

SB 1 [CCS HCS SS SCS SB 1 & 130]

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 of workers compensation law

AN ACT to repeal sections 286.020, 287.020, 287.040, 287.063, 287.067, 287.110, 287.120, 287.127, 287.128, 287.129, 287.140, 287.143, 287.150, 287.170, 287.190, 287.197, 287.203, 287.215, 287.380, 287.390, 287.420, 287.510, 287.550, 287.610, 287.615, 287.616, 287.642, 287.710, 287.715, 287.800, 287.812, 287.865, 287.894, 287.957, and 287.972, RSMo, and to enact in lieu thereof forty new sections relating to workers' compensation law, with penalty provisions and an effective date for certain sections.

SECTION

- A. Enacting clause.
- 286.020. Term of office — vacancies — confirmation before the senate — failure to receive confirmation, effect — removal of member.
- 287.020. Definitions — intent to abrogate earlier case law.
- 287.040. Liability of employer — contractors, subcontractors.
- 287.041. For-hire motor carrier not an employer of a lessor — definition.
- 287.043. Abrogation of case law regarding definition of owner.
- 287.063. Occupational diseases, presumption of exposure — last employer liable — statute of limitations, starts running, when.
- 287.067. Occupational disease defined — repetitive motion, loss of hearing, radiation injury, communicable disease, others.
- 287.110. Scope of chapter as to injuries and diseases covered.
- 287.120. Liability of employer set out — compensation increased or reduced, when — use of alcohol or controlled substances or voluntary recreational activities, injury from — effect on compensation — mental injuries, requirements, firefighter stress not affected.
- 287.127. Notice, employer to post, contents — division to provide notice, when — penalty.
- 287.128. Unlawful acts, penalties — fraud or noncompliance, complaint may be filed, effect — fraud and noncompliance unit established, purpose, confidentiality of records — annual report, contents.
- 287.129. False billing practices of health care provider, defined, effect — department of insurance, powers — penalty.
- 287.140. Employer to provide medical and other services, transportation, artificial devices, reactivation of claim — duties of health care providers — refusal of treatment, effect — medical evidence — division, commission responsibilities — notice to health care provider of workers' compensation claim, contents, effect — use of employee leave time.
- 287.143. Vocational rehabilitation services, not mandatory — testing and assessment.
- 287.150. Subrogation to rights of employee or dependents against third person, effect of recovery — construction design professional, immunity from liability, when, exception — waiver of subrogation rights on certain contracts void, employer's lien on subrogation recovery, when.
- 287.170. Temporary total disability, amount to be paid — method of payment — disqualification, when — post injury misconduct defined.
- 287.190. Permanent partial disability, amount to be paid — permanent partial disability defined — permanent total and partial total disability require certification by physician on compensability — award reduced when.
- 287.197. Occupational deafness — tests, claims, awards, liability of employer, effect of hearing aid.
- 287.203. Termination of compensation by employer, employee right to hearing — assessment of costs.
- 287.215. Injured employee to be furnished copy of his statement, otherwise inadmissible as evidence, statement what is not to be included.
- 287.253. Monetary bonus, effect on benefits.
- 287.380. Employer or insurer to make report to division, requirements — information not to be disclosed — failure to report, penalty.
- 287.390. Compromise settlements, how made — validity, effect, settlement with minor dependents — employee entitled to one hundred percent of offer, when.
- 287.420. Written notice of injury to be given to employer — exceptions.
- 287.510. Temporary or partial awards may be made.
- 287.550. Proceedings before commission to be informal and summary.
- 287.610. Additional administrative law judges, appointment and qualification, limit on number — annual evaluations — performance audit standards, review committee, retention vote — jurisdiction, powers — continuing training required — performance audits required — rules.
- 287.615. Employees of division — compensation — selection.

- 287.642. Public information programs, division to establish.
 287.710. Tax returns — payments — use of proceeds — funds and interest not to lapse.
 287.715. Annual surcharge required for second injury fund, amount, how computed, collection — violation, penalty.
 287.800. Law to be strictly construed.
 287.801. Review of claims, by whom.
 287.804. Waiver of compensation by employee, procedure.
 287.808. Burden of proof.
 287.812. Definitions.
 287.865. Moneys not deemed state moneys — use of funds — reports to director, when — additional powers of corporation — assessments, division shall levy, amount — no dividends to be paid — bankruptcy, dissolution, or insolvency of self-insured member, procedure.
 287.894. Insurers to report medical claims data to division of workers' compensation, contents — consolidated health plan, duties — purpose — costs — penalty for failure to comply.
 287.957. Experience rating plan, contents.
 287.972. Advisory organization's permitted activities — director may allow pure premium rate data to be distributed.
 287.616. Legal advisors to act as associate administrative law judges, when, powers.
 B. Effective date.

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

SECTION A. ENACTING CLAUSE. — Sections 286.020, 287.020, 287.040, 287.063, 287.067, 287.110, 287.120, 287.127, 287.128, 287.129, 287.140, 287.143, 287.150, 287.170, 287.190, 287.197, 287.203, 287.215, 287.380, 287.390, 287.420, 287.510, 287.550, 287.610, 287.615, 287.616, 287.642, 287.710, 287.715, 287.800, 287.812, 287.865, 287.894, 287.957, and 287.972, RSMo, are repealed and forty new sections enacted in lieu thereof, to be known as sections 286.020, 287.020, 287.040, 287.041, 287.043, 287.063, 287.067, 287.110, 287.120, 287.127, 287.128, 287.129, 287.140, 287.143, 287.150, 287.170, 287.190, 287.197, 287.203, 287.215, 287.253, 287.380, 287.390, 287.420, 287.510, 287.550, 287.610, 287.615, 287.642, 287.710, 287.715, 287.800, 287.801, 287.804, 287.808, 287.812, 287.865, 287.894, 287.957, and 287.972, to read as follows:

286.020. TERM OF OFFICE — VACANCIES — CONFIRMATION BEFORE THE SENATE — FAILURE TO RECEIVE CONFIRMATION, EFFECT — REMOVAL OF MEMBER., — The term of office of each member of the commission shall be six years except that when first constituted one member shall be appointed for two years, one for four years and one for six years, and thereafter all vacancies shall be filled as they occur. The terms of office of the first members of the commission shall begin on the date of their appointment which shall be within thirty days after the effective date of this chapter. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed, shall be appointed by the governor, by and with the advice and consent of the senate, for the remainder of such term. **Every commission member appointed to serve, either as a permanent, an acting, a temporary, an interim, or as a legislative recess appointment, shall appear for confirmation before the senate within thirty days after the senate next convenes for regular session. Any member appointed to or serving the labor and industrial relations commission without senate confirmation after said time period shall immediately resign from the commission and shall not be reappointed to the same office or position in accordance with section 51 of article IV of the Missouri Constitution.** The governor may remove any member of the commission, after notice and hearing, for gross inefficiency, mental or physical incapacity, neglect of duties, malfeasance, misfeasance or nonfeasance in office, incompetence or for any offense involving moral turpitude or oppression in office.

287.020. DEFINITIONS — INTENT TO ABROGATE EARLIER CASE LAW. — 1. The word "employee" as used in this chapter shall be construed to mean every person in the service of any employer, as defined in this chapter, under any contract of hire, express or implied, oral or

written, or under any appointment or election, including executive officers of corporations. Any reference to any employee who has been injured shall, when the employee is dead, also include his dependents, and other persons to whom compensation may be payable. The word "employee" shall also include all minors who work for an employer, whether or not such minors are employed in violation of law, and all such minors are hereby made of full age for all purposes under, in connection with, or arising out of this chapter. The word "employee" shall not include an individual who is the owner, **as defined in subsection 43 of section 301.010, RSMo**, and operator of a motor vehicle which is leased or contracted with a driver to a for-hire [common or contract] motor [vehicle] carrier operating within a commercial zone as defined in section 390.020 or 390.041, RSMo, or operating under a certificate issued by the [motor carrier and railroad safety division of the department of economic development] **Missouri department of transportation** or by the [interstate commerce commission] **United States Department of Transportation, or any of its subagencies.**

2. The word "accident" as used in this chapter shall[, unless a different meaning is clearly indicated by the context, be construed to] mean an unexpected [or unforeseen identifiable event or series of events happening suddenly and violently, with or without human fault,] **traumatic event or unusual strain identifiable by time and place of occurrence** and producing at the time objective symptoms of an injury **caused by a specific event during a single work shift.** [An injury is compensable if it is clearly work related. An injury is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability.] An injury is not compensable [merely] because work was a triggering or precipitating factor.

3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. [The injury must be incidental to and not independent of the relation of employer and employee. Ordinary, gradual deterioration or progressive degeneration of the body caused by aging shall not be compensable, except where the deterioration or degeneration follows as an incident of employment.] **An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.**

(2) An injury shall be deemed to arise out of and in the course of the employment only if:

(a) It is reasonably apparent, upon consideration of all the circumstances, that the [employment] **accident** is [a substantial] **the prevailing** factor in causing the injury; and

(b) [It can be seen to have followed as a natural incident of the work; and

(c) It can be fairly traced to the employment as a proximate cause; and

(d) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life;

(3) **An injury resulting directly or indirectly from idiopathic causes is not compensable;**

(4) **A cardiovascular, pulmonary, respiratory, or other disease, or cerebrovascular accident or myocardial infarction suffered by a worker is an injury only if the accident is the prevailing factor in causing the resulting medical condition;**

(5) The terms "injury" and "personal injuries" shall mean violence to the physical structure of the body and to the personal property which is used to make up the physical structure of the body, such as artificial dentures, artificial limbs, glass eyes, eyeglasses, and other prostheses which are placed in or on the body to replace the physical structure and such disease or infection as naturally results therefrom. These terms shall in no case except as specifically provided in this chapter be construed to include occupational disease in any form, nor shall they be construed to include any contagious or infectious disease contracted during the course of the employment, nor shall they include death due to natural causes occurring while the worker is at work.

4. "Death" when mentioned as a basis for the right to compensation means only death resulting from such violence and its resultant effects occurring within three hundred weeks after the accident; except that in cases of occupational disease, the limitation of three hundred weeks shall not be applicable.

5. [Without otherwise affecting either the meaning or interpretation of the abridged clause, "personal injuries arising out of and in the course of such employment", it is hereby declared not to cover workers except while engaged in or about the premises where their duties are being performed, or where their services require their presence as a part of such service.] **Injuries sustained in company-owned or subsidized automobiles in accidents that occur while traveling from the employee's home to the employer's principal place of business or from the employer's principal place of business to the employee's home are not compensable. The "extension of premises" doctrine is abrogated to the extent it extends liability for accidents that occur on property not owned or controlled by the employer even if the accident occurs on customary, approved, permitted, usual or accepted routes used by the employee to get to and from their place of employment.**

6. [A person who is employed by the same employer for more than five and one-half consecutive work days shall for the purpose of this chapter be considered an "employee".

7.] The term "total disability" as used in this chapter shall mean inability to return to any employment and not merely mean inability to return to the employment in which the employee was engaged at the time of the accident.

[8.] **7.** As used in this chapter and all acts amendatory thereof, the term "commission" shall hereafter be construed as meaning and referring exclusively to the labor and industrial relations commission of Missouri, and the term "director" shall hereafter be construed as meaning the director of the department of insurance of the state of Missouri or such agency of government as shall exercise the powers and duties now conferred and imposed upon the department of insurance of the state of Missouri.

[9.] **8.** The term "division" as used in this chapter means the division of workers' compensation of the department of labor and industrial relations of the state of Missouri.

[10.] **9.** For the purposes of this chapter, the term "minor" means a person who has not attained the age of eighteen years; except that, for the purpose of computing the compensation provided for in this chapter, the provisions of section 287.250 shall control.

10. In applying the provisions of this chapter, it is the intent of the legislature to reject and abrogate earlier case law interpretations on the meaning of or definition of "accident", "occupational disease", "arising out of", and "in the course of the employment" to include, but not be limited to, holdings in: Bennett v. Columbia Health Care and Rehabilitation, 80 S.W.3d 524 (Mo.App. W.D. 2002); Kasl v. Bristol Care, Inc., 984 S.W.2d 852 (Mo.banc 1999); and Drewes v. TWA, 984 S.W.2d 512 (Mo.banc 1999) and all cases citing, interpreting, applying, or following those cases.

287.040. LIABILITY OF EMPLOYER — CONTRACTORS, SUBCONTRACTORS. — 1. Any person who has work done under contract on or about his premises which is an operation of the usual business which he there carries on shall be deemed an employer and shall be liable under this chapter to such contractor, his subcontractors, and their employees, when injured or killed on or about the premises of the employer while doing work which is in the usual course of his business.

2. [The provisions of this section shall apply to the relationship of landlord and tenant, and lessor or lessee, when created for the fraudulent purpose of avoiding liability, but not otherwise. In such cases the landlord or lessor shall be deemed the employer of the employees of the tenant or lessee.

3.] The provisions of this section shall not apply to the owner of premises upon which improvements are being erected, demolished, altered or repaired by an independent contractor but such independent contractor shall be deemed to be the employer of the employees of his

subcontractors and their subcontractors when employed on or about the premises where the principal contractor is doing work.

[4.] **3.** In all cases mentioned in the preceding subsections, the immediate contractor or subcontractor shall be liable as an employer of the employees of his subcontractors. All persons so liable may be made parties to the proceedings on the application of any party. The liability of the immediate employer shall be primary, and that of the others secondary in their order, and any compensation paid by those secondarily liable may be recovered from those primarily liable, with attorney's fees and expenses of the suit. Such recovery may be had on motion in the original proceedings. No such employer shall be liable as in this section provided, if the employee was insured by his immediate or any intermediate employer.

4. The provisions of this section shall not apply to the relationship between a for-hire motor carrier operating within a commercial zone as defined in section 390.020 or 390.041, RSMo, or operating under a certificate issued by the Missouri department of transportation or by the United States Department of Transportation, or any of its subagencies, and an owner, as defined in subdivision (43) of section 301.010, RSMo, and operator of a motor vehicle.

287.041. FOR-HIRE MOTOR CARRIER NOT AN EMPLOYER OF A LESSOR — DEFINITION. — Notwithstanding any provision of section 287.030 and 287.040, for purposes of this law, in no event shall a for-hire motor carrier operating within a commercial zone as defined in section 360.041, RSMo, or section 390.020, RSMo, or operating under a certificate issued by the Missouri department of transportation or by the United States Department of Transportation, or its subagencies, be determined to be the employer of a lessor, as defined at 49 C.F.R. Section 376.2(f), or of a driver receiving remuneration from a lessor, as defined at 49 C.F.R. Section 376.2(f), 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.

287.043. ABROGATION OF CASE LAW REGARDING DEFINITION OF OWNER. — In applying the provisions of subsection 1 of section 287.020 and subsection 4 of section 287.040, it is the intent of the legislature to reject and abrogate earlier case law interpretations on the meaning of or definition of "owner", as extended in the following cases: *Owner Operator Independent Drivers Ass'n, Inc. v. New Prime, Inc.*, 133 S.W.3d 162 (Mo. App. S.D., 2004); *Nunn v. C.C. Midwest*, 151 S.W.3d 388 (Mo. App. W.D., 2004).

287.063. OCCUPATIONAL DISEASES, PRESUMPTION OF EXPOSURE — LAST EMPLOYER LIABLE — STATUTE OF LIMITATIONS, STARTS RUNNING, WHEN. — 1. An employee shall be conclusively deemed to have been exposed to the hazards of an occupational disease when for any length of time, however short, he is employed in an occupation or process in which the hazard of the disease exists, subject to the provisions relating to occupational disease due to repetitive motion, as is set forth in subsection 7 of section 287.067, RSMo.

2. The employer liable for the compensation in this section provided shall be the employer in whose employment the employee was last exposed to the hazard of the occupational disease [for which claim is made] **prior to evidence of disability**, regardless of the length of time of such last exposure, **subject to the notice provision of section 287.420.**

3. The statute of limitation referred to in section 287.430 shall not begin to run in cases of occupational disease until it becomes reasonably discoverable and apparent that [a compensable] **an injury has been sustained related to such exposure**, except that in cases of loss of hearing due to industrial noise said limitation shall not begin to run until the employee is eligible to file a claim as hereinafter provided in section 287.197.

287.067. OCCUPATIONAL DISEASE DEFINED — REPETITIVE MOTION, LOSS OF HEARING, RADIATION INJURY, COMMUNICABLE DISEASE, OTHERS. — 1. In this chapter the term "occupational disease" is hereby defined to mean, unless a different meaning is clearly indicated by the context, an identifiable disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

2. An **injury by occupational disease is compensable only** if [it is clearly work related and meets the requirements of an injury which is compensable as provided in subsections 2 and 3 of section 287.020. An occupational disease is not compensable merely because work was a triggering or precipitating factor.] **the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.**

3. **An injury due to repetitive motion is recognized as an occupational disease for purposes of this chapter. An occupational disease due to repetitive motion is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The prevailing factor is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.**

4. "Loss of hearing due to industrial noise" is recognized as an occupational disease for purposes of this chapter and is hereby defined to be a loss of hearing in one or both ears due to prolonged exposure to harmful noise in employment. "Harmful noise" means sound capable of producing occupational deafness.

[4.] 5. "Radiation disability" is recognized as an occupational disease for purposes of this chapter and is hereby defined to be that disability due to radioactive properties or substances or to Roentgen rays (X rays) or exposure to ionizing radiation caused by any process involving the use of or direct contact with radium or radioactive properties or substances or the use of or direct exposure to Roentgen rays (X rays) or ionizing radiation.

[5.] 6. Disease of the lungs or respiratory tract, hypotension, hypertension, or disease of the heart or cardiovascular system, including carcinoma, may be recognized as occupational diseases for the purposes of this chapter and are defined to be disability due to exposure to smoke, gases, carcinogens, inadequate oxygen, **of paid firefighters of a paid fire department or paid police officers of a paid police department certified under chapter 590, RSMo, if a direct causal relationship is established**, or psychological stress of firefighters of a paid fire department if a direct causal relationship is established.

[6.] 7. Any employee who is exposed to and contracts any contagious or communicable disease arising out of and in the course of his or her employment shall be eligible for benefits under this chapter as an occupational disease.

[7.] 8. With regard to occupational disease due to repetitive motion, if the exposure to the repetitive motion which is found to be the cause of the injury is for a period of less than three months and the evidence demonstrates that the exposure to the repetitive motion with [a] **the immediate** prior employer was the [substantial contributing] **prevailing** factor [to] **in causing** the injury, the prior employer shall be liable for such occupational disease.

287.110. SCOPE OF CHAPTER AS TO INJURIES AND DISEASES COVERED. — 1. This chapter shall apply to all cases within its provisions except those exclusively covered by any federal law **and those addressed in section 287.120.**

2. This chapter shall apply to all injuries received and occupational diseases contracted in this state, regardless of where the contract of employment was made, and also to all injuries received and occupational diseases contracted outside of this state under contract of employment made in this state, unless the contract of employment in any case shall otherwise provide, and also to all injuries received and occupational diseases contracted outside of this state where the employee's employment was principally localized in this state **within thirteen calendar weeks of the injury or diagnosis of the occupational disease.**

287.120. LIABILITY OF EMPLOYER SET OUT — COMPENSATION INCREASED OR REDUCED, WHEN — USE OF ALCOHOL OR CONTROLLED SUBSTANCES OR VOLUNTARY RECREATIONAL ACTIVITIES, INJURY FROM — EFFECT ON COMPENSATION — MENTAL INJURIES, REQUIREMENTS, FIREFIGHTER STRESS NOT AFFECTED. — 1. Every employer subject to the provisions of this chapter shall be liable, irrespective of negligence, to furnish compensation under the provisions of this chapter for personal injury or death of the employee by accident arising out of and in the course of [his] **the employee's** employment, and shall be released from all other liability therefor whatsoever, whether to the employee or any other person. The term "accident" as used in this section shall include, but not be limited to, injury or death of the employee caused by the unprovoked violence or assault against the employee by any person.

2. The rights and remedies herein granted to an employee shall exclude all other rights and remedies of the employee, his wife, her husband, parents, personal representatives, dependents, heirs or next kin, at common law or otherwise, on account of such accidental injury or death, except such rights and remedies as are not provided for by this chapter.

3. No compensation shall be allowed under this chapter for the injury or death due to the employee's intentional self-inflicted injury, but the burden of proof of intentional self-inflicted injury shall be on the employer or the person contesting the claim for allowance.

4. Where the injury is caused by the failure of the employer to comply with any statute in this state or any lawful order of the division or the commission, the compensation and death benefit provided for under this chapter shall be increased fifteen percent.

5. Where the injury is caused by the [willful] failure of the employee to use safety devices where provided by the employer, or from the employee's failure to obey any reasonable rule adopted by the employer for the safety of employees, [which rule has been kept posted in a conspicuous place on the employer's premises,] the compensation and death benefit provided for herein shall be reduced [fifteen] **at least twenty-five but not more than fifty** percent; provided, that it is shown that the employee had actual knowledge of the rule so adopted by the employer; and provided, further, that the employer had, prior to the injury, made a [diligent] **reasonable** effort to cause his **or her** employees to use the safety device or devices and to obey or follow the rule so adopted for the safety of the employees.

6. (1) Where the employee fails to obey any rule or policy adopted by the employer relating to **a drug-free workplace or** the use of alcohol or nonprescribed controlled drugs in the workplace, [which rule or policy has been kept posted in a conspicuous place on the employer's premises,] the compensation and death benefit provided for herein shall be reduced [fifteen] **fifty** percent if the injury was sustained in conjunction with the use of alcohol or nonprescribed controlled drugs; provided, that it is shown that the employee had actual knowledge of the rules or policy so adopted by the employer and, provided further that the employer had, prior to the injury, made a diligent effort to inform the employee of the requirement to obey any reasonable rule or policy adopted by the employer].

(2) If, however, the use of alcohol or nonprescribed controlled drugs in violation of the employer's rule or policy [which is posted and publicized as set forth in subdivision (1)] is the proximate cause of the injury, then the benefits or compensation otherwise payable under this

chapter for death or disability shall be forfeited. [The forfeiture of benefits or compensation shall not apply when:

(a) The employer has actual knowledge of the employee's use of the alcohol or nonprescribed controlled drugs and in the face thereof fails to take any recuperative or disciplinary action; or

(b) If, as part of the employee's employment, he is authorized by the employer to use such alcohol or nonprescribed controlled drugs.]

(3) The voluntary use of alcohol to the percentage of blood alcohol sufficient under Missouri law to constitute legal intoxication shall give rise to a rebuttable presumption that the voluntary use of alcohol under such circumstances was the proximate cause of the injury. A preponderance of the evidence standard shall apply to rebut such presumption. An employee's refusal to take a test for alcohol or a nonprescribed controlled substance, as defined by section 195.010, RSMo, at the request of the employer shall result in the forfeiture of benefits under this chapter if the employer had sufficient cause to suspect use of alcohol or a nonprescribed controlled substance by the claimant or if the employer's policy clearly authorizes post-injury testing.

7. Where the employee's participation in a [voluntary] recreational activity or program is the [proximate] **prevailing** cause of the injury, benefits or compensation otherwise payable under this chapter for death or disability shall be forfeited regardless that the employer may have promoted, sponsored or supported the recreational activity or program, expressly or impliedly, in whole or in part. The forfeiture of benefits or compensation shall not apply when:

(a) The employee was directly ordered by the employer to participate in such recreational activity or program;

(b) The employee was paid wages or travel expenses while participating in such recreational activity or program; or

(c) The injury from such recreational activity or program occurs on the employer's premises due to an unsafe condition and the employer had actual knowledge of the employee's participation in the recreational activity or program and of the unsafe condition of the premises and failed to either curtail the recreational activity or program or cure the unsafe condition.

8. Mental injury resulting from work related stress does not arise out of and in the course of the employment, unless it is demonstrated that the stress is work related and was extraordinary and unusual. The amount of work stress shall be measured by objective standards and actual events.

9. A mental injury is not considered to arise out of and in the course of the employment if it resulted from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination or any similar action taken in good faith by the employer.

10. The ability of a firefighter to receive benefits for psychological stress under section 287.067 shall not be diminished by the provisions of subsections 8 and 9 of this section.

287.127. NOTICE, EMPLOYER TO POST, CONTENTS — DIVISION TO PROVIDE NOTICE, WHEN — PENALTY. — 1. Beginning January 1, 1993, all employers shall post a notice at their place of employment, in a sufficient number of places on the premises to assure that such notice will reasonably be seen by all employees. An employer for whom services are performed by individuals who may not reasonably be expected to see a posted notice shall notify each such employee in writing of the contents of such notice. The notice shall include:

(1) That the employer is operating under and subject to the provisions of the Missouri workers' compensation law;

(2) That employees must report all injuries immediately to the employer by advising the employer personally, the employer's designated individual or the employee's immediate boss, supervisor or foreman and that the employee may lose the right to receive compensation if the injury or illness is not reported within thirty days or in the case of occupational illness or disease, within thirty days of the time he or she is reasonably aware of work relatedness of the injury or

illness; **employees who fail to notify their employer within thirty days may jeopardize their ability to receive compensation, and any other benefits under this chapter;**

(3) The name, address and telephone number of the insurer, if insured. If self-insured, the name, address and telephone number of the employer's designated individual responsible for reporting injuries or the name, address and telephone number of the adjusting company or service company designated by the employer to handle workers' compensation matters;

(4) The name, address and the toll-free telephone number of the division of workers' compensation;

(5) That the employer will supply, upon request, additional information provided by the division of workers' compensation;

(6) That a fraudulent action by the employer, employee or any other person is unlawful.

2. The division of workers' compensation shall develop the notice to be posted and shall distribute such notice free of charge to employers and insurers upon request. Failure to request such notice does not relieve the employer of its obligation to post the notice. If the employer carries workers' compensation insurance, the carrier shall provide the notice to the insured within thirty days of the insurance policy's inception date.

3. Any employer who willfully violates the provisions of this section shall be guilty of a class 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 a separate offense.

287.128. UNLAWFUL ACTS, PENALTIES — FRAUD OR NONCOMPLIANCE, COMPLAINT MAY BE FILED, EFFECT — FRAUD AND NONCOMPLIANCE UNIT ESTABLISHED, PURPOSE, CONFIDENTIALITY OF RECORDS — ANNUAL REPORT, CONTENTS. — 1. It shall be unlawful for any person to[:

(1)] knowingly present or cause to be presented any false or fraudulent claim for the payment of benefits pursuant to a workers' compensation claim[;].

[2)] 2. It shall be unlawful for any insurance company or self-insurer in this state to knowingly and intentionally refuse to comply with known and legally indisputable compensation obligations with intent to defraud.

3. It shall be unlawful for any person to:

(1) Knowingly present multiple claims for the same occurrence with intent to defraud;

[(3)] Purposefully prepare, make or subscribe to any writing with intent to present or use the same, or to allow it to be presented in support of any false or fraudulent claim;

(4)] (2) Knowingly assist, abet, solicit or conspire with:

(a) Any person who knowingly presents any false or fraudulent claim for the payment of benefits;

(b) Any person who knowingly presents multiple claims for the same occurrence with an intent to defraud; or

(c) Any person who purposefully prepares, makes or subscribes to any writing with the intent to present or use the same, or to allow it to be presented in support of any such claim;

[(5)] (3) Knowingly make or cause to be made any false or fraudulent claim for payment of a health care benefit;

[(6)] (4) Knowingly submit a claim for a health care benefit which was not used by, or on behalf of, the claimant;

[(7)] (5) Knowingly present multiple claims for payment of the same health care benefit with an intent to defraud;

[(8)] (6) Knowingly make or cause to be made any false or fraudulent material statement or material representation for the purpose of obtaining or denying any benefit;

[9)] (7) Knowingly make or cause to be made any false or fraudulent statements with regard to entitlement to benefits with the intent to discourage an injured worker from making a legitimate claim;

(8) Knowingly make or cause to be made a false or fraudulent material statement to an investigator of the division in the course of the investigation of fraud or noncompliance. For the purposes of subdivisions (6), (7), and (8) [and (9)] of this subsection, the term "statement" includes any notice, proof of injury, bill for services, payment for services, hospital or doctor records, X ray or test results.

[2. It shall be unlawful for any insurance company or self-insurer in this state to:

(1) Intentionally refuse to comply with known and legally indisputable compensation obligations;

(2) Discharge or administer compensation obligations in a dishonest manner; and

(3) Discharge or administer compensation obligations in such a manner as to cause injury to the public or those persons dealing with the employer or insurer.

3.] **4.** Any person violating any of the provisions of subsections 1 [and] or 2 of this section [or section 287.129.] shall be guilty of a class [A misdemeanor and,] **D felony**. In addition, **the person shall be liable to the state of Missouri for a fine [not to exceed] up to ten thousand dollars or double the value of the fraud whichever is greater. Any person violating any of the provisions of subsection 3 of this section shall be guilty of a class A misdemeanor and the person shall be liable to the state of Missouri for a fine up to ten thousand dollars.** Any person who has previously pled guilty to or has been found guilty of violating any of the provisions of subsections 1, [and] 2 or 3 of this section [or the provisions of section 287.129] and who subsequently violates any of the provisions of subsections 1 [and], 2 or 3 of this section [or the provisions of section 287.129] shall be guilty of a class [D] **C felony**.

[4.] **5. It shall be unlawful for any person, company, or other entity to prepare or provide an invalid certificate of insurance as proof of workers' compensation insurance. Any person violating any of the provisions of this subsection shall be guilty of a class D felony and, in addition, shall be liable to the state of Missouri for a fine up to ten thousand dollars or double the value of the fraud, whichever is greater.**

6. Any person who knowingly misrepresents any fact in order to obtain workers' compensation insurance at less than the proper rate for that insurance shall be guilty of a class A misdemeanor. Any person who has previously pled guilty to or has been found guilty of violating any of the provisions of this section [or the provisions of section 287.129] and who subsequently violates any of the provisions of this section [or the provisions of section 287.129] shall be guilty of a class D felony.

[5.] **7.** Any employer [failing] **who knowingly fails** to insure his liability pursuant to this chapter shall be guilty of a class A misdemeanor and, in addition, shall be liable to the state of Missouri for a penalty in an amount [equal to twice] **up to three times** the annual premium the employer would have paid had such employer been insured or [twenty-five] **up to fifty** thousand dollars, whichever amount is greater. Any person who has previously pled guilty to or has been found guilty of violating any of the provisions of this section [or the provisions of section 287.129] and who subsequently violates any of the provisions of this section [or the provisions of section 287.129] shall be guilty of a class D felony.

[6.] **8.** Any person may file a complaint alleging fraud or noncompliance with this chapter with a legal advisor in the division of workers' compensation. The legal advisor shall refer the complaint to the fraud and noncompliance unit within the division. The unit shall investigate all complaints and present any finding of fraud or noncompliance to the director, who may refer the file to the attorney general. The attorney general may prosecute any fraud or noncompliance associated with this chapter. All costs incurred by the attorney general associated with any investigation and prosecution pursuant to this subsection shall be paid out of the workers' compensation fund. Any fines or penalties levied and received as a result of any prosecution

under this section shall be paid to the workers' compensation fund. Any restitution ordered as a part of the judgment shall be paid to the person or persons who were defrauded.

9. Any and all reports, records, tapes, photographs, and similar materials or documentation submitted by any person, including the department of insurance, to the fraud and noncompliance unit or otherwise obtained by the unit pursuant to this section, used to conduct an investigation for any violation under chapter 287, shall be considered confidential and not subject to the requirements of chapter 610, RSMo. Nothing in this subsection prohibits the fraud and noncompliance unit from releasing records used to conduct an investigation to the local, state, or federal law enforcement authority or federal or state agency conducting an investigation, upon written request.

[7.] **10.** There is hereby established in the division of workers' compensation a fraud and noncompliance administrative unit responsible for investigating incidences of fraud and failure to comply with the provisions of this chapter.

11. Any prosecution for a violation of the provisions of this section or section 287.129 shall be commenced within three years after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is not a party to the offense. As used in this subsection, the term "person who has a legal duty to represent an aggrieved party" shall mean the attorney general or the prosecuting attorney having jurisdiction to prosecute the action.

12. By January 1, 2006, the attorney general shall forward to the division and the members of the general assembly the first edition of an annual report of the costs of prosecuting fraud and noncompliance under this chapter. The report shall include the number of cases filed with the attorney general by county by the fraud and noncompliance unit, the number of cases prosecuted by county by the attorney general, fines and penalties levied and received, and all incidental costs.

287.129. FALSE BILLING PRACTICES OF HEALTH CARE PROVIDER, DEFINED, EFFECT — DEPARTMENT OF INSURANCE, POWERS — PENALTY. — 1. A health care provider commits a fraudulent workers' compensation insurance act if he knowingly and with intent to defraud presents, causes to be presented, or prepares with knowledge or belief that it will be presented, to or by an insurer, purported insurer, broker, or any agent thereof, any claim for payment or other benefit which involves any one or more of the following false billing practices:

(1) "Unbundling" an insurance claim by claiming a number of medical procedures were performed instead of a single comprehensive procedure;

(2) "Upcoding" a medical, hospital or rehabilitative insurance claim by claiming that a more serious or extensive procedure was performed than was actually performed;

(3) "Exploding" a medical, hospital or rehabilitative insurance claim by claiming a series of tests were performed on a single sample of blood, urine, or other bodily fluid, when actually the series of tests were part of one battery of tests; or

(4) "Duplicating" a medical, hospital or rehabilitative insurance claim made by a health care provider by resubmitting the claim through another health care provider in which the original health care provider has an ownership interest.

Nothing in this section shall prohibit providers from making good faith efforts to ensure that claims for reimbursement are coded to reflect the proper diagnosis and treatment.

2. If, by its own inquiries or as a result of complaints, the department of insurance has reason to believe that a person has engaged in, or is engaging in, any fraudulent workers' compensation insurance act contained in this section, it may administer oaths and affirmations, serve subpoenas ordering the attendance of witnesses or proffering of matter, and collect evidence.

3. If the matter that the department of insurance seeks to obtain by request is located outside the state, the person so requested may make it available to the division or its representative to examine the matter at the place where it is located. The department may designate

representatives, including officials of the state in which the matter is located, to inspect the matter on its behalf, and it may respond to similar requests from officials of other states.

4. Any person violating any of the provisions of subsection 1 of this section is guilty of a class A misdemeanor and the person shall be liable to the state of Missouri for a fine up to twenty thousand dollars. Any person who has previously pled guilty to or has been found guilty of violating any of the provisions of subsection 1 of this section and who subsequently violates any of the provisions of subsection 1 of this section is guilty of a class D felony.

287.140. EMPLOYER TO PROVIDE MEDICAL AND OTHER SERVICES, TRANSPORTATION, ARTIFICIAL DEVICES, REACTIVATION OF CLAIM — DUTIES OF HEALTH CARE PROVIDERS — REFUSAL OF TREATMENT, EFFECT — MEDICAL EVIDENCE — DIVISION, COMMISSION RESPONSIBILITIES — NOTICE TO HEALTH CARE PROVIDER OF WORKERS' COMPENSATION CLAIM, CONTENTS, EFFECT — USE OF EMPLOYEE LEAVE TIME. — 1. In addition to all other compensation **paid to the employee under this section**, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury. If the employee desires, he shall have the right to select his own physician, surgeon, or other such requirement at his own expense. Where the requirements are furnished by a public hospital or other institution, payment therefor shall be made to the proper authorities. Regardless of whether the health care provider is selected by the employer or is selected by the employee at the employee's expense, the health care provider shall have the affirmative duty to communicate fully with the employee regarding the nature of the employee's injury and recommended treatment exclusive of any evaluation for a permanent disability rating. Failure to perform such duty to communicate shall constitute a disciplinary violation by the provider subject to the provisions of chapter 620, RSMo. When an employee is required to submit to medical examinations or necessary medical treatment at a place outside of the local or metropolitan area from the **employee's principal** place of [injury or the place of his residence] **employment**, the employer or its insurer shall advance or reimburse the employee for all necessary and reasonable expenses; except that an injured employee who resides outside the state of Missouri and who is employed by an employer located in Missouri shall have the option of selecting the location of services provided in this section either at a location within one hundred miles of the injured employee's residence, place of injury or place of hire by the employer. The choice of provider within the location selected shall continue to be made by the employer. In case of a medical examination if a dispute arises as to what expenses shall be paid by the employer, the matter shall be presented to the legal advisor, the administrative law judge or the commission, who shall set the sum to be paid and same shall be paid by the employer prior to the medical examination. In no event, however, shall the employer or its insurer be required to pay transportation costs for a greater distance than two hundred fifty miles each way from place of treatment. [In addition to all other payments authorized or mandated under this subsection, when an employee who has returned to full-time employment is required to submit to a medical examination for the purpose of evaluating permanent disability, or to undergo physical rehabilitation, the employer or its insurer shall pay a proportionate weekly compensation benefit based on the provisions of section 287.180 for such wages that are lost due to time spent undergoing such medical examinations or physical rehabilitation, except that where the employee is undergoing physical rehabilitation, such proportionate weekly compensation benefit payment shall be limited to a time period of no more than twenty weeks. For purposes of this subsection only, "physical rehabilitation" shall mean the restoration of the seriously injured person as soon as possible and as nearly as possible to a condition of self-support and maintenance as an able-bodied worker. Determination as to what care and restoration constitutes physical rehabilitation shall be the sole province of the treating physician. Should the employer or its insurer contest the determination of the treating physician,

then the director shall review the case at question and issue his determination. Such determination by the director shall be appealable like any other finding of the director or the division. Serious injury includes, but is not limited to, quadriplegia, paraplegia, amputations of hand, arm, foot or leg, atrophy due to nerve injury or nonuse, and back injuries not amenable alone to recognized medical and surgical procedures.]

2. If it be shown to the division or the commission that the requirements are being furnished in such manner that there is reasonable ground for believing that the life, health, or recovery of the employee is endangered thereby, the division or the commission may order a change in the physician, surgeon, hospital or other requirement.

3. All fees and charges under this chapter shall be fair and reasonable, shall be subject to regulation by the division or the commission, or the board of rehabilitation in rehabilitation cases. A health care provider shall not charge a fee for treatment and care which is governed by the provisions of this chapter greater than the usual and customary fee the provider receives for the same treatment or service when the payor for such treatment or service is a private individual or a private health insurance carrier. The division or the commission, or the board of rehabilitation in rehabilitation cases, shall also have jurisdiction to hear and determine all disputes as to such charges. A health care provider is bound by the determination upon the reasonableness of health care bills.

4. The division shall, by regulation, establish methods to resolve disputes concerning the reasonableness of medical charges, services, or aids. This regulation shall govern resolution of disputes between employers and medical providers over fees charged, whether or not paid, and shall be in lieu of any other administrative procedure under this chapter. The employee shall not be a party to a dispute over medical charges, nor shall the employee's recovery in any way be jeopardized because of such dispute.

5. No compensation shall be payable for the death or disability of an employee, if and insofar as the death or disability may be caused, continued or aggravated by any unreasonable refusal to submit to any medical or surgical treatment or operation, the risk of which is, in the opinion of the division or the commission, inconsiderable in view of the seriousness of the injury. If the employee dies as a result of an operation made necessary by the injury, the death shall be deemed to be caused by the injury.

6. The testimony of any physician or chiropractic physician who treated the employee shall be admissible in evidence in any proceedings for compensation under this chapter, subject to all of the provisions of section 287.210.

7. Every hospital or other person furnishing the employee with medical aid shall permit its record to be copied by and shall furnish full information to the division or the commission, the employer, the employee or his dependents and any other party to any proceedings for compensation under this chapter, and certified copies of the records shall be admissible in evidence in any such proceedings.

8. The employer may be required by the division or the commission to furnish an injured employee with artificial legs, arms, hands, surgical orthopedic joints, or eyes, or braces, as needed, for life whenever the division or the commission shall find that the injured employee may be partially or wholly relieved of the effects of a permanent injury by the use thereof. The director of the division shall establish a procedure whereby a claim for compensation may be reactivated after settlement of such claim is completed. The claim shall be reactivated only after the claimant can show good cause for the reactivation of this claim and the claim shall be made only for the payment of medical procedures involving life-threatening surgical procedures or if the claimant requires the use of a new, or the modification, alteration or exchange of an existing, prosthetic device. For the purpose of this subsection, "life threatening" shall mean a situation or condition which, if not treated immediately, will likely result in the death of the injured worker.

9. Nothing in this chapter shall prevent an employee being provided treatment for his injuries by prayer or spiritual means if the employer does not object to the treatment.

10. The employer shall have the right to select the licensed treating physician, surgeon, chiropractic physician, or other health care provider; provided, however, that such physicians, surgeons or other health care providers shall offer only those services authorized within the scope of their licenses. For the purpose of this subsection, subsection 2 of section 287.030 shall not apply.

11. Any physician or other health care provider who orders, directs or refers a patient for treatment, testing, therapy or rehabilitation at any institution or facility shall, at or prior to the time of the referral, disclose in writing if such health care provider, any of his partners or his employer has a financial interest in the institution or facility to which the patient is being referred, to the following:

(1) The patient;

(2) The employer of the patient with workers' compensation liability for the injury or disease being treated;

(3) The workers' compensation insurer of such employer; and

(4) The workers' compensation adjusting company for such insurer.

12. Violation of subsection 11 of this section is a class A misdemeanor.

13. (1) No hospital, physician or other health care provider, other than a hospital, physician or health care provider selected by the employee at his own expense pursuant to subsection 1 of this section, shall bill or attempt to collect any fee or any portion of a fee for services rendered to an employee due to a work-related injury or report to any credit reporting agency any failure of the employee to make such payment, when an injury covered by this chapter has occurred and such hospital, physician or health care provider has received actual notice given in writing by the employee, the employer or the employer's insurer. Actual notice shall be deemed received by the hospital, physician or health care provider five days after mailing by certified mail by the employer or insurer to the hospital, physician or health care provider.

(2) The notice shall include:

(a) The name of the employer;

(b) The name of the insurer, if known;

(c) The name of the employee receiving the services;

(d) The general nature of the injury, if known; and

(e) Where a claim has been filed, the claim number, if known.

(3) When an injury is found to be noncompensable under this chapter, the hospital, physician or other health care provider shall be entitled to pursue the employee for any unpaid portion of the fee or other charges for authorized services provided to the employee. Any applicable statute of limitations for an action for such fees or other charges shall be tolled from the time notice is given to the division by a hospital, physician or other health care provider pursuant to subdivision (6) of this subsection, until a determination of noncompensability in regard to the injury which is the basis of such services is made, or in the event there is an appeal to the labor and industrial relations commission, until a decision is rendered by that commission.

(4) If a hospital, physician or other health care provider or a debt collector on behalf of such hospital, physician or other health care provider pursues any action to collect from an employee after such notice is properly given, the employee shall have a cause of action against the hospital, physician or other health care provider for actual damages sustained plus up to one thousand dollars in additional damages, costs and reasonable attorney's fees.

(5) If an employer or insurer fails to make payment for authorized services provided to the employee by a hospital, physician or other health care provider pursuant to this chapter, the hospital, physician or other health care provider may proceed pursuant to subsection 4 of this section with a dispute against the employer or insurer for any fees or other charges for services provided.

(6) A hospital, physician or other health care provider whose services have been authorized in advance by the employer or insurer may give notice to the division of any claim for fees or other charges for services provided for a work-related injury that is covered by this chapter, with

copies of the notice to the employee, employer and the employer's insurer. Where such notice has been filed, the administrative law judge may order direct payment from the proceeds of any settlement or award to the hospital, physician or other health care provider for such fees as are determined by the division. The notice shall be on a form prescribed by the division.

14. The employer may allow or require an employee to use any of the employee's accumulated paid leave, personal leave, or medical or sick leave to attend to medical treatment, physical rehabilitation, or medical evaluations during work time. The intent of this subsection is to specifically supercede and abrogate any case law that contradicts the express language of this section.

287.143. VOCATIONAL REHABILITATION SERVICES, NOT MANDATORY — TESTING AND ASSESSMENT. — As a guide to the interpretation and application of sections 287.144 to 287.149, sections 287.144 to 287.149 shall not be construed to require the employer to provide vocational rehabilitation to a severely injured employee. **An employee shall submit to appropriate vocational testing and a vocational rehabilitation assessment scheduled by an employer or its insurer.**

287.150. SUBROGATION TO RIGHTS OF EMPLOYEE OR DEPENDENTS AGAINST THIRD PERSON, EFFECT OF RECOVERY — CONSTRUCTION DESIGN PROFESSIONAL, IMMUNITY FROM LIABILITY, WHEN, EXCEPTION — WAIVER OF SUBROGATION RIGHTS ON CERTAIN CONTRACTS VOID, EMPLOYER'S LIEN ON SUBROGATION RECOVERY, WHEN. — 1. Where a third person is liable to the employee or to the dependents, for the injury or death, the employer shall be subrogated to the right of the employee or to the dependents against such third person, and the recovery by such employer shall not be limited to the amount payable as compensation to such employee or dependents, but such employer may recover any amount which such employee or his dependents would have been entitled to recover. Any recovery by the employer against such third person shall be apportioned between the employer and employee or his dependents using the provisions of subsections 2 and 3 of this section.

2. When a third person is liable for the death of an employee and compensation is paid or payable under this chapter, and recovery is had by a dependent under this chapter either by judgment or settlement for the wrongful death of the employee, the employer **shall have a subrogation lien on any recovery and** shall receive or have credit for sums paid or payable under this chapter to any of the dependents of the deceased employee to the extent of the settlement or recovery by such dependents for the wrongful death. Recovery by the employer and credit for future installments shall be computed using the provisions of subsection 3 of this section relating to comparative fault of the employee.

3. Whenever recovery against the third person is effected by the employee or his dependents, the employer shall pay from his share of the recovery a proportionate share of the expenses of the recovery, including a reasonable attorney fee. After the expenses and attorney fee have been paid, the balance of the recovery shall be apportioned between the employer and the employee or his dependents in the same ratio that the amount due the employer bears to the total amount recovered if there is no finding of comparative fault on the part of the employee, or the total damages determined by the trier of fact if there is a finding of comparative fault on the part of the employee. Notwithstanding the foregoing provision, the balance of the recovery may be divided between the employer and the employee or his dependents as they may otherwise agree. Any part of the recovery found to be due to the employer, the employee or his dependents shall be paid forthwith and any part of the recovery paid to the employee or his dependents under this section shall be treated by them as an advance payment by the employer on account of any future installments of compensation in the following manner:

(1) The total amount paid to the employee or his dependents shall be treated as an advance payment if there is no finding of comparative fault on the part of the employee; or

(2) A percentage of the amount paid to the employee or his dependents equal to the percentage of fault assessed to the third person from whom recovery is made shall be treated as an advance payment if there is a finding of comparative fault on the part of the employee.

4. In any case in which an injured employee has been paid benefits from the second injury fund as provided in subsection 3 of section 287.141, and recovery is had against the third party liable to the employee for the injury, the second injury fund shall be subrogated to the rights of the employee against said third party to the extent of the payments made to him from such fund, subject to provisions of subsections 2 and 3 of this section.

5. No construction design professional who is retained to perform professional services on a construction project or any employee of a construction design professional who is assisting or representing the construction design professional in the performance of professional services on the site of the construction project shall be liable for any injury resulting from the employer's failure to comply with safety standards on a construction project for which compensation is recoverable under the workers' compensation law, unless responsibility for safety practices is specifically assumed by contract. The immunity provided by this subsection to any construction design professional shall not apply to the negligent preparation of design plans or specifications.

6. Any provision in any contract or subcontract, where one party is an employer in the construction group of code classifications, which purports to waive subrogation rights provided under this section in anticipation of a future injury or death is hereby declared against public policy and void. Each contract of insurance for workers' compensation shall require the insurer to diligently pursue all subrogation rights of the employer and shall require the employer to fully cooperate with the insurer in pursuing such recoveries, except that the employer may enter into compromise agreements with an insurer in lieu of the insurer pursuing subrogation against another party. The amount of any subrogation recovery by an insurer shall be credited against the amount of the actual paid losses in the determination of such employer's experience modification factor within forty-five days of the collection of such amount.

287.170. TEMPORARY TOTAL DISABILITY, AMOUNT TO BE PAID — METHOD OF PAYMENT — DISQUALIFICATION, WHEN — POST INJURY MISCONDUCT DEFINED. — 1. For temporary total disability the employer shall pay compensation for not more than four hundred weeks during the continuance of such disability at the weekly rate of compensation in effect under this section on the date of the injury for which compensation is being made. The amount of such compensation shall be computed as follows:

(1) For all injuries occurring on or after September 28, 1983, but before September 28, 1986, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to seventy percent of the state average weekly wage, as such wage is determined by the division of employment security, as of the July first immediately preceding the date of injury;

(2) For all injuries occurring on or after September 28, 1986, but before August 28, 1990, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to seventy-five percent of the state average weekly wage, as such wage is determined by the division of employment security, as of the July first immediately preceding the date of injury;

(3) For all injuries occurring on or after August 28, 1990, but before August 28, 1991, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to one hundred percent of the state average weekly wage;

(4) For all injuries occurring on or after August 28, 1991, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to one hundred five percent of the state average weekly wage;

(5) For all injuries occurring on or after September 28, 1981, the weekly compensation shall in no event be less than forty dollars per week.

2. Temporary total disability payments shall be made to the claimant by check or other negotiable instruments approved by the director which will not result in delay in payment and shall be forwarded directly to the claimant without intervention, or, when requested, to claimant's attorney if represented, except as provided in section 454.517, RSMo, by any other party except by order of the division of workers' compensation.

3. [The employer shall be entitled to a dollar-for-dollar credit against any benefits owed pursuant to this section in an amount equal to the amount of unemployment compensation paid to the employee and charged to the employer during the same adjudicated or agreed-upon period of temporary total disability.] **An employee is disqualified from receiving temporary total disability during any period of time in which the claimant applies and receives unemployment compensation.**

4. If the employee is terminated from post injury employment based upon the employee's post injury misconduct, neither temporary total disability nor temporary partial disability benefits under this section, section 287.170, or 287.180 are payable. As used in this section, the phrase "post injury misconduct" shall not include absence from the work place due to an injury unless the employee is capable of working with restrictions, as certified by a physician.

287.190. PERMANENT PARTIAL DISABILITY, AMOUNT TO BE PAID — PERMANENT PARTIAL DISABILITY DEFINED — PERMANENT TOTAL AND PARTIAL TOTAL DISABILITY REQUIRE CERTIFICATION BY PHYSICIAN ON COMPENSABILITY — AWARD REDUCED WHEN.

— 1. For permanent partial disability, which shall be in addition to compensation for temporary total disability or temporary partial disability paid in accordance with sections 287.170 and 287.180, respectively, the employer shall pay to the employee compensation computed at the weekly rate of compensation in effect under subsection 5 of this section on the date of the injury for which compensation is being made, which compensation shall be allowed for loss by severance, total loss of use, or proportionate loss of use of one or more of the members mentioned in the schedule of losses.

SCHEDULE OF LOSSES

	Weeks
(1) Loss of arm at shoulder	232
(2) Loss of arm between shoulder and elbow	222
(3) Loss of arm at elbow joint	210
(4) Loss of arm between elbow and wrist	200
(5) Loss of hand at the wrist joint	175
(6) Loss of thumb at proximal joint	60
(7) Loss of thumb at distal joint	45
(8) Loss of index finger at proximal joint	45
(9) Loss of index finger at second joint	35
(10) Loss of index finger at distal joint	30
(11) Loss of either the middle or ring finger at the proximal joint	35
(12) Loss of either the middle or ring finger at second joint	30
(13) Loss of either the middle or ring finger	

	at the distal joint.	26
(14)	Loss of little finger at proximal joint.	22
(15)	Loss of little finger at second joint.	20
(16)	Loss of little finger at distal joint.	16
(17)	Loss of one leg at the hip joint or so near thereto as to preclude the use of artificial limb.	207
(18)	Loss of one leg at or above the knee, where the stump remains sufficient to permit the use of artificial limb.	160
(19)	Loss of one leg at or above ankle and below knee joint.	155
(20)	Loss of one foot in tarsus.	150
(21)	Loss of one foot in metatarsus.	110
(22)	Loss of great toe of one foot at proximal joint.	40
(23)	Loss of great toe of one foot at distal joint.	22
(24)	Loss of any other toe at proximal joint.	14
(25)	Loss of any other toe at second joint.	10
(26)	Loss of any other toe at distal joint.	8
(27)	Complete deafness of both ears.	180
(28)	Complete deafness of one ear, the other being normal.	49
(29)	Complete loss of the sight of one eye.	140

2. If the disability suffered in any of items (1) through (29) of the schedule of losses is total by reason of severance or complete loss of use thereof the number of weeks of compensation allowed in the schedule for such disability shall be increased by ten percent.

3. For permanent injuries other than those specified in the schedule of losses, the compensation shall be paid for such periods as are proportionate to the relation which the other injury bears to the injuries above specified, but no period shall exceed four hundred weeks, at the rates fixed in subsection 1. The other injuries shall include permanent injuries causing a loss of earning power. For the permanent partial loss of the use of an arm, hand, thumb, finger, leg, foot, toe or phalange, compensation shall be paid for the proportionate loss of the use of the arm, hand, thumb, finger, leg, foot, toe or phalange, as provided in the schedule of losses.

4. If an employee is seriously and permanently disfigured about the head, neck, hands or arms, the division or commission may allow such additional sum for the compensation on account thereof as it may deem just, but the sum shall not exceed forty weeks of compensation. If both the employer and employee agree, the administrative law judge may utilize a photograph of the disfigurement in determining the amount of such additional sum.

5. The amount of compensation to be paid under subsection 1 of this section shall be computed as follows:

(1) For all injuries occurring on or after September 28, 1983, but before August 28, 1990, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to forty-five percent of the state average weekly wage, as such wage is determined by the division of employment security, as of the July first immediately preceding the date of injury;

(2) For all injuries occurring on or after September 28, 1981, the weekly compensation shall in no event be less than forty dollars per week;

(3) For all injuries occurring on or after August 28, 1990, but before August 28, 1991, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to fifty percent of the state average weekly wage;

(4) For all injuries occurring on or after August 28, 1991, but before August 28, 1992, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to fifty-two percent of the state average weekly wage;

(5) For all injuries occurring on or after August 28, 1992, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to fifty-five percent of the state average weekly wage.

6. (1) "Permanent partial disability" means a disability that is permanent in nature and partial in degree, and when payment therefor has been made in accordance with a settlement approved either by an administrative law judge or by the labor and industrial relations commission, a rating **established by medical finding, certified by a physician, and** approved by an administrative law judge or legal advisor, or an award by an administrative law judge or the commission, the percentage of disability shall be conclusively presumed to continue undiminished whenever a subsequent injury to the same member or same part of the body also results in permanent partial disability for which compensation under this chapter may be due; provided, however, the presumption shall apply only to compensable injuries which may occur after August 29, 1959;

(2) **Permanent partial disability or permanent total disability shall be demonstrated and certified by a physician. Medical opinions addressing compensability and disability shall be stated within a reasonable degree of medical certainty. In determining compensability and disability, where inconsistent or conflicting medical opinions exist, objective medical findings shall prevail over subjective medical findings. Objective medical findings are those findings demonstrable on physical examination or by appropriate tests or diagnostic procedures;**

(3) **Any award of compensation shall be reduced by an amount proportional to the permanent partial disability determined to be a preexisting disease or condition or attributed to the natural process of aging sufficient to cause or prolong the disability or need of treatment.**

287.197. OCCUPATIONAL DEAFNESS — TESTS, CLAIMS, AWARDS, LIABILITY OF EMPLOYER, EFFECT OF HEARING AID. — 1. Losses of hearing due to industrial noise for compensation purposes shall be confined to the frequencies of five hundred, one thousand, and two thousand cycles per second. Loss of hearing ability for frequency tones above two thousand cycles per second are not to be considered as constituting disability for hearing.

2. The percent of hearing loss, for purposes of the determination of compensation claims for occupational deafness, shall be calculated as the average, in decibels, of the thresholds of hearing for the frequencies of five hundred, one thousand, and two thousand cycles per second. Pure tone air conduction audiometric instruments, approved by nationally recognized authorities in this field, shall be used for measuring hearing loss. If the losses of hearing average [fifteen] **twenty-six** decibels or less in the three frequencies, such losses of hearing shall not then constitute any compensable hearing disability. If the losses of hearing average [eighty-two] **ninety-two** decibels or more in the three frequencies, then the same shall constitute and be total or one hundred percent compensable hearing loss. **The decibel standards established by this subsection are based on the most current ANSI occupational hearing loss standard. The division shall, by rule, adopt any superseding ANSI occupational hearing loss standards regarding testing frequencies and decibel standards for measuring hearing loss.**

3. There shall be payable as permanent partial disability for total occupational deafness of one ear forty-nine weeks of compensation; for total occupational deafness of both ears, one hundred eighty weeks of compensation; and for partial occupational deafness in one or both ears,

compensation shall be paid for such periods as are proportionate to the relation which the hearing loss bears to the amount provided in this subsection for total loss of hearing in one or both ears, as the case may be. The amount of the hearing loss shall be reduced by the average amount of hearing loss from nonoccupational causes found in the population at any given age, according to the provisions hereinafter set forth.

4. In measuring hearing [impairment] **disability**, the lowest measured losses in each of the three frequencies shall be added together and divided by three to determine the average decibel loss. For every decibel of loss exceeding [fifteen] **twenty-six** decibels an allowance of one and one-half percent shall be made up to the maximum of one hundred percent which is reached at [eighty-two] **ninety-two** decibels.

5. In determining the binaural (both ears) percentage of loss, the percentage of [impairment] **disability** in the better ear shall be multiplied by five. The resulting figure shall be added to the percentage of [impairment] **disability** in the poorer ear and the sum of the two divided by six. The final percentage shall represent the binaural hearing [impairment] **disability**.

6. Before determining the percentage of hearing [impairment] **disability**, in order to allow for the average amount of hearing loss from nonoccupational causes found in the population at any given age, there shall be deducted from the total average decibel loss, one-half decibel for each year of the employee's age over forty at the time of last exposure to industrial noise.

7. No claim for compensation for occupational deafness may be filed until after [six months] **one month's** separation from the type of noisy work for the last employer in whose employment the employee was at any time during such employment exposed to harmful noise, and the last day of such period of separation from the type of noisy work shall be the date of disability.

8. An employer shall become liable for the entire occupational deafness to which his employment has contributed; but if previous deafness is established by a hearing test or by other competent evidence, whether or not the employee was exposed to noise within [six months] **one month** preceding such test, the employer shall not be liable for previous loss so established nor shall he be liable for any loss for which compensation has previously been paid or awarded.

9. No consideration shall be given to the question of whether or not the ability of an employee to understand speech is improved by the use of a hearing aid.

287.203. TERMINATION OF COMPENSATION BY EMPLOYER, EMPLOYEE RIGHT TO HEARING — ASSESSMENT OF COSTS. — Whenever the employer has provided compensation under section 287.170, 287.180 or 287.200, and terminates such compensation, the employer shall notify the employee of such termination and shall advise the employee of the reason for such termination. If the employee disputes the termination of such benefits, the employee may request a hearing before the division and the division shall set the matter for hearing within sixty days of such request and the division shall hear the matter on the date of hearing and no continuances or delays may be granted except upon a showing of good cause or by consent of the parties. The division shall render a decision within thirty days of the date of hearing. [Reasonable cost of recovery shall be awarded to the prevailing party] **If the division or the commission determines that any proceedings have been brought, prosecuted, or defended without reasonable grounds, the division may assess the whole cost of the proceedings upon the party who brought, prosecuted, or defended them.**

287.215. INJURED EMPLOYEE TO BE FURNISHED COPY OF HIS STATEMENT, OTHERWISE INADMISSIBLE AS EVIDENCE, STATEMENT WHAT IS NOT TO BE INCLUDED. — No statement in writing made or given by an injured employee, whether taken and transcribed by a stenographer, signed or unsigned by the injured employee, or any statement which is mechanically or electronically recorded, or taken in writing by another person, or otherwise preserved, shall be admissible in evidence, used or referred to in any manner at any hearing or action to recover benefits under this law unless a copy thereof is given or furnished the

employee, or his dependents in case of death, or their attorney, within [fifteen] **thirty** days after written request for it by the injured employee, his dependents in case of death, or by their attorney. The request shall be directed to the employer or its insurer by certified mail. **The term "statement" as used in this section shall not include a videotape, motion picture, or visual reproduction of an image of an employee.**

287.253. MONETARY BONUS, EFFECT ON BENEFITS. — A monetary bonus, paid by an employer to an employee, of up to three percent of the employee's yearly compensation from such employer shall not have the effect of increasing the compensation amount used in calculating the employee's compensation or wages for purposes of any workers' compensation claim governed by this chapter.

287.380. EMPLOYER OR INSURER TO MAKE REPORT TO DIVISION, REQUIREMENTS — INFORMATION NOT TO BE DISCLOSED — FAILURE TO REPORT, PENALTY. — 1. Every employer or his insurer in this state, whether he has accepted or rejected the provisions of this chapter, shall within [ten days after knowledge of an accident resulting in personal injury to any employee notify the division thereof, and shall, within one month from the date of filing of the original notification of] **thirty days after knowledge of the injury**, file with the division under such rules and regulations and in such form and detail as the division may require, a full and complete report of every injury or death to any employee for which the employer would be liable to furnish medical aid, other than immediate first aid which does not result in further medical treatment or lost time from work, or compensation hereunder had he accepted this chapter, and every employer or insurer shall also furnish the division with such supplemental reports in regard thereto as the division shall require. All reports submitted under this subsection shall include the name, address, date of birth and wages of the deceased or injured employee, the time and cause of the accident, the nature and extent of the injury, the name and address of the employee's and the employer's or insurer's attorney of record, if any, the medical cost incurred in treating the injured employee, the amount of lost work time of the employee as a result of the injury and such other information as the director may reasonably require in order to maintain in the division, accurate and complete data on the impact of work-related injuries on the workers' compensation system. The division shall collect and maintain such data in such a form as to be readily retrieved and available for analysis by the division. Employers shall report all injuries to their insurance carrier, or third-party administrators, if applicable, within five days of the date of the injury or within five days of the date on which the injury was reported to the employer by the employee, whichever is later. Where an employer reports injuries covered pursuant to this chapter to his insurer or third-party administrator, the insurer or third-party administrator shall be responsible for filing the report prescribed in this section.

2. Every employer and his insurer, and every injured employee, his dependents and every person entitled to any rights hereunder, and every other person receiving from the division or the commission any blank reports with direction to fill out the same shall cause the same to be promptly returned to the division or the commission properly filled out and signed so as to answer fully and correctly to the best of his knowledge each question propounded therein, and a good and sufficient reason shall be given for failure to answer any question.

3. No information obtained under the provisions of this section shall be disclosed to persons other than the parties to compensation proceedings and their attorneys, except by order of the division or the commission, or at a hearing of compensation proceeding, but such information may be used by the division or the commission for statistical purposes.

4. Any person, including any employer, insurer or any employee, who violates any of the provisions of this section, including any employer or insurer who knowingly fails to report any accident under the provisions of subsection 1 of this section, or anyone who knowingly makes a false report or statement in writing to the division or the commission, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than fifty nor

more than five hundred dollars, or by imprisonment in the county jail for not less than one week nor more than one year, or by both the fine and imprisonment.

287.390. COMPROMISE SETTLEMENTS, HOW MADE — VALIDITY, EFFECT, SETTLEMENT WITH MINOR DEPENDENTS — EMPLOYEE ENTITLED TO ONE HUNDRED PERCENT OF OFFER, WHEN. — 1. [Nothing in this chapter shall be construed as preventing the] Parties to claims hereunder [from entering] **may enter** into voluntary agreements in settlement thereof, but no agreement by an employee or his **or her** dependents to waive his **or her** rights under this chapter shall be valid, nor shall any agreement of settlement or compromise of any dispute or claim for compensation under this chapter be valid until approved by an administrative law judge or the commission, nor shall an administrative law judge or the commission approve any settlement which is not in accordance with the rights of the parties as given in this chapter. No such agreement shall be valid unless made after seven days from the date of the injury or death. **An administrative law judge, or the commission, shall approve a settlement agreement as valid and enforceable as long as the settlement is not the result of undue influence or fraud, the employee fully understands his or her rights and benefits, and voluntarily agrees to accept the terms of the agreement.**

2. A compromise settlement approved by an administrative law judge or the commission during the employee's lifetime shall extinguish and bar all claims for compensation for the employee's death if the settlement compromises a dispute on any question or issue other than the extent of disability or the rate of compensation.

3. Notwithstanding the provisions of section 287.190, an employee shall be afforded the option of receiving a compromise settlement as a one-time lump sum payment. A compromise settlement approved by an administrative law judge or the commission shall indicate the manner of payment chosen by the employee.

4. A minor dependent, by parent or conservator, may compromise disputes and may enter into a compromise settlement agreement, and upon approval by an administrative law judge or the commission the settlement agreement shall have the same force and effect as though the minor had been an adult. The payment of compensation by the employer in accordance with the settlement agreement shall discharge the employer from all further obligation.

5. In any claim under this chapter where an offer of settlement is made in writing and filed with the division by the employer, an employee is entitled to one hundred percent of the amount offered, provided such employee is not represented by counsel at the time the offer is tendered. Where such offer of settlement is not accepted and where additional proceedings occur with regard to the employee's claim, the employee is entitled to one hundred percent of the amount initially offered. Legal counsel representing the employee shall receive reasonable fees for services rendered.

6. As used in this chapter, "amount in dispute" means the dollar amount in excess of the dollar amount offered or paid by the employer. An offer of settlement shall not be construed as an admission of liability.

287.420. WRITTEN NOTICE OF INJURY TO BE GIVEN TO EMPLOYER — EXCEPTIONS. — No proceedings for compensation **for any accident** under this chapter shall be maintained unless written notice of the time, place and nature of the injury, and the name and address of the person injured, [have] **has** been given to the employer [as soon as practicable after the happening thereof but not] **no** later than thirty days after the accident, [unless the division or the commission finds that there was good cause for failure to give the notice, or that] **unless** the employer was not prejudiced by failure to receive the notice. [No defect or inaccuracy in the notice shall invalidate it unless the commission finds that the employer was in fact misled and prejudiced thereby] **No proceedings for compensation for any occupational disease or repetitive trauma under this chapter shall be maintained unless written notice of the time, place, and nature of the injury, and the name and address of the person injured, has been given to the employer**

no later than thirty days after the diagnosis of the condition unless the employee can prove the employer was not prejudiced by failure to receive the notice.

287.510. TEMPORARY OR PARTIAL AWARDS MAY BE MADE. — In any case a temporary or partial award of compensation may be made, and the same may be modified from time to time to meet the needs of the case, and the same may be kept open until a final award can be made, and if the same be not complied with, the amount [thereof] **equal to the value of compensation ordered and unpaid** may be doubled in the final award, if the final award shall be in accordance with the temporary or partial award.

287.550. PROCEEDINGS BEFORE COMMISSION TO BE INFORMAL AND SUMMARY. — All proceedings before the commission or any commissioner shall be simple, informal, and summary, and without regard to the technical rules of evidence, and [no defect or irregularity therein shall invalidate the same. Except as otherwise provided in this chapter,] **in accordance with section 287.800.** All such proceedings shall be according to such rules and regulations as may be adopted by the commission.

287.610. ADDITIONAL ADMINISTRATIVE LAW JUDGES, APPOINTMENT AND QUALIFICATION, LIMIT ON NUMBER — ANNUAL EVALUATIONS — PERFORMANCE AUDIT STANDARDS, REVIEW COMMITTEE, RETENTION VOTE — JURISDICTION, POWERS — CONTINUING TRAINING REQUIRED — PERFORMANCE AUDITS REQUIRED — RULES. — 1. [The division may appoint such number of administrative law judges as it may find necessary, but not exceeding twenty-five in number beginning January 1, 1999, with one additional appointment authorized as of July 1, 2000, and one additional appointment authorized in each succeeding year thereafter until and including the year 2004, for a maximum of thirty authorized administrative law judges.] **After August 28, 2005, the division may appoint additional administrative law judges for a maximum of forty authorized administrative law judges.** Appropriations [for any additional appointment] shall be based upon necessity, measured by the requirements and needs of each division office. Administrative law judges shall be duly licensed lawyers under the laws of this state. Administrative law judges shall not practice law or do law business and shall devote their whole time to the duties of their office. [Any administrative law judge may be discharged or removed only by the governor pursuant to an evaluation and recommendation by the administrative law judge review committee, hereinafter referred to as "the committee", of the judge's conduct, performance and productivity] **The director of the division of workers' compensation shall publish and maintain on the division's web site the appointment dates or initial dates of service for all administrative law judges.**

2. The division **director, as a member of the administrative law judge review committee, hereafter referred to as "the committee",** shall [require and] perform, **in conjunction with the committee, a [annual evaluations] performance audit** of [an] all administrative law [judge, associate administrative law judge and legal advisor's conduct, performance and productivity based upon written standards established by rule] **judges by August 28, 2006.** The division[, by rule] **director, in conjunction with the committee,** shall establish the written **performance audit** standards on or before [January 1, 1999] **October 1, 2005.**

(1) After an evaluation by the division, any administrative law judge, associate administrative law judge or legal advisor who has received an unsatisfactory evaluation in any of the three categories of conduct, performance or productivity, may appeal the evaluation to the committee.

(2) The division director shall refer an unsatisfactory evaluation of any administrative law judge, associate administrative law judge or legal advisor to the committee.

(3) When a written, signed complaint is made against an administrative law judge, associate administrative law judge or legal advisor, it shall be referred to the director of the division for a

determination of merit. When the director finds the complaint has merit, it shall be referred to the committee for investigation and review.]

3. **The thirteen administrative law judges with the most years of service shall be subject to a retention vote on August 28, 2008. The next thirteen administrative law judges with the most years of service in descending order shall be subject to a retention vote on August 28, 2012. Administrative law judges appointed and not previously referenced in this subsection shall be subject to a retention vote on August 28, 2016. Subsequent retention votes shall be held every twelve years. Any administrative law judge who has received two or more votes of no confidence under performance audits by the committee shall not receive a vote of retention.**

4. The administrative law judge review committee **members** shall [be composed of one administrative law judge, who shall act as a peer judge on the committee and shall be domiciled in a division office other than that of the judge being reviewed, one employee representative and one employer representative, neither of whom shall] **not** have any direct or indirect employment or financial connection with a workers' compensation insurance company, claims adjustment company, health care provider nor be a practicing workers' compensation attorney. [The employee representative and employer representative] **All members of the committee** shall have a working knowledge of workers' compensation. [The employee and employer representative shall serve for four-year staggered terms and they shall be appointed by the governor. The initial employee representative shall be appointed for a two-year term. The administrative law judge who acts as a peer judge shall be appointed by the chairman of the labor and industrial relations commission and shall not serve on any two consecutive reviews conducted by the committee. Chairmanship of the committee shall rotate between the employee representative and the employer representative every other year. Staffing for the administrative review committee shall be provided, as needed, by the director of the department of labor and industrial relations and shall be funded from the workers' compensation fund. The committee shall conduct a hearing as part of any review of a referral or appeal made according to subsection 2 of this section.

4.] 5. The committee shall [determine] within thirty days [whether an investigation shall be conducted for a referral made pursuant to subdivision (3) of subsection 2 of this section. The committee shall make a final referral to the governor pursuant to subsection 1 of this section within two hundred seventy days of the receipt of a referral or appeal] **of completing each performance audit make a recommendation of confidence or no confidence for each administrative law judge.**

[5.] 6. The administrative law judges appointed by the division shall only have jurisdiction to hear and determine claims upon original hearing and shall have no jurisdiction upon any review hearing, either in the way of an appeal from an original hearing or by way of reopening any prior award, except to correct a clerical error in an award or settlement if the correction is made by the administrative law judge within twenty days of the original award or settlement. The labor and industrial relations commission may remand any decision of an administrative law judge for a more complete finding of facts. The commission may also correct a clerical error in awards or settlements within thirty days of its final award. With respect to original hearings, the administrative law judges shall have such jurisdiction and powers as are vested in the division of workers' compensation under other sections of this chapter, and wherever in this chapter the word "commission", "commissioners" or "division" is used in respect to any original hearing, those terms shall mean the administrative law judges appointed under this section. When a hearing is necessary upon any claim, the division shall assign an administrative law judge to such hearing. Any administrative law judge shall have power to approve contracts of settlement, as provided by section 287.390, between the parties to any compensation claim or dispute under this chapter pending before the division of workers' compensation. Any award by an administrative law judge upon an original hearing shall have the same force and effect, shall be enforceable in the same manner as provided elsewhere in this chapter for awards by the labor

and industrial relations commission, and shall be subject to review as provided by section 287.480.

[6.] 7. Any of the administrative law judges employed pursuant to this section may be assigned on a temporary basis to the branch offices as necessary in order to ensure the proper administration of this chapter.

[7.] 8. All administrative law judges [and legal advisors] shall be required to participate in, on a continuing basis, specific training that shall pertain to those elements of knowledge and procedure necessary for the efficient and competent performance of the administrative law judges' [and legal advisors'] required duties and responsibilities. Such training requirements shall be established by the division subject to appropriations and shall include training in medical determinations and records, mediation and legal issues pertaining to workers' compensation adjudication. Such training may be credited toward any continuing legal education requirements.

[8.] 9. (1) **The director of the division, in conjunction with the administrative law judge review committee shall conduct a performance audit of all administrative law judges every two years. The audit results, stating the committee's recommendation of confidence or no confidence of each administrative law judge shall be sent to the governor no later than the first week of each legislative session immediately following such audit. Any administrative law judge who has received two or more votes of no confidence under performance audits by the committee may have their appointment immediately withdrawn;**

(2) **The review committee shall consist of the division director, who shall be appointed by the governor, one member appointed by the president pro tem of the senate, one member appointed by the minority leader of the senate, one member appointed by the speaker of the house of representatives, and one member appointed by the minority leader of the house of representatives. The governor shall appoint to the committee one member selected from the commission on retirement, removal, and discipline of judges. This member shall act as a member ex-officio and shall not have a vote in the committee. The division director shall serve as the chairperson of the committee, and shall serve on the committee during the time of employment in such position. The term of service for all other members shall be two years. The review committee members shall all serve without compensation. Necessary expenses for review committee members and all necessary support services to the review committee shall be provided by the division.**

10. 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.

287.615. EMPLOYEES OF DIVISION — COMPENSATION — SELECTION. — 1. The division may appoint or employ such persons as may be necessary to the proper administration of this chapter. All salaries to clerical employees shall be fixed by the division and approved by the labor and industrial relations commission. **Beginning January 1, 2006**, the annual salary of each [legal advisor,] administrative law judge, administrative law judge in charge, and chief legal [advisor] **counsel** shall be as follows:

(1) [For each legal advisor, compensation at eighty percent of the rate at which an associate division circuit judge is compensated;

(2) For [each] **any** chief legal [advisor] **counsel located at the division office in Jefferson City, Missouri**, compensation at [the same rate as a legal advisor plus] two thousand dollars **above eighty percent of the rate at which an associate circuit judge is compensated;**

[3] (2) For each administrative law judge, compensation at ninety percent of the rate at which an associate division circuit judge is compensated;

[4] (3) For each administrative law judge in charge, compensation at the same rate as an administrative law judge plus five thousand dollars.

2. The salary of the director of the division of workers' compensation shall be set by the director of the department of labor and industrial relations, but shall not be less than the salary plus two thousand dollars of an administrative law judge in charge. The appointees in each classification shall be selected as nearly as practicable in equal numbers from each of the two political parties casting the highest and the next highest number of votes for governor in the last preceding state election.

287.642. PUBLIC INFORMATION PROGRAMS, DIVISION TO ESTABLISH. — The division of workers' compensation shall create in each of its area offices a public information program to assist all parties involved with an injury or claim under this chapter. [In providing assistance under this section, all of the division's legal advisors shall also act as public information persons and shall, upon request, meet with or otherwise provide information to employees, employers, insurers and health care providers and shall investigate complaints of possible violations of the provisions of this chapter. The division shall employ two additional legal advisors, one to be located in the St. Louis office and one to be located in the Jefferson City office. Assistance provided under this section shall not include representing the claimant in a compensation hearing provided for in section 287.470.]

287.710. TAX RETURNS — PAYMENTS — USE OF PROCEEDS — FUNDS AND INTEREST NOT TO LAPSE. — 1. Every such insurance carrier or self-insurer, on or before the first day of March of each year, shall make a return, verified by the affidavit of its president and secretary or other chief officers or agents, to the director of the department of insurance, stating the amount of all such gross premiums or deposits and credits during the year ending on the thirty-first day of December, next preceding.

2. The amount of the tax due for each calendar year 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] **application of the current calendar year's tax rate to the premium** 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 or self-insurers, the director of revenue shall notify and assess each company or self-insurer 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 or self-insurer 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 or self-insurer 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 or self-insurer 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.

3. Upon the receipt of the returns and verification by the director of the division of workers' compensation as to the percent of tax to be imposed, the director of the department of insurance shall certify the amount of tax due from the various insurance carriers or self-insurers on the basis and at the rate provided in section 287.690, and make a schedule thereof, duplicate copies of which, properly certified by the director, shall be filed in the offices of the revenue department, the state treasurer, and the division of workers' compensation on or before the thirtieth day of

April of each year. If the taxes provided for in this section are not paid, the department of revenue shall certify the fact to the director of the department of insurance who shall thereafter suspend the delinquent carriers of insurance or self-insurers from the further transaction of business in this state until the taxes are paid.

4. Upon receipt of the money all such moneys shall be deposited to the credit of the fund for the support of the division of workers' compensation.

5. The tax collected for implementing the workers' compensation fund, and any interest accruing thereon, under the police power of the state from those specified in sections 287.690, 287.715, and 287.730 shall be used for the purpose of making effective the law to relieve victims of industrial injuries from having individually to bear the burden of misfortune or becoming charges upon society and for the further purpose of providing for the physical rehabilitation of the victims of industrial injuries, and for no other purposes. It is hereby made the express duty of every person exercising any official authority or responsibility in and for the state of Missouri sacredly to safeguard and preserve all funds collected, and any interest accruing thereon, under and by virtue of sections 287.690, 287.715, and 287.730 for the purposes hereinabove declared.

6. The funds created by virtue of sections 287.220, 287.690, 287.715, and 287.730 shall be exempt from the provisions of section 33.080, RSMo, specifically as they relate to the transfer of fund balances and any interest thereon to the ordinary revenue, and the director of the division of workers' compensation may direct the state treasurer to invest all or part of these funds in interest bearing accounts as provided in article IV, section 15 of the Constitution of the state of Missouri, and any unexpended balance in the second injury fund at the end of any appropriation period shall be a credit in the second injury fund and shall be the amount of the fund at the beginning of the appropriation period next immediately following.

287.715. ANNUAL SURCHARGE REQUIRED FOR SECOND INJURY FUND, AMOUNT, HOW COMPUTED, COLLECTION — VIOLATION, PENALTY. — 1. For the purpose of providing for revenue for the second injury fund, every authorized self-insurer, and every workers' compensation policyholder insured pursuant to the provisions of this chapter, shall be liable for payment of an annual surcharge in accordance with the provisions of this section. The annual surcharge imposed under this section shall apply to all workers' compensation insurance policies and self-insurance coverages which are written or renewed on or after April 26, 1988, including the state of Missouri, including any of its departments, divisions, agencies, commissions, and boards or any political subdivisions of the state who self-insure or hold themselves out to be any part self-insured. Notwithstanding any law to the contrary, the surcharge imposed pursuant to this section shall not apply to any reinsurance or retrocessional transaction.

2. [Prior to December 31, 1993, the director of the division of workers' compensation shall estimate the amount of benefits payable from the second injury fund during the ensuing calendar year, and shall calculate the total amount of the annual surcharge to be imposed during the ensuing calendar year upon all workers' compensation holders and authorized self-insurers. The amount of the annual surcharge to be imposed upon all policyholders and self-insurers shall equal the moneys estimated by the director of the division of workers' compensation to be payable from the second injury fund during the calendar year for which the annual surcharge is to be imposed, except that the surcharge shall not exceed three percent of the policyholder's or authorized self-insurer's workers' compensation net deposits, net premiums or net assessments.] Beginning October 31, [1993] **2005**, and each year thereafter, the director of the division of workers' compensation shall estimate the amount of benefits payable from the second injury fund during the [ensuing] **following** calendar year and shall calculate the total amount of the annual surcharge to be imposed **during the following calendar year** upon all workers' compensation policyholders and authorized self-insurers. The amount of the annual surcharge percentage to be imposed upon each policyholder and self-insured for the [ensuing] **following** calendar year commencing with the calendar year beginning on January 1, [1994] **2006**, shall be set at and calculated against a percentage, **not to exceed three percent**, of the policyholder's or self-

insured's workers' compensation net deposits, net premiums, or net assessments for the previous policy year, rounded up to the nearest one-half of a percentage point, that shall generate, as nearly as possible, one hundred ten percent of the moneys [projected] to be paid from the second injury fund in the [ensuing] **following** calendar year, less any moneys contained in the fund at the end of the previous calendar year. All policyholders and self-insurers shall be notified by the division of workers' compensation within ten calendar days of the determination of the surcharge percent to be imposed for, and paid in, the following calendar year. The net premium equivalent for individual self-insured employers and any group of political subdivisions of this state qualified to self-insure their liability pursuant to this chapter as authorized by section 537.620, RSMo, shall be based on average rate classifications calculated by the department of insurance as taken from premium rates filed by the twenty insurance companies providing the greatest volume of workers' compensation insurance coverage in this state. For employers qualified to self-insure their liability pursuant to this chapter, the rates filed by such group of employers in accordance with subsection 2 of section 287.280 shall be the net premium equivalent. The director may advance funds from the workers' compensation fund to the second injury fund if surcharge collections prove to be insufficient. Any funds advanced from the workers' compensation fund to the second injury fund must be reimbursed by the second injury fund no later than December thirty-first of the year following the advance. The surcharge shall be collected from policyholders by each insurer at the same time and in the same manner that the premium is collected, but no insurer or its agent shall be entitled to any portion of the surcharge as a fee or commission for its collection. The surcharge is not subject to any taxes, licenses or fees.

3. All surcharge amounts imposed by this section [shall be paid to the Missouri director of revenue and] shall be deposited to the credit of the second injury fund.

4. Such surcharge amounts shall be paid quarterly by insurers and self-insurers, and insurers shall pay the amounts not later than the thirtieth day of the month following the end of the quarter in which the amount is received from policyholders. **If the director of the division of workers' compensation fails to calculate the surcharge by the thirty-first day of October of any year for the following year, any increase in the surcharge ultimately set by the director shall not be effective for any calendar quarter beginning less than sixty days from the date the director makes such determination.**

5. If a policyholder or self-insured fails to make payment of the surcharge or an insurer fails to make timely transfer to the [director of revenue] **division** of surcharges actually collected from policyholders, as required by this section, a penalty of one-half of one percent of the surcharge unpaid, or untransferred, shall be assessed against the liable policyholder, self-insured or insurer. Penalties assessed under this subsection shall be collected in a civil action by a summary proceeding brought by the director of the division of workers' compensation.

287.800. LAW TO BE STRICTLY CONSTRUED. — [All of the provisions of this chapter shall be liberally construed with a view to the public welfare, and a substantial compliance therewith shall be sufficient to give effect to rules, regulations, requirements, awards, orders or decisions of the division and the commission, and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto.] **1. Administrative law judges, associate administrative law judges, legal advisors, the labor and industrial relations commission, the division of workers' compensation, and any reviewing courts shall construe the provisions of this chapter strictly.**

2. Administrative law judges, associate administrative law judges, legal advisors, the labor and industrial relations commission, and the division of workers' compensation shall weigh the evidence impartially without giving the benefit of the doubt to any party when weighing evidence and resolving factual conflicts.

287.801. REVIEW OF CLAIMS, BY WHOM. — Beginning January 1, 2006, only administrative law judges, the commission, and the appellate courts of this state shall have the power to review claims filed under this chapter.

287.804. WAIVER OF COMPENSATION BY EMPLOYEE, PROCEDURE. — **1.** An employee may file an application with the division of workers' compensation to be excepted from the provisions of this chapter in respect to certain employees. The application shall include a written waiver by the employee of all benefits under this chapter and an affidavit by the employee and employer, that the employee and employer are members of a recognized religious sect or division, as defined in 26 U.S.C. 1402(g), by reason of which they are conscientiously opposed to acceptance of benefits of any public or private insurance which makes payments in the event of death, disability, old age, or retirement or makes payments toward the cost of, or provides services for, medical bills, including the benefits of any insurance system established under the Federal Social Security Act, 42 U.S.C. 301 to 42 U.S.C. 1397jj.

2. The waiver and affidavit required by subsection 1 of this section shall be made upon a form to be provided by the division of workers' compensation.

3. An exception granted in regard to a specific employee shall continue to be valid until such employee rescinds the prior rejection of coverage or the employee or sect ceases to meet the requirements of subsection 1 of this section.

4. Any rejection pursuant to subsection 1 of this section shall be prospective in nature and shall entitle the employee only to reject such benefits that accrue on or after the date the rescission form is received by the insurance company.

287.808. BURDEN OF PROOF. — The burden of establishing any affirmative defense is on the employer. The burden of proving an entitlement to compensation under this chapter is on the employee or dependent. In asserting any claim or defense based on a factual proposition, the party asserting such claim or defense must establish that such proposition is more likely to be true than not true.

287.812. DEFINITIONS. — As used in sections 287.812 to 287.855, unless the context clearly requires otherwise, the following terms shall mean:

(1) "Administrative law judge", any person appointed pursuant to section 287.610 or section 621.015, RSMo, or any person who hereafter may have by law all of the powers now vested by law in administrative law judges appointed under the provisions of the workers' compensation law;

(2) "Beneficiary", a surviving spouse married to the deceased administrative law judge or legal advisor of the division of workers' compensation continuously for a period of at least two years immediately preceding the administrative law judge's or legal advisor's death and also on the day of the last termination of such person's employment as an administrative law judge or legal advisor for the division of workers' compensation, or if there is no surviving spouse eligible to receive benefits, any minor child of the deceased administrative law judge or legal advisor, or any child of the deceased administrative law judge or legal advisor who, regardless of age, is unable to support himself because of mental retardation, disease or disability, or any physical handicap or disability, who shall share in the benefits on an equal basis with all other beneficiaries;

(3) "Benefit", a series of equal monthly payments payable during the life of an administrative law judge or legal advisor of the division of workers' compensation retiring pursuant to the provisions of sections 287.812 to 287.855 or payable to a beneficiary as provided in sections 287.812 to 287.850;

(4) "Board", the board of trustees of the Missouri state employees' retirement system;

(5) "Chief legal counsel", any person appointed or employed under section 287.615 to serve in the capacity of legal counsel to the division;

(6) "Division", the division of workers' compensation of the state of Missouri;

[(6)] (7) "Legal advisor", any person appointed or employed pursuant to section 287.600, 287.615, or 287.616 to serve in the capacity as a legal advisor or an associate administrative law judge and any person appointed pursuant to section 286.010, RSMo, or pursuant to section 295.030, RSMo, and any attorney or legal counsel appointed or employed pursuant to section 286.070, RSMo;

[(7)] (8) "Salary", the total annual compensation paid for personal services as an administrative law judge or legal advisor, or both, of the division of workers' compensation by the state or any of its political subdivisions.

287.865. MONEYS NOT DEEMED STATE MONEYS — USE OF FUNDS — REPORTS TO DIRECTOR, WHEN — ADDITIONAL POWERS OF CORPORATION — ASSESSMENTS, DIVISION SHALL LEVY, AMOUNT — NO DIVIDENDS TO BE PAID — BANKRUPTCY, DISSOLUTION, OR INSOLVENCY OF SELF-INSURED MEMBER, PROCEDURE. — 1. Moneys collected by or on behalf of the division of workers' compensation and dispersed to the corporation shall be vested in the corporation and shall not thereafter be deemed state property and shall not thereafter be subject to appropriation by the legislature, the treasurer, or any other state agency.

2. All moneys in the insolvency fund, exclusive of administrative costs reasonably necessary to conduct the business of the corporation, as determined at the discretion of the board, as described in section 287.867, shall be used solely to compensate persons entitled to receive workers' compensation benefits from a Missouri self-insurer which is unable to meet its workers' compensation benefit obligations and to defray the expenses of the fund.

3. The board of directors of the corporation shall direct the investment of the moneys in the fund, and all returns on the investments shall be retained in the fund. The corporation shall, at the request of the director of the division, annually submit to an audit by an independent certified public accountant or by such other person or persons as the director deems sufficient, and a copy of the audit report shall be transmitted to the Missouri division of workers' compensation and to the corporation.

4. The board of directors of the corporation shall, based on such information as is reasonably available, report to the director of the division upon all matters germane to the solvency, liquidation, rehabilitation or conservation of any workers' compensation self-insurer and such reports shall not be deemed public documents under the provisions of section 610.010, RSMo, or any other law.

5. Upon creation of the insolvency fund pursuant to the provisions of section 287.867, the corporation is obligated for payment of compensation under this chapter to insolvent members' employees resulting from incidents and injuries to the extent of covered claims existing prior to the issuance of an order of liquidation against the member employer with a finding of insolvency which has been entered by a court of competent jurisdiction in the member employer's state of domicile or of this state under the provisions of sections 375.950 to 375.990, RSMo, in which the order of liquidation has not been stayed or been the subject of a writ of supersedeas or other comparable order; or prior to the date of determination by the board of directors that the member employer has fully expended all surety bonds, insurance or reinsurance, and all other available assets and is not able to pay compensation benefits at that time. All incidents giving rise to claims for compensation under this chapter must occur during the year in which such insolvent member is a member of the guaranty fund and was assessable pursuant to the plan of operation, except as provided for certain claims existing prior to August 28, 1992, pursuant to the provisions of subsection 7 of this section, and the employee must make timely claim for such payments according to procedures set forth by a court of competent jurisdiction over the delinquency or bankruptcy proceedings of the insolvent member. Any proceeds derived by such claim of the employee in bankruptcy shall be an offset of any amounts due and owing to the

employee under the workers' compensation law. Any such obligation of the corporation includes only the amount due the injured worker or workers of the insolvent member under this chapter. In no event is the corporation obligated to a claimant in an amount in excess of the obligation of the insolvent member employer. The corporation shall be deemed the insolvent employer for purposes of this chapter to the extent of its obligation on the covered claims and, to such extent, shall have all the rights, duties, and obligations of the insolvent employer as if the employer had not become insolvent. However, in no event shall the corporation be liable for any penalties or interest. **The division, upon notice of a self-insured member filing bankruptcy, liquidation, or dissolution shall notify in writing any employee of the self-insured member, who has an open claim for compensation or first report of injury filed with the division, at that employee's last known address of his or her obligation to file a proof of claim with the court of jurisdiction and of the need of the employee to provide the guaranty fund and the division with the records set out in this section. Any claimant claiming benefits under this chapter against an insolvent self-insured member of the Missouri Private Sector and Individual Guaranty Corporation shall, before the division of workers' compensation for the state of Missouri attaches jurisdiction, file with the bankruptcy court having jurisdiction over the bankruptcy of the self-insured employer, a proof of claim or other claim forms required by the appropriate bankruptcy court to secure a claim against the bankrupt employer. Any such claimant shall provide to the Missouri private sector self-insurance guaranty corporation and to the division of workers' compensation a copy, certified by the bankruptcy court, attesting to the filing of such claim or claim forms. Certification shall include the date of alleged loss alleged against the bankrupt employer; description of injuries claimed; and date the claim or claims were filed with the bankruptcy court. Failure of the claimant to provide such information shall bar the division from invoking jurisdiction over any matter for which an employee may otherwise be entitled to benefits under this chapter.**

6. The corporation may:

(1) Request that the director revoke any member employer's authority to act as a qualified private sector individual self-insurer if the self-insurer member fails to maintain membership in the corporation or fails to pay the assessments levied by the division under sections 287.860 to 287.885;

(2) Sue or be sued, including appearing in, prosecuting or defending and appealing any action on a claim brought by or against the corporation. The corporation shall have full rights of subrogation against any source of payment or reimbursement for payments by the corporation on behalf of a Missouri workers' compensation self-insurer. The corporation shall have a right of recovery through the maintenance of an action against any third party, other than a coemployee, who is in any way responsible or liable for injury or death to a covered worker. The corporation is also authorized to take all necessary action, including bringing an action at law or in equity to seek any available relief, including any action against any workers' compensation self-insurer, where the self-insurer has not paid all assessments levied by the division or the board of directors of the corporation. If the corporation is required to bring an action at law or in equity to enforce any obligations, rights or duties as regards a workers' compensation self-insurer, the court may award reasonable attorney's fees and costs to the corporation;

(3) Employ or retain such persons, including utilization of an in-house or a third-party administrator, fund manager, attorney, certified public accountant, auditor or other such person, and sufficient clerical staff, experts, professional staff and equipment, including sharing clerical staff and other costs with the division upon a mutually agreed upon paid basis, as are necessary to handle the claims and perform other duties of the corporation;

(4) Borrow funds, including authority to issue bonds or purchase excess or any appropriate insurance or reinsurance, necessary to effectuate the purposes of sections 287.860 to 287.885 or to protect the assets of this fund and the members of the board and their employees in accordance with the plan of operation;

(5) Negotiate and become a party to such contracts and perform such other acts as are necessary or proper to effectuate the purpose of sections 287.860 to 287.885;

(6) Become members of any trade association whose purpose includes furthering the understanding of the self-insurance industry in the state of Missouri, including the National Council of Self-Insurers, or other appropriate state, regional or national organizations;

(7) Review, on its own motion, or at the request of the director, all applications for initial and for membership renewal in the corporation, including financial or other appropriate background studies, actuarial studies, and other information or guidelines as may be necessary to ensure that the member is fully complying with the privileges of self-insurance. It shall be the primary duty of the division to provide adequate staff and equipment and technical assistance to thoroughly review initial applications and membership renewals through budgeted funds and initial applications and membership renewal application fees. The corporation, however, shall have the right to, in difficult cases or situations where the work load cannot be adequately done without the help of the corporation, to assist in any assessment of any applicant;

(8) Issue opinions prior to a final determination by the division of workers' compensation as to whether or not to approve any applicant for membership in the corporation, to the division concerning any applicant, which opinions shall be considered by the division;

(9) Charge an applicant, in addition to the applicant's assessment, for initial or membership renewal in the corporation, a fee sufficient to cover the actual cost of examining the financial and safety conditions of the applicant.

7. To the extent necessary to secure funds for the payment of covered claims and also to pay the reasonable costs to administer them, the division, upon certification of the board of directors, shall levy assessments based on the annual modified standard premium, provided that no such assessments shall ever exceed, in the aggregate, from all members, an amount in excess of one million dollars at any given time, exclusive of all new members' assessments in the amounts collected for same, as is set forth in the plan of operation pursuant to the provisions of section 287.870. Such assessments shall be made at a maximum annual assessment of one-sixth of one percent of the annual modified standard premium. The initial assessment shall be for an amount equal to six hundred thousand dollars, the amount of such fee to be levied over a three-year period, one-third of the six hundred thousand dollars to be collected and received the first year, one-third to be collected and received in the second year, and one-third to be collected and received in the third year, the first year to commence as of the date of incorporation, assessments to be prorated on an annualized basis. The director of the division shall annually certify to the corporation the assessment percentage due from the members of the corporation. The director of the division and the board of the corporation shall within the procedures as specified in this section and as established for the premium tax billings, as provided in sections 287.690, 287.710, 287.715 and 287.730, notify, assess, and receive the assessments due from those members for the prior calendar year ending on the thirty-first day of December, with the exception that this annual assessment shall be payable in full, on or before the first day of March directly to the corporation. The department of insurance shall make available to the corporation or director of the division, data on the self-insured employer's workers' compensation administrative tax data for use in verification of the assessment as provided in this section. If assessments provided in this section are not paid, the corporation shall certify the fact to the division. Out of the first amounts assessed, there shall be set aside an amount equal to fifty thousand dollars, which shall be applied retroactively, before August 28, 1992, to be used and applied for the benefit of employees who have open, outstanding claims, in existence, which have not already been fully and completely settled or for which there has been an award of judgment rendered, and for which there are moneys due and owing. The amount of payment and allocation of funds shall be within the exclusive discretion of the director, such payments to be made on a reasonably timely basis, as the director received funds for such purpose. In addition, there shall be no reassessments against any member unless the director feels the current balance of the fund is insufficient or, after deducting the amount paid for or reserved for

outstanding claims and for administrative and other costs in managing the corporation, the amount held shall be less than four hundred thousand dollars, at which point the director shall raise assessments sufficient to bring the minimum amount of the fund back up to six hundred thousand dollars or such other amount not to exceed, in any event, one million dollars based upon a maximum annual assessment of one-sixth of one percent of the annual modified standard premium as shall be necessary to effectuate the purposes of the corporation at that time.

8. Every assessment shall be made on a uniform percentage of the figure applicable, provided that the assessment levied against any self-insurer in any one year shall not exceed one-sixth of one percent of the annual modified standard premium during the calendar year preceding the date of the assessment. Assessments shall be remitted to and administered by the board of directors in the manner specified by the approved plan. Each employer so assessed shall have at least thirty days' written notice as to the date the assessment is due and payable. The corporation shall levy assessments against any newly admitted member of the corporation on the basis of contribution under the plan of operation as provided in section 287.870 and the applicable rules and regulations established pursuant thereto.

9. If, in any one year, funds available from such assessments, together with funds previously raised, are not sufficient to make all the payments or reimbursements then owing, the funds available shall be prorated, and the unpaid portion shall be paid as soon thereafter as sufficient additional funds become available.

10. No state funds of any kind shall be allocated or paid to the corporation or any of its accounts except those state funds accruing to the corporation by and through the assignment of rights of any insolvent employer.

11. All moneys, property and other assets received, owned or otherwise held by the corporation shall be held in such a way as to safeguard the corporation's ability to assure that the purpose and objectives of the corporation shall be advanced and that moneys needed to pay claims to employees of an individual insolvent self-insurer in the private sector shall be preserved.

12. Income derived from the corporation assets and investments shall vest in the corporation and shall not inure, under any circumstances, to the benefit of any member, the division of workers' compensation or any of its employees, or any other party other than an employee. The corporation may reinvest that income as otherwise provided for investing corporation assets. All such investments of corporation income shall be made in such a way as to ensure the welfare of the employees of the private sector individual self-insurers that are financially unable to meet their workers' compensation benefit obligations. In the event that the corporation shall be dissolved, any surplus income previously held by the insolvency fund shall be held in trust for the benefit of the employees of insolvent private sector individual self-insurers in the state of Missouri.

13. The corporation and the insolvency fund shall pay no dividends, rebates, interest, or otherwise distribute any corporation or fund income to any of its members.

287.894. INSURERS TO REPORT MEDICAL CLAIMS DATA TO DIVISION OF WORKERS' COMPENSATION, CONTENTS — CONSOLIDATED HEALTH PLAN, DUTIES — PURPOSE — COSTS — PENALTY FOR FAILURE TO COMPLY. — 1. All commercial insurance carriers licensed to sell workers' compensation insurance in the state shall provide to the Missouri [department of health and senior services] **division of workers' compensation** at least every six months workers' compensation medical claims history data as required by the [department] **division**. Such data shall be on electronic media and shall include the current procedural and medical terminology codes relating to the medical treatment, dates of treatment, demographic characteristics of the worker, type of health care provider rendering care, and charges for treatment. The [department] **division** may require a statistically valid sample of claims. Companies failing to provide such information as required by the [department] **division** are

subject to section 287.740. The [department] **division** may, for purposes of verification, collect data from health care providers relating to the treatment of workers' compensation injuries.

2. The Missouri consolidated health care plan as established in section 103.005, RSMo, shall, upon request of the [department] **division**, provide data comparable to that provided by the insurance carriers as required in subsection 1 of this section.

3. The data required in subsections 1 and 2 of this section shall be used by the [department] **division** to determine historical and statistical trends, variations and changes in health care costs associated with workers' compensation patients compared with nonworkers' compensation patients with similar injuries and conditions. Such data shall be readily available for review by users of the workers' compensation system, members of the general assembly, the Missouri division of workers' compensation and the department of insurance. Any data released by the [department] **division** shall not identify a patient or health care provider.

4. Any additional personnel or equipment needed by the [department] **division** to meet the requirements of this section shall be paid for by the workers' compensation fund.

287.957. EXPERIENCE RATING PLAN, CONTENTS. — The experience rating plan shall contain reasonable eligibility standards, provide adequate incentives for loss prevention, and shall provide for sufficient premium differentials so as to encourage safety. The uniform experience rating plan shall be the exclusive means of providing prospective premium adjustment based upon measurement of the loss-producing characteristics of an individual insured. An insurer may submit a rating plan or plans providing for retrospective premium adjustments based upon an insured's past experience. Such system shall provide for retrospective adjustment of an experience modification and premiums paid pursuant to such experience modification where a prior reserved claim produced an experience modification that varied by greater than fifty percent from the experience modification that would have been established based on the settlement amount of that claim. The rating plan shall prohibit an adjustment to the experience modification of an employer if the total medical cost does not exceed [five hundred] **one thousand** dollars and the employer pays all of the total medical costs and there is no lost time from the employment, **other than the first three days or less of disability under subsection 1 of section 287.160**, and no claim is filed. **An employer opting to utilize this provision maintains an obligation to report the injury under subsection 1 of section 287.380.**

287.972. ADVISORY ORGANIZATION'S PERMITTED ACTIVITIES — DIRECTOR MAY ALLOW PURE PREMIUM RATE DATA TO BE DISTRIBUTED. — 1. The advisory organization, in addition to other activities not prohibited, may:

- (1) Develop statistical plans, including class definitions;
- (2) Collect statistical data from members, subscribers or any other source;
- (3) Prepare and distribute pure premium rate data, adjusted for loss development and loss trending, in accordance with its statistical plans as specified in subsection 2 of this section. Such data and adjustments should be in sufficient detail so as to permit insurers to modify such pure premiums based on their own rating methods or interpretations of underlying data;
- (4) Prepare and distribute manuals of rating rules and rating schedules that do not contain any rules or schedules including final rates of permitting calculation of final rates without information outside the manuals;
- (5) Distribute information that is filed with the director and open to public inspection;
- (6) Conduct research and collect statistics in order to discover, identify and classify information relating to causes or prevention of losses;
- (7) Prepare and file policy forms and endorsements and consult with members, subscribers and others relative to their use and application;
- (8) Collect, compile and distribute past and current prices of individual insurers if such information is made available to the general public;

(9) Conduct research and collect information to determine the impact of benefit level changes on pure premium rates;

(10) Prepare and distribute rules and rating values for the uniform experience rating plan. Calculate and disseminate individual risk premium modifications;

(11) Assist an individual insurer to develop rates, supplementary rate information or supporting information when so authorized by the individual insurer.

2. The director of insurance [may require that no] **will allow** pure premium rate data, adjusted for loss development and loss trending, **to be distributed, [except] upon filing with the director with a final distribution** in a format which allows a comparison of such data, adjusted for loss development without any trend factor, with a trend factor developed by the advisory organization, and with a trend factor developed by the director, for each of the various job classifications. Such data may be used, at their option, by workers' compensation insurers, self-funded employers, or self-insured groups of employers, to determine their own final rates or charges for workers' compensation insurance coverage. The authority to establish such a reporting format shall not be interpreted as allowing the director of insurance to set final rates where a competitive market exists under the provisions of sections 287.930 to 287.975.

[287.616. LEGAL ADVISORS TO ACT AS ASSOCIATE ADMINISTRATIVE LAW JUDGES, WHEN, POWERS. — 1. Legal advisors shall act in the capacity of associate administrative law judges with the power to approve agreements of settlement or compromise entered into pursuant to section 287.390.

2. Legal advisors shall also act in the capacity of associate administrative law judges in those offices having only one administrative law judge and shall have jurisdiction to hear and determine claims upon original hearing. With respect to original hearings the legal advisor shall have such jurisdiction and powers as are vested in the division of workers' compensation under other sections of this chapter.]

SECTION B. EFFECTIVE DATE. — The repeal and reenactment of sections 287.615 and 287.812, and the repeal of section 287.616 of section A of this act shall become effective on January 1, 2006.

Approved March 30, 2005

SB 10 [HCS SCS SB 10 & 27]

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

Requires pseudoephedrine products to be sold by a pharmacist or technician

AN ACT to repeal sections 195.017 and 195.417, RSMo, and to enact in lieu thereof two new sections relating to the scheduling and sale of certain controlled substances, with penalty provisions and an emergency clause.

SECTION

A. Enacting clause.

195.017. Substances, how placed in schedules — list of scheduled substances — publication of schedules annually — electronic log of transactions to be maintained, when — certain products to be located behind pharmacy counter — exemption from requirements, when — rulemaking authority.

195.417. Limit on sale or dispensing of certain drugs, exceptions — violations, penalty.

B. Emergency clause.

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

SECTION A. ENACTING CLAUSE. — Sections 195.017 and 195.417, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 195.017 and 195.417, to read as follows:

195.017. SUBSTANCES, HOW PLACED IN SCHEDULES — LIST OF SCHEDULED SUBSTANCES — PUBLICATION OF SCHEDULES ANNUALLY — ELECTRONIC LOG OF TRANSACTIONS TO BE MAINTAINED, WHEN — CERTAIN PRODUCTS TO BE LOCATED BEHIND PHARMACY COUNTER — EXEMPTION FROM REQUIREMENTS, WHEN — RULEMAKING AUTHORITY. — 1. The department of health and senior services shall place a substance in Schedule I if it finds that the substance:

(1) Has high potential for abuse; and
(2) Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

2. Schedule I:

(1) The controlled substances listed in this subsection are included in Schedule I;
(2) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (a) Acetyl-alpha-methylfentanyl;
- (b) Acetylmethadol;
- (c) Allylprodine;
- (d) Alphacetylmethadol;
- (e) Alphameprodine;
- (f) Alphamethadol;
- (g) Alpha-methylfentanyl;
- (h) Alpha-methylthiofentanyl;
- (i) Benzethidine;
- (j) Betacetylmethadol;
- (k) Beta-hydroxyfentanyl;
- (l) Beta-hydroxy-3-methylfentanyl;
- (m) Betameprodine;
- (n) Betamethadol;
- (o) Betaprodine;
- (p) Clonitazene;
- (q) Dextromoramide;
- (r) Diampromide;
- (s) Diethylthiambutene;
- (t) Difenoxin;
- (u) Dimenoxadol;
- (v) Dimepheptanol;
- (w) Dimethylthiambutene;
- (x) Dioxaphetyl butyrate;
- (y) Dipipanone;
- (z) Ethylmethylthiambutene;
- (aa) Etonitazene;
- (bb) Etoxidine;
- (cc) Furethidine;
- (dd) Hydroxypethidine;
- (ee) Ketobemidone;
- (ff) Levomoramide;

- (gg) Levophenacymorphan;
- (hh) 3-Methylfentanyl;
- (ii) 3-Methylthiofentanyl;
- (jj) Morpheridine;
- (kk) MPPP;
- (ll) Noracymethadol;
- (mm) Norlevorphanol;
- (nn) Normethadone;
- (oo) Norpiperone;
- (pp) Para-fluorofentanyl;
- (qq) PEPAP;
- (rr) Phenadoxone;
- (ss) Phenampromide;
- (tt) Phenomorphan;
- (uu) Phenoperidine;
- (vv) Piritramide;
- (ww) Proheptazine;
- (xx) Properidine;
- (yy) Propiram;
- (zz) Racemoramide;
- (aaa) Thiofentanyl;
- (bbb) Tilidine;
- (ccc) Trimeperidine;

(3) Any of the following opium derivatives, their salts, isomers and salts of isomers unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (a) Acetorphine;
- (b) Acetyldihydrocodeine;
- (c) Benzylmorphine;
- (d) Codeine methylbromide;
- (e) Codeine-N-Oxide;
- (f) Cyprenorphine;
- (g) Desomorphine;
- (h) Dihydromorphine;
- (i) Drotebanol;
- (j) Etorphine; (except Hydrochloride Salt);
- (k) Heroin;
- (l) Hydromorphanol;
- (m) Methyldesorphine;
- (n) Methyldihydromorphine;
- (o) Morphine methylbromide;
- (p) Morphine methylsulfonate;
- (q) Morphine-N-Oxide;
- (r) Myorphine;
- (s) Nicocodeine;
- (t) Nicomorphine;
- (u) Normorphine;
- (v) Pholcodine;
- (w) Thebacon;

(4) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically

excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (a) 4-bromo-2,5-dimethoxyamphetamine;
- (b) 4-bromo-2, 5-dimethoxyphenethylamine;
- (c) 2,5-dimethoxyamphetamine;
- (d) 2,5-dimethoxy-4-ethylamphetamine;
- (e) 4-methoxyamphetamine;
- (f) 5-methoxy-3,4-methylenedioxyamphetamine;
- (g) 4-methyl-2,5-dimethoxy amphetamine;
- (h) 3,4-methylenedioxyamphetamine;
- (i) 3,4-methylenedioxymethamphetamine;
- (j) 3,4-methylenedioxy-N-ethylamphetamine;
- (k) N-nydroxy-3, 4-methylenedioxyamphetamine;
- (l) 3,4,5-trimethoxyamphetamine;
- (m) Alpha-ethyltryptamine;
- (n) Bufotenine;
- (o) Diethyltryptamine;
- (p) Dimethyltryptamine;
- (q) Ibogaine;
- (r) Lysergic acid diethylamide;
- (s) Marijuana; (Marihuana);
- (t) Mescaline;
- (u) Parahexyl;
- (v) Peyote, to include all parts of the plant presently classified botanically as *Lophophora Williamsii* Lemaire, whether growing or not; the seeds thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seed or extracts;

(w) N-ethyl-3-piperidyl benzilate;

(x) N-methyl-3-piperidyl benzilate;

(y) Psilocybin;

(z) Psilocyn;

(aa) Tetrahydrocannabinols;

(bb) Ethylamine analog of phencyclidine;

(cc) Pyrrolidine analog of phencyclidine;

(dd) Thiophene analog of phencyclidine;

(ee) 1-(1-(2-thienyl)cyclohexyl) pyrrolidine;

(5) Any material, compound, mixture or preparation containing any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers and salts of isomers whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

(a) Gamma hydroxybutyric acid;

(b) Mecloqualone;

(c) Methaqualone;

(6) Any material, compound, mixture or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers and salts of isomers:

(a) Aminorex;

(b) Cathinone;

(c) Fenethylamine;

(d) Methcathinone;

(e) (+)cis-4-methylaminorex ((+)cis-4,5-dihydro- 4-methyl-5-phenyl-2-oxazolamine);

(f) N-ethylamphetamine;

(g) N,N-dimethylamphetamine;

(7) A temporary listing of substances subject to emergency scheduling under federal law shall include any material, compound, mixture or preparation which contains any quantity of the following substances:

(a) N-(1-benzyl-4-piperidyl)-N-phenyl-propanamide (benzylfentanyl), its optical isomers, salts and salts of isomers;

(b) N-(1-(2-thienyl)methyl-4-piperidyl)-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts and salts of isomers.

3. The department of health and senior services shall place a substance in Schedule II if it finds that:

(1) The substance has high potential for abuse;

(2) The substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and

(3) The abuse of the substance may lead to severe psychic or physical dependence.

4. The controlled substances listed in this subsection are included in Schedule II:

(1) Any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(a) Opium and opiate and any salt, compound, derivative or preparation of opium or opiate, excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone and naltrexone, and their respective salts but including the following:

a. Raw opium;

b. Opium extracts;

c. Opium fluid;

d. Powdered opium;

e. Granulated opium;

f. Tincture of opium;

g. Codeine;

h. Ethylmorphine;

i. Etorphine hydrochloride;

j. Hydrocodone;

k. Hydromorphone;

l. Metopon;

m. Morphine;

n. Oxycodone;

o. Oxymorphone;

p. Thebaine;

(b) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in this subdivision, but not including the isoquinoline alkaloids of opium;

(c) Opium poppy and poppy straw;

(d) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine;

(e) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy);

(2) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

(a) Alfentanil;

(b) Alphaprodine;

- (c) Anileridine;
 - (d) Bezitramide;
 - (e) Bulk Dextropropoxyphene;
 - (f) Carfentanil;
 - (g) Butyl nitrite;
 - (h) Dihydrocodeine;
 - (i) Diphenoxylate;
 - (j) Fentanyl;
 - (k) Isomethadone;
 - (l) Levo-alphaacetylmethadol;
 - (m) Levomethorphan;
 - (n) Levorphanol;
 - (o) Metazocine;
 - (p) Methadone;
 - (q) Meperidine;
 - (r) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenylbutane;
 - (s) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane — carboxylic acid;
 - (t) Pethidine;
 - (u) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
 - (v) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
 - (w) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
 - (x) Phenazocine;
 - (y) Piminodine;
 - (z) Racemethorphan;
 - (aa) Racemorphan;
 - (bb) Sulfentanil;
 - (3) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:
 - (a) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
 - (b) Methamphetamine, its salts, isomers, and salts of its isomers;
 - (c) Phenmetrazine and its salts;
 - (d) Methylphenidate;
 - (4) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:
 - (a) Amobarbital;
 - (b) Glutethimide;
 - (c) Pentobarbital;
 - (d) Phencyclidine;
 - (e) Secobarbital;
 - (5) Any material, compound or compound which contains any quantity of the following substances:
 - (a) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States Food and Drug Administration approved drug product;
 - (b) Nabilone;
 - (6) Any material, compound, mixture, or preparation which contains any quantity of the following substances:
 - (a) Immediate precursor to amphetamine and methamphetamine: Phenylacetone;
 - (b) Immediate precursors to phencyclidine (PCP):
 - a. 1-phenylcyclohexylamine;
-

- b. 1-piperidinocyclohexanecarbonitrile (PCC).
5. The department of health and senior services shall place a substance in Schedule III if it finds that:
- (1) The substance has a potential for abuse less than the substances listed in Schedules I and II;
 - (2) The substance has currently accepted medical use in treatment in the United States; and
 - (3) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.
6. The controlled substances listed in this subsection are included in Schedule III:
- (1) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:
 - (a) Benzphetamine;
 - (b) Chlorphentermine;
 - (c) Clortermine;
 - (d) Phendimetrazine;
 - (2) Any material, compound, mixture or preparation which contains any quantity or salt of the following substances or salts having a depressant effect on the central nervous system:
 - (a) Any material, compound, mixture or preparation which contains any quantity or salt of the following substances combined with one or more active medicinal ingredients:
 - a. Amobarbital;
 - b. Gamma hydroxybutyric acid and its salts, isomers, and salts of isomers contained in a drug product for which an application has been approved under Section 505 of the Federal Food, Drug, and Cosmetic Act;
 - c. Secobarbital;
 - d. Pentobarbital;
 - (b) Any suppository dosage form containing any quantity or salt of the following:
 - a. Amobarbital;
 - b. Secobarbital;
 - c. Pentobarbital;
 - (c) Any substance which contains any quantity of a derivative of barbituric acid or its salt;
 - (d) Chlorhexadol;
 - (e) Ketamine, its salts, isomers, and salts of isomers;
 - (f) Lysergic acid;
 - (g) Lysergic acid amide;
 - (h) Methyprylon;
 - (i) Sulfondiethylmethane;
 - (j) Sulfonethylmethane;
 - (k) Sulfonmethane;
 - (l) Tiletamine and zolazepam or any salt thereof;
 - (3) Nalorphine;
 - (4) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs or their salts:
 - (a) Not more than 1.8 grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;
 - (b) Not more than 1.8 grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
 - (c) Not more than three hundred milligrams of hydrocodone per one hundred milliliters or not more than fifteen milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(d) Not more than three hundred milligrams of hydrocodone per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts;

(e) Not more than 1.8 grams of dihydrocodeine per one hundred milliliters or more than ninety milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts;

(f) Not more than three hundred milligrams of ethylmorphine per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(g) Not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams or not more than twenty-five milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts;

(h) Not more than fifty milligrams of morphine per one hundred milliliters or per one hundred grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Anabolic steroids. Unless specially excepted or unless listed in another schedule, any material, compound, mixture or preparation containing any quantity of the following substances, including its salts, isomers and salts of isomers whenever the existence of such salts of isomers is possible within the specific chemical designation:

- (a) Boldenone;
- (b) Chlorotestosterone (4-Chlortestosterone);
- (c) Clostebol;
- (d) Dehydrochlormethyltestosterone;
- (e) Dihydrotestosterone (4-Dihydro-testosterone);
- (f) Drostanolone;
- (g) Ethylestrenol;
- (h) Fluoxymesterone;
- (i) Formebolone (Formebolone);
- (j) Mesterolone;
- (k) Methandienone;
- (l) Methandranone;
- (m) Methandriol;
- (n) Methandrostenolone;
- (o) Methenolone;
- (p) Methyltestosterone;
- (q) Mibolerone;
- (r) Nandrolone;
- (s) Norethandrolone;
- (t) Oxandrolone;
- (u) Oxymesterone;
- (v) Oxymetholone;
- (w) Stanolone;
- (x) Stanozolol;
- (y) Testolactone;
- (z) Testosterone;
- (aa) Trenbolone;

(bb) Any salt, ester, or isomer of a drug or substance described or listed in this subdivision, if that salt, ester or isomer promotes muscle growth except an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the secretary of health and human services for that administration.

(6) The department of health and senior services may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subdivisions

(1) and (2) of this subsection from the application of all or any part of sections 195.010 to 195.320 if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

7. The department of health and senior services shall place a substance in Schedule IV if it finds that:

- (1) The substance has a low potential for abuse relative to substances in Schedule III;
- (2) The substance has currently accepted medical use in treatment in the United States; and
- (3) Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III.

8. The controlled substances listed in this subsection are included in Schedule IV:

(1) Any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(a) Not more than one milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit;

(b) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane);

(c) Any of the following limited quantities of narcotic drugs or their salts, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

a. Not more than two hundred milligrams of codeine per one hundred milliliters or per one hundred grams;

b. Not more than one hundred milligrams of dihydrocodeine per one hundred milliliters or per one hundred grams;

c. Not more than one hundred milligrams of ethylmorphine per one hundred milliliters or per one hundred grams;

(2) Any material, compound, mixture or preparation containing any quantity of the following substances, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (a) Alprazolam;
- (b) Barbitol;
- (c) Bromazepam;
- (d) Camazepam;
- (e) Chloral betaine;
- (f) Chloral hydrate;
- (g) Chlordiazepoxide;
- (h) Clobazam;
- (i) Clonazepam;
- (j) Clorazepate;
- (k) Clotiazepam;
- (l) Cloxazolam;
- (m) Delorazepam;
- (n) Diazepam;
- (o) Estazolam;
- (p) Ethchlorvynol;
- (q) Ethinamate;
- (r) Ethyl loflazepate;
- (s) Fludiazepam;

- (t) Flunitrazepam;
- (u) Flurazepam;
- (v) Halazepam;
- (w) Haloxazolam;
- (x) Ketazolam;
- (y) Loprazolam;
- (z) Lorazepam;
- (aa) Lormetazepam;
- (bb) Mebutamate;
- (cc) Medazepam;
- (dd) Meprobamate;
- (ee) Methohexital;
- (ff) Methylphenobarbital;
- (gg) Midazolam;
- (hh) Nimetazepam;
- (ii) Nitrazepam;
- (jj) Nordiazepam;
- (kk) Oxazepam;
- (ll) Oxazolam;
- (mm) Paraldehyde;
- (nn) Petrichloral;
- (oo) Phenobarbital;
- (pp) Pinazepam;
- (qq) Prazepam;
- (rr) Quazepam;
- (ss) Temazepam;
- (tt) Tetrazepam;
- (uu) Triazolam;
- (vv) Zolpidem;

(3) Any material, compound, mixture, or preparation which contains any quantity of the following substance including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible: fenfluramine;

(4) Any material, compound, mixture or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers and salts of isomers:

- (a) Cathine ((+)-norpseudoephedrine);
- (b) Diethylpropion;
- (c) Fencamfamin;
- (d) Fenproporex;
- (e) Mazindol;
- (f) Mefenorex;
- (g) Pemoline, including organometallic complexes and chelates thereof;
- (h) Phentermine;
- (i) Pipradrol;
- (j) SPA ((-)-1-dimethylamino-1,2-diphenylethane);

(5) Any material, compound, mixture or preparation containing any quantity of the following substance, including its salts: pentazocine;

(6) [Any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system including their salts, isomers and salts of isomers: ephedrine or its salts, optical isomers, or salts of optical isomers as the only active medicinal ingredient or contains ephedrine or its salts, optical isomers, or salts of optical isomers and therapeutically insignificant quantities of another active medicinal ingredient;]

Ephedrine, its salts, optical isomers and salts of optical isomers, when the substance is the only active medicinal ingredient;

(7) The department of health and senior services may except by rule any compound, mixture, or preparation containing any depressant substance listed in subdivision (1) of this subsection from the application of all or any part of sections 195.010 to 195.320 if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

9. The department of health and senior services shall place a substance in Schedule V if it finds that:

(1) The substance has low potential for abuse relative to the controlled substances listed in Schedule IV;

(2) The substance has currently accepted medical use in treatment in the United States; and

(3) The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

10. The controlled substances listed in this subsection are included in Schedule V:

(1) Any material, compound, mixture or preparation containing any of the following narcotic drug and its salts: buprenorphine;

(2) Any compound, mixture or preparation containing any of the following narcotic drugs or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(a) Not more than two and five-tenths milligrams of diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit;

(b) Not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams;

(c) Not more than five-tenths milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit;

(3) Any material, compound, mixture or preparation which contains any quantity of the following substance having a stimulant effect on the central nervous system including its salts, isomers and salts of isomers: pyrovalerone[.];

(4) Any compound, mixture, or preparation containing any detectable quantity of pseudoephedrine or its salts or optical isomers, or salts of optical isomers or any compound, mixture, or preparation containing any detectable quantity of ephedrine or its salts or optical isomers, or salts of optical isomers.

11. If any compound, mixture, or preparation as specified in subdivision (4) of subsection 10 of this section is dispensed, sold, or distributed in a pharmacy without a prescription:

(1) All packages of any compound, mixture, or preparation containing any detectable quantity of pseudoephedrine, its salts or optical isomers, or salts of optical isomers or ephedrine, its salts or optical isomers, or salts of optical isomers, shall be offered for sale only from behind a pharmacy counter where the public is not permitted, and only by a registered pharmacist or registered pharmacy technician; and

(2) Any person purchasing, receiving or otherwise acquiring any compound, mixture, or preparation containing any detectable quantity of pseudoephedrine, its salts or optical isomers, or salts of optical isomers or ephedrine, its salts or optical isomers, or salts of optical isomers shall be at least eighteen years of age; and

(3) The pharmacist or registered pharmacy technician shall require any person purchasing, receiving or otherwise acquiring such compound, mixture, or preparation,

who is not known to the pharmacist or registered pharmacy technician, to furnish suitable photo identification showing the date of birth of the person.

12. Within ninety days of the enactment of this section, pharmacists and registered pharmacy technicians shall implement and maintain a written or electronic log of each transaction. Such log shall include the following information:

- (1) The name and address of the purchaser;
- (2) The amount of the compound, mixture, or preparation purchased;
- (3) The date of each purchase; and
- (4) The name or initials of the pharmacist or registered pharmacy technician who dispensed the compound, mixture, or preparation to the purchaser.

13. No person shall dispense, sell, purchase, receive, or otherwise acquire quantities greater than those specified in this chapter.

14. Within thirty days of the enactment of this section, all persons who dispense or offer for sale pseudoephedrine and ephedrine products in a pharmacy shall ensure that all such products are located only behind a pharmacy counter where the public is not permitted.

15. Within thirty days of the enactment of this section, any business entity which sells ephedrine or pseudoephedrine products in the course of legitimate business which is in the possession of pseudoephedrine and ephedrine products, and which does not have a state and federal controlled substances registration, shall return these products to a manufacturer or distributor or transfer them to an authorized controlled substances registrant.

16. Any person who knowingly or recklessly violates the provisions of subsections 11 to 15 of this section is guilty of a class A misdemeanor.

17. The scheduling of substances specified in subdivision (4) of subsection 10 of this section and subsections 11, 12, 14, and 15 of this section shall not apply to any compounds, mixtures, or preparations that are in liquid or liquid-filled gel capsule form.

18. The manufacturer of a drug product or another interested party may apply with the department of health and senior services for an exemption from this section. The department of health and senior services may grant an exemption by rule from this section if the department finds the drug product is not used in the illegal manufacture of methamphetamine or other controlled or dangerous substances. The department of health and senior services shall rely on reports from law enforcement and law enforcement evidentiary laboratories in determining if the proposed product can be used to manufacture illicit controlled substances.

[11.] 19. The department of health and senior services shall revise and republish the schedules annually.

20. The department of health and senior services shall promulgate rules under chapter 536, RSMo, regarding the security and storage of Schedule V controlled substances, as described in subdivision (4) of subsection 10 of this section, for distributors as registered by the department of health and senior services.

195.417. LIMIT ON SALE OR DISPENSING OF CERTAIN DRUGS, EXCEPTIONS — VIOLATIONS, PENALTY. — 1. [No person shall deliver in any single over-the-counter sale more than:

- (1) Two packages or any number of packages that contain a combined total of no more than six grams of any drug containing a sole active ingredient of ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers; or
- (2) Three packages of any combination drug containing, as one of its active ingredients, ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers, or any number of packages of said combination drug that contain a combined total of no more than nine grams of ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers.

2. All packages of any drug having a sole active ingredient of ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers, shall be displayed and offered for sale only behind a checkout counter where the public is not permitted, or within ten feet and an unobstructed view of an attended checkout counter. This subsection shall not apply to any retailer utilizing an electronic antitheft system that utilizes a product tag and detection alarm which specifically prevents the theft of such drugs from the place of business where such drugs are sold.] **The limits specified in subsection 2 of this section shall not apply to any quantity of such product, mixture, or preparation dispensed pursuant to a valid prescription.**

2. Within any thirty-day period, no person shall sell, dispense, or otherwise provide to the same individual, and no person shall purchase, receive, or otherwise acquire more than the following amount: any number of packages of any drug product containing any detectable amount of ephedrine or pseudoephedrine, or any of their salts or optical isomers, or salts of optical isomers, either as:

- (1) The sole active ingredient; or
- (2) One of the active ingredients of a combination drug; or
- (3) A combination of any of the products specified in subdivisions (1) and (2) of this subsection;

in any total amount greater than nine grams.

3. All packages of any compound, mixture, or preparation containing any detectable quantity of ephedrine or pseudoephedrine, or any of their salts or optical isomers, or salts of optical isomers, except those that are excluded from Schedule V in subsection 17 or 18 of section 195.017, shall be offered for sale only from behind a pharmacy counter where the public is not permitted, and only by a registered pharmacist or registered pharmacy technician under section 195.017.

[3.] **4. This section shall supersede and preempt any [municipal] local ordinances or regulations [passed on or after December 23, 2002, to the extent that such ordinances or regulations are more restrictive than the provisions of this section], including any ordinances or regulations enacted by any political subdivision of the state.** This section shall not apply to [any product labeled pursuant to federal regulation for use only in children under twelve years of age, or to] any products that the state department of health and senior services, upon application of a manufacturer, exempts by rule from this section because the product has been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine, or its salts or precursors or to the sale of any animal feed products containing ephedrine or any naturally occurring or herbal ephedra or extract of ephedra.

[4. Any person who is considered the general owner or operator of the outlet where ephedrine, pseudoephedrine, or phenylpropanolamine products are available for sale who violates subsection 1 of this section shall not be penalized pursuant to this section if such person documents that an employee training program was in place to provide the employee with information on the state and federal regulations regarding ephedrine, pseudoephedrine, or phenylpropanolamine.] **5. Persons selling and dispensing substances containing any detectable amount of pseudoephedrine, its salts or optical isomers, or salts of optical isomers or ephedrine, its salts or optical isomers, or salts of optical isomers shall maintain logs, documents, and records as specified in section 195.017. Persons selling only compounds, mixtures, or preparations that are excluded from Schedule V in subsection 17 or 18 of section 195.017 shall not be required to maintain such logs, documents, and records. All logs, records, documents, and electronic information maintained for the dispensing of these products shall be open for inspection and copying by municipal, county, and state or federal law enforcement officers whose duty it is to enforce the controlled substances laws of this state or the United States.**

[5.] **6. Within thirty days of the enactment of this section, all persons who dispense or offer for sale pseudoephedrine and ephedrine products, except those that are excluded**

from Schedule V in subsection 17 or 18 of section 195.017, shall ensure that all such products are located only behind a pharmacy counter where the public is not permitted.

7. Within thirty days of the enactment of this section, any business entity which sells ephedrine or pseudoephedrine products in the course of legitimate business which is in the possession of pseudoephedrine and ephedrine products, except those that are excluded from Schedule V in subsection 17 or 18 of section 195.017, and which does not have a state and federal controlled substances registration, shall return these products to a manufacturer or distributor or transfer them to an authorized controlled substance registrant.

8. Any person who knowingly or recklessly violates this section is guilty of a class A misdemeanor.

9. The provisions of subsection 2 of this section limiting individuals from purchasing the specified amount in any thirty-day period shall not apply to any compounds, mixtures, or preparations that are in liquid or liquid-filled gel capsule form. However, no person shall purchase, receive, or otherwise acquire more than nine grams of any compound, mixture, or preparation excluded in subsection 17 or 18 of section 195.017, in a single purchase as provided in subsection 2 of this section.

SECTION B. EMERGENCY CLAUSE. — Because of the need to protect Missouri citizens from crime relating to methamphetamine, 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 15, 2005

SB 21 [HCS SB 21]

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

Specifies that the filing fee for adoption petitions shall be deposited in the Putative Father Registry Fund

AN ACT to repeal sections 191.975, 192.016, 453.020, and 453.121, RSMo, and to enact in lieu thereof four new sections relating to putative father registry.

SECTION

- A. Enacting clause.
- 191.975. Adoption awareness, department duties — advertising campaign authority — rulemaking authority.
- 192.016. Putative father registry — fund created.
- 453.020. Petition — guardian ad litem appointed — fee, deposit in putative father registry fund.
- 453.121. Adoption records, disclosure procedure — registry of biological parents and adopted adults.

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

SECTION A. ENACTING CLAUSE. — Sections 191.975, 192.016, 453.020, and 453.121, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 191.975, 192.016, 453.020, and 453.121, to read as follows:

191.975. ADOPTION AWARENESS, DEPARTMENT DUTIES — ADVERTISING CAMPAIGN AUTHORITY — RULEMAKING AUTHORITY. — 1. This section shall be known and may be cited as the "Adoption Awareness Law".

2. To raise public awareness and to educate the public, the department of social services, with the assistance of the department of health and senior services, shall be responsible for:

(1) Collecting and distributing resource materials to educate the public about foster care and adoption;

(2) Developing and distributing educational materials, including but not limited to videos, brochures and other media as part of a comprehensive public relations campaign about the positive option of adoption and foster care. The materials shall include, but not be limited to, information about:

(a) The benefits of adoption and foster care;

(b) Adoption and foster care procedures;

(c) Means of financing the cost of adoption and foster care, including but not limited to adoption subsidies, foster care payments and special needs adoption tax credits;

(d) Options for birth parents in choosing adoptive parents;

(e) Protection for and rights of birth parents and adoptive parents prior to and following the adoption;

(f) Location of adoption and foster care agencies;

(g) Information regarding various state health and social service programs for pregnant women and children, including but not limited to medical assistance programs and temporary assistance for needy families (TANF); and

(h) Referrals to appropriate counseling services, including but not be limited to counseling services for parents who are considering retaining custody of their children, placing their children for adoption, or becoming foster or adoptive parents; but excluding any referrals for abortion or to abortion facilities;

(3) Making such educational materials available through state and local public health clinics, public hospitals, family planning clinics, abortion facilities as defined in section 188.015, RSMo, maternity homes as defined in section 135.600, RSMo, child-placing agencies licensed pursuant to sections 210.481 to 210.536, RSMo, attorneys whose practice involves private adoptions, in vitro fertilization clinics and private physicians for distribution to their patients who request such educational materials. Such materials shall also be available to the public through the department of social services' Internet web site; [and]

(4) Establishing a toll-free telephone number for information on adoption and foster care, and to answer questions and assist persons inquiring about becoming adoptive or foster parents.

3. In addition, the department may establish and implement an ongoing advertising campaign for the recruitment of adoptive and foster care families, with a special emphasis on the recruitment of qualified adoptive and foster care families for special needs children. Such advertising campaign may utilize, but shall not be limited to, the following media: television, radio, outdoor advertising, newspaper, magazines and other print media, web sites, and the Internet. The department may contract with professional advertising agencies or other professional entities to conduct such advertising campaign on behalf of the department.

[3.] 4. The provisions of this section shall be subject to appropriations.

[4.] 5. The department of social services shall promulgate rules for the implementation of this section in accordance with chapter 536, RSMo.

192.016. PUTATIVE FATHER REGISTRY — FUND CREATED. — 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 paragraph (b) or (c) of subdivision (2) of subsection 3 of section 453.030, RSMo.

7. Failure to timely file pursuant to paragraph (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 paragraph (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.

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, 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 this section, 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.

11. There is hereby created in the state treasury the "Putative Father Registry Fund", which shall consist of moneys collected under section 453.020, RSMo. Upon appropriation, moneys in the fund shall be used solely for the administration of the putative father registry. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, moneys in the fund shall not revert to the credit of general revenue at the end of the biennium, but shall be used upon appropriations by the general assembly for the purpose of carrying out the provisions of this chapter.

453.020. PETITION — GUARDIAN AD LITEM APPOINTED — FEE, DEPOSIT IN PUTATIVE FATHER REGISTRY FUND. — 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.

3. All fees provided for in this section shall be deposited in the putative father registry fund. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, money in the fund shall not be transferred and placed to the credit of general revenue at the end of the biennium, but shall be used upon appropriation by the general assembly for the purpose of carrying out the provisions of this chapter.

453.121. ADOPTION RECORDS, DISCLOSURE PROCEDURE — REGISTRY OF BIOLOGICAL PARENTS AND ADOPTED ADULTS. — 1. As used in this section, unless the context clearly indicates otherwise, the following terms mean:

- (1) "Adopted adult", any adopted person who is [twenty-one] **eighteen** years of age or over;
- (2) "Adopted child", any adopted person who is less than [twenty-one] **eighteen** years of age;
- (3) "Adult sibling", any brother or sister of the whole or half blood who is [twenty-one] **eighteen** years of age or over;
- (4) "Identifying information", information which includes the name, date of birth, place of birth and last known address of the biological parent;
- (5) "Nonidentifying information", information concerning the physical description, nationality, religious background and medical history of the biological parent or sibling.

2. All papers, records, and information pertaining to an adoption whether part of any permanent record or file may be disclosed only in accordance with this section.

3. Nonidentifying information, if known, concerning undisclosed biological parents or siblings shall be furnished by the child-placing agency or the juvenile court to the adoptive parents, legal guardians or adopted adult upon written request therefor.

4. An adopted adult may make a written request to the circuit court having original jurisdiction of such adoption to secure and disclose information identifying the adopted adult's biological parents. **If the biological parents have consented to the release of identifying information under subsection 11 of this section, the court shall disclose such identifying information to the adopted adult. If the biological parents have not consented to the release of identifying information under subsection 11 of this section,** the court shall, within ten days of receipt of the request, notify in writing the adoptive parents of such petitioner and the child-placing agency or juvenile court personnel having access to the information requested of the request by the adopted adult.

5. Within three months after receiving notice of the request of the adopted adult, the child-placing agency or juvenile court personnel shall notify the adoptive parents, if such adoptive parents are living and shall not make any attempt to notify the biological parents without prior

written consent of such adoptive parents for adoptions instituted or completed prior to August 13, 1986, but may proceed if there is proof that the adoptive parents are deceased or incapacitated, as such term is defined in chapter 475, RSMo. If the adoptive parents are living but are unwilling to give such written consent, the child-placing agency or the juvenile court personnel shall make a written report to the court stating that they were unable to notify the biological parent. If the adoptive parents are deceased or give written consent, the child-placing agency or the juvenile court personnel shall make reasonable efforts to notify the biological parents of the request of the adopted adult. The child-placing agency or juvenile court personnel may charge actual costs to the adopted adult for the cost of making such search. All communications under this subsection are confidential. For purposes of this subsection, "notify" means a personal and confidential contact with the biological parent of the adopted adult, which initial contact shall not be made by mail and shall be made by an employee of the child-placing agency which processed the adoption, juvenile court personnel or some other licensed child-placing agency designated by the child-placing agency or juvenile court. Nothing in this section shall be construed to permit the disclosure of communications privileged pursuant to section 491.060, RSMo. At the end of three months, the child-placing agency or juvenile court personnel shall file a report with the court stating that each biological parent that was located was given the following information:

- (1) The nature of the identifying information to which the agency has access;
- (2) The nature of any nonidentifying information requested;
- (3) The date of the request of the adopted adult;
- (4) The right of the biological parent to file an affidavit with the court stating that the identifying information should be disclosed;
- (5) The effect of a failure of the biological parent to file an affidavit stating that the identifying information should be disclosed.

6. If the child-placing agency or juvenile court personnel reports to the court that it has been unable to notify the biological parent within three months, the identifying information shall not be disclosed to the adopted adult. Additional requests for the same or substantially the same information may not be made to the court within one year from the end of the three-month period during which the attempted notification was made, unless good cause is shown and leave of court is granted.

7. If, within three months, the child-placing agency or juvenile court personnel reports to the court that it has notified the biological parent pursuant to subsection 5 of this section, the court shall receive the identifying information from the child-placing agency. If an affidavit duly executed by a biological parent authorizing the release of information is filed with the court, the court shall disclose the identifying information as to that biological parent to the adopted adult, provided that the other biological parent either:

- (1) Is unknown;
- (2) Is known but cannot be found and notified pursuant to section 5 of this act;
- (3) Is deceased; or
- (4) Has filed with the court an affidavit authorizing release of identifying information.

If the biological parent fails or refuses to file an affidavit with the court authorizing the release of identifying information, then the identifying information shall not be released to the adopted adult. No additional request for the same or substantially the same information may be made within three years of the time the biological parent fails or refuses to file an affidavit authorizing the release of identifying information.

8. If the biological parent is deceased but previously had filed an affidavit with the court stating that identifying information shall be disclosed, the information shall be forwarded to and released by the court to the adopted adult. If the biological parent is deceased and, at any time prior to his death, the biological parent did not file an affidavit with the court stating that the identifying information shall be disclosed, the adopted adult may petition the court for an order

releasing the identifying information. The court shall grant the petition upon a finding that disclosure of the information is necessary for health-related purposes.

9. Any adopted adult whose adoption was finalized in this state or whose biological parents had their parental rights terminated in this state may request the court to secure and disclose identifying information concerning an adult sibling and upon a finding by the court that such information is necessary for urgent health-related purposes in the same manner as provided in this section. Identifying information pertaining exclusively to the adult sibling, whether part of the permanent record of a file in the court or in an agency, shall be released only upon consent of that adult sibling.

10. The central office of the **children's** division [of family services of] **within** the department of social services shall maintain a registry by which biological parents, **adult siblings**, and adoptive adults may indicate their desire to be contacted by each other. The division may request such identification for the registry as a party may possess to assure positive identifications. [If] **At the time of registry, a biological parent or adult sibling may consent in writing to the release of identifying information to an adopted adult. If such a consent has not been executed and** the division believes that a match has occurred on the registry between [both] biological parents **or adult siblings** and an adopted adult, an employee of the division shall make the confidential contact provided in subsection 5 of this section with the biological parents **or adult siblings** and with the adopted adult. If the division believes that a match has occurred on the registry between one biological parent **or adult sibling** and an adopted adult, an employee of the division shall make the confidential contact provided by subsection 5 of this section with the biological parent **or adult sibling**. The division shall then attempt to make such confidential contact with the other biological parent, and shall proceed thereafter to make such confidential contact with the adopted adult only if the division determines that the other biological parent meets one of the conditions specified in subsection 7 of this section. The biological parent, **adult sibling**, or adopted adult may refuse to go forward with any further contact between the parties when contacted by the division.

11. The provisions of this section, except as provided in subsection 5 of this section governing the release of identifying and nonidentifying adoptive information apply to adoptions completed before and after August 13, 1986.

Approved July 6, 2005

SB 24 [HCS SCS SB 24]

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

Limits expiration date to provision allowing for debt service on county bonds for renovation and enhancement

AN ACT to repeal section 488.426, RSMo, and section 488.429, as enacted by conference committee substitute for senate substitute for senate committee substitute for house committee substitute for house bill nos. 795, 972, 1128 & 1161, ninety-second general assembly, second regular session, and to enact in lieu thereof one new section relating to limitations on the use of law library funds.

SECTION

- A. Enacting clause.
 488.426. Deposit required in civil actions — exemptions — surcharge to remain in effect — additional fee for adoption and small claims court (Franklin County) — expiration date.
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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 — expiration date.

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

SECTION A. ENACTING CLAUSE. — Section 488.426, RSMo, and section 488.429, as enacted by conference committee substitute for senate substitute for senate committee substitute for house committee substitute for house bill nos. 795, 972, 1128 & 1161, ninety-second general assembly, second regular session, are repealed and one new section enacted in lieu thereof, to be known as section 488.426, to read as follows:

488.426. DEPOSIT REQUIRED IN CIVIL ACTIONS — EXEMPTIONS — SURCHARGE TO REMAIN IN EFFECT — ADDITIONAL FEE FOR ADOPTION AND SMALL CLAIMS COURT (FRANKLIN COUNTY) — EXPIRATION DATE. — 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. **The provisions of this subsection shall expire on December 31, 2014.**

[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 — EXPIRATION DATE. — 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, other than a county participating in the nonpartisan court plan, such fund may also be applied and expended for courtroom renovation and technology enhancement, or for debt service on county bonds for such renovation or enhancement projects.

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

Approved July 6, 2005

SB 37 [HCS SS SCS SBs 37, 322, 78, 351 & 424]

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 provisions concerning alcohol related offenses

AN ACT to repeal sections 302.060, 302.321, 302.541, 311.310, 565.024, 568.050, 577.001, 577.023, and 577.500, RSMo, and to enact in lieu thereof eleven new sections relating to alcohol related offenses, with penalty provisions.

SECTION

- A. Enacting clause.
- 302.060. License not to be issued to whom, exceptions.
- 302.321. Driving while license or driving privilege is canceled, suspended or revoked, penalty — enhanced penalty for repeat offenders — imprisonment, mandatory, exception.
- 302.541. Additional reinstatement fee, license to operate motor vehicle, when — proof of financial responsibility, not required, when.
- 311.310. Sale to minor — certain other persons, misdemeanor — exceptions — permitting minor to consume intoxicating liquor on property, violation, penalty — defenses.
- 565.024. Involuntary manslaughter, penalty.
- 568.050. Endangering the welfare of a child in the second degree.
- 577.001. Chapter definitions.
- 577.023. Persistent and prior offenders — enhanced penalties — imprisonment requirements, exceptions — procedures — definitions.
- 577.500. Suspension or revocation of driving privileges, persons under twenty-one years of age — violation of certain laws — surrender of licenses — court to forward to director of revenue — period of suspension.

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

SECTION A. ENACTING CLAUSE. — Sections 302.060, 302.321, 302.541, 311.310, 565.024, 568.050, 577.001, 577.023, and 577.500, RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 302.060, 302.309, 302.321, 302.541, 311.310, 565.022, 565.024, 568.050, 577.001, 577.023, and 577.500, to read as follows:

302.060. LICENSE NOT TO BE ISSUED TO WHOM, EXCEPTIONS. — The director shall not issue any license and shall immediately deny any driving privilege:

- (1) To any person who is under the age of eighteen years, if such person operates a motor vehicle in the transportation of persons or property as classified in section 302.015;
- (2) To any person who is under the age of sixteen years, except as hereinafter provided;
- (3) To any person whose license has been suspended, during such suspension, or to any person whose license has been revoked, until the expiration of one year after such license was revoked;
- (4) To any person who is an habitual drunkard or is addicted to the use of narcotic drugs;
- (5) To any person who has previously been adjudged to be incapacitated and who at the time of application has not been restored to partial capacity;
- (6) To any person who, when required by this law to take an examination, has failed to pass such examination;
- (7) To any person who has an unsatisfied judgment against such person, as defined in chapter 303, RSMo, until such judgment has been satisfied or the financial responsibility of such person, as defined in section 303.120, RSMo, has been established;
- (8) To any person whose application shows that the person has been convicted within one year prior to such application of violating the laws of this state relating to failure to stop after an accident and to disclose the person's identity or driving a motor vehicle without the owner's consent;

(9) To any person who has been convicted more than twice of violating state law, or a county or municipal ordinance where [the judge in such cases was an attorney and] the defendant was represented by or waived the right to an attorney in writing, relating to driving while intoxicated; except that, after the expiration of ten years from the date of conviction of the last offense of violating such law or ordinance relating to driving while intoxicated, a person who was so convicted may petition the circuit court of the county in which such last conviction was rendered and the court shall review the person's habits and conduct since such conviction. If the court finds that the petitioner has not been convicted of any offense related to alcohol, controlled substances or drugs during the preceding ten years and that the petitioner's habits and conduct show such petitioner to no longer pose a threat to the public safety of this state, the court may order the director to issue a license to the petitioner if the petitioner is otherwise qualified pursuant to the provisions of sections 302.010 to 302.540. No person may obtain a license pursuant to the provisions of this subdivision through court action more than one time;

(10) To any person who has been convicted twice within a five-year period of violating state law, or a county or municipal ordinance where [the judge in such cases was an attorney and] the defendant was represented by or waived the right to an attorney in writing, of driving while intoxicated, or who has been convicted of the crime of involuntary manslaughter while operating a motor vehicle in an intoxicated condition. The director shall not issue a license to such person for five years from the date such person was convicted for involuntary manslaughter while operating a motor vehicle in an intoxicated condition or for driving while intoxicated for the second time. Any person who has been denied a license for two convictions of driving while intoxicated prior to July 27, 1989, shall have the person's license issued, upon application, unless the two convictions occurred within a five-year period, in which case, no license shall be issued to the person for five years from the date of the second conviction;

(11) To any person who is otherwise disqualified pursuant to the provisions of sections 302.010 to 302.780, chapter 303, RSMo, or section 544.046, RSMo;

(12) To any person who is under the age of eighteen years, if such person's parents or legal guardians file a certified document with the department of revenue stating that the director shall not issue such person a driver's license. Each document filed by the person's parents or legal guardians shall be made upon a form furnished by the director and shall include identifying information of the person for whom the parents or legal guardians are denying the driver's license. The document shall also contain identifying information of the person's parents or legal guardians. The document shall be certified by the parents or legal guardians to be true and correct. This provision shall not apply to any person who is legally emancipated. The parents or legal guardians may later file an additional document with the department of revenue which reinstates the person's ability to receive a driver's license.

302.321. DRIVING WHILE LICENSE OR DRIVING PRIVILEGE IS CANCELED, SUSPENDED OR REVOKED, PENALTY — ENHANCED PENALTY FOR REPEAT OFFENDERS — IMPRISONMENT, MANDATORY, EXCEPTION. — 1. A person commits the crime of driving while revoked if [he] **such person** operates a motor vehicle on a highway when [his] **such person's** license or driving privilege has been canceled, suspended or revoked under the laws of this state or any other state and acts with criminal negligence with respect to knowledge of the fact that [his] **such person's** driving privilege has been canceled, suspended or revoked.

2. Any person convicted of driving while revoked is guilty of a class A misdemeanor. Any person with no prior alcohol-related enforcement contacts as defined in section 302.525, convicted a fourth or subsequent time of driving while revoked or a county or municipal ordinance of driving while suspended or revoked where [the judge in such case was an attorney and] the defendant was represented by or waived the right to an attorney in writing, and where the prior three driving-while-revoked offenses occurred within ten years of the date of occurrence of the present offense and where the person received and served a sentence of ten days or more on such previous offenses; and any person with a prior alcohol-related enforcement contact as

defined in section 302.525, convicted a third or subsequent time of driving while revoked or a county or municipal ordinance of driving while suspended or revoked where [the judge in such case was an attorney and] the defendant was represented by or waived the right to an attorney in writing, and where the prior two driving-while-revoked offenses occurred within ten years of the date of occurrence of the present offense and where the person received and served a sentence of ten days or more on such previous offenses is guilty of a class D felony. No court shall suspend the imposition of sentence as to such a person nor sentence such person to pay a fine in lieu of a term of imprisonment, nor shall such person be eligible for parole or probation until [he] **such person** has served a minimum of forty-eight consecutive hours of imprisonment, unless as a condition of such parole or probation, such person performs at least ten days involving at least forty hours of community service under the supervision of the court in those jurisdictions which have a recognized program for community service. Driving while revoked is a class D felony on the second or subsequent conviction pursuant to section 577.010, RSMo, or a fourth or subsequent conviction for any other offense.

302.541. ADDITIONAL REINSTATEMENT FEE, LICENSE TO OPERATE MOTOR VEHICLE, WHEN — PROOF OF FINANCIAL RESPONSIBILITY, NOT REQUIRED, WHEN. — 1. In addition to other fees required by law, any person who has had a license to operate a motor vehicle suspended or revoked following a determination, pursuant to section 302.505, or section 577.010, 577.012, 577.041 or 577.510, RSMo, or any county or municipal ordinance, where [the judge in such case was an attorney and] the defendant was represented by or waived the right to an attorney, that such person was driving while intoxicated or with a blood alcohol content of eight-hundredths of one percent or more by weight or, where such person was at the time of the arrest less than twenty-one years of age and was driving with a blood alcohol content of two-hundredths of one percent or more by weight, shall pay an additional fee of twenty-five dollars prior to the reinstatement or reissuance of the license.

2. Any person less than twenty-one years of age whose driving privilege has been suspended or revoked solely for a first determination pursuant to sections 302.500 to 302.540 that such person was driving a motor vehicle with two-hundredths of one percent or more blood alcohol content is exempt from filing proof of financial responsibility with the department of revenue in accordance with chapter 303, RSMo, as a prerequisite for reinstatement of driving privileges or obtaining a restricted driving privilege as provided by section 302.525.

311.310. SALE TO MINOR — CERTAIN OTHER PERSONS, MISDEMEANOR — EXCEPTIONS — PERMITTING DRINKING OR POSSESSION BY A MINOR, PENALTY, EXCEPTION. — 1. Any licensee under this chapter, or his employee, who shall sell, vend, give away or otherwise supply any intoxicating liquor in any quantity whatsoever to any person under the age of twenty-one years, or to any person intoxicated or appearing to be in a state of intoxication, or to a habitual drunkard, and any person whomsoever except his parent or guardian who shall procure for, sell, give away or otherwise supply intoxicating liquor to any person under the age of twenty-one years, or to any intoxicated person or any person appearing to be in a state of intoxication, or to a habitual drunkard, shall be deemed guilty of a misdemeanor, except that this section shall not apply to the supplying of intoxicating liquor to a person under the age of twenty-one years for medical purposes only, or to the administering of such intoxicating liquor to any person by a duly licensed physician. No person shall be denied a license or renewal of a license issued under this chapter solely due to a conviction for unlawful sale or supply to a minor when serving in the capacity as an employee of a licensed establishment.

2. **Any owner, occupant, or other person or legal entity with a lawful right to the use and enjoyment of any property is prohibited from knowingly allowing a person under the age of twenty-one to drink or possess intoxicating liquor or knowingly failing to stop a person under the age of twenty-one from drinking or possessing intoxicating liquor on such property, unless such person allowing the person under the age of twenty-one to**

drink or possess intoxicating liquor is his or her parent or guardian. A person who violates the provisions of this subsection is guilty of a class A misdemeanor.

565.024. INVOLUNTARY MANSLAUGHTER, PENALTY. — 1. A person commits the crime of involuntary manslaughter in the first degree if he:

(1) Recklessly causes the death of another person; or
(2) While in an intoxicated condition operates a motor vehicle in this state and, when so operating, acts with criminal negligence to cause the death of any person.

2. **Except as provided in subsections 3 and 4 of this section**, involuntary manslaughter in the first degree is a class C felony.

3. **A person commits the crime of involuntary manslaughter in the first degree if he or she, while in an intoxicated condition operates a motor vehicle in this state, and, when so operating, acts with criminal negligence to:**

(1) **Cause the death of any person not a passenger in the vehicle operated by the defendant, including the death of an individual that results from the defendant's vehicle leaving a highway, as defined by section 301.010, RSMo, or the highway's right-of-way; or**

(2) **Cause the death of two or more persons; or**

(3) **Cause the death of any person while he or she has a blood alcohol content of at least eighteen-hundredths by weight of alcohol in such person's blood.**

4. **Involuntary manslaughter in the first degree under subdivisions (1), (2), or (3) of subsection 3 of this section is a class B felony. A second or subsequent violation of subdivision (3) of subsection 3 of this section is a class A felony. For any violation of subsection 3 of this section, the minimum prison term which the defendant must serve shall be eighty-five percent of his or her sentence.**

5. A person commits the crime of involuntary manslaughter in the second degree if he acts with criminal negligence to cause the death of any person.

[4.] 6. Involuntary manslaughter in the second degree is a class D felony.

568.050. ENDANGERING THE WELFARE OF A CHILD IN THE SECOND DEGREE. — 1. A person commits the crime of endangering the welfare of a child in the second degree if:

(1) He **or she** with criminal negligence acts in a manner that creates a substantial risk to the life, body or health of a child less than seventeen years old; or

(2) He **or she** knowingly encourages, aids or causes a child less than seventeen years old to engage in any conduct which causes or tends to cause the child to come within the provisions of paragraph (d) of subdivision (2) of subsection 1 or subdivision (3) of subsection 1 of section 211.031, RSMo; or

(3) Being a parent, guardian or other person legally charged with the care or custody of a child less than seventeen years old, he **or she** recklessly fails or refuses to exercise reasonable diligence in the care or control of such child to prevent him from coming within the provisions of paragraph (c) of subdivision (1) of subsection 1 or paragraph (d) of subdivision (2) of subsection 1 or subdivision (3) of subsection 1 of section 211.031, RSMo; or

(4) He **or she** knowingly encourages, aids or causes a child less than seventeen years of age to enter into any room, building or other structure which is a public nuisance as defined in section 195.130, RSMo; **or**

(5) **The person operates a vehicle in violation of section 565.024, 565.060, 577.010, or 577.012, RSMo, while a child less than seventeen years of age is present in the vehicle.**

2. Nothing in this section shall be construed to mean the welfare of a child is endangered for the sole reason that he **or she** is being provided nonmedical remedial treatment recognized and permitted under the laws of this state.

3. Endangering the welfare of a child in the second degree is a class A misdemeanor unless the offense is committed as part of a ritual or ceremony, in which case the crime is a class D felony.

577.001. CHAPTER DEFINITIONS. — 1. As used in this chapter, the term "court" means any circuit, associate circuit, or municipal court, including traffic court, but not any juvenile court or drug court.

2. As used in this chapter, the term "drive", "driving", "operates" or "operating" means physically driving or operating a motor vehicle.

[2.] **3.** As used in this chapter, a person is in an "intoxicated condition" when he is under the influence of alcohol, a controlled substance, or drug, or any combination thereof.

[3.] **4.** As used in this chapter, the term "law enforcement officer" or "arresting officer" includes the definition of law enforcement officer in subdivision (17) of section 556.061, RSMo, and military policemen conducting traffic enforcement operations on a federal military installation under military jurisdiction in the state of Missouri.

[4.] **5.** As used in this chapter, "substance abuse traffic offender program" means a program certified by the division of alcohol and drug abuse of the department of mental health to provide education or rehabilitation services pursuant to a professional assessment screening to identify the individual needs of the person who has been referred to the program as the result of an alcohol or drug related traffic offense. Successful completion of such a program includes participation in any education or rehabilitation program required to meet the needs identified in the assessment screening. The assignment recommendations based upon such assessment shall be subject to judicial review as provided in subsection 7 of section 577.041.

577.023. PERSISTENT AND PRIOR OFFENDERS — ENHANCED PENALTIES — IMPRISONMENT REQUIREMENTS, EXCEPTIONS — PROCEDURES — DEFINITIONS. — 1. For purposes of this section, unless the context clearly indicates otherwise:

(1) An **"aggravated offender"** is a person who has pleaded guilty to or been found guilty of three or more intoxication-related traffic offenses or a person who has pleaded guilty to or has been found guilty of involuntary manslaughter under section 565.024, RSMo; murder in the second degree under section 565.021, RSMo, where the underlying felony is an intoxication-related offense; assault in the second degree under subdivision (4) of subsection 1 of section 565.060, RSMo; or assault of a law enforcement officer in the second degree under subdivision (4) of subsection 1 of section 565.082, RSMo; and in addition, one other intoxication-related traffic offense;

(2) A **"chronic offender"** is:

(a) A person who has pleaded guilty to or has been found guilty of four or more intoxication-related traffic offenses;

(b) A person who has pleaded guilty to or been found guilty of, on two or more separate occasions, involuntary manslaughter under section 565.024, RSMo, assault in the second degree under subdivision (4) of subsection 1 of section 565.060, RSMo, or assault of a law enforcement officer in the second degree under subdivision (4) of subsection 1 of section 565.082, RSMo;

(c) A person who has pleaded guilty to or been found guilty of involuntary manslaughter under section 565.024, RSMo, assault in the second degree under subdivision (4) of subsection 1 of section 565.060, RSMo, or assault of a law enforcement officer in the second degree under subdivision (4) of subsection 1 of section 565.082, RSMo, and in addition, two or more intoxication-related traffic offenses;

(3) An "intoxication-related traffic offense" is driving while intoxicated, driving with excessive blood alcohol content, involuntary manslaughter pursuant to [subdivision (2) of subsection 1 of] section 565.024, RSMo, **murder in the second degree pursuant to section 565.021, RSMo, where the underlying felony is an intoxication-related offense**, assault in the second degree pursuant to subdivision (4) of subsection 1 of section 565.060, RSMo, assault of a law enforcement officer in the second degree pursuant to subdivision (3) of subsection 1 of section 565.082, RSMo, or driving under the influence of alcohol or drugs in violation of state law or a county or municipal ordinance, where [the judge in such case was an attorney and] the defendant was represented by or waived the right to an attorney in writing;

[2.] (4) A "persistent offender" is one of the following:

(a) A person who has pleaded guilty to or has been found guilty of two or more intoxication-related traffic offenses[, where such two or more offenses occurred within ten years of the occurrence of the intoxication-related traffic offense for which the person is charged];

(b) A person who has pleaded guilty to or has been found guilty of involuntary manslaughter pursuant to [subsection 1 of] section 565.024, RSMo, assault in the second degree pursuant to subdivision (4) of subsection 1 of section 565.060, RSMo, assault of a law enforcement officer in the second degree pursuant to subdivision (3) of subsection 1 of section 565.082, RSMo; and

[(3)] (5) A "prior offender" is a person who has pleaded guilty to or has been found guilty of one intoxication-related traffic offense, where such prior offense occurred within five years of the occurrence of the intoxication-related traffic offense for which the person is charged.

2. Any person who pleads guilty to or is found guilty of a violation of section 577.010 or 577.012 who is alleged and proved to be a prior offender shall be guilty of a class A misdemeanor.

3. Any person who pleads guilty to or is found guilty of a violation of section 577.010 or 577.012 who is alleged and proved to be a persistent offender shall be guilty of a class D felony.

4. **Any person who pleads guilty to or is found guilty of a violation of section 577.010 or section 577.012 who is alleged and proved to be an aggravated offender shall be guilty of a class C felony.**

5. **Any person who pleads guilty to or is found guilty of a violation of section 577.010 or section 577.012 who is alleged and proved to be a chronic offender shall be guilty of a class B felony.**

6. No **state, county, or municipal** court shall suspend the imposition of sentence as to a prior **offender**, [or] persistent offender, **aggravated offender**, or **chronic offender** under this section nor sentence such person to pay a fine in lieu of a term of imprisonment, section 557.011, RSMo, to the contrary notwithstanding. No prior offender shall be eligible for parole or probation until he has served a minimum of five days imprisonment, unless as a condition of such parole or probation such person performs at least thirty days of community service under the supervision of the court in those jurisdictions which have a recognized program for community service. No persistent offender shall be eligible for parole or probation until he or she has served a minimum of ten days imprisonment, unless as a condition of such parole or probation such person performs at least sixty days of community service under the supervision of the court. **No aggravated offender shall be eligible for parole or probation until he or she has served a minimum of sixty days imprisonment. No chronic offender shall be eligible for parole or probation until he or she has served a minimum of two years imprisonment.**

[5.] 7. The **state, county, or municipal** court shall find the defendant to be a prior offender [or], persistent offender, **aggravated offender**, or **chronic offender** if:

(1) The indictment or information, original or amended, or the information in lieu of an indictment pleads all essential facts warranting a finding that the defendant is a prior offender or persistent offender; and

(2) Evidence is introduced that establishes sufficient facts pleaded to warrant a finding beyond a reasonable doubt the defendant is a prior offender [or], persistent offender, **aggravated offender**, or **chronic offender**; and

(3) The court makes findings of fact that warrant a finding beyond a reasonable doubt by the court that the defendant is a prior offender [or], persistent offender, **aggravated offender**, or **chronic offender**.

[6.] 8. In a jury trial, the facts shall be pleaded, established and found prior to submission to the jury outside of its hearing.

[7.] 9. In a trial without a jury or upon a plea of guilty, the court may defer the proof in findings of such facts to a later time, but prior to sentencing.

[8.] **10.** The defendant shall be accorded full rights of confrontation and cross-examination, with the opportunity to present evidence, at such hearings.

[9.] **11.** The defendant may waive proof of the facts alleged.

[10.] **12.** Nothing in this section shall prevent the use of presentence investigations or commitments.

[11.] **13.** At the sentencing hearing both the state, **county, or municipality** and the defendant shall be permitted to present additional information bearing on the issue of sentence.

[12.] **14.** The pleas or findings of guilty shall be prior to the date of commission of the present offense.

[13.] **15.** The court shall not instruct the jury as to the range of punishment or allow the jury, upon a finding of guilty, to assess and declare the punishment as part of its verdict in cases of prior offenders [or], persistent offenders, **aggravated offenders, or chronic offenders**.

[14.] **16.** Evidence of prior convictions shall be heard and determined by the trial court out of the hearing of the jury prior to the submission of the case to the jury, and shall include but not be limited to evidence of convictions received by a search of the records of the Missouri uniform law enforcement system maintained by the Missouri state highway patrol. After hearing the evidence, the court shall enter its findings thereon. A conviction of a violation of a municipal or county ordinance in a county or municipal court for driving while intoxicated or a conviction or a plea of guilty or a finding of guilty followed by a suspended imposition of sentence, suspended execution of sentence, probation or parole or any combination thereof in a state court shall be treated as a prior conviction.

577.500. SUSPENSION OR REVOCATION OF DRIVING PRIVILEGES, PERSONS UNDER TWENTY-ONE YEARS OF AGE — VIOLATION OF CERTAIN LAWS — SURRENDER OF LICENSES — COURT TO FORWARD TO DIRECTOR OF REVENUE — PERIOD OF SUSPENSION. — 1. A court of competent jurisdiction shall, upon a plea of guilty, conviction or finding of guilt, or, if the court is a juvenile court, upon a finding of fact that the offense was committed by a juvenile, enter an order suspending or revoking the driving privileges of any person determined to have committed one of the following offenses and who, at the time said offense was committed, was under twenty-one years of age:

(1) Any alcohol related traffic offense in violation of state law or a county or, beginning July 1, 1992, municipal ordinance, where [the judge in such case was an attorney and] the defendant was represented by or waived the right to an attorney in writing;

(2) Any offense in violation of state law or, beginning July 1, 1992, a county or municipal ordinance, where [the judge in such case was an attorney and] the defendant was represented by or waived the right to an attorney in writing, involving the possession or use of alcohol, committed while operating a motor vehicle;

(3) Any offense involving the possession or use of a controlled substance as defined in chapter 195, RSMo, in violation of the state law or, beginning July 1, 1992, a county or municipal ordinance, where [the judge in such case was an attorney and] the defendant was represented by or waived the right to an attorney in writing;

(4) Any offense involving the alteration, modification or misrepresentation of a license to operate a motor vehicle in violation of section 311.328, RSMo;

(5) Any offense in violation of state law or, beginning July 1, 1992, a county or municipal ordinance, where [the judge in such case was an attorney and] the defendant was represented by or waived the right to an attorney in writing, involving the possession or use of alcohol for a second time; except that a determination of guilt or its equivalent shall have been made for the first offense and both offenses shall have been committed by the person when the person was under eighteen years of age.

2. The court shall require the surrender to it of any license to operate a motor vehicle then held by any person against whom a court has entered an order suspending or revoking driving privileges under subsection 1 of this section.

3. The court, if other than a juvenile court, shall forward to the director of revenue the order of suspension or revocation of driving privileges and any licenses acquired under subsection 2 of this section.

4. (1) The court, if a juvenile court, shall forward to the director of revenue the order of suspension or revocation of driving privileges and any licenses acquired under subsection 2 of this section for any person sixteen years of age or older, the provision of chapter 211, RSMo, to the contrary notwithstanding.

(2) The court, if a juvenile court, shall hold the order of suspension or revocation of driving privileges for any person less than sixteen years of age until thirty days before the person's sixteenth birthday, at which time the juvenile court shall forward to the director of revenue the order of suspension or revocation of driving privileges, the provision of chapter 211, RSMo, to the contrary notwithstanding.

5. The period of suspension for a first offense under this section shall be ninety days. Any second or subsequent offense under this section shall result in revocation of the offender's driving privileges for one year.

Approved July 13, 2005

SB 38 [HCS SB 38]

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

Adds highway designations within Newton and Jasper County

AN ACT to repeal section 227.340, RSMo, and to enact in lieu thereof two new sections relating to the George Washington Carver Memorial Highway.

SECTION

A. Enacting clause.

227.302. Carver Prairie Drive designated in Newton County.

227.340. George Washington Carver Memorial Highway, portion of interstate highway 44 in Newton County and portion of U.S. Highway 71 in Jasper County designated as.

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

SECTION A. ENACTING CLAUSE. — Section 227.340, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 227.302 and 227.340, to read as follows:

227.302. CARVER PRAIRIE DRIVE DESIGNATED IN NEWTON COUNTY. — **The portion of state route V in the county of the second classification with more than fifty-two thousand six hundred but fewer than fifty-two thousand seven hundred inhabitants from U.S. Highway 71 east to U.S. Highway 59 shall be designated the "Carver Prairie Drive". Costs for such designation shall be paid by the city of Diamond.**

227.340. GEORGE WASHINGTON CARVER MEMORIAL HIGHWAY, PORTION OF INTERSTATE HIGHWAY 44 IN NEWTON COUNTY AND PORTION OF U.S. HIGHWAY 71 IN JASPER COUNTY DESIGNATED AS. — The portion of interstate highway 44 contained in a [county of the first classification with more than one hundred four thousand six hundred but less than one hundred four thousand seven hundred inhabitants and a] county of the second classification with more than fifty-two thousand six hundred but less than fifty-two thousand

seven hundred inhabitants, and the portion of U.S. Highway 71 from the intersection of Interstate 44 in the county of the first classification with more than one hundred four thousand six hundred but fewer than one hundred four thousand seven hundred inhabitants south to state route V in the county of the second classification with more than fifty-two thousand six hundred but fewer than fifty-two thousand seven hundred inhabitants shall be designated as the "George Washington Carver Memorial Highway".

Approved June 21, 2005

SB 68 [SCS SB 68]

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 sales tax exemption for certain college athletic events

AN ACT to repeal section 144.030, RSMo, and to enact in lieu thereof one new section relating to exemptions from state and local sales and use tax.

SECTION

A. Enacting clause.

144.030. Exemptions from state and local sales and use taxes.

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

SECTION A. ENACTING CLAUSE. — Section 144.030, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 144.030, to read as follows:

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; and

(39) Sales of tickets to any collegiate athletic championship event that is held in a facility owned or operated by a governmental authority or commission, a quasi-governmental agency, a state university or college or by the state or any political subdivision thereof, including a municipality, and that is played on a neutral site and may reasonably be played at a site located outside the state of Missouri. For purposes of this subdivision, "neutral site" means any site that is not located on the campus of a conference member institution participating in the event.

Approved July 6, 2005

SB 69 [SCS SB 69]

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 land in Jackson County to Kansas City

AN ACT to authorize the conveyance of property owned by the state in Jackson County to the City of Kansas City, with an emergency clause.

SECTION

1. To authorize the conveyance of property owned by the state in Jackson County to the City of Kansas City, with an emergency clause.
- B. Emergency clause.

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

SECTION 1. — 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 to the City of Kansas City. The property to be conveyed is more particularly described as follows:

TRACT 1:

The South ½ of LOT 191, BLOCK 14, McGEE'S ADDITION, a subdivision in Kansas City, Jackson County, Missouri, according to the recorded plat thereof.

TRACT 2:

LOT 192, BLOCK 14, McGEE'S ADDITION, a subdivision in Kansas City, Jackson County, Missouri, according to the recorded plat thereof.

TRACT 3:

LOTS 193, 194, 201, 202 and 203, except that part thereof in Main Street, BLOCK 14, McGEE'S ADDITION, a subdivision in Kansas City, Jackson County, Missouri, according to the recorded plat thereof.

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 B. EMERGENCY CLAUSE. — Because of the need to continue the economic development efforts in downtown Kansas City, 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 3, 2005

SB 71 [SB 71]

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

Changes which state employees may receive paid leave for volunteering as a disaster service volunteer

AN ACT to repeal section 105.267, RSMo, and to enact in lieu thereof one new section relating to public officers and employees.

SECTION

- A. Enacting clause.
- 105.267. Red Cross and other emergency management agency recognized volunteers granted leave during disasters — procedure — definition — additional employees granted leave, when.

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

SECTION A. ENACTING CLAUSE. — Section 105.267, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 105.267, to read as follows:

105.267. RED CROSS AND OTHER EMERGENCY MANAGEMENT AGENCY RECOGNIZED VOLUNTEERS GRANTED LEAVE DURING DISASTERS — PROCEDURE — DEFINITION — ADDITIONAL EMPLOYEES GRANTED LEAVE, WHEN. — 1. Except as otherwise provided in this subsection, any employee of an agency of the state of Missouri, who has been certified by the American Red Cross **or certified by a volunteer organization with a disaster service commitment recognized by the state emergency management agency** as a disaster service volunteer, may be granted leave from work with pay to participate in specialized disaster relief services for the American Red Cross **or such volunteer organization**, not to exceed a total of twenty-five full-time equivalent state employees for a total of one hundred twenty work hours in any fiscal year for each full-time equivalent employee. The employee shall be released from work to participate in specialized disaster relief services upon request from an authorized representative of the American Red Cross **or such volunteer organization** for such employee and upon the approval of such employee's appointing authority. The appointing authority shall compensate an employee granted leave pursuant to this section at the employee's regular rate of pay for regular work hours during which the employee is absent from the employee's regular place of employment for the state of Missouri. Any leave granted pursuant to this section shall not affect the employee's leave status.

2. Before any payment of salary is made covering the period of the leave, the authorized representative of the American Red Cross **or such volunteer organization, pursuant to subsection 1 of this section**, shall file with the appointing authority or supervising agency evidence that such employee participated in specialized disaster relief services during the time such leave pay is granted.

3. No certified disaster service volunteer shall be discharged from employment because of such person's status as a certified disaster service volunteer nor shall such employee be discriminated against or dissuaded from volunteering or continuing such service as a certified disaster relief volunteer. For the purposes of this section, the term "certified disaster volunteer" means a person who has completed the necessary training for, and has been certified as, a disaster service specialist by the American Red Cross **or such volunteer organization, pursuant to subsection 1 of this section.**

4. Upon written order of the governor, additional employees, not to exceed twenty-five full-time equivalent state employees, may be granted leave pursuant to this section to participate in specialized disaster relief services for disasters occurring within this state.

Approved July 6, 2005

SB 73 [SCS SB 73]

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

Allows county law enforcement agencies to have sexual offender registry web sites

AN ACT to amend chapter 589, RSMo, by adding thereto one new section relating to sexual offender registry websites.

SECTION

- A. Enacting clause.
589.402. Internet search capability of registered sex offenders to be maintained — information to be made available.
-

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

SECTION A. ENACTING CLAUSE. — Chapter 589, RSMo, is amended by adding thereto one new section, to be known as section 589.402, to read as follows:

589.402. INTERNET SEARCH CAPABILITY OF REGISTERED SEX OFFENDERS TO BE MAINTAINED — INFORMATION TO BE MADE AVAILABLE. — 1. The chief law enforcement officer of the county may maintain a web page on the Internet, which shall be open to the public and shall include a registered sexual offender search capability.

2. The registered sexual offender search shall make it possible for any person using the Internet to search for and find the information specified in subdivisions (1) to (4) of subsection 3 of this section, if known, on offenders registered in this state pursuant to sections 589.400 to 589.425, except that only persons who have been convicted of, found guilty of, or plead guilty to committing or attempting to commit sexual offenses shall be included on this website.

3. Only the information listed in subdivisions (1) to (4) of this subsection shall be provided to the public in the registered sexual offender search:

- (1) The name of the offender;**
- (2) The last known address of the offender, including the street address, city, county, state, and zip code;**
- (3) A photograph of the offender; and**
- (4) The crime or crimes for which the offender was convicted that caused him or her to have to register.**

Approved July 8, 2005

SB 74 [HCS SS SCS SBs 74 & 49]

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

Creates new provisions with respect to the Department of Health and Senior Services

AN ACT to repeal sections 191.332, 192.900, 193.015, 193.085, 193.087, 193.115, 193.125, 193.145, 195.060, 195.080, and 701.049, RSMo, and to enact in lieu thereof seventeen new sections relating to the department of health and senior services, with an expiration date for a certain section and an emergency clause for certain sections.

SECTION

- A. Enacting clause.
- 191.235. Mercury contained in immunizations, not to be administered to certain persons — insurance reimbursement for nonmercury immunizations — exemptions, when.
- 191.332. Supplemental newborn screening requirements.
- 191.645. Risk of exposure to Hepatitis C, information to be made available — web site to be maintained, content.
- 192.324. Administrative and cost allocation fund created, use of moneys.
- 192.326. Disaster fund created, use of moneys during a state of emergency.
- 192.375. Missouri Senior Advocacy and Efficiency Commission established, members, meetings, duties — sunset date.
- 192.900. Missouri public health services fund, established, purposes.
- 193.015. Definitions.
- 193.085. Birth certificate — contents, filing, locale, duties of certain persons, time allowed, attestation.
- 193.087. Voluntary acknowledgment of paternity — forms, contents — immunity for staff presenting form — training of hospital staff — intentional misidentification of parent, penalty — public assistance recipients, duty to cooperate.
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- 193.115. Court order constituting birth certificate, petition, procedure.
- 193.125. Adoption — new birth certificate — reports — duties — inspection of certain records by court order only.
- 193.145. Death certificate — contents, filing, locale, duties of certain persons, time allowed — certificate marked presumptive, when.
- 195.060. Controlled substances to be dispensed on prescription only, exception — certain advertising prohibited.
- 195.080. Excepted substances — prescription or dispensing limitation on amount of supply — may be increased by physician, procedure.
- 701.049. Fees collected by department to be deposited in public health service fund, purpose.
1. Consumer-directed personal care assistance services, reimbursement for through eligible vendors — eligibility requirements — documentation — service plan required — premiums, amount — annual reevaluation — denial of benefits, procedure — expiration date.
 - B. Emergency clause.

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

SECTION A. ENACTING CLAUSE. — Sections 191.332, 192.900, 193.015, 193.085, 193.087, 193.115, 193.125, 193.145, 195.060, 195.080, and 701.049, RSMo, are repealed and seventeen new sections enacted in lieu thereof, to be known as sections 191.235, 191.332, 191.645, 192.324, 192.326, 192.375, 192.900, 193.015, 193.085, 193.087, 193.115, 193.125, 193.145, 195.060, 195.080, 701.049, and 1, to read as follows:

191.235. MERCURY CONTAINED IN IMMUNIZATIONS, NOT TO BE ADMINISTERED TO CERTAIN PERSONS — INSURANCE REIMBURSEMENT FOR NONMERCURY IMMUNIZATIONS — EXEMPTIONS, WHEN. — **1. Beginning April 1, 2007, immunizations administered in the state of Missouri to knowingly pregnant women or children less than three years of age shall not contain more than one microgram of mercury per five-tenths-milliliter dose.**

2. Beginning April 1, 2007, any health carrier as defined in section 376.1350, RSMo, doing business in the state of Missouri that provides insurance coverage for immunizations on a fee schedule or on a percentage reimbursement basis shall reimburse for immunizations not containing mercury at the same percentage rate of the usual and customary charges which were provided for immunizations containing mercury or other preservatives immediately prior to April 1, 2007.

3. The director of the department of health and senior services shall exempt the use of a vaccine from compliance with this section if the director finds, and the governor concurs, that an actual or potential public health emergency exists, including an epidemic, outbreak, or shortage for which there does not exist a sufficient supply of vaccine that complies with subsection 1 of this section that would prevent knowingly pregnant women or children less than three year of age from receiving the vaccine. The director shall determine the duration of such exemption.

191.332. SUPPLEMENTAL NEWBORN SCREENING REQUIREMENTS. — 1. By January 1, 2002, the department of health and senior services shall, subject to appropriations, expand the newborn screening requirements in section 191.331 to include potentially treatable or manageable disorders, [including] **which may include but are not limited to** cystic fibrosis, galactosemia, biotinidase deficiency, congenital adrenal hyperplasia, maple syrup urine disease (MSUD) and other amino acid disorders, glucose-6-phosphate [dehydrogenase] **dehydrogenase** deficiency (G-6-PD), MCAD and other fatty acid oxidation disorders, methylmalonic acidemia, propionic acidemia, isovaleric acidemia and glutaric acidemia Type I.

2. The department of health and senior services may promulgate rules to implement the provisions 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 chapter 536, RSMo.

191.645. RISK OF EXPOSURE TO HEPATITIS C, INFORMATION TO BE MADE AVAILABLE — WEB SITE TO BE MAINTAINED, CONTENT. — **1. Healthcare employers shall make**

information available to their employees regarding the risk of exposure to hepatitis C. Such information shall include but not be limited to the following: availability of testing, including lists of several sites where testing can be obtained; cost; the department of health and senior services web site; protocol for accidental exposure; and any other information deemed pertinent by the employer.

2. The department of health and senior services shall maintain a "Missouri Hepatitis C" web site in conjunction with the department's current web site that:

- (1) Informs Missourians of the availability testing for the detection of hepatitis C;
- (2) Contains detailed information regarding hepatitis including, but not limited to, the following:
 - (a) Facts about hepatitis C;
 - (b) Risk factors for the contraction of hepatitis C;
 - (c) Common routes of transmission for hepatitis C;
 - (d) Effects of hepatitis C on the liver and other organs;
 - (e) Current treatments for acute and chronic hepatitis C;
 - (f) Effects of untreated hepatitis C on the liver and other organs;
- (3) Contains links to the following information and instructional web sites:
 - (a) The American Liver Foundation (www.liverfoundation.org);
 - (b) Hepatitis Foundation International (www.hepatitisfoundation.org);
 - (c) Centers for Disease Control and Prevention (www.cdc.gov/ncidod/diseases/hepatitis/resource/);
 - (d) Links to any other web site or sites the director deems appropriate and informative for Missourians; and
 - (e) Information on hepatitis C support groups in Missouri, including but not limited to meeting times, locations, and dates.

192.324. ADMINISTRATIVE AND COST ALLOCATION FUND CREATED, USE OF MONEYS.
— There is hereby created in the state treasury the "Department of Health and Senior Services Administrative and Cost Allocation Fund". The state treasurer shall be the custodian of the fund and the fund shall be administered by the director of the department of health and senior services. The fund shall be funded annually by appropriations, and deposits and transfers thereto. The fund shall contain moneys transferred or paid to the department in return for goods and services provided internally by the department, or to any governmental entity or the public. The commissioner of administration shall approve disbursements from the fund at the request of the director of the department or the director's designee in accordance with the appropriations made therefore. Notwithstanding the provisions of section 33.080, RSMo, moneys in the fund shall not lapse to the credit of general revenue at the end of the biennium. All interest earned on the fund shall be deposited in and credited to the fund.

192.326. DISASTER FUND CREATED, USE OF MONEYS DURING A STATE OF EMERGENCY.
— There is hereby created in the state treasury the "Department of Health and Senior Services Disaster Fund", to which the general assembly may appropriate moneys and from which moneys may be appropriated annually to the department of health and senior services. Moneys in the fund shall be expended during a state of emergency at the direction of the governor and upon issuance of an emergency declaration which shall set forth the emergency and shall state that it requires the expenditure of public funds to furnish immediate aid and relief. The state treasurer shall be the custodian of the fund and the fund shall be administered by the department of health and senior services. Notwithstanding the provisions of section 33.080, RSMo, moneys in the fund shall not lapse to the credit of general revenue at the end of the biennium. All interest earned on the fund shall be deposited in and credited to the fund.

