections 1 and 2 of this section shall receive the same cost-of-living increases as granted to retired members pursuant to section 104.103.

10. The state highways and transportation commission shall contribute the same amount as provided for all state employees for any person receiving disability benefits pursuant to subsection 2 of this section for medical insurance provided pursuant to section 104.270.

11. Any member who qualified for disability benefits pursuant to subsection 2 or subsection 7 of this section shall continue to accrue normal annuity benefits based on the member's rate of pay immediately prior to the date the member became disabled in accordance with sections 104.090 and 104.615 as in effect on the earlier of the date the member reaches normal retirement age or the date normal annuity payments commence.

12. A member who continues to be disabled as provided in subsection 2 or subsection 7 of this section shall continue to accrue creditable service until the member reaches normal retirement age. The maximum benefits period for benefits pursuant to subsections 2 and 7 of this section shall be established by the board. A member who is eligible to retire and does retire while receiving disability benefits pursuant to subsections 2 and 7 of this section shall receive the greater of the normal annuity or the minimum annuity determined pursuant to sections 104.090 and 104.615, as if the member had continued in the active employ of the employer until the member's normal retirement age and the member's compensation for such period had been the member's rate of pay immediately preceding the date the member became disabled.

13. Any member who was receiving disability benefits from the board prior to August 28, 1997, or any member who has submitted an application for disability benefits before August 28, 1997, and would have been eligible to receive benefits pursuant to the eligibility requirements which were applicable at the time of application shall be eligible to receive or shall continue to receive benefits in accordance with such prior eligibility requirements until the member again becomes an employee.

14. Any member receiving disability benefits pursuant to subsection 1, subsection 2 or subsection 7 of this section shall be eligible to receive death benefits pursuant to the provisions of subsection 1 of section 104.140. The death benefits provided pursuant to this subsection shall be in lieu of the death benefits available to the member pursuant to subsection 2 of section 104.140.

15. The board is authorized to contract for benefits in lieu of the benefits provided pursuant to this section.

16. To the extent that the board enters or has entered into any contract with any insurer or service organization to provide the disability benefits provided for pursuant to this section:

(1) The obligation to provide such disability benefits shall be primarily that of the insurer or service organization and secondarily that of the board;

(2) Any employee who has been denied disability benefits by the insurer or service organization and has exhausted all appeal procedures provided by the insurer or service organization may appeal such decision by filing a petition against the insurer or service organization in a court of law in the employee's county of residence; and

(3) The board and the system shall not be liable for the disability benefits provided by an insurer or service organization pursuant to this section and shall not be subject to any cause of action with regard to disability benefits or the denial of disability benefits by the insurer or service organization unless the employee has obtained judgment against the insurer or service organization for disability benefits and the insurer or service organization is unable to satisfy that judgment.

17. An employee may elect to waive the receipt of any disability benefit provided for pursuant to this section at any time.

18. Any member receiving disability benefits pursuant to subsections 1 and 2 of this section shall be eligible for a death benefit of five thousand dollars in addition to any benefits under subsection 14 of this section.

104.170. OFFICERS OF BOARD OF TRUSTEES, ELECTION, TERMS, DUTIES — EXECUTIVE DIRECTOR, APPOINTMENT, POWERS AND DUTIES — PROCESS TO BE SERVED ON EXECUTIVE DIRECTOR. — 1. The board shall elect by secret ballot one member as chair and one member as vice chair **[**in January**]** **at the first board meeting** of each year. The chair may not serve more than two consecutive terms beginning after August 13, 1988. The chair shall preside over meetings of the board and perform such other duties as may be required by action of the board. The vice chair shall perform the duties of the chair in the absence of the latter or upon the chair's inability or refusal to act.

2. The board shall appoint a full-time executive director, who shall not be compensated for any other duties under the state highways and transportation commission. The executive director shall have charge of the offices and records and shall hire such employees that the executive director deems necessary subject to the direction of the board. The executive director and all other employees of the system shall be members of the system and the board shall make contributions to provide the insurance benefits available pursuant to section 104.270 on the same basis as provided for other state employees pursuant to the provisions of section 104.515, and also shall make contributions to provide the retirement benefits on the same basis as provided for other employees pursuant to the provisions of sections 104.090 to 104.260. **The executive director is authorized to execute all documents including contracts necessary to carry out any and all actions of the board.**

3. Any summons or other writ issued by the courts of the state shall be served upon the executive director or, in the executive director's absence, on the assistant director.

104.180. MEETINGS OF BOARD, QUORUM, COMPENSATION OF EMPLOYEES OF BOARD — SERVICE TO SYSTEM DEEMED REGULAR DUTIES. — 1. The board of trustees shall meet within the state of Missouri upon the written call of the chairman or by agreement of any four members of the board. Notice of the meeting shall be delivered to all other trustees in person, or by depositing notice in a United States post office, in a properly stamped and addressed envelope, not less than six days prior to the date fixed for the meeting**, unless authorized by the board**. The board may meet at any time by unanimous mutual consent. There shall be at least one meeting in each quarter.

2. Six trustees shall constitute a quorum for the transaction of business, and any official action of the board shall be based on the majority vote of the trustees present.

3. The trustees shall serve without compensation, but shall receive their necessary expenses incurred in the performance of their duties for the system.

4. The executive director and other employees of the system shall receive such salaries **or other compensation** as may be fixed by the board and their necessary travel expense within and without the state as may be authorized by the board.

5. Duties performed for the system **as board members** by the director or any **elected** employee of the state highways and transportation commission or by the superintendent of the state highway patrol or any **elected** employee or member of the patrol shall be considered duties in connection with the regular employment of such individual, and the employee shall suffer no loss in regular compensation by reason of the performance of such duties.

104.255. CERTAIN SURVIVING SPOUSES TO BECOME CONSULTANTS — COMPENSATION — NOT TO AFFECT SURVIVOR'S BENEFITS OR ELIGIBILITY FOR RETIREMENT — SURVIVING SPOUSES NOT RECEIVING PAYMENTS ON OR AFTER SEPTEMBER 1, 1989. — 1. Any spouse of a deceased member who retired prior to August 28, 1989, shall, upon application, be made, constituted, and appointed and employed by the board as a special consultant on the problems of retirement, aging, and other matters relating to spouses of deceased members of the system, and upon the request of the board shall give opinions, in writing or orally, in response to such requests of the board. As compensation for the services required by this section, spouses of deceased members of the system shall be compensated monthly in an amount subject to either the option that the member chose at the time of retirement or an amount equal to one-half of the member's benefit, whichever is greater. The above benefits shall be based upon the benefit the member was receiving at the time of death.

2. The employment provided for by this section shall in no way affect any person's eligibility for retirement or survivor benefits under the provisions of this chapter, or in any way have the effect of reducing any retirement or survivor benefits, anything to the contrary notwithstanding.

3. Other provisions of law notwithstanding, any surviving spouse not receiving a continuing payment who would have been eligible for compensation under the provisions of subsection 1 or 2 of this section on or after September 1, 1989, shall be entitled to receive compensation in a sum equal to the amount the spouse would have received had subsections 1 and 2 been in effect on September 1, 1989. **In order for a surviving spouse to be eligible for the benefits under this subsection, the retirement application of the deceased member must be filed prior to August 28, 2004.**

251.255. REGIONAL PLANNING COMMISSION DEEMED POLITICAL SUBDIVISION — RETIREMENT SYSTEM ELIGIBILITY. — Notwithstanding the provisions of section 70.600, RSMo, to the contrary, a regional planning commission shall be considered a political subdivision for the purposes of sections 70.600 to 70.755, RSMo, and employees of a regional planning commission shall be eligible for membership in the Missouri local government employees' retirement system upon the regional planning commission becoming an "employer" as defined in subdivision (11) of section 70.600, RSMo.

251.440. DISSOLUTION OF REGIONAL COMMISSION, PROCEDURE. — Upon receipt of certified copies of resolutions recommending the dissolution of a regional planning commission adopted by the governing bodies of a majority of the local units in the region, including the county commission of any county, part or all of which is within the region, and upon a finding that all outstanding indebtedness of the regional planning commission has been paid**, including monies owed to any retirement plan or system in which the commission participates and has pledged to pay for the unfunded accrued liability of its past and current employees,** and all unexpended funds returned to the local units which supplied them, or that adequate

provision has been made therefor, the governor shall issue a certificate of dissolution of the commission which shall thereupon cease to exist.

Approved June 24, 2004

HB 1442 [HB 1442]

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

Designates the Thomas G. Tucker, Jr. Memorial Highway.

AN ACT to amend chapter 227, RSMo, by adding thereto one new section relating to the designation of a memorial highway.

SECTION
A. Enacting clause.
227.352. Thomas G. Tucker, Jr. Memorial Highway designated for a portion of State Route 51 located in Perry County.

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

SECTION A. ENACTING CLAUSE. — Chapter 227, RSMo, is amended by adding thereto one new section, to be known as section 227.352, to read as follows:

227.352. THOMAS G. TUCKER, JR. MEMORIAL HIGHWAY DESIGNATED FOR A PORTION OF STATE ROUTE 51 LOCATED IN PERRY COUNTY. — The portion of state route 51 in Perry County from interstate highway 55 to U.S. Highway 61 shall be designated the "Thomas G. Tucker, Jr. Memorial Highway".

Approved July 2, 2004

HB 1444 [HB 1444]

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

Repeals current requirement for legislative committees to have resolutions passed authorizing visits to state institutions.

AN ACT to repeal section 21.190, RSMo, relating to legislative committees.

SECTION
A. Enacting clause.
21.190. Visiting committees.

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

SECTION A. ENACTING CLAUSE. — Section 21.190, RSMo, is repealed.

[21.190. VISITING COMMITTEES. — No committee of either or of both branches of the general assembly of the state of Missouri shall visit any state institution as a committee, without a resolution authorizing it so to do.**]**

Approved July 2, 2004

HB 1449 [HCS HB 1449]

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

Creates additional special license plates.

AN ACT to amend chapter 301, RSMo, by adding thereto two new sections relating to special license plates.

SECTION
A. Enacting clause.
301.3078. Operation Iraqi Freedom special license plate, application, fee.
301.3132. Missouri Society of Professional Engineers special license plates, application, fee.

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

SECTION A. ENACTING CLAUSE. — Chapter 301, RSMo, is amended by adding thereto two new sections, to be known as sections 301.3078 and 301.3132, to read as follows:

301.3078. OPERATION IRAQI FREEDOM SPECIAL LICENSE PLATE, APPLICATION, FEE. — Any person who served in the military operation known as Operation Iraqi Freedom and either currently serves in any branch of the United States armed forces or was honorably discharged from such service may apply for Operation Iraqi Freedom motor vehicle license plates, for any motor vehicle the person owns, either solely or jointly, other than an apportioned motor vehicle or a commercial motor vehicle licensed in excess of eighteen thousand pounds gross weight. Any such person shall make application for the license plates authorized by this section on a form provided by the director of revenue and furnish such proof of service in Operation Iraqi Freedom and status as currently serving in a branch of the armed forces of the United States or as an honorably discharged veteran as the director may require. Upon presentation of the proof of eligibility, payment of a fifteen-dollar fee in addition to the regular registration fees and presentation of documents which may be required by law, the director shall then issue license plates bearing letters or numbers or a combination thereof as determined by the director, with the words "OPERATION IRAQI FREEDOM VETERAN" in place of the words "SHOW-ME STATE". Notwithstanding the provisions of section 301.144, no additional fee shall be charged for the personalization of license plates issued pursuant to this section. The plates shall be clearly visible at night and shall be aesthetically attractive, as prescribed by section 301.130. There shall be no limit on the number of license plates any person qualified pursuant to this section may obtain so long as each set of license plates issued pursuant to this section is issued for vehicles owned solely or jointly by such person. License plates issued pursuant to this section shall not be transferable to any other person except that any registered co-owner of the motor vehicle may operate the motor vehicle for the duration of the year licensed in the event of the death of the qualified person.

301.3132. MISSOURI SOCIETY OF PROFESSIONAL ENGINEERS SPECIAL LICENSE PLATES, APPLICATION, FEE. — 1. Any member of Missouri Society of Professional Engineers may receive special license plates as prescribed by this section, for any motor vehicle such person owns, either solely or jointly, other than an apportioned motor vehicle or a commercial motor vehicle licensed in excess of eighteen thousand pounds gross weight, after an annual payment of an emblem-use authorization fee to Missouri Society of Professional Engineers Educational Foundation. Missouri Society of Professional

Engineers hereby authorizes the use of its official emblem to be affixed on multiyear personalized license plates as provided in this section. Any contribution to Missouri Society of Professional Engineers Educational Foundation derived from this section, except reasonable administrative costs, shall be used solely for the purposes of Missouri Society of Professional Engineers Educational Foundation and shall be deposited into the society's educational fund. Any member of Missouri Society of Professional Engineers may annually apply for the use of the emblem.

2. Upon annual application and payment of a twenty-five dollar emblem-use contribution to Missouri Society of Professional Engineers Educational Foundation, the organization shall issue to the vehicle owner, without further charge, an emblem-use authorization statement, which shall be presented by the owner to the department of revenue at the time of registration of a motor vehicle. Upon presentation of the annual statement, payment of a fifteen dollar fee in addition to the registration fee and documents which may be required by law, the department of revenue shall issue to the vehicle owner a personalized license plate which shall bear the emblem of Missouri Society of Professional Engineers and the words "MISSOURI SOCIETY OF PROFESSIONAL ENGINEERS" in place of the words "SHOW-ME STATE". Such license plates shall be made with fully reflective material with a common color scheme and design, shall be clearly visible at night, and shall be aesthetically attractive, as prescribed by section 301.130. Notwithstanding the provisions of section 301.144, no additional fee shall be charged for the personalization of license plates pursuant to this section.

3. A vehicle owner, who was previously issued a plate with the Missouri Society of Professional Engineers' emblem authorized by this section but who does not provide an emblem-use authorization statement at a subsequent time of registration, shall be issued a new plate which does not bear the Missouri Society of Professional Engineers' emblem, as otherwise provided by law. The director of revenue shall make necessary rules and regulations for the administration of this section, and shall design all necessary forms required by this section. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.

Approved July 1, 2004

HB 1453 [CCS SS SCS HS HCS HB 1453]

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

Enacts and modifies various provisions regarding the state foster care system.

AN ACT to repeal sections 26.740, 43.503, 43.530, 43.540, 135.327, 167.020, 192.016, 207.050, 207.060, 210.025, 210.102, 210.109, 210.110, 210.145, 210.150, 210.152, 210.153, 210.160, 210.183, 210.201, 210.211, 210.518, 210.565, 210.760, 210.903, 210.909, 211.031, 211.032, 211.059, 211.171, 211.181, 211.321, 302.272, 431.056, 452.375, 452.400, 452.402, 452.423, 452.455, 453.020, 453.025, 453.030, 453.060, 453.110, 475.024, 487.100, 491.075, 492.304, 537.046, and 701.336, RSMo, and to enact in lieu thereof seventy-nine new sections relating to foster care and protection of children, with penalty provisions and an emergency clause for certain sections.

SECTION
A. Enacting clause.

37.699. Dominic James Memorial Foster Care Reform Act, statutes involved.
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37.710. Access to information — authority of office — confidentiality of information.
37.715. Complaint procedures — annual report, contents.
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37.730. Immunity from liability, when.
43.503. Arrest, charge and disposition of misdemeanors and felonies to be sent to highway patrol — procedure for certain juveniles.
43.530. Fees, method of payment — criminal record system fund, established — fund not to lapse.
43.540. Criminal record review — definitions — patrol to conduct review, when, procedure, confidentiality, violation, penalty — patrol to provide forms.
135.327. Special needs child adoption tax credit — nonrecurring adoption expenses, amount — individual and business entities tax credit, amount — assignment of tax credit, when — report to general assembly.
167.020. Registration requirements — residency — homeless child or youth defined — recovery of costs, when — records to be requested, provided, when.
168.283. Criminal background checks required for school personnel, when, procedure — rulemaking authority.
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207.050. County family services commission — qualifications, appointment, terms, expenses, vacancies, duties.
207.060. County offices — director — agreements with subdivisions — other employees.
207.085. Division employee dismissal, when — mitigating factors.
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210.025. Criminal background checks, persons receiving state or federal funds for child care, procedure — rulemaking authority.
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210.109. Child protection system established by children's division, duties, records, investigations or assessments and services — central registry maintained.
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210.111. Identification of children receiving foster care, report to general assembly, contents.
210.112. Children's services providers and agencies, contracting with, requirements — reports to general assembly — rulemaking authority.
210.113. Accreditation goal, when to be achieved.
210.117. Child not reunited with parents or placed in a home, when.
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210.145. Telephone hotline for reports on child abuse — division duties, protocols, law enforcement contacted immediately, investigation conducted, when, exception — chief investigator named — family support team meetings, who may attend — reporter's right to receive information — admissibility of reports in custody cases.
210.147. Confidentiality of family support team meetings, exceptions — form developed for core commitments made at meetings.
210.150. Confidentiality of reports and records, exceptions — violations, penalty.
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210.153. Child abuse and neglect review board, established, members, duties, records, rules.
210.160. Guardian ad litem, how appointed — when — fee — volunteer advocates may be appointed to assist guardian — training program.
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210.188. Report to general assembly and governor, contents.
210.201. Definitions.
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210.542. Training and standards for foster parents to be provided, when — evaluation of foster parents.

210.565. Relatives of child shall be given foster home placement, when — relative, defined — death or dissolution not to affect grandparents' status — specific findings required, when — age of relative not a factor, when — federal requirements to be followed for placement of Native American children.
210.760. Placement in foster care — division's duties — removal of children from school, restrictions.
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211.031. Juvenile court to have exclusive jurisdiction, when — exceptions — home schooling, attendance violations, how treated.
211.032. Child abuse and neglect hearings, when held, procedure — supreme court rules to be promulgated — transfer of school records, when.
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211.059. Rights of child when taken into custody (Miranda warning) — right of child in custody in abuse and neglect cases.
211.171. Hearing procedure — notification of current foster parents, preadoptive parents and relatives, when — public may be excluded, when — victim impact statement permitted, when.
211.181. Order for disposition or treatment of child — suspension of order and probation granted, when — community organizations, immunity from liability, when — length of commitment may be set forth — assessments, deposits, use.
211.319. Juvenile court records and proceedings, abuse and neglect cases, procedure.
211.321. Juvenile court records, confidentiality, exceptions — records of peace officers, exceptions, release of certain information to victim.
302.272. School bus permit, qualifications — permit renewal, when — fee — temporary permits — grounds for refusal to issue or renew permit — criminal record checks of applicants.
431.056. Minor's ability to contract for certain purposes — conditions.
452.375. Custody — definitions — factors determining custody — prohibited, when — public policy of state — custody options plan, when required — findings required, when — exchange of information and right to certain records, failure to disclose — fees, costs assessed, when — joint custody not to preclude child support — support, how determined — domestic violence or abuse, specific findings.
452.400. Visitation rights, awarded when — history of domestic violence, consideration of — prohibited, when — modification of, when — supervised visitation defined — noncompliance with order, effect of — family access motions, procedure, penalty for violation — attorney fees and costs assessed, when.
452.402. Grandparent's visitation rights granted, when, terminated, when — guardian ad litem appointed, when — attorney fees and costs assessed, when.
452.423. Guardian ad litem appointed, when, duties — disqualification, when — fees — volunteer advocates, expenses.
452.455. Petition for modification — procedure — child support delinquency, effect of.
453.020. Petition — guardian ad litem appointed — fee.
453.025. Appointment of guardian ad litem, when — fee — duties of guardian ad litem.
453.030. Approval of court required — how obtained, consent of child and parent required, when — validity of consent — withdrawal of consent — forms, developed by department, contents — court appointment of attorney, when.
453.060. Service on parties, how accomplished — petitioners' names not to appear on copy of petition served with summons, when — right of appeal — waiver of service — putative father unknown, procedure.
453.061. Conception of a child, man deemed to be on notice, when.
453.110. Prohibiting transfer of custody of child — exception — penalty — investigation and report — transfer of custody order issued, when.
475.024. Temporary delegation of powers by parent — exceptions.
487.100. Mediation, counseling, home study may be recommended — costs.
491.075. Statement of child under fourteen admissible, when.
492.304. Visual and aural recordings of child under fourteen admissible, when.
537.046. Childhood sexual abuse, injury or illness defined — action for damages may be brought, when.
701.336. Department to cooperate with federal government — information to be provided to certain persons — lead testing of children, strategy to increase number.
1. Nonoffending parent, child returned to custody of, when.
2. Severability clause.
26.740. Child abuse, custody and neglect commission created, members, terms — reports — expiration date.
B. Emergency clause.

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

SECTION A. ENACTING CLAUSE. — Sections 26.740, 43.503, 43.530, 43.540, 135.327, 167.020, 192.016, 207.050, 207.060, 210.025, 210.102, 210.109, 210.110, 210.145, 210.150, 210.152, 210.153, 210.160, 210.183, 210.201, 210.211, 210.518, 210.565, 210.760, 210.903, 210.909, 211.031, 211.032, 211.059, 211.171, 211.181, 211.321, 302.272, 431.056, 452.375,

452.400, 452.402, 452.423, 452.455, 453.020, 453.025, 453.030, 453.060, 453.110, 475.024, 487.100, 491.075, 492.304, 537.046, and 701.336, RSMo, are repealed and seventy-nine new sections enacted in lieu thereof, to be known as sections 37.699, 37.700, 37.705, 37.710, 37.715, 37.725, 37.730, 43.503, 43.530, 43.540, 135.327, 167.020, 168.283, 191.748, 192.016, 207.050, 207.060, 207.085, 208.647, 210.025, 210.102, 210.108, 210.109, 210.110, 210.111, 210.112, 210.113, 210.117, 210.127, 210.145, 210.147, 210.150, 210.152, 210.153, 210.160, 210.183, 210.187, 210.188, 210.201, 210.211, 210.482, 210.487, 210.518, 210.535, 210.542, 210.565, 210.760, 210.762, 210.903, 210.909, 211.031, 211.032, 211.038, 211.059, 211.171, 211.181, 211.319, 211.321, 302.272, 431.056, 452.375, 452.400, 452.402, 452.423, 452.455, 453.020, 453.025, 453.030, 453.060, 453.061, 453.110, 475.024, 487.100, 491.075, 492.304, 537.046, 701.336, 1, and 2, to read as follows:

37.699. DOMINIC JAMES MEMORIAL FOSTER CARE REFORM ACT, STATUTES INVOLVED. — Sections 37.700 to 37.730, 168.283, 191.748, 207.085, 210.109, 210.110, 210.111, 210.112, 210.113, 210.127, 210.145, 210.147, 210.150, 210.152, 210.153, 210.160, 210.183, 210.187, 210.188, 210.482, 210.487, 210.518, 210.535, 210.542, 210.565, 210.760, 210.762, 211.031, 211.032, 211.059, 211.319, and 537.046, RSMo, shall be known and may be cited as the "Dominic James Memorial Foster Care Reform Act of 2004".

37.700. DEFINITIONS. — As used in sections 37.700 to 37.730, the following terms mean:

(1) "Office", the office of the child advocate for children's protection and services within the office of administration, which shall include the child advocate and staff;

(2) "Recipient", any child who is receiving child welfare services from the department of social services or its contractors, or services from the department of mental health.

37.705. OFFICE ESTABLISHED — APPOINTMENT OF CHILD ADVOCATE. — 1. There is hereby established within the office of administration the "Office of Child Advocate for Children's Protection and Services", for the purpose of assuring that children receive adequate protection and care from services, programs offered by the department of social services, or the department of mental health, or the juvenile court. The child advocate shall report directly to the commissioner of the office of administration.

2. The office shall be administered by the child advocate, who shall be appointed jointly by the governor and the chief justice of the Missouri supreme court with the advice and consent of the senate. The child advocate shall hold office for a term of six years and shall continue to hold office until a successor has been duly appointed. The advocate shall act independently of the department of social services, the department of mental health, and the juvenile court in the performance of his or her duties. The office of administration shall provide administrative support and staff as deemed necessary.

37.710. ACCESS TO INFORMATION — AUTHORITY OF OFFICE — CONFIDENTIALITY OF INFORMATION. — 1. The office shall have access to the following information:

(1) The names and physical location of all children in protective services, treatment, or other programs under the jurisdiction of the children's division, the department of mental health, and the juvenile court;

(2) All written reports of child abuse and neglect; and

(3) All current records required to be maintained pursuant to chapters 210 and 211, RSMo.

2. The office shall have the authority:

(1) To communicate privately by any means possible with any child under protective services and anyone working with the child, including the family, relatives, courts,

employees of the department of social services and the department of mental health, and other persons or entities providing treatment and services;

(2) To have access, including the right to inspect, copy and subpoena records held by the clerk of the juvenile or family court, juvenile officers, law enforcement agencies, institutions, public or private, and other agencies, or persons with whom a particular child has been either voluntarily or otherwise placed for care, or has received treatment within this state or in another state;

(3) To work in conjunction with juvenile officers and guardians ad litem;

(4) To file amicus curiae briefs on behalf of the interests of the parent or child;

(5) To initiate meetings with the department of social services, the department of mental health, the juvenile court, and juvenile officers;

(6) To take whatever steps are appropriate to see that persons are made aware of the services of the child advocate's office, its purpose, and how it can be contacted;

(7) To apply for and accept grants, gifts, and bequests of funds from other states, federal, and interstate agencies, and independent authorities, private firms, individuals, and foundations to carry out his or her duties and responsibilities. The funds shall be deposited in a dedicated account established within the office to permit moneys to be expended in accordance with the provisions of the grant or bequest; and

(8) Subject to appropriation, to establish as needed local panels on a regional or county basis to adequately and efficiently carry out the functions and duties of the office, and address complaints in a timely manner.

3. For any information obtained from a state agency or entity under sections 37.700 to 37.730, the office of child advocate shall be subject to the same disclosure restrictions and confidentiality requirements that apply to the state agency or entity providing such information to the office of child advocate. For information obtained directly by the office of child advocate under sections 37.700 to 37.730, the office of child advocate shall be subject to the same disclosure restrictions and confidentiality requirements that apply to the children's division regarding information obtained during an child abuse and neglect investigation resulting in an unsubstantiated report.

37.715. COMPLAINT PROCEDURES — ANNUAL REPORT, CONTENTS. — 1. The office shall establish and implement procedures for receiving, processing, responding to, and resolving complaints made by or on behalf of children who are recipients of the services of the departments of social services and mental health, and the juvenile court. Such procedures shall address complaints relating to the actions, inactions, or decisions of providers or their representatives, public or private child welfare agencies, social service agencies, or the courts which may adversely affect the health, safety, welfare, or rights of such recipient.

2. The office shall establish and implement procedures for the handling and, whenever possible, the resolution of complaints.

3. The office shall have the authority to make the necessary inquiries and review relevant information and records as the office deems necessary.

4. The office may recommend to any state or local agency changes in the rules adopted or proposed by such state or local agency which adversely affect or may adversely affect the health, safety, welfare, or civil or human rights of any recipient. The office shall make recommendations on changes to any current policies and procedures. The office shall analyze and monitor the development and implementation of federal, state and local laws, regulations and policies with respect to services in the state and shall recommend to the department, courts, general assembly, and governor changes in such laws, regulations and policies deemed by the office to be appropriate.

5. The office shall inform recipients, their guardians or their families of their rights and entitlements under state and federal laws and regulations through the distribution of educational materials.

6. The office shall annually submit to the governor, the general assembly, and the Missouri supreme court a detailed report on the work of the office of the child advocate for children's protection and services. Such report shall include, but not be limited to, the number of complaints received by the office, the disposition of such complaints, the number of recipients involved in complaints, the state entities named in complaints and whether such complaints were found to be substantiated, and any recommendations for improving the delivery of services to reduce complaints or improving the function of the office of the child advocate for children's protection and services.

37.725. FILES MAY BE DISCLOSED AT DISCRETION OF CHILD ADVOCATE, EXCEPTIONS — PRIVILEGED INFORMATION — PENALTY FOR DISCLOSURE OF CONFIDENTIAL MATERIAL. — 1. Any files maintained by the advocate program shall be disclosed only at the discretion of the child advocate; except that the identity of any complainant or recipient shall not be disclosed by the office unless:

(1) The complainant or recipient, or the complainant's or recipient's legal representative, consents in writing to such disclosure; or

(2) Such disclosure is required by court order.

2. Any statement or communication made by the office relevant to a complaint received by, proceedings before, or activities of the office and any complaint or information made or provided in good faith by any person shall be absolutely privileged and such person shall be immune from suit.

3. Any representative of the office conducting or participating in any examination of a complaint who knowingly and willfully discloses to any person other than the office, or those persons authorized by the office to receive it, the name of any witness examined or any information obtained or given during such examination is guilty of a class A misdemeanor. However, the office conducting or participating in any examination of a complaint shall disclose the final result of the examination with the consent of the recipient.

4. The office shall not be required to testify in any court with respect to matters held to be confidential in this section except as the court may deem necessary to enforce the provisions of sections 37.700 to 37.730, or where otherwise required by court order.

37.730. IMMUNITY FROM LIABILITY, WHEN. — 1. Any employee or an unpaid volunteer of the office shall be treated as a representative of the office. No representative of the office shall be held liable for good faith performance of his or her official duties under the provisions of sections 37.700 to 37.730 and such representative shall be immune from suit for the good faith performance of such duties. Every representative of the office shall be considered a state employee under section 105.711, RSMo.

2. No reprisal or retaliatory action shall be taken against any recipient or employee of the departments or courts for any communication made or information given to the office. Any person who knowingly or willfully violates the provisions of this subsection is guilty of a class A misdemeanor.

43.503. ARREST, CHARGE AND DISPOSITION OF MISDEMEANORS AND FELONIES TO BE SENT TO HIGHWAY PATROL — PROCEDURE FOR CERTAIN JUVENILES. — 1. For the purpose of maintaining complete and accurate criminal history record information, all police officers of this state, the clerk of each court, the department of corrections, the sheriff of each county, the chief law enforcement official of a city not within a county and the prosecuting attorney of each county or the circuit attorney of a city not within a county shall submit certain criminal arrest, charge, and disposition information to the central repository for filing without undue delay in the form and manner required by sections 43.500 to 43.543.

2. All law enforcement agencies making misdemeanor and felony arrests as determined by section 43.506 shall furnish without undue delay, to the central repository, fingerprints, charges,

appropriate charge codes, and descriptions of all persons who are arrested for such offenses on standard fingerprint forms supplied or approved by the highway patrol or electronically in a format and manner approved by the highway patrol. All such agencies shall also notify the central repository of all decisions not to refer such arrests for prosecution. An agency making such arrests may enter into arrangements with other law enforcement agencies for the purpose of furnishing without undue delay such fingerprints, charges, appropriate charge codes, and descriptions to the central repository upon its behalf.

3. In instances where an individual less than seventeen years of age and not currently certified as an adult is taken into custody for an offense which would be a felony if committed by an adult, the arresting officer shall take fingerprints for the central repository. These fingerprints shall be taken on fingerprint cards supplied by or approved by the highway patrol or transmitted electronically in a format and manner approved by the highway patrol. The fingerprint cards shall be so constructed that the name of the juvenile should not be made available to the central repository. The individual's name and the unique number associated with the fingerprints and other pertinent information shall be provided to the court of jurisdiction by the agency taking the juvenile into custody. The juvenile's fingerprints and other information shall be forwarded to the central repository and the courts without undue delay. The fingerprint information from the card shall be captured and stored in the automated fingerprint identification system operated by the central repository. In the event the fingerprints are found to match other tenprints or unsolved latent prints, the central repository shall notify the submitting agency who shall notify the court of jurisdiction as per local agreement.

4. Upon certification of the individual as an adult, the **certifying** court shall order a law enforcement agency to immediately fingerprint the individual. The law enforcement agency shall submit such fingerprints to the central repository within fifteen days and shall furnish the offense cycle number associated with the fingerprints to the prosecuting attorney or the circuit attorney of a city not within a county and to the clerk of the court ordering the subject fingerprinted. If the juvenile is acquitted of the crime and is no longer certified as an adult, the prosecuting attorney shall notify within fifteen days the central repository of the change of status of the juvenile. Records of a child who has been fingerprinted and photographed after being taken into custody shall be closed records as provided under section 610.100, RSMo, if a petition has not been filed within thirty days of the date that the child was taken into custody; and if a petition for the child has not been filed within one year of the date the child was taken into custody, any records relating to the child concerning the alleged offense may be expunged under the procedures in sections 610.122 to 610.126, RSMo.

5. The prosecuting attorney of each county or the circuit attorney of a city not within a county shall notify the central repository on standard forms supplied by the highway patrol or in a manner approved by the highway patrol of all charges filed, including all those added subsequent to the filing of a criminal court case, and whether charges were not filed in criminal cases for which the central repository has a record of an arrest. All records forwarded to the central repository by prosecutors or circuit attorneys as required by sections 43.500 to 43.530 shall include the state offense cycle number of the offense, the charge code for the offense, and the originating agency identifier number of the reporting prosecutor, using such numbers as assigned by the highway patrol.

6. The clerk of the courts of each county or city not within a county shall furnish the central repository, on standard forms supplied by the highway patrol or in a manner approved by the highway patrol, with all final dispositions of cases for which the central repository has a record of an arrest or a record of fingerprints reported pursuant to sections 43.500 to 43.506. Such information shall include, for each charge:

(1) All judgments of not guilty, acquittals on the ground of mental disease or defect excluding responsibility, judgments or pleas of guilty including the sentence, if any, or probation, if any, pronounced by the court, nolle pros, discharges, releases and dismissals in the trial court;

(2) Court orders filed with the clerk of the courts which reverse a reported conviction or vacate or modify a sentence;

(3) Judgments terminating or revoking a sentence to probation, supervision or conditional release and any resentencing after such revocation; and

(4) The offense cycle number of the offense, and the originating agency identifier number of the sentencing court, using such numbers as assigned by the highway patrol.

7. The clerk of the courts of each county or city not within a county shall furnish, to the department of corrections or department of mental health, court judgment and sentence documents and the state offense cycle number and the charge code of the offense which resulted in the commitment or assignment of an offender to the jurisdiction of the department of corrections or the department of mental health if the person is committed pursuant to chapter 552, RSMo. This information shall be reported to the department of corrections or the department of mental health at the time of commitment or assignment. If the offender was already in the custody of the department of corrections or the department of mental health at the time of such subsequent conviction, the clerk shall furnish notice of such subsequent conviction to the appropriate department by certified mail, return receipt requested, or in a manner and format mutually agreed to, within fifteen days of such disposition.

8. Information and fingerprints, and other indicia forwarded to the central repository, normally obtained from a person at the time of the arrest, may be obtained at any time the subject is in the criminal justice system or committed to the department of mental health. A law enforcement agency or the department of corrections may fingerprint the person and obtain the necessary information at any time the subject is in custody. If at the time of disposition, the defendant has not been fingerprinted for an offense in which a fingerprint is required by statute to be collected, maintained, or disseminated by the central repository, the court shall order a law enforcement agency to fingerprint immediately the defendant. The law enforcement agency shall submit such fingerprints to the central repository without undue delay and within thirty days and shall furnish the offense cycle number associated with the fingerprints to the prosecuting attorney or the circuit attorney of a city not within a county and to the court clerk of the court ordering the subject fingerprinted.

9. The department of corrections and the department of mental health shall furnish the central repository with all information concerning the receipt, escape, execution, death, release, pardon, parole, commutation of sentence, granting of executive clemency, legal name change, or discharge of an individual who has been sentenced to that department's custody for any offenses which are mandated by law to be collected, maintained or disseminated by the central repository. All records forwarded to the central repository by the department as required by sections 43.500 to 43.543 shall include the offense cycle number of the offense, and the originating agency identifier number of the department using such numbers as assigned by the highway patrol.

43.530. FEES, METHOD OF PAYMENT — CRIMINAL RECORD SYSTEM FUND, ESTABLISHED — FUND NOT TO LAPSE. — 1. For each request requiring the payment of a fee received by the central repository, the requesting entity shall pay a fee of not more than five dollars per request for criminal history record information not based on a fingerprint search **when the requesting entity is required to obtain such information by any provision of state or federal law** and pay a fee of not more than fourteen dollars per request for criminal history record information based on a fingerprint search **when the requesting entity is required to obtain such information by any provision of state or federal law; provided that, when the requesting entity is not required to obtain such information by law, the requesting entity shall pay a fee of not more than ten dollars per request for criminal history record information not based on a fingerprint search and pay a fee of not more than twenty dollars per request for criminal history record information based on a fingerprint search**. Each such request shall be limited to check and search on one individual. Each request shall be accompanied by a check, warrant, voucher, money order, or electronic payment payable to the state of Missouri-criminal record system or payment shall be made in a manner approved by the

highway patrol. The highway patrol may establish procedures for receiving requests for criminal history record information for classification and search for fingerprints, from courts and other entities, and for the payment of such requests. There is hereby established by the treasurer of the state of Missouri a fund to be entitled as the "Criminal Record System Fund". Notwithstanding the provisions of section 33.080, RSMo, to the contrary, if the moneys collected and deposited into this fund are not totally expended annually for the purposes set forth in sections 43.500 to 43.543, the unexpended moneys in such fund shall remain in the fund and the balance shall be kept in the fund to accumulate from year to year.

2. For purposes of obtaining criminal records prior to issuance of a school bus operator's permit pursuant to section 302.272, RSMo, and for determining eligibility for such permit, the applicant for such permit shall submit two sets of fingerprints to the director of revenue when applying for the permit. The fingerprints shall be collected in a manner approved by the superintendent of the highway patrol. The school bus permit applicant shall pay the appropriate fee described in this section and pay the appropriate fee determined by the Federal Bureau of Investigation for the federal criminal history record when he or she applies for the school bus permit. Collections for records described in this subsection shall be deposited in the criminal record system fund.

43.540. CRIMINAL RECORD REVIEW — DEFINITIONS — PATROL TO CONDUCT REVIEW, WHEN, PROCEDURE, CONFIDENTIALITY, VIOLATION, PENALTY — PATROL TO PROVIDE FORMS. — 1. As used in this section, the following terms mean:

(1) "Authorized state agency", a division of state government or an office of state government designated by the statutes of Missouri to issue or renew a license, permit, certification, or registration of authority to a qualified entity;

(2) "Care", the provision of care, treatment, education, training, instruction, supervision, or recreation;

(3) "Missouri criminal record review", a review of criminal history records **[**or**]** **and** sex offender registration records pursuant to sections 589.400 to 589.425, RSMo, maintained by the Missouri state highway patrol in the Missouri criminal records repository;

(4) "National criminal record review", a review of the criminal history records maintained by the Federal Bureau of Investigation;

(5) "Patient or resident", a person who by reason of age, illness, disease or physical or mental infirmity receives or requires care or services furnished by a provider, as defined in this section, or who resides or boards in, or is otherwise kept, cared for, treated or accommodated in a facility as defined in section 198.006, RSMo, for a period exceeding twenty-four consecutive hours;

(6) "Provider", a person who:

(a) Has or may have unsupervised access to children, the elderly, or persons with disabilities; and

(b) **a.** Is employed by or seeks employment with a qualified entity; or

[(c)**]** **b.** Volunteers or seeks to volunteer with a qualified entity; or

[(d)**]** **c.** Owns or operates a qualified entity;

(7) "Qualified entity", a person, business, or organization, whether public or private, for profit, not for profit, or voluntary, that provides care, placement, or educational services for children, the elderly, or persons with disabilities as patients or residents, including a business or organization that licenses or certifies others to provide care or placement services;

(8) "Youth services agency", any public or private agency, school, or association which provides programs, care or treatment for or which exercises supervision over minors.

2. A qualified entity may obtain a Missouri criminal record review of a provider from the highway patrol by furnishing information on forms and in the manner approved by the highway patrol.

3. A qualified entity may request a Missouri criminal record review and a national criminal record review of a provider through an authorized state agency. No authorized state agency is required by this section to process Missouri or national criminal record reviews for a qualified entity, however, if an authorized state agency agrees to process Missouri and national criminal record reviews for a qualified entity, the qualified entity shall provide to the authorized state agency on forms and in a manner approved by the highway patrol the following:

(1) Two sets of fingerprints of the provider **if a national criminal record review is requested**;

(2) A statement signed by the provider which contains:

(a) The provider's name, address, and date of birth;

(b) Whether the provider has been convicted of or has pled guilty to a crime which includes a suspended imposition of sentence;

(c) If the provider has been convicted of or has pled guilty to a crime, a description of the crime, and the particulars of the conviction or plea;

(d) The authority of the qualified entity to check the provider's criminal history;

(e) The right of the provider to review the report received by the qualified entity; and

(f) The right of the provider to challenge the accuracy of the report. If the challenge is to the accuracy of the criminal record review, the challenge shall be made to the highway patrol.

4. The authorized state agency shall forward the required forms and fees to the highway patrol. The results of the record review shall be forwarded to the authorized state agency who will notify the qualified entity. The authorized state agency may assess a fee to the qualified entity to cover the cost of handling the criminal record review and may establish an account solely for the collection and dissemination of fees associated with the criminal record reviews.

5. Any information received by an authorized state agency or a qualified entity pursuant to the provisions of this section shall be used solely for internal purposes in determining the suitability of a provider. The dissemination of criminal history information from the Federal Bureau of Investigation beyond the authorized state agency or related governmental entity is prohibited. All criminal record check information shall be confidential and any person who discloses the information beyond the scope allowed is guilty of a class A misdemeanor.

6. The highway patrol shall make available or approve the necessary forms, procedures, and agreements necessary to implement the provisions of this section.

135.327. SPECIAL NEEDS CHILD ADOPTION TAX CREDIT — NONRECURRING ADOPTION EXPENSES, AMOUNT — INDIVIDUAL AND BUSINESS ENTITIES TAX CREDIT, AMOUNT — ASSIGNMENT OF TAX CREDIT, WHEN — REPORT TO GENERAL ASSEMBLY. — 1. Any person residing in this state who legally adopts a special needs child on or after January 1, 1988, and before January 1, 2000, shall be eligible to receive a tax credit of up to ten thousand dollars for nonrecurring adoption expenses for each child adopted that may be applied to taxes due under chapter 143, RSMo. Any business entity providing funds to an employee to enable that employee to legally adopt a special needs child shall be eligible to receive a tax credit of up to ten thousand dollars for nonrecurring adoption expenses for each child adopted that may be applied to taxes due under such business entity's state tax liability, except that only one ten thousand dollar credit is available for each special needs child that is adopted.

2. Any person residing in this state who proceeds in good faith with the adoption of a special needs child on or after January 1, 2000, shall be eligible to receive a tax credit of up to ten thousand dollars for nonrecurring adoption expenses for each child that may be applied to taxes due under chapter 143, RSMo**; provided, however, that beginning on or after July 1, 2004, a minimum of fifty percent of the tax credits allowed shall be allocated for the adoption of special needs children who are residents or wards of residents of this state at the time the adoption is initiated**. Any business entity providing funds to an employee to enable that employee to proceed in good faith with the adoption of a special needs child shall be eligible to receive a tax credit of up to ten thousand dollars for nonrecurring adoption expenses

for each child that may be applied to taxes due under such business entity's state tax liability, except that only one ten thousand dollar credit is available for each special needs child that is adopted.

3. Individuals and business entities may claim a tax credit for their total nonrecurring adoption expenses in each year that the expenses are incurred. A claim for fifty percent of the credit shall be allowed when the child is placed in the home. A claim for the remaining fifty percent shall be allowed when the adoption is final. The total of these tax credits shall not exceed the maximum limit of ten thousand dollars per child. The cumulative amount of tax credits which may be claimed by taxpayers **claiming the credit** for nonrecurring adoption expenses in any one fiscal year **prior to July 1, 2004,** shall not exceed two million dollars **and shall not exceed four million dollars in any one fiscal year beginning on or after July 1, 2004; provided, however, that in the first ninety days following each July first, if less than two million dollars in credits have been issued for adoption of special needs children who are not residents or wards of residents of this state at the time the adoption is initiated, the remaining amount of the four million dollar cap shall be available for the adoption of special needs children who are residents or wards of residents of this state at the time the adoption is initiated**.

4. Notwithstanding any provision of law to the contrary, any individual or business entity may assign, transfer or sell tax credits allowed in this section. Any sale of tax credits claimed pursuant to this section shall be at a discount rate of seventy-five percent or greater of the amount sold.

5. The director of revenue shall establish a procedure by which, for each fiscal year, the cumulative amount of tax credits authorized in this section is equally apportioned among all taxpayers within the two categories specified in subsection 2 of this section claiming the credit in that fiscal year. To the maximum extent possible, the director of revenue shall establish the procedure described in this subsection in such a manner as to ensure that taxpayers within each category can claim all the tax credits possible up to the cumulative amount of tax credits available for the fiscal year.

6. The director of revenue shall submit to the general assembly, by January 1, 2005 and each succeeding year, information by income levels of those individual taxpayers who have qualified and claimed the credit authorized in this section, regardless of whether those taxpayers have assigned, transferred, or sold such credits. The information shall indicate the number of such taxpayers with federal adjusted gross income in the immediately preceding tax year of less than one hundred fifty thousand dollars, of one hundred fifty thousand dollars to and including one hundred ninety thousand dollars, and of more than one hundred ninety thousand dollars.

167.020. REGISTRATION REQUIREMENTS — RESIDENCY — HOMELESS CHILD OR YOUTH DEFINED — RECOVERY OF COSTS, WHEN — RECORDS TO BE REQUESTED, PROVIDED, WHEN. — 1. As used in this section, the term "homeless child" **or "homeless youth"** shall mean a person less than twenty-one years of age who lacks a fixed, regular and adequate nighttime residence, including a child **or youth** who:

(1) Is **[**living on the street, in a car, tent, abandoned building or some other form of shelter not designed as a permanent home;

(2) Is living in a community shelter facility;

(3) Is living in transitional housing for less than one full year**] sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; is living in motels, hotels, or camping grounds due to lack of alternative adequate accommodations; is living in emergency or transitional shelters; is abandoned in hospitals; or is awaiting foster care placement;**

(2) Has a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

(3) Is living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(4) Is a migratory child or youth who qualifies as homeless because the child or youth is living in circumstances described in subdivisions (1) to (3) of this subsection.

2. In order to register a pupil, the parent or legal guardian of the pupil or the pupil himself or herself shall provide, at the time of registration, one of the following:

(1) Proof of residency in the district. Except as otherwise provided in section 167.151, the term "residency" shall mean that a person both physically resides within a school district and is domiciled within that district. The domicile of a minor child shall be the domicile of a parent, military guardian pursuant to a military-issued guardianship or court-appointed legal guardian; or

(2) Proof that the person registering the student has requested a waiver under subsection 3 of this section within the last forty-five days. In instances where there is reason to suspect that admission of the pupil will create an immediate danger to the safety of other pupils and employees of the district, the superintendent or the superintendent's designee may convene a hearing within three working days of the request to register and determine whether or not the pupil may register.

3. Any person subject to the requirements of subsection 2 of this section may request a waiver from the district board of any of those requirements on the basis of hardship or good cause. Under no circumstances shall athletic ability be a valid basis of hardship or good cause for the issuance of a waiver of the requirements of subsection 2 of this section. The district board shall convene a hearing as soon as possible, but no later than forty-five days after receipt of the waiver request made under this subsection or the waiver request shall be granted. The district board may grant the request for a waiver of any requirement of subsection 2 of this section. The district board may also reject the request for a waiver in which case the pupil shall not be allowed to register. Any person aggrieved by a decision of a district board on a request for a waiver under this subsection may appeal such decision to the circuit court in the county where the school district is located.

4. Any person who knowingly submits false information to satisfy any requirement of subsection 2 of this section is guilty of a class A misdemeanor.

5. In addition to any other penalties authorized by law, a district board may file a civil action to recover, from the parent, military guardian or legal guardian of the pupil, the costs of school attendance for any pupil who was enrolled at a school in the district and whose parent, military guardian or legal guardian filed false information to satisfy any requirement of subsection 2 of this section.

6. Subsection 2 of this section shall not apply to a pupil who is a homeless child **or youth,** or a pupil attending a school not in the pupil's district of residence as a participant in an interdistrict transfer program established under a court-ordered desegregation program, a pupil who is a ward of the state and has been placed in a residential care facility by state officials, a pupil who has been placed in a residential care facility due to a mental illness or developmental disability, a pupil attending a school pursuant to sections 167.121 and 167.151, a pupil placed in a residential facility by a juvenile court, a pupil with a disability identified under state eligibility criteria if the student is in the district for reasons other than accessing the district's educational program, or a pupil attending a regional or cooperative alternative education program or an alternative education program on a contractual basis.

7. Within two business days of enrolling a pupil, the school official enrolling a pupil, including any special education pupil, shall request those records required by district policy for student transfer and those discipline records required by subsection 7 of section 160.261, RSMo, from all schools previously attended by the pupil within the last twelve months. Any school district that receives a request for such records from another school district enrolling a pupil that had previously attended a school in such district shall respond to such request within five business days of receiving the request. School districts may report or disclose education records

to law enforcement and juvenile justice authorities if the disclosure concerns law enforcement's or juvenile justice authorities' ability to effectively serve, prior to adjudication, the student whose records are released. The officials and authorities to whom such information is disclosed must comply with applicable restrictions set forth in 20 U.S.C. Section 1232g (b)(1)(E).

168.283. CRIMINAL BACKGROUND CHECKS REQUIRED FOR SCHOOL PERSONNEL, WHEN, PROCEDURE — RULEMAKING AUTHORITY. — 1. The school district shall ensure that a criminal background check is conducted on any person employed after January 1, 2005, authorized to have contact with pupils and prior to the individual having contact with any pupil. Such persons include, but are not limited to, administrators, teachers, aides, paraprofessionals, assistants, secretaries, custodians, cooks, and nurses. For bus drivers, the background check conducted by the department of revenue for the issuance or renewal of a school bus permit under section 302.272, RSMo, shall satisfy the background check requirements of this section.

2. In order to facilitate the criminal history background check on any person employed after January 1, 2005, the applicant shall submit two sets of fingerprints collected pursuant to standards determined by the Missouri highway patrol. One set of fingerprints shall be used by the highway patrol to search the criminal history repository and the family care safety registry pursuant to sections 210.900 to 210.936, RSMo, and the second set shall be forwarded to the Federal Bureau of Investigation for searching the federal criminal history files.

3. The applicant shall pay the fee for the state criminal history record information pursuant to section 43.530, RSMo, and sections 210.900 to 210.936, RSMo, and pay the appropriate fee determined by the Federal Bureau of Investigation for the federal criminal history record when he or she applies for a position authorized to have contact with pupils pursuant to this section. The department shall distribute the fees collected for the state and federal criminal histories to the Missouri highway patrol.

4. The school district may adopt a policy to provide for reimbursement of expenses incurred by an employee for state and federal criminal history information pursuant to section 43.530, RSMo.

5. If, as a result of the criminal history background check mandated by this section, it is determined that the holder of a certificate issued pursuant to section 168.021 has pled guilty or nolo contendere to, or been found guilty of a crime or offense listed in section 168.071, RSMo, or a similar crime or offense committed in another state, the United States, or any other country, regardless of imposition of sentence, such information shall be reported to the department of elementary and secondary education.

6. Any school official making a report to the department of elementary and secondary education in conformity with this section shall not be subject to civil liability for such action.

7. Nothing in this section shall be construed to alter the standards for suspension, denial, or revocation of a certificate issued pursuant to this chapter.

8. The state board of education may promulgate rules for criminal history background checks made pursuant to this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after the effective date of ths section shall be invalid and void.

9. The provisions of this section shall become effective January 1, 2005.

191.748. SHAKEN BABY SYNDROME VIDEO, REQUIRED VIEWING, WHEN. — Every hospital and any health care facility licensed in this state that provides obstetrical services shall offer to all new mothers an opportunity to view with the father and other persons of the mother's choosing a video on the dangers of shaking a baby and shaken baby syndrome before the mother's discharge from the facility. Such video shall be approved by the department of health and senior services.

192.016. PUTATIVE FATHER REGISTRY. — 1. The department of health and senior services shall establish a putative father registry which shall record the names and addresses of:

(1) Any person adjudicated by a court of this state to be the father of a child born out of wedlock;

(2) Any person who has filed with the registry before or after the birth of a child out of wedlock, a notice of intent to claim paternity of the child;

(3) Any person adjudicated by a court of another state or territory of the United States to be the father of an out-of-wedlock child, where a certified copy of the court order has been filed with the registry by such person or any other person.

2. A person filing a notice of intent to claim paternity of a child or an acknowledgment of paternity shall file the acknowledgment affidavit form developed by the state registrar which shall include the minimum requirements prescribed by the Secretary of the United States Department of Health and Human Services pursuant to 42 U.S.C. Section 652(a)(7).

3. A person filing a notice of intent to claim paternity of a child shall notify the registry of any change of address.

4. A person who has filed a notice of intent to claim paternity may at any time revoke a notice of intent to claim paternity previously filed therewith and, upon receipt of such notification by the registry, the revoked notice of intent to claim paternity shall be deemed a nullity nunc pro tunc.

5. An unrevoked notice of intent to claim paternity of a child may be introduced in evidence by any party, other than the person who filed such notice, in any proceeding in which such fact may be relevant.

6. **Lack of knowledge of the pregnancy does not excuse failure to timely file pursuant to subdivisions (b) or (c) of subdivision (2) of subsection 3 of section 453.030, RSMo.**

7. Failure to timely file pursuant to subdivisions (b) or (c) of subsection 3 of section 453.030, RSMo, shall waive a man's right to withhold consent to an adoption proceeding unless:

(1) The person was led to believe through the mother's misrepresentation or fraud that:

(a) The mother was not pregnant when in fact she was; or

(b) The pregnancy was terminated when in fact the baby was born; or

(c) After the birth, the child died when in fact the child is alive; and

(2) The person upon the discovery of the misrepresentation or fraud satisfied the requirements of subdivision (b) or (c) of subsection 3 of section 453.030, RSMo, within fifteen days of that discovery.

8. The department shall, upon request and within two business days of such request, provide the names and addresses of persons listed with the registry to any court or authorized agency, or entity or person named in section 453.014, RSMo, and such information shall not be divulged to any other person, except upon order of a court for good cause shown.

[7.**]** **9.** The department of health and senior services shall:

(1) Prepare forms for registration of paternity and an application for search of the putative father registry;

(2) Produce and distribute a pamphlet or publication informing the public about the putative father registry, including the procedures for voluntary acknowledgment of paternity, the consequences of acknowledgment and failure to acknowledge paternity pursuant to section

453.010, RSMo, [and the address of] **a copy of a statement informing the public about the putative father registry, including, to whom and under what circumstances it applies, the time limits and responsibilities for filing, protection of paternal rights and associated responsibilities, and other provisions of this section, and a detachable form meeting the requirements of subsection 2 of this section addressed to** the putative father registry. Such pamphlet or publication shall be made available for distribution at all offices of the department of health and senior services. The department shall also provide such pamphlets or publications to the department of social services, hospitals, libraries, medical clinics, schools, universities, and other providers of child-related services upon request;

(3) Provide information to the public at large by way of general public service announcements, or other ways to deliver information to the public about the putative father registry and its services.

10. Pursuant to subdivision (2) of subsection 9 of section 192.016, RSMo, a statement prepared by the department of health and senior services shall be contained in any pamphlet or publication informing the public about the putative father registry.

207.050. COUNTY FAMILY SERVICES COMMISSION — QUALIFICATIONS, APPOINTMENT, TERMS, EXPENSES, VACANCIES, DUTIES. — In every county there [shall] **may** be established a county family services commission to consist of four persons, two from each of the two major political parties, to be selected by the director of social services from a list submitted to the director of the department of social services by the county commission, consisting of double the number of appointments to be made. Each member of the county family services commission shall serve for a term of four years. Vacancies shall be filled in the same way in which the original appointment was made. [If the county commission fails or refuses to submit a list to the director of social services as required by this section for the appointment of members of the county family services commission within ten days after such appointments are to be made the director of social services shall make such appointments as may be necessary from a list prepared by the director of social services.] The duties of the county family services commission shall be advisory in nature with the power to examine the records of any case pending within their county and to make recommendations thereon. They shall serve without compensation, but shall be paid their traveling expenses and other necessary expense in the performance of their duty. No elective officer shall be appointed as a member of the county family services commission, and upon becoming a candidate for any elective office, such member of the county family services commission shall forthwith forfeit his **or her** position on the commission. Duties imposed by this law upon the several county commissions shall be performed in the city of St. Louis by the board of estimate and apportionment.

207.060. COUNTY OFFICES — DIRECTOR — AGREEMENTS WITH SUBDIVISIONS — OTHER EMPLOYEES. — 1. The [director of family services shall establish] **directors of the family support division and children's division shall jointly operate and maintain** a county office in every county, which may be in the charge of a county welfare director who shall have been a resident of the state of Missouri for a period of at least two years immediately prior to taking office and whose salary shall be paid from funds appropriated for the **family support** division [of family services] **and children's division**.

2. For the purpose of establishing and maintaining county offices, or carrying out any of the duties of the [division of family services] **divisions**, the [director of family services] **division directors** may enter into agreements with any political subdivision of this state, and as a part of such agreement, may accept moneys, services, or quarters as a contribution toward the support and maintenance of such county offices. Any funds so received shall be payable to the director of revenue and deposited in the proper special account in the state treasury, and become and be a part of state funds appropriated for the use of the [division of family services] **family support division and children's division**.

3. Other employees in the county offices shall be employed with due regard to the population of the county, existing conditions and purpose to be accomplished. Such employees shall be paid as are other employees of the **[**division of family services**]** **family support division and children's division**.

207.085. DIVISION EMPLOYEE DISMISSAL, WHEN — MITIGATING FACTORS. — 1. Any employee of the children's division, including supervisory personnel and private contractors with the division, who is involved with child protective services and purposely, knowingly, and willfully violates a stated or written policy of the division, any rule promulgated by the division, or any state law directly related to the child abuse and neglect activities of the division shall be dismissed if the violation directly results in serious physical injury or death, subject to the provisions of subsection 2 of this section. The provisions of this section shall apply to merit system employees of the division, as well as all other employees of the division and private contractors with the division, and upon a showing of a violation, such employees shall be dismissed for cause, subject to the provisions of subsection 2 of this section, and shall have the right of appeal pursuant to sections 36.380 and 36.390, RSMo. For purposes of this section, a "private contractor with the division" means any private entity or community action agency with the appropriate and relevant training and expertise in delivering services to children and their families as determined by the children's division, and capable of providing direct services and other family services for children in the custody of the children's division or any such entities or agencies that are receiving state moneys for such services.

2. The provisions of sections 660.019 to 660.021, RSMo, shall apply to this section. If an employee of the division or a private contractor with the division is responsible for caseload assignments in excess of those required to attain accreditation by the Council for Accreditation for Families and Children's Services, and the employee purposely, knowingly, and willfully violates a stated or written policy of the division, any rule promulgated by the division, or any state law directly related to the child abuse and neglect activities of the division and the violation directly results in serious physical injury or death, the employee's good faith efforts to follow the stated or written policies of the division, the rules promulgated by the division, or the state laws directly related to the child abuse and neglect activities of the division shall be a mitigating factor in determining whether an employee of the division or a private contractor with the division is dismissed pursuant to subsection 1 of this section.

208.647. SPECIAL HEALTH CARE NEEDS, WAIVER OF WAITING PERIOD FOR COVERAGE. — Any child identified as having special health care needs, defined as a condition which left untreated would result in the death or serious physical injury of a child, that does not have access to affordable employer-subsidized health care insurance shall not be required to be without health care coverage for six months in order to be eligible for services under sections 208.631 to 208.657 and shall not be subject to the waiting period required under section 208.646, as long as the child meets all other qualifications for eligibility.

210.025. CRIMINAL BACKGROUND CHECKS, PERSONS RECEIVING STATE OR FEDERAL FUNDS FOR CHILD CARE, PROCEDURE — RULEMAKING AUTHORITY. — 1. To qualify for receipt of state or federal funds for providing child-care services in the home either by direct payment or through reimbursement to a child-care beneficiary, an applicant and any person over the age of **[**eighteen**]** **seventeen** who is living in the applicant's home shall be required to submit to a criminal background check pursuant to section 43.540, RSMo, and a check of the central registry for child abuse established in section 210.145. Effective January 1, 2001, the requirements of this subsection or subsection 2 of this section shall be satisfied through registration with the family care safety registry established in sections 210.900 to 210.936. Any costs associated with such checks shall be paid by the applicant.

2. Upon receipt of an application for state or federal funds for providing child-care services in the home, the **family support** division **[**of family services**]** shall:

(1) Determine if a **[**probable cause**]** finding of child abuse or neglect **by probable cause prior to the effective date of this section or by a preponderance of the evidence after the effective date of this section** involving the applicant or any person over the age of **[**eighteen**] seventeen** who is living in the applicant's home has been recorded pursuant to section 210.221 or 210.145;

(2) Determine if the applicant or any person over the age of **[**eighteen**] seventeen** who is living in the applicant's home has been refused licensure or has experienced licensure suspension or revocation pursuant to section 210.221 or 210.496; and

(3) **Upon initial application, require the applicant to submit to fingerprinting and** request a criminal background check of the applicant and any person over the age of **[**eighteen**] seventeen** who is living in the applicant's home pursuant to section 43.540, RSMo**, and section 210.487, and inquire of the applicant whether any children less than seventeen years of age residing in the applicant's home have ever been certified as an adult and convicted of, or pled guilty or nolo contendere to any crime**.

3. Except as otherwise provided in subsection 4 of this section, upon completion of the background checks in subsection 2 of this section, an applicant shall be denied state or federal funds for providing child care if such applicant **[**or**],** any person over the age of **[**eighteen**] seventeen** who is living in the applicant's home**, and any child less than seventeen years of age who is living in the applicant's home and who the division has determined has been certified as an adult for the commission of a crime**:

(1) Has had a **[**probable cause**]** finding of child abuse or neglect **by probable cause prior to the effective date of this section or by a preponderance of the evidence after the effective date of this section** pursuant to section 210.145 **or section 210.152**;

(2) Has been refused licensure or has experienced licensure suspension or revocation pursuant to section 210.496;

(3) Has pled guilty or nolo contendere to or been found guilty of any felony for an offense against the person as defined by chapter 565, RSMo, or any other offense against the person involving the endangerment of a child as prescribed by law; of any misdemeanor or felony for a sexual offense as defined by chapter 566, RSMo; of any misdemeanor or felony for an offense against the family as defined in chapter 568, RSMo, with the exception of the sale of fireworks, as defined in section 320.110, RSMo, to a child under the age of eighteen; of any misdemeanor or felony for pornography or related offense as defined by chapter 573, RSMo; or of any similar crime in any federal, state, municipal or other court of similar jurisdiction of which the director has knowledge or any offenses or reports which will disqualify an applicant from receiving state or federal funds.

4. An applicant shall be given an opportunity by the division to offer any extenuating or mitigating circumstances regarding the findings, refusals or violations against such applicant or any person over the age of **[**eighteen**] seventeen or less than seventeen** who is living in the applicant's home listed in subsection 2 of this section. Such extenuating and mitigating circumstances may be considered by the division in its determination of whether to permit such applicant to receive state or federal funds for providing child care in the home.

5. An applicant who has been denied state or federal funds for providing child care in the home may appeal such denial decision in accordance with the provisions of section 208.080, RSMo.

6. If an applicant is denied state or federal funds for providing child care in the home based on the background check results for any person over the age of **[**eighteen**] seventeen** who is living in the applicant's home, the applicant shall not apply for such funds until such person is no longer living in the applicant's home.

7. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies

with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. All rulemaking authority delegated prior to August 28, 1999, is of no force and effect and repealed. Nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to August 28, 1999, if it fully complied with all applicable provisions of law. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

210.102. SERVICE COMMISSION'S POWERS AND DUTIES — COORDINATING BOARD FOR EARLY CHILDHOOD ESTABLISHED, MEMBERS, POWERS. — 1. It shall be the duty of the Missouri children's services commission to:

(1) Make recommendations which will encourage greater interagency coordination, cooperation, more effective utilization of existing resources and less duplication of effort in activities of state agencies which affect the legal rights and well-being of children in Missouri;

(2) Develop an integrated state plan for the care provided to children in this state through state programs;

(3) Develop a plan to improve the quality of **[**child day care**]** **children's** programs statewide. Such plan shall include, but not be limited to:

(a) Methods for promoting geographic availability and financial accessibility for all children and families in need of such services;

(b) Program recommendations for **[**child day care**]** **children's** services which include child development, education, supervision, health and social services;

(4) Design and implement evaluation of the activities of the commission in fulfilling the duties as set out in this section;

(5) Report annually to the governor with five copies each to the house of representatives and senate about its activities including, but not limited to the following:

(a) A general description of the activities pertaining to children of each state agency having a member on the commission;

(b) A general description of the plans and goals, as they affect children, of each state agency having a member on the commission;

(c) Recommendations for statutory and appropriation initiatives to implement the integrated state plan;

(d) A report from the commission regarding the state of children in Missouri.

2. There is hereby established within the children's services commission the "Coordinating Board for Early Childhood", which shall constitute a body corporate and politic, and shall include but not be limited to the following members:

(1) A representative from the governor's office;

(2) A representative from each of the following departments: health and senior services, mental health, social services, and elementary and secondary education;

(3) A representative of the judiciary;

(4) A representative of the family and community trust board (FACT);

(5) A representative from the head start program;

(6) Nine members appointed by the governor with the advice and consent of the senate who are representatives of the groups, such as business, philanthropy, civic groups, faith-based organizations, parent groups, advocacy organizations, early childhood service providers, and other stakeholders.

The coordinating board may make all rules it deems necessary to enable it to conduct its meetings, elect its officers, and set the terms and duties of its officers. The coordinating board shall elect from amongst its members a chairperson, vice chairperson, a secretary-reporter, and such other officers as it deems necessary. Members of the board

shall serve without compensation but may be reimbursed for actual expenses necessary to the performance of their official duties for the board.

3. The coordinating board for early childhood shall have the power to:

(1) Develop a comprehensive statewide long-range strategic plan for a cohesive early childhood system;

(2) Confer with public and private entities for the purpose of promoting and improving the development of children from birth through age five of this state;

(3) Identify legislative recommendations to improve services for children from birth through age five;

(4) Promote coordination of existing services and programs across public and private entities;

(5) Promote research-based approaches to services and ongoing program evaluation;

(6) Identify service gaps and advise public and private entities on methods to close such gaps;

(7) Apply for and accept gifts, grants, appropriations, loans, or contributions to the coordinating board for early childhood fund from any source, public or private, and enter into contracts or other transactions with any federal or state agency, any private organizations, or any other source in furtherance of the purpose of subsections 2 and 3 of this section, and take any and all actions necessary to avail itself of such aid and cooperation;

(8) Direct disbursements from the coordinating board for early childhood fund as provided in this section;

(9) Administer the coordinating board for early childhood fund and invest any portion of the moneys not required for immediate disbursement in obligations of the United States or any agency or instrumentality of the United States, in obligations of the state of Missouri and its political subdivisions, in certificates of deposit and time deposits, or other obligations of banks and savings and loan associations, or in such other obligations as may be prescribed by the board;

(10) Purchase, receive, take by grant, gift, devise, bequest or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use, and otherwise deal with real or personal property or any interests therein, wherever situated;

(11) Sell, convey, lease, exchange, transfer or otherwise dispose of all or any of its property or any interest therein, wherever situated;

(12) Employ and fix the compensation of an executive director and such other agents or employees as it considers necessary;

(13) Adopt, alter, or repeal by its own bylaws, rules, and regulations governing the manner in which its business may be transacted;

(14) Adopt and use an official seal;

(15) Assess or charge fees as the board determines to be reasonable to carry out its purposes;

(16) Make all expenditures which are incident and necessary to carry out its purposes;

(17) Sue and be sued in its official name;

(18) Take such action, enter into such agreements, and exercise all functions necessary or appropriate to carry out the duties and purposes set forth in this section.

4. There is hereby created the "Coordinating Board for Early Childhood Fund" which shall consist of the following:

(1) Any moneys appropriated by the general assembly for use by the board in carrying out the powers set out in subsections 2 and 3 of this section;

(2) Any moneys received from grants or which are given, donated, or contributed to the fund from any source;

(3) Any moneys received as fees authorized under subsections 2 and 3 of this section;

(4) Any moneys received as interest on deposits or as income on approved investments of the fund;

(5) Any moneys obtained from any other available source.

Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any moneys remaining in the coordinating board for early childhood fund at the end of the biennium shall not revert to the credit of the general revenue fund.

210.108. VOLUNTARY PLACEMENT AGREEMENTS, CHILDREN IN STATE CUSTODY SOLELY IN NEED OF MENTAL HEALTH TREATMENT — RULEMAKING AUTHORITY. — 1. As used in this section, "voluntary placement agreement" means a written agreement between the department of social services and a parent, legal guardian, or custodian of a child seventeen years of age or younger solely in need of mental health treatment. A voluntary placement agreement developed under a department of mental health assessment and certification of appropriateness authorizes the department of social services to administer the placement and care of a child while the parent, legal guardian, or custodian of the child retains legal custody.

2. The department of social services may enter into a cooperative interagency agreement with the department of mental health authorizing the department of mental health to administer the placement and care of a child under a voluntary placement agreement. The department of mental health is defined as a child placing agency under section 210.481 solely for children placed under a voluntary placement agreement.

3. Any function delegated from the department of social services to the department of mental health regarding the placement and care of children shall be administered and supervised by the department of social services to ensure compliance with federal and state law.

4. The departments of social services and mental health may promulgate rules under this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

210.109. CHILD PROTECTION SYSTEM ESTABLISHED BY CHILDREN'S DIVISION, DUTIES, RECORDS, INVESTIGATIONS OR ASSESSMENTS AND SERVICES — CENTRAL REGISTRY MAINTAINED. — 1. The **children's** division **[**of family services**]** shall establish a child protection system for the entire state.

2. The child protection system shall **[**seek to**]** promote the safety of children and the integrity and preservation of their families by conducting investigations or family assessments and providing services in response to reports of child abuse or neglect. The system shall **[**endeavor to**]** coordinate community resources and provide assistance or services to children and families identified to be at risk, and to prevent and remedy child abuse and neglect.

3. In addition to any duties specified in section 210.145, in implementing the child protection system, the division shall:

(1) Maintain a central registry;

(2) Receive reports and establish and maintain an information system operating at all times, capable of receiving and maintaining reports;

(3) Attempt to obtain the name and address of any person making a report in all cases, after obtaining relevant information regarding the alleged abuse or neglect, although reports may be made anonymously**; except that, reports by mandatory reporters under section 210.115,**

including employees of the children's division, juvenile officers, and school personnel shall not be made anonymously, provided that the reporter shall be informed, at the time of the report, that the reporter's name and any other personally identifiable information shall be held as confidential and shall not be made public as provided under this section and section 211.319, RSMo;

(4) Upon receipt of a report, check with the information system to determine whether previous reports have been made regarding actual or suspected abuse or neglect of the subject child, of any siblings, and the perpetrator, and relevant dispositional information regarding such previous reports;

(5) Provide protective or preventive services to the family and child and to others in the home to prevent abuse or neglect, to safeguard their health and welfare, and to help preserve and stabilize the family whenever possible. The juvenile court shall cooperate with the division in providing such services;

(6) Collaborate with the community to identify comprehensive local services and assure access to those services for children and families where there is risk of abuse or neglect;

(7) Maintain a record which contains the facts ascertained which support the determination as well as the facts that do not support the determination**;**

(8) Whenever available and appropriate, contract for the provision of children's services through children's services providers and agencies in the community; except that the state shall be the sole provider of child abuse and neglect hotline services, the initial child abuse and neglect investigation, and the initial family assessment. The division shall attempt to seek input from child welfare service providers in completing the initial family assessment. In all legal proceedings involving children in the custody of the division, the division shall be represented in court by either division personnel or persons with whom the division contracts with for such legal representation. All children's services providers and agencies shall be subject to criminal background checks pursuant to chapter 43, RSMo, and shall submit names of all employees to the family care safety registry.

As used in this subsection, "report" includes any telephone call made pursuant to section 210.145.

[4. By January 1, 1998, the division of family services shall submit documentation to the speaker of the house of representatives and the president pro tem of the senate on the success or failure of the child protection system established in this section. The general assembly may recommend statewide implementation or cancellation of the child protection system based on the success or failure of the system established in this section.

5. The documentation required by subsection 4 of this section shall include an independent evaluation of the child protection system completed according to accepted, objective research principles.**]**

210.110. DEFINITIONS. — As used in sections 210.109 to 210.165, and sections 210.180 to 210.183, the following terms mean:

(1) "Abuse", any physical injury, sexual abuse, or emotional abuse inflicted on a child other than by accidental means by those responsible for the child's care, custody, and control, except that discipline including spanking, administered in a reasonable manner, shall not be construed to be abuse;

(2) "Central registry", a registry of persons where the division has found probable cause to believe **prior to the effective date of this section or by a preponderance of the evidence after the effective date of this section** or a court has substantiated through court adjudication that the individual has committed child abuse or neglect or the person has pled guilty or has been found guilty of a crime pursuant to section 565.020, 565.021, 565.023, 565.024 or 565.050, RSMo, if the victim is a child less than eighteen years of age, section 566.030 or 566.060, RSMo, if the victim is a child less than eighteen years of age, or other crime pursuant to chapter 566, RSMo, if the victim is a child less than eighteen years of age and the perpetrator is

twenty-one years of age or older, section 567.050, RSMo, if the victim is a child less than eighteen years of age, section 568.020, 568.030, 568.045, 568.050, 568.060, 568.080, or 568.090, RSMo, section 573.025 or 573.035, RSMo, or an attempt to commit any such crimes**. Any persons placed on the registry prior to the effective date of this section, shall remain on the registry for the duration of time required by section 210.152**;

(3) "Child", any person, regardless of physical or mental condition, under eighteen years of age;

(4) **"Children's services providers and agencies", any public, quasi-public, or private entity with the appropriate and relevant training and expertise in delivering services to children and their families as determined by the children's division, and capable of providing direct services and other family services for children in the custody of the children's division or any such entities or agencies that are receiving state moneys for such services;**

(5) "Director", the director of the Missouri **children's** division **[**of family**] within the department of social** services;

[(5)**] (6)** "Division", the Missouri **children's** division **[**of family**] within the department of social** services;

[(6)**] (7)** "Family assessment and services", an approach to be developed by the **children's** division **[**of family services**]** which will provide for a prompt assessment of a child who has been reported to the division as a victim of abuse or neglect by a person responsible for that child's care, custody or control and of that child's family, including risk of abuse and neglect and, if necessary, the provision of community-based services to reduce the risk and support the family;

(8) "Family support team meeting" or "team meeting", a meeting convened by the division or children's services provider in behalf of the family and/or child for the purpose of determining service and treatment needs, determining the need for placement and developing a plan for reunification or other permanency options, determining the appropriate placement of the child, evaluating case progress, and establishing and revising the case plan;

[(7)**] (9)** "Investigation", the collection of physical and verbal evidence to determine if a child has been abused or neglected;

[(8)**] (10)** "Jail or detention center personnel", employees and volunteers working in any premises or institution where incarceration, evaluation, care, treatment or rehabilitation is provided to persons who are being held under custody of the law;

[(9)**] (11)** "Neglect", failure to provide, by those responsible for the care, custody, and control of the child, the proper or necessary support, education as required by law, nutrition or medical, surgical, or any other care necessary for the child's well-being;

[(10)**] (12)** "Probable cause", available facts when viewed in the light of surrounding circumstances which would cause a reasonable person to believe a child was abused or neglected;

[(11)**] (13) "Preponderance of the evidence", that degree of evidence that is of greater weight or more convincing than the evidence which is offered in opposition to it or evidence which as a whole shows the fact to be proved to be more probable than not;**

(14) "Report", the communication of an allegation of child abuse or neglect to the division pursuant to section 210.115;

[(12)**] (15)** "Those responsible for the care, custody, and control of the child", those included but not limited to the parents or guardian of a child, other members of the child's household, or those exercising supervision over a child for any part of a twenty-four-hour day. Those responsible for the care, custody and control shall also include any adult who, based on relationship to the parents of the child, members of the child's household or the family, has access to the child.

210.111. IDENTIFICATION OF CHILDREN RECEIVING FOSTER CARE, REPORT TO GENERAL ASSEMBLY, CONTENTS. — By January 1, 2005, the children's division shall

identify all children in the custody of the division currently receiving foster care services and shall report to the general assembly the type of foster care being provided, including but not limited to care provided in a licensed foster care home, institutional setting, residential setting, independent living setting, or kinship care setting, and the status of all such children. Nothing in this section shall be construed as requiring the division to disclose the identity or precise location of any child in the custody of the division.