192.375. MISSOURI SENIOR ADVOCACY AND EFFICIENCY COMMISSION ESTABLISHED, MEMBERS, MEETINGS, DUTIES — SUNSET DATE. — 1. There is hereby established within the department of health and senior services the "Missouri Senior Advocacy and Efficiency Commission". The commission shall consist of the following fifteen members, or their designees, who are residents of this state:

- (1) The director of the department of health and senior services;
- (2) Two members of the Missouri senate, appointed by the president pro tem of the senate;
- (3) Two members of the Missouri house of representatives, appointed by the speaker of the house;
- (4) A pharmacist licensed in the state of Missouri, recommended by the Missouri board of pharmacy and appointed by the governor;
- (5) A representative of the Pharmaceutical Research and Manufacturers of America, appointed by the governor;
- (6) One member of the Missouri silver-haired legislature, appointed by the governor;
- (7) One member of the Missouri senior Rx commission, appointed by the governor;
- (8) One representative from the assisted living community who currently serve on the personal independence commission, appointed by the governor;
- (9) One representative of the Missouri Area Agency on Aging, appointed by the governor;
- (10) One member of the special health, psychological, and social needs of minority older individuals commission;
- (11) One member of the governor's advisory council on aging, appointed by the governor;
- (12) The lieutenant governor, who shall serve as chair of the commission; and
- (13) One member from the Missouri council for in-home services, appointed by the governor.

In making the initial appointment to the committee, the governor, president pro tem, and speaker shall stagger the terms of the appointees so that five members serve an initial terms of one year, five members serve initial terms of two years and five members serve initial terms of three years. All members appointed thereafter shall serve three year terms. All members shall be eligible for reappointment. Members of the commission shall be appointed by October 1, 2005. Members shall continue to serve until their successor is appointed and qualified. Any vacancy on the commission shall be filled in the same manner as the original appointment. The commission shall be dissolved on December 31, 2008.

2. Service on the commission shall be voluntary. Subject to appropriations, members of the commission shall receive with reasonable reimbursement for expenses actually incurred in the performance of the member's official duties for members who are not employees of the state of Missouri.

3. Subject to appropriations, the department of health and senior services shall provide administrative support and resources as is necessary for the effective operation of the commission.

4. Meetings shall be held at least every ninety days or at the call of the commission chair.

5. The senior advocacy and efficiency commission shall:

- (1) Hold public hearings in accordance with chapter 536, RSMo, to gather information from any state agency, commission, or public entity on issues pertaining to the quality and efficiency of all senior services offered by the state of Missouri;
- (2) Analyze state statutes, commissions, and administrative rules regarding services offered by the state of Missouri for senior citizens and designate which programs provide effective and efficient support to seniors and the programs that lack quality;

(3) Establish a mechanism to educate the staff of the member's of the Missouri general assembly to assist seniors, including but not limited to assisting seniors in applying for any and all prescription drug assistance offered under the federal Medicare Prescription Drug Modernization Act of 2003;

(4) Develop a plan that delays the need for the provisions of long-term care outside the residence of senior citizens and allows seniors to remain at home for as long as possible;

(5) Maintain a web site with detailed information regarding all programs and services offered by the state of Missouri which are available to seniors;

(6) Maintain a toll-free senior advocacy support telephone number which directs seniors to all services offered by the state of Missouri which are available to seniors;

(7) Submit an annual report on the activities of the commission to the director of the department of health and senior services, the members of the Missouri general assembly, and the governor by February 1, 2007, and every February first thereafter. Such report shall include, but not be limited to, the following:

(a) Efficiencies that can be realized by consolidation of senior services offered by Missouri;

(b) Effectiveness of all senior services, programs, and commissions offered by the state of Missouri;

(c) Information regarding the impact and effectiveness of prior recommendations, if any, that have been implemented; and

(d) Measurable data to identify the cost effectiveness of the services, programs, and commissions evaluated.

6. Unless reauthorized, the provisions of this section shall sunset on December 31, 2008.

192.900. MISSOURI PUBLIC HEALTH SERVICES FUND, ESTABLISHED, PURPOSES. — The "Missouri Public Health Services Fund" is hereby created. All moneys deposited in the Missouri public health services fund, subject to appropriation, shall be used for public health purposes, including the contracting for the accomplishment of such purposes by local health departments. **Notwithstanding the provisions of section 33.080, RSMo, moneys in the fund shall not lapse to the credit of general revenue at the end of the biennium. Any interest earned on the fund shall accrue to the fund.**

193.015. DEFINITIONS. — As used in sections 193.005 to 193.325, unless the context clearly indicates otherwise, the following terms shall mean:

(1) "Dead body", a human body or such parts of such human body from the condition of which it reasonably may be concluded that death recently occurred;

(2) "Department", the department of health and senior services;

(3) "Final disposition", the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or fetus;

(4) "Institution", any establishment, public or private, which provides inpatient **or outpatient** medical, surgical, or diagnostic care or treatment or nursing, custodian, or domiciliary care, or to which persons are committed by law;

(5) "Live birth", the complete expulsion or extraction from its mother of a child, irrespective of the duration of pregnancy, which after such expulsion or extraction, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached;

(6) "Physician", a person authorized or licensed to practice medicine or osteopathy pursuant to chapter 334, RSMo;

(7) "Spontaneous fetal death", a noninduced death prior to the complete expulsion or extraction from its mother of a fetus, irrespective of the duration of pregnancy; the death is

indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles;

(8) "State registrar", state registrar of vital statistics of the state of Missouri;

(9) "System of vital statistics", the registration, collection, preservation, amendment and certification of vital records; the collection of other reports required by sections 193.005 to 193.325 and section 194.060, RSMo; and activities related thereto including the tabulation, analysis and publication of vital statistics;

(10) "Vital records", certificates or reports of birth, death, marriage, dissolution of marriage and data related thereto;

(11) "Vital statistics", the data derived from certificates and reports of birth, death, spontaneous fetal death, marriage, dissolution of marriage and related reports.

193.085. BIRTH CERTIFICATE — CONTENTS, FILING, LOCALE, DUTIES OF CERTAIN PERSONS, TIME ALLOWED, ATTESTATION. — 1. A certificate of birth for each live birth which occurs in this state shall be filed with the local registrar, or as otherwise directed by the state registrar, within [seven] **five** days after such birth and shall be registered if such certificate has been completed and filed pursuant to the provisions of this section.

2. When a birth occurs in an institution or en route to an institution, the person in charge of the institution or such person's designated representative shall obtain the personal data, prepare the certificate, [secure the signatures required] **certify that the child was born alive at the place and time and on the date stated either by signature or an electronic process approved by the department**, and file the certificate pursuant to this section or as otherwise directed by the state registrar within the required [seven] **five** days. The physician or other person in attendance shall provide the medical information required by the certificate and certify to the facts of birth within five days after the birth. If the physician or other person in attendance does not certify to the facts of birth within the five-day period, the person in charge of the institution shall complete [and sign] the certificate.

3. When a birth occurs outside an institution, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

(1) The physician in attendance at or immediately after the birth;

(2) Any other person in attendance at or immediately after the birth;

(3) The father, the mother, or, in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred.

4. When a birth occurs on a moving conveyance within the United States and the child is first removed from the conveyance in this state, the birth shall be registered in this state and such place shall be considered the place of birth. When a birth occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the child is first removed from the conveyance in this state, the birth shall be registered in this state but the certificate shall show the actual place of birth insofar as can be determined.

5. If the mother was married at the time of either conception or birth, or between conception and birth, the name of the husband shall be entered on the certificate as the father of the child, unless:

(1) Paternity has been determined otherwise by a court of competent jurisdiction; or

(2) The mother executes an affidavit attesting that the husband is not the father and the putative father is the father, and the putative father executes an affidavit attesting that he is the father, and the husband executes an affidavit attesting that he is not the father. If such affidavits are executed, the putative father shall be shown as the father on the birth certificate and the signed acknowledgment of paternity shall be considered a legal finding of paternity. The affidavits shall be as provided for in section 193.215.

6. In any case in which paternity of a child is determined by a court of competent jurisdiction, the name of the father and surname of the child shall be entered on the certificate of birth pursuant to the finding and order of the court.

7. Notwithstanding any other law to the contrary, if a child is born to unmarried parents, the name of the father and other required information shall be entered on the certificate of birth only if an acknowledgment of paternity pursuant to section 193.215 is completed, or if paternity is determined by a court of competent jurisdiction or by an administrative order of the **family support** division [of child support enforcement].

8. If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate.

9. The birth certificate of a child born to a married woman as a result of artificial insemination, with consent of her husband, shall be completed pursuant to the provisions of subsection 5 of this section.

10. Either of the parents of the child, or other informant, shall attest to the accuracy of the personal data entered on the certificate in time to permit the filing of the certificate within the required [seven] **five** days.

193.087. VOLUNTARY ACKNOWLEDGMENT OF PATERNITY — FORMS, CONTENTS — IMMUNITY FOR STAFF PRESENTING FORM — TRAINING OF HOSPITAL STAFF — INTENTIONAL MISIDENTIFICATION OF PARENT, PENALTY — PUBLIC ASSISTANCE RECIPIENTS, DUTY TO COOPERATE. — 1. In addition to the requirements of subsection 2 of section 193.085, when a birth occurs to an unmarried mother, whether in an institution or en route to an institution, the person in charge of the institution or a designated representative shall:

(1) Provide a form or affidavit prescribed by the state registrar that may be completed by the child's mother and father to voluntarily acknowledge paternity of the child pursuant to section 193.215;

(2) File the form, when completed, along with the certificate required by this section; and

(3) Provide oral and written notice to the affiant required by section 193.215.

2. Any institution, the person in charge or a designated representative shall be immune from civil or criminal liability for providing the form or affidavit required by subsection 1 of this section, the information developed pursuant to that subsection, or otherwise fulfilling the duties required by subsection 1 of this section.

3. The **family support** division [of child support enforcement] may contract with the department of health and senior services to provide assistance and training to the hospital staff assigned responsibility for providing the information, as appropriate, to carry out duties pursuant to this section. The **family support** division [of child support enforcement] shall develop and distribute free of charge the information on the rights and responsibilities of parents that is required to be distributed pursuant to this section. The department of health and senior services shall provide free of charge to hospitals the acknowledgment of paternity affidavit, and instructions on the completion of the affidavit.

4. If no contract is developed with the department of health and senior services, then the **family support** division [of child support enforcement] shall provide the assistance and training activities to hospitals pursuant to subsection 3 of this section.

5. Any affiant who intentionally misidentifies another person as a parent may be prosecuted for perjury, pursuant to section 575.040, RSMo.

6. Due to lack of cooperation by public assistance recipients, the **family support** division shall either suspend the entire public assistance cash grant, or remove the needs of the adult recipient of public assistance from the cash grant, subject to good cause exceptions pursuant to federal law or regulations.

193.115. COURT ORDER CONSTITUTING BIRTH CERTIFICATE, PETITION, PROCEDURE. — 1. If a delayed certificate of birth is rejected under the provisions of section 193.105, a

petition signed and sworn to by the petitioner may be filed with a court of competent jurisdiction for an order establishing a record of the date and place of the birth and the parentage of the person whose birth is to be registered.

2. Such petition shall be made on a form prescribed [and furnished] **or approved** by the state registrar and shall allege:

- (1) That the person for whom a delayed certificate of birth is sought was born in this state;
- (2) That no certificate of birth of such person can be found in the department or the office of any local custodian of birth certificates;
- (3) That diligent efforts by the petitioner have failed to obtain the evidence required in accordance with section 193.105, and regulations adopted pursuant thereto;
- (4) That the state registrar has refused to register a delayed certificate of birth;
- (5) Such other allegations as may be required.

3. The petition shall be accompanied by a statement of the state registrar made in accordance with section 193.105 and all documentary evidence which was submitted to the state registrar in support of such registration.

4. The court shall fix a time and place for hearing the petition and shall give the state registrar thirty days' notice of said hearing. The state registrar or his authorized representative may appear and testify in the proceeding.

5. If the court finds, from the evidence presented, that the person for whom a delayed certificate of birth is sought was born in this state, it shall make findings as to the place and date of birth, parentage, and such other findings as may be required and shall issue an order, on a form prescribed [and furnished] **or approved** by the state registrar, to establish a certificate of birth. This order shall include the birth data to be registered, a description of the evidence presented, and the date of the court's action.

6. The clerk of the court shall forward each such order to the state registrar not later than the tenth day of the calendar month following the month in which it was entered. Such order shall be registered by the state registrar and shall constitute the certificate of birth.

193.125. ADOPTION—NEW BIRTH CERTIFICATE—REPORTS—DUTIES—INSPECTION OF CERTAIN RECORDS BY COURT ORDER ONLY. — 1. For each adoption decreed by a court of competent jurisdiction in this state, the court shall require the preparation of a certificate of decree of adoption on a form as prescribed [and furnished] **or approved** by the state registrar. The certificate of decree of adoption shall include such facts as are necessary to locate and identify the certificate of birth of the person adopted, and shall provide information necessary to establish a new certificate of birth of the person adopted and shall identify the court and county of the adoption and be certified by the clerk of the court. The state registrar shall file the original certificate of birth with the certificate of decree of adoption and such file may be opened by the state registrar only upon receipt of a certified copy of an order as decreed by the court of adoption.

2. Information necessary to prepare the report of adoption shall be furnished by each petitioner for adoption or the petitioner's attorney. The social welfare agency or any person having knowledge of the facts shall supply the court with such additional information as may be necessary to complete the report. The provision of such information shall be prerequisite to the issuance of a final decree in the matter by the court.

3. Whenever an adoption decree is amended or annulled, the clerk of the court shall prepare a report thereof, which shall include such facts as are necessary to identify the original adoption report and the facts amended in the adoption decree as shall be necessary to properly amend the birth record.

4. Not later than the fifteenth day of each calendar month or more frequently as directed by the state registrar the clerk of the court shall forward to the state registrar reports of decrees of adoption, annulment of adoption and amendments of decrees of adoption which were entered in the preceding month, together with such related reports as the state registrar shall require.

5. When the state registrar shall receive a report of adoption, annulment of adoption, or amendment of a decree of adoption for a person born outside this state, he or she shall forward such report to the state registrar in the state of birth.

6. In a case of adoption in this state of a person not born in any state, territory or possession of the United States or country not covered by interchange agreements, the state registrar shall upon receipt of the certificate of decree of adoption prepare a birth certificate in the name of the adopted person, as decreed by the court. The state registrar shall file the certificate of the decree of adoption, and such documents may be opened by the state registrar only by an order of court. The birth certificate prepared under this subsection shall have the same legal weight as evidence as a delayed or altered birth certificate as provided in section 193.235.

7. The department, upon receipt of proof that a person has been adopted by a Missouri resident pursuant to laws of countries other than the United States, shall prepare a birth certificate in the name of the adopted person as decreed by the court of such country. If such proof contains the surname of either adoptive parent, the department of health and senior services shall prepare a birth certificate as requested by the adoptive parents. Any subsequent change of the name of the adopted person shall be made by a court of competent jurisdiction. The proof of adoption required by the department shall include a copy of the original birth certificate and adoption decree, an English translation of such birth certificate and adoption decree, and a copy of the approval of the immigration of the adopted person by the Immigration and Naturalization Service of the United States government which shows the child lawfully entered the United States. The authenticity of the translation of the birth certificate and adoption decree required by this subsection shall be sworn to by the translator in a notarized document. The state registrar shall file such documents received by the department relating to such adoption and such documents may be opened by the state registrar only by an order of a court. A birth certificate pursuant to this subsection shall be issued upon request of one of the adoptive parents of such adopted person or upon request of the adopted person if of legal age. The birth certificate prepared pursuant to the provisions of this subsection shall have the same legal weight as evidence as a delayed or altered birth certificate as provided in sections 193.005 to 193.325.

8. If no certificate of birth is on file for the person under twelve years of age who has been adopted, a belated certificate of birth shall be filed with the state registrar as provided in sections 193.005 to 193.325 before a new birth record is to be established as result of adoption. A new certificate is to be established on the basis of the adoption under this section and shall be prepared on a [standard] certificate of live birth form.

9. If no certificate of birth has been filed for a person twelve years of age or older who has been adopted, a new birth certificate is to be established under this section upon receipt of proof of adoption as required by the department. A new certificate shall be prepared in the name of the adopted person as decreed by the court, registering adopted parents' names. The new certificate shall be prepared on a delayed birth certificate form. The adoption decree is placed in a sealed file and shall not be subject to inspection except upon an order of the court.

193.145. DEATH CERTIFICATE — CONTENTS, FILING, LOCALE, DUTIES OF CERTAIN PERSONS, TIME ALLOWED — CERTIFICATE MARKED PRESUMPTIVE, WHEN. — 1. A certificate of death for each death which occurs in this state shall be filed with the local registrar, or as otherwise directed by the state registrar, within five days after death and shall be registered if such certificate has been completed and filed pursuant to this section.

2. If the place of death is unknown but the dead body is found in this state, the certificate of death shall be completed and filed pursuant to the provisions of this section. The place where the body is found shall be shown as the place of death. The date of death shall be the date on which the remains were found.

3. When death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in this state, the death shall be registered in this state and the place where the body is first removed shall be considered the place of death. When a death occurs on

a moving conveyance while in international waters or air space or in a foreign country or its air space and the body is first removed from the conveyance in this state, the death shall be registered in this state but the certificate shall show the actual place of death if such place may be determined.

4. The funeral director or person [acting as such] in charge of final disposition of the dead body shall file the certificate of death. The funeral director or **person in charge of the final disposition of the dead body** shall obtain or verify:

(1) The personal data from the next of kin or the best qualified person or source available; and

(2) The medical certification from the person responsible for such certification.

5. The medical certification shall be completed, [signed] **attested to its accuracy either by signature or an electronic process approved by the department**, and returned to the funeral director or person [acting as such] **in charge of final disposition** within seventy-two hours after death by the physician in charge of the patient's care for the illness or condition which resulted in death. In the absence of the physician or with the physician's approval the certificate may be completed and [signed] **attested to its accuracy either by signature or an approved electronic process** by the physician's associate physician, the chief medical officer of the institution in which death occurred, or the physician who performed an autopsy upon the decedent, provided such individual has access to the medical history of the case, views the deceased at or after death and death is due to natural causes. **The state registrar may approve alternate methods of obtaining and processing the medical certification and filing the death certificate.** The Social Security number of any individual who has died shall be placed in the records relating to the death and recorded on the death certificate.

6. When death occurs from natural causes more than thirty-six hours after the decedent was last treated by a physician, the case shall be referred to the county medical examiner or coroner or physician or local registrar for investigation to determine and certify the cause of death. If the death is determined to be of a natural cause, the medical examiner or coroner or local registrar shall refer the certificate of death to the attending physician for such physician's certification. If the attending physician refuses or is otherwise unavailable, the medical examiner or coroner or local registrar shall [sign] **attest to the accuracy of the certificate of death either by signature or an approved electronic process** within thirty-six hours.

7. If the circumstances suggest that the death was caused by other than natural causes, the medical examiner or coroner shall determine the cause of death and shall complete and [sign] **attest to the accuracy either by signature or an approved electronic process** the medical certification within seventy-two hours after taking charge of the case.

8. If the cause of death cannot be determined within seventy-two hours after death, the attending medical examiner or coroner or attending physician or local registrar shall give the funeral director, or person [acting as such] **in charge of final disposition of the dead body**, notice of the reason for the delay, and final disposition of the body shall not be made until authorized by the medical examiner or coroner, attending physician or local registrar.

9. When a death is presumed to have occurred within this state but the body cannot be located, a death certificate may be prepared by the state registrar upon receipt of an order of a court of competent jurisdiction which shall include the finding of facts required to complete the death certificate. Such a death certificate shall be marked "Presumptive", show on its face the date of registration, and identify the court and the date of decree.

195.060. CONTROLLED SUBSTANCES TO BE DISPENSED ON PRESCRIPTION ONLY, EXCEPTION — CERTAIN ADVERTISING PROHIBITED. — 1. Except as provided in subsection 3 of this section, a pharmacist, in good faith, may sell and dispense controlled substances to any person only upon a prescription of a practitioner as authorized by statute, provided that the controlled substances listed in Schedule V may be sold without prescription in accordance with regulations of the department of health and senior services. All written prescriptions shall be

signed by the person prescribing the same. All prescriptions shall be dated on the day when issued and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is prescribed, and the full name, address, and the registry number under the federal controlled substances laws of the person prescribing, if he is required by those laws to be so registered. If the prescription is for an animal, it shall state the species of the animal for which the drug is prescribed. The person filling the prescription shall **either** write the date of filling and his own signature on the prescription **or retain the date of filling and the identity of the dispenser as electronic prescription information**. The prescription **or electronic prescription information** shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two years, so as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this law. No prescription for a drug in Schedule I or II shall be filled more than six months after the date prescribed; no prescription for a drug in schedule I or II shall be refilled; no prescription for a drug in Schedule III or IV shall be filled or refilled more than six months after the date of the original prescription or be refilled more than five times unless renewed by the practitioner.

2. The legal owner of any stock of controlled substances in a pharmacy, upon discontinuance of dealing in such drugs, may sell the stock to a manufacturer, wholesaler, or pharmacist, but only on an official written order.

3. A pharmacist, in good faith, may sell and dispense, any Schedule II drug or drugs to any person, in emergency situations as defined by rule of the department of health and senior services upon an oral prescription by an authorized practitioner.

4. It shall be unlawful for controlled substances to be promoted or advertised for use or sale, provided that this subsection shall not prohibit such activity by a manufacturer, wholesaler, or their agents directed to a physician, pharmacist or other practitioner.

5. Except where a bona fide physician-patient-pharmacist relationship exists, prescriptions for narcotics or hallucinogenic drugs shall not be delivered to or for an ultimate user or agent by mail or other common carrier.

195.080. EXCEPTED SUBSTANCES — PRESCRIPTION OR DISPENSING LIMITATION ON AMOUNT OF SUPPLY — MAY BE INCREASED BY PHYSICIAN, PROCEDURE. — 1. Except as otherwise in sections 195.005 to 195.425 specifically provided, sections 195.005 to 195.425 shall not apply to the following cases: Prescribing, administering, dispensing or selling at retail of liniments, ointments, and other preparations that are susceptible of external use only and that contain controlled substances in such combinations of drugs as to prevent the drugs from being readily extracted from such liniments, ointments, or preparations, except that sections 195.005 to 195.425 shall apply to all liniments, ointments, and other preparations that contain coca leaves in any quantity or combination.

2. The quantity of Schedule II controlled substances prescribed or dispensed at any one time shall be limited to a thirty-day supply. The quantity of Schedule III, IV or V controlled substances prescribed or dispensed at any one time shall be limited to a ninety-day supply and shall be prescribed and dispensed in compliance with the general provisions of sections 195.005 to 195.425. The supply limitations provided in this subsection may be increased up to three months if the physician describes on the prescription form **or indicates via telephone, fax, or electronic communication to the pharmacy to be entered on or attached to the prescription form** the medical reason for requiring the larger supply.

3. The partial filling of a prescription for a Schedule II substance is permissible as defined by regulation by the department of health and senior services.

701.049. FEES COLLECTED BY DEPARTMENT TO BE DEPOSITED IN PUBLIC HEALTH SERVICE FUND, PURPOSE. — 1. All moneys collected by the department pursuant to sections 701.025 to 701.059, except any administrative penalties, shall be deposited in the state treasury to be credited to the Missouri public health services fund, which is created in section 192.900,

RSMo, and used for the specific purposes authorized in sections 701.025 to 701.059, except as provided in subsection 2 of this section, including contracting with county governments and local health departments to accomplish the purposes of sections 701.025 to 701.059. [Section 33.080, RSMo, notwithstanding, any balance in the fund exceeding five hundred thousand dollars shall revert to general revenue. All interest earned on the fund shall accrue to the fund.]

2. The director may, upon appropriations from the general assembly, use money from the Missouri public health services fund for development of innovative sewage systems and pilot programs.

SECTION 1. CONSUMER-DIRECTED PERSONAL CARE ASSISTANCE SERVICES, REIMBURSEMENT FOR THROUGH ELIGIBLE VENDORS — ELIGIBILITY REQUIREMENTS — DOCUMENTATION — SERVICE PLAN REQUIRED — PREMIUMS, AMOUNT — ANNUAL REEVALUATION — DENIAL OF BENEFITS, PROCEDURE — EXPIRATION DATE. — 1. As used in this section, the term "department" shall mean the Department of Health and Senior Services.

2. Subject to appropriations, the department may provide financial assistance for consumer-directed personal care assistance services through eligible vendors, as provided in sections 660.661 through 660.687, RSMo, to each person who was participating as a non-Medicaid eligible client pursuant to Sections 178.661 through 178.673, RSMo on June 30, 2005 and who:

- (1) Makes application to the department;
- (2) Demonstrates financial need and eligibility under subsection 3 of this section;
- (3) Meets all the criteria set forth in sections 660.661 through 660.687, RSMo, except for section 660.664.1(5);
- (4) Has been found by the Department of Social Services not to be eligible to participate under guidelines established by the Medicaid state plan; and
- (5) Does not have access to affordable employer-sponsored health care insurance or other affordable health care coverage for personal care assistance services as defined in section 660.661, RSMo. For purposes of this section, "access to affordable employer-sponsored health care insurance or other affordable health care coverage" refers to health insurance requiring a monthly premium less than or equal to one hundred thirty-three percent of the monthly average premium required in the state's current Missouri consolidated health care plan.

Payments made by the department under the provisions of this section shall be made only after all other available sources of payment have been exhausted.

3. (1) **In order to be eligible for financial assistance for consumer-directed personal care assistance services under this section, a person shall demonstrate financial need, which shall be based on the adjusted gross income and the assets of the person seeking financial assistance and such person's spouse.**

(2) **In order to demonstrate financial need, a person seeking financial assistance under this section and such person's spouse must have an adjusted gross income, less disability-related medical expenses, as approved by the department, that is equal to or less than three hundred percent of the federal poverty level. The adjusted gross income shall be based on the most recent income tax return.**

(3) **No person seeking financial assistance for personal care services under this section and such person's spouse shall have assets in excess of two-hundred fifty thousand dollars.**

4. **The department shall require applicants and the applicant's spouse, and consumers and the consumer's spouse to provide documentation for income, assets, and disability-related medical expenses for the purpose of determining financial need and eligibility for the program. In addition to the most recent income tax return, such documentation may include, but shall not be limited to:**

- (a) **Current wage stubs for the applicant or consumer and the applicant's or consumer's spouse;**
- (b) **A current W-2 form for the applicant or consumer and the applicant's or consumer's spouse;**

(c) Statements from the applicant's or consumer's and the applicant's or consumer's spouse's employers;

(d) Wage matches with the division of employment security;

(e) Bank statements; and

(f) Evidence of disability-related medical expenses and proof of payment.

5. A personal care assistance services plan shall be developed by the department pursuant to section 660.667, RSMo for each person who is determined to be eligible and in financial need under the provisions of this section. The plan developed by the department shall include the maximum amount of financial assistance allowed by the department, subject to appropriation, for such services.

6. Each consumer who participates in the program is responsible for a monthly premium equal to the average premium required for the Missouri consolidated health care plan; provided that the total premium described in this section shall not exceed five percent of the consumer's and the consumer's spouse's adjusted gross income for the year involved.

7. (1) Nonpayment of the premium required in subsection 6 shall result in the denial or termination of assistance, unless the person demonstrates good cause for such nonpayment.

(2) No person denied services for nonpayment of a premium shall receive services unless such person shows good cause for non payment and makes payments for past due premiums as well as current premiums.

(3) Any person who is denied services for nonpayment of a premium and who does not make any payments for past due premiums for sixty consecutive days shall have their enrollment in the program terminated.

(4) No person whose enrollment in the program is terminated for nonpayment of a premium when such nonpayment exceeds sixty consecutive days shall be re-enrolled unless such person pays any past due premiums as well as current premiums prior to being re-enrolled. Nonpayment shall include payment with a returned, refused, or dishonored instrument.

8. (1) Consumers determined eligible for personal care assistance services under the provisions of this section shall be reevaluated annually to verify their continued eligibility and financial need. The amount of financial assistance for consumer-directed personal care assistance services received by the consumer shall be adjusted or eliminated based on the outcome of the reevaluation. Any adjustments made shall be recorded in the consumer's personal care assistance services plan.

(2) In performing the annual reevaluation of financial need, the department shall annually send a re-verification eligibility form letter to the consumer requiring the consumer to respond within ten days of receiving the letter and to provide income and disability-related medical expense verification documentation. If the department does not receive the consumer's response and documentation within the ten-day period, the department shall send a letter notifying the consumer that he or she has ten days to file an appeal or the case will be closed.

(3) The department shall require the consumer and the consumer's spouse to provide documentation for income and disability-related medical expense verification for purposes of the eligibility review. Such documentation may include, but shall not be limited to the documentation listed in subsection 4 of this section.

9. (1) Applicants for personal care assistance services and consumers receiving such services pursuant to this section are entitled to a hearing with the department of social services if eligibility for personal care assistance services is denied, if the type or amount of services is set at a level less than the consumer believes is necessary, if disputes arise after preparation of the personal care assistance plan concerning the provision of such services, or if services are discontinued as provided in section 660.684, RSMo. Services provided under the provisions of this section shall continue during the appeal process.

(2) A request for such hearing shall be made to the department of social services in writing in the form prescribed by the department of social services within ninety days after the mailing or delivery of the written decision of the department of health and senior services. The procedures for such requests and for the hearings shall be as set forth in section 208.080, RSMo.

10. Unless otherwise provided in this section, all other provisions of sections 660.661 through 660.687, RSMo shall apply to individuals who are eligible for financial assistance for personal care assistance services under this section.

11. The department may promulgate rules and regulations, including emergency rules, 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. Any provisions of the existing rules regarding the personal care assistance program promulgated by the department of elementary and secondary education in title 5, code of state regulation, division 90, chapter 7, which are inconsistent with the provisions of this section are void and of no force and effect.

12. The provisions of this section shall expire on June 30, 2006.

SECTION B. EMERGENCY CLAUSE. — Because immediate action is necessary to preserve funding for public health funds administered by the department of health and senior services, the enactment of sections 192.324 and 192.326 and the repeal and reenactment of sections 192.900 and 701.049 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 sections 192.324 and 192.326 and the repeal and reenactment of sections 192.900 and 701.049 of section A of this act shall be in full force and effect on June 29, 2005, or upon its passage and approval, whichever later occurs.

Approved June 29, 2005

SB 95 [HCS SS SB 95]

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 provisions relating to lead abatement

AN ACT to repeal sections 701.304, 701.306, 701.308, 701.309, 701.311, 701.312, 701.314, 701.320, 701.328, and 701.337, RSMo, and to enact in lieu thereof fourteen new sections relating to lead poisoning, with penalty provisions.

SECTION

- A. Enacting clause.
- 143.603. Childhood lead testing fund — refund donation designation.
- 701.304. Inspections and risk assessments, purpose, conditions — warrant — samples — fees for licenses and accreditation.
- 701.305. Educational information to be provided on department web site.
- 701.306. Notification of risk to health of children.
- 701.308. Abatement of hazard by owner — no eviction, effect — failure to abate, violation, order of compliance — relocation — report of violation.
- 701.309. Contractor to notify department, when — notification fee, due when.
- 701.311. Compliance inspections — warrant — notice of violation — hearing — enforcement manual to be posted on web site, contents.

- 701.312. Program to train and license lead inspectors and others — rules — liability insurance required.
701.313. Lead abatement grant projects, notification to department required — violation, penalty.
701.314. Program to train and license lead inspectors, supervisors, and workers — rules.
701.317. Additional remedies — rulemaking authority — administrative penalties, requirements — deposit of penalty moneys in lead abatement loan fund.
701.320. Violations, penalty.
701.328. Identity of persons participating to be protected — consent for release form, when requested — use and publishing of reports.
701.337. Department to establish lead abatement loan or grant program — Missouri lead abatement loan fund created.

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

SECTION A. ENACTING CLAUSE. — Sections 701.304, 701.306, 701.308, 701.309, 701.311, 701.312, 701.314, 701.320, 701.328, and 701.337, RSMo, are repealed and fourteen new sections enacted in lieu thereof, to be known as sections 143.603, 701.304, 701.305, 701.306, 701.308, 701.309, 701.311, 701.312, 701.313, 701.314, 701.317, 701.320, 701.328, and 701.337 to read as follows:

143.603. CHILDHOOD LEAD TESTING FUND — REFUND DONATION DESIGNATION. — 1. In each taxable year beginning on or after January 1, 2005, each individual or corporation entitled to a tax refund in an amount sufficient to make a designation under this section may designate that one dollar or any amount in excess of one dollar on a single return, and two dollars or any amount in excess of two dollars on a combined return, of the refund due be credited to the childhood lead testing fund created in section 701.345, RSMo. The contribution designation authorized by this section shall be clearly and unambiguously printed on the first page of each income tax return form provided by this state. If any individual or corporation that is not entitled to a tax refund in an amount sufficient to make a designation under this section wishes to make a contribution to the childhood lead testing fund, 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 the childhood lead testing fund, the individual or corporation wishes to contribute. The department of revenue shall forward such amount to the state treasurer for deposit to the childhood lead testing fund as provided in subsection 2 of this section.

2. 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 childhood lead testing fund.

3. The director of revenue shall transfer at least monthly all contributions designated by the corporations under this section, less an amount sufficient to cover the cost of collection and handling by the department of revenue, to the state treasurer for deposit to the childhood lead testing fund.

4. A contribution designated under this section shall only be transferred and deposited in the childhood lead testing fund after all other claims against the refund from which such contribution is to be made have been satisfied.

701.304. INSPECTIONS AND RISK ASSESSMENTS, PURPOSE, CONDITIONS — WARRANT — SAMPLES — FEES FOR LICENSES AND ACCREDITATION. — 1. A representative of the department, or a representative of a unit of local government or health department licensed by the department for this purpose, may conduct an inspection or a risk assessment at a dwelling or a child-occupied facility for the purpose of ascertaining the existence of a lead hazard under the following conditions:

- (1) The department, owner of the dwelling, and an adult occupant of a dwelling which is rented or leased have been notified that an occupant of the dwelling or a child six or fewer years

of age who regularly visits the child-occupied facility has been identified as having an elevated blood lead level as defined by rule; and

(2) The inspection or risk assessment occurs at a reasonable time; and

(3) The representative of the department or local government presents appropriate credentials to the owner or occupant; and

(4) Either the dwelling's owner or adult occupant or the child-occupied facility's owner or agent grants consent to enter the premises to conduct an inspection or risk assessment; or

(5) If consent to enter is not granted, the representative of the department, local government, or local health department may petition the circuit court for an order to enter the premises and conduct an inspection or risk assessment after notifying the dwelling's owner or adult occupant in writing of the time and purpose of the inspection or risk assessment at least forty-eight hours in advance. The court shall grant the order upon a showing that an occupant of the dwelling or a child six or fewer years of age who regularly visits the child-occupied facility has been identified as having an elevated blood lead level as defined by rule.

2. In conducting such an inspection or risk assessment, a representative of the department, or representative of a unit of local government or health department licensed by the department for this purpose, may remove samples necessary for laboratory analysis in the determination of the presence of a lead-bearing substance or lead hazard in the designated dwelling or child-occupied facility.

3. The director shall assess fees for licenses and accreditation **and impose administrative penalties** in accordance with rules promulgated pursuant to sections 701.300 to [701.330] **701.338**. All such fees **and fines** shall be deposited into the state treasury to the credit of the public health services fund established in section 192.900, RSMo.

701.305. EDUCATIONAL INFORMATION TO BE PROVIDED ON DEPARTMENT WEB SITE.

— **The department of health and senior services shall provide on its Internet web site educational information that explains the rights and responsibilities of the property owner and tenants of a dwelling and the lead inspectors, risk assessors, and the lead abatement contractors.**

701.306. NOTIFICATION OF RISK TO HEALTH OF CHILDREN. — If the department, or a representative of a unit of local government or health department licensed by the department for this purpose, determines that there is a lead hazard at a dwelling or child-occupied facility which poses a risk of adverse health effects upon young children, the department or its licensed local representative:

(1) Shall provide written notification to the owner and an adult occupant of the dwelling or the owner or agent of a child-occupied facility of the confirmed presence of a lead hazard which may lead to adverse health effects upon small children who reside in or regularly visit the residence or facility. The written notification shall include [recommendations] **options** appropriate for reduction of the lead hazard to an acceptable level and a reasonable time period for abating or establishing interim controls for any such lead hazard that is accessible to small children who reside in or regularly visit the dwelling or facility; and

(2) May provide written notification to the parents or guardians of children who regularly visit a child-occupied facility of the confirmed presence of a lead hazard that may lead to adverse health effects; and

(3) May provide a copy of the written notification to the local health officers.

701.308. ABATEMENT OF HAZARD BY OWNER — NO EVICTION, EFFECT — FAILURE TO ABATE, VIOLATION, ORDER OF COMPLIANCE — RELOCATION — REPORT OF VIOLATION. —

1. Upon receipt of written notification **as described in section 701.306**, of the presence of a lead hazard, the owner shall comply with the requirement for abating or establishing interim controls for the lead hazard in a manner consistent with the [recommendations described]

options provided by the department and within the applicable time period. If the dwelling or child-occupied facility is a rental or leased property, the owner may remove it from the rental market.

2. Except as provided in subsection 1 of this section, no tenant shall be evicted because an individual with an elevated blood lead level or with suspected lead poisoning resides in the dwelling, or because of any action required of the dwelling owner as a result of enforcement of sections 701.300 to 701.338. The provisions of this subsection shall not operate to prevent the owner of any such dwelling from evicting a tenant for any other reason as provided by law.

3. No child shall be denied attendance at a child-occupied facility because of an elevated blood lead level or suspected lead poisoning or because of any action required of the facility owner as a result of enforcement of sections 701.300 to 701.338. The provisions of this subsection shall not prevent the owner or agent of any such child-occupied facility from denying attendance for any other reason allowed by law.

4. [Whenever] **A representative of the department, or a representative of a unit of local government or health department licensed by the department for this purpose, is authorized to re-enter a dwelling or child-occupied facility to determine if the owner has taken the required actions for abating or establishing interim controls for the lead hazard in a manner consistent with the options provided by the department and lead hazards have been reduced to an acceptable level. If consent to enter is not granted, the representative of the department, local government, or local health department may petition the court for an order to enter the premises to determine if the owner has taken the required actions for abating or establishing interim controls for the lead hazard in a manner consistent with the options provided by the department, and provided that the lead hazards have been reduced to an acceptable level. The court shall grant the order upon a showing that the representative of the department, local government, or local health department has attempted to notify the dwelling's owner or adult occupant in writing of the time and purpose of the reentry at least forty-eight hours in advance.**

5. **Upon reentry, if the department[,] or a representative of a unit of local government[,] or local health department licensed by the department for this purpose, finds[, after providing written notification to the owner,] that the owner has not taken the required actions [which will result in the reduction of a lead hazard in a dwelling or child-occupied facility have not been taken] for abating or establishing interim controls for the lead hazard in a manner consistent with the options provided by the department, and lead hazards have not been reduced to an acceptable level, the owner shall be deemed to be in violation of sections 701.300 to 701.338. Such violation shall not by itself create a cause of action. The department or the local government or local health department shall:**

(1) Notify in writing the owner found to be causing, allowing or permitting the violation to take place; and

(2) Order that the owner of the dwelling or child-occupied facility shall cease and abate causing, allowing or permitting the violation and shall take such action as is necessary to comply with this section and the rules promulgated pursuant to this section.

[5.] **6. If [no action is taken pursuant to subsection 4 of this section which would result in abatement or interim control of the lead hazard within the stated time period], upon reentry, the lead hazard has not been reduced to an acceptable level, the following steps may be taken:**

(1) The local health officer and local building officials may, as practical, use such community or other resources as are available to effect the relocation of the individuals who occupied the affected dwelling or child-occupied facility until the owner complies with the notice; or

(2) The department[,] or representative of a unit of local government or health department licensed by the department for this purpose, [shall] **may** report any violation of sections 701.300 to 701.338 to the prosecuting attorney of the county in which the dwelling or child-occupied facility is located and notify the owner that such a report has been made. The prosecuting

attorney shall seek injunctive relief to ensure that the lead hazard is abated or that interim controls are established.

7. In commercial lead production areas, if the department identifies lead hazards due to paint, mini-blinds, or other household products/sources in a property where a child has been identified with an elevated blood level, the owner shall comply with the requirement for abating or establishing interim controls for the above stated hazards, in a manner consistent with the recommendations described by the department and within the applicable time period. Residential property owners in commercial lead production areas shall not be deemed in violation pursuant to section 701.308, after compliance with the requirement for abating or establishing interim controls established by the department per the initial risk assessment, or made to pay for any type of lead remediation necessary due to the commercial lead production and transport. If the residential property is owned by a commercial lead production or transport company, which has not taken the required actions for abating or establishing interim controls for the lead hazard in a manner consistent with the options provided by the department and the lead hazards have not been reduced to an acceptable level, the commercial lead production or transport company shall be deemed to be in violation of sections 701.300 to 701.308.

701.309. CONTRACTOR TO NOTIFY DEPARTMENT, WHEN — NOTIFICATION FEE, DUE WHEN. — 1. At least ten days prior to the onset of a lead abatement project, the lead abatement contractor conducting such an abatement project shall:

- (1) Submit to the department a written notification as prescribed by the department; and
- (2) Pay a notification fee of twenty-five dollars.

2. The lead abatement contractor and any public agency, local community organization, government agency, or quasi-government agency issuing grants or loans for lead abatement projects or interim controls shall inform the owners and tenants of a dwelling that information regarding potential lead hazards can be accessed on the department's Internet web site.

3. In addition to the specified penalties in section 701.320, failure to notify the department prior to the onset of a lead abatement project shall result in a fine of two hundred fifty dollars imposed against the lead abatement contractor for the first identified offense, five hundred dollars for the second identified offense, and thereafter, fines shall be doubled for each identified offense.

4. Written notification as prescribed by the department shall include disclosure of any potential lead hazards to the owners and tenants of a dwelling by the licensed risk assessor who conducted the initial risk assessment.

5. If the lead abatement contractor is unable to comply with the requirements of subsection 1 of this section because of an emergency situation as defined by rule, the contractor shall:

- (1) Notify the department by other means of communication within twenty-four hours of the onset of the project; and
- (2) Submit the written notification and notification fee prescribed in subsection 1 of this section to the department no more than five days after the onset of the project.

6. Upon completion of the abatement, the lead abatement contractor shall submit to the department written notification and the final clearance results report.

701.311. COMPLIANCE INSPECTIONS — WARRANT — NOTICE OF VIOLATION — HEARING — ENFORCEMENT MANUAL TO BE POSTED ON WEB SITE, CONTENTS. — 1. Any authorized representative of the department who presents appropriate credentials may, at all reasonable times, enter public or private property to conduct compliance inspections of lead abatement contractors as may be necessary to implement the provisions of sections 701.300 to 701.338 and any rules promulgated pursuant to sections 701.300 to 701.338.

2. It is unlawful for any person to refuse entry or access requested for inspecting or determining compliance with sections 701.300 to 701.338. A suitably restricted search warrant, upon a showing of probable cause in writing and upon oath, shall be issued by any circuit or associate circuit judge having jurisdiction for the purpose of enabling such inspections.

3. Whenever the director determines through a compliance inspection that there are reasonable grounds to believe that there has been a violation of any provision of sections 701.300 to 701.338 or the rules promulgated pursuant to sections 701.300 to 701.338, the director [shall] **may** give notice of such alleged violation to the owner or person responsible, as provided in this section. 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 the notice requires;
- (4) Be served upon the property owner or person responsible as the case may require, provided that such notice shall be deemed to have been properly served upon such person when a copy of such notice 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 law;
- (5) Contain an outline of corrective action which is required to effect compliance with sections 701.300 to 701.338 and the rules promulgated pursuant to sections 701.300 to 701.338.

4. If an owner or 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 thirty days from the date of receipt of the notice before the director or the director's designee to review the appropriateness of the corrective action. The director shall issue a written decision within thirty days of the date of the hearing. Any final decision of the director may be appealed to the administrative hearing commission as provided in chapter 621, RSMo. Any decision of the administrative hearing commission may be appealed as provided in sections 536.100 to 536.140, RSMo.

5. The attorney general or the prosecuting attorney of the county in which any violation of sections 701.300 to 701.338 or the rules promulgated pursuant to sections 701.300 to 701.338, occurred shall, at the request of the city, county or department, institute appropriate proceedings for correction.

6. When the department determines 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 by the local prosecuting attorney or the attorney general. For the purposes of this subsection, an "emergency" means any set of circumstances that constitutes an imminent health hazard or the threat of an imminent health hazard.

7. Nothing in sections 701.300 to 701.338 or rules promulgated pursuant to sections 701.300 to 701.338 shall be construed as requiring the department of health and senior services to issue a notice of violation pursuant to subsection 3 of section 701.311, whenever the department of health and senior services believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

8. The department shall develop, publish, and post on its web site an enforcement manual that:

- (1) Delineates the categories of violations for which the department shall issue a notice of violation under subsection 3 of this section; and**
- (2) Delineates the categories of violations for which the department may either issue a notice of violation under subsection 3 of this section or issue a suitable written notice or warning.**

701.312. PROGRAM TO TRAIN AND LICENSE LEAD INSPECTORS AND OTHERS — RULES — LIABILITY INSURANCE REQUIRED. — 1. The director of the department of health and senior

services shall develop a program to license lead inspectors, risk assessors, lead abatement supervisors, lead abatement workers, project designers and lead abatement contractors. The director shall promulgate rules and regulations including, but not limited to:

- (1) The power to issue, restrict, suspend, revoke, deny and reissue licenses;
- (2) **The power to issue notices of violation, written notices and letters of warning;**
- (3) The ability to enter into reciprocity agreements with other states that have similar licensing provisions;
- [(3)] (4) Fees for any such licenses;
- [(4)] (5) Training, education and experience requirements; and
- [(5)] (6) The implementation of work practice standards, reporting requirements and licensing standards.

2. [The director shall issue temporary risk assessor licenses to persons who, as of August 28, 1998, are licensed by the department as lead inspectors. The temporary risk assessor licenses issued pursuant to this subsection shall expire upon the same date as the expiration date of such person's lead inspector license. The director shall set forth standards and conditions under which temporary risk assessor licenses shall be issued.] **The director shall require, as a condition of licensure, lead abatement contractors to purchase and maintain liability and errors and omissions insurance. The director shall require a licensee or an applicant for licensure to provide evidence of their ability to indemnify any person that may suffer damage from lead-based paint activities of which the licensee or applicant may be liable.**

701.313. LEAD ABATEMENT GRANT PROJECTS, NOTIFICATION TO DEPARTMENT REQUIRED — VIOLATION, PENALTY. — 1. Any local community organization, government agency, or quasi-government agency issuing grants or loans for lead abatement projects must provide written notification to the department no later than ten days prior to the onset of a lead abatement project. The written notification shall include, but not be limited to, the name of the lead abatement contractor, the address of the property on which the lead abatement project shall be conducted, and the date on which the lead abatement project shall be conducted.

2. If the local community organization, government agency, or quasi-government agency fails to provide written notification for each property pursuant to subsection 1 of this section, a fine of two hundred fifty dollars shall be levied by the department.

3. If the local community organization, the government agency, or quasi-government agency is unable to comply with the requirements in subsection 1 of this section due to an emergency situation, as defined by the department, the local community organization, government agency, or quasi-government agency shall:

- (1) **Notify the department by other means of communication within twenty-four hours of the onset of the lead abatement project; and**
- (2) **Provide written notification to the department no later than five days after the onset of the lead abatement project.**

701.314. PROGRAM TO TRAIN AND LICENSE LEAD INSPECTORS, SUPERVISORS, AND WORKERS — RULES. — The director of the department of health and senior services shall develop a program to accredit training providers to train lead inspectors, risk assessors, lead abatement supervisors, lead abatement workers and project designers. The director shall promulgate rules and regulations including, but not limited to:

- (1) The power to grant, restrict, suspend, revoke, deny or renew accreditation;
- (2) **The power to issue notices of violation, written notices and letters of warning;**
- (3) The ability to enter into reciprocity agreements with other states that have similar accreditation provisions;
- [(3)] (4) Fees for any such accreditation;
- [(4)] (5) The curriculum for training;

[5] (6) The development of standards for accreditation; and
[6] (7) Procedures for monitoring, training, record keeping and reporting requirements for training providers.

701.317. ADDITIONAL REMEDIES — RULEMAKING AUTHORITY — ADMINISTRATIVE PENALTIES, REQUIREMENTS — DEPOSIT OF PENALTY MONEYS IN LEAD ABATEMENT LOAN FUND. — 1. In addition to any other remedy provided by law, upon a determination by the director that a provision of section 701.300 to 701.338, or a standard, limitation, order, rule or regulation promulgated pursuant thereto, or a term or condition of any license has been violated, the director may issue an order assessing an administrative penalty upon the violator under this section. An administrative penalty shall not be imposed until the director has issued a notice of violation pursuant to section 701.311 to the violator regarding the same type of violation within the calendar year. Any order assessing an administrative penalty shall state that an administrative penalty is being assessed under this section and that the person subject to the penalty may appeal as provided by this section. Any such order that fails to state the statute under which the penalty is being sought, the manner of collection or rights of appeal shall result in the state's waiving any right to collection of the penalty.

2. The director shall promulgate rules and regulations for the assessment of administrative penalties. Such rules shall take into consideration the harm or potential harm which the violation causes, or may cause, the violator's previous compliance record, and any other factors which the department may reasonably deem relevant.

3. An administrative penalty shall be paid within sixty days from the date of issuance of the order assessing the penalty. Any person subject to an administrative penalty may appeal to the department within ten days after receipt of the imposition of penalty. Upon receipt of a request for hearing, the department shall schedule the hearing to be held within thirty days. Any appeal will stay the due date of such administrative penalty until the appeal is resolved. Any person who fails to pay an administrative penalty by the final due date shall be liable to the state for a surcharge of fifteen percent of the penalty plus ten percent per annum on any amounts owed. An action may be brought in the appropriate circuit court to collect any unpaid administrative penalty, and for attorney's fees and costs incurred directly in the collection thereof.

4. An administrative penalty shall not be increased in those instances where department action, or failure to act, has caused a continuation of the violation that was a basis for the penalty. Any administrative penalty must be assessed within two years following the department's initial discovery of such alleged violation, or from the date of the department in the exercise of ordinary diligence should have discovered such alleged violation.

5. Any final order imposing an administrative penalty is subject to judicial review on the record upon the filing of a petition pursuant to section 536.100, RSMo, by any person subject to the administrative penalty. The appeal shall be filed in the circuit court of the county where the violation occurred.

6. The director may elect to assess an administrative penalty, or, in lieu thereof, to request that the attorney general or prosecutor file an appropriate legal action seeking a civil penalty in the appropriate circuit court.

7. The penalties collected pursuant to this section shall be deposited in the "Missouri Lead Abatement Loan Fund" as established in section 701.337. Such penalties shall not be considered charitable contributions for tax purposes.

701.320. VIOLATIONS, PENALTY. — 1. Except as otherwise provided, violation of the provisions of sections 701.308, 701.309, 701.310, 701.311 and 701.316 is a class A misdemeanor.

2. Any lead inspector, risk assessor, lead abatement supervisor, lead abatement worker, project designer, or lead abatement contractor who engages in a lead abatement project while such person's license, issued under section 701.312, is under suspension or revocation is guilty of a class D felony.

701.328. IDENTITY OF PERSONS PARTICIPATING TO BE PROTECTED — CONSENT FOR RELEASE FORM, WHEN REQUESTED — USE AND PUBLISHING OF REPORTS. — 1. The department of health and senior services shall protect the identity of the patient and physician involved in the reporting required by sections 701.318 to 701.349. Such identity shall not be revealed except that the identity of the patient shall be released only upon written consent of the patient. The identity of the physician shall be released only upon written consent of the physician.

2. The department may release without consent any information obtained pursuant to sections 701.318 to 701.349, including the identities of certain patients or physicians, when the information is necessary for the performance of duties by public employees within, or the legally designated agents of, any **federal**, state, or local agency, department or political subdivision, but only when such employees and agents need to know such information to perform their public duties.

3. The department shall use or publish reports based upon materials reported pursuant to sections 701.318 to 701.349 to advance research, education, treatment and lead abatement. The department shall geographically index the data from lead testing reports to determine the location of areas of high incidence of lead poisoning. The department shall provide qualified researchers with data from the reported information upon the researcher's compliance with appropriate conditions as provided by rule and upon payment of a fee to cover the cost of processing the data.

701.337. DEPARTMENT TO ESTABLISH LEAD ABATEMENT LOAN OR GRANT PROGRAM — MISSOURI LEAD ABATEMENT LOAN FUND CREATED. — 1. The department shall have the authority to develop a plan for implementing a program that provides financial assistance via loans or grants to owners of dwellings or child-occupied facilities for performing lead abatement projects. In developing the plan, the department shall consult with the department of natural resources and the department of economic development.

2. The program shall accept applications from local entities for implementing at the local level of lead abatement projects that conform with the requirements of sections 701.300 to 701.338, and any rules promulgated thereunder. For purposes of this section, "local entities" shall include any municipality or county, any local not-for-profit community or housing organization or any community assistance project agency.

3. There is hereby established in the state treasury the "Missouri Lead Abatement Loan Fund". The state treasurer shall receive and deposit to the credit of the fund moneys from appropriations by the general assembly, **penalties paid because of violations of sections 701.301 to 701.338 and those rules promulgated thereto**, repayments by applicants of loans made pursuant to this section, including interest on such loans, and gifts, bequests, donations or any other payments made by any public or private entity for use in carrying out the provisions of this section. The state treasurer shall deposit all moneys in the fund in any of the qualified depositories of the state. All such deposits shall be secured in such a manner and shall be made upon such terms and conditions as are now or may hereafter be provided by law relative to state deposits. Interest accrued by the fund shall be credited to the fund. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, moneys in the fund shall not revert to the credit of the general revenue fund at the end of the biennium. The fund shall be used solely for the purposes of this section and for no other purpose.

Approved June 30, 2005

SB 98 [SS SCS SB 98]

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 names of various higher education institutions

AN ACT to repeal sections 172.020, 173.005, 174.020, 174.231, 174.241, 174.250, 174.251, 174.253, 174.261, 174.300, 174.310, 174.320, 174.324, 174.450, 174.453, and 176.010, RSMo, and to enact in lieu thereof sixteen new sections relating to state institutions of higher education.

SECTION

- A. Enacting clause.
- 172.020. Corporate name — powers of curators — restrictions on dealings in real property, timber or minerals, rules — notice.
- 173.005. Department of higher education created — agencies, divisions, transferred to department — coordinating board, appointment qualifications, terms, compensation, duties, advisory committee, members.
- 174.020. Names of state colleges and universities.
- 174.231. Missouri Southern State University, mission statement — discontinuance of associate degree program.
- 174.250. Missouri Western State University — established, when — district.
- 174.251. Missouri Western State University, mission statement.
- 174.253. Missouri Western State University, three-year plan — review and approval.
- 174.261. State to fund universities.
- 174.300. Harris-Stowe University — board of regents, appointment, terms.
- 174.310. Harris-Stowe State University, transfer of facility — operation — funding — educational emphasis.
- 174.320. Harris-Stowe State University, retirement system provision.
- 174.324. Master's degrees in accounting authorized for Missouri Western University and Missouri Southern State University, requirements — limitations on new master's degree programs.
- 174.450. Board of governors to be appointed for certain public institutions of higher education, qualifications — board of regents abolished, when.
- 174.453. Board, appointment — certain residency requirements — terms, voting members — term, nonvoting student member — board appointments, Missouri Southern State University.
- 176.010. Definitions.
1. Missouri State University not to seek land grant designation or research designation held by other institutions — cooperation with University of Missouri in offering of certain programs, requirements.
- 174.241. Boards of regents, Missouri Western College — appointment, terms, qualifications.

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

SECTION A. ENACTING CLAUSE. — Sections 172.020, 173.005, 174.020, 174.231, 174.241, 174.250, 174.251, 174.253, 174.261, 174.300, 174.310, 174.320, 174.324, 174.450, 174.453, and 176.010, RSMo, are repealed and sixteen new sections enacted in lieu thereof, to be known as sections 172.020, 173.005, 174.020, 174.231, 174.250, 174.251, 174.253, 174.261, 174.300, 174.310, 174.320, 174.324, 174.450, 174.453, 176.010, and 1, to read as follows:

172.020. CORPORATE NAME — POWERS OF CURATORS — RESTRICTIONS ON DEALINGS IN REAL PROPERTY, TIMBER OR MINERALS, RULES — NOTICE. — Pursuant to sections 9(a) and 9(b) of Article IX of the Missouri Constitution, the state university is hereby incorporated and created as a body politic and shall be known by the name of "The Curators of the University of Missouri", and by that name shall have perpetual succession, power to sue and be sued, complain and defend in all courts; to make and use a common seal, and to alter the same at pleasure; to take, purchase and to sell, convey and otherwise dispose of lands and chattels, except that the curators shall not have the power to subdivide, sell or convey title to any land contained within a university campus or to subdivide, sell or convey title to any portion of any parcel of land containing in excess of twenty-five hundred contiguous acres unless such transaction is approved by the general assembly by passage of a concurrent resolution signed by the governor. The curators shall not sell, trade or otherwise convey or permit the severance of

timber, minerals or other natural resources, unless the curators comply with bidding procedures established by rule that mandate notice of the transaction be provided in a manner reasonably calculated to apprise prospective purchasers. Such rule or rules must at a minimum require at least one notice of the transaction be published in a newspaper of general circulation where the resources are located. The curators may act as trustee in all cases in which there be a gift of property or property left by will to the university or for its benefit or for the benefit of students of the university; to condemn an appropriate real estate or other property, or any interest therein, for any public purpose within the scope of its organization, in the same manner and with like effect as is provided in chapter 523, RSMo, relating to the appropriation and valuation of lands taken for telegraph, telephone, gravel and plank or railroad purposes; provided, that if the curators so elect, no assessment of damages or compensation under this law shall be payable and no execution shall issue before the expiration of sixty days after the adjournment of the next regular session of the legislature held after such assessment is made, but the same shall bear interest at the rate of six percent per annum from its date until paid; and provided further, that the curators may, at any time, elect to abandon the proposed appropriation of property by an instrument of writing to that effect, to be filed with the clerk of the court and entered on the minutes of the court, and as to so much as is thus abandoned, the assessment of damages or compensation shall be void.

173.005. DEPARTMENT OF HIGHER EDUCATION CREATED — AGENCIES, DIVISIONS, TRANSFERRED TO DEPARTMENT — COORDINATING BOARD, APPOINTMENT QUALIFICATIONS, TERMS, COMPENSATION, DUTIES, ADVISORY COMMITTEE, MEMBERS. —

1. There is hereby created a "Department of Higher Education", and the division of higher education of the department of education is abolished and all its powers, duties, functions, personnel and property are transferred as provided by the Reorganization Act of 1974, Appendix B, RSMo.

2. The commission on higher education is abolished and all its powers, duties, personnel and property are transferred by type I transfer to the "Coordinating Board for Higher Education", which is hereby created, and the coordinating board shall be the head of the department. The coordinating board shall consist of nine members appointed by the governor with the advice and consent of the senate, and not more than five of its members shall be of the same political party. None of the members shall be engaged professionally as an educator or educational administrator with a public or private institution of higher education at the time appointed or during his term. The other qualifications, terms and compensation of the coordinating board shall be the same as provided by law for the curators of the University of Missouri. The coordinating board may, in order to carry out the duties prescribed for it in subsections 1, 2, 3, 7, and 8 of this section, employ such professional, clerical and research personnel as may be necessary to assist it in performing those duties, but this staff shall not, in any fiscal year, exceed twenty-five full-time equivalent employees regardless of the source of funding. In addition to all other powers, duties and functions transferred to it, the coordinating board for higher education shall have the following duties and responsibilities:

(1) The coordinating board for higher education shall have approval of proposed new degree programs to be offered by the state institutions of higher education;

(2) The coordinating board for higher education may promote and encourage the development of cooperative agreements between Missouri public four-year institutions of higher education which do not offer graduate degrees and Missouri public four-year institutions of higher education which do offer graduate degrees for the purpose of offering graduate degree programs on campuses of those public four-year institutions of higher education which do not otherwise offer graduate degrees. Such agreements shall identify the obligations and duties of the parties, including assignment of administrative responsibility. Any diploma awarded for graduate degrees under such a cooperative agreement shall include the names of both institutions inscribed thereon. Any cooperative agreement in place as of August 28, 2003, shall require no

further approval from the coordinating board for higher education. Any costs incurred with respect to the administrative provisions of this subdivision may be paid from state funds allocated to the institution assigned the administrative authority for the program. The provisions of this subdivision shall not be construed to invalidate the provisions of subdivision (1) of this subsection;

(3) In consultation with the heads of the institutions of higher education affected and against a background of carefully collected data on enrollment, physical facilities, manpower needs, institutional missions, the coordinating board for higher education shall establish guidelines for appropriation requests by those institutions of higher education; however, other provisions of the Reorganization Act of 1974 notwithstanding, all funds shall be appropriated by the general assembly to the governing board of each public four-year institution of higher education which shall prepare expenditure budgets for the institution;

(4) No new state-supported senior colleges or residence centers shall be established except as provided by law and with approval of the coordinating board for higher education;

(5) The coordinating board for higher education shall establish admission guidelines consistent with institutional missions;

(6) The coordinating board shall establish policies and procedures for institutional decisions relating to the residence status of students;

(7) The coordinating board shall establish guidelines to promote and facilitate the transfer of students between institutions of higher education within the state;

(8) The coordinating board shall collect the necessary information and develop comparable data for all institutions of higher education in the state. The coordinating board shall use this information to delineate the areas of competence of each of these institutions and for any other purposes deemed appropriate by the coordinating board;

(9) Compliance with requests from the coordinating board for institutional information and the other powers, duties and responsibilities, herein assigned to the coordinating board, shall be a prerequisite to the receipt of any funds for which the coordinating board is responsible for administering; and

(10) If any institution of higher education in this state, public or private, willfully fails or refuses to follow any lawful guideline, policy or procedure established or prescribed by the coordinating board, or knowingly deviates from any such guideline, or knowingly acts without coordinating board approval where such approval is required, or willfully fails to comply with any other lawful order of the coordinating board, the coordinating board may, after a public hearing, withhold or direct to be withheld from that institution any funds the disbursement of which is subject to the control of the coordinating board, or may remove the approval of the institution as an "approved institution" within the meaning of section 173.205, but nothing in this section shall prevent any institution of higher education in this state from presenting additional budget requests or from explaining or further clarifying its budget requests to the governor or the general assembly.

3. The coordinating board shall meet at least four times annually with an advisory committee who shall be notified in advance of such meetings. The coordinating board shall have exclusive voting privileges. The advisory committee shall consist of thirty-two members, who shall be the president or other chief administrative officer of the University of Missouri; the chancellor of each campus of the University of Missouri; the president of each state-supported four-year college or university, including Harris-Stowe State [College] **University**, Missouri Southern State [University-Joplin] **University**, Missouri Western State [College] **University**, and Lincoln University; the president of Linn State Technical College; the president or chancellor of each public community college district; and representatives of each of five accredited private institutions selected biennially, under the supervision of the coordinating board, by the presidents of all of the state's privately supported institutions; but always to include at least one representative from one privately supported junior college, one privately supported four-year college, and one privately supported university. The conferences shall enable the committee to

advise the coordinating board of the views of the institutions on matters within the purview of the coordinating board.

4. The University of Missouri, Lincoln University, and all other state-governed colleges and universities, chapters 172, 174 and 175, RSMo, and others, are transferred by type III transfers to the department of higher education subject to the provisions of subsection 2 of this section.

5. The state historical society, chapter 183, RSMo, is transferred by type III transfer to the University of Missouri.

6. The state anatomical board, chapter 194, RSMo, is transferred by type II transfer to the department of higher education.

7. All the powers, duties and functions vested in the division of public schools and state board of education relating to community college state aid and the supervision, formation of districts and all matters otherwise related to the state's relations with community college districts and matters pertaining to community colleges in public school districts, chapters 163 and 178, RSMo, and others, are transferred to the coordinating board for higher education by type I transfer. Provided, however, that all responsibility for administering the federal-state programs of vocational-technical education, except for the 1202a post-secondary educational amendments of 1972 program, shall remain with the department of elementary and secondary education. The department of elementary and secondary education and the coordinating board for higher education shall cooperate in developing the various plans for vocational-technical education; however, the ultimate responsibility will remain with the state board of education.

8. The administration of sections 163.171 and 163.181, RSMo, relating to teacher-training schools in cities, is transferred by type I transfer to the coordinating board for higher education.

9. All the powers, duties, functions, personnel and property of the state library and state library commission, chapter 181, RSMo, and others, are transferred by type I transfer to the coordinating board for higher education, and the state library commission is abolished. The coordinating board shall appoint a state librarian who shall administer the affairs of the state library under the supervision of the board.

10. All the powers, duties, functions, and properties of the state poultry experiment station, chapter 262, RSMo, are transferred by type I transfer to the University of Missouri, and the state poultry association and state poultry board are abolished. In the event the University of Missouri shall cease to use the real estate of the poultry experiment station for the purposes of research or shall declare the same surplus, all real estate shall revert to the governor of the state of Missouri and shall not be disposed of without legislative approval.

174.020. NAMES OF STATE COLLEGES AND UNIVERSITIES. — 1. **Except as provided in subsection 5 of this section,** state institutions of higher education governed by sections 174.020 to 174.500 shall be named and known as follows: the institution at Warrensburg, Johnson County, shall hereafter be known as the "Central Missouri State University"; the institution at Cape Girardeau, Cape Girardeau County, shall hereafter be known as the "Southeast Missouri State University"; the institution at Springfield, Greene County, shall hereafter be known as the "[Southwest] Missouri State University"; the institution at Maryville, Nodaway County, shall hereafter be known as the "Northwest Missouri State University"; the [college] **institution** at St. Joseph, Buchanan County, shall hereafter be known as the "Missouri Western State [College] **University**"; the institution at Joplin, Jasper County, shall hereafter be known as the "Missouri Southern State [University-Joplin] **University**"; and the college in the city of St. Louis shall be known as "Harris-Stowe State [College] **University**".

2. References in the statutes in this state to such institutions whether denominated colleges or universities in such statutes or whether said institutions are renamed in subsection 1 of this section shall continue to apply to the applicable institution.

3. Any costs incurred with respect to modifications of the names of the state colleges and universities specified in subsection 1 of this section shall not be paid from state funds.

4. When the conditions set forth in section 178.631, RSMo, are met, the technical college located in Osage County, commonly known as the East Campus of Linn Technical College, shall be known as "Linn State Technical College".

5. The board of governors of the institution at Warrensburg, Johnson County, may alter the name of such institution to "The University of Central Missouri" upon the approval of at least four voting members of the board. Upon such a vote, the board shall provide written notice to the revisor of statutes affirming that the board has approved the alteration. From the date the revisor receives the notice, the institution at Warrensburg, Johnson County, shall be named and known as "The University of Central Missouri." The provisions of this subsection shall expire on August 28, 2007.

174.231. MISSOURI SOUTHERN STATE UNIVERSITY, MISSION STATEMENT — DISCONTINUANCE OF ASSOCIATE DEGREE PROGRAM. — 1. On and after August 28, [2003] 2005, the institution formerly known as Missouri Southern State College located in Joplin, Jasper County, shall be known as "Missouri Southern State [University-Joplin] University". Missouri Southern State [University-Joplin] University is hereby designated and shall hereafter be operated as a statewide institution of international or global education. The Missouri Southern State [University-Joplin] University is hereby designated a moderately selective institution which shall provide associate degree programs except as provided in subsection 2 of this section, baccalaureate degree programs, and graduate degree programs pursuant to subdivisions (1) and (2) of subsection 2 of section 173.005, RSMo. The institution shall develop such academic support programs and public service activities it deems necessary and appropriate to establish international or global education as a distinctive theme of its mission. Consistent with the provisions of section 174.324, Missouri Southern State [University-Joplin] University is authorized to offer master's level degree programs in accountancy, subject to the approval of the coordinating board for higher education as provided in subdivision (1) of subsection 2 of section 173.005, RSMo.

2. As of July 1, 2008, Missouri Southern State [University-Joplin] University shall discontinue any and all associate degree programs unless the continuation of such associate degree programs is approved by the coordinating board for higher education pursuant to subdivision (1) of subsection 2 of section 173.005, RSMo.

174.250. MISSOURI WESTERN STATE UNIVERSITY — ESTABLISHED, WHEN — DISTRICT. — 1. If the facilities of the present Missouri Western Junior College are made available, there shall be established in St. Joseph, Missouri, a state college, which shall make available those third and fourth year college level courses that lead to a baccalaureate degree.

2. This state college shall in the year 1967, or at such a time as the present Missouri Western Junior College has acquired a campus for a third and fourth year college which meets the requirements established by the board of curators of Missouri University and its enrollment trends constitute sufficient justification for the operation of a four year college in the opinion of the board, whichever occurs later, become an independent two year state senior college, to be known as the "Missouri Western State [College] University". Its district shall be [coterminous with that of the Missouri Western Junior College district] **Buchanan County and counties contiguous to Buchanan county.**

174.251. MISSOURI WESTERN STATE UNIVERSITY, MISSION STATEMENT. — 1. On and after August 28, 2005, the institution formerly known as Missouri Western State College at St. Joseph, Buchanan County, shall hereafter be known as the "Missouri Western State University". Missouri Western State University is hereby designated and shall hereafter be operated as a statewide institution of applied learning. The Missouri Western State [College located in St. Joseph, Buchanan County,] University is hereby designated an open enrollment institution which shall provide associate [and] degree programs except as provided

in subsection 2 of this section, baccalaureate degree programs [which meet the needs of the citizens, businesses, and industries of its service area as defined in section 174.010, as well as counties contiguous to Buchanan County], **and graduate degree programs pursuant to subdivisions (1) and (2) of subsection 2 of section 173.005, RSMo.** The institution shall develop such academic support programs as it deems necessary and appropriate to an open enrollment institution [to improve the potential for success of its students] **with a statewide mission of applied learning.** Consistent with the provisions of section 174.324, Missouri Western State [College] **University** is authorized to offer master's level degree programs in accountancy, subject to the approval of the coordinating board for higher education as provided in subdivision (1) of subsection 2 of section 173.005, RSMo.

2. As of July 1, 2010, Missouri Western State University shall discontinue any and all associate degree programs unless the continuation of such associate degree program is approved by the coordinating board for higher education pursuant to subdivision 2 of section 173.005, RSMo.

174.253. MISSOURI WESTERN STATE UNIVERSITY, THREE-YEAR PLAN — REVIEW AND APPROVAL. — Degree programs offered by Missouri Western State [College] **University** prior to August 28, 1995, that have been approved by the coordinating board for higher education may be continued by the board of regents. Within twelve months of August 28, 1995, the board of regents shall submit to the coordinating board for its review and approval a three-year plan outlining admissions requirements, program changes, institutional performance goals, assessment measures, and fees appropriate to its statutory mission. Pursuant to subdivision (1) of subsection 2 of section 173.005, RSMo, the coordinating board shall review and may approve all proposed new degree programs included in the three-year plan.

174.261. STATE TO FUND UNIVERSITIES. — The state of Missouri may provide the funds necessary to provide the staff, cost of operation, and payment of all capital improvements commenced after July 1, 1977, for Missouri Southern State [College] **University** and Missouri Western State [College] **University**.

174.300. HARRIS-STOWE UNIVERSITY — BOARD OF REGENTS, APPOINTMENT, TERMS. — **1.** Prior to October 17, 1978, the governor shall, with the advice and consent of the senate, appoint a six member board of regents to assume the general control and management of Harris-Stowe College. The members of the board shall serve for terms of six years each, except for the members first appointed, two of whom shall serve two-year terms, two of whom shall serve four-year terms, and two of whom shall serve six-year terms. Not more than three of the regents shall be affiliated with any one political party.

2. On and after August 28, 2005, Harris-Stowe State College shall be known as Harris-Stowe State University, and the provisions contained in subsection 1 of this section shall continue to apply to the institution.

174.310. HARRIS-STOWE STATE UNIVERSITY, TRANSFER OF FACILITY — OPERATION — FUNDING — EDUCATIONAL EMPHASIS. — **1.** There shall be a period of orderly transition which shall begin with the appointment of the board of regents, during which the St. Louis board of education shall convey by gift, the buildings, facilities, equipment, and adjoining eight acres, more or less, of realty located at 3026 Laclede Avenue, St. Louis, Missouri, which currently serves as the campus of Harris-Stowe State College, to the board of regents, and during which time the St. Louis board of education, at its own expense, shall continue to provide necessary supporting services to Harris-Stowe State College. The transition period shall terminate no later than July 1, 1979, at which time the regents shall be responsible for every aspect of the college's operation.

2. Notwithstanding any other provisions of this chapter to the contrary, the board of regents of Harris-Stowe State College is authorized to offer undergraduate degree programs with an emphasis on selected applied professional disciplines that will meet the needs of the St. Louis metropolitan area. Such programs shall be subject to approval by the coordinating board for higher education as provided for in subdivision (1) of subsection 2 of section 173.005, RSMo.

3. The state shall, effective July 1, 1978, provide the necessary funds to fully staff and operate Harris-Stowe State College and to make appropriate capital improvements.

4. On and after August 28, 2005, Harris-Stowe State College shall be known as Harris-Stowe State University, and the provisions contained in subsections 1 to 3 of this section shall continue to apply to the institution.

174.320. HARRIS-STOWE STATE UNIVERSITY, RETIREMENT SYSTEM PROVISION. — 1. Any person employed by Harris-Stowe State College prior to September 1, 1978, who is a member of the public school retirement system established in sections 169.410 to 169.540, RSMo, and who did not become a member of the Missouri state employees' retirement system may remain a member of that public school retirement system. Any employer contributions required to be made by sections 169.410 to 169.540, RSMo, shall be made by the state of Missouri.

2. Any person employed on or after September 1, 1978, as an instructor, teacher or administrator of Harris-Stowe State College and who did not become a member of the Missouri state employees' retirement system under section 104.342, RSMo, is a member of the public school retirement system of Missouri created by sections 169.010 to 169.130, RSMo. Any other person employed on or after September 1, 1978, as an employee of Harris-Stowe State College is a member of the Missouri state employees' retirement system established by sections 104.310 to 104.550, RSMo.

3. On and after August 28, 2005, Harris-Stowe State College shall be known as Harris-Stowe State University, and the provisions contained in subsections 1 and 2 of this section shall continue to apply to the institution.

174.324. MASTER'S DEGREES IN ACCOUNTING AUTHORIZED FOR MISSOURI WESTERN UNIVERSITY AND MISSOURI SOUTHERN STATE UNIVERSITY, REQUIREMENTS — LIMITATIONS ON NEW MASTER'S DEGREE PROGRAMS. — 1. Notwithstanding any law to the contrary, Missouri Western State [College] **University** and Missouri Southern State [University-Joplin] **University** may offer master's degrees in accounting, subject to any terms and conditions of the Missouri state board of accountancy applicable to any other institution of higher education in this state which offers such degrees, and subject to approval of the coordinating board for higher education.

2. Any new master's degree program offered at Missouri Southern State [University-Joplin] **University**, **Missouri Western State University**, or any other public institution of higher education in this state must be approved by the coordinating board for higher education pursuant to the provisions of subdivision (1) or (2) of subsection 2 of section 173.005, RSMo.

174.450. BOARD OF GOVERNORS TO BE APPOINTED FOR CERTAIN PUBLIC INSTITUTIONS OF HIGHER EDUCATION, QUALIFICATIONS — BOARD OF REGENTS ABOLISHED, WHEN. — **1. Except as provided in subsection 2 of this section**, the governing board of Central Missouri State University, [Southwest] Missouri State University, Missouri Southern State [University-Joplin] **University**, **Missouri Western State University**, and of each other public institution of higher education which, through the procedures established in subdivision (7) or (8) of section 173.030, RSMo, is charged with a statewide mission shall be a board of governors consisting of eight members, composed of seven voting members and one nonvoting member as provided in sections 174.453 and 174.455, who shall be appointed by the governor of Missouri, by and with the advice and consent of the senate. No person shall be appointed a voting member who

is not a citizen of the United States and who has not been a resident of the state of Missouri for at least two years immediately prior to such appointment. Not more than four voting members shall belong to any one political party. The appointed members of the board of regents serving on the date of the statutory mission change shall become members of the board of governors on the effective date of the statutory mission change and serve until the expiration of the terms for which they were appointed. The board of regents of any such institution shall be abolished on the effective date of the statutory mission change, as prescribed in subdivision (7) or (8) of section 173.030, RSMo.

2. The governing board of Missouri State University, a public institution of higher education charged with a statewide mission in public affairs, shall be a board of governors of ten members, composed of nine voting members and one nonvoting member, who shall be appointed by the governor, by and with the advice and consent of the senate. The nonvoting member shall be a student selected in the same manner as prescribed in section 174.055. No more than one voting member shall be appointed to the board from the same congressional district, and every member of the board shall be a citizen of the United States, and a resident of this state for at least two years prior to his or her appointment. No more than five voting members shall belong to any one political party.

3. The governing board of Missouri Southern State University shall be a board of governors consisting of nine members, composed of eight voting members and one nonvoting member as provided in sections 174.453 and 174.455, who shall be appointed by the governor of Missouri, by and with the advice and consent of the senate. No person shall be appointed a voting member who is not a citizen of the United States and who has not been a resident of the state of Missouri for at least two years immediately prior to such appointment. Not more than four voting members shall belong to any one political party.

174.453. BOARD, APPOINTMENT — CERTAIN RESIDENCY REQUIREMENTS — TERMS, VOTING MEMBERS — TERM, NONVOTING STUDENT MEMBER — BOARD APPOINTMENTS, MISSOURI SOUTHERN STATE UNIVERSITY. — 1. The board of governors shall be appointed as follows:

(1) Five voting members shall be selected from the counties comprising the institution's historic statutory service region as described in section 174.010, except that no more than two members shall be appointed from any one county with a population of less than two hundred thousand inhabitants;

(2) Two voting members shall be selected from any of the counties in the state which are outside of the institution's historic service region; and

(3) One nonvoting member who is a student shall be selected in the same manner as prescribed in section 174.055.

2. The term of service of the governors shall be as follows:

(1) The voting members shall be appointed for terms of six years; and

(2) The nonvoting student member shall serve a two-year term.

3. Members of any board of governors selected pursuant to this section and in office on May 13, 1999, shall serve the remainder of their unexpired terms.

4. Notwithstanding the provisions of subsection 1 of this section, the board of governors of Missouri Southern State [University-Joplin] **University** shall be appointed as follows:

(1) ~~Five~~ **Six** voting members shall be selected from any of the following counties: Barton, Jasper, Newton, McDonald, Dade, Lawrence, and Barry provided that no more than three of these ~~five~~ **six** members shall be appointed from any one county;

(2) Two voting members shall be selected from any of the counties in the state which are outside of the counties articulated in subdivision (1) of this subsection;

(3) One nonvoting member who is a student shall be selected in the same manner as prescribed in section 174.055; and

(4) The provisions of subdivisions (1) and (2) of this subsection shall only apply to board members first appointed after August 28, 2004.

5. Notwithstanding the provisions of subsection 1 of this section, the board of governors of Missouri Western State University shall be appointed as follows:

(1) Five voting members shall be selected from any of the following counties: Buchanan, Platte, Clinton, Andrew, and DeKalb provided that no more than three of these five members shall be appointed from any one county;

(2) Two voting members shall be selected from any of the counties in the state which are outside of the counties articulated in subdivision (1) of this subsection;

(3) One nonvoting member who is a student shall be selected in the same manner as prescribed in section 174.055; and

(4) The provisions of subdivisions (1) and (2) of this subsection shall only apply to board members first appointed after August 28, 2005.

176.010. DEFINITIONS. — The following words and phrases as used in sections 176.010 to 176.080, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) "Governing body" shall mean:

(a) The board of curators of the University of the State of Missouri;

(b) The board of curators of Lincoln University of Missouri;

(c) The board of governors for the Truman State University;

(d) The board of [regents] **governors** for the Central Missouri State University;

(e) The board of regents for the Southeast Missouri State University;

(f) The board of [regents] **governors** for the [Southwest] Missouri State University;

(g) The board of regents for the Northwest Missouri State University;

(h) The board of [regents] **governors** for the Missouri Western State [College] **University**;

(i) The board of [regents] **governors** for the Missouri Southern State [College] **University**;

(j) The board of regents for Harris-Stowe State [College] **University**;

(k) The board of trustees of any junior college district formed under sections 178.770 to 178.890, RSMo;

(1) The board of regents of Linn State Technical College, provided the conditions of section 178.631, RSMo, are met.

(2) "Net income and revenues" shall mean the income arising from the operation of a project remaining after providing for the costs of operation of such project and the costs of maintenance thereof.

(3) "Project" shall mean one or more dormitory buildings with or without dining room facilities as an integral part thereof, or dining room facilities alone, or one or more social and recreational buildings, or any other revenue producing facilities of state educational institutions, or any combination of such facilities.

(4) "Revenue bonds" shall mean bonds issued hereunder for the purposes herein authorized and payable, both as to principal and interest, solely and only out of the net income and revenues arising from the operation of the project for which such bonds are issued after providing for the costs of operation and maintenance of such project, and, in addition thereto, in the discretion of the governing body, out of either one or both of the following sources:

(a) The proceeds of any grant in aid of such project which may be received from any source; and

(b) The net income and revenues arising from the operation of another project, as herein defined, already owned and operated by any such state educational institution.

Such bonds shall not be deemed to be an indebtedness of the state of Missouri, the educational institution issuing them, the governing body of such educational institution, or the individual members of such governing body.

(5) "State educational institutions" shall mean and shall include:

(a) The State University of Missouri, incorporated as a body politic under the name of "The Curators of the University of Missouri", together with the departments of said state university especially established by law as the "College of Agriculture at Columbia" and the "University of Missouri-Rolla";

(b) "Lincoln University" at Jefferson City;

(c) "Truman State University" at Kirksville, Missouri;

(d) **"Missouri State University" at Springfield;**

(e) The several regional universities, to wit:

"Central Missouri State University" at Warrensburg, Missouri;

"Southeast Missouri State University" at Cape Girardeau, Missouri;

["Southwest Missouri State University" at Springfield, Missouri;]

"Northwest Missouri State University" at Maryville, Missouri;

"Missouri Western State University" at St. Joseph, Missouri;

"Missouri Southern State University" at Joplin, Missouri;

"Harris-Stowe State [College] University" at St. Louis, Missouri;

[(e)] (f) Junior college districts formed under sections 178.770 to 178.890, RSMo;

[(f)] (g) The several state colleges, to wit:

["Missouri Western State College" at St. Joseph, Missouri;

"Missouri Southern State College" at Joplin, Missouri;]

"Linn State Technical College" in Osage County, Missouri, provided the conditions of section 178.631, RSMo, are met.

SECTION 1. MISSOURI STATE UNIVERSITY NOT TO SEEK LAND GRANT DESIGNATION OR RESEARCH DESIGNATION HELD BY OTHER INSTITUTIONS — COOPERATION WITH UNIVERSITY OF MISSOURI IN OFFERING OF CERTAIN PROGRAMS, REQUIREMENTS. — Missouri State University shall not seek the land grant designation held by Lincoln University and the University of Missouri nor shall Missouri State University seek the research designation currently held by the University of Missouri. Missouri State University shall offer engineering programs and doctoral programs only in cooperation with the University of Missouri; provided that such cooperative agreements are approved by the governing boards of each institution and that in these instances the University of Missouri shall be the degree-granting institution. Should the University of Missouri decline to cooperate in the offering of such programs within one year of the formal approval of the coordinating board, Missouri State University may cooperate with another educational institution, or directly offer the degree. In all cases, the offering of such degree programs shall be subject to the approval of the coordinating board for higher education, or any other higher education governing authority that may replace it. Missouri State University may offer doctoral programs in audiology and physical therapy. Missouri State University shall neither offer nor duplicate the professional programs at the University of Missouri including, without limitation, those that train medical doctors, pharmacists, dentists, veterinarians, optometrists, lawyers, and architects. The alteration of the name of Southwest Missouri State University to Missouri State University shall not entitle Missouri State University to any additional state funding.

[174.241. BOARDS OF REGENTS, MISSOURI WESTERN COLLEGE — APPOINTMENT, TERMS, QUALIFICATIONS. — 1. The board of regents of Missouri Western State College shall consist of six members, who shall be appointed by the governor, by and with the advice and consent of the senate, and shall be responsible for the administration of the college. All persons appointed to the board of regents shall be citizens of the United States and shall have been residents of the state of Missouri for two successive years next preceding the date of their appointment, shall be residents of the district in which the college is located, and not more than three members of the board of regents shall belong to the same political party.

2. The term of service of the members of the board of regents shall be six years, the term of one member expiring each year, except that of the members first appointed, one shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, one for a term of five years, and one for a term of six years. The governor shall first appoint members to the board of regents prior to October 13, 1975.]

Approved March 17, 2005

SB 100 [HCS SCS SB 100]

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

Revises licensing requirements for speech language pathologists and audiologists

AN ACT to repeal sections 345.015, 345.022, 345.050, and 345.080, RSMo, and to enact in lieu thereof four new sections relating to the licensing of speech-language pathologists and audiologists.

SECTION

- A. Enacting clause.
- 345.015. Definitions.
- 345.022. Provisional license, fee, renewal.
- 345.050. Requirements to be met for license.
- 345.080. Advisory commission for speech-language pathologists and audiologists established — members — terms — appointment — duties — removal — expenses — compensation — meetings, notice of — quorum — staff.

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

SECTION A. ENACTING CLAUSE. — Sections 345.015, 345.022, 345.050, and 345.080, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 345.015, 345.022, 345.050, and 345.080 to read as follows:

345.015. DEFINITIONS. — As used in sections 345.010 to 345.080, the following terms mean:

(1) "Audiologist", a person who is licensed as an audiologist pursuant to sections 345.010 to 345.080 to practice audiology;

(2) "Audiology aide", a person who is registered as an audiology aide by the board, who does not act independently but works under the direction and supervision of a licensed audiologist. Such person assists the audiologist with activities which require an understanding of audiology but do not require formal training in the relevant academics. To be eligible for registration by the board, each applicant shall submit a registration fee, be of good moral and ethical character; and:

- (a) Be at least eighteen years of age;
- (b) Furnish evidence of the person's educational qualifications which shall be at a minimum:
 - a. Certification of graduation from an accredited high school or its equivalent; and
 - b. On-the-job training;
- (c) Be employed in a setting in which direct and indirect supervision are provided on a regular and systematic basis by a licensed audiologist.

However, the aide shall not administer or interpret hearing screening or diagnostic tests, fit or dispense hearing instruments, make ear impressions, make diagnostic statements, determine case selection, present written reports to anyone other than the supervisor without the signature of the supervisor, make referrals to other professionals or agencies, use a title other than speech-language pathology aide or clinical audiology aide, develop or modify treatment plans, discharge clients from treatment or terminate treatment, disclose clinical information, either orally or in writing, to anyone other than the supervising speech-language pathologist/audiologist, or perform any procedure for which he or she is not qualified, has not been adequately trained or both;

- (3) "Board", the state board of registration for the healing arts;
 - (4) "Clinical fellowship", the supervised professional employment period following completion of the academic and practicum requirements of an accredited training program as defined in sections 345.010 to 345.080;
 - (5) "Commission", the advisory commission for speech-language pathologists and audiologists;
 - (6) "Hearing instrument" or "hearing aid", any wearable device or instrument designed for or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments or accessories, including ear molds, but excluding batteries, cords, receivers and repairs;
 - (7) "Person", any individual, organization, or corporate body, except that only individuals may be licensed pursuant to sections 345.010 to 345.080;
 - (8) "Practice of audiology":
 - (a) The application of accepted audiologic principles, methods and procedures for the measurement, testing, interpretation, appraisal and prediction related to disorders of the auditory system, balance system or related structures and systems;
 - (b) Provides consultation, counseling to the patient, client, student, their family or interested parties;
 - (c) Provides academic, social and medical referrals when appropriate;
 - (d) Provides for establishing goals, implementing strategies, methods and techniques, for habilitation, rehabilitation or aural rehabilitation, related to disorders of the auditory system, balance system or related structures and systems;
 - (e) Provides for involvement in related research, teaching or public education;
 - (f) Provides for rendering of services or participates in the planning, directing or conducting of programs which are designed to modify audition, communicative, balance or cognitive disorder, which may involve speech and language or education issues;
 - (g) Provides and interprets behavioral and neurophysiologic measurements of auditory balance, cognitive processing and related functions, including intraoperative monitoring;
 - (h) Provides involvement in any tasks, procedures, acts or practices that are necessary for evaluation of audition, hearing, training in the use of amplification or assistive listening devices;
 - (i) Provides selection and assessment of hearing instruments;
 - (j) Provides for taking impressions of the ear, making custom ear molds, ear plugs, swim molds and industrial noise protectors;
 - (k) Provides assessment of external ear and cerumen management;
 - (l) Provides advising, fitting, mapping assessment of implantable devices such as cochlear or auditory brain stem devices;
 - (m) Provides information in noise control and hearing conservation including education, equipment selection, equipment calibration, site evaluation and employee evaluation;
 - (n) Provides performing basic speech-language screening test;
 - (o) Provides involvement in social aspects of communication, including challenging behavior and ineffective social skills, lack of communication opportunities;
 - (p) Provides support and training of family members and other communication partners for the individual with auditory balance, cognitive and communication disorders;
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- (q) Provides aural rehabilitation and related services to individuals with hearing loss and their families;
 - (r) Evaluates, collaborates and manages audition problems in the assessment of the central auditory processing disorders and providing intervention for individuals with central auditory processing disorders;
 - (s) Develops and manages academic and clinical problems in communication sciences and disorders;
 - (t) Conducts, disseminates and applies research in communication sciences and disorders;
 - (9) "Practice of speech-language pathology":
 - (a) Provides screening, identification, assessment, diagnosis, treatment, intervention, including but not limited to prevention, restoration, amelioration and compensation, and follow-up services for disorders of:
 - a. Speech: articulation, fluency, voice, including respiration, phonation and resonance;
 - b. Language, involving the parameters of phonology, morphology, syntax, semantics and pragmatic; and including disorders of receptive and expressive communication in oral, written, graphic and manual modalities;
 - c. Oral, pharyngeal, cervical esophageal and related functions, such as dysphagia, including disorders of swallowing and oral functions for feeding; orofacial myofunctional disorders;
 - d. Cognitive aspects of communication, including communication disability and other functional disabilities associated with cognitive impairment;
 - e. Social aspects of communication, including challenging behavior, ineffective social skills, lack of communication opportunities;
 - (b) Provides consultation and counseling and makes referrals when appropriate;
 - (c) Trains and supports family members and other communication partners of individuals with speech, voice, language, communication and swallowing disabilities;
 - (d) Develops and establishes effective augmentative and alternative communication techniques and strategies, including selecting, prescribing and dispensing of augmentative aids and devices; and the training of individuals, their families and other communication partners in their use;
 - (e) Selects, fits and establishes effective use of appropriate prosthetic/adaptive devices for speaking and swallowing, such as tracheoesophageal valves, electrolarynges, or speaking valves;
 - (f) Uses instrumental technology to diagnose and treat disorders of communication and swallowing, such as videofluoroscopy, nasendoscopy, ultrasonography and stroboscopy;
 - (g) Provides aural rehabilitative and related counseling services to individuals with hearing loss and to their families;
 - (h) Collaborates in the assessment of central auditory processing disorders in cases in which there is evidence of speech, language or other cognitive communication disorders; provides intervention for individuals with central auditory processing disorders;
 - (i) Conducts pure-tone air conduction hearing screening and screening tympanometry for the purpose of the initial identification or referral;
 - (j) Enhances speech and language proficiency and communication effectiveness, including but not limited to accent reduction, collaboration with teachers of English as a second language and improvement of voice, performance and singing;
 - (k) Trains and supervises support personnel;
 - (l) Develops and manages academic and clinical programs in communication sciences and disorders;
 - (m) Conducts, disseminates and applies research in communication sciences and disorders;
 - (n) Measures outcomes of treatment and conducts continuous evaluation of the effectiveness of practices and programs to improve and maintain quality of services;
 - (10) "Speech-language pathologist", a person who is licensed as a speech-language pathologist pursuant to sections 345.010 to 345.080; who engages in the practice of speech-language pathology as defined in sections 345.010 to 345.080;
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(11) "Speech-language pathology aide", a person who is registered as a speech-language aide by the board, who does not act independently but works under the direction and supervision of a licensed speech-language pathologist. Such person assists the speech-language pathologist with activities which require an understanding of speech-language pathology but do not require formal training in the relevant academics. To be eligible for registration by the board, each applicant shall submit a registration fee, be of good moral and ethical character; and:

- (a) Be at least eighteen years of age;
- (b) Furnish evidence of the person's educational qualifications which shall be at a minimum:
 - a. Certification of graduation from an accredited high school or its equivalent; and
 - b. On-the-job training;
 - (c) Be employed in a setting in which direct and indirect supervision is provided on a regular and systematic basis by a licensed speech-language pathologist. However, the aide shall not administer or interpret hearing screening or diagnostic tests, fit or dispense hearing instruments, make ear impressions, make diagnostic statements, determine case selection, present written reports to anyone other than the supervisor without the signature of the supervisor, make referrals to other professionals or agencies, use a title other than speech-language pathology aide or clinical audiology aide, develop or modify treatment plans, discharge clients from treatment or terminate treatment, disclose clinical information, either orally or in writing, to anyone other than the supervising speech-language pathologist/audiologist, or perform any procedure for which he or she is not qualified, has not been adequately trained or both;

(12) "Speech-language pathology assistant", a person who is registered as a speech-language pathology assistant by the board, who does not act independently but works under the direction and supervision of a licensed speech-language pathologist and whose activities require both academic and practical training in the field of speech-language pathology although less training than those established by sections 345.010 to 345.080 as necessary for licensing as a speech-language pathologist. To be eligible for registration by the board, each applicant shall submit the registration fee, be of good moral character and furnish evidence of the person's educational qualifications which meet the following:

- (a) Hold a bachelor's level degree in **the field of** speech-language pathology from an institution accredited or approved by [the Council on Academic Accreditation of the American Speech-Language-Hearing Association in the area of speech-language pathology] **a regional accrediting body recognized by the United States Department of Education or its equivalent;** and
- (b) Submit official transcripts from one or more accredited colleges or universities presenting evidence of the completion of bachelor's level course work and clinical practicum requirements equivalent to that required or approved by [the Council on Academic Accreditation of the American Speech-Language-Hearing Association] **a regional accrediting body recognized by the United States Department of Education or its equivalent.**

345.022. PROVISIONAL LICENSE, FEE, RENEWAL. — 1. Any person in the person's clinical fellowship as defined in sections 345.010 to 345.080 shall hold a provisional license to practice speech-language pathology or audiology. The board may issue a provisional license to an applicant who:

- (1) Has met the requirements for practicum and academic requirements from an accredited training program as defined in sections 345.010 to 345.080;
- (2) Submits an application to the board on a form prescribed by the board. Such form shall include a plan for the content and supervision of the clinical fellowship, as well as evidence of good moral and ethical character; and
- (3) Submits to the board an application fee, as set by the board, for the provisional license.

2. A provisional license is effective for one year and may be extended for an additional twelve months only for purposes of completing the postgraduate clinical experience portion of

the clinical fellowship; provided that, the applicant has passed the national examination and shall hold a master's degree from an approved training program in his or her area of application.

3. Within twelve months of issuance of the provisional license, the applicant shall pass an examination promulgated or approved by the board.

4. Within twelve months of issuance of a provisional license, the applicant shall complete the master's or doctoral degree from [an institution] **a program** accredited by the Council on Academic Accreditation of the American Speech-Language-Hearing Association **or other accrediting agency approved by the board** in the area in which licensure is sought.

345.050. REQUIREMENTS TO BE MET FOR LICENSE. — 1. To be eligible for licensure by the board by examination, each applicant shall submit the application fee and shall furnish evidence of such person's good moral and ethical character, current competence and shall:

(1) Hold a master's or a doctoral degree from [an institution] **a program** accredited by the Council on Academic Accreditation of the American Speech-Language-Hearing Association **or other accrediting agency approved by the board** in the area in which licensure is sought;

(2) Submit official transcripts from one or more accredited colleges or universities presenting evidence of the completion of course work and clinical practicum requirements equivalent to that required by the Council on Academic Accreditation of the American Speech-Language-Hearing Association **or other accrediting agency approved by the board**;

(3) Present written evidence of completion of clinical fellowship as defined in subdivision (4) of section 345.015 from supervisors. The experience required by this subdivision shall follow the completion of the requirements of subdivisions (1) and (2) of this subsection. This period of employment shall be under the direct supervision of a person who is licensed by the state of Missouri in the profession in which the applicant seeks to be licensed. **Persons applying with an audiology clinical doctoral degree are exempt from this provision**;

(4) Pass an examination promulgated or approved by the board. The board shall determine the subject and scope of the examinations.

2. To be eligible for licensure by the board without examination, each applicant shall make application on forms prescribed by the board, submit the application fee and shall be of good moral and ethical character, submit an activity statement and meet one of the following requirements:

(1) The board shall issue a license to any speech-language pathologist or audiologist who is licensed in another jurisdiction and who has had no violations, suspension or revocations of a license to practice speech-language pathology or audiology in any jurisdiction; provided that, such person is licensed in a jurisdiction whose requirements are substantially equal to, or greater than, Missouri at the time the applicant applies for licensure; or

(2) Hold the certificate of clinical competence issued by the American Speech-Language-Hearing Association in the area in which licensure is sought.

345.080. ADVISORY COMMISSION FOR SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS ESTABLISHED — MEMBERS — TERMS — APPOINTMENT — DUTIES — REMOVAL — EXPENSES — COMPENSATION — MEETINGS, NOTICE OF — QUORUM — STAFF. — 1. There is hereby established an "Advisory Commission for Speech-Language Pathologists and Audiologists" which shall guide, advise and make recommendations to the board. The commission shall approve the examination required by section 345.050, and shall assist the board in carrying out the provisions of sections 345.010 to 345.075.

2. After August 28, 1997, the commission shall consist of seven members, one of whom shall be a voting public member, appointed by the board of registration for the healing arts. Each member shall be a citizen of the United States and a resident of this state. Three members of the commission shall be licensed speech-language pathologists and three members of the commission shall be licensed audiologists. The public member shall be at the time of 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 345.010 to 345.080 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 345.010 to 345.080, or an activity or organization directly related to any profession licensed or regulated pursuant to sections 345.010 to 345.080. Members shall be appointed to serve three-year terms, except as provided in this subsection. Each member of the advisory commission for speech pathologists and clinical audiologists on August 28, 1995, shall become a member of the advisory commission for speech-language pathologists and clinical audiologists and shall continue to serve until the term for which the member was appointed expires. Each member of the advisory commission for speech-language pathologists and clinical audiologists on August 28, 1997, shall become a member of the advisory commission for speech-language pathologists and audiologists and shall continue to serve until the term for which the member was appointed expires. The first public member appointed pursuant to this subsection shall be appointed for a two-year term and the one additional member appointed pursuant to this subsection shall be appointed for a full three-year term. No person shall be eligible for reappointment who has served as a member of the advisory commission for speech pathologists and audiologists or as a member of the commission as established on August 28, 1995, for a total of six years. The membership of the commission shall reflect the differences in levels of education, work experience and geographic residence. **For a licensed speech-language pathologist member, the president of the Missouri [Speech, Hearing and Language] Speech-Language-Hearing Association in office at the time, and for a licensed audiologist member, the president of the Missouri Academy of Audiologists in office at the time, in consultation with the president of the Missouri Speech-Language-Hearing Association, shall, at least ninety days prior to the expiration of a term [of a member] of a commission member, other than the public member, or as soon as feasible after a vacancy on the commission otherwise occurs, submit to the director of the division of professional registration a list of five persons qualified and willing to fill the vacancy in question, with the request and recommendation that the board of registration for the healing arts appoint one of the five persons so listed, and with the list so submitted, the president of the Missouri [Speech, Hearing and Language] Speech-Language-Hearing Association or the president of the Missouri Academy of Audiologists in office at the time shall include in his or her letter of transmittal a description of the method by which the names were chosen by that association.**

3. Notwithstanding any other provision of law to the contrary, any appointed member of the commission shall receive as compensation an amount established by the director of the division of professional registration not to exceed seventy dollars per day for commission business plus actual and necessary expenses. The director of the division of professional registration shall establish by rule guidelines for payment. All staff for the commission shall be provided by the board of registration for the healing arts.

4. The commission shall hold an annual meeting at which it shall elect from its membership a chairman and secretary. The commission may hold such additional meetings as may be required in the performance of its duties, provided that notice of every meeting shall be given to each member at least ten days prior to the date of the meeting. A quorum of the commission shall consist of a majority of its members.

5. The board of registration for the healing arts may remove a commission member for misconduct, incompetency or neglect of the member's official duties after giving the member written notice of the charges against such member and an opportunity to be heard thereon.

Approved July 12, 2005

SB 103 [HCS SCS SBs 103 & 115]

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

Allows school districts to convene a committee of their board in order to rule on pupil residency waiver requests

AN ACT to repeal section 167.020, RSMo, and to enact in lieu thereof one new section relating to student enrollment hearings, with penalty provisions.

SECTION

- A. Enacting clause.
167.020. Registration requirements — residency — homeless child or youth defined — recovery of costs, when — records to be requested, provided, when.

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

SECTION A. ENACTING CLAUSE. — Section 167.020, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 167.020, to read as follows:

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 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 five 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

or committee of the board appointed by the president and which shall have full authority to act in lieu of the 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 **or committee of the board** may grant the request for a waiver of any requirement of subsection 2 of this section. The district board **or committee of the 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 **or committee of the 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] **9** 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).

Approved July 12, 2005

SB 122 [SB 122]

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 Energy Efficiency Implementation Act

AN ACT to amend chapter 8, RSMo, by adding thereto one new section relating to the creation of the energy efficiency implementation act.

SECTION

- A. Enacting clause.
8.238. Energy efficiency implementation — deposits into administrative trust fund — annual report, contents — authority of office of administration, rulemaking.

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

SECTION A. ENACTING CLAUSE. — Chapter 8, RSMo, is amended by adding thereto one new section, to be known as section 8.238, to read as follows:

8.238. ENERGY EFFICIENCY IMPLEMENTATION — DEPOSITS INTO ADMINISTRATIVE TRUST FUND — ANNUAL REPORT, CONTENTS — AUTHORITY OF OFFICE OF ADMINISTRATION, RULEMAKING. — 1. This section shall be known as the "Energy Efficiency Implementation Act".

2. The office of administration shall identify and cause to be deposited into the office of administration revolving "Administrative Trust Fund" created in section 37.005, RSMo, no more than two and one-half percent of the total cost savings realized as a result of implementing sections 8.231 to 8.237. "Cost savings" shall be defined as expenses eliminated and future replacement expenditures avoided as a direct result of implementing sections 8.231 to 8.237. The percentage of cost savings and the means of calculating such cost savings shall be determined by the commissioner of administration or his designated agent and shall be set forth in the performance contract.

3. At least annually, a report shall be prepared and forwarded to the governor, the speaker of the house of representatives and the president pro tem of the senate outlining the cost savings identified by the office of administration pursuant to subsection 2 of this section.

4. In order to advise the governor, and consistent with this section, the office of administration shall have authority to:

- (1) Establish policies and procedures for facility management and valuation;
- (2) Coordinate a state facility review;
- (3) Implement a capital improvement plan;
- (4) Solicit and evaluate state facility investment proposals;
- (5) Establish performance measures for facility management operations; and
- (6) Prepare annual reports and plans concerning operation savings.

5. Subject to appropriation from the general assembly, the office of administration may expend the cost savings and the interest thereon, if any, at such time or times as are necessary to offset all reasonable costs associated with the implementation of sections 8.231 to 8.237.

6. The provisions of section 33.080, RSMo, requiring the transfer of unexpended funds to the general revenue fund of the state shall not apply to funds identified and not otherwise expended for the implementation of this section.

7. The office of administration shall have the authority, pursuant to chapter 537, RSMo, to promulgate rules regarding the implementation 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 August 28, 2005, shall be invalid and void.

Approved July 14, 2005

SB 131 [SB 131]

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

Allows insurance companies to invest capital, reserves, and surplus in preferred or guaranteed stocks

AN ACT to repeal sections 375.532 and 376.300, RSMo, and to enact in lieu thereof two new sections relating to insurance company investment in preferred stocks.

SECTION

A. Enacting clause.

375.532. Investment in debt of institution permitted, when.

376.300. Investment of surplus and reserve funds.

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

SECTION A. ENACTING CLAUSE. — Sections 375.532 and 376.300, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 375.532 and 376.300, to read as follows:

375.532. INVESTMENT IN DEBT OF INSTITUTION PERMITTED, WHEN. — 1. [Notwithstanding any provision of subdivision (5) of subsection 1 of section 376.300, RSMo, to the contrary,] The capital, reserve and surplus of a domestic insurer may be invested in bonds, notes or other evidences of indebtedness, **or preferred or guaranteed stocks or shares**, issued, assumed or guaranteed by an institution organized under the laws of the United States, any state, territory or possession of the United States, or the District of Columbia, if such bonds, notes or other evidences of indebtedness, **or preferred or guaranteed stocks or shares**, shall carry at least the second highest designation or quality rating conferred by the Securities Valuation Office of the National Association of Insurance Commissioners, or some similar or equivalent rating by a nationally recognized rating agency which has been approved by the director.

2. As used in this section, the term "institution" means a corporation, a joint stock company, an association, a trust, a business partnership, a business joint venture or similar entity.

376.300. INVESTMENT OF SURPLUS AND RESERVE FUNDS. — 1. All other laws to the contrary notwithstanding, the capital, reserve and surplus of all life insurance companies of whatever kind and character organized pursuant to the laws of this state shall be invested only in the following:

(1) Bonds, notes or other evidences of indebtedness, issued, assumed or guaranteed as to principal and interest, by the United States, any state, territory or possession of the United States, the District of Columbia, or of an administration, agency, authority or instrumentality of any of the political units enumerated, and of the Dominion of Canada;

(2) Bonds, notes or other evidences of indebtedness issued, assumed or guaranteed as to principal and interest by any foreign country or state not mentioned in subdivision (1) insofar as such bonds, notes or other evidences of indebtedness may be necessary or required in order to do business in such foreign state or country;

(3) Bonds, notes or other evidences of indebtedness issued, guaranteed or insured as to principal and interest, by a city, county, drainage district, levee district, road district, school district, tax district, town, township, village or other civil administration, agency, authority, instrumentality or subdivision of a city, county, state, territory or possession of the United States or of the District of Columbia, provided such obligations are authorized by law;

(4) Loans evidenced by bonds, notes or other evidences of indebtedness guaranteed or insured, but only to the extent guaranteed or insured by the United States, any state, territory or possession of the United States, the District of Columbia, or by any agency, administration, authority or instrumentality of any of the political units enumerated;

(5) Bonds, notes or other evidences of indebtedness issued, assumed or guaranteed by a corporation organized under the laws of the United States, any state, territory or possession of the United States, or the District of Columbia, provided such bonds, notes or other evidences of indebtedness shall meet with the requirements of [either paragraph (a) or (b) of this subdivision:

(a) The issuing, assuming or guaranteeing corporation shall have had bonds, notes or other evidences of indebtedness outstanding for five years prior to the time of acquisition of such bonds or other evidences of indebtedness and shall not have defaulted in the payment of either principal or interest upon any of its outstanding indebtedness during such five-year period;

(b) Such bonds, notes or other evidences of indebtedness are not in default as to principal or interest; and

a. The net earnings of the issuing, assuming or guaranteeing corporation or corporations, for a period of five fiscal years next preceding the date of acquisition, shall have averaged per year not less than one and one-half times its or their annual fixed charges as of the date of acquisition; or

b. Such corporation or corporations, over the period of the five fiscal years immediately preceding purchase, shall have earned an average amount per annum at least equal to two times the amount of the yearly interest charges upon all its or their bonds, notes and other evidences of indebtedness of equal or prior lien outstanding at date of purchase] **sections 375.532 and 375.1070 to 375.1075, RSMo;**

(6) (a) Notes, equipment trust certificates or obligations which are adequately secured, or other adequately secured instruments evidencing an interest in any equipment leased or sold to a corporation, other than the life insurance company making the investment or its parent or affiliates, which qualifies under subdivision (5) of this subsection for investment in its bonds, notes, or other evidences of indebtedness, or to a common carrier, domiciled within the United States or the Dominion of Canada, with gross revenues exceeding one million dollars in the fiscal year immediately preceding purchase, which provide a right to receive determined rental, purchase, or other fixed obligatory payments for the use or purchase of such equipment and which obligatory payments are adequate to retire the obligations within twenty years from date of issue; or

(b) Notes, trust certificates, or other instruments which are adequately secured. Such notes, trust certificates, or other instruments shall be considered adequately secured for the purposes of this paragraph if a corporation or corporations which qualify under subdivision (5) of this subsection for investment in their bonds, notes, or other evidences of indebtedness, are jointly or severally obliged under a binding lease or agreement to make rental, purchase, use, or other payments for the benefit of the life insurance company making the investment which are adequate to retire the instruments according to their terms within twenty years from date of issue;

(7) Preferred or guaranteed stocks or shares of any solvent corporation created or existing under the laws of the United States, any state, territory or possession of the United States, or the District of Columbia, if all of the prior obligations [and] **including** prior preferred stocks, if any, of such corporation, at the date of acquisition, are eligible as investments under any provisions of this section; and if qualified under [paragraph (a) or paragraph (b) following:

(a) Preferred stocks or shares shall be deemed qualified if both of the following requirements are fulfilled:

a. The net earnings of such corporation available for its fixed charges for a period of five fiscal years next preceding the date of acquisition shall have averaged per year no less than one and one-half times the sum of its average annual fixed charges, if any, its average annual maximum contingent interest, if any, and its average annual preferred dividend requirements applicable to such period; and

b. During each of the last two years of such period, such net earnings shall have been no less than one and one-half times the sum of its fixed charges, contingent interest and preferred dividend requirements for each year. The term "preferred dividend requirements" shall be deemed to mean cumulative or noncumulative dividends, whether paid or not;

(b) Guaranteed stocks or shares shall be deemed qualified if the assuming or guaranteeing corporation meets the requirements of subparagraph a. of paragraph (b) of subdivision (5) of this subsection construed so as to include as a fixed charge the amount of guaranteed dividends of such issue or the rental covering the guarantee of such dividends] **sections 375.532 and 375.1070 to 375.1075, RSMo;**

(8) Stocks or shares of insured state-chartered building and loan associations, federal savings and loan associations, if such shares are insured by the Federal Savings and Loan Insurance Corporation pursuant to the terms of Title IV of the act of the Congress of the United States, entitled "The National Housing Act" (12 U.S.C.A. Sections 1724 to 1730), as the same presently exists or may subsequently be amended, and federal home loan banks;

(9) Loans evidenced by notes or other evidences of indebtedness and secured by first mortgage liens on unencumbered real estate or unencumbered leaseholds having at least twenty-five years of unexpired term, such real estate or leaseholds to be located in the United States, any territory or possession of the United States. Such loans shall not exceed eighty percent of the fair market value of the security of the loan for insurance companies. However, insurance companies may make loans in excess of eighty percent of the fair market value of the security for the loan, but not to exceed ninety-five percent of the fair market value of the security for the loan, if that portion of the total indebtedness in excess of seventy-five percent of the value of the security for the loan is guaranteed or insured by a mortgage insurance company authorized by the director of insurance to do business in this state, and provided the mortgage insurance company is not affiliated with the entity making the loan. In addition, an insurance company may not place more than two percent of its admitted assets in loans in which the amount of the loan exceeds ninety percent of the fair market value of the security for the loan. An entity which is restricted by section 104.440, RSMo, in making investments to those authorized life insurance companies may make loans in excess of eighty percent of the fair market value of the security of the loan if that portion of the total indebtedness in excess of eighty percent of the fair market value is insured by a mortgage insurance company authorized by the director of insurance to do business in this state. Any life insurance company may sell any real estate acquired by it and take back a purchase money mortgage or deed of trust for the whole or any part of the sale price; and such percentage may be exceeded if and to the extent such excess is guaranteed or insured by the United States, any state, territory or possession of the United States, any city within the United States having a population of one hundred thousand or more or by an administration, agency, authority or instrumentality of any such governmental units; and such percentage shall not exceed one hundred percent if such a loan is made to a corporation which qualifies pursuant to subdivision (5) for investment in its bonds, notes or other evidences of indebtedness, or if the borrower assigns to the lender a lease or leases on the real estate providing rentals payable to the borrower in amounts sufficient to repay such loan with interest in the manner specified by the note or notes evidencing such loan and executed as lessee or lessees by a corporation or corporations, which qualify pursuant to subdivision (5) for investment in its or their bonds, notes or other evidences of indebtedness. No mortgage loan upon a leasehold shall be made or acquired pursuant to this subdivision unless the terms of the mortgage loan shall provide for amortization payments to be made by the borrower on the principal thereof at least once in each year in amounts sufficient to completely amortize the loan within four-fifths of the term of the leasehold which is unexpired at the time the loan is made, but in no event exceeding thirty years. Real estate or a leasehold shall not be deemed to be encumbered by reason of the existence in relation thereto of:

(a) Liens inferior to the lien securing the loan made by the life insurance company;

(b) Taxes or assessment liens not delinquent;

(c) Instruments creating or reserving mineral, oil or timber rights, rights-of-way, common or joint driveways, easements for sewers, walls or utilities;

(d) Building restrictions and other restrictive covenants; or

(e) An unassigned lease reserving rents or profits to the owner;

(10) Shares of stock, bonds, notes or other evidences of indebtedness issued, assumed or guaranteed by an urban redevelopment corporation organized pursuant to the provisions of chapter 353, RSMo, known as the "Urban Redevelopment Corporations Law", or any amendments thereto, or any law enacted in lieu thereof; provided, that one or more such life insurance companies may, with the approval of the director of the department of insurance, subscribe to and own all of the shares of stock of any such urban redevelopment corporation; and provided further, that the aggregate investment by any such company pursuant to the terms of this subdivision shall not be in excess of five percent of the admitted assets of such company;

(11) Land situated in this state and located within an area subject to redevelopment within the meaning of the urban redevelopment corporations law, or any amendments thereto, or any law enacted in lieu thereof, which land is acquired for the purposes specified in such urban redevelopment corporations law, and any such life insurance company may erect apartments, tenements or other dwelling houses, not including hotels, but including accommodations for retail stores, shops, offices and other community services reasonably incident to such projects, and such company may thereafter own, hold, rent, lease, collect or receive income, maintain and manage such land so acquired and the improvements thereon, as real estate necessary and proper for the carrying on of its legitimate business; provided, that any such life insurance company shall have power to own, hold, maintain and manage such land, and all improvements thereon, in accordance with the urban redevelopment corporations law, amendments thereto or any law enacted in lieu thereof, and shall have all the powers, duties, obligations, privileges and immunities, including any tax exemption, credits or relief, granted an urban redevelopment corporation, pursuant to the urban redevelopment corporations law, amendments thereto or any law enacted in lieu thereof, the same as if such insurance company were an urban redevelopment corporation organized pursuant to the provisions of that law; provided, that two or more such life insurance companies may, with the approval of the director of the department of insurance, enter into agreements whereby the ownership and management and control of a redevelopment project is participated in by each such company; and provided further that the aggregate investment by any such company pursuant to the terms of this subdivision shall not be in excess of five percent of the admitted assets of such company;

(12) Investments in property and processes for the development and production of solar or geothermal energy, fossil or synthetic fuels, or gasohol, whether made directly or as a participant in a general partnership, limited partnership or joint venture.

2. No such life insurance company shall invest in any of the foregoing securities in excess of the following percentages of the admitted assets of such company, as shown by its last annual statement preceding the date of acquisition, as filed with the director of the insurance department of the state of Missouri:

(1) Ten percent of its admitted assets in the securities issued by any one corporation or governmental unit falling pursuant to the classification set forth in subdivisions (3), (5), (6), (7) and (8) of subsection 1;

(2) One percent of its admitted assets or ten percent of its capital and surplus, whichever is greater, in any single loan on real estate pursuant to subdivision (9) of subsection 1;

(3) Ten percent of the admitted assets in the total amount of securities described in subdivision (7) of subsection 1, and no such life insurance company shall own securities described in subdivision (7) of subsection 1 of any one corporation which, in the aggregate, represents more than five percent of the total of all outstanding shares of stock of that corporation;

(4) One percent of its admitted assets in the bonds, notes or other evidences of indebtedness of the Dominion of Canada and mentioned in subdivision (1) of subsection 1; provided,

however, that in addition thereto any such life insurance company which has outstanding insurance contracts on lives of persons residing in the Dominion of Canada may invest in bonds, notes or other evidences of indebtedness of the Dominion of Canada and mentioned in subdivision (1) of subsection 1, to an amount not in excess of the total amount of its reserves and other accrued liabilities under such contracts;

(5) Five percent of its admitted assets in the notes or trust certificates secured by any equipment leased or sold to a corporation falling under the classification set forth in subdivision (5) of subsection 1 or to a common carrier domiciled in the Dominion of Canada and mentioned in subdivision (6) of subsection 1;

(6) Three percent of its admitted assets in loans evidenced by notes or other evidences of indebtedness and secured by liens on unencumbered leaseholds having at least twenty-five years of unexpired term and mentioned in subdivision (9) of subsection 1;

(7) One percent of its admitted assets, or five percent of that portion of its admitted assets in excess of two hundred fifty million dollars, whichever is greater, in energy-related investments specified in subdivision (12) of subsection 1.

3. The term "corporation", as used in subdivisions (5) and (7) of subsection 1, shall include private corporations, joint stock associations or business trusts. In applying the earnings tests, provided herein, to any issuing, assuming or guaranteeing corporation, whether or not in legal existence during the whole of the test period, and if such corporation has during the test period acquired the assets of any other corporation or corporations by purchase, merger, consolidation or otherwise, or has been reorganized pursuant to the bankruptcy law, the earnings available for interest and dividends of such other predecessor or constituent corporation or the corporation so reorganized shall be considered as the earnings of the issuing, assuming or guaranteeing corporation.

4. Nothing contained in this section shall be construed as repealing or affecting the provisions of sections 375.330, 375.340, and 375.355, RSMo.

Approved July 6, 2005

SB 133 [SCS SB 133]

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

Requires Office of Administration to include certain products in the cafeteria plan for state employees

AN ACT to repeal section 33.103, RSMo, and to enact in lieu thereof one new section relating to cafeteria plans for state employees.

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.

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

SECTION A. ENACTING CLAUSE. — Section 33.103, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 33.103, 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.

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) Include as an option in the plan any other product eligible under Section 125 of Title 26 of the United States Code, subject to regulations promulgated by the office of administration, and including payment to the state by vendors providing those products for the cost of administering those deductions, as set by the office of administration; and

(4) 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.

Approved July 12, 2005

SB 149 [SB 149]

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

Establishes hearing for restatement date and back-pay award

AN ACT to repeal section 36.390, RSMo, and to enact in lieu thereof one new section relating to state personnel law.

SECTION

- A. Enacting clause.
36.390. Right of appeal, procedure, regulation — nonmerit agencies may adopt — dismissal appeal procedure — nonmerit agencies, not adopting, to establish similar system, exceptions.

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

SECTION A. ENACTING CLAUSE. — Section 36.390, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 36.390, to read as follows:

36.390. RIGHT OF APPEAL, PROCEDURE, REGULATION — NONMERIT AGENCIES MAY ADOPT — DISMISSAL APPEAL PROCEDURE — NONMERIT AGENCIES, NOT ADOPTING, TO ESTABLISH SIMILAR SYSTEM, EXCEPTIONS. — 1. An applicant whose request for admission to any examination has been rejected by the director may appeal to the board in writing within fifteen days of the mailing of the notice of rejection by the director, and in any event before the holding of the examination. The board's decision on all matters of fact shall be final.

2. Applicants may be admitted to an examination pending a consideration of the appeal, but such admission shall not constitute the assurance of a passing grade in education and experience.

3. Any applicant who has taken an examination and who feels that he or she has not been dealt with fairly in any phase of the examination process may request that the director review his or her case. Such request for review of any examination shall be filed in writing with the director within thirty days after the date on which notification of the results of the examination was mailed to the applicant. A candidate may appeal the decision of the director in writing to the board. This appeal shall be filed with the board within thirty days after date on which notification of the decision of the director was mailed to the applicant. The board's decision with respect to any changes shall be final, and shall be entered in the minutes. A correction in the rating shall not affect a certification or appointment which may have already been made from the register.

4. An eligible whose name has been removed from a register for any of the reasons specified in section 36.180 or in section 36.240 may appeal to the board for reconsideration. Such appeal shall be filed in writing at the office of the director within thirty days after the date on which notification was mailed to the board. The board, after investigation, shall make its

decision which shall be recorded in the minutes and the eligible shall be notified accordingly by the director.

5. Any regular employee who is dismissed or involuntarily demoted for cause or suspended for more than five working days may appeal in writing to the board within thirty days after the effective date thereof, setting forth in substance the employee's reasons for claiming that the dismissal, suspension or demotion was for political, religious, or racial reasons, or not for the good of the service. Upon such appeal, both the appealing employee and the appointing authority whose action is reviewed shall have the right to be heard and to present evidence at a hearing which, at the request of the appealing employee, shall be public. At the hearing of such appeals, technical rules of evidence shall not apply. After the hearing and consideration of the evidence for and against a suspension [or], demotion, **or dismissal**, the board shall approve or disapprove such action and [in the event of a disapproval the board shall order the reinstatement of the employee to the employee's former position and the payment to the employee of such salary as the employee has lost by reason of such suspension or demotion. After the hearing and consideration of the evidence for and against a dismissal, the board shall approve or disapprove such action and] may make any one of the following appropriate orders:

(1) Order the reinstatement of the employee to the employee's former position [and the payment to the employee of part or all of such salary as has been lost by reason of such dismissal];

(2) Sustain the dismissal of such employee[, unless the board finds that the dismissal was based upon political, social, or religious reason, in which case it shall order the reinstatement of the employee to the employee's former position and the payment to the employee of such salary as has been lost by reason of such dismissal];

(3) Except as provided in subdivisions (1) and (2) of this subsection, the board may sustain the dismissal, but may order the director to recognize reemployment rights for the dismissed employee pursuant to section 36.240, in an appropriate class or classes, or may take steps to effect the transfer of such employee to an appropriate position in the same or another division of service.

6. Any order by the board under subsection 5 of this section shall be a final decision on the merits and may be appealed as provide in chapter 536, RSMo.

7. After an order of reinstatement has been issued and all parties have let the time for appeal lapse or have filed an appeal and that appeal process has become final and the order of reinstatement has been affirmed, the board shall commence a separate action to determine the date of reinstatement and the amount of back pay owed to the employee. This action may be done by hearing, or by affidavit, depositions, or stipulations, or by agreement on the amount of back pay owed. If the parties cannot reach an agreement as to how the parties shall be heard on this separate action, then the board shall decide on the method through its hearing officer. No hearing will be public unless requested to be public by the employee.

8. The board shall establish such rules as may be necessary to give effect to the provisions of this section. The rules may provide that the board or the chairman of the board may delegate responsibility for the conduct of investigations and the hearing of appeals provided pursuant to any section of this chapter to a member of the board or to a hearing officer designated by the board. Such hearing officer shall have the power to administer oaths, subpoena witnesses, compel the production of records pertinent to any hearing, and take any action in connection with such hearing which the board itself is authorized to take by law other than making the final decision and appropriate order. When the hearing has been completed, the individual board member or the hearing officer who conducted the hearing shall prepare a summary thereof and recommend a findings of fact, conclusions of law, decision and appropriate order for approval of the board. The board may adopt such recommendations in whole or in part, require the production of additional testimony, reassign the case for rehearing, or may itself conduct such new or additional hearing as is deemed necessary prior to rendering a final decision. The board

may also establish rules which provide for alternative means of resolving one or more of the types of appeals outlined in this section.

[7.] **9.** The provisions for appeals provided in subsection 5 of this section for dismissals of regular merit employees may be adopted by nonmerit agencies of the state for any or all employees of such agencies.

[8.] **10.** Agencies not adopting the provisions for appeals provided in subsection 5 of this section shall adopt dismissal procedures substantially similar to those provided for merit employees. However, these procedures need not apply to employees in policy-making positions, or to members of military or law enforcement agencies.

[9. The hearing] **11. Hearings under this section** shall be deemed to be a contested case and the procedures applicable to the processing of such hearings and determinations shall be those established by chapter 536, RSMo. Decisions of the personnel advisory board shall be final and binding subject to appeal by either party. Final decisions of the personnel advisory board pursuant to this subsection shall be subject to review on the record by the circuit court pursuant to chapter 536, RSMo.

Approved July 12, 2005

SB 155 [CCS HCS SCS#2 SB 155]

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

Requires certain identifying information to be expunged by the Division of Family Services

AN ACT to repeal sections 210.117, 210.152, 210.710, 210.720, and 211.038, RSMo, and to enact in lieu thereof five sections relating to reporting of child abuse and neglect.

SECTION

- A. Enacting clause.
- 210.117. Child not reunited with parents or placed in a home, when.
- 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.
- 210.710. Child committed to care of authorized agency — written report of status required for court review, when — dispositional hearing, when, purpose — child not returned home, when.
- 210.720. Court-ordered custody — written report of status required for court review, when — permanency hearing when, purpose.
- 211.038. Children not to be reunited with parents or placed in a home, when — discretion to return, when.

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

SECTION A. ENACTING CLAUSE. — Sections 210.117, 210.152, 210.710, 210.720, and 211.038, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 210.117, 210.152, 210.710, 210.720, and 211.038, to read as follows:

210.117. CHILD NOT REUNITED WITH PARENTS OR PLACED IN A HOME, WHEN. — **1.** 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 a 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.

2. If a court of competent jurisdiction determines, or the division determines, based on a substantiated report of child abuse that is upheld by the child abuse and neglect review board, that a minor has abused another child, such minor shall be prohibited from returning to or residing in any residence located within one thousand feet of the residence of the abused child, or any child care facility or school that the abused child attends, until the abused child reaches eighteen years of age. The prohibitions of this subsection shall not apply where the alleged abuse occurred between siblings.

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 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;]

(a) For investigation reports initiated against a person required to report pursuant to section 210.115, where insufficient evidence of abuse or neglect is found by the division and where the division determines the allegation of abuse or neglect was made maliciously, for purposes of harassment or in retaliation for the filing of a report by a person required to report, identifying information shall be expunged by the division within forty-five days from the conclusion of the investigation;

(b) For investigation reports, where insufficient evidence of abuse or neglect is found by the division and where the division determines the allegation of abuse or neglect was made maliciously, for purposes of harassment or in retaliation for the filing of a report, identifying information shall be expunged by the division within forty-five days from the conclusion of the investigation;

(c) For investigation reports initiated by a person required to report under section 210.015, where insufficient evidence of abuse or neglect is found by the division, identifying information shall be retained for five years from the conclusion of the investigation. 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 conclusion of the investigation. Such reports shall include any exculpatory evidence known by the division, including exculpatory evidence obtained after the closing of the case. At the end

of such time 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 August 28, 2004, or by a preponderance of the evidence after August 28, 2004, that 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) 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 was supported by evidence of probable cause prior to August 28, 2004, or is supported by a preponderance of the evidence after August 28, 2004, 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.

210.710. CHILD COMMITTED TO CARE OF AUTHORIZED AGENCY — WRITTEN REPORT OF STATUS REQUIRED FOR COURT REVIEW, WHEN — DISPOSITIONAL HEARING, WHEN, PURPOSE — CHILD NOT RETURNED HOME, WHEN. — 1. In the case of a child who has been

committed to the care of an authorized agency by a parent, guardian or relative and where such child has remained in the care of one or more authorized agencies for a continuous period of six months, the agency shall petition the juvenile court in the county where the child is present to review the status of the child. A written report on the status of the child shall be presented to the court. The court shall then review the status of the child and may hold a dispositional hearing thereon. The purpose of the dispositional hearing shall be to determine whether or not the child should be continued in foster care or whether the child should be returned to a parent, guardian or relative, or whether or not proceedings should be instituted to terminate parental right and legally free such child for adoption.

2. If the child is in the care of an authorized agency based on an allegation that the child has abused another child and the court determines that such abuse occurred, the court shall not return the child to or permit the child to reside in any residence located within one thousand feet of the residence of the abused child, or any child care facility or school that the abused child attends, until the abused child reaches eighteen years of age. The prohibitions of this subsection shall not apply where the alleged abuse occurred between siblings.

210.720. COURT-ORDERED CUSTODY — WRITTEN REPORT OF STATUS REQUIRED FOR COURT REVIEW, WHEN — PERMANENCY HEARING WHEN, PURPOSE. —

1. In the case of a child who has been placed in the custody of the division of family services in accordance with subdivision (17) of subsection 1 of section 207.020, RSMo, or another authorized agency by a court or who has been placed in foster care by a court, every six months after the placement, the foster family, group home, agency, or child care institution with which the child is placed shall file with the court a written report on the status of the child. The court shall review the report and shall hold a permanency hearing within twelve months of initial placement and at least annually thereafter. The permanency hearing shall be for the purpose of determining in accordance with the best interests of the child a permanent plan for the placement of the child, including whether or not the child should be continued in foster care or whether the child should be returned to a parent, guardian or relative, or whether or not proceedings should be instituted by either the juvenile officer or the division to terminate parental rights and legally free such child for adoption.

2. In such permanency hearings the court shall consider all relevant factors including:

(1) The interaction and interrelationship of the child with the child's foster parents, parents, siblings, and any other person who may significantly affect the child's best interests;

(2) The child's adjustment to his or her foster home, school and community;

(3) The mental and physical health of all individuals involved, including any history of abuse of any individuals involved. **If the child is in the care of an authorized agency based on an allegation that the child has abused another child and the court determines that such abuse occurred, the court shall not return the child to or permit the child to reside in any residence located within one thousand feet of the residence of the abused child, or any child care facility or school that the abused child attends, until the abused child reaches eighteen years of age. The prohibitions of this subsection shall not apply where the alleged abuse occurred between siblings;** and

(4) The needs of the child for a continuing relationship with the child's 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 judge shall make written findings of fact and conclusions of law in any order pertaining to the placement of the child.

211.038. CHILDREN NOT TO BE REUNITED WITH PARENTS OR PLACED IN A HOME, WHEN

— DISCRETION TO RETURN, WHEN. — 1. 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 a 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.

2. If the juvenile court determines that a minor has abused another child, such minor shall be prohibited from returning to or residing in any residence located within one thousand feet of the residence of the abused child, or any child care facility or school that the abused child attends, until the abused child reaches eighteen years of age. The prohibitions of this subsection shall not apply where the alleged abuse occurred between siblings.

Approved July 14, 2005

SB 156 [SB 156]

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

Modifies powers of port authorities with respect to property ownership and development

AN ACT to repeal sections 68.020 and 68.025, RSMo, and to enact in lieu thereof two new sections relating to port authorities.

SECTION

- A. Enacting clause.
- 68.020. Purpose of port authority.
- 68.025. Powers of port authority.

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

SECTION A. ENACTING CLAUSE. — Sections 68.020 and 68.025, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 68.020 and 68.025, to read as follows:

68.020. PURPOSE OF PORT AUTHORITY. — It shall be the purposes of every port authority to promote the general welfare, **to promote development within the port district**, to encourage private capital investment by fostering the creation of industrial facilities and industrial parks within the port district and to endeavor to increase the volume of commerce, and to promote the establishment of a foreign trade zone within the port districts.

68.025. POWERS OF PORT AUTHORITY. — 1. Every local and regional port authority, approved as a political subdivision of the state, shall have the following powers to:

- (1) Confer with any similar body created under laws of this or any other state for the purpose of adopting a comprehensive plan for the future development and improvement of its port districts;
 - (2) Consider and adopt detailed and comprehensive plans for future development and improvement of its port districts and to coordinate such plans with regional and state programs;
 - (3) Either jointly with a similar body, or separately, recommend to the proper departments of the government of the United States, or any state or subdivision thereof, or to any other body, the carrying out of any public improvement for the benefit of its port districts;
 - (4) Provide for membership in any official, industrial, commercial, or trade association, or any other organization concerned with such purposes, for receptions of officials or others as may contribute to the advancement of its port districts and any industrial development therein, and for such other public relations activities as will promote the same, and such activities shall be considered a public purpose;
 - (5) Represent its port districts before all federal, state and local agencies;
 - (6) Cooperate with other public agencies and with industry, business, and labor in port district improvement matters;
 - (7) Enter into any agreement with any other states, agencies, authorities, commissions, municipalities, persons, corporations, or the United States, to effect any of the provisions contained in this chapter;
 - (8) Approve the construction of all wharves, piers, bulkheads, jetties, or other structures;
 - (9) Prevent or remove, or cause to be removed, obstructions in harbor areas, including the removal of wrecks, wharves, piers, bulkheads, derelicts, jetties or other structures endangering the health and general welfare of the port districts; in case of the sinking of a facility from any cause, such facility or vessel shall be removed from the harbor at the expense of its owner or agent so that it shall not obstruct the harbor;
 - (10) Recommend the relocation, change, or removal of dock lines and shore or harbor lines;
 - (11) Acquire, own, construct, **redevelop**, lease, [and] maintain, **and conduct land reclamation and resource recovery with respect to unimproved land, residential developments, commercial developments, mixed-use developments**, recreational facilities, industrial parks, industrial facilities, and terminals, terminal facilities, warehouses and any other type port facility;
 - (12) Acquire, own, lease, sell or otherwise dispose of interest in and to real property and improvements situate thereon and in personal property necessary to fulfill the purposes of the port authority;
 - (13) Acquire rights-of-way and property of any kind or nature within its port districts necessary for its purposes. Every port authority shall have the right and power to acquire the same by purchase, negotiation, or by condemnation, and should it elect to exercise the right of eminent domain, condemnation proceedings shall be maintained by and in the name of the port authority, and it may proceed in the manner provided by the laws of this state for any county or municipality. The power of eminent domain shall not apply to property actively being used in relation to or in conjunction with river trade or commerce, unless such use is by a port authority pursuant to a lease in which event the power of eminent domain shall apply;
 - (14) Contract and be contracted with, and to sue and be sued;
 - (15) Accept gifts, grants, loans or contributions from the United States of America, the state of Missouri, political subdivisions, municipalities, foundations, other public or private agencies, individual, partnership or corporations;
 - (16) Employ such managerial, engineering, legal, technical, clerical, accounting, advertising, stenographic, and other assistance as it may deem advisable. The port authority may also contract with independent contractors for any of the foregoing assistance;
 - (17) Improve navigable and nonnavigable areas as regulated by federal statute;
 - (18) Disburse funds for its lawful activities and fix salaries and wages of its employees; and
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(19) Adopt, alter or repeal its own bylaws, rules and regulations governing the manner in which its business may be transacted; however, said bylaws, rules and regulations shall not exceed the powers granted to the port authority by this chapter.

2. [When private operators are not interested or available, the port authority shall have the power to operate a recreational facility, industrial parks, and terminals, and terminal facilities, warehouses and any other type port facility for a period not to exceed five years, after which the facility shall again be offered for competitive bids for private operation. In the event that such bids are not responsive, the port authority shall submit these bids to the highways and transportation commission for review. In the event that the commission concurs, the port authority may petition the commission, at least nine months before the expiration of the operating provision, to extend the provision for one additional period not to exceed five years.] **In implementing its powers, the port authority shall have the power to enter into agreements with private operators or public entities for the joint development, redevelopment, and reclamation of property within a port district or for other uses to fulfill the purposes of the port authority.**

Approved July 12, 2005

SB 168 [HCS SS SCS SB 168]

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 process to resolve disputes arising out of alleged construction defects in residential property

AN ACT to amend chapters 213 and 431, RSMo, by adding thereto eight new sections relating to resolution of disputes concerning alleged defective residential construction.

SECTION

- A. Enacting clause.
- 213.041. Restrictive covenants, homeowners' association — limitations — procedure to delete violative restrictive covenants.
- 431.300. Definitions.
- 431.303. Notice of offer to cure defects by contractor, contents — effect on court actions
- 431.306. Court actions arising from construction defects, notice of alleged defect to be given, response of contractor — dispute of claim, procedure — mediation, where to occur.
- 431.309. Rejection of settlement offer by association governing board, effect of — meeting requirements.
- 431.312. Mediation requirements.
- 431.315. Law not to restrict or inhibit other remedies or ability to contract.
 - 1. Severability clause.

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

SECTION A. ENACTING CLAUSE. — Chapters 213 and 431, RSMo, are amended by adding thereto eight new sections, to be known as sections 213.041, 431.300, 431.303, 431.306, 431.309, 431.312, 431.315, and 1, to read as follows:

213.041. RESTRICTIVE COVENANTS, HOMEOWNERS' ASSOCIATION — LIMITATIONS — PROCEDURE TO DELETE VIOLATIVE RESTRICTIVE COVENANTS. — 1. No declaration or other governing document of a homeowners association shall include a restrictive covenant in violation of section 213.040.

2. Notwithstanding any other provision of law or provision of the governing documents, the board of directors of a homeowners association shall amend, without approval of the owners, any declaration or other governing document that includes a restrictive covenant in violation of section 213.040, and shall restate the declaration or other governing document without the restrictive covenant but with no other change to the declaration or governing document.

3. If after providing written notice to a homeowners association requesting that the association delete a restrictive covenant in violation of section 213.040, and the association fails to delete the restrictive covenant within thirty days of receiving the notice, the Missouri commission on human rights, a city or county in which a common interest development is located, or any person may bring an action against the homeowners association for injunctive relief to enforce the provisions of subsections 1 and 2 of this section. The court may award attorney's fees to the prevailing party.

4. The provisions of this section shall become effective on January 1, 2006.

431.300. DEFINITIONS. — As used in sections 431.300 to 431.315, unless the context clearly requires otherwise, the following terms shall mean:

(1) "Action", any civil lawsuit, action, or proceeding, in contract or tort, or otherwise, for damages or indemnity, brought to assert a claim, whether by petition, complaint, counterclaim, or cross-claim, for damage to, diminution in the value of, or the loss of use of real or personal property caused by an alleged construction defect. Action does not include any claim originating in small claims court, or any civil action in tort alleging personal injury or wrongful death to a person or persons resulting from an alleged construction defect;

(2) "Association":

(a) An association or unit owners' association as defined and provided for in subdivision (3) of section 448.1-103, RSMo;

(b) A homeowners' association, including but not limited to, a nonprofit corporation or unincorporated association of home owners created pursuant to a declaration to own and operate portions of a planned community or other residential subdivision and which has the power under the declaration to assess association members to pay the costs and expenses incurred in the performance of the association's obligations under the declaration, or tenants-in-common with respect to the ownership of common areas or amenities of a planned community or other residential subdivision; or

(c) Any cooperative form of ownership of multiunit housing;

(3) "Claimant", a homeowner or association which asserts a claim against a contractor concerning an alleged construction defect;

(4) "Construction defect", for the purposes of sections 431.300 to 431.315, a deficiency in, or a deficiency arising from, any of the following:

(a) Defective material, products, or components used in new residential construction or from a substantial remodel;

(b) Violation of the applicable codes and ordinances, including those ordinances which regulate zoning and the subdivision of land, in effect at the time of the commencement of construction of residential improvements, or as to a substantive remodel, at the commencement of such substantial remodel; provided however, that any matter that is in compliance with applicable codes and ordinances, including without limitation, those ordinances which regulate zoning and the subdivision of land, in effect at the commencement of construction of residential improvements, or to a substantial remodel as the case may be, shall conclusively establish that such matter is not, nor shall it be deemed or construed to be a construction defect, unless a construction defect as to such matter is established because of defective material, products, or components used in new residential construction or in a substantial remodel;

(c) Failure to construct residential improvements in accordance with accepted trade standards for good and workmanlike construction at the time of construction. Compliance with the applicable codes and ordinances, including without limitation, those ordinances which regulate zoning and the subdivision of land, in effect at the commencement of construction, or of a substantial remodeling as the case may be, shall conclusively establish construction in accordance with accepted trade standards for good and workmanlike construction, with respect to all matters specified in those codes;

(d) Failure to construct residential improvements in accordance with the agreement between the contractor and the claimant, notwithstanding anything to the contrary in this subdivision;

(5) "Contractor", any person, company, firm, partnership, corporation, association, or other entity that is engaged in the business of designing, developing, constructing, or substantially remodeling residences;

(6) "Homeowner", any person, company, firm, partnership, corporation, association, or other entity who contracts with a contractor for the construction, substantial remodel of a residence, or the sale of a residence constructed by such contractor. Homeowner also includes a subsequent purchaser of a residence from any homeowner;

(7) "Residence", a single-family house, duplex, triplex, quadraplex, or a unit in a multiunit residential structure in which title to each individual unit is transferred to the owner under a condominium or cooperative system, and shall include common areas and common elements as defined in subdivision (4) of section 448.1-103, RSMo. Residence shall include the land and improvements to land under and around the house, unit, or structure. Residence shall not include a manufactured home as defined in section 700.010, RSMo;

(8) "Serve" or "service", personal service to the person intended to be notified or mailing to the last known address of such person;

(9) "Substantial remodel", a remodel of a residence, for which the total cost exceeds one-half of the assessed value of the residence for property tax purposes at the time the contract for the remodel work was made.

431.303. NOTICE OF OFFER TO CURE DEFECTS BY CONTRACTOR, CONTENTS — EFFECT ON COURT ACTIONS. — 1. The contractor shall provide notice to each homeowner upon entering into a contract for sale, construction, or substantial remodel of a residence of the contractor's right to offer to cure construction defects before a claimant may commence action against the contractor pursuant to sections 431.300 to 431.315. Such notice shall be conspicuous and may be included as part of the underlying contract signed by the homeowner. In the sale of a condominium unit, the requirement for delivery of such notice shall be deemed satisfied if contained in a public offering statement in accordance with the laws of this state.

2. The notice required by this subsection shall provide time frame guidelines to comply with sections 431.300 to 431.315 for both the claimant and contractor and shall be in substantially the following form:

SECTIONS 431.300 TO 431.315 OF MISSOURI REVISED STATUTES PROVIDES YOU WITH CERTAIN RIGHTS IF YOU HAVE A DISPUTE WITH A CONTRACTOR REGARDING CONSTRUCTION DEFECTS. EXCEPT FOR CLAIMS FILED IN SMALL CLAIMS COURT, IF YOU HAVE A DISPUTE WITH A CONTRACTOR, YOU MUST DELIVER TO THE CONTRACTOR A WRITTEN CLAIM OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE YOUR CONTRACTOR THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE CONTRACTOR. READ THIS NOTICE CAREFULLY. THERE ARE STRICT DEADLINES AND

PROCEDURES UNDER SECTIONS 431.300 TO 431.315 WHICH MUST BE OBEYED IN ORDER TO PRESERVE YOUR ABILITY TO FILE A LAWSUIT. OTHER THAN REPAIRS TO WORK DONE BY THE CONTRACTOR THAT ARE NECESSARY TO PROTECT THE LIFE, HEALTH, OR SAFETY OF PERSONS LIVING IN A RESIDENCE, OR TO AVOID ADDITIONAL SIGNIFICANT AND MATERIAL DAMAGE TO THE RESIDENCE PURSUANT TO SECTION 431.306.10, YOU MAY NOT INCLUDE IN CLAIMS AGAINST YOUR CONTRACTOR THE COSTS OF OTHER REPAIRS YOU PERFORM BEFORE YOU ARE ENTITLED TO FILE A LAWSUIT UNDER SECTIONS 431.300 TO 431.315.

3. Nothing in sections 431.300 to 431.315 shall preclude or bar any action if a notice is not given to the claimant as required by this section, and the provisions of sections 431.300 to 431.315 shall not apply to any claim of a claimant against a contractor if such contractor failed to provide the written notice required by this section.

4. In those lawsuits originally filed by a contractor against a homeowner, if a homeowner files a counterclaim or an affirmative defense in such lawsuit that includes a claim based on a construction defect allegedly caused by the contractor, then the provisions of sections 431.300 to 431.315 shall not apply to said lawsuit, and the homeowner or association claimant will not be required to adhere to sections 431.300 to 431.315 for those claims made pursuant to the lawsuit, provided a claimant shall be required to follow those provisions for any claim not otherwise covered by said lawsuit.

431.306. COURT ACTIONS ARISING FROM CONSTRUCTION DEFECTS, NOTICE OF ALLEGED DEFECT TO BE GIVEN, RESPONSE OF CONTRACTOR — DISPUTE OF CLAIM, PROCEDURE — MEDIATION, WHERE TO OCCUR. — 1. In every action against a contractor arising from construction or substantial remodel of a residence, a claimant shall serve the contractor with a written notice of claim of construction defects. The notice of claim shall state that the claimant asserts a construction defect claim against the contractor and shall describe the claim in reasonable detail sufficient to determine the general nature of the defect as well as any known results of the defect.

2. Within fourteen days after service of the notice of claim, the contractor shall serve a written response on the claimant which shall:

(1) Propose to inspect the residence that is the subject of the claim and to complete the inspection within a specified time frame. The proposal shall include the statement that the contractor shall, based on the inspection, thereafter offer to remedy the defect within a specified time frame, compromise by payment, or dispute the claim; or

(2) Offer to remedy the claim without an inspection within a specified time frame; or

(3) Offer to remedy part of the claim without inspection and compromise and settle the remainder of the claim by monetary payment within a specified time frame; or

(4) Offer to compromise and settle all of a claim without inspection. A contractor's offer pursuant to this subdivision to compromise and settle a claimant's or association's claim may include, but is not limited to, an express offer to purchase the claimant's residence that is the subject of the claim; or

(5) State that the contractor disputes the claim and will neither remedy the construction defect nor compromise and settle the claim.

3. (1) If the contractor disputes the claim pursuant to subdivision (5) of subsection 2 of this section or does not respond to the claimant's notice of claim within the time stated in subsection 2 of this section, the claimant may bring an action against the contractor for the defect described in the notice of claim without further notice.

(2) If the claimant rejects the inspection proposal or the settlement offer made by the contractor pursuant to subsection 2 of this section, the claimant shall serve written notice

of the claimant's rejection on the contractor. The notice shall include the basis for claimant's rejection. After service of the rejection, the claimant and contractor may attempt to resolve the claim through mediation in accordance with section 431.312. If the claim is not resolved through mediation, the claimant may bring an action against the contractor for the construction defect claim without further notice described in the notice of claim. If the contractor has not received from the claimant within thirty days after the claimant's receipt of the contractor's response either an acceptance or rejection of the inspection proposal or settlement offer, the contractor may at any time thereafter terminate the proposal or offer by serving written notice to the claimant. If the contractor so terminates the proposal, the claimant may thereafter bring an action against the contractor for the defect described in the notice of claim without further notice.

(3) If the claimant elects to accept the offer of the contractor to remedy the claim without an inspection pursuant to subdivision (2) of subsection 2 of this section, or if the claimant elects to accept the offer of the contractor to remedy part of the claim without inspection and compromise and settle the remainder of the claim by monetary payment pursuant to subdivision (3) of subsection 2 of this section, the claimant shall provide the contractor and its contractors or other agents reasonable access to the claimant's residence during normal working hours to perform and complete the construction or work in accordance with the timetable stated in the offer. Any dispute relating to performance of the remedial construction or work by the contractor may be resolved by mediation in accordance with section 431.312. If the dispute is not resolved by mediation, the claimant may bring an action against the contractor for the defect described in the notice of claim.

4. (1) If the claimant elects to allow the contractor to inspect in accordance with the contractor's proposal pursuant to subdivision (1) of subsection 2 of this section, within fourteen days after the date of the claimant's election to allow an inspection is communicated to the contractor, the claimant and contractor shall agree on a time and date for the inspection, and such inspection shall occur within fourteen days from the date of the communication of such election for an inspection unless the claimant and contractor agree to a later date. The claimant shall provide the contractor and its subcontractors, suppliers, or other agents reasonable access to the claimant's residence during normal working hours to inspect the premises and the claimed defect. The contractor shall perform the inspection at its own cost. If destructive testing is necessary, the contractor shall repair all damage caused by the testing.

(2) Within fourteen days following completion of the inspection, the contractor shall serve a report of the scope of the inspection and the findings and results of the inspection on the claimant, and either:

(a) A written offer to remedy all of the claim at no cost to the claimant, including a description of the construction or work necessary to remedy the defect described in the claim, and a timetable for the completion of such construction or work; or

(b) A written offer to remedy part of the claim, and compromise and settle the remainder of the claim by monetary payment, within a specified time frame; or

(c) A written offer to compromise and settle all of the claim by monetary payment pursuant to subdivision (4) of subsection 2 of this section; or

(d) A written statement that the contractor will not proceed further to remedy the defect.

(3) If the contractor does not proceed further to remedy the construction defect within the stated timetable, or if the contractor fails to comply with the provisions of subdivision (2) of this subsection, the claimant may bring an action against the contractor for the defect described in the notice of claim without further notice.

(4) If the claimant rejects the offer made by the contractor pursuant to paragraph (a), (b), or (c) of subdivision (2) of this subsection to either remedy the construction defect or remedy part of the claim and make a monetary settlement as to the remainder of the

claim or to compromise and settle the claim by monetary payment, the claimant shall serve written notice of the claimant's rejection and the reasons for the rejection on the contractor. After service of the rejection notice, the claimant and contractor may attempt to resolve the dispute through mediation in accordance with section 431.312. If the dispute is not resolved through mediation, the claimant may bring an action against the contractor for the defect described in the notice of claim. If the contractor has not received from the claimant within thirty days after the claimant's receipt of the contractor's response either an acceptance or rejection of the offer made pursuant to paragraph (a), (b), or (c) of subdivision (2) of this subsection, the contractor may at any time thereafter terminate the offer by serving written notice to the claimant. If the contractor so terminates its offer, the claimant may bring an action against the contractor for the claim described in the notice of claim without further notice.

5. (1) Any claimant accepting the offer of a contractor to remedy all or part of the construction defect pursuant to paragraph (a) or (b) of subdivision (2) of subsection 4 of this section shall do so by serving the contractor with a written notice of acceptance within a reasonable time period after receipt of the offer, and no later than thirty days after receipt of the offer. The claimant shall provide the contractor and its subcontractors or other agents reasonable access to the claimant's residence during normal working hours to perform and complete the construction or work by the timetable stated in the offer. Any dispute relating to performance of the remedial construction or work by the contractor may be resolved by mediation in accordance with section 431.312. If the dispute is not resolved by mediation, the claimant may bring an action against the contractor for the defect described in the notice of claim.

(2) The claimant and contractor may, by mutual written agreement, alter the extent of construction or the timetable for completion of construction stated in the offer, including, but not limited to, repair of additional defects.

6. Any action commenced by a claimant prior to compliance with the requirements of this section shall, upon motion by a party to the action, be subject to dismissal without prejudice, and shall not be recommenced until the claimant has complied with the requirements of this section if the court finds the claimant knowingly violated the sections of said act.

7. The claimant may amend the notice of claim to include construction defects discovered after the service of the original notice of claim and shall otherwise comply with the requirements of this section for the additional claims. Claims for defects discovered after the commencement or recommencement of an action may be added to such action only after providing notice to the contractor of the defect and allowing for response under subsection 2 of this section.

8. If, during the pendency of the notice, inspection, offer, acceptance, or repair process, an applicable limitations period would otherwise expire, the claimant may file an action against the contractor, but such action shall be immediately abated pending completion of the notice of claim process described in this section. This subsection shall not be construed either to revive a statute of limitations period that has expired prior to the date on which a claimant's written notice of claim is served or extend any applicable statute of repose.

9. A written notice of claim and any written response by a contractor shall be treated as a settlement offer and shall not be admissible in an action related to a construction defect asserted therein, except as otherwise permitted by law. A written notice of claim and any written response by a contractor shall not be admissible as a prior inconsistent statement.

10. In the event that immediate action must be taken by a claimant to prevent imminent injury to persons because of alleged construction defects, including defective garage doors, that threaten the life or safety of persons, or alleged construction defects,

including defective garage doors, that if not addressed will result in significant and material additional damage to the residence, the homeowner or another person designated by the homeowner including the contractor may undertake reasonable repairs necessary to mitigate the emergency situation. Claimants may thereafter include the cost of such repairs in the written notice of claim of construction defects provided for in subsection 1 of this section. Provided, however, that other than the undertaking of immediate repairs to remedy an emergency situation, any repairs to construction defects undertaken by homeowners shall not be included in claims initiated under subsection 1 of this section, and shall not be the subject of an action.

11. Any mediation shall take place in the county where the claimant resides or in a mutually agreed to location.

431.309. REJECTION OF SETTLEMENT OFFER BY ASSOCIATION GOVERNING BOARD, EFFECT OF — MEETING REQUIREMENTS. — 1. If an association's governing board rejects a written settlement offer from the contractor and has satisfied applicable provisions of section 431.306, and upon written request by the contractor as part of said offer that the association hold a meeting of the members, the provisions of this section shall apply prior to the association filing an action alleging construction defects in the common areas and common elements.

2. The board shall hold a meeting open to each member of the association. The meeting shall be held no less than fifteen days before the association commences an action against the contractor.

3. No less than fifteen days before this meeting is held, a written notice shall be sent to each member of the association specifying all of the following:

(1) That a meeting will take place to discuss construction defects that may lead to the filing of an action, and the date, time, and place of the meeting;

(2) The options that are available to address the construction defects, including the filing of an action and a statement of the various alternatives that are reasonably foreseeable by the association to pay for those options and whether these payments are expected to be made from the use of reserve account funds or the imposition of regular or special assessments, or emergency assessment increases;

(3) The complete text of any written final settlement offer from the contractor and a concise explanation of the contractor's specific reasons for the terms of the offer.

4. The discussions at the meeting and the contents of the notice and the items required to be specified in the notice under subsection 3 of this section are privileged communications and are not admissible in evidence in any action, unless the association consents to their admission.

5. No more than one request to meet and discuss a written settlement offer under this section may be made by the contractor.

431.312. MEDIATION REQUIREMENTS. — 1. At any time, either a claimant or contractor may offer to resolve a claim against a contractor through mediation. Mediation pursuant to this section shall be nonbinding and independently administered. The contractor and claimant shall mutually agree upon a qualified independent and neutral mediator and shall equally share the cost of the mediator. If the parties agree upon a mediator, then the mediation shall take place within a reasonable time period, but in no event later than forty-five days after service of a request for mediation by a claimant upon a contractor or a request by a contractor upon a claimant. A contractor who receives a request for mediation from a claimant shall serve a response in writing within fourteen days and may include within the response the name of a proposed mediator and mediation date. A claimant who receives a request for mediation from a contractor shall serve a response in writing within fourteen days and may include within the response the name of a proposed mediator and mediation date.

2. The contractor or claimant may include in the mediation any person or entity reasonably necessary for resolution of the claim asserted. This subsection shall not be construed to mandate attendance at a mediation by a person or entity other than the contractor or claimant served with a notice of claim.

3. If all the parties to a dispute agree in writing to submit their dispute to any forum for arbitration, conciliation, or mediation, then no person who serves as arbitrator, conciliator or mediator, nor any agent or employee of that person, shall be subpoenaed or otherwise compelled to disclose any matter disclosed in the process of setting up or conducting the arbitration, conciliation, or mediation.

4. Arbitration, conciliation, and mediation proceedings shall be regarded as settlement negotiations and the confidentiality of such proceeding shall be as set forth in supreme court rule 17.

5. Notwithstanding any provisions of law or the agreements of the parties to the contrary, the resolution of the dispute by the parties through mediation or otherwise shall not operate to release any claim of the claimant except the claim described in the notice of defect, and shall not operate to release the claim described in the notice of defect until the agreed upon remedy has been accomplished.

431.315. LAW NOT TO RESTRICT OR INHIBIT OTHER REMEDIES OR ABILITY TO CONTRACT. — 1. Nothing in sections 431.300 to 431.315 shall be construed to create a theory or cause of action upon which liability may be based or to limit any causes of action or remedies otherwise available to a homeowner or contractor pursuant to law after giving effect to the provisions of sections 431.300 to 431.315, nor to hinder or otherwise affect the employment, agency, or contractual relationship between homeowners and contractors during the process of construction or remodeling, and does not preclude the termination of those relationships as allowed under current law. Nothing in sections 431.300 to 431.315 shall negate or otherwise restrict a contractor's right to access or inspection provided by law, covenant, easement, or contract.

2. Nothing in sections 431.300 to 431.315 shall be construed to prevent contracts between contractors and homeowners from specifying that disputes shall be resolved by binding arbitration pursuant to chapter 435, RSMo. In contracts between contractors and homeowners that specify binding arbitration as the means of dispute resolution, sections 431.300 to 431.315 shall not be applicable; provided, in those contracts between contractors and homeowners that specify binding arbitration as the means of dispute resolution, the contractor shall provide notice, pursuant to section 435.460, that disputes may be resolved by binding arbitration and sections 431.300 to 431.315 are not applicable to such transactions.

3. The provisions of sections 431.300 to 431.315 shall not apply to an action brought by an insurer, subrogated to the rights of a claimant, if payment was made by the insurer pursuant to a claim under an insurance policy.

SECTION 1. SEVERABILITY CLAUSE. — If any provision of sections 431.300 to 431.315, RSMo, is found by a court of competent jurisdiction to be invalid or unconstitutional it is the stated intent of the general assembly that the general assembly would have approved the remaining portions of sections 431.300 to 431.315, RSMo, and the remaining portions of sections 431.300 to 431.315, RSMo, shall remain in full force and effect.

Approved July 12, 2005

SB 170 [SCS SB 170]

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 dry cleaning fees until 2012

AN ACT to repeal sections 260.900, 260.905, 260.925, 260.935, 260.940, 260.945, and 260.960, RSMo, and to enact in lieu thereof eight new sections relating to hazardous waste, with an emergency clause and an expiration date.

SECTION

- A. Enacting clause.
- 260.900. Definitions.
- 260.905. Hazardous waste management commission to promulgate rules for dry-cleaning facility environmental remediation.
- 260.925. Expenditures from fund, how used — fund not to be used, when — liability determinations — entry onto premises where corrective action required — fund payment limit — owner liability when fund payment obtained.
- 260.935. Dry-cleaning facility registration surcharge — deposited in fund — penalties and interest for nonpayment.
- 260.940. Dry-cleaning solvent surcharge, amount imposed due to solvent factor — deposited in fund — penalties and interest for nonpayment — operators not to purchase solvent from persons not paying surcharge.
- 260.945. Surcharges not collected, when.
- 260.960. Rulemaking.
- 260.965. Expiration date.
- B. Emergency clause.

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

SECTION A. ENACTING CLAUSE. — Sections 260.900, 260.905, 260.925, 260.935, 260.940, 260.945, and 260.960, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 260.900, 260.905, 260.925, 260.935, 260.940, 260.945, 260.960, and 260.965, to read as follows:

260.900. DEFINITIONS. — As used in sections 260.900 to 260.960, unless the context clearly indicates otherwise, the following terms mean:

- (1) "Abandoned dry-cleaning facility", any real property premises or individual leasehold space in which a dry-cleaning facility formerly operated;
- (2) "Active dry-cleaning facility", any real property premises or individual leasehold space in which a dry-cleaning facility currently operates;
- (3) "Chlorinated dry-cleaning solvent", any dry-cleaning solvent which contains a compound which has a molecular structure containing the element chlorine;
- (4) "Commission", the hazardous waste management commission created in section 260.365;
- (5) "Corrective action", those activities described in subsection 1 of section 260.925;
- (6) "Corrective action plan", a plan approved by the director to perform corrective action at a dry-cleaning facility;
- (7) "Department", the Missouri department of natural resources;
- (8) "Director", the director of the Missouri department of natural resources;
- (9) "Dry-cleaning facility", a commercial establishment that operates, or has operated in the past in whole or in part for the purpose of cleaning garments or other fabrics on site utilizing a process that involves any use of dry-cleaning solvents. Dry-cleaning facility includes all contiguous land, structures and other appurtenances and improvements on the land used in connection with a dry-cleaning facility but does not include prisons, governmental entities, hotels,

motels or industrial laundries. Dry-cleaning facility does include coin-operated dry-cleaning facilities;

(10) "Dry-cleaning solvent", any and all nonaqueous solvents used or to be used in the cleaning of garments and other fabrics at a dry-cleaning facility and includes but is not limited to perchloroethylene, also known as tetrachloroethylene, [and petroleum-based solvents] **chlorinated dry-cleaning**, and the products into which such solvents degrade;

(11) "Dry-cleaning unit", a machine or device which utilizes dry-cleaning solvents to clean garments and other fabrics and includes any associated piping and ancillary equipment and any containment system;

(12) "Environmental response surcharge", either the active dry-cleaning facility registration surcharge or the dry-cleaning solvent surcharge;

(13) "Fund", the dry-cleaning environmental response trust fund created in section 260.920;

(14) "Immediate response to a release", containment and control of a known release in excess of a reportable quantity and notification to the department of any known release in excess of a reportable quantity;

(15) "Operator", any person who is or has been responsible for the operation of dry-cleaning operations at a dry-cleaning facility;

(16) "Owner", any person who owns the real property where a dry-cleaning facility is or has operated;

(17) "Person", an individual, trust, firm, joint venture, consortium, joint-stock company, corporation, partnership, association or limited liability company. Person does not include any governmental organization;

(18) "Release", any spill, leak, emission, discharge, escape, leak or disposal of dry-cleaning solvent from a dry-cleaning facility into the soils or waters of the state;

(19) "Reportable quantity", a known release of a dry-cleaning solvent deemed reportable by applicable federal or state law or regulation.

260.905. HAZARDOUS WASTE MANAGEMENT COMMISSION TO PROMULGATE RULES FOR DRY-CLEANING FACILITY ENVIRONMENTAL REMEDIATION. — 1. The commission shall promulgate and adopt such initial rules and regulations, effective no later than July 1, [2002] **2007**, as shall be necessary to carry out the purposes and provisions of sections 260.900 to 260.960. Prior to the promulgation of such rules, the commission shall meet with representatives of the dry-cleaning industry and other interested parties. The commission, thereafter, shall promulgate and adopt additional rules and regulations or change existing rules and regulations when necessary to carry out the purposes and provisions of sections 260.900 to 260.960.

2. Any rule or regulation adopted pursuant to sections 260.900 to 260.960 shall be reasonably necessary to protect human health, to preserve, protect and maintain the water and other natural resources of this state and to provide for prompt corrective action of releases from dry-cleaning facilities. Consistent with these purposes, the commission shall adopt rules and regulations, effective no later than July 1, [2002] **2007**:

(1) Establishing requirements that owners who close dry-cleaning facilities remove dry-cleaning solvents and wastes from such facilities in order to prevent any future releases;

(2) Establishing criteria to prioritize the expenditure of funds from the dry-cleaning environmental response trust fund. The criteria shall include consideration of:

(a) The benefit to be derived from corrective action compared to the cost of conducting such corrective action;

(b) The degree to which human health and the environment are actually affected by exposure to contamination;

(c) The present and future use of an affected aquifer or surface water;

(d) The effect that interim or immediate remedial measures will have on future costs; and

(e) Such additional factors as the commission considers relevant;

(3) Establishing criteria under which a determination may be made by the department of the level at which corrective action shall be deemed completed. Criteria for determining completion of corrective action shall be based on the factors set forth in subdivision (2) of this subsection and:

- (a) Individual site characteristics including natural remediation processes;
- (b) Applicable state water quality standards;
- (c) Whether deviation from state water quality standards or from established criteria is appropriate, based on the degree to which the desired remediation level is achievable and may be reasonably and cost effectively implemented, subject to the limitation that where a state water quality standard is applicable, a deviation may not result in the application of standards more stringent than that standard; and
- (d) Such additional factors as the commission considers relevant.

260.925. EXPENDITURES FROM FUND, HOW USED — FUND NOT TO BE USED, WHEN — LIABILITY DETERMINATIONS — ENTRY ONTO PREMISES WHERE CORRECTIVE ACTION REQUIRED — FUND PAYMENT LIMIT — OWNER LIABILITY WHEN FUND PAYMENT OBTAINED.

— 1. On and after July 1, 2002, moneys in the fund shall be utilized to address contamination resulting from releases of dry-cleaning solvents as provided in sections 260.900 to 260.960. Whenever a release poses a threat to human health or the environment, the department, consistent with rules and regulations adopted by the commission pursuant to subdivisions (2) and (3) of subsection 2 of section 260.905, shall expend moneys available in the fund to provide for:

(1) Investigation and assessment of a release from a dry-cleaning facility, including costs of investigations and assessments of contamination which may have moved off of the dry-cleaning facility;

(2) Necessary or appropriate emergency action, including but not limited to treatment, restoration or replacement of drinking water supplies, to assure that the human health or safety is not threatened by a release or potential release;

(3) Remediation of releases from dry-cleaning facilities, including contamination which may have moved off of the dry-cleaning facility, which remediation shall consist of the preparation of a corrective action plan and the cleanup of affected soil, groundwater and surface waters, using an alternative that is cost-effective, technologically feasible and reliable, provides adequate protection of human health and environment and to the extent practicable minimizes environmental damage;

(4) Operation and maintenance of corrective action;

(5) Monitoring of releases from dry-cleaning facilities including contamination which may have moved off of the dry-cleaning facility;

(6) Payment of reasonable costs incurred by the director in providing field and laboratory services;

(7) Reasonable costs of restoring property as nearly as practicable to the condition that existed prior to activities associated with the investigation of a release or cleanup or remediation activities;

(8) Removal and proper disposal of wastes generated by a release of a dry-cleaning solvent; and

(9) Payment of costs of corrective action conducted by the department or by entities other than the department but approved by the department, whether or not such corrective action is set out in a corrective action plan; except that, there shall be no reimbursement for corrective action costs incurred before August 28, 2000.

2. Nothing in subsection 1 of this section shall be construed to authorize the department to obligate moneys in the fund for payment of costs that are not integral to corrective action for a release of dry-cleaning solvents from a dry-cleaning facility. Moneys from the fund shall not be used:

(1) For corrective action at sites that are contaminated by solvents normally used in dry-cleaning operations where the contamination did not result from the operation of a dry-cleaning facility;

(2) For corrective action at sites, other than dry-cleaning facilities, that are contaminated by dry-cleaning solvents which were released while being transported to or from a dry-cleaning facility;

(3) To pay any fine or penalty brought against a dry-cleaning facility operator under state or federal law;

(4) To pay any costs related to corrective action at a dry-cleaning facility that has been included by the United States Environmental Protection Agency on the national priorities list;

(5) For corrective action at sites with active dry-cleaning facilities where the owner or operator is not in compliance with sections 260.900 to 260.960, rules and regulations adopted pursuant to sections 260.900 to 260.960, orders of the director pursuant to sections 260.900 to 260.960, or any other applicable federal or state environmental statutes, rules or regulations; or

(6) For corrective action at sites with abandoned dry-cleaning facilities that have been taken out of operation prior to July 1, [2004] **2009**, and not documented by or reported to the department by July 1, [2004] **2009**. Any person reporting such a site to the department shall include any available evidence that the site once contained a dry-cleaning facility.

3. Nothing in sections 260.900 to 260.960 shall be construed to restrict the department from temporarily postponing completion of corrective action for which moneys from the fund are being expended whenever such postponement is deemed necessary in order to protect public health and the environment.

4. At any multisource site, the department shall utilize the moneys in the fund to pay for the proportionate share of the liability for corrective action costs which is attributable to a release from one or more dry-cleaning facilities and for that proportionate share of the liability only.

5. At any multisource site, the director is authorized to make a determination of the relative liability of the fund for costs of corrective action, expressed as a percentage of the total cost of corrective action at a site, whether known or unknown. The director shall issue an order establishing such percentage of liability. Such order shall be binding and shall control the obligation of the fund until or unless amended by the director. In the event of an appeal from such order, such percentage of liability shall be controlling for costs incurred during the pendency of the appeal.

6. Any authorized officer, employee or agent of the department, or any person under order or contract with the department, may enter onto any property or premises, at reasonable times and with reasonable advance notice to the operator, to take corrective action where the director determines that such action is necessary to protect the public health or environment. If consent is not granted by the operator regarding any request made by any officer, employee or agent of the department, or any person under order or contract with the department, under the provisions of this section, the director may issue an order directing compliance with the request. The order may be issued after such notice and opportunity for consultation as is reasonably appropriate under the circumstances.

7. Notwithstanding any other provision of sections 260.900 to 260.960, in the discretion of the director, an operator may be responsible for up to one hundred percent of the costs of corrective action attributable to such operator if the director finds, after notice and an opportunity for a hearing in accordance with chapter 536, RSMo, that:

(1) Requiring the operator to bear such responsibility will not prejudice another owner, operator or person who is eligible, pursuant to the provisions of sections 260.900 to 260.960, to have corrective action costs paid by the fund; and

(2) The operator:

(a) Caused a release in excess of a reportable quantity by willful or wanton actions and such release was caused by operating practices in violation of existing laws and regulations at the time of the release; or

(b) Is in arrears for moneys owed pursuant to sections 260.900 to 260.960, after notice and an opportunity to correct the arrearage; or

(c) Materially obstructs the efforts of the department to carry out its obligations pursuant to sections 260.900 to 260.960; except that, the exercise of legal rights shall not constitute a substantial obstruction; or

(d) Caused or allowed a release in excess of a reportable quantity because of a willful material violation of sections 260.900 to 260.960 or the rules and regulations adopted by the commission pursuant to sections 260.900 to 260.960.

8. For purposes of subsection 7 of this section, unless a transfer is made to take advantage of the provisions of subsection 7 of this section, purchasers of stock or other indicia of ownership and other successors in interest shall not be considered to be the same owner or operator as the seller or transferor of such stock or indicia of ownership even though there may be no change in the legal identity of the owner or operator. To the extent that an owner or operator is responsible for corrective action costs pursuant to subsection 7 of this section, such owner or operator shall not be entitled to the exemption provided in subsection 5 of section 260.930.

9. The fund shall not be liable for the payment of costs in excess of one million dollars at any one contaminated dry-cleaning site. Additionally, the fund shall not be liable for the payment of costs for any one site in excess of twenty-five percent of the total moneys in the fund during any fiscal year. For purposes of this subsection, "contaminated dry-cleaning site" means the areal extent of soil or ground water contaminated with dry-cleaning solvents.

10. The owner or operator of an active dry-cleaning facility shall be liable for the first twenty-five thousand dollars of corrective action costs incurred because of a release from an active dry-cleaning facility. The owner of an abandoned dry-cleaning facility shall be liable for the first twenty-five thousand dollars of corrective action costs incurred because of a release from an abandoned dry-cleaning facility. Nothing in this subsection shall be construed to prohibit the department from taking corrective action because the department cannot obtain the deductible.

260.935. DRY-CLEANING FACILITY REGISTRATION SURCHARGE — DEPOSITED IN FUND — PENALTIES AND INTEREST FOR NONPAYMENT. — 1. Every active dry-cleaning facility shall pay, in addition to any other environmental response surcharges, an annual dry-cleaning facility registration surcharge as follows:

(1) Five hundred dollars for facilities which use no more than one hundred forty gallons of chlorinated solvents [and no more than one thousand four hundred gallons of petroleum, nonchlorinated solvents per year];

(2) One thousand dollars for facilities which use more than one hundred forty gallons of chlorinated solvents [or more than one thousand four hundred gallons of petroleum, nonchlorinated solvents per year] and less than three hundred sixty gallons of chlorinated solvents [and less than three thousand six hundred gallons of petroleum, nonchlorinated solvents] per year; and

(3) Fifteen hundred dollars for facilities which use at least three hundred sixty gallons of chlorinated solvents [or at least three thousand six hundred gallons of petroleum, nonchlorinated solvents] per year.

2. The active dry-cleaning facility registration surcharge imposed by this section shall be reported and paid to the department on an annual basis. The commission shall prescribe by administrative rule the procedure for the report and payment required by this section.

3. The department shall provide each person who pays a dry-cleaning facility registration surcharge pursuant to this section with a receipt. The receipt or the copy of the receipt shall be produced for inspection at the request of any authorized representative of the department.

4. All moneys collected or received by the department pursuant to this section shall be transmitted to the department of revenue for deposit in the state treasury to the credit of the dry-cleaning environmental response trust fund created in section 260.920. Following each annual

reporting date, the state treasurer shall certify the amount deposited in the fund to the department.

5. If any person does not pay the active dry-cleaning facility registration surcharge or any portion of the active dry-cleaning facility registration surcharge imposed by this section by the date prescribed for such payment, the department shall impose and such person shall pay, in addition to the active dry-cleaning facility registration surcharge owed by such person, a penalty of fifteen percent of the active dry-cleaning facility registration surcharge. Such penalty shall be deposited in the dry-cleaning environmental response trust fund.

6. If any person does not pay the active dry-cleaning facility registration surcharge or any portion of the active dry-cleaning facility registration surcharge imposed by this section by the date prescribed for such payment, the department shall also impose interest upon the unpaid amount at the rate of ten percent per annum from the date prescribed for the payment of such surcharge and penalties until payment is actually made. Such interest shall be deposited in the dry-cleaning environmental response trust fund.

260.940. DRY-CLEANING SOLVENT SURCHARGE, AMOUNT IMPOSED DUE TO SOLVENT FACTOR — DEPOSITED IN FUND — PENALTIES AND INTEREST FOR NONPAYMENT — OPERATORS NOT TO PURCHASE SOLVENT FROM PERSONS NOT PAYING SURCHARGE. — 1. Every seller or provider of dry-cleaning solvent for use in this state shall pay, in addition to any other environmental response surcharges, a dry-cleaning solvent surcharge on the sale or provision of dry-cleaning solvent.

2. The amount of the dry-cleaning solvent surcharge imposed by this section on each gallon of dry-cleaning solvent shall be an amount equal to the product of the solvent factor for the dry-cleaning solvent and the rate of eight dollars per gallon.

3. The solvent factor for each dry-cleaning solvent is as follows:

- (1) For perchloroethylene, the solvent factor is 1.00;
- (2) For 1,1,1-trichloroethane, the solvent factor is 1.00; **and**
- (3) For other chlorinated dry-cleaning solvents, the solvent factor is 1.00[; and
- (4) For any nonchlorinated dry-cleaning solvent, the solvent factor is 0.05].

4. In the case of a fraction of a gallon, the dry-cleaning solvent surcharge imposed by this section shall be the same fraction of the fee imposed on a whole gallon.

5. The dry-cleaning solvent surcharge required in this section shall be paid to the department by the seller or provider of the dry-cleaning solvent, regardless of the location of such seller or provider.

6. The dry-cleaning solvent surcharge required in this section shall be paid by the seller or provider on a quarterly basis and shall be paid to the department for the previous quarter. The commission shall prescribe by administrative rule the procedure for the payment required by this section.

7. The department shall provide each person who pays a dry-cleaning solvent surcharge pursuant to this section with a receipt. The receipt or the copy of the receipt shall be produced for inspection at the request of any authorized representative of the department.

8. All moneys collected or received by the department pursuant to this section shall be transmitted to the department of revenue for deposit in the state treasury to the credit of the dry-cleaning environmental response trust fund created in section 260.920. Following each annual or quarterly reporting date, the state treasurer shall certify the amount deposited to the department.

9. If any seller or provider of dry-cleaning solvent fails or refuses to pay the dry-cleaning solvent surcharge imposed by this section, the department shall impose and such seller or provider shall pay, in addition to the dry-cleaning solvent surcharge owed by the seller or provider, a penalty of fifteen percent of the dry-cleaning solvent surcharge. Such penalty shall be deposited in the dry-cleaning environmental response trust fund.

10. If any person does not pay the dry-cleaning solvent surcharge or any portion of the dry-cleaning solvent surcharge imposed by this section by the date prescribed for such payment, the department shall impose and such person shall pay interest upon the unpaid amount at the rate of ten percent per annum from the date prescribed for the payment of such surcharge and penalties until payment is actually made. Such interest shall be deposited in the dry-cleaning environmental response trust fund.

11. An operator of a dry-cleaning facility shall not purchase or obtain solvent from a seller or provider who does not pay the dry-cleaning solvent charge, as provided in this section. Any operator of a dry-cleaning facility who fails to obey the provisions of this section shall be required to pay the dry-cleaning solvent surcharge as provided in subsections 2, 3 and 4 of this section for any dry-cleaning solvent purchased or obtained from a seller or provider who fails to pay the proper dry-cleaning solvent surcharge as determined by the department. Any operator of a dry-cleaning facility who fails to follow the provisions of this subsection shall also be charged a penalty of fifteen percent of the dry-cleaning solvent surcharge owed. Any operator of a dry-cleaning facility who fails to obey the provisions of this subsection shall also be subject to the interest provisions of subsection 10 of this section. If a seller or provider of dry-cleaning solvent charges the operator of a dry-cleaning facility the dry-cleaning solvent surcharge provided for in this section when the solvent is purchased or obtained by the operator and the operator can prove that the operator made full payment of the surcharge to the seller or provider but the seller or provider fails to pay the surcharge to the department as required by this section, then the operator shall not be liable pursuant to this subsection for interest, penalties or the seller's or provider's unpaid surcharge. Such surcharges, penalties and interest shall be collected by the department, and all moneys collected pursuant to this subsection shall be deposited in the dry-cleaning environmental response trust fund.

260.945. SURCHARGES NOT COLLECTED, WHEN. — 1. If the unobligated principal of the fund equals or exceeds five million dollars on April first of any year, the active dry-cleaning facility registration surcharge imposed by section 260.935 and the dry-cleaning solvent surcharge imposed by section 260.940 shall not be collected on or after the next July first until such time as on April first of any year thereafter the unobligated principal balance of the fund equals two million dollars or less, then the active dry-cleaning facility registration surcharge imposed by section 260.935 and the dry-cleaning solvent surcharge imposed by section 260.940 shall again be collected on and after the next July first.

2. Not later than April fifth of each year, the state treasurer shall notify the department of the amount of the unobligated balance of the fund on April first of such year. Upon receipt of the notice, the department shall notify the public if the active dry-cleaning facility registration surcharge imposed by section 260.935 and the dry-cleaning solvent surcharge imposed by section 260.940 will terminate or be payable on the following July first.

3. Moneys in the fund shall not be expended pursuant to sections 260.900 to 260.960 prior to July 1, 2002.

260.960. RULEMAKING. — 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.] **the effective date of this act** shall be invalid and void.

260.965. EXPIRATION DATE. — **The provisions of sections 260.900 to 260.965 shall expire August 28, 2012.**

SECTION B. EMERGENCY CLAUSE. — Because immediate action is necessary to enable the promulgation of regulations to implement this act and to preserve the environment, 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 July 6, 2005

SB 174 [HCS SB 174]

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 state to convey land to the Regional West Fire Protection District

AN ACT to authorize the conveyance of property owned by the state in Cole County to the Regional West Fire District, with an emergency clause.

SECTION

1. Conveyance of state property in Cole County to the Regional West Fire District.
- B. Emergency clause.

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

SECTION 1. CONVEYANCE OF STATE PROPERTY IN COLE COUNTY TO THE REGIONAL WEST FIRE DISTRICT, WITH AN EMERGENCY CLAUSE. — **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 Cole County to the Regional West Fire District. The property to be conveyed is more particularly described as follows:**

Part of the Southwest Quarter of Section 13, Township 45 North, Range 13 West, Cole County, Missouri, more particularly described as follows:

From the southeast corner of the West Half of the Southwest Quarter of said Section 13; thence N1°10'35"E, along the Quarter Quarter Section line, 1071.37 feet to the POINT OF BEGINNING for this description; thence S38°35'30"W, 113.29 feet; thence N51°24'30"W, 348.48 feet; thence N38°35'30"E, 250.00 feet to a point on the southerly right-of-way line of Missouri State Route 179; thence S51°24'30"E, along the southerly line of said right-of-way, 348.48 feet; thence S38°35'30"W, 136.71 feet to the point of beginning.

Containing 2.0 Acres.

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 B. EMERGENCY CLAUSE. — Because of the urgent need to provide adequate fire protection for certain citizens in the state of Missouri, 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 22, 2005

SB 176 [SB 176]

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 elections in Cole County and the City of Poplar Bluff

AN ACT to repeal section 57.080, RSMo, and to enact in lieu thereof two new sections relating to political subdivision elections, with an emergency clause and an expiration date.

SECTION

- A. Enacting clause.
- 57.080. Vacancy in office, how filled — private person may execute process, when — sheriff vacancy, Cole County, expiration date.
- 94.1012. Economic development sales tax (Poplar Bluff) — ballot language — rate of tax — revenue from tax deposited in the local economic development sales tax fund.
- B. Emergency clause.

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

SECTION A. ENACTING CLAUSE. — Section 57.080, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 57.080 and 94.1012, to read as follows:

57.080. VACANCY IN OFFICE, HOW FILLED — PRIVATE PERSON MAY EXECUTE PROCESS, WHEN — SHERIFF VACANCY, COLE COUNTY, EXPIRATION DATE. — **1.** Whenever from any cause the office of sheriff becomes vacant, the same shall be filled by the county commission; if such vacancy happens more than nine months prior to the time of holding a general election, such county commission shall immediately order a special election to fill the same, and the person by it appointed shall hold said office until the person chosen at such election shall be duly qualified; otherwise the person appointed by such county commission shall hold office until the person chosen at such general election shall be duly qualified; but while such vacancy continues, any writ or process directed to the said sheriff and in such sheriff's hands at the time such vacancy occurs, remaining unexecuted, and any writ or process issued after such vacancy, may be served by any person selected by the plaintiff, the plaintiff's agent or attorney, at the risk of such plaintiff; and the clerk of any court out of which such writ or process shall issue shall endorse on such writ or process the authority to such person to execute and return the same, and shall state on such endorsement that the authority thus given is "at the request and risk of the plaintiff", and the person so named in said writ or process may proceed to execute and return said process, as sheriffs are by the law required to do. Such election shall be held on or before the tenth Tuesday after the vacancy occurs. Upon the occurrence of such vacancy, it shall be the duty of the presiding commissioner of the county commission, if such commission be not then in session, to call a special term thereof, and cause said election to be held.