210.112. CHILDREN'S SERVICES PROVIDERS AND AGENCIES, CONTRACTING WITH, REQUIREMENTS — REPORTS TO GENERAL ASSEMBLY — RULEMAKING AUTHORITY. — 1. It is the policy of this state and its agencies to implement a foster care and child protection and welfare system focused on providing the highest quality of services and outcomes for children and their families. The department of social services shall implement such system subject to the following principles:

(1) The safety and welfare of children is paramount;

(2) Providers of direct services to children and their families will be evaluated in a uniform and consistent basis;

(3) Services to children and their families shall be provided in a timely manner to maximize the opportunity for successful outcomes; and

(4) Any provider of direct services to children and families shall have the appropriate and relevant training, education, and expertise to provide the highest quality of services possible which shall be consistent with the federal standards, but not less than the standards and policies used by the children's division as of January 1, 2004.

2. On or before July 1, 2005, and subject to appropriations, the children's division and any other state agency deemed necessary by the division shall, in consultation with the community and providers of services, enter into and implement contracts with qualified children's services providers and agencies to provide a comprehensive and deliberate system of service delivery for children and their families. Contracts shall be awarded through a competitive process and provided by children's services providers and agencies currently contracting with the state to provide such services and by public and private not-for-profit or limited liability corporations owned exclusively by not-for-profit corporations children's services providers and agencies which have:

(1) A proven record of providing child welfare services within the state of Missouri which shall be consistent with the federal standards, but not less than the standards and policies used by the children's division as of January 1, 2004; and

(2) The ability to provide a range of child welfare services, which may include case management services, family-centered services, foster and adoptive parent recruitment and retention, residential care, in-home services, foster care services, adoption services, relative care case management, planned permanent living services, and family reunification services.

No contracts shall be issued for services related to the child abuse and neglect hotline, investigations of alleged abuse and neglect, and initial family assessments. Any contracts entered into by the division shall be in accordance with all federal laws and regulations, and shall not result in the loss of federal funding. Such children's services providers and agencies under contract with the division shall be subject to all federal, state, and local laws and regulations relating to the provision of such services, and shall be subject to oversight and inspection by appropriate state agencies to assure compliance with standards which shall be consistent with the federal standards, but not less than the standards and policies used by the children's division as of January 1, 2004.

3. In entering into and implementing contracts under subsection 2 of this section, the division shall consider and direct their efforts towards geographic areas of the state, including Greene County, where eligible direct children's services providers and agencies are currently available and capable of providing a broad range of services, including case

management services, family-centered services, foster and adoptive parent recruitment and retention, residential care, family preservation services, foster care services, adoption services, relative care case management, other planned living arrangements, and family reunification services consistent with federal guidelines. Nothing in this subsection shall prohibit the division from contracting on an as-needed basis for any individual child welfare service listed above.

4. The contracts entered into under this section shall assure that:

(1) Child welfare services shall be delivered to a child and the child's family by professionals who have substantial and relevant training, education, or competencies otherwise demonstrated in the area of children and family services;

(2) Children's services providers and agencies shall be evaluated by the division based on objective, consistent, and performance-based criteria;

(3) Any case management services provided shall be subject to a case management plan established under subsection 5 of this section which is consistent with all relevant federal guidelines. The case management plan shall focus on attaining permanency in children's living conditions to the greatest extent possible and shall include concurrent planning and independent living where appropriate in accordance with the best interests of each child served and considering relevant factors applicable to each individual case as provided by law, including:

(a) The interaction and interrelationship of a child with the child's foster parents, biological or adoptive parents, siblings, and any other person who may significantly affect the child's best interests;

(b) A child's adjustment to his or her foster home, school, and community;

(c) The mental and physical health of all individuals involved, including any history of abuse of or by any individuals involved; and

(d) The needs of the child for a continuing relationship with the child's biological or adoptive parents and the ability and willingness of the child's biological or adoptive parents to actively perform their functions as parents with regard to the needs of the child;

(4) The delivery system shall have sufficient flexibility to take into account children and families on a case-by-case basis;

(5) The delivery system shall provide a mechanism for the assessment of strategies to work with children and families immediately upon entry into the system to maximize permanency and successful outcome in the shortest time possible and shall include concurrent planning. Outcome measures for private and public agencies shall be equal for each program; and

(6) Payment to the children's services providers and agencies shall be made based on the reasonable costs of services, including responsibilities necessary to execute the contract. Contracts shall provide incentives in addition to the costs of services provided in recognition of accomplishment of the case goals and the corresponding cost savings to the state. The division shall promulgate rules to implement the provisions of this subdivision.

5. Contracts entered into under this section shall require that a case management plan consistent with all relevant federal guidelines shall be developed for each child at the earliest time after the initial investigation, but in no event longer than fourteen days after the initial investigation or referral to the contractor by the division. Such case management plan shall be presented to the court and be the foundation of service delivery to the child and family. The case management plan shall, at a minimum, include:

(1) An outcome target based on the child and family situation achieving permanency or independent living, where appropriate;

(2) Services authorized and necessary to facilitate the outcome target;

(3) Timeframes in which services will be delivered; and

(4) Necessary evaluations and reporting.

In addition to any visits and assessments required under case management, services to be provided by a public or private children's services provider under the specific case

management plan may include family-centered services, foster and adoptive parent recruitment and retention, residential care, in-home services, foster care services, adoption services, relative care case services, planned permanent living services, and family reunification services. In all cases, an appropriate level of services shall be provided to the child and family after permanency is achieved to assure a continued successful outcome.

6. On or before July 15, 2006, and each July fifteenth thereafter that the project is in operation, the division shall submit a report to the general assembly which shall include:

(1) Details about the specifics of the contracts, including the number of children and families served, the cost to the state for contracting such services, the current status of the children and families served, an assessment of the quality of services provided and outcomes achieved, and an overall evaluation of the project; and

(2) Any recommendations regarding the continuation or possible statewide implementation of such project; and

(3) Any information or recommendations directly related to the provision of direct services for children and their families that any of the contracting children's services providers and agencies request to have included in the report.

7. The division shall accept as prima facie evidence of completion of the requirements for licensure under sections 210.481 to 210.511 proof that an agency is accredited by any of the following nationally recognized bodies: the Council on Accreditation of Services, Children and Families, Inc.; the Joint Commission on Accreditation of Hospitals; or the Commission on Accreditation of Rehabilitation Facilities. The division shall not require any further evidence of qualification for licensure if such proof of voluntary accreditation is submitted.

8. By February 1, 2005, the children's division shall promulgate and have in effect rules to implement the provisions of this section, and pursuant to this section, shall define implementation plans and dates. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after the effective date of this section shall be invalid and void.

210.113. ACCREDITATION GOAL, WHEN TO BE ACHIEVED. — It is the intent and goal of the general assembly to have the department attain accreditation by the Council for Accreditation for Families and Children's Services within five years of the effective date of this section.

210.117. CHILD NOT REUNITED WITH PARENTS OR PLACED IN A HOME, WHEN. — No child taken into the custody of the state shall be reunited with a parent or placed in a home in which the parent or any person residing in the home has been found guilty of, or pled guilty to, a felony violation of chapter 566, RSMo, except for section 566.034, RSMo, when a child was the victim, or a violation of section 568.020, 568.045, 568.060, 568.065, 568.070, 568.080, 568.090, or 568.175, RSMo, except for subdivision (1) of subsection 1 of section 568.060, RSMo, when a child was the victim, or an offense committed in another state when a child is the victim, that would be a felony violation of chapter 566, RSMo, except for section 566.034, RSMo, or a violation of section 568.020, 568.045, 568.060, 568.065, 568.070, 568.080, 568.090, or 568.175, RSMo, except for subdivision (1) of subsection 1 of section 568.060, RSMo, if committed in Missouri; provided however, nothing in this section shall preclude the division from exercising its discretion regarding

the placement of child in a home in which the parent or any person residing in the home has been found guilty of, or pled guilty or nolo contendere to any offense excepted or excluded in this section.

210.127. DILIGENT SEARCH FOR BIOLOGICAL PARENTS REQUIRED, WHEN. — 1. If the location or identity of the biological parent or parents of a child in the custody of the division is unknown, the children's division shall utilize all reasonable and effective means available to conduct a diligent search for the biological parent or parents of such child.

2. For purposes of this section, "diligent search" means the efforts of the division, or an entity under contract with the division, to locate a biological parent whose identity or location is unknown, initiated as soon as the division is made aware of the existence of such parent, with the search progress reported at each court hearing until the parent is either identified and located or the court excuses further search.

210.145. TELEPHONE HOTLINE FOR REPORTS ON CHILD ABUSE — DIVISION DUTIES, PROTOCOLS, LAW ENFORCEMENT CONTACTED IMMEDIATELY, INVESTIGATION CONDUCTED, WHEN, EXCEPTION — CHIEF INVESTIGATOR NAMED — FAMILY SUPPORT TEAM MEETINGS, WHO MAY ATTEND — REPORTER'S RIGHT TO RECEIVE INFORMATION — ADMISSIBILITY OF REPORTS IN CUSTODY CASES. — 1. The division shall **[**establish and maintain**]** **develop protocols which give priority to:**

(1) Ensuring the well-being and safety of the child in instances where child abuse or neglect has been alleged;

(2) Promoting the preservation and reunification of children and families consistent with state and federal law;

(3) Providing due process for those accused of child abuse or neglect; and

(4) Maintaining an information system operating at all times, capable of receiving and maintaining reports. This information system shall have the ability to receive reports over a single, statewide toll-free number. Such information system shall maintain the results of all investigations, family assessments and services, and other relevant information.

2. **The division shall utilize structured decision-making protocols for classification purposes of all child abuse and neglect reports. The protocols developed by the division shall give priority to ensuring the well-being and safety of the child. All child abuse and neglect reports shall be initiated within twenty-four hours and shall be classified based upon the reported risk and injury to the child. The division shall promulgate rules regarding the structured decision-making protocols to be utilized for all child abuse and neglect reports.**

3. Upon receipt of a report, the division shall **determine if the report merits investigation, including reports which if true would constitute a suspected violation of any of the following: section 565.020, 565.021, 565.023, 565.024, or 565.050, RSMo, if the victim is a child less than eighteen years of age, section 566.030 or 566.060, RSMo, if the victim is a child less than eighteen years of age, or other crimes under chapter 566, RSMo, if the victim is a child less than eighteen years of age and the perpetrator is twenty-one years of age or older, section 567.050, RSMo, if the victim is a child less than eighteen years of age, section 568.020, 568.030, 568.045, 568.050, 568.060, 568.080, or 568.090, RSMo, section 573.025, 573.035, 573.037, or 573.040, RSMo, or an attempt to commit any such crimes. The division shall** immediately communicate **[**such report**]** **all reports that merit investigation** to its appropriate local office and any relevant information as may be contained in the information system. The local division staff shall determine, through the use of protocols developed by the division, whether an investigation or the family assessment and services approach should be used to respond to the allegation. The protocols developed by the division shall give priority to ensuring the well-being and safety of the child.

[3.**]** **4.** The local office shall contact the appropriate law enforcement agency immediately upon receipt of a report which division personnel determine merits an investigation**[**, or, which, if true, would constitute a suspected violation of any of the following: section 565.020, 565.021, 565.023, 565.024 or 565.050, RSMo, if the victim is a child less than eighteen years of age, section 566.030 or 566.060, RSMo, if the victim is a child less than eighteen years of age, or other crime under chapter 566, RSMo, if the victim is a child less than eighteen years of age and the perpetrator is twenty-one years of age or older, section 567.050, RSMo, if the victim is a child less than eighteen years of age, section 568.020, 568.030, 568.045, 568.050, 568.060, 568.080, or 568.090, RSMo, section 573.025, 573.037 or 573.045, RSMo, or an attempt to commit any such crimes. The local office shall**]** **and** provide such agency with a detailed description of the report received. In such cases the local division office shall request the assistance of the local law enforcement agency in all aspects of the investigation of the complaint. The appropriate law enforcement agency shall either assist the division in the investigation or provide the division, within twenty-four hours, an explanation in writing detailing the reasons why it is unable to assist.

[4.**]** **5.** The local office of the division shall cause an investigation or family assessment and services approach to be initiated **[**immediately or no later than within twenty-four hours of receipt of the report from the division**]** **in accordance with the protocols established in subsection 2 of this section**, except in cases where the sole basis for the report is educational neglect. If the report indicates that educational neglect is the only complaint and there is no suspicion of other neglect or abuse, the investigation shall be initiated within seventy-two hours of receipt of the report. If the report indicates the child is in danger of serious physical harm or threat to life, an investigation shall include direct observation of the subject child within twenty-four hours of the receipt of the report. Local law enforcement shall take all necessary steps to facilitate such direct observation. If the parents of the child are not the alleged abusers, a parent of the child must be notified prior to the child being interviewed by the division. **If the abuse is alleged to have occurred in a school or child-care facility** the division shall not meet with the child **[**at the child's school or child-care facility**]** **in any school building or child-care facility building where abuse of such child is alleged to have occurred**. When the child is reported absent from the residence, the location and the well-being of the child shall be verified. **For purposes of this subsection, "child-care facility" shall have the same meaning as such term is defined in section 210.201.**

[5.**]** **6.** The director of the division shall name at least one chief investigator for each local division office, who shall direct the division response on any case involving a second or subsequent incident regarding the same subject child or perpetrator. The duties of a chief investigator shall include verification of direct observation of the subject child by the division and shall ensure information regarding the status of an investigation is provided to the public school district liaison. The public school district liaison shall develop protocol in conjunction with the chief investigator to ensure information regarding an investigation is shared with appropriate school personnel. The superintendent of each school district shall designate a specific person or persons to act as the public school district liaison. Should the subject child attend a nonpublic school the chief investigator shall notify the school principal of the investigation. Upon notification of an investigation, all information received by the public school district liaison or the school shall be subject to the provisions of the federal Family Educational Rights and Privacy Act (FERPA), 20 U.S.C., Section 1232g, and federal rule 34 C.F.R., Part 99.

[6.**]** **7.** The investigation shall include but not be limited to the nature, extent, and cause of the abuse or neglect; the identity and age of the person responsible for the abuse or neglect; the names and conditions of other children in the home, if any; the home environment and the relationship of the subject child to the parents or other persons responsible for the child's care; any indication of incidents of physical violence against any other household or family member; and other pertinent data.

[7.] **8.** When a report has been made by a person required to report under section 210.115, the division shall contact the person who made such report within forty-eight hours of the receipt of the report in order to ensure that full information has been received and to obtain any additional information or medical records, or both, that may be pertinent.

[8.] **9.** Upon completion of the investigation, if the division suspects that the report was made maliciously or for the purpose of harassment, the division shall refer the report and any evidence of malice or harassment to the local prosecuting or circuit attorney.

[9.] **10.** Multidisciplinary teams shall be used whenever conducting the investigation as determined by the division in conjunction with local law enforcement. Multidisciplinary teams shall be used in providing protective or preventive social services, including the services of law enforcement, a liaison of the local public school, the juvenile officer, the juvenile court, and other agencies, both public and private.

11. For all family support team meetings involving an alleged victim of child abuse or neglect, the parents, legal counsel for the parents, foster parents, the legal guardian or custodian of the child, the guardian ad litem for the child, and the volunteer advocate for the child shall be provided notice and be permitted to attend all such meetings. Family members, other than alleged perpetrators, or other community informal or formal service providers that provide significant support to the child and other individuals may also be invited at the discretion of the parents of the child. In addition, the parents, the legal counsel for the parents, the legal guardian or custodian and the foster parents may request that other individuals, other than alleged perpetrators, be permitted to attend such team meetings. Once a person is provided notice of or attends such team meetings, the division or the convenor of the meeting shall provide such persons with notice of all such subsequent meetings involving the child. Families may determine whether individuals invited at their discretion shall continue to be invited.

[10.] **12.** If the appropriate local division personnel determine after an investigation has begun that completing an investigation is not appropriate, the division shall conduct a family assessment and services approach. The division shall provide written notification to local law enforcement prior to terminating any investigative process. The reason for the termination of the investigative process shall be documented in the record of the division and the written notification submitted to local law enforcement. Such notification shall not preclude nor prevent any investigation by law enforcement.

[11.] **13.** If the appropriate local division personnel determines to use a family assessment and services approach, the division shall:

(1) Assess any service needs of the family. The assessment of risk and service needs shall be based on information gathered from the family and other sources;

(2) Provide services which are voluntary and time-limited unless it is determined by the division based on the assessment of risk that there will be a high risk of abuse or neglect if the family refuses to accept the services. The division shall identify services for families where it is determined that the child is at high risk of future abuse or neglect. The division shall thoroughly document in the record its attempt to provide voluntary services and the reasons these services are important to reduce the risk of future abuse or neglect to the child. If the family continues to refuse voluntary services or the child needs to be protected, the division may commence an investigation;

(3) Commence an immediate investigation if at any time during the family assessment and services approach the division determines that an investigation, as delineated in sections 210.109 to 210.183, is required. The division staff who have conducted the assessment may remain involved in the provision of services to the child and family;

(4) Document at the time the case is closed, the outcome of the family assessment and services approach, any service provided and the removal of risk to the child, if it existed.

[12.] **14.** Within thirty days of an oral report of abuse or neglect, the local office shall update the information in the information system. The information system shall contain, at a

minimum, the determination made by the division as a result of the investigation, identifying information on the subjects of the report, those responsible for the care of the subject child and other relevant dispositional information. The division shall complete all investigations within thirty days, unless good cause for the failure to complete the investigation is documented in the information system. If the investigation is not completed within thirty days, the information system shall be updated at regular intervals and upon the completion of the investigation. The information in the information system shall be updated to reflect any subsequent findings, including any changes to the findings based on an administrative or judicial hearing on the matter.

[13.**]** **15.** A person required to report under section 210.115 to the division **and any person making a report of child abuse or neglect made to the division which is not made anonymously** shall be informed by the division of his **or her** right to obtain information concerning the disposition of his or her report. Such person shall receive, from the local office, if requested, information on the general disposition of his or her report. **[**A**]** **Such** person **[**required to report to the division pursuant to section 210.115**]** may receive, if requested, findings and information concerning the case. Such release of information shall be at the discretion of the director based upon a review of the **[**mandated**]** reporter's ability to assist in protecting the child or the potential harm to the child or other children within the family. The local office shall respond to the request within forty-five days. The findings shall be made available to the **[**mandated**]** reporter within five days of the outcome of the investigation. **If the report is determined to be unsubstantiated, the reporter may request that the report be referred by the division to the office of child advocate for children's protection and services established in sections 37.700 to 37.730, RSMo. Upon request by a reporter under this subsection, the division shall refer an unsubstantiated report of child abuse or neglect to the office of child advocate for children's protection and services.**

[14.**]** **16.** In any judicial proceeding involving the custody of a child the fact that a report may have been made pursuant to sections 210.109 to 210.183 shall not be admissible. However**[**,**]**:

(1) Nothing in this subsection shall prohibit the introduction of evidence from independent sources to support the allegations that may have caused a report to have been made**; and**

(2) The court may on its own motion, or shall if requested by a party to the proceeding, make an inquiry not on the record with the children's division to determine if such a report has been made. If a report has been made, the court may stay the custody proceeding until the children's division completes its investigation.

[15.**]** **17.** In any judicial proceeding involving the custody of a child where the court determines that the child is in need of services pursuant to subdivision (d) of subsection 1 of section 211.031, RSMo, and has taken jurisdiction, the child's parent, guardian or custodian shall not be entered into the registry.

[16.**]** **18.** The **children's** division **[**of family services**]** is hereby granted the authority to promulgate rules and regulations pursuant to the provisions of section 207.021, RSMo, and chapter 536, RSMo, to carry out the provisions of sections 210.109 to 210.183.

[17.**]** **19.** Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2000, shall be invalid and void.

210.147. CONFIDENTIALITY OF FAMILY SUPPORT TEAM MEETINGS, EXCEPTIONS — FORM DEVELOPED FOR CORE COMMITMENTS MADE AT MEETINGS. — 1. Except as

otherwise provided by law, all information provided at any family support team meeting held in relation to the removal of a child from the child's home is confidential; except that:

(1) Any parent or party may waive confidentiality for himself or herself to the extent permitted by law; and

(2) Any parent of the child shall have an absolute right to video and/or audio tape such team meetings to the extent permitted by law; and

(3) No parent or party shall be required to sign a confidentiality agreement before testifying or providing information at such team meetings. Any person, other than a parent or party, who does not agree to maintain confidentiality of the information provided at such team meetings may be excluded from all or any portion of such team meetings during which such person is not testifying or providing information.

2. The division shall be responsible for developing a form to be signed at the conclusion of any team meeting held in relation to a child removed from the home and placed in the custody of the state that reflects the core commitments made by the children's division or the convenor of the team meeting and the parents of the child or any other party. The content of the form shall be consistent with service agreements or case plans required by statute, but not the specific address of the child; whether the child shall remain in current placement or be moved to a new placement; visitation schedule for the child's family; and any additional core commitments. Any dissenting views shall be recorded and attested to on such form. The parents and any other party shall be provided with a copy of the signed document.

210.150. CONFIDENTIALITY OF REPORTS AND RECORDS, EXCEPTIONS — VIOLATIONS, PENALTY. — 1. The **children's** division **[**of family services**]** shall ensure the confidentiality of all reports and records made pursuant to sections 210.109 to 210.183 and maintained by the division, its local offices, the central registry, and other appropriate persons, officials, and institutions pursuant to sections 210.109 to 210.183. To protect the rights of the family and the child named in the report as a victim, the **children's** division **[**of family services**]** shall establish guidelines which will ensure that any disclosure of information concerning the abuse and neglect involving that child is made only to persons or agencies that have a right to such information. The division may require persons to make written requests for access to records maintained by the division. The division shall only release information to persons who have a right to such information. The division shall notify persons receiving information pursuant to subdivisions (2), (7), (8) and (9) of subsection 2 of this section of the purpose for which the information is released and of the penalties for unauthorized dissemination of information. Such information shall be used only for the purpose for which the information is released.

2. Only the following persons shall have access to investigation records contained in the central registry:

(1) Appropriate federal, state or local criminal justice agency personnel, or any agent of such entity, with a need for such information under the law to protect children from abuse or neglect;

(2) A physician or a designated agent who reasonably believes that the child being examined may be abused or neglected;

(3) Appropriate staff of the division and of its local offices, including interdisciplinary teams which are formed to assist the division in investigation, evaluation and treatment of child abuse and neglect cases or a multidisciplinary provider of professional treatment services for a child referred to the provider;

(4) Any child named in the report as a victim, or a legal representative, or the parent, if not the alleged perpetrator, or guardian of such person when such person is a minor, or is mentally ill or otherwise incompetent, but the names of reporters shall not be furnished to persons in this category. Prior to the release of any identifying information, the division **[**of family services**]** shall determine if the release of such identifying information may place a person's life or safety

in danger. If the division makes the determination that a person's life or safety may be in danger, the identifying information shall not be released. The division shall provide a method for confirming or certifying that a designee is acting on behalf of a subject;

(5) Any alleged perpetrator named in the report, but the names of reporters shall not be furnished to persons in this category. Prior to the release of any identifying information, the division **[**of family services**]** shall determine if the release of such identifying information may place a person's life or safety in danger. If the division makes the determination that a person's life or safety may be in danger, the identifying information shall not be released. However, the investigation reports will not be released to any alleged perpetrator with pending criminal charges arising out of the facts and circumstances named in the investigation records until an indictment is returned or an information filed;

(6) A grand jury, juvenile officer, prosecuting attorney, law enforcement officer involved in the investigation of child abuse or neglect, juvenile court or other court conducting abuse or neglect or child protective proceedings **or child custody proceedings**, and other federal, state and local government entities, or any agent of such entity, with a need for such information in order to carry out its responsibilities under the law to protect children from abuse or neglect;

(7) Any person engaged in a bona fide research purpose, with the permission of the director; provided, however, that no information identifying the child named in the report as a victim or the reporters shall be made available to the researcher, unless the identifying information is essential to the research or evaluation and the child named in the report as a victim or, if the child is less than eighteen years of age, through the child's parent, or guardian provides written permission;

(8) Any child-care facility; child-placing agency; residential-care facility, including group homes; juvenile courts; public or private elementary schools; public or private secondary schools; or any other public or private agency exercising temporary supervision over a child or providing or having care or custody of a child who may request an examination of the central registry from the division for all employees and volunteers or prospective employees and volunteers, who do or will provide services or care to children. Any agency or business recognized by the division **[**of family services**]** or business which provides training and places or recommends people for employment or for volunteers in positions where they will provide services or care to children may request the division to provide an examination of the central registry. Such agency or business shall provide verification of its status as a recognized agency. Requests for examinations shall be made to the division director or the director's designee in writing by the chief administrative officer of the above homes, centers, public and private elementary schools, public and private secondary schools, agencies, or courts. The division shall respond in writing to that officer. The response shall include information pertaining to the nature and disposition of any report or reports of abuse or neglect revealed by the examination of the central registry. This response shall not include any identifying information regarding any person other than the alleged perpetrator of the abuse or neglect;

(9) Any parent or legal guardian who inquires about a child abuse or neglect report involving a specific person or child-care facility who does or may provide services or care to a child of the person requesting the information. Request for examinations shall be made to the division director or the director's designee, in writing, by the parent or legal guardian of the child and shall be accompanied with a signed and notarized release form from the person who does or may provide care or services to the child. The notarized release form shall include the full name, date of birth and Social Security number of the person who does or may provide care or services to a child. The response shall include information pertaining to the nature and disposition of any report or reports of abuse or neglect revealed by the examination of the central registry. This response shall not include any identifying information regarding any person other than the alleged perpetrator of the abuse or neglect. The response shall be given within ten working days of the time it was received by the division;

(10) Any person who inquires about a child abuse or neglect report involving a specific child-care facility, child-placing agency, residential-care facility, public and private elementary schools, public and private secondary schools, juvenile court or other state agency. The information available to these persons is limited to the nature and disposition of any report contained in the central registry and shall not include any identifying information pertaining to any person mentioned in the report;

(11) Any state agency acting pursuant to statutes regarding a license of any person, institution, or agency which provides care for or services to children;

(12) Any child fatality review panel established pursuant to section 210.192 or any state child fatality review panel established pursuant to section 210.195;

(13) Any person who is a tenure-track or full-time research faculty member at an accredited institution of higher education engaged in scholarly research, with the permission of the director. Prior to the release of any identifying information, the director shall require the researcher to present a plan for maintaining the confidentiality of the identifying information. The researcher shall be prohibited from releasing the identifying information of individual cases.

3. Only the following persons shall have access to records maintained by the division pursuant to section 210.152 for which the division has received a report of child abuse and neglect and which the division has determined that there is insufficient evidence or in which the division proceeded with the family assessment and services approach:

(1) Appropriate staff of the division;

(2) Any child named in the report as a victim, or a legal representative, or the parent or guardian of such person when such person is a minor, or is mentally ill or otherwise incompetent. The names or other identifying information of reporters shall not be furnished to persons in this category. Prior to the release of any identifying information, the division **[**of family services**]** shall determine if the release of such identifying information may place a person's life or safety in danger. If the division makes the determination that a person's life or safety may be in danger, the identifying information shall not be released. The division shall provide for a method for confirming or certifying that a designee is acting on behalf of a subject;

(3) Any alleged perpetrator named in the report, but the names of reporters shall not be furnished to persons in this category. Prior to the release of any identifying information, the division **[**of family services**]** shall determine if the release of such identifying information may place a person's life or safety in danger. If the division makes the determination that a person's life or safety may be in danger, the identifying information shall not be released. However, the investigation reports will not be released to any alleged perpetrator with pending criminal charges arising out of the facts and circumstances named in the investigation records until an indictment is returned or an information filed;

(4) Any child fatality review panel established pursuant to section 210.192 or any state child fatality review panel established pursuant to section 210.195;

(5) Appropriate criminal justice agency personnel or juvenile officer;

(6) Multidisciplinary agency or individual including a physician or physician's designee who is providing services to the child or family, with the consent of the parent or guardian of the child or legal representative of the child;

(7) Any person engaged in bona fide research purpose, with the permission of the director; provided, however, that no information identifying the subjects of the reports or the reporters shall be made available to the researcher, unless the identifying information is essential to the research or evaluation and the subject, or if a child, through the child's parent or guardian, provides written permission.

4. Any person who knowingly violates the provisions of this section, or who permits or encourages the unauthorized dissemination of information contained in the information system or the central registry and in reports and records made pursuant to sections 210.109 to 210.183, shall be guilty of a class A misdemeanor.

5. Nothing in this section shall preclude the release of findings or information about cases which resulted in a child fatality or near fatality. Such release is at the sole discretion of the director of the department of social services, based upon a review of the potential harm to other children within the immediate family.

210.152. REPORTS OF ABUSE OR NEGLECT — DIVISION TO RETAIN CERTAIN INFORMATION — CONFIDENTIAL, RELEASED ONLY TO AUTHORIZED PERSONS — REPORT REMOVAL, WHEN — NOTICE OF AGENCY'S DETERMINATION TO RETAIN OR REMOVE, SENT WHEN — ADMINISTRATIVE REVIEW OF DETERMINATION — DE NOVO JUDICIAL REVIEW. — 1. All identifying information, including telephone reports reported pursuant to section 210.145, relating to reports of abuse or neglect received by the division shall be retained by the division and removed from the records of the division as follows:

(1) For investigation reports contained in the central registry, identifying information shall be retained by the division;

(2) For investigation reports initiated by a person required to report pursuant to section 210.115, where insufficient evidence of abuse or neglect is found by the division, identifying information shall be retained for **[**ten**]** **five** years from the date of the report. For all other investigation reports where insufficient evidence of abuse or neglect is found by the division, identifying information shall be retained for two years from the date of the report. Such report shall include any exculpatory evidence known by the division, including exculpatory evidence obtained after the closing of the case. At the end of such two-year period, the identifying information shall be removed from the records of the division and destroyed;

(3) For reports where the division uses the family assessment and services approach, identifying information shall be retained by the division;

(4) For reports in which the division is unable to locate the child alleged to have been abused or neglected, identifying information shall be retained for ten years from the date of the report and then shall be removed from the records of the division.

2. Within ninety days after receipt of a report of abuse or neglect that is investigated, the alleged perpetrator named in the report and the parents of the child named in the report, if the alleged perpetrator is not a parent, shall be notified in writing of any determination made by the division based on the investigation. The notice shall advise either:

(1) That the division has determined **by a probable cause finding prior to the effective date of this section or by a preponderance of the evidence after the effective date of this section** that **[**there is probable cause to suspect**]** abuse or neglect exists and that the division shall retain all identifying information regarding the abuse or neglect; that such information shall remain confidential and will not be released except to law enforcement agencies, prosecuting or circuit attorneys, or as provided in section 210.150; that the alleged perpetrator has sixty days from the date of receipt of the notice to seek reversal of the division's determination through a review by the child abuse and neglect review board as provided in subsection 3 of this section; or

(2) **[**There is insufficient probable cause of abuse or neglect.**]** **That the division has not made a probable cause finding or determined by a preponderance of the evidence that abuse or neglect exists.**

3. Any person named in an investigation as a perpetrator who is aggrieved by a determination of abuse or neglect by the division as provided in this section may seek an administrative review by the child abuse and neglect review board pursuant to the provisions of section 210.153. Such request for review shall be made within sixty days of notification of the division's decision under this section. In those cases where criminal charges arising out of facts of the investigation are pending, the request for review shall be made within sixty days from the court's final disposition or dismissal of the charges.

4. In any such action for administrative review, the child abuse and neglect review board shall sustain the division's determination if such determination **[**is**]** **was** supported by evidence

of probable cause **prior to the effective date of this section or is supported by a preponderance of the evidence after the effective date of this section** and is not against the weight of such evidence. The child abuse and neglect review board hearing shall be closed to all persons except the parties, their attorneys and those persons providing testimony on behalf of the parties.

5. If the alleged perpetrator is aggrieved by the decision of the child abuse and neglect review board, the alleged perpetrator may seek de novo judicial review in the circuit court in the county in which the alleged perpetrator resides and in circuits with split venue, in the venue in which the alleged perpetrator resides, or in Cole County. If the alleged perpetrator is not a resident of the state, proper venue shall be in Cole County. The case may be assigned to the family court division where such a division has been established. The request for a judicial review shall be made within sixty days of notification of the decision of the child abuse and neglect review board decision. In reviewing such decisions, the circuit court shall provide the alleged perpetrator the opportunity to appear and present testimony. The alleged perpetrator may subpoena any witnesses except the alleged victim or the reporter. However, the circuit court shall have the discretion to allow the parties to submit the case upon a stipulated record.

6. In any such action for administrative review**,** the child abuse and neglect review board shall notify the child or the parent, guardian or legal representative of the child that a review has been requested.

210.153. CHILD ABUSE AND NEGLECT REVIEW BOARD, ESTABLISHED, MEMBERS, DUTIES, RECORDS, RULES. — 1. There is hereby created in the department of social services the "Child Abuse and Neglect Review Board", which shall provide an independent review of child abuse and neglect determinations in instances in which the alleged perpetrator is aggrieved by the decision of the **children's** division **[**of family services**]**. The division may establish more than one board to assure timely review of the determination.

2. The board shall consist of nine members, who shall be appointed by the governor with the advice and consent of the senate, and shall include:

(1) A physician, nurse or other medical professional;

(2) A licensed child or family psychologist, counselor or social worker;

(3) An attorney who has acted as a guardian ad litem or other attorney who has represented a subject of a child abuse and neglect report;

(4) A representative from law enforcement or a juvenile office.

3. Other members of the board may be selected from:

(1) A person from another profession or field who has an interest in child abuse or neglect;

(2) A college or university professor or elementary or secondary teacher;

(3) A child advocate;

(4) A parent, foster parent or grandparent.

4. The following persons may participate in a child abuse and neglect review board review:

(1) Appropriate **children's** division **[**of family services**]** staff and legal counsel for the department;

(2) The alleged perpetrator, who may be represented pro se or be represented by legal counsel. The alleged perpetrator's presence is not required for the review to be conducted. The alleged perpetrator may submit a written statement for the board's consideration in lieu of personal appearance; and

(3) Witnesses providing information on behalf of the child, the alleged perpetrator or the department. Witnesses shall only be allowed to attend that portion of the review in which they are presenting information.

5. The members of the board shall serve without compensation, but shall receive reimbursement for reasonable and necessary expenses actually incurred in the performance of their duties.

6. All records and information compiled, obtained, prepared or maintained by the child abuse and neglect review board in the course of any review shall be confidential information.

7. The department shall promulgate rules and regulations governing the operation of the child abuse and neglect review board except as otherwise provided for in this section. These rules and regulations shall, at a minimum, describe the length of terms, the selection of the chairperson, confidentiality, notification of parties and time frames for the completion of the review.

8. Findings of probable cause to suspect **prior to the effective date of this section or findings by a preponderance of the evidence after the effective date of this section of** child abuse and neglect by the division which are substantiated by court adjudication shall not be heard by the child abuse and neglect review board.

210.160. GUARDIAN AD LITEM, HOW APPOINTED — WHEN — FEE — VOLUNTEER ADVOCATES MAY BE APPOINTED TO ASSIST GUARDIAN — TRAINING PROGRAM. — 1. In every case involving an abused or neglected child which results in a judicial proceeding, the judge shall appoint a guardian ad litem to appear for and represent:

(1) A child who is the subject of proceedings pursuant to sections 210.110 to 210.165, sections 210.700 to 210.760, sections 211.442 to 211.487, RSMo, or sections 453.005 to 453.170, RSMo, or proceedings to determine custody or visitation rights under sections 452.375 to 452.410, RSMo; or

(2) A parent who is a minor, or who is a mentally ill person or otherwise incompetent, and whose child is the subject of proceedings under sections 210.110 to 210.165, sections 210.700 to 210.760, sections 211.442 to 211.487, RSMo, or sections 453.005 to 453.170, RSMo.

2. The guardian ad litem shall be provided with all reports relevant to the case made to or by any agency or person **[**and**],** shall have access to all records of such agencies or persons relating to the child or such child's family members or placements of the child**, and upon appointment by the court to a case, shall be informed of and have the right to attend any and all family support team meetings involving the child**. Employees of the division, officers of the court, and employees of any agency involved shall fully inform the guardian ad litem of all aspects of the case of which they have knowledge or belief.

3. The appointing judge shall require the guardian ad litem to faithfully discharge such guardian ad litem's duties, and upon failure to do so shall discharge such guardian ad litem and appoint another. **The appointing judge shall have the authority to examine the general and criminal background of persons appointed as guardians ad litem, including utilization of the family care safety registry and access line pursuant to sections 210.900 to 210.937, to ensure the safety and welfare of the children such persons are appointed to represent.** The judge in making appointments pursuant to this section shall give preference to persons who served as guardian ad litem for the child in the earlier proceeding, unless there is a reason on the record for not giving such preference.

4. The guardian ad litem may be awarded a reasonable fee for such services to be set by the court. The court, in its discretion, may award such fees as a judgment to be paid by any party to the proceedings or from public funds. However, no fees as a judgment shall be taxed against a party or parties who have not been found to have abused or neglected a child or children. Such an award of guardian fees shall constitute a final judgment in favor of the guardian ad litem. Such final judgment shall be enforceable against the parties in accordance with chapter 513, RSMo.

5. The court may designate volunteer advocates, who may or may not be attorneys licensed to practice law, to assist in the performance of the guardian ad litem duties for the court. **Nonattorney volunteer advocates shall not provide legal representation. The court shall have the authority to examine the general and criminal background of persons designated as volunteer advocates, including utilization of the family care safety registry and access line pursuant to sections 210.900 to 210.937, to ensure the safety and welfare of the**

children such persons are designated to represent. The volunteer advocate shall be provided with all reports relevant to the case made to or by any agency or person **[**and**],** shall have access to all records of such agencies or persons relating to the child or such child's family members or placements of the child**, and upon designation by the court to a case, shall be informed of and have the right to attend any and all family support team meetings involving the child**. Any such designated person shall receive no compensation from public funds. This shall not preclude reimbursement for reasonable expenses.

6. Any person appointed to perform guardian ad litem duties shall have completed a training program in permanency planning **and shall advocate for timely court hearings whenever possible to attain permanency for a child as expeditiously as possible to reduce the effects that prolonged foster care may have on a child**. A nonattorney volunteer advocate shall have access to a court appointed attorney guardian ad litem should the circumstances of the particular case so require.

210.183. ALLEGED PERPETRATOR TO BE PROVIDED WRITTEN DESCRIPTION OF INVESTIGATION PROCESS. — 1. At the time of the initial investigation of a report of child abuse or neglect, the division employee conducting the investigation shall provide the alleged perpetrator with a written description of the investigation process. Such written notice shall be given substantially in the following form:

"The investigation is being undertaken by the **Children's** Division **[**of Family Services**]** pursuant to the requirements of chapter 210 of the Revised Missouri Statutes in response to a report of child abuse or neglect.

["]The identity of the person who reported the incident of abuse or neglect is confidential and may not even be known to the Division since the report could have been made anonymously.

["]This investigation is required by law to be conducted in order to enable the **Children's** Division **[**of Family Services**]** to identify incidents of abuse or neglect in order to provide protective or preventive social services to families who are in need of such services.

["]The division shall make every reasonable attempt to complete the investigation within thirty days. Within ninety days you will receive a letter from the Division which will inform you of one of the following:

["](1) That the Division has found insufficient evidence of abuse or neglect; or

["](2) That there appears to be **[**probable cause**] by a preponderance of the evidence reason** to suspect the existence of child abuse or neglect in the judgment of the Division and that the Division will contact the family to offer social services.

["]If the Division finds **[**there is probable cause**] by a preponderance of the evidence reason** to believe child abuse or neglect has occurred or the case is substantiated by court adjudication, a record of the report and information gathered during the investigation will remain on file with the Division.

["]If you disagree with the determination of the Division and feel that there is insufficient **[**probable cause to believe**] reason to believe by a preponderance of the evidence that** abuse or neglect has occurred, you have a right to request an administrative review at which time you may hire an attorney to represent you. If you request an administrative review on the issue, you will be notified of the date and time of your administrative review hearing by the child abuse and neglect review board. If the division's decision is reversed by the child abuse and neglect review board, the Division records concerning the report and investigation will be updated to reflect such finding. If the child abuse and neglect review board upholds the division's decision, an appeal may be filed in circuit court within sixty days of the child abuse and neglect review board's decision."

2. If the division uses the family assessment approach, the division shall at the time of the initial contact provide the parent of the child with the following information:

(1) The purpose of the contact with the family;

(2) The name of the person responding and his **or her** office telephone number;

(3) The assessment process to be followed during the division's intervention with the family including the possible services available and expectations of the family.

210.187. CHILD ABUSE AND NEGLECT SERVICES AND FUNDING, TASK FORCE ON CHILDREN'S JUSTICE TO MAKE RECOMMENDATIONS AND AWARD GRANT MONEYS. — 1. The task force on children's justice established by the children's division within the department of social services to recommend improvements in the area of child abuse and neglect services and provide funding for such recommendations shall provide an independent review of policies and procedures of state and local child protective services agencies, and where appropriate, specific cases, and shall evaluate the extent to which the agencies are effectively discharging their child protection responsibilities.

2. Consistent with the task force's function of reviewing applications for federal grant moneys available to the state under the Children's Justice Act which are designed to assist eligible states in implementing programs for the handling, investigation, and prosecution of child abuse cases, the task force shall consider the awarding of grant moneys which address the issues that arise from the independent review conducted by the task force pursuant to subsection 1 of this section. As authorized by the Children's Justice Act, grant moneys shall be awarded for the following categories:

(1) Improvements to the investigative, administrative, and judicial handling of cases of child abuse and neglect;

(2) Experimental, model, and demonstration programs for testing innovative approaches and techniques to improve the prompt and successful resolution of court proceedings or enhance the effectiveness and judicial administration action in child abuse and neglect cases; and

(3) Reform of state laws, rules, protocols, and procedures to provide comprehensive protection for children from abuse and neglect.

3. The members of the task force shall not disclose to any person or government official any identifying information concerning a specific child protection case with respect to which the task force is providing information and shall not make public other information unless authorized by federal or state law.

4. The task force shall be provided:

(1) Access to information on cases that the task force desires or is requested to review if such information is necessary for the task force to carry out its functions pursuant to this section; and

(2) Upon request, assistance from the department of social services for the performance of the task force's duties.

210.188. REPORT TO GENERAL ASSEMBLY AND GOVERNOR, CONTENTS. — Beginning February 1, 2006, and each February first thereafter, the department of social services shall submit a report to the governor and the general assembly that includes the following information for the previous calendar year:

(1) The number of children who were reported to the state of Missouri during the year as abused or neglected;

(2) Of the number of children described in subdivision (1) of this section, the number with respect to whom such reports were substantiated or unsubstantiated;

(3) Of the number of children described in subdivision (2) of this section:

(a) The number that did not receive or refused services during the year under a children's division program;

(b) The number that did receive services during the year under a state program; and

(c) The number that were removed from their families during the year by disposition of the case;

(4) The number of families that received preventive services from the state or a private service provider during the year;

(5) The number of deaths in the state during the year resulting from child abuse or neglect;

(6) Of the number of children described in subdivision (5) of this section, the number of children who were in foster care or received services from a private service provider;

(7) The number of child protective services workers responsible for the intake and screening of reports filed during the year;

(8) The agency response time with respect to each such report with respect to initial investigation of reports of child abuse or neglect;

(9) The response time with respect to the provision of services to families and children where an allegation of abuse or neglect has been made;

(10) The number of child protective services workers responsible for intake, assessment, and investigation of child abuse and neglect reports relative to the number of reports investigated during the year;

(11) The number of children reunited with their families or receiving family preservation services that, within five years, result in subsequent substantiated reports of child abuse and neglect, including the death of the child; and

(12) The number of children in foster care who have been adopted.

210.201. DEFINITIONS. — As used in sections 210.201 to 210.257, the following terms mean:

(1) "Child", an individual who is under the age of seventeen;

(2) "Child-care facility", a house or other place conducted or maintained by any person who advertises or holds himself out as providing care for more than four children during the daytime, for compensation or otherwise, except those operated by a school system or in connection with a business establishment which provides child care as a convenience for its customers or its employees for no more than four hours per day, but a child-care facility shall not include any private or religious organization elementary or secondary school, a religious organization academic preschool or kindergarten for four- and five-year-old children, a home school, as defined in section 167.031, RSMo, a weekly Sunday or Sabbath school, a vacation Bible school or child care made available while the parents or guardians are attending worship services or other meetings and activities conducted or sponsored by a religious organization**. If a facility or program is exempt from licensure based on the school exception established in this subdivision, such facility or program shall submit documentation annually to the department to verify its licensure-exempt status; except that, under no circumstances shall any public or religious organization elementary or secondary school, a religious organization academic preschool or kindergarten for four- and five-year-old children, a home school, as defined in section 167.031, RSMo, a weekly Sunday or Sabbath school, a vacation Bible school or child care made available while the parents or guardians are attending worship services or other meetings and activities conducted or sponsored by a religious organization be required to submit documentation annually to the department to verify its licensure-exempt status**;

(3) "Person", any person, firm, corporation, association, institution or other incorporated or unincorporated organization;

(4) "Religious organization", a church, synagogue or mosque; an entity that has or would qualify for federal tax-exempt status as a nonprofit religious organization under Section 501(c) of the Internal Revenue Code; or an entity whose real estate on which the child-care facility is located is exempt from taxation because it is used for religious purposes.

210.211. LICENSE REQUIRED — EXCEPTIONS. — 1. It shall be unlawful for any person to establish, maintain or operate a child-care facility for children, or to advertise or hold himself

or herself out as being able to perform any of the services as defined in section 210.201, without having in effect a written license granted by the department of health and senior services; except that nothing in sections 210.203 to 210.245 shall apply to:

(1) Any person who is caring for four or fewer children. For purposes of this subdivision, children who are related by blood, marriage or adoption to such person within the third degree shall not be considered in the total number of children being cared for;

(2) Any person who has been duly appointed by a court of competent jurisdiction the guardian of the person of the child or children, or the person who has legal custody of the child or children;

(3) Any person who receives free of charge, and not as a business, for periods not exceeding ninety consecutive days, as bona fide, occasional and personal guests the child or children of personal friends of such person, and who receives custody of no other unrelated child or children;

(4) Any graded boarding school, summer camp, hospital, sanitarium or home which is conducted in good faith primarily to provide education, recreation, medical treatment, or nursing or convalescent care for children;

(5) Any child-care facility maintained or operated under the exclusive control of a religious organization. When a nonreligious organization, having as its principal purpose the provision of child-care services, enters into an arrangement with a religious organization for the maintenance or operation of a child-care facility, the facility is not under the exclusive control of the religious organization;

(6) Any residential facility or day program licensed by the department of mental health pursuant to sections 630.705 to 630.760, RSMo, which provides care, treatment and habilitation exclusively to children who have a primary diagnosis of mental disorder, mental illness, mental retardation or developmental disability, as defined in section 630.005, RSMo; and

(7) Any nursery school.

2. Notwithstanding the provisions of subsection 1 of this section, no child-care facility shall be exempt from licensure if such facility receives any state or federal funds for providing care for children, except for federal funds for those programs which meet the requirements for participation in the Child and Adult Care Food Program pursuant to 42 U.S.C. 1766. Grants to parents for child care pursuant to sections 210.201 to 210.257 shall not be construed to be funds received by [the] **a person or** facility **listed in subdivisions (1) and (5) of subsection 1 of this section**.

210.482. BACKGROUND CHECKS FOR EMERGENCY PLACEMENTS, REQUIREMENTS, EXCEPTIONS — COST, PAID BY WHOM. — 1. If the emergency placement of a child in a private home is necessary due to the unexpected absence of the child's parents, legal guardian, or custodian, the juvenile court or children's division:

(1) May request that a local or state law enforcement agency or juvenile officer, subject to any required federal authorization, immediately conduct a name-based criminal history record check to include full orders of protection and outstanding warrants of each person over the age of seventeen residing in the home by using the Missouri uniform law enforcement system (MULES) and the National Crime Information Center to access the Interstate Identification Index maintained by the Federal Bureau of Investigation; and

(2) Shall determine or, in the case of the juvenile court, shall request the division to determine whether any person over the age of seventeen years residing in the home is listed on the child abuse and neglect registry.

For any children less than seventeen years of age residing in the home, the children's division shall inquire of the person with whom an emergency placement of a child will be made whether any children less than seventeen years of age residing in the home have ever been certified as an adult and convicted of, or pled guilty or nolo contendere to any crime.

2. If a name-based search has been conducted pursuant to subsection 1 of this section, within fifteen business days after the emergency placement of the child in the private home, and if the private home has not previously been approved as a foster or adoptive home, all persons over the age of seventeen residing in the home and all children less than seventeen residing in the home who the division has determined has been certified as an adult for the commission of a crime, other than persons within the second degree of consanguinity and affinity to the child, shall report to a local law enforcement agency for the purpose of providing two sets of fingerprints each and accompanying fees, pursuant to section 43.530, RSMo. One set of fingerprints shall be used by the highway patrol to search the criminal history repository and the second set shall be forwarded to the Federal Bureau of Investigation for searching the federal criminal history files. Results of the checks will be provided to the juvenile court or children's division office requesting such information. Any child placed in emergency placement in a private home shall be removed immediately if any person residing in the home fails to provide fingerprints after being requested to do so, unless the person refusing to provide fingerprints ceases to reside in the private home.

3. If the placement of a child is denied as a result of a name-based criminal history check and the denial is contested, all persons over the age of seventeen residing in the home and all children less than seventeen years of age residing in the home who the division has determined has been certified as an adult for the commission of a crime shall, within fifteen business days, submit to the juvenile court or the children's division two sets of fingerprints in the same manner described in subsection 2 of this section, accompanying fees, and written permission authorizing the juvenile court or the children's division to forward the fingerprints to the state criminal record repository for submission to the Federal Bureau of Investigation. One set of fingerprints shall be used by the highway patrol to search the criminal history repository and the second set shall be forwarded to the Federal Bureau of Investigation for searching the federal criminal history files.

4. Subject to appropriation, the total cost of fingerprinting required by this section may be paid by the state, including reimbursement of persons incurring fingerprinting costs under this section.

5. For the purposes of this section, "emergency placement" refers to those limited instances when the juvenile court or children's division is placing a child in the home of private individuals, including neighbors, friends, or relatives, as a result of a sudden unavailability of the child's primary caretaker.

210.487. BACKGROUND CHECKS FOR FOSTER FAMILIES, REQUIREMENTS — COSTS, PAID BY WHOM — RULEMAKING AUTHORITY. — 1. When conducting investigations of persons for the purpose of foster parent licensing, the division shall:

(1) Conduct a search for all persons over the age of seventeen in the applicant's household and for any child less than seventeen years of age residing in the applicant's home who the division has determined has been certified as an adult for the commission of a crime for evidence of full orders of protection. The office of state courts administrator shall allow access to the automated court information system by the division. The clerk of each court contacted by the division shall provide the division information within ten days of a request; and

(2) Obtain two sets of fingerprints for any person over the age of seventeen in the applicant's household and for any child less than seventeen years of age residing in the applicant's home who the division has determined has been certified as an adult for the commission of a crime in the same manner set forth in subsection 2 of section 210.482. One set of fingerprints shall be used by the highway patrol to search the criminal history repository and the second set shall be forwarded to the Federal Bureau of Investigation for searching the federal criminal history files. The highway patrol shall assist the division and provide the criminal fingerprint background information, upon request; and

(3) Determine whether any person over the age of seventeen residing in the home and any child less than seventeen years of age residing in the applicant's home who the division has determined has been certified as an adult for the commission of a crime is listed on the child abuse and neglect registry.

For any children less than seventeen years of age residing in the applicant's home, the children's division shall inquire of the applicant whether any children less than seventeen years of age residing in the home have ever been certified as an adult and been convicted of, or pled guilty or nolo contendere to any crime.

2. Subject to appropriation, the total cost of fingerprinting required by this section may be paid by the state, including reimbursement of persons incurring fingerprinting costs under this section.

3. The division may make arrangements with other executive branch agencies to obtain any investigative background information.

4. The division may promulgate rules that are necessary to implement the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after the effective date of this section shall be invalid and void.

210.518. DEPARTMENTS' DUTIES, CLASSIFICATION OF SERVICES TO CHILDREN — INTERAGENCY MEETINGS FOR COORDINATION OF SERVICES. — 1. The department of social services, the department of mental health, the department of elementary and secondary education and all subdivisions thereof shall develop and implement through interagency agreement a common system of classification for assessing the needs of a child and common terminology to describe the services to be provided to the child. The agreement must establish a standardized form and set of records to be kept for such children which shall include, if applicable to such child, any individualized education plan, diagnostic summary, school history, school records, medical history, court records, placement orders and any criminal history. The agreement shall be adopted and in effect on or before July 1, 1999.

2. To facilitate the coordination of services being provided to children, interagency meetings pursuant to subsection 1 of this section shall be held as frequently as appropriate to address and review any actions being taken by agency personnel involved in the provision of services to a child and to ensure the existence of a continuation of services to prevent and treat child abuse and neglect, evaluate data, policy, and practices, and assure the quality of services provided to children. The agencies shall document which staff members attended such meetings. If any services for the child are provided through contracted providers, such providers shall be included in the meetings described in this section.

210.535. FOSTER CARE AND ADOPTION ASSISTANCE UNDER FEDERAL SOCIAL SECURITY ACT, AMENDMENTS TO PLAN AND WAIVERS TO BE SUBMITTED. — The department of social services, shall:

(1) Submit amendments to state plans and seek available waivers from the federal Department of Health and Human Services to enhance federal reimbursement and federal administrative reimbursement for foster care and adoption assistance under Title IV-E of the Social Security Act and Title XIX of the Social Security Act; and

(2) Take the necessary steps to qualify the state for receipt of any federal block grant moneys which are or will be available for foster care and adoption assistance.

210.542. TRAINING AND STANDARDS FOR FOSTER PARENTS TO BE PROVIDED, WHEN — EVALUATION OF FOSTER PARENTS. — 1. The children's division shall provide certain standards and training that prospective foster care parents shall meet before becoming licensed.

2. The children's division shall provide performance-based criteria for the evaluation of licensed foster parents and may establish by rule the frequency of such evaluation.

210.565. RELATIVES OF CHILD SHALL BE GIVEN FOSTER HOME PLACEMENT, WHEN — RELATIVE, DEFINED — DEATH OR DISSOLUTION NOT TO AFFECT GRANDPARENTS' STATUS — SPECIFIC FINDINGS REQUIRED, WHEN — AGE OF RELATIVE NOT A FACTOR, WHEN — FEDERAL REQUIREMENTS TO BE FOLLOWED FOR PLACEMENT OF NATIVE AMERICAN CHILDREN. — 1. Whenever a child is placed in a foster home **and the court has determined pursuant to subsection 3 of this section that foster home placement with relatives is not contrary to the best interest of the child,** the **children's** division **[**of family services**]** shall give **[**preference and first consideration for**]** foster home placement to relatives of the child. Notwithstanding any rule of the division to the contrary, grandparents who request consideration shall be given preference and first consideration for foster home placement.

2. As used in this section, the term "relative" means a person related to another by blood or affinity within the third degree. The status of a grandparent shall not be affected by the death or the dissolution of the marriage of a son or daughter.

3. The preference for placement with relatives created by this section shall only apply where the court finds that placement with such relatives is **[**in**] not contrary to** the best interest of the child considering all circumstances. **If the court finds that it is contrary to the best interest of a child to be placed with relatives, the court shall make specific findings on the record detailing the reasons why the best interests of the child necessitate placement of the child with persons other than relatives.**

4. The age of the child's relative shall not be the only factor that the children's division takes into consideration when it makes placement decisions and recommendations to the court about placing the child with such relative.

5. For any native American child placed in protective custody, the children's division shall comply with the placement requirements set forth in 25 U.S.C. Section 1915.

210.760. PLACEMENT IN FOSTER CARE — DIVISION'S DUTIES — REMOVAL OF CHILDREN FROM SCHOOL, RESTRICTIONS. — **1.** In making placements in foster care the **children's** division **[**of family services**]** shall:

(1) Arrange for a preplacement visit of the child, except in emergencies;

(2) Provide full and accurate medical information and medical history to the persons providing foster care at the time of placement;

(3) Give a minimum of five days advance notice to the persons providing foster care before removing a child from their care;

(4) Provide the persons giving foster care with a written statement of the reasons for removing a child at the time of the notification required by this section; **[**and**]**

(5) **Notify the child's parent or legal guardian that the child has been placed in foster care; and**

(6) Work with the **[**natural**]** parent **or legal guardian of the child**, through services available, in an effort to return the child to his **or her** natural home, if at all possible, or to place the child in a permanent adoptive setting, in accordance with the division's goals to reduce the number of children in long-term foster care and reestablish and encourage the family unit.

2. Except as otherwise provided in section 210.125, no child shall be removed from school prior to the end of the official school day for that child for placement in foster care without a court order specifying that the child shall be removed from school.

210.762. FAMILY SUPPORT TEAM MEETINGS TO BE HELD, WHEN — WHO MAY ATTEND — FORM TO BE USED. — 1. When a child is taken into custody by a juvenile officer or law enforcement official under subdivision (1) of subsection 1 of section 211.031, RSMo, and initially placed with the division, the division may make a temporary placement and shall arrange for a family support team meeting prior to or within twenty-four hours following the protective custody hearing held under section 211.032, RSMo. After a child is in the division's custody and a temporary placement has been made, the division shall arrange an additional family support team meeting prior to taking any action relating to the placement of such child; except that, when the welfare of a child in the custody of the division requires an immediate or emergency change of placement, the division may make a temporary placement and shall schedule a family support team meeting within seventy-two hours.

2. The parents, the legal counsel for the parents, the foster parents, the legal guardian or custodian of the child, the guardian ad litem for the child, and the volunteer advocate, and any designee of the parent that has written authorization shall be notified and invited to participate in all family support team meetings. The family support team meeting may include such other persons whose attendance at the meeting may assist the team in making appropriate decisions in the best interests of the child. If the division finds that it is not in the best interest of a child to be placed with relatives, the division shall make specific findings in the division's report detailing the reasons why the best interests of the child necessitate placement of the child with persons other than relatives.

3. The division shall use the form created in subsection 2 of section 210.147 to be signed upon the conclusion of the meeting pursuant to subsection 1 of this section confirming that all involved parties are aware of the team's decision regarding the custody and placement of the child. Any dissenting views must be recorded and attested to on such form.

4. The case manager shall be responsible for including such form with the case records of the child.

210.903. FAMILY CARE SAFETY REGISTRY AND ACCESS LINE ESTABLISHED, CONTENTS. — 1. To protect children, the elderly, and disabled individuals in this state, and to promote family and community safety by providing information concerning family caregivers, there is hereby established within the department of health and senior services a "Family Care Safety Registry and Access Line" which shall be available by January 1, 2001.

2. The family care safety registry shall contain information on child-care workers', elder-care workers', and personal-care workers' background and on child-care, elder-care and personal-care providers through:

(1) The patrol's criminal record check system pursuant to section 43.540, RSMo, including state and national information, to the extent possible;

(2) Probable cause findings of abuse and neglect **prior to the effective date of this section or findings of abuse and neglect by a preponderance of the evidence after the effective date of this section** pursuant to sections 210.109 to 210.183 and, as of January 1, 2003, financial exploitation of the elderly or disabled, pursuant to section 570.145, RSMo;

(3) The division of aging's employee disqualification list pursuant to section 660.315, RSMo;

(4) As of January 1, 2003, the department of mental health's employee disqualification registry;

(5) Foster parent licensure denials, revocations and involuntary suspensions pursuant to section 210.496;

(6) Child-care facility license denials, revocations and suspensions pursuant to sections 210.201 to 210.259;

(7) Residential living facility and nursing home license denials, revocations, suspensions and probationary status pursuant to chapter 198, RSMo; and

(8) As of January 1, 2004, a check of the patrol's Missouri uniform law enforcement system (MULES) for sexual offender registrations pursuant to section 589.400, RSMo.

210.909. DEPARTMENT DUTIES — INFORMATION INCLUDED IN REGISTRY, WHEN — REGISTRANT NOTIFICATION. — 1. Upon submission of a completed registration form by a child-care worker, elder-care worker or personal-care attendant, the department shall:

(1) Determine if a probable cause finding of child abuse or neglect **prior to the effective date of this section or a finding of child abuse or neglect by a preponderance of the evidence after the effective date of this section** involving the applicant has been recorded pursuant to sections 210.109 to 210.183 and, as of January 1, 2003, if there is a probable cause finding of financial exploitation of the elderly or disabled pursuant to section 570.145, RSMo;

(2) Determine if the applicant has been refused licensure or has experienced involuntary licensure suspension or revocation pursuant to section 210.496;

(3) Determine if the applicant has been placed on the employee disqualification list pursuant to section 660.315, RSMo;

(4) As of January 1, 2003, determine if the applicant is listed on the department of mental health's employee disqualification registry;

(5) Determine through a request to the patrol pursuant to section 43.540, RSMo, whether the applicant has any criminal history record for a felony or misdemeanor or any offense for which the person has registered pursuant to sections 589.400 to 589.425, RSMo; and

(6) If the background check involves a provider, determine if a facility has been refused licensure or has experienced licensure suspension, revocation or probationary status pursuant to sections 210.201 to 210.259 or chapter 198, RSMo; and

(7) As of January 1, 2004, determine through a request to the patrol if the applicant is a registered sexual offender pursuant to section 589.400, RSMo, listed in the Missouri uniform law enforcement system (MULES).

2. Upon completion of the background check described in subsection 1 of this section, the department shall include information in the registry for each registrant as to whether any convictions, employee disqualification listings, registry listings, probable cause findings, pleas of guilty or nolo contendere, or license denial, revocation or suspension have been documented through the records checks authorized pursuant to the provisions of sections 210.900 to 210.936.

3. The department shall notify such registrant in writing of the results of the determination recorded on the registry pursuant to this section.

211.031. JUVENILE COURT TO HAVE EXCLUSIVE JURISDICTION, WHEN — EXCEPTIONS — HOME SCHOOLING, ATTENDANCE VIOLATIONS, HOW TREATED. — 1. Except as otherwise provided in this chapter, the juvenile court or the family court in circuits that have a family court as provided in sections 487.010 to 487.190, RSMo, shall have exclusive original jurisdiction in proceedings:

(1) Involving any child or person seventeen years of age who may be a resident of or found within the county and who is alleged to be in need of care and treatment because:

(a) The parents, or other persons legally responsible for the care and support of the child or person seventeen years of age, neglect or refuse to provide proper support, education which is required by law, medical, surgical or other care necessary for his or her well-being; except that reliance by a parent, guardian or custodian upon remedial treatment other than medical or surgical treatment for a child or person seventeen years of age shall not be construed as neglect when the treatment is recognized or permitted pursuant to the laws of this state;

(b) The child or person seventeen years of age is otherwise without proper care, custody or support; or

(c) The child or person seventeen years of age was living in a room, building or other structure at the time such dwelling was found by a court of competent jurisdiction to be a public nuisance pursuant to section 195.130, RSMo;

(d) The child or person seventeen years of age is a child in need of mental health services and the parent, guardian or custodian is unable to afford or access appropriate mental health treatment or care for the child;

(2) Involving any child who may be a resident of or found within the county and who is alleged to be in need of care and treatment because:

(a) The child while subject to compulsory school attendance is repeatedly and without justification absent from school; or

(b) The child disobeys the reasonable and lawful directions of his or her parents or other custodian and is beyond their control; or

(c) The child is habitually absent from his or her home without sufficient cause, permission, or justification; or

(d) The behavior or associations of the child are otherwise injurious to his or her welfare or to the welfare of others; or

(e) The child is charged with an offense not classified as criminal, or with an offense applicable only to children; except that, the juvenile court shall not have jurisdiction over any child fifteen and one-half years of age who is alleged to have violated a state or municipal traffic ordinance or regulation, the violation of which does not constitute a felony, or any child who is alleged to have violated a state or municipal ordinance or regulation prohibiting possession or use of any tobacco product;

(3) Involving any child who is alleged to have violated a state law or municipal ordinance, or any person who is alleged to have violated a state law or municipal ordinance prior to attaining the age of seventeen years, in which cases jurisdiction may be taken by the court of the circuit in which the child or person resides or may be found or in which the violation is alleged to have occurred; except that, the juvenile court shall not have jurisdiction over any child fifteen and one-half years of age who is alleged to have violated a state or municipal traffic ordinance or regulation, the violation of which does not constitute a felony, or any child who is alleged to have violated a state or municipal ordinance or regulation prohibiting possession or use of any tobacco product;

(4) For the adoption of a person;

(5) For the commitment of a child or person seventeen years of age to the guardianship of the department of social services as provided by law.

2. Transfer of a matter, proceeding, jurisdiction or supervision for a child or person seventeen years of age who resides in a county of this state shall be made as follows:

(1) Prior to the filing of a petition and upon request of any party or at the discretion of the juvenile officer, the matter in the interest of a child or person seventeen years of age may be transferred by the juvenile officer, with the prior consent of the juvenile officer of the receiving court, to the county of the child's residence or the residence of the person seventeen years of age for future action;

(2) Upon the motion of any party or on its own motion prior to final disposition on the pending matter, the court in which a proceeding is commenced may transfer the proceeding of a child or person seventeen years of age to the court located in the county of the child's residence or the residence of the person seventeen years of age, or the county in which the offense pursuant to subdivision (3) of subsection 1 of this section is alleged to have occurred for further action;

(3) Upon motion of any party or on its own motion, the court in which jurisdiction has been taken pursuant to subsection 1 of this section may at any time thereafter transfer jurisdiction of a child or person seventeen years of age to the court located in the county of the child's residence or the residence of the person seventeen years of age for further action with the prior consent of the receiving court;

(4) Upon motion of any party or upon its own motion at any time following a judgment of disposition or treatment pursuant to section 211.181, the court having jurisdiction of the cause may place the child or person seventeen years of age under the supervision of another juvenile

court within or without the state pursuant to section 210.570, RSMo, with the consent of the receiving court;

(5) **Upon motion of any child or person seventeen years of age or his or her parent, the court having jurisdiction shall grant one change of judge pursuant to Missouri Supreme Court Rules;**

(6) Upon the transfer of any matter, proceeding, jurisdiction or supervision of a child or person seventeen years of age, certified copies of all legal and social documents and records pertaining to the case on file with the clerk of the transferring juvenile court shall accompany the transfer.

3. In any proceeding involving any child or person seventeen years of age taken into custody in a county other than the county of the child's residence or the residence of a person seventeen years of age, the juvenile court of the county of the child's residence or the residence of a person seventeen years of age shall be notified of such taking into custody within seventy-two hours.

4. When an investigation by a juvenile officer pursuant to this section reveals that the only basis for action involves an alleged violation of section 167.031, RSMo, involving a child who alleges to be home schooled, the juvenile officer shall contact a parent or parents of such child to verify that the child is being home schooled and not in violation of section 167.031, RSMo, before making a report of such a violation. Any report of a violation of section 167.031, RSMo, made by a juvenile officer regarding a child who is being home schooled shall be made to the prosecuting attorney of the county where the child legally resides.

211.032. CHILD ABUSE AND NEGLECT HEARINGS, WHEN HELD, PROCEDURE — SUPREME COURT RULES TO BE PROMULGATED — TRANSFER OF SCHOOL RECORDS, WHEN. — 1. **Except as otherwise provided in a circuit participating in a pilot project established by the Missouri supreme court,** when a child or person seventeen years of age, alleged to be in need of care and treatment pursuant to subdivision (1) of subsection 1 of section 211.031, is taken into custody, the juvenile or family court shall notify the parties of the right to have a protective custody hearing. Such notification shall be in writing.

2. Upon request from any party, the court shall hold a protective custody hearing. Such hearing shall be held within three days of the request for a hearing, excluding Saturdays, Sundays and legal holidays. **For circuits participating in a pilot project established by the Missouri supreme court, the parties shall be notified at the status conference of their right to request a protective custody hearing.**

3. No later than February 1, 2005, the Missouri supreme court shall require a mandatory court proceeding to be held within three days, excluding Saturdays, Sundays, and legal holidays, in all cases under subdivision (1) of subsection 1 of section 211.031. The Missouri supreme court shall promulgate rules for the implementation of such mandatory court proceedings and may consider recommendations from any pilot projects established by the Missouri supreme court regarding such proceedings. Nothing in this subsection shall prevent the Missouri supreme court from expanding pilot projects prior to the implementation of this subsection.

[3.] **4. The court shall hold an adjudication hearing no later than sixty days after the child has been taken into custody. The court shall notify the parties in writing of the specific date, time, and place of such hearing. If at such hearing the court determines that sufficient cause exists for the child to remain in the custody of the state, the court shall conduct a dispositional hearing no later than ninety days after the child has been taken into custody and shall conduct review hearings regarding the reunification efforts made by the division every ninety to one hundred twenty days for the first year the child is in the custody of the division. After the first year, review hearings shall be held as necessary,**

but in no event less than once every six months for as long as the child is in the custody of the division.

5. At **[**the protective custody hearing**] all hearings held pursuant to this section** the court may receive testimony and other evidence relevant to the necessity of detaining the child out of the custody of the parents, guardian or custodian.

6. By January 1, 2005, the supreme court shall develop rules regarding the effect of untimely hearings.

7. If the placement of any child in the custody of the children's division will result in the child attending a school other than the school the child was attending when taken into custody:

(1) The child's records from such school shall automatically be forwarded to the school that the child is transferring to upon notification within two business days by the division; or

(2) Upon request of the foster family, the guardian ad litem, or the volunteer advocate and whenever possible, the child shall be permitted to continue to attend the same school that the child was enrolled in and attending at the time the child was taken into custody by the division. The division, in consultation with the department of elementary and secondary education, shall establish the necessary procedures to implement the provisions of this subsection.

211.038. CHILDREN NOT TO BE REUNITED WITH PARENTS OR PLACED IN A HOME, WHEN. — No child under the jurisdiction of the juvenile court shall be reunited with a parent or placed in a home in which the parent or any person residing in the home has been found guilty of, or pled guilty to, a felony violation of chapter 566, RSMo, except for section 566.034, RSMo, when a child was the victim, or a violation of sections 568.020, 568.045, 568.060, 568.065, 568.070, 568.080, 568.090, and 568.175, RSMo, except for subdivision (1) of subsection 1 of section 568.060, RSMo, when a child was the victim, or an offense committed in another state when a child is the victim, that would be a felony violation of chapter 566, RSMo, except for section 566.034, RSMo, or a violation of sections 568.020, 568.045, 568.060, 568.065, 568.070, 568.080, 568.090, and 568.175, RSMo, except for subdivision (1) of subsection 1 of section 568.060, RSMo, if committed in Missouri; provided however, nothing in this section shall preclude the juvenile court from exercising its discretion regarding the placement of child in a home in which the parent or any person residing in the home has been found guilty of, or pled guilty or nolo contendere to any offense excepted or excluded in this section.

211.059. RIGHTS OF CHILD WHEN TAKEN INTO CUSTODY (MIRANDA WARNING) — RIGHT OF CHILD IN CUSTODY IN ABUSE AND NEGLECT CASES. — 1. When a child is taken into custody by a juvenile officer or law enforcement official, with or without a warrant for an offense in violation of the juvenile code or the general law which would place the child under the jurisdiction of the juvenile court pursuant to subdivision (2) or (3) of subsection 1 of section 211.031, the child shall be advised prior to questioning:

(1) That he has the right to remain silent; and

(2) That any statement he does make to anyone can be and may be used against him; and

(3) That he has a right to have a parent, guardian or custodian present during questioning; and

(4) That he has a right to consult with an attorney and that one will be appointed and paid for him if he cannot afford one.

2. If the child indicates in any manner and at any stage of questioning pursuant to this section that he does not wish to be questioned further, the officer shall cease questioning.

3. When a child is taken into custody by a juvenile officer or law enforcement official which places the child under the jurisdiction of the juvenile court under subdivision (1)

of subsection 1 of section 211.031, including any interactions with the child by the children's division, the following shall apply:

(1) If the child indicates in any manner at any stage during questioning involving the alleged abuse and neglect that the child does not wish to be questioned any further on the allegations, or that the child wishes to have his or her parent, legal guardian, or custodian if such parent, guardian, or custodian is not the alleged perpetrator, or his or her attorney present during questioning as to the alleged abuse, the questioning of the child shall cease on the alleged abuse and neglect until such a time that the child does not object to talking about the alleged abuse and neglect unless the interviewer has reason to believe that the parent, legal guardian, or custodian is acting to protect the alleged perpetrator. Nothing in this subdivision shall be construed to prevent the asking of any questions necessary for the care, treatment, or placement of a child; and

(2) Notwithstanding any prohibition of hearsay evidence, all video or audio recordings of any meetings, interviews, or interrogations of a child shall be presumed admissible as evidence in any court or administrative proceeding involving the child if the following conditions are met:

(a) Such meetings, interviews, or interrogations of the child are conducted by the state prior to or after the child is taken into the custody of the state; and

(b) Such video or audio recordings were made prior to the adjudication hearing in the case. Nothing in this paragraph shall be construed to prohibit the videotaping or audiotaping of any such meetings, interviews, or interrogations of a child after the adjudication hearing; and

(3) Only upon a showing by clear and convincing evidence that such a video or audio recording lacks sufficient indicia of reliability shall such recording be inadmissible.

The provisions of this subsection shall not apply to statements admissible under section 491.075 or 492.304, RSMo, in criminal proceedings.

211.171. HEARING PROCEDURE — NOTIFICATION OF CURRENT FOSTER PARENTS, PREADOPTIVE PARENTS AND RELATIVES, WHEN — PUBLIC MAY BE EXCLUDED, WHEN — VICTIM IMPACT STATEMENT PERMITTED, WHEN. — 1. The procedure to be followed at the hearing shall be determined by the juvenile court judge and may be as formal or informal as he or she considers desirable, consistent with constitutional and statutory requirements. The judge may take testimony and inquire into the habits, surroundings, conditions and tendencies of the child and the family to enable the court to render such order or judgment as will best promote the welfare of the child and carry out the objectives of this chapter.

2. The hearing may, in the discretion of the court, proceed in the absence of the child and may be adjourned from time to time.

3. The current foster parents of a child, or any preadoptive parent or relative currently providing care for the child, shall be provided with notice of, and an opportunity to be heard in, any **[**permanency or other review**]** hearing to be held with respect to the child. This subsection shall not be construed to require that any such foster parent, preadoptive parent or relative providing care for a child be made a party to the case solely on the basis of such notice and opportunity to be heard.

4. All cases of children shall be heard separately from the trial of cases against adults.

5. Stenographic notes or an authorized recording of the hearing shall be required if the court so orders or**,** if requested by any party interested in the proceeding.

6. The general public shall be excluded and only such persons admitted as have a direct interest in the case or in the work of the court except in cases where the child is accused of conduct which, if committed by an adult, would be considered a class A or B felony; or for conduct which would be considered a class C felony, if the child has previously been formally adjudicated for the commission of two or more unrelated acts which would have been class A, B or C felonies, if committed by an adult.

7. The practice and procedure customary in proceedings in equity shall govern all proceedings in the juvenile court**; except that, the court shall not grant a continuance in such proceedings absent compelling extenuating circumstances, and in such cases, the court shall make written findings on the record detailing the specific reasons for granting a continuance**.

8. The court shall allow the victim of any offense to submit a written statement to the court. The court shall allow the victim to appear before the court personally or by counsel for the purpose of making a statement, unless the court finds that the presence of the victim would not serve justice. The statement shall relate solely to the facts of the case and any personal injuries or financial loss incurred by the victim. A member of the immediate family of the victim may appear personally or by counsel to make a statement if the victim has died or is otherwise unable to appear as a result of the offense committed by the child.