2. Notwithstanding the provisions of this section to the contrary, if a vacancy occurs in the office of the sheriff in any county of the first classification with more than seventy-one thousand three hundred but fewer than seventy-one thousand four hundred inhabitants, the election to fill such vacancy shall be held on the general municipal election day as provided for in section 115.121, RSMo. The provisions of this subsection shall expire on June 1, 2005.

94.1012. ECONOMIC DEVELOPMENT SALES TAX (POPLAR BLUFF) — BALLOT LANGUAGE — RATE OF TAX — REVENUE FROM TAX DEPOSITED IN THE LOCAL ECONOMIC DEVELOPMENT SALES TAX FUND. — **1.** The governing body of any city of the third classification with more than sixteen thousand six hundred but fewer than sixteen thousand seven hundred inhabitants may impose, by ordinance or order, an economic development sales tax on all retail sales which are subject to taxation pursuant to the

provisions of sections 144.010 to 144.525, RSMo, for the purpose of funding economic development. For the purposes of this section, the term "economic development" shall mean funding any economic development project approved by the voters, including a transportation corporation, as defined in sections 238.300 to 238.367, RSMo. The tax authorized by this section shall be in addition to any and all other sales taxes allowed by law. The ordinance or order shall become effective after the governing body of the city shall submit to the voters of that city a proposal to authorize the tax.

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

Shall the city of (name of city) impose a sales tax of (insert rate) for the purpose of funding economic development in order to fund a (description of economic development project to be approved); provided that, the sales tax shall terminate upon the payment of all bonds issued to complete the (description of economic development project to be approved)? There is no guarantee of any state funding.

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 voting thereon are in favor of the proposal, then the ordinance or order shall be in effect, beginning the first day of the second calendar quarter following its adoption or a later date if authorized by the governing body. If the governing body has not authorized the initial collection of the tax pursuant to such ordinance or order within three years after the date of the passage of the proposal, authorization for the governing body to impose such tax shall expire. If a majority of the votes cast by the qualified voters voting are opposed to the proposal, then the governing body of the city shall have no power to impose the sales tax authorized in this section unless and until the governing body of the city shall again have submitted another such proposal and the proposal is approved by the requisite majority of the qualified voters voting thereon. However, in no event shall a proposal pursuant to this section be submitted to the voters sooner than twelve months from the date of the last proposal submitted pursuant to this section.

3. After the effective date of any tax imposed pursuant to the provisions of this section, the director of revenue shall perform all functions incident to the administration, collection, enforcement and operation of the tax in the same manner as provided in sections 94.500 to 94.550, and the director of revenue shall collect in addition to the sales tax for the state of Missouri the additional tax authorized pursuant to the authority of this section. The tax imposed pursuant to this section and the tax imposed pursuant to the sales tax law of the state of Missouri shall be collected together and reported upon such forms and pursuant to such administrative rules and regulations as may be prescribed by the director of revenue. Except as modified in this section, all provisions of sections 32.085 and 32.087, RSMo, shall apply to the tax imposed pursuant to this section.

4. The economic development sales tax may be approved at a rate of one-half of one percent of the receipts from the sale at retail of all tangible personal property and taxable services at retail within any city 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.

5. All revenue generated from the tax authorized pursuant to the provisions of this section, less one percent for the cost of collection which shall be deposited in the general revenue fund, shall be deposited into the "Local Economic Development Sales Tax Fund", which is hereby created in the state treasury. The fund moneys shall be distributed to the city from which the revenue was generated for the sole purpose of funding economic development, as that term is defined in this section. The tax authorized by this section shall terminate as approved by the voters.

SECTION B. EMERGENCY CLAUSE. — Because of the need to save taxpayers' money by allowing an election at the regularly scheduled election in April instead of holding a special election on another date and to expedite the completion of certain transportation projects, 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 February 1, 2005

SB 177 [CCS HCS SB 177]

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

Modifies a number of provisions regarding professional registration

AN ACT to repeal sections 105.712, 256.468, 329.050, 334.735, 337.600, 337.603, 337.615, 337.618, 337.653, 344.040, 436.218, and 621.045, RSMo, and to enact in lieu thereof nineteen new sections relating to professional registration.

SECTION

- A. Enacting clause.
- 105.712. Dental primary care and preventative health services.
- 190.550. Schedule of fees established, rules — collection and deposit.
- 256.468. Application for certification, contents, requirements — examination required — geologist-registrant in-training, designation — board, powers and duties.
- 329.050. Applicants for examination or licensure — qualifications.
- 332.302. Definitions.
- 332.303. Dental hygienist distance learning committee established, members.
- 332.304. Duties of the dental hygienist distance learning committee.
- 332.305. Dissolution of the dental hygienist distance learning committee.
- 332.312. Distance dental hygienist education program to be established by department of economic development — distance dental hygienist education program defined.
- 334.735. Definitions — scope of practice — prohibited activities — board of healing arts to administer licensing program — supervision agreements — duties and liability of physicians.
- 337.600. Definitions.
- 337.603. License required — exemptions from licensure.
- 337.615. Education, experience requirements — reciprocity.
- 337.618. License expiration, renewal, fees, continuing education requirements.
- 337.653. Baccalaureate social workers, license required, permitted activities.
- 344.040. License renewal, application for, fee — late renewal, effect — additional disciplinary action authorized, when.
- 436.218. Definitions.
- 621.045. Commission to conduct hearings, make determinations — boards included — settlement agreements.
 - 1. Board of pharmacy, salary schedule for employees to be established.

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

SECTION A. ENACTING CLAUSE. — Sections 105.712, 256.468, 329.050, 334.735, 337.600, 337.603, 337.615, 337.618, 337.653, 344.040, 436.218, and 621.045, RSMo, are repealed and nineteen new sections enacted in lieu thereof, to be known as sections 105.712, 190.550, 256.468, 329.050, 332.302, 332.303, 332.304, 332.305, 332.312, 334.735, 337.600, 337.603, 337.615, 337.618, 337.653, 344.040, 436.218, 621.045, and 1, to read as follows:

105.712. DENTAL PRIMARY CARE AND PREVENTATIVE HEALTH SERVICES. — Dental primary care and preventive health services as authorized in section 105.711 shall include

examinations, cleaning, fluoride treatment, application of sealants, placement of basic restorations **extractions**, and emergency treatment to relieve pain.

190.550. SCHEDULE OF FEES ESTABLISHED, RULES — COLLECTION AND DEPOSIT. —

1. The department of health and senior services shall by rule establish a schedule of fees to be paid by applicants for specific licensure or accreditation under sections 190.001 to 190.250 and sections 190.525 to 190.537; except that, such fee shall not be imposed for specific licensure or accreditation of persons employed by volunteer ambulance services. 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, 2005, shall be invalid and void.

2. All fees imposed under this section shall be collected by the department and deposited in the Missouri public health services fund established in section 192.900, RSMo. Moneys in the fund deposited under this section shall be used upon appropriation by the general assembly for the purpose of implementing the provisions of sections 190.001 to 190.250 and sections 190.525 to 190.537. Notwithstanding the provisions of section 33.080, RSMo, moneys deposited to the credit of the fund under this section shall not revert to the credit of general revenue at the end of the biennium.

256.468. APPLICATION FOR CERTIFICATION, CONTENTS, REQUIREMENTS — EXAMINATION REQUIRED — GEOLOGIST-REGISTRANT IN-TRAINING, DESIGNATION — BOARD, POWERS AND DUTIES. — 1. An applicant for certification as a registered geologist shall complete and sign a personal data form, prescribed and furnished by the board, and shall provide the appropriate application fee. The personal data of an individual shall be considered confidential information.

2. The applicant shall have graduated from a course of study satisfactory to the board and which includes at least thirty semester or forty-five quarter hours of credit in geology.

3. The applicant shall provide to the board a detailed summary of actual geologic work, documenting that the applicant meets the minimum requirements for registration as a geologist, including a demonstration that the applicant has at least three years of postbaccalaureate experience in the practice of geology.

4. Except as provided in this section, no applicant shall be certified unless he **or she shall have passed an examination covering the fundamentals, principles and practices of geology prescribed or accepted by the board.**

5. [The examination requirement of subsection 4 of this section shall be waived for those persons who were practicing geology on August 28, 1994, provided that application is made on or before October 1, 1995, and all applicable fees have been paid. All other requirements of sections 256.450 to 256.483 must be satisfied.

6. The examination requirement of subsection 4 of this section and the course of study requirement of subsection 2 of this section shall be waived for persons who meet the following conditions:

(1) Are licensed professional engineers in accordance with the provisions of sections 327.181 to 327.261, RSMo;

(2) Has provided the board a summary of the actual geologic work demonstrating that the applicant has at least ten years of competent postbaccalaureate experience in the practice of geology;

(3) Have made timely application and paid the applicable fees as provided in subsection 5 of this section; and

(4) Had their application denied by the board solely for failure to meet the course of study requirements as provided in subsection 2 of this section.

7.] Any person, upon application to the board and demonstration that the person meets the requirements of subsections 1 and 2 of this section and has passed that portion of the professional examination covering the fundamentals of geology, shall be awarded the geologist-registrant in-training certificate. The geologist then may use the title "geologist-registrant in-training" subject to the limitations of sections 256.450 to 256.483.

[8.] **6.** The board shall deny registration to an applicant who fails to satisfy the requirements of this section. The board shall not issue a certificate of registration pending the disposition in this or another state of any complaint alleging a violation of this chapter or the laws, rules, regulations and code of professional conduct applicable to registered geologists and regulated geologic work of which violation the board has notice. An applicant who is denied registration shall be notified in writing within thirty days of the board's decision and the notice shall state the reason for denial of registration. Any person aggrieved by a final decision of the board on an application for registration may appeal that decision to the administrative hearing commission in the manner provided in section 621.120, RSMo.

[9.] **7.** The board shall issue an appropriate certificate evidencing the issuance of the certificate of registration upon payment of the applicable registration fee to any applicant who has satisfactorily met all the requirements of this section for registration as a geologist. Such certificate shall show the full name of the registrant, shall have a serial number, and shall be dated and signed by an appropriate officer of the board under the seal of the board.

[10.] **8.** The certificate seal shall be prima facie evidence that the person named therein is entitled to all rights and privileges of a registered geologist under sections 256.450 to 256.483 and to practice geology as an individual, firm or corporation while such certificate remains unrevoked or unexpired.

[11.] **9.** The board may issue a certificate of registration to any individual who has made application and provided proof of certification of registration from another state nongovernmental or governmental organization, or country, approved by the board, provided that the registration or licensing requirements are substantially similar to the requirements of this section and the necessary fees have been paid. The board may require, by examination or other procedures, demonstration of competency pertaining to geologic conditions in Missouri.

[12.] **10.** The board shall reissue the certificate of registration of any registrant who, before the expiration date of the certificate and within a period of time and procedures established by the board, submits the required renewal application and fee.

[13.] **11.** The board, by rule, may establish conditions and fees for the reissuing of certificates of registration which have lapsed, expired, or have been suspended or revoked.

[14.] **12.** Registered geologists may purchase from the board, or other approved sources, a seal bearing the registered geologist's name, registration number, and the legend "Registered Geologist".

329.050. APPLICANTS FOR EXAMINATION OR LICENSURE — QUALIFICATIONS. — 1. Applicants for examination or licensure pursuant to this chapter shall possess the following qualifications:

(1) They must be persons of good moral character, have an education equivalent to the successful completion of the tenth grade and be at least seventeen years of age;

(2) If the applicants are apprentices, they shall have served and completed, as an apprentice under the supervision of a licensed cosmetologist, the time and studies required by the board which shall be no less than three thousand hours for cosmetologists, and no less than [seven hundred eighty hours] **eight hundred hours** for manicurists and no less than fifteen hundred hours for esthetics. However, when the classified occupation of manicurist is apprenticed in

conjunction with the classified occupation of cosmetologist, the [apprentices] **apprentice** shall be required to successfully complete [the] **an** apprenticeship of no less than a total of three thousand hours;

(3) If the applicants are students, they shall have had the required time in a licensed school of no less than one thousand five hundred hours training or the credit hours determined by the formula in Subpart A of Part 668 of Section 668.8 of Title 34 of the Code of Federal Regulations, as amended, for the classification of cosmetologist, with the exception of public vocational technical schools in which a student shall complete no less than one thousand two hundred twenty hours training. All students shall complete no less than four hundred hours or the credit hours determined by the formula in Subpart A of Part 668 of Section 668.8 of Title 34 of the Code of Federal Regulations, as amended, for the classification of manicurist. All students shall complete no less than seven hundred fifty hours or the credit hours determined by the formula in Subpart A of Part 668 of Section 668.8 of Title 34 of the Code of Federal Regulations, as amended, for the classification of esthetician. However, when the classified occupation of manicurist is taken in conjunction with the classified occupation of cosmetologist, the student shall not be required to serve the extra four hundred hours or the credit hours determined by the formula in Subpart A of Part 668 of Section 668.8 of Title 34 of the Code of Federal Regulations, as amended, otherwise required to include manicuring of nails; and

(4) They shall have passed an examination to the satisfaction of the board.

2. A person may apply to take the examination required by subsection 1 of this section if the person is a graduate of a school of cosmetology or apprentice program in another state or territory of the United States which has substantially the same requirements as an educational establishment licensed pursuant to this chapter. **A person may apply to take the examination required by subsection 1 of this section if the person is a graduate of an educational establishment in a foreign country that provides training for a classified occupation of cosmetology, as defined by section 329.010, and has educational requirements that are substantially the same requirements as an educational establishment licensed under this chapter. The board has sole discretion to determine the substantial equivalency of such educational requirements. The board may require that transcripts from foreign schools be submitted for its review, and the board may require that the applicant provide an approved English translation of such transcripts.**

3. Each application shall contain a statement that, subject to the penalties of making a false affidavit or declaration, the application is made under oath or affirmation and that its representations are true and correct to the best knowledge and belief of the person signing the application.

4. The sufficiency of the qualifications of applicants shall be determined by the board, but the board may delegate this authority to its executive director subject to such provisions as the board may adopt.

5. For the purpose of meeting the minimum requirements for examination, training completed by a student or apprentice shall be recognized by the board for a period of no more than five years from the date it is received.

332.302. DEFINITIONS. — As used in sections 332.302 to 332.305, the following terms shall mean:

(1) "Committee", the "Dental Hygienist Distance Learning Committee" created under section 332.303;

(2) "Department", the department of economic development;

(3) "Director", the director of the department of economic development.

332.303. DENTAL HYGIENIST DISTANCE LEARNING COMMITTEE ESTABLISHED, MEMBERS. — 1. Subject to appropriations, there is hereby established the "Dental Hygienist Distance Learning Committee". The committee shall consist of six members and

the director of the division of professional registration. The director shall appoint the members of the committee, three of whom shall be dentists licensed under this chapter, and three of whom shall be dental hygienists holding certificates of registration under this chapter.

2. Members of the committee shall not be compensated for their services, but they shall be reimbursed for actual and necessary expenses incurred in the performance of their duties. Each member shall serve until the committee is dissolved under section 332.305. The department shall provide staff to the committee and aid it in the performance of its duties.

332.304. DUTIES OF THE DENTAL HYGIENIST DISTANCE LEARNING COMMITTEE. — The specific duties of the committee shall include the following:

(1) Designing a training program for dental hygienists which allows coursework to be completed off-site from the educational institution, and clinical and didactic training to be delivered in the office of a dentist licensed under this chapter, if such offsite dental office is a part of an accredited dental hygiene program through the Commission on Dental Accreditation of the American Dental Association as an extended campus facility or any other facility approved by the council on dental accreditation;

(2) Developing suggestions for the creation of a contract between the department and an institution of higher education to establish the training program designed under subdivision (1) of this section;

(3) Analyzing issues relating to the curriculum, funding, and administration of the training program designed under subdivision (1) of this section; and

(4) On or before November 1, 2005, delivering to both houses of the general assembly and the governor a report on the training program designed under subdivision (1) of this section and any suggestions developed and analysis made under subdivisions (2) and (3) of this section.

332.305. DISSOLUTION OF THE DENTAL HYGIENIST DISTANCE LEARNING COMMITTEE. — The committee shall dissolve upon delivery of the report required under subdivision (4) of section 332.304.

332.312. DISTANCE DENTAL HYGIENIST EDUCATION PROGRAM TO BE ESTABLISHED BY DEPARTMENT OF ECONOMIC DEVELOPMENT — DISTANCE DENTAL HYGIENIST EDUCATION PROGRAM DEFINED. — 1. As used in this section, "distance dental hygienist education program" shall mean a training program for dental hygienists accredited by the Commission on Dental Accreditation of the American Dental Association that allows didactic and clinical course work to be completed offsite of the educational institution, including a dental facility regulated under this chapter, if such offsite location is a part of an accredited dental hygiene program through the Commission on Dental Accreditation of the American Dental Association as an extended campus facility.

2. The department of economic development shall contract with an institution of higher education, which meets the standards established by the Commission on Dental Accreditation of the American Dental Association, to establish a distance dental hygienist education program.

334.735. DEFINITIONS — SCOPE OF PRACTICE — PROHIBITED ACTIVITIES — BOARD OF HEALING ARTS TO ADMINISTER LICENSING PROGRAM — SUPERVISION AGREEMENTS — DUTIES AND LIABILITY OF PHYSICIANS. — 1. As used in sections 334.735 to 334.749, the following terms mean:

(1) "Applicant", any individual who seeks to become licensed as a physician assistant;

(2) "Certification" or "registration", a process by a certifying entity that grants recognition to applicants meeting predetermined qualifications specified by such certifying entity;

(3) "Certifying entity", the nongovernmental agency or association which certifies or registers individuals who have completed academic and training requirements;

(4) "Department", the department of economic development or a designated agency thereof;

(5) "License", a document issued to an applicant by the department acknowledging that the applicant is entitled to practice as a physician assistant;

(6) "Physician assistant", a person who has graduated from a physician assistant program accredited by the American Medical Association's Committee on Allied Health Education and Accreditation or by its successor agency, who has passed the certifying examination administered by the National Commission on Certification of Physician Assistants and has active certification by the National Commission on Certification of Physician Assistants who provides health care services delegated by a licensed physician. A person who has been employed as a physician assistant for three years prior to August 28, 1989, who has passed the National Commission on Certification of Physician Assistants examination, and has active certification of the National Commission on Certification of Physician Assistants;

(7) "Recognition", the formal process of becoming a certifying entity as required by the provisions of sections 334.735 to 334.749;

(8) "Supervision", control exercised over a physician assistant working within the same office facility of the supervising physician except a physician assistant may make follow-up patient examinations in hospitals, nursing homes and correctional facilities, each such examination being reviewed, approved and signed by the supervising physician. The board shall promulgate rules pursuant to chapter 536, RSMo, for the proximity of practice between the physician assistant and the supervising physician and documentation of joint review of the physician assistant activity by the supervising physician and the physician assistant.

2. The scope of practice of a physician assistant shall consist only of the following services and procedures:

(1) Taking patient histories;

(2) Performing physical examinations of a patient;

(3) Performing or assisting in the performance of routine office laboratory and patient screening procedures;

(4) Performing routine therapeutic procedures;

(5) Recording diagnostic impressions and evaluating situations calling for attention of a physician to institute treatment procedures;

(6) Instructing and counseling patients regarding mental and physical health using procedures reviewed and approved by a licensed physician;

(7) Assisting the supervising physician in institutional settings, including reviewing of treatment plans, ordering of tests and diagnostic laboratory and radiological services, and ordering of therapies, using procedures reviewed and approved by a licensed physician;

(8) Assisting in surgery;

(9) Performing such other tasks not prohibited by law under the supervision of a licensed physician as the physician's assistant has been trained and is proficient to perform;

(10) Physician assistants shall not perform abortions.

3. Physician assistants shall not prescribe nor dispense any drug, medicine, device or therapy independent of consultation with the supervising physician, nor prescribe lenses, prisms or contact lenses for the aid, relief or correction of vision or the measurement of visual power or visual efficiency of the human eye, nor administer or monitor general or regional block anesthesia during diagnostic tests, surgery or obstetric procedures. Prescribing and dispensing of drugs, medications, devices or therapies by a physician assistant shall be pursuant to a physician assistant supervision agreement which is specific to the clinical conditions treated by the supervising physician and the physician assistant shall be subject to the following:

(1) A physician assistant shall not prescribe controlled substances;

(2) The types of drugs, medications, devices or therapies prescribed or dispensed by a physician assistant shall be consistent with the scopes of practice of the physician assistant and the supervising physician;

(3) All prescriptions shall conform with state and federal laws and regulations and shall include the name, address and telephone number of the physician assistant and the supervising physician;

(4) A physician assistant or advanced practice nurse as defined in section 335.016, RSMo, may request, receive and sign for noncontrolled professional samples and may distribute professional samples to patients;

(5) A physician assistant shall not prescribe any drugs, medicines, devices or therapies the supervising physician is not qualified or authorized to prescribe; and

(6) A physician assistant may only dispense starter doses of medication to cover a period of time for seventy-two hours or less.

4. A physician assistant shall clearly identify himself or herself as a physician assistant and shall not use or permit to be used in the physician assistant's behalf the terms "doctor", "Dr." or "doc" nor hold himself or herself out in any way to be a physician or surgeon. No physician assistant shall practice or attempt to practice without physician supervision or in any location where the supervising physician is not immediately available for consultation, assistance and intervention, except in an emergency situation, nor shall any physician assistant bill a patient independently or directly for any services or procedure by the physician assistant.

5. [The physician assistant shall be a person who is a graduate of a physician assistant program accredited by the American Medical Association's Committee on Allied Health Education and Accreditation or its successor or is certified by a national nongovernmental agency or association, who has passed the National Commission on Certification of Physician Assistants examination and has active certification by the National Commission on Certification of Physician Assistants or its successor. A person who has been employed as a physician assistant for three years prior to August 28, 1989, and has passed the National Commission on Certification of Physician Assistants examination shall be deemed to have met the academic requirements necessary for licensing.

6.] For purposes of this section, the licensing of physician assistants shall take place within processes established by the state board of registration for the healing arts through rule and regulation. The board of healing arts is authorized to establish rules pursuant to chapter 536, RSMo, establishing licensing and renewal procedures, supervision, supervision agreements, fees, and addressing such other matters as are necessary to protect the public and discipline the profession. An application for licensing may be denied or the license of a physician assistant may be suspended or revoked by the board in the same manner and for violation of the standards as set forth by section 334.100, or such other standards of conduct set by the board by rule or regulation. Persons licensed pursuant to the provisions of chapter 335, RSMo, shall not be required to be licensed as physician assistants.

[7.] **6.** "Physician assistant supervision agreement" means a written agreement, jointly agreed upon protocols or standing order between a supervising physician and a physician assistant, which provides for the delegation of health care services from a supervising physician to a physician assistant and the review of such services.

[8.] **7.** When a physician assistant supervision agreement is utilized to provide health care services for conditions other than acute self-limited or well-defined problems, the supervising physician or other physician designated in the supervision agreement, shall see the patient for evaluation and approve or formulate the plan of treatment for new or significantly changed conditions as soon as practical, but in no case more than two weeks after the patient has been seen by the physician assistant.

[9.] **8.** At all times the physician is responsible for the oversight of the activities of, and accepts responsibility for, health care services rendered by the physician assistant.

337.600. DEFINITIONS. — As used in sections 337.600 to 337.689, the following terms mean:

(1) "Clinical social work", the application of methods, principles, and techniques of case work, group work, client-centered advocacy, community organization, administration, planning, evaluation, consultation, research, psychotherapy and counseling methods and techniques to persons, families and groups in assessment, diagnosis, treatment, prevention and amelioration of mental and emotional conditions;

(2) "Department", the Missouri department of economic development;

(3) "Director", the director of the division of professional registration in the department of economic development;

(4) "Division", the division of professional registration;

(5) **"Independent practice", any practice of social workers outside of an organized setting such as a social, medical, or governmental agency in which a social worker assumes responsibility and accountability for services required;**

(6) "Licensed clinical social worker", any person who offers to render services to individuals, groups, organizations, institutions, corporations, government agencies or the general public for a fee, monetary or otherwise, implying that the person is trained, experienced, and licensed as a clinical social worker, and who holds a current, valid license to practice as a clinical social worker;

[(6)] (7) "Practice of clinical social work", rendering, offering to render, or supervising those who render to individuals, couples, groups, organizations, institutions, corporations, or the general public any service involving the application of methods, principles, and techniques of clinical social work;

[(7)] (8) "Provisional licensed clinical social worker", any person who is a graduate of an accredited school of social work and meets all requirements of a licensed clinical social worker, other than the supervised clinical social work experience prescribed by subdivision (2) of subsection 1 of section 337.615, and who is supervised by a person who is qualified to practice clinical social work, as defined by rule;

[(8)] (9) "Social worker", any individual that has:

(a) Received a baccalaureate or master's degree in social work from an accredited social work program approved by the council on social work education;

(b) Received a doctorate or Ph.D. in social work; or

(c) A current baccalaureate or clinical social worker license as set forth in sections 337.600 to 337.689.

337.603. LICENSE REQUIRED — EXEMPTIONS FROM LICENSURE. — No person shall use the title of "licensed clinical social worker", "clinical social worker" or "provisional licensed clinical social worker" and engage in the practice of clinical social work in this state unless the person is licensed as required by the provisions of sections 337.600 to 337.639. Only individuals who are licensed clinical social workers shall practice **clinical** social work [as an independent practice]. Sections 337.600 to 337.639 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 committee to practice any other occupation or profession while rendering services similar in nature to clinical social work in the performance of the occupation or profession which the person is registered, certificated, or licensed; and

(2) The practice of any social worker who is employed by any agency or department of the state of Missouri while discharging the person's duties in that capacity.

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] **completed three thousand hours** of supervised clinical experience **with a licensed clinical social worker** acceptable to the committee, as defined by rule, **in no less than twenty-four months and no more than forty-eight consecutive calendar months;**

(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. 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)] **(2)** 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.

337.618. LICENSE EXPIRATION, RENEWAL, FEES, CONTINUING EDUCATION REQUIREMENTS. — Each license issued pursuant to the provisions of sections 337.600 to 337.639 shall expire on a renewal date established by the director. The term of licensure shall be twenty-four months[; however, the director may establish a shorter term for the first licenses issued pursuant to sections 337.600 to 337.639 in accordance with the provisions of subsection 14 of section 620.010, RSMo]. The committee [may] **shall** require [a specified number] **a minimum number of thirty clock hours** of continuing education [units] for renewal of a license issued pursuant to sections 337.600 to 337.639. The committee shall renew any license, **other than a provisional license**, upon application for a renewal, completion of [any] **the** required continuing education **hours** and upon payment of the fee established by the committee pursuant to the provisions of section 337.612. **As provided by rule, the board may waive or extend the time requirements for completion of continuing education for reasons related to health, military service, foreign residency, or for other good cause. All requests for**

waivers or extensions of time shall be made in writing and submitted to the board before the renewal date.

337.653. BACCALAUREATE SOCIAL WORKERS, LICENSE REQUIRED, PERMITTED ACTIVITIES. — 1. No person shall use the title of "licensed baccalaureate social worker" or "provisional licensed baccalaureate social worker" and engage in the practice of baccalaureate social work in this state unless the person is licensed as required by the provisions of sections 337.650 to 337.689.

2. A licensed baccalaureate social worker [may] **shall be deemed qualified to practice the following:**

(1) Engage in [psychosocial] assessment and evaluation **from a generalist perspective**, excluding the diagnosis and treatment of mental illness and emotional disorders;

(2) Conduct basic data gathering of records and social problems of individuals, groups, families and communities, assess such data, and formulate and implement a plan to achieve specific goals;

(3) Serve as an advocate for clients, families, groups or communities for the purpose of achieving specific goals;

(4) Counsel, excluding psychotherapy; **however, counseling shall be defined as providing support, direction, and guidance to clients by assisting them in successfully solving complex social problems;**

(5) Perform crisis intervention, screening and resolution, excluding the use of psychotherapeutic techniques;

(6) Be a community supporter, organizer, planner or administrator for a social service program;

(7) Conduct crisis planning ranging from disaster relief planning for communities to helping individuals prepare for the death or disability of family members;

(8) Inform and refer clients to other professional services;

(9) Perform case management and outreach, including but not limited to planning, managing, directing or coordinating social services; and

(10) Engage in the training and education of social work students from an accredited institution and supervise other licensed baccalaureate social workers.

3. A licensed baccalaureate social worker [shall not] **may** engage in the [private] **independent** practice of [clinical] **baccalaureate** social work **as defined in subdivision (6) of section 337.650 and subdivisions (1) to (10) of subsection 2 of this section.**

344.040. LICENSE RENEWAL, APPLICATION FOR, FEE — LATE RENEWAL, EFFECT — ADDITIONAL DISCIPLINARY ACTION AUTHORIZED, WHEN. — 1. Every license issued under this chapter shall expire on June thirtieth of the year **following the year** of issuance and [each] **every other** year thereafter, **provided that licenses issued or renewed during the year 2006 may be issued or renewed by the board for a period of either one or two years, as provided by rule.** Licensees seeking renewal shall, during the month of May of [each] **the year of renewal**, file an application for renewal on forms furnished by the board, which shall include evidence satisfactory to the board of completion of the approved continuing education hours required by the board, and shall be accompanied by a renewal fee [of fifty dollars] **as provided by rule** payable to the [director] **department** of [revenue] **health and senior services.**

2. Upon receipt of an incomplete application for renewal, the board shall grant the applicant a temporary permit which shall be in effect for thirty days. The applicant is required to submit the required documentation or fee within the thirty-day period, or the board may refuse to renew his application. The thirty-day period can be extended for good cause shown for an additional thirty days. Upon receipt of the approved continuing education credits or other required documentation or fee within the appropriate time period, the board shall issue [an annual] **a** license.

3. The board shall renew the license of an applicant who has met all of the requirements for renewal.

4. As a requirement for renewal of license, the board may require not more than forty-eight clock hours of continuing education a year. The continuing education provided for under this section shall be approved by the board. There shall be a separate, nonrefundable fee for each single offering provider. The board shall set the amount of fee for any single offering provided by rules and regulations promulgated pursuant to section 536.021, RSMo. The fee shall be set at a level to produce revenue which shall not substantially exceed the cost and expense in administering and reviewing any single offering.

5. By April first of each year, the board shall mail an application for renewal of license to every person [for whom a] **whose** license [was issued or] **shall be** renewed during the current year. The applicant must submit such information as will enable the board to determine if the applicant's license should be renewed. Information provided in the application shall be given under oath.

6. Any licensee who fails to apply to renew his license by June thirtieth **of the licensee's year of renewal** may be relicensed by the board if he meets the requirements set forth by the board pursuant to sections 344.010 to 344.100 and pays the [fifty-dollar] renewal fee **required by rule**, plus a penalty of twenty-five dollars. No action shall be taken by the board in addition to a penalty of twenty-five dollars imposed by this section against any such licensee whose license has not expired for a period of more than two months, and who has had no action in the preceding five years taken against them by the board, and who has met all other licensure requirements by June thirtieth **of the year of renewal**; provided, however, that nothing in this section shall prevent the board from taking any other disciplinary action against a licensee if there shall exist a cause for discipline pursuant to section 344.050. A person whose license has expired for a period of more than twelve months must meet the requirements set out in section 344.030 for initial licensure.

436.218. DEFINITIONS. — As used in sections 436.215 to 436.272, the following terms mean:

(1) "Agency contract", an agreement in which a student athlete authorizes a person to negotiate or solicit on behalf of the student athlete a professional sports services contract or an endorsement contract;

(2) "Athlete agent", an individual who enters into an agency contract with a student athlete or directly or indirectly recruits or solicits a student athlete to enter into an agency contract. The term does not include a spouse, parent, sibling, grandparent, or guardian of the student athlete or an individual acting solely on behalf of a professional sports team or professional sports organization. The term includes an individual who represents to the public that the individual is an athlete agent;

(3) "Athletic director", an individual responsible for administering the overall athletic program of an educational institution or if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate;

(4) "Contact", a direct or indirect communication between an athlete agent and a student athlete to recruit or solicit the student athlete to enter into an agency contract;

(5) "Director", the director of the division of professional registration;

(6) "Division", the division of professional registration;

(7) "Endorsement contract", an agreement under which a student athlete is employed or receives consideration to use on behalf of the other party any value that the student athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance;

(8) "Intercollegiate sport", a sport played at the collegiate level for which eligibility requirements for participation by a student athlete are established by a national association for the promotion or regulation of collegiate athletics;

(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) "Professional sports services contract", an agreement under which an individual is employed or agrees to render services as a player on a professional sports team, with a professional sports organization, or as a professional athlete;

(11) "Record", information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(12) "Registration", registration as an athlete agent under sections 436.215 to 436.272;

(13) "State", 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;

(14) "Student athlete", [an individual] **a current student** who engages in, **has engaged in**, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. [If an individual is permanently ineligible to participate in a particular intercollegiate sport the individual is not a student athlete for purposes of that sport.]

621.045. COMMISSION TO CONDUCT HEARINGS, MAKE DETERMINATIONS — BOARDS INCLUDED — SETTLEMENT AGREEMENTS. — 1. The administrative hearing commission shall conduct hearings and make findings of fact and conclusions of law in those cases when, under the law, a license issued by any of the following agencies may be revoked or suspended or when the licensee may be placed on probation or when an agency refuses to permit an applicant to be examined upon his qualifications or refuses to issue or renew a license of an applicant who has passed an examination for licensure or who possesses the qualifications for licensure without examination:

Missouri State Board of Accountancy

Missouri Board of Registration for Architects, Professional Engineers and Land Surveyors

Board of Barber Examiners

Board of Cosmetology

Board of Chiropody and Podiatry

Board of Chiropractic Examiners

Missouri Dental Board

Board of Embalmers and Funeral Directors

Board of Registration for the Healing Arts

Board of Nursing

Board of Optometry

Board of Pharmacy

Missouri Real Estate Commission

Missouri Veterinary Medical Board

Supervisor of Liquor Control

Department of Health and Senior Services

Department of Insurance

Department of Mental Health

2. If in the future there are created by law any new or additional administrative agencies which have the power to issue, revoke, suspend, or place on probation any license, then those agencies are under the provisions of this law.

3. Notwithstanding any other provision of this section to the contrary, after August 28, 1995, in order to encourage settlement of disputes between any agency described in subsection 1 **or 2** of this section and its licensees, any such agency shall:

(1) Provide the licensee with a written description of the specific conduct for which discipline is sought and a citation to the law and rules allegedly violated, together with copies of any documents which are the basis thereof **and the agency's initial settlement offer**, or file a contested case against the licensee[, at least thirty days prior to offering the licensee a settlement proposal, and provide the licensee with an opportunity to respond to the allegations];

(2) If no contested case has been filed against the licensee, allow the licensee at least sixty days, from the date of mailing, [during which] to consider the agency's initial settlement offer and **to contact the agency to** discuss the terms of such settlement offer [with the agency];

(3) If no contested case has been filed against the licensee, advise the licensee that the licensee may, either at the time the settlement agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the administrative hearing commission for determination that the facts agreed to by the parties to the settlement constitute grounds for denying or disciplining the license of the licensee; and

(4) In any contact pursuant to this subsection by the agency or its counsel with a licensee who is not represented by counsel, advise the licensee that the licensee has the right to consult an attorney at the licensee's own expense.

4. If the licensee desires review by the administrative hearing commission pursuant to subdivision (3) of subsection 3 of this section at any time prior to the settlement becoming final, the licensee may rescind and withdraw from the settlement and any admissions of fact or law in the agreement shall be deemed withdrawn and not admissible for any purposes under the law against the licensee. Any settlement submitted to the administrative hearing commission shall not be effective and final unless and until findings of fact and conclusions of law are entered by the administrative hearing commission that the facts agreed to by the parties to the settlement constitute grounds for denying or disciplining the license of the licensee.

[5. As to a matter settled prior to August 28, 1995, by consent agreement or agreed settlement, any party to a consent agreement or agreed settlement, other than a state agency, after having received written notice at their last known address known to the agency from the respective licensing agency of a person's rights under this section, shall have six months to file an action in the circuit court of Cole County contesting the authority of any agency described in subsection 1 of this section to enter into such consent agreement or agreed settlement. Any consent agreement or agreed settlement which is not invalidated by the court pursuant to this subsection shall be given full force and effect by all courts and agencies.]

SECTION 1. BOARD OF PHARMACY, SALARY SCHEDULE FOR EMPLOYEES TO BE ESTABLISHED. — Any provision of the law to the contrary notwithstanding, the board of pharmacy shall prepare and maintain an equitable salary schedule for professional staff that are employees of the board. The positions and classification plan for personnel attributed to the inspection of licensed entities within this chapter shall allow for a comparison of such positions with similar positions in adjoining states. Board of pharmacy professional positions shall not be compensated at more than ninety percent parity for corresponding positions within adjoining states for pharmacists employed in those positions.

Approved July 6, 2005

SB 178 [SB 178]

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

Modifies provisions regarding licensing of podiatrists

AN ACT to repeal sections 330.010, 330.020, 330.030, 330.040, 330.045, 330.050, 330.065, 330.070, 330.080, 330.090, 330.100, 330.110, 330.160, 330.180, 330.200, and 330.210, RSMo, and to enact in lieu thereof sixteen new sections relating to podiatrists, with penalty provisions.

SECTION

- A. Enacting clause.
- 330.010. Definitions, ankle surgery, requirements for performing.
- 330.020. Practice of podiatric medicine — license.
- 330.030. Issuance of license — qualifications — examination — fees — reciprocity with other states.
- 330.040. Contents of examination — grading.
- 330.045. Board of podiatric medicine to establish rules for license qualifications.
- 330.050. Form of license — display required.
- 330.065. Temporary license, interns/residents, qualifications — fee.
- 330.070. Renewal of license, application, contents — postgraduate study required — failure to receive renewal form, effect.
- 330.080. License renewal fee, when paid.
- 330.090. Retirement of a person engaged in practice of podiatric medicine.
- 330.100. Establishment of board — meetings.
- 330.110. Board of podiatric medicine — appointment — terms — compensation — qualifications.
- 330.160. Denial, revocation, or suspension of certificate, grounds for.
- 330.180. Chapter not applicable to surgical officers of the army, or certain others.
- 330.200. Evidence of practice.
- 330.210. Fraud, false representation, unlicensed practice — penalty.

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

SECTION A. ENACTING CLAUSE. — Sections 330.010, 330.020, 330.030, 330.040, 330.045, 330.050, 330.065, 330.070, 330.080, 330.090, 330.100, 330.110, 330.160, 330.180, 330.200, and 330.210, RSMo, are repealed and sixteen new sections enacted in lieu thereof, to be known as sections 330.010, 330.020, 330.030, 330.040, 330.045, 330.050, 330.065, 330.070, 330.080, 330.090, 330.100, 330.110, 330.160, 330.180, 330.200, and 330.210, to read as follows:

330.010. DEFINITIONS, ANKLE SURGERY, REQUIREMENTS FOR PERFORMING. — 1. The word "board" whenever used in this chapter means the state board of podiatric medicine.

2. The definitions of the words "podiatrist" or "physician of the foot" shall for the purpose of this section be held to be the diagnosis, medical, physical, or surgical treatment of the ailments of the human foot, with the exception of administration of general anesthetics, or amputation of the foot and with the further exception that the definitions shall not apply to bone surgery on children under the age of one year. The use of such drugs and medicines in the treatment of ailments of the human foot shall not include the treatment of any systemic diseases. For the purposes of this chapter, the term "human foot" includes the ankle and the tendons which insert into the foot as well as the foot. For surgery of the ankle only, the doctor of podiatric medicine licensed pursuant to this chapter shall either be board certified in foot and ankle surgery by the American Board of Podiatric Surgery or shall complete a twenty-four-month **postgraduate clinical** residency in podiatric surgery; provided, however, any newly licensed doctor of podiatric medicine desiring to perform ankle surgery and licensed pursuant to this chapter after January 1, 2005, shall be required to complete a twenty-four-month **postgraduate clinical** residency in podiatric surgery. Nothing in this section shall be construed to prohibit a doctor of podiatric medicine from performing ankle surgery under the direct supervision of a doctor who is authorized to perform surgery of the ankle. Surgical treatment of the ankle by a doctor of podiatric medicine shall be performed only in a licensed acute care hospital or a licensed ambulatory surgical clinic. A doctor of podiatric medicine performing ankle surgery shall be required to complete the [same annual] **biennial** continuing medical education hourly credit requirements as [provided in section 334.075, RSMo, for a doctor of orthopedic surgery]

established by the state board of podiatric medicine. The doctor of podiatric medicine shall have obtained approval of the physician's credentialing committee of a licensed acute care hospital or a licensed ambulatory surgical clinic.

330.020. PRACTICE OF PODIATRIC MEDICINE — LICENSE. — No one shall practice [podiatry] **podiatric medicine** in this state unless duly licensed [and registered] as provided by law.

330.030. ISSUANCE OF LICENSE — QUALIFICATIONS — EXAMINATION — FEES — RECIPROCITY WITH OTHER STATES. — Any person desiring to practice [podiatry] **podiatric medicine** in this state shall furnish the board with satisfactory proof, including a statement under oath or affirmation that all representations are true and correct to the best knowledge and belief of the person submitting and signing same, subject to the penalties of making a false affidavit or declaration, that he or she is twenty-one years of age or over, and of good moral character, and that he or she has received at least four years of high school training, or the equivalent thereof, and has received a diploma or certificate of graduation from an approved college of [podiatry] **podiatric medicine**, recognized and approved by the board, having a minimum requirement of two years in an accredited college and four years in a recognized college of [podiatry] **podiatric medicine**. Upon payment of the examination fee, and making satisfactory proof as aforesaid, the applicant shall be examined by the board, or a committee thereof, under such rules and regulations as said board may determine, and if found qualified, shall be licensed, upon payment of the license fee, to practice [podiatry] **podiatric medicine** as [registered] **licensed**; provided, that the board shall, under regulations established by the board, admit without examination legally qualified practitioners of [podiatry] **podiatric medicine** who hold [certificates] **licenses** to practice [podiatry] **podiatric medicine** in any state or territory of the United States or the District of Columbia or any foreign country with equal educational requirements to the state of Missouri upon the applicant paying a fee equivalent to the license and examination fees required above.

330.040. CONTENTS OF EXAMINATION — GRADING. — Examinations shall be in the English language, and shall be written, oral, or clinical, or a combination of two or more of the said methods as the board shall determine and provide by rule. **The examination will consist of the examination offered by the National Board of Podiatric Medical Examiners, as well as an examination of applicable Missouri statutes and regulations which shall be promulgated or approved by the board.** The examination shall embrace the subjects of anatomy, physiology, chemistry, bacteriology, surgery, histology, pathology, diagnosis and treatment, materia medica and therapeutics as these subjects relate to antiseptics and [anaesthetics] **anesthetics**, and clinical [podiatry] **podiatric medicine**, but said examinations shall be so limited in their scope as to cover only the minimum requirements for [podiatry] **podiatric medical** education as herein provided, and shall not be construed to require of the applicant a medical or surgical education other than deemed necessary for the practice of [podiatry] **podiatric medicine**. The board shall by rule and regulation prescribe the standard for successful completion of the examination.

330.045. BOARD OF PODIATRIC MEDICINE TO ESTABLISH RULES FOR LICENSE QUALIFICATIONS. — Every applicant for a permanent license as a podiatrist shall provide the state board of [podiatry] **podiatric medicine** with satisfactory evidence of having successfully completed such postgraduate training in hospitals and such other clinical and surgical settings as the board may prescribe by rule.

330.050. FORM OF LICENSE — DISPLAY REQUIRED. — 1. Upon due application therefor and upon submission by such person of evidence satisfactory to the board that such person is

licensed to practice [podiatry] **podiatric medicine** in this state, and upon the payment of the fees required to be paid by this chapter, the board shall cause to be issued to such applicant a [certificate of registration] **license**, which [certificate] **license** shall recite that the person therein named is duly registered for the period specified.

2. Such [certificate of registration] **license** shall contain the name of the person to whom it is issued and the office address [and residence address] of such person, the date and number of the license issued to such person to practice [podiatry] **podiatric medicine**.

3. Every person practicing [podiatry] **podiatric medicine** shall, upon receiving such [certificate] **license**, cause the same to be conspicuously displayed at all times in every office maintained by such person or in which he practices [podiatry] **podiatric medicine** in this state. If such person maintains or practices in more than one office in this state, the board shall, upon the payment of an additional fee to be set by the board, cause to be issued] **issue** to such person a duplicate [certificates of registration] **license** for each office so maintained or in which such person may practice. If such person maintains or practices in more than one office in this state, the board shall, [without an additional fee, cause to be issued] **issue** to such person duplicate renewal [certificates of registration] **licenses** for each office so maintained or in which such person may practice.

4. If any registrant shall change the location of his office during the period for which any [certificate of registration] **license** shall have been issued, such registrant shall, within fifteen days thereafter, notify the board of such change, whereupon he shall be issued, without additional fee, a duplicate [registration] renewal [certificate] **license** for such new location.

330.065. TEMPORARY LICENSE, INTERNS/RESIDENTS, QUALIFICATIONS — FEE. — 1. Any person desiring to serve a period of internship/residency in a Missouri hospital may do so without obtaining a permanent [certificate of registration] **license** from the board if he or she qualifies for and obtains a temporary [certificate of registration] **license** for internship/residency from the board **for a two-year period**.

2. The board shall grant a temporary [certificate of registration] **license** for internship/residency upon proper application if it finds:

(1) That the applicant has graduated from a college of [podiatry] **podiatric medicine** recognized and approved by the board; and

(2) That the applicant has successfully passed an examination of the National Board of [Podiatry] **Podiatric Medical** Examiners or any successor thereof; and

(3) That the internship/residency program the applicant intends to enter is offered by a Missouri hospital accredited by the [American Podiatry Association] **American Podiatric Medical Association**.

3. Any person desiring to obtain a temporary [certificate of registration] **license** shall make application to the board with evidence that he or she meets the requirements of this section. There shall be a fee paid by the applicant for the temporary [certificate of registration] **license**, such fee to be paid upon the issuance of the [certificate] **license**. There shall be an application fee which shall accompany all applications for a temporary [certificate of registration] **license** and shall be nonrefundable.

4. [The temporary certificate of registration for internship/residency may upon approval by the board for good cause shown be renewed for an additional one-year period.] If during the period of internship/residency specified in the temporary [certificate] **license**, the holder thereof shall transfer from the internship/residency program offered by the hospital specified in his or her application, the holder must, before such transfer, receive approval for the transfer from the board. Upon approval of the transfer, the **new** temporary [certificate] **license** shall remain valid for [one year] **a two-year period** from the [date of such transfer] **original date of issuance**.

330.070. RENEWAL OF LICENSE, APPLICATION, CONTENTS — POSTGRADUATE STUDY REQUIRED — FAILURE TO RECEIVE RENEWAL FORM, EFFECT. — 1. The board shall on or

before the first day of the month preceding the [registration] **biennial license** renewal date cause to be mailed to each person licensed to practice [podiatry] **podiatric medicine** in this state, at the last known office or residence address of such person, a blank application form for such person's [registration] **biennial license** renewal.

2. Each person applying for [registration] **biennial license** renewal shall complete the form and return it to the board on or before the renewal date for the licensing period for which the person desires to be registered.

3. Each applicant shall give on the form such applicant's full name[,] **and** the applicant's office [and residence addresses] **address**.

4. Each applicant shall give with the application for [registration] **biennial license renewal** satisfactory evidence of completion of [twelve] **twenty-four** hours of postgraduate study for each [year] **renewal period** since the last issuance or renewal of the license. The postgraduate study required shall be that presented by a college of [podiatry] **podiatric medicine** accredited by the American [Podiatry] **Podiatric Medical** Association or a course of study approved by the board.

5. Failure of the registrant to receive the renewal form shall not relieve any registrant of the duty to register and pay the fee required by this chapter nor exempt any such person from the penalties provided by this chapter for failure to register.

330.080. LICENSE RENEWAL FEE, WHEN PAID. — Each applicant for [registration] **biennial license renewal** under this chapter shall accompany the application for [registration] **biennial license renewal** with a [registration] **biennial renewal** fee to be paid to the director of revenue for the licensing period for which [registration] **licensure** is sought. If said application be filed and said fee paid after the **biennial** renewal date, there shall be a late fee in addition to the [registration] **biennial license renewal** fee; provided, however, that whenever in the opinion of the board the applicant's failure to [register] **renew the license** was caused by extenuating circumstances including illness of the applicant, as defined by rule, the late fee may be waived by such board, and provided further, that whenever any license is granted to any person to practice [podiatry] **podiatric medicine** under the provisions of this chapter, the board shall upon application therefor cause to be issued to such licensee a [certificate of registration] **biennial license renewal** covering the period from the date of the issuance of such license to the next [registration] **biennial license** renewal date without the payment of [any] **the late** fee.

330.090. RETIREMENT OF A PERSON ENGAGED IN PRACTICE OF PODIATRIC MEDICINE. — Any person licensed to practice [podiatry] **podiatric medicine** in this state who has retired or may hereafter retire from such practice shall not be required to register as required by this chapter, provided such person shall file with the board an affidavit which states the date on which the person retired from the practice of [podiatry] **podiatric medicine** and such other facts as shall tend to verify the person's retirement as the board deems necessary; provided, however, that if such person thereafter reengage in the practice of [podiatry] **podiatric medicine**, the person shall [register] **reapply** with the board as provided by [this chapter] **section 330.030**. **The retired applicant will be required to submit evidence of satisfactory completion of the applicable continuing education requirements as well as submitting the licensing, processing, and administration fees established by the board.**

330.100. ESTABLISHMENT OF BOARD — MEETINGS. — There is hereby created and established a "State Board of Podiatric Medicine" for the purpose of licensing [and registering] all practitioners of [podiatry] **podiatric medicine** in this state, which board shall have such other powers and duties as are provided by this chapter. The board shall meet annually and at such other times and places as a majority of the board shall designate.

330.110. BOARD OF PODIATRIC MEDICINE — APPOINTMENT — TERMS — COMPENSATION — QUALIFICATIONS. — 1. The board shall be composed of five members

including one voting public member, to be appointed by the governor with the advice and consent of the senate. Vacancies on the board shall be filled in like manner. The term of office of each member shall be four years. Each member of the board shall receive as compensation an amount set by the board not to exceed [fifty] **seventy** dollars for each day devoted to the affairs of the board, and shall be entitled to reimbursement of the member's expenses necessarily incurred in the discharge of the member's official duties. All members of the board, except the public member, shall be doctors of surgical [podiatry] **podiatric medicine** duly registered and licensed pursuant to the laws of this state, shall be United States citizens, shall have been residents of this state for at least one year next preceding their appointment and shall have been engaged in the lawful and ethical practice of [podiatry] **podiatric medicine** for a period of not less than five years. Not more than two of the podiatrists shall belong to the same political party. Members of the board shall not be directly or indirectly interested in any [podiatry] **podiatric medical** college or the [podiatry] **podiatric medical** department of any institution of higher learning or in any [podiatry] **podiatric medical** supply or shoe business. The president of the Missouri Podiatric Medical Association in office at the time shall, at least ninety days prior to the expiration of the term of a board member, other than the public member, or as soon as feasible after a vacancy on the board otherwise occurs, submit to the director of the division of professional registration a list of five doctors of surgical [podiatry] **podiatric medicine** 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 Podiatric Medical Association shall include in his or her letter of transmittal a description of the method by which the names were chosen by that association.

2. The public member shall be at the time of the member's 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 this chapter 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 this chapter, or an activity or organization directly related to any profession licensed or regulated pursuant to this chapter. 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. All members on the state board of podiatry on August 28, 1995, shall automatically become members of the state board of podiatric medicine.]

330.160. DENIAL, REVOCATION, OR SUSPENSION OF CERTIFICATE, GROUNDS FOR. — 1. The board may refuse to issue any certificate of registration or authority, permit or license required pursuant to this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of the applicant's 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 certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, 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 under 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 for any offense involving moral turpitude, whether or not sentence is imposed;

(3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of registration or authority, 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;

(5) Incompetency, misconduct, repeated negligence, gross negligence, fraud, misrepresentation or dishonesty in the performance of 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 of any lawful rule or regulation adopted pursuant to this chapter;

(7) Impersonation of any person holding a certificate of registration or authority, permit or license or allowing any person to use his or her certificate of registration or authority, 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 granted by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state;

(9) A person is finally adjudged insane or incompetent by a court of competent jurisdiction;

(10) Assisting or enabling any person to practice or offer to practice 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 certificate of registration or authority, permit or license based upon a material mistake of fact;

(12) Failure to display a valid certificate or license if so required by this chapter or any rule promulgated hereunder;

(13) Violation of any professional trust or confidence;

(14) Use of any advertisement or solicitation which 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 self-laudatory statement;

(c) Any misleading or deceptive statement offering or promising a free service. Nothing in this paragraph 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;

(d) 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 in this paragraph 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 which exceeds or exaggerates the scope of its supporting documentation, data or evidence is misleading or deceptive;

(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.

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, 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, certificate, or permit] **certificate of registration or authority, permit, or license**.

4. In any order of revocation, the board may provide that the person may not apply for reinstatement of the person's certificate of registration or authority, permit, or license for a period of time ranging from two to seven years following the date of the order of revocation. All stay orders shall toll this time period.

5. Before restoring to good standing a certificate of registration or authority, permit, or license that has been revoked, suspended, or inactive for any cause more than two years, the board may require the applicant to attend such continuing medical education courses and pass such examinations as the board may direct.

330.180. CHAPTER NOT APPLICABLE TO SURGICAL OFFICERS OF THE ARMY, OR CERTAIN OTHERS. — This chapter shall not apply to the commissioned surgical officers of the United States Army, Navy or Marine hospital service when in the actual performance of their official duties, nor to any physician duly registered, nor to any legally registered podiatrist of another state, taking charge of the practice of a legally registered podiatrist of this state temporarily during the latter's absence therefrom upon the written request to the board of said registered podiatrist of this state. This chapter shall further not apply to manufacturers of and dealers in shoes or corrective appliances for deformed feet; provided, however, that such manufacturers and dealers shall not be entitled to practice [podiatry] **podiatric medicine**, as in this chapter defined, unless duly licensed so to do as herein provided.

330.200. EVIDENCE OF PRACTICE. — It shall be deemed prima facie evidence of the practice of [podiatry] **podiatric medicine**, or of holding oneself out as a practitioner within the meaning of this chapter, for any person to treat in any manner the human foot by medical, mechanical, or surgical methods, or to use the title "podiatrist" or "registered podiatrist", or any other words, or letters, which designate, or tend to designate, to the public that the person so treating or holding himself or herself out to treat, is a podiatrist.

330.210. FRAUD, FALSE REPRESENTATION, UNLICENSED PRACTICE — PENALTY. — Any person who shall unlawfully obtain [registration] **licensure** under this chapter, whether by false or untrue statements contained in his or her application to the board by presenting to said board a fraudulent diploma, certificate, or license, or one fraudulently obtained shall be deemed guilty of a class B misdemeanor; and any person not being lawfully authorized to practice [podiatry] **podiatric medicine** in this state and [registered] **licensed** as aforesaid, who shall advertise as a podiatrist, in any form, or hold himself out to the public as a podiatrist or who shall practice as a podiatrist shall be guilty of a class A misdemeanor.

Approved July 6, 2005

SB 179 [SS SCS SB 179]

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

Allows for utility companies to recover costs through alternate rate plans

AN ACT to amend chapter 386, RSMo, by adding thereto one new section relating to cost recovery for utility companies.

SECTION

A. Enacting clause.

386.266. Rate schedules for interim energy charges or periodic rate adjustment — application for approval, procedure — rulemaking authority — effective date — task force to be appointed.

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

SECTION A. ENACTING CLAUSE. — Chapter 386, RSMo, is amended by adding thereto one new section, to be known as section 386.266, to read as follows:

386.266. RATE SCHEDULES FOR INTERIM ENERGY CHARGES OR PERIODIC RATE ADJUSTMENT — APPLICATION FOR APPROVAL, PROCEDURE — RULEMAKING AUTHORITY — EFFECTIVE DATE — TASK FORCE TO BE APPOINTED. — **1.** Subject to the requirements of this section, any electrical corporation may make an application to the commission to approve rate schedules authorizing an interim energy charge, or periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred fuel and purchased power costs, including transportation. The commission may, in accordance with existing law, include in such rate schedules features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased power procurement activities.

2. Subject to the requirements of this section, any electrical, gas, or water corporation may make an application to the commission to approve rate schedules authorizing periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred costs, whether capital or expense, to comply with any federal, state, or local environmental law, regulation, or rule. Any rate adjustment made under such rate schedules shall not exceed an annual amount equal to two and one-half percent of the electrical, gas, or water corporation's Missouri gross jurisdictional revenues, excluding gross receipts tax, sales tax and other similar pass-through taxes not included in tariffed rates, for regulated services as established in the utility's most recent general rate case or complaint proceeding. In addition to the rate adjustment, the electrical, gas, or water corporation shall be permitted to collect any applicable gross receipts tax, sales tax, or other similar pass-through taxes, and such taxes shall not be counted against the two and one-half percent rate adjustment cap. Any costs not recovered as a result of the annual two and one-half percent limitation on rate adjustments may be deferred, at a carrying cost each month equal to the utilities net of tax cost of capital, for recovery in a subsequent year or in the corporation's next general rate case or complaint proceeding.

3. Subject to the requirements of this section, any gas corporation may make an application to the commission to approve rate schedules authorizing periodic rate adjustments outside of general rate proceedings to reflect the non-gas revenue effects of increases or decreases in residential and commercial customer usage due to variations in either weather, conservation, or both.

4. The commission shall have the power to approve, modify, or reject adjustment mechanisms submitted under subsections 1 to 3 of this section only after providing the opportunity for a full hearing in a general rate proceeding, including a general rate proceeding initiated by complaint. The commission may approve such rate schedules after considering all relevant factors which may affect the costs or overall rates and charges of the corporation, provided that it finds that the adjustment mechanism set forth in the schedules:

(1) Is reasonably designed to provide the utility with a sufficient opportunity to earn a fair return on equity;

(2) Includes provisions for an annual true-up which shall accurately and appropriately remedy any over- or under-collections, including interest at the utility's short-term borrowing rate, through subsequent rate adjustments or refunds.

(3) In the case of an adjustment mechanism submitted under subsections 1 and 2 of this section, includes provisions requiring that the utility file a general rate case with the effective date of new rates to be no later than four years after the effective date of the commission order implementing the adjustment mechanism. However, with respect to each mechanism, the four-year period shall not include any periods in which the utility is prohibited from collecting any charges under the adjustment mechanism, or any period for which charges collected under the adjustment mechanism must be fully refunded. In the event a court determines that the adjustment mechanism is unlawful and all moneys collected thereunder are fully refunded, the utility shall be relieved of any obligation under that adjustment mechanism to file a rate case.

(4) In the case of an adjustment mechanism submitted under subsections 1 or 2 of this section, includes provisions for prudence reviews of the costs subject to the adjustment mechanism no less frequently than at eighteen month intervals, and shall require refund of any imprudently incurred costs plus interest at the utility's short-term borrowing rate.

5. Once such an adjustment mechanism is approved by the commission under this section, it shall remain in effect until such time as the commission authorizes the modification, extension, or discontinuance of the mechanism in a general rate case or complaint proceeding.

6. Any amounts charged under any adjustment mechanism approved by the commission under this section shall be separately disclosed on each customer bill.

7. The commission may take into account any change in business risk to the corporation resulting from implementation of the adjustment mechanism in setting the corporation's allowed return in any rate proceeding, in addition to any other changes in business risk experienced by the corporation.

8. In the event the commission lawfully approves an incentive or performance based plan, such plan shall be binding on the commission for the entire term of the plan. This subsection shall not be construed to authorize or prohibit any incentive or performance based plan.

9. Prior to the effective date of this section, the commission shall have the authority to promulgate rules under the provisions of chapter 536, RSMo, as it deems necessary, to govern the structure, content and operation of such rate adjustments, and the procedure for the submission, frequency, examination, hearing and approval of such rate adjustments. Such rules shall be promulgated no later than one hundred fifty days after the initiation of such rulemaking proceeding. Any electrical, gas, or water corporation may apply for any adjustment mechanism under this section whether or not the commission has promulgated any such rules.

10. Nothing contained in this section shall be construed as affecting any existing adjustment mechanism, rate schedule, tariff, incentive plan, or other ratemaking mechanism currently approved and in effect.

11. Each of the provisions of this section is severable. In the event any provision or subsection of this section is deemed unlawful, all remaining provisions shall remain in effect.

12. The provisions of this section shall take effect on January 1, 2006, and the commission shall have previously promulgated rules to implement the application process for any rate adjustment mechanism under this section prior to the commission issuing an order for any rate adjustment.

13. The public service commission shall appoint a task force, consisting of all interested parties, to study and make recommendations on the cost recovery and implementation of conservation and weatherization programs for electrical and gas corporations.

Approved July 14, 2005

SB 182 [HCS SCS SB 182]

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

Requires liquefied petroleum gas dealers to maintain liability insurance

AN ACT to repeal sections 323.020 and 323.060, RSMo, and to enact in lieu thereof three new sections relating to liquefied petroleum gases.

SECTION

- A. Enacting clause.
- 323.020. Director of agriculture to promulgate standards, rulemaking procedure — conformity with national standards.
- 323.060. Retail distributors to be registered — nonresidents to comply — immunity from liability, when — exemptions.
- 323.075. Third-party compensation, financial responsibility to be demonstrated for registration, methods — rulemaking authority.

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

SECTION A. ENACTING CLAUSE. — Sections 323.020 and 323.060, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 323.020, 323.060, and 323.075, to read as follows:

323.020. DIRECTOR OF AGRICULTURE TO PROMULGATE STANDARDS, RULEMAKING PROCEDURE — CONFORMITY WITH NATIONAL STANDARDS. — 1. The director of the department of agriculture shall make, promulgate and enforce regulations setting forth [minimum] general standards covering the design, construction, location, installation and operation of equipment for storing, handling, transporting by tank truck, tank trailer, and utilizing liquefied petroleum gases and specifying the odorization of such gases and the degree thereof. The regulations shall be such as are reasonably necessary for the protection of the health, welfare and safety of the public and persons using such materials, and shall be in substantial conformity with the generally accepted standards of safety concerning the same subject matter. Such regulations shall be adopted by the director of the department of agriculture pursuant to chapter 536, RSMo. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is promulgated under the authority of this chapter, shall become effective only if the agency has fully complied with all of the requirements of chapter 536, RSMo, including but not limited to, section 536.028, RSMo, if applicable, after January 1, 1999. All rulemaking authority delegated prior to January 1, 1999, is of no force and effect and repealed as of January 1, 1999, however nothing in this act shall be interpreted to repeal or affect the validity of any rule adopted and promulgated prior to January 1, 1999. If the provisions of section 536.028, RSMo, apply, the provisions of this section are nonseverable and if any of the powers vested with the general assembly pursuant to section 536.028, RSMo, to review, to delay the effective date, or to disapprove and annul a rule or portion of a rule are held unconstitutional or invalid, the purported grant of rulemaking authority and any rule so proposed and contained in the order of rulemaking shall be invalid and void, except that nothing in this act shall affect the validity of any rule adopted and promulgated prior to January 1, 1999.

2. Except as specifically provided in subsection 1 of section 323.060, regulations in substantial conformity with the published standards of the National Board of Fire Underwriters for the design, installation and construction of containers and pertinent equipment for the storage and handling of liquefied petroleum gases as recommended by the National Fire Protection Association shall be deemed to be in substantial conformity with the generally accepted standards of safety concerning the same subject matter.

323.060. RETAIL DISTRIBUTORS TO BE REGISTERED — NONRESIDENTS TO COMPLY — IMMUNITY FROM LIABILITY, WHEN — EXEMPTIONS. — 1. No person or company shall engage in this state in the business of selling at retail of liquefied petroleum gas[,] or in the business of handling or transportation of liquefied petroleum gas over the highways of this state [or in the business of installing, modifying, repairing, or servicing equipment and appliances for use with liquefied petroleum gas] without having first registered with the director of the department of agriculture. [No person shall engage in this state in the business of selling at retail of liquefied petroleum gas unless such person maintains and operates one or more storage tanks located in the state of Missouri with a combined capacity of at least eighteen thousand gallons, except that such storage capacity requirements shall apply only to businesses engaged in bulk sales of liquefied petroleum.] **Registration must be in the appropriate class as determined by the director.**

2. **No person or company shall engage in this state in the business of installing, modifying, repairing, or servicing equipment and appliances for use with liquefied petroleum gas without having first registered with the director of the department of agriculture. Registration must be in the appropriate classes as determined by the director.**

3. Nonresidents of the state of Missouri desiring to engage in the business of distribution of liquefied petroleum gases at retail, or the business of installing, repairing or servicing equipment and appliances for use of liquefied petroleum gases, shall comply with sections 323.010 to 323.110 and rules and regulations promulgated [thereunder] **hereunder.**

[3.] 4. No person registered pursuant to this section and engaged in this state in the business of selling at retail of liquefied petroleum gas or in the business of handling or transportation of liquefied petroleum gas over the highways of this state shall be liable for actual or punitive civil damages for injury to persons or property that result from any occurrence caused by the installation, modification, repair, or servicing of equipment and appliances for use with liquefied petroleum gas by any other person unless such registered person had received written notification or had other actual knowledge of such installation, modification, repair, or servicing of equipment and appliances and failed to inspect such installation, modification, repair, or servicing of equipment and appliances within thirty days after receipt of such notice or actual knowledge.

[4.] 5. Nothing in this section is intended to limit the liability of any person for any damages that arise directly from the gross negligence or willful or wanton acts of such person.

[5.] 6. All utility operations of public utility companies subject to the safety jurisdiction of the public service commission are exempt from the provisions of this section.

7. **Persons who only sell liquefied petroleum gas in containers having a capacity of fifty pounds or less that have been filled by another person registered under this chapter are exempt from the provisions of this section.**

323.075. THIRD-PARTY COMPENSATION, FINANCIAL RESPONSIBILITY TO BE DEMONSTRATED FOR REGISTRATION, METHODS — RULEMAKING AUTHORITY. — 1. Every person required to be registered under subsection 1 of section 323.060 shall demonstrate financial responsibility for compensating third parties for bodily injury and property damage caused by the release of liquefied petroleum gas. The minimum amount of financial responsibility shall be one million dollars per occurrence with an annual aggregate of two million dollars.

2. A person may demonstrate financial responsibility required in subsection 1 of this section either by self insurance or by being insured in the manner set forth in this section.

3. A registrant may demonstrate financial responsibility by obtaining liability insurance in the required amounts as an endorsement to an existing policy or as a separate policy issued by an insurance company authorized by the department of insurance to transact the business of insurance in the state of Missouri. The endorsement or policy shall include a requirement that the insurance company deliver a copy of any final notice

of cancellation to the department of agriculture at the same time such a notice is provided to the insured. A copy of the certificate of insurance evidencing such coverage shall accompany any original application. The original insurance policy, any relevant endorsements, and the certificate of insurance must be made available upon request for examination and copying by the department of agriculture.

4. The director may promulgate regulations governing acceptable forms of self insurance.

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, 2005, shall be invalid and void.

6. The provisions of this section shall become effective on January 1, 2006.

Approved July 6, 2005

SB 189 [HCS SB 189]

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

Extends certain federal reimbursement allowance and requires Medicaid managed care organizations to pay a reimbursement allowance

AN ACT to repeal sections 198.439, 208.480, and 338.550, RSMo, and to enact in lieu thereof ten new sections relating to the health care provider tax, with an emergency clause.

SECTION

- A. Enacting clause.
- 198.439. Expiration date.
- 208.431. Medicaid managed care organization reimbursement allowance, amount.
- 208.432. Record keeping required, submission to department.
- 208.433. Calculation of reimbursement allowance amount — notification of Medicaid managed care organizations — offset permitted, when.
- 208.434. Amount final, when — protest, procedure.
- 208.435. Rulemaking authority.
- 208.436. Remittance to the department — deposit in dedicated fund.
- 208.437. Reimbursement allowance period — notification of balance due, when — delinquent payments, procedure, basis for denial of licensure — expiration date.
- 208.480. Federal reimbursement allowance to expire September 30, 2006.
- 338.550. Expiration date of tax, when.
- B. Emergency clause.

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

SECTION A. ENACTING CLAUSE. — Sections 198.439, 208.480, and 338.550, RSMo, are repealed and ten new sections enacted in lieu thereof, to be known as sections 198.439, 208.431, 208.432, 208.433, 208.434, 208.435, 208.436, 208.437, 208.480, and 338.550, to read as follows:

198.439. EXPIRATION DATE. — Sections 198.401 to 198.436 shall expire on September 30, [2005] **2006**.

208.431. MEDICAID MANAGED CARE ORGANIZATION REIMBURSEMENT ALLOWANCE, AMOUNT. — 1. For purposes of sections 208.431 to 208.437, the following terms mean:

(1) "Engaging in the business of providing health benefit services", accepting payment for health benefit services;

(2) "Medicaid managed care organization", a health benefit plan, as defined in section 376.1350, RSMo, with a contract under 42 U.S.C. Section 1396b(m) to provide benefits to Missouri MC+ managed care program eligibility groups.

2. Beginning July 1, 2005, each Medicaid managed care organization in this state shall, in addition to all other fees and taxes now required or paid, pay a Medicaid managed care organization reimbursement allowance for the privilege of engaging in the business of providing health benefit services in this state.

3. Each Medicaid managed care organization's reimbursement allowance shall be based on a formula set forth in rules, including emergency rules if necessary, promulgated by the department of social services. No Medicaid managed care organization reimbursement allowance shall be collected by the department of social services if the federal Center for Medicare and Medicaid Services determines that such reimbursement allowance is not authorized under Title XIX of the Social Security Act. If such determination is made by the federal Center for Medicare and Medicaid Services, any Medicaid managed care organization reimbursement allowance collected prior to such determination shall be immediately returned to the Medicaid managed care organizations which have paid such allowance.

208.432. RECORD KEEPING REQUIRED, SUBMISSION TO DEPARTMENT. — Each Medicaid managed care organization shall keep such records as may be necessary to determine the amount of its reimbursement allowance. Every Medicaid managed care organization shall submit to the department of social services a statement that accurately reflects such information as is necessary to determine that Medicaid managed care organization's reimbursement allowance.

208.433. CALCULATION OF REIMBURSEMENT ALLOWANCE AMOUNT — NOTIFICATION OF MEDICAID MANAGED CARE ORGANIZATIONS — OFFSET PERMITTED, WHEN. — 1. The director of the department of social services shall make a determination as to the amount of Medicaid managed care organization's reimbursement allowance due from each Medicaid managed care organization.

2. The director of the department of social services shall notify each Medicaid managed care organization of the annual amount of its reimbursement allowance. Such amount may be paid in monthly increments over the balance of the reimbursement allowance period.

3. The department of social services may offset the managed care organization reimbursement allowance owed by the Medicaid managed care organization against any payment due that managed care organization only if the managed care organization requests such an offset. The amounts to be offset shall result, so far as practicable, in withholding from the managed care organization an amount substantially equivalent to the reimbursement allowance owed by the managed care organization. The office of administration and state treasurer may make any fund transfers necessary to execute the offset.

208.434. AMOUNT FINAL, WHEN — PROTEST, PROCEDURE. — 1. Each Medicaid managed care organization reimbursement allowance determination shall be final after receipt of written notice from the department of social services, unless the Medicaid managed care organization files a protest with the director of the department of social services setting forth the grounds on which the protest is based, within thirty days from

the date of receipt of written notice from the department of social services to the managed care organization.

2. If a timely protest is filed, the director of the department of social services shall reconsider the determination and, if the Medicaid managed care organization has so requested, the director or the director's designee shall grant the managed care organization a hearing to be held within forty-five days after the protest is filed, unless extended by agreement between the managed care organization and the director. The director shall issue a final decision within forty-five days of the completion of the hearing. After reconsideration of the reimbursement allowance determination and a final decision by the director of the department of social services, a managed care organization's appeal of the director's final decision shall be to the administrative hearing commission in accordance with sections 208.156 and 621.055, RSMo.

208.435. RULEMAKING AUTHORITY. — 1. The department of social services shall promulgate rules, including emergency rules if necessary, to implement the provisions of sections 208.431 to 208.437, including but not limited to:

(1) The form and content of any documents required to be filed under sections 208.431 to 208.437;

(2) The dates for the filing of documents by Medicaid managed care organizations and for notification by the department to each Medicaid managed care organization of the annual amount of its reimbursement allowance; and

(3) The formula for determining the amount of each managed care organization's reimbursement allowance.

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 sections 208.431 to 208.437 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. Sections 208.431 to 208.437 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.

208.436. REMITTANCE TO THE DEPARTMENT — DEPOSIT IN DEDICATED FUND. — 1.

(1) The Medicaid managed care organization reimbursement allowance owed or, if an offset has been requested, the balance, if any, after such offset, shall be remitted by the managed care organization to the department of social services. The remittance shall be made payable to the director of the department of revenue.

(2) The amount remitted shall be deposited in the state treasury to the credit of the "Medicaid Managed Care Organization Reimbursement Allowance Fund", which is hereby created for the sole purposes of providing payment to Medicaid managed care organizations. All investment earnings of the managed care organization reimbursement allowance fund shall be credited to the Medicaid managed care organization reimbursement allowance fund.

(3) The unexpended balance in the Medicaid managed care organization reimbursement allowance fund at the end of the biennium is exempt from the provisions of section 33.080, RSMo. The unexpended balance shall not revert to the general revenue fund, but shall accumulate in the Medicaid managed care organization reimbursement allowance fund from year to year.

(4) The state treasurer shall maintain records that show the amount of money in the Medicaid managed care organization reimbursement allowance fund at any time and the amount of any investment earnings on that amount. The department of social services shall disclose such information to any interested party upon written request.

2. An offset as authorized by this section or a payment to the Medicaid managed care organization reimbursement allowance fund shall be accepted as payment of the Medicaid managed care organization's obligation imposed by section 208.431.

208.437. REIMBURSEMENT ALLOWANCE PERIOD — NOTIFICATION OF BALANCE DUE, WHEN — DELINQUENT PAYMENTS, PROCEDURE, BASIS FOR DENIAL OF LICENSURE — EXPIRATION DATE. — 1. A Medicaid managed care organization reimbursement allowance period as provided in sections 208.431 to 208.437 shall be from the first day of July to the thirtieth day of June. The department shall notify each Medicaid managed care organization with a balance due on the thirtieth day of June of each year the amount of such balance due. If any managed care organization fails to pay its managed care organization reimbursement allowance within thirty days of such notice, the reimbursement allowance shall be delinquent. The reimbursement allowance may remain unpaid during an appeal.

2. Except as otherwise provided in this section, if any reimbursement allowance imposed under the provision of sections 208.431 to 208.437 is unpaid and delinquent, the department of social services may compel the payment of such reimbursement allowance in the circuit court having jurisdiction in the county where the main offices of the Medicaid managed care organization is located. In addition, the director of the department of social services or the director's designee may cancel or refuse to issue, extend or reinstate a Medicaid contract agreement to any Medicaid managed care organization which fails to pay such delinquent reimbursement allowance required by sections 208.431 to 208.437 unless under appeal.

3. Except as otherwise provided in this section, failure to pay a delinquent reimbursement allowance imposed under sections 208.431 to 208.437 shall be grounds for denial, suspension or revocation of a license granted by the department of insurance. The director of the department of insurance may deny, suspend or revoke the license of a Medicaid managed care organization with a contract under 42 U.S.C. Section 1396b(m) which fails to pay a managed care organization's delinquent reimbursement allowance unless under appeal.

4. Nothing in sections 208.431 to 208.437 shall be deemed to affect or in any way limit the tax-exempt or nonprofit status of any Medicaid managed care organization with a contract under 42 U.S.C. Section 1396b(m) granted by state law.

5. Sections 208.431 to 208.437 shall expire on June 30, 2006.

208.480. FEDERAL REIMBURSEMENT ALLOWANCE TO EXPIRE SEPTEMBER 30, 2006. — Notwithstanding the provisions of section 208.471 to the contrary, sections 208.453 to 208.480 shall expire on September 30, [2005] 2006.

338.550. EXPIRATION DATE OF TAX, WHEN. — 1. The pharmacy tax required by sections 338.500 to 338.550 shall expire ninety days after any one or more of the following conditions are met:

(1) The aggregate dispensing fee as appropriated by the general assembly paid to pharmacists per prescription is less than the fiscal year 2003 dispensing fees reimbursement amount; or

(2) The formula used to calculate the reimbursement as appropriated by the general assembly for products dispensed by pharmacies is changed resulting in lower reimbursement to the pharmacist in the aggregate than provided in fiscal year 2003; or

(3) June 30, [2005] 2006. The director of the department of social services shall notify the revisor of statutes of the expiration date as provided in this subsection. The provisions of sections 338.500 to 338.550 shall not apply to pharmacies domiciled or headquartered outside this state which are engaged in prescription drug sales that are delivered directly to patients within this state via common carrier, mail or a carrier service.

2. Sections 338.500 to 338.550 shall expire on June 30, [2005] **2006**.

SECTION B. EMERGENCY CLAUSE. — Because of the need to preserve state revenue, 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 13, 2005

SB 196 [HCS SCS SB 196]

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

Modifies sales and use tax exemption eligibility for manufacturing and material recovery plants

AN ACT to repeal section 144.030, RSMo, and to enact in lieu thereof one new section relating to material recovery operations.

SECTION

- A. Enacting clause.
144.030. Exemptions from state and local sales and use taxes.

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

SECTION A. ENACTING CLAUSE. — Section 144.030, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 144.030, to read as follows:

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] **144.761** 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] **that has as its primary purpose the recovery of materials into a useable product or a different form which is used in producing a new product** and shall include a facility or equipment which [is] **are** 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. **Material recovery is not the reuse of materials within a manufacturing process or the use of a product previously recovered. The material recovery processing plant shall qualify under the provisions of this section regardless of ownership of the material being recovered;**

(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] **70.441**, 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, **water, or other utilities** which [is] **are** ultimately consumed in connection with the manufacturing of cellular glass

products or in any material recovery processing plant as defined in subdivision (4) of subsection 2 of this section;

(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] **70.441**, RSMo, or sections 238.010 to 238.100, RSMo.

Approved July 6, 2005

SB 202 [HCS SCS SBs 202, 33, 45, 183 & 217]

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

Merges the Administrative Law Judge retirement system into the state employees' retirement system

AN ACT to repeal section 287.845, RSMo, and to enact in lieu thereof two new sections relating to retirement, with an emergency clause.

SECTION

- A. Enacting clause.
- 287.813. Retirement, administrative law judges and legal advisors — participation in state employee's retirement system required, when.
- 287.845. Administration of retirement system and funds.
- B. Emergency clause.

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

SECTION A. ENACTING CLAUSE. — Section 287.845, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 287.813 and 287.845, to read as follows:

287.813. RETIREMENT, ADMINISTRATIVE LAW JUDGES AND LEGAL ADVISORS — PARTICIPATION IN STATE EMPLOYEE'S RETIREMENT SYSTEM REQUIRED, WHEN. — **Any administrative law judge or legal advisor who is originally employed as such on or after the effective date of this section, and who has not previously been covered by the administrative law judge's and legal advisor's retirement system under sections 287.812 to 287.856, shall not be eligible to participate in that system. Such administrative law judge or legal advisor shall participate in the state employees' retirement system under chapter 104, RSMo, if otherwise eligible under the applicable provisions of law contained in that chapter.**

287.845. ADMINISTRATION OF RETIREMENT SYSTEM AND FUNDS. — 1. The board shall administer the provisions of sections 287.812 to 287.855 and shall have the same powers, duties, and obligations in regard to the funds and the system provided for in such sections as it has in regard to the Missouri state employees' retirement system. The system shall calculate the annuity for an administrative law judge or legal advisor, as defined in section 287.812 based on the law in effect at the time the administrative law judge's or legal advisor's employment was terminated.

2. The commissioner of administration, the state treasurer, and the secretary of the Missouri state employees' retirement system shall perform the same duties in regard to the retirement system established pursuant to the provisions of sections 287.812 to 287.855 that are prescribed for such officers in sections 104.436 and 104.438, RSMo, in regard to the Missouri state employees' retirement system. Funds so certified and transferred for the retirement system established pursuant to the provisions of sections 287.812 to 287.855 shall be deposited in a separate account of the Missouri state employees' retirement fund and shall be disbursed only for the purposes of sections 287.812 to 287.855.

3. [Notwithstanding any other provision of law to the contrary, nothing contained in this act shall alter or revise the administrative law judge's and legal advisor's retirement system as previously established by law.] **As of the effective date of this section, the liabilities and assets of the administrative law judge's and legal advisor's retirement system shall be transferred and combined with the state employees' retirement system. The contribution rate certified by the board under section 104.1066, RSMo, for the state employees' retirement system**

after the effective date of this section, shall include amounts necessary to cover the costs of the administrative law judge's and legal advisor's retirement system. This act shall not affect the past, present, or future rights or benefits of administrative law judges and legal advisors participating in the administrative law judge's and legal advisor's retirement system prior to the effective date of this act, including their beneficiaries, spouses, or former spouses.

SECTION B. EMERGENCY CLAUSE. — Because of the state of Missouri's retirement systems need to maintain the highest level of integrity and fairness, 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 April 26, 2005

SB 210 [CCS HCS SS SCS SB 210]

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

Modifies provisions affecting political subdivisions

AN ACT to repeal sections 44.090, 50.333, 50.530, 50.1030, 52.317, 54.010, 54.280, 54.320, 54.330, 55.160, 56.060, 56.631, 56.640, 56.650, 56.660, 59.005, 64.215, 64.940, 65.110, 65.160, 65.460, 65.490, 65.600, 67.469, 67.1754, 67.1775, 67.1850, 67.1922, 67.1934, 89.450, 94.270, 100.050, 100.059, 110.130, 110.150, 115.019, 136.010, 136.160, 137.078, 137.115, 137.465, 137.585, 137.720, 139.040, 139.055, 139.120, 139.350, 139.400, 139.420, 139.430, 139.440, 139.450, 139.460, 140.150, 140.160, 165.071, 190.010, 190.015, 190.090, 205.010, 210.860, 210.861, 233.295, 242.560, 245.205, 250.140, 263.245, 301.025, 321.120, 321.130, 321.190, 321.322, 321.603, 473.770, 473.771, 483.537, 488.426, 545.550, and 573.505, RSMo, and section 137.130 as enacted by conference committee substitute for senate substitute for senate committee substitute for house substitute for house committee substitute for house bill no. 701, ninetieth general assembly, first regular session, and section 137.130 as enacted by conference committee substitute for house substitute for house committee substitute for senate bill no. 827, eighty-ninth general assembly, second regular session, and section 488.429, as enacted by conference committee substitute for senate substitute for senate committee substitute for house committee substitute for house bill nos. 795, 972, 1128 & 1161, ninety-second general assembly, second regular session, are repealed and to enact in lieu thereof one hundred four new sections relating to political subdivisions.

SECTION

- A. Enacting clause.
 - 44.090. Mutual-aid agreements — participation in statewide mutual aid system — reimbursement for services provided, benefits.
 - 50.333. Salary commission, duties of clerk or court administrator, meetings, notice of, members, duties, report, form, failure to meet, effect of — mileage allowance — maximum compensation allowable, defined (noncharter counties).
 - 50.530. Definitions.
 - 50.1030. Board of directors, election, appointment by the governor, term, powers, duties — chairman, secretary, meetings — advisors — audits — compensation, costs — record — annual review.
 - 50.1031. Benefit adjustments, required assets-to-liability ratio — frequency of adjustments — effective date of adjustments.
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- 52.317. Moneys provided for budget purposes, requirements — moneys remaining in fund at end of calendar year, requirements — one-time expenditures, common fund permitted.
- 54.010. Office created — election.
- 54.280. County collector-treasurer, duties — fees authorized.
- 54.320. Collector-treasurer, compensation — fees — deputies and assistants, compensation — training program, attendance required, expenses, compensation (township counties).
- 54.330. Bonds of collector-treasurers — bond requirements for deputies and assistants.
- 55.160. Duties (second class and certain first class counties).
- 56.060. Prosecutor's duties, generally, expenses — employed attorney, how compensated.
- 56.631. County counselor, how appointed, tenure, qualifications, compensation.
- 56.640. County counselor and assistants, duties of.
- 56.650. Counselor to advise county commission — employees of counselor, how paid, tenure — assistant counselor, compensation, how set.
- 56.660. Special county counselors — employment — compensation — qualifications.
- 59.005. Definitions.
- 59.044. Certain recorders to be paid statutory compensation.
- 64.215. County planning board, members (exception for Cass County), terms, removal, expenses, chairman (noncharter first classification counties).
- 64.940. Powers of the authority.
- 65.110. Officers to be chosen.
- 65.160. Oath — shall assume office, when.
- 65.460. Township trustee, collector.
- 65.490. Township funds, how paid out — school district funds, duties of trustees.
- 65.600. County collector and assessor — tenure upon adoption of township organization.
- 66.411. Municipal fire departments, vote required to dissolve, eliminate, merge, or terminate (St. Charles County, St. Charles city).
- 67.469. Assessment treated as tax lien, payable upon foreclosure.
- 67.1159. Lien for unpaid taxes — release of lien, when — fee for recording of lien — notification of sale of property, when — civil action authorized, when.
- 67.1305. Retail sales tax may be imposed in lieu of certain local economic development sales tax — ballot language — collection and distribution of moneys — trust fund and board to be established.
- 67.1754. Sales tax, how allocated.
- 67.1775. Authorizes local sales tax in all counties and St. Louis City to provide services for children — establishes fund.
- 67.1850. Geographical information system may be created, purpose, open records policy, fees for information, licensing, liability.
- 67.1922. Water quality, infrastructure and tourism, sales taxes authorized for certain counties — ballot language.
- 67.1934. Repeal of tax, submitted to voters, ballot language.
- 67.2535. Monitoring of blasting operations permitted (St. Charles County).
- 89.450. Use of unapproved plat in sale of land — penalty — vacation or injunction of transfer.
- 94.270. Power to license, tax and regulate certain businesses and occupations — prohibition on local license fees in excess of certain amounts in certain cities (Edmundson, Woodson Terrace) — license fee on hotels or motels (St Peters) — increase or decrease of tax, when.
- 99.1080. Citation of law.
- 99.1082. Definitions.
- 99.1086. Redevelopment plan, contents — adoption of plan, when.
- 99.1088. Public hearing required, notice requirements — changes to a plan without further hearing, when — boundaries of redevelopment area not to be changed after adoption.
- 99.1090. Application to department for approval of project costs, approval procedure — rulemaking authority.
- 99.1092. Fund established, allocation of moneys — rulemaking authority.
- 100.050. Approval of plan by governing body of municipality — information required — additional information required, when — payments in lieu of taxes, applied how.
- 100.059. Notice of proposed project for industrial development, when, contents — limitation on indebtedness, inclusions — applicability, limitation.
- 110.130. Depositories of county funds — how selected.
- 110.150. Public opening of bids — computation and payment of interest — rejected bids.
- 115.019. Voters may petition to establish a board of election commissioners, procedure — form of petition.
- 136.010. Division to collect all state revenues, exceptions, report.
- 136.160. Accounts and vouchers to be exhibited, when.
- 137.071. Business personal property, excludes from total assessed valuation a portion of assessed valuation for property subject to appeal.
- 137.078. Depreciation schedules for broadcasting equipment, definitions — true value in money, how determined — tables.
- 137.115. Real and personal property, assessment — maintenance plan — assessor may mail forms for personal property — classes of property, assessment — physical inspection required, when, procedure.

- 137.122. Depreciable tangible personal property — definitions — standardized schedule to be used — valuation table — exceptions.
- 137.130. Assessor to make physical inspection, when — assessment.
- 137.130. Assessor to make physical inspection, when — assessment.
- 137.465. County clerk to submit lists of property — abstracts of all real property.
- 137.585. Township special road and bridge tax, how levied, collected and disbursed.
- 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).
- 139.040. Acceptable medium of exchange in payment of taxes.
- 139.055. Tax paid by credit card or electronic transfer — fee.
- 139.120. Seizure and sale of personal property — duty of sheriff.
- 139.350. Collection of taxes — procedure.
- 139.400. Abatement on tax list — procedure.
- 139.420. Collector-treasurer — final settlement of accounts.
- 139.430. Collector-treasurer — monthly statements — disposition of collected moneys — commission.
- 139.440. Collector-treasurer — default, penalties — certified copy of statement.
- 139.450. Collector-treasurer — statements.
- 139.460. Collector-treasurer — school taxes, collection — apportioned and kept — school districts.
- 140.150. Lands, lots, mineral rights, and royalty interests subject to sale, when.
- 140.160. Limitation of actions, exceptions — county auditor to furnish delinquent tax list.
- 165.071. County collector-treasurer to pay over school district moneys monthly (seven-director districts).
- 190.010. Territory of district may be noncontiguous — ambulance districts authorized except in counties of 400,000 or more population — district, how named.
- 190.015. Petition to form, contents — ambulance district boundaries (St. Louis County).
- 190.090. Consolidation of ambulance districts, procedure for — form of ballot — transition provisions for consolidation.
- 198.345. Apartments for seniors, districts may establish (Marion and Ralls counties).
- 205.010. Petition of voters — maximum tax rate — submission of question.
- 210.860. Tax levy, amount, purposes — ballot — deposit of funds in special community children's services fund.
- 210.861. Board of directors, term, expenses, organization — powers — funds, expenditure, purpose, restrictions.
- 215.246. Grants or loans not awarded without implementation of certain oversight procedures (Kansas City).
- 233.295. Dissolution of road district — petition — notice — disincorporation of district (Christian, Jasper and Barry counties).
- 242.560. Current and delinquent taxes — collection — procedure.
- 245.205. Secretary of board to extend and certify levee tax to collector-treasurers — duties of collector-treasurer — county collector-treasurer to collect delinquent taxes.
- 250.140. Services deemed furnished both to occupant and owner of premises — payment delinquency, notice of termination sent to both occupant and owner of premises — applicability — unapplied-for utility services, defined.
- 263.245. Brush adjacent to county roads, to be removed, certain counties — county commission may remove brush, when, procedures, certain counties.
- 301.025. Personal property taxes and federal heavy vehicle use tax, paid when — tax receipt forms — failure to pay personal property tax, effect of, notification requirements, reinstatement fee, appeals — rulemaking, procedure.
- 321.120. Election before decree becomes conclusive — decree to determine number of directors — ballot form — successor directors, terms — may increase number of directors, exception — ballot, form — terms.
- 321.130. Directors, qualifications — candidate filing fee, oath.
- 321.190. Attendance fees authorized — reimbursement for expenses — secretary and treasurer, additional compensation, how set, limitation.
- 321.222. Residential construction — definitions — regulatory system of city or county supersedes fire protection district regulations (Jefferson County).
- 321.322. Cities with population of 2,500 to 65,000 with fire department, annexing property in a fire protection district — rights and duties, procedure — exception.
- 321.603. Attendance fees permitted, fire district board members (first classification charter counties).
- 473.770. Deputies, appointment, tenure, compensation, powers (first classification counties) — delegation of duties, certain counties.
- 473.771. Deputies, appointment in all counties but counties of the first classification — tenure — compensation — powers — delegation to deputies.
- 483.537. Passports, accounting for fees charged, use of moneys collected.
- 488.426. Deposit required in civil actions — exemptions — surcharge to remain in effect — additional fee for adoption and small claims court (Franklin County) — expiration date.
- 545.550. Defendant in custody, to be removed, when — which county jail to house defendant.
- 573.505. Sales tax authorized, vote required — ballot — disposition of revenue — termination — city and county background check tax trust fund created, refunds — duties of director of revenue.
1. Governor authorized to convey state property in Buchanan County.
 2. Governor authorized to convey state property in St. Francois County.

3. Base salary schedules for county officials — salary commission responsible for computation of county officials salaries, except for charter counties.
 4. Recreation sales tax authorized (Madison County) — ballot language — rate, use of moneys — expiration date.
 5. Governor authorized to convey state property in Jasper County.
 6. Governor authorized to convey state property in Cole County.
 7. Department of Natural Resources authorized to convey property at Fort Davidson State Historic Park to the city of Pilot Knob.
- 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 — expiration date.

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

SECTION A. ENACTING CLAUSE. — Sections 44.090, 50.333, 50.530, 50.1030, 52.317, 54.010, 54.280, 54.320, 54.330, 55.160, 56.060, 56.631, 56.640, 56.650, 56.660, 59.005, 64.215, 64.940, 65.110, 65.160, 65.460, 65.490, 65.600, 67.469, 67.1754, 67.1775, 67.1850, 67.1922, 67.1934, 89.450, 94.270, 100.050, 100.059, 110.130, 110.150, 115.019, 136.010, 136.160, 137.078, 137.115, 137.465, 137.585, 137.720, 139.040, 139.055, 139.120, 139.350, 139.400, 139.420, 139.430, 139.440, 139.450, 139.460, 140.150, 140.160, 165.071, 190.010, 190.015, 190.090, 205.010, 210.860, 210.861, 233.295, 242.560, 245.205, 250.140, 263.245, 301.025, 321.120, 321.130, 321.190, 321.322, 321.603, 473.770, 473.771, 483.537, 488.426, 545.550, and 573.505, RSMo, and section 137.130 as enacted by conference committee substitute for senate substitute for senate committee substitute for house substitute for house committee substitute for house bill no. 701, ninetieth general assembly, first regular session, and section 137.130 as enacted by conference committee substitute for house substitute for house committee substitute for senate bill no. 827, eighty-ninth general assembly, second regular session, and section 488.429, as enacted by conference committee substitute for senate substitute for senate committee substitute for house committee substitute for house bill nos. 795, 972, 1128 & 1161, ninety-second general assembly, second regular session, are repealed and one hundred four new sections enacted in lieu thereof, to be known as sections 44.090, 50.333, 50.530, 50.1030, 50.1031, 52.317, 54.010, 54.280, 54.320, 54.330, 55.160, 56.060, 56.631, 56.640, 56.650, 56.660, 59.005, 59.044, 64.215, 64.940, 65.110, 65.160, 65.460, 65.490, 65.600, 66.411, 67.469, 67.1159, 67.1305, 67.1754, 67.1775, 67.1850, 67.1922, 67.1934, 67.2535, 89.450, 94.270, 99.1080, 99.1082, 99.1086, 99.1088, 99.1090, 99.1092, 100.050, 100.059, 110.130, 110.150, 115.019, 136.010, 136.160, 137.071, 137.078, 137.115, 137.122, 137.130, 137.465, 137.585, 137.720, 139.040, 139.055, 139.120, 139.350, 139.400, 139.420, 139.430, 139.440, 139.450, 139.460, 140.150, 140.160, 165.071, 190.010, 190.015, 190.090, 198.345, 205.010, 210.860, 210.861, 215.246, 233.295, 242.560, 245.205, 250.140, 263.245, 301.025, 321.120, 321.130, 321.190, 321.222, 321.322, 321.603, 473.770, 473.771, 483.537, 488.426, 545.550, 573.505, 1, 2, 3, 4, 5, 6, and 7, to read as follows:

44.090. MUTUAL-AID AGREEMENTS — PARTICIPATION IN STATEWIDE MUTUAL AID SYSTEM — REIMBURSEMENT FOR SERVICES PROVIDED, BENEFITS. — 1. The executive officer of any political subdivision may enter into mutual-aid arrangements or agreements with other public and private agencies within and without the state for reciprocal emergency aid. Such arrangements or agreements shall be consistent with the state disaster plan and program and the provisions of section 70.837, RSMo, and section 320.090, RSMo. In time of emergency it shall be the duty of each local organization for emergency management to render assistance in accordance with the provisions of such mutual-aid arrangements or agreements.

2. [The coordinator of each local organization for emergency management may assist in negotiation of reciprocal mutual-aid agreements between the coordinator's organization and other public and private agencies and between the governor and the adjoining states or political subdivisions thereof, and shall carry out arrangements or agreements relating to the local unit.]

Any contracts that are agreed upon may provide for compensation from the parties and

other terms that are agreeable to the parties and may be for an indefinite period as long as they include a sixty-day cancellation notice provision by either party. The contracts agreed upon may not be entered into for the purpose of reduction of staffing by either party.

3. At the time of significant emergency such as fire, earthquake, flood, tornado, hazardous material incident, terrorist incident, or other such manmade or natural emergency disaster anywhere within the state or bordering states, the highest ranking official of a political subdivision available may render aid to any requesting political jurisdiction, even without written agreement, as long as he or she is in accordance with the policies and procedures set forth by the governing board of that jurisdiction.

4. When responding to mutual aid or emergency aid requests, political subdivisions shall be subject to all provisions of law as if it were providing service within its own jurisdiction.

5. All political subdivisions within the state are, upon enactment of this legislation or execution of an agreement, automatically a part of the Missouri statewide mutual aid system. A political subdivision within the state may elect not to participate in the statewide mutual aid system upon enacting an appropriate resolution by its governing body declaring that it elects not to participate in the statewide mutual aid system and by providing a copy of the resolution to the state fire marshal and state emergency management agency.

6. Emergency response agencies shall include fire service organizations, law enforcement agencies, emergency medical service organizations, public health and medical personnel, emergency management officials, infrastructure departments, public works agencies, and those other agencies, organizations, and departments that have personnel with special skills or training that are needed to provide services during an emergency or disaster.

7. It shall be the responsibility of each political subdivision to adopt and put into practice the National Incident Management System promulgated by the United States Department of Homeland Security.

8. In the event of a disaster that is beyond the capability of local political subdivisions, the local governing authority may request assistance under this section.

9. Any entity or individual that holds a license, certificate, or other permit issued by a participating political subdivision or state shall be deemed licensed, certified, or permitted in the requesting political subdivision for the duration of the declared emergency or authorized drill.

10. Reimbursement for services rendered under this section shall be in accordance with state and federal guidelines. Any political subdivision providing assistance shall receive appropriate reimbursement according to those guidelines.

11. Applicable benefits normally available to personnel while performing duties for their jurisdiction are also available to such persons when an injury or death occurs when rendering assistance to another political subdivision under this section. Responders shall be eligible for the same state and federal benefits that may be available to them for line of duty deaths if such services are otherwise provided for within their jurisdiction.

12. All activities performed under this section are deemed to be governmental functions. For the purposes of liability, all participating political subdivisions responding under operational control of the requesting political subdivision are deemed employees of such participating political subdivision.

50.333. SALARY COMMISSION, DUTIES OF CLERK OR COURT ADMINISTRATOR, MEETINGS, NOTICE OF, MEMBERS, DUTIES, REPORT, FORM, FAILURE TO MEET, EFFECT OF — MILEAGE ALLOWANCE — MAXIMUM COMPENSATION ALLOWABLE, DEFINED (NONCHARTER COUNTIES). — 1. There shall be a salary commission in every nonchartered county.

2. The clerk **or court administrator** of the circuit court of the judicial circuit in which such county is located shall set a date, time and place for the salary commission meeting and serve as temporary chairman of the salary commission until the members of the commission elect a chairman from their number. Upon written request of a majority of the salary commission members the clerk **or court administrator** of the circuit court shall forthwith set the earliest date possible for a meeting of the salary commission. The circuit clerk **or court administrator** shall give notice of the time and place of any meeting of the salary commission. Such notice shall be published in a newspaper of general circulation in such county at least five days prior to such meeting. Such notice shall contain a general description of the business to be discussed at such meeting.

3. The members of the salary commission shall be:

- (1) The recorder of deeds if the recorder's office is separate from that of the circuit clerk;
- (2) The county clerk;
- (3) The prosecuting attorney;
- (4) The sheriff;
- (5) The county commissioners;
- (6) The collector or treasurer ex officio collector;
- (7) The treasurer or treasurer ex officio collector;
- (8) The assessor;
- (9) The auditor;
- (10) The public administrator; and
- (11) The coroner.

Members of the salary commission shall receive no additional compensation for their services as members of the salary commission. A majority of members shall constitute a quorum.

4. Notwithstanding the provisions of sections 610.021 and 610.022, RSMo, all meetings of a county salary commission shall be open meetings and all votes taken at such meetings shall be open records. Any vote taken at any meeting of the salary commission shall be taken by recorded yeas and nays.

5. In every county, the salary commission shall meet at least once before November thirtieth of each odd-numbered year. The salary commission may meet as many times as it deems necessary and may meet after November thirtieth and prior to December fifteenth of any odd-numbered year if the commission has met at least once prior to November thirtieth of that year. At any meeting of the salary commission, the members shall elect a chairman from their number. The county clerk shall present a report on the financial condition of the county to the commission once the chairman is elected, and shall keep the minutes of the meeting.

6. For purposes of this section, the 1988 base compensation is the compensation paid on September 1, 1987, plus the same percentage increase paid or allowed, whichever is greater, to the presiding commissioner or the sheriff, whichever is greater, of that county for the year beginning January 1, 1988. Such increase shall be expressed as a percentage of the difference between the maximum allowable compensation and the compensation paid on September 1, 1987. At its meeting in 1987 and at any meeting held in 1988, the salary commission shall determine the compensation to be paid to every county officer holding office on January 1, 1988. The salary commission shall establish the compensation for each office at an amount not greater than that set by law as the maximum compensation. If the salary commission votes to increase compensation, but not to pay the maximum amount authorized by law for any officer or office, then the increase in compensation shall be the same percentage increase for all officers and offices and shall be expressed as a percentage of the difference between the maximum allowable compensation and the compensation being received at the time of the vote. If two-thirds of the members of the salary commission vote to decrease the compensation being received at the time of the vote below that compensation, all officers shall receive the same percentage decrease. The commission may vote not to increase or decrease the compensation

and that compensation shall continue to be the salary of such offices and officers during the subsequent term of office.

7. For the year 1989 and every second year thereafter, the salary commission shall meet in every county as many times as it deems necessary on or prior to November thirtieth of any such year for the purpose of determining the amount of compensation to be paid to county officials. For each year in which the commission meets, the members shall elect a chairman from their number. The county clerk shall present a report on the financial condition of the county to the commission once the chairman is elected, and shall keep minutes of the meeting. The salary commission shall then consider the compensation to be paid for the next term of office for each county officer to be elected at their next general election. If the commission votes not to increase or decrease the compensation, the salary being paid during the term in which the vote was taken shall continue as the salary of such offices and officers during the subsequent term of office. If the salary commission votes to increase the compensation, all officers or offices whose compensation is being considered by the commission at that time, shall receive the same percentage of the maximum allowable compensation. However, for any county in which all offices' and officers' salaries have been set at one hundred percent of the maximum allowable compensation, the commission may vote to increase the compensation of all offices except that of full-time prosecuting attorneys at that or any subsequent meeting of the salary commission without regard to any law or maximum limitation established by law. Such increase shall be expressed as a percentage of the compensation being paid during the term of office when the vote is taken, and each officer or office whose compensation is being established by the salary commission at that time shall receive the same percentage increase over the compensation being paid for that office during the term when the vote is taken. This increase shall be in addition to any increase mandated by an official's salary schedule because of changes in assessed valuation during the current term. If the salary commission votes to decrease the compensation, a vote of two-thirds or more of all the members of the salary commission shall be required before the salary or other compensation of any county office shall be decreased below the compensation being paid for the particular office on the date the salary commission votes, and all officers and offices shall receive the same percentage decrease.

8. The salary commission shall issue, not later than December fifteenth of any year in which it meets, a report of compensation to be paid to each officer and the compensation so set shall be paid beginning with the start of the subsequent term of office of each officer. The report of compensation shall be certified to the clerk of the county commission for the county and shall be in substantially the following form:

The salary commission for County hereby certifies that it has met pursuant to law to establish compensation for county officers to be paid to such officers during the next term of office for the officers affected. The salary commission reports that there shall be (no increase in compensation) (an increase of percent) (a decrease of percent) (county officer's salaries set at percent of the maximum allowable compensation). Salaries shall be adjusted each year on the official's year of incumbency for any change in the last completed assessment that would affect the maximum allowable compensation for that office.

9. For the meeting in 1989 and every meeting thereafter, in the event a salary commission in any county fails, neglects or refuses to meet as provided in this section, or in the event a majority of the salary commission is unable to reach an agreement and so reports or fails to certify a salary report to the clerk of the county commission by December fifteenth of any year in which a report is required to be certified by this section, then the compensation being paid to each affected office or officer on such date shall continue to be the compensation paid to the affected office or officer during the succeeding term of office.

10. Other provisions of law notwithstanding, in every instance where an officer or employee of any county is paid a mileage allowance or reimbursement, the county commission shall allow or reimburse such officers or employees out of the county treasury at the highest rate paid to any county officer for each mile actually and necessarily traveled in the performance of

their official duties. The county commission of any county may elect to pay a mileage allowance for any county commissioner for travel going to and returning from the place of holding commission meetings and for all other necessary travel on official county business in the personal motor vehicle of the commissioner presenting the claim. The governing body of any county of the first classification not having a charter form of government may provide by order for the payment of mileage expenses of elected and appointed county officials by payment of a certain amount monthly which would reflect the average monthly mileage expenses of such officer based on the amount allowed pursuant to state law for the payment of mileage for state employees. Any order entered for such purpose shall not be construed as salary, wages or other compensation for services rendered.

11. The term "maximum allowable compensation" as used in this section means the highest compensation which may be paid to the specified officer or office in the particular county based on the salary schedule established by law for the specified officer or office. If the salary commission at its meeting in 1987 voted for one hundred percent of the maximum allowable compensation and does not change such vote at its meeting held within thirty days after May 13, 1988, as provided in subsection 6 of this section, the one hundred percent shall be calculated on the basis of the total allowable compensation permitted after May 13, 1988.

12. At the salary commission meeting which establishes the percentage rate to be applied to county officers during the next term of office, the salary commission may authorize the further adjustment of such officers' compensation as a cost-of-living component and effective January first of each year, the compensation for county officers may be adjusted by the county commission, and if the adjustment of compensation is authorized, the percentage increase shall be the same for all county officers, not to exceed the percentage increase given to the other county employees. The compensation for all county officers may be set as a group, although the change in compensation will not become effective until the next term of office for each officer.

13. At the salary commission meeting in 1997 which establishes the salaries for those officers to be elected at the general election in 1998, the salary commission of each noncharter county may provide salary increases for associate county commissioners elected in 1996. This one-time increase is necessitated by the change from two- to four-year terms for associate commissioners pursuant to house bill 256, passed by the first regular session of the eighty-eighth general assembly in 1995.

50.530. DEFINITIONS. — As used in sections 50.530 to 50.745:

(1) "Accounting officer" means county auditor in counties of [classes one and two] **the first and second classifications** and the county clerks in counties of [classes three and four] **the third and fourth classifications**;

(2) "Budget officer" means such person, as may, from time to time, be appointed by the county commission of [class one] counties **of the first classification** except in [class one] counties **of the first classification** with a population of less than one hundred thousand inhabitants according to the official United States Census of 1970 the county auditor shall be the chief budget officer, the presiding commissioner of the county commission in [class two] counties **of the second classification**, unless the county commission designates the county clerk as budget officer, and the county clerk in counties of [class three and four] **the third and fourth classification**. **Notwithstanding the provisions of this subdivision to the contrary, in any county of the first classification with more than eighty-two thousand but fewer than eighty-two thousand one hundred inhabitants, the presiding commissioner shall be the budget officer unless the county commission designates the county clerk as the budget officer.**

50.1030. BOARD OF DIRECTORS, ELECTION, APPOINTMENT BY THE GOVERNOR, TERM, POWERS, DUTIES — CHAIRMAN, SECRETARY, MEETINGS — ADVISORS — AUDITS — COMPENSATION, COSTS — RECORD — ANNUAL REVIEW. — 1. The general administration and

the responsibility for the proper operation of the fund and the system and the investment of the funds of the system are vested in a board of directors of eleven persons. Nine directors shall be elected by a secret ballot vote of the county employee members of this state. Two directors, who have no beneficiary interest in the system, shall be appointed by the governor with the advice and consent of the senate. No more than one director at any one time shall be employed by the same elected county office. Directors shall be chosen for terms of four years from the first day of January next following their election. It shall be the responsibility of the board to establish procedures for the conduct of future elections of directors and such procedures shall be approved by a majority vote by secret ballot by members of the system. The board shall have all powers and duties that are necessary and proper to enable it, its officers, employees and agents to fully and effectively carry out all the purposes of sections 50.1000 to 50.1300.

2. The board of directors shall elect one of their number as chairman and one of their number as vice chairman and may employ an administrator who shall serve as secretary to the board. The board shall hold regular meetings at least once each quarter. Board meetings shall be held in Jefferson City. Other meetings may be called as necessary by the chairman. Notice of such meetings shall be given in accordance with chapter 610, RSMo.

3. The board of directors shall retain an actuary as technical advisor to the board.

4. The board of directors shall retain investment counsel to be an investment advisor to the board.

5. The state auditor shall provide for biennial audits of the Missouri county employees' retirement system and the operations of the board, to be paid for out of the funds of the system.

6. The board of directors shall serve without compensation for their services, but each director shall be paid out of the funds of the system for any actual and necessary expenses incurred in the performance of duties authorized by the board.

7. The board of directors shall be allowed administrative costs for the operation of the system to be paid out of the funds of the system.

8. The board shall keep a record of its proceedings which shall be open to public inspection. It shall annually prepare a report showing the financial condition of the system. The report shall contain, but not be limited to, an auditor's opinion, financial statements prepared in accordance with generally accepted accounting principles, an actuary's certification along with actuarial assumptions and financial solvency tests.

9. The board shall conduct an annual review, to determine if, among other things, the following actions are actuarially feasible:

(1) An adjustment to the formula described in section 50.1060, subject to the limitations of subsection 4 of section 50.1060;

(2) An adjustment in the flat dollar pension benefit credit described in subsection 1 of section 50.1060;

(3) The cost-of-living increase as described in section 50.1070;

(4) An adjustment in the matching contribution described in section 50.1230;

(5) An adjustment in the twenty-five year service cap on creditable service; [or]

(6) An adjustment to the target replacement ratio; **or**

(7) **An additional benefit or enhancement which will improve the quality of life of future retirees.**

Based upon the findings of the actuarial review, the board may [recommend to the general assembly an actual change to implement] **vote to change** none, one, or more than one of the above [actions] **items, subject to the actuarial guidelines outlined in section 50.1031.**

50.1031. BENEFIT ADJUSTMENTS, REQUIRED ASSETS-TO-LIABILITY RATIO — FREQUENCY OF ADJUSTMENTS — EFFECTIVE DATE OF ADJUSTMENTS. — 1. No adjustments may be made until the fund has achieved a funded ratio of assets to the actuarial accrued liability equaling at least eighty percent. No benefit adjustment shall be adopted which causes the funded ratio to fall more than five percent.

2. Adjustments may be made no more frequently than once every twelve months.
3. Any adjustment or combination of adjustments within a twelve-month period may increase the actuarially determined, normally required annual contribution as a percentage of payroll no more than one percent.
4. Adjustments, other than those in subdivision (3) of subsection 9 of section 50.1030, will apply only with respect to active employees on the effective date of any adjustment.

52.317. MONEYS PROVIDED FOR BUDGET PURPOSES, REQUIREMENTS — MONEYS REMAINING IN FUND AT END OF CALENDAR YEAR, REQUIREMENTS — ONE-TIME EXPENDITURES, COMMON FUND PERMITTED. — 1. Any county subject to the provisions of section 52.312 shall provide moneys for budget purposes in an amount not less than the approved budget in the previous year and shall include the same percentage adjustments in compensation as provided for other county employees as effective January first each year. Any moneys accumulated and remaining in the tax maintenance fund as of December thirty-first each year in all counties of the first classification without a charter form of government and any county with a charter form of government and with more than two hundred fifty thousand but less than three hundred fifty thousand inhabitants shall be limited to an amount equal to one-half of the previous year's approved budget for the office of collector, and any moneys accumulated and remaining in the tax maintenance fund as of December thirty-first each year in all counties other than counties of the first classification and any city not within a county, which collect more than four million dollars of all current taxes charged to be collected, shall be limited to an amount equal to the previous year's approved budget for the office of collector. Any moneys remaining in the tax maintenance fund as of December thirty-first each year that exceed the above-established limits shall be transferred to county general revenue by the following January fifteenth of each year.

2. For one-time expenditures directly attributable to any department, office, institution, commission, or county court, the county commission may budget such expenses in a common fund or account so that any such expenditures separately budgeted do not appear in any specific department, county office, institution, commission, or court budget.

54.010. OFFICE CREATED — ELECTION. — 1. There is created in all the counties of this state the office of county treasurer, **except that in those counties having adopted the township alternative form of county government the qualified electors shall elect a county collector-treasurer.**

2. In counties of classes one and two the qualified electors shall elect a county treasurer at the general election in 1956 and every four years thereafter.

3. In counties of [classes three and four] **the third and fourth classifications** the qualified electors shall elect a county treasurer at the general election in the year 1954, and every four years thereafter, except that in those counties having adopted the township alternative form of county government the qualified electors shall elect a county [treasurer] **collector-treasurer** at the November election in 1956, and every four years thereafter.

4. **Laws generally applicable to county collectors, their offices, clerks, and deputies shall apply to and govern county collector-treasurers in counties having township organization, except when such general laws and such laws applicable to counties of the third and fourth classification conflict with the laws specifically applicable to county collector-treasurers, their offices, clerks, and deputies in counties having township organization, in which case, such laws shall govern.**

54.280. COUNTY COLLECTOR-TREASURER, DUTIES — FEES AUTHORIZED. — 1. The county [treasurer] **collector-treasurer** of counties having adopted or which may hereafter adopt township organization shall [be ex officio collector, and shall] have the [same] power to collect all **current, back, and delinquent real and personal property taxes, including merchants' and**

manufacturers' licenses, [merchants' taxes,] taxes on railroads **and utilities**, and other corporations, the **current and** delinquent or nonresident lands or town lots, **and all other local taxes, including ditch and levee taxes**, and to prosecute for and make sale thereof, the same that is now or may hereafter be vested in the county collectors under the general laws of this state. The [ex officio collector] **collector-treasurer** shall, at the time of making his annual settlement in each year, deposit the tax books [returned by the township collectors] in the office of the county clerk, and within thirty days thereafter the clerk shall make, in a book to be called "the back tax book", a correct list, in numerical order, of all tracts of land and town lots which have been returned delinquent [by said collectors], and return said list to the [ex officio collector] **collector-treasurer**, taking his **or her** receipt therefor.

2. Notwithstanding any other provision of law to the contrary, for the collection of all current and current delinquent taxes, the collector-treasurer shall collect on behalf of the county the following fees to be deposited into the county general fund:

- (1) In any county in which the total amount of taxes levied for any one year is five million dollars or less, a fee of three percent on the total amount of taxes levied;**
- (2) In any county in which the total amount of taxes levied for any one year exceeds five million dollars but is equal to or less than nine million dollars, a fee of two and one-half percent on the total amount of taxes levied;**
- (3) In any county in which the total amount of taxes levied for any one year is greater than nine million dollars but equal to or less than thirteen million dollars, a fee of two percent on the total amount of taxes levied;**
- (4) In any county in which the total amount of taxes levied for any one year is greater than thirteen million dollars, a fee of one and one-half percent on the total amount of taxes levied.**

54.320. COLLECTOR-TREASURER, COMPENSATION — FEES — DEPUTIES AND ASSISTANTS, COMPENSATION — TRAINING PROGRAM, ATTENDANCE REQUIRED, EXPENSES, COMPENSATION (TOWNSHIP COUNTIES). — 1. The county [treasurer ex officio collector] **collector-treasurer** in counties of the third and fourth classifications adopting township organization shall receive an annual salary as set forth in the following schedule. The assessed valuation factor shall be the amount thereof as shown for the year next preceding the computation. A county [treasurer ex officio collector] **collector-treasurer** subject to the provisions of this section shall not receive an annual compensation less than the total compensation being received by the county treasurer ex officio collector in that county for services rendered or performed for the period beginning March 1, 1987, and ending February 29, 1988. The county [treasurer ex officio collector] **collector-treasurer** shall receive the same percentage adjustments provided by 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 treasurer ex officio 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 to 449,999,999	45,000

In addition, the [ex officio collector] **collector-treasurer** shall [be allowed to retain a commission] **collect on behalf of the county a fee** for the collection of all back taxes and all delinquent taxes of two percent on all sums collected to be added to the face of the tax bill, and collected from the party paying the tax. The [ex officio collector] **collector-treasurer** shall [be allowed a commission] **collect on behalf of the county a fee** of three percent on all licenses, [and all taxes,] including current **railroad and utility** taxes, **surtax**, back taxes, delinquent taxes and interest collected by the [ex officio collector] **collector-treasurer**, to be deducted from the amounts collected. [The three percent allowed to be retained shall be withheld on behalf of the county and shall be deposited in the county treasury or as provided by law and beginning January 1, 1989, the two percent allowed to be retained for collection of all back taxes and delinquent taxes shall be withheld on behalf of the county and shall be deposited in the county treasury or as provided by law.] **The collector-treasurer shall collect on behalf of the county for the purpose of mailing statements and receipts required by section 139.350, RSMo, a fee of one-half of one percent on all licenses and all taxes, including current taxes, back taxes, delinquent taxes, and interest collected by the collector-treasurer, to be deducted from the amounts collected. All fees collected under this section shall be collected on behalf of the county and shall be deposited in the county treasury or as provided by law. Collector-treasurers in counties having a township form of government are entitled to collect such fees immediately upon an order of the circuit court under section 139.031, RSMo. If the protest is later sustained and a portion of the taxes so paid is returned to the taxpayer the county shall return that portion of the fee collected on the amount returned to the taxpayer.** The [treasurer ex officio collector] **collector-treasurer** in each of the third and fourth classification counties which have adopted the township form of county government is entitled to employ deputies and assistants, and for the deputies and assistants is allowed not less than the amount allowed in [1992 or 1993] **2003-2004**, whichever is greater.

2. **Notwithstanding any provisions of law to the contrary, the collector-treasurer in each county of the third or fourth classification having a township form of government shall employ not fewer than one full-time deputy. The collector-treasurer may employ such number of deputies and assistants as may be necessary to perform the duties of the office of collector-treasurer promptly and correctly, as determined by the collector-treasurer. The office of the collector-treasurer shall be funded sufficiently to compensate deputies and assistants at a level no less than the compensation provided for other county employees. Such deputies and assistants shall be allowed adjustments in compensation at the same percentage as provided for other county employees, as effective January first each year.**

3. Two thousand dollars of the salary authorized in this section shall be payable to the [treasurer ex officio collector] **collector-treasurer** only if such officer has completed at least twenty hours of classroom instruction each calendar year relating to the operations of the [treasurer ex officio collector's] **collector-treasurer's** office when approved by a professional association of the county treasurers or 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 [treasurer ex officio collector] **collector-treasurer** who completes the training program and shall send a list of certified [treasurer ex officio collectors] **collector-treasurers** to the county commission of each county. Expenses incurred for attending the training session may be reimbursed to the county [treasurer ex officio collector] **collector-treasurer** in the same manner as other expenses as may be appropriated for that purpose.

54.330. BONDS OF COLLECTOR-TREASURERS — BOND REQUIREMENTS FOR DEPUTIES AND ASSISTANTS. — 1. County [treasurers, as ex officio county collectors of counties under]

collector-treasurers in a county having township organization, shall be required to give bonds as other county collectors under the general revenue law.

2. Before entering upon the duties for which they are employed, deputies and assistants employed in the office of any [treasurer ex officio collector] **collector-treasurer** shall give bond and security to the satisfaction of the [treasurer ex officio collector] **collector-treasurer**. The bond for each individual deputy or assistant shall not exceed one-half of the amount of the maximum bond required for any [treasurer ex officio collector] **collector-treasurer**. The official bond required pursuant to this section shall be a surety bond with a surety company authorized to do business in this state. The premium of the bond shall be paid by the county or city being protected.

55.160. DUTIES (SECOND CLASS AND CERTAIN FIRST CLASS COUNTIES). — The auditor of each county of the first [class] **classification** not having a charter form of government and of each county of the second [class] **classification** shall keep an inventory of all county property under the control and management of the various officers and departments and shall annually take an inventory of such property at an original value of [two hundred fifty] **one thousand** dollars or more showing the amount, location and estimated value thereof. [He] **The auditor** shall keep accounts of all appropriations and expenditures made by the county commission, and no warrant shall be drawn or obligation incurred without [his] **the auditor's** certification that an unencumbered balance, sufficient to pay the same, remain in the appropriate account or in the anticipated revenue fund against which such warrant or obligation is to be charged. [He] **The auditor** shall audit the accounts of all officers of the county annually or upon their retirement from office. The auditor shall audit, examine and adjust all accounts, demands, and claims of every kind and character presented for payment against the county, and shall in [his] **the auditor's** discretion approve to the county commission of the county all lawful, true, just and legal accounts, demands and claims of every kind and character payable out of the county revenue or out of any county funds before the same shall be allowed and a warrant issued therefor by the commission. Whenever the auditor thinks it necessary to the proper examination of any account, demand or claim, [he] **the auditor** may examine the parties, witnesses, and others on oath or affirmation touching any matter or circumstance in the examination of such account, demand or claim before [he] **the auditor** allows same. The auditor shall not be personally liable for any cost for any proceeding instituted against [him] **the auditor** in [his] **the auditor's** official capacity. The auditor shall keep a correct account between the county and all county and township officers, and shall examine all records and settlements made by them for and with the county commission or with each other, and the auditor shall, whenever [he] **the auditor** desires, have access to all books, county records or papers kept by any county or township officer or road overseer. The auditor shall, during the first four days of each month, strike a balance in the case of each county and township officer, showing the amount of money collected by each, the amount of money due from each to the county, and the amount of money due from any source whatever to such office, and the auditor shall include in such balance any fees that have been returned to the county commission or to the auditor as unpaid and which since having been returned have been collected.

56.060. PROSECUTOR'S DUTIES, GENERALLY, EXPENSES — EMPLOYED ATTORNEY, HOW COMPENSATED. — 1. Each prosecuting attorney shall commence and prosecute all civil and criminal actions in [his] **the prosecuting attorney's** county in which the county or state is concerned, defend all suits against the state or county, and prosecute forfeited recognizances and actions for the recovery of debts, fines, penalties and forfeitures accruing to the state or county. In all cases, civil and criminal, in which changes of venue are granted, [he] **the prosecuting attorney** shall follow and prosecute or defend, as the case may be, all the causes, for which, in addition to the fees now allowed by law, [he] **the prosecuting attorney** shall receive his or her actual expenses. If any misdemeanor case is taken to the court of appeals by appeal [he] **the**

prosecuting attorney shall represent the state in the case in the court and make out and cause to be printed, at the expense of the county, all necessary abstracts of record and briefs, and if necessary appear in the court in person, or shall employ some attorney at [his] **the prosecuting attorney's** own expense to represent the state in the court, and for his **or her** services he **or she** shall receive the compensation that is proper, not to exceed twenty-five dollars for each case, and necessary traveling expenses, to be audited and paid as other claims are audited and paid by the county commission of the county.

2. Notwithstanding the provisions of subsection 1 **of this section**, in any county [of the first class not having a charter form of government] for which a county counselor is appointed, the prosecuting attorney shall only perform those duties prescribed by subsection 1 **of this section** which are not performed by the county counselor under the provisions of law relating to the office of county counselor.

56.631. COUNTY COUNSELOR, HOW APPOINTED, TENURE, QUALIFICATIONS, COMPENSATION. — 1. The county commission **or governing body** of any county [of the first class not having a charter form of government or any second class county which contains part of a city with a population of at least three hundred fifty thousand], **except for any county with a charter form of government and with more than two hundred fifty thousand but fewer than three hundred fifty thousand inhabitants**, may by order of the commission **or governing body** appoint some suitable person to the position of county counselor. If a county counselor is appointed, [he] **the county counselor** shall be commissioned as other officers are commissioned. The county counselor shall serve at the pleasure of the county commission **or governing body**.

2. The county counselor shall be a person licensed to practice law in this state, but the county commission **or governing body** may determine and fix further qualifications for the position.

3. The county commission **or governing body** shall fix the compensation of the county counselor.

4. The county commission **or governing body** may require the county counselor to devote his full time to the duties of his office.

56.640. COUNTY COUNSELOR AND ASSISTANTS, DUTIES OF. — 1. If a county counselor is appointed, [he] **the county counselor** and [his] **the county counselor's** assistants under [his] **the county counselor's** direction shall represent the county and all departments, officers, institutions and agencies thereof, except as otherwise provided by law and shall upon request of any county department, officer, institution or agency for which legal counsel is otherwise provided by law, and upon the approval of the county commission **or governing body**, represent such department, officer, institution or agency. [He] **The county counselor** shall commence, prosecute or defend, as the case may require, and exercise exclusive authority in all civil suits or actions in which the county or any county officer, commission, **governing body**, or agency is a party, in [his] **the county counselor's** or its official capacity, [he] **the county counselor** shall draw all contracts relating to the business of the county, [he] **the county counselor** shall represent the county generally in all matters of civil law, and [he] **the county counselor** shall upon request furnish written opinions to any county officer or department.

2. In all cases in which a civil fine may be imposed pursuant to section 49.272, RSMo, it shall be the duty of the county counselor, rather than the county prosecuting attorney, to prosecute such violations in the associate division of the circuit court in the county where the violation occurred.

3. Notwithstanding any law to the contrary, the county counselor in any county of the first classification and the prosecuting attorney of such county may by mutual cooperation agreement prosecute or defend any civil action which the prosecuting attorney or county counselor of the county is authorized or required by law to prosecute or defend.

56.650. COUNSELOR TO ADVISE COUNTY COMMISSION — EMPLOYEES OF COUNSELOR, HOW PAID, TENURE — ASSISTANT COUNSELOR, COMPENSATION, HOW SET. — If a county counselor is appointed, [he] **the county counselor** shall in person, or by assistant, at the election of the county commission **or governing body**, attend [each sitting] **such sittings** of the county commission and give advice on all legal questions that may arise during the session of the commission **or governing body as the county commission or governing body**, and [he] **the county counselor** shall assist the **county commission or governing body** in all such matters that may be referred to [him] **the county counselor**. The county counselor may, with the approval of the county commission **or governing body**, employ such office personnel as are necessary in the discharge of [his] **the county counselor's** official duties and such employees and assistants shall hold their positions at the pleasure of the county counselor and shall be paid monthly by the county commission **or governing body** out of the county treasury. The county counselor may, with the approval of the county commission **or governing body**, appoint such assistants as are necessary in the conduct of [his] **the county counselor's** office, who shall receive as compensation such salary as is fixed by the county counselor and approved by the county commission **or governing body**.

56.660. SPECIAL COUNTY COUNSELORS — EMPLOYMENT — COMPENSATION — QUALIFICATIONS. — [In all counties of the first class not having a charter form of government and containing all or part of a city with a population of over four hundred thousand inhabitants,] The county counselor may, with the approval of the **county commission or the governing body** of such county, employ special county counselors to represent such county in prosecuting or defending any suit by or against such county, or any official of such county acting in [his] **the county counselor's** official capacity. The county counselor may pay such special county counselors a reasonable compensation, which shall be fixed by the **county commission or the governing body** of such county and paid out of such funds as the **county commission or the governing body** may direct, for their services. Special county counselors employed under this section shall have the same qualifications required for county counselors under the provisions of section 56.631.

59.005. DEFINITIONS. — As used in this chapter, unless the context clearly indicates otherwise, the following terms mean:

- (1) "Document" or "instrument", any writing or drawing presented to the recorder of deeds for recording;
- (2) "File", "filed" or "filing", the act of delivering or transmitting a document to the recorder of deeds for recording into the official public record;
- (3) "Grantor" or "grantee", the names of the parties involved in the transaction used to create the recording index;
- (4) "Legal description", includes but is not limited to the lot or parts thereof, block, plat or replat number, plat book and page and the name of any recorded plat or a metes and bounds description with acreage, if stated in the description, or the quarter/quarter section, and the section, township and range of property, or any combination thereof. The address of the property shall not be accepted as legal description;
- (5) "Legible", all text, seals, drawings, signatures or other content within the document must be capable of producing a clear and readable image from record, regardless of the process used for recording;
- (6) "Page", any writing, printing or drawing printed on one side only covering all or part of the page, not larger than eight and one-half inches in width and eleven inches in height for pages other than a plat or survey;
- (7) "Record", "recorded" or "recording", the recording of a document into the official public record, regardless of the process used;

(8) "Recorder of deeds", the separate recorder of deeds in those counties where separate from the circuit clerk and the circuit clerk and ex officio recorder of deeds in those counties where the offices are combined;

(9) "Copying" or "reproducing", any recorded instrument or document, the act of making a single reproduction in any medium of a recorded document or instrument;

(10) "Duplicate", copies, copies requested concurrently with, but in excess of one reproduction in any medium of a recorded instrument or document or collection thereof.

59.044. CERTAIN RECORDERS TO BE PAID STATUTORY COMPENSATION. — In any county, except counties with a charter form of government, counties of the first classification, and any city not within a county, where the recorder of deeds is separate from that of the clerk of the circuit court, each recorder of deeds shall be paid the statutory compensation provided for by sections 50.333 and 50.334, RSMo.

64.215. COUNTY PLANNING BOARD, MEMBERS (EXCEPTION FOR CASS COUNTY), TERMS, REMOVAL, EXPENSES, CHAIRMAN (NONCHARTER FIRST CLASSIFICATION COUNTIES). — 1. Except as otherwise provided in subsection 2 of this section, the county planning board shall consist of one of the commissioners of the county commission selected by the county commission, the county highway engineer, both of whom shall serve during their tenure of office, **except that in any county of the first classification with more than eighty-two thousand but fewer than eighty-two thousand one hundred inhabitants such members shall be nonvoting members**, and six residents of the unincorporated territory of the county who shall be appointed by the county commission. The term of the six appointed members shall be four years or until their successor takes office, except that the original term of three of the six appointed members shall be two years. Members may be removed for cause by the county commission upon written charges after public hearings. Any vacancy may be filled by the county commission for the unexpired term of any member whose term becomes vacant, or until the member's successor takes office. All members of the board shall serve without compensation; except, that an attendance fee as reimbursement for expenses may be paid to the appointed members of the board in an amount, set by the county commission, not to exceed twenty-five dollars per meeting. The planning board shall elect its chairman from among the appointed members.

2. In any county of the first classification with a population of at least two hundred thousand inhabitants which does not adjoin any other county of the first classification, the county planning board may, at the option of the county commission, consist of one of the commissioners of the county commission selected by the county commission, and shall include the county highway engineer and six residents of the unincorporated territory of the county, who shall be appointed by the county commission. The county highway engineer and the county commissioner, if a member of the board, shall serve during such person's tenure of office. The term of the six appointed members shall be three years or until their successor takes office.

64.940. POWERS OF THE AUTHORITY. — 1. The authority shall have the following powers:

(1) To acquire by gift, bequest, purchase or lease from public or private sources and to plan, construct, operate and maintain, or to lease to others for construction, operation and maintenance a sports stadium, field house, indoor and outdoor recreational facilities, centers, playing fields, parking facilities and other suitable concessions, and all things incidental or necessary to a complex suitable for all types of sports and recreation, either professional or amateur, commercial or private, either upon, above or below the ground;

(2) To charge and collect fees and rents for use of the facilities owned or operated by it or leased from or to others;

(3) To adopt a common seal, to contract and to be contracted with, including, but without limitation, the authority to enter into contracts with counties and other political subdivisions under sections 70.210 to 70.320, RSMo, and to sue and to be sued;

(4) To receive for its lawful activities any contributions or moneys appropriated by municipalities, counties, state or other political subdivisions or agencies or by the federal government or any agency or officer thereof or from any other source;

(5) To disburse funds for its lawful activities and fix salaries and wages of its officers and employees;

(6) To borrow money for the acquisition, planning, construction, equipping, operation, maintenance, repair, extension and improvement of any facility, or any part or parts thereof, which it has the power to own or to operate, and to issue negotiable notes, bonds, or other instruments in writing as evidence of sums borrowed, as hereinafter provided in this section:

(a) Bonds or notes issued hereunder shall be issued pursuant to a resolution adopted by the commissioners of the authority which shall set out the estimated cost to the authority of the proposed facility or facilities, and shall further set out the amount of bonds or notes 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 therewith. Any such bonds or notes 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.

(b) Such bonds or notes shall bear interest at a rate not exceeding eight percent per annum and shall mature within a period not exceeding fifty years and may be sold at public or private sale for not less than ninety-five percent of the principal amount thereof. Bonds or notes issued by an authority shall possess all of the qualities of negotiable instruments under the laws of this state.

(c) Such bonds or notes may be payable to bearer, may be registered or coupon bonds or notes 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 the same which resolution may also provide for the exchange of registered and coupon bonds or notes. Such bonds or notes and any coupons attached thereto shall be signed in such manner and by such officers of the authority as may be provided for by the resolution authorizing the same. The authority may provide for the replacement of any bond or note which shall become mutilated, destroyed or lost.

(d) Bonds or notes issued by an authority shall be payable as to principal, interest and redemption premium, if any, out of the general funds of the authority, including rents, revenues, receipts and income derived and to be derived for the use of any facility or combination of facilities, or any part or parts thereof, acquired, constructed, improved or extended in whole or in part from the proceeds of such bonds or notes, including but not limited to stadium rentals, concessions, parking facilities and from funds derived from any other facilities or part or parts thereof, owned or operated by the authority, all or any part of which rents, revenues, receipts and income the authority is authorized to pledge for the payment of said principal, interest, and redemption premium, if any. Bonds or notes issued pursuant to this section shall not constitute an indebtedness of the authority within the meaning of any constitutional or statutory restriction, limitation or provision, and such bonds or notes shall not be payable out of any funds raised or to be raised by taxation. Bonds or notes issued pursuant to this section may be further secured by a mortgage or deed of trust upon the rents, revenues, receipts and income herein referred to or any part thereof or upon any leasehold interest or other property owned by the authority, or any part thereof, whether then owned or thereafter acquired. The proceeds of such bonds or notes shall be disbursed in such manner and under such restrictions as the authority may provide in the resolution authorizing the issuance of such bonds or notes or in any such mortgage or deed of trust.

(e) It shall be the duty of the authority to fix and maintain rates and make and collect charges for the use and services of its interest in the facility or facilities or any part thereof operated by the authority which shall be sufficient to pay the cost of operation and maintenance thereof, to pay the principal of and interest on any such bonds or notes and to provide funds sufficient to meet all requirements of the resolution by which such bonds or notes have been issued.

(f) The resolution authorizing the issuance of any such bonds or notes may provide for the allocation of rents, revenues, receipts and income derived and to be derived by the authority from the use of any facility or part thereof into such separate accounts as shall be deemed to be advisable to assure the proper operation and maintenance of any facility or part thereof and the prompt payment of any bonds or notes issued to finance all or any part of the costs thereof. Such accounts may include reserve accounts necessary for the proper operation and maintenance of any such facility or any part thereof, and for the payment of any such bonds or notes. Such resolution may include such other covenants and agreements by the authority as in its judgment are advisable or necessary properly to secure the payment of such bonds or notes.

(g) The authority may issue negotiable refunding bonds or notes for the purpose of refunding, extending or unifying the whole or any part of such bonds or notes then outstanding, which bonds or notes shall not exceed the principal of the outstanding bonds or notes to be refunded and the accrued interest thereon to the date of such refunding, including any redemption premium. The authority may provide for the payment of interest on such refunding bonds or notes at a rate in excess of the bonds or notes to be refunded but such interest rate shall not exceed the maximum rate of interest hereinbefore provided.

(7) To condemn any and all rights or property, of any kind or character, necessary for the purposes of the authority, subject, however, to the provisions of sections 64.920 to 64.950 and in the manner provided in chapter 523, RSMo; provided, however, that no property now or hereafter vested in or held by the state or by any county, city, village, township or other political subdivisions shall be taken by the authority without the authority or consent of such political subdivisions;

(8) To perform all other necessary and incidental functions; and to exercise such additional powers as shall be conferred by the general assembly or by act of congress.

2. The authority is authorized and directed to proceed to carry out its duties, functions and powers in accordance with sections 64.920 to 64.950 as rapidly as may be economically practicable and is vested with all necessary and appropriate powers not inconsistent with the constitution or the laws of the United States to effectuate the same, except the power to levy taxes or assessments.

3. Any expenditure made by the authority located in a county with a charter form of government and with more than six hundred thousand but fewer than seven hundred thousand inhabitants, that is over five thousand dollars, including professional service contracts, must be competitively bid.

65.110. OFFICERS TO BE CHOSEN. — 1. There shall be chosen at the biennial election in each township one trustee, who shall be ex officio treasurer of the township, [one township collector,] one township clerk, and two members of the township board.

2. Upon the assumption of office of a county assessor elected as provided by section 53.010, RSMo, the township clerk shall cease to perform the duties of ex officio township assessor and shall promptly deliver to the county assessor all books, papers, records, and property pertaining to the office of ex officio township assessor.

3. The treasurer ex officio collector of a county with township organization shall no longer retain such title, and shall instead, assume the office of collector-treasurer, as provided for by section 54.010, on March 1, 2007. On such date, the township collector shall cease to perform the duties of township collector and shall promptly deliver to the collector-treasurer, all books, papers, records, and property pertaining to the office of

township collector. The township collector shall continue to perform the same duties and be subject to the same requirements and liabilities until his or her term expires on March 1, 2007. Notwithstanding other provisions of law to the contrary, the collector-treasurer shall obtain and hold the same duties, powers, and obligations previously granted to, and held by, the township collector on and after March 1, 2007.

65.160. OATH — SHALL ASSUME OFFICE, WHEN. — Every person chosen or appointed to the office of township trustee and ex officio treasurer, member of the township board, [township collector,] or township clerk, before [he] **such person** enters on the duties of his **or her** office and within ten days after [he] **such person** shall be notified of his **or her** election or appointment, shall take and subscribe, before any officer authorized to administer oaths, such oath or affirmation as is prescribed by law.

65.460. TOWNSHIP TRUSTEE, COLLECTOR. — Every person elected or appointed to the office of township trustee and ex officio treasurer, before [he] **such person** enters on the duties of his **or her** office, and within ten days after [his] **such person's** election or appointment, shall execute and deliver to the township clerk a bond with one or more sureties, to the satisfaction of the township clerk payable to the township board, equal to one-half the largest amount on deposit at any one time during the year preceding his **or her** election or appointment of all the township funds, including school moneys, that may come into his **or her** hands; and every such bond, when deposited with the township clerk as aforesaid, shall constitute a lien upon all the real estate within the county belonging to such trustee and ex officio treasurer at the time of filing thereof, and shall continue to be a lien until its conditions, together with all costs and charges which may accrue by reason of any prosecution thereon, shall be satisfied. [The township collector shall before he receives the tax books give bond and security to the state, to the satisfaction of the county commission, in a sum for any one month equal to the average total monthly collection for the same month during the preceding four years, but not to exceed one-half the largest amount collected during any one year preceding his election or appointment, including school taxes. Such bond shall be executed in duplicate; one part thereof shall be deposited and recorded in the office of the clerk of the county commission, and the other part shall be transmitted by the clerk to the state tax commission. The conditions of such bond shall be that he, the said collector, will faithfully and punctually collect and pay over all state, county, township and other revenue, including school taxes, that may become due and collectible during the period for which such collector shall be elected or appointed; and that he will in all things faithfully perform all the duties of the office of township collector according to law; provided, the county commission or township board shall annually examine the collector's or trustee's bond as to form and sufficiency of surety and in case of any doubt shall require additional security.]

65.490. TOWNSHIP FUNDS, HOW PAID OUT — SCHOOL DISTRICT FUNDS, DUTIES OF TRUSTEES. — The township trustee and ex officio treasurer shall not pay out any moneys belonging to the township for any purpose whatever, except upon the order of the township board of directors, signed by the chairman of said board and attested by the township clerk; provided, that nothing in this chapter shall be so construed as to change or interfere with any school district, the boundary lines of which are different from that of the municipal township as organized under the provisions of this chapter, nor with the payment of any school moneys upon proper vouchers. [He] **The township trustee and ex officio treasurer** shall receive from the [township collector and the county collector or treasurer] **collector-treasurer** all road and bridge and other taxes due the township when collected by such officers, and shall receipt for the same, and shall account therefor in like manner as for other moneys in his **or her** hands belonging to the township.

65.600. COUNTY COLLECTOR AND ASSESSOR — TENURE UPON ADOPTION OF TOWNSHIP ORGANIZATION. — 1. In any county in this state which may hereafter adopt township

organization, the person holding the office of the collector of the revenue in such county, at the time in March when township organization becomes effective in such county, shall continue to hold his **or her** office and exercise all the functions and receive all the fees and emoluments thereof until the time at which his **or her** term of office would have expired had such county not adopted township organization, and, except as herein otherwise provided, [he] **the collector** shall perform the same duties and be subject to the same requirements and liabilities as in counties not under township organization.

2. The county assessor shall assess the property of the various townships in such county and arrange [his] **the county assessor's** books and lists in a manner so that it can be determined which township is entitled to the taxes assessed against any property.

3. The county clerk of such county shall [make out] **submit**, for the use of such county collector, lists of the property assessed in each township the same as [he] **the county clerk** is required to [make out] **submit** for the use of township collectors.

4. The collector of the revenue in such county shall pay over to the several township trustees of such county after deducting his **or her** commission, all township taxes and funds of every kind collected by [him] **the collector** and belonging respectively to the several townships in such county, as required by section 139.430, RSMo, in the case of township collectors, and for [his] **the collector's** failure to do so [he] **the collector** shall be subject to the same liability as provided by section 139.430, RSMo, in the case of township collectors.

5. The first township collectors in such county shall be elected at the township election held in March next preceding the time at which the term of office of the collector of the revenue in such county shall expire and their terms of office shall begin at the expiration of the term of office of such collector of the revenue, and they shall hold their offices until the next township election in such county. **The provisions of this section shall be effective prior to August 28, 2005.**

66.411. MUNICIPAL FIRE DEPARTMENTS, VOTE REQUIRED TO DISSOLVE, ELIMINATE, MERGE, OR TERMINATE (ST. CHARLES COUNTY, ST. CHARLES CITY). — **No county with a charter form of government and with more than two hundred fifty thousand but fewer than three hundred fifty thousand inhabitants shall dissolve, eliminate, merge, or terminate a municipal fire department of any home rule city with more than sixty thousand three hundred but fewer than sixty thousand four hundred inhabitants, until it has been submitted to an election of the voters residing within the home rule city with more than sixty thousand three hundred but fewer than sixty thousand four hundred inhabitants, and assented to by a majority vote of the voters of the city voting on the question.**

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. **The lien may be foreclosed in the same manner as a tax upon real property by land tax sale pursuant to chapter 140, RSMo, or by judicial foreclosure proceeding, at the option of the governing body.** Upon the foreclosure of any such lien, **whether by land tax sale or by judicial foreclosure proceeding**, the entire remaining assessment [shall] **may** become due and payable and [shall] **may** be recoverable in such foreclosure proceeding **at the option of the governing body.**

67.1159. LIEN FOR UNPAID TAXES — RELEASE OF LIEN, WHEN — FEE FOR RECORDING OF LIEN — NOTIFICATION OF SALE OF PROPERTY, WHEN — CIVIL ACTION AUTHORIZED, WHEN. — **1. In any case in which any tax, interest or penalty imposed under sections 67.1150 to 67.1158 is not paid when due, the authority or its designated agent may file for**

record in the real estate records of the recorder's office of the city or the county where the business giving rise to the tax, interest, or penalty is located, or in which the person owing the tax, interest, or penalty resides, a notice of lien specifying the amount of tax, interest, or penalty due and the name of the person liable for the same. From the time of filing any such notice, the amount of the tax specified in such notice shall have the force and effect of a lien against the real and personal property of the business of such person or the facility giving rise to the tax for the amount specified in such notice.

2. A lien created under subsection 1 of this section may be released:

(1) By filing for record in the office of the recorder where the lien was originally filed a release of the lien executed by a duly authorized agent of the authority upon payment of the tax, interest, and penalty due; or

(2) Upon receipt by the authority of sufficient security to secure payment thereof; or

(3) By final judgment holding such lien to have been erroneously imposed.

3. Each recorder shall receive the standard statutory fee for the recording of each notice of lien and for each release of lien filed for record. The authority is authorized to collect an additional penalty from each taxpayer equal to the cost of filing a notice of lien or release with respect to such taxpayer.

4. Any person operating or managing a business or facility who owes any tax, penalty, or interest, or is required to file any report with the authority, shall notify the authority in writing at least ten days prior to any sale of the entire business or facility, or the entire assets or property of the business or facility, or a major part thereof. Such notice shall include the name of the business or facility, the name of the owner of the business or facility, the name of the person collecting the tax at the time of the notice, the name of the purchaser, and the intended date of purchase. A purchaser of such business, facility, assets, or property who takes with notice of any delinquent tax or with notice of noncompliance with this section takes subject to any tax, penalty, or interest owed by the seller.

5. The authority shall have the power to bring a civil action in any court of competent jurisdiction to enjoin the operation of the business or facility of any person or the successor-in-interest to any person operating or managing the same business or facility, which business or facility gave rise to any tax, penalty, or interest which is unpaid or to enjoin the operating or managing of any such business or facility whose owners or successors-in-interest are operating or managing in violation of the provisions of sections 67.1150 to 67.1159. The courts shall expedite the hearing on the merits of any such action and shall not require the authority to post a bond pending such hearing.

67.1305. RETAIL SALES TAX MAY BE IMPOSED IN LIEU OF CERTAIN LOCAL ECONOMIC DEVELOPMENT SALES TAX — BALLOT LANGUAGE — COLLECTION AND DISTRIBUTION OF MONEYS — TRUST FUND AND BOARD TO BE ESTABLISHED. — 1. As used in this section, the term "city" shall mean any incorporated city, town, or village.

2. In lieu of the sales taxes authorized under sections 67.1300 and 67.1303, the governing body of any city or county may impose, by order or ordinance, a sales tax on all retail sales made in the city or county which are subject to sales tax under chapter 144, RSMo. The tax authorized in this section shall not be more than one-half of one percent. The order or ordinance imposing the tax shall not become effective unless the governing body of the city or county submits to the voters of the city or county at any citywide, county, or state general, primary, or special election a proposal to authorize the governing body to impose a tax under this section. The tax authorized in this section shall be in addition to all other sales taxes imposed by law, and shall be stated separately from all other charges and taxes. The tax authorized in this section shall not be imposed by any city or county that has imposed a tax under section 67.1300 or 67.1303 unless the tax imposed under those sections has expired or been repealed.

3. 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 or county) impose a sales tax at a rate of (insert rate of percent) percent for economic development purposes?"

[] 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 and such question is approved by a majority of the qualified voters voting on the question, provided that no proposal shall be resubmitted to the voters sooner than twelve months from the date of the submission of the last proposal.

4. All sales taxes collected by the director of revenue under this section on behalf of any county or city, 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 in a special trust fund, which is hereby created, to be known as the "Local Option Economic Development Sales Tax Trust Fund".

5. The moneys in the local option economic development sales 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 and which was collected in each city or county imposing a sales tax under this section, and the records shall be open to the inspection of officers of the city or county and the public.

6. 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 city or county which levied the tax. Such funds shall be deposited with the county treasurer of each such county or the appropriate city officer in the case of a city tax, and all expenditures of funds arising from the local option economic development sales tax trust fund shall be in accordance with this section.

7. The director of revenue may authorize the state treasurer to make refunds from the amounts in the trust fund and credited to any city or county for erroneous payments and overpayments made, and may redeem dishonored checks and drafts deposited to the credit of such cities and counties.

8. If any county or city abolishes the tax, the city or county 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 city or county, the director of revenue shall remit the balance in the account to the city or county and close the account of that city or county. The director of revenue shall notify each city or county of each instance of any amount refunded or any check redeemed from receipts due the city or county.

9. Except as modified by this section, all provisions of sections 32.085 and 32.087, RSMo, shall apply to the tax imposed pursuant to this section.

10. (1) No revenue generated by the tax authorized in this section shall be used for any retail development project, except for the redevelopment of downtown areas and historic districts. Not more than twenty-five percent of the revenue generated may be used annually for administrative purposes, including staff and facility costs.

(2) At least twenty percent of the revenue generated by the tax authorized in this section shall be used solely for projects directly related to long-term economic development preparation, including, but not limited to, the following:

- (a) Acquisition of land;
- (b) Installation of infrastructure for industrial or business parks;
- (c) Improvement of water and wastewater treatment capacity;
- (d) Extension of streets;
- (e) Public facilities directly related to economic development and job creation; and
- (f) Providing matching dollars for state or federal grants relating to such long-term projects;

(3) The remaining revenue generated by the tax authorized in this section may be used for, but shall not be limited to, the following:

- (a) Marketing;
- (b) Providing grants and loans to companies for job training, equipment acquisition, site development, and infrastructure;
- (c) Training programs to prepare workers for advanced technologies and high skill jobs;
- (d) Legal and accounting expenses directly associated with the economic development planning and preparation process; and
- (e) Developing value-added and export opportunities for Missouri agricultural products.

11. 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 or county funds.

12. (1) Any city or county imposing the tax authorized in this section shall establish an economic development tax board. The volunteer board shall receive no compensation or operating budget.

(2) The economic development tax board established by a city shall consist of five members, to be appointed as follows:

- (a) One member shall be appointed by the school districts included within any economic development plan or area funded by the sales tax authorized in this section. Such member shall be appointed in any manner agreed upon by the affected districts;
- (b) Three members shall be appointed by the chief elected officer of the city with the consent of the majority of the governing body of the city; and
- (c) One member shall be appointed by the governing body of the county in which the city is located.

(3) The economic development tax board established by a county shall consist of seven members, to be appointed as follows:

- (a) One member shall be appointed by the school districts included within any economic development plan or area funded by the sales tax authorized in this section. Such member shall be appointed in any manner agreed upon by the affected districts;
- (b) Four members shall be appointed by the governing body of the county; and
- (c) Two members from the cities, towns, or villages within the county appointed in any manner agreed upon by the chief elected officers of the cities, towns or villages.

Of the members initially appointed, three shall be designated to serve for terms of two years, and the remaining members shall be designated to serve for a term of four years from the date of such initial appointments. Thereafter the members appointed shall serve for a term of four years, except that all vacancies shall be filled for unexpired terms in the same manner as were the original appointments.

13. The board, subject to approval of the governing body of the city or county, shall consider economic development plans, economic development projects, or designations of an economic development area, and shall hold public hearings and provide notice of any

such hearings. The board shall vote on all proposed economic development plans, economic development projects, or designations of an economic development area, and amendments thereto, within thirty days following completion of the hearing on any such plan, project, or designation, and shall make recommendations to the governing body within ninety days of the hearing concerning the adoption of or amendment to economic development plans, economic development projects, or designations of an economic development area. The governing body of the city or county shall have the final determination on use and expenditure of any funds received from the tax imposed under this section.

14. The board may consider and recommend using funds received from the tax imposed under this section for plans, projects, or area designations outside the boundaries of the city or county imposing the tax if and only if:

(1) The city or county imposing the tax or the state receives significant economic benefit from the plan, project, or area designation; and

(2) The board establishes an agreement with the governing bodies of all cities and counties in which the plan, project, or area designation is located detailing the authority and responsibilities of each governing body with regard to the plan, project, or area designation.

15. Notwithstanding any other provision of law to the contrary, the local option economic development sales tax imposed under this section when imposed within a special taxing district, including but not limited to a tax increment financing district, neighborhood improvement district, or community improvement district, shall be excluded from the calculation of revenues available to such districts, and no revenues from any sales tax imposed under this section shall be used for the purposes of any such district unless recommended by the economic development tax board established under this section and approved by the governing body imposing the tax.

16. The board and the governing body of the city or county imposing the tax shall report at least annually to the governing body of the city or county on the use of the funds provided under this section and on the progress of any plan, project, or designation adopted under this section and shall make such report available to the public.

17. Not later than the first day of March each year the department of economic development shall submit to the joint committee on economic development a report which shall include the following information for each project using the tax authorized under this section:

(1) A statement of its primary economic development goals;

(2) A statement of the total economic development sales tax revenues received during the immediately preceding calendar year; and

(3) A statement of total expenditures during the preceding calendar year in each of the following categories:

(a) Infrastructure improvements;

(b) Land or buildings, or both;

(c) Machinery and equipment;

(d) Job training investments;

(e) Direct business incentives;

(f) Marketing;

(g) Administration and legal expenses; and

(h) Other expenditures.

18. The governing body of any city or county 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 or county. The ballot of submission shall be in substantially the following form:

"Shall (insert the name of the city or county) repeal the sales tax imposed at a rate of (insert rate of percent) percent for economic development 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 or county, and the repeal is approved by a majority of the qualified voters voting on the question.

19. If any provision of this section or section 67.1303 or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or application of this section or section 67.1303 which can be given effect without the invalid provision or application, and to this end the provisions of this section and section 67.1303 are declared severable.

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; **in such county, notwithstanding other provisions to the contrary, the grant proceeds may be used to fund any recreation program or park improvement serving municipal residents and for such other purposes as set forth in section 67.1757.**

67.1775. AUTHORIZES LOCAL SALES TAX IN ALL COUNTIES AND ST. LOUIS CITY TO PROVIDE SERVICES FOR CHILDREN — ESTABLISHES FUND. — 1. The governing body of a city not within a county, or any county of this state may, after voter approval [pursuant to] **under** this section, levy a sales tax not to exceed one-quarter of a cent in the county **or city** for the purpose of providing services described in section 210.861, RSMo, including counseling, family support, and temporary residential services to persons nineteen years of age or less. The question shall be submitted to the qualified voters of the county **or city** at a county **or city** or state general, primary or special election upon the motion of the governing body of the county **or city** or upon the petition of eight percent of the qualified voters of the county **or city** determined on the basis of the number of votes cast for governor in such county at the last gubernatorial election held prior to the filing of the petition. The election officials of the county **or city** shall give legal notice as provided in chapter 115, RSMo. The question shall be submitted in substantially the following form:

Shall County **or City**, solely for the purpose of establishing a community children's services fund for the purpose of providing services to protect the well-being and

safety of children and youth nineteen years of age or less and to strengthen families, be authorized to levy a sales tax of (not to exceed one-quarter of a cent) in the **city or county** [for the purpose of establishing a community children's services fund for the purpose of providing services to protect the well-being and safety of children and youth nineteen years of age or less and to strengthen families]?

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 be levied and collected as otherwise provided by law. 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 be levied unless and until the question is again submitted to the qualified voters of the county and a majority of such voters are in favor of such a tax, and not otherwise.]

If a majority of the votes cast on the question by the qualified voters voting thereon are in favor of the question, then the ordinance or order and any amendments thereto shall be in effect on the first day of the second calendar quarter after the director receives notification of the local sales tax. If a question receives less than the required majority, then the governing authority of the city or county shall have no power to impose the sales tax unless and until the governing authority of the city or county has submitted another question to authorize the imposition of the sales tax authorized by this section and such question is approved by the required majority of the qualified voters voting thereon. However, in no event shall a question under this section be submitted to the voters sooner than twelve months from the date of the last question under this section.

2. **After the effective date of any tax imposed under the provisions of this section, the director of revenue shall perform all functions incident to the administration, collection, enforcement, and operation of the tax and the director of revenue shall collect in addition to the sales tax for the state of Missouri the additional tax authorized under the authority of this section. The tax imposed under this section and the tax imposed under the sales tax law of the state of Missouri shall be collected together and reported upon such forms and under such administrative rules and regulations as may be prescribed by the director of revenue.**

3. **All sales taxes collected by the director of revenue under this section on behalf of any city or county, 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 with the state treasurer in a special fund, which is hereby created, to be known as the "Community Children's Services Fund". The moneys in the city or county community children's services 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 fund which was collected in each city or county imposing a sales tax under this section, and the records shall be open to the inspection of officers of each city or county and the general public. Not later than the tenth day of each month, the director of revenue shall distribute all moneys deposited in the fund during the preceding month by distributing to the city or county treasurer, or such other officer as may be designated by a city or county ordinance or order, of each city or county imposing the tax authorized by this section, the sum, as certified by the director of revenue, due the city or county.**

4. **The director of revenue may authorize the state treasurer to make refunds from the amounts in the fund and credited to any city or county for erroneous payments and overpayments made, and may redeem dishonored checks and drafts deposited to the credit of such counties. Each city or county shall notify the director of revenue at least ninety days prior to the effective date of the expiration of the sales tax authorized by this section and the director of revenue may order retention in the 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 such tax and to redeem dishonored checks and drafts deposited to the credit of such accounts. After one year has elapsed after the date of expiration of the tax authorized by this section in such city or county, the director of revenue shall remit the balance in the account to the city or county and close the account of that city or county. The director of revenue shall notify each city or county of each instance of any amount refunded or any check redeemed from receipts due the city or county.

5. Except as modified in this section, all provisions of sections 32.085 and 32.087, RSMo, shall apply to the tax imposed under this section.

6. All revenues generated by the tax prescribed in this section shall be deposited in the county treasury or, in a city not within a county, to the board established by law to administer such fund to the credit of a special "Community Children's Services Fund" to accomplish the purposes set out herein and in section 210.861, RSMo, and shall be used for no other purpose. Such fund shall be administered by a board of directors, established [pursuant to] under section 210.861, RSMo.

67.1850. GEOGRAPHICAL INFORMATION SYSTEM MAY BE CREATED, PURPOSE, OPEN RECORDS POLICY, FEES FOR INFORMATION, LICENSING, LIABILITY. — 1. As used in this section, the following terms mean:

- (1) "Community", any municipality or county as defined in this section;
- (2) "County", any county [of the first classification without a charter] form of government;
- (3) "Geographical information system", a computerized, spatial coordinate mapping and relational database technology which:
 - (a) Captures, assembles, stores, converts, manages, analyzes, amalgamates and records, in the digital mode, all kinds and types of information and data;
 - (b) Transforms such information and data into intelligence and subsequently retrieves, presents and distributes that intelligence to a user for use in making the intelligent decisions necessary for sound management;
- (4) "Municipality", any city [with a population of at least sixty thousand inhabitants and] located in [a] any county [of the first classification without a charter form of government].

2. The development of geographical information systems has not been undertaken in any large-scale and useful way by private enterprise. The use of modern technology can enhance the planning and decision-making processes of communities. The development of geographical information systems is a time-consuming and expensive activity. In the interest of maintaining community governments open and accessible to the public, information gathered by communities for use in a geographical information system, unless properly made a closed record, should be available to the public. However, access to the information in a way by which a person could render the investment of the public in a geographical information system a special benefit to that person, and not to the public, should not be permitted.

3. Any community as defined in this section may create a geographical information system for the community. The scope of the geographical information system shall be determined by the governing body of the community. The method of creation, maintenance, use and distribution of the geographical information system shall be determined by the governing body of the community. A community shall not mandate the use of this system or allocate the costs of the system to nonusers.

4. The information collected or assimilated by a community for use in a geographical information system shall not be withheld from the public, unless otherwise properly made a closed record of the community as provided by section 610.021, RSMo. The information collected or assimilated by a community for use in a geographical information system need not be disclosed in a form which may be read or manipulated by computer, absent a license agreement between the community and the person requesting the information.

5. Information collected or assimilated by a community for use in a geographical information system and disclosed in any form, other than in a form which may be read or manipulated by computer, shall be provided for a reasonable fee, as established by section 610.026, RSMo. A community maintaining a geographical information system shall make maps and other products of the system available to the public. The cost of the map or other product shall not exceed a reasonable fee representing the cost to the community of time, equipment and personnel in the production of the map or other product. A community may license the use of a geographical information system. The total cost of licensing a geographical information system may not exceed the cost, as established by section 610.026, RSMo, of the:

(1) Cost to the community of time, equipment and personnel in the production of the information in a geographical information system or the production of the geographical information system; and

(2) Cost to the community of the creation, purchase, or other acquisition of the information in a geographical information system or of the geographical information system.

6. The provisions of this section shall not hinder the daily or routine collection of data from the geographical information system by real estate brokers and agents, title collectors, developers, surveyors, utility companies, banks, news media or mortgage companies, nor shall the provisions allow for the charging of fees for the collection of such data exceeding that allowed pursuant to section 610.026, RSMo. The provisions of this section, however, shall allow a community maintaining a geographical information system to license and establish costs for the use of the system's computer program and computer software, **and may also establish costs for the use of computer programs and computer software that provide access to information aggregated with geographic information system information.**

7. A community distributing information used in a geographical information system or distributing a geographical information system shall not be liable for any damages which may arise from any error which may exist in the information or the geographical information system.

67.1922. WATER QUALITY, INFRASTRUCTURE AND TOURISM, SALES TAXES AUTHORIZED FOR CERTAIN COUNTIES — BALLOT LANGUAGE. — 1. The governing body of any county containing any part of a Corps of Engineers lake with a shoreline of at least seven hundred miles and not exceeding a shoreline of nine hundred miles or the governing body of any county which borders on or which contains part of a lake with not less than one hundred miles of shoreline may impose by order [a] **one or more sales [tax] taxes**, not to exceed one and one-half percent **in the aggregate**, on all retail sales made in such county which are subject to taxation pursuant to the provisions of sections 144.010 to 144.525, RSMo, for the purpose of [promoting] **affecting any combination of** water quality, infrastructure [and], **or** tourism [through programs designed to affect the economic development of] **in** the county. The [tax] **taxes** authorized by this section shall be in addition to any and all other sales taxes allowed by law; except that no order imposing a sales tax pursuant to the provisions of this section shall be effective unless the governing body of the county submits to the voters of the county, at a municipal or state primary, general or special election, a proposal to authorize the governing body of the county to impose [a] **such** tax.

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

Shall the county of (county's name) impose a countywide sales tax of (insert percent) for the purpose of [creating and implementing water quality, infrastructure and tourism programs affecting economic development in the county] **affecting** **(water quality, infrastructure, and tourism)(water quality and infrastructure)(water quality and tourism)(infrastructure and tourism)(water quality)(infrastructure)(tourism)** (insert one) as provided by law?

[] 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 county voting thereon are in favor of the proposal, then the order shall become effective on the first day of the second calendar quarter after the director of revenue receives notice of adoption of the tax. If the proposal receives less than the required majority, then the governing body of the county shall have no power to impose the sales tax authorized pursuant to this section unless and until the governing body shall again have submitted another proposal to authorize the governing body to impose the sales tax authorized by this section and such proposal is approved by the required majority of the qualified voters of the county voting on such proposal.

67.1934. REPEAL OF TAX, SUBMITTED TO VOTERS, BALLOT LANGUAGE. — The governing body of the county, when presented with a petition, signed by at least twenty percent of the registered voters in the county that voted in the last gubernatorial election, calling for an election to repeal the tax 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 County, Missouri, repeal the percent economic development sales tax for [promoting water quality, infrastructure and tourism] **affecting (water quality, infrastructure, and tourism programs)(water quality and infrastructure programs)(water quality and tourism programs)(infrastructure and tourism programs)(water quality programs)(infrastructure programs)(tourism programs)(insert one)** now in effect in the county?

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 county 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 county's indebtedness incurred pursuant to sections 67.1922 to 67.1940, whichever occurs later.

67.2535. MONITORING OF BLASTING OPERATIONS PERMITTED (ST. CHARLES COUNTY). — **Any charter county with a population of at least two hundred fifty thousand adjoining a charter county with a population of at least nine hundred thousand may conduct and pay for the monitoring of blasting operations, whether the blasting operation is located in an unincorporated area of the county or within the limits of a village, town, city, or municipality located within the county.**

89.450. USE OF UNAPPROVED PLAT IN SALE OF LAND — PENALTY — VACATION OR INJUNCTION OF TRANSFER. — No owner, or agent of the owner, of any land located within the platting jurisdiction of any municipality, knowingly or with intent to defraud, may transfer, sell, agree to sell, or negotiate to sell that land by reference to or by other use of a plat of any purported subdivision of the land before the plat has been approved by the council or planning commission and recorded in the office of the appropriate county recorder **unless the owner or agent shall disclose in writing that such plat has not been approved by such council or planning commission and the sale is contingent upon the approval of such plat by such council or planning commission.** Any person violating the provisions of this section shall forfeit and pay to the municipality a penalty not to exceed three hundred dollars for each lot transferred or sold or agreed or negotiated to be sold; and the description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from this penalty. A municipality may enjoin or vacate the transfer or sale or agreement by legal action, and may recover the penalty in such action.

94.270. POWER TO LICENSE, TAX AND REGULATE CERTAIN BUSINESSES AND OCCUPATIONS — PROHIBITION ON LOCAL LICENSE FEES IN EXCESS OF CERTAIN AMOUNTS IN CERTAIN CITIES (EDMUNDSON, WOODSON TERRACE) — LICENSE FEE ON HOTELS OR MOTELS (ST PETERS) — INCREASE OR DECREASE OF TAX, WHEN. — 1. The mayor and board of aldermen shall have power and authority to regulate and to license and to levy and collect a license tax on auctioneers, druggists, hawkers, peddlers, banks, brokers, pawnbrokers, merchants of all kinds, grocers, confectioners, restaurants, butchers, taverns, hotels, public boardinghouses, billiard and pool tables and other tables, bowling alleys, lumber dealers, real estate agents, loan companies, loan agents, public buildings, public halls, opera houses, concerts, photographers, bill posters, artists, agents, porters, public lecturers, public meetings, circuses and shows, for parades and exhibitions, moving picture shows, horse or cattle dealers, patent right dealers, stockyards, inspectors, gaugers, mercantile agents, gas companies, insurance companies, insurance agents, express companies, and express agents, telegraph companies, light, power and water companies, telephone companies, manufacturing and other corporations or institutions, automobile agencies, and dealers, public garages, automobile repair shops or both combined, dealers in automobile accessories, gasoline filling stations, soft drink stands, ice cream stands, ice cream and soft drink stands combined, soda fountains, street railroad cars, omnibuses, drays, transfer and all other vehicles, traveling and auction stores, plumbers, and all other business, trades and avocations whatsoever, and fix the rate of carriage of persons, drayage and cartage of property; and to license, tax, regulate and suppress ordinaries, money brokers, money changers, intelligence and employment offices and agencies, public masquerades, balls, street exhibitions, dance houses, fortune tellers, pistol galleries, corn doctors, private venereal hospitals, museums, menageries, equestrian performances, horoscopic views, telescopic views, lung testers, muscle developers, magnifying glasses, ten pin alleys, ball alleys, billiard tables, pool tables and other tables, theatrical or other exhibitions, boxing and sparring exhibitions, shows and amusements, tipping houses, and sales of unclaimed goods by express companies or common carriers, auto wrecking shops and junk dealers; to license, tax and regulate hackmen, draymen, omnibus drivers, porters and all others pursuing like occupations, with or without vehicles, and to prescribe their compensation; and to regulate, license and restrain runners for steamboats, cars, and public houses; and to license ferries, and to regulate the same and the landing thereof within the limits of the city, and to license and tax auto liveries, auto drays and jitneys.

2. Notwithstanding any other law to the contrary, no city of the fourth classification with more than eight hundred but less than nine hundred inhabitants and located in any county with a charter form of government and with more than one million inhabitants shall levy or collect a license fee on hotels or motels in an amount in excess of twenty-seven dollars per room per year. No hotel or motel in such city shall be required to pay a license fee in excess of such amount, and any license fee in such city that exceeds the limitations of this subsection shall be automatically reduced to comply with this subsection.

3. Notwithstanding any other law to the contrary, no city of the fourth classification with more than four thousand one hundred but less than four thousand two hundred inhabitants and located in any county with a charter form of government and with more than one million inhabitants shall levy or collect a license fee on hotels or motels in an amount in excess of thirteen dollars and fifty cents per room per year. No hotel or motel in such city shall be required to pay a license fee in excess of such amount, and any license fee in such city that exceeds the limitations of this subsection shall be automatically reduced to comply with this subsection.

4. Notwithstanding any other law to the contrary, on or after January 1, 2006, no city of the fourth classification with more than fifty-one thousand three hundred and eighty but less than fifty-one thousand four hundred inhabitants and located in any county with a charter form of government and with more than two hundred eighty thousand but less than two hundred eighty-five thousand shall levy or collect a license fee on hotels or motels in an amount in excess of one thousand dollars per year. No hotel or motel in such city shall be required to pay a license fee in excess of such amount, and any license fee in

such city that exceeds the limitation of this subsection shall be automatically reduced to comply with this subsection.

5. Any city under subsection 4 of this section may increase a hotel and motel license tax by five percent per year but the total tax levied under this section shall not exceed one-eighth of one percent of such hotels' or motels' gross revenue.

6. Any city under subsections 1, 2, and 3 of this section may increase a hotel and motel license tax by five percent per year but the total tax levied under this section shall not exceed the greater of:

- (1) One-eighth of one percent of such hotels' or motels' gross revenue; or
- (2) The business license tax rate for such hotel or motel on May 1, 2005.

7. The provisions of subsection 6 of this section shall not apply to any tax levied by a city when the revenue from such tax is restricted for use to a project from which bonds are outstanding as of May 1, 2005.

99.1080. CITATION OF LAW. — Sections 99.1080 to 99.1092 shall be known and may be cited as the "Downtown Revitalization Preservation Program".

99.1082. DEFINITIONS. — As used in sections 99.1080 to 99.1092, unless the context clearly requires otherwise, the following terms shall mean:

(1) "Baseline year", the calendar year prior to the adoption of an ordinance by the municipality approving a redevelopment project; provided, however, if local sales tax revenues or state sales tax revenues, from businesses other than any out-of-state business or businesses locating in the redevelopment project area, decrease in the redevelopment project area in the year following the year in which the ordinance approving a redevelopment project is approved by a municipality, the baseline year may, at the option of the municipality approving the redevelopment project, be the year following the year of the adoption of the ordinance approving the redevelopment project. When a redevelopment project area is located within a county for which public and individual assistance has been requested by the governor under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq., for an emergency proclaimed by the governor under section 44.100, RSMo, due to a natural disaster of major proportions and the redevelopment project area is a central business district that sustained severe damage as a result of such natural disaster, as determined by the state emergency management agency, the baseline year may, at the option of the municipality approving the redevelopment project, be the calendar year in which the natural disaster occurred or the year following the year in which the natural disaster occurred, provided that the municipality adopts an ordinance approving the redevelopment project within one year after the occurrence of the natural disaster;

(2) "Blighted area", an area which, by reason of the predominance of defective or inadequate street layout, unsanitary 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;

(3) "Central business district", the area at or near the historic core that is locally known as the "downtown" of a municipality that has a median household income of sixty-two thousand dollars or less, according to the last decennial census. In addition, at least fifty percent of existing buildings in this area will have been built in excess of thirty-five years prior or vacant lots that had prior structures built in excess of thirty-five years prior to the adoption of the ordinance approving the redevelopment plan. The historical land use emphasis of a central business district prior to redevelopment will have been a mixed

use of business, commercial, financial, transportation, government, and multifamily residential uses;

(4) "Conservation area", any improved area within the boundaries of a redevelopment area located within the territorial limits of a municipality in which fifty percent or more of the structures in the area have an age of thirty-five years or more, and such an area is not yet a blighted area but is detrimental to the public health, safety, morals, or welfare and may become a blighted area because of any one or more of the following factors: dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of structures below minimum code standards; abandonment; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical maintenance; and lack of community planning;

(5) "Gambling establishment", an excursion gambling boat as defined in section 313.800, RSMo, and any related business facility including any real property improvements which are directly and solely related to such business facility, whose sole purpose is to provide goods or services to an excursion gambling boat and whose majority ownership interest is held by a person licensed to conduct gambling games on an excursion gambling boat or licensed to operate an excursion gambling boat as provided in sections 313.800 to 313.850, RSMo;

(6) "Local sales tax increment", at least fifty percent of the local sales tax revenue from taxes that are imposed by a municipality and its county, and that are generated by economic activities within a redevelopment area over the amount of such taxes generated by economic activities within such a redevelopment area in the calendar year prior to the adoption of the ordinance designating such a redevelopment area while financing under sections 99.1080 to 99.1092 remains in effect, but excluding personal property taxes, taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, licenses, fees, or special assessments; provided however, the governing body of any county may, by resolution, exclude any portion of any county-wide sales tax of such county. For redevelopment projects or redevelopment plans approved after August 28, 2005, if a retail establishment relocates within one year from one facility within the same county and the governing body of the municipality finds that the retail establishment is a direct beneficiary of tax increment financing, then for the purposes of this subdivision, the economic activity taxes generated by the retail establishment shall equal the total additional revenues from economic activity taxes that are imposed by a municipality or other taxing district over the amount of economic activity taxes generated by the retail establishment in the calendar year prior to its relocation to the redevelopment area;

(7) "Local sales tax revenue", city sales tax revenues received under sections 94.500 to 94.550, RSMo, and county sales tax revenues received under sections 67.500 to 67.594, RSMo;

(8) "Major initiative", a development project within a central business district which promotes tourism, cultural activities, arts, entertainment, education, research, arenas, multipurpose facilities, libraries, ports, mass transit, museums, economic development, or conventions for the municipality, and where the capital investment within the redevelopment project area is:

(a) At least five million dollars for a project area within a city having a population of one hundred thousand to one hundred ninety nine thousand nine hundred and ninety-nine inhabitants;

(b) At least one million dollars for a project area within a city having a population of fifty thousand to ninety-nine thousand nine hundred and ninety-nine inhabitants;

(c) At least five hundred thousand dollars for a project area within a city having a population of ten thousand to forty-nine thousand nine hundred and ninety-nine inhabitants; or

(d) At least two hundred fifty thousand dollars for a project area within a city having a population of one to nine thousand nine hundred and ninety-nine inhabitants;

(9) "Municipality", any city or county of this state having fewer than two hundred thousand inhabitants;

(10) "Obligations", bonds, loans, debentures, notes, special certificates, or other evidences of indebtedness issued by the municipality or authority, or other public entity authorized to issue such obligations under sections 99.1080 to 99.1092 to carry out a redevelopment project or to refund outstanding obligations;

(11) "Ordinance", an ordinance enacted by the governing body of any municipality;

(12) "Redevelopment area", an area designated by a municipality in respect to which the municipality has made a finding that there exist conditions which cause the area to be classified as a blighted area or a conservation area, which area shall have the following characteristics:

(a) It can be renovated through one or more redevelopment projects;

(b) It is located in the central business district;

(c) The redevelopment area shall not exceed ten percent of the entire geographic area of the municipality.

Subject to the limitation set forth in this subdivision, the redevelopment area can be enlarged or modified as provided in section 99.1088;

(13) "Redevelopment plan", the comprehensive program of a municipality to reduce or eliminate those conditions which qualify a redevelopment area as a blighted area or a conservation area, and to thereby enhance the tax bases of the taxing districts which extend into the redevelopment area through the reimbursement, payment, or other financing of redevelopment project costs in accordance with sections 99.1080 to 99.1092 and through application for and administration of downtown revitalization preservation program financing under sections 99.1080 to 99.1092;

(14) "Redevelopment project", any redevelopment project within a redevelopment area which constitutes a major initiative in furtherance of the objectives of the redevelopment plan, and any such redevelopment project shall include a legal description of the area selected for such redevelopment project;

(15) "Redevelopment project area", the area located within a redevelopment area selected for a redevelopment project;

(16) "Redevelopment project costs", include such costs to the redevelopment plan or a redevelopment project, as applicable, which are expended on public property, buildings, or rights-of-ways for public purposes to provide infrastructure to support a redevelopment project, including facades. Such costs shall only be allowed as an initial expense which, to be recoverable, must be included in the costs of a redevelopment plan or redevelopment project, except in circumstances of plan amendments approved by the department of economic development. Such infrastructure costs include, but are not limited to, the following:

(a) Costs of studies, appraisals, surveys, plans, and specifications;

(b) Professional service costs, including, but not limited to, architectural, engineering, legal, marketing, financial, planning, or special services;

(c) Property assembly costs, including, but not limited to, acquisition of land and other property, real or personal, or rights or interests therein, demolition of buildings, and the clearing and grading of land;

(d) Costs of rehabilitation, reconstruction, repair, or remodeling of existing public buildings and fixtures;

(e) Costs of construction of public works or improvements;

(f) Financing costs, including, but not limited to, all necessary expenses related to the issuance of obligations issued to finance all or any portion of the infrastructure costs of one or more redevelopment projects, and which may include capitalized interest on any such obligations and reasonable reserves related to any such obligations;

(g) All or a portion of a taxing district's capital costs resulting from any redevelopment project necessarily incurred or to be incurred in furtherance of the objectives of the redevelopment plan, to the extent the municipality by written agreement accepts and approves such infrastructure costs;

(h) Payments to taxing districts on a pro rata basis to partially reimburse taxes diverted by approval of a redevelopment project when all debt is retired;

(i) State government costs, including, but not limited to, the reasonable costs incurred by the department of economic development and the department of revenue in evaluating an application for and administering downtown revitalization preservation financing for a redevelopment project;

(17) "State sales tax increment", up to one-half of the incremental increase in the state sales tax revenue in the redevelopment project area provided the local taxing jurisdictions commit one-half of their local sales tax to paying for redevelopment project costs. The incremental increase shall be the amount by which the state sales tax revenue generated at the facility or within the redevelopment project area exceeds the state sales tax revenue generated at the facility or within the redevelopment project area in the baseline year. For redevelopment projects or redevelopment plans approved after August 28, 2005, if a retail establishment relocates within one year from one facility to another facility within the same county and the governing body of the municipality finds that the retail establishment is a direct beneficiary of tax increment financing, then for the purposes of this subdivision, the economic activity taxes generated by the retail establishment shall equal the total additional revenues from economic activity taxes that are imposed by a municipality or other taxing district over the amount of economic activity taxes generated by the retail establishment in the calendar year prior to the relocation to the redevelopment area;

(18) "State sales tax revenues", the general revenue portion of state sales tax revenues received under section 144.020, RSMo, excluding sales taxes that are constitutionally dedicated, taxes deposited to the school district trust fund in accordance with section 144.701, RSMo, sales and use taxes on motor vehicles, trailers, boats and outboard motors and future sales taxes earmarked by law;

(19) "Taxing districts", any political subdivision of this state having the power to levy taxes;

(20) "Taxing district's capital costs", those costs of taxing districts for capital improvements that are found by the municipal governing bodies to be necessary and to directly result from a redevelopment project.

99.1086. REDEVELOPMENT PLAN, CONTENTS — ADOPTION OF PLAN, WHEN. — 1. A redevelopment plan shall set forth in writing a general description of the program to be undertaken to accomplish the redevelopment projects and related objectives and shall include, but need not be limited to:

(1) The name, street and mailing address, and phone number of the mayor or chief executive officer of the municipality;

(2) The street address of the redevelopment site;

(3) The estimated redevelopment project costs;

(4) The anticipated sources of funds to pay such redevelopment project costs;

(5) Evidence of the commitments to finance such redevelopment project costs;

(6) The anticipated type and term of the sources of funds to pay such redevelopment project costs;

(7) The anticipated type and terms of the obligations to be issued;

(8) The general land uses to apply in the redevelopment area;

(9) A list of other community and economic benefits to result from the project;

(10) A list of all other public investments made or to be made by this state or units of local government to support infrastructure or other needs generated by the project for which the funding under sections 99.1080 to 99.1092 is being sought;

(11) A certification by the chief officer of the applicant as to the accuracy of the redevelopment plan;

(12) A study analyzing the revenues that are being displaced as a result of the project that otherwise would have occurred in the market area. The department of economic development shall have discretion to exempt smaller projects from this requirement;

(13) An economic feasibility analysis including a pro forma financial statement indicating the return on investment that may be expected without public assistance. The financial statement shall detail any assumptions made including a pro forma statement analysis that demonstrates the amount of assistance required to bring the return into a range deemed attractive to private investors. That amount shall not exceed the estimated reimbursable project costs.

2. The redevelopment plan may be adopted by a municipality in reliance on findings that a reasonable person would believe:

(1) The redevelopment area on the whole is a blighted area or a conservation area as determined by an independent third party. Such a finding shall include, but not be limited to, a detailed description of the factors that qualify the redevelopment area or project under this subsection;

(2) The redevelopment area has not been subject to growth and redevelopment through investment by private enterprise or would not reasonably be anticipated to develop or continue to be developed without the implementation of one or more redevelopment projects and the adoption of local and state redevelopment financing;

(3) The redevelopment plan conforms to the comprehensive plan for the redevelopment of the municipality as a whole;

(4) The estimated dates, which shall not be more than twenty-five years from the adoption of the ordinance approving any redevelopment project, of the completion of such redevelopment project and retirement of obligations incurred to finance redevelopment project costs have been stated, provided that no ordinance approving a redevelopment project shall be adopted later than fifteen years from the adoption of the ordinance approving the redevelopment plan and provided that no property for a redevelopment project shall be acquired by eminent domain later than ten years from the adoption of the ordinance approving such redevelopment plan;

(5) In the event any business or residence is to be relocated as a direct result of the implementation of the redevelopment plan, a plan has been developed for relocation assistance for businesses and residences; and

(6) The redevelopment plan does not include the initial development or redevelopment of any gambling establishment.

99.1088. PUBLIC HEARING REQUIRED, NOTICE REQUIREMENTS — CHANGES TO A PLAN WITHOUT FURTHER HEARING, WHEN — BOUNDARIES OF REDEVELOPMENT AREA NOT TO BE CHANGED AFTER ADOPTION. — 1. Prior to the adoption of the ordinance designating a redevelopment area, adopting a redevelopment plan, or approving a redevelopment project, the municipality or authority shall fix a time and place for a public hearing and notify each taxing district located wholly or partially within the boundaries of the proposed redevelopment area or redevelopment project area affected. Such notice shall comply with the provisions of subsections 2 and 3 of this section. At the public hearing any interested person or affected taxing district may file with the municipality or authority written objections to, or comments on, and may be heard orally in respect to any issues regarding the plan or issues embodied in the notice. The municipality or authority shall hear and consider all protests, objections, comments, and other evidence presented at the

hearing. The hearing may be continued to another date without further notice other than a motion to be entered upon the minutes fixing the time and place of the subsequent hearing. Prior to the conclusion of the hearing, changes may be made in the redevelopment plan, redevelopment project, redevelopment area or redevelopment project area, provided that written notice of such changes is available at the public hearing. After the public hearing but prior to the adoption of an ordinance designating a redevelopment area, adopting a redevelopment plan or approving a redevelopment project, changes may be made to any such proposed redevelopment plan, redevelopment project, redevelopment area, or redevelopment project area without a further hearing, if such changes do not enlarge the exterior boundaries of the redevelopment area, and do not substantially affect the general land uses established in a redevelopment plan or redevelopment project, provided that notice of such changes shall be given by mail to each affected taxing district and by publication in a newspaper of general circulation in the redevelopment area or redevelopment project area, as applicable, not less than ten days prior to the adoption of the changes by ordinance. After the adoption of an ordinance designating the redevelopment area, adopting a redevelopment plan, approving a redevelopment project, or designating a redevelopment project area, no ordinance shall be adopted altering the exterior boundaries of the redevelopment area or a redevelopment project area affecting the general land uses established under the redevelopment plan or the general nature of a redevelopment project without holding a public hearing in accordance with this section. One public hearing may be held for the simultaneous consideration of a redevelopment area, redevelopment plan, redevelopment project, or redevelopment project area.

2. Notice of the public hearing required by this section shall be given by publication and mailing. Notice by publication shall be given by publication at least twice, the first publication to be not more than thirty days and the second publication to be not more than ten days prior to the hearing, in a newspaper of general circulation in the proposed redevelopment area or redevelopment project area, as applicable. Notice by mailing shall be given by depositing such notice in the United States mail by certified mail addressed to the person or persons in whose name the general taxes for the last preceding year were paid on each lot, block, tract, or parcel of land lying within the proposed redevelopment area or redevelopment project area, as applicable. Such notice shall be mailed not less than ten working days prior to the date set for the public hearing.

3. The notices issued under this section shall include the following:

- (1) The time and place of the public hearing;
- (2) The general boundaries of the proposed redevelopment area or redevelopment project area, as applicable, by street location, where possible;
- (3) A statement that all interested persons shall be given an opportunity to be heard at the public hearing;
- (4) A description of the redevelopment plan and the proposed redevelopment projects and a location and time where the entire redevelopment plan or redevelopment projects proposed may be reviewed by any interested party;
- (5) A statement that redevelopment financing involving tax revenues is being sought for the project and an estimate of the amount of local redevelopment financing that will be requested, if applicable; and
- (6) Such other matters as the municipality or authority may deem appropriate.

4. Not less than forty-five days prior to the date set for the public hearing, the municipality or authority shall give notice by mail as provided in subsection 2 of this section to all taxing districts whose taxes are affected in the redevelopment area or redevelopment project area, as applicable, and in addition to the other requirements under subsection 3 of this section, the notice shall include an invitation to each taxing district to submit comments to the municipality or authority concerning the subject matter of the hearing prior to the date of the hearing.

5. A copy of any and all hearing notices required by this section shall be submitted by the municipality or authority to the director of the department of economic development and the date such notices were mailed or published, as applicable.

99.1090. APPLICATION TO DEPARTMENT FOR APPROVAL OF PROJECT COSTS, APPROVAL PROCEDURE— RULEMAKING AUTHORITY. — 1. A municipality shall submit an application to the department of economic development for review and determination as to approval of the disbursement of the project costs of one or more redevelopment projects from the downtown revitalization preservation fund. The department of economic development shall forward the application to the commissioner of the office of administration for approval. In no event shall any approval authorize a disbursement of one or more redevelopment projects from the downtown revitalization preservation fund which exceeds the allowable amount of other net new revenues derived from the redevelopment area. An application submitted to the department of economic development shall contain the following, in addition to the items set forth in section 99.1086:

(1) An estimate that one hundred percent of the local sales tax increment deposited to the special allocation fund must and will be used to pay redevelopment project costs or obligations issued to finance redevelopment project costs to achieve the objectives of the redevelopment plan;

(2) Identification of the existing businesses located within the redevelopment project area and the redevelopment area;

(3) The aggregate baseline year amount of state sales tax revenues reported by existing businesses within the redevelopment project area. Provisions of section 32.057, RSMo, notwithstanding, municipalities will provide this information to the department of revenue for verification. The department of revenue will verify the information provided by the municipalities within forty-five days of receiving a request for such verification from a municipality;

(4) An estimate of the state sales tax increment within the redevelopment project area after redevelopment. The department of economic development shall have the discretion to exempt smaller projects from this requirement;

(5) An affidavit that is signed by the developer or developers attesting that the provision of subdivision (2) of subsection 2 of section 99.1086 has been met;

(6) The amounts and types of other net new revenues sought by the applicant to be disbursed from the downtown revitalization preservation fund over the term of the redevelopment plan;

(7) The methodologies and underlying assumptions used in determining the estimate of the state sales tax increment; and

(8) Any other information reasonably requested by the department of economic development.

2. The department of economic development shall make all reasonable efforts to process applications within a reasonable amount of time.

3. The department of economic development shall make a determination regarding the application for a certificate allowing disbursements from the downtown revitalization preservation fund and shall forward such determination to the commissioner of the office of administration. In no event shall the amount of disbursements from the downtown revitalization preservation fund approved for a project, in addition to any other state economic redevelopment funding or other state incentives, exceed the projected state benefit of the redevelopment project, as determined by the department of economic development through a cost-benefit analysis. Any political subdivision located either wholly or partially within the redevelopment area shall be permitted to submit information to the department of economic development for consideration in its cost-benefit analysis. Upon approval of downtown revitalization preservation financing, a

certificate of approval shall be issued by the department of economic development containing the terms and limitations of the disbursement.

4. At no time shall the annual amount of other net new revenues approved for disbursements from the downtown revitalization preservation fund exceed fifteen million dollars.

5. Redevelopment projects receiving disbursements from the downtown revitalization preservation fund shall be limited to receiving such disbursements for twenty-five years. The approved term notwithstanding, downtown revitalization preservation financing shall terminate when redevelopment financing for a redevelopment project is terminated by a municipality.

6. The municipality shall deposit payments received from the downtown revitalization preservation redevelopment fund in a separate segregated account for other net new revenues within the special allocation fund.

7. Redevelopment project costs may include, at the prerogative of the state, the portion of salaries and expenses of the department of economic development and the department of revenue reasonably allocable to each redevelopment project approved for disbursements from the downtown revitalization preservation fund for the ongoing administrative functions associated with such redevelopment project. Such amounts shall be recovered from new state revenues deposited into the downtown revitalization preservation fund created under section 99.1092.

8. A redevelopment project approved for downtown revitalization preservation financing shall not thereafter elect to receive tax increment financing under the real property tax increment allocation redevelopment act, sections 99.800 to 99.865, and continue to receive downtown revitalization financing under sections 99.1080 to 99.1092.

9. The department of economic development may establish the procedures and standards for the determination and approval of applications by the promulgation of rules and publish forms to implement the provisions of this section and section 99.1092.

10. 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 and section 99.1092 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, section 99.1092, 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, 2005, shall be invalid and void.

99.1092. FUND ESTABLISHED, ALLOCATION OF MONEYS — RULEMAKING AUTHORITY.

— 1. There is hereby established within the state treasury a special fund to be known as the "Downtown Revitalization Preservation Fund", to be administered by the department of economic development. Any unexpended balance and any interest in the fund at the end of the biennium shall be exempt from the provisions of section 33.080, RSMo, relating to the transfer of unexpended balances to the general revenue fund. The fund shall consist of:

- (1) The first fifteen million dollars of other net new revenues generated annually by the redevelopment projects;
- (2) Money received from costs charged under subsection 7 of section 99.1090; and
- (3) Gifts, contributions, grants, or bequests received from federal, private, or other sources.

2. Notwithstanding the provisions of section 144.700, RSMo, to the contrary, the department of revenue shall annually submit the first fifteen million dollars of other net new revenues generated by the redevelopment projects to the treasurer for deposit in the downtown revitalization preservation fund.

3. The department of economic development shall annually disburse funds from the downtown revitalization preservation fund in amounts determined under the certificates of approval for projects, providing that the amounts of other net new revenues generated from the redevelopment area have been verified and all of the conditions of sections 99.1080 to 99.1092 are met. If the revenues appropriated from the downtown revitalization preservation fund are not sufficient to equal the amounts determined to be disbursed under such certificates of approval, the department of economic development shall disburse the revenues on a pro rata basis to all such projects and other costs approved under section 99.1090.

4. In no event shall the amounts distributed to a project from the downtown revitalization preservation fund exceed the lesser of the amount of the certificates of approval for projects or the actual other net new revenues generated by the projects.

5. The department of economic development shall not disburse any moneys from the downtown revitalization preservation fund for any project which has not complied with the annual reporting requirements determined by the department of economic development.

6. Money in the downtown revitalization preservation fund may be spent for the reasonable and necessary costs associated with the administration of the program authorized under sections 99.1080 to 99.1092.

7. No municipality shall obligate or commit the expenditure of disbursements received from the downtown revitalization preservation fund prior to receiving a certificate of approval for the redevelopment project generating other net new revenues. In addition, no municipality shall commence work on a redevelopment project prior to receiving a certificate of approval for the redevelopment project.

8. Taxpayers in any redevelopment area who are required to remit sales taxes under chapter 144, RSMo, shall provide additional information to the department of revenue in a form prescribed by the department by rule. Such information shall include, but shall not be limited to, information upon which other net new revenues can be calculated and sales tax generated in the redevelopment area by such taxpayer in the baseline year and during the time period related to the sales tax remittance.

9. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created pursuant to 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, 2003, shall be invalid and void.

100.050. APPROVAL OF PLAN BY GOVERNING BODY OF MUNICIPALITY — INFORMATION REQUIRED — ADDITIONAL INFORMATION REQUIRED, WHEN — PAYMENTS IN LIEU OF TAXES, APPLIED HOW. — 1. Any municipality proposing to carry out a project for industrial development shall first, by majority vote of the governing body of the municipality, approve the plan for the project. The plan shall include the following information pertaining to the proposed project:

- (1) A description of the project;
- (2) An estimate of the cost of the project;
- (3) A statement of the source of funds to be expended for the project;
- (4) A statement of the terms upon which the facilities to be provided by the project are to be leased or otherwise disposed of by the municipality; and
- (5) Such other information necessary to meet the requirements of sections 100.010 to 100.200.

2. If the plan for the project is approved after August 28, 2003, and the project plan involves issuance of revenue bonds or involves conveyance of a fee interest in property to a municipality, the project plan shall additionally include the following information:

(1) A statement identifying each school district, **junior college district**, county, or city affected by such project except property assessed by the state tax commission pursuant to chapters 151 and 153, RSMo;

(2) The most recent equalized assessed valuation of the real property and personal property included in the project, and an estimate as to the equalized assessed valuation of real property and personal property included in the project after development;

(3) An analysis of the costs and benefits of the project on each school district, **junior college district**, county, or city; and

(4) Identification of any payments in lieu of taxes expected to be made by any lessee of the project, and the disposition of any such payments by the municipality.

3. If the plan for the project is approved after August 28, 2003, any payments in lieu of taxes expected to be made by any lessee of the project shall be applied in accordance with this section. The lessee may reimburse the municipality for its actual costs of issuing the bonds and administering the plan. All amounts paid in excess of such actual costs shall, immediately upon receipt thereof, be disbursed by the municipality's treasurer or other financial officer to each school district, **junior college district**, county, or city in proportion to the current ad valorem tax levy of each school district, **junior college district**, county, or city; **however, in any county of the first classification with more than ninety-three thousand eight hundred but fewer than ninety-three thousand nine hundred inhabitants, if the plan for the project is approved after May 15, 2005, such amounts shall be disbursed by the municipality's treasurer or other financial officer to each affected taxing entity in proportion to the current ad valorem tax levy of each affected taxing entity.**

100.059. NOTICE OF PROPOSED PROJECT FOR INDUSTRIAL DEVELOPMENT, WHEN, CONTENTS — LIMITATION ON INDEBTEDNESS, INCLUSIONS — APPLICABILITY, LIMITATION.

— 1. The governing body of any municipality proposing a project for industrial development which involves issuance of revenue bonds or involves conveyance of a fee interest in property to a municipality shall, not less than twenty days before approving the plan for a project as required by section 100.050, provide notice of the proposed project to the county in which the municipality is located and any school district that is a school district, **junior college district**, county, or city; **however, in any county of the first classification with more than ninety-three thousand eight hundred but fewer than ninety-three thousand nine hundred inhabitants, if the plan for the project is approved after May 15, 2005, such notice shall be provided to all affected taxing entities in the county.** Such notice shall include the information required in section 100.050, shall state the date on which the governing body of the municipality will first consider approval of the plan, and shall invite such school districts, **junior college districts**, counties, or cities to submit comments to the governing body and the comments shall be fairly and duly considered.

2. Notwithstanding any other provisions of this section to the contrary, for purposes of determining the limitation on indebtedness of local government pursuant to section 26(b), article VI, Constitution of Missouri, the current equalized assessed value of the property in an area selected for redevelopment attributable to the increase above the total initial equalized assessed valuation shall be included in the value of taxable tangible property as shown on the last completed assessment for state or county purposes.

3. The county assessor shall include the current assessed value of all property within the school district, **junior college district**, county, or city in the aggregate valuation of assessed property entered upon the assessor's book and verified pursuant to section 137.245, RSMo, and such value shall be utilized for the purpose of the debt limitation on local government pursuant to section 26(b), article VI, Constitution of Missouri.

4. This section is applicable only if the plan for the project is approved after August 28, 2003.

110.130. DEPOSITARIES OF COUNTY FUNDS — HOW SELECTED. — 1. Subject to the provisions of section 110.030 the county commission of each county in this state, at the [May] **April** term, in [May] **April** 1997 and every fourth year thereafter, with an option to rebid in each odd-numbered year, shall receive proposals from banking corporations or associations at the county seat of the county which desire to be selected as the depositaries of the funds of the county. For the purpose of letting the funds the county commission shall, by order of record, divide the funds into not less than two nor more than twelve equal parts, except that in counties of the first [class] **classification** not having a charter form of government, funds shall be divided in not less than two nor more than twenty equal parts, and the bids provided for in sections 110.140 and 110.150 may be for one or more of the parts.

2. Notice that such bids will be received shall be published by the clerk of the commission twenty days before the commencement of the term in some newspaper published in the county, and if no newspaper is published therein, then the notice shall be published at the door of the courthouse of the county. In counties operating under the township organization law of this state, township boards shall exercise the same powers and privileges with reference to township funds as are conferred in sections 110.130 to 110.260 upon county commissions with reference to county funds at the same time and manner, except that township funds shall not be divided but let as an entirety; and except, also, that in all cases of the letting of township funds, three notices, posted in three public places by the township clerk, will be a sufficient notice of such letting.

110.150. PUBLIC OPENING OF BIDS — COMPUTATION AND PAYMENT OF INTEREST — REJECTED BIDS. — 1. The county commission, at noon on the first day of the [May] **April** term in 1997 and every second or fourth year thereafter, shall publicly open the bids, and cause each bid to be entered upon the records of the commission, and shall select as the depositaries of all the public funds of every kind and description going into the hands of the county treasurer, and also all the public funds of every kind and description going into the hands of the ex officio collector in counties under township organization, the deposit of which is not otherwise provided for by law, the banking corporations or associations whose bids respectively made for one or more of the parts of the funds shall in the aggregate constitute the largest offer for the payment of interest per annum for the funds; but the commission may reject any and all bids.

2. The interest upon each fund shall be computed upon the daily balances with the depositary, and shall be payable to the county treasurer monthly, who shall place the interest on the school funds to the credit of those funds respectively, the interest on all county hospital funds and hospital district funds to the credit of those funds, the interest on county health center funds to the credit of those funds, the interest on county library funds to the credit of those funds and the interest on all other funds to the credit of the county general fund; provided, that the interest on any funds collected by the collector of any county of the first [class] **classification** not having a charter form of government on behalf of any political subdivision or special district shall be credited to such political subdivision or special district.

3. The county clerk shall, in opening the bids, return the certified checks deposited with him to the banks whose bids are rejected, and on approval of the security of the successful bidders return the certified checks to the banks whose bids are accepted.

115.019. VOTERS MAY PETITION TO ESTABLISH A BOARD OF ELECTION COMMISSIONERS, PROCEDURE — FORM OF PETITION. — 1. Any group of registered voters from any county of the first [class] **classification** not having a board of election commissioners may circulate a petition for the formation of a board.

2. The petition shall be signed by the number of registered voters in the county equal to at least fifteen percent of the total votes cast in the county for governor at the last gubernatorial election.

3. Petitions proposing the formation of a board of election commissioners in any county of the first [class] **classification** shall be filed with the election authority of the county not later than 5:00 p.m. on the thirteenth Tuesday preceding a general election.

4. Each petition for the formation of a board of election commissioners shall consist of sheets of uniform size. The space for signatures on either side of a petition page shall be no larger than eight and one-half by fourteen inches, and each page shall contain signatures of registered voters from only one county. Each page of each petition for the formation of a board of election commissioners shall be in substantially the following form:

To the Honorable, county clerk of County:

We, the undersigned, citizens and registered voters of County, respectfully order that the following question be placed on the official ballot, for acceptance or rejection, at the next general election to be held on the day of,

"Should a board of election commissioners be established in County to assume responsibility for the registration of voters and the conduct of elections?"; and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and County; my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

CIRCULATOR'S AFFIDAVIT

STATE OF MISSOURI,
COUNTY OF

I,, a resident of the state of Missouri, being first duly sworn, say (print or type names of signers)

		REGISTERED VOTING			
NAME	DATE	ADDRESS	ZIP	CONGR	NAME
(Signature)	SIGNED	(Street)(City, Town or Village)	CODE	DIST.	(Printed or Typed)

(Here follow numbered lines for signers)

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and County.

.....
Signature of Affiant
(Person obtaining signatures)

.....
Address of Affiant

Subscribed and sworn to before me this day of, A.D.

.....
Signature of Notary

Notary Public (Seal)

My commission expires

If this form is followed substantially, it shall be sufficient, disregarding clerical and merely technical errors.

5. The validity of each petition filed pursuant to provisions of this section shall be determined in the manner provided for new party and independent candidate petitions in sections 115.333, 115.335 and 115.337.

6. Upon the filing of a valid petition for the formation of a board of election commissioners or upon a majority vote of the county commission in any county of the first classification with more than eighty-two thousand but fewer than eighty-two thousand one hundred inhabitants, it shall be the duty of the election authority to have the following question placed on the official ballot, in the same manner other questions are placed, at the next general election:

"Should a board of election commissioners be established in County to assume responsibility for the registration of voters and the conduct of elections?"

7. The votes for and against the question shall be counted and certified in the same manner as votes on other questions.

8. If the question is approved by a majority of the voters at the election, a board of election commissioners shall be appointed as provided in this subchapter and shall have the same rights and responsibilities provided by law for all boards of election commissioners.

9. Any person who is a registered voter of a county of the first [class] **classification** not having a board of election commissioners may sign a petition for the formation of a board in the county. Any person who signs a name other than the person's own to any petition or knowingly signs the person's name more than once to the same petition or who knows the person is not a registered voter at the time of signing such petition, or any officer or person willfully violating any provision of this section shall be guilty of a class two election offense.

136.010. DIVISION TO COLLECT ALL STATE REVENUES, EXCEPTIONS, REPORT. — 1. The division of taxation and collection shall collect all taxes, licenses and fees payable to the state, except that county [and township] collectors **and collector-treasurers** shall collect the state tax on tangible property, which shall be transmitted promptly to the division of taxation and collection.

2. All money payable to the state, including gifts, escheats, penalties, federal funds, and money from every other source payable to the state shall be promptly transmitted to the division of taxation and collection; provided that all such money payable to the curators of the university of Missouri, except those funds required by law or by instrument granting the same to be paid into the seminary fund of the state, is excepted herefrom, and in the case of other state educational institutions there is excepted herefrom, gifts or trust funds from whatever source, appropriations, gifts or grants from the federal government, private organizations and individuals, funds for or from student activities, farm or housing activities, and other funds from which the whole or some part thereof may be liable to be repaid to the person contributing the same, and hospital fees. All of the above excepted funds shall be reported in detail quarterly to the governor and biennially to the general assembly.

3. The director of revenue in cooperation with the state treasurer shall develop a uniform system of summary reporting on income, expenditures and balances of the excepted funds in subsection 2 of this section, and for all other funds handled by state agencies, institutions or state officials in their official duties pursuant to any law or administrative practice but not deposited with the state treasurer. Such forms shall be made available to all agencies, institutions and officials responsible for such funds. Said agencies and officials shall annually file a complete summary report on the uniform forms provided by the director of revenue by August first for the fiscal period July first to June thirtieth just passed. These reports shall be compiled by the director of revenue for inclusion in the annual report of the state treasurer and director of revenue showing balances, income, expenditures, asset value and form of all assets held by the account.

136.160. ACCOUNTS AND VOUCHERS TO BE EXHIBITED, WHEN. — All officers and others bound by law to pay money directly to the director of revenue, or the department of revenue shall exhibit their accounts and vouchers to the director of revenue on or before the thirty-first day of December, to be adjusted and settled, except the county [and township] collectors of revenue **and collector-treasurers**, who shall, immediately after their final settlement with the county commission on the first Monday in March in each year, exhibit their accounts and vouchers to the director of revenue for the amount due the state to be adjusted and settled.

137.071. BUSINESS PERSONAL PROPERTY, EXCLUDES FROM TOTAL ASSESSED VALUATION A PORTION OF ASSESSED VALUATION FOR PROPERTY SUBJECT TO APPEAL. — **Prior to setting its rate or rates as required by section 137.073, each taxing authority shall**

exclude from its total assessed valuation seventy-two percent of the total amount of assessed value of business personal property that is the subject of an appeal at the state tax commission or in a court of competent jurisdiction in this state. This exclusion shall only apply to the portion of the assessed value of business personal property that is disputed in the appeal, and shall not exclude any portion of the same property that is not disputed. If the taxing authority uses a multi-rate approach as provided in section 137.073, this exclusion shall be made from the personal property class. The state tax commission shall provide each taxing authority with the total assessed value of business personal property within the jurisdiction of such taxing authority for which an appeal is pending no later than August twentieth of each year. Whenever any appeal is resolved, whether by final adjudication or settlement, and the result of the appeal causes money to be paid to the taxing authority, the taxing authority shall not be required to make an additional adjustment to its rate or rates due to such payment once the deadline for setting its rates, as provided by this chapter, has passed in a taxable year, but shall adjust its rate or rates due to such payment in the next rate setting cycle to offset the payment in the next taxable year. For the purposes of this section, the term "business personal property", means tangible personal property which is used in a trade or business or used for production of income and which has a determinable life of longer than one year except that supplies used by a business shall also be considered business personal property, but shall not include livestock, farm machinery, property subject to the motor vehicle registration provisions of chapter 301, RSMo, property subject to the tables provided in section 137.078, the property of rural electric cooperatives under chapter 394, RSMo, or property assessed by the state tax commission under chapters 151, 153, and 155, RSMo, section 137.022, and sections 137.1000 to 137.1030.

137.078. DEPRECIATION SCHEDULES FOR BROADCASTING EQUIPMENT, DEFINITIONS — TRUE VALUE IN MONEY, HOW DETERMINED — TABLES. — 1. For purposes of this section, the following terms shall mean:

(1) "Analog equipment", all depreciable items of tangible personal property that are used directly or indirectly in broadcasting television shows [and], **radio programs, or** commercials through the use of analog technology, **including studio broadcast equipment, transmitter and antenna equipment, and broadcast towers;**

(2) "Applicable analog fraction", a fraction, the numerator of which is the total number of analog television sets in the United States for the immediately preceding calendar year and the denominator of which is an amount representing the total combined number of analog and digital television sets in the United States for the immediately preceding calendar year. The applicable analog fraction will be determined on an annual basis by the Missouri Broadcasters Association;

(3) "Applicable analog percentage", the following percentages for the following years:

Year of Acquisition	2004 Tax Year	2005 Tax Year	2006 Tax Year	2007 Tax Year
				1%
2006				1%
2005			2	5%
2004		50%	25%	1%
2003	75%	50%	25%	1%
2002	75%	50%	25%	1%
2001	75%	50%	25%	1%
2000	75%	50%	25%	1%
1999	75%	50%	25%	1%
1998	75%	50%	25%	1%
Prior	75%	50%	25%	1%;

(4) "Applicable digital fraction", a fraction, the numerator of which is the total number of digital television sets in the United States for the immediately preceding calendar year and the denominator of which is an amount representing the total combined number of analog and digital television sets in the United States for the immediately preceding calendar year. The applicable digital fraction will be determined on an annual basis by the Missouri Broadcasters Association;

(5) **"Broadcast towers", structures with a function that includes holding television or radio broadcasters' antennae, repeaters, or translators at the height required or needed to transmit over-the-air signals or enhance the transmission of the signals. This term also includes the structures at least partially used by television broadcasters or radio broadcasters to provide weather radar information to the public. For property tax assessment purposes, broadcast towers are classified as tangible personal property;**

(6) "Digital equipment", all depreciable items of tangible personal property that are used directly or indirectly in broadcasting television shows [and], **radio programs, or** commercials through the use of digital technology, **including studio broadcast equipment, transmitter and antenna equipment, and broadcast towers;**

(7) **"Radio broadcasters", all businesses that own, lease, or operate radio broadcasting stations that transmit radio shows and commercials and that are required to be licensed by the Federal Communications Commission to provide such services;**

(8) **"Radio broadcasting equipment", both analog equipment and digital equipment;**

[(6)] (9) "Television broadcasters", all businesses that own, lease, or operate television broadcasting stations that transmit television shows and commercials and that are required to be licensed by the Federal Communications Commission to provide such services;

[(7)] (10) "Television broadcasting equipment", both analog equipment and digital equipment;

(11) **"Transmitter and antenna equipment", equipment with functions that include transmitting signals from broadcast studios by increasing the power, tuning signals to the frequency allowed by regulatory authorities, and broadcasting signals to the public for television broadcasters or radio broadcasters;**

(12) **"Studio broadcast equipment", studio equipment that receives, produces, modifies, controls, measures, modulates, adds to or subtracts from, or enhances signals in the process that results in over-the-air signals for television broadcasters or radio broadcasters.**

2. In response to recent action by the Federal Communications Commission, as described by the commission in the fifth report and order, docket number 97-116, for purposes of assessing all items of television broadcasting equipment that are owned and used by television broadcasters for purposes of broadcasting television shows and commercials:

(1) The true value in money of all analog equipment shall be determined by depreciating the historical cost of such property using the depreciation tables provided in subdivision (1) of subsection 3 of this section and multiplying the results by the applicable analog percentage. The result of the second computation is multiplied by the applicable analog fraction to determine the true value in money of the analog equipment; and

(2) The true value in money of all digital equipment shall be determined by depreciating the historical cost of such property using the depreciation tables provided in subdivision (2) of subsection 3 of this section and multiplying the results by the applicable digital fraction to determine the true value in money of the digital equipment.

3. For purposes of subsection 2 of this section, the depreciation tables for determining the fair value in money of television broadcasting equipment are as follows:

(1) For analog equipment, the following depreciation tables will apply for the following years:

	2004	2005	2006	2007
Year of Acquisition	Tax Year	Tax Year	Tax Year	Tax Year
2006				65%

2005			65%	45%
2004		6	5%	45%
2003	65%		45%	30%
2002	45%		30%	20%
2001	30%		20%	10%
2000	20%		10%	5%
1999	10%		5%	5%
1998	5%		5%	5%
Prior	5%		5%	5%;

(2) For digital equipment, the following depreciation tables will apply for the following years:

Year of Acquisition	2004 Tax Year	2005 Tax Year	2006 Tax Year	2007 Tax Year
2006				65%
2005			65%	45%
2004		65%	45%	30%
2003	65%	45%	30%	20%
2002	45%	30%	20%	10%
2001	30%	20%	10%	5%
2000	20%	10%	5%	5%
1999	10%	5%	5%	5%
1998	5%	5%	5%	5%
Prior	5%	5%	5%	5%.

4. Beginning January 1, 2008, for purposes of assessing all items of television broadcasting equipment that are owned and used by television broadcasters for purposes of broadcasting television shows and commercials, the following depreciation tables will be used to determine their true value in money. The percentage shown for the first year shall be the percentage of the original cost used for January first of the year following the year of acquisition of the property, and the percentage shown for each succeeding year shall be the percentage of the original cost used for January first of the respective succeeding year as follows:

Year	Studio Broadcast Equipment	Transmitter and Antenna Equipment	Broadcast Tower
1	6	5%	91%
2	4	5%	96%
3	3	0%	82%
4	2	0%	73%
5	1	0%	64%
6		5%	55%
7			46%
8			37%
9			28%
10			19%
11			10%
12			65%
13			61%
14			58%
15			54%
16			51%
17			47%
18			44%
19			40%
20			33%
			30%

21	27%
22	24%
23	21%
24	18%
25	15%.

Television broadcasting equipment in all recovery periods shall continue in subsequent years to have the depreciation percentage last listed in the appropriate column so long as it is owned or held by the taxpayer.

5. Effective January 1, 2006, for purposes of assessing all items of radio broadcasting equipment that are owned and used by radio broadcasters for purposes of broadcasting radio programs and commercials, the following depreciation tables will be used to determine their true value in money. The percentage shown for the first year shall be the percentage of the original cost used for January first of the year following the year of acquisition of the property, and the percentage shown for each succeeding year shall be the percentage of the original cost used for January first of the respective succeeding year as follows:

Year	Studio Broadcast Equipment	Transmitter and Antenna Equipment	Broadcast Tower
1	65%	91%	96%
2	45%	82%	93%
3	30%	73%	89%
4	20%	64%	86%
5	10%	55%	82%
6	5%	46%	79%
7		37%	75%
8		28%	72%
9		19%	68%
10		10%	65%
11			61%
12			58%
13			54%
14			51%
15			47%
16			44%
17			40%
19			33%
20			30%
21			27%
22			24%
23			21%
24			18%
25			15%.

Radio broadcast equipment in all recovery periods shall continue in subsequent years to have the depreciation percentage last listed in the appropriate column so long as it is owned or held by the taxpayer.

137.115. REAL AND PERSONAL PROPERTY, ASSESSMENT — MAINTENANCE PLAN — ASSESSOR MAY MAIL FORMS FOR PERSONAL PROPERTY — CLASSES OF PROPERTY, ASSESSMENT — PHYSICAL INSPECTION REQUIRED, WHEN, PROCEDURE. — 1. All other laws to the contrary notwithstanding, the assessor or the assessor's deputies in all counties of this state including the city of St. Louis shall annually make a list of all real and tangible personal property taxable in the assessor's city, county, town or district. Except as otherwise provided in subsection

3 of this section and section 137.078, the assessor shall annually assess all personal property at thirty-three and one-third percent of its true value in money as of January first of each calendar year. The assessor shall annually assess all real property, including any new construction and improvements to real property, and possessory interests in real property at the percent of its true value in money set in subsection 5 of this section. The assessor shall annually assess all real property in the following manner: new assessed values shall be determined as of January first of each odd-numbered year and shall be entered in the assessor's books; those same assessed values shall apply in the following even-numbered year, except for new construction and property improvements which shall be valued as though they had been completed as of January first of the preceding odd-numbered year. The assessor may call at the office, place of doing business, or residence of each person required by this chapter to list property, and require the person to make a correct statement of all taxable tangible personal property owned by the person or under his or her care, charge or management, taxable in the county. On or before January first of each even-numbered year, the assessor shall prepare and submit a two-year assessment maintenance plan to the county governing body and the state tax commission for their respective approval or modification. The county governing body shall approve and forward such plan or its alternative to the plan to the state tax commission by February first. If the county governing body fails to forward the plan or its alternative to the plan to the state tax commission by February first, the assessor's plan shall be considered approved by the county governing body. If the state tax commission fails to approve a plan and if the state tax commission and the assessor and the governing body of the county involved are unable to resolve the differences, in order to receive state cost-share funds outlined in section 137.750, the county or the assessor shall petition the administrative hearing commission, by May first, to decide all matters in dispute regarding the assessment maintenance plan. Upon agreement of the parties, the matter may be stayed while the parties proceed with mediation or arbitration upon terms agreed to by the parties. The final decision of the administrative hearing commission shall be subject to judicial review in the circuit court of the county involved. In the event a valuation of subclass (1) real property within any county with a charter form of government, or within a city not within a county, is made by a computer, computer-assisted method or a computer program, the burden of proof, supported by clear, convincing and cogent evidence to sustain such valuation, shall be on the assessor at any hearing or appeal. In any such county, unless the assessor proves otherwise, there shall be a presumption that the assessment was made by a computer, computer-assisted method or a computer program. Such evidence shall include, but shall not be limited to, the following:

(1) The findings of the assessor based on an appraisal of the property by generally accepted appraisal techniques; and

(2) The purchase prices from sales of at least three comparable properties and the address or location thereof. As used in this paragraph, the word "comparable" means that:

(a) Such sale was closed at a date relevant to the property valuation; and

(b) Such properties are not more than one mile from the site of the disputed property, except where no similar properties exist within one mile of the disputed property, the nearest comparable property shall be used. Such property shall be within five hundred square feet in size of the disputed property, and resemble the disputed property in age, floor plan, number of rooms, and other relevant characteristics.

2. Assessors in each county of this state and the city of St. Louis may send personal property assessment forms through the mail.

3. The following items of personal property shall each constitute separate subclasses of tangible personal property and shall be assessed and valued for the purposes of taxation at the following percents of their true value in money:

(1) Grain and other agricultural crops in an unmanufactured condition, one-half of one percent;

(2) Livestock, twelve percent;

(3) Farm machinery, twelve percent;

(4) Motor vehicles which are eligible for registration as and are registered as historic motor vehicles pursuant to section 301.131, RSMo, and aircraft which are at least twenty-five years old and which are used solely for noncommercial purposes and are operated less than fifty hours per year or aircraft that are home built from a kit, five percent;

(5) Poultry, twelve percent; and

(6) Tools and equipment used for pollution control and tools and equipment used in retooling for the purpose of introducing new product lines or used for making improvements to existing products by any company which is located in a state enterprise zone and which is identified by any standard industrial classification number cited in subdivision (6) of section 135.200, RSMo, twenty-five percent.

4. The person listing the property shall enter a true and correct statement of the property, in a printed blank prepared for that purpose. The statement, after being filled out, shall be signed and either affirmed or sworn to as provided in section 137.155. The list shall then be delivered to the assessor.

5. All subclasses of real property, as such subclasses are established in section 4(b) of article X of the Missouri Constitution and defined in section 137.016, shall be assessed at the following percentages of true value:

(1) For real property in subclass (1), nineteen percent;

(2) For real property in subclass (2), twelve percent; and

(3) For real property in subclass (3), thirty-two percent.

6. Manufactured homes, as defined in section 700.010, RSMo, which are actually used as dwelling units shall be assessed at the same percentage of true value as residential real property for the purpose of taxation. The percentage of assessment of true value for such manufactured homes shall be the same as for residential real property. If the county collector cannot identify or find the manufactured home when attempting to attach the manufactured home for payment of taxes owed by the manufactured home owner, the county collector may request the county commission to have the manufactured home removed from the tax books, and such request shall be granted within thirty days after the request is made; however, the removal from the tax books does not remove the tax lien on the manufactured home if it is later identified or found. A manufactured home located in a manufactured home rental park, rental community or on real estate not owned by the manufactured home owner shall be considered personal property. A manufactured home located on real estate owned by the manufactured home owner may be considered real property.

7. Each manufactured home assessed shall be considered a parcel for the purpose of reimbursement pursuant to section 137.750, unless the manufactured home has been converted to real property in compliance with section 700.111, RSMo, and assessed as a realty improvement to the existing real estate parcel.

8. Any amount of tax due and owing based on the assessment of a manufactured home shall be included on the personal property tax statement of the manufactured home owner unless the manufactured home has been converted to real property in compliance with section 700.111, RSMo, in which case the amount of tax due and owing on the assessment of the manufactured home as a realty improvement to the existing real estate parcel shall be included on the real property tax statement of the real estate owner.

9. The assessor of each county and each city not within a county shall use the trade-in value published in the October issue of the National Automobile Dealers' Association Official Used Car Guide, or its successor publication, as the recommended guide of information for determining the true value of motor vehicles described in such publication. In the absence of a listing for a particular motor vehicle in such publication, the assessor shall use such information or publications which in the assessor's judgment will fairly estimate the true value in money of the motor vehicle.

10. Before the assessor may increase the assessed valuation of any parcel of subclass (1) real property by more than fifteen percent since the last assessment, excluding increases due to new construction or improvements, the assessor shall conduct a physical inspection of such property.

11. If a physical inspection is required, pursuant to subsection 10 of this section, the assessor shall notify the property owner of that fact in writing and shall provide the owner clear written notice of the owner's rights relating to the physical inspection. If a physical inspection is required, the property owner may request that an interior inspection be performed during the physical inspection. The owner shall have no less than thirty days to notify the assessor of a request for an interior physical inspection.

12. A physical inspection, as required by subsection 10 of this section, shall include, but not be limited to, an on-site personal observation and review of all exterior portions of the land and any buildings and improvements to which the inspector has or may reasonably and lawfully gain external access, and shall include an observation and review of the interior of any buildings or improvements on the property upon the timely request of the owner pursuant to subsection 11 of this section. Mere observation of the property via a "drive-by inspection" or the like shall not be considered sufficient to constitute a physical inspection as required by this section.

13. The provisions of subsections 11 and 12 of this section shall only apply in any county with a charter form of government with more than one million inhabitants.

14. A county or city collector may accept credit cards as proper form of payment of outstanding property tax **or license** due. No county or city collector may charge surcharge for payment by credit card which exceeds the fee or surcharge charged by the credit card bank, **processor, or issuer** for its service. **A county or city collector may accept payment by electronic transfers of funds in payment of any tax or license and charge the person making such payment a fee equal to the fee charged the county by the bank, processor, or issuer of such electronic payment.**

15. The provisions of this section and sections 137.073, 138.060 and 138.100, RSMo, as enacted by house bill no. 1150 of the ninety-first general assembly, second regular session, shall become effective January 1, 2003, for any taxing jurisdiction within a county with a charter form of government with greater than one million inhabitants, and the provisions of this section and sections 137.073, 138.060 and 138.100, RSMo, as enacted by house bill no. 1150 of the ninety-first general assembly, second regular session, shall become effective October 1, 2004, for all taxing jurisdictions in this state. Any county or city not within a county in this state may, by an affirmative vote of the governing body of such county, opt out of the provisions of this section and sections 137.073, 138.060, and 138.100, RSMo, as enacted by house bill no. 1150 of the ninety-first general assembly, second regular session and section 137.073 as modified by this act, for the next year of the general reassessment, prior to January first of any year. No county or city not within a county shall exercise this opt-out provision after implementing the provisions of this section and sections 137.073, 138.060, and 138.100, RSMo, as enacted by house bill no. 1150 of the ninety-first general assembly, second regular session and section 137.073 as modified by this act, in a year of general reassessment. For the purposes of applying the provisions of this subsection, a political subdivision contained within two or more counties where at least one of such counties has opted out and at least one of such counties has not opted out shall calculate [the separate rates for the three subclasses of real property and the aggregate class of personal property as required by section 137.073, provided that such political subdivision shall also provide a single blended rate, in accordance with the procedure for determining a blended rate for school districts in subdivision (1) of subsection 6 of section 137.073. Such blended rate shall be used for the portion of such political subdivision that is situated within any county that has opted out] **a single tax rate as in effect prior to the enactment of house bill number 1150 of the ninety-first general assembly, second regular session.** A governing body of a city not within a county or a county that has opted out under the provisions of this subsection may choose to implement the provisions of this section and sections 137.073, 138.060, and 138.100, RSMo,

as enacted by house bill no. 1150 of the ninety-first general assembly, second regular session, and section 137.073 as modified by this act, for the next year of general reassessment, by an affirmative vote of the governing body prior to December thirty-first of any year.

137.122. DEPRECIABLE TANGIBLE PERSONAL PROPERTY — DEFINITIONS — STANDARDIZED SCHEDULE TO BE USED — VALUATION TABLE — EXCEPTIONS. — 1. As used in this section, the following terms mean:

(1) "Business personal property", tangible personal property which is used in a trade or business or used for production of income and which has a determinable life of longer than one year except that supplies used by a business shall also be considered business personal property, but shall not include livestock, farm machinery, grain and other agricultural crops in an unmanufactured condition, property subject to the motor vehicle registration provisions of chapter 301, RSMo, property assessed under section 137.078, the property of rural electric cooperatives under chapter 394, RSMo, or property assessed by the state tax commission under chapters 151, 153, and 155, RSMo, section 137.022, and sections 137.1000 to 137.1030;

(2) "Class life", the class life of property as set out in the federal Modified Accelerated Cost Recovery System life tables or their successors under the Internal Revenue Code as amended;

(3) "Economic or functional obsolescence", a loss in value of personal property above and beyond physical deterioration and age of the property. Such loss may be the result of economic or functional obsolescence or both;

(4) "Original cost", the price the current owner, the taxpayer, paid for the item without freight, installation, or sales or use tax. In the case of acquisition of items of personal property as part of an acquisition of an entity, the original cost shall be the historical cost of those assets remaining in place and in use and the placed in service date shall be the date of acquisition by the entity being acquired;

(5) "Placed in service", property is placed in service when it is ready and available for a specific use, whether in a business activity, an income-producing activity, a tax-exempt activity, or a personal activity. Even if the property is not being used, the property is in service when it is ready and available for its specific use;

(6) "Recovery period", the period over which the original cost of depreciable tangible personal property shall be depreciated for property tax purposes and shall be the same as the recovery period allowed for such property under the Internal Revenue Code.

2. To establish uniformity in the assessment of depreciable tangible personal property, each assessor shall use the standardized schedule of depreciation in this section to determine the assessed valuation of depreciable tangible personal property for the purpose of estimating the value of such property subject to taxation under this chapter.

3. For purposes of this section, and to estimate the value of depreciable tangible personal property for mass appraisal purposes, each assessor shall value depreciable tangible personal property by applying the class life and recovery period to the original cost of the property according to the following depreciation schedule. The percentage shown for the first year shall be the percentage of the original cost used for January first of the year following the year of acquisition of the property, and the percentage shown for each succeeding year shall be the percentage of the original cost used for January first of the respective succeeding year as follows:

Year	Recovery Period in Years					
	3	5	7	10	15	20
1	75.00	85.00	89.29	92.50	95.00	96.25
2	37.50	59.50	70.16	78.62	85.50	89.03
3	12.50	41.65	55.13	66.83	76.95	82.35
4	5.00	24.99	42.88	56.81	69.25	76.18

5	10.00	30.63	48.07	62.32	70.46
6		18.38	39.33	56.09	65.18
7		10.00	30.59	50.19	60.29
8			21.85	4 4.29	55.77
9			15.00	3 8.38	51.31
10				3 2.48	46.85
11				2 6.57	42.38
12				2 0.67	37.92
13				1 5.00	33.46
14					29.00
15					24.54
16					20.08
17					20.00

Depreciable tangible personal property in all recovery periods shall continue in subsequent years to have the depreciation factor last listed in the appropriate column so long as it is owned or held by the taxpayer. The state tax commission shall study and analyze the values established by this method of assessment and in every odd-numbered year make recommendations to the joint committee on tax policy pertaining to any changes in this methodology, if any, that are warranted.

4. Such estimate of value determined under this section shall be presumed to be correct for the purpose of determining the true value in money of the depreciable tangible personal property, but such estimation may be disproved by substantial and persuasive evidence of the true value in money under any method determined by the state tax commission to be correct, including, but not limited to, an appraisal of the tangible personal property specifically utilizing generally accepted appraisal techniques, and contained in a narrative appraisal report in accordance with the Uniform Standards of Professional Appraisal Practice or by proof of economic or functional obsolescence or evidence of excessive physical deterioration. For purposes of appeal of the provisions of this section, the salvage or scrap value of depreciable tangible personal property may only be considered if the property is not in use as of the assessment date.

5. This section shall not apply to business personal property placed in service before January 2, 2006.

6. The provisions of this section are not intended to modify the definition of tangible personal property as defined in section 137.010.

137.130. ASSESSOR TO MAKE PHYSICAL INSPECTION, WHEN — ASSESSMENT. — Whenever there shall be any taxable personal property in any county, and from any cause no list thereof shall be given to the assessor in proper time and manner, **or whenever the assessor has insufficient information to assess any real property,** the assessor **or an employee of the assessor** shall [make out the list] **assess the property based upon a physical inspection** [, on the assessor's own view,] or on the best information the assessor can obtain; and for that purpose the assessor **or an employee of the assessor** shall have lawful right to enter into any lands and make any examination and search which may be necessary **to assess such real property only when the assessor is entering because the assessor has insufficient information to assess such real property or to assess such personal property only when the assessor is entering because no list of taxable personal property has been given,** and may examine any person upon oath touching the same. **The assessor or an employee of the assessor shall not enter the interior of any structure on any real property as part of the inspection to assess such property without permission.** The assessor shall list, assess and cause taxes to be imposed upon omitted taxable personal property in the current year and in the event personal property was also subject to taxation in the immediately preceding three years, but was omitted, the assessor shall also list, assess and cause taxes to be imposed upon such property.

[137.130. ASSESSOR TO MAKE PHYSICAL INSPECTION, WHEN — ASSESSMENT. — Whenever there shall be any taxable personal property in any county, and from any cause no list thereof shall be given to the assessor in proper time and manner, the assessor shall make out the list, on the assessor's own view, or on the best information the assessor can obtain; and for that purpose the assessor shall have lawful right to enter into any lands and make any examination and search which may be necessary, and may examine any person upon oath touching the same. The assessor shall list, assess and cause taxes to be imposed upon omitted taxable personal property in the current year and in the event personal property was also subject to taxation in the immediately prior year, but was omitted, the assessor shall also list, assess and cause taxes to be imposed upon such property.]

137.465. COUNTY CLERK TO SUBMIT LISTS OF PROPERTY — ABSTRACTS OF ALL REAL PROPERTY. — 1. It shall be the duty of the county clerk of each county in this state, that has or hereafter may adopt township organization, to [make out] annually **submit**, for the use of the [township collector] **collector-treasurer** of each [township] **county**, correct lists of the property assessed, which lists shall be in alphabetical order, the names of the persons owing tax on personal property in [each collector's district] **the county**, the aggregate value of such property assessed to each person, and the amount of taxes due thereon.

2. [He] **The county clerk** shall also [make out] **submit** for the use of the [township collector] **collector-treasurer** an abstract of all real property which is assessed, in numerical order, which shall show the name or names, if known, of the person or persons to whom each tract or lot is assessed, and the value of each tract or lot, and the amount of taxes due thereon, which list shall be made out in strict conformity with the forms and instructions furnished by the state tax commission.

137.585. TOWNSHIP SPECIAL ROAD AND BRIDGE TAX, HOW LEVIED, COLLECTED AND DISBURSED. — 1. In addition to other levies authorized by law, the township board of directors of any township in their discretion may levy an additional tax not exceeding thirty-five cents on each one hundred dollars assessed valuation in their township for road and bridge purposes. Such tax shall be levied by the township board, to be collected by the [township collector] **collector-treasurer** and turned into the county treasury, where it shall be known and designated as a special road and bridge fund.

2. The county commission of any such county may in its discretion order the county treasurer **or collector-treasurer** to retain an amount not to exceed five cents on the one hundred dollars assessed valuation out of such special road and bridge fund and to transfer the same to the county special road and bridge fund; and all of said taxes over the amount so ordered to be retained by the county shall be paid to the treasurers of the respective townships from which it came as soon as practicable after receipt of such funds, and shall be designated as a special road and bridge fund of such township and used by said townships only for road and bridge purposes, except that amounts collected within the boundaries of road districts formed in accordance with the provisions of sections 233.320 to 233.445, RSMo, shall be paid to the treasurers of such road districts; provided that the amount retained, if any, by the county shall be uniform as to all such townships levying and paying such tax into the county treasury; provided further, that the proceeds of such fund may be used in the discretion of the township board of directors in the construction and maintenance of roads and in improving and repairing any street in any incorporated city, town or village in the township, if said street shall form a part of a continuous highway of the township running through said city, town or village.

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; **provided, however, that capital expenditures and equipment expenses identified in a memorandum of understanding signed by the county's governing body and the county assessor prior to transfer of county general revenue funds to the assessment fund shall be deducted from a year's contribution before computing the three-year average**, except that a lesser amount shall be acceptable if unanimously agreed upon by the county assessor, the 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.

139.040. ACCEPTABLE MEDIUM OF EXCHANGE IN PAYMENT OF TAXES. — [Taxes may be paid in any acceptable medium of exchange. State warrants shall be received in payment of state taxes. Jury certificates of the county shall be received in payment of county taxes. Past due bonds or coupons of any county, city, township, drainage district, levee district or school district shall be received in payment of any tax levied for the payment of bonds or coupons of the same issue, but not in payment of any tax levied for any other purpose. Any warrant, issued by any county or city, when presented by the legal holder thereof, shall be received in payment of any tax, license, assessment, fine, penalty or forfeiture existing against the holder and accruing to the county or city issuing the warrant; but no such warrant shall be received in payment of any tax unless it was issued during the year for which the tax was levied, or there is an excess of revenue for the year in which the warrant was issued over and above the expenses of the county or city for that year.] **A county or city collector, or other collection authority charged with the duty of tax or license collection is authorized but not obligated to accept cash, personal check, business check, money order, credit card, or electronic transfers of funds for any tax or license payable to the county. The collection authority may refuse to accept any medium of exchange at the discretion of the collection authority. Refusal by the collection**

authority to accept alternative means of payment beyond those approved by the collection authority shall not relieve an obligor of the obligor's tax or license obligation nor shall it delay the levy of interest and penalty on any overdue unpaid tax or license obligation pending submission of a form or payment approved by the collection authority.

139.055. TAX PAID BY CREDIT CARD OR ELECTRONIC TRANSFER—FEE. — Any county may accept payment by credit card or [automatic bank] **electronic** transfers of funds for any tax or license payable to the county. A county collector shall not be required to accept payment by credit card if the credit card **bank, processor, or** issuer would charge the county a fee for such payment. However, a county may accept payment by credit card and charge the person making such payment by credit card a fee equal to the fee charged the county by the credit card **bank, processor, issuer** for such payment. **A county may accept payment by electronic transfer of funds in payment of any tax or license and charge the person making such payment a fee equal to the fee charged the county by the bank, processor, or issuer of such electronic payment.**

139.120. SEIZURE AND SALE OF PERSONAL PROPERTY — DUTY OF SHERIFF. — 1. The collector or collector-treasurer in a county having township organization shall diligently endeavor and use all lawful means to collect all taxes which they are required to collect in their respective counties, and to that end they shall have the power to seize and sell the goods and chattels of the person liable for taxes, in the same manner as goods and chattels are or may be required to be seized and sold under execution issued on judgments at law, and no property whatever shall be exempt from seizure and sale for taxes due on lands or personal property; provided, that no such seizure or sale for taxes shall be made until after the first day of October of each year, and the collector or collector-treasurer shall not receive a credit for delinquent taxes until [he] **the collector or collector-treasurer** shall have made affidavit that [he] **the collector or collector-treasurer** has been unable to find any personal property out of which to make the taxes in each case so returned delinquent; but no such seizure and sale of goods shall be made until the collector or collector-treasurer has made demand for the payment of the tax, either in person or by deputy, to the party liable to pay the same, or by leaving a written or printed notice at his place of abode for that purpose, with some member of the family over fifteen years of age.

2. Such seizure may be made at any time after the first day of October, and before said taxes become delinquent, or after they become delinquent; provided further, that when any person owing personal tax removes from one county in this state to another, it shall be the duty of the county collector, or [township collector] **collector-treasurer** as the case may be, of the county from which such person shall move, to send a tax bill to the sheriff of the county into which such person may be found, and on receipt of the same by said sheriff, it shall be [his] **the collector's or the collector-treasurer's** duty to proceed to collect said tax bill in like manner as provided by law for the collection of personal tax, for which [he] **the collector or the collector-treasurer** shall be allowed the same compensation as provided by law in the collection of executions. It shall be the duty of the sheriff in such case to make due return to the collector or collector-treasurer of the county from whence said tax bill was issued, with the money collected thereon.

139.350. COLLECTION OF TAXES — PROCEDURE. — Every [ex officio township collector] **collector-treasurer in a county having a township organization**, upon receiving the tax book and warrant from the county clerk, shall proceed in the following manner to collect the same; and [he] **the collector-treasurer** shall mail to all resident taxpayers, at least fifteen days prior to delinquent date, a statement of all real and tangible personal property taxes due and assessed on the current tax books in the name of the taxpayers. [Collectors] **Collector-treasurers** shall also mail tax receipts for all the taxes received by mail.

139.400. ABATEMENT ON TAX LIST — PROCEDURE. — If the [township collector] **collector-treasurer in any county that has adopted township organization** shall be unable to collect any taxes charged in the tax list, by reason of the removal or insolvency of the person to whom such tax may be charged, or on account of any error in the tax list, [he] **the collector-treasurer** shall deliver to the county [treasurer] **clerk his or her** tax book, and shall [make out] **submit** and file with said [treasurer] **clerk**, at the time of his **or her** settlement, a statement in writing, setting forth the name of the person charged with such tax, the value of the property, and the amount of tax so charged and the cause of the delinquency, and shall make oath before the county clerk, or some associate circuit judge, that the facts stated in such statement are true and correct, and that the sums mentioned therein remain unpaid, and that [he] **the collector-treasurer** used due diligence to collect the same, which oath or affidavit shall be signed by the [township collector] **collector-treasurer**; and upon filing said statement, the county [treasurer] **clerk** shall allow the [township collector] **collector-treasurer** credit for the amount of taxes therein stated, and shall apportion and credit the same on the several funds for which such tax was charged; and when [he] **the collector-treasurer** makes settlement with the county commission, such statement shall be a sufficient voucher to entitle [him] **the collector-treasurer** to credit for the amount therein stated; but in no case shall any [township collector] **collector-treasurer, county clerk**, or county treasurer, be entitled to abatement on the resident tax list until the statement and affidavit aforesaid are filed as required by this chapter.

139.420. COLLECTOR-TREASURER — FINAL SETTLEMENT OF ACCOUNTS. — 1. The [township collector of each township] **collector-treasurer of any county that has adopted township organization**, at the term of the county commission to be held on the first Monday in March of each year, shall make a final settlement of [his] **the collector-treasurer's** accounts with the county commission for state, county, school and township taxes; produce receipts from the proper officers for all school and township taxes collected by [him, less his commission] **the collector-treasurer's**; pay over to the county [treasurer and ex officio collector] **treasury** all moneys remaining in his **or her** hands, collected by [him] **the collector-treasurer** on state and county taxes; make his **or her** return of all delinquent or unpaid taxes, as required by law, and make oath before the commission that [he] **the collector-treasurer** has exhausted all the remedies required by law for the collection of such taxes.

2. On or before the twentieth day of March in each year, [he] **the collector-treasurer** shall make a final settlement with the township board.

3. If any [township collector] **collector-treasurer** shall fail or refuse to make the settlement required by this section, or shall fail or refuse to pay over the state and county taxes, as provided in this section, the county commission shall attach [him] **the collector-treasurer** until [he] **the collector-treasurer** shall make such settlement of his **or her** accounts or pay over the money found due from [him] **the collector-treasurer**; and the commission shall cause the clerk thereof to notify the director of revenue and the prosecuting attorney of the county at once of the failure of such [township collector] **collector-treasurer** to settle his **or her** accounts, or pay over the money found due from [him] **the collector-treasurer**, and the director of revenue and the prosecuting attorney shall proceed against such collector in the manner provided in section 139.440, and such collector shall be liable to the penalties provided in section 139.440.

139.430. COLLECTOR-TREASURER — MONTHLY STATEMENTS — DISPOSITION OF COLLECTED MONEYS — COMMISSION. — 1. The [township collector] **collector-treasurer in any county that has a township organization**, on or before the [fifth] **tenth** day of each month, shall make and file in the office of the county clerk a statement showing the amount of taxes collected by [him] **the collector-treasurer** for all purposes during the preceding month, which statement shall be sworn to by such [township collector] **collector-treasurer** before the county clerk, or some other officer authorized to administer oaths.

2. On or before the tenth day in each month, the [township collector, after deducting his commissions,] **collector-treasurer** shall pay over to the county [treasurer and ex officio collector] **treasury** all state and county taxes collected by [him] **the collector-treasurer** during the preceding month, as shown by the statement required by this section, and take duplicate receipts therefor, one of which [he] **the collector-treasurer** shall retain and the other [he] **the collector-treasurer** shall file with the county clerk; and the county clerk shall charge the [treasurer] **collector-treasurer** with the amounts so receipted for, to be accounted for at the annual settlement.

3. The [township collector] **collector-treasurer**, in like manner, on or before the twentieth day of each month, shall pay over to the township trustee and ex officio treasurer [after deducting his commission] all township taxes and funds of every kind belonging to the township, collected by [him] **the collector-treasurer** during the preceding month, and take duplicate receipts therefor, one of which [he] **the collector-treasurer** shall retain and the other [he] **the collector-treasurer** shall deposit with the township clerk, who shall charge the township trustee and ex officio treasurer with the amount so receipted.

[4. The township collector shall receive a commission of two and one-half percent on the first forty thousand dollars collected; one percent on the next forty thousand dollars collected; and three-fourths of one percent on the remainder of all moneys collected by him.]

139.440. COLLECTOR-TREASURER — DEFAULT, PENALTIES — CERTIFIED COPY OF STATEMENT. — 1. If any [township collector] **collector-treasurer** shall fail or refuse to file the statement required by section 139.430, or, having filed such statement, shall neglect or refuse to pay over to the county [treasurer and ex officio collector] **treasury** the state and county taxes collected by him **or her** during the preceding month, as shown by such statement, the county clerk, immediately after such default, and not later than the fifteenth day of the month in which such statement was or should have been made, shall certify such fact to the director of revenue and the prosecuting attorney of the county; and the director of revenue and the prosecuting attorney shall proceed against such defaulting [township collector] **collector-treasurer** in the same manner as is provided by section 139.270 for proceeding against defaulting county collectors [and ex officio county collectors,] and the [township collector] **collector-treasurer** shall [forfeit his commission] on all moneys collected and wrongfully withheld, [and otherwise] be liable to all the penalties imposed by section 139.270.

2. The county clerk shall certify a copy of such monthly statement to the director of revenue within the time prescribed for certifying the statements of the county collectors and [ex officio collectors] **collector-treasurers**.

139.450. COLLECTOR-TREASURER — STATEMENTS. — The [ex officio collector] **collector-treasurer** shall include in his **or her** monthly statement all such sums collected for the preceding month [as may have been paid to him by the township collectors up to the time of making his monthly statement,] which have not been included in any previous statements, and shall include in [his] **the collector-treasurer's** annual settlement, as provided in this chapter and in the general revenue law, the whole amount of taxes collected [by the several township collectors of his county] as shown by the annual settlements [of the township collectors] with the county commission as provided in section 139.420.

139.460. COLLECTOR-TREASURER — SCHOOL TAXES, COLLECTION — APPORTIONED AND KEPT — SCHOOL DISTRICTS. — 1. The [township collector] **collector-treasurer** shall be required to draw or procure a plat of each school district or fractional part thereof in [his township] **the collector-treasurer's county**, and shall keep a true and correct account of all school moneys collected by him **or her** in each school district or fractional part thereof; and when said collector pays the moneys so collected by him **or her** to the township treasurer **or**

school district treasurer, he **or she** shall state the amount collected from each school district or fractional part thereof, and take duplicate receipts therefor, one of which he **or she** shall retain, and file the other with the township clerk.

2. As soon as the school funds are apportioned, the township treasurer shall apply to the county [treasurer] **collector-treasurer** for the school moneys belonging to each school district or fractional part thereof, in his **or her** township, and the county [treasurer] **collector-treasurer** shall pay over to him **or her** all of said school money, taking duplicate receipts therefor, one of which he or she shall file with the township clerk **and one of which shall be retained**.

3. The township treasurer shall safely keep such money until paid out upon the order of the board of directors of the various school districts in his **or her** township.

4. When any school district is divided by township or county lines, the district shall be considered in the township or county in which the schoolhouse is located, and the township treasurer holding any money belonging to fractional parts of districts in which no schoolhouse is located shall pay over all such money to the township treasurer of the township in which the fractional part of the district having the schoolhouse is located, taking duplicate receipts therefor, one of which shall be filed with the township clerk, and the township treasurer shall settle annually with the township board on or before the twentieth day of March in each year.

140.150. LANDS, LOTS, MINERAL RIGHTS, AND ROYALTY INTERESTS SUBJECT TO SALE, WHEN. — 1. All lands, lots, mineral rights, and royalty interests on which taxes **or neighborhood improvement district special assessments** are delinquent and unpaid are subject to sale to discharge the lien for the delinquent and unpaid taxes **or unpaid special assessments** as provided for in this chapter on the fourth Monday in August of each year.

2. No real property, lots, mineral rights, or royalty interests shall be sold for state, county or city taxes **or special assessments** without judicial proceedings, unless the notice of sale contains the names of all record owners thereof, or the names of all owners appearing on the land tax book and all other information required by law. Delinquent taxes **or unpaid special assessments**, penalty, interest and costs due thereon may be paid to the county collector at any time before the property is sold therefor.

3. The entry in the back tax book by the county clerk of the delinquent lands, lots, mineral rights, and royalty interests constitutes a levy upon the delinquent lands, lots, mineral rights, and royalty interests for the purpose of enforcing the lien of delinquent and unpaid taxes **or unpaid special assessments as provided in section 67.469, RSMo**, together with penalty, interest and costs.

140.160. LIMITATION OF ACTIONS, EXCEPTIONS — COUNTY AUDITOR TO FURNISH DELINQUENT TAX LIST. — 1. No proceedings for the sale of land and lots for delinquent taxes pursuant to this chapter **or unpaid special assessments as provided in section 67.469, RSMo**, relating to the collection of delinquent and back taxes **and unpaid special assessments** and providing for foreclosure sale and redemption of land and lots therefor, shall be valid unless initial proceedings therefor shall be commenced within three years after delinquency of such taxes **and unpaid special assessments**, and any sale held pursuant to initial proceedings commenced within such period of three years shall be deemed to have been in compliance with the provisions of said law insofar as the time at which such sales are to be had is specified therein; provided further, that in suits or actions to collect delinquent drainage and/or levee assessments on real estate such suits or actions shall be commenced within three years after delinquency, otherwise no suit or action therefor shall be commenced, had or maintained, except that the three-year limitation described in this subsection shall not be applicable if any written instrument conveys any real estate having a tax-exempt status, if such instrument causes such real estate to again become taxable real property and if such instrument has not been recorded in the office of the recorder in the county in which the real estate has been situated. Such three-year limitation shall only be applicable once the recording of the title has occurred.

2. In order to enable county and city collectors to be able to collect delinquent and back taxes **and unpaid special assessments**, the county auditor in all counties having a county auditor shall annually audit and list all delinquent and back taxes **and unpaid special assessments** and provide a copy of such audit and list to the county collector and to the governing body of the county. A copy of the audit and list may be provided to city collectors within the county at the discretion of the county collector.

165.071. COUNTY COLLECTOR-TREASURER TO PAY OVER SCHOOL DISTRICT MONEYS MONTHLY (SEVEN-DIRECTOR DISTRICTS). — 1. At least once in every month the county collector in all counties of the first and second [classes] **classifications** and the [township collector] **collector-treasurer** in counties having township organization shall pay over to the treasurer of the school board of all seven-director districts all moneys received and collected by [him] **the collector-treasurer** to which the board is entitled and take duplicate receipts from the treasurer, one of which [he] **the collector-treasurer** shall file with the secretary of the school board and the other [he] **the collector-treasurer** shall file in his **or her** settlement with the county commission.

2. The county collector in counties of the third and fourth [classes] **classification**, except in counties under township organization, shall pay over to the county treasurer at least once in every month all moneys received and collected by [him] **the county collector** which are due each school district and shall take duplicate receipts therefor, one of which [he] **the county collector** shall file in his **or her** settlement with the county commission. The county treasurer in such counties shall pay over to the treasurer of the school board of seven-director districts, at least once in every month, all moneys so received by [him] **the county treasurer** to which the board is entitled. Upon payment [he] **the county treasurer** shall take duplicate receipts from the treasurer of the school board, one of which [he] **the county treasurer** shall file with the secretary of the school board, and the other he shall file in his **or her** settlement with the county commission.

190.010. TERRITORY OF DISTRICT MAY BE NONCONTIGUOUS — AMBULANCE DISTRICTS AUTHORIZED EXCEPT IN COUNTIES OF 400,000 OR MORE POPULATION — DISTRICT, HOW NAMED. — 1. An ambulance district may be created, incorporated and managed as provided in sections 190.001 to 190.090 and may exercise the powers herein granted or necessarily implied. **The territory contained within the corporate limits of a proposed ambulance district shall not be required to be contiguous. Any territory which is noncontiguous within a proposed district must be located so that at least a portion of the territory lies within five miles of any other portion of the territory contained within the proposed ambulance district. Notwithstanding the provisions of subsection 2 of section 190.015,** an ambulance district may include municipalities or territory not in municipalities or both or territory in one or more counties; except, that the provisions of sections 190.001 to 190.090 are not effective in counties having a population of more than four hundred thousand inhabitants at the time the ambulance district is formed. The territory contained within the corporate limits of an existing ambulance district shall not be incorporated in another ambulance district. Ambulance districts created and still operating before August 1, 1998, in counties of less than four hundred thousand population are authorized to continue operation subject to sections 190.001 to 190.090 if the population of the county within the ambulance district exceeds four hundred thousand after August 1, 1998.

2. When an ambulance district is organized it shall be a body corporate and a political subdivision of the state and shall be known as "..... Ambulance District", and in that name may sue and be sued, levy and collect taxes within the limitations of sections 190.001 to 190.090 and the constitution and issue bonds as provided in sections 190.001 to 190.090.

190.015. PETITION TO FORM, CONTENTS — AMBULANCE DISTRICT BOUNDARIES (ST. LOUIS COUNTY). — 1. Whenever the creation of an ambulance district is desired, a number of

voters residing in the proposed district equal to ten percent of the vote cast for governor in the proposed district in the next preceding gubernatorial election may file with the county clerk in which the territory or the greater part thereof is situated a petition requesting the creation thereof. In case the proposed district [which shall be contiguous] 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 area is situated, and the commissioners of the county commission of the county shall set the petition for public 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 area;
- (3) The name of the proposed district;
- (4) The population of the district which shall not be less than two thousand inhabitants;
- (5) The assessed valuation of the area, which shall not be less than ten million dollars; and
- (6) A request that the question be submitted to the voters residing within the limits of the proposed ambulance district whether they will establish an ambulance district pursuant to the provisions of sections 190.001 to 190.090 to be known as "..... Ambulance District" for the purpose of establishing and maintaining an ambulance service.

2. In any county with a charter form of government and with more than one million inhabitants, fire protection districts created under chapter 321, RSMo, may choose to create an ambulance district with boundaries congruent with each participating fire protection district's existing boundaries provided no ambulance district already exists in whole or part of any district being proposed and the dominant provider of ambulance services within the proposed district as of September 1, 2005, ceases to offer or provide ambulance services, and the board of each participating district, by a majority vote, approves the formation of such a district and participating fire protection districts are contiguous. Upon approval by the fire protection district boards, subsection 1 of this section shall be followed for formation of the ambulance district. Services provided by a district under this subsection shall only include emergency ambulance services as defined in section 321.225, RSMo.

190.090. CONSOLIDATION OF AMBULANCE DISTRICTS, PROCEDURE FOR — FORM OF BALLOT — TRANSITION PROVISIONS FOR CONSOLIDATION. — 1. Two or more organized ambulance districts may consolidate into one ambulance district[, if the territory of the consolidated district is contiguous,] by following the procedures set forth in this section.

2. If the consolidation of existing ambulance districts is desired, a number of voters residing in an existing ambulance district equal to ten percent of the vote cast for governor in the existing district in the next preceding gubernatorial election may file with the county clerk in which the territory or greater part of the proposed consolidated district is situated a petition requesting the consolidation of two or more existing ambulance districts.

3. The petition shall be in the following form:

We, the undersigned voters of the ambulance district do hereby petition that existing ambulance districts be consolidated into one consolidated ambulance district.

4. An alternative procedure of consolidation may be followed, if the board of directors of the existing ambulance districts pass a resolution in the following form:

Be it resolved by the board of directors of the ambulance district that the ambulance districts be consolidated into one consolidated ambulance district.

5. Upon the filing of a petition, or a resolution, with the county clerk from each of the ambulance districts proposed to be consolidated, the county clerk shall present the petition or resolution to the commissioners of the county commission having jurisdiction who shall thereupon order the submission of the question to the voters of the districts. The filing of each of the petitions in the ambulance districts shall have occurred within a continuous twelve-month period.

6. The notice shall set forth the names of the existing ambulance districts to be included in the consolidated district.

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

Shall the existing ambulance districts be consolidated into one ambulance district?

8. If the county commission having jurisdiction finds that the question to consolidate the districts received a majority of the votes cast, the commission shall make and enter its order declaring that the proposition passed.

9. Within thirty days after the district has been declared consolidated, the county commission shall divide the district into six election districts and shall order an election to be held and conducted as provided in section 190.050 for the election of directors.

10. Within thirty days after the election of the initial board of directors of the district, the directors shall meet and the time and place of the first meeting of the board shall be designated by the county commission. At the first meeting the newly elected board of directors shall choose a name for the consolidated district and shall notify the clerk of the county commission of each county within which the consolidated district is located of the name of the consolidated district.

11. On the thirtieth day following the election of the board of directors, the existing ambulance districts shall cease to exist and the consolidated district shall assume all of the powers and duties exercised by those districts. All assets and obligations of the existing ambulance districts shall become assets and obligations of the consolidated district.

198.345. APARTMENTS FOR SENIORS, DISTRICTS MAY ESTABLISH (MARION AND RALLS COUNTIES). — Nothing in sections 198.200 to 198.350 shall prohibit a nursing home district from establishing and maintaining apartments for seniors that provide at a minimum housing, food services, and emergency call buttons to the apartment residents in any county of the third classification without a township form of government and with more than twenty-eight thousand two hundred but fewer than twenty-eight thousand three hundred inhabitants or any county of the third classification without a township form of government and with more than nine thousand five hundred fifty but fewer than nine thousand six hundred fifty inhabitants. Such nursing home districts shall not lease such apartments for less than fair market rent as reported by the United States Department of Housing and Urban Development.

205.010. PETITION OF VOTERS — MAXIMUM TAX RATE — SUBMISSION OF QUESTION.

— Any county, subject to the provisions of the Constitution of the state of Missouri, may establish, maintain, manage and operate a public health center in the following manner: Whenever the county commission shall be presented with a petition signed by at least ten percent or more of the voters of the county, as determined by the number of votes cast for governor at the preceding general election, asking that an annual tax not in excess of forty cents on each one hundred dollars of the assessed valuation of property in the county, be levied for the establishment, maintenance, management and operation of a county health center and the maintenance of the personnel required for operation of the health center, **or by majority vote of the county commission in any county of the first classification with more than eighty-two thousand but fewer than eighty-two thousand one hundred inhabitants, or by majority vote of the county commission in any county of the third classification without a township form of government and with more than sixteen thousand six hundred but fewer than sixteen thousand seven hundred inhabitants,** the county commission shall submit the question to the voters of the county at an election.

210.860. TAX LEVY, AMOUNT, PURPOSES — BALLOT — DEPOSIT OF FUNDS IN SPECIAL COMMUNITY CHILDREN'S SERVICES FUND. — 1. The governing body of any county or city not within a county may, after voter approval pursuant to this section, levy a tax not to exceed twenty-five cents on each one hundred dollars of assessed valuation on taxable property in the

county for the purpose of providing counseling, family support, and temporary residential services to persons eighteen years of age or less **and those services described in section 210.861**. The question shall be submitted to the qualified voters of the county or city not within a county at a county or state general, primary or special election upon the motion of the governing body of the county or city not within a county or upon the petition of eight percent of the qualified voters of the county determined on the basis of the number of votes cast for governor in such county or city not within a county at the last gubernatorial election held prior to the filing of the petition. The election officials of the county or city not within a county shall give legal notice as provided in chapter 115, RSMo. The question shall be submitted in substantially the following form:

Shall County (City) be authorized to levy a tax of cents on each one hundred dollars of assessed valuation on taxable property in the county (city) for the purpose of establishing a community children's services fund for purposes of providing funds for counseling and related services to children and youth in the county (city) eighteen years of age or less and services which will promote healthy lifestyles among children and youth and strengthen families?

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 be levied and collected as otherwise provided by law. 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 be levied unless and until the question is again submitted to the qualified voters of the county or city not within a county and a majority of such voters are in favor of such a tax, and not otherwise.

2. All revenues generated by the tax prescribed in this section shall be deposited in the county treasury **or, in a city not within a county, to the board established by law to administer such fund** to the credit of a special "Community Children's Services Fund" **to accomplish the purposes set out herein and shall be used for no other purpose**. Such fund shall be administered by **and expended only upon approval by** a board of directors, established pursuant to section 210.861.

210.861. BOARD OF DIRECTORS, TERM, EXPENSES, ORGANIZATION — POWERS — FUNDS, EXPENDITURE, PURPOSE, RESTRICTIONS. — 1. When the tax prescribed by section 210.860 or section 67.1775, RSMo, is established, the governing body of the **city or** county shall appoint a board of directors consisting of nine members, who shall be residents of the **city or** county. All board members shall be appointed to serve for a term of three years, except that of the first board appointed, three members shall be appointed for one-year terms, three members for two-year terms and three members for three-year terms. Board members may be reappointed. In a city not within a county, or any county of the first classification with a charter form of government with a population not less than nine hundred thousand inhabitants, or any county of the first classification with a charter form of government with a population not less than two hundred thousand inhabitants and not more than six hundred thousand inhabitants, or any noncharter county of the first classification with a population not less than one hundred seventy thousand and not more than two hundred thousand inhabitants, or any noncharter county of the first classification with a population not less than eighty thousand and not more than eighty-three thousand inhabitants, or any third classification county with a population not less than twenty-eight thousand and not more than thirty thousand inhabitants, or any county of the third classification with a population not less than nineteen thousand five hundred and not more than twenty thousand inhabitants the members of the community mental health board of trustees appointed pursuant to the provisions of sections 205.975 to 205.990, RSMo, shall be the board members for the community children's services fund. The directors shall not receive compensation for their services, but may be reimbursed for their actual and necessary expenses.

2. The board shall elect a chairman, vice chairman, treasurer, and such other officers as it deems necessary for its membership. Before taking office, the treasurer shall furnish a surety

bond, in an amount to be determined and in a form to be approved by the board, for the faithful performance of his **or her** duties and faithful accounting of all moneys that may come into his **or her** hands. The treasurer shall enter into the surety bond with a surety company authorized to do business in Missouri, and the cost of such bond shall be paid by the board of directors. The board shall administer **and expend** all funds generated pursuant to section 210.860 or section 67.1775, RSMo, in a manner consistent with this section.

3. The board may contract with public or not-for-profit agencies licensed or certified where appropriate to provide qualified services and may place conditions on the use of such funds. The board shall reserve the right to audit the expenditure of any and all funds. The board and any agency with which the board contracts may establish eligibility standards for the use of such funds and the receipt of services. No member of the board shall serve on the governing body, have any financial interest in, or be employed by any agency which is a recipient of funds generated pursuant to section 210.860 or section 67.1775, RSMo.

4. Revenues collected and deposited in the community children's services fund may be expended for the purchase of the following services:

(1) Up to thirty days of temporary shelter for abused, neglected, runaway, homeless or emotionally disturbed youth; respite care services; and services to unwed mothers;

(2) Outpatient chemical dependency and psychiatric treatment programs; counseling and related services as a part of transitional living programs; home-based and community-based family intervention programs; unmarried parent services; crisis intervention services, inclusive of telephone hotlines; and prevention programs which promote healthy lifestyles among children and youth and strengthen families;

(3) Individual, group, or family professional counseling and therapy services; psychological evaluations; and mental health screenings.

5. Revenues collected and deposited in the community children's services fund may not be expended for inpatient medical, psychiatric, and chemical dependency services, or for transportation services.

215.246. GRANTS OR LOANS NOT AWARDED WITHOUT IMPLEMENTATION OF CERTAIN OVERSIGHT PROCEDURES (KANSAS CITY). — Beginning July 1, 2006, the commission shall not award grants or loans to any home rule city with more than four hundred thousand inhabitants and located in more than one county unless the governing body of such city has implemented oversight procedures to review expenditures and development plans for all housing contracts in excess of one hundred thousand dollars.

233.295. DISSOLUTION OF ROAD DISTRICT — PETITION — NOTICE — DISINCORPORATION OF DISTRICT (CHRISTIAN, JASPER AND BARRY COUNTIES). — 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 this section, then the county commission shall disincorporate the road district. This subsection shall not apply to any road district located in two counties.

5. Notwithstanding other provisions of this section to the contrary, in any county of the third classification without a township form of government and with more than thirty-four thousand but fewer than thirty-four thousand one 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 this section, then the county commission shall disincorporate the road district. This subsection shall not apply to any road district located in two counties.

6. Notwithstanding other provisions of this section to the contrary, in any county of the second classification with more than fifty-four thousand two hundred but fewer than fifty-four thousand three 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 this section, then the county commission shall disincorporate the road district. This subsection shall not apply to any road district located in two counties.

7. Notwithstanding other provisions of this section to the contrary, in any county, 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 this section, then the county commission shall

disincorporate the road district. This subsection shall not apply to any road district located in two counties.

8. Notwithstanding other provisions of this section to the contrary, in any county, a petition to disincorporate a road district located in two counties organized under sections 233.170 to 233.315 shall be presented to the county commission or similar authority in each county in which the road district is located. Each petition shall be signed by the lesser of fifty or a majority of the registered voters residing within the district and county, 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 in each county in which the road district is located that the public good will be advanced by the disincorporation after providing notice and a hearing as required in this section, then the county commission in each county in which the road district is located shall disincorporate the road district. A road district located in two counties shall not be disincorporated until it is disincorporated in each county in which it is located.

242.560. CURRENT AND DELINQUENT TAXES — COLLECTION — PROCEDURE. — 1. In counties where the provisions of chapter 65, RSMo, are, or may hereafter be in force, the secretary of the board of supervisors shall extend all drainage taxes under the provisions of sections 242.010 to 242.690 on separate tax books for the respective townships in which such lands are situate, and such tax books shall be certified to the [township collectors of such townships] **collector-treasurer** at the same time and in the same manner as provided for county collectors.

2. Such taxes shall be collected by such [township collectors] **collector-treasurer** at the same time and in the same manner as state and county taxes are collected, and each [township collector] **collector-treasurer** shall give bond, have the same authority to collect such taxes, receive the same compensation therefor and pay over such taxes to the secretary of board of supervisors, as provided for county collectors under said sections, and shall be subject to the same penalties and liabilities. Such [township collectors] **collector-treasurer** shall make due return of such tax books under oath in the same manner as required of county collectors.

3. The delinquent drainage taxes shall be certified by the secretary of the board of supervisors to the county [treasurer as ex officio collector] **collector-treasurer** of delinquent taxes, who shall collect such delinquent drainage taxes at the same time and in the same manner as is herein provided for the collection of the delinquent drainage taxes in counties not under the provisions of chapter 65, RSMo. The said [treasurer as ex officio collector] **collector-treasurer** of delinquent taxes shall give bond, have the same authority to collect such taxes, receive the same compensation therefor and pay over the said taxes to the treasurer of the drainage district as is provided for county collectors under sections 242.010 to 242.690, and shall be subject to the same penalties and liabilities.

4. All township drainage tax books, and the return of the collectors of such books, shall be taken as prima facie evidence in all courts of all matters therein contained, and that the delinquent tax shown in such books was properly levied and extended against such lands and remains unpaid. The lien of such tax shall be enforced and suits to collect such delinquent tax shall be instituted and prosecuted in the same manner provided by said sections, except such suits shall be instituted by the drainage district on tax bills duly made out and certified by the county [treasurer as ex officio collector] **collector-treasurer** of delinquent taxes.

245.205. SECRETARY OF BOARD TO EXTEND AND CERTIFY LEVEE TAX TO COLLECTOR-TREASURERS — DUTIES OF COLLECTOR-TREASURER — COUNTY COLLECTOR-TREASURER TO COLLECT DELINQUENT TAXES. — 1. In counties where the provisions of chapter 65, RSMo, are or may hereafter be in force, the secretary of the board of supervisors shall extend all levee taxes under the provisions of sections 245.010 to 245.280 on separate tax books for the respective townships in which such lands are situate, and such tax books shall be certified to the

[township collectors of such townships] **collector-treasurers** at the same time and in the same manner as provided for county collectors. Such taxes shall be collected by such [township collectors] **collector-treasurers** at the same time and in the same manner, as state and county taxes are collected, and each [township collector] **collector-treasurer** shall give bond, have the same authority to collect such taxes, receive the same compensation therefor and pay over such taxes to the secretary of board of supervisors, as provided for county collectors under sections 245.010 to 245.280 and shall be subject to the same penalties and liabilities. Such [township collectors] **collector-treasurers** shall make due return of such tax books under oath in the same manner as required of county collectors.

2. The delinquent levee taxes shall be certified by the secretary of the board of supervisors to the county [treasurer as ex officio collector] **collector-treasurer** of delinquent taxes, who shall collect such delinquent levee taxes at the same time and in the same manner as is herein provided for the collection of the delinquent levee taxes in counties not under the provisions of chapter 65, RSMo. The said [treasurer as ex officio collector] **collector-treasurer** of delinquent levee taxes shall give bond, have the same authority to collect such taxes, receive the same compensation therefor, and pay over the said taxes to the treasurer of the levee district as is provided for county collectors under sections 245.010 to 245.280, and shall be subject to the same penalties and liabilities.

3. All township levee tax books, and the return of the collectors of such books, shall be taken as prima facie evidence in all courts of all matters therein contained, and that the delinquent tax shown in such books was properly levied and extended against such lands and remains unpaid. The lien of such tax shall be enforced and suits to collect such delinquent tax shall be instituted and prosecuted in the same manner provided by sections 245.010 to 245.280, except such suits shall be instituted by the levee district on tax bills duly made out and certified by the county [treasurer as ex officio collector] **collector-treasurer** of delinquent taxes.

250.140. SERVICES DEEMED FURNISHED BOTH TO OCCUPANT AND OWNER OF PREMISES — PAYMENT DELINQUENCY, NOTICE OF TERMINATION SENT TO BOTH OCCUPANT AND OWNER OF PREMISES — APPLICABILITY — UNAPPLIED-FOR UTILITY SERVICES, DEFINED. —

1. Sewerage services, **water services**, or water and sewerage services combined shall be deemed to be furnished to both the occupant and owner of the premises receiving such service and, **except as otherwise provided in subsection 2 of this section**, the city, town [or], village, or sewer district **or water supply district organized and incorporated under chapter 247, RSMo**, rendering such services shall have power to sue the occupant or owner, or both, of such real estate in a civil action to recover any sums due for such services **less any deposit that is held by the city, town, village, or sewer district or water supply district organized and incorporated under chapter 247, RSMo, for such services**, plus a reasonable attorney's fee to be fixed by the court.

2. [If the occupant of the premises receives the billing,] **When the occupant is delinquent in payment for thirty days, the city, town, village, sewer district, or water supply district shall make a good faith effort to notify the owner of the premises receiving such service of the delinquency and the amount thereof. Notwithstanding any other provision of this section to the contrary, when an occupant is delinquent more than ninety days, the owner shall not be liable for sums due for more than ninety days of service; provided, however, that in any city not within a county and any home rule city with more than four hundred thousand inhabitants and located in more than one county, until January 1, 2007, when an occupant is delinquent more than one hundred twenty days the owner shall not be liable for sums due for more than one hundred twenty days of service, and after January 1, 2007, when an occupant is delinquent more than ninety days the owner shall not be liable for sums due for more than ninety days.** Any notice of termination of service shall be sent to both the occupant and owner of the premises receiving such service[, if such owner has

requested in writing to receive any notice of termination and has provided the entity rendering such service with the owner's business addresses.]

3. The provisions of this section shall apply only to residences that have their own private water and sewer lines. In instances where several residences share a common water or sewer line, the owner of the real property upon which the residences sit shall be liable for water and sewer expenses.

4. Notwithstanding any other provision of law to the contrary, any water provider who terminates service due to delinquency of payment by a consumer shall not be liable for any civil or criminal damages.

5. The provisions of this section shall not apply to unapplied-for utility services. As used in this subsection, "unapplied-for utility services" means services requiring application by the property owner and acceptance of such application by the utility prior to the establishment of an account. The property owner is billed directly for the services provided, and as a result, any delinquent payment of a bill becomes the responsibility of the property owner rather than the occupant.

263.245. BRUSH ADJACENT TO COUNTY ROADS, TO BE REMOVED, CERTAIN COUNTIES — COUNTY COMMISSION MAY REMOVE BRUSH, WHEN, PROCEDURES, CERTAIN COUNTIES.

— 1. All owners of land in any county with a township form of government, located north of the Missouri River and having no portion of the county located east of U.S. Highway 63 **and located in any county of the third classification without a township form of government and with more than four thousand one hundred but fewer than four thousand two hundred inhabitants** shall control all brush growing on such owner's property that is designated as the county right-of-way or county maintenance easement part of such owner's property and which is adjacent to any county road. Such brush shall be cut, burned or otherwise destroyed as often as necessary in order to keep such lands accessible for purposes of maintenance and safety of the county road.

2. The county commission, either upon its own motion or upon receipt of a written notice requesting the action from any residents of the county in which the county road bordering the lands in question is located or upon written request of any person regularly using the county road, may control such brush so as to allow easy access to the land described in subsection 1 of this section, and for that purpose the county commission, or its agents, servants, or employees shall have authority to enter on such lands without being liable to an action of trespass therefor, and shall keep an accurate account of the expenses incurred in eradicating the brush, and shall verify such statement under seal of the county commission, and transmit the same to the officer whose duty it is or may be to extend state and county taxes on tax books or bills against real estate. Such officer shall extend the aggregate expenses so charged against each tract of land as a special tax, which shall then become a lien on such lands, and be collected as state and county taxes are collected by law and paid to the county commission and credited to the county control fund.

3. Before proceeding to control brush as provided in this section, the county commission of the county in which the land is located shall notify the owner of the land of the requirements of this law by certified mail, return receipt requested, from a list supplied by the officer who prepares the tax list, and shall allow the owner of the land thirty days from acknowledgment date of return receipt, or date of refusal of acceptance of delivery as the case may be, to eradicate all such brush growing on land designated as the county right-of-way or county maintenance easement part of such owner's land and which is adjacent to the county road. In the event that the property owner cannot be located by certified mail, notice shall be placed in a newspaper of general circulation in the county in which the land is located at least thirty days before the county commission removes the brush pursuant to subsection 2 of this section. Such property owner shall be granted an automatic thirty-day extension due to hardship by notifying the county commission that such owner cannot comply with the requirements of this section, due to

hardship, within the first thirty-day period. The property owner may be granted a second extension by a majority vote of the county commission. There shall be no further extensions. For the purposes of this subsection, "hardship" may be financial, physical or any other condition that the county commission deems to be a valid reason to allow an extension of time to comply with the requirements of this section.

4. County commissions shall not withhold rock, which is provided from funds from the county aid road trust fund, for maintaining county roads due to the abutting property owner's refusal to remove brush located on land designated as the county right-of-way or county maintenance easement part of such owner's land. County commissions shall use such rock on the county roads, even though the brush is not removed, or county commissions may resort to the procedures in this section to remove the brush.

301.025. PERSONAL PROPERTY TAXES AND FEDERAL HEAVY VEHICLE USE TAX, PAID WHEN — TAX RECEIPT FORMS — FAILURE TO PAY PERSONAL PROPERTY TAX, EFFECT OF, NOTIFICATION REQUIREMENTS, REINSTATEMENT FEE, APPEALS — RULEMAKING, PROCEDURE. — 1. No state registration license to operate any motor vehicle in this state shall be issued unless the application for license of a motor vehicle or trailer is accompanied by a tax receipt for the tax year which immediately precedes the year in which the vehicle's or trailer's registration is due and which reflects that all taxes, including delinquent taxes from prior years, have been paid, or a statement certified by the county [or township collector of the county or township] **collector or collector-treasurer of the county** in which the applicant's property was assessed showing that the state and county tangible personal property taxes for such previous tax year and all delinquent taxes due have been paid by the applicant, or **a statement certified by the county or township collector for such previous year** that no such taxes were **assessed or due and, the applicant has no unpaid taxes on the collector's tax roll for any subsequent year** or, if the applicant is not a resident of this state and serving in the armed forces of the United States, the application is accompanied by a leave and earnings statement from such person verifying such status or, if the applicant is an organization described pursuant to subdivision (5) of section 137.100, RSMo, or subsection 1 of section 137.101, RSMo, the application is accompanied by a document, in a form approved by the director, verifying that the organization is registered with the department of revenue or is determined by the internal revenue service to be a tax-exempt entity. If the director of the department of revenue has been notified by the assessor pursuant to subsection 2 of section 137.101, RSMo, that the applicant's personal property is not tax exempt, then the organization's application shall be accompanied by a statement certified by the county **collector** or [township collector] **collector-treasurer** of the county [or township] in which the organization's property was assessed showing that the state and county tangible personal property taxes for such previous tax year and all delinquent taxes due have been paid by the organization. In the event the registration is a renewal of a registration made two or three years previously, the application shall be accompanied by proof that taxes were not due or have been paid for the two or three years which immediately precede the year in which the motor vehicle's or trailer's registration is due. The county **collector** or [township collector] **collector-treasurer** shall not be required to issue a receipt or **certified statement that taxes were not assessed or due** for the immediately preceding tax year until all personal property taxes, including all **current and** delinquent taxes [currently due], are paid. If the applicant was a resident of another county of this state in the applicable preceding years, he or she must submit to the collector or **collector-treasurer** in the county [or township] of residence proof that the personal property tax was paid in the applicable tax years. Every county **collector** and [township collector] **collector-treasurer** shall give each person a tax receipt or a certified statement of tangible personal property taxes paid. The receipt issued by the county collector in any county of the first classification with a charter form of government which contains part of a city with a population of at least three hundred fifty thousand inhabitants which is located in more than one county, any county of the first classification without a charter form of government

with a population of at least one hundred fifty thousand inhabitants which contains part of a city with a population of at least three hundred fifty thousand inhabitants which is located in more than one county and any county of the first classification without a charter form of government with a population of at least one hundred ten thousand but less than one hundred fifty thousand inhabitants shall be determined null and void if the person paying tangible personal property taxes issues or passes a check or other similar sight order which is returned to the collector because the account upon which the check or order was drawn was closed or did not have sufficient funds at the time of presentation for payment by the collector to meet the face amount of the check or order. The collector may assess and collect in addition to any other penalty or interest that may be owed, a penalty of ten dollars or five percent of the total amount of the returned check or order whichever amount is greater to be deposited in the county general revenue fund, but in no event shall such penalty imposed exceed one hundred dollars. The collector may refuse to accept any check or other similar sight order in payment of any tax currently owed plus penalty or interest from a person who previously attempted to pay such amount with a check or order that was returned to the collector unless the remittance is in the form of a cashier's check, certified check or money order. If a person does not comply with the provisions of this section, a tax receipt issued pursuant to this section is null and void and no state registration license shall be issued or renewed. Where no such taxes are due each such collector shall, upon request, certify such fact and transmit such statement to the person making the request. Each receipt or statement shall describe by type the total number of motor vehicles on which personal property taxes were paid, and no renewal of any state registration license shall be issued to any person for a number greater than that shown on his or her tax receipt or statement except for a vehicle which was purchased without another vehicle being traded therefor, or for a vehicle previously registered in another state, provided the application for title or other evidence shows that the date the vehicle was purchased or was first registered in this state was such that no personal property tax was owed on such vehicle as of the date of the last tax receipt or certified statement prior to the renewal. The director of revenue shall make necessary rules and regulations for the enforcement of this section, and shall design all necessary forms. If electronic data is not available, residents of counties with a township form of government and with [township collectors] **collector-treasurers** shall present personal property tax receipts which have been paid for the preceding two years when registering under this section.

2. Every county collector in counties with a population of over six hundred thousand and less than nine hundred thousand shall give priority to issuing tax receipts or certified statements pursuant to this section for any person whose motor vehicle registration expires in January. Such collector shall send tax receipts or certified statements for personal property taxes for the previous year within three days to any person who pays the person's personal property tax in person, and within twenty working days, if the payment is made by mail. Any person wishing to have priority pursuant to this subsection shall notify the collector at the time of payment of the property taxes that a motor vehicle registration expires in January. Any person purchasing a new vehicle in December and licensing such vehicle in January of the following year may use the personal property tax receipt of the prior year as proof of payment.

3. In addition to all other requirements, the director of revenue shall not register any vehicle subject to the heavy vehicle use tax imposed by Section 4481 of the Internal Revenue Code of 1954 unless the applicant presents proof of payment, or that such tax is not owing, in such form as may be prescribed by the United States Secretary of the Treasury. No proof of payment of such tax shall be required by the director until the form for proof of payment has been prescribed by the Secretary of the Treasury.

4. Beginning July 1, 2000, a county **collector** or [township collector] **collector-treasurer** may notify, by ordinary mail, any owner of a motor vehicle for which personal property taxes have not been paid that if full payment is not received within thirty days the collector may notify the director of revenue to suspend the motor vehicle registration for such vehicle. Any

notification returned to the collector **or collector-treasurer** by the post office shall not result in the notification to the director of revenue for suspension of a motor vehicle registration. Thereafter, if the owner fails to timely pay such taxes the collector **or collector-treasurer** may notify the director of revenue of such failure. Such notification shall be on forms designed and provided by the department of revenue and shall list the motor vehicle owner's full name, including middle initial, the owner's address, and the year, make, model and vehicle identification number of such motor vehicle. Upon receipt of this notification the director of revenue may provide notice of suspension of motor vehicle registration to the owner at the owner's last address shown on the records of the department of revenue. Any suspension imposed may remain in effect until the department of revenue receives notification from a county **collector** or [township collector] **collector-treasurer** that the personal property taxes have been paid in full. Upon the owner furnishing proof of payment of such taxes and paying a twenty dollar reinstatement fee to the director of revenue the motor vehicle or vehicles registration shall be reinstated. In the event a motor vehicle registration is suspended for nonpayment of personal property tax the owner so aggrieved may appeal to the circuit court of the county of his or her residence for review of such suspension at any time within thirty days after notice of motor vehicle registration suspension. Upon such appeal the cause shall be heard de novo in the manner provided by chapter 536, RSMo, for the review of administrative decisions. The circuit court may order the director to reinstate such registration, sustain the suspension of registration by the director or set aside or modify such suspension. Appeals from the judgment of the circuit court may be taken as in civil cases. The prosecuting attorney of the county where such appeal is taken shall appear in behalf of the director, and prosecute or defend, as the case may require.

5. Beginning July 1, 2005, a city not within a county or any home rule city with more than four hundred thousand inhabitants and located in more than one county may notify, by ordinary mail, any owner of a motor vehicle who is delinquent in payment of vehicle-related fees and fines that if full payment is not received within thirty days, the city not within a county or any home rule city with more than four hundred thousand inhabitants and located in more than one county may notify the director of revenue to suspend the motor vehicle registration for such vehicle. Any notification returned to the city not within a county or any home rule city with more than four hundred thousand inhabitants and located in more than one county by the post office shall not result in the notification to the director of revenue for suspension of a motor vehicle registration. If the vehicle-related fees and fines are assessed against a car that is registered in the name of a rental or leasing company and the vehicle is rented or leased to another person at the time the fees or fines are assessed, the rental or leasing company may rebut the presumption by providing the city not within a county or any home rule city with more than four hundred thousand inhabitants and located in more than one county with a copy of the rental or lease agreement in effect at the time the fees or fines were assessed. A rental or leasing company shall not be charged for fees or fines under this subsection, nor shall the registration of a vehicle be suspended, unless prior written notice of the fees or fines has been given to that rental or leasing company by ordinary mail at the address appearing on the registration and the rental or leasing company has failed to provide the rental or lease agreement copy within fifteen days of receipt of such notice. Any notification to a rental or leasing company that is returned to the city not within a county or any home rule city with more than four hundred thousand inhabitants and located in more than one county by the post office shall not result in the notification to the director of revenue for suspension of a motor vehicle registration. For the purpose of this section, "vehicle-related fees and fines" includes, but is not limited to, traffic violation fines, parking violation fines, vehicle towing, storage and immobilization fees, and any late payment penalties, other fees, and court costs associated with the adjudication or collection of those fines.

6. If after notification under subsection 5 of this section the vehicle owner fails to pay such vehicle-related fees and fines to the city not within a county or any home rule city with more than four hundred thousand inhabitants and located in more than one county within thirty days from

the date of such notice, the city not within a county or any home rule city with more than four hundred thousand inhabitants and located in more than one county may notify the director of revenue of such failure. Such notification shall be on forms or in an electronic format approved by the department of revenue and shall list the vehicle owner's full name and address, and the year, make, model, and vehicle identification number of such motor vehicle and such other information as the director shall require.

7. Upon receipt of notification under subsection 5 of this section, the director of revenue may provide notice of suspension of motor vehicle registration to the owner at the owner's last address shown on the records of the department of revenue. Any suspension imposed may remain in effect until the department of revenue receives notification from a city not within a county or any home rule city with more than four hundred thousand inhabitants and located in more than one county that the vehicle-related fees or fines have been paid in full. Upon the owner furnishing proof of payment of such fees and fines and paying a twenty dollar reinstatement fee to the director of revenue the motor vehicle registration shall be reinstated. In the event a motor vehicle registration is suspended for nonpayment of vehicle-related fees or fines the owner so aggrieved may appeal to the circuit court of the county where the violation occurred for review of such suspension at any time within thirty days after notice of motor vehicle registration suspension. Upon such appeal the cause shall be heard de novo in the manner provided by chapter 536, RSMo, for the review of administrative decisions. The circuit court may order the director to reinstate such registration, sustain the suspension of registration by the director or set aside or modify such suspension. Appeals from the judgment of the circuit court may be taken as in civil cases. The prosecuting attorney of the county where such appeal is taken shall appear in behalf of the director, and prosecute or defend, as the case may require.

8. The city not within a county or any home rule city with more than four hundred thousand inhabitants and located in more than one county shall reimburse the department of revenue for all administrative costs associated with the administration of subsections 5 to 8 of this section.

9. 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.

321.120. ELECTION BEFORE DECREE BECOMES CONCLUSIVE — DECREE TO DETERMINE NUMBER OF DIRECTORS — BALLOT FORM — SUCCESSOR DIRECTORS, TERMS — MAY INCREASE NUMBER OF DIRECTORS, EXCEPTION — BALLOT, FORM — TERMS. — 1. The decree of incorporation shall not become final and conclusive until it has been submitted to an election of the voters residing within the boundaries described in such decree, and until it has been assented to by a majority vote of the voters of the district voting on the question. The decree shall also provide for the holding of the election to vote on the proposition of incorporating the district, and to select three or five persons to act as the first board of directors, and shall fix the date for holding the election.

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

Shall there be incorporated a fire protection district?

YES NO

3. The proposition of electing the first board of directors or the election of subsequent directors may be submitted on a separate ballot or on the same ballot which contains any other proposition of the fire protection district. The ballot to be used for the election of a director or directors shall be substantially in the following form:

OFFICIAL BALLOT

Instruction to voters:

Place a cross (X) mark in the square opposite the name of the candidate or candidates you favor. (Here state the number of directors to be elected and their term of office.)

ELECTION

(Here insert name of district.) Fire Protection District. (Here insert date of election.)

FOR BOARD OF DIRECTORS

..... []
..... []
..... []

4. If a majority of the voters voting on the proposition or propositions voted in favor of the proposition to incorporate the district, then the court shall enter its further order declaring the decree of incorporation to be final and conclusive. In the event, however, that the court finds that a majority of the voters voting thereon voted against the proposition to incorporate the district, then the court shall enter its further order declaring the decree of incorporation to be void and of no effect. If the court enters an order declaring the decree of incorporation to be final and conclusive, it shall at the same time designate the first board of directors of the district who have been elected by the voters voting thereon. If a board of three members is elected, the person receiving the third highest number of votes shall hold office for a term of two years, the person receiving the second highest number of votes shall hold office for a term of four years, and the person receiving the highest number of votes shall hold office for a term of six years from the date of the election of the first board of directors and until their successors are duly elected and qualified. If a board of five members is elected, the person who received the highest number of votes shall hold office for a term of six years, the persons who received the second and third highest numbers of votes shall hold office for terms of four years and the persons who received the fourth and fifth highest numbers of votes shall hold office for terms of two years and until their successors are duly elected and qualified. Thereafter, members of the board shall be elected to serve terms of six years and until their successors are duly elected and qualified, provided however, in any county with a charter form of government and with more than two hundred fifty thousand but fewer than three hundred fifty thousand inhabitants, any successor elected and qualified in the year 2005 shall hold office for a term of six years and until his or her successor is duly elected and qualified and any successor elected and qualified in the year 2006 or 2007 shall hold office for a term of five years and until his or her successor is duly elected and qualified, and thereafter, members of the board shall be elected to serve terms of four years and until their successors are duly elected and qualified. The court shall at the same time enter an order of record declaring the result of the election on the proposition, if any, to incur bonded indebtedness.

5. Notwithstanding the provisions of subsections 1 to 4 of this section to the contrary, upon a motion by the board of directors in districts where there are three-member boards, and upon approval by the voters in the district, the number of directors may be increased to five, except that in any county of the first classification with a population of more than nine hundred thousand inhabitants such increase in the number of directors shall apply only in the event of a consolidation of existing districts. The ballot to be used for the approval of the voters to increase the number of members on the board of directors of the fire protection district shall be substantially in the following form:

Shall the number of members of the board of directors of the
(Insert name of district) Fire Protection District be increased to five members?
[] YES [] NO

If a majority of the voters voting on the proposition vote in favor of the proposition then at the next election of board members after the voters vote to increase the number of directors, the voters shall select two persons to act in addition to the existing three directors as the board of directors. The court which entered the order declaring the decree of incorporation to be final

shall designate the additional board of directors who have been elected by the voters voting thereon as follows: the one receiving the second highest number of votes to hold office for a term of four years, and the one receiving the highest number of votes to hold office for a term of six years from the date of the election of such additional board of directors and until their successors are duly elected and qualified. Thereafter, members of the board shall be elected to serve terms of six years and until their successors are duly elected and qualified, **provided however, in any county with a charter form of government and with more than two hundred fifty thousand but fewer than three hundred fifty thousand inhabitants, any successor elected and qualified in the year 2005 shall hold office for a term of six years and until his or her successor is duly elected and qualified and any successor elected and qualified in the year 2006 or 2007 shall hold office for a term of five years and until his or her successor is duly elected and qualified, and thereafter, members of the board shall be elected to serve terms of four years and until their successors are duly elected and qualified.**

6. Members of the board of directors in office on the date of an election pursuant to subsection 5 of this section to elect additional members to the board of directors shall serve the term to which they were elected or appointed and until their successors are elected and qualified.

321.130. DIRECTORS, QUALIFICATIONS — CANDIDATE FILING FEE, OATH. — 1. A person, to be qualified to serve as a director, shall be a voter of the district at least [two years] **one year** before the election or appointment and be over the age of twenty-five years; except as provided in subsections 2 and 3 of this section. Nominations and declarations of candidacy shall be filed at the headquarters of the fire protection district by paying a ten dollar filing fee and filing a statement under oath that such person possesses the required qualifications.

2. In any fire protection district located in more than one county one of which is a first class county without a charter form of government having a population of more than one hundred ninety-eight thousand and not adjoining any other first class county or located wholly within a first class county as described herein, a resident shall have been a resident of the district for more than one year to be qualified to serve as a director.

3. In any fire protection district located in a county of the third or fourth classification, a person to be qualified to serve as a director shall be over the age of twenty-five years and shall be a voter of the district for more than [two years] **one year** before the election or appointment, except that for the first board of directors in such district, a person need only be a voter of the district for one year before the election or appointment.

4. A person desiring to become a candidate for the first board of directors of the proposed district shall pay the sum of five dollars as a filing fee to the treasurer of the county and shall file with the election authority a statement under oath that such person possesses all of the qualifications set out in this chapter for a director of a fire protection district. Thereafter, such candidate shall have the candidate's name placed on the ballot as a candidate for director.

321.190. ATTENDANCE FEES AUTHORIZED — REIMBURSEMENT FOR EXPENSES — SECRETARY AND TREASURER, ADDITIONAL COMPENSATION, HOW SET, LIMITATION. — Each member of the board may receive an attendance fee not to exceed one hundred dollars for attending each regularly called board meeting, or special meeting, but shall not be paid for attending more than two in any calendar month, except that in a county of the first class having a charter form of government, he shall not be paid for attending more than four in any calendar month. **However, no board member shall be paid more than one attendance fee if such member attends more than one board meeting in a calendar week.** In addition, the chairman of the board of directors may receive fifty dollars for attending each regularly or specially called board meeting, but shall not be paid the additional fee for attending more than two meetings in any calendar month. Each member of the board shall be reimbursed for his **or her** actual expenditures in the performance of his **or her** duties on behalf of the district. The

secretary and the treasurer, if members of the board of directors, may each receive such additional compensation for the performance of their respective duties as secretary and treasurer as the board shall deem reasonable and necessary, not to exceed one thousand dollars per year. The circuit court having jurisdiction over the district shall have power to remove directors or any of them for good cause shown upon a petition, notice and hearing.

321.222. RESIDENTIAL CONSTRUCTION — DEFINITIONS — REGULATORY SYSTEM OF CITY OR COUNTY SUPERSEDES FIRE PROTECTION DISTRICT REGULATIONS (JEFFERSON COUNTY). — 1. As used in this section, the term "residential construction" shall mean new construction and erection of detached single-family or two-family dwellings, the alteration, enlargement, replacement, or repair of detached single family or two-family dwellings.

2. As used in this section, the term "residential construction regulatory system" means any bylaw, ordinance, order, rule, or regulation pertaining to residential construction, the implementation or enforcement of any permitting system or program relative to residential construction, including the use or occupancy by the initial occupant thereof, or the implementation or enforcement of any system or program for the inspection of residential construction.

3. Notwithstanding the provisions of any other law to the contrary, in the event a city, town, village, or county adopts or has adopted, implements or has implemented, or enforces a residential construction regulatory system or any portion thereof applicable to residential construction within its jurisdiction, neither fire protection districts nor their boards shall have the power, authority, or privilege to adopt, enforce, or implement a residential construction regulatory system or any portion thereof applicable to or pertaining to residential construction within the jurisdiction of such city, town, village, or county.

4. Any residential construction regulatory system or any portion thereof adopted or previously adopted, implemented or previously implemented, or enforced by a fire protection district or its board as to residential construction within the jurisdiction of a city, town, village, or county shall be null and void as of the date on which such city, town, village, or county adopts, implements, or enforces its own residential construction regulatory system as to residential construction within its jurisdiction whether or not the residential construction regulatory system or any portion thereof adopted, implemented, or enforced by such city, town, village, or county specifically addresses matters addressed in substance or manner by the residential construction regulatory system or any portion thereof adopted, implemented, or enforced by the applicable fire protection district or its board.

5. In no event shall a fire protection district or its board enact, adopt, or implement any bylaws, ordinances, orders, rules, or regulations that pertain, in any manner, to either the subdivision of land for the purpose of residential construction or to the construction, installation, and erection of any improvements, infrastructure, and utility facilities related to or for the purpose of serving residential construction.

6. Any residential construction regulatory system or any portion thereof adopted or previously adopted, implemented or previously implemented, or enforced by the applicable fire protection district or board that is in conflict with this section shall be void.

7. This section shall only apply to any fire protection district located wholly within any county of the first classification with more than one hundred ninety-eight thousand but fewer than one hundred ninety-nine thousand two hundred inhabitants.

8. Notwithstanding any provision in this section to the contrary, a fire protection district may enter into a contract with a county, city, town, or village to assist in the implementation of the residential construction regulatory system of such county, city, town, or village as it relates to fire protection issues as long as the county, city, town, or village retains jurisdiction over the implementation and enforcement of such system.

321.322. CITIES WITH POPULATION OF 2,500 TO 65,000 WITH FIRE DEPARTMENT, ANNEXING PROPERTY IN A FIRE PROTECTION DISTRICT — RIGHTS AND DUTIES, PROCEDURE — EXCEPTION.

1. If any property located within the boundaries of a fire protection district shall be included within a city having a population of at least two thousand five hundred but not more than [fifty] ~~sixty-five~~ thousand which is not wholly within the fire protection district and which maintains a city fire department, then upon the date of actual inclusion of the property within the city, as determined by the annexation process, the city shall within sixty days assume by contract with the fire protection district all responsibility for payment in a lump sum or in installments an amount mutually agreed upon by the fire protection district and the city for the city to cover all obligations of the fire protection district to the area included within the city, and thereupon the fire protection district shall convey to the city the title, free and clear of all liens or encumbrances of any kind or nature, any such tangible real and personal property of the fire protection district as may be agreed upon, which is located within the part of the fire protection district located within the corporate limits of the city with full power in the city to use and dispose of such tangible real and personal property as the city deems best in the public interest, and the fire protection district shall no longer levy and collect any tax upon the property included within the corporate limits of the city; except that, if the city and the fire protection district cannot mutually agree to such an arrangement, then the city shall assume responsibility for fire protection in the annexed area on or before January first of the third calendar year following the actual inclusion of the property within the city, as determined by the annexation process, and furthermore the fire protection district shall not levy and collect any tax upon that property included within the corporate limits of the city after the date of inclusion of that property:

(1) On or before January first of the second calendar year occurring after the date on which the property was included within the city, the city shall pay to the fire protection district a fee equal to the amount of revenue which would have been generated during the previous calendar year by the fire protection district tax on the property in the area annexed which was formerly a part of the fire protection district;

(2) On or before January first of the third calendar year occurring after the date on which the property was included within the city, the city shall pay to the fire protection district a fee equal to four-fifths of the amount of revenue which would have been generated during the previous calendar year by the fire protection district tax on the property in the area annexed which was formerly a part of the fire protection district;

(3) On or before January first of the fourth calendar year occurring after the date on which the property was included within the city, the city shall pay to the fire protection district a fee equal to three-fifths of the amount of revenue which would have been generated during the previous calendar year by the fire protection district tax on the property in the area annexed which was formerly a part of the fire protection district;

(4) On or before January first of the fifth calendar year occurring after the date on which the property was included within the city, the city shall pay to the fire protection district a fee equal to two-fifths of the amount of revenue which would have been generated during the previous calendar year by the fire protection district tax on the property in the area annexed which was formerly a part of the fire protection district; and

(5) On or before January first of the sixth calendar year occurring after the date on which the property was included within the city, the city shall pay to the fire protection district a fee equal to one-fifth of the amount of revenue which would have been generated during the previous calendar year by the fire protection district tax on the property in the area annexed which was formerly a part of the fire protection district. Nothing contained in this section shall prohibit the ability of a city to negotiate contracts with a fire protection district for mutually agreeable services. This section shall also apply to those fire protection districts and cities which have not reached agreement on overlapping boundaries previous to August 28, 1990. Such fire protection districts and cities shall be treated as though inclusion of the annexed area took place on December thirty-first immediately following August 28, 1990.

2. Any property excluded from a fire protection district by reason of subsection 1 of this section shall be subject to the provisions of section 321.330.

3. The provisions of this section shall not apply in any county of the first class having a charter form of government and having a population of over nine hundred thousand inhabitants.

4. The provisions of this section shall not apply where the annexing city or town operates a city fire department and was on January 1, 2005, a city of the fourth classification with more than eight thousand nine hundred but fewer than nine thousand inhabitants and entirely surrounded by a single fire district. In such cases, the provision of fire and emergency medical services following annexation shall be governed by subsections 2 and 3 of section 72.418, RSMo.

321.603. ATTENDANCE FEES PERMITTED, FIRE DISTRICT BOARD MEMBERS (FIRST CLASSIFICATION CHARTER COUNTIES). — In addition to the compensation provided pursuant to section 321.190 for fire protection districts located in a county of the first classification with a charter form of government, each member of any such fire protection district board may receive an attendance fee not to exceed one hundred dollars for attending a board meeting conducted pursuant to chapter 610, RSMo, but such board member shall not be paid for attending more than four such meetings in any calendar month. **However, no board member shall be paid more than one attendance fee if such member attends more than one meeting conducted under chapter 610, RSMo, in a calendar week.**

473.770. DEPUTIES, APPOINTMENT, TENURE, COMPENSATION, POWERS (FIRST CLASSIFICATION COUNTIES) — DELEGATION OF DUTIES, CERTAIN COUNTIES. — 1. Whenever, in the judgment of any public administrator in any county of the first class, it is necessary for the proper and efficient conduct of the business of [his] **the public administrator's** office that [he] **the public administrator** appoint any deputies to assist [him] **the public administrator** in the performance of his **or her** official duties as public administrator or as executor, administrator, personal representative, guardian, or conservator in any estates wherein [he] **the public administrator** has been specially appointed, the public administrator may appoint one or more deputies to assist him **or her** in the performance of his **or her** duties as public administrator and as executor, administrator, personal representative, guardian, or conservator in the estates wherein [he] **the public administrator** has been specially appointed. The appointment shall be in writing and shall be filed with the court, and, upon the filing, the court shall issue under its seal a certificate of the appointment for each deputy, stating that the appointee is vested with the powers and duties conferred by this section. The certificate shall be valid for one year from date, unless terminated prior thereto, and shall be renewed from year to year as long as the appointment remains in force, and may be taken as evidence of the authority of the deputy. The appointment and authority of any deputy may at any time be terminated by the public administrator by notice of the termination filed in the court, and upon termination the deputy shall surrender [his] **the public administrator's** certificate of appointment.

2. In all [first class] counties **of the first classification** not having a charter form of government and containing a portion of a city having a population of three hundred thousand or more inhabitants, the compensation of each such deputy shall be set by the public administrator, with the approval of the governing body of the county, and shall be paid in equal monthly installments out of the county treasury. In all other [first class] counties **of the first classification** the compensation of each such deputy shall be prescribed and paid by the public administrator out of the fees to which he **or she** is legally entitled, and no part of such compensation shall be paid out of any public funds or assessed as costs or allowed in any estate.

3. Each deputy so appointed shall be authorized to perform such ministerial and nondiscretionary duties as may be delegated to him **or her** by the public administrator, including:

(1) Assembling, taking into possession, and listing moneys, checks, notes, stocks, bonds and other securities, and all other personal property of any and all estates in the charge of the public administrator;

(2) Depositing all moneys, checks, and other instruments for the payment of money in the bank accounts maintained by the public administrator for the deposit of such funds;

(3) Signing or countersigning any and all checks and other instruments for the payment of moneys out of such bank accounts, in pursuance of general authorization by the public administrator to the bank in which the same are deposited, as long as such authorization remains in effect;

(4) Entering the safe deposit box of any person or decedent whose estate is in the charge of the public administrator and any safe deposit box maintained by the public administrator for the safekeeping of assets in his **or her** charge, as a deputy of the public administrator, pursuant to general authorization given by the public administrator to the bank or safe deposit company in charge of any such safe deposit box, as long as such deputy-authorization remains in effect, and withdrawing therefrom and depositing therein such assets as may be determined by the public administrator. The bank or safe deposit company shall not be charged with notice or knowledge or any limitation of authority of the authorized deputy, unless specially notified in writing thereof by the public administrator, and may allow the deputy access to the safe deposit box, in the absence of notice, to the full extent allowable to the public administrator in person.

4. The enumeration of the foregoing powers shall not operate as an exclusion of any powers not specifically conferred. No authorized deputy shall exercise any power, other than as prescribed in this section, which shall require the exercise of a discretion enjoined by law to be exercised personally by the executor, administrator, personal representative, guardian, or conservator in charge of the estate to which the discretionary power refers.

5. Notwithstanding the provisions of subsections 3 and 4 of this section to the contrary, a public administrator in a county of the first [class] **classification** having a charter form of government and containing all or part of a city with a population of at least three hundred thousand inhabitants, **and a public administrator in any county of the first classification** may delegate to any deputy appointed by [him] **the public administrator** any of the duties of the public administrator enumerated in section 473.743, and sections 475.120 and 475.130, RSMo. Such public administrator may also delegate to a deputy who is a licensed attorney the authority to execute inventories, settlements, surety bonds, pleadings and other documents filed in any court in the name of the public administrator, and the same shall have the force and effect as if executed by the public administrator.

473.771. DEPUTIES, APPOINTMENT IN ALL COUNTIES BUT COUNTIES OF THE FIRST CLASSIFICATION — TENURE — COMPENSATION — POWERS — DELEGATION TO DEPUTIES.

— 1. Whenever, in the judgment of any public administrator in any county which is not a [first class] county **of the first classification**, it is necessary for the proper and efficient conduct of the business of his **or her** office that [he] **the public administrator** appoint a deputy to assist [him] **the public administrator** in the performance of his **or her** official duties as public administrator or as executor, administrator, personal representative, guardian, or conservator in any estates wherein [he] **the public administrator** has been specially appointed, the public administrator may appoint a deputy to assist him **or her** in the performance of his **or her** duties as public administrator and as executor, administrator, personal representative, guardian, or conservator in the estates wherein [he] **the public administrator** has been specially appointed. The appointment shall be in writing and shall be filed with the court, and, upon the filing, the court shall issue under its seal a certificate of the appointment for the deputy, stating that the appointee is vested with the powers and duties conferred by this section. The certificate shall be valid for one year from the date, unless terminated prior thereto, and shall be renewed from year to year as long as the appointment remains in force, and may be taken as evidence of the authority of the deputy. The appointment and authority of a deputy may at any time be terminated by the public administrator by notice of the termination filed in the court, and upon termination the deputy shall surrender his **or her** certificate of appointment.

2. The compensation of a deputy appointed pursuant to the provisions of this section shall be prescribed and paid by the public administrator out of the fees to which he **or she** is legally entitled.

3. A deputy appointed pursuant to the provisions of this section shall be authorized to perform such ministerial and nondiscretionary duties as may be delegated to him **or her** by the public administrator, including:

(1) Assembling, taking into possession, and listing moneys, checks, notes, stocks, bonds and other securities, and all other personal property of any and all estates in the charge of the public administrator;

(2) Depositing all moneys, checks, and other instruments for the payment of money in the bank accounts maintained by the public administrator for the deposit of such funds;

(3) Signing or countersigning any and all checks and other instruments for the payment of moneys out of such bank accounts, in pursuance of general authorization by the public administrator to the bank in which the same are deposited, as long as such authorization remains in effect;

(4) Entering the safe deposit box of any person or decedent whose estate is in the charge of the public administrator and any safe deposit box maintained by the public administrator for the safekeeping of assets in his **or her** charge, as a deputy of the public administrator, pursuant to general authorization given by the public administrator to the bank or safe deposit company in charge of any such safe deposit box, as long as such authorization as a deputy remains in effect, and withdrawing therefrom and depositing therein such assets as may be determined by the public administrator. The bank or safe deposit company shall not be charged with notice or knowledge or any limitation of authority of the authorized deputy, unless specially notified in writing thereof by the public administrator, and may allow the deputy access to the safe deposit box, in the absence of notice, to the full extent allowable to the public administrator in person.

4. The enumeration of the foregoing powers shall not operate as an exclusion of any powers not specifically conferred. No authorized deputy shall exercise any power, other than as prescribed in this section, which shall require the exercise of a discretion enjoined by law to be exercised personally by the executor, administrator, personal representative, guardian, or conservator in charge of the estate to which the discretionary power refers.

5. Notwithstanding the provisions of subsections 3 and 4 of this section to the contrary, a public administrator in a county which is not a county of the first classification may delegate to any deputy appointed by the public administrator any of the duties of the public administrator enumerated in section 473.743, and sections 475.120 and 475.130, RSMo. Such public administrator may also delegate to a deputy who is a licensed attorney the authority to execute inventories, settlements, surety bonds, pleadings, and other documents filed in any court in the name of the public administrator, and the same shall have the force and effect as if executed by the public administrator.

483.537. PASSPORTS, ACCOUNTING FOR FEES CHARGED, USE OF MONEYS COLLECTED.

— The clerk of any state court who, by deputy or otherwise, takes or processes applications for passports or their renewal shall account for the fees charged for such service[, and remit eighty percent of the same on the last day of each month to the state, and twenty percent to the county where the application was taken] **and for the expenditure of such fee in an annual report made to the presiding judge and the office of the state courts administrator. Such fees shall be only for the maintenance of the courthouse or to fund operations of the circuit court.**

488.426. DEPOSIT REQUIRED IN CIVIL ACTIONS — EXEMPTIONS — SURCHARGE TO REMAIN IN EFFECT — ADDITIONAL FEE FOR ADOPTION AND SMALL CLAIMS COURT (FRANKLIN COUNTY) — EXPIRATION DATE. — 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. **The provisions of this subsection shall expire on December 31, 2014.**

545.550. DEFENDANT IN CUSTODY, TO BE REMOVED, WHEN — WHICH COUNTY JAIL TO HOUSE DEFENDANT. — 1. If the defendant be in actual custody or confinement, the court or officer granting the order of removal shall, **subject to any arrangements made pursuant to section 2 of this section**, also make an order commanding the sheriff to remove the body of the defendant to the jail of the county into which the cause is to be removed, and then deliver him to the keeper of such jail, together with the warrant or process, by virtue of which he is imprisoned or held.

2. The sheriff of the county granting the change of venue and the sheriff of the county into which the cause is removed, may agree as to which county's jail will house the defendant. If the sheriffs do not agree where the defendant will be confined, the defendant will be confined in the county into which the cause is removed. In the event that the county granting the change of venue continues to house the defendant, the sheriff of that county shall be responsible for the timely transportation of the defendant for all court appearances that require the presence of the defendant.

573.505. SALES TAX AUTHORIZED, VOTE REQUIRED — BALLOT — DISPOSITION OF REVENUE — TERMINATION — CITY AND COUNTY BACKGROUND CHECK TAX TRUST FUND CREATED, REFUNDS — DUTIES OF DIRECTOR OF REVENUE. — 1. In order to defray the costs of background checks conducted pursuant to section 573.503, any city not within a county and any county may, by ordinance or order, impose a sales tax on all retail sales which are subject to taxation under the provisions of sections 144.010 to 144.510, RSMo, made in such city or county by any adult cabaret. The tax authorized by this section shall not be levied at a rate which would amount to a sum greater than ten percent of the gross receipts of any such business. The tax authorized by this section shall be in addition to any and all other sales taxes allowed by law, except that no order or ordinance imposing a sales tax under the provisions of this section shall be effective unless the governing body of the city or county submits to the voters of the city or county, at a city, county or state general, primary, or special election, a proposal to authorize the governing body of the city or county to impose a tax.

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

Shall the city or county of (city's or county's name) impose a sales tax upon adult cabarets of (Insert amount) for a period not to exceed (Insert number) years for the purpose of investigating the background of the employees of such businesses **and for the general law enforcement use of the sheriff's office with existing revenues to be used for either purpose?**

[] 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 voting thereon are in favor of the proposal, then the ordinance or order and any amendments thereto shall become effective on the first day of the second calendar 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 city or county shall have no power to impose the sales tax authorized by this section unless and until the governing body of the city or county shall again have submitted another proposal to authorize the governing body of the city or county to impose the sales tax authorized by this section and such proposal is approved by a majority of the qualified voters voting thereon.

3. All revenue received by a city or county from the tax authorized under the provisions of this section shall be deposited in a special trust fund and shall be used by the city or county [solely] for the investigation of the backgrounds of persons employed at any adult cabaret in such city or county **and for the general law enforcement use of the sheriff's office**. 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 city or county funds.

4. The tax authorized by this section shall terminate four years from the date on which such tax was initially imposed by the city or county, unless sooner abolished by the governing body of the city or county.

5. All sales taxes collected by the director of revenue under this section on behalf of any city or county, 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 special trust fund, which is hereby created, to be known as the "City and County Background Check Tax Trust Fund". The moneys in the 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 city or county imposing a sales tax under this section, and the records shall be open to the inspection of officers of the city or county and the 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 city or county which levied the tax. Such funds shall be deposited with the city or county treasurer of each such city or county, and all expenditures of funds arising from the trust fund shall be by an appropriation act to be enacted by the governing body of each such city or county.

6. The director of revenue may authorize the state treasurer to make refunds from the amounts in the trust fund and credited to any city or county for erroneous payments and overpayments made, and may redeem dishonored checks and drafts deposited to the credit of such cities or counties. If any city or county abolishes the tax, the city or county 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 city or county, the director of revenue shall authorize the state treasurer to remit the balance in the account to the city or county and close the account of that city or county. The director of revenue shall notify each city or county of each instance of any amount refunded or any check redeemed from receipts due the city or county.

7. Except as modified in this section, all provisions of sections 32.085 and 32.087, RSMo, shall apply to the tax imposed under this section.

8. As used in this section, the term "city" means any city not within a county.

SECTION 1. GOVERNOR AUTHORIZED TO CONVEY STATE PROPERTY IN BUCHANAN COUNTY. — 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 Buchanan County. The property to be conveyed is more particularly described as follows:

All of Lot one (1) and the North Sixteen (16) feet of Lot Two (2) in Block Ten (10) in SMITH'S ADDITION to the City of St. Joseph, Missouri.

The South forty-four (44) feet of Lot Two (2) and the North Four (4) feet of Lot Three (3) in Block Ten (10) in SMITH'S ADDITION to the City of St. Joseph, Missouri.

All of Lot Three (3) except the north four feet thereof and all of Lot Four (4) in Block Ten (10) in SMITH'S ADDITION, to the City of St. Joseph, Missouri.

This property is used by the Division of Workforce Development as a career center.

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 sale.

3. The attorney general shall approve the form of the instrument of conveyance.

SECTION 2. GOVERNOR AUTHORIZED TO CONVEY STATE PROPERTY IN ST. FRANCOIS COUNTY. — 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 St. Francois County. The property to be conveyed is more particularly described as follows:

All that part of Block 4 of Doe Run Lead Company's Subdivision of the Town of Flat River in St. Francois County, Missouri, as recorded in Book 5 at Pages 6 and 7. Begin at the Southeast corner of Lot 13, Block 4 of said Subdivision; thence South 52 degrees 58 minutes West, 135 feet on the North line of Coffman Street to the point of beginning of the tract herein described; thence continue South 52 degrees 58 minutes West, 125 feet on the North line of Coffman Street; thence North 37 degrees 2 minutes West, 140 feet; thence North 52 degrees 58 minutes East, 125 feet; thence South 37 degrees 2 minutes East, 140 feet to the point of beginning. The above described tract includes a part of Lots 14, 15 and 16 of Block 4 of said Subdivision and a part of an abandoned railroad right-of-way.

This property is used by the Division of Workforce Development as a career center.

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 sale.

3. The attorney general shall approve the form of the instrument of conveyance.

SECTION 3. BASE SALARY SCHEDULES FOR COUNTY OFFICIALS — SALARY COMMISSION RESPONSIBLE FOR COMPUTATION OF COUNTY OFFICIALS SALARIES, EXCEPT FOR CHARTER COUNTIES. — Notwithstanding any other provisions of law to the contrary, the salary schedules contained in sections 49.082, RSMo, 50.334, RSMo, 50.343, RSMo, 51.281, RSMo, 51.282, RSMo, 52.269, RSMo, 53.082, RSMo, 53.083, RSMo, 54.261, RSMo, 54.320, RSMo, 55.091, RSMo, 56.265, RSMo, 57.317, RSMo, and 58.095, RSMo, shall be set as a base schedule for those county officials, unless the current salary of such officials, as of August 28, 2005, is lower than the compensation provided under the salary schedules. Beginning August 28, 2005, the salary commission in all counties except charter counties in this state shall be responsible for the computation of salaries of all county officials; provided, however, that any percentage salary adjustments in a county shall be equal for all such officials in that county.

SECTION 4. RECREATION SALES TAX AUTHORIZED (MADISON COUNTY) — BALLOT LANGUAGE — RATE, USE OF MONEYS — EXPIRATION DATE. — 1. Any county of the third classification without a township form of government and with more than eleven thousand seven hundred fifty but fewer than eleven thousand eight hundred fifty inhabitants may

impose a sales tax throughout the county for public recreational projects and programs, but the sales tax authorized by this section shall not become effective unless the governing body of such county submits to the qualified voters of the county a proposal to authorize the county to impose the sales tax.

2. The ballot submission shall be in substantially the following form:

Shall the County of impose a sales tax of up to one percent for the purpose of funding the financing, acquisition, construction, operation, and maintenance of recreational projects and programs, including the acquisition of land for such purposes?

YES NO

3. If approved by a majority of qualified voters in the county, the governing body of the county shall appoint a board of directors consisting of nine members. Of the initial members appointed to the board, three members shall be appointed for a term of three years, three members shall be appointed for a term of two years, and three members shall be appointed for a term of one year. After the initial appointments, board members shall be appointed to three-year terms.

4. The sales tax may be imposed at a rate of up to one percent on the receipts from the retail sale of all tangible personal property or taxable service within the county, if such property and services are subject to taxation by the state of Missouri under sections 144.010 to 144.525, RSMo.

5. All revenue collected from the sales tax under this section by the director of revenue on behalf of a county, 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 with the state treasurer in a special trust fund, which is hereby created, to be known as the "County Recreation Sales Trust Fund". Moneys in the 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 collected in each county imposing a sales tax under this section, and the records shall be open to the inspection of officers of such county and the general public. Not later than the tenth day of each calendar month, the director of revenue shall distribute all moneys deposited in the trust fund during the preceding calendar month by distributing to the county treasurer, or such officer as may be designated by county ordinance or order, of each county imposing the tax under this section the sum due the county as certified by the director of revenue.

6. The director of revenue may authorize the state treasurer to make refunds from the amounts in the trust fund and credited to any county for erroneous payments and overpayments made, and may redeem dishonored checks and drafts deposited to the credit of such counties. Each county shall notify the director of revenue at least ninety days prior to the effective date of the expiration of the sales tax authorized by this section 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 overpayments of such tax and to redeem dishonored checks and drafts deposited to the credit of such accounts. After one year has elapsed after the date of expiration of the tax authorized by this section in a county, the director of revenue shall remit the balance in the account to the county and close the account of such county. The director of revenue shall notify each county of each instance of any amount refunded or any check redeemed from receipts due such county.

7. The tax authorized under this section may be imposed in accordance with this section by a county in addition to or in lieu of the tax authorized in sections 67.750 to 67.780, RSMo.

8. The sales tax imposed under this section shall expire twenty years from the effective date thereof unless an extension of the tax is submitted to and approved by the qualified voters in the county in the manner provided in this section. Each extension of the sales tax shall be for a period of ten years.

9. The provisions of this section shall not in any way affect or limit the powers granted to any county to establish, maintain, and conduct parks and other recreational grounds for public recreation.

10. Except as modified in this section, the provisions of section 32.085 and 32.087, RSMo, shall apply to the tax imposed under this section.

SECTION 5. GOVERNOR IS AUTHORIZED TO CONVEY STATE PROPERTY IN JASPER COUNTY. — 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 Jasper County. The property to be conveyed is more particularly described as follows:

All of Lots Numbered Ninety-seven (97) and Ninety-eight (98) in Byer's and Murphy's Addition to Murphysburg, now a part of the City of Joplin, Jasper County, Missouri.

All of Lots 131 and 132 in Byers and Murphy's Addition to the town of Murphysburg in the City of Joplin, Jasper County, Missouri, situated in the Northeast Quarter (N. E. 1/4) of the Northeast Quarter (N.E. 1/4) of Section Ten (S.10) Township Twenty-seven (Twp. 27), and Range Thirty-three (R. 33).

All of Lots Numbered Ninety-Nine (99) and One Hundred (100) in Byers and Murphy's Addition to the Town of Murphysburg, now a part of the City of Joplin, Jasper County, Missouri.

This property is used by the Division of Workforce Development as a career center.

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 sale.

3. The attorney general shall approve the form of the instrument of conveyance.

SECTION 6. GOVERNOR AUTHORIZED TO CONVEY STATE PROPERTY IN COLE COUNTY. — 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 Cole County. The property to be conveyed is more particularly described as follows:

Part of Inlot No. 566, in the City of Jefferson, Missouri, more particularly described as follows:

Beginning on the southerly line of said Inlot, at a point 35 feet easterly from the southwesterly corner thereof; thence easterly along the said southerly line, 32 feet; thence northerly parallel with Mulberry Street, 86 feet; thence westerly parallel with the southerly line of said Inlot, 32 feet; thence southerly parallel with Mulberry Street, 86 feet, to the point of beginning.

ALSO: Part of Inlots Nos. 566 and 567, in the City of Jefferson, Missouri, more particularly described as follows:

From the southwesterly corner of said Inlot No. 566; thence easterly along the southerly line thereof, 67 feet, to the southeasterly corner of a tract conveyed to Joseph R. Kroeger and wife, by deed of record in Book 172, page 693, Cole County Recorder's Office, and the beginning point of this description; thence northerly along the easterly line of the said Kroeger tract, 86 feet, to the northeasterly corner thereof; thence easterly parallel with the southerly line of Inlots Nos. 566 and 567, 51 feet; thence southerly parallel with the easterly line of the said Kroeger tract, 86 feet, to the southerly line of Inlot No. 567; thence westerly along the southerly line of Inlots Nos. 567 and 566, 51 feet, to the beginning point of this description.

40 feet off of the easterly side of Inlot No. 565 in the City of Jefferson, Missouri, and more particularly described as follows:

Beginning at the northeasterly corner of said Inlot 565 on McCarty Street, thence running westerly along McCarty Street 40 feet; thence southerly parallel with Mulberry

Street 198 feet 9 inches to the Public Alley; thence easterly along said alley 40 feet; thence northerly along the line between Inlots Nos. 565 and 566, 198 feet 9 inches to the point of beginning.

Part of Inlot 566 in the City of Jefferson, Missouri, described as follows:

Beginning at the northwesterly corner of said inlot; thence easterly along McCarty Street, 35 feet; thence southerly parallel with Mulberry Street, 198 feet 9 inches; thence westerly along alley, 35 feet; thence northerly parallel with Mulberry Street, 198 feet 9 inches to beginning.

The southwesterly part of Inlot No. 565, in the City of Jefferson, Missouri, more particularly described as follows:

Beginning at the southwesterly corner of said Inlot No. 565; thence northerly with the westerly line thereof, 45 feet; thence easterly parallel with the southerly line thereof, 64 feet 4 E inches; thence southerly parallel with the westerly line, 45 feet, to the southerly line thereof; thence westerly with the southerly line, 64 feet 4 E inches, to the point of beginning.

Part of Inlot No. 565, in the City of Jefferson, Missouri, more particularly described as follows:

Beginning at a point on the westerly line of said Inlot, which said point is 45 feet northerly from the southwesterly corner thereof; thence easterly parallel with McCarty Street, 64 feet 4-1/2 inches; thence northerly parallel with Mulberry Street, 36 feet 10-1/2 inches; thence westerly parallel with McCarty Street; 64 feet 4-1/2 inches, to the westerly line of said Inlot; thence southerly along the westerly line of said Inlot, 36 feet 10-1/2 inches, to the point of beginning.

The northeasterly part of Inlot No. 566, in the City of Jefferson, Missouri, more particularly described as follows:

Beginning at the northeasterly corner of said Inlot No. 566; thence westerly along the northerly line thereof, 37 feet 4 inches; thence southerly parallel with the easterly line of said Inlot, 112 feet 9 inches; thence easterly parallel with the southerly line of said Inlot No. 566, 37 feet 4 inches, to the easterly line of said Inlot; thence northerly along said easterly line, 112 feet 9 inches, to the point of beginning.

Also

Part of the westerly half of Inlot No. 567, in the City of Jefferson, Missouri, more particularly described as follows:

Beginning at the northwesterly corner of said Inlot No. 567; thence easterly along the northerly line thereof, 52 feet 2-1/4 inches; thence southerly parallel with the westerly line of said Inlot, 198 feet 9 inches, to the southerly line thereof; thence westerly along the said southerly line, 38 feet 6-1/4 inches, more or less, to the southeasterly corner of a tract conveyed to Joseph L. Kroeger and wife, by deed of record in Book 200, page 33, Cole County Recorder's Office; thence northerly along the easterly line thereof, 86 feet, to the northeasterly corner of said tract; thence westerly along the northerly line thereof, 13 feet 8 inches, more or less, to the westerly line of said Inlot No. 567; thence northerly along the said westerly line, 112 feet 9 inches, to the point of beginning.

Part of Inlot 566 in the City of Jefferson, Missouri, described as follows:

Beginning on the northerly line of said Inlot at a point which is 35 feet easterly of the northwest corner thereof, thence easterly along said northerly line 32 feet; thence southerly parallel with Mulberry Street 112 feet 9 inches; thence westerly parallel with the northerly line of said Inlot 32 feet; thence northerly 112 feet 9 inches to point of beginning.

Part of Inlot No. 567, in the City of Jefferson, Missouri, more particularly described as follows:

Beginning on the northerly line of said Inlot No. 567, a distance of 12 feet 2 1/4 inches westerly from the northeasterly corner thereof; thence westerly along said northerly line, a distance of 40 feet; thence southerly parallel with the easterly line of said Inlot, a distance of 92 feet 3 inches, to the northerly line of a private alley; thence easterly along said

northerly line of said alley and parallel with the northerly line of said Inlot, a distance of 40 feet; thence northerly parallel with the easterly line of said Inlot, a distance of 92 feet 3 inches, to the point of beginning.

Also the use of a 10 foot private alley touching upon and immediately adjacent to the southerly boundary line of the above described tract and running to the easterly line of Inlot No. 568.

Part of Inlots Nos. 567 and 568, in the City of Jefferson, Missouri, more particularly described as follows:

Beginning on the northerly line of Inlot No. 568, 65 feet westerly from the northeasterly corner of said Inlot; thence westerly along the northerly line of Inlots Nos. 568 and 567, 51 feet 6-3/4 inches; thence southerly parallel with the westerly line of Inlot No. 568, 92 feet 3 inches, to the northerly line of a private alley; thence easterly along the northerly line of said alley and parallel with the northerly line of Inlots Nos. 567 and 568, 51 feet 6-3/4 inches; thence northerly parallel with the easterly line of said Inlot No. 568, 92 feet 3 inches, to the point of beginning.

Also the use of a ten foot private alley touching upon and immediately adjacent to the southerly boundary line of the above described tract and running to the easterly boundary line of Inlot No. 568.

Part of Inlot No. 568, in the City of Jefferson, Missouri, more particularly described as follows:

Beginning at the northeasterly corner of Inlot No. 568; thence westerly along the northerly line thereof, 65 feet; thence southerly parallel with the easterly line of said Inlot, 92 feet 3 inches; thence easterly parallel with the northerly line of said Inlot 65 feet, to the easterly line thereof; thence northerly along said easterly line, a distance of 92 feet 3 inches, to the point of beginning.

ALSO: A private alley, subject to existing easements, more particularly described as follows:

Beginning at a point on the easterly line of said Inlot No. 568, in the City of Jefferson, Missouri, said point being 96 feet 6 inches northerly of the southeasterly corner of said Inlot; thence northerly along the said easterly line, 10 feet; thence westerly parallel with McCarty Street, 156 feet 6-3/4 inches, to a point 52 feet 2-1/4 inches westerly of the easterly line of Inlot No. 567; thence southerly parallel with Broadway Street, 106 feet 6 inches, to the southerly line of Inlot No. 567; thence easterly along the southerly line of said Inlot, 10 feet; thence northerly parallel with Broadway Street, 96 feet 6 inches; thence easterly parallel with McCarty Street, 146 feet 6 3/4 inches, to the point of beginning; per Decree of the Circuit Court of Cole County, Missouri, entered March 7, 1925.

Part of Inlot No. 565 in the City of Jefferson, Missouri, described as follows:

Beginning at the northwesterly corner of said inlot; thence easterly along the northerly line thereof 64 feet 4-1/2 inches; thence southerly parallel with the westerly line of said inlot 80 feet; thence westerly parallel with the northerly line of said inlot 64 feet 4-1/2 inches; thence northerly along westerly line of said inlot 80 feet to the point of beginning.

Part of Inlot 565 in the City of Jefferson, Missouri, and more particularly described as follows:

Beginning at a point on the westerly line of said Inlot 565 which is 80 feet southerly from the northwesterly corner of said Inlot, thence southerly along the westerly line thereof 36 feet 10-1/2 inches, thence easterly parallel with McCarty Street, 64 feet 4-1/2 inches, thence northerly parallel with Mulberry Street 36 feet 10-1/2 inches, thence westerly parallel with McCarty Street 64 feet 4-1/2 inches 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 7. DEPARTMENT OF NATURAL RESOURCES AUTHORIZED TO CONVEY PROPERTY AT FORT DAVIDSON STATE HISTORIC PARK TO THE CITY OF PILOT KNOB. —

1. The department of natural resources is hereby authorized and empowered to remise, release and forever quit claim the following described property at Fort Davidson State Historic Park to the City of Pilot Knob, Missouri. The property to be conveyed is more particularly described as follows:

A tract of land situated in the City of Pilot Knob, County of Iron and the State of Missouri, lying in Part of Section 30, Township 34 North, Range 4 East of the Fifth Principal Meridian, described as follows, to wit: Commencing at the common corner of Sections 29, 30, 31 and 32, Township 34 North, Range 4 East, described on Survey Document Number 600-64159 as shown on a survey by PLS-2550 dated January 20, 2000 and filed with the Missouri Land Survey in Document Number 750-26834; thence along the line between Sections 29 and 30, North 00°45'46" East, 982.52 feet to an iron pin with cap by said PLS 2550; thence leaving said section line, West, 768.18 feet to an iron pin with cap by said PLS 2550 on the East right-of-way line of a County Road; thence along said County Road, North 30°50'55" West, 596.36 feet to the POINT OF BEGINNING of the tract herein described; thence continuing along said East right-of-way line, North 30°50'55" West, 6.84 feet to an iron pin with cap by said PLS 2550; thence leaving said East right-of-way line, North 07°30'05" West, 132.59 feet to a drill rod; thence North 24°07'24" West, 467.55 feet to an iron pin with cap by said PLS 2550; thence North 37°10'36" East, 265.27 feet to a drill rod; thence South 25°47'23" East, 332.36 feet to an iron pin; thence South 22°56'24" East, 642.56 feet to an iron pin; thence South 86°24'35" West, 573.80 feet to the point of beginning. Containing 9.07 Acres, more or less and being part of a larger parcel described in Book 359 at Page 756 of the Land Records of Iron County, Missouri.

2. In consideration for the conveyance in subsection 1 of this section, the department of natural resources is hereby authorized to receive via quit claim deed the following property from the City of Pilot Knob, Iron County, Missouri. The property to be conveyed to the department is more particularly described as follows:

A parcel of land lying in Lot 57, Lot 61, Lot 71, Lot 72, and Lot 73 of the Big Muddy Coal and Iron Company Subdivision in Section 30, Township 34 North, Range 4 East and described as follows: Begin at an iron rod on the south line of Industrial Drive and said point is 2260.06 feet North 58 degrees 08 minutes 17 seconds West from the southeast corner of Section 30, Township 34 North, Range 4 east. Run thence from said point of beginning along the south line of Industrial Drive the following bearings and distances: South 79 degrees 20 minutes 38 seconds West 59.61 feet to an iron rod; thence North 83 degrees 59 minutes 02 seconds West 73.29 feet to an iron rod; thence North 76 degrees 39 minutes 07 seconds West 70.87 feet to an iron rod; thence North 59 degrees 39 minutes 09 seconds West 81.32 feet to a point; thence North 50 degrees 41 minutes 13 seconds West 202.01 feet to an iron rod; thence North 50 degrees 12 minutes 13 seconds West 199.04 feet to an iron rod; thence North 54 degrees 18 minutes 13 seconds 103.10 feet to a point; thence North 62 degrees 12 minutes 18 seconds West 81.76 feet to an iron rod; thence North 74 degrees 14 minutes 23 seconds West 96.33 feet to an iron rod; thence North 83 degrees 19 minutes 02 seconds West 171.17 feet to an iron rod at the intersection of the South line of Industrial Drive and East right of way of Route "V"; thence South 08 degrees 29 minutes 48 seconds East 88.71 feet to a right of way marker on the east right of way of Route "V"; thence South 03 degrees 23 minutes 42 seconds west 67.34 feet to an iron rod on the east right of way of Route "V"; thence departing said right of way South 71 degrees 24 minutes 35 seconds east 111.02 feet to an iron pipe; thence South 31 degrees 58 minutes 22 seconds East 136.47 feet to a driven grader blade; thence South 27 degrees 15 minutes 19 seconds East 110.16 feet to an iron rod; thence North 42 degrees 11 minutes 24 seconds East 96.54 feet to a point; thence South 27 degrees 25 minutes 37 seconds East 127.75 feet to an iron rod; thence South 24 degrees 25 minutes 37 seconds

East 187.70 feet to an iron rod; thence South 30 degrees 49 minutes 37 seconds East 141.40 feet to a point; thence South 43 degrees 30 minutes 37 seconds East 186.20 feet to an iron rod; thence South 62 degrees 20 minutes 37 seconds East 205.0 feet to an iron rod; thence North 33 degrees 30 minutes 23 seconds East 47.0 feet to an iron rod; thence South 56 degrees 26 minutes 37 seconds east 140.40 feet to a point in Knob Creek; thence North 03 degrees 10 minutes 09 seconds East 548.68 feet to the point of beginning, containing 9.07 acres more or less.

3. The attorney general shall approve the form of the instrument of conveyance.

[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 — EXPIRATION DATE. — 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, other than a county participating in the nonpartisan court plan, such fund may also be applied and expended for courtroom renovation and technology enhancement, or for debt service on county bonds for such renovation or enhancement projects.

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

Approved July 7, 2005

SB 211 [SB 211]

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

Extends certain rights with regards to sales commissions

AN ACT to repeal sections 407.911, 407.912, and 407.913, RSMo, and to enact in lieu thereof three new sections relating to certain merchandising practices.

SECTION

- A. Enacting clause.
- 407.911. Definitions.
- 407.912. Commission to become due, when — termination of employment, all commissions due, when.
- 407.913. Failure to pay sales representative commission, liability in civil action for actual damages — additional damages allowed — attorney fees and costs.

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

SECTION A. ENACTING CLAUSE. — Sections 407.911, 407.912, and 407.913, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 407.911, 407.912, and 407.913, to read as follows:

407.911. DEFINITIONS. — As used in sections 407.911 to 407.915, the following terms mean:

(1) "Commission", compensation accruing to a sales representative for payment by a principal, the rate of which is expressed as a percentage of the dollar amount of orders or sales, or as a specified amount per order or per sale;

(2) "Principal", a person, firm, corporation, partnership or other business entity, whether or not it has a permanent or fixed place of business in this state, and who:

(a) Manufactures, produces, imports, **provides**, or distributes a product [for wholesale] **or service for sale**;

(b) Contracts with a sales representative to solicit orders for the product **or service**; and

(c) Compensates the sales representative, in whole or in part, by commission;

(3) "Sales representative", a person, **firm, corporation, partnership, or other business entity** who contracts with a principal to solicit [wholesale] orders and who is compensated, in whole or in part, by commission, but shall not include [one] **a person, firm, corporation, partnership, or other business entity** who places orders or purchases for [his] **its** own account for resale.

407.912. COMMISSION TO BECOME DUE, WHEN — TERMINATION OF EMPLOYMENT, ALL COMMISSIONS DUE, WHEN. — 1. When a commission becomes due shall be determined in the following manner:

(1) The written terms of the contract between the principal and sales representative shall control;

(2) If there is no written contract, or if the terms of the written contract do not provide when the commission becomes due, or the terms are ambiguous or unclear, the commission shall be paid when the [merchandise] **product or service** is delivered and accepted by the purchaser or the principal receives satisfaction in full;

(3) If neither subdivision (1) nor (2) of this subsection can be used to clearly ascertain when the commission becomes due, then the commission shall be due on the date the principal accepts the order and receives satisfaction in full, unless the custom and usage prevalent in this state for the parties' particular industry is different, in which event such custom and usage shall prevail.

2. Nothing in sections 407.911 to 407.915 shall be construed to impair a sales representative from collecting commissions on [merchandise or product] **products or services** ordered prior to the termination of the contract between the principal and the sales representative but delivered and accepted by the purchaser after such termination.

3. When the contract between a sales representative and a principal is terminated, all commissions then due shall be paid within thirty days of such termination. Any and all commissions which become due after the date of such termination shall be paid within thirty days of becoming due.

407.913. FAILURE TO PAY SALES REPRESENTATIVE COMMISSION, LIABILITY IN CIVIL ACTION FOR ACTUAL DAMAGES — ADDITIONAL DAMAGES ALLOWED — ATTORNEY FEES AND COSTS. — Any principal who fails to timely pay the sales representative commissions earned by such sales representative shall be liable to the sales representative in a civil action for the actual damages sustained by the sales representative[,] **and** an additional amount as if the sales representative were still earning commissions calculated on an annualized pro rata basis from the date of termination to the date of payment. In addition the court may award reasonable attorney's fees and costs to the prevailing party.

Approved July 12, 2005

SB 216 [HCS SB 216]

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

Requires depositions of crime laboratory employees to be in county where employed

AN ACT to amend chapter 492, RSMo, by adding thereto one new section relating to depositions of state crime laboratory employees.

SECTION

- A. Enacting clause.
492.292. Venue for deposition of employee of a publicly funded crime laboratory.

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

SECTION A. ENACTING CLAUSE. — Chapter 492, RSMo, is amended by adding thereto one new section, to be known as section 492.292, to read as follows:

492.292. VENUE FOR DEPOSITION OF EMPLOYEE OF A PUBLICLY FUNDED CRIME LABORATORY. — Unless otherwise ordered by the court, any deposition taken of an employee of a publicly funded crime laboratory located within the state, where the subject matter of the deposition concerns the official duties of the employee, shall be taken in the county where the employee is employed by the laboratory.

Approved July 13, 2005

SB 225 [HCS SS#2 SCS SB 225]

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 sections pertaining to hazardous waste

AN ACT to repeal sections 260.200, 260.218, 260.262, 260.270, 260.272, 260.273, 260.274, 260.275, 260.276, 260.278, 260.325, 260.330, 260.335, 260.342, 260.345, 260.375, 260.380, 260.391, 260.420, 260.446, 260.475, 260.479, 260.480, 260.481, 260.546, 260.569, 260.900, 260.905, 260.925, 260.935, 260.940, and 260.960, RSMo, and to enact in lieu thereof thirty new sections relating to hazardous waste, with penalty provisions.

SECTION

- A. Enacting clause.
260.200. Definitions.
260.262. Retailers of lead-acid batteries, duties — notice to purchaser, contents.
260.270. Scrap tires, prohibited activities — penalties — site owners, no new scrap tire sites permitted, when, exception — registration required, duty to inform department, contents — rules and regulations — permit fees — duties of department — inventory of processed scrap tires not to exceed limitation — auto dismantler, limited storage of tires allowed — recovered rubber, use by transportation department, how.
260.272. Scrap tires and rubber chips may be used as landfill cover, department of natural resources to promulgate rules.
260.273. Fee, sale of new tires, amount — collection, use of moneys — termination — report to general assembly.
260.275. Scrap tire site, closure plan, contents — financial assurance instrument, purpose, how calculated.
260.276. Nuisance abatement activities, department may conduct — costs, civil action authorized, exception — resource recovery or nuisance abatement bids on contract, who may bid — content.
260.278. Performance bond or letter of credit required for transporter of scrap tires, when — provisions required — forfeiture of bond, when, procedure — bond requirement ceases, when.

- 260.279. Preference and bonus points for contracts for the removal or clean up of waste tires, when.
- 260.325. Solid waste management plan, submitted to department, contents, procedures — approval, revision of plan — funds may be made available, purpose — audits.
- 260.330. Landfill fee, amount — solid waste management fund, created, purpose — department to enforce — transfer station, fee charged — free disposal day, notice.
- 260.335. Distribution of fund moneys, uses — grants, distribution of moneys — advisory board, solid waste, duties.
- 260.345. Solid waste advisory board, members — qualifications — duties and powers — removal of board member for failure to attend meetings, when.
- 260.375. Duties of department — licenses required — permits required.
- 260.380. Duties of hazardous waste generators — fees to be collected, disposition — exemptions.
- 260.391. Hazardous waste fund created — payments — not to lapse — subaccount created, purpose — transfer of moneys — restrictions on use of moneys — general revenue appropriation to be requested annually.
- 260.420. Imminent hazard, action to be taken.
- 260.475. Fees to be paid by hazardous waste generators — exceptions — deposit of moneys — violations, penalty — deposit — fee requirement, expiration.
- 260.480. Transfer of moneys in the hazardous waste remedial fund to hazardous waste fund.
- 260.481. Disincorporation certain city, when, procedure — trustee appointment, duties — expenditures (Times Beach).
- 260.546. Emergency assistance — cost, how paid — cost statement, costs not to be included — payment, when — amount, appeal procedure — state fund to pay cost but repayment required.
- 260.569. Reimbursement for costs to department, computation — deposit of funds — termination from participation by department, when — refund of balance, when.
- 260.900. Definitions.
- 260.905. Hazardous waste management commission to promulgate rules for dry-cleaning facility environmental remediation.
- 260.925. Expenditures from fund, how used — fund not to be used, when — liability determinations — entry onto premises where corrective action required — fund payment limit — owner liability when fund payment obtained.
- 260.935. Dry-cleaning facility registration surcharge — deposited in fund — penalties and interest for nonpayment.
- 260.940. Dry-cleaning solvent surcharge, amount imposed due to solvent factor — deposited in fund — penalties and interest for nonpayment — operators not to purchase solvent from persons not paying surcharge.
- 260.960. Rulemaking.
- 260.965. Expiration date.
- 304.184. Transportation of solid waste, weight restrictions for trucks and tractor-trailers.
- 260.218. Vehicles transporting solid wastes, weight limits.
- 260.274. Grants, use of waste tires as fuel, who may apply — limitations — advisory council, duties.
- 260.342. Educational and informational programs, department to conduct, how.
- 260.446. Accounting on remedial fund, content — sent to whom.
- 260.479. Commission to establish subdivisions of waste based on management, fees charged against generators — limits on certain fees — exceptions — fee distribution — expires, when.

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

SECTION A. ENACTING CLAUSE. — Sections 260.200, 260.218, 260.262, 260.270, 260.272, 260.273, 260.274, 260.275, 260.276, 260.278, 260.325, 260.330, 260.335, 260.342, 260.345, 260.375, 260.380, 260.391, 260.420, 260.446, 260.475, 260.479, 260.480, 260.481, 260.546, 260.569, 260.900, 260.905, 260.925, 260.935, 260.940, and 260.960, RSMo, are repealed and thirty new sections enacted in lieu thereof, to be known as sections 260.200, 260.262, 260.270, 260.272, 260.273, 260.275, 260.276, 260.278, 260.279, 260.325, 260.330, 260.335, 260.345, 260.375, 260.380, 260.391, 260.420, 260.475, 260.480, 260.481, 260.546, 260.569, 260.900, 260.905, 260.925, 260.935, 260.940, 260.960, 260.965, and 304.184, to read as follows:

260.200. DEFINITIONS. — **1.** The following words and phrases when used in sections 260.200 to 260.345 shall mean:

(1) "Alkaline-manganese battery" or "alkaline battery", a battery having a manganese dioxide positive electrode, a zinc negative electrode, an alkaline electrolyte, including alkaline-manganese button cell batteries intended for use in watches, calculators, and other electronic products, and larger-sized alkaline-manganese batteries in general household use;

- (2) "Button cell battery" or "button cell", any small alkaline-manganese or mercuric-oxide battery having the size and shape of a button;
 - (3) "City", any incorporated city, town, or village;
 - (4) "Clean fill", uncontaminated soil, rock, sand, gravel, concrete, asphaltic concrete, cinderblocks, brick, minimal amounts of wood and metal, and inert solids as approved by rule or policy of the department for fill, reclamation or other beneficial use;
 - (5) "Closure", the permanent cessation of active disposal operations, abandonment of the disposal area, revocation of the permit or filling with waste of all areas and volumes specified in the permit and preparing the area for long-term care;
 - (6) "Closure plan", plans, designs and relevant data which specify the methods and schedule by which the operator will complete or cease disposal operations, prepare the area for long-term care, and make the area suitable for other uses, to achieve the purposes of sections 260.200 to 260.345 and the regulations promulgated thereunder;
 - (7) "Conference, conciliation and persuasion", a process of verbal or written communications consisting of meetings, reports, correspondence or telephone conferences between authorized representatives of the department and the alleged violator. The process shall, at a minimum, consist of one offer to meet with the alleged violator tendered by the department. During any such meeting, the department and the alleged violator shall negotiate in good faith to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance;
 - (8) "Demolition landfill", a solid waste disposal area used for the controlled disposal of demolition wastes, construction materials, brush, wood wastes, soil, rock, concrete and inert solids insoluble in water;
 - (9) "Department", the department of natural resources;
 - (10) "Director", the director of the department of natural resources;
 - (11) "District", a solid waste management district established under section 260.305;
 - (12) "Financial assurance instrument", an instrument or instruments, including, but not limited to, cash or surety bond, letters of credit, corporate guarantee or secured trust fund, submitted by the applicant to ensure proper closure and postclosure care and corrective action of a solid waste disposal area in the event that the operator fails to correctly perform closure and postclosure care and corrective action requirements, except that the financial test for the corporate guarantee shall not exceed one and one-half times the estimated cost of closure and postclosure. The form and content of the financial assurance instrument shall meet or exceed the requirements of the department. The instrument shall be reviewed and approved or disapproved by the attorney general;
 - (13) "Flood area", any area inundated by the one hundred year flood event, or the flood event with a one percent chance of occurring in any given year;
 - (14) "Household consumer", an individual who generates used motor oil through the maintenance of the individual's personal motor vehicle, vessel, airplane, or other machinery powered by an internal combustion engine;
 - (15) "Household consumer used motor oil collection center", any site or facility that accepts or aggregates and stores used motor oil collected only from household consumers or farmers who generate an average of twenty-five gallons per month or less of used motor oil in a calendar year. This section shall not preclude a commercial generator from operating a household consumer used motor oil collection center;
 - (16) "Household consumer used motor oil collection system", any used motor oil collection center at publicly owned facilities or private locations, any curbside collection of household consumer used motor oil, or any other household consumer used motor oil collection program determined by the department to further the purposes of sections 260.200 to 260.345;
 - (17) "Infectious waste", waste in quantities and characteristics as determined by the department by rule, including isolation wastes, cultures and stocks of etiologic agents, blood and blood products, pathological wastes, other wastes from surgery and autopsy, contaminated laboratory wastes, sharps, dialysis unit wastes, discarded biologicals known or suspected to be
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infectious; provided, however, that infectious waste does not mean waste treated to department specifications;

(18) "Lead-acid battery", a battery designed to contain lead and sulfuric acid with a nominal voltage of at least six volts and of the type intended for use in motor vehicles and watercraft;

(19) "Major appliance", clothes washers and dryers, water heaters, trash compactors, dishwashers, conventional ovens, ranges, stoves, woodstoves, air conditioners, refrigerators and freezers;

(20) "Mercuric-oxide battery" or "mercury battery", a battery having a mercuric-oxide positive electrode, a zinc negative electrode, and an alkaline electrolyte, including mercuric-oxide button cell batteries generally intended for use in hearing aids and larger size mercuric-oxide batteries used primarily in medical equipment;

(21) "Minor violation", a violation which possesses a small potential to harm the environment or human health or cause pollution, was not knowingly committed, and is not defined by the United States Environmental Protection Agency as other than minor;

(22) "Motor oil", any oil intended for use in a motor vehicle, as defined in section 301.010, RSMo, train, vessel, airplane, heavy equipment, or other machinery powered by an internal combustion engine;

(23) "Motor vehicle", as defined in section 301.010, RSMo;

(24) "Operator" and "permittee", anyone so designated, and shall include cities, counties, other political subdivisions, authority, state agency or institution, or federal agency or institution;

(25) "Permit modification", any permit issued by the department which alters or modifies the provisions of an existing permit previously issued by the department;

(26) "Person", any individual, partnership, corporation, association, institution, city, county, other political subdivision, authority, state agency or institution, or federal agency or institution;

(27) "Postclosure plan", plans, designs and relevant data which specify the methods and schedule by which the operator shall perform necessary monitoring and care for the area after closure to achieve the purposes of sections 260.200 to 260.345 and the regulations promulgated thereunder;

(28) "Recovered materials", those materials which have been diverted or removed from the solid waste stream for sale, use, reuse or recycling, whether or not they require subsequent separation and processing;

(29) "Recycled content", the proportion of fiber in a newspaper which is derived from postconsumer waste;

(30) "Recycling", the separation and reuse of materials which might otherwise be disposed of as solid waste;

(31) "Resource recovery", a process by which recyclable and recoverable material is removed from the waste stream to the greatest extent possible, as determined by the department and pursuant to department standards, for reuse or remanufacture;

(32) "Resource recovery facility", a facility in which recyclable and recoverable material is removed from the waste stream to the greatest extent possible, as determined by the department and pursuant to department standards, for reuse or remanufacture;

(33) "Sanitary landfill", a solid waste disposal area which accepts commercial and residential solid waste;

(34) "**Scrap tire**", a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect;

(35) "**Scrap tire collection center**", a site where scrap tires are collected prior to being offered for recycling or processing and where fewer than five hundred tires are kept on site on any given day;

(36) "**Scrap tire end-user facility**", a site where scrap tires are used as a fuel or fuel supplement or converted into a useable product. Baled or compressed tires used in structures, or used at recreational facilities, or used for flood or erosion control shall be considered an end use;

(37) "Scrap tire generator", a person who sells tires at retail or any other person, firm, corporation, or government entity that generates scrap tires;

(38) "Scrap tire processing facility", a site where tires are reduced in volume by shredding, cutting, or chipping or otherwise altered to facilitate recycling, resource recovery, or disposal;

(39) "Scrap tire site", a site at which five hundred or more scrap tires are accumulated, but not including a site owned or operated by a scrap tire end-user that burns scrap tires for the generation of energy or converts scrap tires to a useful product;

(40) "Solid waste", garbage, refuse and other discarded materials including, but not limited to, solid and semisolid waste materials resulting from industrial, commercial, agricultural, governmental and domestic activities, but does not include hazardous waste as defined in sections 260.360 to 260.432, recovered materials, overburden, rock, tailings, matte, slag or other waste material resulting from mining, milling or smelting;

[(35)] (41) "Solid waste disposal area", any area used for the disposal of solid waste from more than one residential premises, or one or more commercial, industrial, manufacturing, recreational, or governmental operations;

[(36)] (42) "Solid waste fee", a fee imposed pursuant to sections 260.200 to 260.345 and may be:

(a) A solid waste collection fee imposed at the point of waste collection; or

(b) A solid waste disposal fee imposed at the disposal site;

[(37)] (43) "Solid waste management area", a solid waste disposal area which also includes one or more of the functions contained in the definitions of recycling, resource recovery facility, waste tire collection center, waste tire processing facility, waste tire site or solid waste processing facility, excluding incineration;

[(38)] (44) "Solid waste management system", the entire process of managing solid waste in a manner which minimizes the generation and subsequent disposal of solid waste, including waste reduction, source separation, collection, storage, transportation, recycling, resource recovery, volume minimization, processing, market development, and disposal of solid wastes;

[(39)] (45) "Solid waste processing facility", any facility where solid wastes are salvaged and processed, including:

(a) A transfer station; or

(b) An incinerator which operates with or without energy recovery but excluding waste tire end-user facilities; or

(c) A material recovery facility which operates with or without composting;

[(40)] (46) "Solid waste technician", an individual who has successfully completed training in the practical aspects of the design, operation and maintenance of a permitted solid waste processing facility or solid waste disposal area in accordance with sections 260.200 to 260.345;

[(41)] (47) "Tire", a continuous solid or pneumatic rubber covering encircling the wheel of any self-propelled vehicle not operated exclusively upon tracks, or a trailer as defined in chapter 301, RSMo, except farm tractors and farm implements owned and operated by a family farm or family farm corporation as defined in section 350.010, RSMo;

[(42)] (48) "Used motor oil", any motor oil which, as a result of use, becomes unsuitable for its original purpose due to loss of original properties or the presence of impurities, but used motor oil shall not include ethylene glycol, oils used for solvent purposes, oil filters that have been drained of free flowing used oil, oily waste, oil recovered from oil tank cleaning operations, oil spilled to land or water, or industrial nonlube oils such as hydraulic oils, transmission oils, quenching oils, and transformer oils;

[(43)] (49) "Utility waste landfill", a solid waste disposal area used for fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;

[(44)] "Waste tire", a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect;

(45) "Waste tire collection center", a site where waste tires are collected prior to being offered for recycling or processing and where fewer than five hundred tires are kept on site on any given day;

(46) "Waste tire end-user facility", a site where waste tires are used as a fuel or fuel supplement or converted into a useable product. Baled or compressed tires used in structures, or used at recreational facilities, or used for flood or erosion control shall be considered an end use;

(47) "Waste tire generator", a person who sells tires at retail or any other person, firm, corporation, or government entity that generates waste tires;

(48) "Waste tire processing facility", a site where tires are reduced in volume by shredding, cutting, chipping or otherwise altered to facilitate recycling, resource recovery or disposal;

(49) "Waste tire site", a site at which five hundred or more waste tires are accumulated, but not including a site owned or operated by a waste tire end-user that burns waste tires for the generation of energy or converts waste tires to a useful product;]

(50) "Yard waste", leaves, grass clippings, yard and garden vegetation and Christmas trees. The term does not include stumps, roots or shrubs with intact root balls.

2. For the purposes of section 260.200 and sections 260.270 to 260.278 and any rules in place as of the effective date of this section or promulgated under said sections, the term "scrap" shall be used synonymously with and in place of "waste", as it applies only to scrap tires.

260.262. RETAILERS OF LEAD-ACID BATTERIES, DUTIES — NOTICE TO PURCHASER, CONTENTS. — A person selling lead-acid batteries at retail or offering lead-acid batteries for retail sale in the state shall:

(1) Accept, at the point of transfer, in a quantity at least equal to the number of new lead-acid batteries purchased, used lead-acid batteries from customers, if offered by customers;

(2) Post written notice which must be at least four inches by six inches in size and must contain the universal recycling symbol and the following language:

(a) It is illegal to discard a motor vehicle battery or other lead-acid battery;

(b) Recycle your used batteries; and

(c) State law requires us to accept used motor vehicle batteries, or other lead-acid batteries for recycling, in exchange for new batteries purchased; and

(3) Manage used lead-acid batteries in a manner consistent with the requirements of the state hazardous waste law;

(4) **Collect at the time of sale a fee of fifty cents for each lead-acid battery sold. Such fee shall be added to the total cost to the purchaser at retail after all applicable sales taxes on the battery have been computed. The fee imposed, less six percent of fees collected, which shall be retained by the seller as collection costs, shall be paid to the department of revenue in the form and manner required by the department and shall include the total number of batteries sold during the preceding month. The department of revenue shall promulgate rules and regulations necessary to administer the fee collection and enforcement. The terms "sold at retail" and "retail sales" do not include the sale of batteries to a person solely for the purpose of resale, if the subsequent retail sale in this state is to the ultimate consumer and is subject to the fee. However, this fee shall not be paid on batteries sold for use in agricultural operations upon written certification by the purchaser[.]; and**

(5) The department of revenue shall administer, collect, and enforce the fee authorized pursuant to this section pursuant to the same procedures used in the administration, collection, and enforcement of the general state sales and use tax imposed pursuant to chapter 144, RSMo, except as provided in this section. The proceeds of the battery fee, less four percent of the proceeds, which shall be retained by the department of revenue as collection costs, shall be transferred by the department of revenue into the

hazardous waste fund, created pursuant to section 260.391. The fee created in subdivision (4) and this subdivision shall be effective October 1, 2005. The provisions of subdivision (4) and this subdivision shall terminate June 30, 2011.

260.270. SCRAP TIRES, PROHIBITED ACTIVITIES — PENALTIES — SITE OWNERS, NO NEW SCRAP TIRE SITES PERMITTED, WHEN, EXCEPTION — REGISTRATION REQUIRED, DUTY TO INFORM DEPARTMENT, CONTENTS — RULES AND REGULATIONS — PERMIT FEES — DUTIES OF DEPARTMENT — INVENTORY OF PROCESSED SCRAP TIRES NOT TO EXCEED LIMITATION — AUTO DISMANTLER, LIMITED STORAGE OF TIRES ALLOWED — RECOVERED RUBBER, USE BY TRANSPORTATION DEPARTMENT, HOW. — 1. (1) It shall be unlawful for any person to haul for commercial profit, collect, process, or dispose of [waste] **scrap** tires in the state except as provided in this section. This section shall not be construed to prohibit [waste] **scrap** tires from being hauled to a lawfully operated facility in another state. [Waste] **Scrap** tires shall be collected at a [waste] **scrap** tire site, [waste] **scrap** tire processing facility, [waste] **scrap** tire end-user facility, or a [waste] **scrap** tire collection center. A violation of this subdivision shall be a class C misdemeanor for the first violation. A second and each subsequent violation shall be a class A misdemeanor. A third and each subsequent violation, in addition to other penalties authorized by law, may be punishable by a fine not to exceed five thousand dollars and restitution may be ordered by the court.

(2) A person shall not maintain a [waste] **scrap** tire site unless the site is permitted by the department of natural resources for the proper and temporary storage of [waste] **scrap** tires or the site is an integral part of the person's permitted [waste] **scrap** tire processing facility or registered [waste] **scrap** tire end-user facility. No new [waste] **scrap** tire sites shall be permitted by the department after August 28, 1997, unless they are located at permitted [waste] **scrap** tire processing facilities or registered [waste] **scrap** tire end-user facilities. A person who maintained a [waste] **scrap** tire site on or before August 28, 1997, shall not accept any quantity of additional [waste] **scrap** tires at such site after August 28, 1997, unless the site is an integral part of the person's [waste] **scrap** tire processing or end-user facility, or unless the person who maintains such site can verify that a quantity of [waste] **scrap** tires at least equal to the number of additional [waste] **scrap** tires received was shipped to a [waste] **scrap** tire processing or end-user facility within thirty days after receipt of such additional [waste] **scrap** tires.

(3) A person shall not operate a [waste] **scrap** tire processing facility unless the facility is permitted by the department. A person shall not maintain a [waste] **scrap** tire end-user facility unless the facility is registered by the department. The inventory of unprocessed [waste] **scrap** tires on the premises of a [waste] **scrap** tire processing or end-user facility shall not exceed the estimated inventory that can be processed or used in six months of normal and continuous operation. This estimate shall be based on the volume of tires processed or used by the facility in the last year or the manufacturer's estimated capacity of the processing or end-user equipment. This estimate may be increased from time to time when new equipment is obtained by the owner of the facility, and shall be reduced if equipment used previously is removed from active use. The inventory of processed [waste] **scrap** tires on the premises of a [waste] **scrap** tire processing or end-user facility shall not exceed two times the permitted inventory of an equivalent volume of unprocessed [waste] **scrap** tires.

(4) Any person selling new, used, or remanufactured tires at retail shall accept, at the point of transfer, in a quantity equal to the number of tires sold, [waste] **scrap** tires from customers, if offered by such customers. Any person accepting [waste] **scrap** tires may charge a reasonable fee reflecting the cost of proper management of any [waste] **scrap** tires accepted; [except that the fee shall not exceed two dollars per waste tire for any tire designed for a wheel of a diameter of sixteen inches or less] and which tire is required to be accepted on a one-for-one basis at the time of a retail sale pursuant to this subdivision. All tire retailers or other businesses that generate [waste] **scrap** tires shall use a [waste] **scrap** tire hauler permitted by the department, except that businesses that generate or accept [waste] **scrap** tires in the normal course of business may haul

such [waste] **scrap** tires without a permit, if such hauling is performed without any consideration and such business maintains records on the [waste] **scrap** tires hauled as required by sections 260.270 to 260.276. Retailers shall not be liable for illegal disposal of [waste] **scrap** tires after such [waste] **scrap** tires are delivered to a [waste] **scrap** tire hauler, [waste] **scrap** tire collection center, [waste] **scrap** tire site, [waste] **scrap** tire processing facility or [waste] **scrap** tire end-user facility if such entity is permitted by the department of natural resources.

(5) It shall be unlawful for any person to transport [waste] **scrap** tires for consideration within the state without a permit.

(6) [Waste] **Scrap** tires may not be deposited in a landfill unless the tires have been cut, chipped or shredded.

2. Within six months after August 28, 1990, owners and operators of any [waste] **scrap** tire site shall provide the department of natural resources with information concerning the site's location, size, and approximate number of [waste] **scrap** tires that have been accumulated at the site and shall initiate steps to comply with sections 260.270 to 260.276.

3. The department of natural resources shall promulgate rules and regulations pertaining to collection, storage and processing and transportation of [waste] **scrap** tires and such rules and regulations shall include:

(1) Methods of collection, storage and processing of [waste] **scrap** tires. Such methods shall consider the general location of [waste] **scrap** tires being stored with regard to property boundaries and buildings, pest control, accessibility by fire-fighting equipment, and other considerations as they relate to public health and safety;

(2) Procedures for permit application and permit fees for [waste] **scrap** tire sites and commercial [waste] **scrap** tire haulers, and by January 1, 1996, procedures for permitting of [waste] **scrap** tire processing facilities and registration of [waste] **scrap** tire end-user facilities. The only purpose of such registration shall be to provide information for the documentation of [waste] **scrap** tire handling as described in subdivision (5) of this subsection, and registration shall not impose any additional requirements on the owner of a [waste] **scrap** tire end-user facility;

(3) Requirements for performance bonds or other forms of financial assurance for [waste] **scrap** tire sites, **scrap** tire end-user facilities, and **scrap** tire processing facilities;

(4) Exemptions from the requirements of sections 260.270 to 260.276; and

(5) By January 1, 1996, requirements for record-keeping procedures for retailers and other businesses that generate [waste] **scrap** tires, [waste] **scrap** tire haulers, [waste] **scrap** tire collection centers, [waste] **scrap** tire sites, [waste] **scrap** tire processing facilities, and [waste] **scrap** tire end-user facilities. Required record keeping shall include the source and number or weight of tires received and the destination and number of tires or weight of tires or tire pieces shipped or otherwise disposed of and such records shall be maintained for at least three years following the end of the calendar year of such activity. Detailed record keeping shall not be required where any charitable, fraternal, or other nonprofit organization conducts a program which results in the voluntary cleanup of land or water resources or the turning in of [waste] **scrap** tires.

4. Permit fees for [waste] **scrap** tire sites and commercial [waste] **scrap** tire haulers shall be established by rule and shall not exceed the cost of administering sections 260.270 to 260.275. Permit fees shall be deposited into an appropriate subaccount of the solid [waste] **scrap** management fund.

5. The department shall:

(1) Encourage the voluntary establishment of [waste] **scrap** tire collection centers at retail tire selling businesses and [waste] **scrap** tire processing facilities; and

(2) Investigate, locate and document existing sites where tires have been or currently are being accumulated, and initiate efforts to bring these sites into compliance with rules and regulations promulgated pursuant to the provisions of sections 260.270 to 260.276.

6. Any person licensed as an auto dismantler and salvage dealer under chapter 301, RSMo, may without further license, permit or payment of fee, store but shall not bury on his property, up to five hundred [waste] **scrap** tires that have been chipped, cut or shredded, if such tires are only from vehicles acquired by him, and such tires are stored in accordance with the rules and regulations adopted by the department pursuant to this section. Any tire retailer or wholesaler may hold more than five hundred [waste] **scrap** tires for a period not to exceed thirty days without being permitted as a [waste] **scrap** tire site, if such tires are stored in a manner which protects human health and the environment pursuant to regulations adopted by the department.

7. Notwithstanding any other provisions of sections 260.270 to 260.276, a person who leases or owns real property may use [waste] **scrap** tires for soil erosion abatement and drainage purposes in accordance with procedures approved by the department, or to secure covers over silage, hay, straw or agricultural products.

8. The department of transportation shall, beginning July 1, 1991, undertake, as part of its currently scheduled highway improvement projects, demonstration projects using recovered rubber from [waste] **scrap** tires as surfacing material, structural material, subbase material and fill, consistent with standard engineering practices. The department shall evaluate the efficacy of using recovered rubber in highway improvements, and shall encourage the modification of road construction specifications, when possible, for the use of recovered rubber in highway improvement projects.

9. The director may request a prosecuting attorney to institute a prosecution for any violation of this section. In addition, the prosecutor of any county or circuit attorney of any city not within a county may, by information or indictment, institute a prosecution for any violation of this section.

260.272. SCRAP TIRES AND RUBBER CHIPS MAY BE USED AS LANDFILL COVER, DEPARTMENT OF NATURAL RESOURCES TO PROMULGATE RULES. — Processed [waste] **scrap** tires and recycled rubber chips may be used in the design and operation of sanitary landfills, including use of such tires and rubber chips as daily cover. The department of natural resources may promulgate rules to implement 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, 1999, shall be invalid and void.

260.273. FEE, SALE OF NEW TIRES, AMOUNT — COLLECTION, USE OF MONEYS — TERMINATION — REPORT TO GENERAL ASSEMBLY. — 1. Any person purchasing a new tire may present to the seller the used tire or remains of such used tire for which the new tire purchased is to replace.

2. A fee for each new tire sold at retail shall be imposed on any person engaging in the business of making retail sales of new tires within this state. The fee shall be charged by the retailer to the person who purchases a tire for use and not for resale. Such fee shall be imposed at the rate of fifty cents for each new tire sold. Such fee shall be added to the total cost to the purchaser at retail after all applicable sales taxes on the tires have been computed. The fee imposed, less six percent of fees collected, which shall be retained by the tire retailer as collection costs, shall be paid to the department of revenue in the form and manner required by the department of revenue and shall include the total number of new tires sold during the preceding month. The department of revenue shall promulgate rules and regulations necessary to administer the fee collection and enforcement. The terms "sold at retail" and "retail sales" do not

include the sale of new tires to a person solely for the purpose of resale, if the subsequent retail sale in this state is to the ultimate consumer and is subject to the fee.

3. The department of revenue shall administer, collect and enforce the fee authorized pursuant to this section pursuant to the same procedures used in the administration, collection and enforcement of the general state sales and use tax imposed pursuant to chapter 144, RSMo, except as provided in this section. The proceeds of the new tire fee, less four percent of the proceeds, which shall be retained by the department of revenue as collection costs, shall be transferred by the department of revenue into an appropriate subaccount of the solid waste management fund, created pursuant to section 260.330.

4. Up to five percent of the revenue available may be allocated, upon appropriation, to the department of natural resources to be used cooperatively with the department of elementary and secondary education for the purposes of developing educational programs and curriculum pursuant to section 260.342.

5. Up to twenty-five percent of the moneys received pursuant to this section may, upon appropriation, be used to administer the programs imposed by this section. Up to five percent of the moneys received under this section may, upon appropriation, be used for the grants authorized in subdivision (2) of subsection 6 of this section and authorized in section 260.274. All remaining moneys shall be allocated, upon appropriation, for the projects authorized in section 260.276, **except that any unencumbered moneys may be used for public health, environmental, and safety projects in response to environmental emergencies as determined by the director.**

6. The department shall promulgate, by rule, a statewide plan for the use of moneys received pursuant to this section to accomplish the following:

- (1) Removal of waste tires from illegal tire dumps;
- (2) Providing grants to persons that will use products derived from waste tires, or used waste tires as a fuel or fuel supplement; and
- (3) Resource recovery activities conducted by the department pursuant to section 260.276.