211.181. ORDER FOR DISPOSITION OR TREATMENT OF CHILD — SUSPENSION OF ORDER AND PROBATION GRANTED, WHEN — COMMUNITY ORGANIZATIONS, IMMUNITY FROM LIABILITY, WHEN — LENGTH OF COMMITMENT MAY BE SET FORTH — ASSESSMENTS, DEPOSITS, USE. — 1. When a child or person seventeen years of age is found by the court to come within the applicable provisions of subdivision (1) of subsection 1 of section 211.031, the court shall so decree and make a finding of fact upon which it exercises its jurisdiction over the child or person seventeen years of age, and the court may, by order duly entered, proceed as follows:

(1) Place the child or person seventeen years of age under supervision in his own home or in the custody of a relative or other suitable person after the court or a public agency or institution designated by the court conducts an investigation of the home, relative or person and finds such home, relative or person to be suitable and upon such conditions as the court may require;

(2) Commit the child or person seventeen years of age to the custody of:

(a) A public agency or institution authorized by law to care for children or to place them in family homes; except that, such child or person seventeen years of age may not be committed to the department of social services, division of youth services;

(b) Any other institution or agency which is authorized or licensed by law to care for children or to place them in family homes;

(c) An association, school or institution willing to receive the child or person seventeen years of age in another state if the approval of the agency in that state which administers the laws relating to importation of children into the state has been secured; or

(d) The juvenile officer;

(3) Place the child or person seventeen years of age in a family home;

(4) Cause the child or person seventeen years of age to be examined and treated by a physician, psychiatrist or psychologist and when the health or condition of the child or person seventeen years of age requires it, cause the child or person seventeen years of age to be placed in a public or private hospital, clinic or institution for treatment and care; except that, nothing contained herein authorizes any form of compulsory medical, surgical, or psychiatric treatment of a child or person seventeen years of age whose parents or guardian in good faith are providing other remedial treatment recognized or permitted under the laws of this state;

(5) The court may order, pursuant to subsection 2 of section 211.081, that the child receive the necessary services in the least restrictive appropriate environment including home and community-based services, treatment and support, based on a coordinated, individualized treatment plan. The individualized treatment plan shall be approved by the court and developed by the applicable state agencies responsible for providing or paying for any and all appropriate and necessary services, subject to appropriation, and shall include which agencies are going to pay for and provide such services. Such plan must be submitted to the court within thirty days and the child's family shall actively participate in designing the service plan for the child or person seventeen years of age**;**

(6) The department of social services, in conjunction with the department of mental health, shall apply to the United States Department of Health and Human Services for such federal waivers as required to provide services for such children, including the acquisition of community-based services waivers.

2. When a child is found by the court to come within the provisions of subdivision (2) of subsection 1 of section 211.031, the court shall so decree and upon making a finding of fact upon which it exercises its jurisdiction over the child, the court may, by order duly entered, proceed as follows:

(1) Place the child under supervision in his own home or in custody of a relative or other suitable person after the court or a public agency or institution designated by the court conducts an investigation of the home, relative or person and finds such home, relative or person to be suitable and upon such conditions as the court may require;

(2) Commit the child to the custody of:

(a) A public agency or institution authorized by law to care for children or place them in family homes; except that, a child may be committed to the department of social services, division of youth services, only if he is presently under the court's supervision after an adjudication under the provisions of subdivision (2) or (3) of subsection 1 of section 211.031;

(b) Any other institution or agency which is authorized or licensed by law to care for children or to place them in family homes;

(c) An association, school or institution willing to receive it in another state if the approval of the agency in that state which administers the laws relating to importation of children into the state has been secured; or

(d) The juvenile officer;

(3) Place the child in a family home;

(4) Cause the child to be examined and treated by a physician, psychiatrist or psychologist and when the health or condition of the child requires it, cause the child to be placed in a public or private hospital, clinic or institution for treatment and care; except that, nothing contained herein authorizes any form of compulsory medical, surgical, or psychiatric treatment of a child whose parents or guardian in good faith are providing other remedial treatment recognized or permitted under the laws of this state;

(5) Assess an amount of up to ten dollars to be paid by the child to the clerk of the court. Execution of any order entered by the court pursuant to this subsection, including a commitment to any state agency, may be suspended and the child placed on probation subject to such conditions as the court deems reasonable. After a hearing, probation may be revoked and the suspended order executed.

3. When a child is found by the court to come within the provisions of subdivision (3) of subsection 1 of section 211.031, the court shall so decree and make a finding of fact upon which it exercises its jurisdiction over the child, and the court may, by order duly entered, proceed as follows:

(1) Place the child under supervision in his **or her** own home or in custody of a relative or other suitable person after the court or a public agency or institution designated by the court conducts an investigation of the home, relative or person and finds such home, relative or person to be suitable and upon such conditions as the court may require;

(2) Commit the child to the custody of:

(a) A public agency or institution authorized by law to care for children or to place them in family homes;

(b) Any other institution or agency which is authorized or licensed by law to care for children or to place them in family homes;

(c) An association, school or institution willing to receive it in another state if the approval of the agency in that state which administers the laws relating to importation of children into the state has been secured; or

(d) The juvenile officer;

(3) Beginning January 1, 1996, the court may make further directions as to placement with the division of youth services concerning the child's length of stay. The length of stay order may set forth a minimum review date;

(4) Place the child in a family home;

(5) Cause the child to be examined and treated by a physician, psychiatrist or psychologist and when the health or condition of the child requires it, cause the child to be placed in a public or private hospital, clinic or institution for treatment and care; except that, nothing contained herein authorizes any form of compulsory medical, surgical, or psychiatric treatment of a child whose parents or guardian in good faith are providing other remedial treatment recognized or permitted under the laws of this state;

(6) Suspend or revoke a state or local license or authority of a child to operate a motor vehicle;

(7) Order the child to make restitution or reparation for the damage or loss caused by his offense. In determining the amount or extent of the damage, the court may order the juvenile officer to prepare a report and may receive other evidence necessary for such determination. The child and his attorney shall have access to any reports which may be prepared, and shall have the right to present evidence at any hearing held to ascertain the amount of damages. Any restitution or reparation ordered shall be reasonable in view of the child's ability to make payment or to perform the reparation. The court may require the clerk of the circuit court to act as receiving and disbursing agent for any payment ordered;

(8) Order the child to a term of community service under the supervision of the court or of an organization selected by the court. Every person, organization, and agency, and each employee thereof, charged with the supervision of a child under this subdivision, or who benefits from any services performed as a result of an order issued under this subdivision, shall be immune from any suit by the child ordered to perform services under this subdivision, or any person deriving a cause of action from such child, if such cause of action arises from the supervision of the child's performance of services under this subdivision and if such cause of action does not arise from an intentional tort. A child ordered to perform services under this subdivision shall not be deemed an employee within the meaning of the provisions of chapter 287, RSMo, nor shall the services of such child be deemed employment within the meaning of the provisions of chapter 288, RSMo. Execution of any order entered by the court, including a commitment to any state agency, may be suspended and the child placed on probation subject to such conditions as the court deems reasonable. After a hearing, probation may be revoked and the suspended order executed;

(9) When a child has been adjudicated to have violated a municipal ordinance or to have committed an act that would be a misdemeanor if committed by an adult, assess an amount of up to twenty-five dollars to be paid by the child to the clerk of the court; when a child has been adjudicated to have committed an act that would be a felony if committed by an adult, assess an amount of up to fifty dollars to be paid by the child to the clerk of the court.

4. Beginning January 1, 1996, the court may set forth in the order of commitment the minimum period during which the child shall remain in the custody of the division of youth services. No court order shall require a child to remain in the custody of the division of youth services for a period which exceeds the child's eighteenth birth date except upon petition filed by the division of youth services pursuant to subsection 1 of section 219.021, RSMo. In any order of commitment of a child to the custody of the division of youth services, the division shall determine the appropriate program or placement pursuant to subsection 3 of section 219.021, RSMo. Beginning January 1, 1996, the department shall not discharge a child from the custody of the division of youth services before the child completes the length of stay determined by the court in the commitment order unless the committing court orders otherwise. The director of the division of youth services may at any time petition the court for a review of a child's length of stay commitment order, and the court may, upon a showing of good cause, order the early discharge of the child from the custody of the division of youth services. The division may

discharge the child from the division of youth services without a further court order after the child completes the length of stay determined by the court or may retain the child for any period after the completion of the length of stay in accordance with the law.

5. When an assessment has been imposed under the provisions of subsection 2 or 3 of this section, the assessment shall be paid to the clerk of the court in the circuit where the assessment is imposed by court order, to be deposited in a fund established for the sole purpose of payment of judgments entered against children in accordance with section 211.185.

211.319. JUVENILE COURT RECORDS AND PROCEEDINGS, ABUSE AND NEGLECT CASES, PROCEDURE. — 1. On or before July 1, 2005, all juvenile court proceedings conducted pursuant to subdivision (1) of subsection 1 of section 211.031 and for termination of parental rights cases pursuant to sections 211.442 to 211.487 initiated by a juvenile officer or the division shall be open to the public. The court, on its own motion, may exclude for good cause shown any person or persons from the proceedings to protect the welfare and best interests of the child and for exceptional circumstances. Any party to a juvenile court proceeding referred to in this subsection, except the state, may file a motion requesting that the general public be excluded from the proceeding or any portion of the proceeding. Upon the filing of such motion, the court shall hear arguments by the parties, but no evidence, and shall make a determination whether closure is in the best interest of the parties or whether it is in the public interest to deny such motion. The court shall make a finding on the record when a motion to close a hearing pursuant to this section is made and heard by the court.

2. Notwithstanding the provisions of subsection 1 of this section, the general public shall be excluded from all juvenile court proceedings referred to in subsection 1 of this section during the testimony of any child or victim and only such persons who have a direct interest in the case or in the work of the court will be admitted to the proceedings.

3. For juvenile court proceedings described in subsection 1 of this section, pleadings and orders of the juvenile court other than confidential files and those specifically ordered closed by the juvenile court judge shall be open to the general public. For purposes of this section, "confidential file" means all other records and reports considered closed or confidential by law, including but not limited to medical reports, psychological or psychiatric evaluations, investigation reports of the children's division, social histories, home studies, and police reports and law enforcement records. Only persons who are found by the court to have a legitimate interest shall be allowed access to confidential or closed files. In determining whether a person has a legitimate interest, the court shall consider the nature of the proceedings, the welfare and safety of the public, and the interest of any child involved.

4. For records made available to the public pursuant to this section:

(1) The identity of any child involved except the perpetrator shall not be disclosed and all references in such records to the identity of any child involved except the perpetrator shall be redacted prior to disclosure to the public; and

(2) All information that may identify or lead to the disclosure of the identity of a reporter of child abuse under sections 210.109 to 210.183, RSMo, and section 352.400, RSMo, shall not be disclosed to the public.

5. The provisions of this section shall apply to juvenile court proceedings and records specified in this section in which the initial pleadings are filed on or after July 1, 2005.

211.321. JUVENILE COURT RECORDS, CONFIDENTIALITY, EXCEPTIONS — RECORDS OF PEACE OFFICERS, EXCEPTIONS, RELEASE OF CERTAIN INFORMATION TO VICTIM. — 1. Records of juvenile court proceedings as well as all information obtained and social records prepared in the discharge of official duty for the court shall not be open to inspection or their contents disclosed, except by order of the court to persons having a legitimate interest therein, unless a petition or motion to modify is sustained which charges the child with an offense which,

if committed by an adult, would be a class A felony under the criminal code of Missouri, or capital murder, first degree murder, or second degree murder or except as provided in subsection 2 of this section. In addition, whenever a report is required under section 557.026, RSMo, there shall also be included a complete list of certain violations of the juvenile code for which the defendant had been adjudicated a delinquent while a juvenile. This list shall be made available to the probation officer and shall be included in the presentence report. The violations to be included in the report are limited to the following: rape, sodomy, murder, kidnapping, robbery, arson, burglary or any acts involving the rendering or threat of serious bodily harm. The supreme court may promulgate rules to be followed by the juvenile courts in separating the records.

2. In all proceedings under **[**subdivisions (1) and**]** **subdivision** (2) of subsection 1 of section 211.031, the records of the juvenile court as well as all information obtained and social records prepared in the discharge of official duty for the court shall be kept confidential and shall be open to inspection only by order of the judge of the juvenile court or as otherwise provided by statute. In all proceedings under subdivision (3) of subsection 1 of section 211.031 the records of the juvenile court as well as all information obtained and social records prepared in the discharge of official duty for the court shall be kept confidential and may be open to inspection without court order only as follows:

(1) The juvenile officer is authorized at any time:

(a) To provide information to or discuss matters concerning the child, the violation of law or the case with the victim, witnesses, officials at the child's school, law enforcement officials, prosecuting attorneys, any person or agency having or proposed to have legal or actual care, custody or control of the child, or any person or agency providing or proposed to provide treatment of the child. Information received pursuant to this paragraph shall not be released to the general public, but shall be released only to the persons or agencies listed in this paragraph;

(b) To make public information concerning the offense, the substance of the petition, the status of proceedings in the juvenile court and any other information which does not specifically identify the child or the child's family;

(2) After a child has been adjudicated delinquent pursuant to subdivision (3) of subsection 1 of section 211.031, for an offense which would be a felony if committed by an adult, the records of the dispositional hearing and proceedings related thereto shall be open to the public to the same extent that records of criminal proceedings are open to the public. However, the social summaries, investigations or updates in the nature of presentence investigations, and status reports submitted to the court by any treating agency or individual after the dispositional order is entered shall be kept confidential and shall be opened to inspection only by order of the judge of the juvenile court;

(3) As otherwise provided by statute;

(4) In all other instances, only by order of the judge of the juvenile court.

3. Peace officers' records, if any are kept, of children shall be kept separate from the records of persons seventeen years of age or over and shall not be open to inspection or their contents disclosed, except by order of the court. This subsection does not apply to children who are transferred to courts of general jurisdiction as provided by section 211.071 or to juveniles convicted under the provisions of sections 578.421 to 578.437, RSMo. This subsection does not apply to the inspection or disclosure of the contents of the records of peace officers for the purpose of pursuing a civil forfeiture action pursuant to the provisions of section 195.140, RSMo.

4. Nothing in this section shall be construed to prevent the release of information and data to persons or organizations authorized by law to compile statistics relating to juveniles. The court shall adopt procedures to protect the confidentiality of children's names and identities.

5. The court may, either on its own motion or upon application by the child or his representative, or upon application by the juvenile officer, enter an order to destroy all social histories, records, and information, other than the official court file, and may enter an order to

seal the official court file, as well as all peace officers' records, at any time after the child has reached his seventeenth birthday if the court finds that it is in the best interest of the child that such action or any part thereof be taken, unless the jurisdiction of the court is continued beyond the child's seventeenth birthday, in which event such action or any part thereof may be taken by the court at any time after the closing of the child's case.

6. Nothing in this section shall be construed to prevent the release of general information regarding the informal adjustment or formal adjudication of the disposition of a child's case to a victim or a member of the immediate family of a victim of any offense committed by the child. Such general information shall not be specific as to location and duration of treatment or detention or as to any terms of supervision.

7. Records of juvenile court proceedings as well as all information obtained and social records prepared in the discharge of official duty for the court shall be disclosed to the child fatality review panel reviewing the child's death pursuant to section 210.192, RSMo, unless the juvenile court on its own motion, or upon application by the juvenile officer, enters an order to seal the records of the victim child.

302.272. SCHOOL BUS PERMIT, QUALIFICATIONS — PERMIT RENEWAL, WHEN — FEE — TEMPORARY PERMITS — GROUNDS FOR REFUSAL TO ISSUE OR RENEW PERMIT — CRIMINAL RECORD CHECKS OF APPLICANTS. — 1. No person shall operate any school bus owned by or under contract with a public school or the state board of education unless such driver has qualified for a school bus permit under this section and complied with the pertinent rules and regulations of the department of revenue. A school bus permit shall be issued to any applicant who meets the following qualifications:

(1) The applicant has a valid state license issued under this chapter or has a license valid in any other state;

(2) The applicant is at least twenty-one years of age;

(3) The applicant has passed a medical examination, including vision and hearing tests, as prescribed by the director of revenue and, if the applicant is at least seventy years of age, the applicant shall pass the medical examination annually to maintain or renew the permit; and

(4) The applicant has successfully passed an examination for the operation of a school bus as prescribed by the director of revenue. The examination shall include, but need not be limited to, a written skills examination of applicable laws, rules and procedures, and a driving test in the type of vehicle to be operated. The test shall be completed in the appropriate class of vehicle to be driven. For purposes of this section classes of school buses shall comply with the Commercial Motor Vehicle Safety Act of 1986 (Title XII of Pub. Law 99-570).

2. Except as otherwise provided in this section, a school bus permit shall be renewed every three years and shall require the applicant to provide a medical examination as specified in subdivision (3) of subsection 1 of this section and to successfully pass a written skills examination as prescribed by the director of revenue in consultation with the department of elementary and secondary education. If the applicant is at least seventy years of age, the school bus permit shall be renewed annually, and the applicant shall successfully pass the examination prescribed in subdivision (4) of subsection 1 of this section prior to receiving the renewed permit. The director may waive the written skills examination on renewal of a school bus permit upon verification of the applicant's successful completion within the preceding twelve months of a training program which has been approved by the director in consultation with the department of elementary and secondary education and which is at least eight hours in duration with special instruction in school bus driving.

3. The fee for a new or renewed school bus permit shall be three dollars.

4. Upon the applicant's completion of the requirements of subsections 1, 2**,** and 3 of this section, the director of revenue shall issue a temporary school bus permit to the applicant until such time as a permanent school bus permit shall be issued following the record clearance as provided in subsection 6 of this section.

5. The director of revenue, to the best of the director's knowledge, shall not issue or renew a school bus permit to any applicant:

(1) Whose driving record shows that such applicant's privilege to operate a motor vehicle has been suspended, revoked or disqualified or whose driving record shows a history of moving vehicle violations;

(2) Who has pled guilty to or been found guilty of any felony or misdemeanor for violation of drug regulations as defined in chapter 195, RSMo; of any felony for an offense against the person as defined by chapter 565, RSMo, or any other offense against the person involving **child abuse or** the endangerment of a child as prescribed by law; of any misdemeanor or felony for a sexual offense as defined by chapter 566, RSMo; of any misdemeanor or felony for prostitution as defined by chapter 567, RSMo; of any misdemeanor or felony for an offense against the family as defined in chapter 568, RSMo; of any felony or misdemeanor for a weapons offense as defined by chapter 571, RSMo; of any misdemeanor or felony for pornography or related offense as defined by chapter 573, RSMo; or of any similar crime in any federal, state, municipal or other court of similar jurisdiction of which the director has knowledge;

(3) Who has pled guilty to or been found guilty of any felony involving robbery, arson, burglary or a related offense as defined by chapter 569, RSMo; or any similar crime in any federal, state, municipal or other court of similar jurisdiction within the preceding ten years of which the director has knowledge**;**

(4) Who is listed on the child abuse and neglect registry.

6. The **[**department of social services or the**]** Missouri highway patrol**[**, whichever has access to applicable records,**]** shall provide a record of clearance or denial of clearance for any applicant for a school bus permit for the **[**convictions**] offenses** specified in subdivisions (2) and (3) of subsection 5 of this section. The Missouri highway patrol in providing the record of clearance or denial of clearance for any such applicant is authorized to obtain from the Federal Bureau of Investigation any information which might aid the Missouri highway patrol in providing such record of clearance or denial of clearance. The **[**department of social services or the**]** Missouri highway patrol shall provide the record of clearance or denial of clearance within thirty days of the date requested, relying on information available at that time, except that the **[**department of social services or the**]** Missouri highway patrol shall provide any information subsequently discovered to the department of revenue.

7. Beginning January 1, 2005, the director shall request that the department of social services determine whether the applicant is listed on the child abuse and neglect registry and shall require the applicant to submit two sets of fingerprints. One set of fingerprints shall be used by the highway patrol in order to search the criminal history repository and the second set shall be forwarded to the Federal Bureau of Investigation for searching the federal criminal history files.

8. The applicant shall pay the fee for the state criminal history information pursuant to section 43.530, RSMo, and pay the appropriate fee determined by the Federal Bureau of Investigation for the federal criminal history record when he or she applies for the school bus permit pursuant to this section. The director shall distribute the fees collected for the state and federal criminal histories to the highway patrol.

9. If, as a result of the criminal history background check and the check of the child abuse and neglect registry required by this section, it is determined that an applicant has pled guilty or nolo contendere to, or been found guilty of an offense listed in subdivisions (2) and (3) of subsection 5 of this section, or a similar offense if committed in any other state, the United States, or any other country, regardless of imposition of sentence, or the applicant's name appears on the child abuse and neglect registry the director of revenue shall not issue or renew a school bus permit to such applicant.

10. The director may adopt any rules and regulations necessary to carry out the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become

effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after the effective date of this section, shall be invalid and void.

431.056. MINOR'S ABILITY TO CONTRACT FOR CERTAIN PURPOSES — CONDITIONS. — **1.** A minor shall be qualified and competent to contract for housing, employment, purchase of an automobile, receipt of a student loan, admission to high school or postsecondary school, obtaining medical care, establishing a bank account and admission to a shelter for victims of domestic violence, as defined in section 455.200, RSMo, or a homeless shelter if:

(1) The minor is sixteen or seventeen years of age; and

(2) The minor is homeless, as defined in **[**subdivisions (1), (2) and (3) of**]** subsection 1 of section 167.020, RSMo, or a victim of domestic violence, as defined in section 455.200, RSMo, unless the child is under the supervision of the **children's** division **[**of family services**]** or the jurisdiction of the juvenile court; and

(3) The minor is self-supporting**, such that the minor is without the physical or financial support of a parent or legal guardian**; and

(4) The minor's **[**parents have**] parent or legal guardian has** consented to the minor living independent of the parents' **or guardians'** control. **Consent may be expressed or implied, such that:**

(1) Expressed consent is any verbal or written statement made by the parents or guardian of the minor displaying approval or agreement that the minor may live independently of the parent's or guardian's control;

(2) Implied consent is any action made by the parent or guardian of the minor that indicates the parent or guardian is unwilling or unable to adequately care for the minor. Such actions may include, but are not limited to:

(a) Barring the minor from the home or otherwise indicating that the minor is not welcome to stay;

(b) Refusing to provide any or all financial support for the minor; or

(c) Abusing or neglecting the minor, as defined in section 210.110, RSMo.

452.375. CUSTODY — DEFINITIONS — FACTORS DETERMINING CUSTODY — PROHIBITED, WHEN — PUBLIC POLICY OF STATE — CUSTODY OPTIONS PLAN, WHEN REQUIRED — FINDINGS REQUIRED, WHEN — EXCHANGE OF INFORMATION AND RIGHT TO CERTAIN RECORDS, FAILURE TO DISCLOSE — FEES, COSTS ASSESSED, WHEN — JOINT CUSTODY NOT TO PRECLUDE CHILD SUPPORT — SUPPORT, HOW DETERMINED — DOMESTIC VIOLENCE OR ABUSE, SPECIFIC FINDINGS. — 1. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Custody", means joint legal custody, sole legal custody, joint physical custody or sole physical custody or any combination thereof;

(2) "Joint legal custody" means that the parents share the decision-making rights, responsibilities, and authority relating to the health, education and welfare of the child, and, unless allocated, apportioned, or decreed, the parents shall confer with one another in the exercise of decision-making rights, responsibilities, and authority;

(3) "Joint physical custody" means an order awarding each of the parents significant, but not necessarily equal, periods of time during which a child resides with or is under the care and supervision of each of the parents. Joint physical custody shall be shared by the parents in such a way as to assure the child of frequent, continuing and meaningful contact with both parents;

(4) "Third-party custody" means a third party designated as a legal and physical custodian pursuant to subdivision (5) of subsection 5 of this section.

2. The court shall determine custody in accordance with the best interests of the child. The court shall consider all relevant factors including:

(1) The wishes of the child's parents as to custody and the proposed parenting plan submitted by both parties;

(2) The needs of the child for a frequent, continuing and meaningful relationship with both parents and the ability and willingness of parents to actively perform their functions as mother and father for the needs of the child;

(3) The interaction and interrelationship of the child with parents, siblings, and any other person who may significantly affect the child's best interests;

(4) Which parent is more likely to allow the child frequent, continuing and meaningful contact with the other parent;

(5) The child's adjustment to the child's home, school, and community;

(6) The mental and physical health of all individuals involved, including any history of abuse of any individuals involved. If the court finds that a pattern of domestic violence has occurred, and, if the court also finds that awarding custody to the abusive parent is in the best interest of the child, then the court shall enter written findings of fact and conclusions of law. Custody and visitation rights shall be ordered in a manner that best protects the child **and any other child or children for whom the parent has custodial or visitation rights,** and the parent or other family or household member who is the victim of domestic violence from any further harm;

(7) The intention of either parent to relocate the principal residence of the child; and

(8) The wishes of a child as to the child's custodian.

The fact that a parent sends his or her child or children to a home school, as defined in section 167.031, RSMo, shall not be the sole factor that a court considers in determining custody of such child or children.

3. **In any court proceedings relating to custody of a child,** the court shall not award custody **or unsupervised visitation** of a child to a parent if such parent **or any person residing with such parent** has been found guilty of, or pled guilty to, a felony violation of chapter 566, RSMo, **except for section 566.034, RSMo,** when **[**the**] a** child was the victim, or a violation of **[**chapter 568, RSMo, except for section 568.040**] section 568.020, 568.045, 568.060, 568.065, 568.070, 568.080, 568.090, or 568.175, RSMo, except for subdivision (1) of subsection 1 of section 568.060**, RSMo, when **[**the**] a** child was the victim**, or an offense committed in another state when a child is the victim, that would be a felony violation of chapter 566, RSMo, except for section 566.034, RSMo, or section 568.020, 568.045, 568.060, 568.065, 568.070, 568.080, 568.090, or 568.175, RSMo, except for subdivision (1) of subsection 1 of section 568.060, RSMo, if committed in Missouri; provided however, nothing in this subsection shall preclude the court from exercising its discretion regarding the awarding of custody or visitation for child if the parent or any person residing in the home has been found guilty of, or pled guilty or nolo contendere to any offense excepted or excluded in this subsection**.

4. The general assembly finds and declares that it is the public policy of this state that frequent, continuing and meaningful contact with both parents after the parents have separated or dissolved their marriage is in the best interest of the child, except for cases where the court specifically finds that such contact is not in the best interest of the child, and that it is the public policy of this state to encourage parents to participate in decisions affecting the health, education and welfare of their children, and to resolve disputes involving their children amicably through alternative dispute resolution. In order to effectuate these policies, the court shall determine the custody arrangement which will best assure both parents participate in such decisions and have frequent, continuing and meaningful contact with their children so long as it is in the best interests of the child.

5. Prior to awarding the appropriate custody arrangement in the best interest of the child, the court shall consider each of the following as follows:

(1) Joint physical and joint legal custody to both parents, which shall not be denied solely for the reason that one parent opposes a joint physical and joint legal custody award. The residence of one of the parents shall be designated as the address of the child for mailing and educational purposes;

(2) Joint physical custody with one party granted sole legal custody. The residence of one of the parents shall be designated as the address of the child for mailing and educational purposes;

(3) Joint legal custody with one party granted sole physical custody;

(4) Sole custody to either parent; or

(5) Third-party custody or visitation:

(a) When the court finds that each parent is unfit, unsuitable, or unable to be a custodian, or the welfare of the child requires, and it is in the best interests of the child, then custody, temporary custody or visitation may be awarded to any other person or persons deemed by the court to be suitable and able to provide an adequate and stable environment for the child. Before the court awards custody, temporary custody or visitation to a third person under this subdivision, the court shall make that person a party to the action;

(b) Under the provisions of this subsection, any person may petition the court to intervene as a party in interest at any time as provided by supreme court rule.

6. If the parties have not agreed to a custodial arrangement, or the court determines such arrangement is not in the best interest of the child, the court shall include a written finding in the judgment or order based on the public policy in subsection 4 of this section and each of the factors listed in subdivisions (1) to (8) of subsection 2 of this section detailing the specific relevant factors that made a particular arrangement in the best interest of the child. If a proposed custodial arrangement is rejected by the court, the court shall include a written finding in the judgment or order detailing the specific relevant factors resulting in the rejection of such arrangement.

7. Upon a finding by the court that either parent has refused to exchange information with the other parent, which shall include but not be limited to information concerning the health, education and welfare of the child, the court shall order the parent to comply immediately and to pay the prevailing party a sum equal to the prevailing party's cost associated with obtaining the requested information, which shall include but not be limited to reasonable attorney's fees and court costs.

8. As between the parents of a child, no preference may be given to either parent in the awarding of custody because of that parent's age, sex, or financial status, nor because of the age or sex of the child.

9. Any judgment providing for custody shall include a specific written parenting plan setting forth the terms of such parenting plan arrangements specified in subsection 7 of section 452.310. Such plan may be a parenting plan submitted by the parties pursuant to section 452.310 or, in the absence thereof, a plan determined by the court, but in all cases, the custody plan approved and ordered by the court shall be in the court's discretion and shall be in the best interest of the child.

10. Unless a parent has been denied custody rights pursuant to this section or visitation rights under section 452.400, both parents shall have access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records. If the parent without custody has been granted restricted or supervised visitation because the court has found that the parent with custody or **[**the**]** **any** child has been the victim of domestic violence, as defined in section 455.200, RSMo, by the parent without custody, the court may order that the reports and records made available pursuant to this subsection not include the address of the parent with custody or the child. Unless a parent has been denied custody rights pursuant to this section or visitation rights under section 452.400, any judgment of dissolution or other applicable court order shall specifically allow both parents access to such records and reports.

11. Except as otherwise precluded by state or federal law, if any individual, professional, public or private institution or organization denies access or fails to provide or disclose any and all records and information, including, but not limited to, past and present dental, medical and school records pertaining to a minor child, to either parent upon the written request of such parent, the court shall, upon its finding that the individual, professional, public or private institution or organization denied such request without good cause, order that party to comply immediately with such request and to pay to the prevailing party all costs incurred, including, but not limited to, attorney's fees and court costs associated with obtaining the requested information.

12. An award of joint custody does not preclude an award of child support pursuant to section 452.340 and applicable supreme court rules. The court shall consider the factors contained in section 452.340 and applicable supreme court rules in determining an amount reasonable or necessary for the support of the child.

13. If the court finds that domestic violence or abuse, as defined in sections 455.010 and 455.501, RSMo, has occurred, the court shall make specific findings of fact to show that the custody or visitation arrangement ordered by the court best protects the child and the parent or other family or household member who is the victim of domestic violence or abuse, as defined in sections 455.010 and 455.501, RSMo, **and any other children for whom such parent has custodial or visitation rights** from any further harm.

452.400. VISITATION RIGHTS, AWARDED WHEN — HISTORY OF DOMESTIC VIOLENCE, CONSIDERATION OF — PROHIBITED, WHEN — MODIFICATION OF, WHEN — SUPERVISED VISITATION DEFINED — NONCOMPLIANCE WITH ORDER, EFFECT OF — FAMILY ACCESS MOTIONS, PROCEDURE, PENALTY FOR VIOLATION — ATTORNEY FEES AND COSTS ASSESSED, WHEN. — 1. A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger the child's physical health or impair his **or her** emotional development. The court shall enter an order specifically detailing the visitation rights of the parent without physical custody rights **to the child and any other children for whom such parent has custodial or visitation rights**. In determining the granting of visitation rights, the court shall consider evidence of domestic violence. If the court finds that domestic violence has occurred, the court may find that granting visitation to the abusive party is in the best interests of the child. The court shall not grant visitation to the parent not granted custody if such parent **or any person residing with such parent** has been found guilty of or pled guilty to a felony violation of chapter 566, RSMo, **except for section 566.034, RSMo,** when **[**the**]** **a** child was the victim, or a violation of **[**chapter 568, RSMo, except for section 568.040**]** **section 568.020, 568.045, 568.060, 568.065, 568.070, 568.080, 568.090, or 568.175, RSMo, except for subdivision (1) of subsection 1 of section 568.060**, RSMo, when **[**the**]** **a** child was the victim**,** or an offense committed in another state**[**,**]** when **[**the**]** **a** child is the victim, that would be a felony violation of chapter 566, RSMo, **except for section 566.034, RSMo,** or chapter **[**568, RSMo, except for section 568.040**]** **section 568.020, 568.045, 568.060, 568.065, 568.070, 568.080, 568.090, or 568.175, RSMo, except for subdivision (1) of subsection 1 of section 568.060**, RSMo, if committed in Missouri**; provided however, nothing in this subsection shall preclude the court from exercising its discretion regarding the awarding of custody or visitation for child if the parent or any person residing in the home has been found guilty of, or pled guilty or nolo contendere to any offense excepted or excluded in this subsection**. The court shall consider the parent's history of inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault on other persons and shall grant visitation in a manner that best protects the child and the parent or other family or household member who is the victim of domestic violence**, and any other children for whom the parent has custodial or visitation rights** from any further harm. The court, if requested by a party, shall make specific findings of fact to show that the visitation arrangements made by the court best protect the child or the parent or

other family or household member who is the victim of domestic violence**, or any other child for whom the parent has custodial or visitation rights** from any further harm.

2. The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child, but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger the child's physical health or impair his **or her** emotional development. **In any proceeding modifying visitation rights, the court shall not grant unsupervised visitation to a parent if the parent or any person residing with such parent has been found guilty of or pled guilty to a felony violation of chapter 566, RSMo, except for section 566.034, RSMo, when a child was the victim, or a violation of sections 568.020, 568.045, 568.060, 568.065, 568.070, 568.080, 568.090, and 568.175, RSMo, except for subdivision (1) of subsection 1 of section 568.060, RSMo, when a child was the victim, or an offense committed in another state when a child is the victim, that would be a felony violation of chapter 566, RSMo, except for section 566.034, RSMo, or a violation of sections 568.020, 568.045, 568.060, 568.065, 568.070, 568.080, 568.090, and 568.175, RSMo, except for subdivision (1) of subsection 1 of section 568.060, RSMo, if committed in Missouri; provided however, nothing in this subsection shall preclude the court from exercising its discretion regarding the placement of child in a home in which the parent or any person residing in the home has been found guilty of, or pled guilty or nolo contendere to any offense excepted or excluded in this subsection.** When a court restricts a parent's visitation rights or when a court orders supervised visitation because of allegations of abuse or domestic violence, a showing of proof of treatment and rehabilitation shall be made to the court before unsupervised visitation may be ordered. "Supervised visitation", as used in this section, is visitation which takes place in the presence of a responsible adult appointed by the court for the protection of the child.

3. The court shall mandate compliance with its order by all parties to the action, including parents, children and third parties. In the event of noncompliance, the aggrieved person may file a verified motion for contempt. If custody, visitation or third-party custody is denied or interfered with by a parent or third party without good cause, the aggrieved person may file a family access motion with the court stating the specific facts which constitute a violation of the judgment of dissolution or legal separation. The state courts administrator shall develop a simple form for pro se motions to the aggrieved person, which shall be provided to the person by the circuit clerk. Clerks, under the supervision of a circuit clerk, shall explain to aggrieved parties the procedures for filing the form. Notice of the fact that clerks will provide such assistance shall be conspicuously posted in the clerk's offices. The location of the office where the family access motion may be filed shall be conspicuously posted in the court building. The performance of duties described in this section shall not constitute the practice of law as defined in section 484.010, RSMo. Such form for pro se motions shall not require the assistance of legal counsel to prepare and file. The cost of filing the motion shall be the standard court costs otherwise due for instituting a civil action in the circuit court.

4. Within five court days after the filing of the family access motion pursuant to subsection 3 of this section, the clerk of the court shall issue a summons pursuant to applicable state law, and applicable local or supreme court rules. A copy of the motion shall be personally served upon the respondent by personal process server as provided by law or by any sheriff. Such service shall be served at the earliest time and shall take priority over service in other civil actions, except those of an emergency nature or those filed pursuant to chapter 455, RSMo. The motion shall contain the following statement in boldface type:

"PURSUANT TO SECTION 452.400, RSMO, YOU ARE REQUIRED TO RESPOND TO THE CIRCUIT CLERK WITHIN TEN DAYS OF THE DATE OF SERVICE. FAILURE TO RESPOND TO THE CIRCUIT CLERK MAY RESULT IN THE FOLLOWING:

(1) AN ORDER FOR A COMPENSATORY PERIOD OF CUSTODY, VISITATION OR THIRD-PARTY CUSTODY AT A TIME CONVENIENT FOR THE AGGRIEVED PARTY NOT LESS THAN THE PERIOD OF TIME DENIED;

(2) PARTICIPATION BY THE VIOLATOR IN COUNSELING TO EDUCATE THE VIOLATOR ABOUT THE IMPORTANCE OF PROVIDING THE CHILD WITH A CONTINUING AND MEANINGFUL RELATIONSHIP WITH BOTH PARENTS;

(3) ASSESSMENT OF A FINE OF UP TO FIVE HUNDRED DOLLARS AGAINST THE VIOLATOR;

(4) REQUIRING THE VIOLATOR TO POST BOND OR SECURITY TO ENSURE FUTURE COMPLIANCE WITH THE COURT'S ORDERS;

(5) ORDERING THE VIOLATOR TO PAY THE COST OF COUNSELING TO REESTABLISH THE PARENT-CHILD RELATIONSHIP BETWEEN THE AGGRIEVED PARTY AND THE CHILD; AND

(6) A JUDGMENT IN AN AMOUNT NOT LESS THAN THE REASONABLE EXPENSES, INCLUDING ATTORNEY'S FEES AND COURT COSTS ACTUALLY INCURRED BY THE AGGRIEVED PARTY AS A RESULT OF THE DENIAL OF CUSTODY, VISITATION OR THIRD-PARTY CUSTODY.".

5. If an alternative dispute resolution program is available pursuant to section 452.372, the clerk shall also provide information to all parties on the availability of any such services, and within fourteen days of the date of service, the court may schedule alternative dispute resolution.

6. Upon a finding by the court pursuant to a motion for a family access order or a motion for contempt that its order for custody, visitation or third-party custody has not been complied with, without good cause, the court shall order a remedy, which may include, but not be limited to:

(1) A compensatory period of visitation, custody or third-party custody at a time convenient for the aggrieved party not less than the period of time denied;

(2) Participation by the violator in counseling to educate the violator about the importance of providing the child with a continuing and meaningful relationship with both parents;

(3) Assessment of a fine of up to five hundred dollars against the violator payable to the aggrieved party;

(4) Requiring the violator to post bond or security to ensure future compliance with the court's access orders; and

(5) Ordering the violator to pay the cost of counseling to reestablish the parent-child relationship between the aggrieved party and the child.

7. The reasonable expenses incurred as a result of denial or interference with custody or visitation, including attorney's fees and costs of a proceeding to enforce visitation rights, custody or third-party custody, shall be assessed, if requested and for good cause, against the parent or party who unreasonably denies or interferes with visitation, custody or third-party custody. In addition, the court may utilize any and all powers relating to contempt conferred on it by law or rule of the Missouri supreme court.

8. Final disposition of a motion for a family access order filed pursuant to this section shall take place not more than sixty days after the service of such motion, unless waived by the parties or determined to be in the best interest of the child. Final disposition shall not include appellate review.

9. Motions filed pursuant to this section shall not be deemed an independent civil action from the original action pursuant to which the judgment or order sought to be enforced was entered.

452.402. GRANDPARENT'S VISITATION RIGHTS GRANTED, WHEN, TERMINATED, WHEN — GUARDIAN AD LITEM APPOINTED, WHEN — ATTORNEY FEES AND COSTS ASSESSED, WHEN. — 1. The court may grant reasonable visitation rights to the grandparents of the child and issue any necessary orders to enforce the decree. The court may grant grandparent visitation when:

(1) The parents of the child have filed for a dissolution of their marriage. A grandparent shall have the right to intervene in any dissolution action solely on the issue of visitation rights.

Grandparents shall also have the right to file a motion to modify the original decree of dissolution to seek visitation rights when **[**such rights have**]** **visitation has** been denied to them; **or**

(2) One parent of the child is deceased and the surviving parent denies reasonable visitation **[**rights**]** to a parent of the deceased parent of the child; **or**

(3) The child has resided in the grandparent's home for at least six months within the twenty-four month period immediately preceding the filing of the petition; **and**

(4) A grandparent is unreasonably denied visitation with the child for a period exceeding ninety days. However, if the natural parents are legally married to each other and are living together with the child, a grandparent may not file for visitation pursuant to this subdivision**[**; or

(5) The child is adopted by a stepparent, another grandparent or other blood relative**]**.

2. The court shall determine if the visitation by the grandparent would be in the child's best interest or if it would endanger the child's physical health or impair the child's emotional development. Visitation may only be ordered when the court finds such visitation to be in the best interests of the child. However, when the parents of the child are legally married to each other and are living together with the child, it shall be a rebuttable presumption that such parents know what is in the best interest of the child. The court may order reasonable conditions or restrictions on grandparent visitation.

3. If the court finds it to be in the best interests of the child, the court may appoint a guardian ad litem for the child. The guardian ad litem shall be an attorney licensed to practice law in Missouri. The guardian ad litem may, for the purpose of determining the question of grandparent visitation rights, participate in the proceedings as if such guardian ad litem were a party. The court shall enter judgment allowing a reasonable fee to the guardian ad litem.

4. A home study, as described by section 452.390, may be ordered by the court to assist in determining the best interests of the child.

5. The court may, in its discretion, consult with the child regarding the child's wishes in determining the best interest of the child.

6. The right of a grandparent to **[**seek or**]** maintain visitation rights pursuant to this section may terminate upon the adoption of the child.

7. The court may award reasonable attorneys fees and expenses to the prevailing party.

452.423. GUARDIAN AD LITEM APPOINTED, WHEN, DUTIES — DISQUALIFICATION, WHEN — FEES — VOLUNTEER ADVOCATES, EXPENSES. — 1. In all proceedings for child custody or for dissolution of marriage or legal separation where custody, visitation, or support of a child is a contested issue, the court may appoint a guardian ad litem. **[**The court shall appoint a guardian ad litem in any proceeding in which child abuse or neglect is alleged.**]** Disqualification of a guardian ad litem shall be ordered in any legal proceeding only pursuant to **[**chapter 210, RSMo, or**]** this chapter, upon the filing of a written application by any party within ten days of appointment, or within ten days of August 28, 1998, if the appointment occurs prior to August 28, 1998. Each party shall be entitled to one disqualification of a guardian ad litem **appointed under this subsection** in each proceeding, except a party may be entitled to additional disqualifications of a guardian ad litem for good cause shown.

2. **The court shall appoint a guardian ad litem in any proceeding in which child abuse or neglect is alleged.**

3. The guardian ad litem shall:

(1) Be the legal representative of the child at the hearing, and may examine, cross-examine, subpoena witnesses and offer testimony;

(2) Prior to the hearing, conduct all necessary interviews with persons having contact with or knowledge of the child in order to ascertain the child's wishes, feelings, attachments and attitudes. If appropriate, the child should be interviewed;

(3) Request the juvenile officer to cause a petition to be filed in the juvenile division of the circuit court if the guardian ad litem believes the child alleged to be abused or neglected is in danger.

[3.**]** **4.** The appointing judge shall require the guardian ad litem to faithfully discharge such guardian ad litem's duties, and upon failure to do so shall discharge such guardian ad litem and appoint another. The judge in making appointments pursuant to this section shall give preference to persons who served as guardian ad litem for the child in the earlier proceeding, unless there is a reason on the record for not giving such preference.

[4.**]** **5.** The guardian ad litem shall be awarded a reasonable fee for such services to be set by the court. The court, in its discretion, may award such fees as a judgment to be paid by any party to the proceedings or from public funds. Such an award of guardian fees shall constitute a final judgment in favor of the guardian ad litem. Such final judgment shall be enforceable against the parties in accordance with chapter 513, RSMo.

[5.**]** **6.** The court may designate volunteer advocates, who may or may not be attorneys licensed to practice law, to assist in the performance of the guardian ad litem duties for the court. The volunteer advocate shall be provided with all reports relevant to the case made to or by any agency or person and shall have access to all records of such agencies or persons relating to the child or such child's family members. Any such designated person shall receive no compensation from public funds. This shall not preclude reimbursement for reasonable expenses.

452.455. PETITION FOR MODIFICATION — PROCEDURE — CHILD SUPPORT DELINQUENCY, EFFECT OF. — 1. Any petition for modification of child custody decrees filed under the provisions of section 452.410, or sections 452.440 to 452.450, shall be verified and, if the original proceeding originated in the state of Missouri, shall be filed in that original case, but service shall be obtained and responsive pleadings may be filed as in any original proceeding.

2. Before making a decree under the provisions of section 452.410, or sections 452.440 to 452.450, the litigants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child must be served in the manner provided by the rules of civil procedure and applicable court rules and may within thirty days after the date of service (forty-five days if service by publication) file a verified answer. If any of these persons is outside this state, notice and opportunity to be heard shall be given pursuant to section 452.460.

3. In any case in which the paternity of a child has been determined by a court of competent jurisdiction and where the noncustodial parent is delinquent in the payment of child support in an amount in excess of ten thousand dollars, the custodial parent shall have the right to petition a court of competent jurisdiction for the termination of the parental rights of the noncustodial parent.

4. When a person filing a petition for modification of a child custody decree owes past due child support to a custodial parent in an amount in excess of ten thousand dollars, such person shall post a bond in the amount of past due child support owed as ascertained by the division of child support enforcement or reasonable legal fees of the custodial parent, whichever is greater, before the filing of the petition. The court shall hold the bond in escrow until the modification proceedings pursuant to this section have been concluded wherein such bond shall be transmitted to the division of child support enforcement for disbursement to the custodial parent.

453.020. PETITION — GUARDIAN AD LITEM APPOINTED — FEE. — **1.** The petition for adoption shall state:

(1) The name, sex and place of birth of the person sought to be adopted;

(2) The name of his parents, if known to the petitioner;

(3) If the person sought to be adopted is a minor, the fact that petitioner has the ability to properly care for, maintain and educate such person; and

(4) If it is desired to change the name of such person, the new name.

2. The petition for adoption shall include payment of a fifty dollar filing fee which shall be used to fund the putative father registry established pursuant to section 192.016, RSMo.

453.025. APPOINTMENT OF GUARDIAN AD LITEM, WHEN — FEE — DUTIES OF GUARDIAN AD LITEM. — 1. The court shall, in all cases where the person sought to be adopted is under eighteen years of age, appoint a guardian ad litem, if not previously appointed pursuant to section 210.160, RSMo, to represent the person sought to be adopted.

2. When the parent is a minor or incompetent, the court shall appoint a guardian ad litem to represent such parent.

3. **The guardian ad litem may be awarded a reasonable fee for such services to be set by the court. The court, in its discretion, may award such fees as a judgment to be paid by any party to the proceedings or from public funds. Such an award of guardian fees shall constitute a final judgment in favor of the guardian ad litem. Such final judgment shall be enforceable against the parties in accordance with chapter 513, RSMo.**

4. The guardian ad litem shall:

(1) Be the legal advocate for the best interest of the party he is appointed to represent with the power and authority to cross-examine, subpoena witnesses, and offer testimony;

(2) Initiate an appeal of any disposition that he determines to be adverse to the interests of the party he represents; and

(3) Ascertain the child's wishes, feelings and attitudes regarding the adoption by interviewing persons with knowledge of the child, and if appropriate, to meet with the child.

453.030. APPROVAL OF COURT REQUIRED — HOW OBTAINED, CONSENT OF CHILD AND PARENT REQUIRED, WHEN — VALIDITY OF CONSENT — WITHDRAWAL OF CONSENT — FORMS, DEVELOPED BY DEPARTMENT, CONTENTS — COURT APPOINTMENT OF ATTORNEY, WHEN. — 1. In all cases the approval of the court of the adoption shall be required and such approval shall be given or withheld as the welfare of the person sought to be adopted may, in the opinion of the court, demand.

2. The written consent of the person to be adopted shall be required in all cases where the person sought to be adopted is fourteen years of age or older, except where the court finds that such child has not sufficient mental capacity to give the same.

3. With the exceptions specifically enumerated in section 453.040, when the person sought to be adopted is under the age of eighteen years, the written consent of the following persons shall be required and filed in and made a part of the files and record of the proceeding:

(1) The mother of the child; and

(2) **[**Any**] Only the** man who:

(a) Is presumed to be the father pursuant to the subdivision (1), (2), or (3) of subsection 1 of section 210.822, RSMo; or

(b) Has filed an action to establish his paternity in a court of competent jurisdiction no later than fifteen days after the birth of the child **and has served a copy of the petition on the mother in accordance with section 506.100, RSMo**; or

(c) Filed with the putative father registry pursuant to section 192.016, RSMo, a notice of intent to claim paternity or an acknowledgment of paternity either prior to or within fifteen days after the child's birth, and has filed an action to establish his paternity in a court of competent jurisdiction no later than fifteen days after the birth of the child; or

(3) The child's current adoptive parents or other legally recognized mother and father.

Upon request by the petitioner and within one business day of such request, the clerk of the local court shall verify whether such written consents have been filed with the court.

4. The written consent required in subdivisions (2) and (3) of subsection 3 of this section may be executed before or after the commencement of the adoption proceedings, and shall be acknowledged before a notary public. In lieu of such acknowledgment, the signature of the person giving such written consent shall be witnessed by the signatures of at least two adult persons whose signatures and addresses shall be plainly written thereon. The two adult witnesses shall not be the prospective adoptive parents or any attorney representing a party to the adoption proceeding. The notary public or witnesses shall verify the identity of the party signing the consent.

5. The written consent required in subdivision (1) of subsection 3 of this section by the birth parent shall not be executed anytime before the child is forty-eight hours old. Such written consent shall be executed in front of a judge or a notary public. In lieu of such acknowledgment, the signature of the person giving such written consent shall be witnessed by the signatures of at least two adult persons who are present at the execution whose signatures and addresses shall be plainly written thereon and who determine and certify that the consent is knowingly and freely given. The two adult witnesses shall not be the prospective adoptive parents or any attorney representing a party to the adoption proceeding. The notary public or witnesses shall verify the identity of the party signing the consent.

6. The written consents shall be reviewed and, if found to be in compliance with this section, approved by the court within three business days of such consents being presented to the court. Upon review, in lieu of approving the consent within three business days, the court may set a date for a prompt evidentiary hearing upon notice to the parties. Failure to review and approve the written consent within three business days shall not void the consent, but a party may seek a writ of mandamus from the appropriate court, unless an evidentiary hearing has been set by the court pursuant to this subsection.

7. The written consent required in subsection 3 of this section may be withdrawn anytime until it has been reviewed and accepted by a judge.

8. A consent form shall be developed through rules and regulations promulgated by the department of social services. No rule or portion of a rule promulgated under the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo. If a written consent is obtained after August 28, 1997, but prior to the development of a consent form by the department and the written consent complies with the provisions of subsection 9 of this section, such written consent shall be deemed valid.

9. However, the consent form must specify that:

(1) The birth parent understands the importance of identifying all possible fathers of the child and **[**shall**]** **may** provide the names of all such persons **[**unless the mother has good cause as to why she should not name such persons. The court shall determine if good cause is justifiable. By signing the consent, the birth parent acknowledges that those having an interest in the child have been supplied with all available information to assist in locating all possible fathers**]**; and

(2) The birth parent understands that if he denies paternity, but consents to the adoption, he waives any future interest in the child.

10. The written consent to adoption required by subsection 3 and executed through procedures set forth in subsection 5 of this section shall be valid and effective even though the parent consenting was under eighteen years of age, if such parent was represented by a guardian ad litem, at the time of the execution thereof.

11. Where the person sought to be adopted is eighteen years of age or older, his written consent alone to his adoption shall be sufficient.

12. A birth parent, including a birth parent less than eighteen years of age, shall have the right to legal representation and payment of any reasonable legal fees incurred throughout the adoption process. In addition, the court may appoint an attorney to represent a birth parent if:

(1) A birth parent requests representation;

(2) The court finds that hiring an attorney to represent such birth parent would cause a financial hardship for the birth parent; and

(3) The birth parent is not already represented by counsel.

13. Except in cases where the court determines that the adoptive parents are unable to pay reasonable attorney fees and appoints pro bono counsel for the birth parents, the court shall order the costs of the attorney fees incurred pursuant to subsection 12 of this section to be paid by the prospective adoptive parents or the child-placing agency.

453.060. SERVICE ON PARTIES, HOW ACCOMPLISHED — PETITIONERS' NAMES NOT TO APPEAR ON COPY OF PETITION SERVED WITH SUMMONS, WHEN — RIGHT OF APPEAL — WAIVER OF SERVICE — PUTATIVE FATHER UNKNOWN, PROCEDURE. — 1. A writ of summons and a copy of the petition shall be served on:

(1) Any person, agency, organization or institution whose consent to the adoption is required by law unless such consent is filed in court;

(2) Any person whose consent to the adoption, according to the allegation of the petition for adoption, is not required for the reasons set forth in subdivision (6) or (7) of section 453.040;

(3) Any person, agency, organization or institution, within or without the state, having custody of the child sought to be adopted under a decree of a court of competent jurisdiction even though its consent to the adoption is not required by law;

(4) The legally appointed guardian of the child;

(5) Any person adjudicated by a court of this state or another state, a territory of the United States or another country to be the father of the child;

(6) Any person who has timely filed a notice of intent to claim paternity of the child pursuant to section 192.016, RSMo, or an acknowledgment of paternity pursuant to section 193.087, RSMo.

2. Except as provided in this section and section 453.014, it is not necessary to serve any person, agency, organization or institution whose consent is not required pursuant to the provisions of sections 453.030 to 453.050.

3. If service of summons cannot be made in the manner prescribed in section 506.150, RSMo, then the service shall be made by mail or publication as provided in section 506.160, RSMo.

4. Upon service, whether personal or constructive, the court may act upon the petition without the consent of any party, except that of a parent whose consent is required by sections 453.030 to 453.050, and the judgment is binding on all parties so served. Any such party has the right to appeal from the judgment in the manner and form provided by the civil code of Missouri.

5. In all cases where the putative father is unknown, **[**service shall be made by publication on "John Doe" as provided in section 506.160, RSMo**] a search of the Missouri putative father registry shall be conducted to determine if a man has filed or been registered with the registry. If such a man is discovered, service shall be carried out according to the provisions of this section**.

6. Upon request, the court may order that the writ of summons and copy of the petition required by this section may be served without the names and addresses of the petitioners when the court deems it to be in the best interests of the child.

453.061. CONCEPTION OF A CHILD, MAN DEEMED TO BE ON NOTICE, WHEN. — Any man who has engaged in sexual intercourse with a woman is deemed to be on notice that a child may be conceived and as a result is entitled to notice of an adoption proceeding only as provided in this chapter.

453.110. PROHIBITING TRANSFER OF CUSTODY OF CHILD — EXCEPTION — PENALTY — INVESTIGATION AND REPORT — TRANSFER OF CUSTODY ORDER ISSUED, WHEN. — 1. No person, agency, organization or institution shall surrender custody of a minor child, or transfer the custody of such a child to another, and no person, agency, organization or institution shall take possession or charge of a minor child so transferred, without first having filed a petition before the circuit court sitting as a juvenile court of the county where the child may be, praying that such surrender or transfer may be made, and having obtained such an order from such court approving or ordering transfer of custody.

2. If any such surrender or transfer is made without first obtaining such an order, such court shall, on petition of any public official or interested person, agency, organization or institution,

order an investigation and report as described in section 453.070 to be completed by the division of family services and shall make such order as to the custody of such child in the best interest of such child.

3. Any person violating the terms of this section shall be guilty of a class D felony.

4. The investigation required by subsection 2 of this section shall be initiated by the division of family services within forty-eight hours of the filing of the court order requesting the investigation and report and shall be completed within thirty days. The court shall order the person having custody in violation of the provisions of this section to pay the costs of the investigation and report.

5. This section shall not be construed to prohibit any parent, agency, organization or institution from placing a child **[**in a family home**] with another individual** for care if the right to supervise the care of the child and to resume custody thereof is retained, or from placing a child with a licensed foster home within the state through a child placing agency licensed by this state as part of a preadoption placement.

6. After the filing of a petition for the transfer of custody for the purpose of adoption, the court may enter an order of transfer of custody if the court finds all of the following:

(1) A family assessment has been made as required in section 453.070 and has been reviewed by the court;

(2) A recommendation has been made by the guardian ad litem;

(3) A petition for transfer of custody for adoption has been properly filed or an order terminating parental rights has been properly filed;

(4) The financial affidavit has been filed as required under section 453.075;

(5) The written report regarding the child who is the subject of the petition containing the information has been submitted as required by section 453.026;

(6) Compliance with the Indian Child Welfare Act, if applicable; and

(7) Compliance with the Interstate Compact on the Placement of Children pursuant to section 210.620, RSMo.

7. A hearing on the transfer of custody for the purpose of adoption is not required if:

(1) The conditions set forth in subsection 6 of this section are met;

(2) The parties agree and the court grants leave; and

(3) Parental rights have been terminated pursuant to section 211.444 or 211.447, RSMo.

475.024. TEMPORARY DELEGATION OF POWERS BY PARENT — EXCEPTIONS. — A parent of a minor, by a properly executed power of attorney, may delegate to another individual, for a period not exceeding one year, any of his **or her** powers regarding care or custody of the minor child, except his **or her** power to consent to marriage or adoption of the minor child.

487.100. MEDIATION, COUNSELING, HOME STUDY MAY BE RECOMMENDED — COSTS. — In any family court case the judge or commissioner may, on the judge's or commissioner's own motion or, at the request of a party, order or recommend mediation, counseling or a home study. The costs of such mediation, counseling or home study may be assessed against any party at any time and may be taxed as court costs paid by the party against whom costs are taxed or may be paid from the family services and justice fund established pursuant to section 487.170. **The amount assessed for such mediation, counseling, or home study shall be such amount as the court determines to be reasonable under the circumstances.** The party's ability to pay shall be a consideration when such costs are assessed.

491.075. STATEMENT OF CHILD UNDER FOURTEEN ADMISSIBLE, WHEN. — 1. A statement made by a child under the age of **[**twelve**] fourteen** relating to an offense under chapter 565, 566 or 568, RSMo, performed with or on a child by another, not otherwise admissible by statute or court rule, is admissible in evidence in criminal proceedings in the courts of this state as substantive evidence to prove the truth of the matter asserted if:

(1) The court finds, in a hearing conducted outside the presence of the jury that the time, content and circumstances of the statement provide sufficient indicia of reliability; and

(2) (a) The child testifies at the proceedings; or

(b) The child is unavailable as a witness; or

(c) The child is otherwise physically available as a witness but the court finds that the significant emotional or psychological trauma which would result from testifying in the personal presence of the defendant makes the child unavailable as a witness at the time of the criminal proceeding.

2. Notwithstanding subsection 1 of this section or any provision of law or rule of evidence requiring corroboration of statements, admissions or confessions of the defendant, and notwithstanding any prohibition of hearsay evidence, a statement by a child when under the age of **[**twelve**]** **fourteen** who is alleged to be victim of an offense under chapter 565, 566 or 568, RSMo, is sufficient corroboration of a statement, admission or confession regardless of whether or not the child is available to testify regarding the offense.

3. A statement may not be admitted under this section unless the prosecuting attorney makes known to the accused or **[**his**]** **the accused's** counsel his **or her** intention to offer the statement and the particulars of the statement sufficiently in advance of the proceedings to provide the accused or **[**his**]** **the accused's** counsel with a fair opportunity to prepare to meet the statement.

4. Nothing in this section shall be construed to limit the admissibility of statements, admissions or confessions otherwise admissible by law.

492.304. VISUAL AND AURAL RECORDINGS OF CHILD UNDER FOURTEEN ADMISSIBLE, WHEN. — 1. In addition to the admissibility of a statement under the provisions of section 492.303, the visual and aural recording of a verbal or nonverbal statement of a child when under the age of **[**twelve**]** **fourteen** who is alleged to be a victim of an offense under the provisions of chapter 565, 566 or 568, RSMo, is admissible into evidence if:

(1) No attorney for either party was present when the statement was made**; except that, for any statement taken at a state-funded child assessment center as provided for in subsection 2 of section 210.001, RSMo, an attorney representing the state of Missouri in a criminal investigation may, as a member of a multidisciplinary investigation team, observe the taking of such statement, but such attorney shall not be present in the room where the interview is being conducted**;

(2) The recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(3) The recording equipment was capable of making an accurate recording, the operator of the equipment was competent, and the recording is accurate and has not been altered;

(4) The statement was not made in response to questioning calculated to lead the child to make a particular statement or to act in a particular way;

(5) Every voice on the recording is identified;

(6) The person conducting the interview of the child in the recording is present at the proceeding and available to testify or be cross-examined by either party; and

(7) The defendant or the attorney for the defendant is afforded an opportunity to view the recording before it is offered into evidence.

2. If the child does not testify at the proceeding, the visual and aural recording of a verbal or nonverbal statement of the child shall not be admissible under this section unless the recording qualifies for admission under section 491.075, RSMo.

3. If the visual and aural recording of a verbal or nonverbal statement of a child is admissible under this section and the child testifies at the proceeding, it shall be admissible in addition to the testimony of the child at the proceeding whether or not it repeats or duplicates the child's testimony.

4. As used in this section, a nonverbal statement shall be defined as any demonstration of the child by his or her actions, facial expressions, demonstrations with a doll or other visual aid whether or not this demonstration is accompanied by words.

537.046. CHILDHOOD SEXUAL ABUSE, INJURY OR ILLNESS DEFINED — ACTION FOR DAMAGES MAY BE BROUGHT, WHEN. — 1. As used in this section, the following terms mean:

(1) "Childhood sexual abuse", any act committed by the defendant against the plaintiff which act occurred when the plaintiff was under the age of eighteen years and which act would have been a violation of section 566.030, 566.040, 566.050, 566.060, 566.070, 566.080, 566.090, 566.100, 566.110, or 566.120, RSMo, or section 568.020, RSMo;

(2) "Injury" or "illness", either a physical injury or illness or a psychological injury or illness. A psychological injury or illness need not be accompanied by physical injury or illness.

2. **[**In any civil action for recovery of damages suffered as a result of childhood sexual abuse, the time for commencement of the action shall be within five years of the date the plaintiff attains the age of eighteen or within three years of the date the plaintiff discovers or reasonably should have discovered that the injury or illness was caused by child sexual abuse, whichever later occurs.**] Any action to recover damages from injury or illness caused by childhood sexual abuse in an action brought pursuant to this section, shall be commenced within ten years of the plaintiff attaining the age of twenty-one or within three years of the date the plaintiff discovers, or reasonably should have discovered, that the injury or illness was caused by childhood sexual abuse, whichever later occurs.**

3. This section shall apply to any action commenced on or after **[**August 28, 1990**] the effective date of this section**, including any action which would have been barred by the application of the statute of limitation applicable prior to that date.

701.336. DEPARTMENT TO COOPERATE WITH FEDERAL GOVERNMENT — INFORMATION TO BE PROVIDED TO CERTAIN PERSONS — LEAD TESTING OF CHILDREN, STRATEGY TO INCREASE NUMBER. — 1. The department of health and senior services shall cooperate with the federal government in implementing subsections (d) and (e) of 15 U.S.C. 2685 to establish public education activities and an information clearinghouse regarding childhood lead poisoning. The department may develop additional educational materials on lead hazards to children, lead poisoning prevention, lead poisoning screening, lead abatement and disposal, and on health hazards during abatement.

2. **The department of health and senior services and the department of social services, in collaboration with related not-for-profit organizations, health maintenance organizations, and the Missouri consolidated health care plan, shall devise an educational strategy to increase the number of children who are tested for lead poisoning under the Medicaid program. The goal of the educational strategy is to have seventy-five percent of the children who receive Medicaid tested for lead poisoning. The educational strategy shall be implemented over a three-year period and shall be in accordance with all federal laws and regulations.**

3. The division of family services, in collaboration with the department of health and senior services, shall regularly inform eligible clients of the availability and desirability of lead screening and treatment services, including those available through the early and periodic screening, diagnosis, and treatment (EPSDT) component of the Medicaid program.

SECTION 1. NONOFFENDING PARENT, CHILD RETURNED TO CUSTODY OF, WHEN. — 1. For purposes of proceedings and investigations conducted pursuant to chapter 211, RSMo, children shall be promptly returned to the care and custody of a nonoffending parent entitled to physical custody of the child if:

(1) The parents have continuously maintained joint domicile for a period of at least six months prior to the alleged incident or the parents are maintaining separate households; and

(2) A preponderance of the evidence indicates that only one of the parents is the subject of an investigation of abuse or neglect; and

(3) The nonoffending parent does not have a history of criminal behavior, drug or alcohol abuse, child abuse or child neglect, domestic violence, stalking, or full orders of protection entered against them within the past five years; and

(4) The parents are maintaining joint domicile and the offending parent is removed from the home voluntarily or involuntarily, or the parents live separately and the child is removed from the home of the custodial parent; and

(5) A nonoffending parent requests custody of the child and agrees to cooperate with any orders of the court limiting contact or establishing visitation with the offending parent and the nonoffending parent complies with such orders.

When the parents maintain joint domicile or comply with court-ordered visitation, there shall be a rebuttable presumption that the nonoffending parent has not committed any violation of sections 568.030, 568.032, 568.045, 568.050, or 568.060, RSMo, or has not engaged in any conduct that would constitute child abuse or neglect under chapter 210, RSMo. In order to rebut the presumption there must be a finding of actual harm or endangerment to the child if the child is placed in the custody of the nonoffending parent.

2. Nothing in this section shall prevent the division or the court from exercising its discretion to return a child or children to the custody of any individual.

SECTION 2. SEVERABILITY CLAUSE. — If any provision of this act is found by a court of competent jurisdiction to be invalid or unconstitutional it is the stated intent of the legislature that the legislature would have approved the remaining portions of the act, and the remaining portions of the act shall remain in full force and effect.

[26.740. CHILD ABUSE, CUSTODY AND NEGLECT COMMISSION CREATED, MEMBERS, TERMS — REPORTS — EXPIRATION DATE. — 1. There is hereby created within the office of the governor a "Child Abuse, Custody and Neglect Commission" which shall evaluate the laws and rules relating to child abuse, neglect, child custody and visitation and termination of parental rights and shall make recommendations on further action or legislative remedies, if any, to be taken as necessary. The commission shall review and recommend standardized guidelines for judicial review of what constitutes the best interest of the child.

2. The child abuse, custody and neglect commission shall be composed of twelve members to be appointed by the governor, including a county prosecutor, a law enforcement officer, a juvenile officer, a certified guardian ad litem, a juvenile court judge, a member of the clergy, a psychologist, a pediatrician, an educator, the chairman of the children's services commission, a division of family services designee, and one citizen of the state of Missouri, chosen to reflect the racial composition of the state, to serve four-year terms and of the members first appointed, four shall serve for a term of two years, four shall serve for a term of three years, and four shall serve for a term of four years.

3. The commission shall make its first report to the governor and the general assembly by February 1, 2002, and any subsequent reports shall be made to the governor, the chief justice of the supreme court and the general assembly as necessary.

4. All members shall serve without compensation but shall be reimbursed for all actual and necessary expenses incurred in the performance of their official duties for the commission.

5. The office of the governor shall provide funding, administrative support, and staff for the effective operation of the commission.

6. This section shall expire on August 28, 2004.**]**

SECTION B. EMERGENCY CLAUSE. — Because immediate action is necessary to ensure the safety of children receiving child protective services, the enactment of section 208.647 and the repeal and reenactment of sections 135.327 and 211.032 of section A 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 the enactment of section 208.647 and the repeal and reenactment of sections 135.327 and 211.032 of section A of this act shall be in full force and effect on July 1, 2004, or upon its passage and approval, whichever later occurs.

Approved June 29, 2004

HB 1456 [SCS HCS HB 1456 AND HB 824]

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

Authorizes a transient guest tax for tourism purposes and infrastructure improvements in Marston, Matthews, Concordia, and Steele.

AN ACT to repeal section 94.834, RSMo, and to enact in lieu thereof two new sections relating to transient guest taxes.

SECTION
A. Enacting clause.
94.834. Tourism tax on transient guests in hotels and motels (Marshall, Sweet Springs, and Concordia).
94.836. Tourism tax on transient guests in hotels and motels (Marston, Matthews, Steele) — procedure, ballot, use of revenues — repeal of tax.

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

SECTION A. ENACTING CLAUSE. — Section 94.834, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 94.834 and 94.836, to read as follows:

94.834. TOURISM TAX ON TRANSIENT GUESTS IN HOTELS AND MOTELS (MARSHALL, SWEET SPRINGS, AND CONCORDIA). — 1. The governing body of any city of the third classification with more than twelve thousand four hundred but less than twelve thousand five hundred inhabitants, **the governing body of any city of the fourth classification with more than two thousand three hundred but less than two thousand four hundred inhabitants and located in any county of the fourth classification with more than thirty-two thousand nine hundred but less than thirty-three thousand inhabitants,** and the governing body of any city of the fourth classification with more than one thousand six hundred but less than one thousand seven hundred inhabitants and located in any county of the fourth classification with more than twenty-three thousand seven hundred but less than twenty-three thousand eight hundred inhabitants may impose a tax on the charges for all sleeping rooms paid by the transient guests of hotels or motels situated in the city or a portion thereof, which shall be not more than five percent per occupied room per night, except that such tax shall not become effective unless the governing body of the city submits to the voters of the city at a state general or primary election a proposal to authorize the governing body of the city to impose a tax pursuant to this section. The tax authorized in this section shall be in addition to the charge for the sleeping room and all other taxes imposed by law, and the proceeds of such tax shall be used by the city solely for the promotion of tourism. Such tax shall be stated separately from all other charges and taxes.

2. The ballot of submission for the tax authorized in this section shall be in substantially the following form:

Shall ..... (insert the name of the city) impose a tax on the charges for all sleeping rooms paid by the transient guests of hotels and motels situated in ..... (name of city) at a rate of ..... (insert rate of percent) percent for the sole purpose of promoting tourism?

YES NO

If a majority of the votes cast on the question by the qualified voters voting thereon are in favor of the question, then the tax shall become effective on the first day of the second calendar quarter following the calendar quarter in which the election was held. If a majority of the votes cast on the question by the qualified voters voting thereon are opposed to the question, then the tax authorized by this section shall not become effective unless and until the question is resubmitted pursuant to this section to the qualified voters of the city and such question is approved by a majority of the qualified voters of the city voting on the question.

3. As used in this section, "transient guests" means a person or persons who occupy a room or rooms in a hotel or motel for thirty-one days or less during any calendar quarter.

94.836. TOURISM TAX ON TRANSIENT GUESTS IN HOTELS AND MOTELS (MARSTON, MATTHEWS, STEELE) — PROCEDURE, BALLOT, USE OF REVENUES — REPEAL OF TAX. — 1. The governing body of any city of the fourth classification with more than six hundred but less than seven hundred inhabitants and located in any county of the second classification with more than nineteen thousand seven hundred but less than nineteen thousand eight hundred inhabitants or any city of the fourth classification with more than two thousand two hundred but less than two thousand three hundred inhabitants and located in any county of the third classification without a township form of government and with more than twenty thousand but less than twenty thousand one hundred inhabitants may impose a tax on the charges for all sleeping rooms paid by the transient guests of hotels or motels situated in the city or a portion thereof, which shall be not more than five percent per occupied room per night, except that such tax shall not become effective unless the governing body of the city submits to the voters of the city at a state general or primary election a proposal to authorize the governing body of the city to impose a tax under this section. The tax authorized in this section shall be in addition to the charge for the sleeping room and all other taxes imposed by law, and shall be stated separately from all other charges and taxes.

2. The ballot of submission for the tax authorized in this section shall be in substantially the following form:

Shall ..... (insert the name of the city) impose a tax on the charges for all sleeping rooms paid by the transient guests of hotels and motels situated in ..... (name of city) at a rate of ..... (insert rate of percent) percent for tourism purposes, including infrastructure improvements?

YES NO

If a majority of the votes cast on the question by the qualified voters voting thereon are in favor of the question, then the tax shall become effective on the first day of the second calendar quarter following the calendar quarter in which the election was held. If a majority of the votes cast on the question by the qualified voters voting thereon are opposed to the question, then the tax shall not become effective unless and until the question is resubmitted under this section to the qualified voters of the city and such question is approved by a majority of the qualified voters of the city voting on the question.

3. At least sixty-five percent of the revenue generated by the tax authorized in this section shall be used by the city solely for tourism purposes, and not more than thirty-five percent of the revenue generated may be used for infrastructure improvements. All revenue generated by the tax shall be deposited in a special trust fund and shall be used solely for the designated purposes. If the tax is repealed, all funds remaining in the special

trust fund shall continue to be used solely for the designated purposes. Any funds in the special trust fund which are not needed for current expenditures may be invested by the governing body in accordance with applicable laws relating to the investment of other city funds.

4. The governing body of any city that has adopted the sales tax authorized in this section may submit the question of repeal of the tax to the voters on any date available for elections for the city. The ballot of submission shall be in substantially the following form:

Shall ..... (insert the name of the city) repeal the sales tax imposed at a rate of ..... (insert rate of percent) percent for tourism purposes?

[ ] YES [ ] NO

If a majority of the votes cast on the proposal are in favor of repeal, that repeal shall become effective on December thirty-first of the calendar year in which such repeal was approved. If a majority of the votes cast on the question by the qualified voters voting thereon are opposed to the repeal, then the sales tax authorized in this section shall remain effective until the question is resubmitted under this section to the qualified voters of the city, and the repeal is approved by a majority of the qualified voters voting on the question.

5. Whenever the governing body of any city that has adopted the sales tax authorized in this section receives a petition, signed by ten percent of the registered voters of the city voting in the last gubernatorial election, calling for an election to repeal the sales tax imposed under this section, the governing body shall submit to the voters of the city a proposal to repeal the tax. If a majority of the votes cast on the question by the qualified voters voting thereon are in favor of the repeal, that repeal shall become effective on December thirty-first of the calendar year in which such repeal was approved. If a majority of the votes cast on the question by the qualified voters voting thereon are opposed to the repeal, then the tax shall remain effective until the question is resubmitted under this section to the qualified voters of the city and the repeal is approved by a majority of the qualified voters voting on the question.

6. As used in this section, "transient guests" means a person or persons who occupy a room or rooms in a hotel or motel for thirty-one days or less during any calendar quarter.

Approved June 25, 2004

HB 1487 [CCS HS HB 1487]

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

Revises the crime of kidnapping by including kidnapping of a child under fourteen years of age.

AN ACT to repeal sections 556.037, 565.110, and 567.030, RSMo, and to enact in lieu thereof twelve new sections relating to crimes against persons, with penalty provisions and an emergency clause for certain sections.

SECTION

A. Enacting clause.
556.037. Time limitations for prosecutions for sexual offenses involving a person under eighteen.
565.110. Kidnapping — penalty.
565.115. Child kidnapping — penalty.
566.200. Definitions.

566.203. Abusing an individual through forced labor — penalty.
566.206. Trafficking for the purpose of slavery, involuntary servitude, peonage, or forced labor — penalty.
566.209. Trafficking for the purpose of sexual exploitation — penalty.
566.212. Sexual trafficking of a child — penalty.
566.215. Contributing to human trafficking — penalty.
566.218. Restitution required for certain offenders.
566.223. Federal Trafficking Victims Protection Act of 2000 to apply, when.
567.030. Patronizing prostitution — penalty.
B. Emergency clause.

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

SECTION A. ENACTING CLAUSE. — Sections 556.037, 565.110, and 567.030, RSMo, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 556.037, 565.110, 565.115, 566.200, 566.203, 566.206, 566.209, 566.212, 566.215, 566.218, 566.223, and 567.030, to read as follows:

556.037. TIME LIMITATIONS FOR PROSECUTIONS FOR SEXUAL OFFENSES INVOLVING A PERSON UNDER EIGHTEEN. — **Notwithstanding** the provisions of section 556.036, **[**to the contrary notwithstanding,**]** prosecutions for unlawful sexual offenses involving a person eighteen years of age or under must be commenced within **[**ten**]** **twenty** years after the victim reaches the age of eighteen **unless the prosecutions are for forcible rape, attempted forcible rape, forcible sodomy, kidnapping, or attempted forcible sodomy in which case such prosecutions may be commenced at any time**.

565.110. KIDNAPPING — PENALTY. — 1. A person commits the crime of kidnapping if he **or she** unlawfully removes another without his **or her** consent from the place where he **or she** is found or unlawfully confines another without his **or her** consent for a substantial period, for the purpose of

(1) Holding that person for ransom or reward, or for any other act to be performed or not performed for the return or release of that person; or

(2) Using the person as a shield or as a hostage; or

(3) Interfering with the performance of any governmental or political function; or

(4) Facilitating the commission of any felony or flight thereafter; or

(5) Inflicting physical injury on or terrorizing the victim or another.

2. Kidnapping is a class A felony unless committed under subdivision (4) or (5) of subsection 1 in which cases it is a class B felony.

565.115. CHILD KIDNAPPING — PENALTY. — 1. A person commits the crime of child kidnapping if such person is not a relative of the child within the third degree and such person:

(1) Unlawfully removes a child under the age of fourteen without the consent of such child's parent or guardian from the place where such child is found; or

(2) Unlawfully confines a child under the age of fourteen without the consent of such child's parent or guardian.

2. In determining whether the child was removed or confined unlawfully, it is an affirmative defense that the person reasonably believed that the person's actions were necessary to preserve the child from danger to his or her welfare.

3. Child kidnapping is a class A felony.

566.200. DEFINITIONS. — As used in sections 566.200 to 566.218, the following terms shall mean:

(1) "Commercial sex act", any sex act on account of which anything of value is given to or received by any person;

(2) "Involuntary servitude or forced labor", a condition of servitude induced by means of:

(a) Any scheme, plan, or pattern of behavior intended to cause a person to believe that, if the person does not enter into or continue the servitude, such person or another person will suffer substantial bodily harm or physical restraint; or

(b) The abuse or threatened abuse of the legal process;

(3) "Peonage", illegal and involuntary servitude in satisfaction of debt.

566.203. ABUSING AN INDIVIDUAL THROUGH FORCED LABOR — PENALTY. — 1. A person commits the crime of abusing an individual through forced labor by knowingly providing or obtaining the labor or services of a person:

(1) By threats of serious harm or physical restraint against such person or another person;

(2) By means of any scheme, plan, or pattern of behavior intended to cause such person to believe that, if the person does not perform the labor services, the person or another person will suffer substantial bodily harm or physical restraint; or

(3) By means of the abuse or threatened abuse of the law or the legal process.

2. A person who pleads guilty to or is found guilty of the crime of abuse through forced labor shall not be required to register as a sexual offender pursuant to the provisions of section 589.400, RSMo, unless such person is otherwise required to register pursuant to the provisions of such section.

3. The crime of abuse through forced labor is a class B felony.

566.206. TRAFFICKING FOR THE PURPOSE OF SLAVERY, INVOLUNTARY SERVITUDE, PEONAGE, OR FORCED LABOR — PENALTY. — 1. A person commits the crime of trafficking for the purposes of slavery, involuntary servitude, peonage, or forced labor if a person knowingly recruits, harbors, transports, provides, or obtains by any means, another person for labor or services, for the purposes of slavery, involuntary servitude, peonage, or forced labor.

2. A person who pleads guilty to or is found guilty of the crime of trafficking for the purposes of slavery, involuntary servitude, peonage, or forced labor shall not be required to register as a sexual offender pursuant to the provisions of section 589.400, RSMo, unless such person is otherwise required to register pursuant to the provisions of such section.

3. The crime of trafficking for the purposes of slavery, involuntary servitude, peonage, or forced labor is a class B felony.

566.209. TRAFFICKING FOR THE PURPOSE OF SEXUAL EXPLOITATION — PENALTY. — 1. A person commits the crime of trafficking for the purposes of sexual exploitation if a person knowingly recruits, transports, provides, or obtains by any means, another person for the use or employment of such person in sexual conduct as defined in section 556.061, RSMo, without his or her consent.

2. The crime of trafficking for the purposes of sexual exploitation is a class B felony.

566.212. SEXUAL TRAFFICKING OF A CHILD — PENALTY. — 1. A person commits the crime of sexual trafficking of a child if the individual knowingly:

(1) Recruits, entices, harbors, transports, provides, or obtains by any means a person under the age of eighteen to participate in a commercial sex act or benefits, financially or by receiving anything of value, from participation in such activities; or

(2) Causes a person under the age of eighteen to engage in a commercial sex act.

2. It shall not be an affirmative defense that the defendant believed that the person was eighteen years of age or older.

3. The crime of sexual trafficking of a child is a class A felony if the child is under the age of eighteen.

566.215. CONTRIBUTING TO HUMAN TRAFFICKING — PENALTY. — 1. A person commits the crime of contributing to human trafficking through the misuse of documentation when the individual knowingly:

(1) Destroys, conceals, removes, confiscates, or possesses a valid or purportedly valid passport, government identification document, or other immigration document of another person while committing crimes or with the intent to commit crimes, pursuant to sections 566.200 to 566.218; or

(2) Prevents, restricts, or attempts to prevent or restrict, without lawful authority, a person's ability to move or travel by restricting the proper use of identification, in order to maintain the labor or services of a person, who is the victim of a crime committed pursuant to sections 566.200 to 566.218.

2. A person who pleads guilty to or is found guilty of the crime of contributing to human trafficking through the misuse of documentation shall not be required to register as a sexual offender pursuant to the provisions of section 589.400, RSMo, unless such person is otherwise required to register pursuant to the provisions of such section.

3. The crime of contributing to human trafficking through the misuse of documentation is a class D felony.

566.218. RESTITUTION REQUIRED FOR CERTAIN OFFENDERS. — A court sentencing an offender convicted of violating the provisions of sections 566.203, 566.206, 566.209, 566.212, and 566.215, shall order the offender to pay restitution to the victim of the offense.

566.223. FEDERAL TRAFFICKING VICTIMS PROTECTION ACT OF 2000 TO APPLY, WHEN. — Any individual who is alleging that a violation of sections 566.200 to 566.218 has occurred against his or her person, shall be afforded the rights and protections provided in the federal Trafficking Victims Protection Act of 2000, Public Law 106-386, as amended.

567.030. PATRONIZING PROSTITUTION — PENALTY. — 1. A person commits the crime of patronizing prostitution if he patronizes prostitution.

2. **It shall not be an affirmative defense that the defendant believed that the person he or she patronized for prostitution was eighteen years of age or older.**

3. Patronizing prostitution is a class B misdemeanor**, unless the individual who the person is patronizing is under the age of eighteen but older than the age of fourteen, in which case patronizing prostitution is a class A misdemeanor.**

4. Patronizing prostitution is a class D felony if the individual who the person patronizes is fourteen years of age or younger. Nothing in this section shall preclude the prosecution of an individual for the offenses of:

(1) Statutory rape in the first degree pursuant to section 566.032, RSMo;

(2) Statutory rape in the second degree pursuant to section 566.034, RSMo;

(3) Statutory sodomy in the first degree pursuant to section 566.062, RSMo; or

(4) Statutory sodomy in the second degree pursuant to section 566.064, RSMo.

SECTION B. EMERGENCY CLAUSE. — Because immediate action is necessary to protect the children of this state from kidnapping, the repeal and reenactment of section 565.110 and the enactment of section 565.115 of section A 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 the repeal and reenactment of section 565.110 and the enactment of section 565.115 of section A of this act shall be in full force and effect upon its passage and approval.

Approved June 17, 2004

HB 1494 [HB 1494]

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

Provides for election of regional recreational district board members in Clay County.

AN ACT to repeal section 67.797, RSMo, and to enact in lieu thereof one new section relating to boards of directors for regional recreational districts.

SECTION

A. Enacting clause.
67.797. Board of directors appointed for district or elected in certain districts (Clay County), qualifications — terms — officers — powers and duties — money to be deposited in treasury of county containing largest portion of district.

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

SECTION A. ENACTING CLAUSE. — Section 67.797, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 67.797, to read as follows:

67.797. BOARD OF DIRECTORS APPOINTED FOR DISTRICT OR ELECTED IN CERTAIN DISTRICTS (CLAY COUNTY), QUALIFICATIONS — TERMS — OFFICERS — POWERS AND DUTIES — MONEY TO BE DEPOSITED IN TREASURY OF COUNTY CONTAINING LARGEST PORTION OF DISTRICT. — 1. When a regional recreational district is organized in only one county, the executive, as that term is defined in subdivision (4) of section 67.750, with the advice and consent of the governing body of the county shall appoint a board of directors for the district consisting of seven persons, chosen from the residents of the district. Where the district is in more than one county, the executives, as defined in subdivision (4) of section 67.750, of the counties in the district shall, with the advice and consent of the governing bodies of each county shall, as nearly as practicable, evenly appoint such members and allocate staggered terms pursuant to subsection 2 of this section, with the county having the largest area within the district appointing a greater number of directors if the directors cannot be appointed evenly. No member of the governing body of the county or official of any municipal government located within the district shall be a member of the board and no director shall receive compensation for performance of duties as a director. Members of the board of directors shall be citizens of the United States and they shall reside within the district. No board member shall be interested directly or indirectly in any contract entered into pursuant to sections 67.792 to 67.799.

2. The directors appointed to the regional recreation district shall hold office for three-year terms, except that of the members first appointed, two shall hold office for one year, two shall hold office for two years and three shall hold office for three years. The executives of the counties within the regional recreational district shall meet to determine and implement a fair allocation of the staggered terms among the counties, provided that counties eligible to appoint more than one board member may not appoint board members with identical initial terms until each of a one-year, two-year and three-year initial term has been applied to such county. On the expiration of such initial terms of appointment and on the expiration of any subsequent term, the resulting vacancies shall be filled by the executives of the respective counties, with the advice and consent of the respective governing bodies. All vacancies on the board shall be filled in the same manner for the duration of the term being filled. Board members shall serve until their successors are named and such successors have commenced their terms as board members. Board members shall be eligible for reappointment. Upon the petition of the county executive of the county from which the board member received his or her appointment, the governing body of the county may remove any board member for misconduct or neglect of duties.

3. **Notwithstanding any other provision of sections 67.750 to 67.799, to the contrary, after August 28, 2004, in any district located in whole or in part in any county of the first classification with more than one hundred eighty-four thousand but less than one hundred eighty-eight thousand inhabitants, upon the expiration of such initial terms of appointment and on the expiration of any subsequent term, the resulting vacancies shall be filled by election at the next regularly scheduled election date throughout the district. In the event that a vacancy exists before the expiration of a term, the governing body of the county shall appoint a member for the remainder of the unexpired term. Board members shall be elected for terms of three years. Such elections shall be held according to this section and the applicable laws of this state. If no person files as a candidate for election to the vacant office within the applicable deadline for filing as a candidate, then the governing body of any such county shall appoint a person to be a member of the board for a term of three years. Any appointed board members shall be eligible to run for office.**

4. Directors shall immediately after their appointment meet and organize by the election of one of their number president, and by the election of such other officers as they may deem necessary. The directors shall make and adopt such bylaws, rules and regulations for their guidance and for the government of the parks, neighborhood trails and recreational grounds and facilities as may be expedient, not inconsistent with sections 67.792 to 67.799. They shall have the exclusive control of the expenditures of all money collected to the credit of the regional recreational fund and of the supervision, improvement, care and custody of public parks, neighborhood trails, recreational facilities and grounds owned, maintained or managed by the district. All moneys received for such purposes shall be deposited in the treasury of the county containing the largest portion of the district to the credit of the regional recreational fund and shall be kept separate and apart from the other moneys of such county. Such board shall have power to purchase or otherwise secure ground to be used for such parks, neighborhood trails, recreational grounds and facilities, shall have power to appoint suitable persons to maintain such parks, neighborhood trails and recreational facilities and administer recreational programs and fix their compensation, and shall have power to remove such appointees.

[4.**] 5.** The board of directors may issue debt for the district pursuant to section 67.798.

[5.**] 6.** If a county, or a portion of a county, not previously part of any district, shall enter a district, the executives of the new member county and any previous member counties shall promptly meet to apportion the board seats among the counties participating in the enlarged district. All purchases in excess of ten thousand dollars used in the construction or maintenance of any public park, neighborhood trail or recreational facility in the regional recreation district shall be made pursuant to the lowest and best bid standard as provided in section 34.040, RSMo, or pursuant to the lowest and best proposal standard as provided in section 34.042, RSMo. The board of the district shall have the same discretion, powers and duties as the commissioner of administration has in sections 34.040 and 34.042, RSMo.

Approved July 2, 2004

HB 1502 [HB 1502]

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

Changes laws related to the Kansas City Public School Retirement System.

AN ACT to repeal sections 169.270, 169.291, 169.295, 169.311, 169.313, 169.322, 169.324, and 169.328, RSMo, and to enact in lieu thereof seven new sections relating to school employee retirement.

SECTION
A. Enacting clause.
169.270. Definitions.
169.291. Board of trustees, qualifications, terms — superintendent of school district to be member — vacancies — lapse of corporate organization, effect of — oaths — officers — expenses — powers and duties — medical board, appointment — contribution rates of employers, amount.
169.295. Board of trustees, powers and duties.
169.311. One year creditable service, how computed.
169.322. Retirement for disability — periodic examination — subsequent reemployment and retirement.
169.324. Retirement allowances, minimum amounts — retirants may substitute without affecting allowance, limitation — annual determination of ability to provide benefits, standards — action plan for use of minority and women money managers, brokers and investment counselors.
169.328. Accumulated contributions returned to member, when.
169.313. Prior service granted to reemployed members.

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

SECTION A. ENACTING CLAUSE. — Sections 169.270, 169.291, 169.295, 169.311, 169.313, 169.322, 169.324, and 169.328, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 169.270, 169.291, 169.295, 169.311, 169.322, 169.324, and 169.328, RSMo, to read as follows:

169.270. DEFINITIONS. — Unless a different meaning is clearly required by the context, the following words and phrases as used in sections 169.270 to 169.400 shall have the following meanings:

(1) "Accumulated contributions", the sum of all amounts deducted from the compensation of a member or paid on behalf of the member by the employer and credited to the member's individual account together with interest thereon in the employees' contribution fund. The board of trustees shall determine the rate of interest allowed thereon as provided for in section 169.295;

(2) "Actuarial equivalent", a benefit of equal value when computed upon the basis of formulas and/or tables which have been approved by the board of trustees;

(3) "Average final compensation", the highest average annual compensation received for any four consecutive years of service. In determining whether years of service are "consecutive", only periods for which creditable service is earned shall be considered, and all other periods shall be disregarded;

(4) "Beneficiary", any person designated by a member for a retirement allowance or other benefit as provided by sections 169.270 to 169.400;

(5) "Board of education", the board of directors or corresponding board, by whatever name, having charge of the public schools of the school district in which the retirement system is established;

(6) "Board of trustees", the board provided for in section 169.291 to administer the retirement system;

(7) "Break in service", an occurrence when a regular employee ceases to be a regular employee for any reason **other than retirement** (including termination of employment, resignation, **[**retirement**]** or furlough but not including vacation, sick leave, excused absence or leave of absence granted by an employer) and such person does not again become a regular employee until after **sixty consecutive calendar days have elapsed, or after** fifteen consecutive school or work days have elapsed**, whichever occurs later**. **A break in service also occurs when a regular employee retires under the retirement system established by section 169.280 and does not again become a regular employee until after fifteen consecutive school or work days have elapsed.** A "school or work day" is a day on which the employee's employer requires (or if the position no longer exists, would require, based on past practice) employees having the former employee's last job description to report to their place of employment for any reason;

(8) "Charter school", any charter school established pursuant to sections 160.400 to 160.420, RSMo, and located, at the time it is established, within the school district;

(9) "Compensation", the regular compensation as shown on the salary and wage schedules of the employer **[**plus**], including** any amounts paid by the employer on a member's behalf pursuant to subdivision (5) of subsection 1 of section 169.350, but such term is not to include extra pay, overtime pay, consideration for entering into early retirement, or any other payments not included on salary and wage schedules. For any year beginning after December 31, 1988, the annual compensation of each member taken into account under the retirement system shall not exceed the limitation set forth in Section 401(a)(17) of the Internal Revenue Code of 1986, as amended;

(10) "Creditable service", the amount of time that a regular employee is a member of the retirement system and makes contributions thereto in accordance with the provisions of sections 169.270 to 169.400;

(11) "Employee", any person who is classified by the school district, a charter school, the library district or the retirement system established by section 169.280 as an employee of such employer and is reported contemporaneously for federal and state tax purposes as an employee of such employer. A person is not considered to be an employee for purposes of such retirement system with respect to any service for which the person was not reported contemporaneously for federal and state tax purposes as an employee of such employer, regardless of whether the person is or may later be determined to be or to have been a common law employee of such employer, including but not limited to a person classified by the employer as independent contractors and persons employed by other entities which contract to provide staff and services to the employer. In no event shall a person reported for federal tax purposes as an employee of a private, for-profit entity be deemed to be an employee eligible to participate in the retirement system established by section 169.280 with respect to such employment;

(12) "Employer", the school district, any charter school, the library district, or the retirement system established by section 169.280, or any combination thereof, as required by the context to identify the employer of any member, or, for purposes only of subsection 2 of section 169.324, of any retirant;

(13) "Employer's board", the board of education, the governing board of any charter school, the board of trustees of the library district, the board of trustees, or any combination thereof, as required by the context to identify the governing body of an employer;

(14) "Library district", any urban public library district created from or within a school district under the provisions of section 182.703, RSMo;

(15) "Medical board", the board of physicians provided for in section 169.291;

(16) "Member", any person who is a regular employee after the retirement system has been established hereunder ("active member"), and any person who (i) was an active member, (ii) has vested retirement benefits hereunder, and (iii) is not receiving a retirement allowance hereunder ("inactive member");

(17) "Minimum normal retirement age", the earlier of the **date the** member **[**attaining**] attains** the age of sixty or **the date the member** has a total of at least seventy-five credits, with each year of creditable service**[**, and prorated for fractional years, equal to one credit**]** and each year of age**[**, and**] equal to one credit, with both years of creditable service and years of age** prorated for fractional years**[**, equal to one credit**]**;

(18) "Prior service", service prior to the date the system becomes operative which is creditable in accordance with the provisions of section 169.311. Prior service in excess of thirty-eight years shall be considered thirty-eight years;

(19) "Regular employee", any employee who is assigned to an established position which requires service of not less than **[**five**] twenty-five** hours **[**per day, five days**]** per week, and not less than nine calendar months a year. Any regular employee who is subsequently assigned without break in service to a position demanding less service than is required of a regular employee shall continue the employee's status as a regular employee. **[**However,**] Except as**

stated in the preceding sentence, a temporary, part-time**,** or furloughed employee is not a regular employee;

(20) "Retirant", a former member receiving a retirement allowance hereunder;

(21) "Retirement allowance", annuity payments to a retirant or to such beneficiary as is entitled to same;

(22) "School district", any school district in which a retirement system shall be established under section 169.280.

169.291. BOARD OF TRUSTEES, QUALIFICATIONS, TERMS — SUPERINTENDENT OF SCHOOL DISTRICT TO BE MEMBER — VACANCIES — LAPSE OF CORPORATE ORGANIZATION, EFFECT OF — OATHS — OFFICERS — EXPENSES — POWERS AND DUTIES — MEDICAL BOARD, APPOINTMENT — CONTRIBUTION RATES OF EMPLOYERS, AMOUNT. — 1. The general administration and the responsibility for the proper operation of the retirement system are hereby vested in a board of trustees of twelve persons who shall be resident taxpayers of the school district, as follows:

(1) Four trustees to be appointed for terms of four years by the board of education; provided, however, that the terms of office of the first four trustees so appointed shall begin immediately upon their appointment and shall expire one, two, three and four years from the date the retirement system becomes operative, respectively;

(2) Four trustees to be elected for terms of four years by and from the members of the retirement system; provided, however, that the terms of office of the first four trustees so elected shall begin immediately upon their election and shall expire one, two, three and four years from the date the retirement system becomes operative, respectively;

(3) The ninth trustee shall be the superintendent of schools of the school district;

(4) The tenth trustee shall be one retirant of the retirement system elected for a term of four years beginning the first day of January immediately following August 13, 1986, by the retirants of the retirement system;

(5) The eleventh trustee shall be appointed for a term of four years beginning the first day of January immediately following August 13, 1990, by the board of trustees described in subdivision (3) of section 182.701, RSMo;

(6) The twelfth trustee shall be a retirant of the retirement system elected for a term of four years beginning the first day of January immediately following August 28, 1992, by the retirants of the retirement system.

2. If a vacancy occurs in the office of a trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled, except that the board of trustees may appoint a qualified person to fill the vacancy in the office of an elected member until the next regular election at which time a member shall be elected for the unexpired term. No vacancy or vacancies on the board of trustees shall impair the power of the remaining trustees to administer the retirement system pending the filling of such vacancy or vacancies.

3. In the event of a lapse of the school district's corporate organization as described in subsections 1 and 4 of section 162.081, RSMo, the general administration and responsibility for the proper operation of the retirement system shall continue to be vested in a twelve-person board of trustees, all of whom shall be resident taxpayers of a city, other than a city not within a county, of four hundred thousand or more. In such event, if vacancies occur in the offices of the four trustees appointed, prior to the lapse, by the board of education, or in the offices of the four trustees elected, prior to the lapse, by the members of the retirement system, or in the office of trustee held, prior to the lapse, by the superintendent of schools in the school district, as provided in subdivisions (1), (2) and (3) of subsection 1 of this section, the board of trustees shall appoint a qualified person to fill each vacancy and subsequent vacancies in the office of trustee for terms of up to four years, as determined by the board of trustees.

4. Each trustee shall, before assuming the duties of a trustee, take the oath of office before the court of the judicial circuit or one of the courts of the judicial circuit in which the school

district is located that so far as it devolves upon the trustee, such trustee shall diligently and honestly administer the affairs of the board of trustees and that the trustee will not knowingly violate or willingly permit to be violated any of the provisions of the law applicable to the retirement system. Such oath shall be subscribed to by the trustee making it and filed in the office of the clerk of the circuit court.

5. Each trustee shall be entitled to one vote in the board of trustees. Seven trustees shall constitute a quorum at any meeting of the board of trustees. At any meeting of the board of trustees where a quorum is present, the vote of at least seven of the trustees in support of a motion, resolution or other matter is necessary to be the decision of the board; provided, however, that in the event of a lapse in the school district's corporate organization as described in subsections 1 and 4 of section 162.081, RSMo, a majority of the trustees then in office shall constitute a quorum at any meeting of the board of trustees, and the vote of a majority of the trustees then in office in support of a motion, resolution or other matter shall be necessary to be the decision of the board.

6. The board of trustees shall have exclusive original jurisdiction in all matters relating to or affecting the funds herein provided for, including, in addition to all other matters, all claims for benefits or refunds, and its action, decision or determination in any matter shall be reviewable in accordance with chapter 536, RSMo, or chapter 621, RSMo. Subject to the limitations of sections 169.270 to 169.400, the board of trustees shall, from time to time, establish rules and regulations for the administration of funds of the retirement system, for the transaction of its business, and for the limitation of the time within which claims may be filed.

7. The trustees shall serve without compensation. The board of trustees shall elect from its membership a chairman and a vice chairman. The board of trustees shall appoint an executive director who shall serve as the administrative officer of the retirement system and as secretary to the board of trustees. It shall employ one or more persons, firms or corporations experienced in the investment of moneys to serve as investment counsel to the board of trustees. The compensation of all persons engaged by the board of trustees and all other expenses of the board necessary for the operation of the retirement system shall be paid at such rates and in such amounts as the board of trustees shall approve, and shall be paid from the investment income.

8. The board of trustees shall keep in convenient form such data as shall be necessary for actuarial valuations of the various funds of the retirement system and for checking the experience of the system.

9. The board of trustees shall keep a record of all its proceedings which shall be open to public inspection. It shall prepare annually and furnish to the board of education and to each member of the retirement system who so requests a report showing the fiscal transactions of the retirement system for the preceding fiscal year, the amount of accumulated cash and securities of the system, and the last balance sheet showing the financial condition of the system by means of an actuarial valuation of the assets and liabilities of the retirement system.

10. The board of trustees shall have, in its own name, power to sue and to be sued, to enter into contracts, to own property, real and personal, and to convey the same; but the members of such board of trustees shall not be personally liable for obligations or liabilities of the board of trustees or of the retirement system.

11. The board of trustees shall arrange for necessary legal advice for the operation of the retirement system.

12. The board of trustees shall designate a medical board to be composed of three **or more** physicians who shall not be eligible for membership in the system and who shall pass upon all medical examinations required under the provisions of sections 169.270 to 169.400, shall investigate all essential statements and certificates made by or on behalf of a member in connection with an application for disability retirement and shall report in writing to the board of trustees its conclusions and recommendations upon all matters referred to it.

13. The board of trustees shall designate an actuary who shall be the technical advisor of the board of trustees on matters regarding the operation of the retirement system and shall

perform such other duties as are required in connection therewith. Such person shall be qualified as an actuary by membership as a Fellow of the Society of Actuaries or by similar objective standards.

14. At least once in each five-year period the actuary shall make an investigation into the actuarial experience of the members, retirants and beneficiaries of the retirement system and, taking into account the results of such investigation, the board of trustees shall adopt for the retirement system such actuarial assumptions as the board of trustees deems necessary for the financial soundness of the retirement system.

15. On the basis of such actuarial assumptions as the board of trustees adopts, the actuary shall make annual valuations of the assets and liabilities of the funds of the retirement system.

16. The rate of contribution payable by the employer shall equal one and ninety-nine one-hundredths percent, effective July 1, 1993; three and ninety-nine one-hundredths percent, effective July 1, 1995; five and ninety-nine one-hundredths percent, effective July 1, 1996; seven and one-half percent effective January 1, 1999, and for all subsequent years.

17. In the event of a lapse of a school district's corporate organization as described in subsections 1 and 4 of section 162.081, RSMo, no retirement system, nor any of the assets of any retirement system, shall be transferred to or merged with another retirement system without prior approval of such transfer or merge by the board of trustees of the retirement system.

169.295. BOARD OF TRUSTEES, POWERS AND DUTIES. — 1. The board of trustees shall be the trustees of all the funds of the system and shall have full power to invest and reinvest such funds. The trustees shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities and investments in which the funds shall have been invested, and the proceeds thereof.

2. The board of trustees shall allow interest annually on the balance in each member's account at the beginning of the year at the rate approved by the board. The board shall adjust the balance of the general reserve fund for investment realized and unrealized gains, losses, income and expenses, not so allowed as interest on members' accounts.

3. The board of trustees shall elect a treasurer who shall serve at the board's pleasure. The treasurer shall be the custodian of the funds provided for in section 169.350 and shall give such bond for the faithful handling of the funds as the board of trustees shall determine. The board of trustees may employ **[**a bank**]** **one or more banks** having fiduciary powers for the provisions of such custodial or clerical service as the board may deem appropriate to assist the treasurer. Disbursement of funds of the retirement system shall be under the supervision of the treasurer and shall be in accordance with procedures established or approved by the board of trustees with the concurrence of the system's auditors.

4. For the purpose of meeting disbursements for retirement allowances and other payments, there may be kept available cash, not exceeding ten percent of the total amount in the funds of the retirement system, on deposit in one or more banks or trust companies in the school district, organized under the laws of the state of Missouri, or of the United States; provided, that the amount on deposit in any one bank or trust company shall not exceed twenty-five percent of the paid-up capital and surplus of such bank or trust company, and for all deposits in excess of ten thousand dollars the board of trustees shall require of the banks or trust companies as security for the safekeeping and payment of the deposits securities of a like kind and character as may be required by law for the safekeeping and payment of deposits made by the state treasurer.

5. Except as herein provided, no trustee and no employee of the board of trustees shall have any direct interest in the gains or profits of any investment made by the board of trustees. No trustee or employee of the board of trustees shall directly or indirectly for such person or as an agent in any manner use the assets of the retirement system except to make such current and necessary payments as are authorized by the board of trustees, nor shall any trustee or employee of the board of trustees become in any manner an obligor for moneys loaned by or borrowed from the board of trustees.

6. In the event that any employer offers to its employees an early retirement option, or any other form of group exit incentive program, the board of trustees is hereby authorized to permit such employer or any active member who participates in such group exit incentive program to purchase additional creditable service, in increments of not less than one month, and shall fix and determine by proper rules and regulations, which may be amended from time to time, the amount of service that may be purchased and the cost thereof. Under no circumstance, however, shall:

(1) The amount of such purchased creditable service exceed twenty-four months;

(2) The cost of purchasing such creditable service be less than the amount necessary to pay the full actuarial cost to the retirement system of the additional purchased service;

(3) The purchasing employer or active member be permitted to elect to purchase such creditable service after the expiration of a reasonable time period, which time period shall be specified in the above-referenced rules and regulations;

(4) Such purchased creditable service count toward the vesting requirements of section 169.301; or

(5) This subsection be applied in any manner that would not be in compliance with applicable provisions of the Internal Revenue Code.

169.311. ONE YEAR CREDITABLE SERVICE, HOW COMPUTED. — **[**1.**]** The board of trustees shall fix and determine by proper rules and regulations how much service in any year is equivalent to one year of creditable service, but in no case shall more than one year of service be creditable for all service in one calendar year, nor shall the board of trustees allow credit as service for any period of more than one pay period's duration, as shown on the salary and wage schedules of the employer, during all of which the member was absent without pay unless such member pays the employee contributions, including contributions by the employer in lieu of employee contributions, for such period as permitted by the board of trustees in accordance with the provisions of section 169.315.

[2. Under the rules and regulations that the board of trustees adopts, each member who was an employee on and prior to the date the retirement system becomes operative and who becomes a member within one year of such date shall file a detailed statement of all service as an employee for which such person claims credit rendered by such person prior to that date.

3. Subject to the above restrictions and to the other rules and regulations that the board of trustees adopts, the board of trustees shall verify the service claims as soon as practicable, after the filing of the statements of service.

4. Upon verification of the statements of service, the board of trustees shall issue prior service certificates, certifying to each member the length of prior service with which the member is credited on the basis of the member's statement of service. So long as the holder of a certificate continues to be a member, a prior service certificate shall be final and conclusive for retirement purposes as to such service; provided, however, that any member may, within one year from the date of issuance or modification of the certificate, request the board of trustees to modify or correct the person's prior service certificate. When any employee ceases to be a member, the person's prior service certificate becomes void, and if the person again becomes a member the person shall enter the retirement system as a member not entitled to prior service credit, except as provided in section 169.313.**]**

169.322. RETIREMENT FOR DISABILITY — PERIODIC EXAMINATION — SUBSEQUENT REEMPLOYMENT AND RETIREMENT. — 1. Upon the written application of an active member or of the person's employer's board, any active member who has five or more years of creditable service shall be retired by the board of trustees on a disability retirement allowance, if the medical board after a medical examination of such member**, or based on such other medical information as the medical board may require,** shall certify that such member is mentally or physically unable to perform such member's employment duties and that such incapacity is likely to be permanent. Application for a disability retirement allowance may be made after the

member ceases to be an active member; provided that, the disability commenced while the member was an active member, and further provided that application is made no later than six months after the disabled member ceases to be an employee of his or her employer. The first monthly payment of such disability retirement allowance shall not be made to such member so long as the member receives compensation from the member's employer.

2. Upon retirement for disability, a member shall receive a disability retirement allowance which shall be determined in the same manner as the service retirement allowance as set forth in section 169.324, but not less than the minimum disability retirement allowance provided in this section. The minimum disability retirement allowance shall be the lesser of:

(1) Twenty-five percent of the person's average final compensation; or

(2) The member's service retirement allowance calculated based on the member's final average compensation and the maximum number of years of creditable service the member would have earned had the member remained an employee until attaining the age of sixty.

3. Once each year during the first five years following a member's retirement on a disability retirement allowance and once in every three-year period thereafter, the board of trustees may require any disability retirant who has not yet attained minimum normal retirement age to undergo a medical examination at a place designated by the medical board, such examination to be made by the medical board or by a physician or physicians designated by such board. Should any such disability retirant refuse to submit to such medical examination, the person's disability allowance may be discontinued until the person's withdrawal of such refusal, and should the person's refusal continue for one year all rights in and to the person's disability allowance shall be revoked by the board of trustees.

4. Should the board of trustees determine that any disability retirant who has not yet attained minimum normal retirement age is engaged in or is able to engage in a gainful occupation paying more than the difference between the person's monthly disability retirement allowance plus any Social Security benefits to which the person is eligible and the current rate of monthly compensation for the position the person held at retirement, then the amount of the person's disability retirement allowance shall be reduced to an amount which together with Social Security benefits and the amount earnable by the person shall equal such current rate of monthly compensation. Should the person's earning capacity be later changed, the amount of the person's disability retirement allowance may be further modified. The board of trustees may engage those persons, firms or corporations which it deems necessary to assist the board of trustees in making any determination under this subsection.

5. Should any member retired for disability be restored to active service as a regular employee, the member's disability retirement allowance shall cease and the member shall again become a member of the retirement system, and contribute thereunder. Anything in sections 169.270 to 169.400 to the contrary notwithstanding, a disability retirant who has not attained the minimum normal retirement age at the date of again becoming a member shall have the person's creditable service at the time of the person's disability retirement restored, and the excess of the person's accumulated contributions at time of retirement over the total payments which the person received during retirement shall be credited to the person's account. Upon subsequent retirement, the person shall be entitled to a service retirement allowance to the extent the person meets the requisite qualifications, and the person's prior disability retirement allowance shall not be resumed. If a disability retirant has attained the minimum normal retirement age at the date of again becoming a member, the disability retirement allowance the person was receiving immediately prior to restoration of membership shall be resumed on subsequent retirement, together with such retirement allowances as shall accrue by reason of the person's latest period of membership. For the sole purpose of determining the person's eligibility for such additional retirement allowance, but not for determining the amount, all of the person's years of creditable service, whether before or after the person's period of disability, for which the person has made contributions which have not been withdrawn, shall be considered.

169.324. RETIREMENT ALLOWANCES, MINIMUM AMOUNTS — RETIRANTS MAY SUBSTITUTE WITHOUT AFFECTING ALLOWANCE, LIMITATION — ANNUAL DETERMINATION OF ABILITY TO PROVIDE BENEFITS, STANDARDS — ACTION PLAN FOR USE OF MINORITY AND WOMEN MONEY MANAGERS, BROKERS AND INVESTMENT COUNSELORS. — 1. The annual service retirement allowance payable pursuant to section 169.320 in equal monthly installments for life shall be the retirant's number of years of creditable service multiplied by one and three-fourths percent of the person's average final compensation, subject to a maximum of sixty percent of the person's average final compensation. For any member who retires as an active member on or after June 30, 1999, the annual service retirement allowance payable pursuant to section 169.320 in equal monthly installments for life shall be the retirant's number of years of creditable service multiplied by two percent of the person's average final compensation, subject to a maximum of sixty percent of the person's average final compensation. Any member whose number of years of creditable service is greater than thirty-four and one-quarter on August 28, 1993, shall receive an annual service retirement allowance payable pursuant to section 169.320 in equal monthly installments for life equal to the retirant's number of years of creditable service as of August 28, 1993, multiplied by one and three-fourths percent of the person's average final compensation but shall not receive a greater annual service retirement allowance based on additional years of creditable service after August 28, 1993. Provided, however, that, effective January 1, 1996, any retiree who retired on, before or after January 1, 1996, with at least twenty years of creditable service shall receive at least three hundred dollars each month as a retirement allowance, or the actuarial equivalent thereof if the retiree elected any of the options available under section 169.326. Provided, further, any retiree who retired with at least ten years of creditable service shall receive at least one hundred fifty dollars each month as a retirement allowance, plus fifteen dollars for each additional full year of creditable service greater than ten years but less than twenty years (or the actuarial equivalent thereof if the retiree elected any of the options available under section 169.326). Any beneficiary of a deceased retiree who retired with at least ten years of creditable service and elected one of the options available under section 169.326 shall also be entitled to the actuarial equivalent of the minimum benefit provided by this subsection, determined from the option chosen.

2. Except as otherwise provided in sections **169.331,** 169.580 and 169.585, payment of a retirant's retirement allowance will be suspended for any month for which such person receives remuneration from the person's employer or from any other employer in the retirement system established by section 169.280 for the performance of services except **any** such person **other than a person receiving a disability retirement allowance under section 169.322** may serve as a nonregular substitute, part-time or temporary employee for not more than six hundred hours in any school year without becoming a member and without having the person's retirement allowance discontinued. If a retirant is reemployed by any employer in any capacity, whether pursuant to this section, **[**section**] or section 169.331,** 169.580**,** or **[**section**]** 169.585**,** or as a regular employee, the amount of such person's retirement allowance attributable to service prior to the person's first retirement date shall not be changed by the reemployment. If the person again becomes an active member and earns additional creditable service, upon the person's second retirement the person's retirement allowance shall be the sum of:

(1) The retirement allowance the person was receiving at the time the person's retirement allowance was suspended, pursuant to the payment option elected as of the first retirement date, plus the amount of any increase in such retirement allowance the person would have received pursuant to subsection 3 of this section had payments not been suspended during the person's reemployment; and

(2) An additional retirement allowance computed using the benefit formula in effect on the person's second retirement date, the person's creditable service following reemployment, and the person's average annual compensation as of the second retirement date.

The sum calculated pursuant to this subsection shall not exceed the greater of sixty percent of the person's average final compensation as of the second retirement date or the amount

determined pursuant to subdivision (1) of this subsection. Compensation earned prior to the person's first retirement date shall be considered in determining the person's average final compensation as of the second retirement date if such compensation would otherwise be included in determining the person's average final compensation.

3. The board of trustees shall determine annually whether the investment return on funds of the system can provide for an increase in benefits for retirants eligible for such increase. A retirant shall and will be eligible for an increase awarded pursuant to this section as of the second January following the date the retirant commenced receiving retirement benefits. Any such increase shall also apply to any monthly joint and survivor retirement allowance payable to such retirant's beneficiaries, regardless of age. The board shall make such determination as follows:

(1) After determination by the actuary of the investment return for the preceding year as of December thirty-first (the "valuation year"), the actuary shall recommend to the board of trustees what portion of the investment return is available to provide such benefits increase, if any, and shall recommend the amount of such benefits increase, if any, to be implemented as of the first day of the thirteenth month following the end of the valuation year, and the first payable on or about the first day of the fourteenth month following the end of the valuation year. The actuary shall make such recommendations so as not to affect the financial soundness of the retirement system, recognizing the following safeguards:

(a) The retirement system's funded ratio as of January first of the year preceding the year of a proposed increase shall be at least one hundred percent after adjusting for the effect of the proposed increase. The funded ratio is the ratio of assets to the pension benefit obligation;

(b) The actuarially required contribution rate, after adjusting for the effect of the proposed increase, may not exceed the statutory contribution rate;

(c) The actuary shall certify to the board of trustees that the proposed increase will not impair the actuarial soundness of the retirement system;

(d) A benefit increase, under this section, once awarded, cannot be reduced in succeeding years;

(2) The board of trustees shall review the actuary's recommendation and report and shall, in their discretion, determine if any increase is prudent and, if so, shall determine the amount of increase to be awarded.

4. This section does not guarantee an annual increase to any retirant.

5. If an inactive member becomes an active member after June 30, 2001, and after a break in service, unless the person earns at least four additional years of creditable service without another break in service, upon retirement the person's retirement allowance shall be calculated separately for each separate period of service ending in a break in service. The retirement allowance shall be the sum of the separate retirement allowances computed for each such period of service using the benefit formula in effect, the person's average final compensation as of the last day of such period of service and the creditable service the person earned during such period of service; provided, however, if the person earns at least four additional years of creditable service without another break in service, all of the person's creditable service prior to and including such service shall be aggregated and, upon retirement, the retirement allowance shall be computed using the benefit formula in effect and the person's average final compensation as of the last day of such period of four or more years and all of the creditable service the person earned prior to and during such period.

6. Notwithstanding anything contained in this section to the contrary, the amount of the annual service retirement allowance payable to any retirant pursuant to the provisions of sections 169.270 to 169.400, including any adjustments made pursuant to subsection 3 of this section, shall at all times comply with the provisions and limitations of Section 415 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder, the terms of which are specifically incorporated herein by reference.

7. All retirement systems established by the laws of the state of Missouri shall develop a procurement action plan for utilization of minority and women money managers, brokers and

investment counselors. Such retirement systems shall report their progress annually to the joint committee on public employee retirement and the governor's minority advocacy commission.

169.328. ACCUMULATED CONTRIBUTIONS RETURNED TO MEMBER, WHEN. — 1. Should a member cease to be a regular employee, except by retirement, the member, if living, shall be paid on demand, made by written notice to the board of trustees, the amount of the person's accumulated contributions (with interest as determined by the board of trustees as provided in sections 169.270 to 169.400) standing to the credit of the person's individual account in the employees' contribution fund. The accumulated contributions with interest shall not be paid to a member so long as the person remains a regular employee **or before the member incurs a break in service**. If the member dies before retirement such accumulated contributions (with interest) shall be paid to the member's estate or designated beneficiary unless the provisions of subsection 3 of section 169.326 apply.

2. If a former unvested member's accumulated contributions have not been withdrawn four years after the person has ceased to be a member (other than by reason of death or retirement), the board of trustees shall pay the same to such former member within a reasonable time after the expiration of such four-year period.

3. If, on account of undeliverability, improper mailing or forwarding address, or other similar problem, the board of trustees is unable to refund the accumulated contributions of a former unvested member or to commence payment of retirement benefits within four years after the end of the calendar year in which such former member ceased to be a regular employee, the board may transfer the accumulated contributions to the general reserve fund. If, thereafter, written application is made to the board of trustees for such refund or benefits, the board shall cause the same to be paid from the general reserve fund, but no interest shall be accrued after the end of the fourth year following the end of the calendar year in which such former member ceased to be a regular employee.

4. In its discretion the board of trustees may approve extensions of any time periods in this section on account of a former member's military or naval service, academic study or illness.

[169.313. PRIOR SERVICE GRANTED TO REEMPLOYED MEMBERS. — The board of trustees may grant prior service credit to an active member who was employed by the school district prior to January 1, 1944, if the member has ceased to be an employee and returns as an employee of the school district after January 1, 1944, and has received credit for at least one year of membership service for each year of prior service claimed. Three-fourths credit may be granted for a year of prior service for completion of each year of required membership service, provided the member has a minimum of five continuous years of membership service after the member's reemployment. The maximum number of years for prior service shall be limited to sixteen years and the maximum amount of prior service credit shall be limited to twelve years; provided, further, that all membership credit must be reinstated before prior service credit, if any, is allowed.**]**

Approved July 1, 2004

HB 1508 [HB 1508]

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

Provides that emblem-use fees received by the Kansas City Chiefs shall be forwarded to the "Chiefs' Children's Fund", a not for profit organization established to benefit K.C.-area children in need.

AN ACT to repeal section 301.472, RSMo, and to enact in lieu thereof one new section relating to Kansas City Chiefs' license plates.

SECTION

A. Enacting clause.
301.472. Professional sports team special license plates, emblem — teams to make agreement for use of emblem with department of revenue — procedure to use, application, form, fee — sports team to forward contributions, where, amount — rulemaking authority.

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

SECTION A. ENACTING CLAUSE. — Section 301.472, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 301.472, to read as follows:

301.472. PROFESSIONAL SPORTS TEAM SPECIAL LICENSE PLATES, EMBLEM — TEAMS TO MAKE AGREEMENT FOR USE OF EMBLEM WITH DEPARTMENT OF REVENUE — PROCEDURE TO USE, APPLICATION, FORM, FEE — SPORTS TEAM TO FORWARD CONTRIBUTIONS, WHERE, AMOUNT — RULEMAKING AUTHORITY. — 1. Any motor vehicle owner may receive special license plates for any vehicle the person owns, either solely or jointly, other than an apportioned motor vehicle or a commercial motor vehicle licensed in excess of eighteen thousand pounds gross weight as prescribed in this section after an annual payment of an emblem-use authorization fee to a professional sports team which has made an agreement pursuant to subsection 5 of this section. For the purposes of this section a "professional sports team" shall mean an organization located in this state franchised by the National Professional Soccer League, the National Football League, the National Basketball Association, the National Hockey League, the International Hockey League, or the American League or the National League of Major League Baseball or a team playing in Major League Soccer.

2. The professional sports team which has made an agreement pursuant to subsection 5 of this section and which receives the emblem-use authorization fee hereby authorizes the use of its official emblem to be affixed on multiyear personalized license plates as provided in this section. Any vehicle owner may annually apply for the use of the emblem. The director of revenue shall not authorize the manufacturer of the material to produce such license plates with the individual seal, logo, or emblem until the department of revenue receives a minimum of one hundred applications for each specific professional sports team.

3. Upon annual application and payment of a thirty-five dollar emblem-use contribution to the professional sports team such team shall issue to the vehicle owner, without further charge, an emblem-use authorization statement, which shall be presented by the owner to the director of the department of revenue at the time of registration of a motor vehicle. Upon presentation of the annual statement and payment of a fifteen dollar fee in addition to the regular registration fees, and presentation of other documents which may be required by law, the director shall issue a personalized license plate, which shall bear the official emblem of the professional sports team in a manner determined by the director. Such license plates shall be made with fully reflective material with a common color scheme and design, shall be clearly visible at night, and shall be aesthetically attractive, as prescribed by section 301.130. A fee for the issuance of personalized license plates issued pursuant to section 301.144 shall not be required for plates issued pursuant to this section.

4. A vehicle owner, who was previously issued a plate with a professional sports team emblem authorized by this section but who does not provide an emblem-use authorization statement at a subsequent time of registration, shall be issued a new plate which does not bear the professional sports team emblem, as otherwise provided by law.

5. The director of the department of revenue is authorized to make agreements with professional sports teams on behalf of the state which allow the use of any such team's official emblem pursuant to the provisions of this section as consideration for receiving a thirty-five dollar emblem-use contribution.

6. **Except as provided in subsection 7,** a professional sports team receiving a thirty-five dollar contribution shall forward such contribution, less an amount not in excess of five percent of the contribution for the costs of administration, to the Jackson County Sports Authority or the St. Louis Regional Convention and Visitors Commission. The moneys shall be administered as follows:

(1) The sports authority may retain not in excess of five percent of all funds forwarded to it pursuant to this section for the costs of administration and shall expend the remaining balance of such funds, after consultation with a professional sports team within the authority's area, on marketing and promoting such team. The amount of money expended from the funds obtained pursuant to this section by the authority per professional sports team shall be in the same proportion to the total funds available to be expended on such team as the proportion of contributions forwarded by the team to the authority is to the total contributions received by the authority;

(2) The regional convention and visitors commission shall hold the revenues received from the professional sports teams in the St. Louis area in separate accounts for each team. Each team may submit an annual marketing plan to the commission. Expenses of a team which are in accordance with the marketing plan shall be reimbursed by the commission as long as moneys are available in the account. The commission may retain not in excess of five percent for the costs of administration. If no marketing plan is submitted by a team, the commission shall market and promote the team.

7. **The Kansas City Chiefs shall forward all emblem-use fees received, less an amount not in excess of five percent of the costs of administration, to the Chiefs' Children's Fund, a not-for-profit fund established to benefit children in need in the Kansas City area.**

8. The director of the department of revenue shall promulgate rules and regulations for the administration of this section. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.

Approved July 1, 2004

HB 1511 [SS HS HCS HB 1511]

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

Enacts the Missouri Uniform Trust Code.

AN ACT to repeal sections 301.681, 306.458, 306.461, 362.600, 456.010, 456.015, 456.016, 456.020, 456.030, 456.040, 456.050, 456.055, 456.060, 456.070, 456.072, 456.075, 456.080, 456.090, 456.100, 456.110, 456.120, 456.130, 456.140, 456.150, 456.160, 456.170, 456.180, 456.183, 456.185, 456.187, 456.190, 456.195, 456.200, 456.210, 456.220, 456.225, 456.230, 456.232, 456.233, 456.234, 456.235, 456.236, 456.240, 456.250, 456.260, 456.270, 456.280, 456.290, 456.300, 456.310, 456.320, 456.330, 456.340, 456.350, 456.400, 456.410, 456.420, 456.430, 456.440, 456.450, 456.460, 456.470, 456.480, 456.490, 456.500, 456.510, 456.520, 456.524, 456.530, 456.535, 456.540, 456.550, 456.560, 456.570, 456.580, 456.610, 456.620, 456.630, 456.640, 456.650, 456.660, 456.670, 456.900, 456.901, 456.902, 456.903, 456.904, 456.905, 456.906, 456.907, 456.908, 456.909, 456.910, 456.911, 456.912, 456.913, 461.300, 469.401, 469.409, 469.411, 469.419, 469.423, 469.435, 469.449 and 469.453, RSMo, and to enact in lieu thereof one hundred fifty-six new sections relating to trust and estate administration.

SECTION

A. Enacting clause.
301.681. Certificate of ownership in beneficiary form — multiple beneficiaries allowed — reassignment permitted — procedure to issue, content, fee — consent not required for transactions, revocation — interest subject to certain claims — transfer not deemed testamentary.
306.458. Certificate of title, two or more persons, not held as tenants in common, death of one tenant, transfer to surviving owners, procedure, fee — tenants in common, death of one tenant, procedure to transfer, fee.
306.461. Certificate of title in beneficiary form — multiple beneficiaries allowed — procedure to issue, content, fee — consent not required for transactions, revocation — interest subject to certain claims — transfer not deemed testamentary.
362.600. Reciprocal corporate fiduciary powers — certificates of reciprocity.
456.001-101. Short title.
456.001-102. Scope.
456.001-103. Definitions.
456.001-104. Knowledge.
456.001-105. Default and mandatory rules.
456.001-106. Common law of trusts — principles of equity.
456.001-107. Governing law.
456.001-108. Principal place of administration.
456.001-109. Methods and waiver of notice.
456.001-110. Others treated as qualified beneficiaries.
456.001-111. Nonjudicial settlement agreements.
456.001-112. Rules of construction.
456.002-201. Role of court in administration of trust.
456.002-202. Jurisdiction over trustee and beneficiary.
456.002-204. Venue.
456.003-301. Representation, basic effect.
456.003-302. Representation by holder of general testamentary power of appointment.
456.003-303. Representation by fiduciaries and parents.
456.003-304. Representation by person having substantially identical interest.
456.003-305. Appointment of representative.
456.004-401. Methods of creating trust.
456.004-402. Requirements for creation.
456.004-403. Trusts created in other jurisdictions.
456.004-404. Trust purposes.
456.004-405. Charitable purposes — enforcement.
456.004-406. Creation of trust induced by fraud, duress, or undue influence.
456.004-407. Evidence of oral trust.
456.004-408. Trust for care of animal.
456.004-409. Noncharitable trust without ascertainable beneficiary.
456.004-410. Modification or termination of trust — proceedings for approval or disapproval.
456.004-411A. Modification or termination of noncharitable irrevocable trust by consent.
456.004-411B. Modification or termination of noncharitable irrevocable trust by consent.
456.004-412. Modification or termination because of unanticipated circumstances or inability to administer trust effectively.
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456.004-414. Modification or termination of uneconomic trust.
456.004-415. Reformation to correct mistakes.
456.004-416. Modification to achieve settlor's tax objectives.
456.004-417. Combination and division of trusts.
456.005-501. Rights of beneficiary's creditor or assignee.
456.005-502. Spendthrift provision.
456.005-503. Exceptions to Spendthrift provision.
456.005-504. Discretionary trusts — effect of standard.
456.005-505. Creditor's claim against settlor.
456.005-506. Overdue distribution.
456.005-507. Personal obligations of trustee.
456.006-601. Capacity of settlor of revocable trust.
456.006-602. Revocation or amendment of revocable trust.
456.006-603. Settlor's powers — powers of withdrawal.
456.006-604. Limitation on action contesting validity of revocable trust — distribution of trust property.
456.007-701. Accepting of declining trusteeship.
456.007-702. Trustee's bond.
456.007-703. Cotrustees.
456.007-704. Vacancy in trusteeship — appointment of successor.

456.007-705. Resignation of trustee.
456.007-706. Removal of trustee.
456.007-707. Delivery of property by former trustee.
456.007-708. Compensation of trustee.
456.007-709. Reimbursement of expenses.
456.008-801. Duty to administer trust.
456.008-802. Duty of loyalty.
456.008-803. Impartiality.
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456.008-805. Costs of administration.
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456.011-1102. Electronic records and signatures.
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456.011. Trusts for benefit of employees or self-employed persons — perpetuities — suspension of alienation.
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Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 301.681, 306.458, 306.461, 362.600, 456.010, 456.015, 456.016, 456.020, 456.030, 456.040, 456.050, 456.055, 456.060, 456.070, 456.072, 456.075, 456.080, 456.090, 456.100, 456.110, 456.120, 456.130, 456.140, 456.150, 456.160, 456.170, 456.180, 456.183, 456.185, 456.187, 456.190, 456.195, 456.200, 456.210, 456.220, 456.225, 456.230, 456.232, 456.233, 456.234, 456.235, 456.236, 456.240, 456.250, 456.260, 456.270, 456.280, 456.290, 456.300, 456.310, 456.320, 456.330, 456.340, 456.350, 456.400, 456.410, 456.420, 456.430, 456.440, 456.450, 456.460, 456.470, 456.480, 456.490, 456.500, 456.510, 456.520, 456.524, 456.530, 456.535, 456.540, 456.550, 456.560, 456.570, 456.580, 456.610, 456.620, 456.630, 456.640, 456.650, 456.660, 456.670, 456.900, 456.901, 456.902, 456.903, 456.904, 456.905, 456.906, 456.907, 456.908, 456.909, 456.910, 456.911, 456.912, 456.913, 461.300, 469.401, 469.409, 469.411, 469.419, 469.423, 469.435, 469.449 and 469.453, are repealed and one hundred fifty-six new sections enacted in lieu thereof, to be known as sections 301.681, 306.458, 306.461, 362.600, 456.1-101, 456.1-102, 456.1-103, 456.1-104, 456.1-105, 456.1-106, 456.1-107, 456.1-108, 456.1-109, 456.1-110, 456.1-111, 456.1-112, 456.2-201, 456.2-202, 456.2-204, 456.3-301, 456.3-302, 456.3-303, 456.3-304, 456.3-305, 456.4-401, 456.4-402, 456.4-403, 456.4-404, 456.4-405, 456.4-406, 456.4-407, 456.4-408, 456.4-409, 456.4-410, 456.4-411A, 456.4-411B, 456.4-412, 456.4-413, 456.4-414, 456.4-415, 456.4-416, 456.4-417, 456.5-501, 456.5-502, 456.5-503, 456.5-504, 456.5-505, 456.5-506, 456.5-507, 456.6-601, 456.6-602, 456.6-603, 456.6-604, 456.7-701, 456.7-702, 456.7-703, 456.7-704, 456.7-705, 456.7-706, 456.7-707, 456.7-708, 456.7-709, 456.8-801, 456.8-802, 456.8-803, 456.8-804, 456.8-805, 456.8-806, 456.8-807, 456.8-808, 456.8-809, 456.8-810, 456.8-811, 456.8-812, 456.8-813, 456.8-814, 456.8-815, 456.8-816, 456.8-817, 456.10-1001, 456.10-1002, 456.10-1003, 456.10-1004, 456.10-1005, 456.10-1006, 456.10-1007, 456.10-1008, 456.10-1009, 456.10-1010, 456.10-1011, 456.10-1012, 456.10-1013, 456.11-1101, 456.11-1102, 456.11-1103, 456.11-1104, 456.11-1106, 456.001, 456.003, 456.005, 456.007, 456.009, 456.011, 456.013, 456.015, 456.017, 456.019, 456.021, 456.023, 456.025, 456.027, 456.029, 456.031, 456.033, 456.035, 456.037, 456.039, 456.041, 461.300, 469.240, 469.250, 469.260, 469.270, 469.280, 469.290, 469.300, 469.310, 469.320, 469.330, 469.340, 469.350, 469.401, 469.402, 469.409, 469.411, 469.419, 469.423, 469.435, 469.449, 469.453, 469.900, 469.901, 469.902, 469.903, 469.904, 469.905, 469.906, 469.907, 469.908, 469.909, 469.910, 469.911, 469.912, 469.913, 700.630, and 1, to read as follows:

301.681. CERTIFICATE OF OWNERSHIP IN BENEFICIARY FORM — MULTIPLE BENEFICIARIES ALLOWED — REASSIGNMENT PERMITTED — PROCEDURE TO ISSUE, CONTENT, FEE — CONSENT NOT REQUIRED FOR TRANSACTIONS, REVOCATION — INTEREST SUBJECT TO CERTAIN CLAIMS — TRANSFER NOT DEEMED TESTAMENTARY. — 1. A sole owner of a motor vehicle or trailer, and multiple owners of a motor vehicle or trailer who hold their interest as joint tenants with right of survivorship or as tenants by the entirety, on application and payment of the fee required for an original certificate of ownership, may request

the director of revenue to issue a certificate of ownership for the motor vehicle or trailer in beneficiary form which includes a directive to the director of revenue to transfer the certificate of ownership on death of the sole owner or on death of all multiple owners to one beneficiary or to two or more beneficiaries as joint tenants with right of survivorship or as tenants by the entirety named on the face of the certificate. **The directive to the director of revenue also shall permit the beneficiary or beneficiaries to make one reassignment of the original certificate of ownership upon the death of the owner to another owner without transferring the certificate to the beneficiary or beneficiaries name.**

2. A certificate of ownership in beneficiary form may not be issued to persons who hold their interest in a motor vehicle or trailer as tenants in common.

3. A certificate of ownership issued in beneficiary form shall include after the name of the owner, or after the names of multiple owners, the words "transfer on death to" or the abbreviation "TOD" followed by the name of the beneficiary or beneficiaries.

4. (1) During the lifetime of a sole owner **[**and during the lifetime of all multiple owners**]** **or prior to the death of the last surviving multiple owner**, the signature or consent of the beneficiary or beneficiaries shall not be required for any transaction relating to the motor vehicle or trailer for which a certificate of ownership in beneficiary form has been issued.

(2) A certificate of ownership in beneficiary form may be revoked or the beneficiary or beneficiaries changed at any time before the death of a sole owner or **the last** surviving multiple owner only by the following methods:

(a) By a sale of the motor vehicle or trailer with proper assignment and delivery of the certificate of ownership to another person; or

(b) By filing an application to reissue the certificate of ownership with no designation of a beneficiary or with the designation of a different beneficiary or beneficiaries with the director of revenue in proper form and accompanied by the payment of the fee for an original certificate of ownership.

(3) The beneficiary's or beneficiaries' interest in the motor vehicle or trailer at death of the owner or surviving owner shall be subject to any contract of sale, assignment of ownership or security interest to which the owner or owners of the motor vehicle or trailer were subject during their lifetime.

(4) The designation of a beneficiary or beneficiaries in a certificate of ownership issued in beneficiary form may not be changed or revoked by a will, any other instrument, or a change in circumstances, or otherwise be changed or revoked except as provided by subdivision (2) of this subsection.

5. (1) On proof of death of one of the owners of two or more multiple owners, or of a sole owner, surrender of the outstanding certificate of ownership, and on application and payment of the fee for an original certificate of ownership, the director of revenue shall issue a new certificate of ownership for the motor vehicle or trailer to the surviving owner or owners or, if none, to the surviving beneficiary or beneficiaries, subject to any outstanding security interest; and the current valid certificate of number shall be so transferred. **If the surviving beneficiary or beneficiaries makes a request of the director of revenue, the director may allow the beneficiary or beneficiaries to make one assignment of title.**

(2) The director of revenue may rely on a death certificate or record or report that constitutes prima facie proof or evidence of death under subdivisions (1) and (2) of section 472.290, RSMo.

(3) The transfer of a motor vehicle or trailer at death pursuant to this section is effective by reason of sections 301.675 to 301.682 and sections 306.455 to 306.465, RSMo, and is not to be considered as testamentary, or to be subject to the requirements of section 473.087, RSMo, or section 474.320, RSMo.

306.458. CERTIFICATE OF TITLE, TWO OR MORE PERSONS, NOT HELD AS TENANTS IN COMMON, DEATH OF ONE TENANT, TRANSFER TO SURVIVING OWNERS, PROCEDURE, FEE —

TENANTS IN COMMON, DEATH OF ONE TENANT, PROCEDURE TO TRANSFER, FEE. — 1. A certificate of title for an outboard motor or vessel issued in the names of two or more persons that does not show on the face of the certificate that the persons hold their interest in the outboard motor or vessel as tenants in common, on death of one of the named persons, may be transferred to the surviving owner or owners. On proof of death of one of the persons in whose names the certificate was issued, surrender of the outstanding certificate of title, and on application and payment of the fee for an original certificate of title, the director of revenue shall issue a new certificate for the outboard motor or vessel to the surviving owner or owners; and the current valid certificate of number shall be so transferred. **The directive to the director of revenue also shall permit the beneficiary or beneficiaries to make one reassignment of the original certificate of ownership upon the death of the owner to another owner without transferring the certificate to the beneficiary or beneficiaries name.**

2. A certificate of title for an outboard motor or vessel, issued in the names of two or more persons that shows on its face that the persons hold their interest in the outboard motor or vessel as tenants in common, on death of one of the named persons, may be transferred by the director of revenue on application by the surviving owners and the personal representative or successors of the deceased owner. Upon being presented proof of death of one of the persons in whose names the certificate of title was issued; surrender of the outstanding certificate of title, and on application and payment of the fee for an original certificate of title, the director of revenue shall issue a new certificate of title for the outboard motor or vessel to the surviving owners and personal representative or successors of the deceased owner; and the current valid certificate of number shall be transferred.

306.461. CERTIFICATE OF TITLE IN BENEFICIARY FORM — MULTIPLE BENEFICIARIES ALLOWED — PROCEDURE TO ISSUE, CONTENT, FEE — CONSENT NOT REQUIRED FOR TRANSACTIONS, REVOCATION — INTEREST SUBJECT TO CERTAIN CLAIMS — TRANSFER NOT DEEMED TESTAMENTARY. — 1. A sole owner of an outboard motor or vessel, and multiple owners of an outboard motor or vessel who hold their interest as joint tenants with right of survivorship or as tenants by the entirety, on application and payment of the fee required for an original certificate of title, may request the director of revenue to issue a certificate of title for the outboard motor or vessel in beneficiary form which includes a directive to the director of revenue to transfer the certificate of title on death of the sole owner or on death of all multiple owners to one beneficiary or to two or more beneficiaries as joint tenants with right of survivorship or as tenants by the entirety named on the face of the certificate.

2. A certificate of title in beneficiary form may not be issued to persons who hold their interest in an outboard motor or vessel as tenants in common.

3. A certificate of title issued in beneficiary form shall include after the name of the owner, or after the names of multiple owners, the words "transfer on death to" or the abbreviation "TOD" followed by the name of the beneficiary or beneficiaries.

4. (1) During the lifetime of a sole owner **[**and during the lifetime of all multiple owners**]** **or prior to the death of the last surviving multiple owner**, the signature or consent of the beneficiary or beneficiaries shall not be required for any transaction relating to the outboard motor or vessel for which a certificate of title in beneficiary form has been issued.

(2) A certificate of title in beneficiary form may be revoked or the beneficiary or beneficiaries changed at any time before the death of the sole owner or **the last** surviving multiple owner only by the following methods:

(a) By a sale of the outboard motor or vessel with proper assignment and delivery of the certificate of title to another person; or

(b) By surrender of the outstanding certificate of title and filing an application to reissue the certificate of title with no designation of a beneficiary or with the designation of a different beneficiary or beneficiaries with the director of revenue in proper form and accompanied by the payment of the fee for an original certificate of title.

(3) The beneficiary's or beneficiaries' interest in the outboard motor or vessel at death of the owner or surviving owner shall be subject to any contract of sale, assignment of ownership or security interest to which the owner or owners of the outboard motor or vessel were subject during their lifetime.

(4) The designation of a beneficiary or beneficiaries in a certificate of title issued in beneficiary form may not be changed or revoked by a will, any other instrument, or a change in circumstances, or otherwise be changed or revoked except as provided by subdivision (2) of this subsection.

5. (1) On proof of death of one of the owners of two or more multiple owners, or of a sole owner, surrender of the outstanding certificate of title, and on application and payment of the fee for an original certificate of title, the director of revenue shall issue a new certificate of title for the outboard motor or vessel to the surviving owner or owners or, if none, to the surviving beneficiary or beneficiaries, subject to any outstanding security interest; and the current valid certificate of number shall be so transferred. **If the surviving beneficiary or beneficiaries request of the director of revenue, the director may allow the beneficiary or beneficiaries to make one assignment of title.**

(2) The director of revenue may rely on a death certificate or record or report that constitutes prima facie proof or evidence of death under subdivisions (1) and (2) of section 472.290, RSMo.

(3) The transfer of an outboard motor or vessel at death pursuant to this section is effective by reason of sections 301.675 to 301.682, RSMo, and sections 306.455 to 306.465, and is not to be considered testamentary, or to be subject to the requirements of section 473.087, RSMo, or section 474.320, RSMo.

362.600. RECIPROCAL CORPORATE FIDUCIARY POWERS — CERTIFICATES OF RECIPROCITY. — 1. The term "foreign corporation", as used in this section, shall mean:

(1) Any bank or other corporation now or hereafter organized under the laws of any state of the United States other than Missouri; and

(2) Any national banking association having its principal place of business in any state of the United States other than Missouri.

2. Except as provided in subsection 5 of this section, any foreign corporation may act in this state as trustee, executor, administrator, guardian, or in any other like fiduciary capacity, without the necessity of complying with any law of this state relating to the licensing of foreign banking corporations by the director of finance or relating to the qualifications of foreign corporations to do business in this state, and notwithstanding any prohibition, limitation or restriction contained in any other law of this state, provided only that:

(1) The foreign corporation is authorized to act in this fiduciary capacity or capacities in the state in which it is incorporated, or, if the foreign corporation be a national banking association, in which it has its principal place of business; and

(2) Any bank or other corporation organized under the laws of this state or a national banking association having its principal place of business in this state may act in these fiduciary capacities in that state without further showing or qualification, other than that it is authorized to act in these fiduciary capacities in this state and compliance with any law of that state concerning service of process:

(a) Which may require the appointment of an official or other person for the receipt of process; or

(b) Which contains provisions to the effect that any bank or other corporation, which is not incorporated under the laws of that state, or if a national bank then which does not have its principal place of business in that state, acting in that state in a fiduciary capacity pursuant to provisions of law making it eligible to do so, shall be deemed to have appointed an official of that state to be its true and lawful attorney upon whom may be served all legal process in any action or proceeding against it relating to or growing out of any trust, estate or matter in respect

of which the corporation has acted or is acting in that state in this fiduciary capacity, and that the acceptance of or engagement in that state in any acts in this fiduciary capacity shall be signification of its agreement that the process against it, which is so served, shall be of the same legal force and validity as though served upon it personally, or which contains any substantially similar provisions.

Any foreign corporation eligible to act in any fiduciary capacity in this state pursuant to the provisions of this section may so act whether or not a resident of this state be acting with it in this capacity, may use its corporate name in connection with such activity in this state, and may be appointed to act in this fiduciary capacity by any court having jurisdiction in the premises, all notwithstanding any provision of law to the contrary. Nothing in this section contained shall be construed to prohibit or make unlawful any activity in this state by a bank or other corporation which is not incorporated under the laws of this state, or if a national bank then which does not have its principal place of business in this state, which would be lawful in the absence of this section.

3. Except as provided in subsection 5 of this section, prior to the time when any foreign corporation acts pursuant to the authority of this section in any fiduciary capacity or capacities in this state, the foreign corporation shall file with the director of finance a written application for a certificate of reciprocity and the director of finance shall issue the certificate to the foreign corporation. The application shall state:

(1) The correct corporate name of the foreign corporation;

(2) The name of the state under the laws of which it is incorporated, or if the foreign corporation is a national banking association shall state that fact;

(3) The address of its principal business office;

(4) In what fiduciary capacity or capacities it desires to act, in the state of Missouri;

(5) That it is authorized to act in a similar fiduciary capacity or capacities in the state in which it is incorporated, or, if it is a national banking association, in which it has its principal place of business;

(6) That the application shall constitute the irrevocable appointment of the director of finance of Missouri as its true and lawful attorney to receive service of all legal process in any action or proceeding against it relating to or growing out of any trust, estate or matter in respect of which the foreign corporation may act in this state in the fiduciary capacity pursuant to the certificate of reciprocity applied for**;**

(7) Unless the applicant is subject to the jurisdiction of the Office of Thrift Supervision, that the applicant has provided with the application a fiduciary bond in the amount of one million dollars for the benefit of the director of the division of finance in a format approved by the director of the division of finance.

The application shall be verified by an officer of the foreign corporation, and there shall be filed with it such certificates of public officials and copies of documents certified by public officials as may be necessary to show that the foreign corporation is authorized to act in a fiduciary capacity or capacities similar to those in which it desires to act in the state of Missouri, in the state in which it is incorporated, or, if it is a national banking association in which it has its principal place of business. The director of finance shall, thereupon, if the foreign corporation is one which may act in the fiduciary capacity or capacities as provided in subsection 2 of this section, issue to the corporation a certificate of reciprocity, retaining a duplicate thereof together with the application and accompanying documents in his or her office. The certificate of reciprocity shall recite and certify that the foreign corporation is eligible to act in this state pursuant to this section and shall recite the fiduciary capacity or capacities in which the foreign corporation is eligible so to act.

4. A certificate of reciprocity issued to any foreign corporation shall remain in effect until the foreign corporation shall cease to be entitled under subsection 2 of this section to act in this state in the fiduciary capacity or capacities covered by the certificate, and thereafter until revoked by the director of finance. If at any time the foreign corporation shall cease to be entitled under

subsection 2 of this section to act in this state in the fiduciary capacity or capacities covered by the certificate, the director of finance shall revoke the certificate and give written notice of the revocation to the foreign corporation. No revocation of any certificate of reciprocity shall affect the right of the foreign corporation to continue to act in this state in a fiduciary capacity in estates or matters in which it has theretofore begun to act in a fiduciary capacity pursuant to the certificate.

5. A foreign corporation shall not establish or maintain in this state a place of business, branch office or agency for the conduct in this state of business as a fiduciary unless:

(1) The foreign corporation is under the control of a Missouri bank or a Missouri bank holding company, as these terms are defined in section 362.925, and the foreign corporation has complied with the requirements relating to the qualifications of foreign corporations to do business in this state;

(2) The foreign corporation is a bank, trust company or national banking association in good standing that possesses fiduciary powers from its chartering authority and is the surviving corporation to a merger or consolidation with a national banking association located in Missouri or a Missouri bank or trust company. The provisions of this subdivision are enacted to implement subsection 2 of this section and section 362.610, and the provisions of Title 12, U.S.C. 36(f)(2) of the National Bank Act; or

(3) The foreign corporation is a state-chartered bank, savings and loan association, trust company or national banking association in good standing that possesses fiduciary powers and has received a certificate of reciprocity, in which case it may only open a trust representative office in Missouri which is not otherwise a branch of such foreign corporation, provided a bank, savings and loan association or trust company chartered under the laws of Missouri and a national bank with its principal location in Missouri, all with fiduciary powers, are permitted to open and operate a trust representative office under the same or less restrictive conditions in the state in which the foreign corporation is organized or has its principal office.

6. A foreign corporation, insofar as it acts in a fiduciary capacity in this state pursuant to the provisions of this section, shall not be deemed to be transacting business in this state, if the foreign corporation does not establish or maintain in this state a place of business, branch office, or agency for the conduct in this state of business as a fiduciary.

7. Every foreign corporation to which a certificate of reciprocity shall have been issued shall be deemed to have appointed the director of finance to be its true and lawful attorney upon whom may be served all legal process in any action or proceeding against it relating to or growing out of any trust, estate or matter in respect of which the foreign corporation acts in this state in any fiduciary capacity pursuant to the certificate of reciprocity. Service of the process shall be made by delivering a copy of the summons or other process, with a copy of the petition when service of the copy is required by law, together with a remittance of one dollar (to be taxed as costs in the action or proceeding), to the director of finance or to any person in his or her office authorized by him to receive the service. The director of finance shall immediately forward the process, together with the copy of the petition, if any, to the foreign corporation, by registered mail, addressed to it at the address on file with the director, or if there be none on file then at its last known address. The director of finance shall keep a permanent record in his or her office showing for all process served, the style of the action or proceeding, the court in which it was brought, the name and title of the officer serving the process, the day and hour of service, and the day of mailing by registered mail to the foreign corporation and the address to which mailed. In case the process is issued by an associate circuit judge, the same may be directed to and served by any officer authorized to serve process in the city or county where the director of finance shall have his or her office, at least fifteen days before the return thereof.

456.001-101. SHORT TITLE. — Sections 456.1-101 to 456.11-1106 shall be known and may be cited as the "Missouri Uniform Trust Code".

456.001-102. SCOPE. — Sections 456.1-101 to 456.11-1106 apply to express trusts, charitable or noncharitable, testamentary or inter vivos, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust. Sections 456.1-101 to 456.11-1106 do not apply to any trust created by the inherent power of the court pursuant to chapter 460, RSMo.

456.001-103. DEFINITIONS. — In sections 456.1-101 to 456.11-1106:

(1) "Action," with respect to an act of a trustee, includes a failure to act.

(2) "Beneficiary" means a person that:

(a) has a present or future beneficial interest in a trust, vested or contingent; or

(b) in a capacity other than that of trustee, holds a power of appointment over trust property.

(3) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in subsection 1 of section 456.4-405.

(4) "Conservator" means a person described in subdivision (3) of section 475.010, RSMo. This term does not include a conservator ad litem.

(5) "Conservator ad litem" means a person appointed by the court pursuant to the provisions of section 475.097, RSMo.

(6) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(7) "Financial institution" means a non-foreign bank, savings and loan or trust company chartered, regulated and supervised by the Missouri division of finance, the office of the comptroller of the currency, the office of thrift supervision, the National Credit Union Administration, or the Missouri division of credit union supervision. The term "non-foreign bank" shall mean a bank that is not a foreign bank within the meaning of subdivision (1) of section 361.005, RSMo.

(8) "Guardian" means a person described in subdivision (6) of section 475.010, RSMo. The term does not include a guardian ad litem.

(9) "Interested persons" include beneficiaries and any others having a property right in or claim against a trust estate which may be affected by a judicial proceeding. It also includes fiduciaries and other persons representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

(10) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

(11) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as in effect on January 1, 2005 or as later amended.

(12) "Jurisdiction," with respect to a geographic area, includes a State or country.

(13) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(14) "Permissible distributee" means a beneficiary who is currently eligible to receive distributions of trust income or principal, whether mandatory or discretionary.

(15) "Power of withdrawal" means a presently exercisable general power of appointment other than a power exercisable only upon consent of the trustee or a person holding an adverse interest.

(16) "Principal place of administration" of a trust is the trustee's usual place of business where the records pertaining to the trust are kept, or the trustee's residence if the trustee has no such place of business, unless otherwise designated by the terms of the trust as provided in section 456.1-108. In the case of cotrustees, the principal place of administration is, in the following order of priority:

(a) The usual place of business of the corporate trustee if there is but one corporate cotrustee;

(b) The usual place of business or residence of the trustee who is a professional fiduciary if there is but one such trustee and no corporate cotrustee; or

(c) The usual place of business or residence of any of the cotrustees.

(17) "Professional fiduciary" means an individual who represents himself or herself to the public as having specialized training, experience or skills in the administration of trusts.

(18) "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

(19) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

(a) is a permissible distributee;

(b) would be a permissible distributee if the interests of the permissible distributees described in paragraph (a) of this subdivision terminated on that date; or

(c) would be a permissible distributee if the trust terminated on that date.

(20) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(21) "Revocable," as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

(22) "Settlor" means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion pursuant to the terms of the trust.

(23) "Sign" means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic sound, symbol, or process.

(24) "Spendthrift provision" means a term of a trust which restrains either the voluntary or involuntary transfer or both the voluntary and involuntary transfer of a beneficiary's interest.

(25) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a State.

(26) "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

(27) "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.

(28) "Trustee" includes an original, additional, and successor trustee, and a cotrustee.

456.001-104. KNOWLEDGE. — 1. Subject to subsection 2 of this section, a person has knowledge of a fact if the person:

(1) has actual knowledge of it;

(2) has received a notice or notification of it; or

(3) from all the facts and circumstances known to the person at the time in question, has reason to know it.

2. An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the

employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

456.001-105. DEFAULT AND MANDATORY RULES. — 1. Except as otherwise provided in the terms of the trust, sections 456.1-101 to 456.11-1106 governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

2. The terms of a trust prevail over any provision of sections 456.1-101 to 456.11-1106 except:

(1) the requirements for creating a trust;

(2) the duty of a trustee to act in good faith and in accordance with the purposes of the trust;

(3) the requirement that a trust and its terms be for the benefit of its beneficiaries;

(4) the power of the court to modify or terminate a trust under section 456.4-410, subsection 3 of section 456.4-411B, and sections 456.4-412 to 456.4-416;

(5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in sections 456.5-501 to 456.5-507;

(6) the power of the court under section 456.7-702 to require, dispense with, or modify or terminate a bond;

(7) the power of the court under subsection 2 of section 456.7-708 to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

(8) the duty to notify the permissible distributees of an irrevocable trust who have attained twenty-one years of age of the existence of the trust and of their rights to request trustee's reports and other information reasonably related to the administration of the trust;

(9) the duty to respond to the request of a qualified beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of a trust;

(10) the effect of an exculpatory term under section 456.10-1008;

(11) the rights under sections 456.10-1010 to 456.10-1013 of a person other than a trustee or beneficiary;

(12) periods of limitation for commencing a judicial proceeding;

(13) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and

(14) the venue for a judicial proceeding as provided in section 456.2-204.