7. The fee imposed in subsection 2 of this section shall **begin the first day of the month which falls at least thirty days but no more than sixty days immediately following the effective date of this section and shall terminate January 1, [2004] 2010.**

8. **By January 1, 2009, the department shall report to the general assembly a complete accounting of the tire cleanups completed or in progress, the cost of the cleanups, the number of tires remaining, the balance of the fund, and enforcement actions completed or initiated to address waste tires.**

260.275. SCRAP TIRE SITE, CLOSURE PLAN, CONTENTS — FINANCIAL ASSURANCE INSTRUMENT, PURPOSE, HOW CALCULATED. — 1. Each operator of a [waste] **scrap** tire site shall ensure that the area is properly closed upon cessation of operations. The department of natural resources may require that a closure plan be submitted with the application for a permit. The closure plan, as approved by the department, shall include at least the following:

- (1) A description of how and when the area will be closed;
- (2) The method of final disposition of any [waste] **scrap** tires remaining on the site at the time notice of closure is given to the department.

2. The operator shall notify the department at least ninety days prior to the date he expects closure to begin. No [waste] **scrap** tires may be received by the [waste] **scrap** tire site after the date closure is to begin.

3. The permittee shall provide a financial assurance instrument in such an amount and form as prescribed by the department to ensure that, upon abandonment, cessation or interruption of the operation of the site, an approved closure plan is completed. The amount of the financial assurance instrument shall be based upon the current costs of similar cleanups using data from actual [waste] **scrap** tire cleanup project bids received by the department to remediate [waste] **scrap** tire sites of similar size. If [waste] **scrap** tires are accumulated at a solid [waste] **scrap**

management area, the existing financial assurance instrument filed for the solid [waste] **scrap** disposal area may be applied to the requirements of this section. Any interest that accrues to any financial assurance instrument established pursuant to this section shall remain with that instrument and shall be applied against the operator's obligation under this section until the instrument is released by the department. The director shall authorize the release of the financial assurance instrument after the department has been notified by the operator that the site has been closed, and after inspection, the department approves closure of the [waste] **scrap** tire site.

4. If the operator of a [waste] **scrap** tire site fails to properly implement the closure plan, the director shall order the operator to implement such plan, and take other steps necessary to assure the proper closure of the site pursuant to section 260.228 and this section.

260.276. NUISANCE ABATEMENT ACTIVITIES, DEPARTMENT MAY CONDUCT — COSTS, CIVIL ACTION AUTHORIZED, EXCEPTION — RESOURCE RECOVERY OR NUISANCE ABATEMENT BIDS ON CONTRACT, WHO MAY BID — CONTENT. — 1. The department of natural resources shall, subject to appropriation, conduct resource recovery or nuisance abatement activities designed to reduce the volume of [waste] **scrap** tires or alleviate any nuisance condition at any site if the owner or operator of such a site fails to comply with the rules and regulations authorized under section 260.270, or if the site is in continued violation of such rules and regulations. The department shall give first priority to cleanup of sites owned by persons who present satisfactory evidence that such persons were not responsible for the creation of the nuisance conditions or any violations of section 260.270 at the site.

2. The department may ask the attorney general to initiate a civil action to recover from any persons responsible the reasonable and necessary costs incurred by the department for its nuisance abatement activities and its legal expenses related to the abatement; except that in no case shall the attorney general seek to recover cleanup costs from the owner of the property if such person presents satisfactory evidence that such person was not responsible for the creation of the nuisance condition or any violation of section 260.270 at the site.

3. The department shall allow any person, firm, corporation, state agency, charitable, fraternal, or other nonprofit organization to bid on a contract for each resource recovery or nuisance abatement activity authorized under this section. The contract shall specify the cost per tire for delivery to a registered [waste] **scrap** tire processing or end-user facility, and the cost per tire for processing. The recipient or recipients of any contract shall not be compensated by the department for the cost of delivery and the cost of processing for each tire until such tire is delivered to a registered [waste] **scrap** tire processing or end-user facility and the contract recipient has provided proof of delivery to the department. Any charitable, fraternal, or other nonprofit organization which voluntarily cleans up land or water resources may turn in [waste] **scrap** tires collected in the course of such cleanup under the rules and regulations of the department.

260.278. PERFORMANCE BOND OR LETTER OF CREDIT REQUIRED FOR TRANSPORTER OF SCRAP TIRES, WHEN — PROVISIONS REQUIRED — FORFEITURE OF BOND, WHEN, PROCEDURE — BOND REQUIREMENT CEASES, WHEN. — 1. A person who has, within the preceding twenty-four months, been found guilty or pleaded guilty to a violation of section 260.270 which involves the transport of [waste] **scrap** tires may not be granted a permit to transport [waste] **scrap** tires unless the person seeking the permit has provided to the department a performance bond or letter of credit as provided under this section.

2. The bond or letter shall be conditioned upon faithful compliance with the terms and conditions of the permit and section 260.270 and shall be in the amount of ten thousand dollars.

3. Such performance bond, placed on file with the department, shall be in one of the following forms:

(1) A performance bond, payable to the department and issued by an institution authorized to issue such bonds in this state; or

(2) An irrevocable letter of credit issued in favor of and payable to the department from a commercial bank or savings and loan having an office in the state of Missouri.

4. Upon a determination by the department that a person has violated the terms and conditions of the permit or section 260.270, the department shall notify the person that the bond or letter of credit shall be forfeited and the moneys placed in an appropriate subaccount of the solid waste management fund, created under section 260.330, for remedial action.

5. The department shall expend whatever portion of the bond or letter of credit necessary to conduct resource recovery or nuisance abatement activities to alleviate any condition resulting from a violation of section 260.270 or the terms and conditions of a permit.

6. The requirement for a person to provide a performance bond or a letter of credit under this section shall cease for that person after two consecutive years in which the person has not been found guilty or pleaded guilty to a violation of section 260.270.

260.279. PREFERENCE AND BONUS POINTS FOR CONTRACTS FOR THE REMOVAL OR CLEAN UP OF WASTE TIRES, WHEN. — In letting contracts for the performance of any job or service for the removal or clean up of waste tires under this chapter, the department of natural resources shall, in addition to the requirements of sections 34.073 and 34.076, RSMo, and any other points awarded during the evaluation process, give to any vendor that meets one or more of the following factors a five percent preference and ten bonus points for each factor met:

(1) The bid is submitted by a vendor that has resided or maintained its headquarters or principal place of business in Missouri continuously for the two years immediately preceding the date on which the bid is submitted;

(2) The bid is submitted by a nonresident corporation vendor that has an affiliate or subsidiary that employs at least twenty state residents and has maintained its headquarters or principal place of business in Missouri continuously for the two years immediately preceding the date on which the bid is submitted;

(3) The bid is submitted by a vendor that resides or maintains its headquarters or principal place of business in Missouri and, for the purposes of completing the bid project and continuously over the entire term of the project, an average of at least seventy-five percent of such vendor's employees are Missouri residents who have resided in the state continuously for at least two years immediately preceding the date on which the bid is submitted. Such vendor must certify the residency requirements of this subdivision and submit a written claim for preference at the time the bid is submitted;

(4) The bid is submitted by a nonresident vendor that has an affiliate or subsidiary that employs at least twenty state residents and has maintained its headquarters or principal place of business in Missouri and, for the purposes of completing the bid project and continuously over the entire term of the project, an average of at least seventy-five percent of such vendor's employees are Missouri residents who have resided in the state continuously for at least two years immediately preceding the date on which the bid is submitted. Such vendor must certify the residency requirements of this section and submit a written claim for preference at the time the bid is submitted;

(5) The bid is submitted by any vendor that provides written certification that the end use of the tires collected during the project will be for fuel purposes or for the manufacture of a useable good or product. For the purposes of this section, the landfilling of waste tires, waste tire chips, or waste tire shreds in any manner, including landfill cover, shall not permit the vendor a preference.

260.325. SOLID WASTE MANAGEMENT PLAN, SUBMITTED TO DEPARTMENT, CONTENTS, PROCEDURES — APPROVAL, REVISION OF PLAN — FUNDS MAY BE MADE AVAILABLE, PURPOSE — AUDITS. — 1. The executive board of each district shall submit to the department a plan which has been approved by the council for a solid waste management system serving

areas within its jurisdiction and shall, from time to time, submit officially adopted revisions of its plan as it deems necessary or the department may require. In developing the district's solid waste management plan, the board shall consider the model plan distributed to the board pursuant to section 260.225. Districts may contract with a licensed professional engineer or as provided in chapter 70, RSMo, for the development and submission of a joint plan.

2. The board shall hold at least one public hearing in each county in the district when it prepares a proposed plan or substantial revisions to a plan in order to solicit public comments on the plan.

3. The solid waste management plan shall be submitted to the department within eighteen months of the formation of the district. The plan shall be prepared and submitted according to the procedures specified in section 260.220 and this section.

4. Each plan shall:

(1) Delineate areas within the district where solid waste management systems are in existence;

(2) Reasonably conform to the rules and regulations adopted by the department for implementation of sections 260.200 to 260.345;

(3) Delineate provisions for the collection of recyclable materials or collection points for recyclable materials;

(4) Delineate provisions for the collection of compostable materials or collection points for compostable materials;

(5) Delineate provisions for the separation of household waste and other small quantities of hazardous waste at the source or prior to disposal;

(6) Delineate provisions for the orderly extension of solid waste management services in a manner consistent with the needs of the district, including economic impact, and in a manner which will minimize degradation of the waters or air of the state, prevent public nuisances or health hazards, promote recycling and waste minimization and otherwise provide for the safe and sanitary management of solid waste;

(7) Take into consideration existing comprehensive plans, population trend projections, engineering and economics so as to delineate those portions of the district which may reasonably be expected to be served by a solid waste management system;

(8) Specify how the district will achieve a reduction in solid waste placed in sanitary landfills through waste minimization, reduction and recycling;

(9) Establish a timetable, with milestones, for the reduction of solid waste placed in a landfill through waste minimization, reduction and recycling;

(10) Establish an education program to inform the public about responsible waste management practices;

(11) Establish procedures to minimize the introduction of small quantities of hazardous waste, including household hazardous waste, into the solid waste stream;

(12) Establish a time schedule and proposed method of financing for the development, construction and operation of the planned solid waste management system together with the estimated cost thereof;

(13) Identify methods by which rural households that are not served by a regular solid waste collection service may participate in waste reduction, recycling and resource recovery efforts within the district; and

(14) Include such other reasonable information as the department shall require.

5. The board shall review the district's solid waste management plan at least every twenty-four months for the purpose of evaluating the district's progress in meeting the requirements and goals of the plan, and shall submit plan revisions to the department and council.

6. In the event any plan or part thereof is disapproved, the department shall furnish any and all reasons for such disapproval and shall offer assistance for correcting deficiencies. The executive board shall within sixty days revise and resubmit the plan for approval or request a hearing in accordance with section 260.235. Any plan submitted by a district shall stand

approved one hundred twenty days after submission unless the department disapproves the plan or some provision thereof.

7. The director may institute appropriate action under section 260.240 to compel submission of plans in accordance with sections 260.200 to 260.345 and the rules and regulations adopted pursuant to sections 260.200 to 260.345.

8. The provisions of section 260.215 to the contrary notwithstanding, any county within a region which on or after January 1, 1995, is not a member of a district shall by June 30, 1995, submit a solid waste management plan to the department of natural resources. Any county which withdraws from a district and all cities within the county with a population over five hundred shall submit a solid waste plan or a revision to an existing plan to the department of natural resources within one hundred eighty days of its decision not to participate. The plan shall meet the requirements of section 260.220 and this section.

9. Funds may, upon appropriation, be made available to cities, counties and districts, under section 260.335, for the purpose of implementing the requirements of this section.

10. The district board shall arrange for independent financial audits of the records and accounts of its operations by a certified public accountant or a firm of certified public accountants. Districts receiving two hundred thousand dollars or more of financial assistance shall have annual independent financial audits and districts receiving less than two hundred thousand dollars of financial assistance shall have independent financial audits at least once every two years. The state auditor may examine the findings of such audits and may conduct audits of the districts. Subject to limitations caused by the availability resources, the department shall conduct a performance audit of grants to each district at least once every three years.

260.330. LANDFILL FEE, AMOUNT — SOLID WASTE MANAGEMENT FUND, CREATED, PURPOSE — DEPARTMENT TO ENFORCE — TRANSFER STATION, FEE CHARGED — FREE DISPOSAL DAY, NOTICE. — 1. Except as otherwise provided in subsection 6 of this section, effective October 1, 1990, each operator of a solid waste sanitary landfill shall collect a charge equal to one dollar and fifty cents per ton or its volumetric equivalent of solid waste accepted and each operator of the solid waste demolition landfill shall collect a charge equal to one dollar per ton or its volumetric equivalent of solid waste accepted. Each operator shall submit the charge, less collection costs, to the department of natural resources for deposit in the "Solid Waste Management Fund" which is hereby created. On October 1, 1992, and thereafter, the charge imposed herein shall be adjusted annually by the same percentage as the increase in the general price level as measured by the Consumer Price Index for All Urban Consumers for the United States, or its successor index, as defined and officially recorded by the United States Department of Labor or its successor agency. **No annual adjustment shall be made to the charge imposed under this subsection during October 1, 2005, to October 1, 2009, except an adjustment amount consistent with the need to fund the operating costs of the department and taking into account any annual percentage increase in the total of the volumetric equivalent of solid waste accepted in the prior year at solid waste sanitary landfills and demolition landfills and solid waste to be transported out of this state for disposal that is accepted at transfer stations. No annual increase during October 1, 2005, to October 1, 2009, shall exceed the percentage increase measured by the Consumer Price Index for All Urban Consumers for the United States, or its successor index, as defined and officially recorded by the United States Department of Labor or its successor agency and calculated on the percentage of revenues dedicated under subdivision (1) of subsection 2 of section 260.335. Any such annual adjustment shall only be made at the discretion of the director, subject to appropriations.** Collection costs shall be established by the department and shall not exceed two percent of the amount collected pursuant to this section.

2. The department shall, by rule and regulation, provide for the method and manner of collection.

3. The charges established in this section shall be enumerated separately from the disposal fee charged by the landfill and may be passed through to persons who generated the solid waste. Moneys shall be transmitted to the department shall be no less than the amount collected less collection costs and in a form, manner and frequency as the department shall prescribe. The provisions of section 33.080, RSMo, to the contrary notwithstanding, moneys in the account shall not lapse to general revenue at the end of each biennium. Failure to collect the charge does not relieve the operator from responsibility for transmitting an amount equal to the charge to the department.

4. The department may examine or audit financial records and landfill activity records and measure landfill usage to verify the collection and transmittal of the charges established in this section. The department may promulgate by rule and regulation procedures to ensure and to verify that the charges imposed herein are properly collected and transmitted to the department.

5. Effective October 1, 1990, any person who operates a transfer station in Missouri shall transmit a fee to the department for deposit in the solid waste management fund which is equal to one dollar and fifty cents per ton or its volumetric equivalent of solid waste accepted. Such fee shall be applicable to all solid waste to be transported out of the state for disposal. On October 1, 1992, and thereafter, the charge imposed herein shall be adjusted annually by the same percentage as the increase in the general price level as measured by the Consumer Price Index for All Urban Consumers for the United States, or its successor index, as defined and officially recorded by the United States Department of Labor or its successor agency. **No annual adjustment shall be made to the charge imposed under this subsection during October 1, 2005, to October 1, 2009, except an adjustment amount consistent with the need to fund the operating costs of the department and taking into account any annual percentage increase in the total of the volumetric equivalent of solid waste accepted in the prior year at solid waste sanitary landfills and demolition landfills and solid waste to be transported out of this state for disposal that is accepted at transfer stations. No annual increase during October 1, 2005, to October 1, 2009, shall exceed the percentage increase measured by the Consumer Price Index for All Urban Consumers for the United States, or its successor index, as defined and officially recorded by the United States Department of Labor or its successor agency and calculated on the percentage of revenues dedicated under subdivision (1) of subsection 2 of section 260.335. Any such annual adjustment shall only be made at the discretion of the director, subject to appropriations.** The department shall prescribe rules and regulations governing the transmittal of fees and verification of waste volumes transported out of state from transfer stations. Collection costs shall also be established by the department and shall not exceed two percent of the amount collected pursuant to this subsection. A transfer station with the sole function of separating materials for recycling or resource recovery activities shall not be subject to the fee imposed in this subsection.

6. Each political subdivision which owns an operational solid waste disposal area may designate, pursuant to this section, up to two free disposal days during each calendar year. On any such free disposal day, the political subdivision shall allow residents of the political subdivision to dispose of any solid waste which may be lawfully disposed of at such solid waste disposal area free of any charge, and such waste shall not be subject to any state fee pursuant to this section. Notice of any free disposal day shall be posted at the solid waste disposal area site and in at least one newspaper of general circulation in the political subdivision no later than fourteen days prior to the free disposal day.

260.335. DISTRIBUTION OF FUND MONEYS, USES — GRANTS, DISTRIBUTION OF MONEYS — ADVISORY BOARD, SOLID WASTE, DUTIES. — 1. [For fiscal years 1992-1997, one million] **Each fiscal year eight hundred thousand** dollars from the solid waste management fund shall be made available, upon appropriation, to the department and the environmental improvement and energy resources authority to fund activities that promote the development and maintenance of markets for recovered materials[, and beginning in fiscal year 1998, ten percent of the moneys

in the solid waste management fund, from August 28, 2004, to August 28, 2005, not to exceed eight hundred thousand dollars, shall be made available for such purposes. Up to nineteen percent of such moneys may be used, upon appropriation, to administer the management of household hazardous waste and agricultural hazardous waste from family farms and family farm corporations, as defined in section 350.010, RSMo, to provide for establishment of an education program and a plan for the collection of household hazardous waste on a statewide basis by January 1, 2000. After August 28, 2005, no more than one million dollars shall be made available for such purposes]. **Each fiscal year up to [fifteen percent of such moneys may] two hundred thousand dollars from the solid waste management fund be used by the department upon appropriation [to administer the management of household hazardous waste and agricultural hazardous waste from family farms and family farm corporations, as defined in section 350.010, RSMo, to provide for establishment of an education program and a plan for the collection of household hazardous waste on a statewide basis by January 1, 2000.] for grants to solid waste management districts for district grants and district operations. Only those solid waste management districts that are allocated fewer funds under subsection 2 of this section than if revenues had been allocated based on the criteria in effect in this section on August 27, 2004, are eligible for these grants. An eligible district shall receive a proportionate share of these grants based on that district's share of the total reduction in funds for eligible districts calculated by comparing the amount of funds allocated under subsection 2 of this section with the amount of funds that would have been allocated using the criteria in effect in this section on August 27, 2004.** The department and the authority shall establish a joint interagency agreement with the department of economic development to identify state priorities for market development and to develop the criteria to be used to judge proposed projects. Additional moneys may be appropriated in subsequent fiscal years if requested. The authority shall establish a procedure to measure the effectiveness of the grant program under this subsection and shall provide a report to the governor and general assembly by January fifteenth of each year regarding the effectiveness of the program.

2. All remaining revenues deposited into the fund each fiscal year after moneys have been made available [for market development] under subsection 1 of this section shall be allocated as follows:

(1) [From August 28, 2004, to August 28, 2005, up to forty-two] **Thirty-nine** percent of the revenues shall be dedicated, upon appropriation, to the elimination of illegal solid waste disposal, to identify and prosecute persons disposing of solid waste illegally, to conduct solid waste permitting activities, to administer grants and perform other duties imposed in sections 260.200 to 260.345 and section 260.432. [After August 28, 2005, up to twenty-five percent of the revenues shall be dedicated, upon appropriation, to the activities and duties authorized in this subdivision] **In addition to the thirty-nine percent of the revenues, the department may receive any annual increase in the charge during October 1, 2005, to October 1, 2009, under section 260.330 and such increases shall be used solely to fund the operating costs of the department;**

(2) [From August 28, 2004, to August 28, 2005, at least fifty-eight] **Sixty-one** percent of the revenues, **except any annual increases in the charge under section 260.330 during October 1, 2005, to October 1, 2009, which shall be used solely to fund the operating costs of the department,** shall be allocated through grants, upon appropriation, to participating cities, counties, and districts. [After August 28, 2005, up to fifty percent of the revenues shall be allocated through grants, upon appropriation, to participating districts. Forty] **Revenues to be allocated under this subdivision shall be divided as follows: forty percent shall be allocated based on the population of each district in the latest decennial census, and sixty percent shall be allocated based on the amount of revenue generated within each district. For the purposes of this subdivision, revenue generated within each district shall be determined from the previous year's data. No more than fifty percent of the revenue [generated within each region and] allocable under this subdivision may be allocated to the**

[district] **districts** upon approval of the department for implementation of a solid waste management plan and district operations, and [sixty] **at least fifty** percent of the revenue [generated within each region and] allocable **to the districts** under this subdivision shall be allocated to the cities and counties of the district or to persons or entities providing solid waste management, waste reduction, recycling and related services in these cities and counties. [For the purposes of this subdivision, revenue generated within each district shall be determined from the previous year's data. From August 28, 2004, to August 28, 2005.] Each district shall receive a minimum of seventy-five thousand dollars under this subdivision. After August 28, 2005, each district shall receive a minimum of [forty-five] **ninety-five** thousand dollars under this subdivision **for district grants and district operations**. Each district receiving moneys under this subdivision shall expend such moneys pursuant to a solid waste management plan required under section 260.325, and only in the case that the district is in compliance with planning requirements established by the department[, and shall submit, within ninety days of the end of the fiscal year, an audited report of the expenditure of all funds received under this subsection]. Moneys shall be awarded based upon grant applications. Any moneys remaining in any fiscal year due to insufficient or inadequate applications may be reallocated pursuant to this subdivision;

(3) [From August 28, 2004, to August 28, 2005, any remaining moneys in the fund shall be used, upon appropriation, to provide grants for statewide solid waste management planning or research projects to any district, county or city of the state or to any other person or entity involved in waste reduction or recycling or for contracted services to further the purposes of section 260.225 and sections 260.255 to 260.345. After August 28, 2005, any remaining moneys in the fund shall be used, upon appropriation, to provide grants or loans for statewide solid waste management projects to any district, county or city of the state or to any other person or entity involved in waste reduction or recycling to further the purposes of sections 260.255 to 260.345. Solid waste management districts may apply annually to the department for a three-to-one matching grant of up to twenty thousand dollars per district per year to be used for the purpose of district operations;] **Except for the amount up to one-fourth of the department's previous fiscal year expense, any remaining unencumbered funds generated under subdivision (1) of subsection 2 of this section in prior fiscal years shall be reallocated under this section;**

(4) Funds may be made available under this subsection for the administration and grants of the used motor oil program described in section 260.253;

(5) The department and the environmental improvement and energy resources authority shall conduct sample audits of grants provided under this subsection.

3. The advisory board created in section 260.345 shall recommend criteria to be used to allocate grant moneys to districts, cities and counties. These criteria shall establish a priority for proposals which provide methods of solid waste reduction and recycling. The department shall promulgate criteria for evaluating grants by rule and regulation. Projects of cities and counties located within a district which are funded by grants under this section shall conform to the district solid waste management plan.

4. [Beginning July 1, 2004, a joint committee appointed by the speaker of the house of representatives and the president pro tem of the senate shall consider proposals for fees, restructuring the distribution of the fees between solid waste districts, grant recipients, and the department. The committee shall consider options for the distribution of the tipping fee to the solid waste districts and any other matters it deems appropriate. The committee shall prepare and submit a report including its recommendation for changes to the governor, the house of representatives, and the senate no later than December 31, 2004.

5.] The funds awarded to the districts, counties and cities pursuant to this section shall be used for the purposes set forth in sections 260.300 to 260.345, and shall be used in addition to existing funds appropriated by counties and cities for solid waste management and shall not supplant county or city appropriated funds.

[6.] 5. The department, in conjunction with the solid waste advisory board, shall review the performance of all grant recipients to ensure that grant moneys were appropriately and effectively expended to further the purposes of the grant, as expressed in the recipient's grant application. The grant application shall contain specific goals and implementation dates, and grant recipients shall be contractually obligated to fulfill same. The department may require the recipient to submit periodic reports and such other data as are necessary, both during the grant period and up to five years thereafter, to ensure compliance with this section. The department may audit the records of any recipient to ensure compliance with this section. Recipients of grants under sections 260.300 to 260.345 shall maintain such records as required by the department. If a grant recipient fails to maintain records or submit reports as required herein, refuses the department access to the records, or fails to meet the department's performance standards, the department may withhold subsequent grant payments, if any, and may compel the repayment of funds provided to the recipient pursuant to a grant. [The department shall make available all of the unencumbered funds generated during prior fiscal years by the fees established under section 260.330 through grants or loans to solid waste management areas and processing facilities, municipalities, counties, districts, and other appropriate persons who demonstrate a need for assistance to comply with section 260.250. Such grants or loans shall be used for educational programs, transportation, low-interest or no-interest loans to purchase property for composting or other solid waste source reduction activities stated to facilitate compliance with section 260.250.

7.] 6. The department shall provide for a security interest in any machinery or equipment purchased through grant moneys distributed pursuant to this section.

[8.] 7. If the moneys are not transmitted to the department within the time frame established by the rule promulgated, interest shall be imposed on the moneys due the department at the rate of ten percent per annum from the prescribed due date until payment is actually made. These interest amounts shall be deposited to the credit of the solid waste management fund.

260.345. SOLID WASTE ADVISORY BOARD, MEMBERS — QUALIFICATIONS — DUTIES AND POWERS — REMOVAL OF BOARD MEMBER FOR FAILURE TO ATTEND MEETINGS, WHEN.

— A state "Solid Waste Advisory Board" is created within the department of natural resources. The advisory board shall be composed of the chairman of the executive board of each of the solid waste management districts and other members as provided in this section. Up to five additional members shall be appointed by the director of which [up to] two [may] **members shall** represent the solid waste management industry and have an economic interest in or activity with any solid waste facility or operation, [and at least] one [such] member [shall] **may** represent [a locally owned] **the solid waste [management business] composting or recycling industry businesses**, and the remaining members shall be public members who have demonstrated interest in solid waste management issues and shall have no economic interest in or activity with any solid waste facility or operation but may own stock in a publicly traded corporation which may be involved in waste management as long as such holdings are not substantial. [The appointment of any member by the director shall be terminated if the member fails to attend at least fifty percent of the board meetings in any calendar year.] The advisory board shall advise the department regarding:

- (1) The efficacy of its technical assistance program;
 - (2) Solid waste management problems experienced by solid waste management districts;
 - (3) The effects of proposed rules and regulations upon solid waste management within the districts;
 - (4) Criteria to be used in awarding grants pursuant to section 260.335;
 - (5) Waste management issues pertinent to the districts;
 - (6) The development of improved methods of solid waste minimization, recycling and resource recovery; and
 - (7) Such other matters as the advisory board may determine.
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260.375. DUTIES OF DEPARTMENT — LICENSES REQUIRED — PERMITS REQUIRED. —

The department shall:

(1) Exercise general supervision of the administration and enforcement of sections 260.350 to 260.430 and all standards, rules and regulations, orders or license and permit terms and conditions adopted or issued pursuant to sections 260.350 to 260.430;

(2) Develop and implement programs to achieve goals and objectives set by the state hazardous waste management plan;

(3) Retain, employ, provide for and compensate, within appropriations available therefor, such consultants, assistants, deputies, clerks and other employees on a full- or part-time basis as may be necessary to carry out the provisions of sections 260.350 to 260.430 and prescribe the times at which they shall be appointed and their powers and duties;

(4) Budget and receive duly appropriated moneys for expenditures to carry out the provisions of sections 260.350 to 260.430;

(5) Accept, receive and administer grants or other funds or gifts from public and private agencies including the federal government for the purpose of carrying out any of the functions of sections 260.350 to 260.430. Funds received by the department pursuant to this section shall be deposited with the state treasurer and held and disbursed by him or her in accordance with the appropriations of the general assembly;

(6) Provide the commission all necessary support the commission may require to carry out its powers and duties including, but not limited to: keeping of records of all meetings; notification, at the direction of the chairman of the commission, of the members of the commission of the time, place and purpose of each meeting by written notice; drafting, for consideration of the commission, a state hazardous waste management plan and standards, rules and regulations necessary to carry out the purposes of sections 260.350 to 260.430; and investigation of petitions for variances and complaints made to the commission and submission of recommendations thereto;

(7) Collect and maintain, and require any person to collect and maintain, such records and information of hazardous waste generation, storage, transportation, resource recovery, treatment and disposal in this state, including quantities and types imported and exported across the borders of this state and install, calibrate and maintain and require any person to install, calibrate and maintain such monitoring equipment or methods, and make reports consistent with the purposes of sections 260.350 to 260.430;

(8) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise;

(9) Develop facts and make inspections and investigations, including gathering of samples and performing of tests and analyses, consistent with the purposes of sections 260.350 to 260.430, and in connection therewith, to enter or authorize any representative of the department to enter, at all reasonable times, in or upon any private or public property for any purpose required by sections 260.350 to 260.430 or any federal hazardous waste management act. Such entry may be for the purpose, without limitation, of developing or implementing standards, rules and regulations, orders or license or permit terms and conditions, of inspecting or investigating any records required to be kept by sections 260.350 to 260.430 or any license or permit issued pursuant to sections 260.350 to 260.430 or any hazardous waste management practice which the department or commission believes violates sections 260.350 to 260.430, or any standard, rule or regulation, order or license or permit term or condition adopted or issued pursuant to sections 260.350 to 260.430, or otherwise endangers the health of humans or the environment, or the site of any suspected violation of sections 260.350 to 260.430, or any standard, rule or regulation, order, or license or permit term or condition adopted or issued pursuant to sections 260.350 to 260.430. The results of any such investigation shall be reduced to writing and shall be furnished to the owner or operator of the property. No person shall refuse entry or access requested for the purpose of inspection pursuant to this subdivision to an authorized representative of the department or commission who presents appropriate credentials, nor obstruct or hamper the

representative in carrying out the inspection. A suitably restricted search warrant, upon a showing of probable cause in writing and upon oath, shall be issued by any judge or associate circuit judge having jurisdiction to any such representative for the purpose of enabling the representative to make such inspection;

(10) Require each hazardous waste generator located within this state [and each hazardous waste generator located outside of this state before utilizing any hazardous waste facility in this state except as provided in subdivision (11) of this section] to file a registration report containing such information as the commission by regulation may specify relating to types and quantities of hazardous waste generated and methods of hazardous waste management, and to meet all other requirements placed upon hazardous waste generators by sections 260.350 to 260.430 and the standards, rules and regulations and orders adopted or issued pursuant to sections 260.350 to 260.430;

(11) [Allow Missouri treatment, storage, and disposal facilities receiving hazardous waste from out-of-state generators to submit registration and reporting information to the department in a format prescribed by the department describing the types and quantities of hazardous waste received from the out-of-state generator;

(12) Require each hazardous waste transporter operating in this state to obtain a license and to meet all applicable requirements of sections 260.350 to 260.430 **and section 226.008, RSMo**, and the standards, rules and regulations, orders and license terms and conditions adopted or issued pursuant to sections 260.350 to 260.430 **and section 226.008, RSMo**;

[(13)] (12) Require each hazardous waste facility owner and operator to obtain a permit for each such facility and to meet all applicable requirements of sections 260.350 to 260.430 and the standards, rules and regulations, orders and permit terms and conditions adopted or issued pursuant to sections 260.350 to 260.430;

[(14)] (13) Issue, continue in effect, revoke, modify or deny in accordance with the standards, rules and regulations, [hazardous waste transporter licenses] and hazardous waste facility permits;

[(15)] (14) Encourage voluntary cooperation by persons or affected groups to achieve the purposes of sections 260.350 to 260.430;

[(16)] (15) Enter such order or determination as may be necessary to effectuate the provisions of sections 260.350 to 260.430 and the standards, rules and regulations, and license and permit terms and conditions adopted or issued pursuant to sections 260.350 to 260.430;

[(17)] (16) Enter such order or cause to be instituted in a court of competent jurisdiction such legal proceedings as may be necessary in a situation of imminent hazard, as prescribed in section 260.420;

[(18)] (17) Settle or compromise as it may deem advantageous to the state, with the approval of the commission, any suit undertaken by the commission for recovery of any penalty or for compelling compliance with any provision of sections 260.350 to 260.430 or any standard, rule or regulation, order, or license or permit term or condition adopted or issued pursuant to sections 260.350 to 260.430;

[(19)] (18) Advise, consult and cooperate with other agencies of the state, the federal government, other states and interstate agencies and with affected groups, political subdivisions and industries in furtherance of the purposes of sections 260.350 to 260.430 and, upon request, consult with persons subject to sections 260.350 to 260.430 on the proper measures necessary to comply with the requirements of sections 260.350 to 260.430 and rules and regulations adopted pursuant to sections 260.350 to 260.430;

[(20)] (19) Encourage, coordinate, participate in or conduct studies, investigations, research and demonstrations relating to hazardous waste management as it may deem advisable and necessary for the discharge of its duties pursuant to sections 260.350 to 260.430;

[(21)] (20) Represent the state of Missouri in all matters pertaining to interstate hazardous waste management including the negotiation of interstate compacts or agreements;

[(22)] (21) Arrange for the establishment, staffing, operation and maintenance of collection stations, within appropriations or other funding available therefor, for householders, farmers and other exempted persons as provided in section 260.380;

[(23)] (22) Collect and disseminate information relating to hazardous waste management;

[(24)] (23) Conduct education and training programs on hazardous waste problems and management;

[(25)] (24) Encourage and facilitate public participation in the development, revision and implementation of the state hazardous waste program;

[(26)] (25) Encourage waste reduction, resource recovery, exchange and energy conservation in hazardous waste management;

[(27)] (26) Exercise all powers necessary to carry out the provisions of sections 260.350 to 260.430, assure that the state of Missouri complies with any federal hazardous waste management act and retains maximum control thereunder, and receives all desired federal grants, aid and other benefits;

[(28)] (27) Present to the public, at a public meeting, and to the governor and the members of the general assembly, an annual report on the status of the state hazardous waste program;

[(29)] (28) Develop comprehensive plans and programs to aid in the establishment of hazardous waste disposal sites as needed within the various geographical areas of the state within a reasonable period of time;

[(30)] (29) Control, abate or clean up any hazardous waste placed into or on the land in a manner which endangers or is reasonably likely to endanger the health of humans or the environment and, in aid thereof, may cause to be filed by the attorney general or a prosecuting attorney, a suit seeking mandatory or prohibitory injunctive relief or such other relief as may be appropriate. The department shall also take such action as is necessary to recover all costs associated with the cleanup of any hazardous waste from the person responsible for the waste. All money received shall be deposited in the hazardous waste fund created in section 260.391;

[(31)] (30) Oversee any corrective action work undertaken pursuant to sections 260.350 to 260.430 and rules promulgated pursuant to sections 260.350 to 260.430 to investigate, monitor, or clean up releases of hazardous waste or hazardous constituents to the environment at hazardous waste facilities. The department shall review the technical and regulatory aspects of corrective action plans, reports, documents, and associated field activities, and attest to their accuracy and adequacy. Owners or operators of hazardous waste facilities performing corrective actions shall pay to the department all reasonable costs, as determined by the commission, incurred by the department pursuant to this subdivision. All such funds remitted by owners or operators of hazardous waste facilities performing corrective actions shall be deposited in the hazardous waste fund created in section 260.391.

260.380. DUTIES OF HAZARDOUS WASTE GENERATORS — FEES TO BE COLLECTED, DISPOSITION — EXEMPTIONS. — 1. After six months from the effective date of the standards, rules and regulations adopted by the commission pursuant to section 260.370, hazardous waste generators **located in Missouri** shall:

(1) Promptly file and maintain with the department, on registration forms it provides for this purpose, information on hazardous waste generation and management as specified by rules and regulations[; except that generators located outside of Missouri shall not be required to register with the department if the Missouri treatment, storage, and disposal facilities provide this information in accordance with subdivision (11) of section 260.375. Missouri treatment, storage, or disposal facilities providing this information to the department for those out-of-state generators shall do so and shall pay the applicable initial registration fee within fifteen days of accepting any hazardous waste from those out-of-state generators]. Hazardous waste generators shall pay a one hundred dollar registration fee upon initial registration, and a one hundred dollar registration renewal fee annually thereafter to maintain an active registration[; except that in accordance with subdivision (11) of section 260.375, Missouri treatment, storage, or disposal

facilities receiving hazardous waste from out-of-state generators that elect to provide this service for the out-of-state generator shall pay this fee on behalf of those out-of-state generators. For annual renewal fee payments, Missouri treatment, storage, or disposal facilities that elect to provide this service to out-of-state generators shall notify the department annually of those generators at a time and in a manner prescribed by the department]. Such fees shall be deposited in the hazardous waste fund created in section 260.391;

(2) Containerize and label all hazardous wastes as specified by standards, rules and regulations;

(3) Segregate all hazardous wastes from all nonhazardous wastes and from noncompatible wastes, materials and other potential hazards as specified by standards, rules and regulations;

(4) Provide safe storage and handling, including spill protection, as specified by standards, rules and regulations, for all hazardous wastes from the time of their generation to the time of their removal from the site of generation;

(5) Unless provided otherwise in the rules and regulations, utilize only a hazardous waste transporter holding a license pursuant to sections 260.350 to 260.430 for the removal of all hazardous wastes from the premises where they were generated;

(6) Unless provided otherwise in the rules and regulations, provide a separate manifest to the transporter for each load of hazardous waste transported from the premises where it was generated. The generator shall specify the destination of such load on the manifest. The manner in which the manifest shall be completed, signed and filed with the department shall be in accordance with rules and regulations;

(7) Utilize for treatment, resource recovery, disposal or storage of all hazardous wastes, only a hazardous waste facility authorized to operate pursuant to sections 260.350 to 260.430 or the federal Resource Conservation and Recovery Act, or a state hazardous waste management program authorized pursuant to the federal Resource Conservation and Recovery Act, or any facility exempted from the permit required pursuant to section 260.395;

(8) Collect and maintain such records, perform such monitoring or analyses, and submit such reports on any hazardous waste generated, its transportation and final disposition, as specified in sections 260.350 to 260.430 and rules and regulations adopted pursuant to sections 260.350 to 260.430; [except that generators located outside of Missouri shall not be required to complete this reporting if the information is provided by the Missouri treatment, storage, and disposal facilities in accordance with subdivision (11) of section 260.375;]

(9) Make available to the department upon request samples of waste and all records relating to hazardous waste generation and management for inspection and copying and allow the department to make unhampered inspections at any reasonable time of hazardous waste generation and management facilities located on the generator's property and hazardous waste generation and management practices carried out on the generator's property;

(10) Pay annually, on or before January first of each year, effective January 1, 1982, a fee to the state of Missouri to be placed in the hazardous waste fund [to be used solely for the administrative costs of the program]. The fee shall [not exceed one dollar] **be five dollars per ton or portion thereof** of hazardous waste registered with the department as specified in subdivision (1) of this subsection for the twelve-month period ending June thirtieth of the previous year. [The amount of the fee shall be established annually by the commission by rule or regulation.] However, the fee shall not exceed [ten] **fifty-two** thousand dollars **per generator site per year nor be less than one hundred fifty dollars** per generator **site** per year [and no fee shall be imposed upon any generator who registers less than ten tons of hazardous waste annually with the department];

(a) All moneys payable pursuant to the provisions of this subdivision shall be promptly transmitted to the department of revenue, which shall deposit the same in the state treasury to the credit of the hazardous waste fund created in section 260.391;

(b) The hazardous waste management commission shall establish and submit to the department of revenue procedures relating to the collection of the fees authorized by this

subdivision. Such procedures shall include, but not be limited to, necessary records identifying the quantities of hazardous waste registered, the form and submission of reports to accompany the payment of fees, the time and manner of payment of fees, which shall not be more often than quarterly.

2. Missouri treatment, storage, or disposal facilities shall pay annually, on or before January first of each year, a fee to the department equal to two dollars per ton or portion thereof for all hazardous waste received from outside the state. This fee shall be based on the hazardous waste received for the twelve-month period ending June thirtieth of the previous year.

3. Exempted from the requirements of this section are individual householders and farmers who generate only small quantities of hazardous waste and any person the commission determines generates only small quantities of hazardous waste on an infrequent basis, except that:

(1) Householders, farmers and exempted persons shall manage all hazardous wastes they may generate in a manner so as not to adversely affect the health of humans, or pose a threat to the environment, or create a public nuisance; and

(2) The department may determine that a specific quantity of a specific hazardous waste requires special management. Upon such determination and after public notice by press release or advertisement thereof, including instructions for handling and delivery, generators exempted pursuant to this subsection shall deliver, but without a manifest or the requirement to use a licensed hazardous waste transporter, such waste to:

(a) Any storage, treatment or disposal site authorized to operate pursuant to sections 260.350 to 260.430 or the federal Resource Conservation and Recovery Act, or a state hazardous waste management program authorized pursuant to the federal Resource Conservation and Recovery Act which the department designates for this purpose; or

(b) A collection station or vehicle which the department may arrange for and designate for this purpose.

4. Failure to pay the fee, or any portion thereof, prescribed in this section by the due date shall result in the imposition of a penalty equal to fifteen percent of the original fee. The fee prescribed in this section shall expire December 31, 2011, except that the department shall levy and collect this fee for any hazardous waste generated prior to such date and reported to the department.

260.391. HAZARDOUS WASTE FUND CREATED — PAYMENTS — NOT TO LAPSE — SUBACCOUNT CREATED, PURPOSE — TRANSFER OF MONEYS — RESTRICTIONS ON USE OF MONEYS — GENERAL REVENUE APPROPRIATION TO BE REQUESTED ANNUALLY. — 1. There is hereby created in the state treasury a fund to be known as the "Hazardous Waste Fund". All funds received from hazardous waste permit and license fees, generator fees **or taxes, penalties, or interest assessed on those fees or taxes**, taxes collected by contract hazardous waste landfill operators, general revenue, federal funds, gifts, bequests, donations, or any other moneys so designated shall be paid to the director of revenue and deposited in the state treasury to the credit of the hazardous waste fund. The hazardous waste fund, subject to appropriation by the general assembly, shall be used by the department as provided by appropriations and consistent with rules and regulations established by the hazardous waste management commission for the purpose of carrying out the provisions of sections 260.350 to 260.430 **and sections 319.100 to 319.127, and 319.137, and 319.139, RSMo**, for the management of hazardous waste, responses to hazardous substance releases as provided in sections 260.500 to 260.550, corrective actions at regulated facilities and illegal hazardous waste sites, **prevention of leaks from underground storage tanks and response to petroleum releases from underground and aboveground storage tanks and other related activities required to carry out provisions of sections 260.350 to 260.575 and sections 319.100 to 319.127, RSMo**, and for payments to other state agencies for such services consistent with sections 260.350 to [260.430] **260.575 and sections 319.100 to 319.139, RSMo**, upon proper warrant issued by the commissioner of

administration, and for any other expenditures which are not covered pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, including but not limited to the following purposes:

- (1) Administrative services as appropriate and necessary for the identification, assessment and cleanup of abandoned or uncontrolled sites pursuant to sections 260.435 to 260.550;
- (2) Payments to other state agencies for such services consistent with sections 260.435 to 260.550, upon proper warrant issued by the commissioner of administration, including, but not limited to, the department of health and senior services for the purpose of conducting health studies of persons exposed to waste from an uncontrolled or abandoned hazardous waste site or exposed to the release of any hazardous substance as defined in section 260.500;
- (3) Acquisition of property as provided in section 260.420;
- (4) The study of the development of a hazardous waste facility in Missouri as authorized in section 260.037;
- (5) Financing the nonfederal share of the cost of cleanup and site remediation activities as well as postclosure operation and maintenance costs, pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980; and
- (6) Reimbursement of owners or operators who accept waste pursuant to departmental orders pursuant to subdivision (2) of subsection 1 of section 260.420.

2. The unexpended balance in the hazardous waste fund at the end of each fiscal year shall not be transferred to the general revenue fund of the state treasurer, except as directed by the general assembly by appropriation, and shall be invested to generate income to the fund. The provisions of section 33.080, RSMo, relating to the transfer of funds to the general revenue fund of the state by the state treasurer shall not apply to the hazardous waste fund.

3. There is hereby created within the hazardous waste fund a subaccount known as the "Hazardous Waste Facility Inspection Subaccount". All funds received from hazardous waste facility inspection fees shall be paid to the director of revenue and deposited in the state treasury to the credit of the hazardous waste facility inspection subaccount. Moneys from such subaccount shall be used by the department for conducting inspections at facilities that are permitted or are required to be permitted as hazardous waste facilities by the department.

4. The fund balance remaining in the hazardous waste remedial fund shall be transferred to the hazardous waste fund created in this section.

5. No moneys shall be available from the fund for abandoned site cleanup unless the director has made all reasonable efforts to secure voluntary agreement to pay the costs of necessary remedial actions from owners or operators of abandoned or uncontrolled hazardous waste sites or other responsible persons.

6. The director shall make all reasonable efforts to recover the full amount of any funds expended from the fund for cleanup through litigation or cooperative agreements with responsible persons. All moneys recovered or reimbursed pursuant to this section through voluntary agreements or court orders shall be deposited to the hazardous waste fund created herein.

7. In addition to revenue from all licenses, taxes, fees, penalties, and interest, specified in subsection 1 of this section, the department shall request an annual appropriation of general revenue equal to any state match obligation to the U.S. Environmental Protection Agency for cleanup performed pursuant to the authority of the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

260.420. IMMINENT HAZARD, ACTION TO BE TAKEN. — 1. From September 28, 1977, and notwithstanding any other provision of sections 260.350 to 260.430 or any other law to the contrary, upon receipt of information that any activity subject to sections 260.350 to 260.430 may present an imminent hazard, by placing or allowing escape of any hazardous waste into the

environment or exposure of people to such waste which may be cause of death, disabling personal injury, serious acute or chronic disease, or serious environmental harm, the department director or the commission may take action necessary to protect the health of humans and the environment from such hazard. The action the department director, commission or the designee of the commission may take includes, but is not limited to:

(1) Issuing an order directing the hazardous waste generator, transporter, facility operator or any other person who is the custodian or has control of the waste, which constitutes such hazard, to eliminate such hazard. Such action may include, with respect to a site or facility, permanent or temporary cessation of operation;

(2) Issuing an order directing a permitted commercial hazardous waste facility to treat, store or dispose of any waste cleaned up in accordance with this section;

(3) Acquiring by purchase, donation, agreement or condemnation any lands, or rights in lands, sites, objects, or facilities necessary to protect the health of humans and the environment in accordance with sections 260.350 to 260.550 only after it is proven cost effective and all other options have been exhausted by the commission. In the event any property is condemned, then the procedures and assessment of damages shall be in accordance with chapter 523, RSMo;

(4) Selling or leasing any property that has been cleaned up in accordance with sections 260.350 to 260.550 so as to no longer constitute a threat to the health of people or to the environment. The proceeds of such sales or leases shall be deposited in the hazardous waste [remedial] fund created in section [260.480] **260.391**; and

(5) Causing to be filed by the attorney general or a prosecuting attorney in the name of the people of the state of Missouri, suit for a temporary restraining order, temporary injunction or permanent injunction which action shall be given precedence over all other matters pending in the circuit courts.

2. In any civil action brought pursuant to this section in which a temporary restraining order or temporary injunction is sought, there must be allegations of the types of injury or harm specified in these imminent hazard provisions; it shall be necessary to allege and prove at the proceeding that irreparable damage will occur and that the remedy at law is inadequate, and the temporary restraining order or temporary injunction shall not issue without such allegations and without such proof.

3. This section shall not apply to any alleged imminent hazard that is covered by the federal Occupational Safety and Health Act, so long as the hazardous waste is contained on the site so covered. This subsection shall not prevent the department from taking action necessary to prevent escape of the hazardous waste from such site.

260.475. FEES TO BE PAID BY HAZARDOUS WASTE GENERATORS — EXCEPTIONS — DEPOSIT OF MONEYS — VIOLATIONS, PENALTY — DEPOSIT — FEE REQUIREMENT, EXPIRATION. — 1. Every hazardous waste generator **located in Missouri** shall pay, in addition to the fees imposed in section 260.380, a fee of twenty-five dollars per ton annually on all hazardous waste which is discharged, deposited, dumped or placed into or on the soil as a final action, and two dollars per ton on all other hazardous waste transported off site. No fee shall be imposed upon any hazardous waste generator who registers less than ten tons of hazardous waste annually pursuant to section 260.380, or upon:

(1) Hazardous waste which must be disposed of as provided by a remedial plan for an abandoned or uncontrolled hazardous waste site;

(2) Fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;

(3) Solid waste from the extraction, beneficiation and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore and smelter slag waste from the processing of materials into reclaimed metals;

(4) Cement kiln dust waste;

(5) Waste oil; or

- (6) Hazardous waste that is:
 - (a) Reclaimed or reused for energy and materials;
 - (b) Transformed into new products which are not wastes;
 - (c) Destroyed or treated to render the hazardous waste nonhazardous; or
 - (d) Waste discharged to a publicly owned treatment works.

2. The fees imposed in this section shall be reported and paid to the department on an annual basis not later than the first of January. The payment shall be accompanied by a return in such form as the department may prescribe.

3. [Forty percent of all moneys collected or received by the department pursuant to this section shall be transmitted to the department of revenue for deposit in the state treasury to the credit of the hazardous waste remedial fund created in section 260.480. Sixty percent of] All moneys collected or received by the department pursuant to this section shall be transmitted to the department of revenue for deposit in the state treasury to the credit of the hazardous waste fund created pursuant to section 260.391. Following each annual reporting date, the state treasurer shall certify the amount deposited in the fund to the commission.

4. If any generator or transporter fails or refuses to pay the fees imposed by this section, or fails or refuses to furnish any information reasonably requested by the department relating to such fees, there shall be imposed, in addition to the fee determined to be owed, a penalty of fifteen percent of the fee[, forty percent of which shall be deposited in the hazardous waste remedial fund, and sixty percent of which] shall be deposited in the hazardous waste fund.

5. If the fees or any portion of the fees imposed by this section are not paid by the date prescribed for such payment, there shall be imposed interest upon the unpaid amount at the rate of ten percent per annum from the date prescribed for its payment until payment is actually made, [forty percent of which shall be deposited in the hazardous waste remedial fund, sixty percent] **all** of which shall be deposited in the hazardous waste fund.

6. The state treasurer is authorized to deposit all of the moneys in the hazardous waste [remedial] fund in any of the qualified depositories of the state. All such deposits shall be secured in such a manner and shall be made upon such terms and conditions as are now or may hereafter be provided for by law relative to state deposits. Interest received on such deposits shall be credited to the hazardous waste [remedial] fund.

7. This fee shall expire [June 30, 2006] **December 31, 2011**, except that the department shall levy and collect this fee for any hazardous waste generated prior to such date and reported to the department.

260.480. TRANSFER OF MONEYS IN THE HAZARDOUS WASTE REMEDIAL FUND TO HAZARDOUS WASTE FUND. — [1. There is hereby created within the state treasury a fund to be known as the "Hazardous Waste Remedial Fund". All moneys received from fees, penalties, general revenue, federal funds, gifts, bequests, donations, or any other moneys so designated shall be deposited in the state treasury to the credit of such fund, and shall be invested to generate income to the fund. Notwithstanding the provisions of section 33.080, RSMo, the unexpended balance in the hazardous waste remedial fund at the end of each fiscal year shall not be transferred to the general revenue fund except as directed by the general assembly by appropriation to replace funds appropriated from the general revenue fund for the purposes for which expenditures from the hazardous waste remedial fund are allowed.

2. The department may use the fund, upon appropriation, for the nonfederal share and any other expenditures which are not covered pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, for the following purposes:

- (1) Administrative services as appropriate and necessary for the identification, assessment and cleanup of abandoned or uncontrolled sites pursuant to sections 260.435 to 260.550;
- (2) Payments to other state agencies for such services consistent with sections 260.435 to 260.550, upon proper warrant issued by the commissioner of administration, including, but not limited to, the department of health and senior services for the purpose of conducting health

studies of persons exposed to waste from an uncontrolled or abandoned hazardous waste site or exposed to the release of any hazardous substance as defined in section 260.500;

(3) Acquisition of property as provided in section 260.420;

(4) The study of the development of a hazardous waste facility in Missouri as authorized in section 260.037;

(5) Financing the nonfederal share of the cost of cleanup and site remediation activities as well as postclosure operation and maintenance costs, pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980; and

(6) Reimbursement of owners or operators who accept waste pursuant to departmental orders pursuant to subdivision (2) of subsection 1 of section 260.420.

3. Neither the state of Missouri nor its officers, employees or agents shall be liable for any injury caused by a dangerous condition at any abandoned or uncontrolled site unless such condition is the result of an act or omission constituting gross negligence on the part of the state, its officers, employees or agents.

4. The department may contract with any person to perform the acts authorized in this section.

5. No moneys shall be available from the fund for abandoned site cleanup unless the director has made all reasonable efforts to secure voluntary agreement to pay the costs of necessary remedial actions from owners or operators of abandoned or uncontrolled hazardous waste sites or other responsible persons.

6. The director shall make all reasonable efforts to recover the full amount of any funds expended from the fund through litigation or cooperative agreements with responsible persons. All moneys recovered or reimbursed pursuant to this section through voluntary agreements or court orders shall be deposited with the state treasurer and credited to the account of the hazardous waste remedial fund.] **The fund balance remaining in the hazardous waste remedial fund is hereby transferred to the hazardous waste fund created in section 260.491, and the moneys may be appropriated for any purpose previously authorized by this section as specified in subsection 1 of section 260.391.**

260.481. DISINCORPORATION CERTAIN CITY, WHEN, PROCEDURE — TRUSTEE APPOINTMENT, DUTIES — EXPENDITURES (TIMES BEACH). — 1. Any fourth class city in any first class county with a charter form of government adjoining a city not within a county, which has contracted with the state of Missouri or the federal government, or both, for the acquisition of all real property by any federal or state agency because of the release of a hazardous substance that endangers the public health and welfare of such city and has resulted in a public calamity, and where a city ordinance effecting disincorporation has been submitted to the governor by the mayor of the city requesting disincorporation, shall be disincorporated upon the issuance of a governor's executive order approving such disincorporation. Notice of such disincorporation shall be submitted to the secretary of state and the county commission of the county within which such city lies.

2. Upon the issuance of the executive order as required in subsection 1 of this section, the governor shall appoint a person to act as trustee for the city so disincorporated and shall appoint legal counsel to assist such trustee as necessary. Before entering upon the discharge of his duties, the trustee shall take and subscribe on oath that he will faithfully discharge the duties of his office. The trustee shall be empowered to condemn property as required, to take title to property as it is acquired, to take over all records of the city and to exercise other duties as specified in section 79.520, RSMo, except that the trustee shall not be empowered to institute suits in behalf of the city without the express authorization of the governor.

3. When the trustee shall have closed the affairs of the city, and shall have paid all debts due by the city, he shall, at the request of the governor, pay over to the state treasurer all money remaining in his hands and deliver to the agency designated by the governor all books, papers, records and deeds to acquired real property belonging to the disincorporated city.

4. Any expenditures incurred under this section will be paid first from excess city funds and then from the Missouri hazardous waste [remedial] fund under section [260.480] **260.391**.

260.546. EMERGENCY ASSISTANCE — COST, HOW PAID — COST STATEMENT, COSTS NOT TO BE INCLUDED — PAYMENT, WHEN — AMOUNT, APPEAL PROCEDURE — STATE FUND TO PAY COST BUT REPAYMENT REQUIRED. — 1. In the event that a hazardous substance release occurs for which a political subdivision or volunteer fire protection association as defined in section 320.300, RSMo, provides emergency services, the person having control over a hazardous substance shall be liable for such reasonable cleanup costs incurred by the political subdivision or volunteer fire protection association. Such liability includes the cost of materials, supplies and contractual services actually used to secure an emergency situation. The liability may also include the cost for contractual services which are not routinely provided by the department or political subdivision or volunteer fire protection association. Such liability shall not include the cost of normal services which otherwise would have been provided. Such liability shall not include budgeted administrative costs or the costs for duplicate services if multiple response teams are requested by the department or political subdivision unless, in the opinion of the department or political subdivision, duplication of service was required to protect the public health and environment. Such liability shall be established upon receipt by the person having control of the spilled hazardous substance of an itemized statement of costs provided by the political subdivision.

2. Full payment shall be made within thirty days of receipt of the cost statement unless the person having control over the hazardous substance contests the amount of the costs pursuant to this section. If the person having control over the hazardous substance elects to contest the payment of such costs, he shall file an appeal with the director within thirty days of receipt of the cost statement.

3. Upon receipt of such an appeal, the director shall notify the parties involved of the appeal and collect such evidence from the parties involved as he deems necessary to make a determination of reasonable cleanup costs. Within thirty days of notification of the appeal, the director shall notify the parties of his decision. The director shall direct the person having control over a hazardous substance to pay those costs he finds to be reasonable and appropriate. The determination of the director shall become final thirty days after receipt of the notice by the parties involved unless prior to such date one of the involved parties files a petition for judicial review pursuant to chapter 536, RSMo.

4. The political subdivision or volunteer fire protection association may apply to the department for reimbursement from the hazardous waste fund created in section 260.391, for the costs for which the person having control over a hazardous substance shall be liable if the political subdivision or volunteer fire protection association is able to demonstrate a need for immediate relief for such costs and believes it will not receive prompt payment from the person having control over a hazardous substance. When the liability owed to the political subdivision or volunteer fire protection association by the person having control over a hazardous substance is paid, the political subdivision or volunteer fire protection association shall reimburse the department for any payment it has received from the hazardous waste [remedial] fund. Such reimbursement to a political subdivision or volunteer fire protection association by the department shall be paid back to the department by the political subdivision or volunteer fire protection association within that time limit imposed by the department notwithstanding failure of the person having control over a hazardous substance to reimburse the political subdivision or volunteer fire protection association within that time.

260.569. REIMBURSEMENT FOR COSTS TO DEPARTMENT, COMPUTATION — DEPOSIT OF FUNDS — TERMINATION FROM PARTICIPATION BY DEPARTMENT, WHEN — REFUND OF BALANCE, WHEN. — 1. The department shall be reimbursed for its site-specific costs incurred in administration and oversight of the voluntary cleanup. The department shall bill applicants

who conduct the voluntary cleanup at rates established by rule by the hazardous waste management commission. Such rates shall not be more than the lesser of the costs to the department or one hundred dollars per hour. The department shall furnish to the applicant a complete, full and detailed accounting of the costs incurred by the department for which the applicant is charged. The applicant may appeal any charge to the commission within thirty days of receipt of the bill. Appeal to the commission shall stay the required payment date until thirty days following the rendering of the decision of the commission. The department of natural resources shall initially draw down its charges against the application fee. Timely remittance of reimbursements, as provided in subsection 3 of this section, to the department is a condition of continuing participation. If, after the conclusion of the remedial action, a balance remains, the department shall refund that amount within sixty days. If the department fails to render any decision or take any action within the time period specified in sections 260.565 to 260.575, then the applicant shall not be required to reimburse the department for costs incurred for such review or action.

2. All funds remitted by the applicant conducting the voluntary cleanup shall be deposited into the hazardous waste [remedial] fund created in section [260.480] **260.391** and shall be used by the department upon appropriation for its administrative and oversight costs.

3. The department may terminate an applicant from further participation for cause. Grounds for termination include, but are not limited to:

(1) Discovery of conditions such as to warrant action pursuant to sections 260.350 to 260.480, as amended, the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended, or the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., as amended;

(2) Failure to submit cost reimbursements within sixty days following notice from the department that such reimbursements are due;

(3) Failure to submit required information within ninety days following notice from the department that such information is required;

(4) Failure to submit a remedial action plan within ninety days following notice from the department that such plan is due;

(5) Failure to properly implement the remedial action plan; and

(6) Continuing noncompliance with any of the provisions of sections 260.565 to 260.575 or the rules and regulations promulgated pursuant to sections 260.565 to 260.575.

4. Upon termination pursuant to subdivision (1) of subsection 3 of this section or subsection 11 of section 260.567, if there is a balance in the applicant's application fee after deducting costs incurred by the department of natural resources, such balance shall be refunded within sixty days. Upon termination pursuant to subdivisions (2) to (6) of subsection 3 of this section, if a balance remains in the applicant's application fee, such balance shall be forfeited and deposited in the hazardous waste [remedial] fund.

260.900. DEFINITIONS. — As used in sections 260.900 to 260.960, unless the context clearly indicates otherwise, the following terms mean:

(1) "Abandoned dry-cleaning facility", any real property premises or individual leasehold space in which a dry-cleaning facility formerly operated;

(2) "Active dry-cleaning facility", any real property premises or individual leasehold space in which a dry-cleaning facility currently operates;

(3) "Chlorinated dry-cleaning solvent", any dry-cleaning solvent which contains a compound which has a molecular structure containing the element chlorine;

(4) "Commission", the hazardous waste management commission created in section 260.365;

(5) "Corrective action", those activities described in subsection 1 of section 260.925;

(6) "Corrective action plan", a plan approved by the director to perform corrective action at a dry-cleaning facility;

- (7) "Department", the Missouri department of natural resources;
- (8) "Director", the director of the Missouri department of natural resources;
- (9) "Dry-cleaning facility", a commercial establishment that operates, or has operated in the past in whole or in part for the purpose of cleaning garments or other fabrics on site utilizing a process that involves any use of dry-cleaning solvents. Dry-cleaning facility includes all contiguous land, structures and other appurtenances and improvements on the land used in connection with a dry-cleaning facility but does not include prisons, governmental entities, hotels, motels or industrial laundries. Dry-cleaning facility does include coin-operated dry-cleaning facilities;
- (10) "Dry-cleaning solvent", any and all nonaqueous solvents used or to be used in the cleaning of garments and other fabrics at a dry-cleaning facility and includes but is not limited to perchloroethylene, also known as tetrachloroethylene, [and petroleum-based solvents] **chlorinated dry-cleaning**, and the products into which such solvents degrade;
- (11) "Dry-cleaning unit", a machine or device which utilizes dry-cleaning solvents to clean garments and other fabrics and includes any associated piping and ancillary equipment and any containment system;
- (12) "Environmental response surcharge", either the active dry-cleaning facility registration surcharge or the dry-cleaning solvent surcharge;
- (13) "Fund", the dry-cleaning environmental response trust fund created in section 260.920;
- (14) "Immediate response to a release", containment and control of a known release in excess of a reportable quantity and notification to the department of any known release in excess of a reportable quantity;
- (15) "Operator", any person who is or has been responsible for the operation of dry-cleaning operations at a dry-cleaning facility;
- (16) "Owner", any person who owns the real property where a dry-cleaning facility is or has operated;
- (17) "Person", an individual, trust, firm, joint venture, consortium, joint-stock company, corporation, partnership, association or limited liability company. Person does not include any governmental organization;
- (18) "Release", any spill, leak, emission, discharge, escape, leak or disposal of dry-cleaning solvent from a dry-cleaning facility into the soils or waters of the state;
- (19) "Reportable quantity", a known release of a dry-cleaning solvent deemed reportable by applicable federal or state law or regulation.

260.905. HAZARDOUS WASTE MANAGEMENT COMMISSION TO PROMULGATE RULES FOR DRY-CLEANING FACILITY ENVIRONMENTAL REMEDIATION. — 1. The commission shall promulgate and adopt such initial rules and regulations, effective no later than July 1, [2002] **2007**, as shall be necessary to carry out the purposes and provisions of sections 260.900 to 260.960. Prior to the promulgation of such rules, the commission shall meet with representatives of the dry-cleaning industry and other interested parties. The commission, thereafter, shall promulgate and adopt additional rules and regulations or change existing rules and regulations when necessary to carry out the purposes and provisions of sections 260.900 to 260.960.

2. Any rule or regulation adopted pursuant to sections 260.900 to 260.960 shall be reasonably necessary to protect human health, to preserve, protect and maintain the water and other natural resources of this state and to provide for prompt corrective action of releases from dry-cleaning facilities. Consistent with these purposes, the commission shall adopt rules and regulations, effective no later than July 1, [2002] **2007**:

- (1) Establishing requirements that owners who close dry-cleaning facilities remove dry-cleaning solvents and wastes from such facilities in order to prevent any future releases;
- (2) Establishing criteria to prioritize the expenditure of funds from the dry-cleaning environmental response trust fund. The criteria shall include consideration of:

- (a) The benefit to be derived from corrective action compared to the cost of conducting such corrective action;
 - (b) The degree to which human health and the environment are actually affected by exposure to contamination;
 - (c) The present and future use of an affected aquifer or surface water;
 - (d) The effect that interim or immediate remedial measures will have on future costs; and
 - (e) Such additional factors as the commission considers relevant;
- (3) Establishing criteria under which a determination may be made by the department of the level at which corrective action shall be deemed completed. Criteria for determining completion of corrective action shall be based on the factors set forth in subdivision (2) of this subsection and:
- (a) Individual site characteristics including natural remediation processes;
 - (b) Applicable state water quality standards;
 - (c) Whether deviation from state water quality standards or from established criteria is appropriate, based on the degree to which the desired remediation level is achievable and may be reasonably and cost effectively implemented, subject to the limitation that where a state water quality standard is applicable, a deviation may not result in the application of standards more stringent than that standard; and
 - (d) Such additional factors as the commission considers relevant.

260.925. EXPENDITURES FROM FUND, HOW USED — FUND NOT TO BE USED, WHEN — LIABILITY DETERMINATIONS — ENTRY ONTO PREMISES WHERE CORRECTIVE ACTION REQUIRED — FUND PAYMENT LIMIT — OWNER LIABILITY WHEN FUND PAYMENT OBTAINED.

— 1. On and after July 1, 2002, moneys in the fund shall be utilized to address contamination resulting from releases of dry-cleaning solvents as provided in sections 260.900 to 260.960. Whenever a release poses a threat to human health or the environment, the department, consistent with rules and regulations adopted by the commission pursuant to subdivisions (2) and (3) of subsection 2 of section 260.905, shall expend moneys available in the fund to provide for:

- (1) Investigation and assessment of a release from a dry-cleaning facility, including costs of investigations and assessments of contamination which may have moved off of the dry-cleaning facility;
- (2) Necessary or appropriate emergency action, including but not limited to treatment, restoration or replacement of drinking water supplies, to assure that the human health or safety is not threatened by a release or potential release;
- (3) Remediation of releases from dry-cleaning facilities, including contamination which may have moved off of the dry-cleaning facility, which remediation shall consist of the preparation of a corrective action plan and the cleanup of affected soil, groundwater and surface waters, using an alternative that is cost-effective, technologically feasible and reliable, provides adequate protection of human health and environment and to the extent practicable minimizes environmental damage;
- (4) Operation and maintenance of corrective action;
- (5) Monitoring of releases from dry-cleaning facilities including contamination which may have moved off of the dry-cleaning facility;
- (6) Payment of reasonable costs incurred by the director in providing field and laboratory services;
- (7) Reasonable costs of restoring property as nearly as practicable to the condition that existed prior to activities associated with the investigation of a release or cleanup or remediation activities;
- (8) Removal and proper disposal of wastes generated by a release of a dry-cleaning solvent; and
- (9) Payment of costs of corrective action conducted by the department or by entities other than the department but approved by the department, whether or not such corrective action is set

out in a corrective action plan; except that, there shall be no reimbursement for corrective action costs incurred before August 28, 2000.

2. Nothing in subsection 1 of this section shall be construed to authorize the department to obligate moneys in the fund for payment of costs that are not integral to corrective action for a release of dry-cleaning solvents from a dry-cleaning facility. Moneys from the fund shall not be used:

(1) For corrective action at sites that are contaminated by solvents normally used in dry-cleaning operations where the contamination did not result from the operation of a dry-cleaning facility;

(2) For corrective action at sites, other than dry-cleaning facilities, that are contaminated by dry-cleaning solvents which were released while being transported to or from a dry-cleaning facility;

(3) To pay any fine or penalty brought against a dry-cleaning facility operator under state or federal law;

(4) To pay any costs related to corrective action at a dry-cleaning facility that has been included by the United States Environmental Protection Agency on the national priorities list;

(5) For corrective action at sites with active dry-cleaning facilities where the owner or operator is not in compliance with sections 260.900 to 260.960, rules and regulations adopted pursuant to sections 260.900 to 260.960, orders of the director pursuant to sections 260.900 to 260.960, or any other applicable federal or state environmental statutes, rules or regulations; or

(6) For corrective action at sites with abandoned dry-cleaning facilities that have been taken out of operation prior to July 1, [2004] **2009**, and not documented by or reported to the department by July 1, [2004] **2009**. Any person reporting such a site to the department shall include any available evidence that the site once contained a dry-cleaning facility.

3. Nothing in sections 260.900 to 260.960 shall be construed to restrict the department from temporarily postponing completion of corrective action for which moneys from the fund are being expended whenever such postponement is deemed necessary in order to protect public health and the environment.

4. At any multisource site, the department shall utilize the moneys in the fund to pay for the proportionate share of the liability for corrective action costs which is attributable to a release from one or more dry-cleaning facilities and for that proportionate share of the liability only.

5. At any multisource site, the director is authorized to make a determination of the relative liability of the fund for costs of corrective action, expressed as a percentage of the total cost of corrective action at a site, whether known or unknown. The director shall issue an order establishing such percentage of liability. Such order shall be binding and shall control the obligation of the fund until or unless amended by the director. In the event of an appeal from such order, such percentage of liability shall be controlling for costs incurred during the pendency of the appeal.

6. Any authorized officer, employee or agent of the department, or any person under order or contract with the department, may enter onto any property or premises, at reasonable times and with reasonable advance notice to the operator, to take corrective action where the director determines that such action is necessary to protect the public health or environment. If consent is not granted by the operator regarding any request made by any officer, employee or agent of the department, or any person under order or contract with the department, under the provisions of this section, the director may issue an order directing compliance with the request. The order may be issued after such notice and opportunity for consultation as is reasonably appropriate under the circumstances.

7. Notwithstanding any other provision of sections 260.900 to 260.960, in the discretion of the director, an operator may be responsible for up to one hundred percent of the costs of corrective action attributable to such operator if the director finds, after notice and an opportunity for a hearing in accordance with chapter 536, RSMo, that:

(1) Requiring the operator to bear such responsibility will not prejudice another owner, operator or person who is eligible, pursuant to the provisions of sections 260.900 to 260.960, to have corrective action costs paid by the fund; and

(2) The operator:

(a) Caused a release in excess of a reportable quantity by willful or wanton actions and such release was caused by operating practices in violation of existing laws and regulations at the time of the release; or

(b) Is in arrears for moneys owed pursuant to sections 260.900 to 260.960, after notice and an opportunity to correct the arrearage; or

(c) Materially obstructs the efforts of the department to carry out its obligations pursuant to sections 260.900 to 260.960; except that, the exercise of legal rights shall not constitute a substantial obstruction; or

(d) Caused or allowed a release in excess of a reportable quantity because of a willful material violation of sections 260.900 to 260.960 or the rules and regulations adopted by the commission pursuant to sections 260.900 to 260.960.

8. For purposes of subsection 7 of this section, unless a transfer is made to take advantage of the provisions of subsection 7 of this section, purchasers of stock or other indicia of ownership and other successors in interest shall not be considered to be the same owner or operator as the seller or transferor of such stock or indicia of ownership even though there may be no change in the legal identity of the owner or operator. To the extent that an owner or operator is responsible for corrective action costs pursuant to subsection 7 of this section, such owner or operator shall not be entitled to the exemption provided in subsection 5 of section 260.930.

9. The fund shall not be liable for the payment of costs in excess of one million dollars at any one contaminated dry-cleaning site. Additionally, the fund shall not be liable for the payment of costs for any one site in excess of twenty-five percent of the total moneys in the fund during any fiscal year. For purposes of this subsection, "contaminated dry-cleaning site" means the areal extent of soil or ground water contaminated with dry-cleaning solvents.

10. The owner or operator of an active dry-cleaning facility shall be liable for the first twenty-five thousand dollars of corrective action costs incurred because of a release from an active dry-cleaning facility. The owner of an abandoned dry-cleaning facility shall be liable for the first twenty-five thousand dollars of corrective action costs incurred because of a release from an abandoned dry-cleaning facility. Nothing in this subsection shall be construed to prohibit the department from taking corrective action because the department cannot obtain the deductible.

260.935. DRY-CLEANING FACILITY REGISTRATION SURCHARGE — DEPOSITED IN FUND — PENALTIES AND INTEREST FOR NONPAYMENT. — 1. Every active dry-cleaning facility shall pay, in addition to any other environmental response surcharges, an annual dry-cleaning facility registration surcharge as follows:

(1) Five hundred dollars for facilities which use no more than one hundred forty gallons of chlorinated solvents [and no more than one thousand four hundred gallons of petroleum, nonchlorinated solvents per year];

(2) One thousand dollars for facilities which use more than one hundred forty gallons of chlorinated solvents [or more than one thousand four hundred gallons of petroleum, nonchlorinated solvents per year] and less than three hundred sixty gallons of chlorinated solvents [and less than three thousand six hundred gallons of petroleum, nonchlorinated solvents] per year; and

(3) Fifteen hundred dollars for facilities which use at least three hundred sixty gallons of chlorinated solvents [or at least three thousand six hundred gallons of petroleum, nonchlorinated solvents] per year.

2. The active dry-cleaning facility registration surcharge imposed by this section shall be reported and paid to the department on an annual basis. The commission shall prescribe by administrative rule the procedure for the report and payment required by this section.

3. The department shall provide each person who pays a dry-cleaning facility registration surcharge pursuant to this section with a receipt. The receipt or the copy of the receipt shall be produced for inspection at the request of any authorized representative of the department.

4. All moneys collected or received by the department pursuant to this section shall be transmitted to the department of revenue for deposit in the state treasury to the credit of the dry-cleaning environmental response trust fund created in section 260.920. Following each annual reporting date, the state treasurer shall certify the amount deposited in the fund to the department.

5. If any person does not pay the active dry-cleaning facility registration surcharge or any portion of the active dry-cleaning facility registration surcharge imposed by this section by the date prescribed for such payment, the department shall impose and such person shall pay, in addition to the active dry-cleaning facility registration surcharge owed by such person, a penalty of fifteen percent of the active dry-cleaning facility registration surcharge. Such penalty shall be deposited in the dry-cleaning environmental response trust fund.

6. If any person does not pay the active dry-cleaning facility registration surcharge or any portion of the active dry-cleaning facility registration surcharge imposed by this section by the date prescribed for such payment, the department shall also impose interest upon the unpaid amount at the rate of ten percent per annum from the date prescribed for the payment of such surcharge and penalties until payment is actually made. Such interest shall be deposited in the dry-cleaning environmental response trust fund.

260.940. DRY-CLEANING SOLVENT SURCHARGE, AMOUNT IMPOSED DUE TO SOLVENT FACTOR — DEPOSITED IN FUND — PENALTIES AND INTEREST FOR NONPAYMENT — OPERATORS NOT TO PURCHASE SOLVENT FROM PERSONS NOT PAYING SURCHARGE. — 1. Every seller or provider of dry-cleaning solvent for use in this state shall pay, in addition to any other environmental response surcharges, a dry-cleaning solvent surcharge on the sale or provision of dry-cleaning solvent.

2. The amount of the dry-cleaning solvent surcharge imposed by this section on each gallon of dry-cleaning solvent shall be an amount equal to the product of the solvent factor for the dry-cleaning solvent and the rate of eight dollars per gallon.

3. The solvent factor for each dry-cleaning solvent is as follows:

- (1) For perchloroethylene, the solvent factor is 1.00;
- (2) For 1,1,1-trichloroethane, the solvent factor is 1.00; **and**
- (3) For other chlorinated dry-cleaning solvents, the solvent factor is 1.00[; and
- (4) For any nonchlorinated dry-cleaning solvent, the solvent factor is 0.05].

4. In the case of a fraction of a gallon, the dry-cleaning solvent surcharge imposed by this section shall be the same fraction of the fee imposed on a whole gallon.

5. The dry-cleaning solvent surcharge required in this section shall be paid to the department by the seller or provider of the dry-cleaning solvent, regardless of the location of such seller or provider.

6. The dry-cleaning solvent surcharge required in this section shall be paid by the seller or provider on a quarterly basis and shall be paid to the department for the previous quarter. The commission shall prescribe by administrative rule the procedure for the payment required by this section.

7. The department shall provide each person who pays a dry-cleaning solvent surcharge pursuant to this section with a receipt. The receipt or the copy of the receipt shall be produced for inspection at the request of any authorized representative of the department.

8. All moneys collected or received by the department pursuant to this section shall be transmitted to the department of revenue for deposit in the state treasury to the credit of the dry-cleaning environmental response trust fund created in section 260.920. Following each annual or quarterly reporting date, the state treasurer shall certify the amount deposited to the department.

9. If any seller or provider of dry-cleaning solvent fails or refuses to pay the dry-cleaning solvent surcharge imposed by this section, the department shall impose and such seller or provider shall pay, in addition to the dry-cleaning solvent surcharge owed by the seller or provider, a penalty of fifteen percent of the dry-cleaning solvent surcharge. Such penalty shall be deposited in the dry-cleaning environmental response trust fund.

10. If any person does not pay the dry-cleaning solvent surcharge or any portion of the dry-cleaning solvent surcharge imposed by this section by the date prescribed for such payment, the department shall impose and such person shall pay interest upon the unpaid amount at the rate of ten percent per annum from the date prescribed for the payment of such surcharge and penalties until payment is actually made. Such interest shall be deposited in the dry-cleaning environmental response trust fund.

11. An operator of a dry-cleaning facility shall not purchase or obtain solvent from a seller or provider who does not pay the dry-cleaning solvent charge, as provided in this section. Any operator of a dry-cleaning facility who fails to obey the provisions of this section shall be required to pay the dry-cleaning solvent surcharge as provided in subsections 2, 3 and 4 of this section for any dry-cleaning solvent purchased or obtained from a seller or provider who fails to pay the proper dry-cleaning solvent surcharge as determined by the department. Any operator of a dry-cleaning facility who fails to follow the provisions of this subsection shall also be charged a penalty of fifteen percent of the dry-cleaning solvent surcharge owed. Any operator of a dry-cleaning facility who fails to obey the provisions of this subsection shall also be subject to the interest provisions of subsection 10 of this section. If a seller or provider of dry-cleaning solvent charges the operator of a dry-cleaning facility the dry-cleaning solvent surcharge provided for in this section when the solvent is purchased or obtained by the operator and the operator can prove that the operator made full payment of the surcharge to the seller or provider but the seller or provider fails to pay the surcharge to the department as required by this section, then the operator shall not be liable pursuant to this subsection for interest, penalties or the seller's or provider's unpaid surcharge. Such surcharges, penalties and interest shall be collected by the department, and all moneys collected pursuant to this subsection shall be deposited in the dry-cleaning environmental response trust fund.

260.960. RULEMAKING. — 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.] **the effective date of this act** shall be invalid and void.

260.965. EXPIRATION DATE. — **The provisions of sections 260.900 to 260.965 shall expire August 28, 2012.**

304.184. TRANSPORTATION OF SOLID WASTE, WEIGHT RESTRICTIONS FOR TRUCKS AND TRACTOR-TRAILERS. — **Notwithstanding any other provision of law to the contrary, any truck, tractor-trailer or other combination engaged in transporting solid waste, as defined by section 260.200, RSMo, between any city and a solid waste disposal area or solid waste processing facility approved by the department of natural resources or department of health and senior services, may operate with a weight not to exceed twenty-two thousand four hundred pounds on one axle or a weight not to exceed forty-four thousand eight hundred pounds on any tandem axle; but nothing in this section shall be construed to permit the operation of any motor vehicle on the interstate highway system in excess of the weight limits imposed by federal statute; and no such truck, tractor-trailer or other combination shall exceed the width and length limitations provided in section 304.190.**

[260.218. VEHICLES TRANSPORTING SOLID WASTES, WEIGHT LIMITS. — Notwithstanding any other provision of law to the contrary, any truck, tractor-trailer or other combination engaged in transporting solid waste, as defined by section 260.200, between any city and a solid waste disposal area or solid waste processing facility approved by the department of natural resources or department of health and senior services, may operate with a weight not to exceed twenty-two thousand four hundred pounds on one axle or a weight not to exceed forty-four thousand eight hundred pounds on any tandem axle; but nothing in this section shall be construed to permit the operation of any motor vehicle on the interstate highway system in excess of the weight limits imposed by federal statute; and no such truck, tractor-trailer or other combination shall exceed the width and length limitations provided in section 304.190, RSMo.]

[260.274. GRANTS, USE OF WASTE TIRES AS FUEL, WHO MAY APPLY — LIMITATIONS — ADVISORY COUNCIL, DUTIES. — 1. The department and the environmental improvement and energy resources authority shall administer a program to provide incentive grants for capital expenditures to convert existing facilities for the purpose of using waste tires as a fuel or fuel supplement or products from waste tires. Any person, other than a state agency, who meets eligibility requirements established by the department by rule may apply for such grants. No grant may be awarded for an activity which receives less than forty percent of its tires from Missouri waste tire sites, retailers or residents. The burden of proof shall be on the applicant to show that eligibility requirements have been met.

2. For the purpose of establishing eligibility requirements and application priorities, the director shall create an advisory council consisting of members of the tire industry, the general public, the department, and the department of economic development.]

[260.342. EDUCATIONAL AND INFORMATIONAL PROGRAMS, DEPARTMENT TO CONDUCT, HOW. — The department of natural resources shall collect and disseminate information and conduct educational and training programs that assist in the implementation of sections 260.200 to 260.345. The information and programs shall be designed to enhance district, county and city solid waste management systems and to inform the public of the relationship between an individual's consumption of goods and services, the generation of different types and quantities of solid waste and the implementation of solid waste management priorities under sections 260.200 to 260.345. Educational information shall also address other environmental concerns associated with solid waste management including energy consumption and conservation; air and water pollution; and land use planning. The department of natural resources may cooperate with the department of elementary and secondary education for the purpose of developing specific educational curriculum and programs. The information and programs shall be prepared for use on a statewide basis for the following:

- (1) Municipal, county and state officials and employees;
- (2) Kindergarten through post-baccalaureate students and teachers;
- (3) Private solid waste scrap brokers, dealers and processors;
- (4) Businesses which use or could use recycled materials or which produce or could produce products from recycled materials, and persons who support or serve these businesses; and
- (5) The general public.]

[260.446. ACCOUNTING ON REMEDIAL FUND, CONTENT — SENT TO WHOM. — The department shall, on or before January 1, 1985, and annually thereafter on January first of each succeeding year, render a full accounting of moneys received, moneys expended, sources and recipients, and purposes for the preceding fiscal year in the hazardous waste remedial fund to the commission, the general assembly and the governor.]

[260.479. COMMISSION TO ESTABLISH SUBDIVISIONS OF WASTE BASED ON MANAGEMENT, FEES CHARGED AGAINST GENERATORS — LIMITS ON CERTAIN FEES —

EXCEPTIONS — FEE DISTRIBUTION — EXPIRES, WHEN. — 1. The hazardous waste management commission shall establish, by rule, two subdivisions of hazardous waste based upon the management method. Subdivision A shall include waste which is placed in a hazardous waste disposal facility or which is stored for a period of more than one hundred eighty days; provided, however, for the purposes of this section, the commission may identify hazardous waste which shall be taxed pursuant to subdivision A when stored for longer than ninety days as well as waste which may be stored for up to one year and taxed as provided in subdivision B below. Subdivision B shall include all other hazardous waste produced. The director shall annually request that a minimum of one million dollars be appropriated from general revenue funds for deposit in the hazardous waste remedial fund created pursuant to section 260.480.

2. Except as provided in this subsection and subsection 5 of this section, each hazardous waste generator registered with the department of natural resources, except the state and any political subdivision thereof, shall pay a fee based on the volume of waste produced in each of the subdivisions A and B as follows:

(1) For subdivision A waste, the fee shall be equal to 0.90785 times the amount of waste in short tons times the following sum: twenty-one dollars and eighty cents plus the product of 7.9890 cents times the amount of waste in short tons, except that the fee for subdivision A waste shall not exceed eighty thousand dollars; and

(2) For subdivision B waste, the fee shall be equal to 0.90785 times the amount of waste in short tons times the following sum: ten dollars and ninety cents plus the product of 3.9945 cents times the amount of waste in short tons, except that the fee for subdivision B waste shall not exceed forty thousand dollars. No company shall pay more than eighty thousand dollars annually pursuant to this subsection; provided that all fee amounts established pursuant to this subsection may be adjusted annually by the commission by an amount not to exceed two and fifty-five hundredths percent. No individual generator subject to a fee pursuant to this section shall pay less than fifty dollars annually.

3. No tax shall be imposed pursuant to this section upon hazardous waste generators whose waste consists solely of waste oil or facilities licensed pursuant to chapter 197, RSMo. The commission may exempt intermittent generators or generators of very small volumes of hazardous waste from payment of fees required pursuant to this section, provided those generators comply with all other applicable provisions of sections 260.360 to 260.430.

4. Any hazardous waste generator registered with the department which discharges waste to a publicly owned treatment works having an approved pretreatment program as required by chapter 204, RSMo, shall not pay any fee required in sections 260.350 to 260.550 on such waste discharged which is in compliance with pretreatment requirements. The hazardous waste management commission may exempt such generators from the provisions of sections 260.350 to 260.430 if such exemption will not be in violation of the federal Resource Conservation and Recovery Act.

5. No fee shall be imposed pursuant to this section upon any hazardous waste which must be disposed of as provided by a remedial plan for an abandoned or uncontrolled hazardous waste site, or upon smelter slag waste from the processing of materials into reclaimed metals. Fees on hazardous waste fuel produced from hazardous waste by processing, blending or other off-site treatment shall be assessed and collected only at the facility where such hazardous waste fuel is utilized as a substitute for other fuel. No facility using hazardous waste fuel shall pay more than eighty thousand dollars annually pursuant to this subsection for the first fiscal year fees are assessed pursuant to this section, and such maximum amount may be adjusted annually thereafter by the commission by an amount not to exceed two and fifty-five hundredths percent. This subsection shall not be construed to apply to hazardous waste used directly as a fuel that has not been processed, blended, or otherwise treated off site. Such waste shall be subject to the fees established in subsection 2 of this section.

6. The department may establish by rule and regulation categories of waste based upon waste characteristics pursuant to subsection 2 of section 260.370. When the commission adopts

hazardous waste categories, it shall establish and annually revise a fee schedule based upon waste characteristics. Each generator shall annually pay a fee, in lieu of the fee required in subsection 2 of this section, based upon the volume of waste produced annually within each hazard category.

7. All fees within this section shall be based on hazardous waste produced within the preceding state fiscal year beginning with July first of the year this section goes into effect and payable at the end of the calendar year on December thirty-first and annually thereafter in the same manner; provided that no liability for fees shall be accrued pursuant to subsection 5 of this section for any waste used as a fuel prior to August 28, 2000.

8. The department shall promptly transmit forty percent of all funds collected pursuant to this section to the director of revenue for deposit in the hazardous waste remedial fund created pursuant to section 260.480. The department shall promptly transmit sixty percent of all funds collected pursuant to this section to the director of revenue for deposit in the hazardous waste fund created pursuant to section 260.391.

9. Notwithstanding any other provision of law to the contrary, no tax based on the number of employees employed by a hazardous waste generator shall be collected. This fee shall expire June 30, 2006, except that the department shall levy and collect this fee for any hazardous waste generated prior to such date and reported to the department.]

Approved July 7, 2005

SB 233 [CCS#2 HCS SCS SB 233]

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

Designates certain bridges and highways and requires future highway designations to go through a new process

AN ACT to amend chapter 227, RSMo, by adding thereto ten new sections relating to the designation of highways and bridges.

SECTION

- A. Enacting clause.
- 227.356. Congressman Mel Hancock Freeway designated in Greene County.
- 227.358. Governor John M. Dalton Memorial Highway designated in Dunklin County.
- 227.361. Veterans Memorial Parkway designated in Johnson County.
- 227.362. Congressman Ike Skelton Bridge designated on Missouri River bridge on Highway 13 between Lafayette and Ray counties.
- 227.365. Memorial bridge or highway designations, procedure — duties of director — notice requirements — signs to be erected.
- 227.367. Officer Scott Armstrong Memorial Highway designated in St. Louis County.
- 227.370. Governor Mel Camahan Memorial Highway designated in Phelps County.
- 227.371. Students of Missouri Assisting Rural Transportation (S.M.A.R.T.) Memorial Highway designated in Lewis County.
- 227.372. Chief Jerry Buehne Memorial Road designated in St. Louis County.
- 227.373. Senator Christopher S. Bond Bridge designated in Hermann.

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 ten new sections, to be known as section 227.356, 227.358, 227.361, 227.362, 227.365, 227.367, 227.370, 227.371, 227.372, and 227.373, to read as follows:

227.356. CONGRESSMAN MEL HANCOCK FREEWAY DESIGNATED IN GREENE COUNTY. — The portion of interstate highway 44 in Greene County from state route MM, exit 70, east to state route 286, exit 72, shall be designated the "Congressman Mel Hancock Freeway". Costs for such designation shall be paid for by the Hancock family.

227.358. GOVERNOR JOHN M. DALTON MEMORIAL HIGHWAY DESIGNATED IN DUNKLIN COUNTY. — The portion of U.S. 412 in Dunklin County from the eastern city limits of Kennett, Missouri, to the western city limits of Hayti, Missouri, within Pemiscot County shall be designated the "Governor John M. Dalton Memorial Highway".

227.361. VETERANS MEMORIAL PARKWAY DESIGNATED IN JOHNSON COUNTY. — The portion of Highway 58 in Johnson County from the intersection with Highway U, west to Highway 131, shall be designated the "Veterans Memorial Parkway". All appropriate signage shall be paid for, erected, and maintained by the City of Holden Veterans of Foreign Wars.

227.362. CONGRESSMAN IKE SKELTON BRIDGE DESIGNATED ON MISSOURI RIVER BRIDGE ON HIGHWAY 13 BETWEEN LAFAYETTE AND RAY COUNTIES. — The bridge crossing over the Missouri River on highway 13 between Lafayette and Ray counties shall be designated "Congressman Ike Skelton Bridge". All signage shall be paid for and maintained through private sources and shall meet appropriate specifications as set forth by the department of transportation.

227.365. MEMORIAL BRIDGE OR HIGHWAY DESIGNATIONS, PROCEDURE — DUTIES OF DIRECTOR — NOTICE REQUIREMENTS — SIGNS TO BE ERECTED. — 1. Except as provided in subsection 8 of this section, an organization that seeks a bridge or highway designation to honor an event, place, organization, or person who has been deceased for more than two years shall petition the department of transportation by submitting the following:

(1) An application in a form prescribed by the director, describing the bridge or segment of highway for which designation is sought and the proposed name of the bridge or relevant portion of highway. The application shall include the name of at least one current member of the general assembly who will sponsor the bridge or highway designation. The application may contain written testimony for support of the bridge or highway designation;

(2) Each application submitted under this section shall be accompanied by a list of at least one hundred signatures of individuals who support the naming of the bridge or highway;

(3) A deposit of four hundred dollars per sign proposed to designate the bridge or highway, with the funds to be used for construction of each sign;

(4) A deposit of six hundred dollars per sign proposed, with the funds to be used to maintain each sign; and

(5) All moneys received by the department of transportation, for the construction and maintenance of bridge or highway signs shall be deposited in the state treasury to the credit of the "Department of Transportation Bridge and Highway Sign Fund" which is hereby created. The state treasurer shall be custodian of the fund and shall make disbursements from the fund requested by the Missouri director of the department of transportation for personal services, expenses, and equipment required to construct and maintain signs erected in accordance with the provisions of this section.

2. At the end of each state fiscal year, the director of the department of transportation shall:

(1) Determine the amount of all moneys deposited into the department of transportation bridge and highway sign fund;

(2) Determine the amount of disbursements from the department of transportation bridge and highway sign fund which were made to construct and maintain the signs; and

(3) Subtract the amount of disbursements from the income figure referred to in subdivision (1) of this subsection and deliver this figure to the state treasurer.

3. The state treasurer shall transfer an amount of money equal to the figure provided by the director of the department of transportation from the department of transportation bridge and highway sign fund to the state highway department fund. An unexpended balance in the department of transportation bridge and highway sign fund at the end of the biennium not exceeding twenty-five thousand dollars shall be exempt from the provisions of section 33.080, RSMo, relating to transfer of unexpended balances to the general revenue fund.

4. The documents and fees required under this section shall be submitted to the department of transportation thirty days before any approval or denial by the house and senate committees on transportation during that legislative session.

5. The department of transportation shall give notice of any proposed bridge or highway designation in a manner reasonably calculated to advise the public of such proposal. Reasonable notice shall include posting the proposal for the designation on the department's official public web site, and making available copies of the sign designation application to any representative of the news media or public upon request and posting the application on a bulletin board or other prominent public place which is easily accessible to the public and clearly designated for that purpose at the principal office.

6. If the memorial highway designation requested by the organization is not approved by the house and senate committees on transportation, ninety-seven percent of the application fee shall be refunded to the requesting organization.

7. Two highway signs shall be erected for each bridge and highway designations; except when a named section of a highway crosses two or more county lines, consideration shall be given by the department of transportation to allow additional signage at the county lines or major intersections.

8. Highway or bridge designations honoring law enforcement officers or members of the armed forces killed in the line of duty shall not be subject to the provisions of this section.

9. Upon approval of a bridge or highway designation, the department of transportation shall provide five miniature signs, free of charge, to persons or organizations sponsoring signs under this section.

10. The provisions of this section shall apply to bridge or highway designations sought after August 28, 2005.

227.367. OFFICER SCOTT ARMSTRONG MEMORIAL HIGHWAY DESIGNATED IN ST. LOUIS COUNTY. — The portion of highway 370 in St. Louis County shall be designated the "Officer Scott Armstrong Memorial Highway". Costs for such designation shall be paid by the Bridgeton Optimist Club.

227.370. GOVERNOR MEL CARNAHAN MEMORIAL HIGHWAY DESIGNATED IN PHELPS COUNTY. — The portion of Interstate 44 in Phelps County from route V east to route 68, shall be designated the "Governor Mel Carnahan Memorial Highway", in recognition of the former governor's contributions to the state of Missouri. The department of transportation shall erect and maintain appropriate signs commemorating this portion of highway. Costs for such designation shall be paid for by the Democrat Freshman Caucus.

227.371. STUDENTS OF MISSOURI ASSISTING RURAL TRANSPORTATION (S.M.A.R.T.) MEMORIAL HIGHWAY DESIGNATED IN LEWIS COUNTY. — The portion of U.S. highway 61 from the intersection of Missouri route B south of La Grange to the intersection of

Missouri route B north of Canton, in Lewis County, shall be designated the "Students of Missouri Assisting Rural Transportation (S.M.A.R.T.) Memorial Highway". This eleven-mile stretch of roadway shall be dedicated to these students and their efforts to improve transportation in the area. The department of transportation shall erect and maintain appropriate signs commemorating such portion of highway 61 at its discretion, and the students of Missouri assisting rural transportation shall pay for all such signs.

227.372. CHIEF JERRY BUEHNE MEMORIAL ROAD DESIGNATED IN ST. LOUIS COUNTY. — The portion of Missouri Highway 30 in St. Louis County from the intersection of highway P northeast to the St. Louis city limits shall be designated the "Chief Jerry Buehne Memorial Road". The department of transportation shall erect and maintain appropriate signs commemorating this portion of highway. Costs for the designation shall be paid for by private funds raised for such purpose.

227.373. SENATOR CHRISTOPHER S. BOND BRIDGE DESIGNATED IN HERMANN. — The new Highway 19 Missouri River Bridge in Hermann slated for completion in December 2007, shall be designated the "Senator Christopher S. Bond Bridge". The department of transportation shall erect and maintain appropriate signs commemorating this portion of highway. Costs for such designation shall be paid for by local organizations.

Approved June 28, 2005

SB 237 [CCS HCS SS SCS SB 237]

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 telecommunications regulations

AN ACT to repeal sections 227.240, 386.020, 392.200, 392.245, 392.500, 536.024, and 536.037, RSMo, and to enact in lieu thereof eight new sections relating to telecommunications companies, with penalty provisions.

SECTION

- A. Enacting clause.
- 227.240. Location and removal of public utility equipment — lines in right-of-way permitted — penalty for violation.
- 386.020. Definitions.
- 392.200. Adequate service — just and reasonable charges — unjust discrimination — unreasonable preference — reduced rates permitted for federal lifeline connection plan — delivery of telephone and telegraph messages — customer — specific pricing — term agreements, discount rates.
- 392.245. Companies to be regulated, when — maximum prices, determined how, changed how — classification — change of rates — nonwireless basic local telecommunications services, average rate to be determined.
- 392.500. Changes in rates, competitive telecommunication services, procedure.
- 536.024. Validity of rules promulgated by state agency dependent on compliance with procedural requirements — powers and duties of joint committee.
- 536.037. Committee on administrative rules, members, meetings, duties — reports — expenses.
 - 1. Public service commission, rulemaking authority.

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

SECTION A. ENACTING CLAUSE. — Sections 227.240, 386.020, 392.200, 392.245, 392.500, 536.024, and 536.037, RSMo, are repealed and eight new sections enacted in lieu

thereof, to be known as sections 227.240, 386.020, 392.200, 392.245, 392.500, 536.024, 536.037, and 1, to read as follows:

227.240. LOCATION AND REMOVAL OF PUBLIC UTILITY EQUIPMENT — LINES IN RIGHT-OF-WAY PERMITTED — PENALTY FOR VIOLATION. — 1. The location and removal of all telephone, [telegraph] **cable television**, and electric light and power transmission lines, poles, wires, and conduits and all pipelines and tramways, erected or constructed, or hereafter to be erected or constructed by any corporation, association or persons, within the right-of-way of any state highway, insofar as the public travel and traffic is concerned, and insofar as the same may interfere with the construction or maintenance of any such highway, shall be under the control and supervision of the state highways and transportation commission.

2. **A cable television corporation or company shall be permitted to place its lines within the right-of-way of any state highway, consistent with the rules and regulations of the state highways and transportation commission. The state highways and transportation commission shall establish a system for receiving and resolving complaints with respect to cable television lines placed in, or removed from, the right-of-way of a state highway.**

3. The commission or some officer selected by the commission shall serve a written notice upon the person or corporation owning or maintaining any such lines, poles, wires, conduits, pipelines, or tramways, which notice shall contain a plan or chart indicating the places on the right-of-way at which such lines, poles, wires, conduits, pipelines or tramways may be maintained. The notice shall also state the time when the work of hard surfacing said roads is proposed to commence, and shall further state that a hearing shall be had upon the proposed plan of location and matters incidental thereto, giving the place and date of such hearing. Immediately after such hearing the said owner shall be given a notice of the findings and orders of the commission and shall be given a reasonable time thereafter to comply therewith; provided, however, that the effect of any change ordered by the commission shall not be to remove all or any part of such lines, poles, wires, conduits, pipelines or tramways from the right-of-way of the highway. The removal of the same shall be made at the cost and expense of the owners thereof unless otherwise provided by said commission, and in the event of the failure of such owners to remove the same at the time so determined they may be removed by the state highways and transportation commission, or under its direction, and the cost thereof collected from such owners, and such owners shall not be liable in any way to any person for the placing and maintaining of such lines, poles, wires, conduits, pipelines and tramways at the places prescribed by the commission.

[3.] 4. The commission is authorized in the name of the state of Missouri, to institute and maintain, through the attorney general, such suits and actions as may be necessary to enforce the provisions of this section. Any corporation, association or the officers or agents of such corporations or associations, or any other person who shall erect or maintain any such lines, poles, wires, conduits, pipelines or tramways, within the right-of-way of such roads which are hard-surfaced, which are not in accordance with such orders of the commission, shall be deemed guilty of a misdemeanor.

386.020. DEFINITIONS. — As used in this chapter, the following words and phrases mean:

(1) "Alternative local exchange telecommunications company", a local exchange telecommunications company certified by the commission to provide basic or nonbasic local telecommunications service or switched exchange access service, or any combination of such services, in a specific geographic area subsequent to December 31, 1995;

(2) "Alternative operator services company", any certificated interexchange telecommunications company which receives more than forty percent of its annual Missouri intrastate telecommunications service revenues from the provision of operator services pursuant to operator services contracts with traffic aggregators;

(3) "Basic interexchange telecommunications service", includes, at a minimum, two-way switched voice service between points in different local calling scopes as determined by the commission and shall include other services as determined by the commission by rule upon periodic review and update;

(4) "Basic local telecommunications service", two-way switched voice service within a local calling scope as determined by the commission comprised of any of the following services and their recurring and nonrecurring charges:

(a) Multiparty, single line, including installation, touchtone dialing, and any applicable mileage or zone charges;

(b) Assistance programs for installation of, or access to, basic local telecommunications services for qualifying economically disadvantaged or disabled customers or both, including, but not limited to, lifeline services and link-up Missouri services for low-income customers or dual-party relay service for the hearing impaired and speech impaired;

(c) Access to local emergency services including, but not limited to, 911 service established by local authorities;

(d) Access to basic local operator services;

(e) Access to basic local directory assistance;

(f) Standard intercept service;

(g) Equal access to interexchange carriers consistent with rules and regulations of the Federal Communications Commission;

(h) One standard white pages directory listing.

Basic local telecommunications service does not include optional toll free calling outside a local calling scope but within a community of interest, available for an additional monthly fee or the offering or provision of basic local telecommunications service at private shared-tenant service locations;

(5) "Cable television service", the one-way transmission to subscribers of video programming or other programming service and the subscriber interaction, if any, which is required for the selection of such video programming or other programming service;

(6) "Carrier of last resort", any telecommunications company which is obligated to offer basic local telecommunications service to all customers who request service in a geographic area defined by the commission and cannot abandon this obligation without approval from the commission;

(7) "Commission", the "Public Service Commission" hereby created;

(8) "Commissioner", one of the members of the commission;

(9) "Competitive telecommunications company", a telecommunications company which has been classified as such by the commission pursuant to section 392.361, RSMo;

(10) "Competitive telecommunications service", a telecommunications service which has been classified as such by the commission pursuant to section **392.245, RSMo, or to section 392.361, RSMo**, or which has become a competitive telecommunications service pursuant to section 392.370, RSMo;

(11) "Corporation" includes a corporation, company, association and joint stock association or company;

(12) "Customer-owned pay telephone", a privately owned telecommunications device that is not owned, leased or otherwise controlled by a local exchange telecommunications company and which provides telecommunications services for a use fee to the general public;

(13) "Effective competition" shall be determined by the commission based on:

(a) The extent to which services are available from alternative providers in the relevant market;

(b) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions;

(c) The extent to which the purposes and policies of chapter 392, RSMo, including the reasonableness of rates, as set out in section 392.185, RSMo, are being advanced;

(d) Existing economic or regulatory barriers to entry; and

(e) Any other factors deemed relevant by the commission and necessary to implement the purposes and policies of chapter 392, RSMo;

(14) "Electric plant" includes all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power;

(15) "Electrical corporation" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, other than a railroad, light rail or street railroad corporation generating electricity solely for railroad, light rail or street railroad purposes or for the use of its tenants and not for sale to others, owning, operating, controlling or managing any electric plant except where electricity is generated or distributed by the producer solely on or through private property for railroad, light rail or street railroad purposes or for its own use or the use of its tenants and not for sale to others;

(16) "Exchange", a geographical area for the administration of telecommunications services, established and described by the tariff of a telecommunications company providing basic local telecommunications service;

(17) "Exchange access service", a service provided by a local exchange telecommunications company which enables a telecommunications company or other customer to enter and exit the local exchange telecommunications network in order to originate or terminate interexchange telecommunications service;

(18) "Gas corporation" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling or managing any gas plant operating for public use under privilege, license or franchise now or hereafter granted by the state or any political subdivision, county or municipality thereof;

(19) "Gas plant" includes all real estate, fixtures and personal property owned, operated, controlled, used or to be used for or in connection with or to facilitate the manufacture, distribution, sale or furnishing of gas, natural or manufactured, for light, heat or power;

(20) "Heating company" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers, appointed by any court whatsoever, owning, operating, managing or controlling any plant or property for manufacturing and distributing and selling, for distribution, or distributing hot or cold water, steam or currents of hot or cold air for motive power, heating, cooking, or for any public use or service, in any city, town or village in this state; provided, that no agency or authority created by or operated pursuant to an interstate compact established pursuant to section 70.370, RSMo, shall be a heating company or subject to regulation by the commission;

(21) "High-cost area", a geographic area, which shall follow exchange boundaries and be no smaller than an exchange nor larger than a local calling scope, where the cost of providing basic local telecommunications service as determined by the commission, giving due regard to recovery of an appropriate share of joint and common costs as well as those costs related to carrier of last resort obligations, exceeds the rate for basic local telecommunications service found reasonable by the commission;

(22) "Incumbent local exchange telecommunications company", a local exchange telecommunications company authorized to provide basic local telecommunications service in a specific geographic area as of December 31, 1995, or a successor in interest to such a company;

(23) "Interexchange telecommunications company", any company engaged in the provision of interexchange telecommunications service;

- (24) "Interexchange telecommunications service", telecommunications service between points in two or more exchanges;
- (25) "InterLATA", interexchange telecommunications service between points in different local access and transportation areas;
- (26) "IntraLATA", interexchange telecommunications service between points within the same local access and transportation area;
- (27) "Light rail" includes every rail transportation system in which one or more rail vehicles are propelled electrically by overhead catenary wire upon tracks located substantially within an urban area and are operated exclusively in the transportation of passengers and their baggage, and including all bridges, tunnels, equipment, switches, spurs, tracks, stations, used in connection with the operation of light rail;
- (28) "Line" includes route;
- (29) "Local access and transportation area" or "LATA", contiguous geographic area approved by the U.S. District Court for the District of Columbia in *United States v. Western Electric*, Civil Action No. 82-0192 that defines the permissible areas of operations for the Bell Operating companies;
- (30) "Local exchange telecommunications company", any company engaged in the provision of local exchange telecommunications service. A local exchange telecommunications company shall be considered a "large local exchange telecommunications company" if it has at least one hundred thousand access lines in Missouri and a "small local exchange telecommunications company" if it has less than one hundred thousand access lines in Missouri;
- (31) "Local exchange telecommunications service", telecommunications service between points within an exchange;
- (32) "Long-run incremental cost", the change in total costs of the company of producing an increment of output in the long run when the company uses least cost technology, and excluding any costs that, in the long run, are not brought into existence as a direct result of the increment of output. The relevant increment of output shall be the level of output necessary to satisfy total current demand levels for the service in question, or, for new services, demand levels that can be demonstrably anticipated;
- (33) "Municipality" includes a city, village or town;
- (34) "Nonbasic telecommunications services" shall be all regulated telecommunications services other than basic local and exchange access telecommunications services, and shall include the services identified in paragraphs (d) and (e) of subdivision (4) of this section. Any retail telecommunications service offered for the first time after August 28, 1996, shall be classified as a nonbasic telecommunications service, including any new service which does not replace an existing service;
- (35) "Noncompetitive telecommunications company", a telecommunications company other than a competitive telecommunications company or a transitionally competitive telecommunications company;
- (36) "Noncompetitive telecommunications service", a telecommunications service other than a competitive or transitionally competitive telecommunications service;
- (37) "Operator services", operator-assisted interexchange telecommunications service by means of either human or automated call intervention and includes, but is not limited to, billing or completion of calling card, collect, person-to-person, station-to-station or third number billed calls;
- (38) "Operator services contract", any agreement between a traffic aggregator and a certificated interexchange telecommunications company to provide operator services at a traffic aggregator location;
- (39) "Person" includes an individual, and a firm or copartnership;
- (40) "Private shared tenant services" includes the provision of telecommunications and information management services and equipment within a user group located in discrete private premises as authorized by the commission by a commercial-shared services provider or by a user

association, through privately owned customer premises equipment and associated data processing and information management services and includes the provision of connections to the facilities of local exchange telecommunications companies and to interexchange telecommunications companies;

(41) "Private telecommunications system", a telecommunications system controlled by a person or corporation for the sole and exclusive use of such person, corporation or legal or corporate affiliate thereof;

(42) "Public utility" includes every pipeline corporation, gas corporation, electrical corporation, telecommunications company, water corporation, heat or refrigerating corporation, and sewer corporation, as these terms are defined in this section, and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this chapter;

(43) "Railroad" includes every railroad and railway, other than street railroad or light rail, by whatsoever power operated for public use in the conveyance of persons or property for compensation, with all bridges, ferries, tunnels, equipment, switches, spurs, tracks, stations, real estate and terminal facilities of every kind used, operated, controlled or owned by or in connection with any such railroad;

(44) "Railroad corporation" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, holding, operating, controlling or managing any railroad or railway as defined in this section, or any cars or other equipment used thereon or in connection therewith;

(45) "Rate", every individual or joint rate, fare, toll, charge, reconsigning charge, switching charge, rental or other compensation of any corporation, person or public utility, or any two or more such individual or joint rates, fares, tolls, charges, reconsigning charges, switching charges, rentals or other compensations of any corporation, person or public utility or any schedule or tariff thereof;

(46) "Resale of telecommunications service", the offering or providing of telecommunications service primarily through the use of services or facilities owned or provided by a separate telecommunications company, but does not include the offering or providing of private shared tenant services;

(47) "Service" includes not only the use and accommodations afforded consumers or patrons, but also any product or commodity furnished by any corporation, person or public utility and the plant, equipment, apparatus, appliances, property and facilities employed by any corporation, person or public utility in performing any service or in furnishing any product or commodity and devoted to the public purposes of such corporation, person or public utility, and to the use and accommodation of consumers or patrons;

(48) "Sewer corporation" includes every corporation, company, association, joint stock company or association, partnership or person, their lessees, trustees or receivers appointed by any court, owning, operating, controlling or managing any sewer system, plant or property, for the collection, carriage, treatment, or disposal of sewage anywhere within the state for gain, except that the term shall not include sewer systems with fewer than twenty-five outlets;

(49) "Sewer system" includes all pipes, pumps, canals, lagoons, plants, structures and appliances, and all other real estate, fixtures and personal property, owned, operated, controlled or managed in connection with or to facilitate the collection, carriage, treatment and disposal of sewage for municipal, domestic or other beneficial or necessary purpose;

(50) "Street railroad" includes every railroad by whatsoever type of power operated, and all extensions and branches thereof and supplementary facilities thereto by whatsoever type of vehicle operated, for public use in the conveyance of persons or property for compensation, mainly providing local transportation service upon the streets, highways and public places in a municipality, or in and adjacent to a municipality, and including all cars, buses and other rolling stock, equipment, switches, spurs, tracks, poles, wires, conduits, cables, subways, tunnels,

stations, terminals and real estate of every kind used, operated or owned in connection therewith but this term shall not include light rail as defined in this section; and the term "street railroad" when used in this chapter, shall also include all motor bus and trolley bus lines and routes and similar local transportation facilities, and the rolling stock and other equipment thereof and the appurtenances thereto, when operated as a part of a street railroad or trolley bus local transportation system, or in conjunction therewith or supplementary thereto, but such term shall not include a railroad constituting or used as part of a trunk line railroad system and any street railroad as defined above which shall be converted wholly to motor bus operation shall nevertheless continue to be included within the term "street railroad" as used herein;

(51) "Telecommunications company" includes telephone corporations as that term is used in the statutes of this state and every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling or managing any facilities used to provide telecommunications service for hire, sale or resale within this state;

(52) "Telecommunications facilities" includes lines, conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, appliances and all devices, real estate, easements, apparatus, property and routes used, operated, controlled or owned by any telecommunications company to facilitate the provision of telecommunications service;

(53) "Telecommunications service", the transmission of information by wire, radio, optical cable, electronic impulses, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. Telecommunications service does not include:

(a) The rent, sale, lease, or exchange for other value received of customer premises equipment except for customer premises equipment owned by a telephone company certificated or otherwise authorized to provide telephone service prior to September 28, 1987, and provided under tariff or in inventory on January 1, 1983, which must be detariffed no later than December 31, 1987, and thereafter the provision of which shall not be a telecommunications service, and except for customer premises equipment owned or provided by a telecommunications company and used for answering 911 or emergency calls;

(b) Answering services and paging services;

(c) The offering of radio communication services and facilities when such services and facilities are provided under a license granted by the Federal Communications Commission under the commercial mobile radio services rules and regulations;

(d) Services provided by a hospital, hotel, motel, or other similar business whose principal service is the provision of temporary lodging through the owning or operating of message switching or billing equipment solely for the purpose of providing at a charge telecommunications services to its temporary patients or guests;

(e) Services provided by a private telecommunications system;

(f) Cable television service;

(g) The installation and maintenance of inside wire within a customer's premises;

(h) Electronic publishing services; or

(i) Services provided pursuant to a broadcast radio or television license issued by the Federal Communications Commission;

(54) "Telephone cooperative", every corporation defined as a telecommunications company in this section, in which at least ninety percent of those persons and corporations subscribing to receive local telecommunications service from the corporation own at least ninety percent of the corporation's outstanding and issued capital stock and in which no subscriber owns more than two shares of the corporation's outstanding and issued capital stock;

(55) "Traffic aggregator", any person, firm, partnership or corporation which furnishes a telephone for use by the public and includes, but is not limited to, telephones located in rooms, offices and similar locations in hotels, motels, hospitals, colleges, universities, airports and public or customer-owned pay telephone locations, whether or not coin operated;

(56) "Transitionally competitive telecommunications company", an interexchange telecommunications company which provides any noncompetitive or transitionally competitive telecommunications service, except for an interexchange telecommunications company which provides only noncompetitive telecommunications service;

(57) "Transitionally competitive telecommunications service", a telecommunications service offered by a noncompetitive or transitionally competitive telecommunications company and classified as transitionally competitive by the commission pursuant to section 392.361 or 392.370, RSMo;

(58) "Water corporation" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling or managing any plant or property, dam or water supply, canal, or power station, distributing or selling for distribution, or selling or supplying for gain any water;

(59) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes, headgates, pipes, flumes, canals, structures and appliances, and all other real estate, fixtures and personal property, owned, operated, controlled or managed in connection with or to facilitate the diversion, development, storage, supply, distribution, sale, furnishing or carriage of water for municipal, domestic or other beneficial use.

392.200. ADEQUATE SERVICE — JUST AND REASONABLE CHARGES — UNJUST DISCRIMINATION — UNREASONABLE PREFERENCE — REDUCED RATES PERMITTED FOR FEDERAL LIFELINE CONNECTION PLAN — DELIVERY OF TELEPHONE AND TELEGRAPH MESSAGES — CUSTOMER — SPECIFIC PRICING — TERM AGREEMENTS, DISCOUNT RATES.

— 1. Every telecommunications company shall furnish and provide with respect to its business such instrumentalities and facilities as shall be adequate and in all respects just and reasonable. All charges made and demanded by any telecommunications company for any service rendered or to be rendered in connection therewith shall be just and reasonable and not more than allowed by law or by order or decision of the commission. Every unjust or unreasonable charge made or demanded for any such service or in connection therewith or in excess of that allowed by law or by order or decision of the commission is prohibited and declared to be unlawful.

2. No telecommunications company shall directly or indirectly or by any special rate, rebate, drawback or other device or method charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered with respect to telecommunications or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect to telecommunications under the same or substantially the same circumstances and conditions. Promotional programs for telecommunications services may be offered by telecommunications companies for periods of time so long as the offer is otherwise consistent with the provisions of this chapter and approved by the commission. Neither this subsection nor subsection 3 of this section shall be construed to prohibit an economy rate telephone service offering. This section and section 392.220 to the contrary notwithstanding, the commission is authorized to approve tariffs filed by local exchange telecommunications companies which elect to provide reduced charges for residential telecommunications connection services pursuant to the lifeline connection assistance plan as promulgated by the federal communications commission. Eligible subscribers for such connection services shall be those as defined by participating local exchange telecommunications company tariffs.

3. No telecommunications company shall make or give any undue or unreasonable preference or advantage to any person, corporation or locality, or subject any particular person, corporation or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever except that telecommunications messages may be classified into such classes as are just and reasonable, and different rates may be charged for the different classes of messages.

4. (1) No telecommunications company may define a telecommunications service as a different telecommunications service based on the geographic area or other market segmentation within which such telecommunications service is offered or provided, unless the telecommunications company makes application and files a tariff or tariffs which propose relief from this subsection. Any such tariff shall be subject to the provisions of sections 392.220 and 392.230 and in any hearing thereon the burden shall be on the telecommunications company to show, by clear and convincing evidence, that the definition of such service based on the geographic area or other market within which such service is offered is reasonably necessary to promote the public interest and the purposes and policies of this chapter.

(2) It is the intent of this act to bring the benefits of competition to all customers and to ensure that incumbent and alternative local exchange telecommunications companies have the opportunity to price and market telecommunications services to all prospective customers in any geographic area in which they compete. To promote the goals of the federal Telecommunications Act of 1996, for an incumbent local exchange telecommunications company in any exchange where an alternative local exchange telecommunications company has been certified and is providing basic local telecommunications services or switched exchange access services, or for an alternative local exchange telecommunications company, the commission shall review and approve or reject, within forty-five days of filing, tariffs for proposed different services as follows:

(a) For services proposed on an exchange-wide basis, it shall be presumed that a tariff which defines and establishes prices for a local exchange telecommunications service or exchange access service as a different telecommunications service in the geographic area, no smaller than an exchange, within which such local exchange telecommunications service or exchange access service is offered is reasonably necessary to promote the public interest and the purposes and policies of this chapter;

(b) For services proposed in a geographic area smaller than an exchange or other market segmentation within which or to whom such telecommunications service is proposed to be offered, a local exchange telecommunications company may petition the commission to define and establish a local exchange telecommunications service or exchange access service as a different local exchange telecommunications service or exchange access service. The commission shall approve such a proposal [if] **unless** it finds[, based upon clear and convincing evidence,] that such service in a smaller geographic area or such other market segmentation is [in] **contrary to** the public interest [and is reasonably necessary to promote competition and] **or is contrary to** the purposes of this chapter. Upon approval of such a smaller geographic area or such other market segmentation for a different service for one local exchange telecommunications company, all other local exchange telecommunications companies certified to provide service in that exchange may file a tariff to use such smaller geographic area or such other market segmentation to provide that service;

(c) For proposed different services described in paragraphs (a) and (b) of this subdivision, the local exchange telecommunications company which files a tariff to provide such service shall provide the service to all similarly situated customers, upon request in accordance with that company's approved tariff, in the exchange or geographic area smaller than an exchange or such other market segmentation for which the tariff was filed, and no price proposed for such service by an incumbent local exchange telecommunications company, other than for a competitive service, shall be lower than its long-run incremental cost, as defined in section 386.020, RSMo;

(3) The commission, on its own motion or upon motion of the public counsel, may by order, after notice and hearing, define a telecommunications service offered or provided by a telecommunications company as a different telecommunications service dependent upon the geographic area or other market within which such telecommunications service is offered or provided and apply different service classifications to such service only upon a finding, based on clear and convincing evidence, that such different treatment is reasonably necessary to promote the public interest and the purposes and policies of this chapter.

5. No telecommunications company may charge a different price per minute or other unit of measure for the same, substitutable, or equivalent interexchange telecommunications service provided over the same or equivalent distance between two points without filing a tariff for the offer or provision of such service pursuant to sections 392.220 and 392.230. In any proceeding under sections 392.220 and 392.230 wherein a telecommunications company seeks to charge a different price per minute or other unit of measure for the same, substitutable, or equivalent interexchange service, the burden shall be on the subject telecommunications company to show that such charges are in the public interest and consistent with the provisions and purposes of this chapter. The commission may modify or prohibit such charges if the subject telecommunications company fails to show that such charges are in the public interest and consistent with the provisions and purposes of this chapter. This subsection shall not apply to reasonable price discounts based on the volume of service provided, so long as such discounts are nondiscriminatory and offered under the same rates, terms, and conditions throughout a telecommunications company's certificated or service area.

6. Every telecommunications company operating in this state shall receive, transmit and deliver, without discrimination or delay, the conversations and messages of every other telecommunications company with whose facilities a connection may have been made.

7. The commission shall have power to provide the limits within which telecommunications messages shall be delivered without extra charge.

8. Customer-specific pricing is authorized **on an equal basis for incumbent and alternative local exchange companies, and for interexchange telecommunications companies** for:

(1) Dedicated, nonswitched, private line and special access services [and for];

(2) Central office-based switching systems which substitute for customer premise, private branch exchange (PBX) services[, provided such customer specific pricing shall be equally available to incumbent and alternative local exchange telecommunications companies]; **and**

(3) **Any business service offered in an exchange in which basic local telecommunications service offered to business customers by the incumbent local exchange telecommunications company has been declared competitive under section 392.245.**

9. This act shall not be construed to prohibit the commission, upon determining that it is in the public interest, from altering local exchange boundaries, provided that the incumbent local exchange telecommunications company or companies serving each exchange for which the boundaries are altered provide notice to the commission that the companies approve the alteration of exchange boundaries.

10. Notwithstanding any other provision of this section, every telecommunications company is authorized to offer term agreements of up to five years on any of its telecommunications services.

11. Notwithstanding any other provision of this section, every telecommunications company is authorized to offer discounted rates or [other] special promotions on any of its telecommunications services to any **existing**, new, and/or former customers.

12. **Packages of services may be offered on an equal basis by incumbent and alternative local exchange companies and shall not be subject to regulation under sections 392.240 or 392.245, nor shall packages of services be subject to the provisions of subsections 1 through 5 of this section, provided that each telecommunications service included in a package is available apart from the package of services and still subject to regulation under section 392.240 or 392.245. For the purposes of this subsection, a "package of services" includes more than one telecommunications service or one or more telecommunications service combined with one or more non telecommunications services.**

392.245. COMPANIES TO BE REGULATED, WHEN — MAXIMUM PRICES, DETERMINED HOW, CHANGED HOW — CLASSIFICATION — CHANGE OF RATES — NONWIRELESS BASIC LOCAL TELECOMMUNICATIONS SERVICES, AVERAGE RATE TO BE DETERMINED. — 1. The

commission shall have the authority to ensure that rates, charges, tolls and rentals for telecommunications services are just, reasonable and lawful by employing price cap regulation. **Any rate, charge, toll, or rental that does not exceed the maximum allowable price under this section shall be deemed to be just, reasonable, and lawful.** As used in this chapter, "price cap regulation" shall mean establishment of maximum allowable prices for telecommunications services offered by an incumbent local exchange telecommunications company, which maximum allowable prices shall not be subject to increase except as otherwise provided in this section.

2. A large incumbent local exchange telecommunications company shall be subject to regulation under this section upon a determination by the commission that an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service and is providing such service in any part of the large incumbent company's service area. A small incumbent local exchange telecommunications company may elect to be regulated under this section upon providing written notice to the commission if an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service and is providing such service, **or if two or more commercial mobile service providers providing wireless two-way voice communications services, are providing services,** in any part of the small incumbent company's service area, and the incumbent company shall remain subject to regulation under this section after such election.

3. Except as otherwise provided in this section, the maximum allowable prices established for a company under subsection 1 of this section shall be those in effect on December thirty-first of the year preceding the year in which the company is first subject to regulation under this section. Tariffs authorized under subsection 9 of this section shall be phased in as provided under such tariffs as approved by the commission.

4. (1) Except as otherwise provided in subsections 8 and 9 of this section and section 392.248, the maximum allowable prices for exchange access and basic local telecommunications services of a small, incumbent local exchange telecommunications company regulated under this section shall not be changed for a period of twelve months after the date the company is subject to regulation under this section. Except as otherwise provided in subsections 8 and 9 of this section and section 392.248, the maximum allowable prices for exchange access and basic local telecommunications services of a large, incumbent local exchange telecommunications company regulated under this section shall not be changed prior to January 1, 2000. Thereafter, the maximum allowable prices for exchange access and basic local telecommunications services of an incumbent local exchange telecommunications company shall be annually changed by one of the following methods:

(a) By the change in the telephone service component of the Consumer Price Index (CPI-TS), as published by the United States Department of Commerce or its successor agency for the preceding twelve months; or

(b) Upon request by the company and approval by the commission, by the change in the Gross Domestic Product Price Index (GDP-PI), as published by the United States Department of Commerce or its successor agency for the preceding twelve months, minus the productivity offset established for telecommunications service by the Federal Communication Commission and adjusted for exogenous factors;

(2) The commission shall approve a change to a maximum allowable price filed pursuant to paragraph (a) of subdivision (1) of this subsection within forty-five days of filing of notice by the local exchange telecommunications company. An incumbent local exchange telecommunications company shall file a tariff to reduce the rates charged for any service in any case in which the current rate exceeds the maximum allowable price established under this subsection.

(3) As a part of its request under paragraph (b) of subdivision (1) of this subsection, a company may seek commission approval to use a different productivity offset in lieu of the productivity offset established by the Federal Communication Commission. An adjustment under paragraph (b) of subdivision (1) of this subsection shall not be implemented if the

commission determines, after notice and hearing to be conducted within forty-five days of the filing of the notice of a change to a maximum allowable price, that it is not in the public interest. In making such a determination, the commission shall consider the relationship of the proposed price of service to its cost and the impact of competition on the incumbent local exchange telecommunications company's intrastate revenues from regulated telecommunications services. Any adjustments for exogenous factors shall be allocated to the maximum allowable prices for exchange access and basic local telecommunications service in the same percentage as the revenues for such company bears to such company's total revenues from basic local, nonbasic and exchange access services for the preceding twelve months.

(4) For the purposes of this section, the term "exogenous factor" shall mean a cumulative impact on a local exchange telecommunications company's intrastate regulated revenue requirement of more than three percent, which is attributable to federal, state or local government laws, regulations or policies which change the revenue, expense or investment of the company, and the term "exogenous factor" shall not include the effect of competition on the revenue, expense or investment of the company nor shall the term include any assessment made under section 392.248.

(5) An incumbent local exchange telecommunications company may change the rates for its services, consistent with the provisions of **subsections 2 through 5 of** section 392.200, but not to exceed the maximum allowable prices, by filing tariffs which shall be approved by the commission within thirty days, provided that any such rate is not in excess of the maximum allowable price established for such service under this section.

5. Each telecommunications service **offered to business customers, other than exchange access service**, of an incumbent local exchange telecommunications company **regulated under this section** shall be classified as competitive in any exchange in which at least [one alternative local exchange telecommunications company has been certified under section 392.455 and has provided basic local telecommunications service in that exchange for at least five years, unless the commission determines, after notice and a hearing, that effective competition does not exist in the exchange for such service. The commission shall, from time to time, on its own motion or motion by an incumbent local exchange telecommunications company, investigate the state of competition in each exchange where an alternative local exchange telecommunication company has been certified to provide local exchange telecommunications service and shall determine, no later than five years following the first certification of an alternative local exchange telecommunication company in such exchange, whether effective competition exists in the exchange for the various services of the incumbent local exchange telecommunications company] **two non-affiliated entities in addition to the incumbent local exchange company are providing basic local telecommunications service to business customers within the exchange. Each telecommunications service offered to residential customers, other than exchange access service, of an incumbent local exchange telecommunications company regulated under this section shall be classified as competitive in an exchange in which at least two non-affiliated entities in addition to the incumbent local exchange company are providing basic local telecommunications service to residential customers within the exchange. For purposes of this subsection:**

(1) Commercial mobile service providers as identified in 47 U.S.C. Section 332(d)(1) and 47 C.F.R. Parts 22 or 24 shall be considered as entities providing basic local telecommunications service, provided that only one such non-affiliated provider shall be considered as providing basic local telecommunications service within an exchange;

(2) Any entity providing local voice service in whole or in part over telecommunications facilities or other facilities in which it or one of its affiliates have an ownership interest shall be considered as a basic local telecommunications service provider regardless of whether such entity is subject to regulation by the commission. A provider of local voice service that requires the use of a third party, unaffiliated broadband network or dial-up Internet network for the origination of local voice service shall not be

considered a basic local telecommunications service provider. For purposes of this subsection only, a broadband network is defined as a connection that delivers services at speeds exceeding two hundred kilobits per second in at least one direction;

(3) Regardless of the technology utilized, local voice service shall mean two-way voice service capable of receiving calls from a provider of basic local telecommunications services as defined by subdivision (4) of section 386.020, RSMo;

(4) Telecommunications companies only offering prepaid telecommunications service or only reselling telecommunications service as defined in subdivision (46) of section 386.020, RSMo, in the exchange being considered for competitive classification shall not be considered entities providing basic telecommunications service; and

(5) Prepaid telecommunications service shall mean a local service for which payment is made in advance that excludes access to operator assistance and long distance service;

(6) Upon request of an incumbent local exchange telecommunications company seeking competitive classification of business service or residential service, or both, the commission shall, within thirty days of the request, determine whether the requisite number of entities are providing basic local telecommunications service to business or residential customers, or both, in an exchange and if so, shall approve tariffs designating all such business or residential services other than exchange access service, as competitive within such exchange. Notwithstanding any other provision of this subsection, any incumbent local exchange company may petition the commission for competitive classification within an exchange based on competition from any entity providing local voice service in whole or in part by using its own telecommunications facilities or other facilities or the telecommunications facilities or other facilities of a third party, including those of the incumbent local exchange company as well as providers that rely on an unaffiliated third-party Internet service. The commission shall approve such petition within sixty days unless it finds that such competitive classification is contrary to the public interest. The commission shall maintain records of regulated providers of local voice service, including those regulated providers who provide local voice service over their own facilities, or through the use of facilities of another provider of local voice service. In reviewing an incumbent local exchange telephone company's request for competitive status in an exchange, the commission shall consider their own records concerning ownership of facilities and shall make all inquiries as are necessary and appropriate from regulated providers of local voice service to determine the extent and presence of regulated local voice providers in an exchange. If the [commission determines that effective competition exists in the exchange] **services of an incumbent local exchange telecommunications company are classified as competitive under this subsection**, the local exchange telecommunications company may thereafter adjust its rates for such competitive services upward or downward as it determines appropriate in its competitive environment, **upon filing tariffs which shall become effective within the timelines identified in section 392.500**. [If the commission determines that effective competition does not exist in the exchange, the provisions of paragraph (c) of subdivision (2) of subsection 4 of section 392.200 and the maximum allowable prices established by the provisions of subsections 4 and 11 of this section shall continue to apply.] The commission shall [from time to time, but no less than], **at least every [five] two years, or where an incumbent local exchange telecommunications company increases rates for basic local telecommunications services in an exchange classified as competitive**, review [the state of competition in] those exchanges where [it has previously found the existence of effective competition,] **an incumbent local exchange carrier's services have been classified as competitive, to determine if the conditions of this subsection for competitive classification continue to exist in the exchange** and if the commission determines, after hearing, that [effective competition] **such conditions** no longer [exists] **exist** for the incumbent local exchange telecommunications company in such exchange, it shall reimpose upon the incumbent local exchange telecommunications company, in such exchange, the provisions of paragraph (c) of

subdivision (2) of subsection 4 of section 392.200 and the maximum allowable prices established by the provisions of subsections 4 and 11 of this section, and, in any such case, the maximum allowable prices established for the telecommunications services of such incumbent local exchange telecommunications company shall reflect all index adjustments which were or could have been filed from all preceding years since the company's maximum allowable prices were first adjusted pursuant to subsection 4 or 11 of this section.

6. Nothing in this section shall be interpreted to alter the commission's jurisdiction over quality and conditions of service or to relieve telecommunications companies from the obligation to comply with commission rules relating to minimum basic local and interexchange telecommunications service.

7. A company regulated under this section shall not be subject to regulation under subsection 1 of section 392.240.

8. An incumbent local exchange telecommunications company regulated under this section may reduce intrastate access rates, including carrier common line charges, subject to the provisions of subsection 9 of this section, to a level not to exceed one hundred fifty percent of the company's interstate rates for similar access services in effect as of December thirty-first of the year preceding the year in which the company is first subject to regulation under this section. Absent commission action under subsection 10 of this section, an incumbent local exchange telecommunications company regulated under this section shall have four years from the date the company becomes subject to regulation under this section to make the adjustments authorized under this subsection and subsection 9 of this section. Nothing in this subsection shall preclude an incumbent local exchange telecommunications company from establishing its intrastate access rates at a level lower than one hundred fifty percent of the company's interstate rates for similar access services in effect as of December thirty-first of the year preceding the year in which the company is first subject to regulation under this section.

9. Other provisions of this section to the contrary notwithstanding and no earlier than January 1, 1997, the commission shall allow an incumbent local exchange telecommunications company regulated under this section which reduces its intrastate access service rates pursuant to subsection 8 of this section to offset the revenue loss resulting from the first year's access service rate reduction by increasing its monthly maximum allowable prices applicable to basic local exchange telecommunications services by an amount not to exceed one dollar fifty cents. A large incumbent local exchange telecommunications company shall not increase its monthly rates applicable to basic local telecommunications service under this subsection unless it also reduces its rates for intraLATA interexchange telecommunications services by at least ten percent. No later than one year after the date the incumbent local exchange telecommunications company becomes subject to regulation under this section, the commission shall complete an investigation of the cost justification for the reduction of intrastate access rates and the increase of maximum allowable prices for basic local telecommunications service. If the commission determines that the company's monthly maximum allowable average statewide prices for basic local telecommunications service after adjustment pursuant to this subsection will be equal to or less than the long run incremental cost, as defined in section 386.020, RSMo, of providing basic local telecommunications service and that the company's intrastate access rates after adjustment pursuant to this subsection will exceed the long run incremental cost, as defined in section 386.020, RSMo, of providing intrastate access services, the commission shall allow the company to offset the revenue loss resulting from the remaining three-quarters of the total needed to bring that company's intrastate access rates to one hundred fifty percent of the interstate level by increasing the company's monthly maximum allowable prices applicable to basic local telecommunications service by an amount not to exceed one dollar fifty cents on each of the next three anniversary dates thereafter; otherwise, the commission shall order the reduction of intrastate access rates and the increase of monthly maximum allowable prices for basic local telecommunications services to be terminated at the levels the commission determines to be cost-justified. The total revenue increase due to the increase to the monthly maximum allowable

prices for basic local telecommunications service shall not exceed the total revenue loss resulting from the reduction to intrastate access service rates.

10. Any telecommunications company whose intrastate access costs are reduced pursuant to subsections 8 and 9 of this section shall decrease its rates for intrastate toll telecommunications service to flow through such reduced costs to its customers. The commission may permit a telecommunications company to defer a rate reduction required by this subdivision until such reductions, on a cumulative basis, reach a level that is practical to flow through to its customers.

11. The maximum allowable prices for nonbasic telecommunications services of a small, incumbent local exchange telecommunications company regulated under this section shall not be changed until twelve months after the date the company is subject to regulation under this section or, on an exchange-by-exchange basis, until an alternative local exchange telecommunications company is certified and providing basic local telecommunications service in such exchange, whichever is earlier. The maximum allowable prices for nonbasic telecommunications services of a large, incumbent local exchange telecommunications company regulated under this section shall not be changed until January 1, 1999, or on an exchange-by-exchange basis, until an alternative local exchange telecommunications company is certified and providing basic local telecommunications service in such exchange, whichever is earlier. Thereafter, the maximum allowable prices for nonbasic telecommunications services of an incumbent local exchange telecommunications company may be annually increased by up to [eight] **five** percent for each of the following twelve-month periods upon providing notice to the commission and filing tariffs establishing the rates for such services in such exchanges at such maximum allowable prices. This subsection shall not preclude an incumbent local exchange telecommunications company from proposing new telecommunications services and establishing prices for such new services. An incumbent local exchange telecommunications company may change the rates for its services, consistent with the provisions of **subsections 2 through 5 of section 392.200**, but not to exceed the maximum allowable prices, by filing tariffs which shall be approved by the commission within thirty days, provided that any such rate is not in excess of the maximum allowable price established for such service under this section.

12. The commission shall permit an incumbent local exchange telecommunications company regulated under this section to determine and set its own depreciation rates which shall be used for all intrastate regulatory purposes. Provided, however, that such a determination is not binding on the commission in determining eligibility for or reimbursement under the universal service fund established under section 392.248.

13. Prior to January 1, 2006, the commission shall determine the weighted, statewide average rate of nonwireless basic local telecommunications services as of the effective date of this section. The commission shall likewise determine the weighted, statewide average rate of nonwireless basic local telecommunications services two years and five years after the effective date of this section. The commission shall report its findings to the general assembly by January 30, 2008, and provide a second study by January 30, 2011. If the commission finds that the weighted, statewide average rate of nonwireless basic local telecommunications service in 2008 or 2011 is greater than the weighted, statewide average rate of nonwireless basic local telecommunications service in 2006 multiplied by one plus the percentage increase in the Consumer Price Index for all goods and services for the study periods, the commission shall recommend to the general assembly such changes in state law as the commission deems appropriate to achieve the purposes set forth in section 392.185. In determining the weighted, statewide average rate of nonwireless basic local telecommunications service, the commission shall exclude rate increases to nonwireless basic telecommunications service permitted under subsections 8 and 9 of this section and section 392.240 or exogenous costs incurred by the providers of nonwireless basic local telecommunications service.

392.500. CHANGES IN RATES, COMPETITIVE TELECOMMUNICATION SERVICES, PROCEDURE. — Except as provided in **subsections 2 to 5** of section 392.200, proposed changes in rates or charges, or any classification or tariff provision affecting rates or charges, for any competitive telecommunications service, shall be treated pursuant to this section as follows:

(1) Any proposed decrease in rates or charges, or proposed change in any classification or tariff resulting in a decrease in rates or charges, for any competitive telecommunications service shall be permitted only upon the filing of the proposed rate, charge, classification or tariff after [seven] **one** days' notice to the commission; and

(2) Any proposed increase in rates or charges, or proposed change in any classification or tariff resulting in an increase in rates or charges, for any competitive telecommunications service shall be permitted [only upon] **ten days after** the filing of the proposed rate, charge, classification or tariff and upon notice to all potentially affected customers through a notice in each such customer's bill at least ten days prior to the date for implementation of such increase or change, or, where such customers are not billed, by an equivalent means of prior notice.

536.024. VALIDITY OF RULES PROMULGATED BY STATE AGENCY DEPENDENT ON COMPLIANCE WITH PROCEDURAL REQUIREMENTS — POWERS AND DUTIES OF JOINT COMMITTEE. — 1. When the general assembly authorizes any state agency to adopt administrative rules or regulations, the granting of such rulemaking authority and the validity of such rules and regulations is contingent upon the agency complying with the provisions of this section in promulgating such rules after June 3, 1994.

2. Upon filing any proposed rule with the secretary of state, the filing agency shall concurrently submit such proposed rule to the joint committee on administrative rules, which may hold hearings upon any proposed rule or portion thereof at any time.

3. A final order of rulemaking shall not be filed with the secretary of state until thirty days after such final order of rulemaking has been received by the committee. The committee may hold one or more hearings upon such final order of rulemaking during the thirty-day period.

4. The committee may file with the secretary of state any comments or recommendations that the committee has concerning a proposed or final order of rulemaking. Such comments shall be published in the Missouri Register.

5. The committee may refer comments or recommendations concerning such rule to the appropriations and budget committees of the house of representatives and the appropriations committee of the senate for further action.

6. The provisions of this section shall not apply to rules adopted by the [public service commission and the] labor and industrial relations commission.

536.037. COMMITTEE ON ADMINISTRATIVE RULES, MEMBERS, MEETINGS, DUTIES — REPORTS — EXPENSES. — 1. There is established a permanent joint committee of the general assembly to be known as the "Committee on Administrative Rules", which shall be composed of five members of the senate and five members of the house of representatives. The senate members of the committee shall be appointed by the president pro tem of the senate and the house members by the speaker of the house. The appointment of each member shall continue during his term of office as a member of the general assembly unless sooner removed. No major party shall be represented by more than three appointed members from either house.

2. The committee on administrative rules shall meet within ten days after its creation and organize by selecting a chairman and a vice chairman, one of whom shall be a member of the senate and one of whom shall be a member of the house of representatives. A majority of the members constitutes a quorum. Meetings of the committee may be called at such time and place as the chairman designates.

3. The committee shall review all rules promulgated by any state agency after January 1, 1976, except rules promulgated by the [public service commission and the] labor and industrial

labor relations commission. In its review the committee may take such action as it deems necessary which may include holding hearings.

4. The members of the committee shall receive no compensation in addition to their salary as members of the general assembly, but may receive their necessary expenses while attending the meetings of the committee, to be paid out of the joint contingent fund.

SECTION 1. PUBLIC SERVICE COMMISSION, RULEMAKING AUTHORITY. — **Beginning January 1, 2007, any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under authority delegated to the Public Service Commission 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 January 1, 2007, shall be invalid and void.**

Approved July 14, 2005

SB 238 [HCS SCS SB 238]

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

Requires all revenue derived from a certain sales tax to be deposited in the Community Children's Sales Tax Trust Fund

AN ACT to repeal sections 67.1775, 210.860, and 210.861, RSMo, and to enact in lieu thereof three new sections relating to local sales tax to provide community services for children.

SECTION

- A. Enacting clause.
- 67.1775. Authorizes local sales tax in all counties and St. Louis City to provide services for children — establishes fund.
- 210.860. Tax levy, amount, purposes — ballot — deposit of funds in special community children's services fund.
- 210.861. Board of directors, term, expenses, organization — powers — funds, expenditure, purpose, restrictions.

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

SECTION A. ENACTING CLAUSE. — Sections 67.1775, 210.860, and 210.861, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 67.1775, 210.860, and 210.861, to read as follows:

67.1775. AUTHORIZES LOCAL SALES TAX IN ALL COUNTIES AND ST. LOUIS CITY TO PROVIDE SERVICES FOR CHILDREN — ESTABLISHES FUND. — 1. The governing body of a city not within a county, or any county of this state may, after voter approval [pursuant to] **under** this section, levy a sales tax not to exceed one-quarter of a cent in the county, **or city not within a county**, for the purpose of providing services described in section 210.861, RSMo, including counseling, family support, and temporary residential services to persons nineteen years of age or less. The question shall be submitted to the qualified voters of the county, **or city not within a county**, at a county **or city** or state general, primary or special election upon the motion of the

governing body of the county, **or city not within a county** or upon the petition of eight percent of the qualified voters of the county, **or city not within a county**, determined on the basis of the number of votes cast for governor in such county at the last gubernatorial election held prior to the filing of the petition. The election officials of the county, **or city not within a county**, shall give legal notice as provided in chapter 115, RSMo. The question shall be submitted in substantially the following form:

Shall County **or city, solely for the purpose of establishing a community children's services fund for the purpose of providing services to protect the well-being and safety of children and youth nineteen years of age or less and to strengthen families**, be authorized to levy a sales tax of (not to exceed one-quarter of a cent) in the county [for the purpose of establishing a community children's services fund for the purpose of providing services to protect the well-being and safety of children and youth nineteen years of age or less and to strengthen families]?

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 be levied and collected as otherwise provided by law. 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 be levied unless and until the question is again submitted to the qualified voters of the county and a majority of such voters are in favor of such a tax, and not otherwise.]

If a majority of the votes cast on the question by the qualified voters voting thereon are in favor of the question, then the ordinance or order and any amendments thereto shall be in effect on the first day of the second calendar quarter after the director receives notification of the local sales tax. If a question receives less than the required majority, then the governing authority of the county, or city not within a county, shall have no power to impose the sales tax unless and until the governing authority of the county, or city not within a county, has submitted another question to authorize the imposition of the sales tax authorized by this section and such question is approved by the required majority of the qualified voters voting thereon. However, in no event shall a question under this section be submitted to the voters sooner than twelve months from the date of the last question under this section.

2. After the effective date of any tax imposed under the provisions of this section, the director of revenue shall perform all functions incident to the administration, collection, enforcement, and operation of the tax and the director of revenue shall collect in addition to the sales tax for the state of Missouri the additional tax authorized under the authority of this section. The tax imposed under this section and the tax imposed under the sales tax law of the state of Missouri shall be collected together and reported upon such forms and under such administrative rules and regulations as may be prescribed by the director of revenue.

3. All sales taxes collected by the director of revenue under this section on behalf of any county, or city not within a county, 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 with the state treasurer in a special fund, which is hereby created, to be known as the "Community Children's Services Fund". The moneys in the county, or city not within a county, community children's services 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 fund which was collected in each county, or city not within a county, imposing a sales tax under this section, and the records shall be open to the inspection of officers of each county, or city not within a county, and the general public. Not later than the tenth day of each month, the director of revenue shall distribute all moneys deposited in the fund during the preceding month by distributing to the

county treasurer, or the treasurer of a city not within a county, or such other officer as may be designated by a county ordinance or order, or ordinance or order of a city not within a county, of each county, or city not within a county, imposing the tax authorized by this section, the sum, as certified by the director of revenue, due the city or county.

4. The director of revenue may authorize the state treasurer to make refunds from the amounts in the fund and credited to any county, or city not within a county, for erroneous payments and overpayments made, and may redeem dishonored checks and drafts deposited to the credit of such counties. Each county, or city not within a county, shall notify the director of revenue at least ninety days prior to the effective date of the expiration of the sales tax authorized by this section and the director of revenue may order retention in the 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 such tax and to redeem dishonored checks and drafts deposited to the credit of such accounts. After one year has elapsed after the date of expiration of the tax authorized by this section in such city not within a county or such county, the director of revenue shall remit the balance in the account to the county, or city not within a county, and close the account of that county, or city not within a county. The director of revenue shall notify each county, or city not within a county, of each instance of any amount refunded or any check redeemed from receipts due the city or county.

5. Except as modified in this section, all provisions of sections 32.085 and 32.087, RSMo, shall apply to the tax imposed under this section.

6. All revenues generated by the tax prescribed in this section shall be deposited in the county treasury or, in a city not within a county, to the board established by law to administer such fund to the credit of a special "Community Children's Services Fund" to accomplish the purposes set out herein and in section 210.861, RSMo, and shall be used for no other purpose. Such fund shall be administered by a board of directors, established [pursuant to] under section 210.861, RSMo.

210.860. TAX LEVY, AMOUNT, PURPOSES — BALLOT — DEPOSIT OF FUNDS IN SPECIAL COMMUNITY CHILDREN'S SERVICES FUND. — 1. The governing body of any county or city not within a county may, after voter approval pursuant to this section, levy a tax not to exceed twenty-five cents on each one hundred dollars of assessed valuation on taxable property in the county for the purpose of providing counseling, family support, and temporary residential services to persons eighteen years of age or less **and those services described in section 210.861**. The question shall be submitted to the qualified voters of the county or city not within a county at a county or state general, primary or special election upon the motion of the governing body of the county or city not within a county or upon the petition of eight percent of the qualified voters of the county determined on the basis of the number of votes cast for governor in such county or city not within a county at the last gubernatorial election held prior to the filing of the petition. The election officials of the county or city not within a county shall give legal notice as provided in chapter 115, RSMo. The question shall be submitted in substantially the following form:

Shall County (City) be authorized to levy a tax of cents on each one hundred dollars of assessed valuation on taxable property in the county (city) for the purpose of establishing a community children's services fund for purposes of providing funds for counseling and related services to children and youth in the county (city) eighteen years of age or less and services which will promote healthy lifestyles among children and youth and strengthen families?

[] 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 be levied and collected as otherwise provided by law. 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 be levied unless and until the question is again submitted to

the qualified voters of the county or city not within a county and a majority of such voters are in favor of such a tax, and not otherwise.

2. All revenues generated by the tax prescribed in this section shall be deposited in the county treasury **or, in a city not within a county, to the board established by law to administer such fund** to the credit of a special "Community Children's Services Fund" **to accomplish the purposes set out herein and shall be used for no other purpose**. Such fund shall be administered by **and expended only upon approval by** a board of directors, established pursuant to section 210.861.

210.861. BOARD OF DIRECTORS, TERM, EXPENSES, ORGANIZATION — POWERS — FUNDS, EXPENDITURE, PURPOSE, RESTRICTIONS. — 1. When the tax prescribed by section 210.860 or section 67.1775, RSMo, is established, the governing body of the county **or city not within a county** shall appoint a board of directors consisting of nine members, who shall be residents of the county **or city not within a county**. All board members shall be appointed to serve for a term of three years, except that of the first board appointed, three members shall be appointed for one-year terms, three members for two-year terms and three members for three-year terms. Board members may be reappointed. In a city not within a county, or any county of the first classification with a charter form of government with a population not less than nine hundred thousand inhabitants, or any county of the first classification with a charter form of government with a population not less than two hundred thousand inhabitants and not more than six hundred thousand inhabitants, or any noncharter county of the first classification with a population not less than one hundred seventy thousand and not more than two hundred thousand inhabitants, or any noncharter county of the first classification with a population not less than eighty thousand and not more than eighty-three thousand inhabitants, or any third classification county with a population not less than twenty-eight thousand and not more than thirty thousand inhabitants, or any county of the third classification with a population not less than nineteen thousand five hundred and not more than twenty thousand inhabitants the members of the community mental health board of trustees appointed pursuant to the provisions of sections 205.975 to 205.990, RSMo, shall be the board members for the community children's services fund. The directors shall not receive compensation for their services, but may be reimbursed for their actual and necessary expenses.

2. The board shall elect a chairman, vice chairman, treasurer, and such other officers as it deems necessary for its membership. Before taking office, the treasurer shall furnish a surety bond, in an amount to be determined and in a form to be approved by the board, for the faithful performance of his duties and faithful accounting of all moneys that may come into his hands. The treasurer shall enter into the surety bond with a surety company authorized to do business in Missouri, and the cost of such bond shall be paid by the board of directors. The board shall administer **and expend** all funds generated pursuant to section 210.860 or section 67.1775, RSMo, in a manner consistent with this section.

3. The board may contract with public or not-for-profit agencies licensed or certified where appropriate to provide qualified services and may place conditions on the use of such funds. The board shall reserve the right to audit the expenditure of any and all funds. The board and any agency with which the board contracts may establish eligibility standards for the use of such funds and the receipt of services. No member of the board shall serve on the governing body, have any financial interest in, or be employed by any agency which is a recipient of funds generated pursuant to section 210.860 or section 67.1775, RSMo.

4. Revenues collected and deposited in the community children's services fund may be expended for the purchase of the following services:

(1) Up to thirty days of temporary shelter for abused, neglected, runaway, homeless or emotionally disturbed youth; respite care services; and services to unwed mothers;

(2) Outpatient chemical dependency and psychiatric treatment programs; counseling and related services as a part of transitional living programs; home-based and community-based

family intervention programs; unmarried parent services; crisis intervention services, inclusive of telephone hotlines; and prevention programs which promote healthy lifestyles among children and youth and strengthen families;

(3) Individual, group, or family professional counseling and therapy services; psychological evaluations; and mental health screenings.

5. Revenues collected and deposited in the community children's services fund may not be expended for inpatient medical, psychiatric, and chemical dependency services, or for transportation services.

Approved July 6, 2005

SB 246 [SCS SB 246]

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

Allows state to issue bonds for grants and loans pursuant to several sections of Article III of the Missouri Constitution

AN ACT to amend chapter 644, RSMo, by adding thereto three new sections relating to the authorization of bonds.

SECTION

- A. Enacting clause.
- 644.584. Board may borrow additional \$10,000,000 for purposes of water pollution control, improvement of drinking water, and storm water control.
- 644.585. Board may borrow additional \$10,000,000 for purposes of rural water and sewer grants and loans.
- 644.586. Board may borrow additional \$20,000,000 for purposes of storm water control.

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

SECTION A. ENACTING CLAUSE. — Chapter 644, RSMo, is amended by adding thereto three new sections to be known as sections 644.584, 644.585, and 644.586, to read as follows:

644.584. BOARD MAY BORROW ADDITIONAL \$10,000,000 FOR PURPOSES OF WATER POLLUTION CONTROL, IMPROVEMENT OF DRINKING WATER, AND STORM WATER CONTROL. — In addition to those sums authorized prior to August 28, 2006, the board of fund commissioners of the state of Missouri, as authorized by section 37(e) of article III of the Constitution of the state of Missouri, may borrow on the credit of this state the sum of ten million dollars in the manner described, and for the purposes set out, in chapter 640, RSMo, and in this chapter.

644.585. BOARD MAY BORROW ADDITIONAL \$10,000,000 FOR PURPOSES OF RURAL WATER AND SEWER GRANTS AND LOANS. — In addition to those sums authorized prior to August 28, 2006, the board of fund commissioners of the state of Missouri, as authorized by section 37(g) of article III of the Constitution of the state of Missouri, may borrow on the credit of this state the sum of ten million dollars in the manner described, and for the purposes set out, in chapter 640, RSMo, and in this chapter.

644.586. BOARD MAY BORROW ADDITIONAL \$20,000,000 FOR PURPOSES OF STORM WATER CONTROL. — In addition to those sums authorized prior to August 28, 2006, the board of fund commissioners of the state of Missouri, as authorized by section 37(h) of

article III of the Constitution of the state of Missouri, may borrow on the credit of this state the sum of twenty million dollars in the manner described, and for the purposes set out, in chapter 640, RSMo, and in this chapter.

Approved July 6, 2005

SB 252 [HCS SCS SB 252]

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 Missouri Military Preparedness and Enhancement Commission

AN ACT to repeal section 143.121, RSMo, and to enact in lieu thereof four new sections relating to the protection of military facilities and personnel, with an emergency clause.

SECTION

- A. Enacting clause.
- 41.1010. Missouri military preparedness and enhancement commission established, purpose, members, duties.
- 41.1013. Planning and zoning for unincorporated areas near military bases (Johnson County).
- 41.1016. Military personnel to hold Missouri resident status, when.
- 143.121. Missouri adjusted gross income.
- B. Emergency clause.

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

SECTION A. ENACTING CLAUSE. — Section 143.121, RSMo, is repealed and four new sections enacted in lieu thereof, to be known as sections 41.1010, 41.1013, 41.1016, and 143.121 to read as follows:

41.1010. MISSOURI MILITARY PREPAREDNESS AND ENHANCEMENT COMMISSION ESTABLISHED, PURPOSE, MEMBERS, DUTIES. — **1.** There is hereby established the "Missouri Military Preparedness and Enhancement Commission". The commission shall have as its purpose the design and implementation of measures intended to protect, retain, and enhance the present and future mission capabilities at the military posts or bases within the state. The commission shall consist of nine members:

- (1) Five members to be appointed by the governor;
- (2) Two members of the house of representatives, one appointed by the speaker of the house, and one appointed by the minority floor leader;
- (3) Two members of the senate, one appointed by the president pro tempore, and one appointed by the minority floor leader;
- (4) The director of the department of economic development or the director's designee, ex officio.

No more than three of the five members appointed by the governor shall be of the same political party. To be eligible for appointment by the governor, a person shall have demonstrated experience in economic development, the defense industry, military installation operation, environmental issues, finance, local government, or the use of air space for future military missions. Appointed members of the commission shall serve three-year terms, except that of the initial appointments made by the governor, two shall be for one-year terms, two shall be for two-year terms, and one shall be for a three-year term. No appointed member of the commission shall serve more than six years total. A vacancy occurs if a legislative member leaves office for any reason. Any vacancy on the commission shall be filled in the same manner as the original appointment.

2. Members of the commission shall be reimbursed for the actual and necessary expenses incurred in the discharge of the member's official duties.

3. A chair of the commission shall be selected by the members of the commission.

4. The commission shall meet at least quarterly and at such other times as the chair deems necessary.

5. The commission shall be funded by an appropriation limited to that purpose. Any expenditure constituting more than ten percent of the commission's annual appropriation shall be based on a competitive bid process.

6. The commission shall:

(1) Advise the governor and the general assembly on military issues and economic and industrial development related to military issues;

(2) Make recommendations regarding:

(a) Developing policies and plans to support the long-term viability and prosperity of the military, active and civilian, in this state, including promoting strategic regional alliances that may extend over state lines;

(b) Developing methods to improve private and public employment opportunities for former members of the military residing in this state; and

(c) Developing methods to assist defense-dependent communities in the design and execution of programs that enhance a community's relationship with military installations and defense-related businesses;

(3) Provide information to communities, the general assembly, the state's congressional delegation, and state agencies regarding federal actions affecting military installations and missions;

(4) Serve as a clearinghouse for:

(a) Defense economic adjustment and transition information and activities; and

(b) Information concerning the following:

a. Issues related to the operating costs, missions, and strategic value of federal military installations located in the state;

b. Employment issues for communities that depend on defense bases and in defense-related businesses; and

c. Defense strategies and incentive programs that other states are using to maintain, expand, and attract new defense contractors;

(5) Provide assistance to communities that have experienced a defense-related closure or realignment;

(6) Assist communities in the design and execution of programs that enhance a community's relationship with military installations and defense-related businesses, including regional alliances that may extend over state lines;

(7) Assist communities in the retention and recruiting of defense-related businesses, including fostering strategic regional alliances that may extend over state lines;

(8) Prepare a biennial strategic plan that:

(a) Fosters the enhancement of military value of the contributions of Missouri military installations to national defense strategies;

(b) Considers all current and anticipated base realignment and closure criteria; and

(c) Develops strategies to protect the state's existing military missions and positions the state to be competitive for new and expanded military missions;

(9) Encourage economic development in this state by fostering the development of industries related to defense affairs.

7. The commission shall prepare and present an annual report to the governor and the general assembly by December thirty-first of each year.

8. The department of economic development shall furnish administrative support and staff for the effective operation of the commission.

41.1013. PLANNING AND ZONING FOR UNINCORPORATED AREAS NEAR MILITARY BASES (JOHNSON COUNTY). — The governing body or county planning commission, if any, of any county of the second classification with more than forty-eight thousand two hundred but fewer than forty-eight thousand three hundred inhabitants shall provide for the planning, zoning, subdivision and building within all or any portion of the unincorporated area extending three thousand feet outward from the boundaries of any military base located in such county and the area within the perimeter of accident potential zones one and two if the county has a zoning commission and a board of adjustment established under sections 64.510 to 64.727, RSMo. As used in this section, the term "accident potential zones one and two" means any land area that was identified in the April, 1976 Air Installation Compatible Use Zone Report at the north and south ends of the clear zone of a military installation located in any county of the second classification with more than forty-eight thousand two hundred but fewer than forty-eight thousand three hundred inhabitants and which is in significant danger of aircraft accidents by being beneath that airspace where the potential for aircraft accidents is most likely to occur.

41.1016. MILITARY PERSONNEL TO HOLD MISSOURI RESIDENT STATUS, WHEN. — For the purposes of student resident status, military personnel, when stationed within the state under military orders, their spouses, and their unemancipated children under twenty-four years of age who enroll in a Missouri community college, Missouri college, or Missouri state university shall be regarded as holding Missouri resident status.

143.121. MISSOURI ADJUSTED GROSS INCOME. — 1. The Missouri adjusted gross income of a resident individual shall be the taxpayer's federal adjusted gross income subject to the modifications in this section.

2. There shall be added to the taxpayer's federal adjusted gross income:

(a) The amount of any federal income tax refund received for a prior year which resulted in a Missouri income tax benefit;

(b) Interest on certain governmental obligations excluded from federal gross income by Section 103 of the Internal Revenue Code. The previous sentence shall not apply to interest on obligations of the state of Missouri or any of its political subdivisions or authorities and shall not apply to the interest described in subdivision (a) of subsection 3 of this section. The amount added pursuant to this paragraph shall be reduced by the amounts applicable to such interest that would have been deductible in computing the taxable income of the taxpayer except only for the application of Section 265 of the Internal Revenue Code. The reduction shall only be made if it is at least five hundred dollars;

(c) The amount of any deduction that is included in the computation of federal taxable income pursuant to Section 168 of the Internal Revenue Code as amended by the Job Creation and Worker Assistance Act of 2002 to the extent the amount deducted relates to property purchased on or after July 1, 2002, but before July 1, 2003, and to the extent the amount deducted exceeds the amount that would have been deductible pursuant to Section 168 of the Internal Revenue Code of 1986 as in effect on January 1, 2002; and

(d) The amount of any deduction that is included in the computation of federal taxable income for net operating loss allowed by Section 172 of the Internal Revenue Code of 1986, as amended, other than the deduction allowed by Section 172(b)(1)(G) and Section 172(i) of the Internal Revenue Code of 1986, as amended, for a net operating loss the taxpayer claims in the tax year in which the net operating loss occurred or carries forward for a period of more than twenty years and carries backward for more than two years. Any amount of net operating loss taken against federal income taxes but disallowed against Missouri income taxes pursuant to this paragraph since July 1, 2002, may be carried forward and taken against any loss on the Missouri income tax return for a period of not more than twenty years from the year of the initial loss.

3. There shall be subtracted from the taxpayer's federal adjusted gross income the following amounts to the extent included in federal adjusted gross income:

(a) Interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission or instrumentality of the United States to the extent exempt from Missouri income taxes pursuant to the laws of the United States. The amount subtracted pursuant to this paragraph shall be reduced by any interest on indebtedness incurred to carry the described obligations or securities and by any expenses incurred in the production of interest or dividend income described in this paragraph. The reduction in the previous sentence shall only apply to the extent that such expenses including amortizable bond premiums are deducted in determining the taxpayer's federal adjusted gross income or included in the taxpayer's Missouri itemized deduction. The reduction shall only be made if the expenses total at least five hundred dollars;

(b) The portion of any gain, from the sale or other disposition of property having a higher adjusted basis to the taxpayer for Missouri income tax purposes than for federal income tax purposes on December 31, 1972, that does not exceed such difference in basis. If a gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to one-half of such portion of the gain;

(c) The amount necessary to prevent the taxation pursuant to this chapter of any annuity or other amount of income or gain which was properly included in income or gain and was taxed pursuant to the laws of Missouri for a taxable year prior to January 1, 1973, to the taxpayer, or to a decedent by reason of whose death the taxpayer acquired the right to receive the income or gain, or to a trust or estate from which the taxpayer received the income or gain;

(d) Accumulation distributions received by a taxpayer as a beneficiary of a trust to the extent that the same are included in federal adjusted gross income;

(e) The amount of any state income tax refund for a prior year which was included in the federal adjusted gross income;

(f) The portion of capital gain specified in section 135.357, RSMo, that would otherwise be included in federal adjusted gross income; [and]

(g) The amount that would have been deducted in the computation of federal taxable income pursuant to Section 168 of the Internal Revenue Code as in effect on January 1, 2002, to the extent that amount relates to property purchased on or after July 1, 2002, but before July 1, 2003, and to the extent that amount exceeds the amount actually deducted pursuant to Section 168 of the Internal Revenue Code as amended by the Job Creation and Worker Assistance Act of 2002; and

(h) For all tax years beginning on or after January 1, 2005, the amount of any income received for military service while the taxpayer serves in a combat zone which is included in federal adjusted gross income and not otherwise excluded therefrom. As used in this section, "combat zone" means any area which the President of the United States by Executive Order designates as an area in which armed forces of the United States are or have engaged in combat. Service is performed in a combat zone only if performed on or after the date designated by the President by Executive Order as the date of the commencing of combat activities in such zone, and on or before the date designated by the President by Executive Order as the date of the termination of combatant activities in such zone.

4. There shall be added to or subtracted from the taxpayer's federal adjusted gross income the taxpayer's share of the Missouri fiduciary adjustment provided in section 143.351.

5. There shall be added to or subtracted from the taxpayer's federal adjusted gross income the modifications provided in section 143.411.

SECTION B. EMERGENCY CLAUSE. — Because of the need for the state of Missouri to meet the deadline for military base reorganization, 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 11, 2005

SB 254 [SB 254]

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

Criminalizes distribution and possession of certain prescription medications on school property

AN ACT to amend chapter 577, RSMo, by adding thereto two new sections relating to prescription medication at school, with penalty provisions.

SECTION

- A. Enacting clause.
- 577.625. Distribution of prescription medication on public or private school property — exceptions — violations, penalty.
- 577.628. Possession of prescription medications on public or private school property — exceptions — violation, penalty.

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

SECTION A. ENACTING CLAUSE. — Chapter 577, RSMo, is amended by adding thereto two new sections, to be known as sections 577.625 and 577.628, to read as follows:

577.625. DISTRIBUTION OF PRESCRIPTION MEDICATION ON PUBLIC OR PRIVATE SCHOOL PROPERTY — EXCEPTIONS — VIOLATIONS, PENALTY. — **1.** No person less than twenty-one years of age shall distribute upon the real property comprising a public or private elementary or secondary school or school bus a prescription medication to any individual who does not have a valid prescription for such medication. For purposes of this section, prescription medication shall not include medication containing a controlled substance, as defined in section 195.010, RSMo.

2. The provisions of this section shall not apply to any person authorized to distribute a prescription medication by any school personnel who are responsible for storing, maintaining, or dispensing any prescription medication under chapter 338, RSMo. This section shall not limit the use of any prescription medication by emergency personnel, as defined in section 565.081, RSMo, during an emergency situation.

3. Any person less than twenty-one years of age who violates this section is guilty of a class B misdemeanor for a first offense and a class A misdemeanor for any second or subsequent offense.

577.628. POSSESSION OF PRESCRIPTION MEDICATIONS ON PUBLIC OR PRIVATE SCHOOL PROPERTY — EXCEPTIONS — VIOLATION, PENALTY. — **1.** No person less than twenty-one years of age shall possess upon the real property comprising a public or private elementary or secondary school or school bus prescription medication without a valid prescription for such medication. For purposes of this section, prescription medication shall not include medication containing a controlled substance, as defined in section 195.010, RSMo.

2. The provisions of this section shall not apply to any person authorized to possess a prescription medication by any school personnel who are responsible for storing, maintaining, or dispensing any prescription medication under chapter 338, RSMo. This section shall not limit the use of any prescription medication by emergency personnel, as defined in section 565.081, RSMo, during an emergency situation.

3. Any person less than twenty-one years of age who violates the provisions of this section is guilty of a class C misdemeanor for a first offense and a class B misdemeanor for any second or subsequent offense.

Approved July 13, 2005

SB 258 [SCS SB 258]

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 Cass County Commission to submit the question of establishing a health center after a majority vote

AN ACT to repeal section 205.010, RSMo, and to enact in lieu thereof one new section relating to county health centers.

SECTION

A. Enacting clause.

205.010. Petition of voters — maximum tax rate — submission of question.

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

SECTION A. ENACTING CLAUSE. — Section 205.010, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 205.010, to read as follows:

205.010. PETITION OF VOTERS — MAXIMUM TAX RATE — SUBMISSION OF QUESTION.
— Any county, subject to the provisions of the Constitution of the state of Missouri, may establish, maintain, manage and operate a public health center in the following manner: Whenever the county commission shall be presented with a petition signed by at least ten percent or more of the voters of the county, as determined by the number of votes cast for governor at the preceding general election, asking that an annual tax not in excess of forty cents on each one hundred dollars of the assessed valuation of property in the county, be levied for the establishment, maintenance, management and operation of a county health center and the maintenance of the personnel required for operation of the health center, **or by majority vote of the county commission in any county of the first classification with more than eighty-two thousand but fewer than eighty-two thousand one hundred inhabitants, or by majority vote of the county commission in any county of the third classification without a township form of government and with more than sixteen thousand six hundred but fewer than sixteen thousandseven hundred inhabitants,** the county commission shall submit the question to the voters of the county at an election.

Approved July 6, 2005

SB 259 [SB 259]

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

Prohibits the Cass County Commissioner and the County Highway Engineer on the county planning board from voting

AN ACT to repeal section 64.215, RSMo, and to enact in lieu thereof one new section relating to county planning boards.

SECTION

- A. Enacting clause.
64.215. County planning board, members (exception for Cass County), terms, removal, expenses, chairman (noncharter first classification counties).

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

SECTION A. ENACTING CLAUSE. — Section 64.215, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 64.215, to read as follows:

64.215. COUNTY PLANNING BOARD, MEMBERS (EXCEPTION FOR CASS COUNTY), TERMS, REMOVAL, EXPENSES, CHAIRMAN (NONCHARTER FIRST CLASSIFICATION COUNTIES).

— 1. Except as otherwise provided in subsection 2 of this section, the county planning board shall consist of one of the commissioners of the county commission selected by the county commission, the county highway engineer, both of whom shall serve during their tenure of office, **except that in any county of the first classification with more than eighty-two thousand but fewer than eighty-two thousand one hundred inhabitants such members shall be nonvoting members**, and six residents of the unincorporated territory of the county who shall be appointed by the county commission. The term of the six appointed members shall be four years or until their successor takes office, except that the original term of three of the six appointed members shall be two years. Members may be removed for cause by the county commission upon written charges after public hearings. Any vacancy may be filled by the county commission for the unexpired term of any member whose term becomes vacant, or until the member's successor takes office. All members of the board shall serve without compensation, except, that an attendance fee as reimbursement for expenses may be paid to the appointed members of the board in an amount, set by the county commission, not to exceed twenty-five dollars per meeting. The planning board shall elect its chairman from among the appointed members.

2. In any county of the first classification with a population of at least two hundred thousand inhabitants which does not adjoin any other county of the first classification, the county planning board may, at the option of the county commission, consist of one of the commissioners of the county commission selected by the county commission, and shall include the county highway engineer and six residents of the unincorporated territory of the county, who shall be appointed by the county commission. The county highway engineer and the county commissioner, if a member of the board, shall serve during such person's tenure of office. The term of the six appointed members shall be three years or until their successor takes office.

Approved June 22, 2005

SB 261 [SB 261]

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

Creates certain requirements for the operation of the Missouri health insurance plan

AN ACT to repeal section 379.943, RSMo, and to enact in lieu thereof one new section relating to health insurance, with an expiration date.

SECTION

A. Enacting clause.

379.943. Plan of operation, contents, powers — reinsurance of small employer group — premium rates, review — report to director, formula to be developed — standards of compensation — exemption from taxation — director to assess companies, payment of assessment — expiration date.

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

SECTION A. ENACTING CLAUSE. — Section 379.943, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 379.943, to read as follows:

379.943. PLAN OF OPERATION, CONTENTS, POWERS — REINSURANCE OF SMALL EMPLOYER GROUP — PREMIUM RATES, REVIEW — REPORT TO DIRECTOR, FORMULA TO BE DEVELOPED — STANDARDS OF COMPENSATION — EXEMPTION FROM TAXATION — DIRECTOR TO ASSESS COMPANIES, PAYMENT OF ASSESSMENT — EXPIRATION DATE. — 1. Within one hundred eighty days after the appointment of the initial board, the board shall submit to the director a plan of operation and thereafter any amendments thereto necessary or suitable, to assure the fair, reasonable and equitable administration of the program. The director may, after notice and hearing, approve the plan of operation if the director determines it to be suitable to assure the fair, reasonable and equitable administration of the program, and provides for the sharing of program gains or losses on an equitable and proportionate basis in accordance with the provisions of sections 379.942 and 379.943. The plan of operation shall become effective upon approval in writing by the director.

2. If the board fails to submit a suitable plan of operation within one hundred eighty days after its appointment, the director shall, after notice and hearing, promulgate and adopt a temporary plan of operation. The director shall amend or rescind any plan so adopted under this subsection at the time a plan of operation is submitted by the board and approved by the director.

3. The plan of operation shall:

(1) Establish procedures for handling and accounting of program assets and moneys and for an annual fiscal report to the director;

(2) Establish procedures for selecting an administering carrier and setting forth the powers and duties of the administering carrier;

(3) Establish procedures for reinsuring risks in accordance with the provisions of sections 379.942 and 379.943;

(4) Establish procedures for collecting assessments from reinsuring carriers to fund claims and administrative expenses incurred or estimated to be incurred by the program; and

(5) Provide for any additional matters necessary for the implementation and administration of the program.

4. The program shall have the general powers and authority granted under the laws of this state to insurance companies and health maintenance organizations licensed to transact business, except the power to issue health benefit plans directly to either groups or individuals. In addition thereto, the program shall have the specific authority to:

(1) Enter into contracts as necessary or proper to carry out the provisions and purposes of sections 379.930 to 379.952, including the authority, with the approval of the director, to enter

into contracts with similar programs in other states for the joint performance of common functions or with persons or other organizations for the performance of administrative functions;

(2) Sue or be sued, including taking any legal actions necessary or proper to recover any assessments and penalties for, on behalf of, or against the program or any reinsuring carriers;

(3) Take any legal action necessary to avoid the payment of improper claims against the program;

(4) Define the health benefit plans for which reinsurance will be provided, and to issue reinsurance policies, in accordance with the requirements of sections 379.930 to 379.952;

(5) Establish rules, conditions and procedures for reinsuring risks under the program;

(6) Establish actuarial functions as appropriate for the operation of the program;

(7) Assess carriers in accordance with the provisions of subsection 8 of this section, and to make advance interim assessments as may be reasonable and necessary for organizational and interim operating expenses. Any interim assessments shall be credited as offsets against any regular assessments due following the close of the calendar year;

(8) Appoint appropriate legal, actuarial and other committees as necessary to provide technical assistance in the operation of the program, policy and other contract design, and any other function within the authority of the program; and

(9) Borrow money to effect the purposes of the program. Any notes or other evidence of indebtedness of the program not in default shall be legal investments for carriers and may be carried as admitted assets.

5. A small employer carrier participating in the program may reinsure an entire small employer group with the program as provided for in this subsection:

(1) With respect to a basic health benefit plan or a standard health benefit plan, the program shall reinsure the level of coverage provided and, with respect to other plans, the program shall reinsure up to the level of coverage provided in a basic or standard health benefit plan.

(2) A small employer carrier may reinsure an entire small employer group within sixty days of the commencement of the group's coverage under a health benefit plan or within thirty days after an annual renewal of a small employer group.

(3) (a) The program shall not reimburse a small employer carrier with respect to the claims of an employee or dependent who is part of a reinsured small employer group until the carrier has incurred an initial level of claims for such employee or dependent of five thousand dollars in a calendar year for benefits covered by the program. In addition, the small employer carrier shall be responsible for ten percent of the remaining incurred claims during a calendar year and the program shall reinsure the remainder. A small employer carrier's liability under this paragraph shall not exceed a maximum limit of twenty-five thousand dollars in any one calendar year with respect to any individual who is part of a reinsured small employer group.

(b) The board annually shall adjust the initial level of claims and the maximum limit to be retained by the carrier to reflect increases in costs and utilization within the standard market for health benefit plans within the state. The adjustment shall not be less than the annual change in the medical component of the "Consumer Price Index for All Urban Consumers" of the federal Department of Labor, Bureau of Labor Statistics, unless the board proposes and the director approves a lower adjustment factor.

(4) A small employer carrier may terminate reinsurance for a small employer on any plan anniversary.

6. (1) The board, as part of the plan of operation, shall establish a methodology for determining premium rates to be charged by the program for reinsuring small employers and individuals pursuant to sections 379.942 and 379.943. The methodology shall include a system for classification of small employers that reflects the types of case characteristics commonly used by small employer carriers in the state. The methodology shall also include a system for classification of small employer carriers that reflects the degree to which the small employer carrier uses the cost containment features adopted by the health benefit plan committee under section 379.944. The methodology shall provide for the development of base reinsurance

premium rates, which shall be multiplied by the factors set forth in subdivision (2) of this act to determine the premium rates for the program. The base reinsurance premium rates, shall be established by the board, subject to the approval of the director, and shall be set at levels which reasonably approximate gross premiums charged to small employers by small employer carriers for health benefit plans with benefits similar to the standard health benefit plan.

(2) Only an entire small employer group may be reinsured, and the rate for such reinsurance shall be one and one-half times the base reinsurance insurance premium rate for the group established pursuant to this subsection.

(3) The board periodically shall review the methodology established under subdivisions (1) and (2) of this section, including the system of classification and any rating factors, to assure that it reasonably reflects the claims experience of the program. The board may propose changes to the methodology which shall be subject to the approval of the director.

7. If a health benefit plan for a small employer is reinsured with the program, the premium charged to the small employer for any rating period for the coverage issued shall meet the requirements relating to premium rates set forth in section 379.936.

8. (1) Prior to March first of each year, the board shall determine and report to the director the program net loss for the previous calendar year, including administrative expenses and incurred losses for the year, taking into account investment income and other appropriate gains and losses.

(2) Any net loss for the year shall be recouped by assessments of reinsuring carriers.

(a) The board shall establish, as part of the plan of operation, a formula by which to make assessments against reinsuring carriers and small employer carriers. The assessment formula shall be based on:

a. The share of each reinsuring carrier which reinsures any small employer group with the program, of the program net loss described in this subsection shall be their proportionate share, determined by premiums earned in the preceding calendar year from health benefit plans which have been ceded to the program, times one-half of the total program net loss;

b. Each reinsuring carrier's share of the program net loss described in this subsection shall be its proportionate share, determined by premiums earned in the preceding calendar year from all health benefit plans delivered or issued for delivery to small employers in this state by all reinsuring carriers, times one-half of the total program net loss. An assessment levied or paid by a reinsuring carrier pursuant to subparagraph a of this paragraph shall not be credited or offset against any assessment levied pursuant to this subparagraph.

(b) The formula established pursuant to paragraph (a) of this subdivision shall not result in any reinsuring carrier having an assessment share that is less than fifty percent nor more than one hundred fifty percent of an amount which is based on the proportion of the small employer carrier's total premiums earned in the preceding calendar year from health benefit plans delivered or issued for delivery to small employers in this state by small employer carriers to total premiums earned in the preceding calendar year from health benefit plans delivered or issued for delivery to small employers in this state by all small employer carriers.

(c) The director by rule and after a hearing thereon, may change the assessment formula established pursuant to paragraph (a) of this subdivision from time to time as appropriate. The director may provide for the shares of the assessment base attributable to premiums from all health benefit plans and to premiums from health benefit plans ceded to the program to vary during a transition period.

(d) Subject to the approval of the director, the board shall make an adjustment to the assessment formula for reinsuring carriers that are approved health maintenance organizations which are federally qualified under 42 U.S.C. section 300, et seq., to the extent, if any, that restrictions are placed on them that are not imposed on other small employer carriers.

(e) Premiums and benefits payable by a reinsuring carrier that are less than an amount determined by the board to justify the cost of collection shall not be considered for purposes of determining assessments.

(3) (a) Prior to March first of each year, the board shall determine and file with the director an estimate of the assessments needed to fund the losses incurred by the program in the previous calendar year.

(b) If the board determines that the assessments needed to fund the losses incurred by the program in the previous calendar year will exceed the amount specified in paragraph (c) of this subdivision, the board shall evaluate the operation of the program and report its findings, including any recommendations for changes to the plan of operation, to the director within ninety days following the end of the calendar year in which the losses were incurred. The evaluation shall include: an estimate of future assessments, the administrative costs of the program, the appropriateness of the premiums charged and the level of insurer retention under the program and the costs of coverage for small employers. If the board fails to file a report with the director within ninety days following the end of the applicable calendar year, the director may evaluate the operations of the program and implement such amendments to the plan of operation the director deems necessary to reduce future losses and assessments.

(c) For any calendar year, the amount specified in this paragraph is five percent of total premiums earned in the previous year from health benefit plans delivered or issued for delivery to small employers in this state by reinsuring carriers.

(d) a. If assessments in each of two consecutive calendar years exceed the amount specified in paragraph (c) of subdivision (3) of this subsection, the program shall be eligible to receive additional financing as provided in subparagraph b of this paragraph.

b. The additional financing provided for in subparagraph a of this paragraph shall be obtained from additional assessments apportioned among all carriers which are not small employer carriers; the amount of the assessment for each carrier determined by the carrier's proportionate share of premiums earned in the preceding calendar year from all health benefit plans delivered, issued for delivery or continued in this state to individuals and groups, other than small employer groups subject to sections 379.930 to 379.952, by all carriers, times the total amount of additional financing to be obtained.

c. The additional assessment provided by subparagraph b of this paragraph shall not exceed an amount equal to one percent of the gross premium derived by that carrier from all health benefit plans delivered, issued for delivery or continued in this state to individuals and groups, other than small employer groups subject to sections 379.930 to 379.952.

d. Any loss sustained by the program which is not reimbursed by additional financing obtained pursuant to this paragraph shall be carried forward to the calendar year succeeding the year in which the loss is sustained, and shall be recouped by an increase in premiums charged by the board for reinsurance of small employer groups with the program.

e. Additional financing received by the program pursuant to this paragraph shall be distributed to reinsuring carriers in proportion to the assessments paid by such carriers over the previous two calendar years.

(4) If assessments exceed net losses of the program, the excess shall be held at interest and used by the board to offset future losses or to reduce program premiums. As used in this paragraph, "future losses" includes reserves for incurred but not reported claims.

(5) Each carrier's proportion of the assessment shall be determined annually by the board based on annual statements and other reports deemed necessary by the board and filed by the carriers with the board.

(6) The plan of operation shall provide for the imposition of an interest penalty for late payment of assessments.

(7) A carrier may seek from the director a deferment from all or part of an assessment imposed by the board. The director may defer all or part of the assessment of a carrier if the director determines that the payment of the assessment would place the carrier in a financially impaired condition. If all or part of an assessment against a carrier is deferred, the amount deferred shall be assessed against the other participating carriers in a manner consistent with the basis for assessment set forth in this subsection. The carrier receiving such deferment shall

remain liable to the program for the amount deferred and the interest penalty provided in subdivision (6) of this subsection and shall be prohibited from reinsuring any groups in the program until such time as it pays such assessments.

9. Neither the participation in the program as reinsuring carriers, the establishment of rates, forms or procedures, nor any other joint or collective action required by sections 379.930 to 379.952 shall be the basis of any legal action, criminal or civil liability, or penalty against the program or any of its reinsuring carriers either jointly or separately, other than any action by the director to enforce the provisions of sections 379.930 to 379.952.

10. The board, as part of the plan of operation, shall develop standards setting forth the manner and levels of compensation to be paid to producers for the sale of basic and standard health benefit plans. In establishing such standards, the board shall take into the consideration: the need to assure the broad availability of coverages; the objectives of the program; the time and effort expended in placing the coverage; the need to provide ongoing service to the small employer; the levels of compensation currently used in the industry; and the overall costs of coverage to small employers selecting these plans.

11. The program shall be exempt from any and all taxes.

12. The director shall make an initial assessment of one thousand dollars on each insurance company authorized to transact accident or health insurance, each health services corporation, and each health maintenance organization. Initial assessments shall be made during January, 1993, and shall be paid before April 1, 1993. Initial assessments shall be deposited into the department of insurance dedicated fund. Within ten days after the effective date of the program's plan of operation, the total amount of the initial assessments shall be transferred at the request of the director to the Missouri small employer health reinsurance program. The program may use such initial assessment in the same manner and for the same purposes as other assessments pursuant to sections 379.942 and 379.943.

13. The program, as defined in section 379.930, shall not accept any new risks or renew any existing risk on or after October 1, 2005.

14. Any program assets or moneys that exceed six hundred thousand dollars on August 28, 2005, shall be delivered on October 1, 2005, to the Missouri health insurance pool as established in sections 376.960 to 376.989, RSMo, and shall be accepted by the Missouri health insurance pool and used for the administration and operation of the Missouri health insurance pool.

15. Any program assets or moneys that remain on October 1, 2006, shall be delivered on October 31, 2006, to the Missouri health insurance pool as established in sections 376.960 to 376.989, RSMo, and shall be accepted by the Missouri health insurance pool and used for the administration and operation of the Missouri health insurance pool.

16. The provisions of this section shall expire on December 31, 2006.

Approved July 12, 2005

SB 262 [HCS SCS SB 262]

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 for obtaining a license to sell intoxicating liquor by the drink

AN ACT to repeal sections 311.070, 311.080, 311.082, 311.191, 311.332, 311.485, and 311.615, RSMo, and to enact in lieu thereof eleven new sections relating to Missouri wine, with penalty provisions.

SECTION

- A. Enacting clause.
- 311.070. Financial interest in retail businesses by certain licensees prohibited, exceptions — penalties — definitions — activities permitted between wholesalers and licensees — certain contracts unenforceable — contributions to certain organizations permitted, when — sale of Missouri wines only, license issued, when.
- 311.080. Sale of liquor prohibited near schools and churches, exceptions.
- 311.082. Labeling of kegs sold at retail for off-premise consumption, procedures.
- 311.086. Portable bars, entertainment district special license — definitions — issuance, procedure (Kansas City).
- 311.101. Unfinished bottles of wine may be carried out of a restaurant bar, when — transportation permitted — wineries, unfinished bottles of wine may be removed, when — transportation permitted — definition of winery.
- 311.104. Sale by drink, Sunday sales, license may be issued — place of entertainment defined—collection of fees.
- 311.191. Vintage wine, definition — sale of vintage wine through auction, authorized sellers — licenses to auction — auction conducted, where, no consumption, issuance period, fee — shipment out of state — tastings — auctioneer subject to regulations — penalty.
- 311.193. Vintage wine, municipalities may sell by sealed bids — issuance of license, restrictions — consumption on premises prohibited, when — shipping — wine tastings — violations, penalty.
- 311.332. Wholesale price regulation, discrimination prohibited — discounts authorized, when — rebate coupons allowed — delivery to certain organizations for nonresale purposes, allowed when — donation permitted, when.
- 311.485. Temporary location for liquor by the drink, caterers — permit and fee required — other laws applicable, exception.
- 311.615. Division of liquor control established, duties.

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

SECTION A. ENACTING CLAUSE. — Sections 311.070, 311.080, 311.082, 311.191, 311.332, 311.485, and 311.615, RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 311.070, 311.080, 311.082, 311.086, 311.101, 311.104, 311.191, 311.193, 311.332, 311.485, and 311.615, to read as follows:

311.070. FINANCIAL INTEREST IN RETAIL BUSINESSES BY CERTAIN LICENSEES PROHIBITED, EXCEPTIONS — PENALTIES — DEFINITIONS — ACTIVITIES PERMITTED BETWEEN WHOLESALEERS AND LICENSEES — CERTAIN CONTRACTS UNENFORCEABLE — CONTRIBUTIONS TO CERTAIN ORGANIZATIONS PERMITTED, WHEN — SALE OF MISSOURI WINES ONLY, LICENSE ISSUED, WHEN. — 1. Distillers, wholesalers, winemakers, brewers or their employees, officers or agents, shall not, except as provided in this section, directly or indirectly, have any financial interest in the retail business for sale of intoxicating liquors, and shall not, except as provided in this section, directly or indirectly, loan, give away or furnish equipment, money, credit or property of any kind, except ordinary commercial credit for liquors sold to such retail dealers. However, notwithstanding any other provision of this chapter to the contrary, for the purpose of the promotion of tourism, a distiller whose manufacturing establishment is located within this state may apply for and the supervisor of liquor control may issue a license to sell intoxicating liquor, as in this chapter defined, by the drink at retail for consumption on the premises where sold; and provided further that the premises so licensed shall be in close proximity to the distillery and may remain open between the hours of 6:00 a.m. and midnight, Monday through Saturday and between the hours of 11:00 a.m. and 9:00 p.m., Sunday. The authority for the collection of fees by cities and counties as provided in section 311.220, and all other laws and regulations relating to the sale of liquor by the drink for consumption on the premises where sold, shall apply to the holder of a license issued under the provisions of this section in the same manner as they apply to establishments licensed under the provisions of section 311.085, 311.090, or 311.095.

2. Any distiller, wholesaler, winemaker or brewer who shall violate the provisions of subsection 1 of this section, or permit his employees, officers or agents to do so, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as follows:

- (1) For the first offense, by a fine of one thousand dollars;

(2) For a second offense, by a fine of five thousand dollars; and
(3) For a third or subsequent offense, by a fine of ten thousand dollars or the license of such person shall be revoked.

3. As used in this section, the following terms mean:

(1) "Consumer advertising specialties", advertising items that are designed to be carried away by the consumer, such items include, but are not limited to: trading stamps, nonalcoholic mixers, pouring racks, ash trays, bottle or can openers, cork screws, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, postcards, pencils, shirts, caps and visors;

(2) "Equipment and supplies", glassware (or similar containers made of other material), dispensing accessories, carbon dioxide (and other gasses used in dispensing equipment) or ice. "Dispensing accessories" include standards, faucets, cold plates, rods, vents, taps, tap standards, hoses, washers, couplings, gas gauges, vent tongues, shanks, and check valves;

(3) "Point of sale advertising materials", advertising items designed to be used within a retail business establishment to attract consumer attention to the products of a distiller, wholesaler, winemaker or brewer. Such materials include, but are not limited to: posters, placards, designs, inside signs (electric, mechanical or otherwise), window decorations, trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, back bar mats, thermometers, clocks, calendars and alcoholic beverage lists or menus;

(4) "Product display", wine racks, bins, barrels, casks, shelving or similar items the primary function of which is to hold and display consumer products;

(5) "Promotion", an advertising and publicity campaign to further the acceptance and sale of the merchandise or products of a distiller, wholesaler, winemaker or brewer.

4. Notwithstanding other provisions contained herein, the distiller, wholesaler, winemaker or brewer, or their employees, officers or agents may engage in the following activities with a retail licensee licensed pursuant to this chapter or chapter 312, RSMo:

(1) The distiller, wholesaler, winemaker or brewer may give or sell product displays to a retail business if all of the following requirements are met:

(a) The total value of all product displays given or sold to a retail business shall not exceed three hundred dollars per brand at any one time in any one retail outlet. There shall be no combining or pooling of the three hundred dollar limits to provide a retail business a product display in excess of three hundred dollars per brand. The value of a product display is the actual cost to the distiller, wholesaler, winemaker or brewer who initially purchased such product display. Transportation and installation costs shall be excluded;

(b) All product displays shall bear in a conspicuous manner substantial advertising matter on the product or the name of the distiller, wholesaler, winemaker or brewer. The name and address of the retail business may appear on the product displays; and

(c) The giving or selling of product displays may be conditioned on the purchase of intoxicating beverages advertised on the displays by the retail business in a quantity necessary for the initial completion of the product display. No other condition shall be imposed by the distiller, wholesaler, winemaker or brewer on the retail business in order for such retail business to obtain the product display;

(2) Notwithstanding any provision of law to the contrary, the distiller, wholesaler, winemaker or brewer may give or sell any point-of-sale advertising materials and consumer advertising specialties to a retail business if all the following requirements are met:

(a) The total value of all point-of-sale advertising materials and consumer advertising specialties given or sold to a retail business shall not exceed five hundred dollars per year, per brand, per retail outlet. The value of point-of-sale advertising materials and consumer advertising specialties is the actual cost to the distiller, wholesaler, winemaker or brewer who initially purchased such item. Transportation and installation costs shall be excluded;

(b) All point-of-sale advertising materials and consumer advertising specialties shall bear in a conspicuous manner substantial advertising matter about the product or the name of the

distiller, wholesaler, winemaker or brewer. The name, address and logos of the retail business may appear on the point-of-sale advertising materials or the consumer advertising specialties; and

(c) The distiller, wholesaler, winemaker or brewer shall not directly or indirectly pay or credit the retail business for using or distributing the point-of-sale advertising materials or consumer advertising specialties or for any incidental expenses arising from their use or distribution;

(3) A malt beverage wholesaler or brewer may give a gift not to exceed a value of one thousand dollars per year, or sell something of value to a holder of a temporary permit as defined in section 311.482;

(4) The distiller, wholesaler, winemaker or brewer may sell equipment or supplies to a retail business if all the following requirements are met:

(a) The equipment and supplies shall be sold at a price not less than the cost to the distiller, wholesaler, winemaker or brewer who initially purchased such equipment and supplies; and

(b) The price charged for the equipment and supplies shall be collected in accordance with credit regulations as established in the code of state regulations;

(5) The distiller, wholesaler, winemaker or brewer may install dispensing accessories at the retail business establishment, which shall include for the purposes of intoxicating and nonintoxicating beer equipment to properly preserve and serve draught beer only and to facilitate the delivery to the retailer the brewers and wholesalers may lend, give, rent or sell and they may install or repair any of the following items or render to retail licensees any of the following services: beer coils and coil cleaning, sleeves and wrappings, box couplings and draft arms, beer faucets and tap markers, beer and air hose, taps, vents and washers, gauges and regulators, beer and air distributors, beer line insulation, coil flush hose, couplings and bucket pumps; portable coil boxes, air pumps, blankets or other coverings for temporary wrappings of barrels, coil box overflow pipes, tilting platforms, bumper boards, skids, cellar ladders and ramps, angle irons, ice box grates, floor runways; and damage caused by any beer delivery excluding normal wear and tear and a complete record of equipment furnished and installed and repairs and service made or rendered must be kept by the brewer or wholesalers furnishing, making or rendering same for a period of not less than one year;

(6) The distiller, wholesaler, winemaker or brewer may furnish, give or sell coil cleaning service to a retailer of distilled spirits, wine or malt beverages;

(7) A wholesaler of intoxicating liquor may furnish or give and a retailer may accept a sample of distilled spirits or wine as long as the retailer has not previously purchased the brand from that wholesaler, if all the following requirements are met:

(a) The wholesaler may furnish or give not more than seven hundred fifty milliliters of any brand of distilled spirits and not more than seven hundred fifty milliliters of any brand of wine; if a particular product is not available in a size within the quantity limitations of this subsection, a wholesaler may furnish or give to a retailer the next larger size;

(b) The wholesaler shall keep a record of the name of the retailer and the quantity of each brand furnished or given to such retailer;

(c) For the purposes of this subsection, no samples of intoxicating liquor provided to retailers shall be consumed on the premises nor shall any sample of intoxicating liquor be opened on the premises of the retailer except as provided by the retail license;

(d) For the purpose of this subsection, the word "brand" refers to differences in brand name of product or differences in nature of product; examples of different brands would be products having a difference in: brand name; class, type or kind designation; appellation of origin (wine); viticulture area (wine); vintage date (wine); age (distilled spirits); or proof (distilled spirits); differences in packaging such a different style, type, size of container, or differences in color or design of a label are not considered different brands;

(8) The distiller, wholesaler, winemaker or brewer may package and distribute intoxicating beverages in combination with other nonalcoholic items as originally packaged by the supplier for sale ultimately to consumers; notwithstanding any provision of law to the contrary, for the

purpose of this subsection, intoxicating liquor and wine wholesalers are not required to charge for nonalcoholic items any more than the actual cost of purchasing such nonalcoholic items from the supplier;

(9) The distiller, wholesaler, winemaker or brewer may sell or give the retail business newspaper cuts, mats or engraved blocks for use in the advertisements of the retail business;

(10) The distiller, wholesaler, winemaker or brewer may in an advertisement list the names and addresses of two or more unaffiliated retail businesses selling its product if all of the following requirements are met:

(a) The advertisement shall not contain the retail price of the product;

(b) The listing of the retail businesses shall be the only reference to such retail businesses in the advertisement;

(c) The listing of the retail businesses shall be relatively inconspicuous in relation to the advertisement as a whole; and

(d) The advertisement shall not refer only to one retail business or only to a retail business controlled directly or indirectly by the same retail business;

(11) Notwithstanding any other provision of law to the contrary, distillers, winemakers, wholesalers, brewers or retailers may conduct a local or national sweepstakes/contest upon a licensed retail premise. However, no money or something of value may be given to the retailer for the privilege or opportunity of conducting the sweepstakes or contest;

(12) The distiller, wholesaler, winemaker or brewer may stock, rotate, rearrange or reset the products sold by such distiller, wholesaler, winemaker or brewer at the establishment of the retail business so long as the products of any other distiller, wholesaler, winemaker or brewer are not altered or disturbed;

(13) The distiller, wholesaler, winemaker or brewer may provide a recommended shelf plan or shelf schematic for distilled spirits, wine or malt beverages;

(14) The distiller, wholesaler, winemaker or brewer participating in the activities of a retail business association may do any of the following:

(a) Display its products at a convention or trade show;

(b) Rent display booth space if the rental fee is the same paid by all others renting similar space at the association activity;

(c) Provide its own hospitality which is independent from the association activity;

(d) Purchase tickets to functions and pay registration fees if such purchase or payment is the same as that paid by all attendees, participants or exhibitors at the association activity; and

(e) Make payments for advertisements in programs or brochures issued by retail business associations at a convention or trade show if the total payments made for all such advertisements do not exceed three hundred dollars per year for any retail business association;

(15) The distiller, wholesaler, winemaker or brewer may sell its other merchandise which does not consist of intoxicating beverages to a retail business if the following requirements are met:

(a) The distiller, wholesaler, winemaker or brewer shall also be in business as a bona fide producer or vendor of such merchandise;

(b) The merchandise shall be sold at its fair market value;

(c) The merchandise is not sold in combination with distilled spirits, wines or malt beverages except as provided in this section;

(d) The acquisition or production costs of the merchandise shall appear on the purchase invoices or records of the distiller, wholesaler, winemaker or brewer; and

(e) The individual selling prices of merchandise and intoxicating beverages sold to a retail business in a single transaction shall be determined by commercial documents covering the sales transaction;

(16) The distiller, wholesaler, winemaker or brewer may sell or give an outside sign to a retail business if the following requirements are met:

(a) The sign shall bear in a conspicuous manner substantial advertising matter about the product or the name of the distiller, wholesaler, winemaker or brewer;

(b) The retail business shall not be compensated, directly or indirectly, for displaying the sign; and

(c) The cost of the sign shall not exceed four hundred dollars;

(17) A wholesaler may, but shall not be required to, exchange for an equal quantity of identical product or allow credit against outstanding indebtedness for intoxicating liquor with alcohol content of less than five percent by weight or nonintoxicating beer that was delivered in a damaged condition or damaged while in the possession of the retailer;

(18) To assure and control product quality, wholesalers at the time of a regular delivery may, but shall not be required to, withdraw, with the permission of the retailer, a quantity of intoxicating liquor with alcohol content of less than five percent by weight or nonintoxicating beer in its undamaged original carton from the retailer's stock, if the wholesaler replaces the product with an equal quantity of identical product;

(19) In addition to withdrawals authorized pursuant to subdivision (18) of this subsection, to assure and control product quality, wholesalers at the time of a regular delivery may, but shall not be required to, withdraw, with the permission of the retailer, a quantity of intoxicating liquor with alcohol content of less than five percent by weight and nonintoxicating beer in its undamaged original carton from the retailer's stock and give the retailer credit against outstanding indebtedness for the product if:

(a) The product is withdrawn at least thirty days after initial delivery and within twenty-one days of the date considered by the manufacturer of the product to be the date the product becomes inappropriate for sale to a consumer; and

(b) The quantity of product withdrawn does not exceed the equivalent of twenty-five cases of twenty-four twelve-ounce containers; and

(c) To assure and control product quality, a wholesaler may, but not be required to, give a retailer credit for intoxicating liquor with an alcohol content of less than five percent by weight or nonintoxicating beer, in a container with a capacity of four gallons or more, delivered but not used, if the wholesaler removes the product within seven days of the initial delivery; and

(20) Nothing in this section authorizes consignment sales.

5. All contracts entered into between distillers, brewers and winemakers, or their officers or directors, in any way concerning any of their products, obligating such retail dealers to buy or sell only the products of any such distillers, brewers or winemakers or obligating such retail dealers to buy or sell the major part of such products required by such retail vendors from any such distiller, brewer or winemaker, shall be void and unenforceable in any court in this state.

6. Notwithstanding any other provisions of this chapter to the contrary, a distiller or wholesaler may install dispensing accessories at the retail business establishment, which shall include for the purposes of distilled spirits, equipment to properly preserve and serve premixed distilled spirit beverages only. To facilitate delivery to the retailer, the distiller or wholesaler may lend, give, rent or sell and the distiller or wholesaler may install or repair any of the following items or render to retail licensees any of the following services: coils and coil cleaning, draft arms, faucets and tap markers, taps, tap standards, tapping heads, hoses, valves and other minor tapping equipment components, and damage caused by any delivery excluding normal wear and tear. A complete record of equipment furnished and installed and repairs or service made or rendered shall be kept by the distiller or wholesaler, furnishing, making or rendering the same for a period of not less than one year.

7. Notwithstanding any other provision of this chapter or chapter 312, RSMo, to the contrary, distillers, winemakers, brewers or their employees, or officers shall be permitted to make contributions of money or merchandise to a licensed retail liquor dealer that is a charitable or religious organization as defined in section 313.005, RSMo, or an educational institution if such contributions are unrelated to such organization's retail operations.

8. Notwithstanding any other provision of this chapter or chapter 312, RSMo, to the contrary, a brewer or manufacturer, its employees, officers or agents may have a financial interest in the retail business for sale of intoxicating liquors and nonintoxicating beer at entertainment facilities owned, in whole or in part, by the brewer or manufacturer, its subsidiaries or affiliates including, but not limited to, arenas and stadiums used primarily for concerts, shows and sporting events of all kinds.

9. Notwithstanding any other provision of this chapter or chapter 312, RSMo, to the contrary, for the purpose of the promotion of tourism, a wine manufacturer, its employees, officers or agents located within this state may apply for and the supervisor of liquor control may issue a license to sell intoxicating liquor, as defined in this chapter, by the drink at retail for consumption on the premises where sold, if the premises so licensed is in close proximity to the winery. Such premises [may remain open between the hours of 6:00 a.m. and midnight, Monday through Saturday and between the hours of 11:00 a.m. and 9:00 p.m., Sunday] **shall be closed during the hours specified under section 311.290 and may remain open between the hours of 9:00 a.m. and midnight on Sunday.**

10. Notwithstanding any other provision of this chapter or chapter 312, RSMo, to the contrary, for the purpose of the promotion of tourism, a person may apply for and the supervisor of liquor control may issue a license to sell intoxicating liquor by the drink at retail for consumption on the premises where sold, but [the person so licensed shall sell only Missouri-produced wines received from manufacturers licensed pursuant to section 311.190] **seventy-five percent or more of the intoxicating liquor sold by such licensed person shall be Missouri-produced wines received from manufacturers licensed under section 311.190.** Such premises may remain open between the hours of 6:00 a.m. and midnight, Monday through Saturday, and between the hours of 11:00 a.m. and 9:00 p.m. on Sundays.

311.080. SALE OF LIQUOR PROHIBITED NEAR SCHOOLS AND CHURCHES, EXCEPTIONS.

— 1. No license shall be granted for the sale of intoxicating liquor, as defined in this chapter, within one hundred feet of any school, church or other building regularly used as a place of religious worship, **unless the applicant for the license shall first obtain the consent in writing of the board of alderman, city council, or other proper authorities of any incorporated city, town, or village,** except that when a school, church or place of worship shall hereafter be established within one hundred feet of any place of business licensed to sell intoxicating liquor, the license shall not be denied for this reason. **Such consent shall not be granted until at least ten days' written notice has been provided to all owners of property within one hundred feet of the proposed licensed premises.**

2. The board of aldermen, city council or other proper authorities of any incorporated city, town or village may by ordinance prohibit the granting of a license for the sale of intoxicating liquor within a distance as great as three hundred feet of any school, church, or other building regularly used as a place of religious worship. In such cases, and where the ordinance has been lawfully enacted, no license of any character shall be issued in conflict with the ordinance while it is in effect; except, that when a school, church or place of worship is established within the prohibited distance from any place of business licensed to sell intoxicating liquor, the license shall not be denied for this reason.

3. Subsection 1 of this section shall not apply to [a holder of] a license issued [pursuant to section 311.090, 311.218, or 311.482, or to any premises holding a license issued before January 1, 2004,] by the supervisor of alcohol and tobacco control for the sale of intoxicating liquor **pursuant to section 311.218 or to a license issued to any church, school, civic, service, fraternal, veteran, political, or charitable club or organization which has obtained an exemption from the payment of federal taxes.**

4. **Subsection 1 of this section shall not apply to any premises holding a license issued before January 1, 2004, by the supervisor of alcohol and tobacco control for the sale of intoxicating liquor. To retain a license under this subsection, the licensed premises shall**

not change license type, amend the legal description, or be without a liquor license for more than ninety days.

311.082. LABELING OF KEGS SOLD AT RETAIL FOR OFF-PREMISE CONSUMPTION, PROCEDURES. — 1. As used in this section, the following terms shall mean:

(1) "Keg", any container capable of holding four gallons or more of beer, wine, or intoxicating liquor and which is designed to dispense beer, wine, or intoxicating liquor directly from the container for purposes of consumption. **Any nonreturnable container with a capacity of less than six gallons shall not be considered a keg under this section;**

(2) "Supervisor of alcohol and tobacco control", the person appointed pursuant to section 311.610.

2. Each keg sold at retail for off-premise consumption shall be labeled with [the name and address of the retail licensee and an] **a numbered** identification [number] **tag**. The division of alcohol and tobacco control may prescribe the [form of the labels] **numbered identification tags** to be used for this purpose. The [label] **recyclable numbered identification tag** shall be affixed to [a recyclable tag that is attached to] the handle on the top chime of the keg. The [label and] **recyclable numbered identification tag** shall be supplied by the division of alcohol and tobacco control without fee and securely affixed to the keg by the licensee making the sale.

3. Each retail licensee shall require each keg purchaser to present [positive] **valid identification and a minimum deposit of fifty dollars per keg** at the time of purchase. **On the identification form provided by the division of alcohol and tobacco control** the licensee shall record for each keg sale the date of sale, the size of keg, [any applicable] **keg tag** identification number [if available], the amount of container deposit, the name, address, and date of birth of the purchaser, and the form of identification presented by such purchaser. The purchaser shall sign a statement at the time of purchase attesting to the accuracy of the purchaser's name and address and acknowledging that misuse of the keg or its contents may result in civil liability, criminal prosecution, or both. The licensee shall retain the identification form for a minimum of three months following the sale of the keg.

4. The licensee shall not refund a deposit for a keg that is returned without the [required label and] **numbered** identification [number] **tag** intact and legible. The licensee shall record the date of return of the keg and the condition of the [label and] **numbered** identification [number] **tag** on the identification form required pursuant to subsection [2] **3** of this section. The licensee may retain any deposit not refunded for this reason. Upon the return of a properly [labeled] **tagged** keg from a consumer, the licensee shall remove the tag from the keg and retain such tag with the identification form as required pursuant to subsection [2] **3** of this section. [This requirement shall not apply to permanent identification numbers or other forms of identification placed on the keg by a manufacturer.]

5. The supervisor shall promulgate rules and regulations for the administration of this section and shall design all necessary forms. No rule, regulation, or portion of a rule or regulation promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to chapter 536, RSMo.

6. The provisions of this section shall become effective on July 1, 2004.

7. This section shall fully preempt and supersede any ordinances, rules, or regulations made by any city, county, or other political subdivision of the state of Missouri which regulate the selling, labeling, or registering of kegs. This section shall not impose any new or additional civil or criminal liability upon the retail licensee.

311.086. PORTABLE BARS, ENTERTAINMENT DISTRICT SPECIAL LICENSE — DEFINITIONS — ISSUANCE, PROCEDURE (KANSAS CITY). — 1. As used in this section, the following terms mean:

(1) "Common area", any area designated as a common area in a development plan for the entertainment district approved by the governing body of the city, any area of a

public right-of-way that is adjacent to or within the entertainment district when it is closed to vehicular traffic and any other area identified in the development plan where a physical barrier precludes motor vehicle traffic and limits pedestrian accessibility;

(2) "Entertainment district", any area located in a home rule city with more than four hundred thousand inhabitants and located in more than one county with a population of at least four thousand inhabitants that is located in the city's central business district which is the historic core locally known as the city's downtown area, that contains a combination of entertainment venues, bars, nightclubs, and restaurants, and that is designated a redevelopment area by the governing body of the city under the Missouri downtown and rural economic stimulus act, sections 99.915 to 99.1060, RSMo;

(3) "Portable bar", any bar, table kiosk, cart, or stand that is not a permanent fixture and can be moved from place to place;

(4) "Promotional association", an association incorporated in the State of Missouri which is organized or authorized by one or more property owners located within the entertainment district who own or otherwise control not less than one hundred thousand square feet of premises designed, constructed, and available for lease for bars, nightclubs, restaurants, and other entertainment venues for the purpose of organizing and promoting activities within the entertainment district. For purposes of determining ownership or control as set forth in this subdivision, the square footage of premises used for residential, office, or retail uses, (other than bars, nightclubs, restaurants, and other entertainment venues), parking facilities, and hotels within the entertainment district shall not be used in the calculation of square footage.

2. Notwithstanding any other provision of this chapter to the contrary, any person acting on behalf of or designated by a promotional association who possesses the qualifications required by this chapter, and who meets the requirements of and complies with the provisions of this chapter, may apply for and the supervisor of alcohol and tobacco control may issue an entertainment district special license to sell intoxicating liquor by the drink for retail for consumption dispensed from one or more portable bars within the common areas of the entertainment district until 3:00 a.m. on Mondays through Saturdays and from 9:00 a.m. until 12 midnight on Sundays.

3. An applicant granted an entertainment district special license under this section shall pay a license fee of three hundred dollars per year.

4. Notwithstanding any other provision of this chapter to the contrary, on such days and at such times designated by the promotional association, in its sole discretion, provided such times are during the hours a license is allowed under this chapter to sell alcoholic beverages, the promotional association may allow persons to leave licensed establishments located in portions of the entertainment district designated by the promotional association with an alcoholic beverage and enter upon and consume the alcoholic beverage within other licensed establishments and common areas located in portions of the entertainment district designated by the promotional association. No person shall take any alcoholic beverages outside the boundaries of the entertainment district or portions of the entertainment district as designated by the promotional association, in its sole discretion. At times when a person is allowed to consume alcoholic beverages dispensed from portable bars and in common areas of all or any portion of the entertainment district designated by the promotional association, the promotional association shall insure that minors can be easily distinguished from persons of legal age buying alcoholic beverages.

5. Every licensee within the entertainment district shall serve alcoholic beverages in containers that contain the licensee's trade name or logo or some other mark that is unique to that license.

6. The holder of an entertainment district special license is solely responsible for alcohol violations occurring at its portable bar and in any common area.

311.101. UNFINISHED BOTTLES OF WINE MAY BE CARRIED OUT OF A RESTAURANT BAR, WHEN — TRANSPORTATION PERMITTED — WINERIES, UNFINISHED BOTTLES OF WINE MAY BE REMOVED, WHEN — TRANSPORTATION PERMITTED — DEFINITION OF WINERY. — 1. Notwithstanding any other provision of law, it shall not be unlawful for the owner, operator, or employees of a restaurant bar, as defined in section 311.097, to allow patrons to carry out one or more bottles of unfinished wine, nor shall it be unlawful for patrons of such restaurant bar to carry out one or more bottles of unfinished wine under the following conditions:

- (1) The patron must have ordered a meal;
- (2) The bottle or bottles of wine must have been at least partially consumed during the meal;
- (3) The restaurant bar must provide a dated receipt for the unfinished bottle or bottles of wine; and
- (4) The restaurant bar must securely reseal the bottle or bottles of wine and place them in one or more one-time-use, tamper-proof, transparent bags and securely seal the bags.

2. Notwithstanding any other provision of law, no person who transports one or more bottles of unfinished wine which came from a restaurant bar under the circumstances described in subsection 1 of this section, in a vehicle, shall be considered to have violated any state law or local ordinance regarding open containers in vehicles so long as such person has in his or her possession the dated receipt from the restaurant bar and the bottle or bottles of wine remain in the restaurant bar furnished, one-time-use, tamper-proof, transparent bags with the seals intact.

3. Notwithstanding any other provision of law, it shall be lawful for the owner, operator, or employees of a winery to allow patrons to carry out one or more bottles of unfinished wine and it shall be lawful for patrons of such winery to carry out one or more bottles of unfinished wine under the following conditions:

- (1) The bottle or bottles of wine must have been at least partially consumed at the winery;
- (2) The winery must provide a dated receipt for the unfinished bottle or bottles of wine; and
- (3) The winery must securely reseal the bottle or bottles of wine and place them in one or more one-time-use, tamper-proof, transparent bags and securely seal the bags.

4. Notwithstanding any other provision of law, no person who transports one or more bottles of unfinished wine which came from a winery under the circumstances described under subsection 3 of this section, shall be considered to have violated any state law or local ordinance regarding open containers in vehicles so long as such person has in his or her possession the dated receipt from the winery and the bottle or bottles of wine remain in the winery furnished, one-time-use, tamper-proof, transparent bags with the seals intact.

5. As used in this section "winery" means any establishment at which wine is made.

311.104. SALE BY DRINK, SUNDAY SALES, LICENSE MAY BE ISSUED — PLACE OF ENTERTAINMENT DEFINED-COLLECTION OF FEES. — 1. Notwithstanding any other provisions of this chapter to the contrary, any person who possesses the qualifications required by this chapter, and who meets the requirements of and complies with the provisions of this chapter may apply for, and the supervisor of alcohol and tobacco control may issue, a license to sell intoxicating liquor by the drink at retail for consumption on the premises of any place of entertainment, as defined in this section, between the hours of 9:00 a.m. on Sunday and midnight on Sunday. As used in this section, the term "place of entertainment" means any establishment located in a county with a charter form of government and with more than two hundred fifty thousand but fewer than three

hundred fifty thousand inhabitants which has gross annual sales in excess of one hundred fifty thousand dollars and the establishment has been in operation for at least one year.

2. The authority for the collection of fees by cities and counties as provided in section 311.220, and all other laws and regulations of the state relating to the sale of liquor by the drink for consumption on the premises where sold, shall apply to a place of entertainment in the same manner as they apply to establishments licensed pursuant to sections 311.085, 311.090, and 311.095, and in addition to all other fees required by law, a place of entertainment shall pay an additional fee of two hundred dollars a year payable at the same time and in the same manner as its other license fees.

311.191. VINTAGE WINE, DEFINITION — SALE OF VINTAGE WINE THROUGH AUCTION, AUTHORIZED SELLERS — LICENSES TO AUCTION — AUCTION CONDUCTED, WHERE, NO CONSUMPTION, ISSUANCE PERIOD, FEE — SHIPMENT OUT OF STATE — TASTINGS — AUCTIONEER SUBJECT TO REGULATIONS — PENALTY. — 1. As used herein, the term "vintage wine" means bottled domestic white, rose or sparkling wine which is not less than five years old, domestic red wine which is not less than ten years old, or imported white, rose, red, sparkling or port wine which is not less than three years old.

2. Notwithstanding any other provisions of this chapter, any **municipality** or person legally owning, controlling or possessing a private collection of vintage wines in their original packages, including an executor, administrator, personal representative, guardian or conservator of an estate, sheriff, trustee in bankruptcy, or person appointed or authorized by a court to act upon or execute a court order or writ of execution with regard to the disposition of that vintage wine, is authorized to sell that vintage wine at auction on consignment through an auctioneer licensed herein. The auctioneer involved in such sale shall ensure that each bottle of vintage wine sold from a private collection has a permanently fixed label stating that the bottle was acquired from a private collection.

3. The supervisor of liquor control is hereby authorized to issue a license to conduct auctions of vintage wine to any person licensed as an auctioneer pursuant to chapter 343, RSMo, and regularly conducting business as an auctioneer at a fixed location in this state within a city in a county of the first classification with a charter form of government; provided, however, that no such license to auction vintage wine may be issued to any person, or any entity controlled in whole or in part by a person, who:

- (1) Has been convicted of a felony or of any offense under this chapter;
- (2) Either possesses a current license to sell intoxicating liquor at wholesale or retail, or previously possessed such a license which was revoked for cause; or
- (3) Has not been continuously in business in this state as an auctioneer for a period of ten years prior to making application for such license to auction vintage wine. The license to auction vintage wine shall be in addition to any license or permit requirements imposed by ordinance within the county or municipal jurisdictions in which the auctioneer conducts such business.

4. No auction of vintage wine may be conducted off the business premises of the auctioneer. No vintage wine sold at auction shall be consumed on the premises of the auctioneer, nor shall any original package of vintage wine be opened on such premises in the course of any such auction, except as provided herein. A license to conduct auctions of vintage wine shall be issued for a period of one year and shall authorize the auctioneer to conduct not more than six auctions of vintage wine during such year. The license shall be issued in such form and upon the completion of such application as may be required by the supervisor of liquor control. The fee for such license shall be five hundred dollars per year.

5. A **municipality** or person legally owning, controlling or possessing a private collection of vintage wines in their original packages may ship the vintage wine in such packages from any location within the state of Missouri to an auctioneer licensed pursuant to this act. Upon receipt of the vintage wine the auctioneer shall be responsible for the storage and warehousing thereof, for the labeling thereof pursuant to the requirements of subsection 2 of this section, for the

delivery of the vintage wine to the purchasers at auction, and for the payment and transfer of any applicable state and local taxes in connection with the auction sale.

6. An auctioneer licensed to sell vintage wine pursuant to this section may hold vintage wine tastings on the premises where an auction of such vintage wine is to be conducted within the period of twenty-four hours immediately preceding the commencement of the auction.

7. An auctioneer licensed pursuant to this section shall be subject to all restrictions, regulations and provisions of this chapter governing the acquisition, storage and sale of intoxicating liquor for off-premises consumption which are not inconsistent with the provisions of this section.

8. An auctioneer who affixes a label to any bottle of vintage wine, as provided in subsection 2 of this section, without having determined through the exercise of reasonable diligence that the wine was acquired from a bona fide private collection, shall be guilty of a class C misdemeanor and, upon a finding of or plea of guilty with regard to any such misdemeanor, shall be subject to cancellation of the license issued pursuant to subsection 3 of this section.

311.193. VINTAGE WINE, MUNICIPALITIES MAY SELL BY SEALED BIDS — ISSUANCE OF LICENSE, RESTRICTIONS — CONSUMPTION ON PREMISES PROHIBITED, WHEN — SHIPPING — WINE TASTINGS — VIOLATIONS, PENALTY. — 1. As used in this section, the term "vintage wine" means bottled domestic white, rose, or sparkling wine which is not less than five years old, domestic red wine which is not less than ten years old, or imported white, rose, red, sparkling, or port wine which is not less than three years old.

2. Notwithstanding any other provisions of this chapter, any municipality legally owning, controlling or possessing a private collection of vintage wines in their original packages, is authorized to sell such vintage wine through a sealed bid process. The municipality may set a minimum bid and may reserve the right to reject all bids. The municipality shall designate a municipal employee to sell vintage wine through a sealed bid process who shall ensure that each bottle of vintage wine sold from a private collection has a permanently fixed label stating that the bottle was acquired from a private collection.

3. The supervisor of liquor control is hereby authorized to issue a license to a designated municipal employee provided that no such license to sell vintage wine through a sealed bid process may be issued to any person, who:

- (1) Has been convicted of a felony or of any offense under this chapter;**
- (2) Either possesses a current license to sell intoxicating liquor at wholesale or retail, or previously possessed such a license which was revoked for cause.**

4. The license to sell vintage wine through a sealed bid process shall be in addition to any license or permit requirements imposed by ordinance within the county or municipality.

5. No vintage wine sold through the sealed bid process shall be consumed on the premises of the municipality, nor shall any original package of vintage wine be opened on such premises, except as provided herein. A license to sell vintage wine through a sealed bid process shall be issued for a period of one year and shall authorize the designated municipal employee to sell such wine not more than six different times during that year. The license shall be issued in such form and upon completion of such application as may be required by the supervisor of liquor control. The fee for such license shall be fifty dollars per year which shall be paid by the municipality.

6. The municipality legally owning, controlling, or possessing a private collection of vintage wines in their original packages may ship the vintage wine in such packages from any location within the state of Missouri to the designated municipal employee licensed pursuant to this section. Upon receipt of the vintage wine the designated municipal employee shall be responsible for the storage and warehousing thereof, for the labeling thereof pursuant to the requirements of subsection 2 of this section, for the delivery of the

vintage wine to the purchasers, and for the payment and transfer of any applicable state and local taxes in connection with the sale.

7. The designated municipal employee licensed to sell vintage wine pursuant to this section may hold vintage wine tastings on the premises where the vintage wine is stored within the period of twenty-four hours immediately preceding the first date on which sealed bids will be accepted.

8. The designated municipal employee licensed pursuant to this section shall be subject to all restrictions, regulations, and provisions of this chapter governing the acquisition, storage, and sale of intoxicating liquor for off-premises consumption which are not inconsistent with the provisions of this section.

9. A municipal employee designated by the municipality to sell vintage wine through a sealed bid process who affixes a label to any bottle of wine, as provided in subsection 2 of this section, without having determined through the exercise of reasonable diligence that the wine was acquired from a bona fide private collection, shall be guilty of a class C misdemeanor and, upon a finding of or plea of guilty with regard to any such misdemeanor, shall be subject to a cancellation of the license issued pursuant to subsection 3 of this section.

311.332. WHOLESALE PRICE REGULATION, DISCRIMINATION PROHIBITED — DISCOUNTS AUTHORIZED, WHEN — REBATE COUPONS ALLOWED — DELIVERY TO CERTAIN ORGANIZATIONS FOR NONRESALE PURPOSES, ALLOWED WHEN — DONATION PERMITTED, WHEN. — 1. Except as provided in subsections 2 and 3 of this section, it shall be unlawful for any wholesaler licensed to sell intoxicating liquor and wine containing alcohol in excess of five percent by weight to persons duly licensed to sell such intoxicating liquor and wine at retail, to discriminate between retailers or in favor of or against any retailer or group of retailers, directly or indirectly, in price, in discounts for time of payment, or in discounts on quantity of merchandise sold, or to grant directly or indirectly, any discount, rebate, free goods, allowance or other inducement, excepting a discount not in excess of one percent for quantity of liquor and wine, and a discount not in excess of one percent for payment on or before a certain date. The delivery of manufacturer rebate coupons by wholesalers to retailers shall not be a violation of this subsection.

2. Except as provided in subsection 3 of this section, any wholesaler licensed to sell intoxicating liquor and wine containing alcohol in excess of five percent by weight to persons duly licensed to sell such intoxicating liquor and wine at retail may offer a price reduction of not more than four percent of [his] **the wholesaler's** price schedule for any brand, age, proof, and size bottle or package. Such price reduction shall apply for a thirty-day period, shall not be offered by any wholesaler more than three times in any calendar year, and shall not be offered during successive months.

3. Any wholesaler licensed to sell intoxicating liquor and wine containing alcohol in excess of five percent by weight to persons duly licensed to sell such intoxicating liquor and wine at retail may offer a price reduction of more than four percent of the scheduled price on close-out merchandise. "Close-out merchandise" is any item which has been in the wholesaler's inventory for more than six months. The price of close out merchandise may be decreased, but shall not be increased, monthly for up to and including twelve consecutive months. A wholesaler shall not purchase any item of intoxicating liquor or wine of the same year and vintage [he] **the wholesaler** has classified as close-out merchandise during the period of such classification. A wholesaler shall not purchase, sell, or offer to sell any item of intoxicating liquor or wine of the same year and vintage [he] **the wholesaler** has classified as close-out merchandise until twenty-four months have elapsed since the wholesaler's last offer to sell the item as close-out merchandise.

4. Manufacturers or wholesalers shall be permitted to **donate or** deliver or cause to be delivered beer, wine, **brandy**, or nonintoxicating beer for nonresale purposes to any unlicensed

person or any licensed retail dealer who is a charitable or religious organization as defined in section 313.005, RSMo, or educational institution, at any location or licensed premises, provided, such beer, wine, **brandy**, or nonintoxicating beer is unrelated to the organization's or institution's licensed retail operation. **A charge for admission to an event or activity at which beer, wine, brandy, or nonintoxicating beer is available without separate charge shall not constitute resale for the purposes of this subsection.** Wine used in religious ceremonies may be sold by wholesalers to a religious organization as defined in section 313.005, RSMo. Any manufacturer or wholesaler providing nonresale items shall keep a record of any deliveries made pursuant to this subsection.

5. Manufacturers, wholesalers, retailers and unlicensed persons may donate wine in the original package to a charitable or religious organization as defined in section 313.005, RSMo, or educational institution for the sole purpose of being auctioned by the organization or institution for fund-raising purposes, provided the auction takes place on a retail-licensed premises and all proceeds from the sale go into a fund of an organization or institution that is unrelated to any licensed retail operation.

311.485. TEMPORARY LOCATION FOR LIQUOR BY THE DRINK, CATERERS — PERMIT AND FEE REQUIRED — OTHER LAWS APPLICABLE, EXCEPTION. — 1. The supervisor of liquor control may issue a temporary permit to caterers and other persons holding licenses to sell intoxicating liquor by the drink at retail for consumption on the premises pursuant to the provisions of this chapter who furnish provisions and service for use at a particular function, occasion or event at a particular location other than the licensed premises, but not including a "festival" as defined in chapter 316, RSMo. The temporary permit shall be effective for a period not to exceed one hundred [twenty] **sixty-eight** consecutive hours, and shall authorize the service of alcoholic beverages at such function, occasion or event during the hours at which alcoholic beverages may lawfully be sold or served upon premises licensed to sell alcoholic beverages for on-premises consumption. For every permit issued pursuant to the provisions of this section, the permittee shall pay to the director of revenue the sum of ten dollars for each calendar day, or fraction thereof, for which the permit is issued.

2. Except as provided in subsection 3 of this section, all provisions of the liquor control law and the ordinances, rules and regulations of the incorporated city, or the unincorporated area of any county, in which is located the premises in which such function, occasion or event is held shall extend to such premises and shall be in force and enforceable during all the time that the permittee, its agents, servants, employees, or stock are in such premises. Except for Missouri-produced wines in the original package, the provisions of this section shall not include the sale of packaged goods covered by this temporary permit.

3. Notwithstanding any other law to the contrary, any caterer who possesses a valid state and valid local liquor license may deliver alcoholic beverages, in the course of his or her catering business. A caterer who possesses a valid state and valid local liquor license need not obtain a separate license for each city the caterer delivers in, so long as such city permits any caterer to deliver alcoholic beverages within the city.

4. To assure and control product quality, wholesalers may, but shall not be required to, give a retailer credit for intoxicating liquor with an alcohol content of less than five percent by weight or nonintoxicating beer delivered and invoiced under the catering permit number, but not used, if the wholesaler removes the product within seventy-two hours of the expiration of the catering permit issued pursuant to this section.

311.615. DIVISION OF LIQUOR CONTROL ESTABLISHED, DUTIES. — There shall be a division within the department of public safety known as the "Division of Alcohol and Tobacco Control", which shall have as its chief executive officer the supervisor of alcohol and tobacco control appointed pursuant to section 311.610. All references to the division of [alcohol and tobacco] **liquor** control and the supervisor of [alcohol and tobacco] **liquor** control in the statutes

shall mean the division of alcohol and tobacco control and **the** supervisor of alcohol and tobacco control.

Approved July 6, 2005

SB 266 [SCS SB 266]

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

Alters the definition of "teacher" in the teacher tenure act

AN ACT to repeal section 168.104, RSMo, and to enact in lieu thereof one new section relating to teachers.

SECTION

- A. Enacting clause.
168.104. Definitions.

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

SECTION A. ENACTING CLAUSE. — Section 168.104, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 168.104, to read as follows:

168.104. DEFINITIONS. — The following words and phrases when used in sections 168.102 to 168.130, except in those instances where the context indicates otherwise, mean:

- (1) "Board of education", the school board or board of directors of a school district, except a metropolitan school district, having general control of the affairs of the district;
- (2) "Demotion", any reduction in salary or transfer to a position carrying a lower salary, except on request of a teacher, other than any change in salary applicable to all teachers or all teachers in a classification;
- (3) "Indefinite contract", every contract heretofore or hereafter entered into between a school district and a permanent teacher;
- (4) "Permanent teacher", any teacher who has been employed or who is hereafter employed as a teacher in the same school district for five successive years and who has continued or who thereafter continues to be employed as a teacher by the school district or any supervisor of teachers who was employed as a teacher in the same school district for at least five successive years prior to becoming a supervisor of teachers and who continues thereafter to be employed as a certificated employee by the school district; except that, when a permanent teacher resigns or is permanently separated from employment by a school district, and is afterwards reemployed by the same school district, reemployment for the first school year does not constitute an indefinite contract but if he is employed for the succeeding year, the employment constitutes an indefinite contract; and except that any teacher employed under a part-time contract by a school district shall accrue credit toward permanent status on a prorated basis. Any permanent teacher who is promoted with his consent to a supervisory position including principal or assistant principal, or is first employed by a district in a supervisory position including principal or assistant principal, shall not have permanent status in such position but shall retain tenure in the position previously held within the district, or, after serving two years as principal or assistant principal, shall have tenure as a permanent teacher of that system;
- (5) "Probationary teacher", any teacher as herein defined who has been employed in the same school district for five successive years or less. In the case of any probationary teacher who

has been employed in any other school system as a teacher for two or more years, the board of education shall waive one year of his probationary period;

(6) "School district", every school district in this state, except metropolitan school district as defined in section 162.571, RSMo;

(7) "Teacher", any employee of a school district, except a metropolitan school district, regularly required to be certified under laws relating to the certification of teachers, except superintendents and assistant superintendents but including certified teachers who teach at the prekindergarten level in a nonmetropolitan public school **within a prekindergarten program in which no fees are charged to parents or guardians.**

Approved July 6, 2005

SB 267 [SCS SB 267]

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

Amends provisions relating to property tax reassessment

AN ACT to repeal section 137.115, RSMo, and to enact in lieu thereof one new section relating to property tax reassessment.

SECTION

A. Enacting clause.

137.115. Real and personal property, assessment — maintenance plan — assessor may mail forms for personal property — classes of property, assessment — physical inspection required, when, procedure.

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

SECTION A. ENACTING CLAUSE. — Section 137.115, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 137.115, to read as follows:

137.115. REAL AND PERSONAL PROPERTY, ASSESSMENT — MAINTENANCE PLAN — ASSESSOR MAY MAIL FORMS FOR PERSONAL PROPERTY — CLASSES OF PROPERTY, ASSESSMENT — PHYSICAL INSPECTION REQUIRED, WHEN, PROCEDURE. — 1. All other laws to the contrary notwithstanding, the assessor or the assessor's deputies in all counties of this state including the city of St. Louis shall annually make a list of all real and tangible personal property taxable in the assessor's city, county, town or district. Except as otherwise provided in subsection 3 of this section and section 137.078, the assessor shall annually assess all personal property at thirty-three and one-third percent of its true value in money as of January first of each calendar year. The assessor shall annually assess all real property, including any new construction and improvements to real property, and possessory interests in real property at the percent of its true value in money set in subsection 5 of this section. The assessor shall annually assess all real property in the following manner: new assessed values shall be determined as of January first of each odd-numbered year and shall be entered in the assessor's books; those same assessed values shall apply in the following even-numbered year, except for new construction and property improvements which shall be valued as though they had been completed as of January first of the preceding odd-numbered year. The assessor may call at the office, place of doing business, or residence of each person required by this chapter to list property, and require the person to make a correct statement of all taxable tangible personal property owned by the person or under his or her care, charge or management, taxable in the county. On or before January first

of each even-numbered year, the assessor shall prepare and submit a two-year assessment maintenance plan to the county governing body and the state tax commission for their respective approval or modification. The county governing body shall approve and forward such plan or its alternative to the plan to the state tax commission by February first. If the county governing body fails to forward the plan or its alternative to the plan to the state tax commission by February first, the assessor's plan shall be considered approved by the county governing body. If the state tax commission fails to approve a plan and if the state tax commission and the assessor and the governing body of the county involved are unable to resolve the differences, in order to receive state cost-share funds outlined in section 137.750, the county or the assessor shall petition the administrative hearing commission, by May first, to decide all matters in dispute regarding the assessment maintenance plan. Upon agreement of the parties, the matter may be stayed while the parties proceed with mediation or arbitration upon terms agreed to by the parties. The final decision of the administrative hearing commission shall be subject to judicial review in the circuit court of the county involved. In the event a valuation of subclass (1) real property within any county with a charter form of government, or within a city not within a county, is made by a computer, computer-assisted method or a computer program, the burden of proof, supported by clear, convincing and cogent evidence to sustain such valuation, shall be on the assessor at any hearing or appeal. In any such county, unless the assessor proves otherwise, there shall be a presumption that the assessment was made by a computer, computer-assisted method or a computer program. Such evidence shall include, but shall not be limited to, the following:

(1) The findings of the assessor based on an appraisal of the property by generally accepted appraisal techniques; and

(2) The purchase prices from sales of at least three comparable properties and the address or location thereof. As used in this paragraph, the word "comparable" means that:

(a) Such sale was closed at a date relevant to the property valuation; and

(b) Such properties are not more than one mile from the site of the disputed property, except where no similar properties exist within one mile of the disputed property, the nearest comparable property shall be used. Such property shall be within five hundred square feet in size of the disputed property, and resemble the disputed property in age, floor plan, number of rooms, and other relevant characteristics.

2. Assessors in each county of this state and the city of St. Louis may send personal property assessment forms through the mail.

3. The following items of personal property shall each constitute separate subclasses of tangible personal property and shall be assessed and valued for the purposes of taxation at the following percents of their true value in money:

(1) Grain and other agricultural crops in an unmanufactured condition, one-half of one percent;

(2) Livestock, twelve percent;

(3) Farm machinery, twelve percent;

(4) Motor vehicles which are eligible for registration as and are registered as historic motor vehicles pursuant to section 301.131, RSMo, and aircraft which are at least twenty-five years old and which are used solely for noncommercial purposes and are operated less than fifty hours per year or aircraft that are home built from a kit, five percent;

(5) Poultry, twelve percent; and

(6) Tools and equipment used for pollution control and tools and equipment used in retooling for the purpose of introducing new product lines or used for making improvements to existing products by any company which is located in a state enterprise zone and which is identified by any standard industrial classification number cited in subdivision (6) of section 135.200, RSMo, twenty-five percent.

4. The person listing the property shall enter a true and correct statement of the property, in a printed blank prepared for that purpose. The statement, after being filled out, shall be signed

and either affirmed or sworn to as provided in section 137.155. The list shall then be delivered to the assessor.

5. All subclasses of real property, as such subclasses are established in section 4(b) of article X of the Missouri Constitution and defined in section 137.016, shall be assessed at the following percentages of true value:

- (1) For real property in subclass (1), nineteen percent;
- (2) For real property in subclass (2), twelve percent; and
- (3) For real property in subclass (3), thirty-two percent.

6. Manufactured homes, as defined in section 700.010, RSMo, which are actually used as dwelling units shall be assessed at the same percentage of true value as residential real property for the purpose of taxation. The percentage of assessment of true value for such manufactured homes shall be the same as for residential real property. If the county collector cannot identify or find the manufactured home when attempting to attach the manufactured home for payment of taxes owed by the manufactured home owner, the county collector may request the county commission to have the manufactured home removed from the tax books, and such request shall be granted within thirty days after the request is made; however, the removal from the tax books does not remove the tax lien on the manufactured home if it is later identified or found. A manufactured home located in a manufactured home rental park, rental community or on real estate not owned by the manufactured home owner shall be considered personal property. A manufactured home located on real estate owned by the manufactured home owner may be considered real property.

7. Each manufactured home assessed shall be considered a parcel for the purpose of reimbursement pursuant to section 137.750, unless the manufactured home has been converted to real property in compliance with section 700.111, RSMo, and assessed as a realty improvement to the existing real estate parcel.

8. Any amount of tax due and owing based on the assessment of a manufactured home shall be included on the personal property tax statement of the manufactured home owner unless the manufactured home has been converted to real property in compliance with section 700.111, RSMo, in which case the amount of tax due and owing on the assessment of the manufactured home as a realty improvement to the existing real estate parcel shall be included on the real property tax statement of the real estate owner.

9. The assessor of each county and each city not within a county shall use the trade-in value published in the October issue of the National Automobile Dealers' Association Official Used Car Guide, or its successor publication, as the recommended guide of information for determining the true value of motor vehicles described in such publication. In the absence of a listing for a particular motor vehicle in such publication, the assessor shall use such information or publications which in the assessor's judgment will fairly estimate the true value in money of the motor vehicle.

10. Before the assessor may increase the assessed valuation of any parcel of subclass (1) real property by more than fifteen percent since the last assessment, excluding increases due to new construction or improvements, the assessor shall conduct a physical inspection of such property.

11. If a physical inspection is required, pursuant to subsection 10 of this section, the assessor shall notify the property owner of that fact in writing and shall provide the owner clear written notice of the owner's rights relating to the physical inspection. If a physical inspection is required, the property owner may request that an interior inspection be performed during the physical inspection. The owner shall have no less than thirty days to notify the assessor of a request for an interior physical inspection.

12. A physical inspection, as required by subsection 10 of this section, shall include, but not be limited to, an on-site personal observation and review of all exterior portions of the land and any buildings and improvements to which the inspector has or may reasonably and lawfully gain external access, and shall include an observation and review of the interior of any buildings

or improvements on the property upon the timely request of the owner pursuant to subsection 11 of this section. Mere observation of the property via a "drive-by inspection" or the like shall not be considered sufficient to constitute a physical inspection as required by this section.

13. The provisions of subsections 11 and 12 of this section shall only apply in any county with a charter form of government with more than one million inhabitants.

14. A county or city collector may accept credit cards as proper form of payment of outstanding property tax due. No county or city collector may charge surcharge for payment by credit card which exceeds the fee or surcharge charged by the credit card bank for its service.

15. The provisions of this section and sections 137.073, 138.060 and 138.100, RSMo, as enacted by house bill no. 1150 of the ninety-first general assembly, second regular session, shall become effective January 1, 2003, for any taxing jurisdiction within a county with a charter form of government with greater than one million inhabitants, and the provisions of this section and sections 137.073, 138.060 and 138.100, RSMo, as enacted by house bill no. 1150 of the ninety-first general assembly, second regular session, shall become effective October 1, 2004, for all taxing jurisdictions in this state. Any county or city not within a county in this state may, by an affirmative vote of the governing body of such county, opt out of the provisions of this section and sections 137.073, 138.060, and 138.100, RSMo, as enacted by house bill no. 1150 of the ninety-first general assembly, second regular session and section 137.073 as modified by this act, for the next year of the general reassessment, prior to January first of any year. No county or city not within a county shall exercise this opt-out provision after implementing the provisions of this section and sections 137.073, 138.060, and 138.100, RSMo, as enacted by house bill no. 1150 of the ninety-first general assembly, second regular session and section 137.073 as modified by this act, in a year of general reassessment. For the purposes of applying the provisions of this subsection, a political subdivision contained within two or more counties where at least one of such counties has opted out and at least one of such counties has not opted out shall calculate [the separate rates for the three subclasses of real property and the aggregate class of personal property as required by section 137.073, provided that such political subdivision shall also provide a single blended rate, in accordance with the procedure for determining a blended rate for school districts in subdivision (1) of subsection 6 of section 137.073. Such blended rate shall be used for the portion of such political subdivision that is situated within any county that has opted out] **a single tax rate as in effect prior to the enactment of house bill no. 1150 of the ninety-first general assembly, second regular session.** A governing body of a city not within a county or a county that has opted out under the provisions of this subsection may choose to implement the provisions of this section and sections 137.073, 138.060, and 138.100, RSMo, as enacted by house bill no. 1150 of the ninety-first general assembly, second regular session, and section 137.073 as modified by this act, for the next year of general reassessment, by an affirmative vote of the governing body prior to December thirty-first of any year.

Approved July 6, 2005

SB 270 [HCS SCS SB 270]

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 linked deposit program and other duties of the State Treasurer

AN ACT to repeal sections 30.247, 30.250, 30.260, 30.270, 30.750, 30.753, 30.756, 30.758, 30.760, 30.765, 30.767, 30.830, and 30.840, RSMo, and to enact in lieu thereof fifteen new sections relating to the state treasurer, with penalty provisions and an emergency clause.

SECTION

- A. Enacting clause.
 - 30.250. Contract with depository, terms and conditions.
 - 30.260. Investment policy required — time and demand deposits — investments — interest rates.
 - 30.270. Security for safekeeping of state funds.
 - 30.286. Authority to enter into agreements for certain services.
 - 30.750. Definitions.
 - 30.753. Treasurer's authority to invest in linked deposits, limitations.
 - 30.756. Lending institution receiving linked deposits, requirements and limitations — false statements as to use for loan, penalty — eligible student borrowers — eligibility, student renewal loans, repayment method.
 - 30.758. Loan package acceptance or rejection — loan agreement requirements — linked deposit at reduced market interest rate, when.
 - 30.760. Loans to be at fixed rate of interest set by rules — records of loans to be segregated — penalty for violations — state treasurer, powers and duties.
 - 30.765. State and state treasurer not liable on loans — default on a loan not to affect deposit agreement with state.
 - 30.767. Expiration of state treasurer's power to invest in linked deposit — exceptions.
 - 30.830. Program funding limitation.
 - 30.840. Renewal.
 - 30.860. Development facilities and renewable fuel production facilities, certificates of qualifications issued, when — factors considered — rulemaking authority.
 - 1. State treasurer's general operations fund created, use of moneys.
 - 30.247. Bank accounts with certain average balances to be obtained through competitive bid process.
- B. Emergency clause.

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

SECTION A. ENACTING CLAUSE. — Sections 30.247, 30.250, 30.260, 30.270, 30.750, 30.753, 30.756, 30.758, 30.760, 30.765, 30.767, 30.830, and 30.840, RSMo, are repealed and fifteen new sections enacted in lieu thereof, to be known as sections 30.250, 30.260, 30.270, 30.286, 30.750, 30.753, 30.756, 30.758, 30.760, 30.765, 30.767, 30.830, 30.840, 30.860, and 1, to read as follows:

30.250. CONTRACT WITH DEPOSITORY, TERMS AND CONDITIONS. — 1. The state treasurer shall enter into a written contract with each depository setting forth the conditions and terms upon which the moneys of the state are deposited therewith and containing among its provisions and conditions the following:

- (1) The amount of the moneys of the state to be entrusted to each depository;
- (2) With respect to demand deposits, the time such contract shall continue with the right reserved to each the state treasurer and the depository to terminate the contract at any time upon giving ninety days' notice to the other party of his or **her or** its intention to do so;
- (3) With respect to time deposits, the conditions as to time and notice which need be given in regard to withdrawals and the rate of interest which the depository shall be obligated to pay;
- (4) Provisions requiring that the depository shall:
 - (a) Safely keep such deposits;
 - (b) Pay demand deposits on the state treasurer's demand therefor; and
 - (c) Pay time deposits only in accordance with the contract with the depository;
- (5) That such depository shall secure the state moneys with the amount and character of securities provided for in section 30.270, such securities to be held at the expense of the depository;
- (6) That no item of security deposited by a depository under the terms of the contract shall be withdrawn without the written consent of the state treasurer; and that otherwise the representatives of the state of Missouri shall have the rights prescribed by sections 30.270 and 30.280;
- (7) That the depository shall, at times specified by the state treasurer, render a statement showing the daily activity in the account;
- (8) That in the event the depository shall default in any manner in performing any of the terms and conditions of the contract, or shall fail to keep safely the moneys of the state deposited

with it, the state treasurer shall be authorized forthwith without notice, advertisement or demand, and at public or private sale, to convert into money the securities deposited, or as many of them as may be necessary to pay the whole amount of the state deposits in such depository; **and**

(9) The contract for state funds may be for a period of up to five years.

2. Upon the execution of such contracts the state treasurer shall deliver a copy thereof to the governor, a copy thereof to the state auditor, a copy thereof to the depository, shall file another copy with the secretary of state, and shall retain the contract in his own office.

30.260. INVESTMENT POLICY REQUIRED — TIME AND DEMAND DEPOSITS — INVESTMENTS — INTEREST RATES. — 1. The state treasurer shall prepare, maintain and adhere to a written investment policy which shall include an asset allocation plan which limits the total amount of state moneys which may be invested in any particular investment authorized by section 15, article IV of the Missouri Constitution. The state treasurer shall present a copy of such policy to the governor, commissioner of administration, state auditor and general assembly at the commencement of each regular session of the general assembly or at any time the written investment policy is amended.

2. The state treasurer shall determine by the exercise of the treasurer's best judgment the amount of state moneys that are not needed for current operating expenses of the state government and shall keep on demand deposit in banking institutions in this state selected by the treasurer and approved by the governor and state auditor the amount of state moneys which the treasurer has so determined are needed for current operating expenses of the state government and disburse the same as authorized by law.

3. Within the parameters of the state treasurer's written investment policy, the state treasurer shall place the state moneys which the treasurer has determined are not needed for current operations of the state government on time deposit drawing interest in banking institutions in this state selected by the treasurer and approved by the governor and the state auditor, or place them outright or, if applicable, by repurchase agreement in obligations described in section 15, article IV, Constitution of Missouri, as the treasurer in the exercise of the treasurer's best judgment determines to be in the best overall interest of the people of the state of Missouri, giving due consideration to:

(1) The preservation of such state moneys;

(2) **The benefits to the economy and welfare of the people of Missouri when such state money is invested in banking institutions in this state that, in turn, provide additional loans and investments in the Missouri economy and generate state taxes from such initial investments and the loans and investments created by the banking institutions, compared to the removal or withholding from banking institutions in the state of all or some such state moneys and investing same in obligations authorized in section 15, article IV of the Missouri Constitution;**

(3) The liquidity needs of the state;

~~[(3)]~~ (4) The ~~[comparative yield]~~ **aggregate return in earnings and taxes on the deposits and the investment** to be derived therefrom;

~~[(4)]~~ The effect upon the economy and welfare of the people of Missouri of the removal or withholding from banking institutions in the state of all or some such state moneys and investing same in obligations authorized in section 15, article IV of the Missouri Constitution;] and

(5) All other factors which to the treasurer as a prudent state treasurer seem to be relevant to the general public welfare in the light of the circumstances at the time prevailing. The state treasurer may also place state moneys which are determined not needed for current operations of the state government in linked deposits as provided in sections 30.750 to 30.767.

4. Except for state moneys deposited in linked deposits as provided in sections 30.750 to 30.767, the rate of interest payable by all banking institutions on time deposits of state moneys shall be the same as the average rate paid during the week next preceding the week in which the deposit was made for United States of America treasury securities maturing and becoming

payable closest to the time of termination of the deposit, as determined by the state treasurer, adjusted to the nearest one-tenth of a percent; except that the rate shall never exceed the maximum rate of interest which by federal law or regulation a bank which is a member of the Federal Reserve System may from time to time pay on a time deposit of the same size and maturity.

5. Within the parameters of the state treasurer's written investment policy, the state treasurer may subscribe for or purchase outright or by repurchase agreement investments of the character described in subsection 3 of this section which the treasurer, in the exercise of the treasurer's best judgment, believes to be the best for investment of state moneys at the time and in payment therefor may withdraw moneys from any bank account, demand or time, maintained by the treasurer without having any supporting warrant of the commissioner of administration. The state treasurer may bid on subscriptions for such obligations in accordance with the treasurer's best judgment. The state treasurer shall provide for the safekeeping of all such obligations so acquired in the same manner that securities pledged to secure the repayment of state moneys deposited in banking institutions are kept by the treasurer pursuant to law. The state treasurer may hold any such obligation so acquired by the treasurer until its maturity or prior thereto may sell the same outright or by reverse repurchase agreement provided the state's security interest in the underlying security is perfected or temporarily exchange such obligation for cash or other authorized securities of at least equal market value with no maturity more than one year beyond the maturity of any of the traded obligations, for a negotiated fee as the treasurer, in the exercise of the treasurer's best judgment, deems necessary or advisable for the best interest of the people of the state of Missouri in the light of the circumstances at the time prevailing. The state treasurer may pay all costs and expenses reasonably incurred by the treasurer in connection with the subscription, purchase, sale, collection, safekeeping or delivery of all such obligations at any time acquired by the treasurer.

6. As used in this chapter, except as more particularly specified in section 30.270, obligations of the United States shall include securities of the United States Treasury, and United States agencies or instrumentalities as described in section 15, article IV, Constitution of Missouri. The word "temporarily" as used in this section shall mean no more than six months.

30.270. SECURITY FOR SAFEKEEPING OF STATE FUNDS. — 1. For the security of the moneys deposited by the state treasurer pursuant to the provisions of this chapter, the state treasurer shall, from time to time, submit a list of acceptable securities to be approved by the governor and state auditor if satisfactory to them, and the state treasurer shall require of the selected and approved banks or financial institutions as security for the safekeeping and payment of deposits, securities from the list provided for in this section, which list [may] **shall** include only securities of the following kind and character, **unless it is determined by the state treasurer that the use of such securities as collateral may place state public funds at undue risk:**

- (1) Bonds or other obligations of the United States;
- (2) Bonds or other obligations of the state of Missouri including revenue bonds issued by state agencies or by state authorities created by legislative enactment;
- (3) Bonds of any city in this state having a population of not less than two thousand;
- (4) Bonds of any county in this state;
- (5) Approved registered bonds of any school district situated in this state;
- (6) Approved registered bonds of any special road district in this state;
- (7) State bonds of any state;
- (8) Notes, bonds, debentures or other similar obligations issued by the [federal land banks, federal intermediate credit banks, or banks for cooperatives] **farm credit banks or agricultural credit banks** or any other obligations issued pursuant to the provisions of an act of the Congress of the United States known as the Farm Credit Act of 1971, and acts amendatory thereto;
- (9) Bonds of the federal home loan banks;

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

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

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

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

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

(15) Out-of-state municipal bonds, provided such bonds are rated in the highest category by at least one nationally recognized statistical rating agency.

(16) (a) Mortgage securities that are individual loans that include negotiable promissory notes and the first lien deeds of trust securing payment of such notes on one to four family real estate, on commercial real estate, or on farm real estate located in Missouri or states adjacent to Missouri, provided such loans:

a. Are underwritten to conform to standards established by the state treasurer, which are substantially similar to standards established by the Federal Home Loan Bank of Des Moines, Iowa, and any of its successors in interest that provide funding for financial institutions in Missouri;

b. Are offered by a financial institution in which a senior executive officer certifies under penalty of perjury that such loans are compliant with the requirements of the Federal Home Loan Bank of Des Moines, Iowa when such loans are pledged by such bank;

c. Are offered by a financial institution that is well capitalized; and

d. Are not construction loans, are not more than ninety days delinquent, have not been classified as substandard, doubtful, or subject to loss, are one hundred percent owned by the financial institution, are otherwise unencumbered and are not being temporarily warehoused in the financial institution for sale to a third party.

Any disqualified mortgage securities shall be removed as collateral within ninety days of disqualification or the state treasurer may disqualify such collateral as collateral for state funds.

(b) The state treasurer may promulgate regulations and provide such other forms or agreements to ensure the state maintains a first priority position on the deeds of trust and otherwise protect and preserve state funds. 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, 2005, shall be invalid and void;

(c) A status report on all such mortgage securities shall be provided to the state treasurer on a calendar monthly basis in the manner and format prescribed by the state treasurer by the financial institutions pledging such mortgage securities and also shall certify their compliance with subsection 2 for such mortgage securities;

(d) In the alternative to paragraph (a) of this subdivision, a financial institution may provide a blanket lien on all loans secured by one to four family real estate, all loans secured by commercial real estate, all loans secured by farm real estate, or any combination of these categories, provided the financial institution secures such blanket

liens with real estate located in Missouri and states adjacent to Missouri and otherwise complies with paragraphs (b) and (c) of this subdivision;

(e) The provisions of paragraphs (a) to (d) of this subdivision are not authorized for any Missouri political subdivision, notwithstanding the provisions of chapter 110, RSMo, to the contrary;

(f) As used in this subdivision, the term "unencumbered" shall mean mortgage securities pledged for state funds as provided in subsection 1 of this section, and not subject to any other express claims by any third parties, including but not limited to a blanket lien on the bank assets by the Federal Home Loan Bank, a depository arrangement when securities are loaned and repurchased daily or otherwise, or the depository has pledged its stock and assets for a loan to purchase another depository or otherwise; and

(g) As used in this subdivision, the term "well capitalized" shall mean a banking institution that according to its most recent report of condition and income or thrift financial report, publicly available as applicable, qualifies as "well capitalized" under the uniform capital requirements established by the federal banking regulators or as determined by state banking regulators under substantially similar requirements.

(17) Any investment that the state treasurer may invest in as provided in article IV, section 15 of the Missouri Constitution, and subject to the state treasurer's written investment policy in section 30.260, that is not otherwise provided for in this section, provided the banking institution or eligible lending institution as defined in subdivision (7) of section 30.750 is well capitalized, as defined in subdivision (16) of this subsection. The provisions of this subdivision are not authorized for political subdivisions, notwithstanding the provisions of chapter 110, RSMo, to the contrary.

2. Securities deposited shall be in an amount valued at market equal at least to one hundred percent of the aggregate amount on time deposit as well as on demand deposit with the particular financial institution less the amount, if any, which is insured either by the Federal Deposit Insurance Corporation [or by the Federal Savings and Loan Insurance Corporation] or by the National Credit Unions Share Insurance Fund. **Furthermore, for a well-capitalized banking institution, securities authorized in this section that are:**

(1) **Mortgage securities on loans secured on one to four family real estate appraised to reflect the market value at the time of the loan and deposited as collateral shall not exceed one hundred and twenty-five percent of the aggregate amount of time deposits and demand deposits;**

(2) **Mortgage securities on loans secured on commercial real estate or on farm real estate appraised to reflect the market value at the time of the loan and deposited as collateral shall not exceed the collateral requirements of the Federal Home Loan Bank of Des Moines, Iowa;**

(3) **Other securities valued at market and deposited as collateral shall not exceed one hundred and five percent of the aggregate amount of time deposits and demand deposits; and**

(4) **Securities that are surety bonds and letters of credit authorized as collateral need only collateralize one hundred percent of the aggregate amount of time deposits and demand deposits.**

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

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

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

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

30.286. AUTHORITY TO ENTER INTO AGREEMENTS FOR CERTAIN SERVICES. — In addition to the other powers authorized in this chapter, the state treasurer may enter into one or more agreements with one or more vendors, banking institutions, agents, consulting firms, or not-for-profit private businesses for the provisions of services relating to the state treasurer's duties as described in this chapter and the Missouri Constitution, including but not limited to collateral tracking and management, custodial banking and other banking services, securities lending, investment advisory services, and other general consulting services as required for a period of years. Such businesses shall be required to demonstrate their ability to manage confidential information, to purchase fidelity bonds on the employees of such businesses, purchase other bonds and insurance as needed for the services provided, and to certify adequately the accuracy of reports required from time to time.

30.750. DEFINITIONS. — As used in sections 30.750 to [30.765] **30.767**, the following terms mean:

(1) "Eligible agribusiness", a person[, employing ten or more persons] engaged in the processing or adding of value to agricultural products produced in Missouri;

(2) "Eligible beginning farmer",

(a) For any beginning farmer who seeks to participate in the linked deposit program alone, a farmer who:

a. Is a Missouri resident;

b. Wishes to borrow for a farm operation located in Missouri;

c. Is at least eighteen years old; **and**

d. In the preceding five years has not owned, either directly or indirectly, farm land greater than [thirty] **fifty** percent of the [median] **average** size farm in the county where the proposed farm operation is located, or farm land with an appraised value greater than [one hundred twenty-five] **four hundred fifty** thousand dollars; and

e. Has not been the sole farmer of land for more than ten years prior to the date of application of the proposed farm operation].

A farmer who qualifies as an eligible farmer under this provision may utilize the proceeds of a linked deposit loan to purchase agricultural land, farm buildings, new and used farm equipment, livestock and working capital;

(b) For any beginning farmer who is participating in both the linked deposit program and the beginning farmer loan program administered by the Missouri agriculture and small business development authority, a farmer who:

a. Qualifies under the definition of a beginning farmer utilized for eligibility for federal tax-exempt financing, including the limitations on the use of loan proceeds; and

b. Meets all other requirements established by the Missouri agriculture and small business development authority;

(3) "**Eligible facility borrower**", a borrower qualified under section 30.860 to apply for a reduced rate loan under sections 30.750 to 30.767;

(4) "Eligible farming operation", any person engaged in farming in an authorized farm corporation, family farm, or family farm corporation as defined in section 350.010, RSMo, that has all of the following characteristics:

(a) Is headquartered in this state;

(b) Maintains offices, operating facilities, or farming operations and transacts business in this state;

(c) Employs less than ten employees;

(d) Is organized for profit;

(e) Possesses not more than sixty percent equity, where "percent equity" is defined as total assets minus total liabilities divided by total assets, except that an otherwise eligible farming operation applying for a loan for the purpose of installing or improving a waste management practice in order to comply with environmental protection regulations shall be exempt from this eligibility requirement;

[(4)] (5) "Eligible higher education institution", any approved public or private institution as defined in section 173.205, RSMo;

[(5)] (6) "Eligible job enhancement business", a new, existing or expanding firm operating in Missouri which employs ten or more employees on a yearly average and which, as nearly as possible, is able to establish or retain at least one job in Missouri for each twenty-five thousand dollars received from a linked deposit loan;

[(6)] (7) "Eligible lending institution", a financial institution that is eligible to make commercial or agricultural or student loans or discount or purchase such loans, is a public depository of state funds or obtains its funds through the issuance of obligations, either directly or through a related entity, eligible for the placement of state funds under the provisions of section 15, article IV, Constitution of Missouri, and agrees to participate in the linked deposit program;

[(7)] (8) "Eligible livestock operation", any person, engaged in production of livestock or poultry in an authorized farm corporation, family farm, or family farm corporation as defined in section 350.010, RSMo;

[(8)] (9) "Eligible marketing enterprise", a business enterprise operating in this state which is in the process of marketing its goods, products or services within or outside of this state or overseas, which marketing is designed to increase manufacturing, transportation, mining, communications, or other enterprises in this state, which has proposed its marketing plan and strategy to the department of economic development and which plan and strategy has been approved by the department for purposes of eligibility pursuant to sections 30.750 to [30.765] **30.767**. Such business enterprise shall conform to the characteristics of paragraphs (a), (b) and (d) of subdivision [(3)] (4) of this section and also employ less than twenty-five employees;

[(9)] (10) "Eligible multitenant development enterprise", a new enterprise that develops multitenant space for targeted industries as determined by the department of economic development and approved by the department for the purposes of eligibility pursuant to sections 30.750 to [30.765] **30.767**;

[(10)] (11) "Eligible residential property developer", an individual who purchases and develops a residential structure of either two or four units, if such residential property developer uses and agrees to continue to use, for at least the five years immediately following the date of issuance of the linked deposit loan, one of the units as his principal residence or if such person's principal residence is located within one-half mile from the developed structure and such person agrees to maintain the principal residence within one-half mile of the developed structure for at least the five years immediately following the date of issuance of the linked deposit loan;

[(11)] (12) "Eligible residential property owner", a person, firm or corporation who purchases, develops or rehabilitates a multifamily residential structure;

[(12)] **(13)** "Eligible small business", a person engaged in an activity with the purpose of obtaining, directly or indirectly, a gain, benefit or advantage and which conforms to the characteristics of paragraphs (a), (b) and (d) of subdivision [(3)] **(4)** of this section, and also employs less than twenty-five employees;

[(13)] **(14)** "Eligible student borrower", any person attending, or the parent of a dependent undergraduate attending, an eligible higher education institution in Missouri who may or may not qualify for need-based student financial aid calculated by the federal analysis called Congressional Methodology Formula pursuant to 20 U.S.C. 1078, as amended (the Higher Education Amendments of 1986);

[(14)] **(15)** "Eligible water supply system", a water system which serves fewer than fifty thousand persons and which is owned and operated by:

(a) A public water supply district established pursuant to chapter 247, RSMo; or
(b) A municipality or other political subdivision; or
(c) A water corporation; and which is certified by the department of natural resources in accordance with its rules and regulations to have suffered a significant decrease in its capacity to meet its service needs as a result of drought;

[(15)] **(16)** "Farming", using or cultivating land for the production of agricultural crops, livestock or livestock products, forest products, poultry or poultry products, milk or dairy products, or fruit or other horticultural products;

[(16)] **(17)** "Linked deposit", a certificate of deposit, or in the case of production credit associations, the subscription or purchase outright of obligations described in section 15, article IV, Constitution of Missouri, placed by the state treasurer with an eligible lending institution [at up to three percent below current market rates that are determined and calculated by the state treasurer, provided the deposit rate is not below two percent] **at rates otherwise provided by law in section 30.758**, provided the institution agrees to lend the value of such deposit, according to the deposit agreement provided in sections 30.750 to [30.765] **30.767**, to eligible small businesses, farming operations, eligible job enhancement businesses, eligible marketing enterprises, eligible residential property developers, eligible residential property owners, eligible agribusinesses, eligible beginning farmers, eligible livestock operations, eligible student borrowers, **eligible facility borrower**, or eligible water supply systems at below the present borrowing rate applicable to each small business, farming operation, eligible job enhancement business, eligible marketing enterprise, eligible residential property developer, eligible residential property owner, eligible agribusiness, eligible beginning farmer, eligible livestock operation, eligible student borrower, or supply system at the time of the deposit of state funds in the institution;

(18) "Market rate", the interest rate tied to federal government securities and more specifically described in subsection 4 of section 30.260;

[(17)] **(19)** "Water corporation", as such term is defined in section 386.020, RSMo;

[(18)] **(20)** "Water system", as such term is defined in section 386.020, RSMo.

30.753. TREASURER'S AUTHORITY TO INVEST IN LINKED DEPOSITS, LIMITATIONS. — 1. The state treasurer may invest in linked deposits; however, the total amount so deposited at any one time shall not exceed, in the aggregate, [three hundred sixty] **seven hundred twenty** million dollars. No more than [one hundred sixty-five] **three hundred thirty** million dollars of the aggregate deposit shall be used for linked deposits to eligible farming operations, eligible agribusinesses, eligible beginning farmers [and], eligible livestock operations, **and eligible facility borrowers**, no more than [fifty-five] **one hundred ten** million of the aggregate deposit shall be used for linked deposits to small businesses, no more than [ten] **twenty** million dollars shall be used for linked deposits to eligible multitenant development enterprises, and no more than [ten] **twenty** million dollars of the aggregate deposit shall be used for linked deposits to eligible residential property developers and eligible residential property owners, no more than [one hundred ten] **two hundred twenty** million dollars of the aggregate deposit shall be used

for linked deposits to eligible job enhancement businesses and no more than [ten] **twenty** million dollars of the aggregate deposit shall be used for linked deposit loans to eligible water systems. Linked deposit loans may be made to eligible student borrowers from the aggregate deposit. If demand for a particular type of linked deposit exceeds the initial allocation, and funds initially allocated to another type are available and not in demand, the state treasurer may commingle allocations among the types of linked deposits. [The amount reallocated under this commingling provision shall not exceed fifty percent of the initial allocation.]

2. The minimum deposit to be made by the state treasurer to an eligible lending institution for eligible job enhancement business loans shall be ninety thousand dollars. Linked deposit loans for eligible job enhancement businesses may be made for the purposes of assisting with relocation expenses, working capital, interim construction, inventory, site development, machinery and equipment, or other expenses necessary to create or retain jobs in the recipient firm.

30.756. LENDING INSTITUTION RECEIVING LINKED DEPOSITS, REQUIREMENTS AND LIMITATIONS — FALSE STATEMENTS AS TO USE FOR LOAN, PENALTY — ELIGIBLE STUDENT BORROWERS — ELIGIBILITY, STUDENT RENEWAL LOANS, REPAYMENT METHOD. — 1. An eligible lending institution that desires to receive a linked deposit shall accept and review applications for linked deposit loans from eligible multitenant enterprises, eligible farming operations, eligible small businesses, eligible job enhancement businesses, eligible marketing enterprises, eligible agribusinesses, eligible beginning farmers, eligible livestock operations, eligible residential property developers, eligible residential property owners, eligible student borrowers, **eligible facility borrowers**, and eligible water supply systems. An eligible residential property owner shall certify on his **or her** loan application that the reduced rate loan will be used exclusively to purchase, develop or rehabilitate a multifamily residential property. The lending institution shall apply all usual lending standards to determine the credit worthiness of each eligible multitenant enterprise, eligible farming operation, eligible small business, eligible job enhancement business, eligible marketing enterprise, eligible residential property developer, eligible residential property owner, eligible agribusiness, eligible beginning farmer, eligible livestock operation, eligible student borrower, **eligible facility borrower**, or eligible water supply system. No linked deposit loan made to any eligible farming operation, eligible livestock operation, eligible agribusiness or eligible small business shall exceed [one hundred thousand dollars and no service of separate loans may be made which exceeds such limit to any single eligible farming operation, eligible livestock operation, eligible agribusiness or eligible small business] **a dollar limit determined by the state treasurer is the state treasurer's best judgment, except as otherwise limited. Any link deposit loan made to an eligible facility borrower shall be in accordance with the loan amount and loan term requirements in section 30.860.**

2. An eligible farming operation, small business or job enhancement business shall certify on its loan application that the reduced rate loan will be used exclusively for necessary production expenses or the expenses listed in subsection 2 of section 30.753 or the refinancing of an existing loan for production expenses or the expenses listed in subsection 2 of section 30.753 of an eligible farming operation, small business or job enhancement business. Whoever knowingly makes a false statement concerning such application is guilty of a class A misdemeanor. An eligible water supply system shall certify on its loan application that the reduced rate loan shall be used exclusively to pay the costs of upgrading or repairing an existing water system, constructing a new water system, or making other capital improvements to a water system which are necessary to improve the service capacity of the system.

3. In considering which eligible farming operations should receive reduced rate loans, the eligible lending institution shall give priority to those farming operations which have suffered reduced yields due to drought or other natural disasters and for which the receipt of a reduced

rate loan will make a significant contribution to the continued operation of the recipient farming operation.

4. The eligible financial institution shall forward to the state treasurer a linked deposit loan package, in the form and manner as prescribed by the state treasurer. The package shall include such information as required by the state treasurer, including the amount of each loan requested. The institution shall certify that each applicant is an eligible farming operation, eligible small business, eligible job enhancement business, eligible marketing enterprise, eligible residential property developer, eligible residential property owner, eligible agribusiness, eligible beginning farmer, eligible livestock operation, eligible student borrower, **eligible facility borrower**, or eligible water supply system, and shall, for each eligible farming operation, small business, eligible job enhancement business, eligible marketing enterprise, eligible residential property developer, eligible residential property owner, eligible agribusiness, eligible beginning farmer, eligible livestock operation, eligible student borrower, **eligible facility borrower**, or eligible water supply system, certify the present borrowing rate applicable.

5. The eligible lending institution shall be responsible for determining if a student borrower is an eligible student borrower. A student borrower shall be eligible for an initial or renewal reduced rate loan only if, at the time of the application for the loan, [he] **the student** is a citizen or permanent resident of the United States, a resident of the state of Missouri as defined by the coordinating board for higher education, is enrolled or has been accepted for enrollment in an eligible higher education institution, and establishes that [he] **the student** has financial need. In considering which eligible student borrowers may receive reduced rate loans, the eligible lending institution may give priority to those eligible student borrowers whose income, or whose family income, if the eligible student borrower is a dependent, is such that the eligible student borrower does not qualify for need-based student financial aid pursuant to 20 U.S.C. 1078, as amended (the Higher Education Amendments of 1986). The eligible lending institution shall require the eligible student borrower to document that [he] **the student** has applied for and has obtained all need-based student financial aid for which [he] **the student** is eligible prior to application for a reduced rate loan pursuant to this section. In no case shall the combination of all financial aid awarded to any student in any particular enrollment period exceed the total cost of attendance at the institution in which the student is enrolled. No eligible lending institution shall charge any additional fees, including but not limited to an origination, service or insurance fee on any loan agreement under the provisions of sections 30.750 to 30.765.

6. The eligible lending institution making an initial loan to an eligible student borrower may make a renewal loan or loans to the student. The total of such reduced rate loans from eligible lending institutions made pursuant to this section to any individual student shall not exceed the cumulative totals established by 20 U.S.C. 1078, as amended. An eligible student borrower shall certify on his **or her** loan application that the reduced rate loan shall be used exclusively to pay the costs of tuition, incidental fees, books and academic supplies, room and board and other fees directly related to enrollment in an eligible higher education institution. The eligible lending institution shall make the loan payable to the eligible student borrower and the eligible higher education institution as copayees. The method of repayment of the loan shall be the same as for repayment of loans made pursuant to sections 173.095 to 173.186, RSMo.

7. Beginning August 28, 2005, in considering which eligible multitenant enterprise, eligible farming operation, eligible small business, eligible job enhancement business, eligible marketing enterprise, eligible residential property developer, eligible residential property owner, eligible agribusiness, eligible beginning farmer, eligible livestock operation, eligible student borrower, eligible facility borrower, or eligible water supply system should receive reduced rate loans, the eligible lending institution shall give priority to an eligible multitenant enterprise, eligible farming operation, eligible small business, eligible job enhancement business, eligible marketing enterprise, eligible residential property developer, eligible residential property owner, eligible agribusiness, eligible beginning farmer, eligible livestock operation, eligible student borrower, eligible facility

borrower, or eligible water supply system that has not previously received a reduced rate loan through the linked deposit program. However, nothing shall prohibit an eligible lending institution from making a reduced rate loan to any entity that previously has received such a loan, if such entity otherwise qualifies for such a reduced rate loan.

30.758. LOAN PACKAGE ACCEPTANCE OR REJECTION — LOAN AGREEMENT REQUIREMENTS — LINKED DEPOSIT AT REDUCED MARKET INTEREST RATE, WHEN. — 1. The state treasurer may accept or reject a linked deposit loan package or any portion thereof.

2. The state treasurer shall make a good faith effort to ensure that the linked deposits are placed with eligible lending institutions to make linked deposit loans to minority or female-owned eligible multitenant enterprises, eligible farming operations, eligible small businesses, eligible job enhancement businesses, eligible marketing enterprises, eligible residential property developers, eligible residential property owners, eligible agribusinesses, eligible beginning farmers, eligible livestock operations, eligible student borrowers, eligible facility borrowers, or eligible water supply systems. Results of such effort shall be included in the linked deposit review committee's annual report to the governor.

[2.] **3.** Upon acceptance of the linked deposit loan package or any portion thereof, the state treasurer may place linked deposits with the eligible lending institution [at up to three percent below current market rates, as determined and calculated by the state treasurer provided the deposit rate is not below two percent] **as follows: when market rates are five percent or above, the state treasurer shall reduce the market rate by up to three percentage points to obtain the linked deposit rate; when market rates are less than five percent, the state treasurer shall reduce the market rate by up to sixty percent to obtain the linked deposit rate, provided that the linked deposit rate is not below one percent. All linked deposit rates are determined and calculated by the state treasurer.** When necessary, the treasurer may place linked deposits prior to acceptance of a linked deposit loan package.

[3.] **4.** The eligible lending institution shall enter into a deposit agreement with the state treasurer, which shall include requirements necessary to carry out the purposes of sections 30.750 to [30.765. Such requirements shall reflect the market conditions prevailing in the eligible lending institution's lending area] **30.767.** The deposit agreement shall specify the length of time for which the lending institution will lend funds upon receiving a linked deposit, **and the original deposit plus renewals shall not exceed five years, except as otherwise provided in this chapter.** The agreement shall also include provisions for the linked deposit of a linked deposit for an **eligible facility borrower**, eligible multitenant enterprise, eligible farming operation, small business, eligible marketing enterprise, eligible residential property developer, eligible residential property owner, eligible agribusiness, eligible beginning farmer, eligible livestock operation, eligible student borrower or job enhancement business [to mature within a period not to exceed one year. The state treasurer may renew such linked deposit for additional periods of time, each of which shall not exceed one year. The linked deposit of a linked deposit for an eligible property developer or residential property owner shall mature within a period not to exceed three years. The linked deposit of a linked deposit for an eligible water supply system shall mature within a period not to exceed three years and the state treasurer may renew such a linked deposit for additional periods of time, each of which shall not exceed three years]. Interest shall be paid at the times determined by the state treasurer.

[4.] **5.** The period of time for which such linked deposit is placed with an eligible lending institution shall be neither longer nor shorter than the period of time for which the linked deposit is used to provide loans at reduced interest rates. The agreement shall further provide that the state shall receive market interest rates on any linked deposit or any portion thereof for any period of time for which there is no corresponding linked deposit loan outstanding to an eligible multitenant enterprise, eligible farming operation, eligible small business, eligible job enhancement business, eligible marketing enterprise, eligible residential property developer,

eligible residential property owner, eligible agribusiness, eligible beginning farmer, eligible livestock operation, eligible student borrower, **eligible facility borrower**, or eligible water supply system, **except as otherwise provided in this subsection. Within thirty days after the annual anniversary date of the linked deposit, the eligible lending institution shall repay the state treasurer any linked deposit principal received from borrowers in the previous yearly period and thereafter repay such principal within thirty days of the yearly anniversary date calculated separately for each linked deposit loan, and repaid at the linked deposit rate. Such principal payment shall be accelerated when more than thirty percent of the linked deposit loan is repaid within a single monthly period. Any principal received and not repaid, up to the point of the thirty percent or more payment, shall be repaid within thirty days of that payment at the linked deposit rate. Finally, when the linked deposit is tied to a "revolving line of credit agreement" between the banking institution and its borrower, the full amount of the line of credit shall be excluded from the repayment provisions of this subsection.**

30.760. LOANS TO BE AT FIXED RATE OF INTEREST SET BY RULES — RECORDS OF LOANS TO BE SEGREGATED — PENALTY FOR VIOLATIONS — STATE TREASURER, POWERS AND DUTIES. — 1. Upon the placement of a linked deposit with an eligible lending institution, such institution is required to lend such funds to each approved eligible multitenant enterprise, eligible farm operation, eligible small business, eligible job enhancement business, eligible marketing enterprise, eligible residential property developer, eligible residential property owner, eligible agribusiness, eligible beginning farmer, eligible livestock operation, eligible student borrower, **eligible facility borrower**, or eligible water supply system listed in the linked deposit loan package required by section 30.756 and in accordance with the deposit agreement required by section 30.758. The loan shall be at a fixed rate of interest [which is below the present borrowing rate applicable] **reduced by the amount established under subsection 3 of section 30.758** to each eligible multitenant enterprise, eligible farming operation, eligible small business, eligible job enhancement business, eligible marketing enterprise, eligible residential property developer, eligible residential property owner, eligible agribusiness, eligible beginning farmer, eligible livestock operation, eligible student borrower, **eligible facility borrower**, or eligible water supply system as determined pursuant to rules and regulations promulgated by the state treasurer under the provisions of chapter 536, RSMo, including emergency rules issued pursuant to section 536.025, RSMo. In addition, the loan agreement shall specify that the eligible multitenant enterprise, eligible farming operation, eligible small business, eligible job enhancement business, eligible marketing enterprise, eligible residential property developer, eligible residential property owner, eligible agribusiness, eligible beginning farmer, eligible livestock operation, eligible student borrower, **eligible facility borrower**, or eligible water supply system shall use the proceeds as required by sections 30.750 to 30.765, and that in the event the loan recipient does not use the proceeds in the manner prescribed by sections 30.750 to 30.765, the remaining proceeds shall be immediately returned to the lending institution and that any proceeds used by the loan recipient shall be repaid to the lending institution as soon as practicable. All records and documents pertaining to the programs established by sections 30.750 to 30.765 shall be segregated by the lending institution for ease of identification and examination. A certification of compliance with this section in the form and manner as prescribed by the state treasurer shall be required of the eligible lending institution. Any lender or lending officer of an eligible lending institution who knowingly violates the provisions of sections 30.750 to 30.765 is guilty of a class A misdemeanor.

2. The state treasurer shall take any and all steps necessary to implement the linked deposit program and monitor compliance of eligible multitenant enterprises, eligible lending institutions, eligible farming operations, eligible small businesses, eligible job enhancement businesses, eligible marketing enterprises, eligible residential property developers, eligible residential property owners, eligible agribusinesses, eligible beginning farmers, eligible livestock operations, **eligible**

facility borrowers, or eligible water supply systems. [Annually, by the first day of February, the state treasurer shall report on the linked deposits program for the preceding calendar year to the governor, the speaker of the house of representatives, and the president pro tem of the senate. The report shall set forth the linked deposits made by the state treasurer under the program during the year and shall include information regarding the nature, terms, and amounts of the loans upon which the linked deposits were based. The report shall not include the assets, liabilities or percent equity of any recipient eligible multitenant enterprise, eligible farming operation, eligible small business, eligible job enhancement business, eligible marketing enterprise, eligible residential property developer, eligible residential property owner, eligible agribusiness, eligible beginning farmer, eligible livestock operation, eligible student borrower or eligible water supply system, but shall include a statement by the state treasurer that the eligible lending institutions have certified that all recipient eligible multitenant enterprises, eligible farming operations, eligible small businesses, eligible job enhancement businesses, eligible marketing enterprises, eligible residential property developers, eligible residential property owners, eligible agribusinesses, eligible beginning farmers, eligible livestock operations, eligible student borrowers or eligible water supply systems meet the criteria of sections 30.750 to 30.765.]

30.765. STATE AND STATE TREASURER NOT LIABLE ON LOANS — DEFAULT ON A LOAN NOT TO AFFECT DEPOSIT AGREEMENT WITH STATE. — The state and the state treasurer are not liable to any eligible lending institution in any manner for payment of the principal or interest on the loan to an eligible multitenant enterprise, eligible farm operation, eligible small business, eligible job enhancement business, eligible marketing enterprise, eligible residential property developer, eligible residential property owner, eligible agribusiness, eligible beginning farmer, eligible livestock operation, eligible student borrower, **eligible facility borrower**, or eligible water supply system. Any delay in payments or default on the part of an eligible multitenant enterprise, eligible farming operation, eligible small business, eligible job enhancement business, eligible marketing enterprise, eligible residential property developer, eligible residential property owner, eligible agribusiness, eligible beginning farmer, eligible livestock operation, eligible student borrower, **eligible facility borrower**, or eligible water supply system does not in any manner affect the deposit agreement between the eligible lending institution and the state treasurer.

30.767. EXPIRATION OF STATE TREASURER'S POWER TO INVEST IN LINKED DEPOSIT — EXCEPTIONS. — The state treasurer shall not, after December 31, [2007] **2015**, invest in any linked deposit the value of which is to be lent to a recipient other than an eligible water supply system or an eligible student borrower. **The state treasurer shall not, after January 1, 2020, invest in any linked deposit, the value of which is to be lent to any new eligible facility borrower. However, such restriction shall not apply to any extensions of existing loans as provided for in section 30.860.**

30.830. PROGRAM FUNDING LIMITATION. — The state treasurer may utilize up to [thirty] **sixty** million dollars of the [one hundred sixty-five] **three hundred thirty** million dollar linked deposit allocation for agriculture set forth in subsection 1 of section 30.753 for linked deposits for eligible guaranteed agribusinesses and eligible guaranteed livestock operations.

30.840. RENEWAL. — The state treasurer may renew a linked deposit for an eligible guaranteed agribusiness or an eligible guaranteed livestock operation for additional [one-year], **up to five-year**, terms, not to exceed ten years.

30.860. DEVELOPMENT FACILITIES AND RENEWABLE FUEL PRODUCTION FACILITIES, CERTIFICATES OF QUALIFICATIONS ISSUED, WHEN — FACTORS CONSIDERED — RULEMAKING AUTHORITY. — **1. As used in this section, the following terms mean:**

(1) "Agricultural commodity", any agricultural product that has been produced for purpose of sale or exchange, except for animals whose principal use may be construed as recreational or as a pet;

(2) "Authority", the Missouri agricultural and small business development authority organized under sections 348.005 to 348.180, RSMo;

(3) "Borrower", any partnership, corporation, cooperative, or limited liability company organized or incorporated under the laws of this state consisting of not less than twelve members 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;

(4) "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;

(5) "Eligible facility borrower", a development facility or renewable fuel production facility borrower qualified by the authority under this section to apply for a reduced rate loan under sections 30.750 to 30.767;

(6) "Renewable fuel production facility", a facility producing an energy source that 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.

2. The authority shall accept applications and issue certificates of qualification as an eligible facility borrower to development facilities and renewable fuel production facilities for purposes of applying for reduced rate loans under sections 30.750 to 30.767 to finance new costs or refinance existing debt associated with such facilities. The authority may charge for each certificate of qualification a one-time fee in an amount not to exceed the actual cost of issuance of the certificate.

3. In determining whether a facility will qualify as an eligible facility borrower, the authority shall consider the following factors:

(1) The borrower's ability to repay the loan;

(2) The general economic conditions of the area in which the agricultural property will be or is located;

(3) The prospect of success of the particular project for which the loan is sought; and

(4) Such other factors as the authority may establish by rule.

4. No reduced rate loan made to an eligible facility borrower under sections 30.750 to 30.767 shall:

(1) Exceed seventy million dollars for any single eligible facility borrower;

(2) Exceed seventy percent of the total anticipated cost of the development facility or renewable fuel production facility or, in the case of refinancing existing debt, ninety percent of the fair market value of the development facility or renewable fuel production facility;

(3) Exceed a loan term of five years, except that such loan may be extended up to two additional loan periods of five years each for a maximum total loan term of fifteen years; and

(4) When a banking institution or an eligible lending institution extends credit under the provisions of this section and provides the lead in underwriting the credit, it may enter into a participation agreement, sell part of the loan to third parties, syndicate the loan, or make other written arrangement with financial intermediaries, provided that at all times any financial intermediary, participant, purchaser, or other party obtaining a legal or

equitable interest in the loan otherwise qualifies for linked deposit loans and fully collateralizes those loans as required by this chapter.

5. The state treasurer may contract with other parties as permitted in section 30.286 and consult with the authority to implement this section. However, the state treasurer shall make the final determination on the placement of linked deposits of state funds in banking institutions or eligible lending institutions as permitted by the constitution.

6. The state treasurer shall promulgate rules 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 August 28, 2005, shall be invalid and void.

7. The provisions of sections 23.250 to 23.298, RSMo, shall not apply to the provisions of this section.

SECTION 1. STATE TREASURER'S GENERAL OPERATIONS FUND CREATED, USE OF MONEYS. — 1. There is hereby created in the state treasury the "State Treasurer's General Operations Fund" which shall receive deposits, make disbursements and be administered in compliance with the provisions of this section.

2. Subject to appropriation, moneys in the state treasurer's general operations fund shall be used solely to pay for personal service, equipment and other expenses of the state treasurer related to the state treasurer's constitutional and statutory responsibilities, exclusive of any personal service, equipment and other expenses attributable to positions wholly dedicated to the functions described in chapter 447, RSMo. The commissioner of administration shall review and approve all requests of the state treasurer of disbursements from the state treasurer's general operations fund for compliance with the provisions of this section. Nothing in this section shall be deemed to prevent the general assembly from making appropriations to the state treasurer from other permissible sources.

3. Notwithstanding any other provisions of law to the contrary, moneys shall be deposited in the state treasurer's general operations fund and administered in accordance with the following provisions:

(1) On a daily basis, the state treasurer shall apportion any interest or other increment derived from the investment of funds in an amount proportionate to the average daily balance of funds in the state treasury. The state treasurer shall use a method in accordance with generally accepted accounting principles in apportioning and distributing that interest or increment. Prior to distributing that interest or increment, the state treasurer shall deduct the costs incurred by the state treasurer in administering this chapter in proportion to the average daily balance of the amounts deposited to each fund in the state treasury. The state treasurer shall then deposit the identified portion of the daily interest receipts in the "State Treasurer's General Operations Fund". All other remaining interest received on the investment of state funds shall be allocated and deposited to funds within the state treasury as required by law.

(2) The total costs for personal service, equipment and other expenses of the state treasurer related to the state treasurer's constitutional and statutory responsibilities, exclusive of any personal service, equipment and other expenses attributable to positions wholly dedicated to the functions described in chapter 447, RSMo, and any banking fees and other banking-related costs, shall not exceed fifteen basis points, or fifteen hundredths of one percent, of the total of the average daily fund balance of funds within the state treasury.

4. Notwithstanding the provisions of section 33.080, RSMo, moneys in the state treasurer's general operations fund shall not lapse to the general revenue fund at the end of the biennium unless and only to the extent to which the amount in the fund exceeds the annual appropriations from the fund for the current fiscal year.

5. The provisions of this section shall not be applicable to the state road fund created in section 226.220, RSMo, the motor fuel tax fund created in section 142.345, RSMo, the state highways and transportation department fund created in section 226.200, RSMo, the state transportation fund created in section 226.225, and the state road bond fund created pursuant to article IV, section 30(b), Constitution of Missouri.

[30.247. **BANK ACCOUNTS WITH CERTAIN AVERAGE BALANCES TO BE OBTAINED THROUGH COMPETITIVE BID PROCESS.** — Any bank account, included but not limited to the life sciences research trust fund created pursuant to section 196.1100, RSMo, with an average daily balance of ten thousand dollars or more, containing state funds, shall be obtained through an open and competitive bid process.]

SECTION B. EMERGENCY CLAUSE. — Because of the need to provide consistent funding to the State Treasurer's Office to allow the office's primary functions to proceed in a timely and efficient manner, 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 13, 2005

SB 272 [HCS SCS SB 272]

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

Limits amount of revenue collectable from gaming boat admission fees

AN ACT to repeal sections 137.073, 313.800, and 313.820, RSMo, and to enact in lieu thereof three new sections relating to gaming boat admission fee revenue.

SECTION

- A. Enacting clause.
- 137.073. Definitions — revision of prior levy, when, procedure — calculation of state aid for public schools, taxing authority's duties.
- 313.800. Definitions — additional games of skill, commission approval, procedures.
- 313.820. Admission fee, amount, division of — licensees subject to all other taxes, collection of nongaming taxes by department of revenue — cap on amount to be collected, exceptions.

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

SECTION A. ENACTING CLAUSE. — Sections 137.073, 313.800, and 313.820, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 137.073, 313.800, and 313.820, to read as follows:

137.073. DEFINITIONS — REVISION OF PRIOR LEVY, WHEN, PROCEDURE — CALCULATION OF STATE AID FOR PUBLIC SCHOOLS, TAXING AUTHORITY'S DUTIES. — 1. As used in this section, the following terms mean:

(1) "General reassessment", changes in value, entered in the assessor's books, of a substantial portion of the parcels of real property within a county resulting wholly or partly from reappraisal of value or other actions of the assessor or county equalization body or ordered by the state tax commission or any court;

(2) "Tax rate", "rate", or "rate of levy", singular or plural, includes the tax rate for each purpose of taxation of property a taxing authority is authorized to levy without a vote and any tax rate authorized by election, including bond interest and sinking fund;

(3) "Tax rate ceiling", a tax rate as revised by the taxing authority to comply with the provisions of this section or when a court has determined the tax rate; except that, other provisions of law to the contrary notwithstanding, a school district may levy the operating levy for school purposes required for the current year pursuant to subsection 2 of section 163.021, RSMo, less all adjustments required pursuant to article X, section 22 of the Missouri Constitution, if such tax rate does not exceed the highest tax rate in effect subsequent to the 1980 tax year. This is the maximum tax rate that may be levied, unless a higher tax rate ceiling is approved by voters of the political subdivision as provided in this section;

(4) "Tax revenue", when referring to the previous year, means the actual receipts from ad valorem levies on all classes of property, including state-assessed property, in the immediately preceding fiscal year of the political subdivision, plus an allowance for taxes billed but not collected in the fiscal year and plus an additional allowance for the revenue which would have been collected from property which was annexed by such political subdivision but which was not previously used in determining tax revenue pursuant to this section. The term "tax revenue" shall not include any receipts from ad valorem levies on any property of a railroad corporation or a public utility, as these terms are defined in section 386.020, RSMo, which were assessed by the assessor of a county or city in the previous year but are assessed by the state tax commission in the current year. All school districts and those counties levying sales taxes pursuant to chapter 67, RSMo, shall include in the calculation of tax revenue an amount equivalent to that by which they reduced property tax levies as a result of sales tax pursuant to section 67.505, RSMo, and section 164.013, RSMo, **or as excess home dock city or county fees as provided in subsection 4 of section 313.820, RSMo**, in the immediately preceding fiscal year but not including any amount calculated to adjust for prior years. For purposes of political subdivisions which were authorized to levy a tax in the prior year but which did not levy such tax or levied a reduced rate, the term "tax revenue", as used in relation to the revision of tax levies mandated by law, shall mean the revenues equal to the amount that would have been available if the voluntary rate reduction had not been made.

2. Whenever changes in assessed valuation are entered in the assessor's books for any personal property, in the aggregate, or for any subclass of real property as such subclasses are established in section 4(b) of article X of the Missouri Constitution and defined in section 137.016, the county clerk in all counties and the assessor of St. Louis City shall notify each political subdivision wholly or partially within the county or St. Louis City of the change in valuation of each subclass of real property, individually, and personal property, in the aggregate, exclusive of new construction and improvements. All political subdivisions shall immediately revise the applicable rates of levy for each purpose for each subclass of real property, individually, and personal property, in the aggregate, for which taxes are levied to the extent necessary to produce from all taxable property, exclusive of new construction and improvements, substantially the same amount of tax revenue as was produced in the previous year for each subclass of real property, individually, and personal property, in the aggregate, except that the rate may not exceed the greater of the rate in effect in the 1984 tax year or the most recent voter-approved rate. Such tax revenue shall not include any receipts from ad valorem levies on any real property which was assessed by the assessor of a county or city in such previous year but is assessed by the assessor of a county or city in the current year in a different subclass of real property. Where the taxing authority is a school district for the purposes of revising the applicable rates of levy for each subclass of real property, the tax revenues from state-assessed

railroad and utility property shall be apportioned and attributed to each subclass of real property based on the percentage of the total assessed valuation of the county that each subclass of real property represents in the current taxable year. As provided in section 22 of article X of the constitution, a political subdivision may also revise each levy to allow for inflationary assessment growth occurring within the political subdivision. The inflationary growth factor for any such subclass of real property or personal property shall be limited to the actual assessment growth in such subclass or class, exclusive of new construction and improvements, and exclusive of the assessed value on any real property which was assessed by the assessor of a county or city in the current year in a different subclass of real property, but not to exceed the consumer price index or five percent, whichever is lower. Should the tax revenue of a political subdivision from the various tax rates determined in this subsection be different than the tax revenue that would have been determined from a single tax rate as calculated pursuant to the method of calculation in this subsection prior to January 1, 2003, then the political subdivision shall revise the tax rates of those subclasses of real property, individually, and/or personal property, in the aggregate, in which there is a tax rate reduction, pursuant to the provisions of this subsection. Such revision shall yield an amount equal to such difference and shall be apportioned among such subclasses of real property, individually, and/or personal property, in the aggregate, based on the relative assessed valuation of the class or subclasses of property experiencing a tax rate reduction. Such revision in the tax rates of each class or subclass shall be made by computing the percentage of current year adjusted assessed valuation of each class or subclass with a tax rate reduction to the total current year adjusted assessed valuation of the class or subclasses with a tax rate reduction, multiplying the resulting percentages by the revenue difference between the single rate calculation and the calculations pursuant to this subsection and dividing by the respective adjusted current year assessed valuation of each class or subclass to determine the adjustment to the rate to be levied upon each class or subclass of property. The adjustment computed herein shall be multiplied by one hundred, rounded to four decimals in the manner provided in this subsection, and added to the initial rate computed for each class or subclass of property. Notwithstanding any provision of this subsection to the contrary, no revision to the rate of levy for personal property shall cause such levy to increase over the levy for personal property from the prior year.

3. (1) Where the taxing authority is a school district, it shall be required to revise the rates of levy to the extent necessary to produce from all taxable property, including state-assessed railroad and utility property, which shall be separately estimated in addition to other data required in complying with section 164.011, RSMo, substantially the amount of tax revenue permitted in this section. In the year following tax rate reduction, the tax rate ceiling may be adjusted to offset such district's reduction in the apportionment of state school moneys due to its reduced tax rate. However, in the event any school district, in calculating a tax rate ceiling pursuant to this section, requiring the estimating of effects of state-assessed railroad and utility valuation or loss of state aid, discovers that the estimates used result in receipt of excess revenues, which would have required a lower rate if the actual information had been known, the school district shall reduce the tax rate ceiling in the following year to compensate for the excess receipts, and the recalculated rate shall become the tax rate ceiling for purposes of this section.

(2) For any political subdivision which experiences a reduction in the amount of assessed valuation relating to a prior year, due to 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 any assessed valuation:

(a) Such political subdivision may revise the tax rate ceiling for each purpose it levies taxes to compensate for the reduction in assessed value occurring after the political subdivision calculated the tax rate ceiling for the particular subclass of real property or for personal property, in the aggregate, in the prior year. Such revision by the political subdivision shall be made at the time of the next calculation of the tax rate for the particular subclass of real property or for personal property, in the aggregate, after the reduction in assessed valuation has been determined

and shall be calculated in a manner that results in the revised tax rate ceiling being the same as it would have been had the corrected or finalized assessment been available at the time of the prior calculation;

(b) In addition, for up to three years following the determination of the reduction in assessed valuation as a result of circumstances defined in this subdivision, such political subdivision may levy a tax rate for each purpose it levies taxes above the revised tax rate ceiling provided in paragraph (a) of this subdivision to recoup any revenues it was entitled to receive for the three-year period preceding such determination.

4. (1) In order to implement the provisions of this section and section 22 of article X of the Constitution of Missouri, the term "improvements" shall apply to both real and personal property. In order to determine the value of new construction and improvements, each county assessor shall maintain a record of real property valuations in such a manner as to identify each year the increase in valuation for each political subdivision in the county as a result of new construction and improvements. The value of new construction and improvements shall include the additional assessed value of all improvements or additions to real property which were begun after and were not part of the prior year's assessment, except that the additional assessed value of all improvements or additions to real property which had been totally or partially exempt from ad valorem taxes pursuant to sections 99.800 to 99.865, RSMo, sections 135.200 to 135.255, RSMo, and section 353.110, RSMo, shall be included in the value of new construction and improvements when the property becomes totally or partially subject to assessment and payment of all ad valorem taxes. The aggregate increase in valuation of personal property for the current year over that of the previous year is the equivalent of the new construction and improvements factor for personal property. Notwithstanding any opt-out implemented pursuant to subsection 15 of section 137.115, the assessor shall certify the amount of new construction and improvements and the amount of assessed value on any real property which was assessed by the assessor of a county or city in such previous year but is assessed by the assessor of a county or city in the current year in a different subclass of real property separately for each of the three subclasses of real property for each political subdivision to the county clerk in order that political subdivisions shall have this information for the purpose of calculating tax rates pursuant to this section and section 22, article X, Constitution of Missouri. In addition, the state tax commission shall certify each year to each county clerk the increase in the general price level as measured by the Consumer Price Index for All Urban Consumers for the United States, or its successor publications, as defined and officially reported by the United States Department of Labor, or its successor agency. The state tax commission shall certify the increase in such index on the latest twelve-month basis available on June first of each year over the immediately preceding prior twelve-month period in order that political subdivisions shall have this information available in setting their tax rates according to law and section 22 of article X of the Constitution of Missouri. For purposes of implementing the provisions of this section and section 22 of article X of the Missouri Constitution, the term "property" means all taxable property, including state assessed property.

(2) Each political subdivision required to revise rates of levy pursuant to this section or section 22 of article X of the Constitution of Missouri shall calculate each tax rate it is authorized to levy and, in establishing each tax rate, shall consider each provision for tax rate revision provided in this section and section 22 of article X of the Constitution of Missouri, separately and without regard to annual tax rate reductions provided in section 67.505, RSMo, and section 164.013, RSMo. Each political subdivision shall set each tax rate it is authorized to levy using the calculation that produces the lowest tax rate ceiling. It is further the intent of the general assembly, pursuant to the authority of section 10(c) of article X of the Constitution of Missouri, that the provisions of such section be applicable to tax rate revisions mandated pursuant to section 22 of article X of the Constitution of Missouri as to reestablishing tax rates as revised in subsequent years, enforcement provisions, and other provisions not in conflict with section 22 of article X of the Constitution of Missouri. Annual tax rate reductions provided in section

67.505, RSMo, and section 164.013, RSMo, shall be applied to the tax rate as established pursuant to this section and section 22 of article X of the Constitution of Missouri, unless otherwise provided by law.

5. (1) In all political subdivisions, the tax rate ceiling established pursuant to this section shall not be increased unless approved by a vote of the people. Approval of the higher tax rate shall be by at least a majority of votes cast. When a proposed higher tax rate requires approval by more than a simple majority pursuant to any provision of law or the constitution, the tax rate increase must receive approval by at least the majority required.

(2) When voters approve an increase in the tax rate, the amount of the increase shall be added to the tax rate ceiling as calculated pursuant to this section to the extent the total rate does not exceed any maximum rate prescribed by law. If a ballot question presents a stated tax rate for approval rather than describing the amount of increase in the question, the stated tax rate approved shall be the current tax rate ceiling. The increased tax rate ceiling as approved may be applied to the total assessed valuation of the political subdivision at the setting of the next tax rate.

(3) The governing body of any political subdivision may levy a tax rate lower than its tax rate ceiling and may increase that lowered tax rate to a level not exceeding the tax rate ceiling without voter approval.

6. (1) For the purposes of calculating state aid for public schools pursuant to section 163.031, RSMo, each taxing authority which is a school district shall determine its proposed tax rate as a blended rate of the classes or subclasses of property. Such blended rate shall be calculated by first determining the total tax revenue of the property within the jurisdiction of the taxing authority, which amount shall be equal to the sum of the products of multiplying the assessed valuation of each class and subclass of property by the corresponding tax rate for such class or subclass, then dividing the total tax revenue by the total assessed valuation of the same jurisdiction, and then multiplying the resulting quotient by a factor of one-hundred. Where the taxing authority is a school district, such blended rate shall also be used by such school district for calculating revenue from state-assessed railroad and utility property as defined in chapter 151, RSMo, and for apportioning the tax rate by purpose.

(2) Each taxing authority proposing to levy a tax rate in any year shall notify the clerk of the county commission in the county or counties where the tax rate applies of its tax rate ceiling and its proposed tax rate. Each taxing authority shall express its proposed tax rate in a fraction equal to the nearest one-tenth of a cent, unless its proposed tax rate is in excess of one dollar, then one/one-hundredth of a cent. If a taxing authority shall round to one/one-hundredth of a cent, it shall round up a fraction greater than or equal to five/one-thousandth of one cent to the next higher one/one-hundredth of a cent; if a taxing authority shall round to one-tenth of a cent, it shall round up a fraction greater than or equal to five/one-hundredths of a cent to the next higher one-tenth of a cent. Any taxing authority levying a property tax rate shall provide data, in such form as shall be prescribed by the state auditor by rule, substantiating such tax rate complies with Missouri law. All forms for the calculation of rates pursuant to this section shall be promulgated as a rule and shall not be incorporated by reference. Within thirty days after the effective date of this act, the state auditor shall promulgate rules for any and all forms for the calculation of rates pursuant to this section which do not currently exist in rule form or that have been incorporated by reference. In addition, each taxing authority proposing to levy a tax rate for debt service shall provide data, in such form as shall be prescribed by the state auditor by rule, substantiating the tax rate for debt service complies with Missouri law. A tax rate proposed for annual debt service requirements will be prima facie valid if, after making the payment for which the tax was levied, bonds remain outstanding and the debt fund reserves do not exceed the following year's payments. The county clerk shall keep on file and available for public inspection all such information for a period of three years. The clerk shall, within three days of receipt, forward a copy of the notice of a taxing authority's tax rate ceiling and proposed tax rate and any substantiating data to the state auditor. The state auditor shall, within fifteen days of the

date of receipt, examine such information and return to the county clerk his or her findings as to compliance of the tax rate ceiling with this section and as to compliance of any proposed tax rate for debt service with Missouri law. If the state auditor believes that a taxing authority's proposed tax rate does not comply with Missouri law, then the state auditor's findings shall include a recalculated tax rate, and the state auditor may request a taxing authority to submit documentation supporting such taxing authority's proposed tax rate. The county clerk shall immediately forward a copy of the auditor's findings to the taxing authority and shall file a copy of the findings with the information received from the taxing authority. The taxing authority shall have fifteen days from the date of receipt from the county clerk of the state auditor's findings and any request for supporting documentation to accept or reject in writing the rate change certified by the state auditor and to submit all requested information to the state auditor. A copy of the taxing authority's acceptance or rejection and any information submitted to the state auditor shall also be mailed to the county clerk. If a taxing authority rejects a rate change certified by the state auditor and the state auditor does not receive supporting information which justifies the taxing authority's original or any subsequent proposed tax rate, then the state auditor shall refer the perceived violations of such taxing authority to the attorney general's office and the attorney general is authorized to obtain injunctive relief to prevent the taxing authority from levying a violative tax rate.

7. No tax rate shall be extended on the tax rolls by the county clerk unless the political subdivision has complied with the foregoing provisions of this section.

8. Whenever a taxpayer has cause to believe that a taxing authority has not complied with the provisions of this section, the taxpayer may make a formal complaint with the prosecuting attorney of the county. Where the prosecuting attorney fails to bring an action within ten days of the filing of the complaint, the taxpayer may bring a civil action pursuant to this section and institute an action as representative of a class of all taxpayers within a taxing authority if the class is so numerous that joinder of all members is impracticable, if there are questions of law or fact common to the class, if the claims or defenses of the representative parties are typical of the claims or defenses of the class, and if the representative parties will fairly and adequately protect the interests of the class. In any class action maintained pursuant to this section, the court may direct to the members of the class a notice to be published at least once each week for four consecutive weeks in a newspaper of general circulation published in the county where the civil action is commenced and in other counties within the jurisdiction of a taxing authority. The notice shall advise each member that the court will exclude him or her from the class if he or she so requests by a specified date, that the judgment, whether favorable or not, will include all members who do not request exclusion, and that any member who does not request exclusion may, if he or she desires, enter an appearance. In any class action brought pursuant to this section, the court, in addition to the relief requested, shall assess against the taxing authority found to be in violation of this section the reasonable costs of bringing the action, including reasonable attorney's fees, provided no attorney's fees shall be awarded any attorney or association of attorneys who receive public funds from any source for their services. Any action brought pursuant to this section shall be set for hearing as soon as practicable after the cause is at issue.

9. If in any action, including a class action, the court issues an order requiring a taxing authority to revise the tax rates as provided in this section or enjoins a taxing authority from the collection of a tax because of its failure to revise the rate of levy as provided in this section, any taxpayer paying his or her taxes when an improper rate is applied has erroneously paid his or her taxes in part, whether or not the taxes are paid under protest as provided in section 139.031, RSMo. The part of the taxes paid erroneously is the difference in the amount produced by the original levy and the amount produced by the revised levy. The township or county collector of taxes or the collector of taxes in any city shall refund the amount of the tax erroneously paid. The taxing authority refusing to revise the rate of levy as provided in this section shall make available to the collector all funds necessary to make refunds pursuant to this subsection. No

taxpayer shall receive any interest on any money erroneously paid by him or her pursuant to this subsection. Effective in the 1994 tax year, nothing in this section shall be construed to require a taxing authority to refund any tax erroneously paid prior to or during the third tax year preceding the current tax year.

10. A taxing authority, including but not limited to a township, county collector, or collector of taxes, responsible for determining and collecting the amount of residential real property tax levied in its jurisdiction, shall report such amount of tax collected by December thirty-first of each year such property is assessed to the state tax commission. The state tax commission shall compile the tax data by county or taxing jurisdiction and submit a report to the general assembly no later than January thirty-first of the following year.

11. 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.

313.800. DEFINITIONS — ADDITIONAL GAMES OF SKILL, COMMISSION APPROVAL, PROCEDURES. — 1. As used in sections 313.800 to 313.850, unless the context clearly requires otherwise, the following terms mean:

(1) "Adjusted gross receipts", the gross receipts from licensed gambling games and devices less winnings paid to wagerers;

(2) "Applicant", any person applying for a license authorized under the provisions of sections 313.800 to 313.850;

(3) "Bank", the elevations of ground which confine the waters of the Mississippi or Missouri Rivers at the ordinary high water mark as defined by common law;

(4) **"Capital, cultural, and special law enforcement purpose expenditures", shall include any disbursement, including disbursements for principal, interest, and costs of issuance and trustee administration related to any indebtedness, for the acquisition of land, land improvements, buildings and building improvements, vehicles, machinery, equipment, works of art, intersections, signing, signalization, parking lot, bus stop, station, garage, terminal, hanger, shelter, dock, wharf, rest area, river port, airport, light rail, railroad, other mass transit, pedestrian shopping malls and plazas, parks, lawns, trees, and other landscape, convention center, roads, traffic control devices, sidewalks, alleys, ramps, tunnels, overpasses and underpasses, utilities, streetscape, lighting, trash receptacles, marquees, paintings, murals, fountains, sculptures, water and sewer systems, dams, drainage systems, creek bank restoration, any asset with a useful life greater than one year, cultural events, and any expenditure related to a law enforcement officer deployed as horse mounted patrol, school resource or drug awareness resistance education (D.A.R.E) officer;**

[(4)] (5) "Cheat", to alter the selection of criteria which determine the result of a gambling game or the amount or frequency of payment in a gambling game;

[(5)] (6) "Commission", the Missouri gaming commission;

[(6)] (7) "Dock", the location in a city or county authorized under subsection 10 of section 313.812 which contains any natural or artificial space, inlet, hollow, or basin, in or adjacent to a bank of the Mississippi or Missouri Rivers, next to a wharf or landing devoted to the embarking of passengers on and disembarking of passengers from a gambling excursion but shall not include any artificial space created after May 20, 1994, and is located more than one thousand feet from the closest edge of the main channel of the river as established by the United States Army Corps of Engineers;

[(7)] **(8)** "Excursion gambling boat", a boat, ferry or other floating facility licensed by the commission on which gambling games are allowed;

(9) "Fiscal year", shall for the purposes of subsections 3 and 4 of section 313.820, mean the fiscal year of a home dock city or county;

[(8)] **(10)** "Floating facility", any facility built or originally built as a boat, ferry or barge licensed by the commission on which gambling games are allowed;

[(9)] **(11)** "Gambling excursion", the time during which gambling games may be operated on an excursion gambling boat whether docked or during a cruise;

[(10)] **(12)** "Gambling game" includes, but is not limited to, games of skill or games of chance on an excursion gambling boat but does not include gambling on sporting events; provided such games of chance are approved by amendment to the Missouri Constitution;

[(11)] **(13)** "Games of chance", any gambling game in which the player's expected return is not favorably increased by his or her reason, foresight, dexterity, sagacity, design, information or strategy;

[(12)] **(14)** "Games of skill", any gambling game in which there is an opportunity for the player to use his or her reason, foresight, dexterity, sagacity, design, information or strategy to favorably increase the player's expected return; including, but not limited to, the gambling games known as "poker", "blackjack" (twenty-one), "craps", "Caribbean stud", "pai gow poker", "Texas hold'em", "double down stud", and any video representation of such games;

[(13)] **(15)** "Gross receipts", the total sums wagered by patrons of licensed gambling games;

[(14)] **(16)** "Holder of occupational license", a person licensed by the commission to perform an occupation within excursion gambling boat operations which the commission has identified as requiring a license;

[(15)] **(17)** "Licensee", any person licensed under sections 313.800 to 313.850;

[(16)] **(18)** "Mississippi River" and "Missouri River", the water, bed and banks of those rivers, including any space filled by the water of those rivers for docking purposes in a manner approved by the commission but shall not include any artificial space created after May 20, 1994, and is located more than one thousand feet from the closest edge of the main channel of the river as established by the United States Army Corps of Engineers;

(19) "Supplier", a person who sells or leases gambling equipment and gambling supplies to any licensee.

2. In addition to the games of skill referred to in subdivision [(12)] **(14)** of subsection 1 of this section, the commission may approve other games of skill upon receiving a petition requesting approval of a gambling game from any applicant or licensee. The commission may set the matter for hearing by serving the applicant or licensee with written notice of the time and place of the hearing not less than five days prior to the date of the hearing and posting a public notice at each commission office. The commission shall require the applicant or licensee to pay the cost of placing a notice in a newspaper of general circulation in the applicant's or licensee's home dock city or county. The burden of proof that the gambling game is a game of skill is at all times on the petitioner. The petitioner shall have the affirmative responsibility of establishing his or her case by a preponderance of evidence including:

(1) Is it in the best interest of gaming to allow the game; and

(2) Is the gambling game a game of chance or a game of skill?

All testimony shall be given under oath or affirmation. Any citizen of this state shall have the opportunity to testify on the merits of the petition. The commission may subpoena witnesses to offer expert testimony. Upon conclusion of the hearing, the commission shall evaluate the record of the hearing and issue written findings of fact that shall be based exclusively on the evidence and on matters officially noticed. The commission shall then render a written decision on the merits which shall contain findings of fact, conclusions of law and a final commission order. The final commission order shall be within thirty days of the hearing. Copies of the final

commission order shall be served on the petitioner by certified or overnight express mail, postage prepaid, or by personal delivery.

313.820. ADMISSION FEE, AMOUNT, DIVISION OF — LICENSEES SUBJECT TO ALL OTHER TAXES, COLLECTION OF NONGAMING TAXES BY DEPARTMENT OF REVENUE — CAP ON AMOUNT TO BE COLLECTED, EXCEPTIONS. — 1. An excursion boat licensee shall pay to the commission an admission fee of two dollars for each person embarking on an excursion gambling boat with a ticket of admission. One dollar of such fee shall be deposited to the credit of the gaming commission fund as authorized pursuant to section 313.835, and one dollar of such fee shall not be considered state funds and shall be paid to the home dock city or county. Subject to appropriation, one cent of such fee deposited to the credit of the gaming commission fund may be deposited to the credit of the compulsive gamblers fund created pursuant to the provisions of section 313.842. Nothing in this section shall preclude any licensee from charging any amount deemed necessary for a ticket of admission to any person embarking on an excursion gambling boat. If tickets are issued which are good for more than one excursion, the admission fee shall be paid to the commission for each person using the ticket on each excursion that the ticket is used. If free passes or complimentary admission tickets are issued, the excursion boat licensee shall pay to the commission the same fee upon these passes or complimentary tickets as if they were sold at the regular and usual admission rate; however, the excursion boat licensee may issue fee-free passes to actual and necessary officials and employees of the licensee or other persons actually working on the excursion gambling boat. The issuance of fee-free passes is subject to the rules of the commission, and a list of all persons to whom the fee-free passes are issued shall be filed with the commission.

2. All licensees are subject to all income taxes, sales taxes, earnings taxes, use taxes, property taxes or any other tax or fee now or hereafter lawfully levied by any political subdivision; however, no other license tax, permit tax, occupation tax, excursion fee, or taxes or fees shall be imposed, levied or assessed exclusively upon licensees by a political subdivision. All state taxes not connected directly to gambling games shall be collected by the department of revenue. Notwithstanding the provisions of section 32.057, RSMo, to the contrary, the department of revenue may furnish and the commission may receive tax information to determine if applicants or licensees are complying with the tax laws of this state; however, any tax information acquired by the commission shall not become public record and shall be used exclusively for commission business.

3. Effective fiscal year 2008 and each fiscal year thereafter, the amount of revenue derived from admission fees paid to a home dock city or county shall not exceed the percentage of gross revenue realized by the home dock city or county attributable to such admission fees for fiscal year 2007. In the case of a new casino, the provisions of this section shall become effective two years from the opening of such casino and the amount of revenue derived from admission fees paid to a home dock city or county shall not exceed the average percentage of gross revenue realized by the home dock city or county attributable to such admission fees for the first two fiscal years in which such casino opened for business. Effective fiscal year 2010 and each subsequent fiscal year until fiscal year 2015, the percentage of all revenue derived by a home dock city or county from such admission fees used for expenditures other than capital, cultural, and special law enforcement purpose expenditures shall be limited to not more than thirty percent. Effective fiscal year 2015 and each subsequent fiscal, the percentage of all revenue derived by a home dock city or county from such admission fees used for expenditures other than capital, cultural, and special law enforcement purpose expenditures shall be limited to not more than twenty percent.

4. After fiscal year 2007, in any fiscal year in which a home dock city or county collects an amount over the limitation on revenue derived from admission fees provided in subsection 1 of this section, such revenue shall be treated as if it were sales tax revenue

within the meaning of section 67.505, RSMo, provided that the home dock city or county shall reduce its total general revenue property tax levy, in accordance with the method provided in subdivision (6) of subsection 3 of section 67.505, RSMo.

5. The provisions of subsections 3 and 4 of this section shall not affect the imposition or collection of a tax under section 313.822.

6. The provisions of subsections 3 and 4 of this section shall not apply to any city of the third classification with more than eight thousand two hundred but fewer than eight thousand three hundred inhabitants, any county of the third classification without a township form of government and with more than sixteen thousand six hundred but fewer than sixteen thousand seven hundred inhabitants, any county of the third classification without a township form of government and with more than ten thousand two hundred but fewer than ten thousand three hundred inhabitants, any home rule city with more than four hundred thousand inhabitants and located in more than one county, any county of the first classification with more than one hundred eighty-four thousand but fewer than one hundred eighty-eight thousand inhabitants, any city of the fourth classification with more than two thousand nine hundred but fewer than three thousand inhabitants and located in any county of the first classification with more than seventy-three thousand seven hundred but fewer than seventy-three thousand eight hundred inhabitants, any county of the first classification with more than seventy-three thousand seven hundred but fewer than seventy-three thousand eight hundred inhabitants, any city of the third classification with more than six thousand seven hundred but fewer than six thousand eight hundred inhabitants and located in any county of the third classification without a township form of government and with more than twenty thousand but fewer than twenty thousand one hundred inhabitants, any county of the third classification without a township form of government and with more than twenty thousand but fewer than twenty thousand one hundred inhabitants, any city of the third classification with more than four thousand seven hundred but fewer than four thousand eight hundred inhabitants and located in any county of the first classification with more than one hundred eighty-four thousand but fewer than one hundred eighty-eight thousand inhabitants, any city of the third classification with more than twenty-five thousand seven hundred but fewer than twenty-five thousand nine hundred inhabitants, any county with a charter form of government and with more than one million inhabitants, any county with a charter form of government and with more than six hundred thousand but fewer than seven hundred thousand inhabitants, any special charter city with more than nine hundred fifty but fewer than one thousand fifty inhabitants, any county of the third classification without a township form of government and with more than ten thousand four hundred but fewer than ten thousand five hundred inhabitants, any city not within a county, any home rule city with more than seventy-three thousand but fewer than seventy-five thousand inhabitants, and any county of the first classification with more than eighty-five thousand nine hundred but fewer than eighty-six thousand inhabitants.

Approved July 14, 2005

SB 274 [SB 274]

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

Regulates travel clubs

AN ACT to amend chapter 407, RSMo, by adding thereto five new sections relating to travel clubs, with penalty provisions.

SECTION

- A. Enacting clause.
- 407.1240. Definitions.
- 407.1243. Registration statement required, content — approval by attorney general, procedure — grandfather clause.
- 407.1246. Renewal of registration, procedure, fee.
- 407.1249. Right to rescind and cancel, time period allowed.
- 407.1252. Complaint procedure — violations, remedy.

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

SECTION A. ENACTING CLAUSE. — Chapter 407, RSMo, is amended by adding thereto five new sections, to be known as sections 407.1240, 407.1243, 407.1246, 407.1249, and 407.1252, to read as follows:

407.1240. DEFINITIONS. — As used in sections 407.1240 to 407.1252, the following terms shall mean:

- (1) "Business day", a day that government offices in this state are open for business;
- (2) "Membership fee", the initial or reoccurring fee that is unrelated to actual pass-through costs associated with the use and enjoyment of travel benefits;
- (3) "Rescission statement", a statement that shall be printed on all contracts pertaining to the purchase of travel club memberships from a travel club that shall provide in at least fourteen-point bold type the following statement:

"Assuming you have not accessed any travel benefits and have returned to the travel club all materials delivered to the purchaser at closing, you have the right to rescind this transaction for a period of three business days after the date of this agreement. To exercise the right of rescission, you must deliver to the travel club by certified mail within the three business day period, return receipt requested, at the address referenced in this contract, a written statement of your desire to rescind this transaction, and all materials that were provided and given to you at the time of the purchase of your travel club membership."

- (4) "Surety bond", any surety bond, corporate guaranty, letter of credit, certificate of deposit, or other bond or financial assurance in the sum of fifty thousand dollars that is required to be delivered by travel clubs which have been adjudged to have violated subsection 4 or 5 of section 407.1252 and in the event that such surety bond is accessed subsequent to posting as a result of the need to reimburse purchasers, the amount of the surety bond shall be increased by ten thousand dollars per reimbursement. All surety bonds shall:

- (a) Serve as a source of funds to reimburse purchasers of travel club memberships who validly exercise their rights under the rescission statement in their contract but who are not, after judgment, provided a refund equal to the purchase price of their unused travel club memberships or, after settlement, equal to the terms of the settlement;
- (b) Serve as a source of funds to reimburse purchasers of travel club memberships who have been proven to be the subject of fraud;
- (c) Remain in full force and effect during the period of time the travel club conducts its business activities; and
- (d) Be deemed acceptable to the attorney general if:
 - a. It is issued by an insurance company that possesses at least a "B+" rating, or its equivalent by A.M. Best or its successors or by any other nationally recognized entity that rates the creditworthiness of insurance companies;
 - b. It is in the form of a letter of credit that is issued by a banking institution with assets of at least seventy-five million dollars;
 - c. It is in the form of a certificate of deposit; or
 - d. It is in a form that otherwise is acceptable to the attorney general;

(5) "Travel benefits", benefits that are offered to travel club purchasers and customers that include all forms of overnight resort, condominium, timeshare, hotel, motel, and other rental housing of every nature; all forms of air travel and rental car access; all forms of cruise line access and usage; and all other forms of discounted travel services of every nature;

(6) "Travel club", any business enterprise that either directly, indirectly, or through the use of a fulfillment company or other third party offers to sell to the public the reoccurring right to purchase travel benefits at prices that are represented as being discounted from prices otherwise not generally available to the public and charges members or customers a membership fee that collectively equals no less than seven hundred fifty dollars.

407.1243. REGISTRATION STATEMENT REQUIRED, CONTENT — APPROVAL BY ATTORNEY GENERAL, PROCEDURE — GRANDFATHER CLAUSE. — 1. No travel club may offer vacation benefits for sale unless the travel club maintains an effective registration statement with the Missouri attorney general that discloses the following information:

(1) The name of the travel club, including the name under which the travel club is doing or intends to do business, if it is different from the name of the travel club;

(2) The name of any parent or affiliated organization that will engage in business transactions with the purchasers of travel benefits or accept responsibility for statements made by, or acts of, the travel club that relate to sales solicited by the travel club;

(3) The travel club's business type and place of organization;

(4) If the travel club is an entity, the travel club's formation and governing documents, including articles of organization, bylaws, operating agreements, and partnership agreements;

(5) If operating under a fictitious business name, the location where the fictitious name has been registered and the same information for any parent or affiliated organization disclosed under subdivision (2) of this subsection;

(6) The names and addresses of the principal owners, officers, and directors of the travel club;

(7) The addresses where the travel club shall offer travel club memberships for sale;

(8) The name and address of the registered agent in the state of Missouri for service of process for the travel club; and

(9) A brief description of the travel club memberships the travel club is offering for sale.

2. The attorney general shall evidence his or her receipt, approval, or disapproval, as the case may be, of a travel club's registration statement or registration renewal statement within thirty days from and after the submission. Upon compliance with the foregoing requirements, the attorney general shall approve the registration statement. Should any registration fail to address any of the registration conditions as set forth above, the attorney general shall advise in writing the registration deficiencies and the manner in which said deficiencies shall be cured. Such advice shall be provided by the attorney general within fifteen working days from the initial filing of the documents.

3. Travel clubs that are operational prior to the effective date of sections 407.1240 to 407.1252 may continue their business activities during the pendency of the attorney general's processing of their registration statements; provided that such registration statement is filed with the attorney general within ninety calendar days of the effective date of sections 407.1240 to 407.1252. Registration of a travel club shall not be transferable.

4. The registration statement shall additionally have appended thereto:

(1) The form of contract under which the travel club proposes to sell travel club memberships which contains the rescission statement;

(2) A check made to the order of the Missouri attorney general in the amount of fifty dollars.

407.1246. RENEWAL OF REGISTRATION, PROCEDURE, FEE. — Each travel club registered under sections 407.1240 to 407.1252 may renew its registration by filing with the attorney general a registration renewal statement containing all of the information required in section 407.1243 within thirty calendar days of the anniversary date of the attorney general's issuance of its approval of the travel club's registration statement. The attorney general may charge an annual renewal fee in a sum not to exceed fifty dollars.

407.1249. RIGHT TO RESCIND AND CANCEL, TIME PERIOD ALLOWED. — Assuming a purchaser has not otherwise accessed any travel benefits and returns to the travel club all materials of value delivered to the purchaser at closing, all purchasers of travel club memberships from a travel club that is registered shall have the nonwaivable right for a period of three business days after the date of their purchase to rescind and cancel their travel club purchase and receive a full refund of all sums otherwise paid to the travel club within fifteen business days of such rescission, minus the cost of any services actually consumed or utilized. Individuals who purchase travel club memberships from a travel club that is not registered under sections 407.1240 to 407.1252 shall have a nonwaivable right for a period of three years from the date of purchase to rescind and cancel their travel club membership and shall receive a full refund within fifteen business days of such rescission.

407.1252. COMPLAINT PROCEDURE — VIOLATIONS, REMEDY. — 1. Any individual who purchases a travel club membership from a travel club and has a complaint resulting from that purchase transaction has the option, in addition to filing a civil suit, to file a written complaint with the office of the state attorney general, or the county prosecuting attorney. The office which receives the complaint shall deliver to the travel club that is the subject of the complaint, by registered mail within ten working days, all written complaints received under this section in their entirety. Should the office receiving the complaint, including the attorney general, fail to deliver the complaint as stated herein, any action subsequently filed on the complaint shall be stayed for a period of thirty business days from the date the club is first notified and provided the written complaint, thereby allowing the travel club that is the subject of the complaint an opportunity to cure the complaint as provided in subsection 2 of this section.

2. Prior to being subject to any remedies available under sections 407.1240 to 407.1252, a travel club shall have thirty business days following the date that a filed complaint is provided to the travel club to cure any grievances stated in the complaint. The parties shall not seek other forms of redress during this period. Upon satisfaction or settlement of any complaint, the parties shall execute a written mutual release which shall contain the terms of the settlement and operate to remove the matters contained in the release as a basis for further action by any entity or person under this chapter. Any payments to be made under a settlement shall be made within fifteen business days of the signing date of the settlement.

3. (1) The attorney general, prosecuting attorney, or complainant may bring an action in a court of competent jurisdiction to enjoin a violation of sections 407.1240 to 407.1252 if the conditions for a violation of sections 407.1240 to 407.1252 have been met.

(2) A person who violates any provision of sections 407.1240 to 407.1252 is guilty of a class D felony and shall be subject to a penalty of ten thousand dollars. Any fines collected under this subsection shall be transferred to the state school moneys fund as established in section 166.051, RSMo, and distributed to the public schools of this state in the manner provided in section 163.031, RSMo.

4. Any travel club registered to operate in this state which has been adjudged to have failed to provide a refund equal to the purchase price of the unused travel benefits of a person who has validly exercised his or her rights of rescission under sections 407.1240 to 407.1252 within fifteen business days of such valid exercise or has been adjudged to have failed to honor a settlement agreement entered into under the provisions of sections 407.1240 to 407.1252 shall post a surety bond upon the earlier of a judgment entered on said violations or its next annual registration.

5. Any travel club registered to operate in this state which has been adjudged to have engaged in fraud in the procurement or sale of contracts shall be required to post a security bond upon the earlier of the judgment finding such or its next annual registration.

Approved July 12, 2005

SB 279 [SB 279]

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

Adds demand drafts to certain transfer and presentment warranties in the Uniform Commercial Code

AN ACT to repeal sections 400.3-103, 400.3-104, 400.3-416, 400.3-417, 400.4-207, and 400.4-208, RSMo, and to enact in lieu thereof six new sections relating to demand drafts under the uniform commercial code.

SECTION

- A. Enacting clause.
- 400.3-103. Definitions.
- 400.3-104. Negotiable instruments.
- 400.3-416. Transfer warranties.
- 400.3-417. Presentment warranties.
- 400.4-207. Transfer warranties.
- 400.4-208. Presentment warranties.

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

SECTION A. ENACTING CLAUSE. — Sections 400.3-103, 400.3-104, 400.3-416, 400.3-417, 400.4-207, and 400.4-208, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 400.3-103, 400.3-104, 400.3-416, 400.3-417, 400.4-207, and 400.4-208, to read as follows:

400.3-103. DEFINITIONS. — (a) In this Article:

- (1) "Acceptor" means a drawee who has accepted a draft.
- (2) "Drawee" means a person ordered in a draft to make payment.
- (3) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.
- (4) "Good faith" means honesty in fact in the conduct or transaction concerned.
- (5) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.
- (6) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(7) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this Article or Article 4.

(8) "Party" means a party to an instrument.

(9) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(10) "Prove" with respect to a fact means to meet the burden of establishing the fact (Section 400.1-201(8)).

(11) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(b) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance"	Section 400.3-409
"Accommodated party"	Section 400.3-419
"Accommodation party"	Section 400.3-419
"Alteration"	Section 400.3-407
"Anomalous Endorsement"	Section 400.3-205
"Blank Endorsement"	Section 400.3-205
"Cashier's check"	Section 400.3-104
"Certificate of deposit"	Section 400.3-104
"Certified check"	Section 400.3-409
"Check"	Section 400.3-104
"Consideration"	Section 400.3-303
"Demand Draft"	Section 400.3-104
"Draft"	Section 400.3-104
"Holder in due course"	Section 400.3-302
"Incomplete instrument"	Section 400.3-115
"Endorsement"	Section 400.3-204
"Endorser"	Section 400.3-204
"Instrument"	Section 400.3-104
"Issue"	Section 400.3-105
"Issuer"	Section 400.3-105
"Negotiable instrument"	Section 400.3-104
"Negotiation"	Section 400.3-201
"Note"	Section 400.3-104
"Payable at a definite time"	Section 400.3-108
"Payable on demand"	Section 400.3-108
"Payable to bearer"	Section 400.3-109
"Payable to order"	Section 400.3-109
"Payment"	Section 400.3-602
"Person entitled to enforce"	Section 400.3-301
"Presentment"	Section 400.3-501
"Reacquisition"	Section 400.3-207
"Special endorsement"	Section 400.3-205
"Teller's check"	Section 400.3-104
"Transfer of instrument"	Section 400.3-203
"Traveler's check"	Section 400.3-104
"Value"	Section 400.3-303

(c) The following definitions in other Articles apply to this Article:

"Bank"	Section 400.4-105
"Banking day"	Section 400.4-104
"Clearing house"	Section 400.4-104
"Collecting bank"	Section 400.4-105
"Depository bank"	Section 400.4-105
"Documentary draft"	Section 400.4-104
"Intermediary bank"	Section 400.4-105
"Item"	Section 400.4-104
"Payor bank"	Section 400.4-105
"Suspends payments"	Section 400.4-104

(d) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

400.3-104. NEGOTIABLE INSTRUMENTS. — (a) Except as provided in subsections (c) and (d), "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(2) is payable on demand or at a definite time; and

(3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(b) "Instrument" means a negotiable instrument.

(c) An order that meets all of the requirements of subsection (a), except paragraph (1), and otherwise falls within the definition of "check" in subsection (f) is a negotiable instrument and a check.

(d) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this Article.

(e) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft," a person entitled to enforce the instrument may treat it as either.

(f) "Check" means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank or (ii) a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order."

(g) "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(h) "Teller's check" means a draft drawn by a bank (i) on another bank, or (ii) payable at or through a bank.

(i) "Traveler's check" means an instrument that (i) is payable on demand, (ii) is drawn on or payable at or through a bank, (iii) is designated by the term "traveler's check" or by a substantially similar term, and (iv) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(j) "Certificate of deposit" means an instrument containing an acknowledgement by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

(k) "**Demand draft**", a writing not signed by the customer that is created by a third party under the purported authority of the customer for the purpose of charging the

customer's account with a bank. A demand draft shall contain the customer's account number and may contain any or all of the following:

- a. The customer's printed or typewritten name;
- b. A notation that the customer authorized the draft; or
- c. The statement "No signature required" or words to that effect.

A demand draft shall not include a check purportedly drawn by and bearing the signature of a fiduciary, as defined in paragraph (1) of subsection (a) of section 400.3-307.

400.3-416. TRANSFER WARRANTIES. — (a) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by endorsement, to any subsequent transferee that:

- (1) the warrantor is a person entitled to enforce the instrument;
- (2) all signatures on the instrument are authentic and authorized;
- (3) the instrument has not been altered;
- (4) the instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor; [and]

(5) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer; **and**

(6) If the instrument is a demand draft, creation of the instrument according to the terms on its face was authorized by the person identified as drawer. Nothing in this section shall be construed to impair the rights of the drawer against the drawee.

(b) A person to whom the warranties under subsection (a) are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

(c) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(d) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(e) If the warranty in paragraph (6) of subsection (a) is not given by a transferor under applicable conflict of law rules, then the warranty is not given to that transferor when that transferor is a transferee.

400.3-417. PRESENTMENT WARRANTIES. — (a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

(1) the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) the draft has not been altered; [and]

(3) the warrantor has no knowledge that the signature of the drawer of the draft is unauthorized; **and**

(4) if the draft is a demand draft, creation of the demand draft according to the terms on its face was authorized by the person identified as drawer. Nothing in this section shall be construed to impair the rights of the drawer against the drawee.

(b) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is

entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized endorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the endorsement is effective under Section 400.3-404 or 400.3-405 or the drawer is precluded under Section 400.3-406 or 400.4-406 from asserting against the drawee the unauthorized endorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an endorser or (ii) any other instrument is presented for payment to a party obliged to pay the instrument, and (iii) payment is received, the following rules apply:

(1) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

(2) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) or (d) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(g) A demand draft is a check, as provided in subsection (f) of section 400.3-104.

(h) If the warranty in paragraph (4) of subsection (a) is not given by a transferor under applicable conflict of law rules, then the warranty is not given to that transferor when that transferor is a transferee.

400.4-207. TRANSFER WARRANTIES. — (a) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

(1) the warrantor is a person entitled to enforce the item;

(2) all signatures on the item are authentic and authorized;

(3) the item has not been altered;

(4) the item is not subject to a defense or claim in recoupment (Section 400.3-305(a)) of any party that can be asserted against the warrantor; [and]

(5) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer; **and**

(6) if the item is a demand draft, creation of the item according to the terms on its face was authorized by the person identified as drawer. Nothing in this section shall be construed to impair the rights of the drawer against the drawee.

(b) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (i) according to the terms of the item at the time it was transferred, or (ii) if the transfer was of an incomplete item, according to its terms when completed as stated in Sections 400.3-115 and 400.3-407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation

under this subsection by an endorsement stating that it is made "without recourse" or otherwise disclaiming liability.

(c) A person to whom the warranties under subsection (a) are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(d) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(e) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(f) If the warranty in paragraph (6) of subsection (a) is not given by a transferor or collecting bank under applicable conflict of law rules, then the warranty is not given to that transferor when that transferor is a transferee, nor to any prior collecting bank of that transferee.

400.4-208. PRESENTMENT WARRANTIES. — (a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(1) the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) the draft has not been altered; [and]

(3) the warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized; **and**

(4) If the draft is a demand draft, creation of the demand draft according to the terms on its face was authorized by the person identified as drawer. Nothing in this section shall be construed to impair the rights of the drawer against the drawee.

(b) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, (i) breach of warranty is a defense to the obligation of the acceptor, and (ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized endorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the endorsement is effective under Section 400.3-404 or 400.3-405 or the drawer is precluded under Section 400.3-406 or 400.4-406 from asserting against the drawee the unauthorized endorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an endorser or (ii) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for

breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(g) **A demand draft is a check, as provided in subsection (f) of section 400.3-104.**

(h) **If the warranty in paragraph (4) of subsection (a) is not given by a transferor under applicable conflict of law rules, then the warranty is not given to that transferor when the transferor is a transferee.**

Approved July 12, 2005

SB 280 [SB 280]

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

Revises education requirements for cosmetologists

AN ACT to repeal sections 328.010, 328.020, 328.070, 328.075, 328.080, 328.085, 328.090, 328.110, 328.115, 328.120, 328.130, 328.160, 329.010, 329.035, 329.045, 329.050, 329.060, 329.070, 329.090, 329.100, 329.110, 329.120, 329.130, and 329.265, RSMo, and to enact in lieu thereof twenty-nine new sections relating to licensing requirements for cosmetologists.

SECTION

- A. Enacting clause.
 - 328.010. Definitions.
 - 328.015. Board of barber examiners abolished, duties merged with board of cosmetology and barber examiners — effect on rules and existing licenses.
 - 328.020. License required.
 - 328.070. Public examinations by board.
 - 328.075. Barber apprentices, application, fee, requirements — rulemaking authority.
 - 328.080. Application for licensure, fee, examination, qualifications — approval of schools.
 - 328.085. Reciprocity with other states — license without examination, when — fee.
 - 328.090. Barber schools — examinations for teaching.
 - 328.110. Application for renewal of license — fees.
 - 328.115. Barber shops, licensure requirements — sanitary regulations, noncompliance, effect — renewal of license, fee — delinquent fee.
 - 328.120. Barber school licenses, fee — requirements for operation — rulemaking, generally, this chapter — procedure.
 - 328.130. Board to furnish license — duty of holder.
 - 328.160. Penalty for violation of provisions of chapter.
 - 329.010. Definitions.
 - 329.015. Board of cosmetology and barber examiners created, duties and responsibilities — appointment of board, terms, qualifications.
 - 329.023. Board of cosmetology abolished, duties transferred to board of cosmetology and barber examiners — effect on rules and existing licenses.
 - 329.025. Powers of the board, meetings — rulemaking authority.
 - 329.028. Board of cosmetology and barber examiners fund created, use of moneys — transfer of moneys in board of barbers fund and board of cosmetology fund.
 - 329.035. Person employed in retail cosmetic sales, definition — board, rules, inspection.
 - 329.045. License of shop required, establishment fee — display of license.
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- 329.050. Applicants for examination or licensure — qualifications.
- 329.060. Individual license, application, fee, temporary license.
- 329.070. Licensing of apprentices and students, fee, qualifications, application.
- 329.090. Admission to examination.
- 329.100. Conduct of examinations.
- 329.110. Board to issue license.
- 329.120. License, renewal, fee — reinstatement after expiration, fee.
- 329.130. Reciprocity with other states, fee — examination required, when.
- 329.265. Cosmetologists may be licensed as esthetician.

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

SECTION A. ENACTING CLAUSE. — Sections 328.010, 328.020, 328.070, 328.075, 328.080, 328.085, 328.090, 328.110, 328.115, 328.120, 328.130, 328.160, 329.010, 329.035, 329.045, 329.050, 329.060, 329.070, 329.090, 329.100, 329.110, 329.120, 329.130, and 329.265, RSMo, are repealed and twenty-nine new sections enacted in lieu thereof, to be known as sections 328.010, 328.015, 328.020, 328.070, 328.075, 328.080, 328.085, 328.090, 328.110, 328.115, 328.120, 328.130, 328.160, 329.010, 329.015, 329.023, 329.025, 329.028, 329.035, 329.045, 329.050, 329.060, 329.070, 329.090, 329.100, 329.110, 329.120, 329.130, and 329.265, to read as follows:

328.010. DEFINITIONS. — As used in this chapter, unless the context clearly indicates otherwise, the following terms mean:

- (1) **"Barber"**, any person who is engaged in the capacity so as to shave the beard or cut and dress the hair for the general public, shall be construed as practicing the occupation of "barber", and the said barber or barbers shall be required to fulfill all requirements within the meaning of this chapter;
- (2) **"Barber establishment"**, that part of any building wherein or whereupon any occupation of barbering is being practiced including any space or barber chair rented within a licensed establishment by a person licensed under this chapter, for the purpose of rendering barbering services;
- (3) **"Board"**, the board of cosmetology and barber examiners;
- (4) **"Cross-over license"**, a license that is issued to any person who has met the licensure and examination requirements for both barbering and cosmetology;
- (5) **"School of barbering"**, an establishment operated for the purpose of teaching barbering as defined in subdivision (1) of this section.

328.015. BOARD OF BARBER EXAMINERS ABOLISHED, DUTIES MERGED WITH BOARD OF COSMETOLOGY AND BARBER EXAMINERS — EFFECT ON RULES AND EXISTING LICENSES. —

1. Upon appointment by the governor and confirmation by the senate of the board, the board of barber examiners shall be abolished and its duties and responsibilities shall merge into the board as established under section 329.015, RSMo. The board shall be a continuance of and shall carry out the duties of the board of barber examiners.

2. Upon appointment by the governor and confirmation by the senate of the board, all of the powers, duties, and functions of the board of barber examiners shall be transferred to, conferred, and imposed upon the board. The board shall be the successor in every way to the powers, duties, and functions of the board of barber examiners.

3. Every act performed in the exercise of such powers, duties, and authorities by or under the authority of the board shall be deemed to have the same force and effect as if performed by the board of barber examiners under this chapter, including any amendments thereto effective with the passage of this section or prior to the effective date of this section.

4. All rules of the board of barber examiners and any amendments to such rules shall continue to be effective and shall be deemed to be duly adopted rules of the board until revised, amended, or repealed by the board. The board shall review such rules and shall

adopt new rules as required for the administration of this chapter for barbers and cosmetologists.

5. Any person or entity licensed or provisionally licensed by the board of barber examiners prior to the appointment by the governor and confirmation by the senate of the board, shall be considered licensed in the same manner by the board.

328.020. LICENSE REQUIRED. — It shall be unlawful for any person to [follow] **practice** the occupation of a barber in this state, unless he **or she** shall have first obtained a [certificate of registration] **license**, as provided in this chapter.

328.070. PUBLIC EXAMINATIONS BY BOARD. — [Such] **The** board shall hold public examinations at least four times in each year, at such times and places as it may deem advisable, notice of such [meetings] **examinations** to be [given by publication thereof] **published** at least ten days prior to [such meetings, in at least two newspapers published in this state, in the locality of each proposed meeting] **the date of the examination**. **The board shall publish its notice of the examination date, place, and time in any manner that it deems appropriate. In lieu of holding its own examinations for barber applicants, the board may contract with an outside entity qualified to examine applicants for licensure.**

328.075. BARBER APPRENTICES, APPLICATION, FEE, REQUIREMENTS — RULEMAKING AUTHORITY. — 1. Any person desiring to practice as an apprentice for barbering in this state shall apply to the board, [register] **shall be registered** as an apprentice with the board, and shall pay the appropriate fees prior to beginning their apprenticeship. Barber apprentices shall be of good moral character and shall be at least seventeen years of age.

2. Any person desiring to act as an apprentice supervisor for barbering in this state shall first possess a license to practice the occupation of barbering, apply to the board, pay the appropriate fees, complete an eight-hour apprentice supervision instruction course certified by the board, and be issued a [certificate of registration] **license** as a barber apprentice supervisor prior to supervising barber apprentices.

3. The board may promulgate rules establishing the criteria for the supervision and training of barber apprentices.

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 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.

328.080. APPLICATION FOR LICENSURE, FEE, EXAMINATION, QUALIFICATIONS — APPROVAL OF SCHOOLS. — 1. Any person desiring to practice barbering in this state shall make application for a [certificate] **license** to the board and shall pay the required barber examination fee. [He or she shall be present at the next regular meeting of the board for the examination of applicants.]

2. The board shall examine [the] **each qualified** applicant and, upon successful completion of the examination and payment of the required [registration] **license** fee, shall issue [to him or her] **the applicant** a [certificate of registration] **license** authorizing him or her to practice the [trade] **occupation of barber** in this state [and enter his name in the register herein provided for]. **The board shall admit an applicant to the examination**, if it finds that he or she:

- (1) Is seventeen years of age or older and of good moral character;
- (2) Is free of contagious or infectious diseases;

(3) Has studied for at least one thousand hours in a period of not less than six months in a properly appointed and conducted barber school under the direct supervision of a licensed instructor; or, if the applicant is an apprentice, the applicant shall have served and completed no less than two thousand hours under the direct supervision of a licensed barber apprentice supervisor;

(4) Is possessed of requisite skill in the trade of barbering to properly perform the duties thereof, including the preparation of tools, shaving, haircutting and all the duties and services incident thereto; and

(5) Has sufficient knowledge of the common diseases of the face and skin to avoid the aggravation and spread thereof in the practice of barbering.

3. The board shall be the judge of whether the barber school, the barber apprenticeship, or college is properly appointed and conducted under proper instruction to give sufficient training in the trade.

4. The sufficiency of the qualifications of applicants shall be determined by the board.

5. For the purposes of meeting the minimum requirements for examination, the apprentice training shall be recognized by the board for a period not to exceed five years.

328.085. RECIPROCITY WITH OTHER STATES — LICENSE WITHOUT EXAMINATION, WHEN — FEE. — 1. The board shall grant without examination a license to practice barbering to any applicant who holds a [valid] **current** barber's license which is issued by another state or territory whose requirements for licensure were equivalent to the licensing requirements in effect in Missouri at the time the applicant was licensed or who has practiced the trade in another state for at least two **consecutive** years. **An applicant under this section shall pay the appropriate application and licensure fees at the time of making application. A licensee who is currently under disciplinary action with another board of barbering shall not be licensed by reciprocity under the provisions of this chapter.**

2. Any person who has lawfully practiced or received training in another state who does not qualify for licensure without examination may apply to the board for licensure by examination. Upon application to the board, the board shall evaluate the applicant's experience and training to determine the extent to which the applicant's training and experience satisfies current Missouri licensing requirements and shall notify the applicant regarding his deficiencies and inform the applicant of the action which he must take to qualify to take the examination.

3. The applicant for licensure under this section shall pay a fee equivalent to the barber examination fee.

328.090. BARBERSCHOOLS — EXAMINATIONS FOR TEACHING. — Any person desiring to teach barbering in this state in a barber school, college or barber shop must first possess a [certificate of registration] **license** to practice the occupation of barbering and make application to [appear before said] **the** board for an examination as a teacher or instructor in said occupation and shall pay the required instructor examination fee. The board shall examine such applicant and after finding that he **or she** is duly qualified to teach said occupation, [said] **the** board shall issue to him **or her** a [certificate of registration] **license** entitling him **or her** to teach barbering in this state, subject to all the provisions of this chapter. Holders of [certificates] **licenses** to teach barbering shall, on or before the expiration of their respective [certificates] **licenses**, make application for the renewal of same, and shall in each case pay the instructor renewal fee. Should any person holding a [certificate] **license** to teach barbering fail to renew same within the time prescribed herein, such person shall be required to pay a reinstatement fee in addition to the regular [registration] **license** fee provided for herein. Any person failing to renew his [certificate of registration] **or her license** to teach barbering for a period not exceeding two years may reinstate said [certificate of registration] **license** upon the payment of the renewal fee in addition to the reinstatement fee, but any person failing to renew his [certificate of registration] **or her license** to teach barbering for a period exceeding two years and desiring to be [reregistered]

licensed as a teacher of barbering in this state will be required to [appear before said board and] pass a satisfactory examination as to his **or her** qualifications to teach barbering and shall pay the instructor examination fee.

328.110. APPLICATION FOR RENEWAL OF LICENSE — FEES. — 1. Every person engaged in barbering shall on or before the renewal date apply for the renewal of his or her [certificate of registration] **license**.

2. Each application for renewal shall state the number of [applicant's] **the licensee's** expiring [certificate] **license**, and be accompanied by his or her renewal fee. Any person holding a [certificate of registration] **license** as a barber, except as herein provided, who fails to apply for renewal within two months of the expiration date of his or her [certificate of registration] **license**, shall pay a reinstatement fee in addition to the regular [registration] **license** renewal fee. Any person who fails to renew his or her [certificate of registration] **license**, except as herein provided, for a period not exceeding two years may reinstate his or her [certificate of registration] **license** upon payment of the [registration] **license** renewal fee for each delinquent year in addition to the reinstatement fee prescribed herein, but any barber, except as herein provided, who fails to renew his or her [certificate of registration] **license** for a period exceeding two years but less than five years and desires to be [reregistered] **licensed** as a barber in this state will be required to [appear before the board and] pass the practicum portion of the [state] **state's** licensing examination as to his or her qualifications to practice barbering and shall pay the barber examination fee.

3. A holder of a [certificate of registration] **barber license** who has been honorably discharged from the United States armed forces, and has not renewed his or her [certificate of registration] **license** as herein provided, shall, upon his or her return to barbering within one year from date of honorable discharge, pay one dollar for renewal of same.

328.115. BARBER SHOPS, LICENSURE REQUIREMENTS — SANITARY REGULATIONS, NONCOMPLIANCE, EFFECT — RENEWAL OF LICENSE, FEE — DELINQUENT FEE. — 1. The owner of every shop or establishment in which the occupation of barbering is practiced shall obtain a [certificate of registration] **license** for such shop or establishment issued by the board before barbering is practiced therein. A new [certificate of registration] **license** shall be obtained for a barber shop or establishment before barbering is practiced therein when the shop or establishment changes ownership or location.

2. The board shall issue a [certificate of registration] **license** for a shop or establishment upon receipt of [a registration] **the license** fee from the applicant if the board finds that the shop or establishment complies with the sanitary regulations adopted pursuant to section 328.060. All shops or establishments shall continue to comply with the sanitary regulations. Failure of a shop or establishment to comply with the sanitary regulations shall be grounds for the board to file a complaint with the administrative hearing commission to revoke or suspend the [certificate of registration] **license** for the shop or censure or place on probation the holder thereof.

3. The [certificate of registration] **license** for a shop or establishment shall be renewable. The applicant for renewal of the [certificate] **license** shall on or before the renewal date submit [a] **the completed renewal application accompanied by the required** renewal fee. If the renewal **application and** fee [is] **are** not submitted [on or before] **within thirty days following** the renewal date [and if the fee remains unpaid for thirty days thereafter], a penalty fee plus the renewal fee shall be paid to renew the [certificate] **license**. If a new shop opens any time during the licensing period and does not register **a license** before opening, there shall be a delinquent fee in addition to the regular fee. The [certificate of registration must] **license shall** be kept posted in plain view within the shop or establishment at all times.

328.120. BARBER SCHOOL LICENSES, FEE — REQUIREMENTS FOR OPERATION — RULEMAKING, GENERALLY, THIS CHAPTER — PROCEDURE. — 1. Any firm, corporation or person, [desiring to conduct a barber school or college in this state, shall first secure from the

board a permit to do so, and shall keep the same prominently displayed. There shall be a permit fee to be paid on or before the permit renewal date.] **may make application to the board for a license to own and operate a barber school or college on the form prescribed by the board. Every barber school or college in which the occupation of barbering is taught shall be required to obtain a license from the board prior to opening. The license shall be issued upon approval of the application by the board, the payment of the required fees, and the board's determination that the applicant meets all other requirements of this chapter and any rules promulgated thereunder. The license shall be kept posted in plain view within the barber school or college at all times.**

2. A barber school or college license renewal application and fee shall be submitted on or before the renewal date of any school or college license issued under this section. If the barber school or college license renewal fee is not paid on or before the renewal date, a late fee shall be added to the regular license renewal fee.

3. The board shall promulgate rules and regulations regarding the course of study in [the] a barber school or college, and may revoke any [permit] license issued hereunder for any violation of the provisions of this section or rule promulgated pursuant to this section. The board shall follow the procedure prescribed by chapter 621, RSMo, to revoke a barber school [permit] license. [Permits] License shall not be restricted to any one group or person but shall be granted to any reasonably qualified person or group under a fair and nondiscriminating method of determination.

[2.] **4.** There shall be not less than one teacher or instructor for every fifteen students in any barber school or college holding a [permit] license under this section.

[3.] **5.** The barber school or college shall immediately file with the board the name and age of each student entering the school, and the board shall cause the same to be entered in a register kept for that purpose. A registration fee shall be paid by the student.

[4.] **6.** The barber school or college shall certify to the board the names of all students who successfully completed a course of study approved by the board and consisting of at least one thousand hours of study under the direct supervision of a licensed instructor in a period of not less than six months.

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

328.130. BOARD TO FURNISH LICENSE — DUTY OF HOLDER. — [There shall be furnished to each person to whom a certificate of registration is issued a card or certificate certifying that] **The board shall issue a printed license to each person successfully meeting the board's requirements for licensure, which shall be evidence** the holder thereof is entitled to practice the occupation of [barber] **barbering** in this state[, and it shall be the duty of the holder of such card or certificate to]. **The licensee shall post [the same] his or her license** in a conspicuous place in front of his **or her** working chair where it may be readily seen by all persons whom he **or she** may serve.

328.160. PENALTY FOR VIOLATION OF PROVISIONS OF CHAPTER. — Any person practicing the occupation of [barber] **barbering** without having obtained a [certificate of registration or permit] license as provided in this chapter, or willfully employing a barber who [has not such certificate or permit] **does not hold a valid license issued by the board**, managing or conducting a barber school or college[,] without first securing a [permit] license from [such] **the board**, or falsely pretending to be qualified to practice as a barber or instructor or teacher of such occupation under this chapter, or failing to keep [the certificate, card or permit mentioned in] **any license required by** this chapter properly displayed or for any extortion or overcharge practiced, and any barber college, firm, corporation or person operating or conducting a barber college without first having secured the [permit provided for] **license required** by this

chapter, or failing to comply with such sanitary rules as the board, in conjunction with the department of health and senior services, prescribes, or for the violation of any of the provisions of this chapter, shall be deemed guilty of a class C misdemeanor. Prosecutions under this chapter shall be initiated and carried on in the same manner as other prosecutions for misdemeanors in this state.

329.010. DEFINITIONS. — As used in this chapter, unless the context clearly indicates otherwise, the following words and terms mean:

(1) **"Accredited school of cosmetology or school of manicuring", an establishment operated for the purpose of teaching cosmetology as defined in this section and meeting the criteria set forth under 34 C.F.R. Part 600, sections 600.1 and 600.2;**

(2) "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] **licensed** cosmetologist or instructor;

[2] (3) "Board", the state board of cosmetology **and barber examiners;**

[3] (4) "Cosmetologist", any person who, for compensation, engages in the practice of cosmetology, as defined in subdivision [(4)] (5) of this section;

[(4)] (5) "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)] (6) "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 this chapter, for the purpose of rendering cosmetology services;

[(6)] (7) **"Cross-over license", a license that is issued to any person who has met the licensure and examination requirements for both barbering and cosmetology;**

(8) "Hairdresser", any person who, for compensation, engages in the practice of cosmetology as defined in paragraph (a) of subdivision [(4)] (5) of this section;

[(7)] (9) "Instructor", any person who is licensed to teach cosmetology or any practices of cosmetology pursuant to this chapter;

[(8)] (10) "Manicurist", any person who, for compensation, engages in any or all of the practices in paragraph (b) of subdivision [(4)] (5) of this section;

[(9)] (11) "Parental consent", the written informed consent of a minor's parent or legal guardian that must be obtained prior to providing body waxing on or near the genitalia;

(12) "School of cosmetology" or "school of manicuring", an establishment operated for the purpose of teaching cosmetology as defined in subdivision [(4)] (5) of this section.

329.015. BOARD OF COSMETOLOGY AND BARBER EXAMINERS CREATED, DUTIES AND RESPONSIBILITIES — APPOINTMENT OF BOARD, TERMS, QUALIFICATIONS. — 1. There is hereby created and established a "Board of Cosmetology and Barber Examiners" for the purpose of licensing all persons engaged in the practice of cosmetology, manicuring, esthetics, and barbering, including but not limited to shaving or trimming the beard or cutting the hair; and to fulfill all other duties and responsibilities delegated by chapter 328, RSMo, as it pertains to barbers and this chapter as it pertains to cosmetologists. The duties and responsibilities of the board of cosmetology and barber examiners as such duties and responsibilities pertain to barbers and cosmetologists shall not take full force and effect until such time as the governor appoints the members of the board of cosmetology and barber examiners and the appointments are confirmed by the senate. At such time, the powers and duties of the board of barber examiners and the state board of cosmetology shall be merged into the board under section 329.023.

2. The governor shall appoint members to the board by and with the advice and consent of the senate. The board shall consist of eleven members each of whom are United States citizens and who have been residents of this state for at least one year immediately preceding their appointment. Of these eleven members, three shall be licensed cosmetologists holding a Class CA license classification, one shall be an accredited cosmetology school owner as defined in section 329.010, one shall be the owner of a school licensed under subsection 1 of section 329.040, one shall be a cosmetologist with a license of any type of cosmetology classification, three shall be licensed barbers, and two shall be voting public members. All members, except the public members and the accredited cosmetology school owner member, shall be cosmetologists and barbers duly registered as such and licensed under the laws of this state and shall have been actively engaged in the lawful practice of their profession for a period of at least five years immediately preceding their appointment. All members of the board, including public members and the accredited cosmetology school owner member, shall be chosen from lists submitted by the director of the division of professional registration.

3. Upon the appointment of the initial board members, at least two cosmetologist members and two barber members shall be appointed by the governor to serve a term of four years; two cosmetologist members, one barber member and a public member shall be appointed to serve a term of three years, and the remaining members of the initial board shall be appointed for a term of two years. Thereafter, all members shall be appointed by the governor by and with the advice and consent of the senate to serve four-year terms. The governor shall appoint members to fill any vacancies, whether it occurs by the expiration of a term or otherwise; provided, however, that any board member shall serve until his or her successor is appointed and duly qualified. No person shall be eligible for reappointment that has served as a member of the board for a total of twelve years.

4. At the time of appointment, the public members shall be citizens of the United States, residents of this state for a period of at least one year immediately preceding their appointment, and a registered voter. The public members and the spouse of such members shall be persons who are not and never were a member of any profession

licensed or regulated by the board. The public members and the spouse of such members shall be persons who do not have and never have had a material financial interest in the provision of the professional services regulated by the board, or an activity or organization directly related to any professions licensed or regulated by the board. The duties of the public members and the accredited school owner 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.

5. Any member who is a school owner shall not be allowed access to the testing and examination materials nor shall any such member be allowed to attend the administration of the examinations, except when such member is being examined for licensure.

6. The members of the board shall receive as compensation for their services the sum set by the board not to exceed seventy dollars for each day actually spent in attendance at meetings of the board plus actual and necessary expenses.

329.023. BOARD OF COSMETOLOGY ABOLISHED, DUTIES TRANSFERRED TO BOARD OF COSMETOLOGY AND BARBER EXAMINERS — EFFECT ON RULES AND EXISTING LICENSES. —

1. Upon appointment by the governor and confirmation by the senate of the board, the state board of cosmetology is abolished and its duties and responsibilities shall merge into the board as established under section 329.015. The board shall be a continuance of and shall carry out the duties of the state board of cosmetology.

2. Upon appointment by the governor and confirmation by the senate of the board, all of the powers, duties, and functions of the state board of cosmetology are transferred to, conferred, and imposed upon the board. The board shall be the successor in every way to the powers, duties, and functions of the state board of cosmetology.

3. Every act performed in the exercise of such powers, duties, and authorities by or under the authority of the board shall be deemed to have the same force and effect as if performed by the state board of cosmetology under this chapter, including any amendments thereto effective with the passage of this law or prior to the effective date of this section.

4. All rules and regulations of the state board of cosmetology and any amendments thereto shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the board until revised, amended, or repealed by the board. The board shall review such rules and regulations and shall adopt new rules as required for the administration of the licensure law for barbers and cosmetologists.

5. Any person or entity licensed or provisionally licensed by the state board of cosmetology prior to the appointment by the governor and confirmation by the senate of the board, shall be considered licensed in the same manner by the board of cosmetology and barber examiners.

329.025. POWERS OF THE BOARD, MEETINGS — RULEMAKING AUTHORITY. — 1. The board shall have power to:

(1) Prescribe by rule for the examination of applicants for licensure to practice the classified occupations of barbering and cosmetology and issue licenses;

(2) Prescribe by rule for the inspection of barber and cosmetology establishments and schools and appoint the necessary inspectors and examining assistants;

(3) Prescribe by rule for the inspection of establishments and schools of barbering and cosmetology as to their sanitary conditions and to appoint the necessary inspectors and, if necessary, examining assistants;

(4) Set the amount of the fees that this chapter and chapter 328 authorize and require, by rules promulgated under section 536.021, RSMo. The fees shall be set at a level sufficient to produce revenue that shall not substantially exceed the cost and expense of administering this chapter and chapter 328;

(5) Employ and remove board personnel, as set forth in subdivision (4) of subsection 15 of section 620.010, RSMo, including an executive secretary or comparable position, inspectors, investigators, legal counsel and secretarial support staff, as may be necessary for the efficient operation of the board, within the limitations of its appropriation;

(6) Elect one of its members president, one vice president, and one secretary with the limitation that no single profession can hold the positions of president and vice president at the same time;

(7) Promulgate rules necessary to carry out the duties and responsibilities designated by this chapter and chapter 328;

(8) Determine the sufficiency of the qualifications of applicants; and

(9) Prescribe by rule the minimum standards and methods of accountability for the schools of barbering and cosmetology licensed under this chapter and chapter 328.

2. The board shall create no expense exceeding the sum received from time to time from fees imposed under this chapter and chapter 328.

3. A majority of the board, with at least one representative of each profession being present, shall constitute a quorum for the transaction of business.

4. The board shall meet not less than six times annually.

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 chapters 328 and 329 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, 2001, shall be invalid and void.

329.028. BOARD OF COSMETOLOGY AND BARBER EXAMINERS FUND CREATED, USE OF MONEYS — TRANSFER OF MONEYS IN BOARD OF BARBERS FUND AND BOARD OF COSMETOLOGY FUND. — 1. There is hereby created in the state treasury a fund to be known as the "Board of Cosmetology and Barber Examiners Fund", which shall consist of all moneys collected by the board. All fees provided for in this chapter and chapter 328 shall be payable to the director of the division of professional registration in the department of economic development, who shall keep a record of the account showing the total payments received and shall immediately thereafter transmit them to the department of revenue for deposit in the state treasury to the credit of the board of cosmetology and barber examiners fund. All the salaries and expenses for the operation of the board shall be appropriated and paid from such fund.

2. The provisions of section 33.080, RSMo, to the contrary notwithstanding, money in this fund shall not be transferred and placed to the credit of general revenue until the amount in the fund at the end of the biennium exceeds two times the amount of the appropriation from the board's funds for the preceding fiscal year or, if the board requires by rule license renewal less frequently than yearly, then three times the appropriation from the board's funds for the preceding fiscal year. The amount, if any, in the fund which shall lapse is that amount in the fund which exceeds the appropriate multiple of the appropriations from the board's funds for the preceding fiscal year.

3. Upon appointment by the governor and confirmation by the senate of the board, all moneys deposited in the board of barbers fund created in section 328.050, RSMo, and the state board of cosmetology fund created in section 329.240, shall be transferred to the board of cosmetology and barber examiners fund created in subsection 1 of this section. The board of barbers fund and the state board of cosmetology fund shall be abolished when all moneys are transferred to the board of cosmetology and barber examiners fund.

329.035. PERSON EMPLOYED IN RETAIL COSMETIC SALES, DEFINITION — BOARD, RULES, INSPECTION. — 1. For the purposes of this section, "person employed in retail cosmetic sales" means any person who assists customers to select cosmetics by allowing the customer to apply samples of demonstration cosmetics, assisting the customer to apply cosmetics, or applying the cosmetic to the customer. There shall be no skin-to-skin contact between the salesperson and the customer. Assisted cosmetic applications by the customer or the person employed in retail cosmetic sales shall be performed with single-use applicators, except for perfume or cologne, samples applied to the hand or the arm or dispensed from a tube, pump, spray or shaker container, or samples or applicators that have been cleansed before each use or application. No person employed in retail cosmetic sales as provided in this section shall accept any remuneration from the customer for performing any of the acts described in this section or make such assistance or application conditioned on any sale.

2. A [certificate of registration as provided in] **license as required under** section 329.030 is not required for persons who are employed in retail cosmetic sales if such persons do not hold themselves out to have a license, permit, certificate of registration or any other authority authorizing such person to practice the professions licensed by the board.

3. The board may promulgate rules establishing minimum sanitation standards for persons employed in retail cosmetic sales, but such rules shall not require a sink at the cosmetic counter for a source and drainage of water or any other electrical sanitation equipment required in hairdressing or cosmetologist's or manicurist's shops licensed pursuant to this chapter. The board may inspect retail cosmetic sales establishments to ensure compliance with this section and rules promulgated thereunder.

329.045. LICENSE OF SHOP REQUIRED, ESTABLISHMENT FEE — DISPLAY OF LICENSE. — Every establishment in which the occupation of cosmetology is practiced shall be required to obtain a license from the [state] board [of cosmetology]. Every establishment required to be licensed shall pay to the [state] **board** an establishment fee for the first three licensed cosmetologists esthetician and/or manicurists, and/or apprentices and an additional fee for each additional licensee. The fee shall be due and payable on the renewal date and, if the fee remains unpaid thereafter, there shall be a late fee in addition to the regular establishment fee or, if a new establishment opens any time during the licensing period and does not register before opening, there shall be a delinquent fee in addition to the regular establishment fee. The license shall be kept posted in plain view within the establishment at all times.

329.050. APPLICANTS FOR EXAMINATION OR LICENSURE — QUALIFICATIONS. — 1. Applicants for examination or licensure pursuant to this chapter shall possess the following qualifications:

(1) They must be persons of good moral character, have an education equivalent to the successful completion of the tenth grade and be at least seventeen years of age;

(2) If the applicants are apprentices, they shall have served and completed, as an apprentice under the supervision of a licensed cosmetologist, the time and studies required by the board which shall be no less than three thousand hours for cosmetologists, and no less than [seven hundred eighty hours] **eight hundred hours** for manicurists and no less than fifteen hundred hours for esthetics. However, when the classified occupation of manicurist is apprenticed in conjunction with the classified occupation of cosmetologist, the [apprentices] **apprentice** shall be required to successfully complete [the] **an** apprenticeship of no less than a total of three thousand hours;

(3) If the applicants are students, they shall have had the required time in a licensed school of no less than one thousand five hundred hours training or the credit hours determined by the formula in Subpart A of Part 668 of Section 668.8 of Title 34 of the Code of Federal Regulations, as amended, for the classification of cosmetologist, with the exception of public vocational technical schools in which a student shall complete no less than one thousand two

hundred twenty hours training. All students shall complete no less than four hundred hours or the credit hours determined by the formula in Subpart A of Part 668 of Section 668.8 of Title 34 of the Code of Federal Regulations, as amended, for the classification of manicurist. All students shall complete no less than seven hundred fifty hours or the credit hours determined by the formula in Subpart A of Part 668 of Section 668.8 of Title 34 of the Code of Federal Regulations, as amended, for the classification of esthetician. However, when the classified occupation of manicurist is taken in conjunction with the classified occupation of cosmetologist, the student shall not be required to serve the extra four hundred hours or the credit hours determined by the formula in Subpart A of Part 668 of Section 668.8 of Title 34 of the Code of Federal Regulations, as amended, otherwise required to include manicuring of nails; and

(4) They shall have passed an examination to the satisfaction of the board.

2. A person may apply to take the examination required by subsection 1 of this section if the person is a graduate of a school of cosmetology or apprentice program in another state or territory of the United States which has substantially the same requirements as an educational establishment licensed pursuant to this chapter. **A person may apply to take the examination required by subsection 1 of this section if the person is a graduate of an educational establishment in a foreign country that provides training for a classified occupation of cosmetology, as defined by section 329.010, and has educational requirements that are substantially the same requirements as an educational establishment licensed under this chapter. The board has sole discretion to determine the substantial equivalency of such educational requirements. The board may require that transcripts from foreign schools be submitted for its review, and the board may require that the applicant provide an approved English translation of such transcripts.**

3. Each application shall contain a statement that, subject to the penalties of making a false affidavit or declaration, the application is made under oath or affirmation and that its representations are true and correct to the best knowledge and belief of the person signing the application.