456.001-106. COMMON LAW OF TRUSTS — PRINCIPLES OF EQUITY. — The common law of trusts and principles of equity supplement sections 456.1-101 to 456.11-1106, except to the extent modified by sections 456.1-101 to 456.11-1106 or another statute of this state.

456.001-107. GOVERNING LAW. — The meaning and effect of the terms of a trust are determined by:

(1) the law of the jurisdiction designated in the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue; or

(2) in the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

456.001-108. PRINCIPAL PLACE OF ADMINISTRATION. — 1. Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:

(1) a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or

(2) all or part of the administration occurs in the designated jurisdiction.

2. Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee may transfer the trust's principal place of administration to another State or to a jurisdiction outside of the United States that is appropriate to the trust's purposes, its administration, and the interests of the beneficiaries.

3. The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than sixty days before initiating the transfer. The notice of proposed transfer must include:

(1) the name of the jurisdiction to which the principal place of administration is to be transferred;

(2) the address and telephone number at the new location at which the trustee can be contacted;

(3) an explanation of the reasons for the proposed transfer;

(4) the date on which the proposed transfer is anticipated to occur; and

(5) the date, not less than sixty days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.

4. The authority of a trustee under this section to transfer a trust's principal place of administration without an order of a court terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

5. In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to section 456.7-704.

456.001-109. METHODS AND WAIVER OF NOTICE. — 1. Notice to a person under sections 456.1-101 to 456.11-1106 or the sending of a document to a person under sections 456.1-101 to 456.11-1106 must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed electronic message.

2. Notice otherwise required under sections 456.1-101 to 456.11-1106 or a document otherwise required to be sent under sections 456.1-101 to 456.11-1106 need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

3. Notice under sections 456.1-101 to 456.11-1106 or the sending of a document under sections 456.1-101 to 456.11-1106 may be waived by the person to be notified or sent the document.

4. Notice of a judicial proceeding must be given as provided in the applicable rules of civil procedure.

456.001-110. OTHERS TREATED AS QUALIFIED BENEFICIARIES. — 1. A specified charitable organization or a person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in sections 456.4-408 or 456.4-409 has the rights of a qualified beneficiary under sections 456.1-101 to 456.11-1106.

2. Except with respect to section 456.4-411B, the attorney general of this state has the rights of a qualified beneficiary with respect to an interest in a charitable trust having its principal place of administration in this state if:

(1) a specified charitable organization is not entitled to a distribution from such interest; and

(2) distributions from the interest are payable in a manner that, if payable to an identifiable charitable entity, would qualify that entity as a specified charitable organization.

3. In this section a "specified charitable organization" means an identifiable charitable entity that, on the date that entity's qualification is determined:

(a) is a permissible distributee;

(b) would be a permissible distributee if the interests of the permissible distributees terminated on that date; or

(c) would be a permissible distributee if the trust terminated on that date.

4. No provision of this section shall limit the authority of the attorney general of this state to supervise and control charitable organizations.

456.001-111. NONJUDICIAL SETTLEMENT AGREEMENTS. — 1. In this section, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

2. Except as otherwise provided in subsection 3 and 6 of this section, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

3. A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under sections 456.1-101 to 456.11-1106 or other applicable law.

4. Matters that may be resolved by a nonjudicial settlement agreement include:

(1) the interpretation or construction of the terms of the trust;

(2) the approval of a trustee's report or accounting;

(3) direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;

(4) the resignation or appointment of a trustee and the determination of a trustee's compensation;

(5) transfer of a trust's principal place of administration; and

(6) liability of a trustee for an action relating to the trust.

5. Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in sections 456.3-301 to 456.3-305 was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

6. A nonjudicial settlement agreement may not be used to terminate or modify a trust for the reasons that a court could terminate or modify a trust as set forth in subsection 1 of section 456.4-411B.

456.001-112. RULES OF CONSTRUCTION. — 1. If a settlor's marriage is dissolved or annulled, any beneficial terms of a trust in favor of the settlor's former spouse or any fiduciary appointment of the settlor's former spouse is revoked on the date the marriage is dissolved or annulled, whether or not the terms of the trust refer to marital status. The terms of the trust shall be given effect as if the former spouse had died immediately before the date the dissolution or annulment became final. This subsection shall also apply to any beneficial interest or fiduciary appointment in favor of a relative of the settlor's former spouse as if such relative were the former spouse.

2. Subsection 1 of this section does not apply to the terms of a trust that provide any beneficial interest or fiduciary appointment for a former spouse or a relative of a former spouse that was created after the marriage was dissolved or annulled, or that expressly states that marriage dissolution or annulment shall not affect the designation of a former spouse or relative of a former spouse as a beneficiary or a fiduciary of the trust.

3. A court may order or the settlor and the spouse may agree before, during, or after the marriage in a binding contract or settlement agreement that Subsection 1 of this section does not apply to a beneficial interest or fiduciary appointment.

4. Any terms of a trust revoked solely by this section are revived by the settlor's remarriage to the former spouse or by a nullification of the marriage dissolution or annulment.

5. In this section, "a relative of the settlor's former spouse" means an individual who is related to the settlor's former spouse by blood, adoption or affinity and who, after the divorce or annulment, is not related to the settlor by blood, adoption or affinity.

456.002-201. ROLE OF COURT IN ADMINISTRATION OF TRUST. — 1. The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

2. A trust is not subject to continuing judicial supervision unless ordered by the court.

3. A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights.

456.002-202. JURISDICTION OVER TRUSTEE AND BENEFICIARY. — 1. By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration to this state, the trustee submits personally to the jurisdiction of the courts of this State regarding the administration of the trust during any period that the principal place of administration is located in this state.

2. With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the courts of this state regarding any proceeding involving the administration of the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any proceeding involving the administration of the trust.

3. A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including, but not limited to a proceeding to:

(1) request instructions or declare rights;

(2) approve a nonjudicial settlement;

(3) interpret or construe the terms of the trust;

(4) determine the validity of a trust or of any of its terms;

(5) approve a trustee's report or accounting or compel a trustee to report or account;

(6) direct a trustee to refrain from performing a particular act or grant to a trustee any necessary or desirable power;

(7) review the actions of a trustee, including the exercise of a discretionary power;

(8) accept the resignation of a trustee;

(9) appoint or remove a trustee;

(10) determine a trustee's compensation;

(11) determine the liability of a trustee for an action relating to the trust and compel redress of a breach of trust by any available remedy;

(12) modify or terminate a trust;

(13) combine trusts or divide a trust;

(14) determine liability of a trust for debts of a beneficiary and living settlor;

(15) approve employment and compensation of agents;

(16) determine the propriety of investments or of principal and income allocations;

(17) ascertain the identity of trust beneficiaries or the respective beneficial interests of trust beneficiaries;

(18) release of trust registration or change of the trust's principal place of administration;

(19) determine the timing and quantity of distributions and dispositions of assets;

(20) determine the validity and effect of alienations by beneficiaries, by exercise of powers of appointment or otherwise; or

(21) appoint a representative for a beneficiary.

4. This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust.

456.002-204. VENUE. — 1. Venue for judicial proceedings involving the internal affairs of a trust shall be:

(1) For a trust then registered in this State, in the probate division of the circuit court where the trust is registered; or

(2) For a trust not then registered in this State, in the probate division of the circuit court where the trust could properly be registered; or

(3) For a trust not then registered in this State and which cannot properly be registered in this State, in accordance with the rules of civil procedure.

2. Where a judicial proceeding under this chapter could be maintained in more than one place in this state, the court in which the proceeding is first commenced has the exclusive right to proceed.

3. If proceedings concerning the same trust are commenced in more than one court of this State, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and if the court in which the proceeding was first commenced determines that venue is properly in another court, it shall transfer the proceeding to the other court.

4. If a court finds that in the interest of justice a proceeding or a file should be located in another court of this State, the court making the finding may transfer the proceeding or file to the other court.

456.003-301. REPRESENTATION, BASIC EFFECT. — 1. Notice to a person who may represent and bind another person under sections 456.3-301 to 456.3-305 has the same effect as if notice were given directly to the other person.

2. The consent of a person who may represent and bind another person under sections 456.3-301 to 456.3-305 is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

3. Except as otherwise provided in sections 456.4-411A and 456.6-602, a person who under sections 456.3-301 to 456.3-305 may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

456.003-302. REPRESENTATION BY HOLDER OF GENERAL TESTAMENTARY POWER OF APPOINTMENT. — The holder of a testamentary power of appointment may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

In this section "testamentary power of appointment" means a testamentary power of appointment exercisable without the consent of the creator of the power or person holding an adverse interest in favor of:

(1) a class of appointees that includes the holder, the holder's estate, the holder's creditors, or the creditors of the holder's estate; or

(2) all persons other than the holder, the holder's estate, the holder's creditor's, or the creditors of the holder's estate.

456.003-303. REPRESENTATION BY FIDUCIARIES AND PARENTS. — To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

(1) a conservator may represent and bind the estate that the conservator controls;

(2) a conservator ad litem may represent and bind the ward with respect to a particular question or dispute over which a conservator does not have authority;

(3) a guardian may represent and bind the ward with respect to a particular question or dispute if a conservator or conservator ad litem is not authorized to act with respect to that particular question or dispute;

(4) a parent may represent and bind the parent's minor or unborn child if a conservator, conservator ad litem, or guardian for the child has not been appointed;

(5) an agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

(6) a trustee may represent and bind the beneficiaries of the trust; and

(7) a personal representative of a decedent's estate may represent and bind persons interested in the estate.

456.003-304. REPRESENTATION BY PERSON HAVING SUBSTANTIALLY IDENTICAL INTEREST. — Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented.

456.003-305. APPOINTMENT OF REPRESENTATIVE. — 1. If the court determines that an interest is not represented under sections 456.3-301 to 456.3-305 or that the otherwise available representation might be inadequate, the court may appoint a representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown. A representative may be appointed to represent several persons or interests.

2. A representative may act on behalf of the individual represented with respect to any matter arising under sections 456.1-101 to 456.11-1106, whether or not a judicial proceeding concerning the trust is pending.

3. In making decisions, a representative may consider general benefit accruing to the living members of the individual's family.

456.004-401. METHODS OF CREATING TRUST. — A trust may be created by:

(1) transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;

(2) declaration by the owner of property that the owner holds identifiable property as trustee;

(3) exercise of a power of appointment in favor of a trustee; or

(4) a court under section 475.092, 475.093, or 511.030, RSMo.

456.004-402. REQUIREMENTS FOR CREATION. — 1. Other than for a trust created by section 475.092, 475.093, or 511.030, RSMo, a trust is created only if:

(1) the settlor has capacity to create a trust;

(2) the settlor indicates an intention to create the trust;

(3) the trust has a definite beneficiary or is:

(a) a charitable trust;

(b) a trust for the care of an animal, as provided in section 456.4-408; or

(c) a trust for a noncharitable purpose, as provided in section 456.4-409;

(4) the trustee has duties to perform; and

(5) the same person is not the sole trustee and sole beneficiary.

2. A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

3. A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

456.004-403. TRUSTS CREATED IN OTHER JURISDICTIONS. — A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation:

(1) the settlor was domiciled, had a place of abode, or was a national;

(2) a trustee was domiciled or had a place of business; or

(3) any trust property was located.

456.004-404. TRUST PURPOSES. — A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries.

456.004-405. CHARITABLE PURPOSES — ENFORCEMENT. — 1. A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community.

2. If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.

3. The settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust.

456.004-406. CREATION OF TRUST INDUCED BY FRAUD, DURESS, OR UNDUE INFLUENCE. — A trust is void to the extent its creation was induced by fraud, duress, or undue influence.

456.004-407. EVIDENCE OF ORAL TRUST. — 1. Except as provided in subsection 2 of this section, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence.

2. Other than for a conveyance by which a trust may arise or result by the implication or construction of law, all declarations or creations of trust of any lands, tenements or hereditaments shall be manifested and proved by some writing signed by the party who is, or shall be, by law, enabled to declare such trusts, or by the party's last will, in writing, or else they shall be void.

456.004-408. TRUST FOR CARE OF ANIMAL. — 1. A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

2. A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

3. Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

456.004-409. NONCHARITABLE TRUST WITHOUT ASCERTAINABLE BENEFICIARY. — Except as otherwise provided in section 456.4-408 or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than twenty-one years.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

456.004-410. MODIFICATION OR TERMINATION OF TRUST — PROCEEDINGS FOR APPROVAL OR DISAPPROVAL. — 1. In addition to the methods of termination prescribed by sections 456.4-411A to 456.4-414, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

2. A proceeding to approve or disapprove a proposed modification or termination under sections 456.4-411A to 456.4-416, or trust combination or division under section 456.4-417, may be commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a proposed modification or termination under section 456.4-411A may be commenced by the settlor. The settlor of a charitable trust may maintain a proceeding to modify the trust under section 456.4-413.

456.004-411A. MODIFICATION OR TERMINATION OF NONCHARITABLE IRREVOCABLE TRUST BY CONSENT. — 1. A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, without court approval, even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's termination or modification may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or by the settlor's conservator ad litem with the approval of the court if an agent is not so authorized and a conservator has not been appointed.

2. Upon termination of a trust under subsection 1 of this section, the trustee shall distribute the trust property as agreed by the beneficiaries.

3. If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection 1 of this section, the modification or termination may be approved by the court if the court is satisfied that:

(1) if all of the beneficiaries had consented, the trust could have been modified or terminated under subsection 1 of this section; and

(2) the interests of a beneficiary who does not consent will be adequately protected.

456.004-411B. MODIFICATION OR TERMINATION OF NONCHARITABLE IRREVOCABLE TRUST BY CONSENT. — 1. When all of the adult beneficiaries having the capacity to contract consent, the court may, upon finding that the interest of any nonconsenting beneficiary will be adequately protected, modify the terms of a noncharitable irrevocable trust so as to reduce or eliminate the interests of some beneficiaries and increase those of others, change the times or amounts of payments and distributions to beneficiaries, or provide for termination of the trust at a time earlier or later than that specified by its terms. The court may at any time upon its own motion appoint a representative pursuant to section 456.3-305 to represent a nonconsenting beneficiary. The court shall appoint such a representative upon the motion of any party, unless the court determines such an appointment is not appropriate under the circumstances.

2. Upon termination of a trust under subsection 1 of this section, the trustee shall distribute the trust property as directed by the court.

3. If a trust cannot be terminated or modified under subsection 1 of this section because not all adult beneficiaries having capacity to contract consent or the terms of the trust prevent such modification or termination, the modification or termination may be approved by the court if the court is satisfied that the interests of a beneficiary, other than the settlor, who does not consent will be adequately protected, modification or termination will benefit a living settlor who is also a beneficiary, and:

(1) in the case of a termination, the party seeking termination establishes that continuance of the trust is not necessary to achieve any material purpose of the trust; or

(2) in the case of a modification, the party seeking modification establishes that the modification is not inconsistent with a material purpose of the trust, and the modification is not specifically prohibited by the terms of the trust.

4. This section shall apply to trusts created on or after January 1, 2005. The provisions of section 456.590 shall apply to all trusts created prior to January 1, 2005.

456.004-412. MODIFICATION OR TERMINATION BECAUSE OF UNANTICIPATED CIRCUMSTANCES OR INABILITY TO ADMINISTER TRUST EFFECTIVELY. — 1. The court may modify the dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

2. The court may modify the management or administrative terms of a trust if modification will further the purposes of the trust.

3. Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

456.004-413. CY PRES. — 1. Except as otherwise provided in subsection 2 of this section, if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:

(1) the trust does not fail, in whole or in part;

(2) the trust property does not revert to the settlor or the settlor's successors in interest; and

(3) the court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

2. A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection 1 of this section to apply cy pres to modify or terminate the trust only if, when the provision takes effect:

(1) the trust property is to revert to the settlor and the settlor is still living; or

(2) fewer than twenty-one years have elapsed since the date of the trust's creation.

456.004-414. MODIFICATION OR TERMINATION OF UNECONOMIC TRUST. — 1. After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than one hundred thousand dollars may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

2. The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

3. Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

4. This section does not apply to an easement for conservation or preservation.

456.004-415. REFORMATION TO CORRECT MISTAKES. — The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

456.004-416. MODIFICATION TO ACHIEVE SETTLOR'S TAX OBJECTIVES. — To achieve the settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect.

456.004-417. COMBINATION AND DIVISION OF TRUSTS. — After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust. The terms of each new trust created by a division under this section do not have to be identical if the interest of each beneficiary is substantially the same under the terms of the trust prior to its division and the combined terms of all trusts after the division. Two or more trusts may be combined into a single trust if the interests of each beneficiary in the trust resulting from the combination are substantially the same as the combined interests of the beneficiary in the trusts prior to the combination. The trustee shall determine the terms controlling any trust after its combination as authorized by this section.

456.005-501. RIGHTS OF BENEFICIARY'S CREDITOR OR ASSIGNEE. — To the extent a beneficiary's interest is not protected by a spendthrift provision, an assignee or a judgment creditor of the beneficiary may, without court order, reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances.

456.005-502. SPENDTHRIFT PROVISION. — 1. A spendthrift provision is valid if it restrains either the voluntary or involuntary transfer or both the voluntary and involuntary transfer of a beneficiary's interest.

2. A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both voluntary and involuntary transfers of the beneficiary's interest.

3. A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in sections 456.5-501 to 456.5-507, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

456.005-503. EXCEPTIONS TO SPENDTHRIFT PROVISION. — 1. In this section,

(1) "Child" includes any person for whom an order or judgment for child support has been entered in this or another State, and

(2) "Judgment" means a judgment which may be executed in this State.

2. Even if a trust contains a spendthrift provision, a beneficiary's child, spouse, or former spouse who has a judgment against the beneficiary for support or maintenance, or a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust, may obtain from a court an order attaching present or future trust income. If there is more than one permissible distributee, the court may grant relief as is equitable under the circumstances.

3. A spendthrift provision is unenforceable against a claim of this State or the United States to the extent a statute of this state or federal law so provides.

456.005-504. DISCRETIONARY TRUSTS — EFFECT OF STANDARD. — 1. Except as otherwise provided in section 456.5-503, whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:

(1) the discretion is expressed in the form of a standard of distribution; or

(2) the trustee has abused the discretion.

2. This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

456.005-505. CREDITOR'S CLAIM AGAINST SETTLOR. — 1. Whether or not the terms of a trust contain a spendthrift provision, during the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

2. With respect to an irrevocable trust without a spendthrift provision, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

3. With respect to an irrevocable trust with a spendthrift provision, a spendthrift provision will prevent the settlor's creditors from satisfying claims from the trust assets except:

(1) Where the conveyance of assets to the trust was fraudulent as to creditors pursuant to the provisions of Chapter 428, RSMo; or

(2) To the extent of the settlor's beneficial interest in the trust assets, if at the time the trust became irrevocable:

(a) The settlor was the sole beneficiary of either the income or principal of the trust or retained the power to amend the trust; or

(b) The settlor was one of a class of beneficiaries and retained a right to receive a specific portion of the income or principal of the trust that was determinable solely from the provisions of the trust instrument.

4. Any trustee who has a duty or power to pay the debts of a deceased settlor may publish a notice in some newspaper published in the county once a week for four consecutive weeks in substantially the following form:

To all persons interested in the estate of _____, decedent. The undersigned _____ is acting as Trustee under a trust the terms of which provide that the debts of the decedent may be paid by the Trustee(s) upon receipt of proper proof thereof. The address of the Trustee is_____.

All creditors of the decedent are noticed to present their claims to the undersigned within six (6) months from the date of the first publication of this notice or be forever barred.

Trustee

(1) If such publication is duly made by the trustee, any debts not presented to the trustee within six months from the date of the first publication of the preceding notice shall be forever barred as against the trustee and the trust property.

(2) A trustee shall not be liable to account to the decedent's personal representative under the provisions of section 461.300, RSMo, by reason of any debt barred under the provisions of this subsection.

5. For purposes of this section:

(1) during the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and

(2) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in sections 2041(b)(2), 2514(e) or 2503(b) of the Internal Revenue Code.

6. This section shall not apply to a spendthrift trust described, defined, or established in section 456.018.

456.005-506. OVERDUE DISTRIBUTION. — Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the required distribution date.

456.005-507. PERSONAL OBLIGATIONS OF TRUSTEE. — Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

456.006-601. CAPACITY OF SETTLOR OF REVOCABLE TRUST. — The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

456.006-602. REVOCATION OR AMENDMENT OF REVOCABLE TRUST. — 1. Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before January 1, 2005.

2. If a revocable trust is created or funded by more than one settlor:

(1) to the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses; and

(2) to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution.

3. The settlor may revoke or amend a revocable trust:

(1) if the terms of the trust provide a method of amendment or revocation, by substantially complying with any method provided in the terms of the trust; or

(2) if the terms of the trust do not provide a method, by any other method manifesting clear and convincing evidence of the settlor's intent, including the terms of a later duly probated will or codicil that identify the trust being revoked or the trust terms being amended.

4. Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

5. A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power.

6. A conservator of the settlor or, if no conservator has been appointed, a conservator ad litem of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the conservator or the conservator ad litem.

7. A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

456.006-603. SETTLOR'S POWERS — POWERS OF WITHDRAWAL. — 1. While a trust is revocable and the settlor has capacity to revoke the trust, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

2. A settlor is presumed to have capacity for the purposes of subsection 1 of this section until either the settlor is adjudicated totally incapacitated or disabled or the trustee has received an affidavit of incapacity.

3. If a revocable trust has more than one settlor, the duties of the trustee are owed to all of the settlors having capacity to revoke the trust.

4. During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

5. In this section, an "affidavit of incapacity" means a written certificate furnished by at least one licensed medical doctor that states that the settlor lacks capacity to revoke the trust.

456.006-604. LIMITATION ON ACTION CONTESTING VALIDITY OF REVOCABLE TRUST — DISTRIBUTION OF TRUST PROPERTY. — 1. A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earliest of:

(1) two years after the settlor's death;

(2) six months after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding; or

(3) in the case of a trust that was revocable at the settlor's death that is entitled to a distribution under the settlor's will, on the date that any contest of that will is barred under the provisions of section 473.083, RSMo, provided that a copy of the trust instrument was filed with the probate division within ninety days of the first publication of notice of granting of letters on the estate of the decedent under section 473.033, RSMo.

2. For purposes of subdivision (2) of subsection 1 of this section, the trustee may provide the documentation and information set forth in that subsection to:

(1) all persons who would be entitled to notice of granting of letters on the estate of the decedent under section 473.033, RSMo; and

(2) all persons whose interests are, in the opinion of the trustee, adversely affected by the terms of the trust.

3. Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:

(1) the trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(2) a potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within sixty days after the contestant sent the notification.

4. A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

456.007-701. ACCEPTING OF DECLINING TRUSTEESHIP. — 1. Except as otherwise provided in subsection 3 of this section, a person designated as trustee accepts the trusteeship:

(1) by substantially complying with a method of acceptance provided in the terms of the trust; or

(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

2. A person designated as trustee who has not yet accepted the trusteeship may decline the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have declined the trusteeship.

3. A person designated as trustee, without accepting the trusteeship, may:

(1) act to preserve the trust property if, within a reasonable time after acting, the person sends a declination of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified beneficiary; and

(2) inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

456.007-702. TRUSTEE'S BOND. — 1. A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.

2. The court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time.

456.007-703. COTRUSTEES. — 1. Cotrustees shall act by majority decision.

2. If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

3. A cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

4. If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

5. A trustee may not delegate to a cotrustee the performance of a function the settlor reasonably expected the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

6. Except as otherwise provided in subsection 7 of this section, a trustee who does not join in an action of another trustee is not liable for the action.

7. Each trustee shall exercise reasonable care to:

(1) prevent a cotrustee from committing a serious breach of trust; and

(2) compel a cotrustee to redress a serious breach of trust.

8. A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

456.007-704. VACANCY IN TRUSTEESHIP — APPOINTMENT OF SUCCESSOR. — 1. A vacancy in a trusteeship occurs if:

(1) a person designated as trustee declines the trusteeship;

(2) a person designated as trustee cannot be identified or does not exist;

(3) a trustee resigns;

(4) a trustee is disqualified or removed;

(5) a trustee dies; or

(6) a guardian or conservator is appointed for an individual serving as trustee.

2. If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

3. A vacancy in a trusteeship required to be filled must be filled in the following order of priority:

(1) by a person designated in or pursuant to the terms of the trust to act as successor trustee;

(2) by a person appointed by a majority in number of the qualified beneficiaries; or

(3) by a person appointed by the court.

4. Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

456.007-705. RESIGNATION OF TRUSTEE. — 1. A trustee may resign:

(1) upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees; or

(2) with the approval of the court.

2. In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

3. Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

456.007-706. REMOVAL OF TRUSTEE. — 1. The settlor, a cotrustee, or a qualified beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

2. The court may remove a trustee if:

(1) the trustee has committed a serious breach of trust;

(2) lack of cooperation among cotrustees substantially impairs the administration of the trust;

(3) because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or

(4) the trustee has substantially and materially reduced the level of services provided to that trust and has failed to reinstate a substantially equivalent level of services within ninety days after receipt of notice by the settlor, a cotrustee, or a qualified beneficiary or removal is requested by all of the qualified beneficiaries and in either such case the party seeking removal establishes to the court that:

(a) removal of the trustee best serves the interests of all of the beneficiaries;

(b) removal of the trustee is not inconsistent with a material purpose of the trust; and

(c) a suitable cotrustee or successor trustee is available and willing to serve.

3. In an action to remove a trustee under subdivision (4) of subsection 2 of this section, the following apply:

(1) In the event that a corporation is the trustee being removed, a suitable replacement cotrustee or successor trustee shall be another corporation qualified to conduct trust business in this state.

(2) In the event that a successor trustee is not appointed under the provisions of section 456.7-704 or the court finds that all potential successor trustees are not suitable, then the court may appoint such trustee or trustees as the court finds suitable under the circumstances.

(3) With respect to a trust created under an instrument executed before January 1, 2005, the provisions of subdivision (4) of subsection 2 of this section shall not apply if the instrument contains any procedures concerning removal of any trustee.

4. Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under subsection 2 of section 456.10-1001 as may be necessary to protect the trust property or the interests of the beneficiaries.

456.007-707. DELIVERY OF PROPERTY BY FORMER TRUSTEE. — 1. Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

2. A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it.

456.007-708. COMPENSATION OF TRUSTEE. — 1. If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

2. If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if:

(1) the duties of the trustee are substantially different from those contemplated when the trust was created; or

(2) the compensation specified by the terms of the trust would be unreasonably low or high.

3. For purposes of this section, reasonable compensation may include fees that take into account the administration of both income and principal whether or not the will or trust instrument contains provisions relating to compensation of the trustee.

456.007-709. REIMBURSEMENT OF EXPENSES. — 1. A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

(1) expenses that were properly incurred in the administration of the trust; and

(2) to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

2. An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

456.008-801. DUTY TO ADMINISTER TRUST. — Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with sections 456.1-101 to 456.11-1106.

456.008-802. DUTY OF LOYALTY. — 1. A trustee shall administer the trust solely in the interests of the beneficiaries.

2. Subject to the rights of persons dealing with or assisting the trustee as provided in section 456.10-1012, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

(1) the transaction was authorized by the terms of the trust;

(2) the transaction was approved by the court;

(3) the beneficiary did not commence a judicial proceeding within the time allowed by section 456.10-1005;

(4) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 456.10-1009; or

(5) the transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

3. A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

(1) the trustee's spouse;

(2) the trustee's descendants, siblings, parents, or their spouses;

(3) an agent or attorney of the trustee; or

(4) a corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

4. A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

5. A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

6. The following transactions are not presumed to be affected by a conflict between the trustee's personal and fiduciary interest provided that any investment made pursuant to the transaction complies with the Missouri Prudent Investor Act.

(1) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee.

(2) the placing of securities transactions by a trustee through a securities broker that is a part of the same company as the trustee, is owned by the trustee, or is affiliated with the trustee.

(3) In addition to the trustee's fees charged to the trust, the trustee, its affiliate, or associated entity may be compensated for any transaction or provision of services described in this subsection 6 or in subdivisions (4), (5), or (6) of subsection 8 of this section; provided, however, that with respect to any investment in securities of an investment company or investment trust to which the trustee or its affiliate provides investment advisory or investment management services or any services described in subdivision (5) of subsection 8 of this section, the trustee shall at least annually notify the persons entitled under section 456.8-813 to receive a copy of the trustee's annual report of the rate or method by which the compensation was determined.

7. In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

8. The following transactions, if fair to the beneficiaries, are not presumed to be affected by a conflict between personal and fiduciary interests and are not precluded by this section:

(1) an agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(2) payment of reasonable compensation to the trustee;

(3) a transaction between a trust and another trust, decedent's estate, or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(4) a deposit of trust money in a financial institution operated by the trustee or an affiliate;

(5) a delegation and any transaction made pursuant to the delegation from a trustee to an agent that is affiliated or associated with the trustee, provided that notice of any compensation paid pursuant to the delegation is given as provided in subdivision (3) of subsection 6 of this section; or

(6) any loan from the trustee or its affiliate.

9. The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

456.008-803. IMPARTIALITY. — If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests.

456.008-804. PRUDENT ADMINISTRATION. — A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

456.008-805. COSTS OF ADMINISTRATION. — In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee.

456.008-806. TRUSTEE'S SKILLS. — A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise.

456.008-807. DELEGATION BY TRUSTEE. — 1. A trustee may delegate to an agent duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(1) selecting an agent;

(2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

2. In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

3. A trustee who complies with subsection 1 of this section is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.

4. By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this State, an agent submits to the jurisdiction of the courts of this State.

456.008-808. POWERS TO DIRECT. — 1. While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

2. If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is contrary to the terms of the trust

or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

3. The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

4. A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

456.008-809. CONTROL AND PROTECTION OF TRUST PROPERTY. — A trustee shall take reasonable steps to take control of and protect the trust property, except that this duty does not apply to, and the trustee is not responsible for, items of tangible personal property that are property of a trust revocable by the settlor and that are not in the possession or control of the trustee.

456.008-810. RECORD KEEPING AND IDENTIFICATION OF TRUST PROPERTY. — 1. A trustee shall keep adequate records of the administration of the trust.

2. A trustee shall keep trust property separate from the trustee's own property.

3. Except as otherwise provided in subsection 4 of this section, a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

4. If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

456.008-811. ENFORCEMENT AND DEFENSE OF CLAIMS. — A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

456.008-812. COLLECTING TRUST PROPERTY. — A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee, and to redress a breach of trust known to the trustee to have been committed by a former trustee.

456.008-813. DUTY TO INFORM AND REPORT. — 1. A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust.

2. A trustee:

(1) upon request of a beneficiary, shall promptly furnish to the beneficiary a copy of the trust instrument;

(2) within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number;

(3) within sixty days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in subsection 3 of this section; and

(4) shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation. Subdivisions (2) and (3) of this subsection do not apply to a trust that became irrevocable before January 1, 2005.

3. A trustee shall send to the permissible distributees of trust income or principal, and to other beneficiaries who request it, at least annually and at the termination of the trust,

a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee. A personal representative, conservator, or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.

4. A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

5. A trustee may charge a reasonable fee to a beneficiary for providing information under this section.

6. The request of any beneficiary for information under any provision of this section shall be with respect to a single trust that is sufficiently identified to enable the trustee to locate the records of the trust.

7. If the trustee is bound by any confidentiality restrictions with respect to an asset of a trust, any beneficiary who is eligible to receive information pursuant to this section about such asset shall agree to be bound by the confidentiality restrictions that bind the trustee before receiving such information from the trustee.

456.008-814. DISCRETIONARY POWERS — TAX SAVINGS. — 1. Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute," "sole," or "uncontrolled," the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

2. Subject to subsection 4 of this section, and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

(1) a person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard relating to the trustee's individual health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code;

(2) a trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person; and

(3) for purposes of this subsection 2 of this section, the term "trustee" shall include a person who is deemed to have any power of a trustee, whether because such person has the right to remove or replace any trustee, because a reciprocal trust or power doctrine applies, or for any other reason.

3. A power whose exercise is limited or prohibited by subsection 2 may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

4. Subsection 2 of this section does not apply to:

(1) a power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in section 2056(b)(5) or 2523(b)(5) of the Internal Revenue Code was previously allowed;

(2) any trust during any period that the trust may be revoked or amended by its settlor; or

(3) a trust if contributions to the trust qualify for the annual exclusion under section 2503(c) of the Internal Revenue Code.

456.008-815. GENERAL POWERS OF TRUSTEE. — 1. A trustee, without authorization by the court, may exercise:

(1) powers conferred by the terms of the trust; and

(2) except as limited by the terms of the trust:

(a) all powers over the trust property which an unmarried competent owner has over individually owned property;

(b) any other powers appropriate to achieve the proper investment, management, and distribution of the trust property; and

(c) any other powers conferred by sections 456.1-101 to 456.11-1106.

2. The exercise of a power is subject to the fiduciary duties prescribed by section 456.8-801 to 456.8-814.

456.008-816. SPECIFIC POWERS OF TRUSTEE. — Without limiting the authority conferred by section 456.8-815, a trustee may:

(1) collect trust property and accept or reject additions to the trust property from a settlor or any other person;

(2) acquire or sell property in divided or undivided interests, for cash or on credit, at public or private sale;

(3) exchange, partition, or otherwise change the character of trust property;

(4) deposit trust money in an account in a financial institution;

(5) borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(6) with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;

(7) with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

(a) vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;

(b) hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;

(c) pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and

(d) deposit the securities with a depositary or other financial institution;

(8) with respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;

(9) enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

(10) grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

(11) insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;

(12) abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

(13) with respect to possible liability for violation of environmental law:

(a) inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been

asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

(b) take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

(c) decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

(d) compromise claims against the trust which may be asserted for an alleged violation of environmental law; and

(e) pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

(14) pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(15) pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

(16) exercise elections with respect to federal, state, and local taxes;

(17) select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

(18) make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;

(19) pledge trust property to guarantee or secure loans made by others to a beneficiary;

(20) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

(21) pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(a) paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;

(b) paying it to the beneficiary's custodian under the Missouri Transfers to Minors Law under sections 404.005 to 404.094, RSMo, or a personal custodian under sections 404.400 to 404.650, RSMo, and, for that purpose, creating a custodianship or custodial trust;

(c) if the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

(d) managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

(22) on distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;

(23) resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(24) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(25) sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers.

(26) on termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it; and

(27) To invest and reinvest trust assets in accordance with sections 469.900 to 469.913, RSMo; including investing and reinvesting 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 meet the standards established by the division of finance pursuant to subsection 5 of section 362.550, RSMo.

456.008-817. DISTRIBUTION UPON TERMINATION. — 1. Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within thirty days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

2. Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

3. A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

(1) it was induced by improper conduct of the trustee; or

(2) the beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

456.010-1001. REMEDIES FOR BREACH OF TRUST. — 1. A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

2. To remedy a breach of trust that has occurred or may occur, the court may:

(1) compel the trustee to perform the trustee's duties;

(2) enjoin the trustee from committing a breach of trust;

(3) compel the trustee to redress a breach of trust by paying money, restoring property, or other means;

(4) order a trustee to account;

(5) appoint a special fiduciary to take possession of the trust property and administer the trust;

(6) suspend the trustee;

(7) remove the trustee as provided in section 456.7-706;

(8) reduce or deny compensation to the trustee;

(9) subject to section 456.10-1012, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or

(10) order any other appropriate relief.

456.010-1002. DAMAGES FOR BREACH OF TRUST. — 1. A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of:

(1) the amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or

(2) the profit the trustee made by reason of the breach.

2. Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other

trustee or trustees that are also liable. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

456.010-1003. DAMAGES IN ABSENCE OF BREACH. — 1. A trustee is accountable to an affected beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust.

2. Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

456.010-1004. ATTORNEY'S FEES AND COSTS. — In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

456.010-1005. LIMITATION OF ACTION AGAINST TRUSTEE. — 1. A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the last to occur of the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and the date the trustee informed the beneficiary of the time allowed for commencing a proceeding with respect to any potential claim adequately disclosed on the report.

2. A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence.

3. If subsection 1 of this section does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within five years after the first to occur of:

(1) the removal, resignation, or death of the trustee;

(2) the termination of the beneficiary's interest in the trust; or

(3) the termination of the trust.

456.010-1006. RELIANCE ON TRUST INSTRUMENT. — A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

456.010-1007. EVENT AFFECTING ADMINISTRATION OR DISTRIBUTION. — If the happening of an event, including marriage, divorce, performance of educational requirements, or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

456.010-1008. EXCULPATION OF TRUSTEE. — 1. A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

(1) relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

(2) was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

2. Unless the settlor was represented by an attorney not employed by the trustee with respect to the trust containing the exculpatory term, an exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential

relationship unless the trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the settlor.

456.010-1009. BENEFICIARY'S CONSENT, RELEASE, OR RATIFICATION. — A trustee is not liable to a beneficiary for breach of trust if the beneficiary, while having capacity, consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

(1) the consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

(2) at the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

456.010-1010. LIMITATION ON PERSONAL LIABILITY OF TRUSTEE. — 1. Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity.

2. A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.

3. A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

456.010-1011. INTEREST AS GENERAL PARTNER. — 1. Except as otherwise provided in subsection 3 of this section or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed with the Secretary of State of this State.

2. Except as otherwise provided in subsection 3 of this section, a trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

3. The immunity provided by this section does not apply if an interest in the partnership is held by the trustee in a capacity other than that of trustee or is held by the trustee's spouse or one or more of the trustee's descendants, siblings, or parents, or the spouse of any of them.

4. If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for contracts and other obligations of the partnership as if the settlor were a general partner.

456.010-1012. PROTECTION OF PERSON DEALING WITH TRUSTEE. — 1. A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

2. A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

3. A person who in good faith delivers assets to a trustee need not ensure their proper application.

4. A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

5. Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

456.010-1013. CERTIFICATION OF TRUST. — 1. Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing the following information:

(1) that the trust exists and the date the trust instrument was executed;

(2) the identity of the settlor;

(3) the identity and address of the currently acting trustee;

(4) the powers of the trustee;

(5) the revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;

(6) the authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee;

(7) the trust's taxpayer identification number; and

(8) the manner of taking title to trust property.

2. A certification of trust must be signed by all the trustees. A third party may require that the certification of trust be acknowledged or guaranteed.

3. A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

4. A certification of trust need not contain the dispositive terms of a trust.

5. A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments which designate the trustee and confer upon the trustee the power to act in the pending transaction.

6. A person who acts in reliance upon a certification of trust without knowledge that the representations contained therein are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.

7. A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

8. A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages if the court determines that the person did not act in good faith in demanding the trust instrument.

9. This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

456.011-1101. UNIFORMITY OF APPLICATION AND CONSTRUCTION. — In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

456.011-1102. ELECTRONIC RECORDS AND SIGNATURES. — Sections 456.1-101 to 456.11-1106 modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. section 7001, et seq.) but do not modify, limit, or supersede section 101(c) of that Act (15 U.S.C. section 7001(c)) or authorize electronic

delivery of any of the notices described in section 103(b) of that act (15 U.S.C. section 7003(b)).

456.011-1103. SEVERABILITY CLAUSE. — If any provision of sections 456.1-101 to 456.11-1106 or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of sections 456.1-101 to 456.11-1106 which can be given effect without the invalid provision or application, and to this end the provisions of sections 456.1-101 to 456.11-1106 are severable.

456.011-1104. EFFECTIVE DATE. — Sections 456.1-101 to 456.11-1106 take effect on January 1, 2005.

456.011-1106. APPLICATION TO EXISTING RELATIONSHIPS. — 1. Except as otherwise provided in sections 456.1-101 to 456.11-1106, on January 1, 2005:

(1) Sections 456.1-101 to 456.11-1106 apply to all trusts created before, on, or after January 1, 2005;

(2) Sections 456.1-101 to 456.11-1106 apply to all judicial proceedings concerning trusts commenced on or after January 1, 2005;

(3) Sections 456.1-101 to 456.11-1106 apply to judicial proceedings concerning trusts commenced before January 1, 2005, unless the court finds that application of a particular provision of sections 456.1-101 to 456.11-1106 would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of sections 456.1-101 to 456.11-1106 does not apply and the superseded law applies;

(4) Any rule of construction or presumption provided in sections 456.1-101 to 456.11-1106 apply to trust instruments executed before January 1, 2005, unless there is a clear indication of a contrary intent in the terms of the trust;

(5) An act done before January 1, 2005, is not affected by any provisions contained in sections 456.1-101 to 456.11-1106; and

(6) Section 456.590 shall not apply to trusts created under an instrument executed on or after January 1, 2005.

2. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before January 1, 2005, that statute continues to apply to the right even if it has been repealed or superseded.

[456.015.] 456.001. BEQUESTS OR TRANSFER TO SPOUSE, VALUATION OF. — If an instrument providing for a pecuniary bequest or transfer to or for the benefit of the spouse of the testator or transferor requires or permits the satisfaction of such bequest or transfer wholly or partly by the distribution of property valued at some date or on some basis other than its fair market value at the time of distribution, and does not require that such bequest or transfer be satisfied by the distribution of assets, including cash, having an aggregate fair market value on the date or dates of distribution amounting to no less than the amount of such bequest or transfer, then in such case, the provisions of the instrument notwithstanding, any property distributed in satisfaction of such bequest or transfer shall have an aggregate fair market value on the date of distribution fairly reflecting the distributee's proportionate share of the appreciation or depreciation in value to the date of distribution of all property then available for distribution.

2. If, in any instrument which provides for a pecuniary bequest or transfer, the personal representative or trustee is empowered to satisfy such bequest or transfer by distribution of property in kind, and the instrument is silent as to the value to be given to property distributed in kind, any property distributed in satisfaction of the bequest or transfer shall be valued at the fair market value thereof on the date of distribution.

3. The phrase "pecuniary bequest or transfer", as used in this section, means a bequest or transfer either in a stated amount or in an amount determined by the use of a formula.

4. This section shall be effective with respect to wills and revocable inter vivos trusts executed or created before or after October 13, 1969, by persons who die on or after said date, and to irrevocable inter vivos trusts which are created on or after October 13, 1969.

[456.020.] 456.003. ABSENCE OF ACTIVE DUTIES NOT TO CURTAIL POWERS OF TRUSTEE. — When the terms of an instrument creating a trust manifest intention that the trustee shall have the legal fee simple in land, the full legal ownership of an estate for years, or the absolute legal ownership of chattels personal, investment securities or choses in action, an exercise by the trustee or a successor trustee of an express or implied power of sale, mortgage, leasing, improvement or conducting any other transaction incident to the administration of the trust, shall bind the fee simple, term of years or absolute ownership notwithstanding the execution of a future interest under the trust into a legal estate or interest by the operation of the Statute of Uses, or former section **[**456.020**]** **456.003**, or a judicial doctrine imposing such execution on dry or passive trusts.

[456.030.] 456.005. LIFE INSURANCE TRUSTS. — Proceeds of life insurance policies heretofore made payable to a trustee or trustees named as beneficiary or hereafter to be named beneficiary under an inter vivos trust shall be paid directly to the trustee or trustees and held and disposed of by the trustee or trustees as provided in the trust agreement or declaration of trust in writing made and in existence on the date of death of the insured, whether or not such trust or declaration of trust is amendable or revocable or both, or whether it may have been amended, and notwithstanding the reservation of any or all rights of ownership under the insurance policy or annuity contract; subject, however, to a valid assignment of any part of the proceeds. It is not necessary to the validity of such trust agreement or declaration of trust that it be funded or have a corpus other than the right, which need not be irrevocable, of the trustee or trustees named therein to receive such proceeds as beneficiary. A policy of life insurance or annuity contract may designate as beneficiary a trustee or trustees named or to be named by will if the designation is made in accordance with the provisions of the policy or contract whether or not the will is in existence at the time of the designation.

[456.040.] 456.007. LESSOR, TRUSTEE OF DEPOSITS BY LESSEE, WHEN — EXCEPTION. — 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 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 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**]** **456.009** 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.

[456.050.] 456.009. LESSOR LIABLE FOR DOUBLE AMOUNT OF DEPOSIT SO HELD IN TRUST, WHEN. — Any person, firm or corporation being a trustee, as provided in section **[**456.040**]** **456.007**, who shall violate any of the provisions thereof, shall pay to the depositor a sum of money double the amount of the deposit or advance payment, which may be recovered in any court of competent jurisdiction, together with a reasonable attorney's fee to be fixed by the court and collected as other costs in the case. Any waiver or attempt to waive the provisions of sections **[**456.040 and 456.050**]** **456.007 and 456.009** shall be void.

[456.060.] 456.011. TRUSTS FOR BENEFIT OF EMPLOYEES OR SELF-EMPLOYED PERSONS — PERPETUITIES — SUSPENSION OF ALIENATION. — A trust of real or personal property, or both, created as part of a stock bonus plan, pension plan, disability or death benefit plan, medical benefit plan, profit-sharing plan or retirement plan, for the exclusive benefit of employees or self-employed persons, to which contributions are made by an employer, or employees, or both, or by self-employed persons, for the purpose of distributing to such employees or self-employed persons the earnings or the principal, or both earnings and principal of the fund so held in trust, shall not be deemed to be invalid as violating any existing laws against perpetuities or suspension of the power of alienation of title to property; but such a trust may continue for such time as may be necessary to accomplish the purposes for which it may be created.

[456.070.] 456.013. TRUSTS FOR BENEFIT OF EMPLOYEES OR SELF-EMPLOYED PERSONS — ACCUMULATION. — The income arising from any property held in a trust created as part of a stock bonus plan, pension plan, disability or death benefit plan, medical benefit plan, profit-sharing plan or retirement plan for the exclusive benefit of employees or self-employed persons to which contributions are made by an employer or employees, or both, or by self-employed persons, for the purpose of distributing in accordance with such plan to such employees or self-employed persons the earnings or the principal or both earnings and principal of the trust fund, may be permitted to accumulate until the fund shall be sufficient to accomplish the purposes of such plan.

[456.072.] 456.015. TRUST FOR BENEFIT OF EMPLOYEES — SPENDTHRIFT TRUST, WHEN — EXEMPT FROM CERTAIN ATTACHMENTS, EXCEPTION. — A trust created as part of a stock bonus plan, nonpublic pension plan, disability or death benefit plan, profit-sharing plan, or retirement plan, for the exclusive benefit of employees to which contributions are made by an employer, or participant, or both, for the purpose of distributing to such participant the earnings or the principal, or both earnings and principal of the fund so held in trust, shall be deemed to be a spendthrift trust if the plan or trust includes a provision restraining the assignment, alienation, or other voluntary or involuntary transfer of the interest of a participant in the trust. Prior to payment or delivery thereof to such participant by the plan trustee, such an interest of the participant shall be exempt from attachment or execution under the laws of this state, and such provision restraining the assignment, alienation, or other voluntary or involuntary transfer of the interest of a participant in the trust shall preclude any creditor of the participant from satisfying a claim from the assets or property of such a plan or trust before payment or delivery of such interest to the participant by the plan trustee, provided that the interest of any such participant shall be subject to attachment or execution pursuant to a qualified domestic relations order, as defined by section 414(p) of the federal Internal Revenue Code, as amended, issued by a court in any proceeding for dissolution of marriage or legal separation or a proceeding for disposition of property following dissolution of marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of marital property at the time of the original judgment of dissolution.

[456.075.] 456.017. APPLICABILITY OF SECTIONS 456.060, 456.070 AND 456.072. — The provisions of sections **[**456.060, 456.070, and 456.072**]** **456.011, 456.013, and 456.015** shall apply to every trust of the kind described in such sections hereafter created or heretofore created or attempted to be created as if such sections had been effective on and after the date of the creation, or attempted creation, of each such trust.

[456.230.] 456.019. TRUSTEES OF PRIVATE FOUNDATIONS, CHARITABLE TRUSTS OR SPLIT-INTEREST TRUSTS, CERTAIN ACTS PROHIBITED. — 1. In the administration of any trust which is a "private foundation", as defined in section 509 of the United States Internal Revenue Code, a "charitable trust", as defined in section 4947(a)(1) of the United States Internal Revenue Code, or a "split-interest trust", as defined in section 4947(a)(2) of the United States Internal Revenue Code, the following acts shall be prohibited:

(1) Engaging in any act of "self-dealing", as defined in section 4941(d) of the United States Internal Revenue Code, which would give rise to any liability for the tax imposed by section 4941(a) of the United States Internal Revenue Code;

(2) Retaining any "excess business holdings", as defined in section 4943(c) of the United States Internal Revenue Code, which would give rise to any liability for the tax imposed by section 4943(a) of the United States Internal Revenue Code;

(3) Making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of section 4944 of the United States Internal Revenue Code, so as to give rise to any liability for the tax imposed by section 4944(a) of the United States Internal Revenue Code; and

(4) Making any "taxable expenditures", as defined in section 4945(d) of the United States Internal Revenue Code, which would give rise to any liability for the tax imposed by section 4945(a) of the United States Internal Revenue Code; provided, however, that this section shall not apply either to those split-interest trusts or to amounts thereof which are not subject to the prohibitions applicable to private foundations by reason of the provisions of section 4947 of the United States Internal Revenue Code.

2. In the administration of any trust which is a "private foundation", as defined in section 509 of the United States Internal Revenue Code, or which is a "charitable trust", as defined in section 4947(a)(1) of the United States Internal Revenue Code, there shall be distributed, for the purposes specified in the trust instrument, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the United States Internal Revenue Code.

3. The provisions of subsections 1 and 2 of this section shall not apply to any trust to the extent that a court of competent jurisdiction shall determine that such application would be contrary to the terms of the instrument governing such trust and that the same may not properly be changed to conform to such sections. The trustee shall not be held liable to anyone for any payments made under subsection 2 prior to such determination.

4. Nothing in this section shall impair the rights and powers of the courts or the attorney general of this state with respect to any trust.

5. All references to sections of the United States Internal Revenue Code shall be to such law as of June 14, 1971.

[456.232.] 456.021. ADDITION TO TRUSTS. — A devise or other transfer, the validity of which is determinable by the law of this state, may be made by a will or other instrument of transfer, including a designation of beneficiary under a life insurance policy, to the trustee or trustees of a trust established or to be established by the testator or transferor or by the testator or transferor and some other person or persons or by some other person or persons, including a funded or unfunded life insurance trust, although the settlor thereof has reserved any or all rights of ownership of the insurance contracts, if the trust is identified in the testator's will or the instrument of transfer and its terms are set forth in a written instrument. The devise or transfer

shall not be invalid because the trust is amendable or revocable, or both, or because the trust was amended after the execution of the will, the delivery of the instrument of transfer, or the death of the testator. Notwithstanding whether a devise or transfer is made before or after August 28, 1996, a devise or transfer is valid if the devise or transfer is made only to the name of the trust or if the devise or transfer is made to the name or names of the trustee or trustees as the trustee or trustees of the trust. Unless the testator's will or the instrument of transfer provides otherwise, the property so devised:

(1) Shall not be deemed to be held under a testamentary trust of the testator or transferor but shall become a part of the trust to which it is given; and

(2) Shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of the trust, including any amendments thereto made before the death of the testator or transferor, regardless of whether made before or after the execution of the testator's will or the delivery of the instrument of transfer, and, if the testator's will or the instrument of transfer so provides, including any amendments to the trust made after the death of the testator or transferor. A revocation or termination of the trust before the death of the testator shall cause a devise to the trustees of that trust to lapse.

[456.235.] 456.023. POWER OF APPOINTMENT NOT EXERCISED BY WILL, WHEN. — A general residuary clause in a will, or a will making general disposition of all of the testator's property, does not exercise a power of appointment granted in an instrument creating or amending a trust unless specific reference is made to the power or there is some other indication of intention to include the property subject to the power.

[456.236.] 456.025. INAPPLICABILITY OF THE RULE AGAINST PERPETUITIES — RULE PROHIBITING UNREASONABLE RESTRAINTS OR SUSPENSION OF POWER OF ALIENATION NOT VIOLATED, WHEN — RULE AGAINST ACCUMULATIONS NOT APPLICABLE, WHEN. — 1. The rule against perpetuities shall not apply to and any rule prohibiting unreasonable restraints on or suspension of the power of alienation shall not be violated by a trust if a trustee, or other person or persons to whom the power is properly granted or delegated, has the power pursuant to the terms of the trust or applicable law to sell the trust property during the period of time the trust continues beyond the period of the rule against perpetuities that would apply to the trust but for this subsection.

2. No rule against accumulations shall apply to a trust described in subsection 1 of this section unless the terms of the trust require that the income be accumulated during a period of time the trust continues beyond the period of the rule against perpetuities that would apply to the trust but for subsection 1 of this section. If the terms of the trust require that the income be accumulated during any period of time the trust continues beyond the period of the rule against perpetuities that would apply to the trust but for subsection 1 of this section, then during that period of time the trustee shall have the power to make discretionary distributions of net income to such recipients and in such shares and in such manner as most closely effectuates the settlor's or testator's manifested plan of distribution.

3. The provisions of this section apply to:

(1) Any trust created by a will or inter vivos agreement, or pursuant to the exercise of a power of appointment other than a general power of appointment granted under a will or inter vivos agreement, executed or amended on or after August 28, 2001;

(2) Any trust created pursuant to the exercise of a general power of appointment exercised in an instrument executed or amended on or after August 28, 2001; or

(3) Any trust created by a will or inter vivos agreement, or pursuant to the exercise of a power of appointment granted under a will or inter vivos agreement, executed or amended before August 28, 2001, if the laws of this state become applicable to the trust after such date, the laws of any other state applied to the trust before such date, and the rule against perpetuities did not apply to the trust pursuant to the laws of the other state.

4. As used in this section, the term "trust" **[**shall have the same meaning as in subdivision (2) of section 456.500, except that the term shall not include a trust that is not subject to the rule against perpetuities by reason of any other law of this state**] means an express trust created by a trust instrument, including a will, whereby a trustee has the duty to administer a trust asset for the benefit of a named or otherwise described income or principal beneficiary, or both. The term "trust" does not include a resulting or constructive trust, a business trust which provides for certificates to be issued to the beneficiary, an investment trust, a voting trust, a security instrument, a trust created by the judgment or decree of a court, a liquidation trust, or a trust for the primary purpose of paying dividends, interests, interest coupons, salaries, wages, pensions, or profits, or employee benefits of any kind, an instrument wherein a person is nominee or escrowee for another, a trust created in deposits in any financial institution, a trust that is not subject to the rule against perpetuities by reason of any other law of this state, or any other trust the nature of which does not admit of general trust administration**.

[456.400.] 456.027. REGISTRATION OF TRUST. — 1. The trustee of a trust having its principal place of administration in this state may register the trust in the probate division of the circuit court of the county wherein the principal place of administration is located.

2. "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a resulting or constructive trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive and resulting trusts, guardianships, conservatorships, decedents' estates, and trust accounts with financial institutions in the name of one or more parties as trustee for one or more beneficiaries where the fiduciary relationship is established by the form of the account and the deposit agreement with the financial institution, and there is no subject of the trust other than the sums on deposit in such account. "Trust" also excludes custodial arrangements pursuant to chapter 404, RSMo, the Missouri Uniform Gifts to Minors Law, paying and transfer agencies, business trusts providing for certificates to be issued to beneficiaries, investment trusts, common trust funds, voting trusts, security instruments or arrangements, liquidation trusts, trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions or employee benefits of any kind, and any arrangements under which a person is nominee or escrowee for another.

3. Unless otherwise designated in the trust instrument, the "principal place of administration of a trust" is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if he has no such place of business. In the case of cotrustees, the principal place of administration, if not otherwise designated in the trust instrument, is:

(1) The usual place of business of the corporate trustee if there is but one corporate cotrustee; or

(2) The usual place of business or residence of the individual trustee who is a professional fiduciary if there is but one such person and no corporate cotrustee; and otherwise

(3) The usual place of business or residence of any of the cotrustees as agreed upon by them.

4. "Professional fiduciary" means an individual trustee who represents himself to the public as having specialized training, experience or skills in the administration of trusts.

5. The right to register under this section does not apply to the trustee of a trust if registration would be inconsistent with the retained jurisdiction of a foreign court from which the trustee cannot obtain release of registration.

[456.410.] 456.029. REGISTRATION PROCEDURE. — Such registration shall be accomplished by filing a statement, indicating the name and address of the trustee and acknowledging the trusteeship. The statement shall indicate whether the trust has been registered elsewhere and shall identify the trust:

(1) In the case of a testamentary trust, by the name of the testator and the date and place of domiciliary probate;

(2) In the case of a written inter vivos trust, by the name of each settlor and the original trustee and the date of the trust instrument; or

(3) In the case of an oral trust, by information identifying the settlor or other source of funds and describing the time and manner of the trust's creation and the terms of the trust, including the subject matter, beneficiaries and time of performance. A registration may be withdrawn by a similar statement.

[456.420.] 456.031. RECORDS AND CERTIFIED COPIES. — The clerk of the probate division of the circuit court shall keep a record for each trust so registered, including trust registration statements, petitions and applications, demands for notices or bonds, and of any orders or responses relating thereto by the court, and establish and maintain a system for indexing, filing or recording which is sufficient to enable users of the records to identify and obtain information about such registered trusts. Upon payment of the fees required by law the clerk must issue certified copies of any record or paper filed or recorded.

[456.430.] 456.033. EFFECT OF REGISTRATION. — 1. By registering a trust, or accepting the trusteeship of a registered trust, the trustee submits personally to the jurisdiction of the court in any proceeding involving the internal affairs of the trust that may be initiated by any interested person while the trust remains registered. Notice of any such proceeding shall be delivered to the trustee or mailed to him by ordinary first-class mail at his address as listed in the registration statement or as thereafter reported to the court and to his address as then known to the petitioner.

2. To the extent of their interests in the trust, all beneficiaries of a trust registered in this state are subject to the jurisdiction of the court of registration for the purposes of proceedings involving internal affairs of the trust, provided notice is given pursuant to section 472.100, RSMo.

3. "Interested persons" include beneficiaries and any others having a property right in or claim against a trust estate which may be affected by a judicial proceeding. It also includes persons and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

4. "Internal affairs" proceedings, without limitation, are those which involve interpretation or construction of the terms of the trust by declarations, instructions or judgments as to the existence, nonexistence and extent of rights, powers, privileges, immunities, duties, liabilities and remedies of trustees and beneficiaries in the administration and distribution of trusts, including but not limited to proceedings concerning:

(1) The qualifications, appointment, removal, indemnification, reimbursement, exoneration or surcharge of trustees;

(2) The imposition, change and release of requirements for trustees' bonds;

(3) The employment of agents and compensation to them and to trustees;

(4) The review and settlement of interim and final accounts;

(5) The propriety of investments or of principal and income allocations;

(6) The allowance of deviations from or modifications of trust terms;

(7) The ascertainment of beneficiaries or of beneficial interests;

(8) The requirements for release of registration or change of principal place of administration;

(9) The timing and quantity of distributions and dispositions of assets;

(10) The validity and effect of alienations by beneficiaries, by exercise of powers of appointment or otherwise; and

(11) Terminations of trusts.

[456.620.] 456.035. EVIDENCE AS TO DEATH OR STATUS — FIVE-YEAR ABSENCE PRESUMPTION OF DEATH. — 1. A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date and time of death and the identity of the deceased settlor, trustee, beneficiary or other interested person.

2. A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances and places disclosed by the record or report.

3. A person who is absent for a continuous period of five years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

[456.640.] 456.037. TRUST PROPERTY — WHEN DEEMED UNCLAIMED. — 1. Property of any kind remaining in a trust which is not subject to administration or distribution to or for an identifiable beneficiary may be deemed to be unclaimed property when the trustee, after reasonable and diligent search, is unable to find or ascertain the existence of any heirs, legal representatives, successors or assigns of any beneficiary to whom such property is distributable by the trust instrument, by any other instrument pertaining to the trust estate, or by the laws of Missouri.

2. Property of any kind remaining in a trust, which is distributable to or for the benefit of an identified beneficiary, may be deemed to be unclaimed when such beneficiary has, for three years after a good faith attempt to notify him in writing of his right to such property, failed or refused to claim the property.

[456.650.] 456.039. PROCEDURE BY TRUSTEE WITH RESPECT TO UNCLAIMED PROPERTY. — 1. Any trustee holding such unclaimed property may file with the state treasurer a verified statement setting forth the reason or reasons why such property is presumed to be unclaimed, the efforts made to find or ascertain any heirs, legal representatives, successors or assigns of any beneficiary or beneficiaries to whom such property is distributable, a list of all instruments known to the trustee that pertain to the trust and their location, with copies of those that are in possession of the trustee, and any further facts causing the trustee to believe that the property is unclaimed, and transfer such property to the state treasurer, who shall issue his receipt therefor.

2. All property so received shall be credited to the escheat fund of the state of Missouri.

[456.660.] 456.041. UNCLAIMED PROPERTY — LIABILITY OF TRUSTEE. — 1. The payment or delivery of such unclaimed property to the state treasurer by the trustee shall terminate any legal relationship between the trustee and beneficiary or apparent beneficiary to receive such property and shall release and discharge the trustee from any and all liability to such beneficiary, his heirs, personal representatives, successors and assigns by such payment or delivery, regardless of whether such property is in fact or in law unclaimed property.

2. Such payment or delivery may be pleaded as a bar to recovery and shall be a defense in any suit or action brought by the apparent owner, or his heirs, personal representatives, successors or assigns, or any claimant against the trustee by reason of the delivery of payment.

461.300. BENEFICIARIES TO PAY, PRO RATA SHARE OF ALL PROPERTY RECEIVED TO COVER STATUTORY ALLOWANCES AND CLAIMS DUE ESTATE, ENFORCED BY ACTION FOR ACCOUNTING, TIME LIMITATION — ACTION AFFECT ON TRANSFERRING ENTITY. — **1. Each recipient of a recoverable transfer of a decedent's property shall be liable to account for a pro rata share of the value of all such property received, to the extent necessary to discharge the statutory allowances to the decedent's surviving spouse and dependent**

children, and claims remaining unpaid after application of the decedent's estate, including expenses of administration and costs as provided in subsection 3 of this section, and including estate or inheritance or other transfer taxes imposed by reason of the decedent's death only where payment of those taxes is a prerequisite to satisfying unpaid claims which have a lower level of priority. No proceeding may be brought under this section when the deficiency described in this subsection is solely attributable to costs and expenses of administration.

2. The obligation of a recipient of a recoverable transfer may be enforced by an action for accounting commenced within eighteen months following the decedent's death by the decedent's personal representative or a qualified claimant, but no action for accounting under this section shall be commenced by any qualified claimant unless the personal representative has received a written demand therefor by a qualified claimant, within sixteen months following the decedent's death. If the personal representative fails to commence an action within thirty days of the receipt of a written demand to do so, any qualified claimant may commence such action. If the personal representative fails to commence the action, the personal representative shall disclose to the qualified claimant or qualified claimants who made such written demand all material knowledge within the possession of the personal representative reasonably relating to the identity of any recipient of a recoverable transfer made by the decedent. In the event the personal representative fails to provide such information with respect to any recoverable transfer of the decedent's property to the personal representative, the eighteen-month limitation is tolled for such recoverable transfer until such time as the personal representative provides such information. In the event the personal representative is alleged in a verified pleading to be a recipient of a recoverable transfer from the decedent, the court may appoint an administrator ad litem to represent the estate in any proceeding brought pursuant to this section. Sums recovered in an action for accounting under this section shall be administered by the personal representative as part of the decedent's estate.

3. The judgment in a proceeding authorized by this section shall take into account the expenses of administration of the estate including the cost of administering the additional assets obtained in the proceeding, and the costs of the proceeding to the extent authorized by this subsection. The court may order the costs of the proceeding, including attorney fees, to be treated as expenses of administration of the estate.

4. If an action for accounting has been commenced under this section within eighteen months following the decedent's death, then any party to the proceeding may join and bring into the action for accounting any other recipient of a recoverable transfer of the decedent's property even if the other recipient is not joined until more than eighteen months following the decedent's death. If an action for accounting has been commenced under this section more than eighteen months following the decedent's death pursuant to the tolling provisions of subsection 2 of this section, then the personal representative, or former personal representative, who received a recoverable transfer of the decedent's property shall be liable to account under the provisions of subsection 1 of this section for the value of all such property received by such personal representative, or former personal representative, and no other recipient of a recoverable transfer of the decedent's property may be joined or brought into the action, and in such case, full recovery, rather than pro rata recovery, may be had from the recoverable property received by such personal representative or former personal representative.

5. This section shall not affect the right of any transferring entity, as defined in section 461.005, to execute a direction of the decedent to make a payment or to make a recoverable transfer on death of the decedent, or make the transferring entity liable to the decedent's estate, unless before the payment or transfer is made the transferring entity has been served with process in a proceeding brought under this section and the transferring entity has had a reasonable time to act on it.

6. This section does not create a lien on any property that is the subject of a recoverable transfer, except as a lien may be perfected by the way of attachment, garnishment, or judgment in an accounting proceeding authorized by this section.

7. An action for accounting under the provisions of this section may be filed in the probate division of the circuit court, and the probate division of the circuit court may hear and determine questions and issue appropriate orders in an action for accounting under this section. Any proceeding under this section and any statements by a personal representative in connection with any recoverable transfer shall be deemed to be proceedings or statements under the probate code that are subject to section 472.013, RSMo.

8. The recipient of any property held in trust that was subject to the satisfaction of the decedent's debts immediately prior to the decedent's death, and the recipient of any property held in joint tenancy with right of survivorship that was subject to the satisfaction of the decedent's debts immediately prior to the decedent's death, are subject to this section, but only to the extent of the decedent's contribution to the value of the property.

9. The provisions of this section shall apply to all actions commenced after August 28, 1995, except that with respect to decedents dying prior to August 28, 1995, an action for accounting under this section may be commenced within two years following the decedent's death.

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

(1) "Creditor", any person to whom the decedent is liable, which liability survives whether arising in contract, tort, or otherwise, and any person to whom the decedent's estate is liable for funeral expenses and the reasonable cost of a tombstone;

(2) "Dependent child", the decedent's minor children whom the decedent was obligated to support and the children who were in fact being supported by the decedent;

(3) "Qualified claimant", a creditor, surviving spouse, dependent child, or a person acting for a dependent child of the decedent;

(4) "Recoverable transfer", a nonprobate transfer of a decedent's property under sections 461.003 to 461.081 and any other transfer of a decedent's property other than from the administration of the decedent's probate estate that was subject to satisfaction of the decedent's debts immediately prior to the decedent's death, but only to the extent of the decedent's contribution to the value of such property.

[456.240.] 469.240. DEFINITIONS. — 1. In sections **[**456.240 to 456.350**] 469.240 to 469.350** unless the context or subject matter otherwise requires:

(1) "Bank" includes any person or association of persons, whether incorporated or not, carrying on the business of banking;

(2) "Fiduciary" includes a trustee under any trust, expressed, implied, resulting or constructive, executor, administrator, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer, or any other person acting in a fiduciary capacity for any person, trust or estate;

(3) "Person" includes a corporation, partnership, or other association, or two or more persons having a joint or common interest;

(4) "Principal" includes any person to whom a fiduciary as such owes an obligation.

2. A thing is done "in good faith" within the meaning of sections **[**456.240 to 456.350**] 469.240 to 469.350**, when it is in fact done honestly, whether it be done negligently or not.

[456.250.] 469.250. PAYMENT OR TRANSFERS TO FIDUCIARIES OR AT THE DIRECTION OF THE FIDUCIARY, EFFECT ON TRANSFEROR. — A person who in good faith pays or transfers to a fiduciary or to any other person as directed by a fiduciary any money or other property

which the fiduciary as such is authorized to receive, is not responsible for the proper application thereof by the fiduciary, and any right or title acquired from the fiduciary in consideration of such payment or transfer is not invalid in consequence of a misapplication by the fiduciary.

[456.260.] 469.260. TRANSFER OF NEGOTIABLE INSTRUMENT BY FIDUCIARY. — If any negotiable instrument payable or endorsed to a fiduciary as such is endorsed by the fiduciary, or if any negotiable instrument payable or endorsed to his principal is endorsed by a fiduciary empowered to endorse such instrument on behalf of his principal, the endorsee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in endorsing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, such instrument is transferred by the fiduciary in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is transferred in any transaction known by the transferee to be for the personal benefit of the fiduciary, the creditor or other transferee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in transferring the instrument.

[456.270.] 469.270. CHECK DRAWN BY FIDUCIARY PAYABLE TO THIRD PERSON. — If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, the payee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in drawing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that this action in taking the instrument amounts to bad faith. If, however, such instrument is payable to a personal creditor of the fiduciary and delivered to the creditor in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is drawn and delivered in any transaction known by the payee to be for the personal benefit of the fiduciary, the creditor or other payee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the instrument.

[456.280.] 469.280. CHECK DRAWN BY AND PAYABLE TO FIDUCIARY. — If a check or other bill of exchange is drawn by a fiduciary as such or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, payable to the fiduciary personally, or payable to a third person and by him transferred to the fiduciary, and is thereafter transferred by the fiduciary, whether in payment of a personal debt of the fiduciary or otherwise, the transferee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in transferring the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith.

[456.290.] 469.290. DEPOSIT IN NAME OF FIDUCIARY AS SUCH. — If a deposit is made in a bank to the credit of a fiduciary as such, the bank is authorized to pay the amount of the deposit or any part thereof upon the check of the fiduciary, signed with the name in which such deposit is entered, without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing the check or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the

principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check.

[456.300.] 469.300. DEPOSIT IN NAME OF PRINCIPAL. — If a check is drawn upon the account of his principal in a bank by a fiduciary who is empowered to draw checks upon his principal's account, the bank is authorized to pay such check without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing such check, or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check.

[456.310.] 469.310. DEPOSIT IN FIDUCIARY'S PERSONAL ACCOUNT. — If a fiduciary makes a deposit in a bank to his personal credit of checks drawn by him upon an account in his own name as fiduciary, or of checks payable to him as fiduciary, or of checks drawn by him upon an account in the name of his principal if he is empowered to draw checks thereon, or of checks payable to his principal and endorsed by him, if he is empowered to endorse such checks, or if he otherwise makes a deposit of funds held by him as fiduciary, the bank receiving such deposit is not bound to inquire whether the fiduciary is committing thereby a breach of his obligation as fiduciary; and the bank is authorized to pay the amount of the deposit or any part thereof upon the personal check of the fiduciary without being liable to the principal, unless the bank receives the deposit or pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in making such deposit or in drawing such check, or with knowledge of such facts that its action in receiving the deposit or paying the check amounts to bad faith.

[456.320.] 469.320. DEPOSIT IN NAMES OF TWO OR MORE TRUSTEES. — When a deposit is made in a bank in the name of two or more persons as trustees and a check is drawn upon the trust account by any trustee or trustees authorized by the other trustee or trustees to draw checks upon the trust account, neither the payee nor other holder nor the bank is bound to inquire whether it is a breach of trust to authorize such trustee or trustees to draw checks upon the trust account, and is not liable unless the circumstances be such that the action of the payee or other holder or the bank amounts to bad faith.

[456.330.] 469.330. CASES NOT PROVIDED FOR IN LAW. — In any case not provided for in sections **[**456.240 to 456.350**]** 469.240 to 469.350 the rules of law and equity, including the law merchant and those rules of law and equity relating to trusts, agency, negotiable instruments and banking, shall continue to apply.

[456.340.] 469.340. UNIFORMITY OF INTERPRETATION. — This law shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

[456.350.] 469.350. SHORT TITLE. — Sections **[**456.240 to 456.350**] 469.240 to 469.350** may be cited as the "Uniform Fiduciaries Law".

469.401. DEFINITIONS. — As used in sections 469.401 to 469.467, the following terms mean:

(1) "Accounting period", a calendar year unless another twelve-month period is selected by a fiduciary. The term includes a portion of a calendar year or other twelve-month period that begins when an income interest begins or ends when an income interest ends;

(2) "Beneficiary", an heir, legatee and devisee of a decedent's estate, and an income beneficiary and a remainder beneficiary of a trust, including any type of entity that has a beneficial interest in either an estate or a trust;

(3) "Fiduciary", a personal representative, trustee, executor, administrator, successor personal representative, special administrator and any other person performing substantially the same function;

(4) "Income", money or property that a fiduciary receives as current return from a principal asset, including a portion of receipts from a sale, exchange or liquidation of a principal asset, as provided in sections 469.423 to 469.449;

(5) "Income beneficiary", a person to whom net income of a trust is or may be payable;

(6) "Income interest", the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion;

(7) "Mandatory income interest", the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute;

(8) "Net income", if section 469.411 applies to the trust, the unitrust amount, or if section 469.411 does not apply to the trust, the total receipts allocated to income during an accounting period minus the disbursements made from income during the same period, plus or minus transfers pursuant to sections 469.401 to 469.467 to or from income during the same period;

(9) "Person", an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation or any other legal or commercial entity;

(10) "Principal", property held in trust for distribution to a remainder beneficiary when the trust terminates;

(11) "Qualified beneficiary", a beneficiary **[**who, on the date qualification is determined, either is entitled or eligible to receive a distribution of trust income or principal, or would be entitled to receive a distribution if the event causing the trust to terminate occurred on that date**]** **defined in section 456.1-103, RSMo**;

(12) "Remainder beneficiary", a person entitled to receive principal when an income interest ends;

(13) "Terms of a trust", the manifestation of the settlor's or decedent's intent expressed in a manner which is admissible as proof in a judicial proceeding, whether by written or spoken words or by conduct;

(14) "Trustee", an original, additional or successor trustee, whether or not appointed or confirmed by a court;

(15) "Unitrust amount", net income as defined by section 469.411.

469.402. APPLICABILITY. — The provisions of sections 456.3-301 to 456.3-305 shall apply to sections 469.401 to 469.467 for all purposes.

469.409. BAR ON CLAIM OF BREACH OF FIDUCIARY DUTY, WHEN — APPLICABLE RULES. — 1. Any claim for breach of a trustee's duty to impartially administer a trust related, directly or indirectly, to an adjustment made by a fiduciary to the allocation between principal and income pursuant to subsection 1 of section 469.405 or any allocation made by the fiduciary pursuant to any authority or discretion specified in subsection 1 of section 469.403, unless previously barred by adjudication, consent or other limitation, shall be barred as provided in this section.

(1) Any such claim brought by a qualified beneficiary is barred if not asserted in a judicial proceeding commenced within two years after the trustee has sent a report to that qualified beneficiary that adequately discloses the facts constituting the claim.

(2) Any such claim **[**is barred if not asserted in a judicial proceeding brought by any beneficiary**]** **brought by a beneficiary (other than a qualified beneficiary)** with any interest

whatsoever in the trust, no matter how remote or contingent, or whether or not the beneficiary is ascertainable or has the capacity to contract, **is barred if not asserted in a judicial proceeding commenced** within two years after **the first to occur of:**

(a) The date the trustee **[**has**]** sent a report to all qualified beneficiaries that adequately discloses the facts constituting the claim**; or**

(b) The date the trustee sent a report to a person that represents the beneficiary under the provisions of subdivision (2) of subsection 2 of this section.

2. For purposes of this section the following rules shall apply:

(1) A report adequately discloses the facts constituting a claim if it provides sufficient information so that the beneficiary should know of the claim or reasonably should have inquired into its existence;

(2) **[**A qualified beneficiary is deemed to have been sent a report if:

(a) In the case of a qualified beneficiary who has the capacity to contract, the report is either delivered personally to the beneficiary or sent to the beneficiary at the beneficiary's last known address;

(b) In the case of a qualified beneficiary who lacks the capacity to contract, the report is either hand delivered to a person with respect to whom pursuant to subdivision (2) of section 472.300, RSMo, an order would bind that beneficiary with respect to the subject of the claim or sent to the person at that person's last known address, provided that there is no conflict of interest between that person and the qualified beneficiary that person is representing**] Section 469.402 shall apply in determining whether a beneficiary (including a qualified beneficiary) has received notice for purposes of this section**;

(3) The determination of the identity of all qualified beneficiaries shall be made on the date the report is deemed to have been sent; and

(4) This section does not preclude an action to recover for fraud or misrepresentation related to the report.