4. The sufficiency of the qualifications of applicants shall be determined by the board, but the board may delegate this authority to its executive director subject to such provisions as the board may adopt.

5. For the purpose of meeting the minimum requirements for examination, training completed by a student or apprentice shall be recognized by the board for a period of no more than five years from the date it is received.

329.060. INDIVIDUAL LICENSE, APPLICATION, FEE, TEMPORARY LICENSE. — 1. Every person desiring to sit for the examination for any of the occupations provided for in this chapter shall file with the [state] board [of cosmetology] a written application on a form supplied to the applicant, and shall submit proof of the required age, educational qualifications, and of good moral character together with the required cosmetology examination fee. Each application shall contain a statement that it is made under oath or affirmation and that its representations are true and correct to the best knowledge and belief of the person signing same, subject to the penalties of making a false affidavit or declaration.

2. Upon the filing of the application and the payment of the fee, the [state] board [of cosmetology] shall, upon request, issue to the applicant, if the applicant is qualified to sit for the examination, a temporary license [for a definite period of time, but not beyond the release of the results from the next regular examination of applicants] for the practicing of the occupations as provided in this chapter. Any person receiving a temporary license shall be entitled to practice the occupations designated on the temporary license, under the supervision of a person licensed in cosmetology, until the expiration of the temporary license. Any person continuing to practice the occupation beyond the expiration of the temporary license without being licensed in cosmetology as provided in this chapter is guilty of an infraction.

329.070. LICENSING OF APPRENTICES AND STUDENTS, FEE, QUALIFICATIONS, APPLICATION. — 1. Apprentices or students shall be licensed with the board and shall pay a student fee or an apprentice fee prior to beginning their course, and shall be of good moral character and have an education equivalent to the successful completion of the tenth grade.

2. An apprentice or student shall not be enrolled in a course of study that shall exceed [eight] **twelve** hours per day or that is less than three hours per day. The course of study shall be no more than [forty-eight] **seventy-two** hours per week and no less than fifteen hours per week.

3. Every person desiring to act as an apprentice in any of the classified occupations within this chapter shall file with the board a written application on a form supplied to the applicant, together with the required apprentice fee.

329.090. ADMISSION TO EXAMINATION. — If the [state] board [of cosmetology] finds the applicant has submitted the credentials required for admission to the examination and has paid the required fee, the board shall admit such applicant to examination for licensure.

329.100. CONDUCT OF EXAMINATIONS. — The examination of applicants for licenses to practice under this chapter shall be conducted under the rules prescribed by the [state] board [of cosmetology] and shall include both practical demonstrations and written and oral tests in reference to the practices for which a license is applied and such related studies and subjects as the [state] board [of cosmetology] may determine necessary for the proper and efficient performance of such practices and shall not be confined to any specific system or method, and such examinations shall be consistent with the practical and theoretical requirements of the classified occupation or occupations as provided by this chapter.

329.110. BOARD TO ISSUE LICENSE. — 1. If an applicant for examination for cosmetology passes the examination to the satisfaction of the [state] board [of cosmetology] and has paid the fee required and complied with the requirements pertaining to this chapter, the board shall cause to be issued a license to that effect. The license shall be evidence that the person to whom it is issued is entitled to engage in the practices, occupation or occupations stipulated therein as prescribed in this chapter. The license shall be conspicuously displayed in his or her principal office, place of business, or employment.

2. Whenever anyone who has been licensed in accordance with this chapter practices any of the occupations authorized in this chapter outside of or away from the person's principal office, place of business, or employment, he or she shall deliver to each person in his or her care a certificate of identification. This certificate shall contain his or her signature, the number and date of his or her license, the post office address and the date upon which the certificate of identification is delivered to the person under his or her care.

329.120. LICENSE, RENEWAL, FEE — REINSTATEMENT AFTER EXPIRATION, FEE. — The holder of a license issued by the [state] board [of cosmetology] who continues in active practice or occupation shall on or before the license renewal date renew the holder's license and pay the renewal fee. A license which has not been renewed prior to the renewal date shall expire on the renewal date. The holder of an expired license may have the license restored within two years of the date of expiration without examination, upon the payment of a delinquent fee in addition to the renewal fee.

329.130. RECIPROCITY WITH OTHER STATES, FEE — EXAMINATION REQUIRED, WHEN. — [The state board of cosmetology shall dispense with examinations of an applicant, as provided in this chapter, and shall grant licenses under the respective sections upon the payment of the required fees, provided that the applicant has complied with the requirements of another state, territory of the United States, or, District of Columbia wherein the requirements for licensure are

substantially equal to those in force in this state at the time application for the license is filed and upon due proof that the applicant at time of making application holds a current license in the other state, territory of the United States, or District of Columbia, and upon the payment of a fee equal to the examination and licensing fees required to accompany an application for a license in cosmetology.] **1. The board shall grant without examination a license to practice cosmetology to any applicant who holds a current license that is issued by another state, territory of the United States, or the District of Columbia whose requirements for licensure are substantially equal to the licensing requirements in Missouri at the time the application is filed or who has practiced cosmetology for at least two consecutive years in another state, territory of the United States, or the District of Columbia. The applicant under this subsection shall pay the appropriate application and licensure fees at the time of making application.** A licensee who is currently under disciplinary action with another board of cosmetology shall not be licensed by reciprocity under the provisions of this chapter.

2. Any person who lawfully practiced or received training in another state who does not qualify for licensure without examination may apply to the board for licensure by examination. Upon application to the board, the board shall evaluate the applicant's experience and training to determine the extent to which the applicant's training and experience satisfies current Missouri licensing requirements and shall notify the applicant regarding his or her deficiencies and inform the applicant of the action that he or she must take to qualify to take the examination. The applicant for licensure under this subsection shall pay the appropriate examination and licensure fees.

329.265. COSMETOLOGISTS MAY BE LICENSED AS ESTHETICIAN. — [Until July 1, 1999, any person licensed in Missouri as a Class CH or CA cosmetologist pursuant to this chapter may be licensed as an esthetician without examination if such person applies to the state board of cosmetology and pays a fee, as established by the board. The state board of cosmetology shall notify, by October 1, 1998, by United States mail at their last known address, all persons licensed in Missouri as Class CH or CA cosmetologists of their rights as provided in this section to be licensed as an esthetician without examination.] After July 1, 1999, any licensed cosmetologist shall be required to complete the required training of seven hundred and fifty hours and pass the required examination **to be licensed as an esthetician.**

Approved July 6, 2005

SB 287 [CCS HCS SS SCS SB 287]

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

Transitions the state away from a tax-rate driven education funding formula to a student-needs based education funding formula

AN ACT to repeal sections 148.360, 149.015, 160.264, 160.400, 160.405, 160.410, 160.415, 160.420, 160.530, 160.531, 160.534, 160.550, 161.527, 162.081, 162.675, 162.725, 162.735, 162.740, 162.792, 162.935, 162.975, 163.005, 163.011, 163.014, 163.015, 163.021, 163.023, 163.025, 163.028, 163.031, 163.032, 163.034, 163.035, 163.036, 163.071, 163.073, 163.081, 163.087, 163.091, 163.172, 164.011, 164.303, 165.011, 165.015, 165.016, 166.260, 166.275, 167.126, 167.151, 167.332, 167.349, 168.281, 168.515, 169.596, 170.051, 170.055, 171.121, 178.296, and 360.106, RSMo, and to enact in lieu thereof fifty-two new sections relating to education, with an effective date for certain sections and penalty provisions.

SECTION

- A. Enacting clause.
- 148.360. County foreign insurance tax money distributed to school districts.
- 149.015. Rate of tax — how stamped — samples, how taxed — tax impact to be on consumer — fair share school fund, distribution.
- 160.400. Charter schools, defined, St. Louis City and Kansas City school districts — sponsors — use of public school buildings — organization of charter schools — affiliations with college or university — criminal background check required.
- 160.405. Proposed charter, how submitted, requirements, submission to state board, powers and duties — approval, revocation, termination — definitions — lease of public school facilities, when — unlawful reprisal, defined, prohibited.
- 160.410. Admission, preferences for admission permitted, when — study of performance to be commissioned by department, costs, contents, results to be made public.
- 160.415. Distribution of state school aid for charter schools — powers and duties of governing body of charter schools.
- 160.420. Employment provisions — school district personnel may accept charter school position and remain district employees, effect — noncertificated instructional personnel, employment, supervision.
- 160.530. Eligibility for state aid, allocation of funds to professional development committee — statewide areas of critical need, funds — success leads to success grant program created, purpose — listing of expenditures.
- 160.534. Excursion gambling boat proceeds, transfer to gaming proceeds for education fund and classroom trust fund.
- 161.527. District not required to reduce operating levy, when — restrictions on administrative costs and salaries — exemptions from restrictions, limitation — extension on exemptions may be submitted to voters.
- 162.081. Lapse of district corporate organization, grounds, effect — hearing prior to determination of attachment of territory of lapsed district — special administrative board — employment interviews for teacher of lapsed district, when — division of district, vote, when.
- 162.675. Definitions.
- 162.740. District of residence to pay toward cost, when — amount, how calculated.
- 162.935. State aid, how computed.
- 162.974. Reimbursement for education costs of high-need children.
- 163.011. Definitions — method of calculating state aid.
- 163.021. Eligibility for state aid, requirements — evaluation of correlation of rates and assessed valuation, report, calculation — further requirements — exception.
- 163.023. School district with operating levy below minimum value classified unaccredited, when — procedure for classification.
- 163.025. Operating levy reduction below minimum rate, effect upon accreditation classification.
- 163.028. Rules, effective, when — rules invalid and void, when.
- 163.031. State aid — amount, how determined — categorical add-on revenue, determination of amount — district apportionment, determination of — waiver of rules — deposits to teachers' fund and incidental fund, when.
- 163.036. Estimates of weighted average daily attendance, authorized, how computed — summer school computation — error in computation between actual and estimated attendance, how corrected — use of assessed valuation for state aid — delinquency in payment of property tax, effect on assessment.
- 163.042. Option district election, effect of — notification to department of election.
- 163.043. Classroom trust fund created, distribution of moneys — use of moneys by districts.
- 163.044. Annual appropriation of fifteen million dollars for specified uses.
- 163.071. State aid for pupils residing on federal lands.
- 163.073. Aid for programs provided by the division of youth services — amount, how determined — payment by district of domicile of the child, amount.
- 163.081. Secretary to report to state department, when, contents, penalty — distribution, when.
- 163.087. School district trust fund distribution, certain school districts — eligible pupils defined — districts foregoing reduction in total operating levy, calculation of entitlement.
- 163.091. Correction of errors in apportionment of state aid.
- 163.172. Minimum teacher's salary — information to be provided to general assembly — salary defined.
- 164.011. Annual estimate of required funds, tax rates required, criteria for exceptions — estimates, where sent.
- 164.303. School district bond fund established, purpose to fund health and educational facilities authority, costs and grants — lapse into general revenue fund, prohibited.
- 165.011. Tuition — accounting of school moneys, funds — uses — transfers to and from incidental fund, when — effect of unlawful transfers — transfers to debt service fund, when.
- 165.012. School district financial reporting requirements to the department — information to be available on department's web site.
- 165.016. Amount to be spent on tuition, retirement and compensation — base school year certificated salary percentage — exemption and revision — penalty — exceptions — termination date.
- 166.275. Appropriations to satisfy certain judgments transferred to school moneys fund — amount, distribution.
- 167.126. Children admitted to certain programs or facilities, right to educational services — school district, per pupil cost, payment — inclusion in average daily attendance, payments in lieu of taxes, when.

- 167.151. Admission of nonresident and other tuition pupils — certain pupils exempt from tuition — school tax credited against tuition — owners of agricultural land in more than one district, options, notice required, when.
- 167.332. Department to evaluate and assess needs — detailed instruction plan to be submitted — receipt of state aid — year-end student reports — new centers funded on priority basis.
- 167.349. Charter schools, establishment.
- 168.281. Permanent employees, removal, procedure — suspension, demotion — reduction of personnel (metropolitan districts).
- 168.515. Salary supplement for participants in career plan — method of distribution — amounts — matching funds, formula, contributions — bonus contribution, when — review of career pay — tax levy authorized, when — use of funds — exception to contribution.
- 169.596. Retired teacher may teach full time without loss of retirement benefits, when — school district requirements.
- 170.051. Textbook defined — school board to provide free textbooks in public schools — funds to be used.
- 170.055. Price to be paid for books — excessive price a misdemeanor, penalty.
- 171.121. District may be closed and required to transport pupils — apportionment of state aid.
- 178.296. Educational programs for juveniles placed or detained in county facilities — state aid.
- 360.106. Definitions — bonds or notes issued for loans to or purchase of notes of school districts and community junior colleges — how secured — investment of funds — bids required for professional services furnished — report by authority due when.
1. Review of local property tax assessment practices — recommendations to general assembly, when — report to state tax commission.
 2. Weighted average daily attendance to include portion of summer school average daily attendance, when.
 3. Transfer corporations (metropolitan schools), computation of state aid.
- 160.264. Incentives for school excellence program established — funding — advisory committee established, appointment, duties — department of elementary and secondary education, duties — guidelines established, distributed — program topic.
- 160.531. Family literacy programs, funding — rulemaking authority.
- 160.550. Incentive payments to reduce pupil/teacher ratios and improve achievement — teacher defined — eligibility — rulemaking procedure.
- 162.725. State board to provide programs for severely handicapped children, when.
- 162.735. State board to assign severely handicapped children, when — appeal from assignment.
- 162.792. Schools for blind, deaf and severely handicapped, entitled to distribution from county foreign insurance tax fund — how computed.
- 162.975. State aid for special programs for handicapped or gifted children, how allocated.
- 163.005. Schools of the future fund created, use of funds.
- 163.014. Calculation of tax rate decrease.
- 163.015. Limitation on operating levy.
- 163.032. Certain counties held harmless under school foundation formula.
- 163.034. Certain revenue received from foundation formula, minimum limit — additional payment prior to deductions.
- 163.035. Contingent effective date, certain sections — attorney general's duty.
- 165.015. Illegal transfer of funds, deadline for repayment, exception, procedure.
- 166.260. Children at-risk in education program established — purposes.
- B. Effective date.

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

SECTION A. ENACTING CLAUSE. — Sections 148.360, 149.015, 160.264, 160.400, 160.405, 160.410, 160.415, 160.420, 160.530, 160.531, 160.534, 160.550, 161.527, 162.081, 162.675, 162.725, 162.735, 162.740, 162.792, 162.935, 162.975, 163.005, 163.011, 163.014, 163.015, 163.021, 163.023, 163.025, 163.028, 163.031, 163.032, 163.034, 163.035, 163.036, 163.071, 163.073, 163.081, 163.087, 163.091, 163.172, 164.011, 164.303, 165.011, 165.015, 165.016, 166.260, 166.275, 167.126, 167.151, 167.332, 167.349, 168.281, 168.515, 169.596, 170.051, 170.055, 171.121, 178.296, and 360.106, RSMo, are repealed and fifty-two new sections enacted in lieu thereof, to be known as sections 148.360, 149.015, 160.400, 160.405, 160.410, 160.415, 160.420, 160.530, 160.534, 161.527, 162.081, 162.675, 162.740, 162.935, 162.974, 163.011, 163.021, 163.023, 163.025, 163.028, 163.031, 163.036, 163.042, 163.043, 163.044, 163.071, 163.073, 163.081, 163.087, 163.091, 163.172, 164.011, 164.303, 165.011, 165.012, 165.016, 166.275, 167.126, 167.151, 167.332, 167.349, 168.281, 168.515, 169.596, 170.051, 170.055, 171.121, 178.296, 360.106, 1, 2, and 3, to read as follows:

148.360. COUNTY FOREIGN INSURANCE TAX MONEY DISTRIBUTED TO SCHOOL DISTRICTS. — On or before the first day of October of each year, [the commissioner of education shall apportion to the school districts of the state all of the moneys to the credit of the county foreign insurance tax fund, and warrants shall be issued in favor of the treasurers of the school districts. The moneys shall be apportioned to each school district in the state in the same proportion that the September membership of the district, determined as provided in (1) of subdivision (8) of section 163.011, RSMo, bears to the sum of the September membership of all districts in the state] **the state treasurer shall transfer the moneys in the county foreign insurance tax fund to the state school moneys fund for distribution to the school districts under section 163.031, RSMo.**

149.015. RATE OF TAX — HOW STAMPED — SAMPLES, HOW TAXED — TAX IMPACT TO BE ON CONSUMER — FAIR SHARE SCHOOL FUND, DISTRIBUTION. — 1. A tax shall be levied upon the sale of cigarettes at an amount equal to eight and one-half mills per cigarette, until such time as the general assembly appropriates an amount equal to twenty-five percent of the net federal reimbursement allowance to the health initiatives fund, then the tax shall be six and one-half mills per cigarette beginning July [first] 1 of the fiscal year immediately after such appropriation. As used in this section, "net federal reimbursement allowance" shall mean that amount of the federal reimbursement allowance in excess of the amount of state matching funds necessary for the state to make payments required by subsection 1 of section 208.471, RSMo, or, if the payments exceed the amount so required, the actual payments made for the purposes specified in subsection 1 of section 208.471, RSMo.

2. The tax shall be evidenced by stamps which shall be furnished by and purchased from the director or by an impression of the tax by the use of a metering machine when authorized by the director as provided in this chapter, and the stamps or impression shall be securely affixed to one end of each package in which cigarettes are contained. All cigarettes must be stamped before being sold in this state.

3. Cigarette tax stamps shall be purchased only from the director. All stamps shall be purchased by the director in proper denominations, shall contain such appropriate wording as the director may prescribe, and shall be of such design, character, color combinations, color changes, sizes and material as the director may, by rules and regulations, determine to afford the greatest security to the state. It shall be the duty of the director to manufacture or contract for revenue stamps required by this chapter; provided that if the stamps are contracted for, the manufacturer thereof shall be within the jurisdiction of the criminal and civil courts of this state, unless the stamps cannot be obtained in this state at a fair price or of acceptable quality. If stamps are manufactured outside of the state, the director shall take any precautions which he deems necessary to safeguard the state against forgery and misdelivery of any stamps. The director may require of the manufacturer from whom stamps are purchased a bond in an amount to be determined by him commensurate with the monetary value of the stamps, containing such conditions as he may deem necessary in order to protect the state against loss.

4. It shall be the intent of this chapter that the impact of the tax levied hereunder be absorbed by the consumer or user and when the tax is paid by any other person, the payment shall be considered as an advance payment and shall thereafter be added to the price of the cigarettes and recovered from the ultimate consumer or user with the person first selling the cigarettes acting as an agent of the state for the payment and collection of the tax to the state, except that in furtherance of the intent of this chapter no refund of any tax collected and remitted by a retailer upon gross receipts from a sale of cigarettes subject to tax pursuant to this chapter shall be claimed pursuant to chapter 144, RSMo, for any amount illegally or erroneously overcharged or overcollected as a result of imposition of sales tax by the retailer upon amounts representing the tax imposed pursuant to this chapter and any such tax shall either be refunded to the person who paid such tax or paid to the director. The director may recoup from any

retailer any tax illegally or erroneously overcharged or overcollected unless such tax has been refunded to the person who paid such tax.

5. In making sales of cigarettes in the state, a wholesaler shall keep a record of the amount of tax on his gross sales. The tax shall be evidenced by appropriate stamps attached to each package of cigarettes sold. Notwithstanding any other law to the contrary, no tax stamp need be attached to a package of cigarettes transported in the state between wholesalers or distributors unless and until such package is sold to a retailer or consumer.

6. The tax on any cigarettes contained in packages of four, ten, twenty or similar quantities to be used solely for distribution as samples shall be computed on a per cigarette basis at the rate set forth in this section, and payment of the tax shall be remitted to the director at such time and in such manner as he may prescribe.

7. The revenue generated by the additional two mills tax imposed effective August 13, 1982, less any three percent reduction allowed pursuant to the provisions of section 149.021, shall be placed in a separate fund entitled "The Fair Share Fund". Such moneys in the fair share fund shall be **transferred monthly to the state school moneys fund and** distributed to the [schools] **school districts** in this state [on an average daily attendance basis, except] as provided in section 163.031, RSMo.

8. The revenue generated by the additional two mills tax imposed effective October 1, 1993, less any three percent reduction allowed pursuant to the provisions of section 149.021, shall be deposited in the health initiatives fund created in section 191.831, RSMo. When the general assembly appropriates an amount equal to twenty-five percent of the net federal reimbursement allowance to the health initiatives fund, this subsection shall expire. The additional two mills tax levied pursuant to this section shall not apply to an amount of stamped cigarettes in the possession of licensed wholesalers on October 1, 1993, up to thirty-five percent of the total cigarette sales made by such licensed wholesaler during the six months immediately preceding October 1, 1993.

160.400. CHARTER SCHOOLS, DEFINED, ST. LOUIS CITY AND KANSAS CITY SCHOOL DISTRICTS — SPONSORS — USE OF PUBLIC SCHOOL BUILDINGS — ORGANIZATION OF CHARTER SCHOOLS — AFFILIATIONS WITH COLLEGE OR UNIVERSITY — CRIMINAL BACKGROUND CHECK REQUIRED. — 1. A charter school is an independent[, publicly supported] **public** school.

2. Charter schools may be operated only in a metropolitan school district or in an urban school district containing most or all of a city with a population greater than three hundred fifty thousand inhabitants and may be sponsored by any of the following:

- (1) The school board of the district;
- (2) A public four-year college or university with its primary campus in the school district or in a county adjacent to the county in which the district is located, with an approved teacher education program that meets regional or national standards of accreditation; [or]
- (3) A community college located in the district; **or**
- (4) **Any private four-year college or university located in a city not within a county with an enrollment of at least one thousand students, and with an approved teacher preparation program.**

3. [A maximum of five percent of the school buildings currently in use for instructional purposes in a district may be converted to charter schools. This limitation does not apply to vacant buildings or buildings not used for instructional purposes.] **The mayor of a city not within a county may request a sponsor under subdivisions (2), (3), or (4) of subsection 2 of this section to consider sponsoring a workplace charter school, which is defined for purposes of sections 160.400 to 160.420 as a charter school with the ability to target prospective students whose parent or parents are employed in a business district, as defined in the charter, which is located in the city.**

4. No sponsor shall receive from an applicant for a charter school any fee of any type for the consideration of a charter, nor may a sponsor condition its consideration of a charter on the promise of future payment of any kind.

5. The charter school shall be a Missouri nonprofit corporation incorporated pursuant to chapter 355, RSMo. The charter provided for herein shall constitute a contract between the sponsor and the charter school.

6. As a nonprofit corporation incorporated pursuant to chapter 355, RSMo, the charter school shall select the method for election of officers pursuant to section 355.326, RSMo, based on the class of corporation selected. Meetings of the governing board of the charter school shall be subject to the provisions of sections 610.010 to 610.030, RSMo, the open meetings law.

7. A sponsor of a charter school, its agents and employees are not liable for any acts or omissions of a charter school that it sponsors, including acts or omissions relating to the charter submitted by the charter school, the operation of the charter school and the performance of the charter school.

8. A charter school may affiliate with a four-year college or university, including a private college or university, or a community college as otherwise specified in subsection 2 of this section when its charter is granted by a sponsor other than such college, university or community college. Affiliation status recognizes a relationship between the charter school and the college or university for purposes of teacher training and staff development, curriculum and assessment development, use of physical facilities owned by or rented on behalf of the college or university, and other similar purposes. The primary campus of the college or university must be located within the county in which the school district lies wherein the charter school is located or in a county adjacent to the county in which the district is located. A university, college or community college may not charge or accept a fee for affiliation status.

9. **The expenses associated with sponsorship of charter schools shall be defrayed by the department of elementary and secondary education retaining one and five-tenths percent of the amount of state and local funding allocated to the charter school under section 160.415, not to exceed one hundred twenty-five thousand dollars, adjusted for inflation. Such amount shall not be withheld when the sponsor is a school district or the state board of education. The department of elementary and secondary education shall remit the retained funds for each charter school to the school's sponsor, provided the sponsor remains in good standing by fulfilling its sponsorship obligations under sections 160.400 to 160.420 and 167.349, RSMo, with regard to each charter school it sponsors.**

10. No university, college or community college shall grant a charter to a nonprofit corporation if an employee of the university, college or community college is a member of the corporation's board of directors.

11. **No sponsor shall grant a charter under sections 160.400 to 160.420 and 167.349, RSMo, without ensuring that a criminal background check and child abuse registry check are conducted for all members of the governing board of the charter schools or the incorporators of the charter school if initial directors are not named in the articles of incorporation, nor shall a sponsor renew a charter without ensuring a criminal background check and child abuse registry check are conducted for each member of the governing board of the charter school.**

12. No member of the governing board of a charter school shall hold any office or employment from the board or the charter school while serving as a member, nor shall the member have any substantial interest, as defined in section 105.450, RSMo, in any entity employed by or contracting with the board. No board member shall be an employee of a company that provides substantial services to the charter school. All members of the governing board of the charter school shall be considered decision-making public servants as defined in section 105.450, RSMo, for the purposes of the financial disclosure requirements contained in sections 105.483, 105.485, 105.487, and 105.489, RSMo.

13. A sponsor shall provide timely submission to the state board of education of all data necessary to demonstrate that the sponsor is in material compliance with all requirements of sections 160.400 to 160.420 and 167.349, RSMo.

14. The state board of education shall ensure each sponsor is in compliance with all requirements under sections 160.400 to 160.420 and 167.349, RSMo, for each charter school sponsored by any sponsor. The state board shall notify each sponsor of the standards for sponsorship of charter schools, delineating both what is mandated by statute and what best practices dictate. The state board, after a public hearing, may require remedial action for a sponsor that it finds has not fulfilled its obligations of sponsorship, such remedial actions including withholding the sponsor's funding and suspending for a period of up to one year the sponsor's authority to sponsor a school that it currently sponsors or to sponsor any additional school. If the state board removes the authority to sponsor a currently operating charter school, the state board shall become the interim sponsor of the school for a period of up to three years until the school finds a new sponsor or until the charter contract period lapses.

160.405. PROPOSED CHARTER, HOW SUBMITTED, REQUIREMENTS, SUBMISSION TO STATE BOARD, POWERS AND DUTIES — APPROVAL, REVOCATION, TERMINATION — DEFINITIONS — LEASE OF PUBLIC SCHOOL FACILITIES, WHEN — UNLAWFUL REPRISAL, DEFINED, PROHIBITED. — 1. A person, group or organization seeking to establish a charter school shall submit the proposed charter, as provided in this section, to a sponsor. If the sponsor is not a school board, the applicant shall give a copy of its application to the school board of the district in which the charter school is to be located[, when] **and to the state board of education, within five business days of the date** the application is filed with the proposed sponsor. The school board may file objections with the proposed sponsor, and, if a charter is granted, the school board may file objections with the state board of education. The charter shall include a mission statement for the charter school, a description of the charter school's organizational structure and bylaws of the governing body, which will be responsible for the policy and operational decisions of the charter school, a financial plan for the first three years of operation of the charter school including provisions for annual audits, a description of the charter school's policy for securing personnel services, its personnel policies, personnel qualifications, and professional development plan, a description of the grades or ages of students being served, the school's calendar of operation, which shall include at least the equivalent of a full school term as defined in section 160.011, and an outline of criteria specified in this section designed to measure the effectiveness of the school. The charter shall also state:

- (1) The educational goals and objectives to be achieved by the charter school;
- (2) A description of the charter school's educational program and curriculum;
- (3) The term of the charter, which shall be not less than five years, nor greater than ten years and shall be renewable;
- (4) A description of the charter school's pupil performance standards, which must meet the requirements of subdivision (6) of subsection 5 of this section. The charter school program must be designed to enable each pupil to achieve such standards; [and]
- (5) A description of the governance and operation of the charter school, including the nature and extent of parental, professional educator, and community involvement in the governance and operation of the charter school; **and**

(6) A description of the charter school's policies on student discipline and student admission, which shall include a statement, where applicable, of the validity of attendance of students who do not reside in the district but who may be eligible to attend under the terms of judicial settlements.

2. Proposed charters shall be subject to the following requirements:

- (1) A charter may be approved when the sponsor determines that the requirements of this section are met and determines that the applicant is sufficiently qualified to operate a charter

school. The sponsor's decision of **approval or denial** shall be made within [sixty] **ninety** days of the filing of the proposed charter;

(2) If the charter is denied, the proposed sponsor shall notify the applicant in writing as to the reasons for its denial **and forward a copy to the state board of education within five business days following the denial**;

(3) If a proposed charter is denied by a sponsor, the proposed charter may be submitted to the state board of education, along with the sponsor's written reasons for its denial. If the state board determines that the applicant meets the requirements of this section, **that the applicant is sufficiently qualified to operate the charter school**, and that granting a charter to the applicant would be likely to provide educational benefit to the children of the district, the state board may grant a charter and act as sponsor of the charter school. **The state board shall review the proposed charter and make a determination of whether to deny or grant the proposed charter within sixty days of receipt of the proposed charter, provided that any charter to be considered by the state board of education under this subdivision shall be submitted no later than March first prior to the school year in which the charter school intends to begin operations. The state board of education shall notify the applicant in writing as the reasons for its denial, if applicable;** and

(4) The sponsor of a charter school shall give priority to charter school applicants that propose a school oriented to high-risk students and to the reentry of dropouts into the school system. If a sponsor grants three or more charters, at least one-third of the charters granted by the sponsor shall be to schools that actively recruit dropouts or high-risk students as their student body and address the needs of dropouts or high-risk students through their proposed mission, curriculum, teaching methods, and services. For purposes of this subsection, a "high-risk" student is one who is at least one year behind in satisfactory completion of course work or obtaining credits for graduation, pregnant or a parent, homeless or has been homeless sometime within the preceding six months, has limited English proficiency, has been suspended from school three or more times, **is eligible for free or reduced price school lunch**, or has been referred by the school district for enrollment in an alternative program. "Dropout" shall be defined through the guidelines of the school core data report. The provisions of this subsection do not apply to charters sponsored by the state board of education.

3. If a charter is approved by a sponsor, [it] **the charter application** shall be submitted to the state board of education [which], **along with a statement of finding that the application meets the requirements of sections 160.400 to 160.420 and section 167.439, RSMo, and a monitoring plan under which the charter sponsor will evaluate the academic performance of students enrolled in the charter school. The state board of education** may, within [forty-five] **sixty** days, disapprove the granting of the charter. The state board of education may disapprove a charter [only] on grounds that the application fails to meet the requirements of sections 160.400 to 160.420 **and section 167.349, RSMo, or that a charter sponsor previously failed to meet the statutory responsibilities of a charter sponsor.**

4. Any disapproval of a charter pursuant to subsection 3 of this section shall be subject to judicial review pursuant to chapter 536, RSMo.

5. A charter school shall, as provided in its charter:

(1) Be nonsectarian in its programs, admission policies, employment practices, and all other operations;

(2) Comply with laws and regulations of the state, **county, or city** relating to health, safety, and **state** minimum educational standards, **as specified by the state board of education, including the requirements relating to student discipline under sections 160.261, 167.161, 167.164, and 167.171, RSMo, notification of criminal conduct to law enforcement authorities under sections 167.115 to 167.117, RSMo, academic assessment under section 160.518, transmittal of school records under section 167.020, RSMo, and the minimum number of school days and hours required under section 160.041;**

(3) Except as provided in sections 160.400 to 160.420, be exempt from all laws and rules relating to schools, governing boards and school districts;

(4) Be financially accountable, use practices consistent with the Missouri financial accounting manual, provide for an annual audit by a certified public accountant, **publish audit reports and annual financial reports as provided in chapter 165, RSMo, provided that the annual financial report may be published on the department of elementary and secondary education's Internet web site in addition to other publishing requirements**, and provide liability insurance to indemnify the school, its board, staff and teachers against tort claims. **A charter school that receives local educational agency status under subsection 6 of this section shall meet the requirements imposed by the Elementary and Secondary Education Act for audits of such agencies. For purposes of an audit by petition under section 29.230, RSMo, a charter school shall be treated as a political subdivision on the same terms and conditions as the school district in which it is located.** For the purposes of securing such insurance, a charter school shall be eligible for the Missouri public entity risk management fund pursuant to section 537.700, RSMo. A charter school that incurs debt must include a repayment plan in its financial plan;

(5) Provide a comprehensive program of instruction for at least one grade or age group from kindergarten through grade twelve, which may include early childhood education if funding for such programs is established by statute, as specified in its charter;

(6) (a) Design a method to measure pupil progress toward the pupil academic standards adopted by the state board of education pursuant to section 160.514, collect baseline data during at least the first three years for determining how the charter school is performing and to the extent applicable, participate in the statewide system of assessments, comprised of the essential skills tests and the nationally standardized norm-referenced achievement tests, as designated by the state board pursuant to section 160.518, complete and distribute an annual report card as prescribed in section 160.522, **which shall also include a statement that background checks have been completed on the charter school's board members**, report to its sponsor, the local school district, and the state board of education as to its teaching methods and any educational innovations and the results thereof, and provide data required for the study of charter schools pursuant to subsection 3 of section 160.410. No charter school will be considered in the Missouri school improvement program review of the district in which it is located for the resource or process standards of the program.

(b) **For proposed high risk or alternative charter schools, sponsors shall approve performance measures based on mission, curriculum, teaching methods, and services. Sponsors shall also approve comprehensive academic and behavioral measures to determine whether students are meeting performance standards on a different time frame as specified in that school's charter. Student performance shall be assessed comprehensively to determine whether a high risk or alternative charter school has documented adequate student progress. Student performance shall be based on sponsor-approved comprehensive measures as well as standardized public school measures. Annual presentation of charter school report card data to the department of elementary and secondary education, the state board, and the public shall include comprehensive measures of student progress.**

(c) Nothing in this paragraph shall be construed as permitting a charter school to be held to lower performance standards than other public schools within a district; however, the charter of a charter school may permit students to meet performance standards on a different time frame as specified in its charter;

(7) Assure that the needs of special education children are met in compliance with all applicable federal and state laws and regulations;

(8) **Provide along with any request for review by the state board of education the following:**

(a) Documentation that the applicant has provided a copy of the application to the school board of the district in which the charter school is to be located, except in those circumstances where the school district is the sponsor of the charter school; and

(b) A statement outlining the reasons for approval or disapproval by the sponsor, specifically addressing the requirements of sections 160.400 to 160.420 and 167.349, RSMo.

6. The charter of a charter school may be amended at the request of the governing body of the charter school and on the approval of the sponsor. The sponsor and the governing board and staff of the charter school shall jointly review the school's performance, management and operations at least once every two years **or at any point where the operation or management of the charter school is changed or transferred to another entity, either public or private. The governing board of a charter school may amend the charter, if the sponsor approves such amendment, or the sponsor and the governing board may reach an agreement in writing to reflect the charter school's decision to become a local educational agency for the sole purpose of seeking direct access to federal grants. In such case the sponsor shall give the department of elementary and secondary education written notice no later than March first of any year, with the agreement to become effective July first. The department may waive the March first notice date in its discretion. The department shall identify and furnish a list of its regulations that pertain to local educational agencies to such schools within thirty days of receiving such notice.**

7. (1) A sponsor may revoke a charter at any time if the charter school commits a serious breach of one or more provisions of its charter or on any of the following grounds: failure to meet academic performance standards as set forth in its charter, failure to meet generally accepted standards of fiscal management, **failure to provide information necessary to confirm compliance with all provisions of the charter and sections 160.400 to 160.420 and 167.349, RSMo, within forty-five days following receipt of written notice requesting such information,** or violation of law.

(2) The sponsor may place the charter school on probationary status to allow the implementation of a remedial plan, **which may require a change of methodology, a change in leadership, or both,** after which, if such plan is unsuccessful, the charter may be revoked.

(3) At least sixty days before acting to revoke a charter, the sponsor shall notify the [board of directors] **governing board** of the charter school of the proposed action in writing. The notice shall state the grounds for the proposed action. The school's [board of directors] **governing board** may request in writing a hearing before the sponsor within two weeks of receiving the notice.

(4) The sponsor of a charter school shall establish procedures to conduct administrative hearings upon determination by the sponsor that grounds exist to revoke a charter. Final decisions of a sponsor from hearings conducted pursuant to this subsection are subject to judicial review pursuant to chapter 536, RSMo.

(5) A termination shall be effective only at the conclusion of the school year, unless the sponsor determines that continued operation of the school presents a clear and immediate threat to the health and safety of the children.

(6) **A charter sponsor shall make available the school accountability report card information as provided under section 160.522 and the results of the academic monitoring required under subsection 3 of this section.**

8. **A sponsor shall take all reasonable steps necessary to confirm that each charter school sponsored by such sponsor is in material compliance and remains in material compliance with all material provisions of the charter and sections 160.400 to 160.420 and 167.349 RSMo. Every charter school shall provide all information necessary to confirm ongoing compliance with all provisions of its charter and sections 160.400 to 160.420 and 167.349, RSMo, in a timely manner to its sponsor.**

9. A school district may enter into a lease with a charter school for physical facilities. [A charter school may not be located on the property of a school district unless the district governing board agrees.]

[9.] 10. A governing board or a school district employee who has control over personnel actions shall not take unlawful reprisal against another employee at the school district because the employee is directly or indirectly involved in an application to establish a charter school. A governing board or a school district employee shall not take unlawful reprisal against an educational program of the school or the school district because an application to establish a charter school proposes the conversion of all or a portion of the educational program to a charter school. As used in this subsection, "unlawful reprisal" means an action that is taken by a governing board or a school district employee as a direct result of a lawful application to establish a charter school and that is adverse to another employee or an educational program.

11. **Charter school board members shall be subject to the same liability for acts while in office as if they were regularly and duly elected members of school boards in any other public school district in this state. The governing board of a charter school may participate, to the same extent as a school board, in the Missouri public entity risk management fund in the manner provided under sections 537.700 to 537.756, RSMo.**

12. **Any entity, either public or private, operating, administering, or otherwise managing a charter school shall be considered a quasi-public governmental body and subject to the provisions of sections 610.010 to 610.035, RSMo.**

13. **The chief financial officer of a charter school shall maintain a surety bond in an amount determined by the sponsor to be adequate based on the cash flow of the school.**

160.410. ADMISSION, PREFERENCES FOR ADMISSION PERMITTED, WHEN — STUDY OF PERFORMANCE TO BE COMMISSIONED BY DEPARTMENT, COSTS, CONTENTS, RESULTS TO BE MADE PUBLIC. — 1. A charter school shall enroll:

- (1) All pupils resident in the district in which it operates, [or]
- (2) **Nonresident pupils** eligible to attend a district's school under an urban voluntary transfer program, and
- (3) **In the case of a workplace charter school, any student eligible to attend under subdivisions (1) or (2) of this subsection whose parent is employed in the business district, who submit a timely application, unless the number of applications exceeds the capacity of a program, class, grade level or building. The configuration of a business district shall be set forth in the charter and shall not be construed to create an undue advantage for a single employer or small number of employers.**

2. If capacity is insufficient to enroll all pupils who submit a timely application, the charter school shall have an admissions process that assures all applicants of an equal chance of gaining admission except that:

- (1) A charter school may establish a geographical area around the school whose residents will receive a preference for enrolling in the school, provided that such preferences do not result in the establishment of racially or socioeconomically isolated schools and provided such preferences conform to policies and guidelines established by the state board of education; and
- (2) A charter school may also give a preference for admission of children whose siblings attend the school or whose parents are employed at the school **or in the case of a workplace charter school, a child whose parent is employed in the business district or at the business site of such school.**

[2.] 3. A charter school shall not limit admission based on race, ethnicity, national origin, disability, gender, income level, proficiency in the English language or athletic ability, but may limit admission to pupils within a given age group or grade level.

[3.] 4. The department of elementary and secondary education shall commission a study of the performance of students at each charter school in comparison with a comparable group and a study of the impact of charter schools upon the districts in which they are located, to be

conducted by a contractor selected through a request for proposal. The department of elementary and secondary education shall reimburse the contractor from funds appropriated by the general assembly for the purpose. The study of a charter school's student performance in relation to a comparable group shall be designed to provide information that would allow parents and educators to make valid comparisons of academic performance between the charter school's students and a group of students comparable to the students enrolled in the charter school. The impact study shall be undertaken every two years to determine the effect of charter schools on education stakeholders in the districts where charter schools are operated. The impact study may include, but is not limited to, determining if changes have been made in district policy or procedures attributable to the charter school and to perceived changes in attitudes and expectations on the part of district personnel, school board members, parents, students, the business community and other education stakeholders. The department of elementary and secondary education shall make the results of the studies public and shall deliver copies to the governing boards of the charter schools, the sponsors of the charter schools, the school board and superintendent of the districts in which the charter schools are operated.

5. A charter school shall make available for public inspection, and provide upon request, to the parent, guardian, or other custodian of any school-age pupil resident in the district in which the school is located, the following information:

- (1) **The school's charter;**
- (2) **The school's most recent annual report card published according to section 160.522; and**
- (3) **The results of background checks on the charter school's board members.**

The charter school may charge reasonable fees, not to exceed the rate specified in section 610.026, RSMo, for furnishing copies of documents under this subsection.

160.415. DISTRIBUTION OF STATE SCHOOL AID FOR CHARTER SCHOOLS — POWERS AND DUTIES OF GOVERNING BODY OF CHARTER SCHOOLS. — 1. For the purposes of calculation and distribution of state school aid under section 163.031, RSMo, pupils enrolled in a charter school shall be included in the pupil enrollment of the school district within which each pupil resides. Each charter school shall report the names, addresses, and eligibility for free [or reduced-price] and reduced lunch [or other], special education, or limited English proficiency status, as well as eligibility for categorical aid, of pupils resident in a school district who are enrolled in the charter school to the school district in which those pupils reside [and]. **The charter school shall report the average daily attendance data, free and reduced lunch count, special education pupil count, and limited English proficiency pupil count** to the state department of elementary and secondary education. Each charter school shall promptly notify the state department of elementary and secondary education and the pupil's school district when a student discontinues enrollment at a charter school.

2. Except as provided in subsections 3 and 4 of this section, the aid payments for charter schools shall be as described in this subsection.

(1) A school district having one or more resident pupils attending a charter school shall pay to the charter school an annual amount equal to the product of the [equalized, adjusted operating levy for school purposes for the pupils' district of residence for the current year times the guaranteed tax base per eligible pupil, as defined in section 163.011, RSMo, times the number of the district's resident pupils attending the charter school] **charter school's weighted average daily attendance and the state adequacy target, multiplied by the dollar value modifier for the district, plus local tax revenues per weighted average daily attendance from the incidental and teachers' funds in excess of the performance levy as defined in section 163.011, RSMo,** plus all other state aid attributable to such pupils[, including summer school, if applicable, and all aid provided pursuant to section 163.031, RSMo].

(2) The district of residence of a pupil attending a charter school shall also pay to the charter school any other federal or state aid that the district receives on account of such child.

(3) **If the department overpays or underpays the amount due to the charter school, such overpayment or underpayment shall be repaid by the public charter school or credited to the public charter school in twelve equal payments in the next fiscal year.**

(4) The amounts provided pursuant to this subsection shall be prorated for partial year enrollment for a pupil.

[(4)] (5) A school district shall pay the amounts due pursuant to this subsection as the disbursal agent and no later than twenty days following the receipt of any such funds. **The department of elementary and secondary education shall pay the amounts due when it acts as the disbursal agent within five days of the required due date.**

[(5) The per-pupil amount paid by a school district to a charter school shall be reduced by the amount per pupil determined by the state board of education to be needed by the district in the current year for repayment of leasehold revenue bonds obligated pursuant to a federal court desegregation action.]

3. **A workplace charter school shall receive payment for each eligible pupil as provided under subsection 2 of this section, except that if the student is not a resident of the district and is participating in a voluntary interdistrict transfer program, the payment for such pupils shall be the same as provided under section 162.1060, RSMo.**

4. **A charter school that has declared itself as a local educational agency shall receive from the department of elementary and secondary education an annual amount equal to the product of the charter school's weighted average daily attendance and the state adequacy target, multiplied by the dollar value modifier for the district, plus local tax revenues per weighted average daily attendance from the incidental and teachers funds in excess of the performance levy as defined in section 163.011, RSMo, plus all other state aid attributable to such pupils. If a charter school declares itself as a local education agency, the department of elementary and secondary education shall, upon notice of the declaration, reduce the payment made to the school district by the amount specified in this subsection and pay directly to the charter school the annual amount reduced from the school district's payment.**

5. If a school district fails to make timely payments of any amount for which it is the disbursal agent, the state department of elementary and secondary education shall authorize payment to the charter school of the amount due pursuant to subsection 2 of this section and shall deduct the same amount from the next state school aid apportionment to the owing school district. If a charter school is paid more or less than the amounts due pursuant to [subsection 2 of] this section, the amount of overpayment or underpayment shall be adjusted [in its next payment] **equally in the next twelve payments** by the school district or the department of elementary and secondary education, as appropriate. Any dispute between the school district and a charter school as to the amount owing to the charter school shall be resolved by the department of elementary and secondary education, and the department's decision shall be the final administrative action for the purposes of review pursuant to chapter 536, RSMo. **During the period of dispute, the department of elementary and secondary education shall make every administrative and statutory effort to allow the continued education of children in their current public charter school setting.**

[4.] 6. The charter school and a local school board may agree by contract for services to be provided by the school district to the charter school. The charter school may contract with any other entity for services. Such services may include but are not limited to food service, custodial service, maintenance, management assistance, curriculum assistance, media services and libraries and shall be subject to negotiation between the charter school and the local school board or other entity. Documented actual costs of such services shall be paid for by the charter school.

[5.] 7. A charter school may enter into contracts with community partnerships and state agencies acting in collaboration with such partnerships that provide services to children and their families linked to the school.

[6.] **8.** A charter school shall be eligible for transportation state aid pursuant to section 163.161, RSMo, and shall be free to contract with the local district, or any other entity, for the provision of transportation to the students of the charter school.

[7.] **9.** (1) The proportionate share of state and federal resources generated by students with disabilities or staff serving them shall be paid in full to charter schools enrolling those students by their school district where such enrollment is through a contract for services described in this section. The proportionate share of money generated under other federal or state categorical aid programs shall be directed to charter schools serving such students eligible for that aid.

(2) A charter school district shall provide the special services provided pursuant to section 162.705, RSMo, and may provide the special services pursuant to a contract with a school district or any provider of such services.

[8.] **10.** A charter school may not charge tuition, nor may it impose fees that a school district is prohibited from imposing.

[9.] **11.** A charter school is authorized to incur debt in anticipation of receipt of funds. A charter school may also borrow to finance facilities and other capital items. A school district may incur bonded indebtedness or take other measures to provide for physical facilities and other capital items for charter schools that it sponsors or contracts with. Upon the dissolution of a charter school, any liabilities of the corporation will be satisfied through the procedures of chapter 355, RSMo.

[10.] **12.** Charter schools shall not have the power to acquire property by eminent domain.

[11.] **13.** The governing body of a charter school is authorized to accept grants, gifts or donations of any kind and to expend or use such grants, gifts or donations. A grant, gift or donation may not be accepted by the governing body if it is subject to any condition contrary to law applicable to the charter school or other public schools, or contrary to the terms of the charter.

160.420. EMPLOYMENT PROVISIONS — SCHOOL DISTRICT PERSONNEL MAY ACCEPT CHARTER SCHOOL POSITION AND REMAIN DISTRICT EMPLOYEES, EFFECT — NONCERTIFICATED INSTRUCTIONAL PERSONNEL, EMPLOYMENT, SUPERVISION. — 1. Any school district in which charter schools may be established under sections 160.400 to 160.420 shall establish a uniform policy which provides that if a charter school offers to retain the services of an employee of a school district, and the employee accepts a position at the charter school, [the contract between the charter school and the school district may provide that] an employee at the employee's option may remain an employee of the district and the charter school shall pay to the district the district's full costs of salary and benefits provided to the employee. [A] **The district's policy shall provide that any** teacher who accepts a position at a charter school and opts to remain an employee of the district retains such teacher's permanent teacher status and **retains such teacher's** seniority rights in the district **for three years.** The school district shall not be liable for any such employee's acts while an employee of the charter school.

2. A charter school may employ noncertificated instructional personnel; provided that no more than twenty percent of the full-time equivalent instructional staff positions at the school are filled by noncertificated personnel. All [noncertified] **noncertificated** instructional personnel shall be supervised by [certified] **certificated** instructional personnel. **A charter school that has a foreign language immersion experience as its chief educational mission, as stated in its charter, shall not be subject to the twenty percent requirement of this subsection but shall ensure that any teachers whose duties include instruction given in a foreign language have current valid credentials in the country in which such teacher received his or her training and shall remain subject to the remaining requirements of this subsection.** The charter school shall ensure that all instructional employees of the charter school have experience, training and skills appropriate to the instructional duties of the employee, and the charter school shall

ensure that a criminal background check and child abuse registry check are conducted for each employee of the charter school prior to the hiring of the employee. **The charter school may not employ instructional personnel whose certificate of license to teach has been revoked or is currently suspended by the state board of education.** Appropriate experience, training and skills of noncertificated instructional personnel shall be determined considering:

- (1) Teaching certificates issued by another state or states;
- (2) Certification by the National Standards Board;
- (3) College degrees in the appropriate field;
- (4) Evidence of technical training and competence when such is appropriate; and
- (5) The level of supervision and coordination with certificated instructional staff.

3. Personnel employed by the charter school shall participate in the retirement system of the school district in which the charter school is located, subject to the same terms, conditions, requirements and other provisions applicable to personnel employed by the school district. For purposes of participating in the retirement system, the charter school shall be considered to be a public school within the school district, and personnel employed by the charter school shall be public school employees. 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, personnel employed by the charter school shall continue to participate in the retirement system and shall do so on the same terms, conditions, requirements and other provisions as they participated prior to the lapse.

4. The charter school and a local school board may agree by contract for services to be provided by the school district to the charter school. The charter school may contract with any other entity for services. Such services may include but are not limited to food service, custodial service, maintenance, management assistance, curriculum assistance, media services and libraries and shall be subject to negotiation between the charter school and the local school board or other entity. Documented actual costs of such services shall be paid for by the charter school.

5. A charter school may enter into contracts with community partnerships and state agencies acting in collaboration with such partnerships that provide services to children and their families linked to the school.

6. A charter school shall be eligible for transportation state aid pursuant to section 163.161, RSMo, and shall be free to contract with the local district, or any other entity, for the provision of transportation to the students of the charter school.

7. (1) The proportionate share of state and federal resources generated by students with disabilities or staff serving them shall be paid in full to charter schools enrolling those students by their school district where such enrollment is through a contract for services described in this section. The proportionate share of money generated under other federal or state categorical aid programs shall be directed to charter schools serving such students eligible for that aid.

(2) A charter school district shall provide the special services provided pursuant to section 162.705, RSMo, and may provide the special services pursuant to a contract with a school district or any provider of such services.

8. A charter school may not charge tuition, nor may it impose fees that a school district is prohibited from imposing.

9. A charter school is authorized to incur debt in anticipation of receipt of funds. A charter school may also borrow to finance facilities and other capital items. A school district may incur bonded indebtedness or take other measures to provide for physical facilities and other capital items for charter schools that it sponsors or contracts with. Upon the dissolution of a charter school, any liabilities of the corporation will be satisfied through the procedures of chapter 355, RSMo.

10. Charter schools shall not have the power to acquire property by eminent domain.

11. The governing body of a charter school is authorized to accept grants, gifts or donations of any kind and to expend or use such grants, gifts or donations. A grant, gift or donation may not be accepted by the governing body if it is subject to any condition contrary to law applicable to the charter school or other public schools, or contrary to the terms of the charter.

160.530. ELIGIBILITY FOR STATE AID, ALLOCATION OF FUNDS TO PROFESSIONAL DEVELOPMENT COMMITTEE — STATEWIDE AREAS OF CRITICAL NEED, FUNDS — SUCCESS LEADS TO SUCCESS GRANT PROGRAM CREATED, PURPOSE — LISTING OF EXPENDITURES. —

1. Beginning with fiscal year 1994 and for all fiscal years thereafter, in order to be eligible for state aid distributed pursuant to section 163.031, RSMo, a school district shall allocate one percent of moneys received pursuant to section 163.031, RSMo, exclusive of categorical add-ons, to the professional development committee of the district as established in subdivision (1) of subsection 4 of section 168.400, RSMo. Of the moneys allocated to the professional development committee in any fiscal year as specified by this subsection, seventy-five percent of such funds shall be spent in the same fiscal year for purposes determined by the professional development committee after consultation with the administrators of the school district and approved by the local board of education as meeting the objectives of a school improvement plan of the district that has been developed by the local board. Moneys expended for staff training pursuant to any provisions of this act shall not be considered in determining the requirements for school districts imposed by this subsection.

2. Beginning with fiscal year 1994 and for all fiscal years thereafter, [ninety percent of one percent] **eighteen million dollars** of the moneys appropriated to the department of elementary and secondary education otherwise distributed to the public schools of the state pursuant to the provisions of section 163.031, RSMo, exclusive of categorical add-ons, shall be distributed by the commissioner of education to address statewide areas of critical need for learning and development as determined by rule and regulation of the state board of education with the advice of the commission established by section 160.510 and the advisory council provided by subsection 1 of section 168.015, RSMo. The moneys described in this subsection may be distributed by the commissioner of education to colleges, universities, private associations, professional education associations, statewide associations organized for the benefit of members of boards of education, public elementary and secondary schools, and other associations and organizations that provide professional development opportunities for teachers, administrators, family literacy personnel and boards of education for the purpose of addressing statewide areas of critical need, provided that subdivisions (1), (2) and (3) of this subsection shall constitute priority uses for such moneys. "Statewide areas of critical need for learning and development" shall include:

- (1) Funding the operation of state management teams in districts with academically deficient schools and providing resources specified by the management team as needed in such districts;
 - (2) Funding for grants to districts, upon application to the department of elementary and secondary education, for resources identified as necessary by the district, for those districts which are failing to achieve assessment standards;
 - (3) Funding for family literacy programs;
 - (4) Ensuring that all children, especially children at risk, children with special needs, and gifted students are successful in school;
 - (5) Increasing parental involvement in the education of their children;
 - (6) Providing information which will assist public school administrators and teachers in understanding the process of site-based decision making;
 - (7) Implementing recommended curriculum frameworks as outlined in section 160.514;
 - (8) Training in new assessment techniques for students;
 - (9) Cooperating with law enforcement authorities to expand successful antidrug programs for students;
 - (10) Strengthening existing curricula of local school districts to stress drug and alcohol prevention;
 - (11) Implementing and promoting programs to combat gang activity in urban areas of the state;
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(12) Establishing family schools, whereby such schools adopt proven models of one-stop state services for children and families;

(13) Expanding adult literacy services; and

(14) Training of members of boards of education in the areas deemed important for the training of effective board members as determined by the state board of education.

3. Beginning with fiscal year 1994 and for all fiscal years thereafter, [ten percent of one percent] **two million dollars** of the moneys appropriated to the department of elementary and secondary education otherwise distributed to the public schools of the state pursuant to the provisions of section 163.031, RSMo, exclusive of categorical add-ons, shall be distributed in grant awards by the state board of education, by rule and regulation, for the "Success Leads to Success" grant program, which is hereby created. The purpose of the success leads to success grant program shall be to recognize, disseminate and exchange information about the best professional teaching practices and programs in the state that address student needs, and to encourage the staffs of schools with these practices and programs to develop school-to-school networks to share these practices and programs.

4. The department shall include a listing of all expenditures under this section in the annual budget documentation presented to the governor and general assembly.

160.534. EXCURSION GAMBLING BOAT PROCEEDS, TRANSFER TO GAMING PROCEEDS FOR EDUCATION FUND AND CLASSROOM TRUST FUND. — For fiscal year 1996 and each subsequent fiscal year, any amount of the excursion gambling boat proceeds deposited in the gaming proceeds for education fund in excess of the amount transferred to the school district bond fund as provided in section 164.303, RSMo, shall be transferred to the [state school moneys] **classroom trust** fund. Such moneys shall be [transferred on a monthly basis and shall be] distributed in the manner provided in section [163.031] **163.043**, RSMo.

161.527. DISTRICT NOT REQUIRED TO REDUCE OPERATING LEVY, WHEN — RESTRICTIONS ON ADMINISTRATIVE COSTS AND SALARIES — EXEMPTIONS FROM RESTRICTIONS, LIMITATION — EXTENSION ON EXEMPTIONS MAY BE SUBMITTED TO VOTERS. — 1. If a school district, which has an assessed valuation per [eligible pupil] **average daily attendance** equal to or less than the state average assessed valuation per [eligible pupil] **average daily attendance**, has transmitted by July [fifteenth] **15** to the department of elementary and secondary education the report required by section 162.821, RSMo, and such school district has received a notice pursuant to section 161.525, such school district is not required to reduce its operating levy pursuant to section 164.013, RSMo, when the district next determines its tax rate in accordance with the provisions of section 164.011, RSMo. [The state average assessed valuation per eligible pupil used in this section shall be the state average used to calculate the guaranteed tax base for the state aid formula for the year the district's tax is not lowered. The district assessed valuation shall be the assessed valuation used in the calculation of the state aid formula for the year the district's tax is not lowered.] However, if a school district does not reduce its operating levy as permitted in this subsection, the school district shall not in the current and next school year increase:

(1) Its administrative costs; or

(2) The aggregate amount of funds paid for salaries of employees of the district.

2. The restrictions on increasing administrative costs and funds paid for salaries as provided for in subsection 1 of this section shall continue in the district for each subsequent school year until combined balances in the teachers' and incidental funds at the end of a fiscal year are equal to or exceed three percent of the amount expended from the funds during the previous fiscal year as determined by the department of elementary and secondary education. Such restrictions provided for in subsection 1 of this section shall not apply to increased expenditures of the district necessary to maintain health insurance coverage for district employees at the same level that may have been provided by the district prior to implementation of the restrictions. Further, the

restrictions shall not apply to increased expenditures of the district necessary to meet the district's share of contributions for employees who are members of the public school retirement system of Missouri, the public school retirement system of the school district of Kansas City, or the public school retirement system of the city of St. Louis.

3. The exemption from reduction authorized by subsection 1 of this section shall be limited to two tax years, at which time the district may submit to the voters of the district the question of whether to continue such exemption.

162.081. LAPSE OF DISTRICT CORPORATE ORGANIZATION, GROUNDS, EFFECT — HEARING PRIOR TO DETERMINATION OF ATTACHMENT OF TERRITORY OF LAPSED DISTRICT — SPECIAL ADMINISTRATIVE BOARD — EMPLOYMENT INTERVIEWS FOR TEACHER OF LAPSED DISTRICT, WHEN — DIVISION OF DISTRICT, VOTE, WHEN. — 1. Whenever any school district in this state fails or refuses in any school year to provide for the minimum school term required by section 163.021, RSMo, or is classified unaccredited for two successive school years by the state board of education, its corporate organization shall lapse. The corporate organization of any school district that is classified as unaccredited shall lapse on June [thirtieth] **30** of the second full school year of such unaccredited classification after the school year during which the unaccredited classification is initially assigned. The territory theretofore embraced within any district that lapses pursuant to this section or any portion thereof may be attached to any district for school purposes by the state board of education; but no school district, except a district classified as unaccredited pursuant to section 163.023, RSMo, and section 160.538, RSMo, shall lapse where provision is lawfully made for the attendance of the pupils of the district at another school district that is classified as provisionally accredited or accredited by the state board of education.

2. Prior to or at the time any school district in this state shall lapse, but after the school district has been classified as unaccredited, the department of elementary and secondary education shall conduct a public hearing at a location in the unaccredited school district. The purpose of the hearing shall be to:

- (1) Review any plan by the district to return to accredited status; or
- (2) Offer any technical assistance that can be provided to the district.

3. Except as otherwise provided in section 162.1100, in a metropolitan school district or an urban school district containing most or all of a city with a population greater than three hundred fifty thousand inhabitants and in any other school district if the local board of education does not anticipate a return to accredited status, the state board of education may appoint a special administrative board to supervise the financial operations, maintain and preserve the financial assets or, if warranted, continue operation of the educational programs within the district or what provisions might otherwise be made in the best interest of the education of the children of the district. The special administrative board shall consist of two persons who are residents of the school district, who shall serve without compensation, and a professional administrator, who shall chair the board and shall be compensated, as determined by the state board of education, in whole or in part with funds from the district.

4. Upon lapse of the district, the state board of education may:

(1) Appoint a special administrative board, if such a board has not already been appointed, and authorize the special administrative board to retain the authority granted to a board of education for the operation of all or part of the district;

(2) Attach the territory of the lapsed district to another district or districts for school purposes; or

(3) Establish one or more school districts within the territory of the lapsed district, with a governance structure consistent with the laws applicable to districts of a similar size, with the option of permitting a district to remain intact for the purposes of assessing, collecting, and distributing property taxes, to be distributed equitably on a [per eligible pupil] **weighted average daily attendance** basis, but to be divided for operational purposes, which shall take effect sixty

days after the adjournment of the regular session of the general assembly next following the state board's decision unless a statute or concurrent resolution is enacted to nullify the state board's decision prior to such effective date.

The special administrative board may retain the authority granted to a board of education for the operation of the lapsed school district under the laws of the state in effect at the time of the lapse.

5. The authority of the special administrative board shall expire at the end of the third full school year following its appointment, unless extended by the state board of education. If the lapsed district is reassigned, the special administrative board shall provide an accounting of all funds, assets and liabilities of the lapsed district and transfer such funds, assets, and liabilities of the lapsed district as determined by the state board of education.

6. Upon recommendation of the special administrative board, the state board of education may assign the funds, assets and liabilities of the lapsed district to another district or districts. Upon assignment, all authority of the special administrative board shall transfer to the assigned districts.

7. Neither the special administrative board nor any district or other entity assigned territory, assets or funds from a lapsed district shall be considered a successor entity for the purpose of employment contracts, unemployment compensation payment pursuant to section 288.110, RSMo, or any other purpose.

8. If additional teachers are needed by a district as a result of increased enrollment due to the annexation of territory of a lapsed or dissolved district, such district shall grant an employment interview to any permanent teacher of the lapsed or dissolved district upon the request of such permanent teacher.

9. (1) The governing body of a school district, upon an initial declaration by the state board of education that such district is provisionally accredited, may, and, upon an initial declaration by the state board of education that such district is unaccredited, shall develop a plan to be submitted to the voters of the school district to divide the school district if the district cannot attain accreditation within three years of the initial declaration that such district is unaccredited. In the case of such a district being declared unaccredited, such plan shall be presented to the voters of the district before the district lapses. In the case of such a district being declared provisionally accredited, such plan may be presented before the close of the current accreditation cycle.

(2) The plan may provide that the school district shall remain intact for the purposes of assessing, collecting and distributing taxes for support of the schools, and the governing body of the district shall develop a plan for the distribution of such taxes equitably on a per pupil basis if the district selects this option.

(3) The makeup of the new districts shall be racially balanced as far as the proportions of students allow.

(4) If a majority of the district's voters approve the plan, the state board of education shall cooperate with the local board of education to implement the plan, which may include use of the provisions of this section to provide an orderly transition to new school districts and achievement of accredited status for such districts.

10. In the event that a school district with an enrollment in excess of five thousand pupils lapses, no school district shall have all or any part of such lapsed school district attached without the approval of the board of the receiving school district.

162.675. DEFINITIONS. — As used in sections 162.670 to 162.995, unless the context clearly indicates otherwise, the following terms mean:

(1) "Gifted children", children who exhibit precocious development of mental capacity and learning potential as determined by competent professional evaluation to the extent that continued educational growth and stimulation could best be served by an academic environment beyond that offered through a standard grade level curriculum;

(2) "Handicapped children", children under the age of twenty-one years who have not completed an approved high school program and who, because of mental, physical, emotional or learning problems, require special educational services;

(3) "Severely handicapped children", handicapped children under the age of twenty-one years who[, because of the extent of the handicapping condition or conditions, as determined by competent professional evaluation, are unable to benefit from or meaningfully participate in programs in the public schools for handicapped children. The term "severely handicapped" is not confined to a separate and specific category but pertains to the degree of disability which permeates a variety of handicapping conditions and education programs] **meet the eligibility criteria for state schools for severely handicapped children, identified in state regulations that implement the Individuals with Disabilities Education Act;**

(4) "Special educational services", programs designed to meet the needs of handicapped or severely handicapped children and which include, but are not limited to, the provision of diagnostic and evaluation services, student and parent counseling, itinerant, homebound and referral assistance, organized instructional and therapeutic programs, transportation, and corrective and supporting services.

162.740. DISTRICT OF RESIDENCE TO PAY TOWARD COST, WHEN — AMOUNT, HOW CALCULATED. — The district of residence of each child attending a state school for severely handicapped children[, an institution providing contractual services arranged pursuant to section 162.735.] or an educational program for a full-time patient or resident at a facility operated by the department of mental health, except school districts which are a part of a special district and except special school districts, shall pay toward the cost of the education of the child an amount equal to the average sum produced per child by the local tax effort of the district. The district of residence shall be notified each year, not later than December fifteenth, of the names and addresses of pupils enrolled in such schools. In the case of a special district, said special district shall be responsible for an amount per child not to exceed the average sum produced per child by the local tax efforts of the component districts. The district of residence of the child's parents or guardians shall be the district responsible for local tax contributions required by this section.

162.935. STATE AID, HOW COMPUTED. — 1. Except as provided in subsection 3 of this section, each special district formed under provisions of sections 162.670 to 162.999 shall receive an amount [for each eligible pupil] equal to [the sum of the amounts received by all districts comprising the special district for the current school year under provisions of section 163.031, RSMo, divided by the total number of eligible pupils in the schools of such districts] **the district's weighted average daily attendance multiplied by the state adequacy target multiplied by the dollar value modifier minus local effort minus payments from the classroom trust fund.** A student enrolled in classes or programs in both the special district and a component district or a pupil enrolled in a local district who needs itinerant or temporary services provided by the special district shall continue his enrollment in the local district for purposes of apportionment of state aid on average daily attendance. The special district may include the pupil in classes approved for special categorical aid. The district providing transportation may claim state transportation aid.

2. Any special school district which is in a county of the first classification which has a population greater than nine hundred thousand is entitled to apportionment of state aid even though the tax rate levied by the special school district is less than that required by section 163.021, RSMo.

3. For the purposes of determining state aid pursuant to section 163.031, RSMo, [the operating levy for school purposes of] **the weighted average daily attendance of** a school district within any special school district which is not in a county of the first classification which has a population greater than nine hundred thousand shall [include the operating levy for school purposes of the special school district in which such school district is located, and the district's

number of eligible pupils shall] reflect the average daily attendance of all pupils resident in the district and educated by the district or by the special school district, or both. The department shall pay the funds so calculated to the school district [and the special school district, respectively, in the same proportion as the school district's operating levy or special school district's operating levy, respectively, bears to the total of the operating levies of the school district and the special school district, except this distribution shall not decrease any district's allocation of formula money per eligible pupil below that which the district received for the 1992-93 school year. Such state aid shall constitute foundation formula state aid provided to such special school district pursuant to section 163.031, RSMo]. **The school district shall pay monthly to the special school district the proportional amount of state aid based on the weighted average daily attendance of students educated by the special school district to the total weighted average daily attendance of students educated by the district and the special school district.**

162.974. REIMBURSEMENT FOR EDUCATION COSTS OF HIGH-NEED CHILDREN. — 1. The state department of elementary and secondary education shall reimburse school districts, including special school districts, for the educational costs of high-need children with an individualized education program exceeding three times the current expenditure per average daily attendance as calculated on the district annual secretary of the board report for the year in which expenditures are claimed.

2. A school district shall submit, through timely application, as determined by the state department of elementary and secondary education, the cost of serving any student, as provided in subsection 1 of this section.

163.011. DEFINITIONS — METHOD OF CALCULATING STATE AID. — As used in this chapter unless the context requires otherwise:

- (1) ["Adjusted gross income":
 - (a) "District adjusted gross income per return" shall be the total Missouri individual adjusted gross income in a school district divided by the total number of Missouri income tax returns filed from the school district as reported by the state department of revenue for the second preceding year;
 - (b) "State adjusted gross income per return" shall be the total Missouri individual adjusted gross income divided by the total number of Missouri individual income tax returns, of those returns designating school districts, as reported by the state department of revenue for the second preceding year;
 - (c) "District income factor" shall be one plus thirty percent of the difference of the district income ratio minus one, except that the district income factor applied to the portion of the assessed valuation corresponding to any increase in assessed valuation above the assessed valuation of a district as of December 31, 1994, shall not exceed a value of one;
 - (d) "District income ratio" shall be the ratio of the district adjusted gross income per return divided by the state adjusted gross income per return;
- (2) "Adjusted operating levy", the sum of tax rates for the current year for teachers' and incidental funds for a school district as reported to the proper officer of each county pursuant to section 164.011, RSMo;

[3] (2) "Average daily attendance" [means], the quotient or the sum of the quotients obtained by dividing the total number of hours attended in a term by resident pupils between the ages of five and twenty-one by the actual number of hours school was in session in that term. To the average daily attendance of the following school term shall be added the full-time equivalent average daily attendance of summer school students. "Full-time equivalent average daily attendance of summer school students" shall be computed by dividing the total number of hours attended by all summer school pupils by the number of hours required in section 160.011, RSMo, in the school term. For purposes of determining average daily attendance under this subdivision, the term "resident pupil" shall include all children between the ages of five and

twenty-one who are residents of the school district and who are attending kindergarten through grade twelve in such district. If a child is attending school in a district other than the district of residence and the child's parent is teaching in the school district or is a regular employee of the school district which the child is attending, then such child shall be considered a resident pupil of the school district which the child is attending for such period of time when the district of residence is not otherwise liable for tuition. Average daily attendance for students below the age of five years for which a school district may receive state aid based on such attendance shall be computed as regular school term attendance unless otherwise provided by law;

[(4) "Current operating costs", all expenditures for instruction and support services excluding capital outlay and debt service expenditures less the revenue from federal categorical sources, food service, student activities and payments from other districts;

(5) "District equalized assessed valuation" shall be the average of the "equalized assessed valuation of the property of a school district" for the first and second preceding years;]

(3) "Current operating expenditures":

(a) For the fiscal year 2007 calculation, "current operating expenditures" shall be calculated using data from fiscal year 2004 and shall be calculated as all expenditures for instruction and support services except capital outlay and debt service expenditures minus the revenue from federal categorical sources; food service; student activities; categorical payments for transportation costs pursuant to section 163.161; state reimbursements for early childhood special education; the career ladder entitlement for the district, as provided for in sections 168.500 to 168.515, RSMo; the vocational education entitlement for the district, as provided for in section 167.332, RSMo; and payments from other districts;

(b) In every fiscal year subsequent to fiscal year 2007, current operating expenditures shall be the amount in paragraph (a) plus any increases in state funding pursuant to sections 163.031 and 163.043 subsequent to fiscal year 2005, not to exceed five percent, per recalculation, of the state revenue received by a district in the 2004-2005 school year from the foundation formula, line 14, gifted, remedial reading, exceptional pupil aid, fair share, and free textbook payments for any district from the first preceding calculation of the state adequacy target;

[(6) "District's target rate", the district's average percentage of pupils from fiscal years 2000 to 2005 scoring at or above the proficiency level on the statewide assessment system on either mathematics or reading/communication arts plus one percentage point for each year after fiscal year 2005 except that the district's target rate shall not exceed the statewide average percentage from fiscal year 2000 to fiscal year 2005 scoring at or above the proficiency level on the statewide assessment system on either mathematics or reading/communication arts;

(7)] **(4) "District's tax rate ceiling", the highest tax rate ceiling in effect subsequent to the 1980 tax year or any subsequent year. Such tax rate ceiling shall not contain any tax levy for debt service;**

[(8) "Eligible pupils" shall be the sum of the average daily attendance of the school term plus the product of two times the average daily attendance for summer school;

(9) "Equalized assessed valuation of the property of a school district" for a given year shall be determined by multiplying the assessed valuation of the real property subclasses specified in section 137.115, RSMo, times the percent of true value as adjusted by the department of elementary and secondary education to an equivalent sales ratio of thirty-three and one-third percent and dividing by either the percent of true value as determined by the state tax commission on or before March fifteenth preceding the fiscal year in which the valuation will be effective as adjusted by the department of elementary and secondary education to an equivalent sales ratio of thirty-three and one-third percent or the average percent of true value for the highest three of the last four years as determined and certified by the state tax commission, whichever is greater. To the equalized locally assessed valuation of each district shall be added the assessed valuation of tangible personal property. The assessed valuation of property which

has previously been excluded from the tax rolls, which is being contested as not being taxable and which increases the total assessed valuation of the school district by fifty percent or more, shall not be included in the calculation of equalized assessed valuation under this subdivision;

(10) "Fiscal instructional ratio of efficiency", the quotient of the sum of the district's current operating costs for all kindergarten through grade twelve direct instructional and direct pupil support service functions plus the costs of improvement of instruction and the cost of purchased services and supplies for operation of the facilities housing those programs, excluding student activities, divided by the sum of the district's current operating cost for kindergarten through grade twelve, plus all tuition revenue received from other districts minus all noncapital transportation costs;

(11) (5) **"Dollar value modifier", an index of the relative purchasing power of a dollar, calculated as one plus fifteen percent of the difference of the regional wage ratio minus one, provided that the dollar value modifier shall not be applied at a rate less than 1.0:**

(a) **"County wage per job", the total county wage and salary disbursements divided by the total county wage and salary employment for each county and the city of St. Louis as reported by the Bureau of Economic Analysis of the United States Department of Commerce for the fourth year preceding the payment year;**

(b) **"Regional wage per job":**

a. **The total Missouri wage and salary disbursements of the metropolitan area as defined by the office of management and budget divided by the total Missouri metropolitan wage and salary employment for the metropolitan area for the county signified in the school district number or the city of St. Louis, as reported by the Bureau of Economic Analysis of the United States Department of Commerce for the fourth year preceding the payment year and recalculated upon every decennial census to incorporate counties that are newly added to the description of metropolitan areas; or if no such metropolitan area is established, then:**

b. **The total Missouri wage and salary disbursements of the micropolitan area as defined by the office of management and budget divided by the total Missouri micropolitan wage and salary employment for the micropolitan area for the county signified in the school district number, as reported by the Bureau of Economic Analysis of the United States Department of Commerce for the fourth year preceding the payment year, if a micropolitan area for such county has been established and recalculated upon every decennial census to incorporate counties that are newly added to the description of micropolitan areas; or**

c. **If a county is not part of a metropolitan or micropolitan area as established by the office of management and budget, then the county wage per job, as defined in paragraph (a) of this subdivision, shall be used for the school district, as signified by the school district number;**

(c) **"Regional wage ratio", the ratio of the regional wage per job divided by the state median wage per job;**

(d) **"State median wage per job", the fifty-eighth highest county wage per job;**

(6) **"Free and reduced lunch [eligible] pupil count", the number of pupils eligible for free and reduced lunch on the last Wednesday in January for the preceding school year who were enrolled as students of the district, as approved by the department in accordance with applicable federal regulations;**

[(12) **"Guaranteed tax base" means the amount of equalized assessed valuation per eligible pupil guaranteed each school district by the state in the computation of state aid. To compute the guaranteed tax base, school districts shall be ranked annually from lowest to highest according to the amount of equalized assessed valuation per pupil. The guaranteed tax base shall be based upon the amount of equalized assessed valuation per pupil of the school district in which the ninety-fifth percentile of the state aggregate number of pupils falls during the third and fourth**

preceding years and shall be equal to the state average equalized assessed valuation per eligible pupil for the third and fourth preceding years times two and one hundred and sixty-seven thousandths; except that, for the purposes of line 14(b) the guaranteed tax base shall be no greater than the guaranteed tax base used for the 1998-99 payment year. The average equalized assessed valuation per pupil shall be the quotient of the total equalized assessed valuation of the state divided by the number of eligible pupils;]

(7) **"Free and reduced lunch threshold"** shall be calculated by dividing the total free and reduced lunch pupil count of every performance district that falls entirely above the bottom five percent and entirely below the top five percent of average daily attendance, when such districts are rank-ordered based on their current operating expenditures per average daily attendance, by the total average daily attendance of all included performance districts;

(8) **"Limited English proficiency threshold"** shall be calculated by dividing the total limited English proficiency pupil count of every performance district that falls entirely above the bottom five percent and entirely below the top five percent of average daily attendance, when such districts are rank-ordered based on their current operating expenditures per average daily attendance, by the total average daily attendance of all included performance districts;

(9) **"Limited English proficiency pupil count"**, the number in the preceding school year of pupils aged three through twenty-one enrolled or preparing to enroll in an elementary school or secondary school who were not born in the United States or whose native language is a language other than English or are native American or Alaskan native, or a native resident of the outlying areas, and come from an environment where a language other than English has had a significant impact on such individuals' level of English language proficiency, or are migratory, whose native language is a language other than English, and who come from an environment where a language other than English is dominant; and have difficulties in speaking, reading, writing, or understanding the English language sufficient to deny such individuals the ability to meet the state's proficient level of achievement on state assessments described in Public Law 107-10, the ability to achieve successfully in classrooms where the language of instruction is English, or the opportunity to participate fully in society;

(10) **"Local effort"**:

(a) For the fiscal year 2007 calculation, "local effort" shall be computed as the equalized assessed valuation of the property of a school district in calendar year 2004 divided by one hundred and multiplied by the performance levy less the percentage retained by the county assessor and collector plus one hundred percent of the amount received in fiscal year 2005 for school purposes from intangible taxes, fines, escheats, payments in lieu of taxes and receipts from state-assessed railroad and utility tax, one hundred percent of the amount received for school purposes pursuant to the merchants' and manufacturers' taxes under sections 150.010 to 150.370, RSMo, one hundred percent of the amounts received for school purposes from federal properties under sections 12.070 and 12.080, RSMo, except when such amounts are used in the calculation of federal impact aid pursuant to P.L. 81-874, fifty percent of Proposition C revenues received for school purposes from the school district trust fund under section 163.087, and one hundred percent of any local earnings or income taxes received by the district for school purposes. Under this paragraph, for a special district established under sections 162.815 to 162.940, RSMo, in a county with a charter form of government and with more than one million inhabitants, a tax levy of zero shall be utilized in lieu of the performance levy for the special school district;

(b) In every year subsequent to fiscal year 2007, "local effort" shall be the amount calculated under paragraph (a) of this subdivision plus any increase in the amount received for school purposes from fines. If a district's assessed valuation has decreased

subsequent to the calculation outlined in paragraph (a) of this subdivision, the district's local effort shall be calculated using the district's current assessed valuation in lieu of the assessed valuation utilized in calculation outlined in paragraph (a) of this subdivision;

[(13)] (11) "Membership" shall be the average of:

[(1)] (a) The number of resident full-time students and the full-time equivalent number of part-time students who were enrolled in the public schools of the district on the last Wednesday in September of the previous year and who were in attendance one day or more during the preceding ten school days; and

[(2)] (b) The number of resident full-time students and the full-time equivalent number of part-time students who were enrolled in the public schools of the district on the last Wednesday in January of the previous year and who were in attendance one day or more during the preceding ten school days, plus the full-time equivalent number of summer school pupils.

"Full-time equivalent number of part-time students" is determined by dividing the total number of hours for which all part-time students are enrolled by the number of hours in the school term. "Full-time equivalent number of summer school pupils" is determined by dividing the total number of hours for which all summer school pupils were enrolled by the number of hours required pursuant to section 160.011, RSMo, in the school term. Only students eligible to be counted for average daily attendance shall be counted for membership;

[(14)] (12) "Operating levy for school purposes" [for districts making transfers pursuant to subsection 4 of section 165.011, RSMo, based upon amounts multiplied by the guaranteed tax base, or making payments or expenditures related to obligations made pursuant to section 177.088, RSMo, or any combination of such transfers, payments or expenditures, means], the sum of tax rates levied for teachers' and incidental funds plus the operating levy or sales tax equivalent pursuant to section 162.1100, RSMo, of any transitional school district containing the school district, in the payment year, [and, for other districts, means the sum of tax rates levied for incidental, teachers', debt service and capital projects funds plus the operating levy or sales tax equivalent pursuant to section 162.1100, RSMo, of any transitional school district containing the school district, with no more than eighteen cents of the sum levied in the debt service and capital projects funds. Any portion of the operating levy for school purposes levied in the debt service and capital projects funds in excess of a sum of ten cents must be authorized by a vote of the people, after August 28, 1998, approving an increase in the operating levy, or a full waiver of the rollback pursuant to section 164.013, RSMo, with a tax rate ceiling in excess of the minimum tax rate or an issuance of general obligation bond. The operating levy shall be, after all adjustments and equalization of the operating levy, no greater than a maximum value of four dollars and ninety-five cents per one hundred dollars assessed valuation, except that the operating levy shall be no greater than a maximum value of four dollars and seventy cents per one hundred dollars assessed valuation for the purposes of line 2 of subsection 6 of section 163.031. To equalize the operating levy, multiply the aggregate tax rates for teachers' and incidental funds by either the percent of true value, as determined by the state tax commission on or before March fifteenth preceding the fiscal year in which the evaluation will be effective as adjusted by the department of elementary and secondary education to an equivalent sales ratio of thirty-three and one-third percent, or the average percent of true value for the highest three of the last four years as determined and certified by the state tax commission, whichever is greater, and divide by the percent of true value as adjusted by the department of elementary and secondary education to an equivalent sales ratio of thirty-three and one-third percent, provided that for any district for which the equivalent sales ratio is equal to or greater than thirty-three and one-third percent, the equalized operating levy shall be the adjusted operating levy. For any county in which the equivalent sales ratio is less than thirty-one and two-thirds percent, the state tax commission shall conduct a second study in that county and shall use a sample consisting of the parcels used as a sample in the original study combined with an equal number of newly selected parcels. If the new ratio is higher than the original ratio provided by this subdivision, the new ratio shall be used for the purposes of this subdivision and for determining equalized assessed valuation pursuant

to subdivision (9) of this section. For the purposes of calculating state aid pursuant to section 163.031, for any district which has not decreased its tax rate from the previous year amount due to an increased amount of a voluntary tax rate rollback, the tax rate used to determine a district's entitlement shall be adjusted so that any decrease in the entitlement due to a decrease in the tax rate resulting from the reassessment shall equal the decrease in the deduction for the assessed valuation of the district as a result of the change in the tax rate due to reassessment. The tax rate adjustments required under this subdivision due to reassessment shall be cumulative and shall be applied each year to determine the tax rate used to calculate the entitlement] **not including any equalized operating levy for school purposes levied by a special school district in which the district is located;**

(13) **"Performance district", any district that has met all performance standards and indicators as established by the department of elementary and secondary education for purposes of accreditation under section 161.092, RSMo, and as reported on the final annual performance report for that district each year;**

(14) **"Performance levy", three dollars and forty-three cents;**

(15) **"School purposes" pertains to teachers' and incidental funds;**

(16) **"Special education pupil count", the number of public school students with a current individualized education program and receiving services from the resident district as of December 1 of the preceding school year, except for special education services provided through a school district established under sections 162.815 to 162.940, RSMo, in a county with a charter form of government and with more than one million inhabitants, in which case the sum of the students in each district within the county exceeding the special education threshold of each respective district within the county shall be counted within the special district and not in the district of residence for purposes of distributing the state aid derived from the special education pupil count;**

(17) **"Special education threshold" shall be calculated by dividing the total special education pupil count of every performance district that falls entirely above the bottom five percent and entirely below the top five percent of average daily attendance, when such districts are rank-ordered based on their current operating expenditures per average daily attendance, by the total average daily attendance of all included performance districts;**

(18) **"State adequacy target", the sum of the current operating expenditures of every performance district that falls entirely above the bottom five percent and entirely below the top five percent of average daily attendance, when such districts are rank-ordered based on their current operating expenditures per average daily attendance, divided by the total average daily attendance of all included performance districts. The department of elementary and secondary education shall first calculate the state adequacy target for fiscal year 2007 and recalculate the state adequacy target every two years using the most current available data. The recalculation shall never result in a decrease from the previous state adequacy target amount. Should a recalculation result in an increase in the state adequacy target amount, fifty percent of that increase shall be included in the state adequacy target amount in the year of recalculation, and fifty percent of that increase shall be included in the state adequacy target amount in the subsequent year. The state adequacy target may be adjusted to accommodate available appropriations;**

[(16)] (19) **"Teacher" [means], any teacher, teacher-secretary, substitute teacher, supervisor, principal, supervising principal, superintendent or assistant superintendent, school nurse, social worker, counselor or librarian who shall, regularly, teach or be employed for no higher than grade twelve more than one-half time in the public schools and who is certified under the laws governing the certification of teachers in Missouri.**

(20) **"Weighted average daily attendance", the average daily attendance plus the product of twenty-five hundredths multiplied by the free and reduced lunch pupil count that exceeds the free and reduced lunch threshold, plus the product of seventy-five hundredths multiplied by the number of special education pupil count that exceeds the**

special education threshold, and plus the product of six-tenths multiplied by the number of limited English proficiency pupil count that exceeds the limited English proficiency threshold. For special districts established under sections 162.815 to 162.940, RSMo, in a county with a charter form of government and with more than one million inhabitants, weighted average daily attendance shall be the average daily attendance plus the product of twenty-five hundredths multiplied by the free and reduced lunch pupil count that exceeds the free and reduced lunch threshold, plus the product of seventy-five hundredths multiplied by the sum of the special education pupil count that exceeds the threshold for each county district, plus the product of six-tenths multiplied by the limited English proficiency pupil count that exceeds the limited English proficiency threshold. None of the districts comprising a special district established under sections 162.815 to 162.940, RSMo, in a county with a charter form of government and with more than one million inhabitants, shall use any special education pupil count in calculating their weighted average daily attendance.

163.021. ELIGIBILITY FOR STATE AID, REQUIREMENTS — EVALUATION OF CORRELATION OF RATES AND ASSESSED VALUATION, REPORT, CALCULATION — FURTHER REQUIREMENTS — EXCEPTION. — 1. A school district shall receive state aid for its education program only if it:

(1) Provides for a minimum of one hundred seventy-four days and one thousand forty-four hours of actual pupil attendance in a term scheduled by the board pursuant to section 160.041, RSMo, for each pupil or group of pupils, except that the board shall provide a minimum of one hundred seventy-four days and five hundred twenty-two hours of actual pupil attendance in a term for kindergarten pupils. If any school is dismissed because of inclement weather after school has been in session for three hours, that day shall count as a school day including afternoon session kindergarten students. When the aggregate hours lost in a term due to inclement weather decreases the total hours of the school term below the required minimum number of hours by more than twelve hours for all-day students or six hours for one-half-day kindergarten students, all such hours below the minimum must be made up in one-half day or full day additions to the term, except as provided in section 171.033, RSMo;

(2) Maintains adequate and accurate records of attendance, personnel and finances, as required by the state board of education, which shall include the preparation of a financial statement which shall be submitted to the state board of education the same as required by the provisions of section 165.111, RSMo, for districts;

(3) Levies an operating levy for school purposes of not less than one dollar and twenty-five cents after all adjustments and reductions on each one hundred dollars assessed valuation of the district;

(4) Computes average daily attendance as defined in subdivision (2) of section 163.011 as modified by section 171.031, RSMo. Whenever there has existed within the district an infectious disease, contagion, epidemic, plague or similar condition whereby the school attendance is substantially reduced for an extended period in any school year, the apportionment of school funds and all other distribution of school moneys shall be made on the basis of the school year next preceding the year in which such condition existed.

2. [Beginning with the tax year which commences January 1, 1998, and for the 1998-99 school year and subsequent tax and school years] **For the 2006-2007 school year and thereafter**, no school district shall receive more state aid, as calculated under subsections 1 and 2 of section 163.031, for its education program, exclusive of categorical add-ons, than it received per [eligible pupil] **weighted average daily attendance** for the school year [1993-94] **2005-2006 from the foundation formula, line 14, gifted, remedial reading, exceptional pupil aid, fair share, and free textbook payment amounts**, unless it has an operating levy for school purposes, as determined pursuant to section 163.011, of not less than two dollars and seventy-five cents after all adjustments and reductions[, with no more than ten cents of this tax rate levied

in the debt service and capital projects funds and eligible for entry on line 1 of the state school aid formula contained in subsection 6 of section 163.031; except that, beginning in the 1997-98 school year.]. Any district which is required, pursuant to article X, section 22 of the Missouri Constitution, to reduce its operating levy below the minimum tax rate otherwise required under this subsection shall not be construed to be in violation of this subsection for making such tax rate reduction. Pursuant to section 10(c) of article X of the state constitution, a school district may levy the operating levy for school purposes required by this subsection less all adjustments required pursuant to article X, section 22 of the Missouri Constitution if such rate does not exceed the highest tax rate in effect subsequent to the 1980 tax year. Nothing in this section shall be construed to mean that a school district is guaranteed to receive an amount not less than the amount the school district received per eligible pupil for the school year 1990-91. The provisions of this subsection shall not apply to any school district located in a county of the second classification which has a nuclear power plant located in such district or to any school district located in a county of the third classification which has an electric power generation unit with a rated generating capacity of more than one hundred fifty megawatts which is owned or operated or both by a rural electric cooperative except that such school districts may levy for current school purposes and capital projects an operating levy not to exceed two dollars and seventy-five cents less all adjustments required pursuant to article X, section 22 of the Missouri Constitution.

3. No school district shall receive more state aid, as calculated in section 163.031, for its education program, exclusive of categorical add-ons, than it received per eligible pupil for the school year 1993-1994, if the state board of education determines that the district was not in compliance in the preceding school year with the requirements of section 163.172, until such time as the board determines that the district is again in compliance with the requirements of section 163.172.

4. [The department of elementary and secondary education shall evaluate the correlation between district tax rates and district assessed valuation per pupil following each biennial property tax reassessment and shall report its findings to the governor and the general assembly by December first of the year following each reassessment. The findings shall include a calculation of the minimum required property tax rate necessary to maintain a correlation of zero or less between district property tax rate and district assessed valuation per pupil and a report of assessed valuation per pupil and district property tax rate for all districts.

5.] No school district shall receive state aid, pursuant to section 163.031, if such district was not in compliance, during the preceding school year, with the requirement, established pursuant to section 160.530, RSMo, to allocate revenue to the professional development committee of the district.

[6.] **5.** No school district shall receive more state aid, as calculated in **subsections 1 and 2** of section 163.031, for its education program, exclusive of categorical add-ons, than it received per [eligible pupil] **weighted average daily attendance** for the school year [1993-1994] **2005-2006 from the foundation formula, line 14, gifted, remedial reading, exceptional pupil aid, fair share, and free textbook payment amounts**, if the district did not comply in the preceding school year with the requirements of subsection [7] **6** of section 163.031.

[7. No school district shall receive state aid, pursuant to section 163.031, if the district failed to make a required payment in the preceding year to the school building revolving fund pursuant to section 166.300, RSMo.]

163.023. SCHOOL DISTRICT WITH OPERATING LEVY BELOW MINIMUM VALUE CLASSIFIED UNACCREDITED, WHEN — PROCEDURE FOR CLASSIFICATION. — 1. Commencing September 1, 1997, a school district that has an operating levy for school purposes as defined in section 163.011, of less than the minimum value required by section 163.021, shall be classified as unaccredited by the state board of education and shall be deemed to be an unclassified school district for all purposes under force of law, pursuant to the authority of the state board of

education to classify school districts pursuant to section 161.092, RSMo, except that no school district shall be classified as unaccredited or deemed to be an unclassified school district pursuant to this section [and section 160.538, RSMo,] if such district is ineligible to receive state aid under section 163.031, exclusive of categorical add-ons, because the [district deductions under subsection 2 of section 163.031, equal or exceed the district entitlement under subsection 1 of section 163.031] **district's local effort is greater than its weighted average daily attendance multiplied by the state adequacy target multiplied by the dollar value modifier.** No school district, except a district which is ineligible to receive state aid under section 163.031, exclusive of categorical add-ons, because the district's [deductions under subsection 2 of section 163.031, equal or exceed the district entitlement under subsection 1 of section 163.031,] **local effort is greater than its weighted average daily attendance multiplied by the state adequacy target multiplied by the dollar value modifier,** may be classified or reclassified as accredited until such district has an operating levy for school purposes which is equal to or greater than the minimum value required by section 163.021. Beginning July 1, 1998, the state board of education shall consider the results for a school district from the statewide assessment system developed pursuant to the provisions of section 160.518, RSMo, when classifying a school district as authorized by subdivision (9) of section 161.092, RSMo. Further, the state board of education shall consider the condition and adequacy of facilities of a school district when determining such classification.

2. For any school district classified unaccredited for any school year, the state board of education shall conduct procedures to classify said school district for the first school year following.

163.025. OPERATING LEVY REDUCTION BELOW MINIMUM RATE, EFFECT UPON ACCREDITATION CLASSIFICATION. — [1.] Whenever the adjusted operating levy, as defined in section 163.011, of any school district is required, pursuant to article X, section 22 of the Missouri Constitution, to be reduced below the minimum tax rate required for the current school year under section 163.021, the district shall not be classified as unaccredited under section 163.023.

[2. Other provisions of section 163.031, to the contrary notwithstanding, for the first two school years in which a school district's adjusted operating levy is required to be reduced below the minimum tax rate required for the current school year under section 163.021, pursuant to article X, section 22 of the Missouri Constitution, for the purpose of distribution of state aid under section 163.031, the district's equalized operating levy for school purposes shall be the greater of the current year's levy or the minimum tax rate required for the current school year under section 163.021, and the district shall not be rendered ineligible, pursuant to section 163.021, for increases in state aid distributed under section 163.031. The provisions of this subsection shall expire on July 1, 1997.]

163.028. RULES, EFFECTIVE, WHEN — RULES INVALID AND VOID, WHEN. — Any rule or portion of a rule [promulgated pursuant to this act shall become effective only as provided pursuant to chapter 536, RSMo, including, but not limited to, section 536.028, RSMo, if applicable, after August 28, 1997. All rulemaking authority delegated prior to August 28, 1997, is of no force and effect and repealed. The provisions of this section are nonseverable and if any of the powers vested with the general assembly pursuant to section 536.028, RSMo, if applicable, to review, to delay the effective date, or to disapprove and annul a rule or portion of a rule are held unconstitutional or invalid, the purported grant of rulemaking authority and any rule so proposed and contained in the order of rulemaking shall be invalid and void], **as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this act 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 July 1, 2006, shall be invalid and void.

163.031. STATE AID — AMOUNT, HOW DETERMINED — CATEGORICAL ADD-ON REVENUE, DETERMINATION OF AMOUNT — DISTRICT APPORTIONMENT, DETERMINATION OF — WAIVER OF RULES — DEPOSITS TO TEACHERS' FUND AND INCIDENTAL FUND, WHEN.

— 1. [School districts which meet the requirements of section 163.021 shall be entitled to an amount computed as follows: an amount determined by multiplying the number of eligible pupils by the lesser of the district's equalized operating levy for school purposes as defined in section 163.011 or two dollars and seventy-five cents per one hundred dollars assessed valuation multiplied by the guaranteed tax base per eligible pupil times the proration factor plus an amount determined by multiplying the number of eligible pupils by the greater of zero or the district's equalized operating levy for school purposes as defined in section 163.011 minus two dollars and seventy-five cents per one hundred dollars assessed valuation multiplied by the guaranteed tax base per eligible pupil times the proration factor. For the purposes of this section, the proration factor shall be equal to the sum of the total appropriation for distribution under subsections 1 and 2 of this section; and the state total of the deductions as calculated in subsection 2 of this section which do not exceed the district entitlements as adjusted by the same proration factor; divided by the amount of the state total of district entitlements before proration as calculated pursuant to this subsection; provided that, if the proration factor so calculated is greater than one, the proration factor for line 1(b) shall be the greater of one or the proration factor for line 1(a) minus five hundredths, and provided that if the proration factor so calculated is less than one, the proration factor for line 1(a) shall be the lesser of one or the proration factor for line 1(b) plus five hundredths.

2. From the district entitlement for each district there shall be deducted the following amounts: an amount determined by multiplying the district equalized assessed valuation by the district's equalized operating levy for school purposes times the district income factor plus ninety percent of any payment received the current year of protested taxes due in prior years no earlier than the 1997 tax year minus the amount of any protested taxes due in the current year and for which notice of protest was received during the current year; one hundred percent of the amount received the previous year for school purposes from intangible taxes, fines, forfeitures and escheats, payments in lieu of taxes and receipts from state assessed railroad and utility tax, except that any penalty paid after July 1, 1995, by a concentrated animal feeding operation as defined by the department of natural resources rule shall not be included; one hundred percent of the amounts received the previous year for school purposes from federal properties pursuant to sections 12.070 and 12.080, RSMo; federal impact aid received the previous year for school purposes pursuant to P.L. 81-874 less fifty thousand dollars multiplied by ninety percent or the maximum percentage allowed by federal regulation if that percentage is less than ninety; fifty percent, or the percentage otherwise provided in section 163.087 of Proposition C revenues received the previous year for school purposes from the school district trust fund pursuant to section 163.087; one hundred percent of the amount received the previous year for school purposes from the fair share fund pursuant to section 149.015, RSMo; and one hundred percent of the amount received the previous year for school purposes from the free textbook fund, pursuant to section 148.360, RSMo.

3. School districts which meet the requirements of section 163.021 shall receive categorical add-on revenue as provided in this subsection. There shall be individual proration factors for each categorical entitlement provided for in this subsection, and each proration factor shall be determined by annual appropriations, but no categorical proration factor shall exceed the entitlement proration factor established pursuant to subsection 1 of this section, except that the career ladder entitlement proration factor established pursuant to line 15 of subsection 6 of this

section, the vocational education entitlement proration factor established pursuant to line 16 of subsection 6 of this section, and the educational and screening program entitlements proration factor established pursuant to line 17 of subsection 6 of this section may exceed the entitlement proration factor established pursuant to subsection 1 of this section. The categorical add-on for the district shall be the sum of: seventy-five percent of the costs of adopting and providing a violence prevention program pursuant to section 161.650, RSMo, multiplied by the proration factor; seventy-five percent of the district allowable transportation costs pursuant to section 163.161 multiplied by the proration factor; the special education approved or allowed cost entitlement for the district, provided for by section 162.975, RSMo, multiplied by the proration factor; seventy-five percent of the district gifted education approved or allowable cost entitlement as determined pursuant to section 162.975, RSMo, multiplied by the proration factor; the free and reduced lunch eligible pupil count for the district, as defined in section 163.011, multiplied by twenty percent, for a district with an operating levy in excess of two dollars and seventy-five cents per one hundred dollars assessed valuation, or twenty-two percent, otherwise times the guaranteed tax base per eligible pupil times two dollars and seventy-five cents per one hundred dollars assessed valuation times the proration factor plus the free and reduced lunch eligible pupil count for the district, as defined in section 163.011, times thirty percent times the guaranteed tax base per eligible pupil times the following quantity: ((the greater of zero or the district's operating levy for school purposes minus two dollars and seventy-five cents per one hundred dollars assessed valuation) times one or, beginning in the fifth year following the effective date of this section, the quotient of the district's fiscal instructional ratio of efficiency for the prior year divided by the fiscal year 1998 statewide average fiscal instructional ratio of efficiency, if the district's prior year fiscal instructional ratio of efficiency is at least five percent below the fiscal year 1998 statewide average) times the proration factor, minus court-ordered state desegregation aid received by the district for operating purposes; the career ladder entitlement for the district, as provided for in sections 168.500 to 168.515, RSMo; the vocational education entitlement for the district, as provided for in section 167.332, RSMo, multiplied by the proration factor and the district educational and screening program entitlements as provided for in sections 178.691 to 178.699, RSMo, times the proration factor.

4. Each district's apportionment shall be the prorated categorical add-ons plus the greater of the district's prorated entitlement minus the total deductions for the district or zero.

5. (1) In the 1993-94 school year and all subsequent school years, pursuant to section 10(c) of article X of the state constitution, a school district shall adjust upward its operating levy for school purposes to the extent necessary for the district to at least maintain the current operating expenditures per pupil received by the district from all sources in the 1992-93 school year, except that its operating levy for school purposes shall not exceed the highest tax rate in effect subsequent to the 1980 tax year, or the minimum rate required by subsection 2 of section 163.021, whichever is less.

(2) The revenue per eligible pupil received by a district from the following sources: line 1 minus line 10, or zero if line 1 minus line 10 is less than zero, plus line 14 of subsection 6 of this section, shall not be less than the revenue per eligible pupil received by a district in the 1992-93 school year from the foundation formula entitlement payment amount plus the amount of line 14 per eligible pupil that exceeds the line 14 per pupil amount from the 1997-98 school year, or the revenue per eligible pupil received by a district in the 1992-93 school year from the foundation formula entitlement payment amount plus the amount of line 14(a) per eligible pupil times the quotient of line 1 minus line 10, divided by the number of eligible pupils, or zero if line 1 minus line 10 is less than zero, divided by the revenue per eligible pupil received by the district in the 1992-93 school year from the foundation formula entitlement payment amount, whichever is greater. The department of elementary and secondary education shall make an addition in the payment amount of line 19 of subsection 6 of this section to assure compliance with the provisions contained in this section.

(3) For any school district which meets the eligibility criteria for state aid as established in section 163.021, but which under subsections 1 to 4 of this section receives no state aid for two successive school years, other than categorical add-ons, by August first following the second such school year, the commissioner of education shall present a plan to the superintendent of the school district for the waiver of rules and the duration of said waivers, in order to promote flexibility in the operations of the district and to enhance and encourage efficiency in the delivery of instructional services. The provisions of other law to the contrary notwithstanding, the plan presented to the superintendent shall provide a summary waiver, with no conditions, for the pupil testing requirements pursuant to section 160.257, RSMo. Further, the provisions of other law to the contrary notwithstanding, the plan shall detail a means for the waiver of requirements otherwise imposed on the school district related to the authority of the state board of education to classify school districts pursuant to section 161.092, RSMo, and such other rules as determined by the commissioner of education, except that such waivers shall not include the provisions established pursuant to sections 160.514 and 160.518, RSMo.

(4) In the 1993-94 school year and each school year thereafter for two years, those districts which are entitled to receive state aid under subsections 1 to 4 of this section shall receive state aid in an amount per eligible pupil as provided in this subsection. For the 1993-94 school year, the amount per eligible pupil shall be twenty-five percent of the amount of state aid per eligible pupil calculated for the district for the 1993-94 school year pursuant to subsections 1 to 4 of this section plus seventy-five percent of the total amount of state aid received by the district from all sources for the 1992-93 school year for which the district is entitled and which are distributed in the 1993-94 school year pursuant to subsections 1 to 4 of this section. For the 1994-95 school year, the amount per eligible pupil shall be fifty percent of the amount of state aid per eligible pupil calculated for the district for the 1994-95 school year pursuant to subsections 1 to 4 of this section plus fifty percent of the total amount of state aid received by the district from all sources for the 1992-93 school year for which the district is entitled and which are distributed in the 1994-95 school year pursuant to subsections 1 to 4 of this section. For the 1995-96 school year, the amount of state aid per eligible pupil shall be seventy-five percent of the amount of state aid per eligible pupil calculated for the district for the 1995-96 school year pursuant to subsections 1 to 4 of this section plus twenty-five percent of the total amount of state aid received by the district from all sources for the 1992-93 school year for which the district is entitled and which are distributed in the 1995-96 school year pursuant to subsections 1 to 4 of this section. Nothing in this subdivision shall be construed to limit the authority of a school district to raise its district operating levy pursuant to subdivision (1) of this subsection.

(5) If the total of state aid apportionments to all districts pursuant to subdivision (3) of this subsection is less than the total of state aid apportionments calculated pursuant to subsections 1 to 4 of this section, then the difference shall be deposited in the outstanding schools trust fund. If the total of state aid apportionments to all districts pursuant to subdivision (1) of this subsection is greater than the total of state aid apportionments calculated pursuant to subsections 1 to 4 of this section, then funds shall be transferred from the outstanding schools trust fund to the state school moneys fund to the extent necessary to fund the district entitlements as modified by subdivision (4) of this subsection for that school year with a district entitlement proration factor no less than one and such transfer shall be given priority over all other uses for the outstanding schools trust fund as otherwise provided by law.

6. State aid shall be determined as follows:

District Entitlement

1(a). Number of eligible pupils x (lesser of district's equalized operating levy for school purposes or two dollars and seventy-five cents per one hundred dollars assessed valuation) x (proration x GTB per EP) \$.....

- 1(b). Number of eligible pupils x (greater of:
 0, or district's equalized operating levy
 for school purposes minus two dollars
 and seventy-five cents per one hundred
 dollars assessed valuation) x (proration
 x GTB per EP) \$.....
 Deductions
2. District equalized assessed valuation x
 district income factor x district's equalized
 operating levy for school purposes
 plus ninety percent of any payment
 received the current year of protested
 taxes due in prior years no earlier than
 the 1997 tax year minus the amount of
 any protested taxes due in the current
 year and for which notice of protest was
 received during the current
 year \$.....
3. Intangible taxes, fines, forfeitures,
 escheats, payments in lieu of
 taxes, etc. (100% of the amount
 received the previous year for school
 purposes) \$.....
4. Receipts from state assessed railroad
 and utility tax (100% of the amount
 received the previous year for school
 purposes) \$.....
5. Receipts from federal properties pursuant
 to sections 12.070 and 12.080, RSMo (100%
 of the amount received the previous year
 for school purposes) \$.....
6. (Federal impact aid received the previous
 year for school purposes pursuant to
 P.L. 81-874 less \$50,000) x 90% or the
 maximum percentage allowed by federal
 regulations if less than 90% \$.....
7. Fifty percent or the percentage otherwise
 provided in section 163.087 of Proposition
 C receipts from the school district trust
 fund received the previous year for
 school purposes pursuant to section 163.087 \$.....
8. One hundred percent of the amount
 received the previous year for
 school purposes from the fair share
 fund pursuant to section 149.015, RSMo \$.....
9. One hundred percent of the amount
 received the previous year for
 school purposes from the free textbook
 fund pursuant to section 148.360, RSMo \$.....
10. Total deductions (sum of lines 2-9) \$.....
 Categorical Add-ons
11. The amount distributed pursuant to

- section 163.161 x proration \$.....
- 12. Special education approved or allowed cost entitlement for the district pursuant to section 162.975, RSMo, x proration \$.....
- 13. Seventy-five percent of the gifted education approved or allowable cost entitlement as determined pursuant to section 162.975, RSMo, x proration \$.....
- 14(a). Free and reduced lunch eligible pupil count for the district, as defined in section 163.011, x .20, if operating levy in excess of \$2.75, or .22, otherwise x GTB per EP x \$2.75 per \$100 AV x proration..... \$.....
- 14(b). Free and reduced lunch eligible pupil count for the district, as defined in section 163.011 x .30 x GTB x ((the greater of zero or the district's adjusted operating levy minus \$2.75 per \$100 AV) x (1.0 or, beginning in the fifth year following the effective date of this section, the district's FIRE for the prior year/statewide average FIRE for FY 1998, if the district's prior year FIRE is at least five percent below the FY 1998 statewide average FIRE) x proration) - court-ordered state desegregation aid received by the district for operating purposes \$.....
- 15. Career ladder entitlement for the district as provided for in sections 168.500 to 168.515, RSMo \$.....
- 16. Vocational education entitlements for the district as provided in section 167.332, RSMo, x proration \$.....
- 17. Educational and screening program entitlements for the district as provided in sections 178.691 to 178.699, RSMo, x proration \$.....
- 18. Sum of categorical add-ons for the district (sum of lines 11-17) \$.....
- 19. District apportionment (line 18 plus the greater of line 1 minus line 10 or zero) \$.....]

The department of elementary and secondary education shall calculate and distribute to each school district qualified to receive state aid under section 163.021 an amount determined by multiplying the district's weighted average daily attendance by the state adequacy target, multiplying this product by the dollar value modifier for the district, and subtracting from this product the district's local effort and, in years not governed under subsection 4 of this section, subtracting payments from the classroom trust fund under section 163.043.

2. Other provisions of law to the contrary notwithstanding:

(1) For districts with an average daily attendance of more than three hundred fifty in the school year preceding the payment year:

(a) For the 2006-2007 school year, the state revenue per weighted average daily attendance received by a district from the state aid calculation under subsections 1 and 4 of this section, as applicable, and the classroom trust fund under section 163.043 shall not be less than the state revenue received by a district in the 2005-2006 school year from the foundation formula, line 14, gifted, remedial reading, exceptional pupil aid, fair share, and free textbook payment amounts multiplied by the sum of one plus the product of one-third multiplied by the remainder of the dollar value modifier minus one, and dividing this product by the weighted average daily attendance computed for the 2005-2006 school year.

(b) For the 2007-2008 school year, the state revenue per weighted average daily attendance received by a district from the state aid calculation under subsections 1 and 4 of this section, as applicable, and the classroom trust fund under section 163.043 shall not be less than the state revenue received by a district in the 2005-2006 school year from the foundation formula, line 14, gifted, remedial reading, exceptional pupil aid, fair share, and free textbook payment amounts multiplied by the sum of one plus the product of two-thirds multiplied by the remainder of the dollar value modifier minus one, and dividing this product by the weighted average daily attendance computed for the 2005-2006 school year.

(c) For the 2008-2009 school year, the state revenue per weighted average daily attendance received by a district from the state aid calculation under subsections 1 and 4 of this section, as applicable, and the classroom trust fund under section 163.043 shall not be less than the state revenue received by a district in the 2005-2006 school year from the foundation formula, line 14, gifted, remedial reading, exceptional pupil aid, fair share, and free textbook payment amounts multiplied by the dollar value modifier, and dividing this product by the weighted average daily attendance computed for the 2005-2006 school year.

(d) For each year subsequent to the 2008-2009 school year, the amount shall be no less than that computed in paragraph (c) of this subdivision, multiplied by the weighted average daily attendance pursuant to section 163.036, less any increase in revenue received from the classroom trust fund under section 163.043.

(2) For districts with an average daily attendance of three hundred fifty or less in the school year preceding the payment year:

(a) For the 2006-2007 school year, the state revenue received by a district from the state aid calculation under subsections 1 and 4 of this section, as applicable, and the classroom trust fund under section 163.043 shall not be less than the greater of state revenue received by a district in the 2004-2005 or 2005-2006 school year from the foundation formula, line 14, gifted, remedial reading, exceptional pupil aid, fair share, and free textbook payment amounts multiplied by the sum of one plus the product of one-third multiplied by the remainder of the dollar value modifier minus one.

(b) For the 2007-2008 school year, the state revenue received by a district from the state aid calculation under subsections 1 and 4 of this section, as applicable, and the classroom trust fund under section 163.043 shall not be less than the greater of state revenue received by a district in the 2004-2005 or 2005-2006 school year from the foundation formula, line 14, gifted, remedial reading, exceptional pupil aid, fair share, and free textbook payment amounts multiplied by the sum of one plus the product of two-thirds multiplied by the remainder of the dollar value modifier minus one.

(c) For the 2008-2009 school year, the state revenue received by a district from the state aid calculation under subsections 1 and 4 of this section, as applicable, and the classroom trust fund under section 163.043 shall not be less than the greater of state

revenue received by a district in the 2004-2005 or 2005-2006 school year from the foundation formula, line 14, gifted, remedial reading, exceptional pupil aid, fair share, and free textbook payment amounts multiplied by the dollar value modifier.

(d) For each year subsequent to the 2008-2009 school year, the amount shall be no less than that computed in paragraph (c) of this subdivision.

(3) The department of elementary and secondary education shall make an addition in the payment amount specified in subsection 1 of this section to assure compliance with the provisions contained in this subsection.

3. School districts that meet the requirements of section 163.021 shall receive categorical add-on revenue as provided in this subsection. The categorical add-on for the district shall be the sum of: seventy-five percent of the district allowable transportation costs under section 163.161; the career ladder entitlement for the district, as provided for in sections 168.500 to 168.515, RSMo; the vocational education entitlement for the district, as provided for in section 167.332, RSMo; and the district educational and screening program entitlements as provided for in sections 178.691 to 178.699, RSMo. The categorical add-on revenue amounts may be adjusted to accommodate available appropriations.

4. In the 2006-2007 school year and each school year thereafter for five years, those districts entitled to receive state aid under the provisions of subsection 1 of this section shall receive state aid in an amount as provided in this subsection.

(1) For the 2006-2007 school year, the amount shall be fifteen percent of the amount of state aid calculated for the district for the 2006-2007 school year under the provisions of subsection 1 of this section, plus eighty-five percent of the total amount of state revenue received by the district for the 2005-2006 school year from the foundation formula, line 14, gifted, remedial reading, exceptional pupil aid, fair share, and free textbook payments less any amounts received under section 163.043.

(2) For the 2007-2008 school year, the amount shall be thirty percent of the amount of state aid calculated for the district for the 2007-2008 school year under the provisions of subsection 1 of this section, plus seventy percent of the total amount of state revenue received by the district for the 2005-2006 school year from the foundation formula, line 14, gifted, remedial reading, exceptional pupil aid, fair share, and free textbook payments less any amounts received under section 163.043.

(3) For the 2008-2009 school year, the amount of state aid shall be forty-four percent of the amount of state aid calculated for the district for the 2008-2009 school year under the provisions of subsection 1 of this section plus fifty-six percent of the total amount of state revenue received by the district for the 2005-2006 school year from the foundation formula, line 14, gifted, remedial reading, exceptional pupil aid, fair share, and free textbook payments less any amounts received under section 163.043.

(4) For the 2009-2010 school year, the amount of state aid shall be fifty-eight percent of the amount of state aid calculated for the district for the 2009-2010 school year under the provisions of subsection 1 of this section plus forty-two percent of the total amount of state revenue received by the district for the 2005-2006 school year from the foundation formula, line 14, gifted, remedial reading, exceptional pupil aid, fair share, and free textbook payments less any amounts received under section 163.043.

(5) For the 2010-11 school year, the amount of state aid shall be seventy-two percent of the amount of state aid calculated for the district for the 2010-11 school year under the provisions of subsection 1 of this section plus twenty-eight percent of the total amount of state revenue received by the district for the 2005-2006 school year from the foundation formula, line 14, gifted, remedial reading, exceptional pupil aid, fair share, and free textbook payments less any amounts received under section 163.043.

(6) For the 2011-2012 school year, the amount of state aid shall be eighty-six percent of the amount of state aid calculated for the district for the 2011-2012 school year under

the provisions of subsection 1 of this section plus fourteen percent of the total amount of state revenue received by the district for the 2005-06 school year from the foundation formula, line 14, gifted, remedial reading, exceptional pupil aid, fair share, and free textbook payments less any amounts received under section 163.043.

(7) (a) Notwithstanding subdivision (18) of section 163.011, the state adequacy target may not be adjusted downward to accommodate available appropriations in any year governed by this subsection.

(b) If a school district experiences a decrease in summer school average daily attendance of more than fifteen percent from the district's 2005-2006 summer school average daily attendance in any year governed by this subsection, an amount equal to the product of the percent reduction in the district's summer school average daily attendance multiplied by the funds generated by the district's summer school program in the 2005-2006 school year shall be subtracted from the district's current year payment amount.

(c) If a school district experiences a decrease in its gifted program enrollment of more than twenty percent from its 2005-2006 gifted program enrollment in any year governed by this subsection, an amount equal to the product of the percent reduction in the district's gifted program enrollment multiplied by the funds generated by the district's gifted program in the 2005-2006 school year shall be subtracted from the district's current year payment amount.

5. For any school district meeting the eligibility criteria for state aid as established in section 163.021, but which is considered an option district under section 163.042 and therefore receives no state aid, the commissioner of education shall present a plan to the superintendent of the school district for the waiver of rules and the duration of said waivers, in order to promote flexibility in the operations of the district and to enhance and encourage efficiency in the delivery of instructional services as provided in section 163.042.

[7. Revenue received for school purposes by each school district pursuant to this section shall be placed in each of the incidental and teachers' funds based on the ratio of the property tax rate in the district for that fund to the total tax rate in the district for the two funds.

8. In addition to the penalty for line 14 described in subsection 6 of this section, beginning in school year 2004-05, any increase in a school district's funds received pursuant to line 14 of subsection 6 of this section over the 1997-98 school year shall be reduced by one percent for each full percentage point the percentage of the district's pupils scoring at or above five percent below the statewide average level on either mathematics or reading is less than sixty-five percent.

9.] 6. (1) No less than seventy-five percent of the state revenue received under the provisions of subsections 1, 2, and 4 of this section shall be placed in the teachers' fund, and the remaining percent of such moneys shall be placed in the incidental fund. No less than seventy-five percent of one-half of the funds received from the school district trust fund distributed under section 163.087 shall be placed in the teachers' fund. One hundred percent of revenue received under the provisions of section 163.161 shall be placed in the incidental fund. One hundred percent of revenue received under the provisions of sections 168.500 to 168.515, RSMo, shall be placed in the teachers' fund.

(2) A school district shall spend for certificated compensation and tuition expenditures each year:

(a) An amount equal to at least seventy-five percent of the state revenue received under the provisions of subsections 1, 2, and 4 of this section;

(b) An amount equal to at least seventy-five percent of one-half of the funds received from the school district trust fund distributed under section 163.087 during the preceding school year; and

(c) Beginning in fiscal year 2008, as much as was spent per the second preceding year's weighted average daily attendance for certificated compensation and tuition expenditures the previous year from revenue produced by local and county tax sources in the teachers' fund, plus the amount of the incidental fund to teachers' fund transfer

calculated to be local and county tax sources by dividing local and county tax sources in the incidental fund by total revenue in the incidental fund.

In the event a district fails to comply with this provision, the amount by which the district fails to spend funds as provided herein shall be deducted from the district's state revenue received under the provisions of subsections 1, 2, and 4 of this section for the following year, provided that the state board of education may exempt a school district from this provision if the state board of education determines that circumstances warrant such exemption.

7. If a school district's annual audit discloses that students were inappropriately identified as eligible for free [or reduced-price] **and reduced lunch, special education, or limited English proficiency** and the district does not resolve the audit finding, the department of elementary and secondary education shall require that the amount of [line 14] aid paid **pursuant to the weighting for free and reduced lunch, special education, or limited English proficiency in the weighted average daily attendance** on the inappropriately identified pupils be repaid by the district in the next school year and shall additionally impose a penalty of one hundred percent of [the line 14] **such** aid paid on such pupils, which penalty shall also be paid within the next school year. Such amounts may be repaid by the district through the withholding of the amount of state aid.

163.036. ESTIMATES OF WEIGHTED AVERAGE DAILY ATTENDANCE, AUTHORIZED, HOW COMPUTED — SUMMER SCHOOL COMPUTATION — ERROR IN COMPUTATION BETWEEN ACTUAL AND ESTIMATED ATTENDANCE, HOW CORRECTED — USE OF ASSESSED VALUATION FOR STATE AID — DELINQUENCY IN PAYMENT OF PROPERTY TAX, EFFECT ON ASSESSMENT.

— 1. In computing the amount of state aid a school district is entitled to receive for the minimum school term only under section 163.031, a school district may use an estimate of the [number of eligible pupils] **weighted average daily attendance** for the current year, **or** the [number of eligible pupils] **weighted average daily attendance** for the immediately preceding year or the [number of eligible pupils] **weighted average daily attendance** for the second preceding school year, whichever is greater. Beginning with the [2005-2006] **2006-2007** school year, the summer school [add-on for eligible pupils] **attendance included in the average daily attendance** as defined in subdivision [(8)] (2) of section 163.011 shall include only [those eligible] **the attendance hours of** pupils that attend summer school in the current year. Beginning with the 2004-2005 school year, when a district's official calendar for the current year contributes to a more than ten percent reduction in the average daily attendance for kindergarten compared to the immediately preceding year, the [eligible pupil] payment attributable to kindergarten shall include only the current year kindergarten average daily attendance. [Except as otherwise provided in subsection 3 of this section,] Any error made in the apportionment of state aid because of a difference between the actual [number of eligible pupils] **weighted average daily attendance** and the estimated [number of eligible pupils] **weighted average daily attendance** shall be corrected as provided in section 163.091, except that if the amount paid to a district estimating [eligible pupils] **weighted average daily attendance** exceeds the amount to which the district was actually entitled by more than five percent, interest at the rate of six percent shall be charged on the excess and shall be added to the amount to be deducted from the district's apportionment the next succeeding year.

2. Notwithstanding the provisions of subsection 1 of this section or any other provision of law, the state board of education shall make an adjustment for the immediately preceding year for any increase in the actual [number of eligible pupils] **weighted average daily attendance** above the number on which the state aid in section 163.031 was calculated. Said adjustment shall be made in the manner providing for correction of errors under subsection 1 of this section.

3. [(1) For any district which has, for at least five years immediately preceding the year in which the error is discovered, adopted a calendar for the school term in which elementary schools are in session for twelve months of each calendar year, any error made in the

apportionment of state aid to such district because of a difference between the actual number of eligible pupils and the estimated number of eligible pupils shall be corrected as provided in section 163.091 and subsection 1 of this section, except that if the amount paid exceeds the amount to which the district was actually entitled by more than five percent and the district provides written application to the state board requesting that the deductions be made pursuant to subdivision (2) of this subsection, then the amounts shall be deducted pursuant to subdivision (2) of this subsection.

(2) For deductions made pursuant to this subdivision, interest at the rate of six percent shall be charged on the excess and shall be included in the amount deducted and the total amount of such excess plus accrued interest shall be deducted from the district's apportionment in equal monthly amounts beginning with the succeeding school year and extending for a period of months specified by the district in its written request and no longer than sixty months.

4. For the purposes of distribution of state school aid pursuant to section 163.031, a school district may elect to use the district's equalized assessed valuation for the preceding year, or an estimate of the current year's assessed valuation if the current year's equalized assessed valuation is estimated to be more than ten percent less than the district's equalized assessed valuation for the preceding year. A district shall give prior notice to the department of its intention to use the current year's assessed valuation pursuant to this subsection.] Any error made in the apportionment of state aid because of a difference between the actual equalized assessed valuation for the current year and the estimated equalized assessed valuation for the current year shall be corrected as provided in section 163.091, except that if the amount paid to a district estimating current equalized assessed valuation exceeds the amount to which the district was actually entitled, interest at the rate of six percent shall be charged on the excess and shall be added to the amount to be deducted from the district's apportionment the next succeeding year.

[5.] **4.** For the purposes of distribution of state school aid pursuant to section 163.031, a school district with ten percent or more of its assessed valuation that is owned by one person or corporation as commercial or personal property who is delinquent in a property tax payment may elect, after receiving notice from the county clerk on or before March [fifteenth except in the year enacted,] **15** that more than ten percent of its current taxes due the preceding December [thirty-first] **31** by a single property owner are delinquent, to use [on line 2] **in the local effort calculation** of the state aid formula the district's equalized assessed valuation for the preceding year or the actual assessed valuation of the year for which the taxes are delinquent less the assessed valuation of property for which the current year's property tax is delinquent. To qualify for use of the actual assessed valuation of the year for which the taxes are delinquent less the assessed valuation of property for which the current year's property tax is delinquent, a district must notify the department of elementary and secondary education on or before April [first] **1**, except in the year enacted, of the current year amount of delinquent taxes, the assessed valuation of such property for which delinquent taxes are owed and the total assessed valuation of the district for the year in which the taxes were due but not paid. Any district giving such notice to the department of elementary and secondary education shall present verification of the accuracy of such notice obtained from the clerk of the county levying delinquent taxes. When any of the delinquent taxes identified by such notice are paid during a four-year period following the due date, the county clerk shall give notice to the district and the department of elementary and secondary education, and state aid paid to the district shall be reduced by an amount equal to the delinquent taxes received plus interest. The reduction in state aid shall occur over a period not to exceed five years and the interest rate on excess state aid not refunded shall be six percent annually.

[6.] **5.** If a district receives state aid based on equalized assessed valuation as determined by subsection [5] **4** of this section and if prior to such notice the district was paid state aid pursuant to [subdivision (2) of subsection 5 of] section 163.031, the amount of state aid paid during the year of such notice and the first year following shall equal the sum of state aid paid pursuant to [line 1 minus line 10 as defined in subsections 1, 2, 3 and 6 of] section 163.031 plus

the difference between the state aid amount being paid after such notice minus the amount of state aid the district would have received pursuant to [line 1 minus line 10 as defined in subsections 1, 2, 3 and 6 of] section 163.031 before such notice. To be eligible to receive state aid based on this provision the district must levy during the first year following such notice at least the maximum levy permitted school districts by article X, section 11(b) of the Missouri Constitution and have a voluntary rollback of its tax rate which is no greater than one cent per one hundred dollars assessed valuation.

163.042. OPTION DISTRICT ELECTION, EFFECT OF — NOTIFICATION TO DEPARTMENT OF ELECTION. — 1. Any board of any school district may elect in any fiscal year to be considered an option district. Such option districts shall not be entitled to any state aid under section 163.031 or 163.043. In exchange for forgoing state aid, option districts shall be granted waivers from all Missouri school improvement plan provisions and any requirements otherwise imposed on the school district related to the authority of the state board of education to classify school districts under section 161.092, RSMo, all fund transfer restrictions under chapter 165, RSMo, and such other rules as determined by the commissioner of education. Nothing in this section exempts any school district from its requirement to administer the state assessment. Further, such districts may choose not to comply with any requirements of federal law and any funding attached to such requirements, provided that such noncompliance is not prohibited under federal law. In any year in which a district elects to be an option district, no locally generated revenue shall be transferred to the state in any manner whatsoever.

2. Between June 1 and June 30 of each year, any board of any district electing to be considered an option district for the following fiscal year shall notify the department of elementary and secondary education of such intention. The department shall promulgate rules concerning the specific eligibility criteria for a district to become and apply for option district status.

163.043. CLASSROOM TRUST FUND CREATED, DISTRIBUTION OF MONEYS — USE OF MONEYS BY DISTRICTS. — 1. For fiscal year 2007 and each subsequent fiscal year, the "Classroom Trust Fund", which is hereby created in the state treasury, shall be distributed by the state board of education to each school district in this state qualified to receive state aid pursuant to section 163.021 on an average daily attendance basis.

2. The moneys distributed pursuant to this section shall be spent at the discretion of the local school district. The moneys may be used by the district for:

- (1) Teacher recruitment, retention, salaries, or professional development;
- (2) School construction, renovation, or leasing;
- (3) Technology enhancements or textbooks or instructional materials;
- (4) School safety; or
- (5) Supplying additional funding for required programs, both state and federal.

3. The classroom trust fund shall consist of all moneys transferred to it under section 160.534, RSMo, all moneys otherwise appropriated or donated to it, and, notwithstanding any other provision of law to the contrary, all unclaimed lottery prize money.

4. The provisions of this section shall not apply to any option district as defined in section 163.042.

163.044. ANNUAL APPROPRIATION OF FIFTEEN MILLION DOLLARS FOR SPECIFIED USES. — 1. Beginning with the 2007 fiscal year and each subsequent fiscal year, the general assembly shall appropriate fifteen million dollars to be directed in the following manner to school districts with an average daily attendance of three hundred fifty students or less in the school year preceding the payment year:

(1) Ten million dollars shall be distributed to the eligible districts in proportion to their average daily attendance; and

(2) Five million dollars shall be directed to the eligible districts that have an operating levy for school purposes in the current year equal to or greater than the performance levy. A tax-rate-weighted average daily attendance shall be calculated for each eligible district in proportion to its operating levy for school purposes for the current year divided by the performance levy with that result multiplied by the district's average daily attendance in the school year preceding the payment year. The total appropriation pursuant to this subdivision shall then be divided by the sum of the tax-rate-weighted average daily attendance of the eligible districts, and the resulting amount per tax-rate-weighted average daily attendance shall be multiplied by each eligible district's tax-rate-weighted average daily attendance to determine the amount to be paid to each eligible district.

2. The payment under this section shall not be transferred to the capital projects fund.

3. Except as provided in subsection 2 of this section, districts receiving payments under this section may use the moneys for, including but not limited to, the following:

- (1) Distance learning;
- (2) Extraordinary transportation costs;
- (3) Rural teacher recruitment; and
- (4) Student learning opportunities not available within the district.

163.071. STATE AID FOR PUPILS RESIDING ON FEDERAL LANDS. — 1. If federal regulations permit inclusion of federal impact aid received pursuant to P.L. 81-874, in part or in full, as a [local wealth deduction] **component of local effort** in [section 163.031] **this chapter**, then the [eligible pupil count] **weighted average daily attendance** for a district which provides an approved program for pupils residing on federal lands shall include those pupils residing on federal lands in the district.

2. If federal regulations forbid inclusion of federal impact aid received pursuant to P.L. 81-874, in part or in full, as a [local wealth deduction] **component of local effort** in [section 163.031] **this chapter**, then the [eligible pupil count] **weighted average daily attendance** for a district which provides an approved program for pupils residing on federal lands shall not include those pupils residing on federal lands in the district and the district shall be entitled to state aid for pupils residing on federal lands in an amount to be determined as follows: The total amount apportioned to the district by the state under section 163.031 for resident pupils shall be divided by the average daily attendance of resident pupils in the district and the quotient resulting shall be multiplied by the number of pupils in average daily attendance in grades kindergarten through twelve residing on the federal lands. The additional state aid under this section shall be paid in the same manner as other apportionments made under section 163.031.

163.073. AID FOR PROGRAMS PROVIDED BY THE DIVISION OF YOUTH SERVICES — AMOUNT, HOW DETERMINED — PAYMENT BY DISTRICT OF DOMICILE OF THE CHILD, AMOUNT. — 1. When an education program, as approved under section 219.056, RSMo, is provided for pupils by the division of youth services in one of the facilities operated by the division for children who have been assigned there by the courts, the division of youth services shall be entitled to state aid for pupils being educated by the division of youth services in an amount to be determined as follows: The total amount apportioned to the division of youth services shall be an amount equal to the average [per-pupil] **per weighted average daily attendance** amount apportioned for the preceding school year under section 163.031, multiplied by the number of full-time equivalent students served by facilities operated by the division of youth services. The number of full-time equivalent students shall be determined by dividing by one hundred seventy-four days the number of student-days of education service provided by the division of youth services to elementary and secondary students who have been assigned to the

division by the courts and who have been determined as inappropriate for attendance in a local public school. A student day shall mean one day of education services provided for one student. In addition, other provisions of law notwithstanding, the division of youth services shall be entitled to funds under [sections 148.360, 149.015, 162.975, RSMo, and] **section 163.087**. The number of full-time equivalent students as defined in this section shall be considered as "September membership" [for the apportioning of funds under section 148.360, RSMo,] **and** as "average daily attendance" for the apportioning of funds under [section 149.015, RSMo, and as "eligible pupils" for the purpose of apportioning funds under] section 163.087.

2. The educational program approved under section 219.056, RSMo, as provided for pupils by the division of youth services shall qualify for funding for those services provided to handicapped or severely handicapped children [as authorized by section 162.975, RSMo]. The department of elementary and secondary education shall cooperate with the division of youth services in arriving at an equitable funding for the services provided to handicapped children in the facilities operated by the division of youth services [under the provisions of section 162.975, RSMo].

3. Each local school district or special school district constituting the domicile of a child placed in programs or facilities operated by the division of youth services or residing in another district pursuant to assignment by the division of youth services, shall pay toward the per pupil cost of educational services provided by the serving district or agency an amount equal to the average sum produced per child by the local tax effort of that district. A special school district shall pay the average sum produced per child by the local tax efforts of the component districts. This amount paid by the local school district or the special school district shall be on the basis of full-time equivalence as determined in section 163.011, not to exceed the actual per pupil local tax effort.

163.081. SECRETARY TO REPORT TO STATE DEPARTMENT, WHEN, CONTENTS, PENALTY — DISTRIBUTION, WHEN. — 1. Between June [fifteenth] **15** and June [thirtieth] **30** each year the secretary of each school district shall make a report to the state department of elementary and secondary education which shall contain all necessary data for calculating the amounts of state support which each district is to receive for the following school year. [The report shall be sworn to before a notary public or the county clerk.] Reports shall be forwarded to the state board of education on or before July [fifteenth] **15**. Any district secretary, superintendent or teacher who knowingly furnishes any false information in the reports, or neglects or refuses to make the reports, is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars or imprisonment in the county jail for not more than six months or by both such fine and imprisonment.

2. [Until July 1, 1982, the state board of education upon receipt of the report from the school district shall calculate the amount which each school district is to receive and on or before September fifteenth of each year shall distribute all moneys available August thirty-first to the several districts. Additional distributions of all moneys available November thirtieth and February twenty-eighth shall be made on or before December fifteenth and March fifteenth of each school year. The state board of education shall certify the amounts so apportioned to the commissioner of administration for his approval and warrants shall be issued payable to the several school districts of the state and forwarded to them. Beginning July 1, 1982,] The moneys appropriated for the state schools in any such year shall be distributed to the several districts entitled thereto through twelve monthly disbursements[. Each of the first six monthly disbursements during any fiscal year shall be equal to one-twelfth of the total amount appropriated for such purpose. Each of the remaining six monthly disbursements shall be in an amount which shall not be less than seven and one-half percent of the total appropriation;], provided[, however,] that the total disbursements through the twelve payments shall not exceed the total amount appropriated for such purpose.

163.087. SCHOOL DISTRICT TRUST FUND DISTRIBUTION, CERTAIN SCHOOL DISTRICTS — ELIGIBLE PUPILS DEFINED — DISTRICTS FOREGOING REDUCTION IN TOTAL OPERATING LEVY, CALCULATION OF ENTITLEMENT. — 1. Money in the school district trust fund shall be distributed to each school district in the state in the same ratio that the [number of eligible pupils] **weighted average daily attendance** in the district bears to the total [number of eligible pupils] **weighted average daily attendance** in all such school districts for the preceding year, except as otherwise provided in section 163.031. [As used in the preceding sentence, the term "eligible pupils" has the meaning ascribed to it in section 163.011.] In addition, each such district which is providing an approved program for pupils residing on federal lands shall receive an amount which shall be determined as follows: [An eligible pupil count] **Weighted average daily attendance** for pupils residing on federal lands shall be calculated separately for the district in the manner provided in section 163.011, treating such pupils as residents of the district for this purpose. Such [eligible student count] **weighted average daily attendance** shall be multiplied by one-half of the amount to be received by the district, pursuant to this subsection, per [eligible pupil] **weighted average daily attendance** not residing on federal lands.

2. Money in the fund shall be distributed monthly [on or before the fifteenth day of each month]. The state board of education shall certify the amounts to be distributed to the several school districts to the commissioner of administration who shall issue the warrants therefor.

3. Money received by a school district from the school district trust fund shall be deemed to be local tax revenue derived for the same fiscal year in which the money is received, for the teachers' and incidental funds[, and shall be deposited to such funds of the district in proportion to operating levies for the teachers' and incidental funds. The reduction in the operating levy pursuant to section 164.013, RSMo, shall be made proportionally in the funds where the remaining one-half of the money from the school district trust fund is deposited]. In the calculation of state aid for the district under the provisions of section 163.031, one-half the amount received by the district in the first preceding year shall be [deducted from the district's entitlement] **included in local effort** as provided in section 163.031.

163.091. CORRECTION OF ERRORS IN APPORTIONMENT OF STATE AID. — The state board of education may correct any error made in the apportionment of the state school moneys fund **and classroom trust fund** among the various [counties] **districts** of this state out of the state school moneys fund **and classroom trust fund** of the year next following the date when the mistake was made. The state board of education shall certify the amount set apart to any school district for the purpose of correcting any error to the commissioner of administration, and the commissioner of administration shall certify the amount so apportioned for proper payment, and the district treasurer shall credit the funds as the funds of the year in which the error occurred. If any district has received funds in excess of the amount to which it was entitled, its apportionment for the next succeeding year shall be reduced accordingly.

163.172. MINIMUM TEACHER'S SALARY — INFORMATION TO BE PROVIDED TO GENERAL ASSEMBLY — SALARY DEFINED. — 1. In school year 1994-95 and thereafter **until school year 2006-2007**, the minimum teacher's salary shall be eighteen thousand dollars. **Beginning in school year 2006-2007, the minimum teacher's salary shall be twenty-two thousand dollars; in school year 2007-2008, the minimum teacher's salary shall be twenty-three thousand dollars; in school year 2008-2009, the minimum teacher's salary shall be twenty-four thousand dollars; in school year 2009-2010 and thereafter, the minimum teacher's salary shall be twenty-five thousand dollars.** Beginning in the school year 1996-97 **until school year 2006-2007**, for any full-time teacher with a master's degree and at least ten [years] **years'** teaching experience in a public school or combination of public schools, the minimum salary shall be twenty-four thousand dollars. **Beginning in the school year 2006-2007, for any full-time teacher with a master's degree in an academic teaching field and at least ten years' teaching experience in a public school or combination of public schools,**

the minimum salary shall be thirty thousand dollars; in the 2007-2008 school year such minimum salary shall be thirty-one thousand dollars; in the 2008-2009 school year such minimum salary shall be thirty-two thousand dollars; and in the 2009-2010 school year such minimum salary shall be thirty-three thousand dollars.

2. Beginning with the budget requests for fiscal year 1991, the commissioner of education shall present to the appropriate committees of the general assembly information on the average Missouri teacher's salary, regional average salary data, and national average salary data.

3. All school salary information shall be public information.

4. As used in this section, the term "salary" shall be defined as the salary figure which appears on the teacher's contract and as determined by the local school district's basic salary schedule and does not include supplements for extra duties.

5. The minimum salary for any fully certificated teacher employed on a less than full-time basis by a school district, state school for the severely handicapped, the Missouri School for the Deaf, or the Missouri School for the Blind shall be prorated to reflect the amounts provided in [subsections 1 and 2] **subsection 1** of this section.

[6. Beginning with the 1996-97 school year, the general assembly shall make an annual appropriation to the excellence in education fund established in section 160.268, RSMo, for the purpose of fulfilling the minimum salary requirements for public school teachers in those districts meeting the qualifications established in subsection 7 of this section. The appropriation shall be sufficient to ensure that all qualifying districts are able to comply with the minimum salary requirements of this section. The department of elementary and secondary education shall determine, prior to each school year, those districts which shall be eligible to receive funds in this subsection during the school year. A qualifying district shall be eligible to receive funds appropriated in this subsection only during the first three years following the district's qualifying for such funds.

7. To qualify to begin receiving funds in subsection 6 of this section, a school district shall meet all of the following criteria:

(1) A portion of the real property of the district shall have been removed from the tax rolls due to the impact of state or federal government action;

(2) The district shall have received no more state aid on a per pupil basis for each of the last three school years, exclusive of categorical funding, than the district received for the 1992-93 school year;

(3) The salaries paid to all teachers in the district for the school year prior to qualification shall be totally compacted at the eighteen thousand dollar per year minimum established in this section;

(4) The district shall have in its employ for the school year prior to qualification one or more teachers with a master's degree and at least ten years' teaching experience in a public school or a combination of public schools;

(5) The district shall be financially distressed or have a history of deficit spending which, if continued, will cause the district to become financially distressed within three years;

(6) The district had an enrollment of no greater than four hundred pupils for the preceding school year; and

(7) The district shall have levied an operating levy for school purposes of not less than two dollars seventy-five cents per one hundred dollars of assessed valuation for the previous year and shall continue to levy at no less than that rate.

8. For any school year in which a school district receives funds pursuant to subsections 6 and 7 of this section, such school district shall continue to expend on teacher salaries no less than the amount it expended on teacher salaries in the school year immediately prior to the school year in which it first receives such funds.

9. No school district receiving funds pursuant to subsections 6 and 7 of this section shall receive additional funds pursuant to subsection 6 of this section by virtue of the annexation of another school district to such school district during or after the school year immediately prior

to the school year in which the annexing district first receives such funds; nor shall any school district annexed to a school district receiving funds pursuant to subsections 6 and 7 of this section also receive funds pursuant to subsection 6 of this section by virtue of such annexation if such annexation occurred during or after the school year immediately prior to the school year in which the annexing school district first receives such funds.]

164.011. ANNUAL ESTIMATE OF REQUIRED FUNDS, TAX RATES REQUIRED, CRITERIA FOR EXCEPTIONS — ESTIMATES, WHERE SENT. —

1. The school board of each district annually shall prepare an estimate of the amount of money to be raised by taxation for the ensuing school year, the rate required to produce the amount, and the rate necessary to sustain the school or schools of the district for the ensuing school year, to meet principal and interest payments on the bonded debt of the district and to provide the funds to meet other legitimate district purposes. In preparing the estimate, the board shall have sole authority in determining what part of the total authorized rate shall be used to provide revenue for each of the funds as authorized by section 165.011, RSMo. [Except as provided in subsection 3 of this section, for the 1996-97 school year and thereafter.] Prior to setting tax rates for the teachers' and incidental funds, the school board of each school district annually shall set the tax rate for the capital projects fund as necessary to meet the expenditures of the capital projects fund after all transfers allowed pursuant to subsection [7] 4 of section 165.011, RSMo[, for expenditures authorized by section 177.088, RSMo, and after the following transfers if needed: in the 1996-97 school year, one-twelfth of the maximum transfer allowed by section 165.011, RSMo; in the 1997-98 school year, one-sixth of the maximum transfer allowed by section 165.011, RSMo; in the 1998-99 school year, one-half of the maximum transfer allowed by section 165.011, RSMo; and in the 1999-2000 school year and thereafter, one hundred percent of the transfers allowed by section 165.011, RSMo]. Furthermore[, except that] the tax rate set in the capital projects fund shall not require the reduction of the equalized combined tax rates for the teachers' and incidental funds to be less than the greater of the minimum operating levy for the current year for school purposes established under subsection 2 of section 163.021, RSMo[, or the 1993 tax rate as used for state aid purposes in section 163.031, RSMo, plus that portion of the full amount of any voter-approved increase in the tax rate ceiling as defined in section 137.073, RSMo, approved after the first day of January, 1994, and before the thirtieth day of March, 1994, as levied in the current year, in any school district located in a county of the fourth classification that had an existing lease purchase arrangement for capital project purposes at the time of the election].

2. The school board of each district shall forward the estimate to the county clerk on or before September [first] 1. In school districts divided by county lines, the estimate shall be forwarded to the proper officer of each county in which any part of the district lies.

3. (1) For the 1997-98 school year and thereafter, prior to setting tax rates for the teachers' and incidental funds, the school board of each school district meeting the criteria specified in subdivision (2) of this subsection annually shall set the tax rate for the capital projects fund as necessary to meet the expenditures of the capital projects fund after all transfers allowed pursuant to subsection 7 of section 165.011, RSMo, for expenditures authorized by section 177.088, RSMo, and after one hundred percent of the transfers allowed by section 165.011, RSMo.

(2) Subdivision (1) of this subsection shall apply to each district which satisfies all of the following criteria:

(a) The district has a membership count for school year 1997-98 which is at least sixteen percent greater than the district's membership count for the 1991-92 school year; and

(b) The district passed a full waiver of Proposition C tax rate rollback pursuant to section 164.013, or approved an increase to the district's tax rate ceiling on or after June 1, 1994;

(c) The district is in compliance with or has paid all penalties required pursuant to section 165.016, RSMo, for the 1994-95, 1995-96 and 1996-97 school years without waiver or adjustment of the base school year certificated salary percentage; and

(d) The district approves, prior to July 1, 1998, a proposal to issue general obligation bonds which will cause the district's bonded indebtedness to be no less than eighty-five percent of the maximum bonded indebtedness of the district.]

164.303. SCHOOL DISTRICT BOND FUND ESTABLISHED, PURPOSE TO FUND HEALTH AND EDUCATIONAL FACILITIES AUTHORITY, COSTS AND GRANTS — LAPSE INTO GENERAL REVENUE FUND, PROHIBITED. — There is hereby established in the state treasury the "School District Bond Fund". Such amounts as may be necessary to fund the annual requests submitted by the health and educational facilities authority to fund the payment of costs and grants as provided in subsection 7 of section 360.106 and sections 360.111 to 360.118, RSMo, and necessary costs for administration of those provisions, but not to exceed seven million dollars per year, shall be transferred by appropriation to the fund from the gaming proceeds for education fund before any amounts in the gaming proceeds for education fund are transferred to the [state school moneys] **classroom trust** fund, as provided in section 160.534, RSMo. Moneys deposited in the school district bond fund shall be used by the health and educational facilities authority, subject to appropriation, to fund the payment of costs and grants as provided in subsection 7 of section 360.106 and sections 360.111 to 360.118, RSMo, and necessary costs for administration of those provisions. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, moneys in the fund shall not be transferred to the credit of the general revenue fund at the end of each biennium.

165.011. TUITION — ACCOUNTING OF SCHOOL MONEYS, FUNDS — USES — TRANSFERS TO AND FROM INCIDENTAL FUND, WHEN — EFFECT OF UNLAWFUL TRANSFERS — TRANSFERS TO DEBT SERVICE FUND, WHEN. — 1. The following funds are created for the accounting of all school moneys: teachers' fund, incidental fund, [free textbook fund,] capital projects fund and debt service fund. The treasurer of the school district shall open an account for each fund specified in this section, and all moneys received from the county school fund and all moneys derived from taxation for teachers' wages shall be placed to the credit of the teachers' fund. All tuition fees, state moneys received under [sections 162.975, RSMo, and] **section 163.031, RSMo**, and all other moneys received from the state except as herein provided shall be placed to the credit of the teachers' and incidental funds at the discretion of the district board of education, **except as provided in subsection 6 of section 163.031, RSMo**. [The portion of state aid received by the district pursuant to section 163.031, RSMo, based upon the portion of the tax rate in the debt service or capital projects fund, respectively, which is included in the operating levy for school purposes pursuant to section 163.011, RSMo, shall be placed to the credit of the debt service fund or capital projects fund, respectively.] Money received from other districts for transportation and money derived from taxation for incidental expenses shall be credited to the incidental fund. [Money apportioned for free textbooks shall be credited to the free textbook fund.] All money derived from taxation or received from any other source for the erection of buildings or additions thereto and the remodeling or reconstruction of buildings and the furnishing thereof, for the payment of lease-purchase obligations, for the purchase of real estate, or from sale of real estate, schoolhouses or other buildings of any kind, or school furniture, from insurance, from sale of bonds other than refunding bonds shall be placed to the credit of the capital projects fund. All moneys derived from the sale or lease of sites, buildings, facilities, furnishings, and equipment by a school district as authorized under section 177.088, RSMo, shall be credited to the capital projects fund. Money derived from taxation for the retirement of bonds and the payment of interest thereon shall be credited to the debt service fund, which shall be maintained as a separate bank account. Receipts from delinquent taxes shall be allocated to the several funds on the same basis as receipts from current taxes, except that where the previous years' obligations of the district would be affected by such distribution, the delinquent taxes shall be distributed according to the tax levies made for the years in which the obligations were incurred. All refunds received shall be placed to the credit of the fund from which the original

expenditures were made. Money donated to the school districts shall be placed to the credit of the fund where it can be expended to meet the purpose for which it was donated and accepted. Money received from any other source whatsoever shall be placed to the credit of the fund or funds designated by the board.

2. [The school board may expend from the incidental fund the sum that is necessary for the ordinary repairs of school property and an amount not to exceed the sum of expenditures for classroom instructional capital outlay, as defined by the department of elementary and secondary education by rule, in state-approved area vocational-technical schools and the greater of twenty-five percent of the guaranteed tax base for the preceding year or two and one-fourth percent of the district's entitlement for the preceding school year as established pursuant to line 1 of subsection 6 of section 163.031, RSMo, as of June thirtieth of the preceding school year for classroom instructional capital outlay, including but not limited to payments authorized pursuant to section 177.088, RSMo. Any and all payments authorized under section 177.088, RSMo, except as otherwise provided in this subsection, for the purchase or lease of sites, buildings, facilities, furnishings and equipment and all other expenditures for capital outlay shall be made from the capital projects fund. If a balance remains in the free textbook fund after books are furnished to pupils as provided in section 170.051, RSMo, it shall be transferred to the teachers' fund.] The **school** board may transfer [the] **any** portion of the **unrestricted** balance remaining in the incidental fund to the teachers' fund [that is necessary for the total payment of all contracted obligations to teachers]. **Any district that uses an incidental fund transfer to pay for more than twenty-five percent of the annual certificated compensation obligation of the district and has an incidental fund balance on June 30 in any year in excess of fifty percent of the combined incidental teachers' fund expenditures for the fiscal year just ended shall be required to transfer the excess from the incidental fund to the teachers' fund.** If a balance remains in the debt service fund, after the total outstanding indebtedness for which the fund was levied is paid, the board may transfer the unexpended balance to the capital projects fund. If a balance remains in the bond proceeds after completion of the project for which the bonds were issued, the balance shall be transferred from the incidental or capital projects fund to the debt service fund. After making all placements of interest otherwise provided by law, a school district may transfer from the capital projects fund to the incidental fund the interest earned from undesignated balances in the capital projects fund. [All other sections of the law notwithstanding, a school district may transfer from the incidental fund to the capital projects fund an amount equal to the capital expenditures for school safety and security purposes.] A school district may borrow from one of the following funds: teachers' fund, incidental fund, or capital projects fund, as necessary to meet obligations in another of those funds; provided that the full amount is repaid to the lending fund within the same fiscal year.

3. Tuition shall be paid from either the teachers' or incidental funds. **Employee benefits for certificated staff shall be paid from the teachers' fund.**

4. Other provisions of law to the contrary notwithstanding, the school board of a school district that [satisfies the criteria specified in subsection 5 of this section] **meets the provisions of subsection 6 of section 163.031, RSMo,** may transfer from the incidental fund to the capital projects fund the sum of:

(1) The amount to be expended for transportation equipment that is considered an allowable cost under state board of education rules for transportation reimbursements during the current year; plus

(2) Any amount necessary to satisfy obligations of the capital projects fund for state-approved area vocational-technical schools; plus

(3) **Current year obligations for lease-purchase obligations entered into prior to January 1, 1997; plus**

(4) **The amount necessary to repay costs of one or more guaranteed energy savings performance contracts to renovate buildings in the school district, provided that the contract is only for energy conservation measures as defined in section 640.651, RSMo,**

and provided that the contract specifies that no payment or total of payments shall be required from the school district until at least an equal total amount of energy and energy-related operating savings and payments from the vendor pursuant to the contract have been realized by the school district; plus

(5) An amount not to exceed the greater of:

(a) [The guaranteed tax base for the preceding year; or

(b) Nine percent of the district's entitlement for the preceding school year as established pursuant to line 1 of subsection 6 of section 163.031, RSMo, as of June thirtieth of the preceding school year, less any amount expended from the incidental fund for classroom instructional capital outlay pursuant to subsection 2 of this section; provided that transfer amounts authorized pursuant to this subdivision may only be transferred by a resolution of the school board approved by a majority of the board members in office when the resolution is voted upon and identifying the specific capital projects to be funded directly by the district by the transferred funds and an estimated expenditure date; and provided that if a district did not maintain compliance with the requirements of section 165.016 the preceding year without recourse to a waiver for that year or a base year adjustment received that year or a fund balance exclusion unless the fund balance exclusion had also been used the second preceding year, the transfer amount pursuant to this subdivision may be transferred only to the extent required to meet current year obligations of the capital projects fund.

5. In order to transfer funds pursuant to subsection 4 of this section, a school district shall:

(1) Meet the minimum criteria for state aid and for increases in state aid for the current year established pursuant to section 163.021, RSMo;

(2) Not incur a total debt, including short-term debt and bonded indebtedness in excess of fifteen percent of the guaranteed tax base for the preceding payment year multiplied by the number of resident and nonresident eligible pupils educated in the district in the preceding year;

(3) Set tax rates pursuant to section 164.011, RSMo;

(4) First apply any voluntary rollbacks or reductions to the total tax rate levied to the teachers' and incidental funds;

(5) In order to be eligible to transfer funds for paying lease purchase obligations:

(a) Incur such obligations, except for obligations for lease purchase for school buses, prior to January 1, 1997;

(b) Limit the term of such obligations to no more than twenty years;

(c) Limit annual installment payments on such obligations to an amount no greater than the amount of the payment for the first full year of the obligation, including all payments of principal and interest, except that the amount of the final payment shall be limited to an amount no greater than two times the amount of such first-year payment;

(d) Limit such payments to leasing nonathletic, classroom, instructional facilities as defined by the state board of education through rule; and

(e) Not offer instruction at a higher grade level than was offered by the district on July 12, 1994.

6. A school district shall be eligible to transfer funds pursuant to subsection 7 of this section if:

(1) Prior to August 28, 1993:

(a) The school district incurred an obligation for the purpose of funding payments under a lease purchase contract authorized under section 177.088, RSMo;

(b) The school district notified the appropriate local election official to place an issue before the voters of the district for the purpose of funding payments under a lease purchase contract authorized under section 177.088, RSMo; or

(c) An issue for funding payments under a lease purchase contract authorized under section 177.088, RSMo, was approved by the voters of the district; or

(2) Prior to November 1, 1993, a school board adopted a resolution authorizing an action necessary to comply with subsection 9 of section 177.088, RSMo. Any increase in the operating

levy of a district above the 1993 tax rate resulting from passage of an issue described in paragraph (b) of subdivision (1) of this subsection shall be considered as part of the 1993 tax rate for the purposes of subsection 1 of section 164.011, RSMo.

7. Prior to transferring funds pursuant to subsection 4 of this section, a school district may transfer, pursuant to this subsection, from the incidental fund to the capital projects fund an amount as necessary to satisfy an obligation of the capital projects fund that satisfies at least one of the conditions specified in subsection 6 of this section, but not to exceed its payments authorized under section 177.088, RSMo, for the purchase or lease of sites, buildings, facilities, furnishings, equipment, and all other expenditures for capital outlay, plus the amount to be expended for transportation equipment that is considered an allowable cost under state board of education rules for transportation reimbursements during the current year plus any amount necessary to satisfy obligations of the capital projects fund for state-approved area vocational-technical schools. A school district that is in compliance with section 165.016 during the second preceding year or has paid all penalties for the second preceding year may transfer from the incidental fund to the capital projects fund the amount necessary to meet the obligation plus the transfers pursuant to subsection 4 of this section.

8.] **One hundred sixty-two thousand three hundred twenty-six dollars; or**

(b) Seven percent of the state adequacy target multiplied by the district's weighted average daily attendance, provided that transfer amounts in excess of current year obligations of the capital projects fund authorized under this subdivision may be transferred only by a resolution of the school board approved by a majority of the board members in office when the resolution is voted on and identifying the specific capital projects to be funded directly by the district by the transferred funds and an estimated expenditure date.

5. **Beginning in the 2006-2007 school year, a district meeting the provisions of subsection 6 of section 163.031, RSMo, and not making the transfer under subdivision (5) of subsection 4 of this section, nor making payments or expenditures related to obligations made under section 177.088, RSMo, may transfer from the incidental fund to the debt service fund or the capital projects fund the greater of:**

(1) The state aid received in the 2005-2006 school year as a result of no more than eighteen cents of the sum of the debt service and capital projects levy used in the foundation formula and placed in the respective debt service or capital projects fund, whichever fund had the designated tax levy; or

(2) Five percent of the state adequacy target multiplied by the district's weighted average daily attendance.

6. **Beginning in the [1995-96] 2006-2007 school year, the department of elementary and secondary education shall deduct from a school district's state aid calculated pursuant to section 163.031, RSMo, an amount equal to the amount of any transfer of funds from the incidental fund to the capital projects fund or debt service fund performed during the previous year in violation of this section; except that the state aid shall be deducted [in equal amounts] over [the] no more than five school years following the school year of an unlawful transfer [provided that:**

(1) The district shall provide written notice to the state board of education, no later than June first of the first school year following the school year of the unlawful transfer, stating the district's intention to comply with the provisions of subdivisions (1) to (4) of this subsection and have state aid deducted for that unlawful transfer over a five-year period;

(2) On or before September first of the second school year following the school year of the unlawful transfer, the district shall approve an increase to the district's operating levy for school purposes to the greater of: two dollars and seventy-five cents per one hundred dollars assessed valuation or the levy which produces an increase in total state and local revenues, as determined by the department, in comparison to the first school year following the school year of the unlawful transfer which is equal to or greater than the amount of state aid to be deducted pursuant to this subsection each school year for such unlawful transfer, provided that increases

required pursuant to this subdivision for subsequent unlawful transfers shall be made in comparison to the latter tax rate described in this subdivision;

(3) During each school year after the school year in which the operating levy is increased pursuant to subdivision (2) of this subsection and in which state aid is deducted pursuant to subdivisions (1) to (4) of this subsection, the district shall maintain an operating levy for school purposes which produces total state and local revenues for the district which are no less than the total state and local revenues produced by the levy required pursuant to subdivision (2) of this subsection;

(4) During each school year state aid is deducted pursuant to subdivisions (1) to (4) of this subsection except for the 1998-99 school year, the district shall maintain compliance with the requirements of section 165.016 without any recourse to waivers or base-year adjustments and without the option to demonstrate compliance based upon the district's fund balances; and

(5) If, in any school year state aid is deducted pursuant to subdivisions (1) to (4) of this subsection, the district fails to comply with any requirement of subdivisions (1) to (4) of this subsection, the full, remaining amount of state aid to be deducted pursuant to this subsection shall be deducted from the district's state aid payments by the department during such school year.

9. On or before June 30, 1999, a school district may transfer to the capital projects fund from the balances of the teachers' and incidental funds any amount, but only to the extent that the amount transferred is equal to or less than the amount that the teachers' and incidental funds' unrestricted balances on June 30, 1995, exceeded eight percent of expenditures from the teachers' and incidental funds for the year ending June 30, 1995.

10. (1) Other provisions of law to the contrary notwithstanding, a school district which satisfies all conditions specified in subdivision (2) of this subsection may make the transfer allowed in subdivision (3) of this subsection.

(2) To make the transfer allowed under subdivision (3) of this subsection, a school district shall:

(a) Have a membership count for school year 1997-98 which is at least sixteen percent greater than the district's membership count for the 1991-92 school year; and

(b) Have passed a full waiver of Proposition C tax rate rollback pursuant to section 164.013, RSMo, or approved an increase to the district's tax rate ceiling on or after June 1, 1994; and

(c) Be in compliance or have paid all penalties required pursuant to section 165.016 for the 1994-95, 1995-96 and 1996-97 school years without waiver or adjustment of the base school year certificated salary percentage; and

(d) After all transfers, have a remaining balance on June 30, 1998, in the combined teachers' and incidental funds which is no less than ten percent of the combined expenditures from those funds for the 1997-98 school year.

(3) A district which satisfies all of the criteria specified in paragraphs (a) to (d) of subdivision (2) of this subsection may, on or before June 30, 1998, make a one-time combined transfer from the teachers' and incidental funds to the capital projects fund of an amount no greater than the sum of the following amounts:

(a) The product of the district's equalized assessed valuation for 1994 times the difference of the district's equalized operating levy for school purposes for 1994 minus the district's equalized operating levy for school purposes for 1993;

(b) The product of the district's equalized assessed valuation for 1995 times the difference of the district's equalized operating levy for school purposes for 1995 minus the district's equalized operating levy for school purposes for 1993;

(c) The product of the district's equalized assessed valuation for 1996 times the difference of the district's equalized operating levy for school purposes for 1996 minus the district's equalized operating levy for school purposes for 1993;

(d) The product of the district's equalized assessed valuation for 1997 times the difference of the district's equalized operating levy for school purposes for 1997 minus the district's

equalized operating levy for school purposes for 1993; provided that the remaining balance in the incidental fund shall be no less than twelve percent of the total expenditures during that fiscal year from the incidental fund.

(4) A district which makes a transfer pursuant to subdivision (3) of this subsection shall be subject to compliance with the requirements of section 165.016 for fiscal years 1999, 2000 and 2001, without the option to request a waiver or an adjustment of the base school year certificated salary percentage.

(5) Other provisions of section 165.016 to the contrary notwithstanding, the transfer of an amount of funds from either the teachers' or incidental fund to the capital projects fund pursuant to subdivision (3) of this subsection shall not be considered an expenditure from the teachers' or incidental fund for the purpose of determining compliance with the provisions of subsections 1 and 2 of section 165.016.

11. In addition to other transfers authorized under subsections 1 to 9 of this section, a district may transfer from the teachers' and incidental funds to the capital projects fund the amount necessary to repay costs of one or more guaranteed energy savings performance contracts to renovate buildings in the school district; provided that the contract is only for energy conservation measures, as defined in section 640.651, RSMo, and provided that the contract specifies that no payment or total of payments shall be required from the school district until at least an equal total amount of energy and energy-related operating savings and payments from the vendor pursuant to the contract have been realized by the school district.

12. In addition to other transfers authorized pursuant to subsections 1 to 9 of this section, any school district that has undergone at least a twenty-percent increase in assessed valuation from the preceding year because of the construction of a power plant may make a one-time transfer on the basis of each such increase to the capital projects fund from the balances of the teachers' and incidental funds' unrestricted balances in an amount equal to twice the amount of such transfer otherwise permitted pursuant to this section for the year in which such one-time transfer is made; provided that such transfer shall be made prior to the end of the second fiscal year following the fiscal year in which the increase in assessed valuation is effective. Such one-time transfer may be made without regard to whether the transferred funds are used for current expenditures. No transfer shall be made pursuant to this subsection after June 30, 2003.

13.] based on a plan from the district approved by the commissioner of elementary and secondary education.

7. A school district may transfer unrestricted funds from the capital projects fund to the incidental fund in any year in which that year's June [thirtieth] **30** combined incidental and teachers' funds unrestricted balance compared to the combined incidental and teachers' funds expenditures would be less than ten percent without such transfer.

[14. School districts that have issued qualified zone academy bonds pursuant to 26 U.S.C. Section 1397E, also known as the Taxpayers Relief Act of 1997, prior to December 31, 2002, and have placed bond proceeds into an interest-bearing account in the capital projects fund without meeting the requirement to set a levy in the debt service fund as required in section 164.161, RSMo, shall be permitted to make transfers to the debt service fund in an amount up to but not exceeding the original amount of bond proceeds invested, under the following conditions:

(1) The district has an unrestricted balance in the capital projects fund equivalent to the original amount of bond proceeds invested that may be transferred to the debt service fund; or

(2) If the district does not have sufficient unrestricted funds in the capital projects fund pursuant to subdivision (1) of this subsection, then additional funds may be transferred from the incidental fund to the debt service fund up to the amount needed to equal the original amount of bond proceeds invested, but such transfer in combination with other district expenditures may not reduce the ending fund balance in the combined teachers' and incidental funds below ten percent balance of the expenditures in those funds;

(3) If the transfers allowed pursuant to subdivisions (1) and (2) of this subsection are not sufficient to equal the original amount of bond proceeds invested, the district shall provide an annual tax in the debt service fund sufficient to generate the amount required within five years from June 23, 2003;

(4) The district shall report the following information as prescribed by the department of elementary and secondary education on the annual secretary of the board report required to be submitted pursuant to section 162.821, RSMo, for the fiscal year ending June 30, 2003:

(a) Documentation of the establishment of the local academy/business partnership and the ten percent business match for qualified zone academy bonds pursuant to 26 U.S.C. Section 1397E;

(b) A detailed schedule of completed and planned expenditures for the projects as specified in the department-approved qualified zone academy bond application, identified by building with certification by the district that a minimum of ninety-five percent of the voter-approved qualified zone academy bonds will be expended within ten years from the date of the sale of bonds; and

(c) The business name, office location, state of incorporation, and names of any representative of the bonding institution and bond counsel, if applicable, who handled the qualified zone academy bond issuance, including all individuals who signed correspondence to or made presentations to the school district concerning such bonds; and providing the amount of fees or costs of issuance paid to the bonding institution and bond counsel stated as a whole dollar amount and as a percentage of the qualified zone academy bond;

(5) Any transfer made pursuant to subdivision (1) or (2) of this subsection shall be reported on the district's fiscal year 2003 financial records;

(6) If the district fails to provide the information in the manner prescribed by the department on the annual secretary of the board report by December 31, 2003, the amount of unrestricted fund balance transferred into the debt service fund from the capital projects fund or incidental fund shall be returned to the original fund from which the transfer was made and an annual tax established in the debt service fund sufficient to pay the principal and interest of the bonds as they fall due.

15. On or before August 31, 2005, a school district located in a 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 and in a 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 and a school district with an assessed valuation of no less than twenty-one million seven hundred fifty thousand dollars and no more than twenty-two million dollars located in a 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 shall be permitted to make a one-time additional transfer from the incidental fund to the capital projects fund in an appropriate amount for the specific purpose of completing a sewer project in order to comply with regulations established by the department of natural resources.

16. On or before August 31, 2005, a school district with an assessed valuation of at least thirty-one million dollars and less than thirty-two million dollars located in a 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 shall be permitted to make a one-time additional transfer from the incidental fund to the capital projects fund in an appropriate amount for the specific purpose of improving the library media and technology center that serves the district's high school and middle school.

17. In addition to other transfers authorized pursuant to this section, an eligible school district may transfer from the incidental fund to the capital projects fund to make expenditures which decrease the total interest cost of payments for a lease-purchase obligation authorized by section 177.088, RSMo. An eligible school district shall:

(1) Have never made a previous transfer pursuant to this subsection;

- (2) Have ending cash reserves during the year of the transfer in incidental and teachers' funds combined equal to or greater than fifteen percent of expenditures;
- (3) Decrease the interest cost of all remaining lease-purchase payments by at least the cost of refinancing plus ten percent;
- (4) Make payments equal to or greater than the amount of the transfer for a lease-purchase obligation meeting an eligibility requirement of subsection 5 or 6 of this section;
- (5) Levy in the incidental and teachers' funds a levy greater than two dollars and seventy-five cents during the year of the transfer and each of the two previous years;
- (6) Demonstrate compliance with the requirements of section 165.016 or have paid all outstanding penalties to eligible staff for five consecutive years prior to the year of the transfer; and
- (7) Have an average salary for teachers in the district which equals or exceeds for three consecutive years prior to the year of the transfer at least one of the following:
 - (a) The average salary for teachers statewide; or
 - (b) The average salary for teachers in its senatorial district.]

165.012. SCHOOL DISTRICT FINANCIAL REPORTING REQUIREMENTS TO THE DEPARTMENT — INFORMATION TO BE AVAILABLE ON DEPARTMENT'S WEB SITE. — 1. Each school district shall annually report to the department of elementary and secondary education, within thirty days, the following district information as of December thirty-first of the current school year;

- (1) The district's unrestricted fund balance in the incidental fund and in the teacher's fund;**
- (2) The amount of tax anticipation borrowed funds placed in the incidental fund and in the teacher's fund since the beginning of the school year; and**
- (3) The net amount of transfer from the incidental fund and teacher's fund to the capital projects fund and to the debt service fund since the beginning of the school year.**

2. For the 2005-2006 school year, each school district shall also provide the same information required under subsection 1 of this section as of December 31, 2003, and as of December 31, 2004.

3. The information reported under this section shall be included on the department's website, for the current school year and for each of the preceding four school years to the extent that such information was required to be reported under subsections 1 and 2 of this section.

165.016. AMOUNT TO BE SPENT ON TUITION, RETIREMENT AND COMPENSATION — BASE SCHOOL YEAR CERTIFICATED SALARY PERCENTAGE — EXEMPTION AND REVISION — PENALTY — EXCEPTIONS — TERMINATION DATE. — 1. A school district shall expend as a percentage of current operating cost, for tuition, teacher retirement and compensation of certificated staff, a percentage that is for the 1994-95 and 1995-96 school years no less than three percentage points less than the base school year certificated salary percentage and for the 1996-97 school year, no less than two percentage points less than the base school year certificated salary percentage. A school district may exclude transportation and school safety and security expenditures from the current operating cost calculation of the base year and the year or years for which the compliance percentage is calculated. The base school year certificated salary percentage shall be the two-year average percentage of the 1991-92 and 1992-93 school years except as otherwise established by the state board under subsection 4 of this section; except that, for any school district experiencing, over a period of three consecutive years, an average yearly increase in average daily attendance of at least three percent, the base school year certificated salary percentage may be the two-year average percentage of the last two years of such period of three consecutive years, at the discretion of the school district.

- 2. Beginning with the 1997-98 school year, a school district shall:**

(1) Expend, as a percentage of current operating cost, as determined in subsection 1 of this section, for tuition, teacher retirement and compensation of certificated staff, a percentage that is no less than two percentage points less than the base school year certificated salary percentage; or

(2) For any year in which no payment of a penalty is required for the district under subsection 6 of this section, have an unrestricted fund balance in the combined incidental and teachers' funds on June thirtieth which is equal to or less than ten percent of the combined expenditures for the year from those funds.

3. Beginning with the 1999-2000 school year:

(1) As used in this subsection, "fiscal instructional ratio of efficiency" or "FIRE" means the quotient of the sum of the district's current operating costs, [as defined in section 163.011, RSMo.] **which for this section shall mean all expenditures for instruction and support services, excluding capital outlay and debt service expenditures less the revenue from federal categorical sources, food service, student activities, and payments from other districts**, for all kindergarten through grade twelve direct instructional and direct pupil support service functions plus the costs of improvement of instruction and the cost of purchased services and supplies for operation of the facilities housing those programs, and excluding student activities, divided by the sum of the district's current operating cost, **as defined in this subdivision**, for kindergarten through grade twelve, plus all tuition revenue received from other districts minus all noncapital transportation and school safety and security costs;

(2) A school district shall show compliance with this section in school year 1998-99 and thereafter by the method described in subsections 1 and 2 of this section, or by maintaining or increasing its fiscal instructional ratio of efficiency compared to its FIRE for the 1997-98 base year.

4. (1) The state board of education may exempt a school district from the requirements of this section upon receiving a request for an exemption by a school district. The request shall show the reason or reasons for the noncompliance, and the exemption shall apply for only one school year. Requests for exemptions under this subdivision may be resubmitted in succeeding years.

(2) A school district may request of the state board a one-time, permanent revision of the base school year certificated salary percentage. The request shall show the reason or reasons for the revision.

5. Any school district requesting an exemption or revision under subsection 4 of this section must notify the certified staff of the district in writing of the district's intent. Prior to granting an exemption or revision, the state board shall consider comments from certified staff of the district. The state board decision shall be final.

6. Any school district which is determined by the department to be in violation of the requirements of subsection 1 or 2 of this section, or both, shall compensate the building-level administrative staff and nonadministrative certificated staff during the year following the notice of violation by an additional amount which is equal to one hundred ten percent of the amount necessary to bring the district into compliance with this section for the year of violation. In any year in which a penalty is paid, the district shall pay the penalty specified in this subsection in addition to the amount required under this section for the current school year.

7. Any additional transfers from the teachers' or incidental fund to the capital projects fund beyond the transfers authorized by state law and state board policy in effect on January 1, 1996, shall be considered expenditures from the teachers' or incidental fund for the purpose of determining compliance with the provisions of subsections 1, 2 and 3 of this section.

8. The provisions of this section shall not apply to any district [receiving state aid pursuant to subsection 6 of section 163.031, RSMo, based on its 1992-93 payment amount per eligible pupil, which is less than fifty percent of the statewide average payment amount per eligible pupil paid during the previous year] **wherein the local effort is greater than its weighted average**

daily attendance multiplied by the state adequacy target multiplied by the dollar value modifier under section 163.031, RSMo.

9. The provisions of subsections 1 to 8 of this section shall not apply to any district that has unrestricted fund balances in the combined incidental and teacher funds on June [thirtieth] **30** of the preceding year which are equal to or less than seventeen percent of the combined expenditure for the preceding year from these funds in any year in which state funds distributed pursuant to **subsections 1 and 2 of** section 163.031, RSMo, [lines 1 to 10 plus line 14] are no more than ninety-six percent of such state funds distributed in fiscal year 2002.

10. The provisions of subsections 1 to 8 of this section shall not apply to any district which meets the following criteria:

(1) With ten percent or more of its assessed valuation that is owned by one person or corporation as commercial or personal property who is delinquent in a property tax payment;

(2) With unrestricted fund balances in the combined incidental and teacher funds on June [thirtieth] **30** of the preceding year which are equal to or less than one-half of the local property tax revenue for the previous year; and

(3) In any year in which state funds distributed pursuant to **subsections 1 and 2 of** section 163.031, RSMo, [lines 1 to 10 plus line 14] are no more than ninety-six percent of such state funds distributed in fiscal year 2002.

11. The provisions of this section shall terminate on June 30, 2007.

166.275. APPROPRIATIONS TO SATISFY CERTAIN JUDGMENTS TRANSFERRED TO SCHOOL MONEYS FUND — AMOUNT, DISTRIBUTION. — 1. Any amount of the difference by which the total amount appropriated by the state to school districts, in accordance with a judgment or order based on the equal protection clause of the fourteenth amendment to the Constitution of the United States, for fiscal year 1999 is less than the amount appropriated for the same purpose in fiscal year 1994 in addition to any unexpended appropriation for the 1998 fiscal year that results in additional unobligated resources for the state in fiscal year 1999 shall be transferred to the state school moneys fund and distributed in the manner provided in section 163.031, RSMo.

2. If the total amount appropriated by the state to school districts, in accordance with a judgment or order based on the equal protection clause of the fourteenth amendment to the Constitution of the United States, for fiscal year 2000 or any subsequent fiscal year is less than the amount appropriated for the same purpose in fiscal year 1999, any amount of the difference, in addition to any unexpended appropriation for the prior fiscal year that results in additional unobligated resources for the state beginning in fiscal year 2000 shall be distributed as follows:

(1) Up to the first seventy-five million dollars **of such funds**, or such lesser amount determined by appropriation to be sufficient to fully fund [district entitlements pursuant to] **subsections 1 and 2 of** section 163.031, RSMo, [with a proration factor no less than one, of such funds] shall be transferred to the state school moneys fund and distributed in the manner provided in section 163.031, RSMo; and

(2) Beginning in fiscal year 2000, after distributing funds pursuant to subdivision (1) of this subsection, the next twenty-five million dollars, or such lesser amount determined by appropriation to be sufficient, of the remaining funds shall be transferred to fully fund increases in appropriations for transportation categorical aid provided pursuant to [line 11 of subsection 6 of] section 163.031, RSMo, and any remainder of such twenty-five million dollars shall be transferred to fund other categorical state aid provided pursuant to section 163.031, RSMo; provided that, for school year 1999-2000 only, such increase in transportation funding may be placed by districts in their capital projects fund and shall be placed as otherwise provided by law in all other years; and

(3) After distributing funds pursuant to subdivisions (1) and (2) of this subsection, [the next twenty-five million dollars] **any remaining funds**, or such amount determined by appropriation to be sufficient to fully fund [district entitlements pursuant to] **subsections 1 and 2 of** section

163.031, RSMo, [with a proration factor no less than one, of such funds] shall be transferred to the state school moneys fund and distributed in the manner provided in section 163.031, RSMo; and

(4) After distributing funds pursuant to subdivisions (1), (2) and (3) of this subsection, any remaining funds shall be transferred to fully fund categorical state aid provided pursuant to section 163.031, RSMo, for transportation, vocational education, special education, gifted education, remedial reading and implementation costs of assessments established pursuant to section 160.526, RSMo].

167.126. CHILDREN ADMITTED TO CERTAIN PROGRAMS OR FACILITIES, RIGHT TO EDUCATIONAL SERVICES — SCHOOL DISTRICT, PER PUPIL COST, PAYMENT — INCLUSION IN AVERAGE DAILY ATTENDANCE, PAYMENTS IN LIEU OF TAXES, WHEN. — 1. Children who are admitted to programs or facilities of the department of mental health or whose domicile is one school district in Missouri but who reside in another school district in Missouri as a result of placement arranged by or approved by the department of mental health, the department of social services or placement arranged by or ordered by a court of competent jurisdiction shall have a right to be provided the educational services as provided by law and shall not be denied admission to any appropriate regular public school or special school district program or program operated by the state board of education, as the case may be, where the child actually resides because of such admission or placement; provided, however, that nothing in this section shall prevent the department of mental health, the department of social services or a court of competent jurisdiction from otherwise providing or procuring educational services for such child.

2. Each school district or special school district constituting the domicile of any child for whom educational services are provided or procured under this section shall pay toward the per pupil costs for educational services for such child. A school district which is not a special school district shall pay an amount equal to the average sum produced per child by the local tax effort of the district of domicile. A special school district shall pay an amount not to exceed the average sum produced per child by the local tax efforts of the domiciliary districts.

3. When educational services have been provided by the school district or special school district in which a child actually resides, other than the district of domicile, the amounts as provided in subsection 2 for which the domiciliary school district or special school district is responsible shall be paid by such district directly to the serving district. The school district, or special school district, as the case may be, shall send a written voucher for payment to the regular or special district constituting the domicile of the child served and the domiciliary school district or special school district receiving such voucher shall pay the district providing or procuring the services an amount not to exceed the average sum produced per child by the local tax efforts of the domiciliary districts. In the event the responsible district fails to pay the appropriate amount to the district within ninety days after a voucher is submitted, the state department of elementary and secondary education shall deduct the appropriate amount due from the next payments of any state financial aid due that district and shall pay the same to the appropriate district.

4. In cases where a child whose domicile is in one district is placed in programs or facilities operated by the department of mental health or resides in another district pursuant to assignment by that department or is placed by the department of social services or a court of competent jurisdiction into any type of publicly contracted residential site in Missouri, the department of elementary and secondary education shall, as soon as funds are appropriated, pay the serving district from funds appropriated for that purpose the amount by which the per pupil costs of the educational services exceeds the amounts received from the domiciliary district except that any other state money received by the serving district by virtue of rendering such service shall reduce the balance due.

5. Institutions providing a place of residence for children whose parents or guardians do not reside in the district in which the institution is located shall have authority to enroll such children in a program in the district or special district in which the institution is located and such

enrollment shall be subject to the provisions of subsections 2 and 3 of this section. The provisions of this subsection shall not apply to placement authorized pursuant to subsection 1 of this section or if the placement occurred for the sole purpose of enrollment in the district or special district. "Institution" as used in this subsection means a facility organized under the laws of Missouri for the purpose of providing care and treatment of juveniles.

6. Children residing in institutions providing a place of residence for three or more such children whose domicile is not in the state of Missouri may be admitted to schools or programs provided on a contractual basis between the school district, special district or state department or agency and the proper department or agency, or persons in the state where domicile is maintained. Such contracts shall not be permitted to place any financial burden whatsoever upon the state of Missouri, its political subdivisions, school districts or taxpayers.

7. For purposes of this section the domicile of the child shall be the school district where the child would have been educated if the child had not been placed in a different school district. No provision of this section shall be construed to deny any child domiciled in Missouri appropriate and necessary, gratuitous public services.

8. For the purpose of distributing state aid under section 163.031, RSMo, a child receiving educational services provided by the district in which the child actually resides, other than the district of domicile, shall be included [as an "eligible pupil"] **in average daily attendance**, as defined under section 163.011, RSMo, of the district providing the educational services for the child.

9. Each school district or special school district where the child actually resides, other than the district of domicile, may receive payment from the department of elementary and secondary education, in lieu of receiving the local tax effort from the domiciliary school district. Such payments from the department shall be subject to appropriation and shall only be made for children that have been placed in a school other than the domiciliary school district by a state agency or a court of competent jurisdiction and from whom excess educational costs are billed to the department of elementary and secondary education.

167.151. ADMISSION OF NONRESIDENT AND OTHER TUITION PUPILS — CERTAIN PUPILS EXEMPT FROM TUITION — SCHOOL TAX CREDITED AGAINST TUITION — OWNERS OF AGRICULTURAL LAND IN MORE THAN ONE DISTRICT, OPTIONS, NOTICE REQUIRED, WHEN.

— 1. The school board of any district, in its discretion, may admit to the school pupils not entitled to free instruction and prescribe the tuition fee to be paid by them, except as provided in sections 167.121 and 167.131.

2. Orphan children, children with only one parent living, and children whose parents do not contribute to their support — if the children are between the ages of six and twenty years and are unable to pay tuition — may attend the schools of any district in the state in which they have a permanent or temporary home without paying a tuition fee.

3. Any person who pays a school tax in any other district than that in which he resides may send his children to any public school in the district in which the tax is paid and receive as a credit on the amount charged for tuition the amount of the school tax paid to the district; except that any person who owns real estate of which eighty acres or more are used for agricultural purposes and upon which his residence is situated may send his children to public school in any school district in which a part of such real estate, contiguous to that upon which his residence is situated, lies and shall not be charged tuition therefor; so long as thirty-five percent of the real estate is located in the school district of choice. The school district of choice shall count the children [as eligible pupils] **in its average daily attendance** for the purpose of distribution of state aid through the foundation formula.

4. Any owner of agricultural land who, pursuant to subsection 3 of this section, has the option of sending his children to the public schools of more than one district shall exercise such option as provided in this subsection. Such person shall send written notice to all school districts involved specifying to which school district his children will attend by June [thirtieth] **30** in

which such a school year begins. If notification is not received, such children shall attend the school in which the majority of his property lies. Such person shall not send any of his children to the public schools of any district other than the one to which he has sent notice pursuant to this subsection in that school year or in which the majority of his property lies without paying tuition to such school district.

5. If a pupil is attending school in a district other than the district of residence and the pupil's parent is teaching in the school district or is a regular employee of the school district which the pupil is attending, then the district in which the pupil attends school shall allow the pupil to attend school upon payment of tuition in the same manner in which the district allows other pupils not entitled to free instruction to attend school in the district. The provisions of this subsection shall apply only to pupils attending school in a district which has an enrollment in excess of thirteen thousand pupils and not in excess of fifteen thousand pupils and which district is located in a county of the first classification with a charter form of government which has a population in excess of six hundred thousand persons and not in excess of nine hundred thousand persons.