469.411. DETERMINATION OF UNITRUST AMOUNT — DEFINITIONS — EXCLUSIONS TO NET FAIR MARKET VALUE OF ASSETS — APPLICABILITY OF SECTION TO CERTAIN TRUSTS. — 1. If the provisions of this section apply to a trust, the unitrust amount shall be determined as follows:

(1) For the first three accounting periods of the trust, the unitrust amount for a current valuation year of the trust shall be **[**three percent, or any higher percentage**] a percentage between three and five percent that is** specified by the terms of the governing instrument or by the election made in accordance with subdivision (2) of subsection 5 of this section, of the net fair market values of the assets held in the trust on the first business day of the current valuation year;

(2) Beginning with the fourth accounting period of the trust, the unitrust amount for a current valuation year of the trust shall be **[**three percent, or any higher percentage**] a percentage between three and five percent that is** specified by the terms of the governing instrument or by the election made in accordance with subdivision (2) of subsection 5 of this section, of the average of the net fair market values of the assets held in the trust on the first business day of the current valuation year and the net fair market values of the assets held in the trust on the first business day of each prior valuation year**, regardless of whether this section applied to the ascertainment of net income for all valuation years**;

(3) The unitrust amount for the current valuation year computed pursuant to subdivision (1) or (2) of this subsection shall be proportionately reduced for any distributions, in whole or in part, other than distributions of the unitrust amount, and for any payments of expenses, including debts, disbursements and taxes, from the trust within a current valuation year that the trustee determines to be material and substantial, and shall be proportionately increased for the receipt, other than a receipt that represents a return on investment, of any additional property into the trust within a current valuation year;

(4) For purposes of subdivision (2) of this subsection, the net fair market values of the assets held in the trust on the first business day of a prior valuation year shall be adjusted to reflect any reduction, in the case of a distribution or payment, or increase, in the case of a receipt, for the prior valuation year pursuant to subdivision (3) of this subsection, as if the distribution, payment or receipt had occurred on the first day of the prior valuation year;

(5) In the case of a short accounting period, the trustee shall prorate the unitrust amount on a daily basis;

(6) In the case where the net fair market value of an asset held in the trust has been incorrectly determined either in a current valuation year or in a prior valuation year, the unitrust amount shall be increased in the case of an undervaluation, or be decreased in the case of an overvaluation, by an amount equal to the difference between the unitrust amount determined based on the correct valuation of the asset and the unitrust amount originally determined.

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

(1) "Current valuation year", the accounting period of the trust for which the unitrust amount is being determined;

(2) "Prior valuation year", each of the two accounting periods of the trust immediately preceding the current valuation year.

3. In determining the sum of the net fair market values of the assets held in the trust for purposes of subdivisions (1) and (2) of subsection 1 of this section, there shall not be included the value of:

(1) Any residential property or any tangible personal property that, as of the first business day of the current valuation year, one or more income beneficiaries of the trust have or had the right to occupy, or have or had the right to possess or control, other than in a capacity as trustee, and instead the right of occupancy or the right to possession or control shall be deemed to be the unitrust amount with respect to the residential property or the tangible personal property; or

(2) Any asset specifically given to a beneficiary under the terms of the trust and the return on investment on that asset, which return on investment shall be distributable to the beneficiary.

4. In determining the net fair market value of each asset held in the trust pursuant to subdivisions (1) and (2) of subsection 1 of this section, the trustee shall, not less often than annually, determine the fair market value of each asset of the trust that consists primarily of real property or other property that is not traded on a regular basis in an active market by appraisal or other reasonable method or estimate, and that determination, if made reasonably and in good faith, shall be conclusive as to all persons interested in the trust. Any claim based on a determination made pursuant to this subsection shall be barred if not asserted in a judicial proceeding brought by any beneficiary with any interest whatsoever in the trust within two years after the trustee has sent a report to all qualified beneficiaries that adequately discloses the facts constituting the claim. The rules set forth in subsection 2 of section 469.409 shall apply to the barring of claims pursuant to this subsection.

5. This section shall apply to the following trusts:

(1) Any trust created after August 28, 2001, with respect to which the terms of the trust clearly manifest an intent that this section apply;

(2) Any trust created under an instrument that became irrevocable on **[**or**]**, before**, or after** August 28, 2001, if the trustee, in the trustee's discretion, elects to have this section apply **[**two years from August 28, 2001,**]** unless the instrument creating the trust **[**provides otherwise**] specifically prohibits an election under this subdivision**. The trustee shall deliver notice to all qualified beneficiaries and the settlor of the trust, if he or she is then living, of the trustee's intent to make such an election at least sixty days before making that election. The trustee shall have sole authority to make the election. **[**Delivery of the notice to a person with respect to whom, pursuant to subdivision (2) of section 472.300, RSMo, an order would bind a beneficiary of the trust is delivery of notice to that beneficiary for all purposes of this subsection.**] Section 469.402 shall apply for all purposes of this subdivision.** An action or order by any court shall not be required. The election shall be made by a signed writing delivered to the settlor of the

trust, if he or she is then living, and to all qualified beneficiaries. The election is irrevocable, unless revoked by order of the court having jurisdiction of the trust. The election may specify the percentage used to determine the unitrust amount pursuant to this section, provided that such percentage is **[**three percent or greater**]** **between three and five percent**, or if no percentage is specified, then that percentage shall be three percent. In making an election pursuant to this subsection, the trustee shall be subject to the same limitations and conditions as apply to an adjustment between income and principal pursuant to subsections 3 and 4 of section 469.405;

(3) No action of any kind based on an election made **[**or not made**]** by a trustee pursuant to subdivision (2) of this subsection shall be brought against the trustee by any beneficiary of that trust three years from **[**August 28, 2001**]** **the effective date of that election.**

(4) If this section is made applicable under this subdivision to an institutional endowment fund, as defined in section 402.010, RSMo, the restrictions contained in section 402.015, RSMo, shall not apply to the extent payment of a unitrust amount would otherwise be prohibited.

469.419. TRUSTEE TO ALLOCATE INCOME RECEIPT OR DISBURSEMENT, WHEN. — 1. A trustee shall allocate an income receipt or disbursement other than one to which **subsection 1 of** section 469.413 applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

2. A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement shall be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins shall be allocated to principal and the balance shall be allocated to income.

3. An item of income or an obligation is due on the date a payment is required. If a payment date is not stated, there is no due date for the purposes of sections 469.401 to 469.467. Distributions to shareholders or other owners from an entity to which section 469.423 applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that shall be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

469.423. ALLOCATIONS BY TRUSTEE — ENTITY DEFINED. — 1. For purposes of this section, the term "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest, other than a trust or estate to which section 469.425 applies, a business or activity to which section 469.427 applies, or an asset-backed security to which section **[**469.447**]** **469.449** applies.

2. Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

3. A trustee shall allocate the following receipts from an entity to principal:

(1) Property other than money;

(2) Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;

(3) Money received in total or partial liquidation of the entity; and

(4) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

4. Money is received in partial liquidation:

(1) To the extent that the entity, at or near the time of a distribution, indicates that such money is a distribution in partial liquidation; or

(2) If the total amount of money and property received in a distribution or series of related distributions is greater than twenty percent of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

5. Money is not received in partial liquidation, nor may it be taken into account pursuant to subdivision (2) of subsection 4 of this section, to the extent that such money does not exceed the amount of income tax that a trustee or beneficiary shall pay on taxable income of the entity that distributes the money.

6. A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

469.435. INSUBSTANTIAL AMOUNTS MAY BE ALLOCATED TO PRINCIPAL, EXCEPTIONS — PRESUMPTION OF INSUBSTANTIAL AMOUNT, WHEN. — If a trustee determines that an allocation between principal and income required by section 469.437, 469.439, 469.441, 469.443 or **[**469.447**]** **469.449** is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in subsection 3 of section 469.405 applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in subsection 4 of section 469.405 and may be released for the reasons and in the manner described in subsection 5 of section 469.405. An allocation is presumed to be insubstantial if:

(1) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than ten percent; or

(2) The value of the asset producing the receipt for which the allocation would be made is less than ten percent of the total value of the trust's assets at the beginning of the accounting period.

469.449. ALLOCATION OF COLLATERAL FINANCIAL ASSETS AND ASSET-BACKED SECURITIES. — 1. As used in this section, the phrase "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The phrase includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The phrase does not include an asset to which section 469.423 or **[**469.435**]** **469.437** applies.

2. If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment which the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

3. If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate ten percent of the payment to income and the balance to principal.

469.453. REQUIRED DISBURSEMENTS FROM PRINCIPAL. — 1. A trustee shall make the following disbursements from principal:

(1) The remaining one-half of the disbursements described in subdivisions (1) and (2) of section 469.451;

(2) All of the trustee's compensation calculated on principal as a fee for acceptance, distribution or termination, and disbursements made to prepare property for sale;

(3) Payments on the principal of a trust debt;

(4) Expenses of a proceeding or other matter that concerns primarily an interest in principal;

(5) Premiums paid on a policy of insurance not described in subdivision (4) of section 469.451 of which the trust is the owner and beneficiary;

(6) Estate, inheritance and other transfer taxes, including penalties, apportioned to the trust; and

(7) **Extraordinary expenses incurred in connection with the management and preservation of trust property;**

(8) Expenses for a capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments; and

(9) Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

2. If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

[456.900.] 469.900. CITATION OF LAW — DEFINITIONS. — Sections [456.900 to 456.913] **469.900 to 469.913** shall be known, and may be cited, as the "Missouri Prudent Investor Act". As used in this act, the term "trustee" includes independent personal representatives and trustees, whether of express or implied trusts, and the term "trust" includes independently administered estates.

[456.901.] 469.901. TRUSTEE DUTIES, SETTLOR MAY RESTRICT OR EXPAND. — 1. Except as otherwise provided in subsection 2 of this section, or by other applicable laws, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this act.

2. A settlor may expand or restrict the prudent investor rule detailed in this act by express provisions in the trust instrument. A trustee is not liable to a beneficiary for the trustee's good faith reliance on these express provisions.

[456.902.] 469.902. TRUSTEE DUTIES AND POWERS — DECISIONS TO BE EVALUATED IN CONTEXT OF TRUST. — 1. A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

2. A trustee's investment and management decisions respecting individual assets and courses of action must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

3. When investing and managing trust assets, a trustee shall consider the following as are relevant to the trust or its beneficiaries:

(1) General economic conditions;

(2) The possible effect of inflation or deflation;

(3) The expected tax consequences of investment decisions or strategies;

(4) The role that each investment or course of action plays within the overall trust portfolio;

(5) The expected total return from income and the appreciation of capital;

(6) Other resources of the beneficiaries known to the trustee;

(7) Needs for liquidity, regularity of income, and preservation or appreciation of capital;

(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries; and

(9) The size of the portfolio, nature and estimated duration of the fiduciary relationship and distribution requirements under the governing instrument.

4. A trustee shall make a reasonable effort to ascertain facts relevant to the investment and management of trust assets.

5. A trustee may invest in any kind of property or type of investment consistent with the standards of this act.

6. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise when investing and managing trust assets.

[456.903.] 469.903. DIVERSIFICATION REQUIRED, EXCEPTION. — A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

[456.904.] 469.904. TRUST ASSETS, RETENTION AND DISPOSITION. — Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this act.

[456.905.] 469.905. TO WHOM DUTY OWED. — A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

[456.906.] 469.906. MULTIPLE BENEFICIARIES, DUTY OWED TO WHOM. — If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

[456.907.] 469.907. RESTRICTION ON COSTS. — In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

[456.908.] 469.908. PRUDENT INVESTOR RULE, STANDARD. — The prudent investor rule imposes a standard of conduct, but does not contemplate a specific outcome or performance. Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

[456.909.] 469.909. TRUSTEE POWERS, DELEGATION — AGENT DUTIES — LIABILITY OF AGENT — AGENT SUBMITS TO JURISDICTION, WHEN. — 1. A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(1) Selecting an agent suitable to the exercise of the delegated function, taking into account the nature and the value of the assets subject to such delegation and the expertise of the agent;

(2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

2. In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

3. A trustee who complies with the requirements of subsection 1 of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

4. By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state even if the delegation agreement provides otherwise.

[456.910.] 469.910. TRUST TERMS AND PHRASES, DEFINITION. — The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorize any investment or strategy permitted under this act: "investments permissible by law for investment of trust funds", "legal investments", "authorized investments", "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital", "prudent man rule", "prudent trustee rule", "prudent person rule", and "prudent investor rule".

[456.911.] 469.911. APPLICABILITY OF CERTAIN SECTIONS. — Except as otherwise specifically provided in the terms of the trust or in sections **[**456.500 to 456.913**] 456.035 to 456.041 and sections 469.900 to 469.913**, the provisions of sections **[**456.500 to 456.913**] 456.035 to 456.041 and sections 469.900 to 469.913** shall apply to any trust established before or after August 28, **[**1996**] 2004**, and to any trust asset acquired by the trustee before or after August 28, **[**1996**] 2004**.

[456.912.] 469.912. INTERPRETATION OF CERTAIN SECTIONS. — This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among the states enacting it.

[456.913.] 469.913. SPECIFIC STATUTORY STANDARDS TO CONTROL. — The general assembly recognizes that persons, corporations, entities or state agencies who have responsibility for investing funds may be subject to a standard that is specifically set forth in other statutes. Under such circumstances, such persons, corporations, entities or state agencies shall comply with the standard of investment set forth in the other statute, and this act shall not modify or repeal that standard.

700.630. SURVIVORSHIP INTEREST IN MANUFACTURED HOMES — ISSUANCE OF CERTIFICATES OF OWNERSHIP, REQUIREMENTS, RESTRICTIONS. — 1. A sole owner of a manufactured home, and multiple owners of a manufactured home who hold their interest as joint tenants with right of survivorship or as tenants by the entirety, on application and payment of the fee required for an original certificate of ownership, may request the director of revenue to issue a certificate of ownership for the manufactured home in beneficiary form which includes a directive to the director of revenue to transfer the certificate of ownership on death of the sole owner or on death of all multiple owners to one beneficiary or to two or more beneficiaries as joint tenants with right of survivorship or as tenants by the entirety named on the face of the certificate. The directive to the director of revenue shall also permit the beneficiary or beneficiaries to make one reassignment of the original certificate of ownership upon the death of the owner to another owner without transferring the certificate to the beneficiary or beneficiaries name.

2. A certificate of ownership in beneficiary form may not be issued to persons who hold their interest in a manufactured home as tenants in common.

3. A certificate of ownership issued in beneficiary form shall include after the name of the owner, or after the names of multiple owners, the words "transfer on death to" or the abbreviation "TOD" followed by the name of the beneficiary or beneficiaries.

4. (1) During the lifetime of a sole owner or prior to the death of the last surviving multiple owner, the signature or consent of the beneficiary or beneficiaries shall not be required for any transaction relating to the manufactured home for which a certificate of ownership in beneficiary form has been issued.

(2) A certificate of ownership in beneficiary form may be revoked or the beneficiary or beneficiaries changed at any time before the death of a sole owner or the last surviving multiple owner only by the following methods:

(a) By a sale of the manufactured home with proper assignment and delivery of the certificate of ownership to another person; or

(b) By filing an application to reissue the certificate of ownership with no designation of a beneficiary or with the designation of a different beneficiary or beneficiaries with the director of revenue in proper form and accompanied by the payment of the fee for an original certificate of ownership.

(3) The beneficiary's or beneficiaries' interest in the manufactured home at death of the owner or surviving owner shall be subject to any contract of sale, assignment of ownership or security interest to which the owner or owners of the manufactured home were subject during their lifetime.

(4) The designation of a beneficiary or beneficiaries in a certificate of ownership issued in beneficiary form may not be changed or revoked by a will, any other instrument, or a change in circumstances, or otherwise be changed or revoked except as provided by subdivision (2) of this subsection.

5. (1) On proof of death of one of the owners of two or more multiple owners, or of a sole owner, surrender of the outstanding certificate of ownership, and on application and payment of the fee for an original certificate of ownership, the director of revenue shall issue a new certificate of ownership for the manufactured home to the surviving owner or owners or, if none, to the surviving beneficiary or beneficiaries, subject to any outstanding security interest; and the current valid certificate of number shall be so transferred. If the surviving beneficiary or beneficiaries makes a request of the director of revenue, the director may allow the beneficiary or beneficiaries to make one assignment of title.

(2) The director of revenue may rely on a death certificate or record or report that constitutes prima facie proof or evidence of death under subdivisions (1) and (2) of section 472.290, RSMo.

(3) The transfer of a manufactured home at death pursuant to this section is not to be considered as testamentary, or to be subject to the requirements of section 473.087, RSMo, or section 474.320, RSMo.

SECTION 1. IN-HOME HEALTH CARE PROVIDERS, TRANSFER OF ASSETS OR BEQUESTS, REBUTTABLE PRESUMPTION OF UNDUE INFLUENCE, WHEN. — There shall be a rebuttable presumption of undue influence for any transfer of assets or bequest or devise to the benefit of any in-home health care provider who is not related to the grantor within the third degree of consanguinity. Such presumption shall not apply to reasonable payments for services rendered nor to transfers of less than five percent of the assets of the grantor.

[456.010. DECLARATIONS OF TRUST AND ASSIGNMENTS TO BE IN WRITING OR BY WILL. — 1. All declarations or creations of trust of any lands, tenements or hereditaments shall be manifested and proved by some writing signed by the party who is, or shall be, by law, enabled to declare such trusts, or by his last will, in writing, or else they shall be void.

2. When any conveyance shall be made of any lands, tenements or hereditaments, by which a trust may arise or result by the implication or construction of law, such trust shall be excepted from the requirements of subsection 1.

3. All grants and assignments of the interest of a beneficiary under any trust of real or personal property shall be in writing signed by the party granting or assigning the same, or by his or her last will, in writing, or else they shall be void.**]**

[456.016. WHAT INSTRUMENTS AFFECTED. — Sections 456.015 and 456.016 shall be effective with respect to wills and revocable inter vivos trusts executed or created before or after October 13, 1969, by persons who die on or after said date, and to irrevocable inter vivos trusts which are created on or after October 13, 1969.**]**

[456.055. HONORARY TRUSTS — PET ANIMALS — NONCHARITABLE SOCIETIES. — A trust for care of pet animals or other lawful specific noncharitable purpose, society or organization may be carried out by the intended trustee or a successor trustee for twenty-one years or any shorter period specified by the terms of the trust although it has no ascertainable human beneficiary or might, by its terms, last longer than the period of the rule against perpetuities.**]**

[456.080. SPENDTHRIFT TRUSTS — CERTAIN PROVISION NOT APPLICABLE TO TRUSTS FOR BENEFIT OF EMPLOYEES. — 1. All restraints upon the right of the cestui que trust to alienate or anticipate the income of any trust estate in the form of a spendthrift trust, or otherwise, and all attempts to withdraw the income of any trust estate from the claims of creditors of the cestui que trust, whether such restraints be by will or deed, now existing or in force, or, which may be hereafter executed in this state, be and the same are hereby declared null and void and of no effect, as against the claims of any wife, child or children, of such cestui que trust for support and maintenance.

2. The settlor may provide in the terms of the trust that the interest of a beneficiary may not be either voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee.

3. A provision restraining the voluntary or involuntary transfer of beneficial interests in a trust will prevent the settlor's creditors from satisfying claims from the trust assets except:

(1) Where the conveyance of assets to the trust was intended to hinder, delay, or defraud creditors or purchasers, pursuant to section 428.020, RSMo; or

(2) To the extent of the settlor's beneficial interest in the trust assets, if at the time the trust was established or amended:

(a) The settlor was the sole beneficiary of either the income or principal of the trust or retained the power to revoke or amend the trust; or

(b) The settlor was one of a class of beneficiaries and retained a right to receive a specific portion of the income or principal of the trust that was determinable solely from the provisions of the trust instrument.

4. Subsection 3 of this section shall not apply to spendthrift trusts described, defined, or established pursuant to section 456.072.**]**

[456.090. COUNTY MAY ACT AS TRUSTEE FOR CHARITABLE USES. — Each county in this state shall have the power of acting as trustee for charitable uses, and as such trustee to take and hold by gift, grant, bequest or devise, money and other property, real, personal and mixed, to it given, granted, bequeathed or devised, in trust for charitable uses, and shall have the power, by and through its county commission, of executing trusts created in it for charitable uses in as full and ample a manner as an individual; provided, however, that gifts, grants, bequests or devises to provide medals, awards, prizes, scholarships, or other things to be given in or under the

direction of any public school in such county shall be deemed a charitable use, within the meaning of sections 456.090 to 456.110.**]**

[456.100. COUNTY DEEMED TRUSTEE, WHEN. — In all cases where heretofore money or other property, real, personal or mixed, has been given, granted, bequeathed or devised, in trust for charitable uses to any county in this state, or to the county commission of any county in this state, or to the commissioners of any county commission in this state, whether the individual names of such commissioners were or were not inserted in the instrument of gift, grant, bequest or devise, and there remains in the possession or control, or both, of the county named in said instrument, such money or other property and the increase thereof, or any portion of the same, then in all such cases the gift, grant, bequest or devise of money or other property shall be deemed and taken by all courts in this state in law and equity to have been made to the county mentioned in the said instrument, and such county shall be deemed and taken to have been created a trustee by such instrument, and shall continue to hold said money or other property and the increase thereof, or such portion thereof as remains in its possession or control, or both, under the trust created by said instrument, and shall have the power, by and through its county commission, to execute the trust created by such instrument in as full and ample manner as an individual.**]**

[456.110. COUNTY AS TRUSTEE TO BE UNDER CONTROL OF CIRCUIT COURT. — All counties which have been created and all counties which shall hereafter he created trustees for charitable uses, together with the trust property held or that may be held by them, shall be under the supervision and control of the circuit courts of the respective counties, and said counties, by and through their respective county commissions, may at any time apply to their respective circuit courts for advice and directions in the execution of their trusts for charitable uses.**]**

[456.120. TRUSTEE — QUALIFICATIONS, EXCEPTIONS. — 1. The trustee may be a natural person, corporation, limited liability company formed pursuant to chapter 347, RSMo, association or partnership with the capacity to take and hold property except as provided in subsection 2 of this section.

2. No corporation, partnership or association organized under the law of a state or country other than the state of Missouri and no United States national banking association having its principal place of business outside of the state of Missouri shall have the capacity to act as trustee in Missouri except as otherwise provided by section 362.600, RSMo.**]**

[456.130. TRUSTEE TO GIVE BOND — EXCEPTION. — Every trustee appointed or who may be appointed, by any last will, deed or other instrument of writing, to hold, manage or dispose of any property or estate, real, personal or mixed, for the use or benefit of any other person, may be required by the circuit court of the county in which any such will shall be proved and recorded, or in which such deed or instrument of writing shall be recorded, to give bond, in such sum and with such securities as the court shall direct, conditioned for the faithful execution of the trust, unless the will, deed or other instrument of writing, creating such trust, shall, in express terms, dispense with security.**]**

[456.140. PETITION FOR SECURITY — NOTICE TO TRUSTEE. — Any person having beneficial interest, present or future, absolute or contingent, in the trust property, may apply to such court for security, by a petition in writing, stating plainly and briefly why security ought to be given by the trustee, and shall deliver to the trustee a copy of the petition, and a notice, in writing, of the time when it will be presented, at least ten days before the application is made.**]**

[456.150. APPLICATION, HOW DETERMINED. — The trustee may answer the petition, in writing, and the court shall hear and determine the application summarily, and shall, as may be just, either reject the petition or direct the trustee to give security.**]**

[456.160. BOND — EXECUTION AND APPROVAL OF AMOUNT. — When security is directed to be given, the bond shall be to the state of Missouri, for the use of all persons beneficially interested in the trust property, and in such sum as the court shall direct, and shall be executed, approved by the court or judge thereof, and filed in the office of said court within the time to be specified in the order of court.**]**

[456.170. TRUSTEE FAILING TO GIVE BOND, TRUSTEESHIP CEASES — COURT TO APPOINT NEW ONE. — If the trustee fail to give bond and security in the time and manner required by the court, his trusteeship, and all his title, right and power to, in and over the trust property, shall cease, and the court shall appoint a new trustee in his stead, who shall immediately be invested with all the title, right and power of the former trustee.**]**

[456.180. NEW TRUSTEE REQUIRED TO GIVE BOND, HOW — IN DEFAULT TO BE DISMISSED. — The court may, upon its own motion or upon the application of any person interested, require and cause the new trustee from time to time, and as often as may be, to give such security as shall be sufficient to insure the faithful execution of the trust, or, in default thereof, to dismiss him, and appoint another trustee in his stead, who will give the required security, to be approved by the court.**]**

[456.183. RESIGNATION BY TRUSTEE, PROCEDURE. — A trustee may resign at any time by written notice of the resignation to the settlor, if living, to a cotrustee, if any, and to the beneficiaries then entitled to receive or eligible to have the benefit of the income from the trust estate.**]**

[456.185. RESIGNATION OF TRUSTEE — POWERS AND DUTIES OF REMAINING TRUSTEES OR IF NO REMAINING TRUSTEE, EFFECT. — If a trustee resigns:

(1) The remaining trustee, if any, shall continue to act, with all the rights, powers and duties, of all the trustees; or

(2) If there is no remaining trustee, the resigning trustee shall continue serving until a successor is appointed and a successor trustee may be appointed by a majority in interest of the beneficiaries then entitled to receive the income from the trust estate or, if the interest of the income beneficiaries is* indefinite, by a majority in number of the beneficiaries then eligible to have the benefit of the income of the trust estate, by an instrument in writing delivered to the successor, who shall become a successor trustee upon written acceptance of the appointment.**]**

[456.187. SUCCESSOR TRUSTEE'S RIGHTS, POWERS AND DUTIES — NO LIABILITY FOR ACTS OF PREDECESSOR TRUSTEE, EXCEPTION. — 1. A successor trustee shall have all the rights, powers and duties, which are granted to or imposed on the predecessor.

2. A successor trustee shall be under no duty to inquire into the acts or doings of a predecessor trustee, and is liable only for any act or failure to act of a predecessor trustee of which the successor trustee had actual knowledge and which the successor trustee fails to reveal to a majority in interest of the beneficiaries entitled, at the time of succession, to receive or eligible to have the benefit of the income from the trust.

3. With the approval of a majority in interest of the beneficiaries then entitled to receive or eligible to have the benefit of the income from the trust, a successor trustee may accept the account rendered and the property received as a full and complete discharge to the predecessor trustee without incurring any liability for so doing.**]**

[456.190. PROCEDURE UPON FAILURE OR UNWILLINGNESS OF TRUSTEE TO EXECUTE TRUST. — If any trustee appointed by any last will, deed or other instrument of writing to hold, manage or dispose of any property or estate, real, personal or mixed, for the use or benefit of any person or purpose shall die, or has died, shall become or has become mentally incapacitated or

disabled, shall tender his resignation as such trustee, shall neglect or refuse or has neglected or refused to act as such trustee, or shall or has become unable, by sickness or other disability to perform or execute his trust, the trustee or a beneficiary, his or her heirs, legal representatives or assigns may present his or their affidavit, stating the facts of the case, specifically, to the circuit court of the county in which the trust property, or any part thereof, is situated or in which the will creating the trust has been proved or recorded.**]**

[456.195. SUCCESSOR TRUSTEE, NOTICE OF HEARING REQUIRED, WHEN. — Unless all beneficiaries of the trust having the capacity to contract and to transfer property consent to the appointment of a named proposed successor trustee in an affidavit filed pursuant to the provisions of section 456.190, notice of hearing is required to be given pursuant to the provisions of section 472.300, RSMo.**]**

[456.200. COURT TO APPOINT NEW TRUSTEE — POWERS AND DUTIES. — If such court shall be satisfied that the facts stated in such affidavit are true, it shall make an order appointing a suitable trustee in the place of the prior trustee to hold the trust property to the same uses and trusts under and subject to the same powers and conditions as the same was held by the prior trustee, and who shall do and perform all the acts and things that the original trustee had power to do and perform, with the same force and effect, and shall thereby be substituted to and vested with the same title and interest in the trust property as was vested in and possessed by the prior trustee, and shall have the same power and right to convey and dispose of such title as the prior trustee had.**]**

[456.210. RETENTION OF JURISDICTION. — When the circuit court of any county has acquired jurisdiction over the trustee and beneficiaries of a trust incident to a proceeding for removal or appointment of a trustee, instructions to a trustee, accounting by a trustee, reimbursement, exoneration or surcharge of a trustee, or construction of the terms of the trust, it may, in its decree granting or denying relief in such proceeding, retain jurisdiction for the purpose of entertaining later proceedings of any of such types with reference to the trust so that no more notice need be given of such later proceedings than that required for hearings on motions during the pendency of a suit.**]**

[456.220. LIMITATIONS ON SUITS AGAINST TRUSTEES. — 1. Unless previously barred by adjudication, consent or limitation, any cause of action against a trustee for breach of trust shall be barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary unless a proceeding to assert the cause of action is commenced within five years after receipt of the final account or statement by him or, if he is a minor or disabled person, by a guardian or conservator of his estate; provided that, if a minor or disabled person has no guardian or conservator of his estate, then such cause of action shall not be barred until one year after the removal of such disability. The cause of action thus barred does not include any action to recover from a trustee for fraud, misrepresentation or concealment related to the settlement of the trust.

2. Any person shall be presumed to have received such a final account or statement as of the date such final account or statement is delivered personally to such person or mailed to such person at his last address known to the trustee.

3. Notwithstanding the above, all causes of action against a trustee for breach of trust or other action pertaining to the administration of the trust shall be barred as to all beneficiaries twenty-two years after the date of final termination of the trust.

4. The limitations herein shall apply to trusts terminating before or after the enactment of this section; provided, however, that as to trusts terminating before enactment, the limitations shall not apply until two years after September 28, 1983.**]**

[456.225. TESTAMENTARY TRUSTS — BOND REQUIRED, WHEN — ACCOUNTING MAY BE REQUIRED, PROCEDURE. — 1. Before rendering any decree of partial or final distribution of any bequest or devise in trust, the probate division of the circuit court, in its discretion, may require any trustee named as distributee in the will creating such trust to file bond, in an amount and with security fixed by the court, conditioned upon the faithful performance of the duties of the trustee, except the court shall not require a bond if the will which creates the trust directs that no bond shall be required of the trustee or trustees. No bond shall be required if the trustee is the surviving spouse of the testator or if the trustee or any cotrustee of the trust is a corporation and has a certificate of the director of finance of the state of Missouri that it has complied with the provisions of section 362.115, RSMo.**]**

[456.233. ACCOUNTING BY TRUSTEES. — Unless the terms of the trust provide otherwise or unless waived in writing by an adult, competent beneficiary, the trustee shall deliver a written statement of accounts to each income beneficiary or his personal representative at least annually. The statement shall contain at least:

(1) A list of all receipts and disbursements since the last statement; and

(2) All items of trust property held by the trustee on the date of the statement at their cost basis, if known, and their market value, if readily ascertainable.**]**

[456.234. CHOICE OF LAW AS TO MEANING OF TRUST INSTRUMENT. — The meaning of a disposition in an instrument creating or amending a trust shall be determined by the local law of a particular state selected by the settlor in his instrument unless the application of that law is contrary to the public policy of this state otherwise applicable to the disposition.**]**

[456.440. PRINCIPAL PLACE OF ADMINISTRATION — JURISDICTION. — 1. By accepting the trusteeship of a trust of which the principal place of administration is in this state, or by moving the principal place of administration of a trust to this state, the trustee submits personally to the courts of this state in proceedings involving internal affairs of such trust as to any matter relating to such internal affairs of the trust arising while the principal place of administration is located in this state.

2. To the extent of the beneficial interests in a trust of which the principal place of administration is in this state, the beneficiaries of the trust are subject to the jurisdiction of the courts of this state for purposes of proceedings involving internal affairs of that trust.**]**

[456.450. VENUE. — 1. Venue for proceedings involving the internal affairs of registered trusts is in the place of registration. Venue for proceedings involving the internal affairs of trusts not registered in this state is in any place where the trust properly could have been registered, and otherwise by the rules of civil procedure.

2. Where a judicial proceeding under this chapter could be maintained in more than one place in this state, the court in which the proceeding is first commenced has the exclusive right to proceed.

3. If proceedings concerning the same trust are commenced in more than one court of this state, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.

4. If a court finds that in the interest of justice a proceeding or a file should be located in another court of this state, the court making the finding may transfer the proceeding or file to the other court.**]**

[456.460. DISMISSAL OF MATTERS RELATING TO FOREIGN TRUSTS. — The court may, even over the objection of a party, entertain proceedings involving the internal affairs of a trust

registered or having its principal place of administration in another state when all appropriate parties could not be bound by litigation in the courts of the state where the trust is registered or has its principal place of administration; or when the interests of justice otherwise would seriously be impaired. The court may condition a stay or dismissal of a proceeding on the consent of any party to jurisdiction of the state in which the trust is registered or has its principal place of business, or the court may grant a continuance or enter any other appropriate order.**]**

[456.470. OATH OR AFFIRMATION ON FILED DOCUMENTS. — Except as otherwise specifically provided in this chapter or by rule, every document filed with the court under this chapter, including applications, petitions, and demands for notice, shall be deemed to include an oath, affirmation or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed.**]**

[456.480. LIABILITY OF TRUSTEE TO THIRD PERSONS. — 1. Unless otherwise provided by the terms of the contract, a trustee is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the trust, unless he fails to reveal his fiduciary capacity and identify the trust in the contract.

2. A trustee is individually liable for obligations arising from ownership or control of the trust assets or for torts committed in the course of administration of the trust only if he is personally at fault.

3. Claims based on contracts entered into by a trustee in his fiduciary capacity, on obligations arising from ownership or control of the trust assets, or on torts committed in the course of trust administration may be asserted against the trust by proceeding against the trustee in his fiduciary capacity, whether or not the trustee is individually liable therefor.

4. Issues of liability as between the trust and the trustee individually may be determined in a proceeding for accounting, surcharge or indemnification, or other appropriate proceeding.

5. A trustee who is a member of a partnership in his fiduciary capacity only is not individually liable for the obligations of the partnership but claims based upon such obligations may be asserted against the trust by proceeding against the trustee in his fiduciary capacity.**]**

[456.490. ACTS BY HOLDER OF GENERAL POWER. — For the purpose of granting consent or approval with regard to the acts or accounts of a trustee, including relief from liability or penalty for failure to post bond, or to perform other duties, and for purposes of consenting to modification or termination of a trust or to deviation from its terms, the sole holder or all coholders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests, as objects, takers in default, or otherwise, are subject to the power.**]**

[456.500. DEFINITIONS AS USED IN SECTIONS 456.500 TO 456.590. — As used in sections 456.500 to 456.600:

(1) "Prudent investor" means:

(a) In the case of decisions and actions taken before August 28, 1996, a trustee whose exercise of trust powers is reasonable and equitable in view of the interests of income or principal beneficiaries, or both, and in view of the manner in which men of ordinary prudence, diligence, discretion, and judgment would act in the management of the affairs of others; and

(b) In the case of decisions and actions taken on or after August 28, 1996, a trustee whose exercise of trust powers is in accordance with the provisions of the Missouri prudent investor act, sections 456.900 to 456.913;

(2) "Trust" means an express trust created by a trust instrument, including a will, whereby a trustee has the duty to administer a trust asset for the benefit of a named or otherwise described income or principal beneficiary, or both; "trust" does not include a resulting or constructive trust, a business trust which provides for certificates to be issued to the beneficiary, an investment trust,

a voting trust, a security instrument, a trust created by the judgment or decree of a court, a liquidation trust, or a trust for the primary purpose of paying dividends, interests, interest coupons, salaries, wages, pensions or profits, or employee benefits of any kind, an instrument wherein a person is nominee or escrowee for another, a trust created in deposits in any financial institution, or other trust the nature of which does not admit of general trust administration;

(3) "Trustee" means an original, added, or successor trustee.**]**

[456.510. POWERS OF TRUSTEE CONFERRED BY TRUST OR BY LAW. — 1. The trustee has all powers conferred upon him by the provisions of sections 456.500 to 456.600, unless limited by the trust instrument.

2. An instrument which is not a trust as defined in section 456.500 may incorporate any part of sections 456.500 to 456.600 by reference.**]**

[456.520. POWERS BY STATUTORY LAW. — 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 the trustee's powers including the powers granted by this chapter, a trustee has a duty to act with due regard to 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 the trustee's administrative duties; to act without independent investigation upon their recommendations; 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 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 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 pursuant to subsections 1 and 2 of this section also meet the standards established by the division of finance 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.**]**

[456.524. TRUSTEES OF TESTAMENTARY AND INTER VIVOS TRUSTS ARE ENTITLED TO REASONABLE COMPENSATION. — 1. A trustee shall be entitled to reasonable compensation for services rendered. For purposes of this section, "reasonable compensation" may include fees that take into account the administration of both income and principal.

2. The provisions of this section shall apply to all testamentary and inter vivos trusts upon and after August 28, 1998, whether established before or after such date, and whether or not the will or trust instrument contains provisions relating to compensation of the trustee; provided that this section shall not apply to the extent of any inconsistency between the provisions of this section and the provisions of the will or trust instrument.**]**

[456.530. TRUSTEE'S OFFICE NOT TRANSFERABLE, EXCEPTION. — Unless otherwise permitted by law or the governing instrument, the trustee shall not transfer his office to another or delegate the entire administration of the trust to a cotrustee or another.**]**

[456.535. SOLE TRUSTEE'S POWER TO DISTRIBUTE PRINCIPAL OR INCOME FOR HIMSELF, LIMITATION, EXCEPTION — EFFECTIVE WHEN. — 1. Unless the terms of the trust refer to this section and provide otherwise, a power exercisable by or attributable to a person, other than the settlor, in such person's capacity as a trustee or because the person is deemed to have any power of a trustee, whether because such person has the right to remove or replace any trustee or because a reciprocal trust or power doctrine applies or otherwise, to make discretionary distribution of either principal or income:

(1) To or for the benefit of himself or herself shall be exercisable only for his or her health, education and support in his or her accustomed manner of living; or

(2) To or for the benefit of others shall not be exercisable to discharge any of his or her legal obligations.

2. The provisions of this section apply to any trust established before or after August 13, 1986.**]**

[456.540. POWERS EXERCISABLE BY JOINT TRUSTEES — LIABILITY. — 1. Any power vested in three or more trustees may be exercised by a majority, but a trustee who has not joined in exercising a power is not liable to the beneficiaries or to others for the consequences of the exercise; and a dissenting trustee is not liable for the consequences of an act in which he joins at the direction of the majority of the trustees, if he expressed his dissent in writing to any of his cotrustees at or before the time of the joinder.

2. If two or more trustees are appointed to perform a trust, and if any of them is unable or refuses to accept the appointment, or, having accepted, ceases to be a trustee, the surviving or remaining trustees shall perform the trust and succeed to all the powers, duties, and discretionary authority given to the trustees jointly.

3. This section does not excuse a cotrustee from liability for failure either to participate in the administration of the trust or to attempt to prevent a breach of trust.

4. Unless the terms of the trust refer to this subsection and provide otherwise, a power conferred upon two or more persons, none of whom is the settlor, in their capacity as trustees to make discretionary distribution of either principal or income to or for the benefit of one of them, cannot be exercised by such person, but it shall be exercisable by the trustee or trustees who are not so disqualified. The provisions of this subsection apply to any trust established before or after August 13, 1986.**]**

[456.550. SPECIAL DUTIES ASSIGNED BY TRUST TO ONE OR MORE OF SEVERAL TRUSTEES, EFFECT. — Unless the terms of the trust provide otherwise, when an instrument creating or amending the terms of a trust authorizes or directs one or more of several cotrustees or other persons to perform designated duties, other cotrustees are not under a duty to inquire into or participate in the performance of any such duties by the cotrustee or cotrustees or other persons authorized or directed to perform it alone in the absence of actual knowledge that the former is or are contemplating, committing or concealing a breach of trust.**]**

[456.560. THIRD PERSONS PROTECTED IN DEALING WITH TRUSTEES. — With respect to a third person dealing with a trustee or assisting a trustee in the conduct of a transaction, the existence of trust powers and their proper exercise by the trustee may be assumed without inquiry. The third person is not bound to inquire whether the trustee has power to act or is properly exercising the power; and a third person, without actual knowledge that the trustee is exceeding his powers or improperly exercising them, is fully protected in dealing with the trustee as if the trustee possessed and properly exercised the powers he purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the trustee.**]**

[456.570. POWER OF COURT TO REMOVE RESTRICTIONS OR TO APPROVE CONFLICT OF INTEREST. — 1. A court of competent jurisdiction for cause shown and upon petition of the trustee or affected beneficiary and upon appropriate notice to the affected parties may relieve a trustee from any restrictions on his power that would otherwise be placed upon him by the trust or by this chapter.

2. If the duty of the trustee and his individual interest or his interest as trustee of another trust, conflict in the exercise of a trust power, the power may be exercised only by court authorization, except as provided in subdivisions (1), (4), (6), (18), (24) and (28) of subsection 3 of section 456.520, upon petition of the trustee. Under this section, personal profit or advantage to an affiliated or subsidiary company or association is personal profit to any corporate trustee. The mere fact that the trustee is also the trustee of another trust or personal representative of an estate with which transactions are conducted does not, of and in itself, create a conflict of interest.**]**

[456.580. TRANSFER FREE OF FUTURE INTERESTS. — When a trustee or beneficial owner of a present estate in land is unable to convey or mortgage a merchantable title in fee simple, to give an indefeasible lease for ninety-nine years, or to make improvements to the land, because his estate is for life or in determinable or defeasible fee simple and such a conveyance, mortgage, lease or improvement is needed to assure a reasonable income, considering the market value of the land, a court of competent jurisdiction may and, unless it finds that the transaction will injure the holder or holders of a future interest in the land, shall, authorize the trustee or beneficial owner to convey or mortgage the fee simple, to give a lease for any period up to ninety-nine years or to make improvements. Any transaction so authorized shall be binding upon all persons with interests in the land. If sale is authorized, the proceeds shall be held in trust for the holders of present and future beneficial interests as their interests shall appear. If mortgage is authorized, the money borrowed shall be used to pay for improvements on the land; any surplus to be held upon trust as in the case of sale proceeds.**]**

[456.610. DEBTS OF DECEDENTS — NOTICE TO CREDITORS — FORM — PUBLICATION — EFFECT. — 1. Any trustee who has a duty or power to pay the debts of a decedent may publish a notice in some newspaper published in the county once a week for four consecutive weeks in substantially the following form:

To all persons interested in the estate of ....., decedent. The undersigned ..... is acting as Trustee under a trust the terms of which provide that the debts of the decedent may be

paid by the Trustee(s) upon receipt of proper proof thereof. The address of the Trustee is ..... . All creditors of the decedent are noticed to present their claims to the undersigned within six (6) months from the date of the first publication of this notice or be forever barred.

.....
Trustee

2. If such publication is duly made by the trustee, any debts not presented to the trustee within six months from the date of the first publication of the aforesaid notice shall be forever barred as against the trustee and the trust property.**]**

[456.630. FRAUD, TRUST PROCEEDING, RELIEF, WHEN — FRAUD DEFINED — PARTY COMMITTING FRAUD, DEFINED — BANKRUPTCY FILED, RELIEF, WHEN — CERTAIN TRUSTS FOR BENEFIT OF EMPLOYEES, EXEMPT. — 1. Notwithstanding any provision of law to the contrary, whenever fraud has been perpetrated in connection with any proceeding under this chapter or if fraud is used to avoid or circumvent the provisions of purposes of this chapter, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud, including restitution from any person, other than a bona fide purchaser, benefiting from the fraud, whether innocent or not. Any such proceeding must be commenced within two years after the discovery of the fraud but no proceeding may be brought against one not a perpetrator of the fraud later than ten years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a settlor during his lifetime which affects validity of a trust or succession to its assets.

2. For the purpose of subsections 2 to 4 of this section:

(1) "Fraud" includes the transfer of funds to any spendthrift trust, including a trust qualifying as a spendthrift trust under the provisions of section 456.072, where the party committing fraud transfers funds to the trust and such transfer is fraudulent as to a creditor of such party in that such party transferred such funds:

(a) With intent to hinder, delay, or prevent the creditor from collecting a lawful debt;

(b) When such party was, or shortly before he became, insolvent;

(c) When such party was not paying his debts as they became due; or

(d) While any creditor lawsuit was pending against such party;

(2) "Party committing fraud" includes any grantor, any person who makes a transfer to the trust, beneficiary, participant, or other similar party of the trust who makes use of a spendthrift trust to commit fraud or attempt to commit fraud against creditors.

3. In addition to any other remedies under subsection 1 of this section, any person injured by a party committing fraud may obtain appropriate relief against such party, where the fraud was committed within three years prior to filing a petition for relief under Title 11 of the United States Code, or three years prior to the discovery of such fraud. The action for fraud shall survive the death of the party committing fraud. Such action shall be limited by the earlier of the time period provided by section 456.610 or a one-year period after death.

4. Any spendthrift trust that otherwise qualifies as part of a plan or contract that is exempt under sections 401(a), 403(a), 403(b), and 409 of the Internal Revenue Code of 1986, as amended, where the funds contributed to such qualified plan or contract were contributed no less often than annually as a part of employee benefits, and including funds transferred under section 408 of such code permitting rollovers, when such funds were originally contributed to such qualified plan or contract no less often than annually as a part of employee benefits is exempt from subsections 2 to 4 of this section, provided such contributions were permitted by the Internal Revenue Code for the years in question.**]**

[456.670. SUPPLEMENT TO PROVISIONS. — Unless displaced by the particular provisions of this chapter, the principles of law and equity supplement its provisions.**]**

[461.300. BENEFICIARIES TO PAY, PRO RATA SHARE OF ALL PROPERTY RECEIVED TO COVER STATUTORY ALLOWANCES AND CLAIMS DUE ESTATE, ENFORCED BY ACTION FOR ACCOUNTING, TIME LIMITATION — ACTION AFFECT ON TRANSFERRING ENTITY. — 1. Each beneficiary who receives a nonprobate transfer of a decedent's property under sections 461.003 to 461.081 and each person who receives other property by a transfer other than from the administration of the decedent's probate estate that was subject to satisfaction of the decedent's debts immediately prior to the decedent's death, but only to the extent of the decedent's contribution to the value of such other property, shall be liable to account to the decedent's personal representative for a pro rata share of the value of all such property received, to the extent necessary to discharge the statutory allowances to the surviving spouse and unmarried minor children, and claims, remaining unpaid after application of the decedent's estate, including expenses of administration and costs as provided in subsection 3 of this section, and including estate or inheritance or other transfer taxes imposed by reason of the decedent's death only where payment of those taxes is a prerequisite to satisfying unpaid claims which have a lower level of priority. No proceeding may be brought under this section when the deficiency described in this subsection is solely attributable to costs and expenses of administration.

2. The obligation of a beneficiary of a nonprobate transfer or other recipient of property under subsection 1 of this section may be enforced by an action for accounting commenced within eighteen months following the decedent's death by the decedent's personal representative, a creditor of the decedent's estate, the decedent's surviving spouse or one acting for an unmarried minor child of the decedent, but no action for accounting under this section shall be commenced by any person unless the personal representative has received a written demand therefor by a creditor, surviving spouse or one acting for an unmarried minor child of the decedent. Sums recovered in an action for accounting under this section shall be administered by the personal representative as part of the decedent's estate except as provided in subsection 3 of this section.

3. The judgment in a proceeding authorized by this section shall take into account the expenses of administration of the estate including the cost of administering the additional assets obtained in the proceeding, and the costs of the proceeding to the extent authorized by this subsection. If the proceeding is commenced by a person other than the personal representative, the court may order the costs of the proceeding, other than attorney fees, to be charged against the amounts recovered and recoverable as a result of the proceeding. If the proceeding is commenced by the personal representative, the court may order the costs of the proceeding, including attorney fees, to be treated as expenses of administration of the estate.

4. After an action for accounting has been commenced under this section, any party to the proceeding may join and bring into the action for accounting other persons who are liable to account to the decedent's personal representative under subsection 1 of this section.

5. This section shall not affect the right of any transferring entity, as defined in section 461.005, to execute a direction of the decedent to make a payment or to make a nonprobate transfer or other transfer described in subsection 1 of this section on death of the decedent, or make the transferring entity liable to the decedent's estate, unless before the payment or transfer is made the transferring entity has been served with process in a proceeding brought under this section and the transferring entity has had a reasonable time to act on it.

6. This section does not create a lien on any property that is the subject of a nonprobate transfer or other property not subject to probate administration, except as a lien may be perfected by way of attachment, garnishment or judgment in an accounting proceeding authorized by this section.

7. An action for accounting under this section may be filed in the probate division of the circuit court, and the probate division of the circuit court may hear and determine questions and issue appropriate orders in an action for accounting under this section.

8. The recipient of any property held in trust that was subject to the satisfaction of the decedent's debts immediately prior to the decedent's death, and the recipient of any property held in joint tenancy with right of survivorship that was subject to the satisfaction of the decedent's

debts immediately prior to the decedent's death, are subject to this section, but only to the extent of the decedent's contribution to the value of the property.

9. This section shall apply to all actions commenced after August 28, 1995, except that with respect to decedents dying prior to August 28, 1995, an action for accounting under this section may be commenced within two years following the decedent's death.**]**

Approved July 9, 2004

HB 1529 [HCS HB 1529 & 1655]

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

Requires a minimum reimbursement for emergency services in a tax increment financing district.

AN ACT to amend chapter 99, RSMo, by adding thereto one new section relating to tax increment financing.

SECTION
A. Enacting clause.
99.848. Emergency services district, reimbursement from special allocation fund authorized, when.

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

SECTION A. ENACTING CLAUSE. — Chapter 99, RSMo, is amended by adding thereto one new section, to be known as section 99.848, to read as follows:

99.848. EMERGENCY SERVICES DISTRICT, REIMBURSEMENT FROM SPECIAL ALLOCATION FUND AUTHORIZED, WHEN. — Notwithstanding subsection 1 of section 99.847, any district providing emergency services pursuant to chapter 190 or 321, RSMo, shall be entitled to reimbursement from the special allocation fund in the amount of at least fifty percent nor more than one hundred percent of the district's tax increment. This section shall not apply to tax increment financing projects or districts approved prior to the effective date of this section.

Approved July 2, 2004

HB 1548 [CCS SCS HB 1548]

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

Requires overtime pay for certain state employees.

AN ACT to repeal sections 105.055, 386.135, and 610.028, RSMo, and to enact in lieu thereof four new sections relating to state employees.

SECTION
A. Enacting clause.

105.055. State employee reporting mismanagement or violations of agencies, discipline of employee prohibited — appeal by employee from disciplinary actions, procedure — disciplinary action defined — violation, penalties — civil action, when.
105.935. Overtime hours, state employee may choose compensatory leave time, when — payment for overtime, when — reports on overtime paid.
386.135. Independent technical staff for commission authorized, qualifications — personal advisors permitted — corresponding elimination of positions required — duties of technical staff.
610.028. Legal defense of members of governmental bodies, when — written policy on release of information required — persons reporting violations exempt from liability and discipline.

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

SECTION A. ENACTING CLAUSE. — Sections 105.055, 386.135, and 610.028, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 105.055, 105.935, 386.135, and 610.028, to read as follows:

105.055. STATE EMPLOYEE REPORTING MISMANAGEMENT OR VIOLATIONS OF AGENCIES, DISCIPLINE OF EMPLOYEE PROHIBITED — APPEAL BY EMPLOYEE FROM DISCIPLINARY ACTIONS, PROCEDURE — DISCIPLINARY ACTION DEFINED — VIOLATION, PENALTIES — CIVIL ACTION, WHEN. — 1. No supervisor or appointing authority of any state agency shall prohibit any employee of the agency from discussing the operations of the agency, either specifically or generally, with any member of the legislature **[**or the**],** state auditor**, attorney general, or any state official or body charged with investigating such alleged misconduct**.

2. No supervisor or appointing authority of any state agency shall:

(1) Prohibit a state employee from or take any disciplinary action whatsoever against a state employee for the disclosure of any alleged prohibited activity under investigation or any related activity, or for the disclosure of information which the employee reasonably believes evidences:

(a) A violation of any law, rule or regulation; or

(b) Mismanagement, a gross waste of funds or abuse of authority, or a substantial and specific danger to public health or safety, if the disclosure is not specifically prohibited by law; or

(2) Require any such employee to give notice to the supervisor or appointing authority prior to making any such report.

3. This section shall not be construed as:

(1) Prohibiting a supervisor or appointing authority from requiring that an employee inform the supervisor or appointing authority as to legislative requests for information to the agency or the substance of testimony made, or to be made, by the employee to legislators on behalf of the employee to legislators on behalf of the agency;

(2) Permitting an employee to leave the employee's assigned work areas during normal work hours without following applicable rules and regulations and policies pertaining to leaves, unless the employee is requested by a legislator or legislative committee to appear before a legislative committee;

(3) Authorizing an employee to represent the employee's personal opinions as the opinions of a state agency; or

(4) Restricting or precluding disciplinary action taken against a state employee if: the employee knew that the information was false; the information is closed or is confidential under the provisions of the open meetings law or any other law; or the disclosure relates to the employee's own violations, mismanagement, gross waste of funds, abuse of authority or endangerment of the public health or safety.

4. As used in this section, "disciplinary action" means any dismissal, demotion, transfer, reassignment, suspension, reprimand, warning of possible dismissal or withholding of work, whether or not the withholding of work has affected or will affect the employee's compensation.

5. Any employee may file an administrative appeal whenever the employee alleges that disciplinary action was taken against the employee in violation of this section. The appeal shall be filed with the state personnel advisory board; provided that the appeal shall be filed with the appropriate agency review board or body of nonmerit agency employers which have established appeal procedures substantially similar to those provided for merit employees in subsection 5 of section 36.390, RSMo. The appeal shall be filed within thirty days of the alleged disciplinary action. Procedures governing the appeal shall be in accordance with chapter 36, RSMo. If the board or appropriate review body finds that disciplinary action taken was unreasonable, the board or appropriate review body shall modify or reverse the agency's action and order such relief for the employee as the board considers appropriate. If the board finds a violation of this section, it may review and recommend to the appointing authority that the violator be suspended on leave without pay for not more than thirty days or, in cases of willful or repeated violations, may review and recommend to the appointing authority that the violator forfeit the violator's position as a state officer or employee and disqualify the violator for appointment to or employment as a state officer or employee for a period of not more than two years. The decision of the board or appropriate review body in such cases may be appealed by any party pursuant to law.

6. Each state agency shall prominently post a copy of this section in locations where it can reasonably be expected to come to the attention of all employees of the agency.

7. (1) In addition to the remedies in subsection 6 of this section, a person who alleges a violation of this section may bring a civil action for damages within ninety days after the occurrence of the alleged violation.

(2) A civil action commenced pursuant to this subsection may be brought in the circuit court for the county where the alleged violation occurred, the county where the complainant resides, or the county where the person against whom the civil complaint is filed resides.

(3) An employee must show by clear and convincing evidence that he or she or a person acting on his or her behalf has reported or was about to report, verbally or in writing, a prohibited activity or a suspected prohibited activity.

(4) A court, in rendering a judgment in an action brought pursuant to this section, shall order, as the court considers appropriate, actual damages, and may also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees.

105.935. OVERTIME HOURS, STATE EMPLOYEE MAY CHOOSE COMPENSATORY LEAVE TIME, WHEN — PAYMENT FOR OVERTIME, WHEN — REPORTS ON OVERTIME PAID. — 1. Any state employee who has accrued any overtime hours may choose to use those hours as compensatory leave time provided that the leave time is available and agreed upon by both the state employee and his or her supervisor.

2. A state employee who is a nonexempt employee pursuant to the provisions of the Fair Labor Standards Act shall be eligible for payment of overtime in accordance with subsection 4 of this section. A nonexempt state employee who works on a designated state holiday shall be granted equal compensatory time off duty or shall receive, at his or her choice, the employee's straight time hourly rate in cash payment. A nonexempt state employee shall be paid in cash for overtime unless the employee requests compensatory time off at the applicable overtime rate. As used in this section, the term "state employee" means any person who is employed by the state and earns a salary or wage in a position normally requiring the actual performance by him or her of duties on behalf of the state, but shall not include any employee who is exempt under the provisions of the Fair Labor Standards Act or any employee of the general assembly.

3. Beginning on January 1, 2006, and annually thereafter each department shall pay all nonexempt state employees in full for any overtime hours accrued during the previous calendar year which have not already been paid or used in the form of compensatory

leave time. All nonexempt state employees shall have the option of retaining up to a total of eighty compensatory time hours.

4. The provisions of subsection 2 of this section shall only apply to nonexempt state employees who are otherwise eligible for compensatory time under the Fair Labor Standards Act, excluding employees of the general assembly. Any nonexempt state employee requesting cash payment for overtime worked shall notify such employee's department in writing of such decision and state the number of hours, no less than twenty, for which payment is desired. The department shall pay the employee within the calendar quarter following the quarter in which a valid request is made. Nothing in this section shall be construed as creating a new compensatory benefit for state employees.

5. Each department shall, by November first of each year, notify the commissioner of administration, the house budget committee chair, and the senate appropriations committee chair of the amount of overtime paid in the previous fiscal year and an estimate of overtime to be paid in the current fiscal year. The fiscal year estimate for overtime pay to be paid by each department shall be designated as a separate line item in the appropriations bill for that department. The provisions of this subsection shall become effective July 1, 2005.

6. Each state department shall report quarterly to the house of representatives budget committee chair, the senate appropriations committee chair, and the commissioner of administration the cumulative number of accrued overtime hours for department employees, the dollar equivalent of such overtime hours, the number of authorized full-time equivalent positions and vacant positions, the amount of funds for any vacant positions which will be used to pay overtime compensation for employees with full-time equivalent positions, and the current balance in the department's personal service fund.

386.135. INDEPENDENT TECHNICAL STAFF FOR COMMISSION AUTHORIZED, QUALIFICATIONS — PERSONAL ADVISORS PERMITTED — CORRESPONDING ELIMINATION OF POSITIONS REQUIRED — DUTIES OF TECHNICAL STAFF. — 1. The commission shall have an independent technical advisory staff of up to six full-time employees. The advisory staff shall have expertise in accounting, economics, finance, engineering/utility operations, law, or public policy.

2. In addition, each commissioner shall also have the authority to retain one personal advisor, who shall be deemed a member of the technical advisory staff. The personal advisors will serve at the pleasure of the individual commissioner whom they serve and shall possess expertise in one or more of the following fields: accounting, economics, finance, engineering/utility operations, law, or public policy.

3. The commission shall only hire technical advisory staff pursuant to subsections 1 and 2 of this section if there is a corresponding elimination in comparable staff positions for commission staff to offset the hiring of such technical advisory staff on a cost-neutral basis. Such technical advisory staff shall be hired on or before July 1, 2005.

4. It shall be the duty of the technical advisory staff to render advice and assistance to the commissioners and the commission's **[**hearing officers**]** **administrative law judges** on technical matters within their respective areas of expertise that may arise during the course of proceedings before the commission.

5. The technical advisory staff shall also update the commission and the commission's **[**hearing officers**]** **administrative law judges** periodically on developments and trends in public utility regulation, including updates comparing the use, nature, and effect of various regulatory practices and procedures as employed by the commission and public utility commissions in other jurisdictions.

6. Each member of the technical advisory staff shall be subject to any applicable ex parte or conflict of interest requirements in the same manner and to the same degree as any commissioner, provided that neither any person regulated by, appearing before, or employed by

the commission shall be permitted to offer such member a different appointment or position during that member's tenure on the technical advisory staff.

7. No employee of a company or corporation regulated by the public service commission, no employee of the office of public counsel or the public counsel, and no staff members of either the utility operations division or utility services division who were an employee or staff member on, during the two years immediately preceding, or anytime after August 28, 2003, may be a member of the commission's technical advisory staff for two years following the termination of their employment with the corporation, office of public counsel or commission staff member.

8. The technical advisory staff shall never be a party to any case before the commission.

610.028. LEGAL DEFENSE OF MEMBERS OF GOVERNMENTAL BODIES, WHEN — WRITTEN POLICY ON RELEASE OF INFORMATION REQUIRED — PERSONS REPORTING VIOLATIONS EXEMPT FROM LIABILITY AND DISCIPLINE. — 1. Any public governmental body may provide for the legal defense of any member charged with a violation of sections 610.010 to 610.030.

2. Each public governmental body shall provide a reasonable written policy in compliance with sections 610.010 to 610.030, open to public inspection, regarding the release of information on any meeting, record or vote and any member or employee of the public governmental body who complies with the written policy is not guilty of a violation of the provisions of sections 610.010 to 610.030 or subject to civil liability for any act arising out of his adherence to the written policy of the agency.

3. No person who in good faith reports a violation of the provisions of sections 610.010 to 610.030 is civilly liable for making such report, nor, if such person is an officer or employee of a public governmental body, may such person be demoted, fired, suspended**,** or otherwise disciplined for making such report.

Approved June 8, 2004

HB 1599 [SCS HS HB 1599]

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

Establishes the Joint Committee on Government Accountability to make a continuing study and analysis of inefficiencies in state government.

AN ACT to repeal section 8.235, RSMo, and to enact in lieu thereof three new sections relating to a joint committee on government accountability.

SECTION

A. Enacting clause.
8.235. Office of administration to contract for guaranteed energy cost savings contracts by bid, criteria — use of funds by governmental units — procurement implementation date.
8.237. Office of administration to develop statewide plan of energy conservation and cost savings, state buildings and facilities — requirements — moneys to be used.
21.820. Joint committee on government accountability established, members, duties, meetings, staff, report.

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

SECTION A. ENACTING CLAUSE. — Section 8.235, RSMo, is repealed and three new sections enacted in lieu thereof to be known as sections 8.235, 8.237, and 21.820, to read as follows:

8.235. OFFICE OF ADMINISTRATION TO CONTRACT FOR GUARANTEED ENERGY COST SAVINGS CONTRACTS BY BID, CRITERIA — USE OF FUNDS BY GOVERNMENTAL UNITS — PROCUREMENT IMPLEMENTATION DATE. — 1. Notwithstanding subsection 3 of section 8.231 and section 34.040, RSMo, the **[**division of design and construction**]** **office of administration** is hereby authorized to contract for guaranteed energy cost savings contracts by selecting a bid for proposal from a contractor or team of contractors using the following criteria:

(1) The specialized experience and technical competence of the firm or team with respect to the type of services required;

(2) The capacity and capability of the firm or team to perform the work in question, including specialized services, within the time limitations fixed for the completion of the project**. The scope of work identified in the report of energy audit findings shall be developed and executed in a manner that best meets the needs of the governmental unit. For the purposes of this section and section 8.237, RSMo, "best meets the needs of governmental unit" means, but is not limited to, on a cost effective and timely basis but not otherwise inconsistent with the provisions provided herein**; and

(3) The past record of performance of the firm or team with respect to such factors as control of costs, quality of work and ability to meet schedules.

2. **[**Each guaranteed energy cost saving contract, authorized pursuant to this section, shall reduce the estimated energy consumption by a minimum of twelve percent or reduce the cost of energy and related savings by a minimum of twelve percent.

3.**]** The guaranteed energy cost saving contract shall otherwise be in accordance with the provisions of section 8.231.

[4. The division of design and construction is authorized to use this procurement process for eight projects.**]**

3. Other state governmental units may procure these services in accordance with section 8.235.

4. A governmental unit may use designated funds, bonds, or master lease for any guaranteed energy cost savings contract including purchases using installment payment contracts or lease purchase agreements, so long as that use is consistent with the purpose of the appropriation.

5. Other state governmental units shall participate in the procurement of these services, in accordance with sections 8.231 and 8.237 with implementation beginning on or prior to June 1, 2006.

8.237. OFFICE OF ADMINISTRATION TO DEVELOP STATEWIDE PLAN OF ENERGY CONSERVATION AND COST SAVINGS, STATE BUILDINGS AND FACILITIES — REQUIREMENTS — MONEYS TO BE USED. — 1. The office of administration shall develop a statewide plan of energy conservation and cost savings for the buildings and facilities of the state. The plan shall be designed to implement energy conservation and cost savings on a cost effective basis. The office of administration shall divide the buildings and facilities of the state by its administrative agencies such that numerous qualified providers of varying capacity shall be eligible to submit requests for proposals or request for qualifications. The office of administration shall give preference to Missouri companies as provided for in sections 34.070 and 34.073, RSMo and relevant executive orders. Prior to the office of administration entering into such contract, it shall solicit sealed proposals from entities that best meet the needs of the governmental unit. Each governmental unit, as defined in section 8.231, prior to entering into a contract for the implementation of any significant energy conservation or facility improvement measure identified by the office of administration, shall meet the following requirements:

(1) Obtain a report of energy audit findings from the entity providing the energy conservation measures containing recommendations concerning the costs of installation, modifications, or remodeling, including costs of design, engineering, repairs, and financing; and

(2) The proposal shall guarantee to such governmental unit an amount of cost savings in energy or operating costs, as defined in section 8.231 if such installation, modification, or remodeling is performed by that entity.

2. For purposes of this section, "energy conservation and facility improvement measure" designed to reduce energy consumption, as defined in section 8.231 includes, but is not limited to, automated or computerized energy control and facility management systems or computerized maintenance management systems, replacement or modification of lighting fixtures and systems, energy recovery systems, water conservation, cogeneration systems, and window and door system modifications.

3. The entity shall contractually guarantee energy savings as appropriate and in a manner that meets the needs of the governmental unit.

4. With regard to energy cost savings in section 8.235 and this section, subject to appropriations, funding may be provided by the office of administration's revolving administrative trust fund, general revenue, or other appropriate fund source.

21.820. JOINT COMMITTEE ON GOVERNMENT ACCOUNTABILITY ESTABLISHED, MEMBERS, DUTIES, MEETINGS, STAFF, REPORT. — 1. There is established a joint committee of the general assembly to be known as the "Joint Committee on Government Accountability" to be composed of seven members of the senate and seven members of the house of representatives. The senate members of the joint committee shall be appointed by the president pro tem and minority floor leader of the senate and the house members shall be appointed by the speaker and minority floor leader of the house of representatives. Each member shall be appointed for a term of two years or until a successor has been appointed to fill the member's place when his or her term has expired. Members may be reappointed to the joint committee. No party shall be represented by more than four members from the house of representatives nor more than four members from the senate. A majority of the committee shall constitute a quorum, but the concurrence of a majority of the members shall be required for the determination of any matter within the committee's duties.

2. The joint committee shall:

(1) Make a continuing study and analysis of inefficiencies, fraud and misconduct in state government;

(2) Determine the appropriate method of obtaining data on each entity of state government that will provide relevant information at least biennially for the identification of potential and actual inefficiencies in each state entity's function, duties, and performance;

(3) Determine from its study and analysis the need for changes in statutory law, rules, or policies; and

(4) Make any other recommendation to the general assembly necessary to reduce inefficiencies in state government;

(5) Identify and acknowledge government agencies and officials who perform functions in an efficient and effective manner.

3. The joint committee shall meet within thirty days after its creation and organize by selecting a chairperson and a vice chairperson, one of whom shall be a member of the senate and the other a member of the house of representatives. The chairperson shall alternate between members of the house and senate every two years after the committee's organization.

4. The committee shall meet at least four times a year. The committee may meet at locations other than Jefferson City when the committee deems it necessary.

5. The committee shall be staffed by legislative personnel as is deemed necessary to assist the committee in the performance of its duties.

6. The members of the committee shall serve without compensation but shall be entitled to reimbursement from the joint contingent fund for actual and necessary expenses incurred in the performance of their official duties.

7. It shall be the duty of the committee to compile a full report of its activities for submission to the general assembly. The report shall be submitted not later than the fifteenth of January of each year in which the general assembly convenes in regular session and shall include any recommendations which the committee may have for legislative action as well as any recommendations for administrative or procedural changes in the internal management or organization of state government agencies and departments. Copies of the report containing such recommendations shall be sent to the appropriate directors of state or local government agencies or departments included in the report.

Approved July 2, 2004

HB 1603 [HB 1603]

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

Reenacts and authorizes the republication of section 135.766 (Tax Credit for Small Business Guaranty Fees).

AN ACT to reenact section 135.766 as repealed by conference committee substitute for house substitute for house committee substitute for senate committee substitute for senate bill no. 894, ninetieth general assembly, second regular session for the sole purpose of the republication of 135.766.

SECTION
A. Enacting clause.
135.766. Tax credit for guaranty fee paid by small businesses, when.

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

SECTION A. ENACTING CLAUSE. — Section 135.766 as repealed by conference committee substitute for house substitute for house committee substitute for senate committee substitute for senate bill no. 894, ninetieth general assembly, second regular session, is reenacted, to read as follows:

135.766. TAX CREDIT FOR GUARANTY FEE PAID BY SMALL BUSINESSES, WHEN. — An eligible small business, as defined in Section 44 of the Internal Revenue Code, shall be allowed a credit against the tax otherwise due pursuant to chapter 143, RSMo, not including sections 143.191 to 143.265, RSMo, in an amount equal to any amount paid by the eligible small business to the United States Small Business Administration as a guaranty fee pursuant to obtaining Small Business Administration guaranteed financing and to programs administered by the United States Department of Agriculture for rural development or farm service agencies.

Approved June 21, 2004

HB 1613 [SCS HB 1613 AND HB 1445 AND HB 1454 AND HB 1462 AND HCS HB 1471 AND HB 1608 AND HB 1612 AND HB 1635]

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

Authorizes the conveyance of various state property.

AN ACT to authorize the conveyance of property, with an emergency clause for a certain section.

SECTION

1. Southwest Missouri State University authorized to convey property along South Scenic Avenue in Springfield.
2. Governor authorized to convey the National Guard Armory located in Stoddard County to the city of Dexter.
3. Governor authorized to convey the National Guard Armory located in Pemiscot County to the city of Caruthersville.
4. Governor authorized to convey the National Guard Armory located in Stoddard County to the city of Bernie.
5. Governor authorized to convey the Felix Building and gated parking lot located in Jackson County to the Truman Medical Center.
6. Governor authorized to convey the Highlands II located in Jackson County.
7. Governor authorized to convey certain property located in Marion County to the city of Hannibal.
8. Governor authorized to convey the Highlands I located in Jackson County.
A. Emergency clause.

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

SECTION 1. SOUTHWEST MISSOURI STATE UNIVERSITY AUTHORIZED TO CONVEY PROPERTY ALONG SOUTH SCENIC AVENUE IN SPRINGFIELD. — 1. The board of governors of Southwest Missouri State University is hereby authorized and empowered to sell, transfer, grant, and convey all interest in fee simple absolute in property owned by the board of governors in the county of Greene. The property to be conveyed, along South Scenic Avenue in the city of Springfield, is more particularly described as follows:

Beginning at the southwest corner of the northwest quarter of the southwest quarter (NW1/4 SW1/4) of Section 34, Township 29N, Range 22W, thence north 3,400 feet, thence East 650 feet, thence southwesterly to a point 200 feet east of the beginning point, thence west to the beginning, consisting of approximately 25 acres.

2. Consideration for the conveyance shall be as negotiated by the board of governors and the purchaser of the property.

3. The attorney general shall approve the form of the instrument of conveyance.

SECTION 2. GOVERNOR AUTHORIZED TO CONVEY THE NATIONAL GUARD ARMORY LOCATED IN STODDARD COUNTY TO THE CITY OF DEXTER. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, and convey all interest in fee simple absolute in property used as a National Guard Armory and owned by the state in the county of Stoddard to the city of Dexter. The property to be conveyed is more particularly described as follows:

All of the south one hundred sixty five (165) feet of Block Fourteen (14) of the original town of Dexter, Stoddard County, Missouri.

2. The commissioner of administration shall set the terms and conditions for the sale as the commissioner deems reasonable. Such terms and conditions may include, but are not limited to, the number of appraisals required, the time, place, and terms of the sale.

3. The attorney general shall approve the form of the instrument of conveyance.

SECTION 3. GOVERNOR AUTHORIZED TO CONVEY THE NATIONAL GUARD ARMORY LOCATED IN PEMISCOT COUNTY TO THE CITY OF CARUTHERSVILLE. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, and convey all interest in fee simple absolute in property used as a National Guard Armory and owned by the state in the county of Pemiscot to the city of Caruthersville. The property to be conveyed is more particularly described as follows:

A part of the Northwest Quarter of the Southwest Quarter of Fractional Section Sixteen (16), in Township Eighteen (18) North, of Range Thirteen (13) East, described by metes and bounds as follows:

Commencing at the most Northern corner of Block Eight (8) of Stephen's Addition to the City of Caruthersville; thence North 55° 06' West 50 feet; thence South 34° 54' West 10 feet to the place of beginning; thence continue South 34° 54' West 200 feet; thence North 55° 06' West 150 feet; thence North 34° 54' East 200 feet; thence South 55° 06' East 150 feet to the point of beginning.

2. The commissioner of administration shall set the terms and conditions for the sale as the commissioner deems reasonable. Such terms and conditions may include, but are not limited to, the number of appraisals required, the time, place, and terms of the sale.

3. The attorney general shall approve the form of the instrument of conveyance.

SECTION 4. GOVERNOR AUTHORIZED TO CONVEY THE NATIONAL GUARD ARMORY LOCATED IN STODDARD COUNTY TO THE CITY OF BERNIE. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, and convey all interest in fee simple absolute in property used as a National Guard Armory and owned by the state in the county of Stoddard to the city of Bernie. The property to be conveyed is more particularly described as follows:

All that part of the northwest quarter of the southwest quarter of Section Three (3), Township Twenty-three (23) north, Range Ten (10) east described by metes and bounds as follows:

Beginning at a point twenty-five (25) feet west of and six hundred thirty four and five tenths (634.5) feet south no degrees and forty three minutes west of the northeast corner of the northwest quarter of the southwest quarter of Section Three (3) aforesaid; thence south no degrees and forty three minutes west two hundred forty-eight (248) feet; thence west four hundred thirty nine and eighty five hundredths (439.85) feet; thence north two hundred forty-eight (248) feet; thence east four hundred forty-three (443) feet to the point of beginning and containing 2.513 acres, more or less, and being a part of the northwest quarter of the southwest quarter of Section Three (3) aforesaid.

2. The commissioner of administration shall set the terms and conditions for the sale as the commissioner deems reasonable. Such terms and conditions may include, but are not limited to, the number of appraisals required, the time, place, and terms of the sale.

3. The attorney general shall approve the form of the instrument of conveyance.

SECTION 5. GOVERNOR AUTHORIZED TO CONVEY THE FELIX BUILDING AND GATED PARKING LOT LOCATED IN JACKSON COUNTY TO THE TRUMAN MEDICAL CENTER. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, and convey all interest in fee simple absolute in property owned by the state in the county of Jackson known as the Felix Building and the gated parking lot to the Truman Medical Center. The property to be conveyed is more particularly described as follows:

THE PROPERTY KNOWN AS THE FELIX BUILDING:

Lots 1, 2, 3, 4, 5, 6, 7, and 8 and the West 7.5 feet of Lot 9 and Lots 24, 25, 26, 27, and 28, together with the West 162.5 feet of the alley between Charlotte Street and Campbell Street next South of 22nd Street lying North of and adjacent to

said Lot 24, GRANDVIEW SUBDIVISION OF BLOCK 11, BOUTON'S ADDITION, a Subdivision in Kansas City, Jackson County, Missouri, according to the recorded plat thereof; and

THE PROPERTY KNOWN AS THE GATED PARKING LOT:

All of lots 25, 26, and 27, except part in alley, HOME PARK, all of Block 5 BOUTON'S ADDITION, except part in alley, together with that part of the South half of 21st Street, as said Street was vacated by Ordinance No. 21525, passed May 17, 1957, from the East line of the North-South alley next West of Charlotte Street to the West line of Charlotte Street lying North of and adjoining Block 5, BOUTON'S ADDITION, both subdivisions in Kansas City, Jackson County, Missouri, said part being described as follows:

The South 15 feet of the South half of said vacated 21st Street.

Subject to restrictions, easements, covenants, and reservations now of record but including all the underlying fee title owned by Grantor to streets and alleys adjoining the described land.

2. The sale price of the property shall be one million dollars. The commissioner of administration shall set the terms and conditions for the sale or transfer as the commissioner deems reasonable. Such terms and conditions may include, but are not limited to, the time, place, and terms of the sale. All costs and fees directly related to the sale shall be paid from the proceeds of the sale. All proceeds from the sale in excess of the costs shall be used to assist in the funding of the construction, repair, or maintenance of state facilities.

3. The attorney general shall approve the form of the instrument of conveyance.

SECTION 6. GOVERNOR AUTHORIZED TO CONVEY THE HIGHLANDS II LOCATED IN JACKSON COUNTY. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, convey, remise, release, and forever quit claim all interest of the state of Missouri in real property known as Highlands II and more particularly described as follows:

Part of the Southeast 1/4 of Section 34, Township 50, Range 32, described as follows:

Beginning at a point 310 feet West and 25 feet South of the Northeast corner of said quarter section, thence South 200 feet; thence West 150 feet; thence North 200 feet; thence East 150 feet to the point of beginning in Independence, Jackson County, Missouri.

2. The commissioner of administration is directed to conduct a public sale of the property by public bid, public auction, or through commercial real estate listing. The commissioner shall set the terms of the sale, including whether appraisals are required and whether a minimum acceptable bid shall be established. All costs of the sale shall be paid from the sale proceeds.

3. The attorney general shall approve the form of the instrument of conveyance.

SECTION 7. GOVERNOR AUTHORIZED TO CONVEY CERTAIN PROPERTY LOCATED IN MARION COUNTY TO THE CITY OF HANNIBAL. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, and convey all interest in fee simple absolute in property owned by the state in the county of Marion to the city of Hannibal. The property to be conveyed is more particularly described as follows:

Parts of Outlot Forty-four (44) and the right-of-way of the South Fifth Street (abandoned), in the City of Hannibal, Missouri, more fully described as follows, to-wit:

Begin at a point on the South side of Collier Street, said point being Twenty-seven (27.0) feet West of the West line of Outlot Forty-four (44) in the City of Hannibal; thence proceed in a Southerly direction parallel to said West

Line of Outlot forty-four (44) for a distance of Sixty-one and 5/10 (61.5) feet; thence proceed in an Easterly direction parallel to the South line of Collier Street for a distance of Two Hundred (200.0) feet; thence in a Northerly direction for a distance of Sixty-one and 5/10 (61.5) feet parallel to the aforementioned West line of Outlot Forty-four (44) to a point on the South line of Collier Street; thence in a westerly direction along said South line of Collier Street for a distance of Two Hundred (200.0) feet to the point of beginning.

Together with an easement of of right-of-way for the purpose of gaining ingress and egress to said lands over and along the North Sixteen (16) feet of the property now owned by the City and designated as Clemens Field, lying on the South Side of Collier Street, from the East line of the above described tract granted to the State of Missouri, to the gate in the wall of said Clemens Field, which is located in Fourth Street.

2. The commissioner of administration shall set the terms and conditions for the sale as the commissioner deems reasonable. Such terms and conditions may include, but are not limited to, the number of appraisals required, the time, place, and terms of the sale.

3. The attorney general shall approve the form of the instrument of conveyance.

SECTION 8. GOVERNOR AUTHORIZED TO CONVEY THE HIGHLANDS I LOCATED IN JACKSON COUNTY. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, convey, remise, release, and forever quit claim all interest of the state of Missouri in real property known as Highlands I and more particularly described as follows:

Part of the Southeast 1/4 of Section 34, Township 50, Range 32, described as follows:

Beginning at the Northeast corner of the said described 1/4 Section, thence West 1436.33 feet to the easterly Right of Way of River Boulevard thence South along the said easterly Right of Way line 182 feet to the true point of beginning; thence East 158.98 feet; thence South 190 feet; thence West 158.98 feet to a point on the east Right of Way line of River Boulevard; thence North 190 feet to the true point of beginning in Independence, Jackson County, Missouri.

2. The commissioner of administration is directed to conduct a public sale of the property by public bid, public auction, or through commercial real estate listing. The commissioner shall set the terms of the sale, including whether appraisals are required and whether a minimum acceptable bid shall be established. All costs of the sale shall be paid from the sale proceeds.

3. The attorney general shall approve the form of the instrument of conveyance.

SECTION A. EMERGENCY CLAUSE. — Because immediate action is necessary to authorize the board of governors of Southwestern Missouri State University to convey the real property and to receive the proceeds from the conveyance, section 1 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 1 of this act shall be in full force and effect upon its passage and approval.

Approved June 25, 2004

HB 1616 [HB 1616]

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

Revises requirements for publishing of administrative rules.

AN ACT to repeal sections 536.015, 536.021, 536.023, and 536.031, RSMo, and to enact in lieu thereof four new sections relating to the publication of administrative rules.

SECTION

A. Enacting clause.
536.015. Missouri Register published at least monthly.
536.021. Rules, procedure for making, amending or rescinding — notice of — rules effective when, exception — effective date to be printed in code of state regulations — failure of agencies to promulgate a required rule — effect — exception — letter ruling authorized for department of revenue, effect.
536.023. Procedures for numbering, indexing and publishing to be prescribed by secretary of state.
536.031. Code to be published — to be revised monthly — incorporation by reference authorized, courts to take judicial notice — incorporation by reference of certain rules, how.

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

SECTION A. ENACTING CLAUSE. — Sections 536.015, 536.021, 536.023, and 536.031, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 536.015, 536.021, 536.023, and 536.031, to read as follows:

536.015. MISSOURI REGISTER PUBLISHED AT LEAST MONTHLY. — There is established a publication to be known as the "Missouri Register", which shall be published **in a format and medium as prescribed by the secretary of state and in writing upon request** no less frequently than monthly by the secretary of state.

536.021. RULES, PROCEDURE FOR MAKING, AMENDING OR RESCINDING — NOTICE OF — RULES EFFECTIVE WHEN, EXCEPTION — EFFECTIVE DATE TO BE PRINTED IN CODE OF STATE REGULATIONS — FAILURE OF AGENCIES TO PROMULGATE A REQUIRED RULE — EFFECT — EXCEPTION — LETTER RULING AUTHORIZED FOR DEPARTMENT OF REVENUE, EFFECT. — 1. No rule shall hereafter be proposed, adopted, amended or rescinded by any state agency unless such agency shall first file with the secretary of state a notice of proposed rulemaking and a subsequent final order of rulemaking, both of which shall be published in the Missouri Register by the secretary of state as soon as practicable after the filing thereof in that office; except that a notice of proposed rulemaking is not required for the establishment of hunting or fishing seasons and limits or for the establishment of state program plans required under federal education acts or regulations. The secretary of state shall not publish any proposed rulemaking or final order of rulemaking that has not fully complied with the provisions of section 536.024 or an executive order, whichever appropriately applies. If the joint committee on administrative rules disapproves any proposed order of rulemaking, final order of rulemaking or portion thereof, the committee shall report its finding to the house of representatives and the senate. No proposed order of rulemaking, final order of rulemaking or portion thereof shall take effect, or be published by the secretary of state, so long as the general assembly shall disapprove such by concurrent resolution pursuant to article IV, section 8 within thirty legislative days occurring during the same regular session of the general assembly. The secretary of state shall not publish any order, or portion thereof, that is the subject of a concurrent resolution until the expiration of time necessary to comply with the provisions of article III, section 32.

2. A notice of proposed rulemaking shall contain:

(1) An explanation of any proposed rule or any change in an existing rule, and the reasons therefor;

(2) The legal authority upon which the proposed rule is based;

(3) The text of the entire proposed rule or the entire text of any affected section or subsection of an existing rule which is proposed to be amended, with all new matter **[**underlined or**]** printed in boldface type and with all deleted matter placed in brackets, except that when a

proposed rule consists of material so extensive that the publication thereof would be unduly cumbersome or expensive, the secretary of state need publish only a summary and description of the substance of the proposed rule so long as a complete copy of the rule is made immediately available to any interested person upon application to the adopting state agency at a cost not to exceed the actual cost of reproduction. A proposed rule may incorporate by reference only if the material so incorporated is retained at the headquarters of the state agency and made available to any interested person at a cost not to exceed the actual cost of the reproduction of a copy. When a proposed amendment to an existing rule is to correct a typographical or printing error, or merely to make a technical change not affecting substantive matters, the amendment may be described in general terms without reprinting the entire existing rule, section or subsection;

(4) The number and general subject matter of any existing rule proposed to be rescinded;

(5) Notice that anyone may file a statement in support of or in opposition to the proposed rulemaking at a specified place and within a specified time not less than thirty days after publication of the notice of proposed rulemaking in the Missouri Register; and

(6) Notice of the time and place of a hearing on the proposed rulemaking if a hearing is ordered, which hearing shall be not less than thirty days after publication of the notice of proposed rulemaking in the Missouri Register; or a statement that no hearing has been ordered if such is the case.

3. Any state agency issuing a notice of proposed rulemaking may order a hearing thereon, but no such hearing shall be necessary unless otherwise required by law.

4. Any state agency which has issued in the Missouri Register a notice of proposed rulemaking to be made without a hearing, but which thereafter concludes that a hearing is desirable, shall withdraw the earlier notice and file a new notice of proposed rulemaking which fully complies with the provisions of subdivision (6) of subsection 2 of this section, and the state agency shall not schedule the hearing for a time less than thirty days following the publication of the new notice.

5. Within ninety days after the expiration of the time for filing statements in support of or in opposition to the proposed rulemaking, or within ninety days after the hearing on such proposed rulemaking if a hearing is held thereon, the state agency proposing the rule shall file with the secretary of state a final order of rulemaking either adopting the proposed rule, with or without further changes, or withdrawing the proposed rule, which order of rulemaking shall be published in the Missouri Register. Such ninety days shall be tolled for the time period any rule is held under abeyance pursuant to an executive order. If the state agency fails to file the order of rulemaking as indicated in this subsection, the proposed rule shall lapse and shall be null, void and unenforceable.

6. The final order of rulemaking shall contain:

(1) Reference to the date and page or pages where the notice of proposed rulemaking was published in the Missouri Register;

(2) An explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change;

(3) The full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking;

(4) A brief summary of the general nature and extent of comments submitted in support of or in opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with said rulemaking, together with a concise summary of the state agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule; and

(5) The legal authority upon which the order of rulemaking is based.

7. Except as provided in section 536.025, any rule, or amendment or rescission thereof, shall be null, void and unenforceable unless made in accordance with the provisions of this section.

8. Except as provided in subsection 1 of this section**[**, all orders of rulemaking**]** **and subsection 4 of section 536.031, after the final order of rulemaking has been published in the Missouri Register, the text of the entire rule** shall be published in full in the Missouri code of state regulations. No rule, except an emergency rule, shall become effective prior to the thirtieth day after the date of publication of the revision to the Missouri code of state regulations. The secretary of state shall distribute revisions of the Missouri code of state regulations to all subscribers of the Missouri code of state regulations on or before the date of publication of such revision. The publication date of each rule shall be printed below the rule in the Missouri code of state regulations, provided further, that rules pertaining to changes in hunting or fishing seasons and limits that must comply with federal requirements or that are necessary because of documented changes in fish and game populations may become effective no earlier than on the tenth day after the filing of the final order of rulemaking.

9. If it is found in a contested case by an administrative or judicial fact finder that a state agency's action was based upon a statement of general applicability which should have been adopted as a rule, as required by sections 536.010 to 536.050, and that agency was put on notice in writing of such deficiency prior to the administrative or judicial hearing on such matter, then the administrative or judicial fact finder shall award the prevailing nonstate agency party its reasonable attorney's fees incurred prior to the award, not to exceed the amount in controversy in the original action. This award shall constitute a reviewable order. If a state agency in a contested case grants the relief sought by the nonstate party prior to a finding by an administrative or judicial fact finder that the agency's action was based on a statement of general applicability which should have been adopted as a rule, but was not, then the affected party may bring an action in the circuit court of Cole County for the nonstate party's reasonable attorney's fees incurred prior to the relief being granted, not to exceed the amount in controversy in the original action.

10. The actions authorized by subsection 9 of this section shall not apply to the department of revenue if that department implements the authorization hereby granted to the director or the director's duly authorized agents to issue letter rulings which shall bind the director or the director's agents and their successors for a minimum of three years, subject to the terms and conditions set forth in properly published regulations. An unfavorable letter ruling shall not bind the applicant and shall not be appealable to any forum. Subject to appropriations, letter rulings shall be published periodically with information identifying the taxpayer deleted. For the purposes of this subsection, the term "letter ruling" means a written interpretation of law by the director to a specific set of facts provided by a nonstate party.

536.023. PROCEDURES FOR NUMBERING, INDEXING AND PUBLISHING TO BE PRESCRIBED BY SECRETARY OF STATE. — 1. The secretary of state shall prescribe in **[**writing**]** **a format and medium as prescribed by the secretary of state and in writing upon request** uniform procedures for the numbering, indexing, form and publication of all rules, notices of proposed rulemaking and orders of rulemaking. Copies of the procedures shall be furnished by the secretary of state to each state agency and copies thereof shall be permanently maintained in the office of the secretary of state and shall be available for public inspection at all reasonable times.

2. No rule, notice of proposed rulemaking or final order of rulemaking shall be accepted for filing with the secretary of state unless it conforms to said uniform procedures.

3. Each state agency shall adopt as a rule a description of its organization and general courses and methods of its operation and the methods and procedures whereby the public may obtain information or make submissions or requests. Substantial changes in any matter covered by the foregoing description shall be made only in accordance with the procedures set forth in this chapter.

536.031. CODE TO BE PUBLISHED — TO BE REVISED MONTHLY — INCORPORATION BY REFERENCE AUTHORIZED, COURTS TO TAKE JUDICIAL NOTICE — INCORPORATION BY

REFERENCE OF CERTAIN RULES, HOW. — 1. There is established a publication to be known as the "Code of State Regulations", which shall be published **in a format and medium as prescribed and in writing upon request** by the secretary of state as soon as practicable after ninety days following January 1, 1976, and may be republished from time to time thereafter as determined by the secretary of state.

2. The code of state regulations shall contain the full text of all rules of state agencies in force and effect upon the effective date of the first publication thereof, and effective September 1, 1990, it shall be revised no less frequently than monthly thereafter so as to include all rules of state agencies subsequently made, amended or rescinded. The code may also include citations, references, or annotations, prepared by the state agency adopting the rule or by the secretary of state, to any intraagency ruling, attorney general's opinion, determination, decisions, order, or other action of the administrative hearing commission, or any determination, decision, order, or other action of a court interpreting, applying, discussing, distinguishing, or otherwise affecting any rule published in the code.

3. The code of state regulations shall be published in looseleaf form in one or more volumes **upon request** and **a format and medium as prescribed by the secretary of state** with an appropriate index **[**and cover**]**, and revisions in the text and index may be made by **[**printing additional pages for insertion in the looseleaf cover**] the secretary of state as necessary and provided in written format upon request**.

4. **An agency may incorporate by reference rules, regulations, standards, and guidelines of an agency of the United States or a nationally or state recognized organization or association without publishing the material in full. The reference in the agency rules shall fully identify the incorporated material by publisher, address, and date in order to specify how a copy of the material may be obtained, and shall state that the referenced rule, regulation, standard, or guideline does not include any later amendments or additions. The agency adopting a rule, regulation, standard, or guideline under this section shall maintain a copy of the referenced rule, regulation, standard, or guideline at the headquarters of the agency and shall make it available to the public for inspection and copying at no more than the actual cost of reproduction.** The secretary of state may omit from the code of state regulations **[**such rules and**]** such material incorporated by reference in any rule the publication of which would be unduly cumbersome or expensive**[**, provided that the full text of such rule or the full text of the material incorporated by reference is made available to any interested person at both the office of the secretary of state and the office of the adopting state agency, and copies thereof made available to any interested party at a cost not to exceed the actual cost of copy reproduction**]**.

5. The courts of this state shall take judicial notice, without proof, of the contents of the code of state regulations.

Approved July 2, 2004

HB 1617 [CCS HCS HB 1617]

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

Makes it unlawful to destroy evidence pertaining to securities proceedings, sets out penalties, and empowers securities commissioner to promulgate rules.

AN ACT to amend chapter 409, RSMo, by adding thereto six new sections relating to obstruction of securities investigations, with penalty provisions.

SECTION
A. Enacting clause.
409.108. Tampering with securities documents or impeding investigations prohibited.
409.109. Penalty.
409.111. Commissioner of securities may investigate violations.
409.112. Commissioner of securities may seek relief for violations, when.
409.113. Commissioner of securities may issue orders, when.
409.114. Duties and powers of commissioner of securities.

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

SECTION A. ENACTING CLAUSE. — Chapter 409, RSMo, is amended by adding thereto six new sections, to be known as sections 409.108, 409.109, 409.111, 409.112, 409.113, and 409.114, to read as follows:

409.108. TAMPERING WITH SECURITIES DOCUMENTS OR IMPEDING INVESTIGATIONS PROHIBITED. — It is unlawful for any person, in any investigation or other proceeding under this chapter, to alter, destroy, mutilate, conceal, make a false entry in, or by any means falsify, remove from any place or withhold any record, document, or tangible, electronic or physical evidence with the intent to impede, obstruct, avoid, evade, or influence the official investigation or administration of any other proceeding under this chapter.

409.109. PENALTY. — A person who willfully violates section 409.108, shall upon conviction be fined not more than five hundred thousand dollars or imprisoned not more than ten years, or both. The proper prosecuting attorney with or without a criminal reference from the commissioner, or the attorney general under section 27.030, RSMo, may institute criminal proceedings under this section.

409.111. COMMISSIONER OF SECURITIES MAY INVESTIGATE VIOLATIONS. — The commissioner of securities may conduct pursuant to the authorization of section 409.6-602 such investigations as the commissioner considers necessary to determine whether a person has violated, is violating, or is about to violate any provision of sections 409.108 to 409.114 or any order, rule or regulation issued pursuant thereto.

409.112. COMMISSIONER OF SECURITIES MAY SEEK RELIEF FOR VIOLATIONS, WHEN. — If the commissioner believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of sections 409.108 to 409.114, or any order, rule or regulation issued pursuant thereto or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of sections 409.108 to 409.114, the commissioner may maintain an action for relief authorized pursuant to section 409.6-603.

409.113. COMMISSIONER OF SECURITIES MAY ISSUE ORDERS, WHEN. — If the commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of sections 409.108 to 409.114, or any order, rule or regulation issued pursuant thereto or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of sections 409.108 to 409.114, or any order, rule or regulation issued pursuant thereto, the commissioner may issue such orders as authorized pursuant to section 409.6-604.

409.114. DUTIES AND POWERS OF COMMISSIONER OF SECURITIES. — Sections 409.108 to 409.114 shall be administered by the commissioner of securities. The commissioner of

securities is hereby empowered to promulgate, alter, amend or revoke rules and regulations pursuant to section 409.6-605 as necessary to carry out the purposes of sections 409.108 to 409.114.

Approved June 25, 2004

HB 1622 [HB 1622]

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

Augments the definition of cosmetology establishment.

AN ACT to repeal section 329.010, RSMo, and to enact in lieu thereof one new section relating to cosmetology.

SECTION
A. Enacting clause.
329.010. Definitions.

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

SECTION A. ENACTING CLAUSE. — Section 329.010, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 329.010, to read as follows:

329.010. DEFINITIONS. — As used in this chapter, unless the context clearly indicates otherwise, the following words and terms mean:

(1) "Apprentice" or "student", a person who is engaged in training within a cosmetology establishment or school, and while so training performs any of the practices of the classified occupations within this chapter under the immediate direction and supervision of a registered cosmetologist or instructor;

(2) "Board", the state board of cosmetology;

(3) "Cosmetologist", any person who, for compensation, engages in the practice of cosmetology, as defined in subdivision (4) of this section;

(4) "Cosmetology" includes performing or offering to engage in any acts of the classified occupations of cosmetology for compensation, which shall include:

(a) "Class CH - hairdresser" includes arranging, dressing, curling, singeing, waving, permanent waving, cleansing, cutting, bleaching, tinting, coloring or similar work upon the hair of any person by any means; or removing superfluous hair from the body of any person by means other than electricity, or any other means of arching or tinting eyebrows or tinting eyelashes. Class CH - hairdresser, also includes, any person who either with the person's hands or with mechanical or electrical apparatuses or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions or creams engages for compensation in any one or any combination of the following: massaging, cleaning, stimulating, manipulating, exercising, beautifying or similar work upon the scalp, face, neck, arms or bust;

(b) "Class MO - manicurist" includes cutting, trimming, polishing, coloring, tinting, cleaning or otherwise beautifying a person's fingernails, applying artificial fingernails, massaging, cleaning a person's hands and arms; pedicuring, which includes, cutting, trimming, polishing, coloring, tinting, cleaning or otherwise beautifying a person's toenails, applying artificial toenails, massaging and cleaning a person's legs and feet;

(c) "Class CA - hairdressing and manicuring" includes all practices of cosmetology, as defined in paragraphs (a) and (b) of this subdivision;

(d) "Class E - estheticians" includes the use of mechanical, electrical apparatuses or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions or creams, not to exceed ten percent phenol, engages for compensation, either directly or indirectly, in any one, or any combination, of the following practices: massaging, cleansing, stimulating, manipulating, exercising, beautifying or similar work upon the scalp, face, neck, ears, arms, hands, bust, torso, legs or feet and removing superfluous hair by means other than electric needle or any other means of arching or tinting eyebrows or tinting eyelashes, of any person;

(5) "Cosmetology establishment", that part of any building wherein or whereupon any of the classified occupations are practiced **including any space rented within a licensed establishment by a person licensed under chapter 329, for the purpose of rendering cosmetology services**;

(6) "Hairdresser", any person who, for compensation, engages in the practice of cosmetology as defined in paragraph (a) of subdivision (4) of this section;

(7) "Instructor", any person who is licensed to teach cosmetology or any practices of cosmetology pursuant to this chapter;

(8) "Manicurist", any person who, for compensation, engages in any or all of the practices in paragraph (b) of subdivision (4) of this section;

(9) "School of cosmetology" or "school of manicuring", an establishment operated for the purpose of teaching cosmetology as defined in subdivision (4) of this section.

Approved July 2, 2004

HB 1631 [HCS HB 1631 & 1623]

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

Removes outdated references to certain state institutions.

AN ACT to repeal section 205.900, RSMo, and to enact in lieu thereof one new section relating to supervision of paroled persons.

SECTION
A. Enacting clause.
205.900. Supervision of paroled persons by county superintendent of public welfare.

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

SECTION A. ENACTING CLAUSE. — Section 205.900, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 205.900, to read as follows:

205.900. SUPERVISION OF PAROLED PERSONS BY COUNTY SUPERINTENDENT OF PUBLIC WELFARE. — 1. **[**The county superintendent of public welfare shall give such oversight and supervision to prisoners who are on parole from the state penitentiary and are residing in his county, and to persons who are on parole from the Missouri Reformatory, and Missouri Training School for Boys and to girls on parole from the State Training School for Girls or from the State Training School for Negro Girls, as may be requested by the state department of corrections and human resources and shall report upon the progress of said paroled prisoners to the state department of corrections and human resources as often as it may request.

2.**]** The county superintendent of public welfare in each county shall give oversight and supervision to prisoners on parole or probation by any court in the state of Missouri and shall

investigate applications for clemency when requested to do so by said courts, and shall report in regard to each person placed under his supervision to the court placing said persons under his supervision.

[3.**]** **2.** The county superintendent of public welfare shall also give oversight and supervision to children placed on parole or probation by the juvenile court or the court having jurisdiction of children's cases in his county when requested to do so by said court and shall report to said court upon progress of persons thus placed on parole or probation.

Approved July 7, 2004

HB 1634 [SCS HB 1634]

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

Revises the laws on military discharge records and other vital records.

AN ACT to repeal sections 59.480, 193.225, and 193.245, RSMo, and to enact in lieu thereof three new sections relating to disclosure of certain recorded documents.

SECTION

A. Enacting clause.
59.480. Recording of discharges from armed forces — definitions — duties of recorders — certain discharge records open records — disclosure of records, when.
193.225. Methods of preserving records, requirements — certified reproductions accepted as originals — death record originals transferred to state archives.
193.245. Inspection and copying of records, disclosure of information, unlawful unless authorized — authority.

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

SECTION A. ENACTING CLAUSE. — Sections 59.480, 193.225, and 193.245, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 59.480, 193.225, and 193.245, to read as follows:

59.480. RECORDING OF DISCHARGES FROM ARMED FORCES — DEFINITIONS — DUTIES OF RECORDERS — CERTAIN DISCHARGE RECORDS OPEN RECORDS — DISCLOSURE OF RECORDS, WHEN. — 1. As used in this section, unless the context clearly indicates otherwise, the following terms mean:

(1) "Authorized party", any of the following:

(a) The person who is the subject of the document;

(b) The representative of a person who is the subject of the document or the agent of a person who is the subject of the document, including but not limited to, relatives, attorneys, attorneys in fact, conservators, guardians, and funeral directors; and who has authorization in writing from the person who is the subject of the document, the spouse of the person who is the subject of the document, a relative who is the next of kin of the person who is the subject of the document, a court, in order to represent the person who is the subject of the document or the executor of the person who was the subject of the document who is acting on behalf of the deceased subject of the document;

(c) Government agencies, including courts, that have an interest in assisting the subject of the document or in assisting the beneficiaries of the deceased subject of the document in obtaining a benefit;

(2) "Military discharge document", a discharge, separation notice, certificate of service, report of transfer or discharge, or any other notice or document which is evidence of severance or transfer from military service and which contains a service record from the armed forces of the United States, or any document that purports to represent a notice of separation from or service in any armed forces of the United States or any state, including but not limited to the Department of Defense form DD 214;

(3) "Recorder of deeds", the recorder of deeds in those counties where separate and the circuit clerk and ex officio recorder of deeds in those counties where the offices are combined.

2. Military discharge documents shall be accepted for filing by the recorder of deeds in all counties and the city of St. Louis in this state without any fee or compensation therefor.

3. The recorder of deeds may refuse to accept any military discharge document that:

(1) Is not an original or does not contain an original signature of an officer of the armed forces of the United States or a federal or state agency;

(2) Is not a certified copy from an agency of the federal or state government; or

(3) Appears to have alterations or erasures.

4. On or after the effective date of this section, the recorder of deeds shall:

(1) Maintain and make available to the public in its office an index containing only the name of the subject of a military discharge document;

(2) Maintain a separate index from publicly available information that contains only:

(a) The name of the subject of a military discharge document; and

(b) The location of the image of the military discharge document;

(3) Maintain the images of all military discharge documents separately from all other publicly available filed or recorded document images.

5. As part of any remote access system, the recorder of deeds shall not make available the location of the image or the image of the military discharge document.

6. Images of a military discharge document or copies thereof shall only be made available to an authorized party by submitting a notarized request form to the recorder of deeds. The recorder of deeds shall not receive a fee or compensation for a certified or uncertified copy of the military discharge document and shall not charge a notary fee for notarizing such request form.

7. **All images of military discharge records older than seventy-five years are deemed principally of historical or genealogical interest, and shall be open records.**

8. Prior to the effective date of this section, the Recorders Association of Missouri shall adopt a request form and any rules necessary to implement the provisions of this section. The recorder of deeds in all counties and the city of St. Louis shall use and furnish the forms adopted by the Recorders Association of Missouri and comply with the rules adopted by the Recorders Association of Missouri.

[8.**]** **9.** A request form that contains more than one military discharge document shall not be accepted by the recorder of deeds.

[9.**]** **10.** The recorder of deeds shall keep all completed request forms for a period of at least five years and such forms shall be made available only to an authorized party in accordance with the provisions of this section.

[10.**]** **11.** In the event that military discharge documents, prior to the effective date of this section, have been commingled, and to the extent possible, a recorder of deeds may choose to enact the provisions of this section regarding the indexes and images.

[11.**]** **12.** On or after the effective date of this section, military discharge documents kept pursuant to this section shall not be reproduced or used in whole or in part for any commercial or speculative purposes.

[12.**]** **13.** Any individual, agency, or court which obtains information pursuant to this section shall not disseminate or disclose such information or any part thereof except as authorized in this section or otherwise by law.

[13.**]** **14.** The recorder of deeds shall not be liable for any damages that may result from good faith compliance with the provisions of this section.

193.225. METHODS OF PRESERVING RECORDS, REQUIREMENTS — CERTIFIED REPRODUCTIONS ACCEPTED AS ORIGINALS — DEATH RECORD ORIGINALS TRANSFERRED TO STATE ARCHIVES. — To preserve vital records, the state registrar is authorized to prepare typewritten, photographic, electronic, or other reproductions of vital statistics certificates or reports. **Such reproducing material shall be of durable material and the device used to reproduce the records shall be as to accurately reproduce and perpetuate the original records in all details ensuring their proper retention and integrity in accordance with standards established by the state records commission.** Such reproductions when certified by the state registrar shall be accepted as the original records. **[**The documents**]** **Death records over fifty years old** from which permanent reproductions have been made and verified **[**may be disposed of as provided by regulation**]** **shall be transferred to the Missouri state archives**.

193.245. INSPECTION AND COPYING OF RECORDS, DISCLOSURE OF INFORMATION, UNLAWFUL UNLESS AUTHORIZED — AUTHORITY. — It shall be unlawful for any person to permit inspection of, or to disclose information contained in, vital records or to copy or issue a copy of all or part of any such record except as authorized by this law and by regulation or by order of a court of competent jurisdiction or in the following situations:

(1) A listing of persons who are born or who die on a particular date may be disclosed upon request, but no information from the record other than the name and the date of such birth or death shall be disclosed;

(2) The department may authorize the disclosure of information contained in vital records for legitimate research purposes;

(3) To a qualified applicant as provided in section 193.255**;**

(4) Copies of death records over fifty years old may be disclosed upon request.

Approved June 25, 2004

HB 1660 [SCS HCS HB 1660]

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

Revises laws pertaining to accident reports and their disclosure.

AN ACT to repeal sections 43.250, 43.251, and 610.200, RSMo, and to enact in lieu thereof three new sections relating to accident reports.

SECTION

A. Enacting clause.
43.250. Law enforcement officers to file accident reports with patrol, when.
43.251. Report forms — how provided, contents — approval by superintendent.
610.200. Law enforcement agency log or record of suspected crimes, accidents or complaints, available for inspection and copying.

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

SECTION A. ENACTING CLAUSE. — Sections 43.250, 43.251, and 610.200, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 43.250, 43.251, and 610.200, to read as follows:

43.250. LAW ENFORCEMENT OFFICERS TO FILE ACCIDENT REPORTS WITH PATROL, WHEN. — Every law enforcement officer who investigates a vehicle accident resulting in injury to or death of a person, or total property damage to an apparent extent of five hundred dollars or more to one person, or who otherwise prepares a written **or computer-generated** report as a result of an investigation either at the time of and at the scene of the accident or thereafter by interviewing the participants or witnesses, shall forward a **[**written**]** report of such accident to the superintendent of the Missouri state highway patrol within ten days after his **or her** investigation of the accident, except that upon the approval of the superintendent of the Missouri state highway patrol the report may be forwarded at a time and/or in a form other than as required in this section.

43.251. REPORT FORMS — HOW PROVIDED, CONTENTS — APPROVAL BY SUPERINTENDENT. — 1. The Missouri division of highway safety shall prepare and upon request supply to police departments, sheriffs, and other appropriate agencies or individuals forms for written accident reports as required by sections 43.250 and 43.251. **[**The written reports**]** **Reports** shall call for sufficiently detailed information to disclose, with reference to a vehicle accident, the cause, conditions then existing and the persons and vehicles involved.

2. Every **written or computer-generated** accident report required to be made **[**in writing**]** shall be **[**made**]** **submitted** on the appropriate form **or in the appropriate computer format** approved by the superintendent of the Missouri state highway patrol and shall contain all the information required therein unless not available.

610.200. LAW ENFORCEMENT AGENCY LOG OR RECORD OF SUSPECTED CRIMES, ACCIDENTS OR COMPLAINTS, AVAILABLE FOR INSPECTION AND COPYING. — **[**1. Except as provided in subsection 2 of this section**]** All law enforcement agencies that maintain a daily log or record that lists suspected crimes, accidents, or complaints, shall make available the following information for inspection and copying by the public:

(1) The time, substance, and location of all complaints or requests for assistance received by the agency;

(2) The time and nature of the agency's response to all complaints or requests for assistance; and

(3) If the incident involves an alleged crime or infraction:

(a) The time, date, and location of occurrence;

(b) The name and age of any victim, unless the victim is a victim of a crime under chapter 566, RSMo;

(c) The factual circumstances surrounding the incident; and

(d) A general description of any injuries, property or weapons involved.

[2. Any law enforcement agency with custody of an accident report or incident report, as defined in section 610.100, shall not release for sixty days after the date of the accident or incident the report containing the factual circumstances or general description of any injuries as provided in paragraphs (c) and (d) of subdivision (3) of subsection 1 of this section to a person that is not an interested party. For the purposes of this subsection, an "interested party" is any law enforcement agency, any person who was involved in the accident or incident, the street department of the jurisdiction involved, the owner of any vehicle involved in the accident or incident, the insurance company, physician or family member of any person involved in the accident or incident or any attorney or any member of the news media.**]**

Approved June 25, 2004

HB 1664 [HB 1664]

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

Modifies procedures for registration of limited liability companies (LLC), limited partnerships (LP), and limited liability partnerships (LLP).

AN ACT to repeal sections 347.020, 347.025, 347.039, 347.041, 347.047, 347.051, 347.055, 347.079, 347.081, 347.088, 347.129, 347.131, 347.153, 347.155, 347.159, 347.161, 347.169, 347.179, 347.725, 351.046, 351.050, 351.051, 351.055, 351.060, 351.085, 351.090, 351.095, 351.106, 351.107, 351.110, 351.115, 351.125, 351.180, 351.195, 351.200, 351.315, 351.355, 351.430, 351.435, 351.448, 351.657, 351.658, 355.011, 355.021, 355.146, 355.631, 356.071, 356.211, 358.440, 358.460, 358.490, 359.021, 359.031, 359.041, 359.121, 359.141, 359.172, 359.501, 359.531, 359.541, 417.210, 417.215, 417.217, and 417.220, RSMo, and to enact in lieu thereof sixty-five new sections relating to business entities, with penalty provisions.

SECTION

A. Enacting clause.
347.020. Name of company regulated.
347.025. Name may be reserved, how, time period.
347.039. Articles, contents.
347.041. Articles of amendment, contents — amendments required, when.
347.047. Execution of documents, manner — affirmation.
347.051. Delivery of documents to secretary of state, format, duties.
347.055. Statement of correction, filed when — contents — execution, effective, when — fee — statement signed.
347.079. Management of company, rights of members — managers, appointment — consent of members required for certain acts.
347.081. Operating agreement, contents — policy statement — enforceability, remedies.
347.088. Standard of duty — extent of liabilities and duties — profit or benefit, duty.
347.129. Notice of merger or consolidation, filing, contents — execution — notice of abandonment, contents — effective date of merger or consolidation of foreign companies.
347.131. Effective date of merger or consolidation.
347.153. Foreign company, registration required — application, contents, fee.
347.155. Proper application for registration, duties of secretary.
347.160. Amended certificates of registration required for certain foreign companies, when — additional information required, due date — fee.
347.161. Cancellation, articles of.
347.169. Affirmation, penalties of perjury.
347.179. Fees.
347.725. Articles of merger or consolidation, contents — filing — duplicates, delivery — effective, when.
351.046. Filing requirements — filing signifies document is correct.
351.050. Incorporators, duties — ownership and acquisition of shares, how construed.
351.051. Documents filed, when — refusal to file — duty to file.
351.055. Articles of incorporation, required contents — optional contents.
351.060. Filing of articles of incorporation — certificate of incorporation.
351.085. Amendment of articles of incorporation permitted.
351.090. Articles of incorporation, how amended.
351.095. Certificate of amendment, contents of.
351.106. Restatement of articles of incorporation.
351.107. Restated articles of incorporation may be amended at time of restatement.
351.110. Name of corporation regulated.
351.115. Reservation of right to exclusive use of corporate name, time period.
351.125. Annual fee.
351.180. Power to issue shares — preferences — procedure — redemption of stock by corporation, requirements — amended certificate of designation for classes or series adversely affecting holders, majority vote of holders required.
351.195. Reduction of stated capital, how made.
351.200. Redemption or purchase of own shares — retirement of shares.
351.315. Number of directors, how elected, how removed.

351.355. Officer, director, employee, or agent of corporation indemnified, when, methods authorized.
351.430. Summary of articles of merger or consolidation filed — contents.
351.435. Certain originals to be delivered to secretary of state who shall issue certificate of merger or consolidation.
351.448. Merger without shareholders' vote, when — requirements, results.
351.657. Abstract of corporate or registration record, fee — certification by secretary of state, fee — no fees, who — public inspection authorized — information by telephone, what given.
351.658. Fees for corporate filings with secretary of state.
355.011. Filing requirements.
355.021. Fees.
355.146. Corporate name requirements.
355.631. Articles of merger.
356.012. Filing of statement or document represents belief that statements are true and correct.
356.071. Regulating name of corporation.
356.211. Annual registration report — filed when, contents — form — fee — penalties for failure to file or making false declarations.
358.440. Registration as a limited liability partnership — renewals — withdrawal of registration — amendment — revocation, effect — fees — false statements, penalty — foreign partnership requirements.
358.460. Reservation of exclusive right to use of a name, procedure to reserve, time period — fee — transfer of name permitted — cancellation, procedure, fee.
358.490. Fees charged for copies of partnership papers filed with secretary of state — certificate of good standing of partnership may be issued by secretary of state, fee.
359.021. Name of limited partnership regulated.
359.031. Reservation of right to exclusive use of name.
359.041. Registered agent and registered office — procedure for changing, filed by limited partnership, filed by registered agent — effective when — failure to maintain, effect.
359.121. Execution of certificate.
359.141. Filing with secretary of state — duties of secretary — effective date of filing.
359.145. Statement of correction authorized, when — contents — effective date — fee — required signature.
359.172. Registered limited liability limited partnership, requirements, failure to file timely amendment to certificate, penalty.
359.501. Registration with secretary of state — form — contents.
359.531. Changes and amendments in registration, when, contents — foreign certification included — fee.
359.541. Cancellation of registration — authority of secretary to accept service of process.
417.210. Registration, when and how — contents — cancellation of fictitious name — ownership reflected in registration, when — registration effective and expiration dates — renewals, contents, effective date.
417.217. Foreign corporations, registration, when — exemption from, when.
417.220. Registration fee.
347.159. Certificate of correction of registration.
417.215. Registration of limited partnerships, when, how, contents.

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

SECTION A. ENACTING CLAUSE. — Sections 347.020, 347.025, 347.039, 347.041, 347.047, 347.051, 347.055, 347.079, 347.081, 347.088, 347.129, 347.131, 347.153, 347.155, 347.159, 347.161, 347.169, 347.179, 347.725, 351.046, 351.050, 351.051, 351.055, 351.060, 351.085, 351.090, 351.095, 351.106, 351.107, 351.110, 351.115, 351.125, 351.180, 351.195, 351.200, 351.315, 351.355, 351.430, 351.435, 351.448, 351.657, 351.658, 355.011, 355.021, 355.146, 355.631, 356.071, 356.211, 358.440, 358.460, 358.490, 359.021, 359.031, 359.041, 359.121, 359.141, 359.172, 359.501, 359.531, 359.541, 417.210, 417.215, 417.217, and 417.220, RSMo, are repealed and sixty-five new sections enacted in lieu thereof, to be known as sections 347.020, 347.025, 347.039, 347.041, 347.047, 347.051, 347.055, 347.079, 347.081, 347.088, 347.129, 347.131, 347.153, 347.155, 347.160, 347.161, 347.169, 347.179, 347.725, 351.046, 351.050, 351.051, 351.055, 351.060, 351.085, 351.090, 351.095, 351.106, 351.107, 351.110, 351.115, 351.125, 351.180, 351.195, 351.200, 351.315, 351.355, 351.430, 351.435, 351.448, 351.657, 351.658, 355.011, 355.021, 355.146, 355.631, 356.012, 356.071, 356.211, 358.440, 358.460, 358.490, 359.021, 359.031, 359.041, 359.121, 359.141, 359.145, 359.172, 359.501, 359.531, 359.541, 417.210, 417.217, and 417.220, to read as follows:

347.020. NAME OF COMPANY REGULATED. — The name of each limited liability company as set forth in its articles of organization:

(1) Shall contain the words "limited company" or "limited liability company" or the abbreviation "LC", "LLC", "L.C." or "L.L.C." and shall be the name under which the limited liability company transacts business in this state unless the limited liability company registers another name under which it transacts business as provided under chapter 417, RSMo, or conspicuously discloses its name as set forth in its articles of organization;

(2) May not contain the word "corporation", "incorporated", "limited partnership", **[**"L.P."**]**, **"limited liability partnership", "limited liability limited partnership",** or "Ltd." or any abbreviation of one of such words or any word or phrase which indicates or implies that it is organized for any purpose not stated in its articles of organization or that it is a governmental agency; and

(3) Must be distinguishable upon the records of the secretary from the name of any corporation, limited liability company, limited partnership **[**or other business entity**], limited liability partnership, or limited liability limited partnership which is licensed,** organized, reserved**,** or registered under the laws of this state **[**or licensed or registered as a foreign corporation, limited liability company or limited partnership in this state**] as a domestic or foreign entity**, unless:

(a) Such other holder of a reserved or registered name consents to such use in writing and files appropriate documentation to the secretary to change its name to a name that is distinguishable upon the records of the secretary from the name of the applying limited liability company; or

(b) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name in this state is filed with the secretary.

347.025. NAME MAY BE RESERVED, HOW, TIME PERIOD. — 1. The exclusive right to the use of a name may be reserved by:

(1) Any person intending to organize a limited liability company under sections 347.010 to 347.187 and to adopt that name;

(2) Any domestic limited liability company intending to adopt that name;

(3) Any foreign limited liability company registered in this state intending to adopt that name or intending to register in this state and to adopt that name; or

(4) Any person intending to organize a foreign limited liability company and intending to have it registered in this state and to adopt that name.

2. The reservation shall be made by filing with the secretary **[**an application,**]** in a **[**form**] format** prescribed by the secretary, executed by the applicant, to reserve a specified name. If the secretary finds that the name is not registered with the secretary as a corporation, limited liability company, limited partnership **[**or other business entity name**]**, **limited liability partnership, or limited liability limited partnership,** and is otherwise available for use, it shall reserve the name for the exclusive use of the applicant for a period of sixty days from and after the date the application is filed with the state. **A name reservation shall not exceed a period of one hundred eighty days from the date of the first name reservation application. Upon the one hundred eighty-first day the name shall cease reserve status and may not be placed back in such status.**

347.039. ARTICLES, CONTENTS. — 1. The articles of organization shall set forth:

(1) The name of the limited liability company;

(2) The purpose or purposes for which the limited liability company is organized, which may be stated to be, or to include, the transaction of any or all lawful business for which a limited liability company may be organized under sections 347.010 to 347.187;

(3) The address, including street and number, if any, of the registered office and the name of the registered agent at such office;

(4) **[**If**] A statement as to whether** management of the limited liability company is vested in **[**one or more**]** managers**[**, a statement to that effect**] or in members**;

(5) The events**[**, if any, on**]** **by** which the limited liability company is to dissolve or the number of years the limited liability company is to **[**continue**]** **exist**, which may be any number or perpetual; and

(6) The name and **physical business or residence** address of each organizer.

2. The articles of organization may set forth any other provision, not inconsistent with law or sections 347.010 to 347.187, which are in the operating agreement of the limited liability company.

347.041. ARTICLES OF AMENDMENT, CONTENTS — AMENDMENTS REQUIRED, WHEN. — 1. A limited liability company's articles of organization is amended by filing with the secretary articles of amendment, which shall set forth:

(1) The name of the limited liability company;

(2) The date the articles of amendment are filed, and, if the articles of amendment provide that they are not to become effective until a specified date after their filing date, the date that they are to become effective which may not be more than ninety days after their filing date;

(3) If the amendment is required to be filed as a result of the occurrence of any event specified in subdivision (2) of subsection 2 of this section, the nature of the event and the date such event occurred or is to occur;

(4) The amendment to the articles of organization; and

(5) A statement that the amendment is authorized under the operating agreement or is otherwise required to be filed under the provisions of sections 347.010 to 347.187.

2. A limited liability company's articles of organization shall be amended promptly, but in no event more than sixty days after the occurrence of any of the following events:

(1) To reflect **[**that**]** **any change in** management of the limited liability company **[**is then vested in one or more managers, in the case of a limited liability company in which management had not been previously so vested;

(2) To reflect that management of the limited liability company is no longer vested in one or more managers, in the case of a limited liability company in which management had previously been vested in one or more managers**]** **that was previously vested whether in managers or members**;

[(3)**]** **(2)** To reflect a change in the name of the limited liability company; or

[(4)**]** **(3)** To reflect a change in the time set forth in the articles of organization for the limited liability company to dissolve.

3. Except as otherwise provided in the operating agreement, a limited liability company's articles of organization may be amended from time to time in any and as many respects as may be desired so long as its articles of organization contain only such provisions as are contained in the operating agreement at the time of making such amendment.

347.047. EXECUTION OF DOCUMENTS, MANNER — AFFIRMATION. — 1. Unless otherwise provided in sections 347.010 to 347.187, articles, notices or documents permitted or required by sections 347.010 to 347.187 to be filed with the secretary shall be executed in the following manner:

(1) The initial articles of organization shall be executed by the organizer or organizers;

(2) An amended or restated articles of organization, statement of change of registered agent or registered office, notice of merger or consolidation, notice of winding up, articles of termination or other document required or permitted to be filed under sections 347.010 to 347.187 shall be executed by an authorized person or any other person duly authorized under the operating agreement; and

(3) All articles, notices and documents required by sections 347.010 to 347.187 to be filed by a limited liability company which is in the hands of a receiver, trustee, or other court-appointed fiduciary, shall be executed by such fiduciary.

2. The original, amended or restated articles of organization, notice of winding up, notice of merger or consolidation, articles of termination or other document required or permitted to be filed under sections 347.010 to 347.187 may be executed by a person duly authorized under a power of attorney.

3. The execution of any document required by sections 347.010 to 347.187 constitutes an affirmation under **[**penalties of perjury**]** **the penalties as set out in section 575.040, RSMo,** that the facts stated therein are true and that such person or persons are duly authorized to execute such document or are otherwise required to file such document under sections 347.010 to 347.187.

347.051. DELIVERY OF DOCUMENTS TO SECRETARY OF STATE, FORMAT, DUTIES. — 1. **[**Duplicate originals or**]** The original**[**, together with a duplicate**]** copy**[**, which may be either a signed or conformed copy,**]** of the articles of organization, an amendment or restatement of such articles, articles of termination, statement of change of registered agent or registered office, or any other statement, document or notice required or permitted to be filed pursuant to sections 347.010 to 347.187, or of any judicial decree requiring the filing of such document under sections 347.010 to 347.187, **in a format as prescribed by the secretary of state** shall be delivered to the secretary **of state**. A person who executes articles or other documents to be filed under sections 347.010 to 347.187 as an agent or fiduciary need not evidence his authority as a prerequisite to filing. If the secretary determines that the documents substantially conform to the filing provisions of sections 347.010 to 347.187, it shall, when all required filing fees have been paid:

(1) Endorse on **[**each**]** **the accepted** signed original **[**and duplicate copy**]** the word "Filed", and the date **[**and time**]** of its acceptance for filing;

(2) **[**Retain the signed original in the secretary's files; and

(3) Return the duplicate copy to the person who filed it or the person's representative.

2. If the secretary is unable to make the determination required for filing by subsection 1 of this section at the time any documents are delivered for filing, the documents are deemed to have been filed at the time of delivery if the secretary subsequently determines that the documents as delivered substantially conform to the filing provisions of sections 347.010 to 347.187.

3.**]** **The accepted original filing and certificate shall be retained by the secretary of state as a state record and a copy of both shall be returned to the person who submitted said document or the person's representative.**

2. Upon the return by the secretary of any articles, notices, documents or judicial decree of amendment marked "Filed", the person or persons executing such documents shall promptly deliver or mail a copy thereof to each member unless the operating agreement provides otherwise.

347.055. STATEMENT OF CORRECTION, FILED WHEN — CONTENTS — EXECUTION, EFFECTIVE, WHEN — FEE — STATEMENT SIGNED. — 1. **[**If any document filed under sections 347.010 to 347.187 contains, as of the date such document was filed, an erroneous statement, an incorrect statement, typographical error, misspelling, other technical error or defect, or was defectively executed, verified or acknowledged, the document may be corrected by filing, in accordance with this section, a statement of correction.

2. The statement of correction shall set forth:

(1) The name of the limited liability company and the jurisdiction under whose laws it is organized; and

(2) A description of the document being corrected, the date it was filed with the secretary, or a filed copy of the document being corrected, specifying the error, misspelling, statement or defect to be corrected and the reason it is incorrect or the manner in which the execution was defective, and correcting the error, misspelling, statement or the defective execution.

3. A statement of corrections shall be executed in the same manner in which the document being corrected was required to be executed.

4. The statement of corrections is effective as of the date the original document was filed, except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, the statement of corrections is effective when filed.**] A domestic or foreign limited liability company may file a statement of correction in a format prescribed by the secretary of state, if the filed document contains an incorrect statement as of the date such document was filed.**

2. The statement of correction shall:

(1) State the name of the limited liability company;

(2) State the type of document being corrected;

(3) State the name of the jurisdiction under the law of organization;

(4) Describe the incorrect statement and the reason for the correction;

(5) If the correction is for a foreign liability company with regard to an incorrect name, provide a certificate of existence or document of similar import duly authenticated by the secretary of state or other official having custody of the records in the state or country under whose laws it is registered.

3. Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons' articles of correction are effective when filed.

4. The secretary of state shall collect a filing fee of five dollars upon filing the statement of correction.

5. The statement of correction shall be signed by an authorized person of the limited liability company.

347.079. MANAGEMENT OF COMPANY, RIGHTS OF MEMBERS — MANAGERS, APPOINTMENT — CONSENT OF MEMBERS REQUIRED FOR CERTAIN ACTS. — 1. **[**Unless**]** The articles of organization **shall** provide **[**that**] how** management of the limited liability company **[**shall**] will** be vested **[**in one or more managers, management of the limited liability company shall be vested in the members,**] and** who shall have the right and authority to manage the affairs of the limited liability company and make all decisions with respect thereto, subject to any provisions in the operating agreement or sections 347.010 to 347.187 restricting or enlarging the management rights or responsibilities of one or more persons or classes of persons.

2. If the articles of organization provide that management of the limited liability company shall be vested in one or more managers, then management of the limited liability company shall be vested in such manager or managers who shall have the right and authority to manage the affairs of the limited liability company and make decisions with respect thereto to the extent provided in the operating agreement, including any provisions therein restricting or enlarging the management rights or responsibilities of one or more persons or classes of persons. The managers of a limited liability company shall be designated in the operating agreement, or designated, appointed or elected by the members in the manner prescribed by the operating agreement, and may be removed or replaced in the manner provided in the operating agreement. Managers need not be members of the limited liability company or individuals unless otherwise required by the operating agreement. If the operating agreement does not provide a manner for designating, appointing, electing, removing or replacing managers, then, the managers of a limited liability company shall be designated, appointed, elected, removed or replaced by the vote of a majority by number of the members and unless earlier removed or resigned, managers shall hold office until their successors have been designated, appointed or elected and qualified.

3. Except as provided in the operating agreement, the affirmative vote, approval or consent of all members shall be required to:

(1) Amend a written operating agreement;

(2) Issue an interest in the limited liability company to any person and admit such person as a member;

(3) Approve a merger or consolidation with another person;

(4) Change the status of the limited liability company from one in which management is vested in the members to one in which management is vested in one or more managers, or vice versa;

(5) Authorize any transaction, agreement or action on behalf of the limited liability company that is unrelated to its purpose as set forth in the articles of organization, that otherwise contravenes the operating agreement or that is not within the usual course of the business of the limited liability company; or

(6) Determine, modify, compromise or release the amount and character of the contributions which a member shall make, or shall promise to make, as the consideration for the issuance of an interest in the limited liability company.

4. Except as provided in the operating agreement, and subject to subsection 3 of this section, the affirmative vote, approval or consent of more than one-half by number of the authorized persons shall be required to decide any matter connected with the business or affairs of the limited liability company.

347.081. OPERATING AGREEMENT, CONTENTS — POLICY STATEMENT — ENFORCEABILITY, REMEDIES. — 1. The member or members of a limited liability company shall adopt an operating agreement containing such provisions as such member or members may deem appropriate, subject only to the provisions of sections 347.010 to 347.187 and other law. The operating agreement may contain any provision, not inconsistent with law, relating to the conduct of the business and affairs of the limited liability company, its rights and powers, and the rights, powers and duties of its members, managers, agents or employees, including:

(1) Whether the management of the limited liability company shall be vested in one or more members, managers or other persons, and, if so, the powers and authority to be exercised by such persons;

(2) Providing for classes or groups of members having various rights, powers and duties, and providing for the future creation of additional classes or groups of members having relative rights, powers and duties superior or equal to existing classes and groups of members;

(3) The exercise or division of management or voting rights among different classes or groups of members, managers or other persons on a per capita or other basis;

(4) With respect to any matter requiring a vote, approval or consent of members or managers, provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on, waiver of notice, action by consent without a meeting, quorum requirements, authorizations by proxy, or any other matter with respect to the exercise of any voting or approval rights;

(5) Authorizing all or certain persons to execute articles, notices or documents permitted or required by sections 347.010 to 347.187;

(6) Restrictions on the transfer of members' interests in the limited liability company, and options or rights to acquire or sell members' interests in the limited liability company;

(7) The manner in which income, gain, deduction, loss, credit and items thereof are to be allocated to the members; and

(8) Provisions relating to any tax elections to be made by the limited liability company and the authorization of persons to make such elections.

2. **It is the policy of sections 347.010 to 347.187 to give the maximum effect to the principle of freedom of contract and to the enforceability of operating agreements.**

3. The operating agreement shall be enforceable at law or in equity by any member to the extent provided in applicable law.

[3.**]** **4.** This section shall not affect any otherwise valid agreement among members of a limited liability company.

347.088. STANDARD OF DUTY — EXTENT OF LIABILITIES AND DUTIES — PROFIT OR BENEFIT, DUTY. — 1. **Except as otherwise provided in the operating agreement** an authorized person shall discharge his **or her** duty under sections 347.010 to 347.187 and the operating agreement in good faith, with the care a corporate officer of like position would exercise under similar circumstances, in the manner **[**he reasonably believes**] a reasonable person would believe** to be in the best interest of the limited liability company, and shall not be liable for any such action so taken or any failure to take such action, if he **or she** performs such duties in compliance with this subsection.

2. **To the extent that, at law or equity, a member or manager or other person has duties, including fiduciary duties, and liabilities relating to those duties to the limited liability company or to another member, manager, or other person that is party to or otherwise bound by an operating agreement:**

(1) Any such member, manager, or other person acting under the operating agreement shall not be liable to the limited liability company or to any such other member, manager, or other person for the member's, manager's, or other person's good faith reliance on the provisions of the operating agreement; and

(2) The member's, manager's or other person's duties and liabilities may be expanded or restricted by provision in the operating agreement.

3. Except as otherwise provided in the operating agreement, every member or manager, if any, shall account to the limited liability company and hold as trustee for it any profit or benefit derived by such person without the informed consent of more than one-half by number of disinterested managers or members from any transaction connected with the conduct of the business and affairs or the winding up of the limited liability company, or from any personal use by such person of the property of the limited liability company, including confidential or proprietary information of the limited liability company or other matters entrusted to him as a result of his status as manager or member.

[3.**] 4.** Except as provided in subsection 2 of this section or the operating agreement, one who is a member of a limited liability company in which management is vested in one or more managers and who is not a manager shall have no duties to the limited liability company or to the other members solely by reason of acting in his capacity as a member.

347.129. NOTICE OF MERGER OR CONSOLIDATION, FILING, CONTENTS — EXECUTION — NOTICE OF ABANDONMENT, CONTENTS — EFFECTIVE DATE OF MERGER OR CONSOLIDATION OF FOREIGN COMPANIES. — 1. The surviving limited liability company in the merger or the new limited liability company in the consolidation shall file a notice of the merger or consolidation with the secretary which shall set forth:

(1) The name of each party to the merger or consolidation;

(2) The effective date of the merger or consolidation which may not exceed ninety days after the filing of the notice of merger or consolidation;

(3) The name of the surviving limited liability company in the merger or the new limited liability company in the consolidation and the state of its formation;

(4) A statement that the merger or consolidation was authorized and approved by the members of each party to the merger or consolidation in accordance with the laws of the jurisdiction where it was organized;

(5) If applicable, the address of the registered office and the name of the registered agent at such office for the surviving or new limited liability company;

(6) In the case of a merger in which a domestic limited liability company is the surviving limited liability company, such amendments to the articles of organization of the surviving limited liability company as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the articles of organization of the surviving limited liability company shall not be amended as a result of the merger;

(7) In the case of a consolidation in which a domestic limited liability company is the continuing limited liability company, the articles of organization of the new domestic limited liability company shall be set forth in an attachment to the notice of consolidation;

(8) A statement that the executed agreement of merger or consolidation is on file at the principal place of business of the surviving or new limited liability company, stating the address of the principal place of business; and

(9) A statement that a copy of the agreement of merger or consolidation will be furnished by the surviving or new entity, on request and without cost, to any member of any entity that is a party to the merger or consolidation.

2. The notice of the merger or consolidation shall be executed by at least one authorized person of the domestic limited liability company and one authorized agent, or its equivalent, for the other party to the merger or consolidation who is duly authorized to execute such notice.

3. In the event the merger or consolidation is not consummated for any reason, the domestic limited liability company shall promptly file a notice of the abandonment of the merger or consolidation with the secretary which shall set forth:

(1) The name of each party to the merger or consolidation;

(2) The date the notice of merger or consolidation was filed with the secretary; and

(3) A statement that the merger or consolidation was not consummated and has been abandoned.

4. If the surviving or new limited liability company is a foreign limited liability company, the effective date of such merger or consolidation shall be the date on which the same becomes effective in the state of domicile of such surviving or new limited liability company; provided a document from the state of domicile of the surviving limited liability company in the case of merger or the case of consolidation certifying that the merger or consolidation has become effective in such state shall be a requirement for the merger or consolidation becoming effective in this state.

347.131. EFFECTIVE DATE OF MERGER OR CONSOLIDATION. — A merger or consolidation **with a domestic survivor or new domestic limited liability company** is effective as of the later of:

(1) The **[**time**]** **date** the secretary files the notice of merger or consolidation for record; or

(2) The **[**time**]** **date** set forth in the notice of merger or consolidation, not to exceed ninety days after the notice of merger or consolidation is accepted for filing.

347.153. FOREIGN COMPANY, REGISTRATION REQUIRED — APPLICATION, CONTENTS, FEE. — Before transacting business in this state, a foreign limited liability company shall register **[**with**]** **in a format prescribed by** the secretary **unless otherwise exempt under subdivision (5) of subsection 5 of section 347.163**. In order to register, a foreign limited liability company shall pay the required filing fee and shall submit to the secretary**[**, in duplicate,**]** an application for registration as a foreign limited liability company signed **[**and acknowledged**]** on its behalf by a manager, member or other authorized agent and setting forth:

(1) The name of the foreign limited liability company and, if different, the name under which it proposes to register and transact business in this state;

(2) The jurisdiction in which it was formed and date of its formation;

(3) The purpose of the foreign limited liability company or the general character of the business it proposes to transact in this state;

(4) The name and **physical** address of its registered agent and registered office in this state, which office and agent shall be subject to the same rights and limitations as provided in sections 347.030 and 347.033;

(5) A statement that the secretary is appointed the agent of the foreign limited liability company for service of process if the limited liability company fails to maintain a registered agent

in this state or if the agent cannot be found or served with the exercise of reasonable diligence; **[**and**]**

(6) The address of the office required to be maintained in the jurisdiction of its organization by the laws of that jurisdiction or, if not so required, of the principal office of the foreign limited liability company**;**

(7) A certificate of existence or a document of similar import duly authenticated by the secretary of state or other official having custody of the records in the state or country under whose laws it is registered; and

(8) A current certificate of good standing/existence from the secretary of state's office in the state of domicile, such document should be dated within sixty calendar days from filing.

347.155. PROPER APPLICATION FOR REGISTRATION, DUTIES OF SECRETARY. — If the secretary finds that an application for registration conforms to law and all requisite fees have been paid**[**, such person shall**]**:

(1) **The secretary shall** endorse on the **[**signed original and duplicate copy of the**] accepted** application the word "Filed", and the month, day and year of the filing thereof; **and**

(2) **[**File in his office an original of the application;

(3) Issue a certificate of registration to transact business in this state; and

(4) Return the certificate of registration, together with a duplicate original of the application, to the person who filed the application or his representative**] The accepted filing shall be retained in the secretary of state's records and a copy of the accepted filing and certificate of registration shall be returned to the person who submitted the document or that person's representative**.

347.160. AMENDED CERTIFICATES OF REGISTRATION REQUIRED FOR CERTAIN FOREIGN COMPANIES, WHEN — ADDITIONAL INFORMATION REQUIRED, DUE DATE — FEE. — 1. A foreign limited liability company authorized to transact business in the state shall obtain an amended certificate of registration from the secretary of state if it changes:

(1) The name of the limited liability company;

(2) The state or country of its registration.

2. The amendment shall include a certificate of existence or document of similar import duly authenticated by the secretary of state or other official having custody of the records in the state or country under whose laws it is registered, such document should be dated within sixty calendar days from filing for acceptance.

3. The fee for filing an amended certificate of registration shall be twenty dollars.

347.161. CANCELLATION, ARTICLES OF. — A foreign limited liability company may cancel its registration by filing with the secretary articles of cancellation signed **[**and acknowledged**]** on its behalf by a manager, member or other authorized agent. A cancellation does not terminate the authority of the secretary to accept service of process on the foreign limited liability company with respect to causes of action arising out of the transactions of business in this state.

347.169. AFFIRMATION, PENALTIES OF PERJURY. — Execution of an application or a certificate by a foreign limited liability company constitutes an affirmation by the person who signed it under **[**the penalties of perjury**] the penalties set out in section 575.040, RSMo,** that the facts stated therein are true and that the person so signing has the authority to execute such application or certificate.

347.179. FEES. — The secretary shall charge and collect:

(1) For filing the original articles of organization, a fee of one hundred dollars;

(2) Applications for registration of foreign limited liability companies and issuance of a certificate of registration to transact business in this state, a fee of one hundred dollars;

(3) Amendments to and restatements of articles of limited liability companies to application for registration of a foreign limited liability company or any other filing otherwise provided for, a fee of twenty dollars;

(4) Articles of termination of limited liability companies or cancellation of registration of foreign limited liability companies, a fee of twenty dollars;

(5) For filing notice of merger or consolidation, a fee of twenty dollars;

(6) For filing a notice of winding up, a fee of twenty dollars;

(7) For issuing a certificate of good standing, a fee of five dollars;

(8) For a notice of the abandonment of merger or consolidation, a fee of twenty dollars;

(9) For furnishing a copy of any document or instrument, a fee of fifty cents per page;

(10) For accepting an application for reservation of a name, or for filing a notice of the transfer or cancellation of any name reservation, a fee of twenty dollars;

(11) For filing a statement of change of address of registered office or registered agent, or both, a fee of five dollars; **[**and**]**

(12) For any service of notice, demand, or process upon the secretary as resident agent of a limited liability company, a fee of twenty dollars, which amount may be recovered as taxable costs by the party instituting such suit, action, or proceeding causing such service to be made if such party prevails therein**;**

(13) For filing an amended certificate of registration a fee of twenty dollars; and

(14) For filing a statement of correction a fee of five dollars.

347.725. ARTICLES OF MERGER OR CONSOLIDATION, CONTENTS — FILING — DUPLICATES, DELIVERY — EFFECTIVE, WHEN. — 1. After an agreement of merger or consolidation is authorized, approved, and certified in accordance with section 347.720, the surviving or new entity shall file the agreement of merger or consolidation with the secretary of state or, in lieu thereof, articles of merger or consolidation, duly executed, by each constituent entity setting forth:

(1) The name, state or country of organization and nature or type of each of the constituent entities;

(2) That an agreement of merger or consolidation has been authorized and approved by each of the constituent entities in accordance with section 347.720;

(3) The effective date of the merger or consolidation which may not exceed ninety days after the date of filing of the agreement of merger or consolidation or the articles of merger or consolidation;

(4) The name of the surviving or new entity;

(5) If applicable, the address of the registered office and the name of the registered agent at such office for the surviving or new entity;

(6) In the case of a merger, such amendments or changes to the organizational documents of the surviving entity, as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the organizational documents of the surviving entity shall be its organizational documents;

(7) In the case of a consolidation, that the organizational documents of the new entity shall be as set forth in an attachment to such agreement or articles of merger or consolidation;

(8) That the executed agreement of merger or consolidation is on file at the principal place of business of the surviving or new entity, stating the address thereof; and

(9) That a copy of the agreement of merger or consolidation will be furnished by the surviving or new entity, on request and without cost, to any partner, shareholder, member, or their equivalent of any entity that is a party to the merger or consolidation.

2. **[**Two duplicate originals**]** **An original** of the agreement of merger or consolidation or articles of merger or consolidation **[**and one duplicate original**]** for each domestic constituent

entity to the merger or consolidation shall be delivered to the secretary of state for filing. A person who executes an agreement or articles of merger or consolidation as an agent or fiduciary need not exhibit evidence of authority as a prerequisite to filing. Unless the secretary of state finds that the agreement or articles of merger or consolidation do not conform to law, upon receipt of all filing fees required by law, the secretary of state shall:

(1) Endorse on **[**each copy**]** **the document** the word "Filed" and the day, month and year of the filing thereof;

(2) File the **[**original**]** **document** in the secretary of state's office;

(3) Issue a certificate of merger or consolidation, which shall set forth the names of all constituent entities, the name of the state or country under the laws of which each was formed, whether a merger or consolidation is involved, the name of the surviving or new entity, the name of the state or country under the laws of which the new entity is formed, the date of filing of the agreement of merger or consolidation or articles of merger or consolidation with him, and the effective date of the merger or consolidation;

(4) Return a copy of the certificate of merger or consolidation to the person who filed the agreement or articles of merger or consolidation or his representative; and

(5) File a copy of the certificate of merger or consolidation in the records of the secretary of state for each domestic constituent entity.

3. A merger or consolidation shall be effective when the requirements for effectiveness of the laws under which any constituent entity was formed have been met and the certificate of merger or consolidation has been filed by the secretary of state, unless a later date is specified in the agreement of merger or consolidation or articles of merger or consolidation, in which case, the effective date of the merger or consolidation will be the date so specified which shall, in no event, exceed ninety days after the date the agreement of merger or consolidation or articles of merger or consolidation is delivered to the secretary of state for filing.

351.046. FILING REQUIREMENTS — FILING SIGNIFIES DOCUMENT IS CORRECT. — 1. A document shall satisfy the requirements of this section, and of any other section that adds to or varies from these requirements, to be entitled to filing by the secretary of state.

2. This chapter shall require or permit filing the document in the office of the secretary of state.

3. The document shall contain the information required by this chapter. It may contain other information as well.

4. The document shall be typewritten or printed.

5. The document shall be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

6. The document shall be executed:

(1) By the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by the incorporator(s); or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

7. The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. The document may contain the corporate seal, an attestation by the secretary or an assistant secretary, an acknowledgment, verification or proof.

8. If the secretary of state has prescribed a mandatory form for the document under the provisions of section 351.047, the document shall be in or on the prescribed form.

9. The document shall be delivered to the office of the secretary of state for filing **[**and must be accompanied by one exact or conformed copy**]** except as provided in sections 351.376 and 351.592, the correct filing fee,**[** and any franchise tax, license fee,**]** or penalty required by this chapter or other law.

10. **In accordance with rules established by the secretary of state,** any signature on any document authorized to be filed by or with the secretary of state pursuant to this chapter may be a facsimile, a conformed signature or an electronically transmitted signature.

11. A statement or document filed under this chapter represents that the person signing the document or statement believes the statements are true and correct to the best of such person's knowledge and belief, subject to the penalties provided under section 575.040, RSMo.

351.050. INCORPORATORS, DUTIES — OWNERSHIP AND ACQUISITION OF SHARES, HOW CONSTRUED. — One or more natural persons of the age of eighteen years, or more, may act as an incorporator of such corporation by signing**[**, verifying**]** and delivering **[**in duplicate**]** in the office of the secretary of state the articles of incorporation of such corporation. Nothing contained in this chapter shall be construed as an indication of any legislative intention that the existence of a corporation, hereafter or heretofore formed, is in any respect impaired by the direct or indirect ownership of all of the shares of such corporation by one owner or by two owners or that by such ownership the corporation becomes dormant, inactive or incapable of acting as a corporation or ceases to possess any of the capacities, powers or authority which it otherwise would possess. The direct or indirect acquisition, heretofore or hereafter, of all of the shares of a corporation by one owner or by two owners and the having of only one shareholder or two shareholders at any time are declared to violate no policy or provision of the laws of this state.

351.051. DOCUMENTS FILED, WHEN — REFUSAL TO FILE — DUTY TO FILE. — **[**Any verification required under this chapter shall be in form substantially as follows:

(for original articles of incorporation)

State of .....)
) ss
County of .....)

I, ..., a notary public, do hereby certify that on the ..... day of ..... 19.., personally appeared before me, ... (and .....), who being by me first duly sworn, (severally) declared that he is (they are) the person(s) who signed the foregoing document as incorporator(s), and that the statements therein contained are true.

. . . . . .
Notary Public

(NOTARIAL SEAL)

(for all other documents)

State of .....)
) ss
County of .....)

I, ..., a notary public, do hereby certify that on this ..... day of ....., 19.., personally appeared before me ....., who, being by me first duly sworn, declared that he is the ..... of ....., that he signed the foregoing document as ..... of the corporation, and that the statements therein contained are true.

. . . . . .
Notary Public **]**

1. If a document delivered to the office of the secretary of state satisfies the requirements of this chapter and is in a medium and format prescribed by the secretary of state the document shall be filed.

2. The secretary of state files the document by stamping or otherwise endorsing "filed" together with the secretary of state's name and official title and the date of receipt on the original when accompanied by the appropriate filing fee. After filing a document except as provided in sections 351.376 and 351.592, the secretary of state shall deliver a copy to the domestic or foreign corporation or its representative.

3. Upon refusing to file a document, the secretary of state shall return the rejected document to the domestic or foreign corporation or its representative with a brief written explanation of the reason or reasons for the refusal.

4. The secretary of state's duty to file documents under this section is ministerial. Filing or refusal to file a document does not:

(1) Affect the validity or invalidity of the document in whole or in part;

(2) Relate to the correctness or incorrectness of information contained in the document; or

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

351.055. ARTICLES OF INCORPORATION, REQUIRED CONTENTS — OPTIONAL CONTENTS.— 1. The articles of incorporation shall set forth:

(1) The name of the corporation;

(2) The address, including street and number, if any, of its initial registered office in this state, and the name of its initial registered agent at such address;

(3) **If** the aggregate number of shares which the corporation shall have the authority to issue**[**, and**]** **exceeds thirty thousand shares or the par value exceeds thirty thousand dollars the corporation shall indicate** the number of shares of each class, if any, that are to have a par value and the par value of each share of each such class, and the number of shares of each class, if any, that are to be without par value and also a statement of the preferences, qualifications, limitations, restrictions, and the special or relative rights including convertible rights, if any, in respect of the shares of each class;

(4) **[**The extent, if any, to which the preemptive right of a shareholder to acquire additional shares is limited or denied;

(5)**]** The name and **[**place of residence**]** **physical business or residence address** of each incorporator;

[(6) Either (a) the number of directors to constitute the first board of directors and a statement to the effect that thereafter the number of directors shall be fixed by, or in the manner provided in, the bylaws of the corporation, and that any changes shall be reported to the secretary of state within thirty calendar days of such change, or (b) the number of directors to constitute the board of directors, except that the number of directors to constitute the board of directors must be stated in the articles of incorporation if the corporation is to have less than three directors.

The persons to constitute the first board of directors may, but need not, be named;

(7)**]** **(5)** The number of years the corporation is to continue, which may be any number or perpetual;

[(8)**]** **(6)** The purposes for which the corporation is formed**[**;**]**.

2. The articles of incorporation may set forth:

(1) The number of directors to constitute the board of directors;

(2) The extent if any to which the preemptive right of a shareholder to acquire additional shares is limited or denied;

[(9)**]** **(3)** If the incorporators, the directors pursuant to subsection 1 of section 351.090 or the shareholders pursuant to subsection 2 of section 351.090 choose to do so, a provision eliminating or limiting the personal liability of a director to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director (a) for any breach of the director's duty of loyalty

to the corporation or its shareholders, (b) for acts or omissions not in subjective good faith or which involve intentional misconduct or a knowing violation of law, (c) pursuant to section 351.345 or (d) for any transaction from which the director derived an improper personal benefit. No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective. **On motion to dismiss, a person challenging the applicability of such a provision shall plead facts challenging such applicability with particularity, and there shall be no discovery until such motion to dismiss has been determined.** All references in this subdivision to a director shall also be deemed to refer (e) to a member of the governing body of a corporation which is not authorized to issue capital stock and (f) to such other person or persons, if any, who, pursuant to a provision of the articles of incorporation in accordance with this chapter, exercise or perform any of the powers or duties otherwise conferred or imposed upon the board of directors by this chapter;

[(10)**] (4)** Any other provisions, not inconsistent with law, which the incorporators, the directors pursuant to subsection 1 of section 351.090 or the shareholders pursuant to subsection 2 of section 351.090 may choose to insert.

351.060. FILING OF ARTICLES OF INCORPORATION — CERTIFICATE OF INCORPORATION. — 1. **[**Duplicate originals or**]** An original **[**and a**]** copy of the articles of incorporation signed **[**and verified**]** by the incorporators as required in section 351.050 shall be delivered to the office of the secretary of state. If the secretary of state finds that the articles of incorporation conform to **[**law**] this chapter**, he **or she** shall, when the required organizational taxes or fees have been paid, file the same, and an original shall be retained by the secretary of state as a permanent record.

2. The secretary of state shall then issue a certificate of incorporation under the seal of the state that the corporation has been duly organized. The secretary of state shall attach the certificate to the copy of the articles of incorporation filed with him and shall deliver them to the corporation or its representative.

351.085. AMENDMENT OF ARTICLES OF INCORPORATION PERMITTED. — **[**1. A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired; provided, that its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation if made at the time of making such amendment, and if a change in shares or an exchange or reclassification of shares is to be made, such provisions as may be necessary to effect such change, exchange or reclassification as may be desired and as is permitted by this chapter.

2. In particular, and without limitation upon such general power of amendment, a corporation may amend its articles of incorporation from time to time so as:

(1) To change its corporate name;

(2) To change its period of duration;

(3) To change, enlarge or diminish its corporate purposes;

(4) To fix, increase or decrease the number of its directors or to provide that the number of directors shall be fixed by, or in the manner provided in, the bylaws of the corporation, in which case the corporation's articles of incorporation, as amended, must comply with subdivision (6) of section 351.055, except that they need not set forth the number of directors which constituted the first board of directors; provided, however, that the corporation shall give written notice to the secretary of state of the number of directors of the corporation as fixed by any method, such notice to be given within thirty calendar days of the date when the number of directors is fixed, and similar notice to be given whenever the number of directors is changed;

(5) To increase or decrease the aggregate number of shares or shares of any class which the corporation has authority to issue;

(6) To increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued; provided, that if the par value of issued shares is increased,

there shall be transferred to stated capital at the time of such increase an amount of surplus equal to the aggregate amount by which the par value is increased;

(7) To exchange, classify, reclassify or cancel all or any part of its shares, whether issued or unissued;

(8) To change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, qualifications, limitations, restrictions and special or relative rights, including convertible rights, in respect of all or any part of its shares, whether issued or unissued;

(9) To change shares having a par value, whether issued or unissued, into the same or a different number of shares without par value, and to change shares without par value, whether issued or unissued, into the same or a different number of shares having a par value;

(10) To create a new class or classes of stock and to define the preferences, qualifications, limitations, restrictions, and the special or relative rights of the shares of such new class or classes;

(11) To establish, limit or deny to shareholders of any class the preemptive right to acquire additional shares of the corporation, whether then or thereafter authorized.**] A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of incorporation, provided that the name of an incorporator shall not be changed. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.**

351.090. ARTICLES OF INCORPORATION, HOW AMENDED. — 1. At any time or times before the corporation has received any payment for any of its shares, the board of directors may adopt amendments to the articles of incorporation by executing **[**and verifying**]** a certificate of amendment as provided in subsection 1 of section 351.095.

2. After the corporation has received any payment for any of its shares, amendments to the articles of incorporation may be made only in the following manner:

(1) The board of directors may adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting, except that the proposed amendment need not be adopted by the board of directors and may be directly submitted to any annual or special meeting of shareholders.

(2) Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in section 351.230 for the giving of notice of meetings of shareholders. If the meeting is an annual meeting, the proposed amendment or summary shall, nevertheless, be included in the notice of the annual meeting.

(3) At the meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. Subject to subsections 3 and 6 of this section, the proposed amendment shall be adopted upon receiving the affirmative vote of a majority of the outstanding shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of a majority of the outstanding shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

3. If the articles of incorporation or bylaws provide for cumulative voting in the election of directors, the number of directors shall not be decreased to less than three by amendment to the articles of incorporation when the number of shares voting against the proposal for decrease would be sufficient to elect a director if the shares were voted cumulatively at an election of three directors. If the articles of incorporation or bylaws do not provide for cumulative voting in the election of directors, then the number of directors shall only be decreased to less than three by amendment to the articles of incorporation approved by the affirmative vote of a majority of the outstanding shares entitled to vote on the amendment.

4. If any amendment made under section 351.085 effects a reduction of stated capital, then the corporation making the amendment shall comply with the applicable provisions of sections 351.195 and 351.200, as well as the provisions of this section.

5. Any number of amendments may be submitted to the shareholders and voted on by them at one meeting.

6. A proposed amendment which provides that section 351.407 does not apply to control share acquisitions of shares of a corporation shall be adopted upon receiving the affirmative vote of two-thirds of all outstanding shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of two-thirds of the outstanding shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. This subsection shall not affect or limit the right, power or authority of any issuing public corporation to adopt any other amendment or to take any other action in addition to an amendment providing for the nonapplicability of section 351.407 to control share acquisitions of the issuing public corporation pursuant to this section.

7. When a corporation has ten or fewer shareholders, cumulative voting may be abolished only by an affirmative vote of the holders of at least two-thirds of the outstanding shares.

351.095. CERTIFICATE OF AMENDMENT, CONTENTS OF. — 1. To adopt an amendment of the articles of incorporation as provided in subsection 1 of section 351.090, a majority of the board of directors shall execute a certificate of amendment **[**verified by one of them, and duplicate originals or the original and a copy of such certificate**]** **that** shall be delivered to the secretary of state. The certificate of amendment shall state:

(1) The name of the corporation and, if it has been changed, the name under which it was originally organized;

(2) The date of the adoption of the amendment by the directors;

(3) The amendment adopted;

(4) That on the date of adoption of the amendment by the directors the corporation had not received any payment for any of its shares.

2. After the adoption of an amendment of the articles of incorporation by the requisite vote of shareholders, a certificate of amendment shall be executed **[**in duplicate**]** by **an officer of** the corporation **[**by its president or a vice president and by its secretary or an assistant secretary, verified by one of the officers signing the certificate with corporate seal affixed, and duplicate originals or**],** the original **[**and a**]** copy of the certificate shall be delivered to the secretary of state. The certificate of amendment shall state:

(1) The name of the corporation and, if it has been changed, the name under which it was originally organized;

(2) The date of adoption of the amendment by the shareholders;

(3) The amendment adopted;

(4) The number of shares outstanding, the number of shares entitled to vote on the amendment and, if the shares of any class are entitled to vote thereon as a class, the number of outstanding shares of each class entitled to vote thereon;

(5) The number of shares voted for and against the amendment, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each class voted for and against the amendment, respectively;

(6) If the amendment provides for an exchange, reclassification, or cancellation of issued shares, or a reduction of the number of authorized shares of any class below the number of issued shares of that class, then a statement of the manner in which it shall be effected;

(7) If the effective date of the amendment is to be a date other than the date of filing of the certificate of amendment with the secretary of state, then the effective date, which shall be no more than ninety days following the filing date, shall be specified.

351.106. RESTATEMENT OF ARTICLES OF INCORPORATION. — A domestic corporation may at any time restate its articles of incorporation as theretofore amended, in the following manner:

(1) The board of directors of the corporation may at any time adopt a resolution setting forth restated articles of incorporation correctly setting forth without change the corresponding provisions of the articles of incorporation as theretofore amended and, upon the approval of a majority of the directors, adopting the same on behalf of the corporation;

(2) Proposed restated articles of incorporation need not be adopted by the directors and may be submitted directly to any annual or special meeting of the shareholders. Written or printed notice stating that the purpose, or one of the purposes, of the meeting is to consider the restatement of the articles of incorporation shall be given to each shareholder of record entitled to vote at the meeting within the time and in the manner and upon the conditions provided in this chapter for the giving of notice of meetings of shareholders. The proposed restated articles of incorporation need not be included in the notice of the meeting;

(3) If the restatement of the articles is proposed to be adopted by the shareholders, such restated articles shall be adopted upon receiving the affirmative vote of a majority of the outstanding shares entitled to vote, but dissenting shareholders shall not have the rights provided for in this chapter;

(4) Upon such approval, restated articles of incorporation shall be executed by **an officer of** the corporation **[**by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing the articles**]**, and shall contain a statement that the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended, and that the restated articles of incorporation supersede the original articles of incorporation and all amendments thereto;

(5) **[**Duplicate originals or**]** The original **[**and a**]** copy of the restated articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the restated articles of incorporation conform to **[**law**] this chapter** he **or she** shall, when the required taxes or fees have been paid, file the same, and the original shall be retained by the secretary of state as a permanent record;

(6) The secretary of state shall then issue a restated certificate of incorporation under the seal of the state that the articles of incorporation of the corporation as amended have been duly restated; the certificate shall set forth the name of the corporation**[**, the amount of its authorized shares, the period of its existence and the address of its then registered office**]**. The secretary of state shall attach the certificate to the other copy of the restated articles of incorporation so filed with him and shall deliver them to the corporation or its representative;

(7) Upon the issuance of the restated certificate of incorporation by the secretary of state, the restated articles of incorporation shall become effective and shall supersede the original articles of incorporation and all amendments.

351.107. RESTATED ARTICLES OF INCORPORATION MAY BE AMENDED AT TIME OF RESTATEMENT. — The articles of incorporation may be amended at the time of restatement of the articles of incorporation, in the following manner:

(1) The procedure required by this chapter for effecting an amendment to the articles of incorporation may be carried out concurrently with the procedure for restatement so that the proposed amendment and the restated articles may be presented to the same meetings of directors and shareholders;

(2) Such amendment **and restatement**, upon adoption by that percentage vote of shareholders required for that particular amendment, and on being set forth in **[**the**] a single** certificate of amendment **and restraint, in the manner** required by this chapter, may then be **[**incorporated into such restated articles of incorporation;

(3) In the event of such amendment, the restated articles shall not be**]** filed in the office of the secretary of state unless and until such amendment has become effective in the manner provided in this chapter.

351.110. NAME OF CORPORATION REGULATED. — The corporate name:

(1) Shall contain the word "corporation", "company", "incorporated", or "limited", or shall end with an abbreviation of one of said words;

(2) Shall not contain any word or phrase which indicates or implies that it is any governmental agency or organized for any purpose other than a purpose for which corporations may be organized under this chapter;

(3) Shall be distinguishable from the name of any domestic corporation existing under any law of this state or any foreign corporation authorized to transact business in this state, or any limited partnership**, limited liability partnership, limited liability limited partnership,** or limited liability company existing or transacting business in this state under chapter 347, RSMo, **[**and**]** **chapter 358, RSMo, or** chapter 359, RSMo, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter, chapter 347, RSMo, **chapter 358, RSMo,** or chapter 359, RSMo**, or any other business entity organized, reserved, or registered under the law of this state**. If the name is the same, a word shall be added to make such name distinguishable from the name of such other corporation, limited liability company**, limited liability partnership, or limited liability limited partnership,** or limited partnership.

351.115. RESERVATION OF RIGHT TO EXCLUSIVE USE OF CORPORATE NAME, TIME PERIOD. — 1. The exclusive right to the use of a corporate name may be reserved by:

(1) Any person intending to organize a corporation under this chapter;

(2) Any domestic corporation intending to change its name;

(3) Any foreign corporation intending to make application for a certificate of authority to transact business in this state;

(4) Any foreign corporation authorized to transact business in this state and intending to change its name;

(5) Any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to transact business in this state.

2. Such reservation shall be made by filing in the office of the secretary of state an application to reserve a specified corporate name, executed by the applicant. If the secretary of state finds that such name is available for corporate use, he shall reserve the same for the exclusive use of such applicant for a period of sixty days. **A name reservation shall not exceed a period of one hundred eighty days from the date of the first name reservation application. Upon the one hundred eighty-first day the name shall cease reserve status and shall not be placed back in such status.**

3. The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person by filing in the office of the secretary of state a notice of such transfer, executed by the person for whom such name was reserved, and specifying the name and address of the transferee.

351.125. ANNUAL FEE. — Every corporation required to register under the provisions of this chapter shall pay to the state a fee of forty dollars for its annual registration **if the report is filed in a written format. The fee is fifteen dollars for each annual registration report filed via an electronic format prescribed by the secretary of state**. If a corporation fails to file a corporation registration report when due, it shall be assessed, in addition to its regular registration fee, a late fee of fifteen dollars for each thirty-day period within which the registration report is filed **whether in writing or in an electronic format**. If the registration report is not filed within ninety days, the corporation shall forfeit its charter.

351.180. POWER TO ISSUE SHARES — PREFERENCES — PROCEDURE — REDEMPTION OF STOCK BY CORPORATION, REQUIREMENTS — AMENDED CERTIFICATE OF DESIGNATION FOR CLASSES OR SERIES ADVERSELY AFFECTING HOLDERS, MAJORITY VOTE OF HOLDERS REQUIRED. — 1. Every corporation may issue one or more classes of stock or one or more series of stock within any class thereof, any or all of which classes may be of stock with par value or stock without par value and which classes or series may have such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in the articles of incorporation or any amendment thereto, or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested in it by the provisions of its articles of incorporation. Any of the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of any such class or series of stock may be made dependent upon facts ascertainable outside the articles of incorporation or of any amendment thereto, or outside the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested in it by its articles of incorporation, provided that the manner in which such facts shall operate upon the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of such class or series of stock is clearly and expressly set forth in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors. The power to increase or decrease or otherwise adjust the capital stock as provided in this chapter shall apply to all or any such classes of stock.

2. (1) Subject to the provisions of section 351.200, the stock of any class or series may be made subject to redemption by the corporation at its option or at the option of the holders of such stock or upon the happening of a specified event; provided, that at the time of such redemption the corporation shall have outstanding shares of at least one class or series of stock with full voting powers which shall not be subject to redemption. Notwithstanding the limitation stated in the foregoing provision:

(a) Any stock of a regulated investment company registered under the Investment Company Act of 1940, as amended, may be made subject to redemption by the corporation at its option or at the option of the holders of such stock;

(b) Any stock of a corporation which holds, directly or indirectly, a license, franchise, or contract from a governmental agency to conduct its business or is a member of a national securities exchange, which license, franchise, contract, or membership is conditioned upon some or all of the holders of its stock possessing the prescribed qualifications, may be made subject to redemption by the corporation to the extent necessary to prevent the loss of such license, franchise or membership or to reinstate it;

(2) Any stock which may be redeemable under this section may be redeemed for cash, property or rights, including securities of the same or another corporation, at such time or times, price or prices, or rate or rates, and with such adjustments, as shall be stated in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided.

3. The holders of preferred or special stock of any class or of any series thereof shall be entitled to receive dividends at such rates, on such conditions and at such times as shall be stated in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided, payable in preference to, or in such relation to, the dividends payable on any other class or classes or of any other series of stock, and cumulative or noncumulative as shall be so stated and expressed. When dividends upon the preferred and special stocks, if any, to the extent of the preference to which such stocks are entitled, have been paid or declared and set apart for payment, a dividend on the remaining class or classes or series of stock may then be paid out of the remaining assets of the corporation available for dividends as is provided elsewhere in this chapter.

4. The holders of the preferred or special stock of any class or of any series thereof are entitled to such rights upon the dissolution of, or upon any distribution of the assets of, the corporation as is stated in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided.

5. Any stock of any class or of any series thereof may be made convertible into, or exchangeable for, at the option of either the holder or the corporation or upon the happening of a specified event, shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation, at such price or prices or at such rate or rates of exchange and with such adjustments as is stated in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided.

6. If any corporation is authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the corporation issues to represent such class or series of stock; but, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the corporation issues to represent such class or series of stock, a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

7. When any corporation desires to issue any shares of stock of any class or of any series of any class of which the powers, designations, preferences and relative, participating, optional or other rights, if any, or the qualifications, limitations or restrictions thereof, if any, have not been set forth in the articles of incorporation or in any amendment thereto, but are provided for in a resolution or resolutions adopted by the board of directors pursuant to authority expressly vested in it by the provisions of the articles of incorporation or any amendment thereto, a certificate of designations setting forth a copy of such resolution or resolutions and the number of shares of stock of such class or series as to which the resolution or resolutions apply shall be executed by the president or any vice president**[**, acknowledged**]** and filed by the corporation with the secretary of state. Unless otherwise provided in any such resolution or resolutions, the number of shares of stock of any such class or series to which such resolution or resolutions apply may be increased, but not above the number of shares of the class authorized by the articles of incorporation with respect to which the powers, designations, preferences and rights have not been set forth, or decreased, but not below the number of shares thereof then outstanding, by a certificate likewise executed**[**, acknowledged**]** and filed setting forth a statement that a specified increase or decrease therein had been authorized and directed by a resolution or resolutions likewise adopted by the board of directors. In case the number of such shares shall be decreased, the number of shares so specified in the certificate shall resume there status which they had prior to the adoption of the resolution or resolutions creating such shares. When no shares of any such class or series are outstanding, either because none were issued or because no issued shares of any such class or series remain outstanding, a certificate setting forth a resolution or resolutions adopted by the board of directors that none of the authorized shares of such class or series are outstanding, and that none will be issued subject to the certificate of designations previously filed with respect to such class or series, may be executed by the president or any vice president**[**, acknowledged**]** and filed by the corporation with the secretary of state and, when such certificate becomes effective, it shall have the effect of eliminating from the articles of incorporation all reference to such class or series of stock. When shares of stock of any class or of any series of any class of which the powers, designations, preferences, and relative, participating, optional or other rights, if any, or the qualifications, limitations or restrictions thereof, if any, have not been set forth in the articles of incorporation or in any

amendment thereto, but are provided in a resolution or resolutions adopted by the board of directors pursuant to authority expressly vested in it by the provisions of the articles of incorporation or any amendment thereto, the board of directors may, by resolution or resolutions adopted by the board of directors, amend the powers, designations, preferences and relative, participating, optional or other rights, if any, or the qualifications, limitations or restrictions thereof, if any, of any such class or series by filing an amended certificate of designations setting forth a copy of such resolution or resolutions, which shall include the terms and conditions of such amendment, executed by the president or any vice president**[**, acknowledged**]** and filed by the corporation with the secretary of state. Provided, however, that if any shares of any such class or series shall be issued and outstanding at the time of such filing, such amendment, if it adversely affects the holders thereof, shall not become effective unless as to any such class or series, a majority of the holders thereof, or such greater vote as the articles of incorporation or any amendment thereto require, adopts such amendment, and the certificate of designations shall state that such approval has been obtained. When any certificate is filed under this subsection, it shall have the effect of amending the articles of incorporation and shall become effective as provided in subsection 1 of section 351.105.

351.195. REDUCTION OF STATED CAPITAL, HOW MADE. — 1. The reduction of the stated capital of a corporation, whether by retirement of reacquired shares or otherwise, may be made in the following manner, but nothing contained in this section shall be construed to forbid the retirement of shares or the reduction of stated capital in any other manner permitted by this chapter:

(1) The board of directors may adopt a resolution setting forth the amount of the proposed reduction and the manner in which the reduction shall be effected, and directing that the question of the reduction be submitted to a vote at a meeting of the shareholders, which may be either an annual or a special meeting, except that such proposed reduction need not be adopted by the board of directors and may be directly submitted to any annual or special meeting of shareholders;

(2) Written or printed notice, stating that the purpose or one of the purposes of such meeting is to consider the question of reducing the stated capital of the corporation, shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the purpose may be included in the notice of the annual meeting;

(3) At the meeting a vote of the shareholders entitled to vote thereat shall be taken on the question of the proposed reduction of stated capital, which shall require for its adoption the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote at the meeting.

2. **[**When a reduction of the stated capital of a corporation has been approved as provided in this section, a statement shall be executed by the corporation by the president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by the secretary or an assistant secretary, which statement shall set forth:

(1) The name of the corporation;

(2) A copy of the resolution of the shareholders approving such reduction;

(3) The total number of shares outstanding;

(4) The number of shares voted for and against such reduction, respectively;

(5) A statement of the manner in which the reduction is effected, and a statement, expressed in dollars, of the amount of stated capital and the amount of paid-in surplus of the corporation adjusted to give effect to the reduction.

3. Duplicate originals or the original and a copy shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall file the same, retain the original of such statement and return the copy to the corporation or its representative. Upon the filing of the statement in the office of the secretary of state, the reduction shall be effective.

4.**]** No reduction of stated capital shall be made which would reduce the stated capital represented by shares without par value having a preferential right in the assets of the corporation in the event of involuntary liquidation to an amount less than the aggregate preferential amount provided from time to time to be payable upon such shares in the event of such involuntary liquidation.

[5.**] 3.** The surplus, if any, created by or arising out of a reduction of the stated capital of a corporation is paid-in surplus.

[6.**] 4.** No distribution of assets to shareholders in connection with a reduction of stated capital shall be made out of stated capital unless the assets of the corporation remaining after the reduction of stated capital shall be sufficient to pay any debts of the corporation, the payment of which shall not have been otherwise provided for.

[7.**] 5.** All shares retired under this or any other section shall become authorized and unissued shares of the class to which they belong, unless the reissue thereof is prohibited by the articles of incorporation, in which case the authorized shares of such class should be reduced to the extent of the shares so retired.

351.200. REDEMPTION OR PURCHASE OF OWN SHARES — RETIREMENT OF SHARES. — 1. Any corporation which has issued shares of any class of stock may, subject to the provisions of its articles of incorporation, redeem all or any part of such shares if subject to redemption under the provisions of its articles of incorporation, or purchase all or any part of such shares, but in the case of shares subject to redemption at not exceeding the price or prices at which the shares may be redeemed, and may by resolution of its board of directors apply to the redemption or purchase an amount out of its stated capital not exceeding the amount of stated capital represented by the shares so redeemed or purchased whereupon the shares so redeemed or purchased out of stated capital are deemed to be retired; but no such redemption or purchase shall be made out of stated capital unless the assets of the corporation remaining after such redemption or purchase are sufficient to pay any debts of the corporation the payment of which has not been otherwise provided for.

2. Any corporation may also by resolution of its board of directors, subject to the provisions of its articles of incorporation, redeem or purchase all or any part of the shares of any class or series of stock out of surplus, and may at any time by resolution of its board of directors retire any shares so redeemed or purchased out of surplus or acquired by the corporation in any other manner not covered by subsection 1 or 3 of this section.

3. Whenever any corporation reacquires any of its shares of any class or series of stock upon the conversion or exchange of such shares into or for other shares of the corporation, the reacquired shares shall be deemed to be retired and the amount of stated capital theretofore represented by the reacquired shares shall automatically be transferred to such other shares to the extent of the aggregate stated capital represented by such other shares. Whenever upon the conversion or exchange of shares into or for other shares of the corporation the amount of stated capital represented by the reacquired shares exceeds the total aggregate stated capital represented by such other shares, the corporation may at any time thereafter by resolution of its board of directors reduce its stated capital by any amount not exceeding the amount of such excess.

4. Whenever any stated capital is applied to the redemption or purchase of shares of any class or series of stock pursuant to subsection 1 of this section, any shares are retired pursuant to subsection 2 of this section, or stated capital is reduced pursuant to subsection 3 of this section, **[**a certificate shall be made accordingly, executed in duplicate by the corporation by the president or a vice president, and verified by such officer, and the corporate seal shall be affixed to, attested by the secretary or an assistant secretary of the corporation, which certificates shall be filed with the secretary of state and otherwise dealt with as in the case of articles of incorporation. Upon such filing, and without the necessity of complying with the provisions or requirements of any other section of this chapter,**]** the stated capital of the corporation shall be reduced by the amount represented by the shares redeemed or purchased of stated capital pursuant to subsection 1 of this

section, or shall be reduced by the amount of the stated capital represented by the shares retired pursuant to subsection 2 of this section, or shall be reduced by the amount specified by the resolution of the board of directors adopted pursuant to subsection 3 of this section. All shares retired by operation of subsection 1, 2 or 3 of this section shall become authorized and unissued shares of the class to which they belong, unless the reissue thereof is prohibited by the articles of incorporation, in which case the authorized shares of such class shall be reduced to the extent of the shares so retired.

351.315. NUMBER OF DIRECTORS, HOW ELECTED, HOW REMOVED. — 1. **[**A corporation shall have three or more directors, except that a corporation may have one or two directors provided the number of directors to constitute the board of directors is stated in the articles of incorporation.**] A board of directors shall consist of one or more individuals with the number specified or fixed in accordance with the articles of incorporation or bylaws.** Any corporation may elect its directors for one or more years, not to exceed three years, the time of service and mode of classification to be provided for by the articles of incorporation or the bylaws of the corporation; but, there shall be an annual election for such number or proportion of directors as may be found upon dividing the entire number of directors by the number of years composing a term. At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders entitled to vote shall elect directors to hold office until the next succeeding annual meeting, except as herein provided. Each director shall hold office for the term for which he is elected or until his successor shall have been elected and qualified.

2. The articles of incorporation may confer upon holders of any class or series of stock the right to elect one or more directors who shall serve for such term and shall have such voting powers as shall be stated in the articles of incorporation. The terms of office and voting powers of the directors elected in the manner so provided in the articles of incorporation may be greater than or less than those of any other director or class of directors. If the articles of incorporation provide that directors elected by the holders of a class or series of stock shall have more or less than one vote per director on any matter, every reference in this chapter to a majority or other proportion of directors shall refer to a majority or other proportion of the votes such directors are entitled to cast.

3. At a meeting called expressly for that purpose, directors may be removed in the manner provided in this section. Such meeting shall be held at the registered office or principal business office of the corporation in this state or in the city or county in this state in which the principal business office of the corporation is located. Unless the articles of incorporation or the bylaws provide otherwise, one or more directors or the entire board of directors may be removed, with or without cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors. If the articles of incorporation or bylaws provide for cumulative voting in the election of directors, if less than the entire board is to be removed, no one of the directors may be removed if the votes cast against such director's removal would be sufficient to elect such director if then cumulatively voted at an election of the entire board of directors, or, if there be classes of directors, at an election of the class of directors of which such director is a part. Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the articles of incorporation, the provisions of this section shall apply, in respect of the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

[4. The corporation shall give written notice to the secretary of state of the number of directors of the corporation as fixed by any method. The notice shall be given within thirty days of the date when the number of directors is fixed, and similar notice shall be given whenever the number of directors is changed.**]**

351.355. OFFICER, DIRECTOR, EMPLOYEE, OR AGENT OF CORPORATION INDEMNIFIED, WHEN, METHODS AUTHORIZED. — 1. A corporation created under the laws of this state may

indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the corporation, by reason of the fact that he or she is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

2. The corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses, including attorneys' fees, and amounts paid in settlement actually and reasonably incurred by him in connection with the defense or settlement of the action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the corporation unless and only to the extent that the court in which the action or suit was brought determines upon application that, despite the adjudication of liability and in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

3. Except as otherwise provided in the articles of incorporation or the bylaws, to the extent that a director, officer, employee or agent of the corporation has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in subsections 1 and 2 of this section, or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the action, suit, or proceeding.

4. Any indemnification under subsections 1 and 2 of this section, unless ordered by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in this section. The determination shall be made by the board of directors by a majority vote of a quorum consisting of directors who were not parties to the action, suit, or proceeding, or if such a quorum is not obtainable, or even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or by the shareholders.

5. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of the action, suit, or proceeding as authorized by the board of directors in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he or she is entitled to be indemnified by the corporation as authorized in this section.

6. The indemnification provided by this section shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the articles of incorporation or bylaws or any agreement, vote of shareholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

7. A corporation created under the laws of this state shall have the power to give any further indemnity, in addition to the indemnity authorized or contemplated under other subsections of this section, including subsection 6, to any person who is or was a director, officer, employee or agent, or to any person who is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, provided such further indemnity is either (i) authorized, directed, or provided for in the articles of incorporation of the corporation or any duly adopted amendment thereof or (ii) is authorized, directed, or provided for in any bylaw or agreement of the corporation which has been adopted by a vote of the shareholders of the corporation, and provided further that no such indemnity shall indemnify any person from or on account of such person's conduct which was finally adjudged to have been knowingly fraudulent, deliberately dishonest or willful misconduct. Nothing in this subsection shall be deemed to limit the power of the corporation under subsection 6 of this section to enact bylaws or to enter into agreements without shareholder adoption of the same.

8. The corporation may purchase and maintain insurance **or another arrangement** on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him **or her** and incurred by him **or her** in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section. **Without limiting the power of the corporation to procure or maintain any kind of insurance or other arrangement the corporation may for the benefit of persons indemnified by the corporation create a trust fund, establish any form of self insurance, secure its indemnity obligation by grant of a security interest or other lien on the assets of the corporation, or establish a letter of credit, guaranty, or surety arrangement. The insurance or other arrangement may be procured, maintained, or established within the corporation or with any insurer or other person deemed appropriate by the board of directors regardless of whether all or part of the stock or other securities of the insurer or other person are owned in whole or in part by the corporation. In the absence of fraud the judgment of the board of directors as to the terms and conditions of the insurance or other arrangement and the identity of the insurer or other person participating in an arrangement shall be conclusive and the insurance or arrangement shall not be voidable and shall not subject the directors approving the insurance or arrangement to liability on any ground regardless of whether directors participating in the approval are beneficiaries of the insurance arrangement.**

9. Any provision of this chapter to the contrary notwithstanding, the provisions of this section shall apply to all existing and new domestic corporations, including but not limited to banks, trust companies, insurance companies, building and loan associations, savings bank and safe deposit companies, mortgage loan companies, corporations formed for benevolent, religious, scientific or educational purposes and nonprofit corporations.

10. For the purpose of this section, references to "the corporation" include all constituent corporations absorbed in a consolidation or merger as well as the resulting or surviving corporation so that any person who is or was a director, officer, employee or agent of such a constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise shall stand in the same position under the provisions of this section with respect

to the resulting or surviving corporation as he or she would if he or she had served the resulting or surviving corporation in the same capacity.

11. For purposes of this section, the term "other enterprise" shall include employee benefit plans; the term "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and the term "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this section.

351.430. SUMMARY OF ARTICLES OF MERGER OR CONSOLIDATION FILED — CONTENTS. — **[**1. Upon such approval, articles of merger or articles of consolidation shall be executed in duplicate by each corporation by its president or a vice president, and verified by him, and the corporate seal of each corporation shall be thereto affixed, attested by its secretary or an assistant secretary, and shall set forth:

(1) The plan of merger or the plan of consolidation;

(2) As to each corporation, the number of shares outstanding;

(3) As to each corporation, the number of shares voted for and against such plan, respectively.

2. In lieu of the delivery of articles of merger or articles of consolidation as required pursuant to section 351.435,**]** **After a plan of merger or consolidation is authorized in accordance with sections 351.420 and 351.425, the surviving corporation shall file a** summary articles of merger or summary articles of consolidation**[**, executed pursuant to section 351.046, may be filed pursuant to section 351.046 to be effective pursuant to section 351.048**]** **with the secretary of state**. Such summary articles shall state:

(1) The name and state **or country** of incorporation of each of the **[**constituent**]** corporations;

(2) That a plan of merger or consolidation has been approved**[**, adopted, certified, executed and acknowledged**]** **and authorized** by each of the **[**constituent**]** corporations **[**as required by this chapter**]** **in accordance with sections 351.420 and 351.425**;

(3) **The effective date of the merger or consolidation which shall not exceed ninety days after the date of filing of the summary articles of merger or summary articles of consolidation by the secretary of state;**

(4) The name of the surviving corporation in the case of a merger or the new corporation in the case of a consolidation;

[(4)**] (5) In the case of a consolidation, the new address of the registered office and the name of the registered agent at such office for the new corporation;**

(6) In the case of a merger, such amendments or changes in the articles of the surviving corporation as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the articles of incorporation of the surviving corporation shall be the articles of incorporation;

[(5)**] (7)** In the case of a consolidation, that the articles of incorporation of the new corporation shall be as set forth in an attachment to the summary articles;

[(6)**] (8)** That the executed plan of merger or consolidation is on file at the principal place of business of the surviving corporation in the case of a merger, or new corporation in the case of a consolidation stating the address thereof; and

[(7)**] (9)** That a copy of a plan of merger or consolidation will be furnished by the surviving corporation in the case of a merger or the new corporation in the case of a consolidation, on request and without cost, to any shareholder of any **[**constituent**]** corporation **that is a party to the merger or consolidation**.

351.435. CERTAIN ORIGINALS TO BE DELIVERED TO SECRETARY OF STATE WHO SHALL ISSUE CERTIFICATE OF MERGER OR CONSOLIDATION. — **[**Duplicate originals or**]** The original **[**and a**]** copy of the articles of merger or articles of consolidation shall be delivered to the secretary of state by the surviving corporation in the case of a merger or the new corporation in the case of a consolidation. The articles shall be executed pursuant to section 351.430, filed pursuant to section 351.046 and effective pursuant to section 351.048. If the secretary of state finds that the articles conform to **[**law**]** **this chapter**, he shall, when all required taxes or fees have been paid, file the same, keeping the original as a permanent record, and issue a certificate of merger or a certificate of consolidation, to which he shall affix the copy of such articles.

351.448. MERGER WITHOUT SHAREHOLDERS' VOTE, WHEN — REQUIREMENTS, RESULTS. — 1. Unless expressly required by its articles of incorporation for a holding company reorganization pursuant to this section through the use of a specific reference to this section, no vote of shareholders of a domestic corporation shall be necessary to authorize a merger with or into a single indirect wholly owned subsidiary of such domestic corporation but solely in connection with a holding company reorganization if:

(1) Such domestic corporation and the indirect wholly owned subsidiary of such domestic corporation are the only constituent corporations to the merger;

(2) Each share or fraction of a share of the capital stock of such domestic corporation outstanding immediately prior to the effective time of the merger is converted in the merger into a share or equal fraction of share of capital stock of a holding company having the same designations, rights, powers and preferences, and the qualifications, limitations and restrictions thereof, as the share or fraction of a share of stock of such domestic corporation being converted in the merger;

(3) The holding company and each of the constituent corporations to the merger are corporations of this state;

(4) The articles of incorporation and bylaws of the holding company immediately following the effective time of the merger contain provisions identical to the articles of incorporation and bylaws of such domestic corporation immediately prior to the effective time of the merger, other than provisions, if any, regarding the incorporator or incorporators, the corporate name, registered office and agent, the initial board of directors and the initial subscribers for shares and such provisions contained in any amendment to the articles of incorporation as were necessary to effect a change, exchange, reclassification or cancellation of stock, if such change, exchange, reclassification or cancellation has become effective;

(5) As a result of the merger such domestic corporation or its successor corporation becomes or remains a direct or indirect wholly owned subsidiary of the holding company;

(6) The directors of such domestic corporation become or remain the directors of the holding company upon the effective time of the merger;

(7) The articles of incorporation of the surviving corporation immediately following the effective time of the merger are identical to the articles of incorporation of such domestic corporation immediately prior to the effective time of the merger, other than provisions, if any, regarding the incorporator or incorporators, the corporate name, registered office and agent, elections and composition of the board of directors, the initial board of directors and the initial subscribers for shares and such provisions contained in any amendment to the articles of incorporation as were necessary to effect a change, exchange, reclassification or cancellation of stock, if such change, exchange, reclassification or cancellation has become effective; provided, however, that:

(a) The articles of incorporation of the surviving corporation shall be amended in the merger to contain a provision requiring that any act or transaction by or involving the surviving corporation that requires for its adoption pursuant to this chapter or its articles of incorporation the approval of the shareholders of the surviving corporation shall, by specific reference to this section, require, in addition, the approval of the shareholders of the holding company, or any

successor by merger, by the same vote as is required by this chapter or by the articles of incorporation of the surviving corporation, or both; and

(b) The articles of incorporation of the surviving corporation may be amended in the merger to reduce the number of classes and shares of capital stock that the surviving corporation is authorized to issue; and

(8) The shareholders of such domestic corporation do not recognize gain or loss for United States federal income tax purposes as determined by the board of directors of such domestic corporation.

2. As used in this section only, the term "holding company" means a corporation which, from its incorporation until consummation of a merger governed by this section, was at all times a direct or indirect wholly owned subsidiary of such domestic corporation and whose capital stock is issued in such merger.

3. From and after the effective time of a merger adopted by such domestic corporation by action of its board of directors and without any vote of shareholders pursuant to this section:

(1) To the extent the restrictions of section 351.407 or 351.459 applied to such domestic corporation and its shareholders or shares at the effective time of the merger, such restrictions shall apply to the holding company and its shareholders or shares immediately after the effective time of the merger as though it were such domestic corporation, and all shares of stock of the holding company acquired in the merger shall for purposes of sections 351.407 and 351.459 be deemed to have been acquired at the time that the shares of stock of such domestic corporation converted in the merger were acquired, and provided further that any shareholder who immediately prior to the effective time of the merger was not an interested shareholder within the meaning of section 351.459 shall not solely by reason of the merger become an interested shareholder of the holding company; and

(2) If the corporate name of the holding company immediately following the effective time of the merger is the same as the corporate name of such domestic corporation immediately prior to the effective time of the merger, the shares of capital stock of the holding company into which the shares of capital stock of such domestic corporation are converted in the merger shall be represented by the stock certificates that previously represented shares of capital stock of such domestic corporation.

4. If a plan of merger is adopted by such domestic corporation by action of its board of directors and without any vote of shareholders pursuant to this section, the articles of merger shall state that the plan of merger has been adopted pursuant to this section and shall set forth the resolution of the board of directors of such domestic corporation approving the plan of merger and the date of adoption of the resolution and shall state that the conditions in the first sentence of subsection 1 of this section have been satisfied. The articles of merger shall also set forth the plan of merger and as to each of the constituent corporations to the merger, the number of shares outstanding, shall be executed **[**and verified**]** as provided in section 351.430 and shall be filed in accordance with section 351.435 and the merger shall become effective in accordance with section 351.440.

5. The provisions of section 351.455 shall not apply to a merger effected pursuant to this section.

6. Nothing in this section shall amend, alter, modify, restrict, limit or otherwise change the provisions of section 351.447. As provided in section 351.017, actions taken in accordance with this section and with any other section of this chapter are acts of independent legal significance.

351.657. ABSTRACT OF CORPORATE OR REGISTRATION RECORD, FEE — CERTIFICATION BY SECRETARY OF STATE, FEE — NO FEES, WHO — PUBLIC INSPECTION AUTHORIZED — INFORMATION BY TELEPHONE, WHAT GIVEN. — 1. The secretary of state shall, upon receipt of a written **or electronic** request and a fee of five dollars, furnish to the person or governmental agency so requesting an abstract of the corporate **or registration** record of any **[**one corporation or limited partnership licensed to do business or conduct its affairs in this

state, or the registration record of any one individual or organization**]** **business entity** registered in the secretary of state's office. Such abstract shall be in concise form and may contain the information contained in one or more annual corporation registration reports or any other document filed by the corporation. The abstract shall contain:

(1) The name of the **[**corporation or limited partnership**]** **business entity**;

(2) The principal place of business, if known;

(3) The registered agent and registered office; and

(4) The current status of the **[**corporation or limited partnership**]** **business entity**.

2. The secretary of state shall certify an abstract of such record upon written request therefor. The fee for such certification shall be five dollars in addition to the fee required for furnishing an abstract record as provided in subsection 1 of this section. The certification shall be made under the seal of the office of the secretary of state.

3. The secretary of state shall also, in accordance with rules promulgated by him, make available for public inspection and copying during regular office hours all papers filed in the office of secretary of state relative to any corporation or business concern the filings of which are administered by him.

4. No fee as herein provided shall apply to any agency or department of the state of Missouri.

5. The secretary of state shall furnish without charge information over the phone concerning corporate status, registered agent and incorporation date and withdrawal date only of any corporation licensed to do business in this state.

6. The secretary of state may in his discretion make a preclearance examination and report upon any document proposed to be filed with the secretary of state, and may charge a fee therefor not in excess of fifty dollars.

7. After initial incorporation the secretary of state may at his discretion permit the filing of any certificate or other paper without first requiring payment of the fees required by any provision of this chapter.

351.658. FEES FOR CORPORATE FILINGS WITH SECRETARY OF STATE. — Except as otherwise provided in this chapter, the secretary of state shall charge and collect for:

(1) Filing application for reservation of a corporate name, twenty dollars;

(2) Filing amendment to articles of incorporation or certificate of authority and issuing a certificate of amendment or amended certificate of authority, twenty dollars;

(3) Filing articles of merger or consolidation, twenty-five dollars plus five dollars for each merging or consolidating Missouri corporation or foreign corporation authorized to do business in Missouri over two in number;

(4) Filing articles of dissolution, twenty dollars; filing articles of liquidation, twenty dollars;

(5) Filing of revocation of articles of dissolution, twenty dollars;

(6) Filing of restated articles of incorporation, twenty dollars;

[(7) Filing of statement of reduction of stated capital, twenty dollars;

(8) Filing of a certificate of redemption or designation, twenty dollars;

(9)**]** **(7)** Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars;

[(10)**]** **(8)** Filing statement of change of address of registered office or change of registered agent, or both, five dollars;

[(11)**]** **(9)** Filing resignation of registered agent, five dollars;

[(12)**]** **(10)** Certified copy of corporate record, **in a written format** fifty cents per page plus five dollars for certification**, or in an electronic format five dollars for certification and copies**;

[(13)**]** **(11)** Furnishing certificate of corporate existence, five dollars;

[(14)**]** **(12)** Furnishing certificate — others, twenty dollars;

[(15)**]** **(13)** Filing evidence of merger by a foreign corporation, twenty dollars plus one dollar for each additional foreign corporation authorized to do business in Missouri over two;

[(16)**]** **(14)** Filing evidence of dissolution by a foreign corporation, twenty dollars.

355.011. FILING REQUIREMENTS. — 1. A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the secretary of state.

2. No document shall be entitled to filing by the secretary of state unless this chapter requires or permits filing the document in the office of the secretary of state.

3. The document must contain the information required by this chapter. It may contain other information as well.

4. The document must be typewritten or printed.

5. The document must be in the English language. However, a corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

6. The document must be executed:

(1) By the presiding officer of the board of directors of a domestic or foreign corporation, its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

7. The person executing a document shall sign it and state beneath or opposite the signature his name and the capacity in which he signs. The document may, but need not, contain:

(1) The corporate seal;

(2) An attestation by the secretary or an assistant secretary; or

(3) An acknowledgment, verification, or proof.

8. If the secretary of state has prescribed a mandatory form for a document under section 355.016, the document must be in or on the prescribed form.

9. The document must be delivered to the office of the secretary of state for filing and must be accompanied by one exact or conformed copy, except as provided in sections 355.171 and 355.791, the correct filing fee, and any license fee or penalty required by this chapter or other law.

10. Any statement or document filed under this chapter represents that the signor believes the statements are true and correct to the best knowledge and belief of the person signing, subject to the penalties of section 557.040, RSMo.

355.021. FEES. — 1. The secretary of state shall collect the following fees when the documents described in this subsection are delivered for filing:

(1) Articles of incorporation, twenty dollars;

(2) Application for reserved name, twenty dollars;

(3) Notice of transfer of reserved name, two dollars;

(4) Application for renewal of reserved name, twenty dollars;

(5) Corporation's statement of change of registered agent or registered office or both, five dollars;

(6) Agent's statement of change of registered office for each affected corporation, five dollars;

(7) Agent's statement of resignation, five dollars;

(8) Amendment of articles of incorporation, five dollars;

(9) Restatement of articles of incorporation with amendments, five dollars;

(10) Articles of merger, five dollars;

(11) Articles of dissolution, five dollars;

(12) Articles of revocation of dissolution, five dollars;

(13) Application for reinstatement following administrative dissolution, twenty dollars;

(14) Application for certificate of authority, twenty dollars;

(15) Application for amended certificate of authority, five dollars;

(16) Application for certificate of withdrawal, five dollars;

(17) Annual report, ten dollars **if filed in a written format or five dollars if filed electronically in a format prescribed by the secretary of state**;

(18) Articles of correction, five dollars;

(19) Certificate of existence or authorization, five dollars;

(20) Any other document required or permitted to be filed by this chapter, five dollars.

2. The secretary of state shall collect a fee of ten dollars upon being served with process under this chapter. The party to a proceeding causing service of process is entitled to recover the fee paid the secretary of state as costs if the party prevails in the proceeding.

3. The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

[(1) Fifty cents a page for copying; and

(2) Five dollars for the certificate.**] in a written format fifty cents per page plus five dollars for certification, or in an electronic format five dollars for certification and copies.**

355.146. CORPORATE NAME REQUIREMENTS. — 1. A corporate name may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 355.126 and its articles of incorporation.

2. Except as authorized by subsection 3 of this section, a corporate name must be distinguishable upon the records of the secretary of state from any domestic **or foreign** corporation**, limited partnership, limited liability partnership, limited liability limited partnership, or limited liability company** existing under any law of this state or any foreign corporation authorized to transact business in this state, **[**or any limited partnership existing or transacting business in this state under chapter 359, RSMo,**] or any business entity organized, reserved, or registered under the laws of this state** or a name the exclusive right to which is, at the time, reserved.

3. A corporation may use the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to do business in this state and the proposed user corporation:

(1) Has merged with the other corporation;

(2) Has been formed by reorganization of the other corporation; or

(3) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

4. This chapter does not control the use of fictitious names.

355.631. ARTICLES OF MERGER. — 1. After a plan of merger is approved by the board of directors, shareholders, and if required by section 355.626, by the members and any other persons, the surviving or acquiring corporation shall deliver to the secretary of state articles of merger setting forth:

(1) The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is herein designated as "the surviving corporation";

(2) The plan of merger;

(3) If approval by members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors;

(4) If approval by members was required:

(a) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and number of votes of each class indisputably voting on the plan; and

(b) Either the total number of votes cast for and against the plan by each class entitled to vote separately on the plan or the total number of undisputed votes cast for the plan by each class and a statement that the number cast for the plan by each class was sufficient for approval by that class;

(5) If approval of the plan by some person or persons other than the members or the board is required pursuant to subdivision (3) of subsection 1 of section 355.626, a statement that the approval was obtained;

(6) If approval by shareholders was required, then a statement as to the manner and basis of converting the shares of each merging corporation into cash, property, memberships or other securities or obligations of the surviving corporation, or, if any shares of any merging corporation are not to be converted solely into cash, property, memberships or other securities or obligations of the surviving corporation, into cash, property, shares or other securities or obligations of any other domestic or foreign corporation, which cash, property, shares or other securities or obligations of any other domestic or foreign corporation may be in addition to or completely in lieu of cash, property, shares or other securities or obligations of the surviving corporation;

(7) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by the merger.

2. The articles of merger shall be executed in duplicate by each nonprofit or business corporation as follows:

(1) Signed **[**and verified**]** as provided in subdivision (1) of subsection 6 of section 355.011 for nonprofit corporations;

(2) Signed **[**and verified**]** as provided in section 351.430, RSMo, for business corporations.

356.012. FILING OF STATEMENT OR DOCUMENT REPRESENTS BELIEF THAT STATEMENTS ARE TRUE AND CORRECT. — Any statement or document filed under this chapter represents that the signor believes the statements are true and correct to the best knowledge and belief of the person signing, subject to the penalties provided under section 575.040, RSMo.

356.071. REGULATING NAME OF CORPORATION. — [1.**]** The name of a professional corporation or of a foreign professional corporation authorized to transact business in this state shall:

(1) Contain the words "Professional Corporation" or the abbreviation "P.C." and the corporation shall identify itself with such designation in the course of rendering any professional service;

(2) Not contain any word or phrase that indicates or implies that it is organized for any purpose other than the purposes contained in its articles of incorporation;

(3) Be distinguishable from (as the preceding standards may be defined at the time of incorporation or qualification in or under the general and business corporation law of Missouri, chapter 351, RSMo) the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at such time, reserved in the manner provided in the general and business corporation law of Missouri, chapter 351, RSMo, **the not-for-profit corporation law, chapter 355, RSMo,** the uniform limited partnership law, chapter 359, RSMo, **the uniform partnership law relating to registered limited liability partnerships and limited liability limited partnerships, chapter 358, RSMo,** or the limited liability company act, chapter 347, RSMo, or the name of an entity that has in effect a registration of its corporate name under either chapter **347,** 351**, 355, 358,** or 359, RSMo**, or any other business entity organized, reserved, or registered under the laws of this state**; except that, this provision shall not apply if:

(a) Such similarity results from the use in the corporate name of the professional corporation or foreign professional corporation personal names of its shareholders or former shareholders; or

(b) The applicant files with the secretary of state either of the following:

a. If the name is the same, a change whereby a word is added to make such name distinguishable from the name of such other corporation, limited partnership or limited liability company; or

b. A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name in this state; and

(4) Otherwise conform to any rule promulgated by any licensing authority having jurisdiction over a professional service described in the articles of incorporation of such corporation.

[2. Any corporation organized pursuant to laws which are repealed by sections 356.011 to 356.261 shall amend its articles of incorporation to comply with the provisions of this section on or before the date one year after August 13, 1986, which amendment shall be accepted by the secretary of state for filing and shall be processed without cost to the corporation. The secretary of state shall give notice of the requirement of this section to any corporation that fails to comply with this section within nine months after August 13, 1986, including the name to which the corporate name will be changed by the secretary of state if its name is not voluntarily changed within the one-year period set by this subsection. The articles of incorporation of any corporation that has not so amended its articles of incorporation to comply with this section within the one-year period set by this subsection shall then be automatically amended by force of law to comply with this section. The secretary of state shall then exercise its discretion to modify the name of the corporation according to its notice to comply with this section, and shall file such an amendment in its records and mail a copy of that amendment to the corporation.**]**

356.211. ANNUAL REGISTRATION REPORT — FILED WHEN, CONTENTS — FORM — FEE — PENALTIES FOR FAILURE TO FILE OR MAKING FALSE DECLARATIONS. — 1. Each professional corporation and each foreign professional corporation shall file with the secretary of state an annual corporation registration report pursuant to section 351.120, RSMo. The corporate registration report shall set forth the following information:

[(1)**]** The names and residence or physical business addresses of all officers, directors and shareholders of that professional corporation as of the date of the report;

[(2) A statement that each officer, director and shareholder is or is not a qualified person as defined in sections 356.011 to 356.261, and setting forth the date on which any shares of the professional corporation were no longer owned by a qualified person, and any subsequent disposition thereof;

(3) A statement as to whether or not suit has been instituted to fix the fair value of any shares not owned by a qualified person, and if so, the date on which and the court in which the same was filed.**]**

2. The report shall be made on a form to be prescribed and furnished by the secretary of state, and shall be executed by an officer of the corporation or authorized person.

3. A filing fee in the amount set out in section 351.125, RSMo, shall be paid with the filing of each report, and no other fees shall be charged therefor; except that, penalty fees may be imposed by the secretary of state for late filings. The report shall be filed subject to the time requirements of section 351.120, RSMo.

4. If a professional corporation or foreign professional corporation shall fail to file a report qualifying with the provisions of this section when such a filing is due, then the corporation shall be subject to the provisions of chapter 351, RSMo, that are applicable to a corporation that has failed to timely file the annual report required to be filed under chapter 351, RSMo.

358.440. REGISTRATION AS A LIMITED LIABILITY PARTNERSHIP — RENEWALS — WITHDRAWAL OF REGISTRATION — AMENDMENT — REVOCATION, EFFECT — FEES — FALSE STATEMENTS, PENALTY — FOREIGN PARTNERSHIP REQUIREMENTS. — 1. To register as a limited liability partnership pursuant to this section, a written application shall be filed **[**in duplicate**]** with the office of the secretary of state. The application shall set forth:

(1) The name of the partnership;

(2) The address of a registered office and the name and address of a registered agent for service of process required to be maintained by section 358.470;

(3) The number of partners in the partnership at the date of application;

(4) A brief statement of the principal business in which the partnership engages;

(5) That the partnership thereby applies for registration as a registered limited liability partnership; and

(6) Any other information the partnership determines to include in the application.

2. The application shall be signed on behalf of the partnership by a majority of the partners or by one or more partners authorized by a majority in interest of the partners to sign the application on behalf of the partnership.

3. The application shall be accompanied by a fee payable to the secretary of state of twenty-five dollars for each partner of the partnership, but the fee shall not exceed one hundred dollars. All moneys from the payment of this fee shall be deposited into the general revenue fund.

4. A person who files a document according to this section as an agent or fiduciary need not exhibit evidence of the partner's authority as a prerequisite to filing. Any signature on such document may be a facsimile. If the secretary of state finds that the filing conforms to law, the secretary of state shall:

(1) Endorse on **[**each**]** **the** copy the word "Filed" and the month, day and year of the filing;

(2) File the original in the secretary of state's office; and

(3) Return the **[**other**]** copy to the person who filed it or to the person's representative.

5. A partnership becomes a registered limited liability partnership on the date of the filing in the office of the secretary of state of an application that, as to form, meets the requirements of subsections 1 and 2 of this section and that is accompanied by the fee specified in subsection 3 of this section, or at any later time specified in the application.

6. An initial application filed under subsection 1 of this section by a partnership registered by the secretary of state as a limited liability partnership expires one year after the date of registration unless earlier withdrawn or revoked or unless renewed in accordance with subsection 9 of this section.

7. If a person is included in the number of partners of a registered limited liability partnership set forth in an application, a renewal application or a certificate of amendment of an application or a renewal application, the inclusion of such person shall not be admissible as evidence in any action, suit or proceeding, whether civil, criminal, administrative or investigative, for the purpose of determining whether such person is liable as a partner of such registered limited liability partnership. The status of a partnership as a registered limited liability partnership and the liability of a partner of such registered limited liability partnership shall not be adversely affected if the number of partners stated in an application, a renewal application or a certificate of amendment of an application or a renewal application is erroneously stated provided that the application, renewal application or certificate of amendment of an application or a renewal application was filed in good faith.

8. Any person who files an application or a renewal application in the office of the secretary of state pursuant to this section shall not be required to file any other documents pursuant to chapter 417, RSMo, which requires filing for fictitious names.

9. An effective registration may be renewed before its expiration by filing in duplicate with the secretary of state an application containing current information of the kind required in an initial application, including the registration number as assigned by the secretary of state. The renewal application shall be accompanied by a fee of one hundred dollars on the date of renewal plus, if the renewal increases the number of partners, fifty dollars for each partner added, but the fee shall not exceed two hundred dollars. All moneys from such fees shall be deposited into the general revenue fund. A renewal application filed under this section continues an effective registration for one year after the date the effective registration would otherwise expire.

10. A registration may be withdrawn by filing **[**in duplicate**]** with the secretary of state a written withdrawal notice signed on behalf of the partnership by a majority of the partners or by one or more partners authorized by a majority of the partners to sign the notice on behalf of the partnership. A withdrawal notice shall include the name of the partnership, the date of registration of the partnership's last application under this section, and a current street address of the partnership's principal office in this state or outside the state, as applicable. A withdrawal notice terminates the registration of the partnership as a limited liability partnership as of the date of filing the notice in the office of the secretary of state. The withdrawal notice shall be accompanied by a filing fee of twenty dollars.

11. If a partnership that has registered pursuant to this section ceases to be registered as provided in subsection 6 or 10 of this section, that fact shall not affect the status of the partnership as a registered limited liability partnership prior to the date the partnership ceased to be registered pursuant to this section.

12. A document filed under this section may be amended or corrected by filing **[**in duplicate**]** with the secretary of state articles of amendment, signed by a majority of the partners or by one or more partners authorized by a majority of the partners. The articles of amendment shall contain:

(1) The name of the partnership;

(2) The identity of the document being amended;

(3) The part of the document being amended; and

(4) The amendment or correction.

The articles of amendment shall be accompanied by a filing fee of twenty dollars plus, if the amendment increases the number of partners, fifty dollars for each partner added, but the fee shall not exceed two hundred dollars; provided that no amendment of an application or a renewal application is required as a result of a change after the application or renewal application is filed in the number of partners of the registered limited liability partnership or in the business in which the registered limited liability partnership engages. All moneys from such fees shall be deposited into the general revenue fund. The status of a partnership as a registered limited liability partnership shall not be affected by changes after the filing of an application or a renewal application in the information stated in the application or renewal application.

13. No later than ninety days after the happening of any of the following events, an amendment to an application or a renewal application reflecting the occurrence of the event or events shall be executed and filed by a majority in interest of the partners or by one or more partners authorized by a majority of the partners to execute an amendment to the application or renewal application:

(1) A change in the name of the registered limited liability partnership;

(2) Except as provided in subsections 2 and 3 of section 358.470, a change in the address of the registered office or a change in the name or address of the registered agent of the registered limited liability partnership.

14. Unless otherwise provided in this chapter or in the certificate of amendment of an application or a renewal application, a certificate of amendment of an application or a renewal application or a withdrawal notice of an application or a renewal application shall be effective at the time of its filing with the secretary of state.

15. The secretary of state may provide forms for the application specified in subsection 1 of this section, the renewal application specified in subsection 9 of this section, the withdrawal notice specified in subsection 10 of this section, and the amendment or correction specified in subsection 12 of this section.

16. The secretary of state may remove from its active records the registration of a partnership whose registration has been withdrawn, revoked or has expired.

17. The secretary of state may revoke the filing of a document filed under this section if the secretary of state determines that the filing fee for the document was paid by an instrument that was dishonored when presented by the state for payment. The secretary of state shall return the

document and give notice of revocation to the filing party by regular mail. Failure to give or receive notice does not invalidate the revocation. A revocation of a filing does not affect an earlier filing.

18. If any person signs a document required or permitted to be filed pursuant to sections 358.440 to 358.500 which the person knows is false in any material respect with the intent that the document be delivered on behalf of a partnership to the secretary of state for filing, such person shall be guilty of a class A misdemeanor. Unintentional errors in the information set forth in an application filed pursuant to subsection 1 of this section, or changes in the information after the filing of the application, shall not affect the status of a partnership as a registered limited liability partnership.

19. Before transacting business in this state, a foreign registered limited liability partnership shall:

(1) Comply with any statutory or administrative registration or filing requirements governing the specific type of business in which the partnership is engaged; and

(2) Register as a limited liability partnership as provided in this section by filing an application which shall, in addition to the other matters required to be set forth in such application, include a statement:

(a) That the secretary is irrevocably appointed the agent of the foreign limited liability partnership for service of process if the limited liability partnership fails to maintain a registered agent in this state or if the agent cannot be found or served with the exercise of reasonable diligence; and

(b) Of the address of the office required to be maintained in the jurisdiction of its organization by the laws of that jurisdiction or, if not so required, of the principal office of the foreign limited liability partnership.

20. A partnership that registers as a limited liability partnership shall not be deemed to have dissolved as a result thereof and is for all purposes the same partnership that existed before the registration and continues to be a partnership under the laws of this state. If a registered limited liability partnership dissolves, a partnership which is a successor to such registered limited liability partnership and which intends to be a registered limited liability partnership shall not be required to file a new registration and shall be deemed to have filed any documents required or permitted under this chapter which were filed by the predecessor partnership.

358.460. RESERVATION OF EXCLUSIVE RIGHT TO USE OF A NAME, PROCEDURE TO RESERVE, TIME PERIOD — FEE — TRANSFER OF NAME PERMITTED — CANCELLATION, PROCEDURE, FEE. — 1. The exclusive right to the use of a name of a registered limited liability partnership or foreign registered limited liability partnership may be reserved by:

(1) Any person intending to become a registered limited liability partnership or foreign registered limited liability partnership under this chapter and to adopt that name; and

(2) Any registered limited liability partnership or foreign registered limited liability partnership which proposes to change its name.

2. The reservation of a specified name shall be made by filing with the secretary of state an application, executed by the applicant, specifying the name to be reserved and the name and address of the applicant. If the secretary of state finds that the name is available for use by a registered limited liability partnership or foreign registered limited liability partnership, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of **[**one hundred twenty**]** **sixty** days. **[**Once having so reserved a name, the same applicant may again reserve the same name for successive one hundred twenty-day periods.**]** **A name reservation shall not exceed a period of one hundred eighty days from the date of the first name reservation application. Upon the one hundred eighty-first day the name shall cease reserve status and shall not be placed back in such status.** The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved,

specifying the name to be transferred and the name and address of the transferee. The reservation of a specified name may be canceled by filing with the secretary of state a notice of cancellation, executed by the applicant or transferee, specifying the name reservation to be canceled and the name and address of the applicant or transferee.

3. A fee in the amount of twenty-five dollars shall be paid to the secretary of state upon receipt for filing of an application for reservation of name, an application for renewal of reservation or a notice of transfer or cancellation pursuant to this section. All moneys from the payment of this fee shall be deposited into the general revenue fund.

358.490. FEES CHARGED FOR COPIES OF PARTNERSHIP PAPERS FILED WITH SECRETARY OF STATE — CERTIFICATE OF GOOD STANDING OF PARTNERSHIP MAY BE ISSUED BY SECRETARY OF STATE, FEE. — 1. A fee in the amount of five dollars shall be paid to the secretary of state for a certified copy of any paper on file as provided for by this chapter**[**, and a fee in the amount of five dollars for the first page and**] in a written electronic format.** One dollar for each additional page shall be paid to the secretary of state **[**for the use of the state of Missouri for each page copied**] for written requests**. Moneys from such fees shall be paid into the general revenue fund.

2. The secretary of state may issue certificates of good standing relating to the registered limited liability partnerships **in a written or electronic format** for a fee in the amount of **[**twenty**] five** dollars, except that for issuing **[**a certificate of good standing**] an abstract** that recites all of the registered limited liability partnership's filings with the secretary of state, a fee of **[**one hundred**] five** dollars shall be paid to the secretary of state.

359.021. NAME OF LIMITED PARTNERSHIP REGULATED. — The name of each limited partnership as set forth in its certificate of limited partnership:

(1) Shall contain the words "limited partnership" or the abbreviation "LP" or "L.P.";

(2) May not contain the name of a limited partner unless:

(a) It is also the name of a general partner or the corporate name of a corporate general partner; or

(b) The business of the limited partnership has been carried on under that name before the admission of that limited partner;

(3) Shall be distinguishable from the name of any domestic corporation, limited partnership**, limited liability partnership, or limited liability limited partnership,** or limited liability company existing under the law of this state or any foreign corporation, foreign limited partnership**, foreign limited liability partnership, or foreign limited liability limited partnership,** or foreign limited liability company authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter **or any other business entity organized, reserved, or registered under the laws of this state**. If the name is the same, a word must be added to make such name distinguishable from the name of such other corporation, limited liability company**, limited liability partnership, or limited liability limited partnership,** or limited partnership;

(4) May not contain the following words: "corporation", "incorporated", or an abbreviation of one of such words;

(5) May not contain any word or phrase which indicates or implies that it is a governmental agency.

359.031. RESERVATION OF RIGHT TO EXCLUSIVE USE OF NAME. — 1. The exclusive right to the use of a name may be reserved by:

(1) Any person intending to organize a limited partnership under this chapter and to adopt that name;

(2) Any domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name;

(3) Any foreign limited partnership intending to register in this state and adopt that name; and

(4) Any person intending to organize a foreign limited partnership and intending to have it register in this state and adopt that name.

2. The reservation shall be made by filing with the secretary of state an application, in a form prescribed by the secretary of state, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is not registered with the secretary of state as a fictitious name pursuant to section **[**417.215**]** **417.210**, RSMo, as a corporation name or a limited partnership name, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of sixty days. **A name reservation shall not exceed a period of one hundred eighty days from the date of the first name reservation application. Upon the one hundred eighty-first day the name shall cease reserve status and shall not be placed back in such status.** The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

359.041. REGISTERED AGENT AND REGISTERED OFFICE — PROCEDURE FOR CHANGING, FILED BY LIMITED PARTNERSHIP, FILED BY REGISTERED AGENT — EFFECTIVE WHEN — FAILURE TO MAINTAIN, EFFECT. — 1. Each limited partnership shall continuously maintain in this state:

(1) A registered office which may be, but need not be, a place of its business in this state; and

(2) A registered agent for service of process on the limited partnership, which agent may be either an individual, resident in this state, whose business office is identical with such registered office, or a domestic corporation or a foreign corporation authorized to do business in this state, whose business office is identical with such registered office.

2. A limited partnership may from time to time change the address of its registered office. A limited partnership shall change its registered agent if the office of registered agent shall become vacant for any reason, if its registered agent becomes disqualified or incapacitated to act, or if the limited partnership revokes the appointment of its registered agent. A limited partnership may change the address of its registered office or change its registered agent, or both, by filing in the office of the secretary of state, on a form approved by the secretary of state, a statement setting forth:

(1) The name of the limited partnership;

(2) The address, including street and number, if any, of its then registered office;

(3) If the address of its registered office be changed, the address, including street and number, if any, to which the registered office is to be changed;

(4) The name of its then registered agent;

(5) If its registered agent be changed, the name of its successor registered agent and the successor registered agent's written consent to the appointment either on the statement or attached thereto;

(6) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and

(7) That such change was authorized by the limited partnership.

3. Such statement shall be executed in duplicate by the limited partnership by a general partner, and delivered to the secretary of state. The execution of such a statement by a general partner constitutes an affirmation under the penalties of **[**perjury**]** **section 575.040, RSMo,** that the facts stated therein are true. If the secretary of state finds that such statement conforms to the provisions of this chapter, the secretary of state shall file the same, keeping the original and returning the other copy to the limited partnership or to its representative.

4. The change of address of the registered office, or the change of the registered agent, or both, as the case may be, shall become effective upon the filing of such statement by the secretary of state. The location or residence of any limited partnership shall be deemed for all purposes to be in the county where its registered office is maintained.

5. If a registered agent changes the street address of his business office, he may change the street address of the registered office of any limited partnership for which he is the registered agent by notifying the limited partnership in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement of change that complies with the requirements of subsection 2 of this section and recites that the limited partnership has been notified of the change. The change of address of the registered office shall become effective upon the filing of the statement to the secretary of state.

6. In the event that a limited partnership shall fail to appoint or maintain a registered agent in this state, then the secretary of state, as long as such default exists, shall be automatically appointed as an agent of such limited partnership upon whom any process, notice, or demand required or permitted by law to be served upon the limited partnership may be served. Service on the secretary of state of any process, notice or demand against a limited partnership shall be made by delivering to and leaving with the secretary of state, or with any clerk having charge of the limited partnership department of the secretary of state's office, a copy of such process, notice or demand. In the event that any process, notice, or demand is served on the secretary of state, the secretary of state shall immediately cause a copy thereof to be forwarded by registered mail, addressed to the limited partnership at its registered office in this state. Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a limited partnership in any other manner now or hereafter permitted by law.

359.121. EXECUTION OF CERTIFICATE. — 1. Each certificate required by this chapter to be filed in the office of the secretary of state shall be executed in the following manner:

(1) An original certificate of limited partnership must be signed by all general partners;

(2) A certificate of amendment must be signed by at least one general partner and by each other general partner designated in the certificate as a new general partner;

(3) A certificate of cancellation must be signed by all general partners.

2. Any person may sign a certificate by an attorney-in-fact, but a power of attorney to sign a certificate relating to the admission of a general partner shall specifically describe the admission.

3. The execution of a certificate by a general partner constitutes an affirmation under the penalties of **[**perjury**]** **section 575.040, RSMo,** that the facts stated therein are true.

359.141. FILING WITH SECRETARY OF STATE — DUTIES OF SECRETARY — EFFECTIVE DATE OF FILING. — 1. **[**Duplicate originals or the**]** **An** original **[**and a**]** copy of the certificate of limited partnership and of any certificates of amendment or cancellation (or of any judicial decree of amendment or cancellation) shall be delivered to the secretary of state. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Unless the secretary of state finds that any certificate does not conform to law, upon receipt of all filing fees required by law, he shall:

(1) Endorse on **[**each copy**]** **the document** the word "Filed" and the day, month and year of the filing thereof;

(2) File the original in his office; and

(3) Return **[**the other**]** **a** copy to the person who filed it or his representative.

2. Upon the filing of a certificate of amendment (or judicial decree of amendment) in the office of the secretary of state, the certificate of limited partnership shall be amended as set forth therein, and upon the effective date of a certificate of cancellation (or a judicial decree thereof), the certificate of limited partnership is canceled; however, any such certificate of amendment or cancellation may provide that it is not to become effective until a specified date after its filing

date, but such date shall not be more than ninety days after its filing date and the certificate issued by the secretary of state shall indicate such defined effective date.

359.145. STATEMENT OF CORRECTION AUTHORIZED, WHEN — CONTENTS — EFFECTIVE DATE — FEE — REQUIRED SIGNATURE. — 1. A domestic or foreign limited partnership may file a statement of correction in a format prescribed by the secretary of state, if the document contains an incorrect statement as of the date such document was filed.

2. The statement of correction shall:

(1) State the name of the limited partnership;

(2) State the type of document being corrected;

(3) State the name of the jurisdiction under the law of organization;

(4) Describe the incorrect statement and the reason for the correction;

(5) If the correction is for a foreign limited partnership with regard to an incorrect name, provide a certificate of existence, or document of similar import, duly authenticated by the secretary of state or other official having custody of the records in the state or country under whose laws it is registered;

3. Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons articles of correction are effective when filed.

4. The secretary of state shall collect a filing fee of five dollars upon filing the statement of correction.

5. The statement of correction shall be signed by an authorized person of the limited liability partnership.

359.172. REGISTERED LIMITED LIABILITY LIMITED PARTNERSHIP, REQUIREMENTS, FAILURE TO FILE TIMELY AMENDMENT TO CERTIFICATE, PENALTY. — 1. To become and to continue as a registered limited liability limited partnership, a limited partnership shall, in addition to complying with the requirements of this chapter:

(1) File an application or a renewal application, as the case may be, as provided in section 358.440, RSMo, as permitted by the limited partnership's partnership agreement or, if the limited partnership's partnership agreement does not provide for the limited partnership's becoming a registered limited liability limited partnership, with the approval by all general partners and the limited partners, or, if there is more than one class or group of limited partners, then by each class or group of limited partners, in either case, by limited partners who own more than fifty percent of the then current percentage or other interest in the profits of the limited partnership owned by all of the limited partners in each class or group, as appropriate;

(2) Comply with sections 358.440 to 358.501, RSMo; and

(3) Have as the last words or letters of its name the words "Registered Limited Liability Limited Partnership", or the abbreviation "L.L.L.P.", or the designation "LLLP".

2. In applying sections 358.440 to 358.501, RSMo, to a limited partnership:

(1) An application to become a registered limited liability limited partnership, a renewal application to continue as a registered limited liability limited partnership, a certificate of amendment of an application or a renewal application, or a withdrawal notice of an application or a renewal application shall be executed by at least one general partner of the limited partnership; and

(2) All references to partners mean general partners only.

3. If a limited partnership is a registered limited liability limited partnership, its partners who are liable for the debts, liabilities and other obligations of the limited partnership shall have the limitation on liability afforded to partners of registered limited liability partnerships pursuant to chapter 358, RSMo.

4. The filing of an application to become a registered limited liability limited partnership shall constitute the filing of an amendment to the limited partnership's certificate of limited partnership for the purposes of causing the name of the limited partnership to comply with the provisions of subdivision (3) of subsection 1 of this section. In the event a limited partnership ceases to be registered in this state as limited liability limited partnership for any reason, the limited partnership shall, within ninety days thereafter, file an amendment to its certificate of limited partnership correcting the designation set forth in subdivision (3) of subsection 1 of this section. In the event the limited partnership fails to timely file an amendment to its certificate of limited partnership as required pursuant to this subsection, the general partners in office at such time may be individually subject to a civil penalty in the amount of ten dollars per **[**day**]** **month** for each **[**day**]** **month** the amendment has not been timely filed, but not to exceed ten thousand dollars, such penalty to be assessed and collected by the secretary, and prosecuted criminally pursuant to section 359.691 with any resulting conviction being a class B misdemeanor and the secretary shall be authorized to file a notice to change the name of the limited partnership to remove the designation required pursuant to subsection 1 of this section.

359.501. REGISTRATION WITH SECRETARY OF STATE — FORM — CONTENTS. — Before transacting business in this state, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state**[**, in duplicate,**]** an application for registration as a foreign limited partnership, signed **[**and sworn to**]** by a general partner and setting forth:

(1) The name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this state;

(2) The state and date of its formation;

(3) The name and address of its registered agent and registered office in this state which office and agent shall be subject to the same rights and limitations as provided in section 359.041;

(4) A statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if no agent has been appointed under subdivision (3) of this section or, if appointed, the agent's authority has been revoked or if the agent cannot be found or served with the exercise of reasonable diligence;

(5) The address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership;

(6) The name and business address of each general partner; **[**and**]**

(7) The address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is canceled**; and**

(8) The application shall include a certificate of existence or document of similar import duly authenticated by the secretary of state or other official having custody of the records in the state or country whose laws it is registered, such document should be dated within sixty calendar days from filing for acceptance.

359.531. CHANGES AND AMENDMENTS IN REGISTRATION, WHEN, CONTENTS — FOREIGN CERTIFICATION INCLUDED — FEE. — **[**If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the secretary of state a certificate, signed and sworn to by a general partner, correcting such statement.**] 1. A foreign limited partnership authorized to transact business in this state shall obtain an amended certificate of registration from the secretary of state if it changes:**

(1) The name of the limited partnership;

(2) The state or country of its registration;

(3) The address of the office required to be maintained in the state of its organization by the laws of that state or if not so required of the principal office of the foreign limited partnership;

(4) The name and business address of any general partner; and

(5) The address of the office at which is kept a list of the names and addresses and capital contributions of the limited partners.

2. The amendment shall include a certificate of existence or document of similar import duly authenticated by the secretary of state or other official having custody of the records in the state or country under whose laws it is registered, such document should be dated within sixty calendar days from filing for acceptance.

3. The fee for filing an amended certificate of registration shall be twenty dollars.

359.541. CANCELLATION OF REGISTRATION — AUTHORITY OF SECRETARY TO ACCEPT SERVICE OF PROCESS. — A foreign limited partnership may cancel its registration by filing with the secretary of state a certificate of cancellation signed **[**and sworn**]** to by a general partner. A cancellation does not terminate the authority of the secretary of state to accept service of process on the foreign limited partnership with respect to causes of action arising out of the transaction of business in this state.

417.210. REGISTRATION, WHEN AND HOW — CONTENTS — CANCELLATION OF FICTITIOUS NAME — OWNERSHIP REFLECTED IN REGISTRATION, WHEN — REGISTRATION EFFECTIVE AND EXPIRATION DATES — RENEWALS, CONTENTS, EFFECTIVE DATE. — 1. Every person, general partnership, corporation, or other business organization who engages in business in this state under a fictitious name or under any name other than the true name of such person, general partnership, corporation, or other business **[**organization**]** **entity** shall, within five days after the beginning or engaging in business under such fictitious name**[**, execute the form**]** **shall file in a format as prescribed by the secretary of state. The execution of the filing** required in this section, and shall be subject to the penalties of making a false declaration pursuant to section 575.060, RSMo, that the facts stated therein are true and that all parties concerned are duly authorized to execute such document and are otherwise required to file such document pursuant to this section **[**upon fictitious name forms furnished by the secretary of state, such partnership or other fictitious name in the office of the secretary of state, together with the name or names and the residence of each and every person, partnership, corporation, or other business organization interested in or owning any part of the business; provided, that if the interest of any owner shall cease to exist, or any other person, partnership, corporation, or other entity shall become an owner, such fictitious name shall be reregistered within five days after any such change shall take place in the ownership of the business or any part thereof as set forth in the original registration, and such reregistration shall in all respects be made as in the case of an original registration of such fictitious name; provided, that the provisions of this section shall not apply to farmers' mutual insurance companies nor farmers' mutual telephone companies**]**.

2. **A fictitious name shall not contain any word or phrase that indicates or implies that it is any governmental agency or that is seriously misleading.**

3. This registration shall state:

(a) The fictitious name;

(b) The physical business address;

(c) The name or names and the residence or business address of every party owning any interest or part in the business.

4. If the business or owner or owners interest ceases to exist or change within five days of such change, it shall be required to file a cancellation of the fictitious name in a

format prescribed by the secretary of state and if desired may file a new registration of a new fictitious name as prescribed in this section.

5. If the interest of any owner of a business conducted under a fictitious name registered as provided in this section is such that such owner may claim not to be jointly and severally liable to third parties with respect to debts and obligations incurred by such business, the registration relating to such business shall reflect the respective exact ownership interests of each owner of such business. In the case of any other business registered as provided in this section, disclosure of the respective exact ownership interests shall be optional.

[3.**]** **6.** For purposes of this section, a partnership or other entity formed for the practice of a licensed profession shall not be deemed to be engaged in the conduct of business, notwithstanding the transaction by such entity of business ancillary to the practice of such licensed profession.

7. All fictitious name registrations filed on or after the effective date of this section shall be governed by the provisions of this section and shall remain active on the record of the secretary of state for a period of five years. Such registered fictitious name filing shall expire at the end of the five-year period unless a renewal is filed under subsection 9 of this section.

8. All active fictitious name registrations filed prior to the effective date of this section shall remain active on the record of the secretary of state for a period of five years. Such registered fictitious name filing shall expire at the end of the five-year period unless a renewal is filed under subsection 9 of this section.

9. A renewal filing shall be filed in a format prescribed by the secretary of state within six months prior to the expiration date of the fictitious name registration. Such renewal filing shall state:

(a) The fictitious name and assigned charter number;

(b) The physical business address;

(c) The name or names and the residence or business address of every party owning any interest or part in the business.

10. A renewal filing continues the effective registration of the fictitious name for five years after the date the effective registration would otherwise expire.

11. Fictitious name registrations filed before the effective date of this section shall be inactivated by the secretary of state on or after August 28, 2009, unless a renewal filing is filed under subsection 9 of this section.

12. The secretary of state may remove from its active records the registration of a fictitious name filing whose registration has been withdrawn, cancelled, or has expired.

417.217. FOREIGN CORPORATIONS, REGISTRATION, WHEN — EXEMPTION FROM, WHEN. — Foreign **[**corporations**]** **business entities** which **[**act as a general partner of any general or limited partnership**]** **have any owning interest or part in this business may be** required to register **[**under this act or which are interested in or own any part of any other business required to register hereunder shall**]** **with the secretary of state as prescribed. The foreign business entity may be required to** first obtain a certificate of authority **[**pursuant to subsection 1 of section 351.572, RSMo, unless exempted by subsection 2 of section 351.572, RSMo**]** **unless otherwise exempt by Missouri law**.

417.220. REGISTRATION FEE. — For the registration **or renewal** of each fictitious name **[**as in**]** **under** sections 417.200 to 417.230 **[**required,**]** there shall be paid to the state director of revenue a fee of two dollars **if filed electronically in a format prescribed by the secretary of state or if filed in a written format prescribed by the secretary of state**.

[347.159. CERTIFICATE OF CORRECTION OF REGISTRATION. — If any statement in the application for registration of a foreign limited liability company was erroneous when made or

any arrangements or other facts described have changed, making the application inaccurate in any respect, a foreign limited liability company shall promptly file with the secretary a certificate of correction setting forth the information required by section 347.055 correcting such statement, signed and acknowledged on its behalf by a manager, member or other authorized agent.**]**

[417.215. REGISTRATION OF LIMITED PARTNERSHIPS, WHEN, HOW, CONTENTS. — Every limited partnership which shall engage in business in this state prior to January 1, 1987, shall, within five days after beginning or engaging in business, register by verified statement of a general partner who is empowered to act on behalf of the limited partnership, upon blanks furnished by the secretary of state, the name and address of the limited partnership, the names and addresses of all general partners, the county and the state in which the limited partnership certificate is filed, and the book and page number where such certificate may be found, in the office of the secretary of state; provided, that if an amendment to such certificate reflecting the admission or withdrawal of any general partner in such limited partnership is filed with the appropriate recorder of deeds or other filing authority, the secretary of state shall be informed of such filing, including the book and page number of such amended certificate, in the manner required in a new registration.**]**

Approved July 2, 2004

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