167.332. DEPARTMENT TO EVALUATE AND ASSESS NEEDS — DETAILED INSTRUCTION PLAN TO BE SUBMITTED — RECEIPT OF STATE AID — YEAR-END STUDENT REPORTS — NEW CENTERS FUNDED ON PRIORITY BASIS. — 1. The department of elementary and secondary education shall evaluate each alternative education plan and assess the needs of each area vocational learning center. Each area vocational learning center shall submit annually to the department of elementary and secondary education a detailed instruction plan for the implementation and continuation of the area learning center. For the purposes of receiving state aid pursuant to section 163.031, RSMo, the resident district shall count students who qualify under sections 167.320 to 167.332. A student shall be counted for the period of time he attends the area learning center to a maximum of six hours per day, even if the hours of attendance are not within the schedule of the resident district. [All funds transmitted to the resident district under section 148.360, RSMo, section 149.015, RSMo, and sections 163.031 and 163.087, RSMo, for the portion of time the student attends the area learning center, shall be transferred by the resident district to the area learning center.] Additional state and federal funds appropriated by the general assembly shall be awarded to the area learning centers as determined by the department of elementary and secondary education based upon each area learning center's needs and on the level of the appropriation.

2. Updated instructional plans and year-end student reports shall be required annually from the area vocational learning centers and shall be a condition for additional funding. New area vocational learning centers shall be funded on a priority basis determined by the potential to be served and the community demand.

167.349. CHARTER SCHOOLS, ESTABLISHMENT. — In any school district to which any provisions of sections 167.340 to 167.346 apply and in which district charter schools may be established pursuant to section 160.400, RSMo, any state college or university which provides educational programs to any part of such district **and any campus of the state university located in a county of the third classification** may sponsor one or more charter schools pursuant to section 160.400, RSMo, and, in addition to the purposes for which charter schools may be established pursuant to sections 160.400 to 160.420, RSMo, such charter schools may be established to emphasize remediation of reading deficiencies.

168.281. PERMANENT EMPLOYEES, REMOVAL, PROCEDURE — SUSPENSION, DEMOTION — REDUCTION OF PERSONNEL (METROPOLITAN DISTRICTS). — 1. After completion of satisfactory probationary service, appointments of employees shall become permanent subject to removal for any one or more causes herein described as well as to the right of the board to terminate services of all who attain the age of compulsory retirement fixed by the retirement system.

2. (1) No employee whose appointment has become permanent may be removed, aside from compulsory retirement, except for one or more of the following causes: Immorality, **felony conviction of a crime under any state or federal criminal statute**, inefficiency or **incompetency** in line of duty, violation of the published regulations of the school district, violation of the laws of Missouri governing the public schools of the state, or that his physical or mental condition is such that it incapacitates him from properly performing his duties or from properly associating with children, and then only after the personnel director has given written notice to the employee, by registered mail with return receipt of his suspension and proposed discharge. The registered letter is to notify the employee:

- (a) Of the charges on which the suspension and proposed discharge is based;
- (b) Of the date, time, and place of the hearing of the charges by the personnel committee;
- (c) Of the employee's right to be present at the hearing and to have counsel or other representative of his choice;
- (d) Of his right to testify and to offer testimony of witnesses as well as other evidence sustaining his defense, and to cross-examine adverse witnesses and to generally conduct a defense;
- (e) And of the necessity, in order for him to avail himself of the aforesaid opportunity to defend himself against the charges, that he notify the personnel director in writing, at least three days before the date of the hearing, of his intention to offer the defense.

(2) The hearing of the committee is to be held not less than ten nor more than fifteen days after the mailing date of the notice of hearing to the employee, except by mutual agreement of the committee and the employee. Failure of the employee to give the three days' notice in writing of his election to defend, or having given the notice, failure of the employee to appear at the hearing, shall each be considered by the committee as an admission of the truth of the charges and the committee may rule accordingly. The committee may, in its discretion, to avoid undue hardship, and upon a sufficient showing by the employee of valid and cogent reasons for his failure to notify the committee of his election to defend, or of his subsequent failure to appear at the hearing, reset the hearing in the same manner as before.

(3) Upon conducting the hearing of the charges, or if no defense is offered, upon considering the charges, the personnel committee by majority vote shall make its decision as soon as practicable and shall immediately thereafter notify the employee of its decision by registered mail. The committee may rule

- (a) That the employee's suspension was justified and that he is discharged with loss of pay as of the date of his suspension;
- (b) That the suspension was unjustified and no grounds calling for his discharge have been proven and that the employee shall immediately be restored to his former position without any loss of pay;
- (c) That the proven charges are of such a nature that they can be removed or remedied by transferring the employee to a different position, grade, classification, school or building in which the employee shall lose no pay during his suspension prior to the committee's decision;
- (d) Or the committee may make any ruling, less severe than that of discharge, which the committee may deem meet and just under the circumstances including suspension with the loss of pay. The decision of the personnel committee shall be final; provided, however, that upon the request of the employee affected the board shall review the record of the proceedings before the personnel committee and may, in its discretion, grant the employee a hearing before the board. Upon hearing the board may affirm, rescind or modify the decision of the committee and make any other orders in connection therewith that are appropriate under the circumstances.

3. No employee whose appointment has become permanent shall be suspended without pay, nor be demoted nor shall his salary be reduced unless the same procedure is followed as herein stated for the removal of the employee because of inefficiency in line of duty, and any employee whose salary is reduced or who is demoted may waive the presentment of charges against him and a hearing thereon by the committee. Nothing herein shall in any way restrict or

limit the powers of the board of education to make reductions in the number of employees because of insufficient funds or decrease in pupil enrollment or lack of work.

168.515. SALARY SUPPLEMENT FOR PARTICIPANTS IN CAREER PLAN — METHOD OF DISTRIBUTION — AMOUNTS — MATCHING FUNDS, FORMULA, CONTRIBUTIONS — BONUS CONTRIBUTION, WHEN — REVIEW OF CAREER PAY — TAX LEVY AUTHORIZED, WHEN — USE OF FUNDS — EXCEPTION TO CONTRIBUTION. — 1. Each teacher selected to participate in a career plan established under sections 168.500 to 168.515, who meets the requirements of such plan, shall receive a salary supplement, the state's share of which shall be distributed under section 163.031, RSMo, equal to the following amounts applied to the career ladder entitlement [of line 15 of subsection 6] of section 163.031, RSMo:

(1) Career stage I teachers may receive up to an additional one thousand five hundred dollars per school year;

(2) Career stage II teachers may receive up to an additional three thousand dollars per school year;

(3) Career stage III teachers may receive up to an additional five thousand dollars per school year.

All teachers within each stage within the same school district shall receive equal salary supplements.

2. The state shall make payments pursuant to section 163.031, RSMo, to the local school district for the purpose of reimbursing the local school district for the payment of any salary supplements provided for in this section, subject to the availability of funds as appropriated each year and distributed on a variable match formula which shall be based on [equalized] assessed valuation of the district for the second preceding school year. [A district's equalized assessed valuation shall be multiplied by the district income factor defined in section 163.011, RSMo, and shall be known as the adjusted equalized assessed valuation.]

3. In distributing these matching funds, school districts shall be ranked by the [adjusted equalized] assessed valuation for the second preceding school year per [eligible pupil] **weighted average daily attendance** from the highest to the lowest and divided into three groups. Group one shall contain the highest twenty-five percent of all public school districts, groups two and three combined shall contain the remaining seventy-five percent of all public school districts. The districts in groups two and three shall be rank-ordered from largest to smallest based on enrollment as of the last Wednesday in September during the second preceding school year, group two shall contain twenty-five percent of all public school districts that are larger on the enrollment-based rank-ordered list and group three shall contain the remaining fifty percent of all public school districts. Pursuant to subsection 4 of this section, districts in group one shall receive forty percent state funding and shall contribute sixty percent local funding, group two shall receive fifty percent state funding and shall contribute fifty percent local funding and group three shall receive sixty percent state funding and shall contribute forty percent local funding.

4. The incremental groups are as follows:

Group	Percentage of Districts	Percentage of State Funding	Percentage of Local Funding
1	2 5%	4 0%	6 0%
2	25%	50%	50%
3	50%	60%	40%

5. Beginning in the 1996-97 school year, any school district in any group which participated in the career ladder program in 1995-96 and paid less than the local funding percentage required by subsection 4 of this section shall increase its local share of career ladder costs by five percentage points from the preceding year until the district pays the percentage share of cost required by subsection 4 of this section, and in no case shall the local funding percentage be increased by a greater amount for any year. For any district, the state payment shall not exceed the local payment times the state percentage share divided by the local percentage share. Any

district not participating in the 1995-96 school year or any district which interrupts its career ladder program for any subsequent year shall enter the program on the cost-sharing basis required by subsection 4 of this section.

6. Not less than every fourth year, beginning with calendar year 1988, the general assembly, through the joint committee established under section 160.254, RSMo, shall review the amount of the career pay provided for in this section to determine if any increases are necessary to reflect the increases in the cost of living which have occurred since the salary supplements were last reviewed or set.

7. To participate in the salary supplement program established under this section, a school district may submit to the voters of the district a proposition to increase taxes for this purpose. If a school district's current tax rate ceiling is at or above the rate from which an increase would require a two-thirds majority, the school board may submit to the voters of the district a proposition to reduce or eliminate the amount of the levy reduction resulting from section 164.013, RSMo. If a majority of the voters voting thereon vote in favor of the proposition, the board may certify that seventy-five percent of the revenue generated from this source shall be used to implement the salary supplement program established under this section.

8. In no case shall a school district use state funds received under this section nor local revenue generated from a tax established under subsection 7 of this section to comply with the minimum salary requirements for teachers established pursuant to section 163.172, RSMo.

9. Beginning in the 1996-97 school year, for any teacher who participated in the career program in the 1995-96 school year, continues to participate in the program thereafter, and remains qualified to receive career pay pursuant to section 168.510, the state's share of the teacher's salary supplement shall continue to be the percentage paid by the state in the 1995-96 school year, notwithstanding any provisions of subsection 4 of this section to the contrary, and the state shall continue to pay such percentage of the teacher's salary supplement until any of the following occurs:

- (1) The teacher ceases his or her participation in the program; or
- (2) The teacher suspends his or her participation in the program for any school year after the 1995-96 school year. If the teacher later resumes participation in the program, the state funding shall be subject to the provisions of subsection 4 of this section.

169.596. RETIRED TEACHER MAY TEACH FULL TIME WITHOUT LOSS OF RETIREMENT BENEFITS, WHEN — SCHOOL DISTRICT REQUIREMENTS. — 1. Notwithstanding any other provision of this chapter to the contrary, a retired certificated teacher receiving a retirement benefit from the retirement system established pursuant to sections 169.010 to 169.141 may, without losing his or her retirement benefit, teach full time for up to two years for a school district covered by such retirement system; provided that the school district has a shortage of certified teachers, as determined by the school district, **and provided that no such retired certificated teacher shall be employed as a superintendent.** The total number of such retired certificated teachers shall not exceed, at any one time, the lesser of ten percent of the total teacher staff for that school district, or five certificated teachers.

2. Notwithstanding any other provision of this chapter to the contrary, a person receiving a retirement benefit from the retirement system established pursuant to sections 169.600 to 169.715 may, without losing his or her retirement benefit, be employed full time for up to two years for a school district covered by such retirement system; provided that the school district has a shortage of noncertificated employees, as determined by the school district. The total number of such retired noncertificated employees shall not exceed, at any one time, the lesser of ten percent of the total noncertificated staff for that school district, or five employees.

3. The employer's contribution rate shall be paid by the hiring school district.

4. In order to hire teachers and noncertificated employees pursuant to the provisions of this section, the school district shall:

- (1) Show a good faith effort to fill positions with nonretired certificated teachers or nonretired noncertificated employees;
- (2) Post the vacancy for at least one month;
- (3) Have not offered early retirement incentives for either of the previous two years;
- (4) Solicit applications through the local newspaper, other media, or teacher education programs;
- (5) Determine there is an insufficient number of eligible applicants for the advertised position; and
- (6) Declare a critical shortage of certificated teachers or noncertificated employees that is active for one year.

5. Any person hired pursuant to this section shall be included in the State Director of New Hires for purposes of income and eligibility verification pursuant to 42 U.S.C. Section 1320b-7.

170.051. TEXTBOOK DEFINED — SCHOOL BOARD TO PROVIDE FREE TEXTBOOKS IN PUBLIC SCHOOLS — FUNDS TO BE USED. — 1. As used in this section, the term "textbook" means workbooks, manuals, or other books, whether bound or in loose-leaf form, intended for use as a principal source of study material for a given class or group of students, a copy of which is expected to be available for the individual use of each pupil in such class or group.

2. Each public school board shall purchase and loan free all textbooks for all children who are enrolled in grades kindergarten through twelve in the public schools of the district, and may purchase textbooks and instructional materials for prekindergarten students.

3. Only textbooks which are filed with the state board of education pursuant to section 170.061 shall be purchased and loaned under this section. No textbooks shall be purchased or loaned under this section to be used in any form of religious instruction or worship.

4. Each school board shall purchase [from the free textbook fund, or] from the incidental fund of the district [if the free textbook fund is insufficient,] all the new or used textbooks for all the pupils in all grades and preschool programs of the public schools of the district. The board may also expend [either textbook fund moneys or] incidental fund moneys to provide supplementary texts, library and reference books, contractual educational television services, and any other instructional supplies for all the pupils of the public schools of the district. [The board may, in its discretion, expend textbook fund moneys to provide any other instructional materials and supplies for the pupils of the public schools of the district.] All books purchased from district funds are the property of the district but shall be furnished, under rules and regulations prescribed by the school board, to the pupils without charge, except for abuse or willful destruction.

170.055. PRICE TO BE PAID FOR BOOKS — EXCESSIVE PRICE A MISDEMEANOR, PENALTY. — [1. When the money apportioned under the provisions of section 148.360, RSMo, is received by the treasurers of the various school districts it shall be placed to the credit of the free textbook fund of the district.

2.] No school board shall pay a higher price for books than is paid by any other school district in this state, or in any other state purchasing textbooks in the open market. No contract for books for a period of more than five years shall be made by any school district under the provisions of this law. Any owner, agent, solicitor or publisher of textbooks who shall offer for sale in this state or sell to any board of directors or board of education textbooks at a higher price than herein specified shall be guilty of a misdemeanor and shall upon conviction thereof be punished by a fine of not less than five hundred dollars and not more than ten thousand dollars for each offense.

171.121. DISTRICT MAY BE CLOSED AND REQUIRED TO TRANSPORT PUPILS — APPORTIONMENT OF STATE AID. — If any district in this state has an average daily attendance of less than fifteen pupils as shown by the records of the last previous school year, the state board of education, after investigation that convinces it that it would be to the best interests of all

concerned, shall require the board to provide for the tuition and transportation of the pupils of the district to other public schools. Separate records of the attendance of pupils from the closed district shall be kept and the district shall receive the same apportionment under [subsection 1 of] section 163.031, RSMo, as it would have received otherwise. For the first year after the closing of a district, apportionment shall be made under [subsection 3 of] section 163.031, RSMo, to the closed district on the basis of the average daily attendance of the preceding year and shall be paid by the closed district to the districts receiving its pupils in proportion to the number of pupils received by each.

178.296. EDUCATIONAL PROGRAMS FOR JUVENILES PLACED OR DETAINED IN COUNTY FACILITIES — STATE AID. — 1. The school districts, except school districts which are part of a special school district, and special school districts in which county- or court-operated facilities for the care and protection of juveniles are located shall provide appropriate educational programs for those juveniles of school age who have not been graduated from the twelfth grade and who are placed in such facilities.

2. School districts and special school districts providing educational programs pursuant to subsection 1 shall be entitled to receive, for nonhandicapped children, the aid provided in section 163.031, RSMo, [and in addition special aid calculated in accordance with subsection 1 of section 162.975, RSMo, for classes approved by the department of elementary and secondary education]. Aid for programs for handicapped and severely handicapped children shall be allocated as provided by law. No school district or special school district providing educational programs pursuant to subsection 1 shall be required to expend on such programs funds in excess of those received by the district under the provisions of sections 178.295 to 178.298.

360.106. DEFINITIONS — BONDS OR NOTES ISSUED FOR LOANS TO OR PURCHASE OF NOTES OF SCHOOL DISTRICTS AND COMMUNITY JUNIOR COLLEGES — HOW SECURED — INVESTMENT OF FUNDS — BIDS REQUIRED FOR PROFESSIONAL SERVICES FURNISHED — REPORT BY AUTHORITY DUE WHEN. — 1. As used in this section and sections 360.111 to 360.118, the following terms mean:

(1) "Funding agreement", any loan agreement, financing agreement or other agreement between the authority and a participating district under this section, providing for the use of proceeds of, security for, and the repayment of, school district bonds, and shall include a complete waiver by the participating district of all powers, rights and privileges conferred upon the participating district to institute any action authorized by any act of the Congress of the United States relating to bankruptcy on the part of the participating district;

(2) "Participating district", with respect to a particular issue of bonds, notes or other financial obligations, any school district and any public community junior college in this state which voluntarily enters into a funding agreement with the authority pursuant to this section;

(3) "School district bonds", any bonds, notes or other obligations issued by the authority for the purpose of making loans to, purchasing the bonds or notes of or otherwise by agreement using or providing for the use of the proceeds of the obligations by a participating district under this section and all related costs of issuance of the obligations including, but not limited to, all costs, charges, fees and expenses of underwriters, financial advisors, attorneys, consultants, accountants and of the authority.

2. In addition to other powers granted to the authority by sections 360.010 to 360.140, the authority shall have the power to issue school district bonds or notes for the purpose of making loans to, or purchasing the bonds, notes or other financial instruments of:

(1) Any school district or any public community junior college in this state for the use of the various funds of such school district or public community junior college for any lawful purpose; and

(2) Any school district in this state with respect to obligations issued by such school district pursuant to sections 164.121 to 164.301, RSMo, or otherwise by law.

3. In connection with the issuance of school district bonds pursuant to the powers granted in this section, the authority shall have all powers as set forth elsewhere in sections 360.010 to 360.140, and the provisions of sections 360.010 to 360.140 shall be applicable to the issuance of school district bonds to the extent that they are not inconsistent with the provisions of this section.

4. School district bonds issued pursuant to this section may be secured by a pledge of payments made to the authority by the participating district, by the bonds or notes of the participating district, or by a pooling of such payments, bonds or notes of two or more of such participating districts or as otherwise set forth in the funding agreements.

5. The authority may invest any funds held pursuant to powers granted under this section, which are not required for immediate disbursement, in any investment approved by the authority and specified in the trust indenture or resolution pursuant to which such bonds or notes are issued without regard to any limitation otherwise imposed by section 360.120 or otherwise by law; provided, however, that each participating district shall receive the earnings, or a credit for such earnings, to the extent any such amounts invested are attributable to a particular participating district.

6. (1) In connection with school district bonds, upon certification by the authority to the commissioner of education and the state treasurer that the funding agreement provides for consent by a participating district for direct deposit of its state payments to the trustee, the state treasurer shall transfer, but only out of funds described in this section, directly to the trustee for such school district bonds, the amounts needed to pay the principal and interest when due on the school district bonds attributable to a particular participating district. Such transfers for any school district bonds attributable to a particular participating district shall only be made out of, and to the extent of, the state payments and distributions from all funds to be made by the state to such participating district pursuant to sections 163.011 to 163.195, RSMo[, and the distributions from the fair share fund to be made by the state to such participating district pursuant to section 149.015, RSMo]. Any such transfer by the state on behalf of a participating district shall discharge the state's obligation to make such state payments to such participating district to the extent of such transfer;

(2) A participating district shall withdraw amounts from any of its funds established pursuant to section 165.011, RSMo, to the extent such amounts could have been used to make the payments made on its behalf by the state treasurer as provided in subdivision (1) of this subsection. Notwithstanding any provisions of section 108.180, RSMo, to the contrary, such amounts shall be deposited into the participating district's funds as provided by law in lieu of the state payments transferred to the trustee under the funding agreement;

(3) The authority shall from time to time develop guidelines containing certain criteria with respect to participating school districts and with respect to the issuance of school district bonds;

(4) Transfers made under this subsection pursuant to a school district's participation in a funding agreement under this section shall be made at no cost to the school district.

7. The authority shall provide for the payment of costs of issuance, costs of credit enhancement and any other costs or fees related to the issuance of any school district bonds other than reserve funds, out of the proceeds thereof or out of amounts distributed annually to the authority pursuant to sections 160.534 and 164.303, RSMo. The authority shall annually submit a request for funding of such costs to the commissioner of education in such form and at such time as he may request. A copy of such request shall be forwarded to the commissioner of administration. The authority shall provide for the payment of costs pursuant to this subsection only for bonds issued for the purpose of financing construction or renovation projects approved by voters after January 1, 1995, or refinancing construction or renovation projects or for refinance of lease purchase obligations with general obligation bonds.

8. Any refunding or refinancing of existing bonds of a school district under this section shall have a net present value savings of at least one and one-half percent of the par amount of the refunded bonds.

9. The commissioner of education shall serve as an ex officio, nonvoting, advisory member of the authority solely with regard to the exercise of powers granted pursuant to this section.

10. Nothing in this section or sections 360.111 to 360.118 shall be construed to relieve a school district or public community junior college of its obligation to levy a debt service levy or capital projects levy sufficient to retire any obligation of the district or college as otherwise provided by law.

11. Any professional services provided in connection with the sale of such bonds pursuant to this section, including, but not limited to, underwriters, bond counsel, underwriters' counsel, trustee and financial advisors, shall be obtained through competitive bidding. The initial bid for professional services shall be for a period of not longer than two years, and thereafter such bids shall be awarded for a period not longer than one year.

12. The authority shall review the cost effectiveness of the program established under this section and sections 360.111 to 360.118 and shall, on or before the fifteenth of August of each year, provide a report to the general assembly which shall contain a report on the program, the authority's findings and a recommendation of whether this section should be repealed, strengthened or otherwise amended.

SECTION 1. REVIEW OF LOCAL PROPERTY TAX ASSESSMENT PRACTICES — RECOMMENDATIONS TO GENERAL ASSEMBLY, WHEN — REPORT TO STATE TAX COMMISSION. — 1. The joint committee on tax policy, as established in section 21.810, RSMo, shall review and analyze the local property tax assessment practices of this state. The committee shall make recommendations to the general assembly regarding its findings with regard to the state's assessment practices. The committee shall submit a preliminary report to the general assembly by January 1, 2006, and a final report by June 30, 2006.

2. The committee shall report to the state tax commission any concerns it finds regarding the state's assessment practices as outlined under chapter 137, RSMo. The state tax commission shall ensure that all counties are accurately assessed, as provided by statute.

SECTION 2. WEIGHTED AVERAGE DAILY ATTENDANCE TO INCLUDE PORTION OF SUMMER SCHOOL AVERAGE DAILY ATTENDANCE, WHEN. — In any school year after the 2009-2010 school year, if there is a twenty-five percent decrease in the statewide percentage of average daily attendance attributable to summer school compared to the percentage of average daily attendance attributable to summer school in the 2005-2006 school year, then for the subsequent school year, weighted average daily attendance, as such term is defined in section 163.011, RSMo, shall include the addition of the product of twenty-five hundredth times the average daily attendance for summer school.

SECTION 3. TRANSFER CORPORATIONS (METROPOLITAN SCHOOLS), COMPUTATION OF STATE AID. — Other provisions of law to the contrary notwithstanding, a transfer corporation formed pursuant to section 162.1060, RSMo, shall receive state aid as calculated in this section:

(1) For purposes of determining weighted average daily attendance pursuant to section 163.011, RSMo, and for the purposes of determining state aid pursuant to sections 163.031, 163.043, and 163.087, RSMo, and any other source of state aid distributed on a per-pupil basis, students attending a district other than their district of residence pursuant to a court-approved transfer program shall be credited to, and all related per pupil aid shall be paid to, the transfer corporation instead of to any other district. The weighted average daily attendance and state aid calculation for the transfer corporation shall be treated on the same basis as the calculation for a separate school district; and

(2) For the eighth year of operation and thereafter, the transfer corporation shall receive transportation state aid for each student that participates in the transfer program

in the amount of one hundred fifty-five percent of the statewide average per pupil cost for transportation for the second preceding school year provided that such aid shall not exceed seventy-five percent of necessary transportation costs.

[160.264. INCENTIVES FOR SCHOOL EXCELLENCE PROGRAM ESTABLISHED — FUNDING — ADVISORY COMMITTEE ESTABLISHED, APPOINTMENT, DUTIES — DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION, DUTIES — GUIDELINES ESTABLISHED, DISTRIBUTED — PROGRAM TOPIC. — 1. The "Incentives for School Excellence Program" is hereby established to promote and encourage all local school district initiatives for excellence in education, and shall commence with the 1986-87 school year. The incentives for school excellence program is a matching fund program of variable match rates.

2. The general assembly shall make an annual appropriation to the excellence in education fund established under section 160.268 for the purpose of providing the state's portion for the incentives for school excellence program.

3. There is hereby established within the department of elementary and secondary education, an advisory committee which shall be composed of twenty-one members to be appointed by the state board of education on the recommendation of the commissioner of education. This advisory committee shall make recommendations to the department regarding the incentives for school excellence program. The advisory committee shall also collect information on local school initiatives that promote excellences and shall disseminate information regarding such initiatives and the incentives program to all school districts.

4. The state board of education, on the recommendation of the commissioner of education, shall establish eligibility guidelines for participation by a district, a school, a group of teachers, or an individual teacher, in the incentive for school excellence program, and such pro rata provisions as are necessary. Copies of the guidelines established under this subsection shall be provided to all school districts in this state.

5. Program topics suitable for obtaining matching funds under the incentives for school excellence program, which matching funds may include in-kind donations, may include, but shall not be limited to, the following school improvement activities:

- (1) Teacher aides to assist in classrooms in grades K-3;
- (2) Business/education partnerships;
- (3) Extended contracts for teachers and administrators;
- (4) School improvement councils;
- (5) Improved attendance plans;
- (6) School volunteer projects;
- (7) Parent participation programs;
- (8) Instructional improvement projects;
- (9) Writing programs;
- (10) Higher technology projects;
- (11) Advanced placement programs;
- (12) Opportunity classes for children who are at risk in reading and math in grades 1, 2, and

3. All districts are eligible to participate in the incentives for the school excellence program.

6. The commissioner of education shall cause guidelines to be developed by the department of elementary and secondary education which shall include, but shall not be limited to, information concerning the application procedures for school districts desiring to participate in the incentives for school excellence program.

7. The state board of education, with recommendation from the advisory committee, shall determine the district-revenue match needed to qualify for a state-revenue match under the incentives for school excellence program. The board shall recognize a school district's ability to raise the necessary matching funds to participate in the program established under this section.

8. Local school districts may use available revenues from any existing fund or source, except the teachers' fund, including gifts, grants, and bequests from federal, private, or other

sources made available for the purpose of the incentives for school excellence program. Other provisions of this section notwithstanding, revenues in the teachers' fund may only be used for programs which relate to teachers' salaries. In no case shall a local school district use as its matching funds to participate in this program any state aid provided pursuant to sections 163.031 and 163.172, RSMo, or sections 168.500 to 168.520, RSMo.

9. The state board of education, at its discretion, may designate a portion of the appropriation for the incentives for school excellence program as a match-free incentive to be awarded to a school, a group of teachers, or an individual teacher to implement exemplary and innovative programs designed to improve instruction. Such match-free incentives shall be awarded to school districts for the benefit of the school, a group of teachers, or an individual teacher on a competitive grant basis according to criteria established by the state board of education with advice of the advisory committee.

10. Participation in the incentives for school excellence program requires the school district, school, teachers or teacher receiving the funds from the program to provide, upon request, such data as the department of elementary and secondary education deems necessary.]

[160.531. FAMILY LITERACY PROGRAMS, FUNDING — RULEMAKING AUTHORITY. —

1. Beginning with fiscal year 2005 and for all fiscal years thereafter, an amount, as specified in subsection 2 of this section, of the appropriation to the department of elementary and secondary education otherwise distributed to the public schools of the state pursuant to the provisions of section 163.031, RSMo, shall be distributed by the department of elementary and secondary education to establish and fund family literacy programs in school attendance centers declared academically deficient by the state board of education as authorized by section 160.538 or school districts declared unaccredited or provisionally accredited by the state board of education pursuant to section 161.092, RSMo.

2. The amount to be distributed by the department of elementary and secondary education to establish and fund family literacy programs pursuant to subsection 1 of this section shall be one and one-half percent of the total line 14 distribution.

3. The department of elementary and secondary education shall promulgate rules for the distribution of family literacy funds.

4. 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 chapter 536, RSMo.]

[160.550. INCENTIVE PAYMENTS TO REDUCE PUPIL/TEACHER RATIOS AND IMPROVE ACHIEVEMENT — TEACHER DEFINED — ELIGIBILITY — RULEMAKING PROCEDURE. — 1.

There is hereby authorized a program, subject to appropriation, for the 1995, 1996, and 1997 fiscal years to provide incentive payments to school districts to reduce pupil/teacher ratios and promote student achievement in grades kindergarten to three. In providing incentive payments authorized by this section, the state board of education, by rule and regulation, shall take into account the instructional methods that school districts use to qualify for the incentive payment. The state board of education shall promulgate any rules it deems necessary to effectively implement the provisions of this section. Any school district which achieves a pupil/teacher ratio of twenty-five to one or lower in any grades kindergarten to three shall be eligible for incentive payments pursuant to this section.

2. For the purposes of this section, the term "teacher" means a certificated teacher licensed to teach in Missouri, who is a regular classroom teacher in a regular instructional program. The term shall not include aides, administrators, or teachers with temporary certificates.

3. School districts shall be eligible for incentive payments only where the district can substantiate according to rules and regulations of the state board of education that the pupil/teacher ratio in the grade levels not affected by the program authorized by this section did not increase in order to meet the requirements for the incentive payment. Further, by rule and regulation of the state board of education, criteria shall be established to disqualify school districts

from receiving incentive payments outlined in this section if such qualification is due to enrollment decreases in the district that have occurred in grades kindergarten to three.

4. Nothing in this section shall be construed to preclude the teaching staff within a school from grouping pupils in alternative ways for instruction, including, but not limited to, team teaching, class-within-a-class, cooperative learning, and ungraded approaches to teaching; provided, however, that such alternative instructional groupings are not used in grade levels not affected by the program outlined in this section in order to meet the criteria to qualify for receiving incentive payments for the reduction in class size in grades kindergarten to three.

5. No rule or portion of a rule promulgated under the authority of sections 160.500 to 160.538, sections 160.545 and 160.550, sections 161.099 and 161.610, RSMo, sections 162.203 and 162.1010, RSMo, section 163.023, RSMo, sections 166.275 and 166.300, RSMo, section 170.254, RSMo, section 173.750, RSMo, and sections 178.585 and 178.698, RSMo, shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.]

[162.725. STATE BOARD TO PROVIDE PROGRAMS FOR SEVERELY HANDICAPPED CHILDREN, WHEN. — 1. The state board of education shall provide special educational services for all severely handicapped children residing in school districts which are not included in special districts provided that such school districts are unable to provide appropriate programs of special instruction for severely handicapped children; however, this shall not prevent any school district from conducting a program for the special instruction of severely handicapped children, except that such program must provide substantially the same special educational services as would be provided in a school operated by the state board of education and such program must be approved by the state department of elementary and secondary education in accordance with regulations established pursuant to section 162.685.

2. Special educational programs shall be established which are designed to develop the individual pupil in order that he may achieve the best possible adjustment in society under the limitation of his handicap.

3. When special districts have been formed to serve handicapped and severely handicapped children under the provisions of sections 162.670 to 162.995, severely handicapped children residing in school districts comprising the special district shall be educated in programs of the special district.]

[162.735. STATE BOARD TO ASSIGN SEVERELY HANDICAPPED CHILDREN, WHEN — APPEAL FROM ASSIGNMENT. — The state department of elementary and secondary education may assign severely handicapped children, except severely handicapped children residing in special school districts and in districts providing approved special educational services for severely handicapped children, to state schools for severely handicapped children, the school for the blind or the school for the deaf. Furthermore, the state board of education may contract for the education of a severely handicapped child with another public agency or with a private agency when the state department of elementary and secondary education determines that such an arrangement would be in the best interests of the severely handicapped child. Assignment of severely handicapped children under this section shall be made to a particular school or program which, in the judgment of the state department of elementary and secondary education, can best provide special educational services, and such assignment shall be made upon the basis of competent evaluations; provided, however, the assignment may be appealed by a parent or guardian pursuant to sections 162.945 to 162.965. Children who are not residents of this state may be admitted to these schools if the schools have the capacity to receive them and upon payment of full tuition and costs as prescribed by the state board of education.]

[162.792. SCHOOLS FOR BLIND, DEAF AND SEVERELY HANDICAPPED, ENTITLED TO DISTRIBUTION FROM COUNTY FOREIGN INSURANCE TAX FUND — HOW COMPUTED. — In

addition to any other funds provided by law, the Missouri School for the Blind in St. Louis, and the Missouri School for the Deaf in Fulton, and the state schools for the severely handicapped shall, any other provision of law to the contrary notwithstanding, be entitled to funds under section 148.360, RSMo. The number of full-time students in those institutions described in this section shall be considered as "September membership" for the apportioning of funds under section 148.360, RSMo, to each institution respectively.]

[162.975. STATE AID FOR SPECIAL PROGRAMS FOR HANDICAPPED OR GIFTED CHILDREN, HOW ALLOCATED. — 1. Each school district or special school district which provides approved special education services for handicapped or severely handicapped children under sections 162.670 to 162.995 or approved extended school year services for such children, shall be entitled under section 163.031, RSMo, to receive state aid. Additional state aid for such programs shall be allocated as follows in the following order of priority:

(1) A school district or special school district shall receive state aid for each child receiving services on homebound status or served by contractual arrangement with a private or public agency approved by the department of elementary and secondary education. The amount paid from state aid for such services shall be adjusted annually by the percent change in the appropriation of state funds to this section for the current fiscal year compared with that for the first preceding fiscal year.

(2) A school district or special school district shall receive state aid for approved extended school year services for handicapped or severely handicapped children. Prior to full implementation of subdivisions (4), (5) and (6) of this subsection, state aid paid for each approved staff member shall bear the same ratio to the amount payable for such staff during the immediate preceding school year as the ratio of the number of hours in the approved extended school year program bears to the number of hours in regular term programs for each respective school district or special school district approved under this section; provided that this amount shall be adjusted annually by the percentage change in the appropriation of state funds to this section for the current fiscal year compared with the appropriation level for the first preceding fiscal year. After full implementation of subdivisions (4), (5) and (6) of this subsection, state aid shall be paid for each approved staff in an amount which bears the same ratio to the amount payable for such staff during the immediate preceding school year as the ratio of the number of hours in the approved extended school year program bears to the number of hours in regular term programs for each respective school district or special school district approved pursuant to this section; provided that the amount payable per approved staff member pursuant to this subdivision for the year of full implementation of subdivisions (4), (5) and (6) of this subsection and thereafter shall be, on a prorated basis, two times the amount payable per approved staff member pursuant to subdivision (4) of this subsection for the current school year.

(3) The division of youth services within the Missouri department of social services shall receive state aid for approved special education services. State aid shall be paid for each full-time equivalent professional and paraprofessional staff member approved by the department of elementary and secondary education at the rate paid during the first full fiscal year preceding the year in which this section becomes effective plus an annual adjustment equal to the percent change in the appropriation of state funds to this section for the current fiscal year compared with the appropriation level for the first preceding year.

(4) A school district or special school district shall receive state aid for approved professional and paraprofessional staff who are employed or contracted to provide special education services for handicapped and severely handicapped children, including staff used by a school district or special school district to provide services before and after the normal school day for students attending nonpublic schools, who are in compliance with section 167.031, RSMo. Each school district or special school district employing or contracting for professional services or paraprofessional staff in the provision of special education services, as defined and approved by the department of elementary and secondary education, shall receive state aid at a

full-time equivalent rate based upon the total allocation of funds pursuant to this subdivision, after sufficient funds are allocated for subdivisions (1), (2) and (3) of this subsection. Paraprofessional staff shall be paid at one-half the rate paid full-time equivalents of professional staff and contractors.

(5) Each school district or special school district providing special education services for handicapped or severely handicapped children shall receive state aid pursuant to section 163.031, RSMo, for each such eligible pupil, and such school district shall receive state aid for each child domiciled in the district and enrolled in a nonpublic school, who are in compliance with section 167.031, RSMo. The per resident student rate paid for students enrolled in nonpublic schools shall be one-half that paid per eligible pupil for students enrolled in a school district or special school district.

(6) No more than fifty percent of the total state aid appropriated pursuant to subdivisions (4) and (5) of this subsection shall be distributed pursuant to subdivision (5) of this subsection. No less than fifty percent of the state aid appropriated pursuant to subdivisions (4) and (5) of this subsection shall be distributed pursuant to subdivision (4) of this subsection. A sufficient share of the funds appropriated pursuant to this subsection shall be appropriated pursuant to subdivisions (1), (2) and (3) of this subsection to meet the requirements of those subdivisions. To the extent allowed by appropriations, the share of funds appropriated pursuant to subdivisions (4) and (5) of this subsection under subdivision (5) shall be increased until that share is equal to fifty percent, at which time subdivisions (4), (5) and (6) of this subsection shall be considered fully implemented, and such share shall remain equal to fifty percent for all years thereafter. No district shall receive less state aid under this section than received during the year preceding that when the phased implementation was begun.

(7) Contractors providing professional services funded under this section shall meet the state licensing and certification requirements appropriate to their contracted duties, as determined by the department of elementary and secondary education.

2. For approved special education and related services provided for handicapped and severely handicapped children under five years of age, but not under the age of three, entitlements for state aid established pursuant to this section and distributed pursuant to section 163.031, RSMo, shall not exceed ninety percent of the cost of the programs as specified in project applications and approved by the department of elementary and secondary education. Such programs shall not be eligible to receive funds allocated pursuant to subsection 1 of this section.

3. Each school district or special school district which provides an approved remedial reading program under provisions of sections 162.670 to 162.995 shall receive state aid established pursuant to this subsection and distributed pursuant to section 163.031, RSMo. The amount paid from state aid for such services per full-time equivalent remedial reading teacher shall be adjusted annually by the percentage change in the appropriation of state funds for the state school aid district entitlements as established pursuant to section 163.031, RSMo, for the current fiscal year compared with that for the first preceding fiscal year. Such programs shall not be eligible to receive funds allocated pursuant to subsection 1 of this section.

4. For approved programs for gifted children, districts shall receive state aid under section 163.031, RSMo, not to exceed seventy-five percent of the cost of instructional personnel and special materials listed in project applications and approved by the department of elementary and secondary education. Such programs shall not be eligible to receive funds allocated pursuant to subsection 1 of this section.]

[163.005. SCHOOLS OF THE FUTURE FUND CREATED, USE OF FUNDS. — The "Schools of the Future Fund" is hereby created in the state treasury. Moneys deposited in this fund shall be considered state funds pursuant to article IV, section 15 of the Missouri Constitution. All interest received on the schools of the future fund shall be credited to the schools of the future fund.

Appropriation of the moneys deposited into the schools of the future fund shall be used solely for the purpose of fully funding state aid to public schools pursuant to section 163.031.]

[163.014. CALCULATION OF TAX RATE DECREASE. — Notwithstanding the provisions of section 163.011 to the contrary, beginning with the 1997-1998 payment year, the calculation of the magnitude of a tax rate decrease due to reassessment shall exclude any voted increase occurring in the year of reassessment dating from tax year 1995.]

[163.015. LIMITATION ON OPERATING LEVY. — 1. Notwithstanding any other provision of law, for districts not making transfers pursuant to subsection 4 of section 165.011, RSMo, nor making payments or expenditures related to obligations made pursuant to section 177.088, RSMo, nor any combination of such transfers, payments or expenditures, the district's operating levy for school purposes shall include the sum of tax rates levied for incidental, teachers', debt service and capital projects funds, with no more than eighteen cents of the sum levied in the debt service and capital projects funds. Any portion of the operating levy for school purposes levied in the debt service and capital projects funds in excess of a sum of ten cents must be authorized by a vote of the people, after August 28, 1998, approving an increase in the operating levy, or a full waiver of the rollback pursuant to section 164.013, RSMo, with a tax rate ceiling in excess of the minimum tax rate or an issuance of general obligation bonds.

2. Notwithstanding any other provision of law, beginning with the tax year which commences January 1, 1998, and for the 1998-99 school year and subsequent tax and school years, no school district shall receive more state aid, as calculated under section 163.031, for its education program, exclusive of categorical add-ons, than it received per eligible pupil for the school year 1993-94, unless it has an operating levy for school purposes of not less than two dollars and seventy-five cents after all adjustments and reductions, with no more than ten cents of this tax rate levied in the debt service and capital projects funds and eligible for entry on line 1 of the state school aid formula contained in subsection 6 of section 163.031; except that any district which is required, pursuant to article X, section 22 of the Missouri Constitution, to reduce its operating levy below the minimum tax rate otherwise required under subsection 2 of section 163.021 shall not be construed to be in violation of subsection 2 of section 163.021 for making such tax rate reduction.

3. Notwithstanding any other provision of law, the portion of state aid received by the district pursuant to section 163.031, based upon the portion of the tax rate in the debt service or capital projects fund, respectively, which is included in the operating levy for school purposes shall be placed to the credit of the debt service fund or capital projects fund, respectively.]

[163.032. CERTAIN COUNTIES HELD HARMLESS UNDER SCHOOL FOUNDATION FORMULA. — Other provisions of law to the contrary notwithstanding, beginning with the 1994-95 school year, the revenue per eligible pupil received by a district from the following sources under subsection 6 of section 163.031: line one minus line ten, or zero if line one minus line ten is less than zero, plus line fourteen; plus the product of the current assessed valuation of the district multiplied by the following tax rate - the greater of zero or the minimum rate required for the current year by subsection 2 of section 163.021, minus the sum of the district's equalized operating levy for school purposes of 1993 and any equalized operating levy for school purposes levied for 1993 by a special school district in which the district is located, shall not be less than the revenue per eligible pupil received by a district in the 1992-93 school year from the foundation formula entitlement payment amount. The department of elementary and secondary education shall make an addition in the payment amount of line nineteen of subsection 6 of section 163.031 to assure compliance with the provisions contained in this section. For all purposes of law, a school district's equalized operating levy for school purposes does not include any equalized operating levy for school purposes levied by a special school district in which the district is located.]

[163.034. CERTAIN REVENUE RECEIVED FROM FOUNDATION FORMULA, MINIMUM LIMIT — ADDITIONAL PAYMENT PRIOR TO DEDUCTIONS. — Other provisions of subsection 5 of section 163.031, to the contrary notwithstanding, beginning with the 1995-96 school year, the revenue per eligible pupil received by a district from the following sources: line 1 minus line 10 or zero if line 1 minus line 10 is less than zero, plus line 14 as those amounts are established in subsection 6 of section 163.031, shall not be less than the revenue per eligible pupil received by a district in the 1992-93 school year from the foundation formula entitlement payment amount; provided that this section shall not be construed to limit the authority of the department of elementary and secondary education to reduce state aid payments pursuant to subsection 11 of section 177.088, RSMo, or subsection 8 of section 165.011, RSMo. The department of elementary and secondary education shall make an addition in the payment amount of line 19 of subsection 6 of section 163.031, to assure compliance with the provisions contained in this section, prior to making any deductions authorized under subsection 11 of section 177.088, RSMo, or subsection 8 of section 165.011, RSMo.]

[163.035. CONTINGENT EFFECTIVE DATE, CERTAIN SECTIONS — ATTORNEY GENERAL'S DUTY. — 1. The repeal and reenactment of sections 163.011 and 163.031 and the enactment of section 162.1060, RSMo, shall become effective on July 1, 1999, if notification has been provided pursuant to subsection 2 of this section.

2. On or within thirty days prior to March 15, 1999, the attorney general shall provide notice to the revisor of statutes as to whether a final judgment as to the state of Missouri and its officials is entered or has been entered in each pending case as of May 15, 1998, which subjects one or more school districts in this state to a federal court's jurisdiction, and if the notice provides that a final judgment as to the state of Missouri and its officials has not been entered in each such case, the repeal and reenactment of sections 163.011 and 163.031 and the enactment of section 162.1060, RSMo, shall not become effective. As used in this section, "final judgment" shall include only a judgment which disposes of all claims involving the state of Missouri and its officials and for which final disposition of appeals has been rendered and may include a consent judgment. Provided, however that a settlement among the parties may include provisions for payment for capital to be made after March 15, 1999, as long as the final judgment approving such settlement fixes with finality the financial obligations of the state.]

[165.015. ILLEGAL TRANSFER OF FUNDS, DEADLINE FOR REPAYMENT, EXCEPTION, PROCEDURE. — 1. Notwithstanding the provisions of subsection 8 of section 165.011 to the contrary, any repayment of moneys pursuant to subsection 8 of section 165.011 may be completed no later than the fifth fiscal year following the year of violation.

2. Notwithstanding the provisions of subsection 8 of section 165.011 of Senate Substitute No. 2 for House Committee Substitute for House Bill No. 889, as truly agreed and finally passed by the first regular session of the ninetieth general assembly, any school district that made an illegal transfer of funds from the incidental fund to the capital projects fund that occurred in both fiscal years 1998 and 1999 shall not be allowed to make a repayment of funds after April 30, 2000, pursuant to the provisions of this section or subsection 8 of section 165.011 of Senate Substitute No. 2 for House Committee Substitute for House Bill No. 889, as truly agreed and finally passed by the first regular session of the ninetieth general assembly unless the voters of such district approve an operating levy increase to the greater of two dollars and eighty-five cents or the levy which produces an increase in total state and local revenues as determined by the department of elementary and secondary education which is equal to or greater than the amount of state aid to be deducted pursuant to subsection 8 of section 165.011 by April 30, 2000. If the voters of such district fail to approve such levy such district shall repay any funds that were illegally transferred by December 31, 2000.]

[166.260. CHILDREN AT-RISK IN EDUCATION PROGRAM ESTABLISHED — PURPOSES. —

There is hereby created the "Children At-Risk in Education Program" which shall be administered by the commissioner of education. The program shall be funded by moneys provided to school districts pursuant to line 14 of subsection 6 of section 163.031, RSMo, and used solely as determined by local boards of education for: reductions of class size in schools containing high concentrations of children who are least advantaged or who have specially identified educational needs according to rule and regulation of the state board of education; or the following:

- (1) The program of half-day instruction for developmentally delayed and at-risk children established pursuant to section 167.260, RSMo;
- (2) The program to provide teacher assistants in grades kindergarten through three established pursuant to section 167.263, RSMo;
- (3) The program of family literacy for children and families of children at risk of dropping out of school pursuant to section 160.531, RSMo;
- (4) The program to provide guidance counselors in grades kindergarten through nine established pursuant to section 167.265, RSMo;
- (5) The programs for pupils at risk of becoming high school dropouts established pursuant to section 167.270, RSMo, including specialized courses of instruction, alternative education programs for pregnant teens and teen mothers and supplemental services for teen mothers;
- (6) The program of support services to pupils identified as having a high risk of dropping out of school established pursuant to section 167.280, RSMo;
- (7) The program of professional development committees for in-service training on teaching children identified as at risk of failing in school pursuant to section 168.400, RSMo;
- (8) A program to contract for mental health services to meet the needs of children who are identified as being at risk of failing school as a result of emotional or environmental factors. Eligible contractors shall be approved by the department of mental health;
- (9) The program of special education and other special services for at-risk and handicapped children in grades kindergarten through third grade emphasizing prevention and early intervention, rather than remediation, known as the "Success for All Program";
- (10) Paying for building site operating costs in the proportion that the free and reduced-price meal eligible student count is to the total enrollment in that building; and
- (11) Other programs as approved by the commissioner of education that are exclusively targeted to provide educational services for students who are least advantaged or who have specially identified educational needs.]

SECTION B. EFFECTIVE DATE. — The enactment of sections 163.042, 163.043, 163.044, 165.012, 1, 2, and 3, the repeal and reenactment of sections 148.360, 149.015, 160.400, 160.405, 160.410, 160.415, 160.420, 160.530, 160.534, 161.527, 162.081, 162.935, 163.011, 163.021, 163.023, 163.025, 163.028, 163.031, 163.036, 163.071, 163.073, 163.081, 163.087, 163.091, 163.172, 164.011, 164.303, 165.011, 165.016, 166.275, 167.126, 167.151, 167.332, 167.349, 168.281, 168.515, 169.596, 170.051, 170.055, 171.121, 178.296, and 360.106, and the repeal of sections 160.264, 160.531, 160.550, 162.792, 162.975, 163.005, 163.014, 163.015, 163.032, 163.034, 163.035, 165.015, and 166.260, of section A of this act shall become effective July 1, 2006.

Approved June 29, 2005

SB 288 [SB 288]

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 Governor to convey land to Nodaway County to the Delta Nu Teke Association

AN ACT to authorize the conveyance of property owned by the state in Nodaway County to the Delta Nu Teke Association.

SECTION

1. Conveyance of state property in Nodaway County to the Delta Nu Teke Association.

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

SECTION 1. CONVEYANCE OF STATE PROPERTY IN NODAWAY COUNTY TO THE DELTA NU TEKE ASSOCIATION. — 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 Nodaway County to the Delta Nu Teke Association, a not-for-profit corporation in exchange for a similar parcel of land described in subsection 2 of this section. The property to be conveyed is more particularly described as follows:

A tract of land located in the County of Nodaway, State of Missouri described as follows: Commencing at the Southeast Corner of Lot One (1), Block Twenty-two (22) of Saunders Addition to the City of Maryville, Nodaway County, Missouri; thence along the East line of said block, North 01 degrees 41 minutes 46 seconds East 305.70 feet to the centerline of the former Norfolk and Southern Railroad; thence along said centerline, North 81 degrees 35 minutes 15 seconds West 453.00 feet; thence departing from said centerline, South 08 degrees 24 minutes 45 seconds West 35.92 feet to the Northeast Corner of a tract of land defined by Deed Book 452, Page 127, Nodaway County Recorder's Office, thence along the East Line of said tract, South 26 degrees 31 minutes 54 seconds East 130.00 feet to the Point of Beginning, said point being the Southeast Corner of said tract conveyed by Deed Book 452, Page 127, Nodaway County Recorder's Office; thence South 63 degrees 28 minutes 08 seconds West 145.00 feet to the Southwest Corner of said tract; thence North 26 degrees 31 minutes 54 seconds West 30.00 feet; thence North 63 degrees 28 minutes 08 seconds East 145.00 feet; thence South 26 degrees 31 minutes 54 seconds East 30.00 feet; to the point of beginning.

2. In exchange for the tract of land conveyed in subsection 1 of this section, the state shall receive property described as follows:

A tract of land located in the County of Nodaway, State of Missouri described as follows: Commencing at the Southeast Corner of Lot One (1), Block Twenty-two (22) of Saunders Addition to the City of Maryville, Nodaway County, Missouri; thence along the East line of said block, North 01 degrees 41 minutes 46 seconds East 305.70 feet to the centerline of the former Norfolk and Southern Railroad; thence along said centerline, North 81 degrees 35 minutes 15 seconds West 453.00 feet; thence departing from said centerline, South 08 degrees 24 minutes 45 seconds West 35.92 feet to the Northeast Corner of a tract of land defined by Deed Book 452, Page 127, Nodaway County Recorder's Office, thence along the East Line of said tract, South 26 degrees 31 minutes 54 seconds East 47.68 feet; thence North 81 degrees 35 minutes 15 seconds West 176.89 feet to the Point of Beginning; thence South 26 degrees 31 minutes 54 seconds East 153.63 feet thence South 34 degrees 46 minutes 48 seconds West 100.40 feet; thence North 27 degrees 06 minutes 32 seconds West 82.93; thence North 32 degrees 07 minutes 42 seconds West 113.67 feet; thence North 30 degrees 09 minutes 32 seconds West 79.30 feet; thence South 81 degrees 35 minutes 15 Seconds East 128.10 feet to the point of beginning.

3. 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.

4. The attorney general shall approve the form of the instrument of conveyance.

Approved June 22, 2005

SB 289 [SCS SB 289]

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

Eliminates a grand jury's duty to examine public buildings and report on their conditions

AN ACT to repeal section 540.031, RSMo, and to enact in lieu thereof one new section relating to duties of grand juries.

SECTION

- A. Enacting clause.
- 540.031. Duties of grand jury.

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

SECTION A. ENACTING CLAUSE. — Section 540.031, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 540.031, to read as follows:

540.031. DUTIES OF GRAND JURY. — A grand jury may make inquiry into and return indictments for all grades of crimes and shall make inquiry into all possible violations of the criminal laws as the court may direct. The grand jury [shall] **may** examine public buildings and report on their conditions.

Approved July 14, 2005

SB 298 [SB 298]

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

Alters provisions regarding the superintendent and teachers of the St. Louis public school system

AN ACT to repeal sections 168.211 and 168.261, RSMo, and to enact in lieu thereof two new sections relating to the powers of the St. Louis public school district superintendent.

SECTION

- A. Enacting clause.
 - 168.211. Superintendent of schools, appointment, term — superintendent to appoint a treasurer and commissioner of school buildings and associate and assistant superintendents — bond — powers of superintendent (metropolitan districts).
 - 168.261. Director of personnel, appointment — personnel committee, appointment (metropolitan districts).
-

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

SECTION A. ENACTING CLAUSE. — Sections 168.211 and 168.261, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 168.211 and 168.261, to read as follows:

168.211. SUPERINTENDENT OF SCHOOLS, APPOINTMENT, TERM — SUPERINTENDENT TO APPOINT A TREASURER AND COMMISSIONER OF SCHOOL BUILDINGS AND ASSOCIATE AND ASSISTANT SUPERINTENDENTS — BOND — POWERS OF SUPERINTENDENT (METROPOLITAN DISTRICTS). — 1. In metropolitan districts the superintendent of schools shall be appointed by the board of education for a term of one to four years, during which term his compensation shall not be reduced. The superintendent of schools [shall] **may** appoint, with the approval of the board, a treasurer, a commissioner of school buildings and he shall serve at the pleasure of the superintendent of schools and as many associate and assistant superintendents as he deems necessary, whose compensation shall be fixed by the board. The superintendent of schools shall give bond in the sum that the board requires but not less than fifty thousand dollars. No employee or agent of the board shall be a member of the board.

2. The superintendent of schools shall have general supervision, subject to [the control of] **policies established by** the board, of the school system, including its various departments and physical properties, courses of instruction, discipline and conduct of the schools, textbooks and studies. All appointments, promotions and transfers of teachers **and all other employees**, and introduction and changes of textbooks and apparatus, shall be made by the superintendent with the approval of the board. All appointments and promotions of teachers **and all other employees** shall be made upon the basis of merit, to be ascertained, as far as practicable, in cases of appointment, by examination, and in cases of promotion, by length and character of service. Examinations for appointment shall be conducted by the superintendent under regulations to be made by the board. He shall make such reports to the board that it directs or the rules provide.

3. The superintendent of schools shall have general supervision, subject to [the approval of] **policies established by** the board, of all school buildings, apparatus, equipment and school grounds and of their construction, installation, operation, repair, care and maintenance; the purchasing of all supplies and equipment; the operation of the school lunchrooms; the administration of examinations for the appointment and promotion of all employees of the school system; and the preparation and administration of the annual budget for the school system. Subject to the approval of the board of education as to number and salaries, the superintendent may appoint as many employees as are necessary for the proper performance of his duties.

4. The board may grant a leave of absence to the superintendent of schools, and may remove him from office by vote of a majority of its members.

5. [The] **Should the superintendent hire a** commissioner of school buildings, **said person** shall be a person qualified by reason of education, experience and general familiarity with buildings and personnel to assume the following responsibilities and duties. Subject to the control of the superintendent of schools, he shall exercise supervision over all school buildings, machinery, heating systems, equipment, school grounds and other buildings and premises of the board of education and the construction, installation, operation, repair, care and maintenance related thereto and the personnel connected therewith; the purchasing of building supplies and equipment and such other duties as may be assigned to him by board rules or regulations[, provided that this provision shall not apply to any commissioner of school buildings serving on October 13, 1967].

168.261. DIRECTOR OF PERSONNEL, APPOINTMENT — PERSONNEL COMMITTEE, APPOINTMENT (METROPOLITAN DISTRICTS). — A director of personnel [shall] **may** be appointed by the superintendent of schools subject to the approval of the board of education of the metropolitan school district. The director of personnel shall be a member of a personnel

committee representing certificated and noncertificated employees, the committee to be appointed in the manner that the rules of the board of education provide.

Approved July 12, 2005

SB 299 [SB 299]

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

Removes school principals from certain sections of the Metropolitan school district's teacher tenure statute

AN ACT to repeal section 168.221, RSMo, and to enact in lieu thereof one new section relating to metropolitan school district principals.

SECTION

A. Enacting clause.

168.221. Probationary period for teachers — removal of probationary and permanent personnel — hearing — demotions — reduction of personnel (metropolitan districts).

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

SECTION A. ENACTING CLAUSE. — Section 168.221, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 168.221, to read as follows:

168.221. PROBATIONARY PERIOD FOR TEACHERS — REMOVAL OF PROBATIONARY AND PERMANENT PERSONNEL — HEARING — DEMOTIONS — REDUCTION OF PERSONNEL (METROPOLITAN DISTRICTS). — 1. The first five years of employment of all teachers entering the employment of the metropolitan school district shall be deemed a period of probation during which period all appointments of teachers shall expire at the end of each school year. During the probationary period any probationary teacher whose work is unsatisfactory shall be furnished by the superintendent of schools with a written statement setting forth the nature of his incompetency. If improvement satisfactory to the superintendent is not made within one semester after the receipt of the statement, the probationary teacher shall be dismissed. The semester granted the probationary teacher in which to improve shall not in any case be a means of prolonging the probationary period beyond five years and six months from the date on which the teacher entered the employ of the board of education. The superintendent of schools on or before the fifteenth day of April in each year shall notify probationary teachers who will not be retained by the school district of the termination of their services. Any probationary teacher who is not so notified shall be deemed to have been appointed for the next school year. Any principal who prior to becoming a principal had attained permanent employee status as a teacher shall upon ceasing to be a principal have a right to resume his or her permanent teacher position with the time served as a principal being treated as if such time had been served as a teacher for the purpose of calculating seniority and pay scale. The rights and duties and remuneration of a teacher who was formerly a principal shall be the same as any other teacher with the same level of qualifications and time of service.

2. After completion of satisfactory probationary services, appointments of teachers shall become permanent, subject to removal for any one or more causes herein described and to the right of the board to terminate the services of all who attain the age of compulsory retirement fixed by the retirement system. In determining the duration of the probationary period of

employment in this section specified, the time of service rendered as a substitute teacher shall not be included.

3. No teacher whose appointment has become permanent may be removed except for one or more of the following causes: immorality, inefficiency in line of duty, violation of the published regulations of the school district, violation of the laws of Missouri governing the public schools of the state, or physical or mental condition which incapacitates him for instructing or associating with children, and then only by a vote of not less than a majority of all the members of the board, upon written charges presented by the superintendent of schools, to be heard by the board after thirty days' notice, with copy of the charges served upon the person against whom they are preferred, who shall have the privilege of being present, together with counsel, offering evidence and making defense thereto. Notifications received by an employee during a vacation period shall be considered as received on the first day of the school term following. At the request of any person so charged the hearing shall be public. The action and decision of the board upon the charges shall be final. Pending the hearing of the charges, the person charged may be suspended if the rules of the board so prescribe, but in the event the board does not by a majority vote of all the members remove the teacher upon charges presented by the superintendent, the person shall not suffer any loss of salary by reason of the suspension. Inefficiency in line of duty is cause for dismissal only after the teacher has been notified in writing at least one semester prior to the presentment of charges against him by the superintendent. The notification shall specify the nature of the inefficiency with such particularity as to enable the teacher to be informed of the nature of his inefficiency.

4. No teacher whose appointment has become permanent shall be demoted nor shall his salary be reduced unless the same procedure is followed as herein stated for the removal of the teacher because of inefficiency in line of duty, and any teacher whose salary is reduced or who is demoted may waive the presentment of charges against him by the superintendent and a hearing thereon by the board. The foregoing provision shall apply only to permanent teachers prior to the compulsory retirement age under the retirement system. Nothing herein contained shall in any way restrict or limit the power of the board of education to make reductions in the number of teachers or principals, or both, because of insufficient funds, decrease in pupil enrollment, or abolition of particular subjects or courses of instruction, except that the abolition of particular subjects or courses of instruction shall not cause those teachers who have been teaching the subjects or giving the courses of instruction to be placed on leave of absence as herein provided who are qualified to teach other subjects or courses of instruction, if positions are available for the teachers in the other subjects or courses of instruction.

5. Whenever it is necessary to decrease the number of teachers [or principals, or both,] because of insufficient funds or a substantial decrease of pupil population within the school district, the board of education upon recommendation of the superintendent of schools may cause the necessary number of teachers [or principals, or both,] beginning with those serving probationary periods, to be placed on leave of absence without pay, but only in the inverse order of their appointment. Nothing herein stated shall prevent a readjustment by the board of education of existing salary schedules. No teacher [or principal] placed on a leave of absence shall be precluded from securing other employment during the period of the leave of absence. Each teacher [or principal] placed on leave of absence shall be reinstated in inverse order of his placement on leave of absence. Such reemployment shall not result in a loss of status or credit for previous years of service. No new appointments shall be made while there are available teachers [or principals] on leave of absence who are seventy years of age or less and who are adequately qualified to fill the vacancy unless the teachers [or principals] fail to advise the superintendent of schools within thirty days from the date of notification by the superintendent of schools that positions are available to them that they will return to employment and will assume the duties of the position to which appointed not later than the beginning of the school year next following the date of the notice by the superintendent of schools.

6. If any regulation which deals with the promotion of either teachers [or principals, or both,] is amended by increasing the qualifications necessary to be met before a teacher [or principal] is eligible for promotion, the amendment shall fix an effective date which shall allow a reasonable length of time within which teachers [or principals] may become qualified for promotion under the regulations.

Approved July 12, 2005

SB 302 [SCS SB 302]

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 election date for certain St. Louis school board members

AN ACT to repeal section 162.601, RSMo, and to enact in lieu thereof one new section relating to school board elections.

SECTION

A. Enacting clause.

162.601. Election of board members, terms — members appointed due to vacancies, terms — qualifications.

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

SECTION A. ENACTING CLAUSE. — Section 162.601, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 162.601, to read as follows:

162.601. ELECTION OF BOARD MEMBERS, TERMS — MEMBERS APPOINTED DUE TO VACANCIES, TERMS — QUALIFICATIONS. — 1. Elected members of the board in office on August 28, 1998, shall hold office for the length of term for which they were elected, and any members appointed pursuant to section 162.611 to fill vacancies left by elected members in office on August 28, 1998, shall serve for the remainder of the term to which the replaced member was elected.

2. No board members shall be elected at the first municipal election in an odd-numbered year next following August 28, 1998.

3. Three board members shall be elected at the second municipal election in an odd-numbered year next following August 28, 1998, to serve four-year terms.

4. Four board members shall be elected at the third municipal election in an odd-numbered year next following August 28, 1998, and two of such members shall be elected to four-year terms and two of such members shall be elected to three-year terms. **For the two members elected at the municipal election in 2006, the terms of such members shall expire after their successors are elected and qualified pursuant to subsection 6 of this section.**

5. Beginning with the fourth municipal election in an odd-numbered year next following August 28, 1998, and at each succeeding municipal election in a year during which board member terms expire, there shall be elected members of the board of education, who shall assume the duties of their office at the first regular meeting of the board of education after their election, and who shall hold office for four years, and until their successors are elected and qualified.

6. **For the two board members who are elected at the municipal election in 2006, their successors thereafter shall be elected at the general election in the year in which their terms expire.**

7. Members of the board of directors shall be elected to represent seven subdistricts. The subdistricts shall be established by the state board of education to be compact, contiguous and as nearly equal in population as practicable. The subdistricts shall be revised by the state board of education after each decennial census and at any other time the state board determines that the district's demographics have changed sufficiently to warrant redistricting.

[7.] 8. A member shall reside in and be elected in the subdistrict which the member is elected to represent. Subdistrict 1 shall be comprised of wards 1, 2, 22 and 27. Subdistrict 2 shall be comprised of wards 3, 4, 5 and 21. Subdistrict 3 shall be comprised of wards 18, 19, 20 and 26. Subdistrict 4 shall be comprised of wards 6, 7, 17 and 28. Subdistrict 5 shall be comprised of wards 9, 10, 11 and 12. Subdistrict 6 shall be comprised of wards 13, 14, 16 and 25. Subdistrict 7 shall be comprised of wards 8, 15, 23 and 24.

Approved July 14, 2005

SB 306 [SB 306]

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

Raises the amount school board members may accept for performing services for (or selling property to) their district

AN ACT to repeal section 105.458, RSMo, and to enact in lieu thereof one new section relating to school board members.

SECTION

A. Enacting clause.

105.458. Prohibited acts by members of governing bodies of political subdivisions, exceptions.

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

SECTION A. ENACTING CLAUSE. — Section 105.458, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 105.458, to read as follows:

105.458. PROHIBITED ACTS BY MEMBERS OF GOVERNING BODIES OF POLITICAL SUBDIVISIONS, EXCEPTIONS. — 1. No member of any legislative or governing body of any political subdivision of the state shall:

(1) Perform any service for such political subdivision or any agency of the political subdivision for any consideration other than the compensation provided for the performance of his or her official duties, **except as otherwise provided in this section**; or

(2) Sell, rent or lease any property to the political subdivision or any agency of the political subdivision for consideration in excess of five hundred dollars per transaction or one thousand five hundred dollars per annum, **or in the case of a school board five thousand dollars per annum**, unless the transaction is made pursuant to an award on a contract let or a sale made after public notice and in the case of property other than real property, competitive bidding, provided that the bid or offer accepted is the lowest received; or

(3) Attempt, for any compensation other than the compensation provided for the performance of his or her official duties, to influence the decision of any agency of the political subdivision on any matter; except that, this provision shall not be construed to prohibit such person from participating for compensation in any adversary proceeding or in the preparation or filing of any public document or conference thereon.

2. No sole proprietorship, partnership, joint venture, or corporation in which any member of any legislative body of any political subdivision is the sole proprietor, a partner having more than a ten percent partnership interest, or a coparticipant or owner of in excess of ten percent of the outstanding shares of any class of stock, shall:

(1) Perform any service for the political subdivision or any agency of the political subdivision for any consideration in excess of five hundred dollars per transaction or one thousand five hundred dollars per annum, **or in the case of a school board five thousand dollars per annum**, unless the transaction is made pursuant to an award on a contract let after public notice and competitive bidding, provided that the bid or offer accepted is the lowest received;

(2) Sell, rent or lease any property to the political subdivision or any agency of the political subdivision where the consideration is in excess of five hundred dollars per transaction or one thousand five hundred dollars per annum, **or in the case of a school board five thousand dollars per annum**, unless the transaction is made pursuant to an award on a contract let or a sale made after public notice and in the case of property other than real property, competitive bidding, provided that the bid or offer accepted is the lowest received.

Approved June 22, 2005

SB 307 [HCS SB 307]

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 amount that public officials or employees can accept for services to their political subdivision

AN ACT to repeal sections 105.454 and 105.458, RSMo, and to enact in lieu thereof two new sections relating to prohibited acts by certain public officials and employees.

SECTION

A. Enacting clause.

105.454. Additional prohibited acts by certain elected and appointed public officials and employees, exceptions.

105.458. Prohibited acts by members of governing bodies of political subdivisions, exceptions.

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

SECTION A. ENACTING CLAUSE. — Sections 105.454 and 105.458, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 105.454 and 105.458, to read as follows:

105.454. ADDITIONAL PROHIBITED ACTS BY CERTAIN ELECTED AND APPOINTED PUBLIC OFFICIALS AND EMPLOYEES, EXCEPTIONS. — No elected or appointed official or employee of the state or any political subdivision thereof, serving in an executive or administrative capacity, shall:

(1) Perform any service for any agency of the state, or for any political subdivision thereof in which he or she is an officer or employee or over which he or she has supervisory power for receipt or payment of any compensation, other than of the compensation provided for the performance of his or her official duties, in excess of five hundred dollars per transaction or [one thousand five hundred] **five thousand** dollars per annum[, or in the case of a school board five thousand dollars per annum], except on transactions made pursuant to an award on a contract

let or sale made after public notice and competitive bidding, provided that the bid or offer is the lowest received;

(2) Sell, rent or lease any property to any agency of the state, or to any political subdivision thereof in which he or she is an officer or employee or over which he or she has supervisory power and received consideration therefor in excess of five hundred dollars per transaction or [one thousand five hundred] **five thousand** dollars per year, [or in the case of a school board five thousand dollars per annum,] unless the transaction is made pursuant to an award on a contract let or sale made after public notice and in the case of property other than real property, competitive bidding, provided that the bid or offer accepted is the lowest received;

(3) Participate in any matter, directly or indirectly, in which he or she attempts to influence any decision of any agency of the state, or political subdivision thereof in which he or she is an officer or employee or over which he or she has supervisory power, when he or she knows the result of such decision may be the acceptance of the performance of a service or the sale, rental, or lease of any property to that agency for consideration in excess of five hundred dollars' value per transaction or [one thousand five hundred] **five thousand** dollars' value per annum to him or her, to his or her spouse, to a dependent child in his or her custody or to any business with which he or she is associated unless the transaction is made pursuant to an award on a contract let or sale made after public notice and in the case of property other than real property, competitive bidding, provided that the bid or offer accepted is the lowest received;

(4) Perform any services during the time of his or her office or employment for any consideration from any person, firm or corporation, other than the compensation provided for the performance of his or her official duties, by which service he or she attempts to influence a decision of any agency of the state, or of any political subdivision in which he or she is an officer or employee or over which he or she has supervisory power;

(5) Perform any service for consideration, during one year after termination of his or her office or employment, by which performance he or she attempts to influence a decision of any agency of the state, or a decision of any political subdivision in which he or she was an officer or employee or over which he or she had supervisory power, except that this provision shall not be construed to prohibit any person from performing such service and receiving compensation therefor, in any adversary proceeding or in the preparation or filing of any public document or to prohibit an employee of the executive department from being employed by any other department, division or agency of the executive branch of state government. For purposes of this subdivision, within ninety days after assuming office, the governor shall by executive order designate those members of his or her staff who have supervisory authority over each department, division or agency of state government for purposes of application of this subdivision. The executive order shall be amended within ninety days of any change in the supervisory assignments of the governor's staff. The governor shall designate not less than three staff members pursuant to this subdivision;

(6) Perform any service for any consideration for any person, firm or corporation after termination of his or her office or employment in relation to any case, decision, proceeding or application with respect to which he or she was directly concerned or in which he or she personally participated during the period of his or her service or employment.

105.458. PROHIBITED ACTS BY MEMBERS OF GOVERNING BODIES OF POLITICAL SUBDIVISIONS, EXCEPTIONS. — 1. No member of any legislative or governing body of any political subdivision of the state shall:

(1) Perform any service for such political subdivision or any agency of the political subdivision for any consideration other than the compensation provided for the performance of his or her official duties; or

(2) Sell, rent or lease any property to the political subdivision or any agency of the political subdivision for consideration in excess of five hundred dollars per transaction or [one thousand five hundred] **five thousand** dollars per annum unless the transaction is made pursuant to an

award on a contract let or a sale made after public notice and in the case of property other than real property, competitive bidding, provided that the bid or offer accepted is the lowest received; or

(3) Attempt, for any compensation other than the compensation provided for the performance of his or her official duties, to influence the decision of any agency of the political subdivision on any matter; except that, this provision shall not be construed to prohibit such person from participating for compensation in any adversary proceeding or in the preparation or filing of any public document or conference thereon.

2. No sole proprietorship, partnership, joint venture, or corporation in which any member of any legislative body of any political subdivision is the sole proprietor, a partner having more than a ten percent partnership interest, or a coparticipant or owner of in excess of ten percent of the outstanding shares of any class of stock, shall:

(1) Perform any service for the political subdivision or any agency of the political subdivision for any consideration in excess of five hundred dollars per transaction or [one thousand five hundred] **five thousand** dollars per annum unless the transaction is made pursuant to an award on a contract let after public notice and competitive bidding, provided that the bid or offer accepted is the lowest received;

(2) Sell, rent or lease any property to the political subdivision or any agency of the political subdivision where the consideration is in excess of five hundred dollars per transaction or [one thousand five hundred] **five thousand** dollars per annum unless the transaction is made pursuant to an award on a contract let or a sale made after public notice and in the case of property other than real property, competitive bidding, provided that the bid or offer accepted is the lowest received.

Approved July 6, 2005

SB 318 [SB 318]

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

Modifies compensation for certain employees of the divisions of finance and credit unions

AN ACT to repeal sections 36.031, 361.170, and 370.107, RSMo, and to enact in lieu thereof three new sections relating to compensation for financial institution regulators.

SECTION

- A. Enacting clause.
- 36.031. Applicability of merit system — director of personnel to notify affected agencies.
- 361.170. Expenses of examination, how paid — salary schedule for division employees to be maintained — division of finance fund, created, uses, transfers to general revenue fund, when.
- 370.107. Annual fee — how computed — division of credit unions fund, created, uses — salary schedule of division employees to be maintained.

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

SECTION A. ENACTING CLAUSE. — Section 36.031, 361.170, and 370.107, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 36.031, 361.170, and 370.107, to read as follows:

36.031. APPLICABILITY OF MERIT SYSTEM — DIRECTOR OF PERSONNEL TO NOTIFY AFFECTED AGENCIES. — Any provision of law to the contrary notwithstanding, except for the

elective offices, institutions of higher learning, the department of transportation, the department of conservation, those positions in the Missouri state highway patrol the compensation of which is established by subdivision (2) of subsection 2 of section 43.030, RSMo, and section 43.080, RSMo, **those positions in the division of finance and the division of credit unions compensated through a dedicated fund obtained from assessments and license fees under sections 361.170 and 370.107, RSMo**, and those positions for which the constitution specifically provides the method of selection, classification, or compensation, and the positions specified in subsection 1 of section 36.030, but including attorneys, those departments, agencies and positions of the executive branch of state government which have not been subject to these provisions of the state personnel law shall be subject to the provisions of sections 36.100, 36.110, 36.120 and 36.130, and the regulations adopted pursuant to sections 36.100, 36.110, 36.120 and 36.130 which relate to the preparation, adoption and maintenance of a position classification plan, the establishment and allocation of positions within the classification plan and the use of appropriate class titles in official records, vouchers, payrolls and communications. Any provision of law which confers upon any official or agency subject to the provisions of this section the authority to appoint, classify or establish compensation for employees shall mean the exercise of such authority subject to the provisions of this section. This section shall not extend coverage of any section of this chapter, except those specifically named in this section, to any agency or employee. In accordance with sections 36.100, 36.110, 36.120 and 36.130, and after consultation with appointing authorities, the director of the division of personnel shall conduct such job studies and job reviews and establish such additional new and revised job classes as the director finds necessary for appropriate classification of the positions involved. Such classifications and the allocation of positions to classes shall be maintained on a current basis by the division of personnel. The director of the division of personnel shall, at the same time, notify all affected agencies of the appropriate assignment of each job classification to one of the salary ranges within the pay plan then applicable to merit system agencies. The affected agencies and employees in the classifications set pursuant to this section shall be subject to the pay plan and rates of compensation established and administered in accordance with the provisions of this section, and the regulations adopted pursuant to this section, on the same basis as for merit agency employees. In addition, any elected official, institution of higher learning, the department of transportation, the department of conservation, the general assembly, or any judge who is the chief administrative officer of the judicial branch of state government may request the division of personnel to study salaries within the requestor's office, department or branch of state government for classification purposes.

361.170. EXPENSES OF EXAMINATION, HOW PAID — SALARY SCHEDULE FOR DIVISION EMPLOYEES TO BE MAINTAINED — DIVISION OF FINANCE FUND, CREATED, USES, TRANSFERS TO GENERAL REVENUE FUND, WHEN. — 1. The expense of every regular and every special examination, together with the expense of administering the banking laws, including salaries, travel expenses, supplies and equipment, and including the direct and indirect expenses for rent and other supporting services furnished by the state, shall be paid by the banks and trust companies of the state, and for this purpose the director shall, prior to the beginning of each fiscal year, make an estimate of the expenses to be incurred by the division during such fiscal year. To this there shall be added an amount [equal to] **not to exceed** fifteen percent of the estimated expenses to pay the costs of rent and other supporting services such as the costs related to the division's services from the state auditor and attorney general and an amount sufficient to cover the cost of fringe benefits furnished by the state. From this total amount the director shall deduct the estimated amount of the anticipated annual income to the fund from all sources other than bank or trust company assessments. The director shall allocate and assess the remainder to the several banks and trust companies in the state on the basis of a weighted formula to be established by the director, which will take into consideration their total assets, as reflected in the last preceding report called for by the director pursuant to the provisions of section 361.130 or

from information obtained pursuant to subsection 3 of section 361.130 and, for trust companies which do not take deposits or make loans, the volume of their trust business, and the relative cost, in salaries and expenses, of examining banks and trust companies of various size and this calculation shall result in an assessment for each bank and trust company which reasonably represents the costs of the division of finance incurred with respect to such bank or trust company. A statement of such assessment shall be sent by the director to each bank and trust company on or before July first. One-half of the amount so assessed to each bank or trust company shall be paid by it to the state director of the department of revenue on or before July fifteenth, and the remainder shall be paid on or before January fifteenth of the next year.

2. Any expenses incurred or services performed on account of any bank, trust company or other corporation subject to the provisions of this chapter, outside of the normal expense of any annual or special examination, shall be charged to and paid by the corporation for whom they were incurred or performed. **Fees and charges to other corporations subject to this chapter should be reviewed at least annually by the division of finance to determine whether regulatory costs are offset by the fees and charges, and the director of the division of finance shall revise fees and charges to fully recover these costs.**

3. **The director of the division of finance shall prepare and maintain an equitable salary schedule for examiners, professional staff, and support personnel who are employees of the division. Personnel employed by the division shall be compensated according to this schedule, provided that such expense of administering the banking laws is assessed and paid in accordance with this section. The positions and classification plan for such personnel attributed to the examination of the state bank and trust companies shall allow for a comparison of such positions with similar bank examiner positions at federal bank regulatory agencies. State bank examiner positions shall not be compensated more than ninety percent of parity for corresponding federal positions for similar geographic locations in Missouri as determined by the director of the division of finance.**

[3.] 4. The state treasurer shall credit such payments to a special fund to be known as the "Division of Finance Fund", which is hereby created and which shall be devoted solely to the payment of expenditures actually incurred by the division and attributable to the regulation of banks, trust companies, and other corporations subject to the jurisdiction of the division. Any amount, other than the **amount not to exceed** fifteen percent for supporting services and the amount of fringe benefits described in subsection 1 of this section, remaining in such fund at the end of any fiscal year [up to five percent of the amount assessed to the banks and trust companies pursuant to subsection 1 of this section] **and any earnings attributed to such fund** shall not be transferred and placed to the credit of the general revenue fund as provided in section 33.080, RSMo, but shall be applicable by appropriation of the general assembly to the payment of such expenditures of the division in the succeeding fiscal year and shall be applied by the division to the reduction of the amount to be assessed to banks and trust companies in such succeeding fiscal year; provided the **amount not to exceed** fifteen percent for supporting services and the amount of fringe benefits described in subsection 1 of this section [and any amount remaining in the division of finance fund at the end of the fiscal year which exceeds five percent of the amount assessed to the banks and trust companies pursuant to subsection 1 of this section] shall be returned to general revenue **to the extent supporting services are not directly allocated to the fund.**

370.107. ANNUAL FEE — HOW COMPUTED — DIVISION OF CREDIT UNIONS FUND, CREATED, USES — SALARY SCHEDULE OF DIVISION EMPLOYEES TO BE MAINTAINED. — 1. Every credit union organized pursuant to section 370.010 and operating pursuant to the laws of this state shall pay to the department of revenue a fee determined by the director based on the total assets of the credit union as of December thirty-first of the preceding fiscal year. One-half of the fee shall be paid on or before July fifteenth, and the balance shall be paid on or before

January fifteenth of the next succeeding year. The maximum fee shall be calculated according to the following table:

Total Assets	Fee
Under \$2,000,000	\$0.125 per \$1,000 of assets up to a maximum of \$250
\$2,000,000 or more but less than \$5,000,000	\$250, plus \$1 per \$1,000 of assets in excess of \$2,000,000
\$5,000,000 or more but less than \$10,000,000.	\$3,250, plus \$0.35 per \$1,000 of assets in excess of \$5,000,000
\$10,000,000 or more but less than \$25,000,000	\$5,000, plus \$0.20 per \$1,000 of assets in excess of \$10,000,000
\$25,000,000 or more.	\$8,000, plus \$0.15 per \$1,000 of assets in excess of \$25,000,000.

The shares of one credit union which are owned by another credit union shall be excluded from the assets of the first credit union for the purpose of computing the supervisory fee levied pursuant to this section. All fees assessed shall be accounted for as prepaid expenses on the books of the credit union.

2. The state treasurer shall credit such payments, including all fees and charges made pursuant to this chapter to a special fund to be known as the "Division of Credit Unions Fund", which is hereby created and which shall be devoted solely and exclusively to the payment of expenditures actually incurred by the division and attributable to the regulation of credit unions. Any amount remaining in such fund at the end of any fiscal year **and any earnings attributed to such fund** shall not be transferred and placed to the credit of the general revenue fund as provided in section 33.080, RSMo, but shall be used, upon appropriation by the general assembly, for the payment of such expenditures of the division in the succeeding fiscal year and shall be applied by the division to the reduction of the amount to be assessed to credit unions in such succeeding fiscal year. In the event two or more credit unions are merged or consolidated, such excess amounts shall be credited to the surviving or new credit union.

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

4. **The director of the division of credit unions shall prepare and maintain an equitable salary schedule for examiners, professional staff, and support personnel who are employees of the division. Personnel employed by the division shall be compensated according to this schedule, provided that such expense of administering the credit union laws is assessed and paid in accordance with this section. The positions and classification**

plan for such personnel attributed to the examination of the state credit unions shall allow for a comparison of such positions with similar examiner positions at federal credit union regulatory agencies. State credit union examiner positions shall not be compensated more than ninety percent of parity for corresponding federal positions for similar geographic locations in Missouri as determined by the director of the division of credit unions. Personnel employed by the division shall be compensated according to this schedule, provided that such expense of administering the credit union laws is assessed and paid in accordance with this section.

Approved July 14, 2005

SB 320 [HCS SB 320]

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

Creates lien for nonpayment of rental equipment fees

AN ACT to repeal sections 429.010 and 429.080, RSMo, and to enact in lieu thereof two new sections relating to mechanic liens.

SECTION

- A. Enacting clause.
- 429.010. Mechanics' and materialmen's lien, who may assert — extent of lien.
- 429.080. Lien filed with circuit clerk, when.

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

SECTION A. ENACTING CLAUSE. — Sections 429.010 and 429.080, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 429.010 and 429.080, to read as follows:

429.010. MECHANICS' AND MATERIALMEN'S LIEN, WHO MAY ASSERT — EXTENT OF LIEN. — Any person who shall do or perform any work or labor upon, **rent any machinery or equipment**, or furnish any material, fixtures, engine, boiler or machinery for any building, erection or improvements upon land, or for repairing, **grading, excavating, or filling of** the same, or furnish and plant trees, shrubs, bushes or other plants or provides any type of landscaping goods or services or who installs outdoor irrigation systems under or by virtue of any contract with the owner or proprietor thereof, or his **or her** agent, trustee, contractor or subcontractor, or without a contract if ordered by a city, town, village or county having a charter form of government to abate the conditions that caused a structure on that property to be deemed a dangerous building under local ordinances pursuant to section 67.410, RSMo, upon complying with the provisions of sections 429.010 to 429.340, shall have for his **or her** work or labor done, **machinery or equipment rented** or materials, fixtures, engine, boiler, machinery, trees, shrubs, bushes or other plants furnished, or any type of landscaping goods or services provided, a lien upon such building, erection or improvements, and upon the land belonging to such owner or proprietor on which the same are situated, to the extent of three acres; or if such building, erection or improvements be upon any lot of land in any town, city or village, or if such building, erection or improvements be for manufacturing, industrial or commercial purposes and not within any city, town or village, then such lien shall be upon such building, erection or improvements, and the lot, tract or parcel of land upon which the same are situated, and not

limited to the extent of three acres, to secure the payment of such work or labor done, **machinery or equipment rented**, or materials, fixtures, engine, boiler, machinery, trees, shrubs, bushes or other plants or any type of landscaping goods or services furnished, or outdoor irrigation systems installed; except that if such building, erection or improvements be not within the limits of any city, town or village, then such lien shall be also upon the land to the extent necessary to provide a roadway for ingress to and egress from the lot, tract or parcel of land upon which such building, erection or improvements are situated, not to exceed forty feet in width, to the nearest public road or highway. Such lien shall be enforceable only against the property of the original purchaser of such plants unless the lien is filed against the property prior to the conveyance of such property to a third person. **For claims involving the rental of machinery or equipment, the lien shall be for the reasonable rental value of the machinery or equipment during the period of actual use and any periods of nonuse taken into account in the rental contract, while the equipment is on the property in question. There shall be no lien involving the rental of machinery or equipment unless:**

- (1) **The improvements are made on commercial property;**
- (2) **The amount of the claim exceeds five thousand dollars; and**
- (3) **The party claiming the lien provides written notice within five business days of the commencement of the use of the rental property to the property owner that rental machinery or equipment is being used upon their property. Such notice shall identify the name of the entity that rented the machinery or equipment, the machinery or equipment being rented, and the rental rate.**

429.080. LIEN FILED WITH CIRCUIT CLERK, WHEN. — It shall be the duty of every original contractor, every journeyman and day laborer, and every other person seeking to obtain the benefit of the provisions of sections 429.010 to 429.340, within six months after the indebtedness shall have accrued, **or, with respect to rental equipment or machinery, within sixty days after the date the last of the rental equipment or machinery was last removed from the property**, to file with the clerk of the circuit court of the proper county a just and true account of the demand due him or them after all just credits have been given, which is to be a lien upon such building or other improvements, and a true description of the property, or so near as to identify the same, upon which the lien is intended to apply, with the name of the owner or contractor, or both, if known to the person filing the lien, which shall, in all cases, be verified by the oath of himself or some credible person for him.

Approved July 14, 2005

SB 323 [SB 323]

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 eligibility criteria for grants to umbilical cord blood banks

AN ACT to amend chapter 196, RSMo, by adding thereto one new section relating to umbilical cord blood banks.

SECTION

- A. Enacting clause.
- 196.1129. Umbilical cord blood banks, grants awarded, when — eligibility criteria.

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

SECTION A. ENACTING CLAUSE. — Chapter 196, RSMo, is amended by adding thereto one new section, to be known as section 196.1129, to read as follows:

196.1129. UMBILICAL CORD BLOOD BANKS, GRANTS AWARDED, WHEN — ELIGIBILITY CRITERIA. — **1.** For purposes of this section, the term "board" shall mean the life sciences research board established under section 196.1103.

2. Subject to appropriations, the board shall establish a program to award grants for the establishment of umbilical cord blood banks to be located in this state and for the expansion of existing umbilical cord blood banks located in this state. The purposes and activities of umbilical cord blood banks eligible for grants for this program shall be directed towards gathering, collecting, and preserving umbilical cord and placental blood only from live births and providing such blood and blood components primarily to recipients who are unrelated to the donors of the blood, and towards persons and institutions conducting scientific research requiring sources of human stem cells.

3. The board shall, by rule, establish eligibility criteria for awarding grants under this section. In awarding grants, the board shall consider:

(1) The ability of the applicant to establish, operate, and maintain an umbilical cord blood bank and to provide related services;

(2) The experience of the applicant in operating similar facilities; and

(3) The applicant's commitment to continue to operate and maintain an umbilical cord blood bank after the expiration of the terms of the contract required by subsection 4 of this section.

4. Recipients of grants awarded shall enter into contracts under which each recipient agrees to:

(1) Operate and maintain an umbilical cord blood bank in this state at least until the eighth anniversary of the date of the award of the grant;

(2) Gather, collect, and preserve umbilical cord blood only from live births; and

(3) Comply with any financial or reporting requirements imposed on the recipient under rules adopted by the board.

5. The grants authorized under this section shall be awarded subject to funds specifically appropriated for that purpose.

Approved July 12, 2005

SB 343 [CCS HCS SS SB 343]

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 laws regarding job development programs administered by the Department of Economic Development

AN ACT to repeal sections 99.960, 100.710, and 135.284, RSMo, and section 99.845, as enacted by conference committee substitute for senate substitute for senate committee substitute for house committee substitute for house bill no. 289, ninety-second general assembly, first regular session and senate bill no. 235, ninety-second general assembly, first regular session, and section 99.845 as enacted by senate committee substitute for senate bill no. 620, ninety-second general assembly, first regular session, section 100.850 as enacted by conference committee substitute for senate substitute for senate committee substitute for house committee substitute for house bill no. 1182, ninety-second general assembly, second

regular session, section 100.850 as enacted by house substitute for senate committee substitute for senate bill no. 1155, ninety-second general assembly, first regular session, section 100.850 as enacted by conference committee substitute for house substitute for house committee substitute for senate bill no. 1394, ninety-second general assembly, second regular session, section 135.535 as enacted by conference committee substitute for senate substitute for senate committee substitute for house substitute for house committee substitute for house bill no. 701, ninetieth general assembly, first regular session and section 135.535 as enacted by conference committee substitute no. 2 for house substitute for house committee substitute for senate bill no. 20, ninetieth general assembly, first regular session, and to enact in lieu thereof fifteen new sections relating to job development programs administered by the department of economic development.

SECTION

- A. Enacting clause.
- 67.1305. Retail sales tax may be imposed in lieu of certain local economic development sales tax — ballot language — collection and distribution of moneys — trust fund and board to be established.
- 99.845. Tax increment financing adoption — division of ad valorem taxes — payments in lieu of tax, deposit, inclusion and exclusion of current equalized assessed valuation for certain purposes, when — other taxes included, amount — supplemental tax increment financing fund established, disbursement.
- 99.845. Tax increment financing adoption — division of ad valorem taxes — payments in lieu of tax, deposit, inclusion and exclusion of current equalized assessed valuation for certain purposes, when — other taxes included, amount — supplemental tax increment financing fund established, disbursement.
- 99.960. Disbursement of project costs, approval of department required — application, contents — finance board to make determination — cap on disbursements — time limitations on disbursements — development costs defined — projects ineligible for TIFs, when — rulemaking authority.
- 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.
- 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.
- 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.
- 135.284. Contingent expiration of certain sections.
- 135.535. Tax credit for relocating a business to a distressed community, approval by department of economic development, application — employees eligible to receive credit — credit for expenditures on equipment — transfer of certificate of credit — maximum amount allowed, credit carried over — limitations — tax credit for existing business in a distressed community which hires new employees, conditions and types of businesses eligible.
- 135.535. Tax credit for relocating a business to a distressed community, approval by department of economic development, application — employees eligible to receive credit — credit for expenditures on equipment — transfer of certificate of credit — maximum amount allowed, credit carried over — limitations — tax credit for existing business in a distressed community which hires new employees, conditions and types of businesses eligible.
- 620.1875. Title of law.
- 620.1878. Definitions.
- 620.1881. Project notice of intent, department to respond with a proposal or a rejection — benefits available — effect on withholding tax — projects eligible for benefits — annual report — cap on tax credits — allocation of tax credits.
- 620.1884. Rulemaking authority.
- 620.1887. Quality jobs advisory task force created, members.
- 620.1890. Report to the general assembly, contents.
- 620.1900. Fee imposed on tax credit recipients, amount, deposited where — economic development advancement fund created, use of moneys.
1. Essential industry retention projects, time for approval.

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

SECTION A. ENACTING CLAUSE. — Sections 99.960, 100.710, and 135.284, RSMo, and section 99.845, as enacted by conference committee substitute for senate substitute for senate committee substitute for house committee substitute for house bill no. 289, ninety-second general assembly, first regular session and senate bill no. 235, ninety-second general assembly,

first regular session, and section 99.845 as enacted by senate committee substitute for senate bill no. 620, ninety-second general assembly, first regular session, section 100.850 as enacted by conference committee substitute for senate substitute for senate committee substitute for house committee substitute for house bill no. 1182, ninety-second general assembly, second regular session, section 100.850 as enacted by house substitute for senate committee substitute for senate bill no. 1155, ninety-second general assembly, first regular session, section 100.850 as enacted by conference committee substitute for house substitute for house committee substitute for senate bill no. 1394, ninety-second general assembly, second regular session, section 135.535 as enacted by conference committee substitute for senate substitute for senate committee substitute for house substitute for house committee substitute for house bill no. 701, ninetieth general assembly, first regular session and section 135.535 as enacted by conference committee substitute no. 2 for house substitute for house committee substitute for senate bill no. 20, ninetieth general assembly, first regular session, are repealed and fifteen new sections enacted in lieu thereof, to be known as sections 67.1305, 99.845, 99.960, 100.710, 100.850, 135.284, 135.535, 620.1875, 620.1878, 620.1881, 620.1884, 620.1887, 620.1890, 620.1900, and 1, to read as follows:

67.1305. RETAIL SALES TAX MAY BE IMPOSED IN LIEU OF CERTAIN LOCAL ECONOMIC DEVELOPMENT SALES TAX — BALLOT LANGUAGE — COLLECTION AND DISTRIBUTION OF MONEYS — TRUST FUND AND BOARD TO BE ESTABLISHED. — 1. As used in this section, the term "city" shall mean any incorporated city, town, or village.

2. In lieu of the sales taxes authorized under sections 67.1300 and 67.1303, the governing body of any city or county may impose, by order or ordinance, a sales tax on all retail sales made in the city or county which are subject to sales tax under chapter 144, RSMo. The tax authorized in this section shall not be more than one-half of one percent. The order or ordinance imposing the tax shall not become effective unless the governing body of the city or county submits to the voters of the city or county at any citywide, county or state general, primary or special election a proposal to authorize the governing body to impose a tax under this section. The tax authorized in this section shall be in addition to all other sales taxes imposed by law, and shall be stated separately from all other charges and taxes. The tax authorized in this section shall not be imposed by any city or county that has imposed a tax under section 67.1300 or 67.1303 unless the tax imposed under those sections has expired or been repealed.

3. 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 or county) impose a sales tax at a rate of (insert rate of percent) percent for economic development purposes?

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 and such question is approved by a majority of the qualified voters voting on the question, provided that no proposal shall be resubmitted to the voters sooner than twelve months from the date of the submission of the last proposal.

4. All sales taxes collected by the director of revenue under this section 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 in a special trust fund, which is hereby created, to be known as the "Local Option Economic Development Sales Tax Trust Fund".

5. The moneys in the local option economic development sales 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 and which was collected in each city or county imposing a sales tax pursuant to this section, and the records shall be open to the inspection of officers of the city or county and the public.

6. 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 city or county which levied the tax. Such funds shall be deposited with the county treasurer of each such county or the appropriate municipal officer in the case of a municipal tax, and all expenditures of funds arising from the local option economic development sales tax trust fund shall be in accordance with this section.

7. The director of revenue may authorize the state treasurer to make refunds from the amounts in the trust fund and credited to any city or county for erroneous payments and overpayments made, and may redeem dishonored checks and drafts deposited to the credit of such cities and counties.

8. If any county or municipality abolishes the tax, the city or county 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 city or county, the director of revenue shall remit the balance in the account to the city or county and close the account of that city or county. The director of revenue shall notify each city or county of each instance of any amount refunded or any check redeemed from receipts due the city or county.

9. Except as modified in this section, all provisions of sections 32.085 and 32.087, RSMo, shall apply to the tax imposed pursuant to this section.

10. (1) No revenue generated by the tax authorized in this section shall be used for any retail development project, except for the redevelopment of downtown areas and historic districts. Not more than twenty-five percent of the revenue generated shall be used annually for administrative purposes, including staff and facility costs.

(2) At least twenty percent of the revenue generated by the tax authorized in this section shall be used solely for projects directly related to long-term economic development preparation, including, but not limited to, the following:

- (a) Acquisition of land;
- (b) Installation of infrastructure for industrial or business parks;
- (c) Improvement of water and wastewater treatment capacity;
- (d) Extension of streets;
- (e) Public facilities directly related to economic development and job creation; and
- (f) Providing matching dollars for state or federal grants relating to such long-term projects.

(3) The remaining revenue generated by the tax authorized in this section may be used for, but shall not be limited to, the following:

- (a) Marketing;
 - (b) Providing grants and loans to companies for job training, equipment acquisition, site development, and infrastructures;
 - (c) Training programs to prepare workers for advanced technologies and high skill jobs;
 - (d) Legal and accounting expenses directly associated with the economic development planning and preparation process; and
 - (e) Developing value-added and export opportunities for Missouri agricultural products.
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11. 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 or county funds.

12. Any city or county imposing the tax authorized in this section shall establish an economic development tax board. The volunteer board shall receive no compensation or operating budget.

(1) The economic development tax board established by a city shall consist of five members, to be appointed as follows:

(a) One member shall be appointed by the school districts included within any economic development plan or area funded by the sales tax authorized in this section. Such members shall be appointed in any manner agreed upon by the affected districts;

(b) Three members shall be appointed by the chief elected officer of the city with the consent of the majority of the governing body of the city; and

(c) One member shall be appointed by the governing body of the county in which the city is located.

(2) The economic development tax board established by a county shall consist of seven members, to be appointed as follows:

(a) One member shall be appointed by the school districts included within any economic development plan or area funded by the sales tax authorized in this section. Such members shall be appointed in any manner agreed upon by the affected districts;

(b) Four members shall be appointed by the governing body of the county; and

(c) Two members from the cities, towns, or villages within the county appointed in any manner agreed upon by the chief elected officers of the cities or villages.

Of the members initially appointed, three shall be designated to serve for terms of two years, and the remaining members shall be designated to serve for a term of four years from the date of such initial appointments. Thereafter, the members appointed shall serve for a term of four years, except that all vacancies shall be filled for unexpired terms in the same manner as were the original appointments.

13. The board, subject to approval of the governing body of the city or county, shall consider economic development plans, economic development projects, or designations of an economic development area, and shall hold public hearings and provide notice of any such hearings. The board shall vote on all proposed economic development plans, economic development projects, or designations of an economic development area, and amendments thereto, within thirty days following completion of the hearing on any such plan, project, or designation, and shall make recommendations to the governing body within ninety days of the hearing concerning the adoption of or amendment to economic development plans, economic development projects, or designations of an economic development area. The governing body of the city or county shall have the final determination on use and expenditure of any funds received from the tax imposed under this section.

14. The board may consider and recommend using funds received from the tax imposed under this section for plans, projects or area designations outside the boundaries of the city or county imposing the tax if, and only if:

(1) The city or county imposing the tax or the state receives significant economic benefit from the plan, project or area designation; and

(2) The board establishes an agreement with the governing bodies of all cities and counties in which the plan, project or area designation is located detailing the authority and responsibilities of each governing body with regard to the plan, project or area designation.

15. Notwithstanding any other provision of law to the contrary, the local option economic development sales tax imposed under this section when imposed within a special taxing district, including, but not limited to a tax increment financing district, neighborhood improvement district, or community improvement district, shall be excluded from the calculation of revenues available to such districts, and no revenues from any sales tax imposed under this section shall be used for the purposes of any such district unless recommended by the economic development tax board established under this section and approved by the governing body imposing the tax.

16. The board and the governing body of the city or county imposing the tax shall report at least annually to the governing body of the city or county on the use of the funds provided under this section and on the progress of any plan, project, or designation adopted under this section and shall make such report available to the public.

17. Not later than the first day of March each year the department of economic development shall submit to the joint committee on economic development a report which must include the following information for each project using the tax authorized under this section:

- (1) A statement of its primary economic development goals;
- (2) A statement of the total economic development sales tax revenues received during the immediately preceding calendar year; and
- (3) A statement of total expenditures during the preceding calendar year in each of the following categories:
 - (a) Infrastructure improvements;
 - (b) Land and or buildings;
 - (c) Machinery and equipment;
 - (d) Job training investments;
 - (e) Direct business incentives;
 - (f) Marketing;
 - (g) Administration and legal expenses; and
 - (h) Other expenditures.

18. The governing body of any city or county 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 or county. The ballot of submission shall be in substantially the following form:

Shall (insert the name of the city or county) repeal the sales tax imposed at a rate of (insert rate of percent) percent for economic development 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 or county, and the repeal is approved by a majority of the qualified voters voting on the question.

19. If any provision of this section or section 67.1303 or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or application of this section or section 67.1303 which can be given effect without the invalid provision or application, and to this end the provisions of this section and section 67.1303 are declared severable.

99.845. TAX INCREMENT FINANCING ADOPTION — DIVISION OF AD VALOREM TAXES — PAYMENTS IN LIEU OF TAX, DEPOSIT, INCLUSION AND EXCLUSION OF CURRENT EQUALIZED ASSESSED VALUATION FOR CERTAIN PURPOSES, WHEN — OTHER TAXES

INCLUDED, AMOUNT — SUPPLEMENTAL TAX INCREMENT FINANCING FUND ESTABLISHED, DISBURSEMENT. — 1. A municipality, either at the time a redevelopment project is approved or, in the event a municipality has undertaken acts establishing a redevelopment plan and redevelopment project and has designated a redevelopment area after the passage and approval of sections 99.800 to 99.865 but prior to August 13, 1982, which acts are in conformance with the procedures of sections 99.800 to 99.865, may adopt tax increment allocation financing by passing an ordinance providing that after the total equalized assessed valuation of the taxable real property in a redevelopment project exceeds the certified total initial equalized assessed valuation of the taxable real property in the redevelopment project, the ad valorem taxes, and payments in lieu of taxes, if any, arising from the levies upon taxable real property in such redevelopment project by taxing districts and tax rates determined in the manner provided in subsection 2 of section 99.855 each year after the effective date of the ordinance until redevelopment costs have been paid shall be divided as follows:

(1) That portion of taxes, penalties and interest levied upon each taxable lot, block, tract, or parcel of real property which is attributable to the initial equalized assessed value of each such taxable lot, block, tract, or parcel of real property in the area selected for the redevelopment project shall be allocated to and, when collected, shall be paid by the county collector to the respective affected taxing districts in the manner required by law in the absence of the adoption of tax increment allocation financing;

(2) (a) Payments in lieu of taxes attributable to the increase in the current equalized assessed valuation of each taxable lot, block, tract, or parcel of real property in the area selected for the redevelopment project and any applicable penalty and interest over and above the initial equalized assessed value of each such unit of property in the area selected for the redevelopment project shall be allocated to and, when collected, shall be paid to the municipal treasurer who shall deposit such payment in lieu of taxes into a special fund called the "Special Allocation Fund" of the municipality for the purpose of paying redevelopment costs and obligations incurred in the payment thereof. Payments in lieu of taxes which are due and owing shall constitute a lien against the real estate of the redevelopment project from which they are derived and shall be collected in the same manner as the real property tax, including the assessment of penalties and interest where applicable. The municipality may, in the ordinance, pledge the funds in the special allocation fund for the payment of such costs and obligations and provide for the collection of payments in lieu of taxes, the lien of which may be foreclosed in the same manner as a special assessment lien as provided in section 88.861, RSMo. No part of the current equalized assessed valuation of each lot, block, tract, or parcel of property in the area selected for the redevelopment project attributable to any increase above the total initial equalized assessed value of such properties shall be used in calculating the general state school aid formula provided for in section 163.031, RSMo, until such time as all redevelopment costs have been paid as provided for in this section and section 99.850;

(b) Notwithstanding any provisions of this section to the contrary, for purposes of determining the limitation on indebtedness of local government pursuant to article VI, section 26(b) of the Missouri Constitution, the current equalized assessed value of the property in an area selected for redevelopment attributable to the increase above the total initial equalized assessed valuation shall be included in the value of taxable tangible property as shown on the last completed assessment for state or county purposes;

(c) The county assessor shall include the current assessed value of all property within the taxing district in the aggregate valuation of assessed property entered upon the assessor's book and verified pursuant to section 137.245, RSMo, and such value shall be utilized for the purpose of the debt limitation on local government pursuant to article VI, section 26(b) of the Missouri Constitution;

(3) For purposes of this section, "levies upon taxable real property in such redevelopment project by taxing districts" shall not include the blind pension fund tax levied under the authority of article III, section 38(b) of the Missouri Constitution, or the merchants' and manufacturers'

inventory replacement tax levied under the authority of subsection 2 of section 6 of article X, of the Missouri Constitution, except in redevelopment project areas in which tax increment financing has been adopted by ordinance pursuant to a plan approved by vote of the governing body of the municipality taken after August 13, 1982, and before January 1, 1998.

2. In addition to the payments in lieu of taxes described in subdivision (2) of subsection 1 of this section, for redevelopment plans and projects adopted or redevelopment projects approved by ordinance after July 12, 1990, and prior to August 31, 1991, fifty percent of the total additional revenue from taxes, penalties and interest imposed by the municipality, or other taxing districts, which are generated by economic activities within the area of the redevelopment project over the amount of such taxes generated by economic activities within the area of the redevelopment project in the calendar year prior to the adoption of the redevelopment project by ordinance, while tax increment financing remains in effect, but excluding taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, taxes levied pursuant to section 70.500, RSMo, licenses, fees or special assessments other than payments in lieu of taxes and any penalty and interest thereon, or, effective January 1, 1998, taxes levied pursuant to section 94.660, RSMo, for the purpose of public transportation, shall be allocated to, and paid by the local political subdivision collecting officer to the treasurer or other designated financial officer of the municipality, who shall deposit such funds in a separate segregated account within the special allocation fund. Any provision of an agreement, contract or covenant entered into prior to July 12, 1990, between a municipality and any other political subdivision which provides for an appropriation of other municipal revenues to the special allocation fund shall be and remain enforceable.

3. In addition to the payments in lieu of taxes described in subdivision (2) of subsection 1 of this section, for redevelopment plans and projects adopted or redevelopment projects approved by ordinance after August 31, 1991, fifty percent of the total additional revenue from taxes, penalties and interest which are imposed by the municipality or other taxing districts, and which are generated by economic activities within the area of the redevelopment project over the amount of such taxes generated by economic activities within the area of the redevelopment project in the calendar year prior to the adoption of the redevelopment project by ordinance, while tax increment financing remains in effect, but excluding personal property taxes, taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, taxes levied pursuant to section 70.500, RSMo, or effective January 1, 1998, taxes levied for the purpose of public transportation pursuant to section 94.660, RSMo, licenses, fees or special assessments other than payments in lieu of taxes and penalties and interest thereon, shall be allocated to, and paid by the local political subdivision collecting officer to the treasurer or other designated financial officer of the municipality, who shall deposit such funds in a separate segregated account within the special allocation fund.

4. Beginning January 1, 1998, for redevelopment plans and projects adopted or redevelopment projects approved by ordinance and which have complied with subsections 4 to 12 of this section, in addition to the payments in lieu of taxes and economic activity taxes described in subsections 1, 2 and 3 of this section, up to fifty percent of the new state revenues, as defined in subsection 8 of this section, estimated for the businesses within the project area and identified by the municipality in the application required by subsection 10 of this section, over and above the amount of such taxes reported by businesses within the project area as identified by the municipality in their application prior to the approval of the redevelopment project by ordinance, while tax increment financing remains in effect, may be available for appropriation by the general assembly as provided in subsection 10 of this section to the department of economic development supplemental tax increment financing fund, from the general revenue fund, for distribution to the treasurer or other designated financial officer of the municipality with approved plans or projects.

5. The treasurer or other designated financial officer of the municipality with approved plans or projects shall deposit such funds in a separate segregated account within the special allocation fund established pursuant to section 99.805.

6. No transfer from the general revenue fund to the Missouri supplemental tax increment financing fund shall be made unless an appropriation is made from the general revenue fund for that purpose. No municipality shall commit any state revenues prior to an appropriation being made for that project. For all redevelopment plans or projects adopted or approved after December 23, 1997, appropriations from the new state revenues shall not be distributed from the Missouri supplemental tax increment financing fund into the special allocation fund unless the municipality's redevelopment plan ensures that one hundred percent of payments in lieu of taxes and fifty percent of economic activity taxes generated by the project shall be used for eligible redevelopment project costs while tax increment financing remains in effect. This account shall be separate from the account into which payments in lieu of taxes are deposited, and separate from the account into which economic activity taxes are deposited.

7. In order for the redevelopment plan or project to be eligible to receive the revenue described in subsection 4 of this section, the municipality shall comply with the requirements of subsection 10 of this section prior to the time the project or plan is adopted or approved by ordinance. The director of the department of economic development and the commissioner of the office of administration may waive the requirement that the municipality's application be submitted prior to the redevelopment plan's or project's adoption or the redevelopment plan's or project's approval by ordinance.

8. For purposes of this section, "new state revenues" means:

(1) The incremental increase in the general revenue portion of state sales tax revenues received pursuant to section 144.020, RSMo, excluding sales taxes that are constitutionally dedicated, taxes deposited to the school district trust fund in accordance with section 144.701, RSMo, sales and use taxes on motor vehicles, trailers, boats and outboard motors and future sales taxes earmarked by law. In no event shall the incremental increase include any amounts attributable to retail sales unless the municipality or authority has proven to the Missouri development finance board and the department of economic development and such entities have made a finding that the sales tax increment attributable to retail sales is from new sources which did not exist in the state during the baseline year. The incremental increase in the general revenue portion of state sales tax revenues for an existing or relocated facility shall be the amount that current state sales tax revenue exceeds the state sales tax revenue in the base year as stated in the redevelopment plan as provided in subsection 10 of this section; or

(2) The state income tax withheld on behalf of new employees by the employer pursuant to section 143.221, RSMo, at the business located within the project as identified by the municipality. The state income tax withholding allowed by this section shall be the municipality's estimate of the amount of state income tax withheld by the employer within the redevelopment area for new employees who fill new jobs directly created by the tax increment financing project.

9. Subsection 4 of this section shall apply only to blighted areas located in enterprise zones, pursuant to sections 135.200 to 135.256, RSMo, blighted areas located in federal empowerment zones, or to blighted areas located in central business districts or urban core areas of cities which districts or urban core areas at the time of approval of the project by ordinance, provided that the enterprise zones, federal empowerment zones or blighted areas contained one or more buildings at least fifty years old; and

(1) Suffered from generally declining population or property taxes over the twenty-year period immediately preceding the area's designation as a project area by ordinance; or

(2) Was a historic hotel located in a county of the first classification without a charter form of government with a population according to the most recent federal decennial census in excess of one hundred fifty thousand and containing a portion of a city with a population according to the most recent federal decennial census in excess of three hundred fifty thousand.

10. The initial appropriation of up to fifty percent of the new state revenues authorized pursuant to subsections 4 and 5 of this section shall not be made to or distributed by the department of economic development to a municipality until all of the following conditions have been satisfied:

(1) The director of the department of economic development or his or her designee and the commissioner of the office of administration or his or her designee have approved a tax increment financing application made by the municipality for the appropriation of the new state revenues. The municipality shall include in the application the following items in addition to the items in section 99.810:

(a) The tax increment financing district or redevelopment area, including the businesses identified within the redevelopment area;

(b) The base year of state sales tax revenues or the base year of state income tax withheld on behalf of existing employees, reported by existing businesses within the project area prior to approval of the redevelopment project;

(c) The estimate of the incremental increase in the general revenue portion of state sales tax revenue or the estimate for the state income tax withheld by the employer on behalf of new employees expected to fill new jobs created within the redevelopment area after redevelopment;

(d) The official statement of any bond issue pursuant to this subsection after December 23, 1997;

(e) An affidavit that is signed by the developer or developers attesting that the provisions of subdivision (1) of section 99.810 have been met and specifying that the redevelopment area would not be reasonably anticipated to be developed without the appropriation of the new state revenues;

(f) The cost-benefit analysis required by section 99.810 includes a study of the fiscal impact on the state of Missouri; and

(g) The statement of election between the use of the incremental increase of the general revenue portion of the state sales tax revenues or the state income tax withheld by employers on behalf of new employees who fill new jobs created in the redevelopment area;

(h) The name, street and mailing address, and phone number of the mayor or chief executive officer of the municipality;

(i) The street address of the development site;

(j) The three-digit North American Industry Classification System number or numbers characterizing the development project;

(k) The estimated development project costs;

(l) The anticipated sources of funds to pay such development project costs;

(m) Evidence of the commitments to finance such development project costs;

(n) The anticipated type and term of the sources of funds to pay such development project costs;

(o) The anticipated type and terms of the obligations to be issued;

(p) The most recent equalized assessed valuation of the property within the development project area;

(q) An estimate as to the equalized assessed valuation after the development project area is developed in accordance with a development plan;

(r) The general land uses to apply in the development area;

(s) The total number of individuals employed in the development area, broken down by full-time, part-time, and temporary positions;

(t) The total number of full-time equivalent positions in the development area;

(u) The current gross wages, state income tax withholdings, and federal income tax withholdings for individuals employed in the development area;

(v) The total number of individuals employed in this state by the corporate parent of any business benefitting from public expenditures in the development area, and all subsidiaries

thereof, as of December thirty-first of the prior fiscal year, broken down by full-time, part-time, and temporary positions;

(w) The number of new jobs to be created by any business benefiting from public expenditures in the development area, broken down by full-time, part-time, and temporary positions;

(x) The average hourly wage to be paid to all current and new employees at the project site, broken down by full-time, part-time, and temporary positions;

(y) For project sites located in a metropolitan statistical area, as defined by the federal Office of Management and Budget, the average hourly wage paid to nonmanagerial employees in this state for the industries involved at the project, as established by the United States Bureau of Labor Statistics;

(z) For project sites located outside of metropolitan statistical areas, the average weekly wage paid to nonmanagerial employees in the county for industries involved at the project, as established by the United States Department of Commerce;

(aa) A list of other community and economic benefits to result from the project;

(bb) A list of all development subsidies that any business benefiting from public expenditures in the development area has previously received for the project, and the name of any other granting body from which such subsidies are sought;

(cc) A list of all other public investments made or to be made by this state or units of local government to support infrastructure or other needs generated by the project for which the funding pursuant to this [act] **section** is being sought;

(dd) A statement as to whether the development project may reduce employment at any other site, within or without the state, resulting from automation, merger, acquisition, corporate restructuring, relocation, or other business activity;

(ee) A statement as to whether or not the project involves the relocation of work from another address and if so, the number of jobs to be relocated and the address from which they are to be relocated;

(ff) A list of competing businesses in the county containing the development area and in each contiguous county;

(gg) A market study for the development area;

(hh) A certification by the chief officer of the applicant as to the accuracy of the development plan;

(2) The methodologies used in the application for determining the base year and determining the estimate of the incremental increase in the general revenue portion of the state sales tax revenues or the state income tax withheld by employers on behalf of new employees who fill new jobs created in the redevelopment area shall be approved by the director of the department of economic development or his or her designee and the commissioner of the office of administration or his or her designee. Upon approval of the application, the director of the department of economic development or his or her designee and the commissioner of the office of administration or his or her designee shall issue a certificate of approval. The department of economic development may request the appropriation following application approval;

(3) The appropriation shall be either a portion of the estimate of the incremental increase in the general revenue portion of state sales tax revenues in the redevelopment area or a portion of the estimate of the state income tax withheld by the employer on behalf of new employees who fill new jobs created in the redevelopment area as indicated in the municipality's application, approved by the director of the department of economic development or his or her designee and the commissioner of the office of administration or his or her designee. At no time shall the [aggregate] annual [appropriation] **amount** of the new state revenues [for redevelopment areas] **approved for disbursements from the Missouri supplemental tax increment financing fund** exceed [fifteen] **thirty-two** million dollars;

(4) Redevelopment plans and projects receiving new state revenues shall have a duration of up to fifteen years, unless prior approval for a longer term is given by the director of the

department of economic development or his or her designee and the commissioner of the office of administration or his or her designee; except that, in no case shall the duration exceed twenty-three years.

11. In addition to the areas authorized in subsection 9 of this section, the funding authorized pursuant to subsection 4 of this section shall also be available in a federally approved levee district, where construction of a levee begins after December 23, 1997, and which is contained within a county of the first classification without a charter form of government with a population between fifty thousand and one hundred thousand inhabitants which contains all or part of a city with a population in excess of four hundred thousand or more inhabitants.

12. There is hereby established within the state treasury a special fund to be known as the "Missouri Supplemental Tax Increment Financing Fund", to be administered by the department of economic development. The department shall annually distribute from the Missouri supplemental tax increment financing fund the amount of the new state revenues as appropriated as provided in the provisions of subsections 4 and 5 of this section if and only if the conditions of subsection 10 of this section are met. The fund shall also consist of any gifts, contributions, grants or bequests received from federal, private or other sources. Moneys in the Missouri supplemental tax increment financing fund shall be disbursed per project pursuant to state appropriations.

13. [All personnel and other costs incurred by the department of economic development for the administration and operation of subsections 4 to 12 of this section shall be paid from the state general revenue fund. On an annual basis, the general revenue fund shall be reimbursed for the full amount of such costs by the developer or developers of the project or projects for which municipalities have made tax increment financing applications for the appropriation of new state revenues, as provided for in subdivision (1) of subsection 10 of this section. The amount of costs charged to each developer shall be based upon the percentage arrived at by dividing the monetary amount of the application made by each municipality for a particular project by the total monetary amount of all applications received by the department of economic development.] **Redevelopment project costs may include, at the prerogative of the state, the portion of salaries and expenses of the department of economic development and the department of revenue reasonably allocable to each redevelopment project approved for disbursements from the Missouri supplemental tax increment financing fund for the ongoing administrative functions associated with such redevelopment project. Such amounts shall be recovered from new state revenues deposited into the Missouri supplemental tax increment financing fund created under this section.**

14. For redevelopment plans or projects approved by ordinance that result in net new jobs from the relocation of a national headquarters from another state to the area of the redevelopment project, the economic activity taxes and new state tax revenues shall not be based on a calculation of the incremental increase in taxes as compared to the base year or prior calendar year for such redevelopment project, rather the incremental increase shall be the amount of total taxes generated from the net new jobs brought in by the national headquarters from another state. In no event shall this subsection be construed to allow a redevelopment project to receive an appropriation in excess of up to fifty percent of the new state revenues.

[99.845. TAX INCREMENT FINANCING ADOPTION — DIVISION OF AD VALOREM TAXES — PAYMENTS IN LIEU OF TAX, DEPOSIT, INCLUSION AND EXCLUSION OF CURRENT EQUALIZED ASSESSED VALUATION FOR CERTAIN PURPOSES, WHEN — OTHER TAXES INCLUDED, AMOUNT — SUPPLEMENTAL TAX INCREMENT FINANCING FUND ESTABLISHED, DISBURSEMENT. — 1. A municipality, either at the time a redevelopment project is approved or in the event a municipality has undertaken acts establishing a redevelopment plan and redevelopment project and has designated a redevelopment area after the passage and approval of sections 99.800 to 99.865 but prior to August 13, 1982, which acts are in conformance with the procedures of sections 99.800 to 99.865, may adopt tax increment allocation financing by

passing an ordinance providing that after the total equalized assessed valuation of the taxable real property in a redevelopment project exceeds the certified total initial equalized assessed valuation of the taxable real property in the redevelopment project, the ad valorem taxes, and payments in lieu of taxes, if any, arising from the levies upon taxable real property in such redevelopment project by taxing districts and tax rates determined in the manner provided in subsection 2 of section 99.855 each year after the effective date of the ordinance until redevelopment costs have been paid shall be divided as follows:

(1) That portion of taxes, penalties and interest levied upon each taxable lot, block, tract, or parcel of real property which is attributable to the initial equalized assessed value of each such taxable lot, block, tract, or parcel of real property in the area selected for the redevelopment project shall be allocated to and, when collected, shall be paid by the county collector to the respective affected taxing districts in the manner required by law in the absence of the adoption of tax increment allocation financing;

(2) Payments in lieu of taxes attributable to the increase in the current equalized assessed valuation of each taxable lot, block, tract, or parcel of real property in the area selected for the redevelopment project and any applicable penalty and interest over and above the initial equalized assessed value of each such unit of property in the area selected for the redevelopment project shall be allocated to and, when collected, shall be paid to the municipal treasurer who shall deposit such payment in lieu of taxes into a special fund called the "Special Allocation Fund" of the municipality for the purpose of paying redevelopment costs and obligations incurred in the payment thereof. Payments in lieu of taxes which are due and owing shall constitute a lien against the real estate of the redevelopment project from which they are derived and shall be collected in the same manner as the real property tax, including the assessment of penalties and interest where applicable. The municipality may, in the ordinance, pledge the funds in the special allocation fund for the payment of such costs and obligations and provide for the collection of payments in lieu of taxes, the lien of which may be foreclosed in the same manner as a special assessment lien as provided in section 88.861, RSMo. No part of the current equalized assessed valuation of each lot, block, tract, or parcel of property in the area selected for the redevelopment project attributable to any increase above the total initial equalized assessed value of such properties shall be used in calculating the general state school aid formula provided for in section 163.031, RSMo, until such time as all redevelopment costs have been paid as provided for in this section and section 99.850;

(3) For purposes of this section, "levies upon taxable real property in such redevelopment project by taxing districts" shall not include the blind pension fund tax levied under the authority of article III, section 38(b) of the Missouri Constitution, or the merchants' and manufacturers' inventory replacement tax levied under the authority of subsection 2 of section 6 of article X, of the Missouri Constitution, except in redevelopment project areas in which tax increment financing has been adopted by ordinance pursuant to a plan approved by vote of the governing body of the municipality taken after August 13, 1982, and before January 1, 1998.

2. In addition to the payments in lieu of taxes described in subdivision (2) of subsection 1 of this section, for redevelopment plans and projects adopted or redevelopment projects approved by ordinance after July 12, 1990, and prior to August 31, 1991, fifty percent of the total additional revenue from taxes, penalties and interest imposed by the municipality, or other taxing districts, which are generated by economic activities within the area of the redevelopment project over the amount of such taxes generated by economic activities within the area of the redevelopment project in the calendar year prior to the adoption of the redevelopment project by ordinance, while tax increment financing remains in effect, but excluding taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, taxes levied pursuant to section 70.500, RSMo, licenses, fees or special assessments other than payments in lieu of taxes and any penalty and interest thereon, or, effective January 1, 1998, taxes levied pursuant to section 94.660, RSMo, for the purpose of public transportation, shall be allocated to, and paid by the local political subdivision collecting officer to the treasurer or other designated financial

officer of the municipality, who shall deposit such funds in a separate segregated account within the special allocation fund. Any provision of an agreement, contract or covenant entered into prior to July 12, 1990, between a municipality and any other political subdivision which provides for an appropriation of other municipal revenues to the special allocation fund shall be and remain enforceable.

3. In addition to the payments in lieu of taxes described in subdivision (2) of subsection 1 of this section, for redevelopment plans and projects adopted or redevelopment projects approved by ordinance after August 31, 1991, fifty percent of the total additional revenue from taxes, penalties and interest which are imposed by the municipality or other taxing districts, and which are generated by economic activities within the area of the redevelopment project over the amount of such taxes generated by economic activities within the area of the redevelopment project in the calendar year prior to the adoption of the redevelopment project by ordinance, while tax increment financing remains in effect, but excluding personal property taxes, taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, taxes levied pursuant to section 70.500, RSMo, or effective January 1, 1998, taxes levied for the purpose of public transportation pursuant to section 94.660, RSMo, licenses, fees or special assessments other than payments in lieu of taxes and penalties and interest thereon, shall be allocated to, and paid by the local political subdivision collecting officer to the treasurer or other designated financial officer of the municipality, who shall deposit such funds in a separate segregated account within the special allocation fund.

4. Beginning January 1, 1998, for redevelopment plans and projects adopted or redevelopment projects approved by ordinance and which have complied with subsections 4 to 12 of this section, in addition to the payments in lieu of taxes and economic activity taxes described in subsections 1, 2 and 3 of this section, up to fifty percent of the new state revenues, as defined in subsection 8 of this section, estimated for the businesses within the project area and identified by the municipality in the application required by subsection 10 of this section, over and above the amount of such taxes reported by businesses within the project area as identified by the municipality in their application prior to the approval of the redevelopment project by ordinance, while tax increment financing remains in effect, may be available for appropriation by the general assembly as provided in subsection 10 of this section to the department of economic development supplemental tax increment financing fund, from the general revenue fund, for distribution to the treasurer or other designated financial officer of the municipality with approved plans or projects.

5. The treasurer or other designated financial officer of the municipality with approved plans or projects shall deposit such funds in a separate segregated account within the special allocation fund established pursuant to section 99.805.

6. No transfer from the general revenue fund to the Missouri supplemental tax increment financing fund shall be made unless an appropriation is made from the general revenue fund for that purpose. No municipality shall commit any state revenues prior to an appropriation being made for that project. For all redevelopment plans or projects adopted or approved after December 23, 1997, appropriations from the new state revenues shall not be distributed from the Missouri supplemental tax increment financing fund into the special allocation fund unless the municipality's redevelopment plan ensures that one hundred percent of payments in lieu of taxes and fifty percent of economic activity taxes generated by the project shall be used for eligible redevelopment project costs while tax increment financing remains in effect. This account shall be separate from the account into which payments in lieu of taxes are deposited, and separate from the account into which economic activity taxes are deposited.

7. In order for the redevelopment plan or project to be eligible to receive the revenue described in subsection 4 of this section, the municipality shall comply with the requirements of subsection 10 of this section prior to the time the project or plan is adopted or approved by ordinance. The director of the department of economic development and the commissioner of the office of administration may waive the requirement that the municipality's application be

submitted prior to the redevelopment plan's or project's adoption or the redevelopment plan's or project's approval by ordinance.

8. For purposes of this section, "new state revenues" means:

(1) The incremental increase in the general revenue portion of state sales tax revenues received pursuant to section 144.020, RSMo, excluding sales taxes that are constitutionally dedicated, taxes deposited to the school district trust fund in accordance with section 144.701, RSMo, sales and use taxes on motor vehicles, trailers, boats and outboard motors and future sales taxes earmarked by law. The incremental increase in the general revenue portion of state sales tax revenues for an existing or relocated facility shall be the amount that current state sales tax revenue exceeds the state sales tax revenue in the base year as stated in the redevelopment plan as provided in subsection 10 of this section; or

(2) The state income tax withheld on behalf of new employees by the employer pursuant to section 143.221, RSMo, at the business located within the project as identified by the municipality. The state income tax withholding allowed by this section shall be the municipality's estimate of the amount of state income tax withheld by the employer within the redevelopment area for new employees who fill new jobs directly created by the tax increment financing project.

9. Subsection 4 of this section shall apply only to blighted areas located in enterprise zones, pursuant to sections 135.200 to 135.256, RSMo, blighted areas located in federal empowerment zones, or to blighted areas located in central business districts or urban core areas of cities which districts or urban core areas at the time of approval of the project by ordinance, provided that the enterprise zones, federal empowerment zones or blighted areas contained one or more buildings at least fifty years old; and

(1) Suffered from generally declining population or property taxes over the twenty-year period immediately preceding the area's designation as a project area by ordinance; or

(2) Was a historic hotel located in a county of the first classification without a charter form of government with a population according to the most recent federal decennial census in excess of one hundred fifty thousand and containing a portion of a city with a population according to the most recent federal decennial census in excess of three hundred fifty thousand.

10. The initial appropriation of up to fifty percent of the new state revenues authorized pursuant to subsections 4 and 5 of this section shall not be made to or distributed by the department of economic development to a municipality until all of the following conditions have been satisfied:

(1) The director of the department of economic development or his or her designee and the commissioner of the office of administration or his or her designee have approved a tax increment financing application made by the municipality for the appropriation of the new state revenues. The municipality shall include in the application the following items in addition to the items in section 99.810:

(a) The tax increment financing district or redevelopment area, including the businesses identified within the redevelopment area;

(b) The base year of state sales tax revenues or the base year of state income tax withheld on behalf of existing employees, reported by existing businesses within the project area prior to approval of the redevelopment project;

(c) The estimate of the incremental increase in the general revenue portion of state sales tax revenue or the estimate for the state income tax withheld by the employer on behalf of new employees expected to fill new jobs created within the redevelopment area after redevelopment;

(d) The official statement of any bond issue pursuant to this subsection after December 23, 1997;

(e) An affidavit that is signed by the developer or developers attesting that the provisions of subdivision (1) of section 99.810 have been met and specifying that the redevelopment area would not be reasonably anticipated to be developed without the appropriation of the new state revenues;

(f) The cost-benefit analysis required by section 99.810 includes a study of the fiscal impact on the state of Missouri; and

(g) The statement of election between the use of the incremental increase of the general revenue portion of the state sales tax revenues or the state income tax withheld by employers on behalf of new employees who fill new jobs created in the redevelopment area;

(2) The methodologies used in the application for determining the base year and determining the estimate of the incremental increase in the general revenue portion of the state sales tax revenues or the state income tax withheld by employers on behalf of new employees who fill new jobs created in the redevelopment area shall be approved by the director of the department of economic development or his or her designee and the commissioner of the office of administration or his or her designee. Upon approval of the application, the director of the department of economic development or his or her designee and the commissioner of the office of administration or his or her designee shall issue a certificate of approval. The department of economic development may request the appropriation following application approval;

(3) The appropriation shall be either a portion of the estimate of the incremental increase in the general revenue portion of state sales tax revenues in the redevelopment area or a portion of the estimate of the state income tax withheld by the employer on behalf of new employees who fill new jobs created in the redevelopment area as indicated in the municipality's application, approved by the director of the department of economic development or his or her designee and the commissioner of the office of administration or his or her designee. At no time shall the aggregate annual appropriation of the new state revenues for redevelopment areas exceed fifteen million dollars;

(4) Redevelopment plans and projects receiving new state revenues shall have a duration of up to fifteen years, unless prior approval for a longer term is given by the director of the department of economic development or his or her designee and the commissioner of the office of administration or his or her designee; except that, in no case shall the duration exceed twenty-three years.

11. In addition to the areas authorized in subsection 9 of this section, the funding authorized pursuant to subsection 4 of this section shall also be available in a federally approved levee district, where construction of a levee begins after December 23, 1997, and which is contained within a county of the first classification without a charter form of government with a population between fifty thousand and one hundred thousand inhabitants which contains all or part of a city with a population in excess of four hundred thousand or more inhabitants.

12. There is hereby established within the state treasury a special fund to be known as the "Missouri Supplemental Tax Increment Financing Fund", to be administered by the department of economic development. The department shall annually distribute from the Missouri supplemental tax increment financing fund the amount of the new state revenues as appropriated as provided in the provisions of subsections 4 and 5 of this section if and only if the conditions of subsection 10 of this section are met. The fund shall also consist of any gifts, contributions, grants or bequests received from federal, private or other sources. Moneys in the Missouri supplemental tax increment financing fund shall be disbursed per project pursuant to state appropriations.

13. All personnel and other costs incurred by the department of economic development for the administration and operation of subsections 4 to 12 of this section shall be paid from the state general revenue fund. On an annual basis, the general revenue fund shall be reimbursed for the full amount of such costs by the developer or developers of the project or projects for which municipalities have made tax increment financing applications for the appropriation of new state revenues, as provided for in subdivision (1) of subsection 10 of this section. The amount of costs charged to each developer shall be based upon the percentage arrived at by dividing the monetary amount of the application made by each municipality for a particular project by the total monetary amount of all applications received by the department of economic development.

14. For redevelopment plans or projects approved by ordinance that result in net new jobs from the relocation of a national headquarters from another state to the area of the redevelopment project, the economic activity taxes and new state tax revenues shall not be based on a calculation of the incremental increase in taxes as compared to the base year or prior calendar year for such redevelopment project, rather the incremental increase shall be the amount of total taxes generated from the net new jobs brought in by the national headquarters from another state. In no event shall this subsection be construed to allow a redevelopment project to receive an appropriation in excess of up to fifty percent of the new state revenues.]

99.960. DISBURSEMENT OF PROJECT COSTS, APPROVAL OF DEPARTMENT REQUIRED — APPLICATION, CONTENTS — FINANCE BOARD TO MAKE DETERMINATION — CAP ON DISBURSEMENTS — TIME LIMITATIONS ON DISBURSEMENTS — DEVELOPMENT COSTS DEFINED — PROJECTS INELIGIBLE FOR TIFs, WHEN — RULEMAKING AUTHORITY. — 1. A municipality shall submit an application to the department of economic development for review and submission of an analysis and recommendation to the Missouri development finance board for a determination as to approval of the disbursement of the project costs of one or more development projects from the state supplemental downtown development fund. The department of economic development shall forward the application to the Missouri development finance board with the analysis and recommendation. In no event shall any approval authorize a disbursement of one or more development projects from the state supplemental downtown development fund which exceeds the allowable amount of other net new revenues derived from the development area. An application submitted to the department of economic development shall contain the following, in addition to the items set forth in section 99.942:

(1) An estimate that one hundred percent of the payments in lieu of taxes and economic activity taxes deposited to the special allocation fund must and will be used to pay development project costs or obligations issued to finance development project costs to achieve the objectives of the development plan. Contributions to the development project from any private not-for-profit organization or local contributions from tax abatement or other sources may be substituted on a dollar-for-dollar basis for the local match of one hundred percent of payments in lieu of taxes and economic activity taxes from the fund;

(2) Identification of the existing businesses located within the development project area and the development area;

(3) The aggregate baseline year amount of state sales tax revenues and the aggregate baseline year amount of state income tax withheld on behalf of existing employees, reported by existing businesses within the development project area. Provisions of section 32.057, RSMo, notwithstanding, municipalities will provide this information to the department of revenue for verification. The department of revenue will verify the information provided by the municipalities within forty-five days of receiving a request for such verification from a municipality;

(4) An estimate of the state sales tax increment and state income tax increment within the development project area after redevelopment;

(5) An affidavit that is signed by the developer or developers attesting that the provision of subdivision (2) of subsection 3 of section 99.942 has been met and specifying that the development area would not be reasonably anticipated to be developed without the appropriation of the other net new revenues;

(6) The amounts and types of other net new revenues sought by the applicant to be disbursed from state supplemental downtown development fund over the term of the development plan;

(7) The methodologies and underlying assumptions used in determining the estimate of the state sales tax increment and the state income tax increment; and

(8) Any other information reasonably requested by the department of economic development and the Missouri development finance board.

2. The department of economic development shall make all reasonable efforts to process applications within sixty days of receipt of the application.

3. The Missouri development finance board shall make a determination regarding the application for a certificate allowing disbursements from the state supplemental downtown development fund and shall forward such determination to the director of the department of economic development. In no event shall the amount of disbursements from the state supplemental downtown development fund approved for a project, in addition to any other state economic development funding or other state incentives, exceed the projected state benefit of the development project, as determined by the department of economic development through a cost-benefit analysis. Any political subdivision located either wholly or partially within the development area shall be permitted to submit information to the department of economic development for consideration in its cost-benefit analysis. Upon approval of state supplemental downtown development financing, a certificate of approval shall be issued by the department of economic development containing the terms and limitations of the disbursement.

4. At no time shall the annual amount of other net new revenues approved for disbursements from the state supplemental downtown development fund exceed one hundred [fifty] **eight** million dollars.

5. Development projects receiving disbursements from the state supplemental downtown development fund shall be limited to receiving such disbursements for fifteen years, unless specific approval for a longer term is given by the director of the department of economic development, as set forth in the certificate of approval; except that, in no case shall the duration exceed twenty-five years. The approved term notwithstanding, state supplemental downtown development financing shall terminate when development financing for a development project is terminated by a municipality.

6. The municipality shall deposit payments received from the state supplemental downtown development fund in a separate segregated account for other net new revenues within the special allocation fund.

7. Development project costs may include, at the prerogative of the state, the portion of salaries and expenses of the department of economic development, the Missouri development finance board, and the department of revenue reasonably allocable to each development project approved for disbursements from the state supplemental downtown development fund for the ongoing administrative functions associated with such development project. Such amounts shall be recovered from other net new revenues deposited into the state supplemental downtown development fund created pursuant to section 99.963.

8. A development project approved for state supplemental downtown development financing may not thereafter elect to receive tax increment financing pursuant to the real property tax increment allocation redevelopment act, sections 99.800 to 99.865, and continue to receive state supplemental downtown development financing pursuant to sections 99.915 to 99.980.

9. The department of economic development, in conjunction with the Missouri development finance board, may establish the procedures and standards for the determination and approval of applications by the promulgation of rules and regulations and publish forms to implement the provisions of this section and section 99.963.

10. 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 and section 99.963 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, section 99.963, 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, 2003, shall be invalid and void.

11. The Missouri development finance board shall consider parity based on population and geography of the state among the regions of the state in making determinations on applications pursuant to this section.

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, or 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;

Notwithstanding the preceding provisions of this subdivision, a development agency, as such term is defined in subdivision (3) of section 100.255, or a corporation, limited liability company, or partnership formed on behalf of a development agency, at the option of the board, may be authorized to act as an eligible industry with such obligations and rights otherwise applicable to an eligible industry, including the rights of an approved company under section 100.850, so long as the eligible industry otherwise meets the requirements imposed by this subsection.

(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.]

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 fifteen million dollars annually. **Of such amount, nine hundred fifty thousand dollars shall be reserved for an approved project for a world headquarters of a business whose primary function is tax return preparation that is located in any home rule city with more than four hundred thousand inhabitants and located in more than one county, which amount reserved shall end in the year of the final maturity of the certificates issued for such approved project.**

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.

[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 nine hundred fifty thousand dollars annually. Of such amount, nine hundred fifty thousand dollars shall be reserved for an approved project for a world headquarters of a business whose primary function is tax return preparation that is located in any home rule city with more than four hundred thousand inhabitants and located in more than one county.

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.]

135.284. CONTINGENT EXPIRATION OF CERTAIN SECTIONS. — The repeal and reenactment of sections [99.845,] 100.710, 100.840, [100.850] and 178.892, and the enactment of sections 135.276, 135.277, 135.279, 135.281, and 135.283 shall expire on January 1, 2006, if no essential industry retention projects have been approved by the department of economic development by December 31, 2005. If an essential industry retention project has been approved by the department of economic development by December 31, 2005, the repeal and reenactment of sections [99.845,] 100.710, 100.840, [100.850] and 178.892, and the enactment of sections 135.276, 135.277, 135.279, 135.281, and 135.283 shall expire on January 1, 2020.

[135.535. TAX CREDIT FOR RELOCATING A BUSINESS TO A DISTRESSED COMMUNITY, APPROVAL BY DEPARTMENT OF ECONOMIC DEVELOPMENT, APPLICATION — EMPLOYEES ELIGIBLE TO RECEIVE CREDIT — CREDIT FOR EXPENDITURES ON EQUIPMENT — TRANSFER OF CERTIFICATE OF CREDIT — MAXIMUM AMOUNT ALLOWED, CREDIT CARRIED OVER — LIMITATIONS — TAX CREDIT FOR EXISTING BUSINESS IN A DISTRESSED COMMUNITY WHICH HIRES NEW EMPLOYEES, CONDITIONS AND TYPES OF BUSINESSES ELIGIBLE. — 1. A corporation, limited liability corporation, partnership or sole proprietorship, which moves its operations from outside Missouri or outside a distressed community into a distressed community, or which commences operations in a distressed community on or after January 1, 1999, and in either case has more than seventy-five percent of its employees at the facility in the distressed community, and which has fewer than one hundred employees for whom payroll taxes are paid, and which is a manufacturing, biomedical, medical devices, scientific research, animal research, computer software design or development, computer programming, telecommunications or a professional firm shall receive a forty percent credit against income taxes owed pursuant to chapter 143, 147 or 148, RSMo, other than taxes withheld pursuant to sections 143.191 to 143.265, RSMo, for each of the three years after such move, if approved by the department of economic development, which shall issue a certificate of eligibility if the department determines that the taxpayer is eligible for such credit. The maximum amount of credits per taxpayer set forth in this subsection shall not exceed one hundred twenty-five thousand dollars for each of the three years for which the credit is claimed. The department of economic development, by means of rule or regulation promulgated pursuant to the provisions of chapter 536, RSMo, shall assign appropriate standard industrial classification numbers to the companies which are eligible for the tax credits provided for in this section. Such three-year credits shall be awarded only one time to any company which moves its operations from outside of Missouri or outside of a distressed community into a distressed community or to a company which commences operations within a distressed community. A taxpayer shall file an application for certification of the tax credits for the first year in which credits are claimed and for each of the two succeeding taxable years for which credits are claimed.

2. Employees of such facilities physically working and earning wages for that work within a distressed community whose employers have been approved for tax credits pursuant to subsection 1 of this section by the department of economic development for whom payroll taxes are paid shall, also be eligible to receive a tax credit against individual income tax, imposed pursuant to chapter 143, RSMo, equal to one and one-half percent of their gross salary paid at such facility earned for each of the three years that the facility receives the tax credit provided by this section, so long as they were qualified employees of such entity. The employer shall calculate the amount of such credit and shall report the amount to the employee and the department of revenue.

3. A tax credit against income taxes owed pursuant to chapter 143, 147 or 148, RSMo, other than the taxes withheld pursuant to sections 143.191 to 143.265, RSMo, in lieu of the

credit against income taxes as provided in subsection 1 of this section, may be taken by such an entity in a distressed community in an amount of forty percent of the amount of funds expended for computer equipment and its maintenance, medical laboratories and equipment, research laboratory equipment, manufacturing equipment, fiber optic equipment, high speed telecommunications, wiring or software development expense up to a maximum of seventy-five thousand dollars in tax credits for such equipment or expense per year per entity and for each of three years after commencement in or moving operations into a distressed community. A corporation, partnership or sole proprietorship, which has no more than one hundred employees for whom payroll taxes are paid, and which is already located in a distressed community, which expends funds for such equipment as set forth in this subsection in an amount exceeding its average of the prior two years for such equipment, shall be eligible to receive a twenty-five percent tax credit against income taxes owed pursuant to chapters 143, 147 and 148, RSMo, up to a maximum of seventy-five thousand dollars in tax credits for such additional equipment and expense per such entity. Tax credits pursuant to this subsection or subsection 1 may be used to satisfy the state tax liability due in the tax year the credit is certified, and that was due during the previous three years, and in any of the five tax years thereafter.

4. Tax credits shall be approved for applicants meeting the requirements of this section in the order that such applications are received. Certificates of tax credits issued in accordance with this section may be transferred, sold or assigned by notarized endorsement which names the transferee.

5. The tax credits allowed pursuant to subsections 1, 2 and 3 of this section shall be for an amount of no more than ten million dollars for each year beginning in 1999. The total maximum credit for all entities already located in distressed communities and claiming credits pursuant to subsection 3 of this section shall be seven hundred and fifty thousand dollars. The department of economic development in approving taxpayers for the credit as provided for in subsection 4 of this section shall use information provided by the department of revenue regarding taxes paid in the previous year, or projected taxes for those entities newly established in the state, as the method of determining when this maximum will be reached and shall maintain a record of the order of approval. Any tax credit not used in the period for which the credit was approved may be carried over until the full credit has been allowed.

6. A Missouri employer relocating into a distressed community and having employees covered by a collective bargaining agreement at the facility from which it is relocating shall not be eligible for the credits in subsection 1 or 3 of this section, and its employees shall not be eligible for the credit in subsection 2 of this section if the relocation violates or terminates a collective bargaining agreement covering employees at the facility, unless the affected collective bargaining unit concurs with the move.

7. Notwithstanding any provision of law to the contrary, no taxpayer shall earn the tax credits allowed in this section and the tax credits otherwise allowed in section 135.110, or the tax credits, exemptions, and refund otherwise allowed in sections 135.200, 135.220, 135.225 and 135.245, respectively, for the same business for the same tax period.

8. An existing business located within a distressed community, that hires new employees within such distressed communities may be eligible for the tax credits provided in this section. In order to be eligible for such tax credits, the business located within the distressed community, during one of its tax years, must employ within such distressed communities at least twice as many workers as were employed at the beginning of that tax year. Prior to the addition of the new employees, the business shall have no more than one hundred employees. The provisions of this section shall apply only to a business which is a manufacturing, biomedical, medical devices, scientific research, animal research, computer software design or development, computer programming, or telecommunications business or a professional firm.]

135.535. TAX CREDIT FOR RELOCATING A BUSINESS TO A DISTRESSED COMMUNITY, APPROVAL BY DEPARTMENT OF ECONOMIC DEVELOPMENT, APPLICATION — EMPLOYEES

ELIGIBLE TO RECEIVE CREDIT — CREDIT FOR EXPENDITURES ON EQUIPMENT — TRANSFER OF CERTIFICATE OF CREDIT — MAXIMUM AMOUNT ALLOWED, CREDIT CARRIED OVER — LIMITATIONS — TAX CREDIT FOR EXISTING BUSINESS IN A DISTRESSED COMMUNITY WHICH HIRES NEW EMPLOYEES, CONDITIONS AND TYPES OF BUSINESSES ELIGIBLE. — 1. A corporation, limited liability corporation, partnership or sole proprietorship, which moves its operations from outside Missouri or outside a distressed community into a distressed community, or which commences operations in a distressed community on or after January 1, 1999, and in either case has more than seventy-five percent of its employees at the facility in the distressed community, and which has fewer than one hundred employees for whom payroll taxes are paid, and which is a manufacturing, biomedical, medical devices, scientific research, animal research, computer software design or development, computer programming, **including Internet, web hosting, and other information technology, wireless or wired or other** telecommunications or a professional firm shall receive a forty percent credit against income taxes owed pursuant to chapter 143, 147 or 148, RSMo, other than taxes withheld pursuant to sections 143.191 to 143.265, RSMo, for each of the three years after such move, if approved by the department of economic development, which shall issue a certificate of eligibility if the department determines that the taxpayer is eligible for such credit. The maximum amount of credits per taxpayer set forth in this subsection shall not exceed one hundred twenty-five thousand dollars for each of the three years for which the credit is claimed. The department of economic development, by means of rule or regulation promulgated pursuant to the provisions of chapter 536, RSMo, shall assign appropriate [standard industrial classification] **North American Industry Classification System** numbers to the companies which are eligible for the tax credits provided for in this section. Such three-year credits shall be awarded only one time to any company which moves its operations from outside of Missouri or outside of a distressed community into a distressed community or to a company which commences operations within a distressed community. A taxpayer shall file an application for certification of the tax credits for the first year in which credits are claimed and for each of the two succeeding taxable years for which credits are claimed.

2. Employees of such facilities physically working and earning wages for that work within a distressed community whose employers have been approved for tax credits pursuant to subsection 1 of this section by the department of economic development for whom payroll taxes are paid shall, also be eligible to receive a tax credit against individual income tax, imposed pursuant to chapter 143, RSMo, equal to one and one-half percent of their gross salary paid at such facility earned for each of the three years that the facility receives the tax credit provided by this section, so long as they were qualified employees of such entity. The employer shall calculate the amount of such credit and shall report the amount to the employee and the department of revenue.

3. A tax credit against income taxes owed pursuant to chapter 143, 147 or 148, RSMo, other than the taxes withheld pursuant to sections 143.191 to 143.265, RSMo, in lieu of the credit against income taxes as provided in subsection 1 of this section, may be taken by such an entity in a distressed community in an amount of forty percent of the amount of funds expended for computer equipment and its maintenance, medical laboratories and equipment, research laboratory equipment, manufacturing equipment, fiber optic equipment, high speed telecommunications, wiring or software development expense up to a maximum of seventy-five thousand dollars in tax credits for such equipment or expense per year per entity and for each of three years after commencement in or moving operations into a distressed community.

4. A corporation, partnership or sole partnership, which has no more than one hundred employees for whom payroll taxes are paid, which is already located in a distressed community and which expends funds for such equipment pursuant to subsection 3 of this section in an amount exceeding its average of the prior two years for such equipment, shall be eligible to receive a tax credit against income taxes owed pursuant to chapters 143, 147 and 148, RSMo, in an amount equal to the lesser of seventy-five thousand dollars or twenty-five percent of the

funds expended for such additional equipment per such entity. Tax credits allowed pursuant to this subsection or subsection 1 of this section may be carried back to any of the three prior tax years and carried forward to any of the five tax years.

5. An existing corporation, partnership or sole proprietorship that is located within a distressed community and that relocates employees from another facility outside of the distressed community to its facility within the distressed community, and an existing business located within a distressed community that hires new employees for that facility may both be eligible for the tax credits allowed by subsections 1 and 3 of this section. To be eligible for such tax credits, such a business, during one of its tax years, shall employ within a distressed community at least twice as many employees as were employed at the beginning of that tax year. A business hiring employees shall have no more than one hundred employees before the addition of the new employees. This subsection shall only apply to a business which is a manufacturing, biomedical, medical devices, scientific research, animal research, computer software design or development, computer programming or telecommunications business, or a professional firm.

6. Tax credits shall be approved for applicants meeting the requirements of this section in the order that such applications are received. Certificates of tax credits issued in accordance with this section may be transferred, sold or assigned by notarized endorsement which names the transferee.

7. The tax credits allowed pursuant to subsections 1, 2, 3, 4 and 5 of this section shall be for an amount of no more than ten million dollars for each year beginning in 1999. The total maximum credit for all entities already located in distressed communities and claiming credits pursuant to subsection 4 of this section shall be seven hundred and fifty thousand dollars. The department of economic development in approving taxpayers for the credit as provided for in subsection 6 of this section shall use information provided by the department of revenue regarding taxes paid in the previous year, or projected taxes for those entities newly established in the state, as the method of determining when this maximum will be reached and shall maintain a record of the order of approval. Any tax credit not used in the period for which the credit was approved may be carried over until the full credit has been allowed.

8. A Missouri employer relocating into a distressed community and having employees covered by a collective bargaining agreement at the facility from which it is relocating shall not be eligible for the credits in subsection 1, 3, 4 or 5 of this section, and its employees shall not be eligible for the credit in subsection 2 of this section if the relocation violates or terminates a collective bargaining agreement covering employees at the facility, unless the affected collective bargaining unit concurs with the move.

9. Notwithstanding any provision of law to the contrary, no taxpayer shall earn the tax credits allowed in this section and the tax credits otherwise allowed in section 135.110, or the tax credits, exemptions, and refund otherwise allowed in sections 135.200, 135.220, 135.225 and 135.245, respectively, for the same business for the same tax period.

620.1875. TITLE OF LAW. — Sections 620.1875 to 620.1890, shall be known and may be cited as the "Missouri Quality Jobs Act".

620.1878. DEFINITIONS. — For the purposes of sections 620.1875 to 620.1890, the following terms shall mean:

- (1) "Average wage", the new payroll divided by the number of new jobs;
- (2) "Commencement of operations", the starting date for the qualified company's first new employee, which must be no later than twelve months from the date of the proposal;
- (3) "County average wage", the average wages in each county as determined by the department for the most recently completed full calendar year. However, if the computed county average wage is above the statewide average wage, the statewide average wage shall be deemed the county average wage for such county. The department shall publish the county average wage for each county at least annually;

- (4) "Department", the Missouri department of economic development;
 - (5) "Director", the director of the department of economic development;
 - (6) "Employee", a person employed by a qualified company;
 - (7) "Full-time equivalent employees", employees of the qualified company converted to reflect an equivalent of the number of full-time, year-round employees. The method for converting part-time and seasonal employees into an equivalent number of full-time, year-round employees shall be published in a rule promulgated by the department as authorized in section 620.1884;
 - (8) "Full-time, year-round employee", an employee of the company that works an average of at least thirty-five hours per week for a twelve-month period, and one for which the qualified company offers health insurance and pays at least fifty percent of such insurance premiums;
 - (9) "High impact project", a qualified company that, within two years from commencement of operations, creates one hundred or more new jobs;
 - (10) "Local incentives", the present value of the dollar amount of direct benefit received by a qualified company for a project facility from one or more local political subdivisions, but shall not include loans or other funds provided to the qualified company that must be repaid by the qualified company to the political subdivision;
 - (11) "NAICS", the 1997 edition of the North American Industry Classification System as prepared by the Executive Office of the President, Office of Management and Budget. Any NAICS sector, subsector, industry group or industry identified in this section shall include its corresponding classification in subsequent federal industry classification systems;
 - (12) "New direct local revenue", the present value of the dollar amount of direct net new tax revenues of the local political subdivisions likely to be produced by the project over a ten-year period as calculated by the department and net new utility revenues, provided the local incentives include a discount or other direct incentives from utilities owned or operated by the political subdivision;
 - (13) "New investment", the purchase or leasing of new tangible assets to be placed in operation at the project facility, which will be directly related to the new jobs;
 - (14) "New job", the number of full-time, year-round employees located at the project facility that exceeds the project facility base employment less any decrease in the number of full-time equivalent employees at related facilities below the related facility base employment;
 - (15) "New payroll", the amount of wages paid by a qualified company to employees in new jobs;
 - (16) "Notice of intent", a form developed by the department, completed by the qualified company and submitted to the department which states the qualified company's intent to hire new jobs and request benefits under this program;
 - (17) "Percent of local incentives", the amount of local incentives divided by the amount of new direct local revenue;
 - (18) "Program", the Missouri quality jobs program provided in sections 620.1875 to 620.1890;
 - (19) "Project facility", the building used by a qualified company at which the new jobs and new investment will be located. A project facility may include separate buildings that are located within one mile of each other such that their purpose and operations are interrelated;
 - (20) "Project facility base employment", for the twelve-month period prior to the date of the proposal, the average number of full-time equivalent employees located at the project facility. In the event the project facility has not been in operation for a full twelve-month period, project facility base employment is the average number of full-time equivalent employees for the number of months the project facility has been in operation prior to the date of the proposal;
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(21) "Project period", the time period that the benefits are provided to a qualified company;

(22) "Proposal", a document submitted by the department to the qualified company that states the benefits that may be provided by this program. The effective date of such proposal cannot be prior to the commencement of operations. The proposal shall not offer benefits regarding any jobs created prior to its effective date unless the proposal is for a job retention project;

(23) "Qualified company", a firm, partnership, joint venture, association, private or public corporation whether organized for profit or not, or headquarters of such entity registered to do business in Missouri that is the owner or operator of a project facility. For the purposes of sections 620.1875 to 620.1890, the term "qualified company" shall not include:

- (a) Gambling establishments (NAICS industry group 7132);
- (b) Retail trade establishments (NAICS sectors 44 and 45);
- (c) Food and drinking places (NAICS subsector 722);
- (d) Utilities regulated by the Missouri public service commission;
- (e) Any company that is delinquent in the payment of any nonprotested taxes or any other amounts due the state or federal government or any other political subdivision of this state; or
- (f) Any company that has filed for or has publicly announced its intention to file for bankruptcy protection;

(24) "Related company" means:

- (a) A corporation, partnership, trust, or association controlled by the qualified company;
- (b) An individual, corporation, partnership, trust, or association in control of the qualified company; or
- (c) Corporations, partnerships, trusts or associations controlled by an individual, corporation, partnership, trust or association in control of the qualified company. As used in this subdivision, "control of a corporation" shall mean ownership, directly or indirectly, of stock possessing at least fifty percent of the total combined voting power of all classes of stock entitled to vote, "control of a partnership or association" shall mean ownership of at least fifty percent of the capital or profits interest in such partnership or association, "control of a trust" shall mean ownership, directly or indirectly, of at least fifty percent of the beneficial interest in the principal or income of such trust, and ownership shall be determined as provided in section 318 of the Internal Revenue Code of 1986, as amended;

(25) "Related facility", a facility operated by the qualified company or a related company located in this state that is directly related to the operations of the project facility;

(26) "Related facility base employment", for the twelve-month period prior to the date of the proposal, the average number of full-time equivalent employees located at all related facilities of the qualified company or a related company located in this state;

(27) "Rural area", a county in Missouri with a population less than seventy-five thousand or that does not contain an individual city with a population greater than fifty thousand according to the most recent federal decennial census;

(28) "Small and expanding business project", a qualified company that, within two years of the date of the proposal creates a minimum of twenty new jobs if the project facility is located in a rural area or a minimum of forty new jobs if the project facility is not located in a rural area and creates fewer than one hundred new jobs regardless of the location of the project facility;

(29) "Tax credits", tax credits issued by the department to offset the state income taxes imposed by chapter 143, RSMo, or which may be sold or refunded as provided for in this program;

(30) "Technology business project", a qualified company that, within two years of the date of the proposal creates a minimum of ten new jobs with at least seventy-five percent of the new jobs directly involved in the operations of a technology company as determined by a regulation promulgated by the department under the provisions of section 620.1884, RSMo, and classified by NAICS codes;

(31) "Withholding tax", the state tax imposed by sections 143.191 to 143.265, RSMo.

620.1881. PROJECT NOTICE OF INTENT, DEPARTMENT TO RESPOND WITH A PROPOSAL OR A REJECTION — BENEFITS AVAILABLE — EFFECT ON WITHHOLDING TAX — PROJECTS ELIGIBLE FOR BENEFITS — ANNUAL REPORT — CAP ON TAX CREDITS — ALLOCATION OF TAX CREDITS. — 1. The department of economic development shall respond within thirty days to a company who provides a notice of intent with either a proposal or a rejection of the notice of intent. Failure to respond on behalf of the department of economic development shall result in the notice of intent being deemed a proposal for the purposes of this section. A qualified company who is provided a proposal for a project shall be allowed a benefit as provided in this program in the amount and duration provided in this section. A qualified company may receive additional periods for subsequent new jobs at the same facility after the full initial period if the minimum thresholds are met as set forth in sections 620.1875 to 620.1890. There is no limit on the number of periods a qualified company may participate in the program, as long as the minimum thresholds are achieved and the qualified company provides the department with the required reporting and is in proper compliance for this program or other state programs. A qualified company may elect to file a notice of intent to start a new project period concurrent with an existing project period if the minimum thresholds are achieved and the qualified company provides the department with the required reporting and is in proper compliance for this program and other state programs; however, the qualified company may not receive any further benefit under the original proposal for jobs created after the date of the new notice of intent, and any jobs created before the new notice of intent may not be included as "new jobs" for the purpose of benefit calculation in relation to the new proposal.

2. Notwithstanding any provision of law to the contrary, any qualified company that is awarded benefits under this program may not also receive tax credits or exemptions under sections 135.100 to 135.150, sections 135.200 to 135.286, section 135.535, or sections 135.900 to 135.906, RSMo, for the same new jobs at the project facility. The benefits available to the company under any other state programs for which the company is eligible and which utilize withholding tax from the new jobs of the company must first be credited to the other state program before the withholding retention level applicable under the Missouri quality jobs act will begin to accrue. These other state programs include, but are not limited to, the new jobs training program under sections 178.892 to 178.896, RSMo, the job retention program under sections 178.760 to 178.764, RSMo, the real property tax increment allocation redevelopment act, sections 99.800 to 99.865, RSMo, or the Missouri downtown and rural economic stimulus act under sections 99.915 to 99.980, RSMo. If any qualified company also participates in the new jobs training program in sections 178.892 to 178.896, RSMo, the company shall retain no withholding tax, but the department shall issue a refundable tax credit for the full amount of benefit allowed under this subdivision.

3. The types of projects and the amount of benefits to be provided are:

(1) Small and expanding business projects: In exchange for the consideration provided by the new tax revenues and other economic stimulus that will be generated by the new jobs created by the program, a qualified company may retain an amount equal to the withholding tax from the new jobs that would otherwise be withheld and remitted by the qualified company under the provisions of sections 143.191 to 143.265, RSMo, for a period of three years from the date the required number of new jobs were created if the

average wage of the new payroll equals or exceeds the county average wage or for a period of five years from the date the required number of new jobs were created if the average wage of the new payroll equals or exceeds one hundred twenty percent of the county average wage;

(2) **Technology business projects:** In exchange for the consideration provided by the new tax revenues and other economic stimulus that will be generated by the new jobs created by the program, a qualified company may retain an amount equal to a maximum of five percent of new payroll for a period of five years from the date the required number of jobs were created from the withholding tax of the new jobs that would otherwise be withheld and remitted by the qualified company under the provisions of sections 143.191 to 143.265, RSMo, if the average wage of the new payroll equals or exceeds the county average wage. An additional one-half percent of new payroll may be added to the five percent maximum if the average wage of the new payroll in any year exceeds one hundred twenty percent of the county average wage in the county in which the project facility is located, plus an additional one-half percent of new payroll may be added if the average wage of the new payroll in any year exceeds one hundred forty percent of the average wage in the county in which the project facility is located. The department shall issue a refundable tax credit for any difference between the amount of benefit allowed under this subdivision and the amount of withholding tax retained by the company, in the event the withholding tax is not sufficient to provide the entire amount of benefit due to the qualified company under this subdivision. The calendar year annual maximum amount of tax credits that may be issued to any qualified company for a project or combination of projects is five hundred thousand dollars;

(3) **High impact projects:** In exchange for the consideration provided by the new tax revenues and other economic stimulus that will be generated by the new jobs created by the program, a qualified company may retain an amount from the withholding tax of the new jobs that would otherwise be withheld and remitted by the qualified company under the provisions of sections 143.191 to 143.265, RSMo, equal to three percent of new payroll for a period of five years from the date the required number of jobs were created if the average wage of the new payroll equals or exceeds the county average wage of the county in which the project facility is located. The percentage of payroll allowed under this subdivision shall be three and one-half percent of new payroll if the average wage of the new payroll in any year exceeds one hundred twenty percent of the county average wage in the county in which the project facility is located. The percentage of payroll allowed under this subdivision shall be four percent of new payroll if the average wage of the new payroll in any year exceeds one hundred forty percent of the county average wage in the county in which the project facility is located. An additional one percent of new payroll may be added to these percentages if local incentives equal between ten percent and twenty-four percent of the new direct local revenue; an additional two percent of new payroll is added to these percentages if the local incentives equal between twenty-five percent and forty-nine percent of the new direct local revenue; or an additional three percent of payroll is added to these percentages if the local incentives equal fifty percent or more of the new direct local revenue. The department shall issue a refundable tax credit for any difference between the amount of benefit allowed under this subdivision and the amount of withholding tax retained by the company, in the event the withholding tax is not sufficient to provide the entire amount of benefit due to the qualified company under this subdivision. The calendar year annual maximum amount of tax credits that may be issued to any qualified company for a project or combination of projects is seven hundred fifty thousand dollars. The calendar year annual maximum amount of tax credit that may be issued to any qualified company for a project or combination of projects may be increased up to one million dollars if such action is proposed by the department and approved by the quality jobs advisory task force established in section 620.1887; provided,

however, until such time as the initial at-large members of the quality jobs advisory task force are appointed, this determination shall be made by the director of the department of economic development. In considering such a request, the task force shall rely on economic modeling and other information supplied by the department when requesting the increased limit on behalf of the project.

(4) Job retention projects: A qualified company may receive a tax credit for the retention of jobs in this state, provided the qualified company and the project meets all of the following conditions:

(a) For each of the twenty-four months preceding the year in which application for the program is made the qualified company must have maintained at least one thousand full-time, year-round employees at the employer's site in the state at which the jobs are based, and the average wage of such employees must meet or exceed the county average wage;

(b) The qualified company retained at the project facility the level of full-time year-round employees that existed in the taxable year immediately preceding the year in which application for the program is made;

(c) The qualified company is considered to have a significant statewide effect on the economy, and has been determined to represent a substantial risk of relocation from the state by the quality jobs advisory task force established in section 620.1887, RSMo; provided, however, until such time as the initial at-large members of the quality jobs advisory task force are appointed, this determination shall be made by the director of the department of economic development;

(d) The qualified company in the project facility will cause to be invested a minimum of seventy million dollars in new investment prior to the end of two years or will cause to be invested a minimum of thirty million dollars in new investment prior to the end of two years and maintain an annual payroll of at least seventy million dollars during each of the years for which a credit is claimed; and

(e) The local taxing entities shall provide local incentives of at least fifty percent of the new direct local revenues created by the project over a ten year period.

The quality jobs advisory task force may recommend to the department of economic development that appropriate penalties be applied to the company for violating the agreement. The amount of the job retention credit granted may be equal to up to fifty percent of the amount of withholding tax generated by the full-time, year-round jobs at the project facility for a period of five years. The calendar year annual maximum amount of tax credit that may be issued to any qualified company for a job retention project or combination of job retention projects shall be seven hundred fifty thousand dollars per year, but the maximum amount may be increased up to one million dollars if such action is proposed by the department and approved by the quality jobs advisory task force established in section 620.1887; provided, however, until such time as the initial at-large members of the quality jobs advisory task force are appointed, this determination shall be made by the director of the department of economic development. In considering such a request, the task force shall rely on economic modeling and other information supplied by the department when requesting the increased limit on behalf of the job retention project. In no event shall the total amount of all tax credits issued for the entire job retention program under this subdivision exceed three million dollars annually. Notwithstanding the above, no tax credits shall be issued for job retention projects approved by the department after August 30, 2007.

4. The qualified company shall provide an annual report of the number of jobs and such other information as may be required by the department to document the basis for the benefits of this program. The department may withhold the approval of any benefits until it is satisfied that proper documentation has been provided, and shall reduce the benefits to reflect any reduction in full-time, year-round employees.

5. The maximum calendar year annual tax credits issued for the entire program shall not exceed twelve million dollars. Notwithstanding any provision of law to the contrary, the maximum annual tax credits authorized under section 135.535, RSMo, is hereby reduced from ten million dollars to eight million dollars, with the balance of two million dollars transferred to this program. There shall be no limit on the amount of withholding taxes that may be retained by approved companies under this program.

6. The department shall allocate the annual tax credits based on the date of the proposal, reserving such tax credits based on the department's best estimate of new jobs and new payroll of the project, and the other factors in the determination of benefits of this program. However, the annual issuance of tax credits is subject to the annual verification of the actual new payroll. The allocation of tax credits for the period assigned to a project shall expire if, within two years from the date of commencement of operations, or proposal if applicable, the minimum thresholds have not been achieved. The qualified company may retain authorized amounts from the withholding tax under this section once the minimum new jobs thresholds are met for the duration of the project period. No benefits shall be provided under this program until the qualified company meets the minimum new jobs thresholds. In the event the qualified company does not meet the minimum new job threshold, the qualified company may submit a new notice of intent or the department may provide a new proposal for a new project of the qualified company at the project facility or other facilities.

7. For a qualified company with flow-through tax treatment to its members, partners, or shareholders, the tax credit shall be allowed to members, partners, or shareholders in proportion to their share of ownership on the last day of the qualified company's tax period.

8. Tax credits may be claimed against taxes otherwise imposed by chapters 143 and 148, RSMo, and may not be carried forward but shall be claimed within one year of the close of the taxable year for which they were issued.

9. Tax credits authorized by this section may be transferred, sold, or assigned by filing a notarized endorsement thereof with the department that names the transferee, the amount of tax credit transferred, and the value received for the credit, as well as any other information reasonably requested by the department.

10. The director of revenue shall issue a refund to the qualified company to the extent that the amount of credits allowed in this section exceeds the amount of the qualified company's income tax.

11. An employee of a qualified company will receive full credit for the amount of tax withheld as provided in section 143.221, RSMo.

12. If any provision of sections 620.1875 to 620.1890 or application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or application of these sections which can be given effect without the invalid provisions or application, and to this end, the provisions of sections 620.1875 to 620.1890 are hereby declared severable.

620.1884. RULEMAKING AUTHORITY. — The department may adopt such rules, statements of policy, procedures, forms, and guidelines as may be necessary to carry out the provisions of sections 620.1875 to 620.1890. 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, 2005, shall be invalid and void.

620.1887. QUALITY JOBS ADVISORY TASK FORCE CREATED, MEMBERS. — There is hereby created a volunteer task force, to be known as the "Quality Jobs Advisory Task Force", which shall consist of the chairperson of the economic development committee of the Missouri senate or his or her designee, a member of the economic development committee of the Missouri senate appointed by the minority leader of the Missouri senate, the chairperson of the economic development committee of the Missouri house of representatives or his or her designee, a member of the economic development committee of the Missouri house of representatives appointed by the minority leader of the Missouri house of representatives, the director of the department of economic development or his or her designee, and two members to be appointed by the governor with the advice and consent of the senate.

620.1890. REPORT TO THE GENERAL ASSEMBLY, CONTENTS. — Prior to March first each year, the department will provide a report on the program to the general assembly including the names of participating companies, location of such companies, the annual amount of benefits provided, the estimated net state fiscal impact (direct and indirect new state taxes derived from the project), the number of new jobs created or jobs retained, the average wages of each project, and the types of qualified companies using the program.

620.1900. FEE IMPOSED ON TAX CREDIT RECIPIENTS, AMOUNT, DEPOSITED WHERE — ECONOMIC DEVELOPMENT ADVANCEMENT FUND CREATED, USE OF MONEYS. — 1. The department of economic development may charge a fee to the recipient of any tax credits issued by the department, in an amount up to two and one-half percent of the amount of tax credits issued. The fee shall be paid by the recipient upon the issuance of the tax credits. However, no fee shall be charged for the tax credits issued under section 135.460, RSMo, or section 208.770, RSMo, or under sections 32.100 to 32.125, RSMo, if issued for community services, crime prevention, education, job training, or physical revitalization.

2. All fees received by the department of economic development under this section shall be deposited solely to the credit of the economic development advancement fund, created under subsection 3 of this section.

3. There is hereby created in the state treasury the "Economic Development Advancement 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 sections 30.170 and 30.180, RSMo. Upon appropriation, money in the fund shall be used solely for the administration of this section. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund.

4. Such fund shall consist of any fees charged under subsection 1 of this section, any gifts, contributions, grants, or bequests received from federal, private, or other sources, fees or administrative charges from private activity bond allocations, moneys transferred or paid to the department in return for goods or services provided by the department, and any appropriations to the fund.

5. At least fifty percent of the fees and other moneys deposited in the fund shall be appropriated for marketing, technical assistance, and training, contracts for specialized economic development services, and new initiatives and pilot programming to address economic trends. The remainder may be appropriated toward the costs of staffing and operating expenses for the program activities of the department of economic development, and for accountability functions.

SECTION 1. ESSENTIAL INDUSTRY RETENTION PROJECTS, TIME FOR APPROVAL. — Notwithstanding any other provision of law to the contrary, the time for approval of essential industry retention projects as identified in section 135.284, RSMo, is extended until December 31, 2007, and if an essential industry retention project has been approved by the department of economic development by December 31, 2007, the provisions of section 135.284 shall expire on January 1, 2020.

Approved July 5, 2005

SB 346 [SS SCS SB 346]

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

Limits paddlesport outfitters liability

AN ACT to amend chapter 537, RSMo, by adding thereto one new section relating to immunity for inherently dangerous recreational activities.

SECTION

- A. Enacting clause.
 537.327. Paddlesport activities — definitions — immunity from liability, when — exemptions — posting of signs required, content.

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 537.327, to read as follows:

537.327. PADDLESPORE ACTIVITIES — DEFINITIONS — IMMUNITY FROM LIABILITY, WHEN — EXEMPTIONS — POSTING OF SIGNS REQUIRED, CONTENT. — 1. As used in this section, unless the context provides otherwise, the following terms shall mean:

- (1) "Canoe", a watercraft which has an open top and is designed to hold one or more participants;
- (2) "Canoeing, rafting, kayaking, or tubing", riding in or on, training in or on, using, paddling, or being a passenger in or on a canoe, kayak, raft, or tube, including a person assisting a participant;
- (3) "Equipment", any accessory to a watercraft which is used for propulsion, safety, comfort, or convenience including, but not limited to, paddles, oars, and personal floatation devices;
- (4) "Inherent risks of paddlesport activities", those dangers, hazards, or conditions which are an integral part of paddlesport activities in Missouri's free-flowing streams or rivers, including, but not limited to:
 - (a) Risks typically associated with watercraft, including change in water flow or current, submerged, semi-submerged, and overhanging objects, capsizing, swamping, or sinking of watercraft and resultant injury, hypothermia, or drowning;
 - (b) Cold weather or heat-related injuries and illnesses, including hypothermia, frostbite, heat exhaustion, heat stroke, and dehydration;
 - (c) An "act of nature" which may include rock fall, inclement weather, thunder and lightning, severe or varied temperature, weather conditions, and winds including tornadoes;

- (d) Equipment failure or operator error;
 - (e) Attack or bite by animals;
 - (f) The aggravation of injuries or illnesses because they occurred in remote places where there are no available medical facilities;
 - (5) "Kayak", a watercraft similar to a canoe with a covered top which may have more than one circular opening to hold participants, or designed to permit a participant to sit on top of an enclosed formed seat;
 - (6) "Outfitter", any individual, group, club, partnership, corporation, or business entity, whether or not operating for profit or not-for-profit, or any employee or agent, which sponsors, organizes, rents, or provides to the general public the opportunity to use any watercraft by a participant on Missouri's free-flowing streams or rivers;
 - (7) "Paddlesport activity", canoeing, rafting, or kayaking in or on a watercraft as follows:
 - (a) A competition, exercise, or undertaking that involves a watercraft;
 - (b) Training or teaching activities;
 - (c) A ride, trip, tour, or other activity, however informal or impromptu, whether or not a fee is paid, that is sponsored by an outfitter;
 - (d) A guided trip, tour, or other activity, whether or not a fee is paid, that is sponsored by an outfitter;
 - (8) "Participant", any person, whether amateur or professional, whether or not a fee is paid, which rents, leases, or uses watercraft or is a passenger on a rented, leased, or used watercraft participating in a paddlesport activity;
 - (9) "Personal floatation device", a life jacket, floatable cushion, or other device approved by the United States Coast Guard;
 - (10) "Raft", an inflatable watercraft which has an open top and is designed to hold one or more participants;
 - (11) "Tube", an inflatable tire inner tube or similar inflatable watercraft which has an open top capable of holding one or more participants;
 - (12) "Watercraft", any canoe, kayak, raft, or tube propelled by the use of paddles, oars, hands, poles, or other nonmechanical, nonmotorized means of propulsion.
2. Except as provided in subsection 4 of this section, an outfitter shall not be liable for any injury to or the death of a participant resulting from the inherent risks of paddlesport activities and, except as provided in subsection 4 of this section, no participant or a participant's representative shall make any claim against, maintain any action against, or recover from an outfitter for injury, loss, damage, or death of the participant resulting from any of the inherent risks of paddlesport activities.
3. This section shall not apply to any employer-employee relationship governed by the provisions of chapter 287, RSMo.
4. The provisions of subsection 2 of this section shall not prevent or limit the liability of an outfitter that:
- (1) Intentionally injures the participant;
 - (2) Commits an act or omission that constitutes negligence for the safety of a participant in a paddlesport activity and that negligence is the proximate cause of the injury or death of a participant;
 - (3) Provides unsafe equipment or watercraft to a participant and knew or should have known that the equipment or watercraft was unsafe to the extent that it did cause the injury;
 - (4) Fails to provide a participant a United States Coast Guard approved personal floatation device; or
 - (5) Fails to use that degree of care that an ordinarily careful and prudent person would use under the same or similar circumstances.
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5. Every outfitter shall post and maintain signs which contain the warning notice specified in this subsection. Such signs shall be placed in a clearly visible location on or near areas where the outfitter conducts paddlesport activities. The warning notice specified in this subsection shall appear on the sign in black letters on a white background with each letter to be a minimum of one inch in height. Every written contract entered into by an outfitter for the providing of watercraft to a participant shall contain the warning notice specified in this subsection. The signs and contracts described in this subsection shall contain the following warning notice:

"WARNING

Under Missouri law, an outfitter is not liable for an injury to or the death of a participant in paddlesport activities resulting from the inherent risks of paddlesport activities pursuant to the Revised Statutes of Missouri."

6. This section shall not be construed to limit or modify any defense or immunity already existing in statute or common law or to affect any claim occurring prior to August 28, 2005.

Approved July 12, 2005

SB 347 [SB 347]

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

Modifies education requirements for professional counselors

AN ACT to repeal section 337.510, RSMo, and to enact in lieu thereof one new section relating to licensing requirements for professional counselors.

SECTION

A. Enacting clause.

337.510. Education, experience requirements for licensure — reciprocity — provisional professional counselor license issued, when, requirements — renewal license fee.

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

SECTION A. ENACTING CLAUSE. — Section 337.510, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 337.510, to read as follows:

337.510. EDUCATION, EXPERIENCE REQUIREMENTS FOR LICENSURE — RECIPROcity — PROVISIONAL PROFESSIONAL COUNSELOR LICENSE ISSUED, WHEN, REQUIREMENTS — RENEWAL LICENSE FEE. — 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) After August 28, 2007, each applicant shall have completed a minimum of three hours of graduate level coursework in diagnostic systems in the curriculum leading to his or her degree.

(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.

2. 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.

5. All persons licensed to practice professional counseling in this state shall pay on or before the license renewal date a renewal license fee and shall furnish to the committee satisfactory evidence of the completion of the requisite number of hours of continuing education, which shall be no more than forty hours biennially. The continuing education requirements may be waived by the committee upon presentation to the committee of satisfactory evidence of the illness of the licensee or for other good cause.

Approved July 6, 2005

SB 355 [HCS SCS SB 355]

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 Missouri Wine and Grape Board

AN ACT to repeal sections 142.029, 142.031, 142.815, 144.010, 144.030, 246.005, 261.241, 265.300, 267.565, 276.606, 277.020, 277.200, 281.040, 311.554, 348.430, and 414.433, RSMo, and to enact in lieu thereof thirty-two new sections relating to agriculture, with an emergency clause for a certain section.

SECTION

- A. Enacting clause.
- 142.029. Effective date of sections 142.027 and 142.028 and their expiration dates.
- 142.031. Missouri qualified biodiesel producer fund created — eligibility for grants — rulemaking authority.
- 142.815. Exemptions allowed for nonhighway use.
- 144.010. Definitions.
- 144.030. Exemptions from state and local sales and use taxes.
- 196.291. Food sold at religious events or charitable functions exempt from food inspection laws and regulations, when.
- 246.005. Extension of time of corporate existence — reinstatement period for certain districts.
- 261.241. Sellers of jams, jellies, and honey, no manufacturing facilities required, when — compliance with health standards and regulations required — label requirements.
- 262.820. Board created.
- 262.823. Purpose of the board, goals.
- 262.826. Definitions.
- 262.829. Principal office location — responsibilities of board.
- 262.832. Membership on board, effect on employment of state officers and employees.
- 262.835. Board members, qualifications, terms.
- 262.838. Removal of board member.
- 262.841. Chairperson and vice chairperson to be elected.
- 262.844. Meetings of the board.
- 262.847. Reimbursement for expenses.
- 262.850. Executive director to be employed, duties — technical experts and other employees permitted.
- 262.853. Duties of the secretary.
- 262.856. Powers of the board.
- 262.859. Annual report submitted to general assembly and the governor, contents.
- 265.300. Definitions.
- 267.565. Definitions.
- 268.063. Confidentiality of premises registration information.
- 276.606. Definitions.
- 277.020. Definitions.
- 277.200. Definitions.
- 281.040. Private applicator's license, qualifications for, duration, renewal — emergency use of restricted pesticides, when authorized.
- 311.554. Privilege of selling wine, additional revenue charges — purpose — Missouri wine and grape fund created — limitation on use of revenue.
- 348.430. Agricultural product utilization contributor tax credit — definitions — requirements — limitations.
- 414.433. Purchase of biodiesel fuel by school districts — contracts with new generation cooperatives — definitions — rulemaking authority.
- B. Emergency clause.

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

SECTION A. ENACTING CLAUSE. — Sections 142.029, 142.031, 142.815, 144.010, 144.030, 246.005, 261.241, 265.300, 267.565, 276.606, 277.020, 277.200, 281.040, 311.554, 348.430, and 414.433, RSMo, are repealed and thirty-two new sections enacted in lieu thereof, to be known as sections 142.029, 142.031, 142.815, 144.010, 144.030, 196.291, 246.005, 261.241, 262.820, 262.823, 262.826, 262.829, 262.832, 262.835, 262.838, 262.841, 262.844, 262.847, 262.850, 262.853, 262.856, 262.859, 265.300, 267.565, 268.063, 276.606, 277.020, 277.200, 281.040, 311.554, 348.430, and 414.433, to read as follows:

142.029. EFFECTIVE DATE OF SECTIONS 142.027 AND 142.028 AND THEIR EXPIRATION DATES. — [1. Section 142.027 shall become effective only if the normal federal-aid funds apportioned to Missouri under the Federal-Aid Highway Act of 1987 exceed the eighty-five percent minimum guarantee as defined in Section 124 of that act. Section 142.027 shall become effective on July first of the year following the federal fiscal year for which the funds were apportioned.

2. Section 142.028 shall become effective July 1, 1989.

3. Section 142.027 shall expire on June 30, 1996.] Section 142.028 shall expire on December 31, [2007] **2015**.

142.031. MISSOURI QUALIFIED BIODIESEL PRODUCER FUND CREATED — ELIGIBILITY FOR GRANTS — RULEMAKING AUTHORITY. — 1. As used in this section the following terms shall mean:

(1) "Biodiesel", fuel as defined in ASTM Standard D-6751 or its subsequent standard specifications for biodiesel fuel (B100) blend stock for distillate fuels;

(2) "Qualified biodiesel producer", a facility that produces biodiesel, is registered with the United States Environmental Protection Agency according to the requirements of 40 CFR 79, and at least fifty-one percent is owned by agricultural producers actively engaged in agricultural production for commercial purposes.

2. The "Missouri Qualified Biodiesel Producer Incentive Fund" is hereby created and subject to appropriations [with funds, other than general revenue funds,] shall be used to provide economic subsidies to Missouri qualified biodiesel producers pursuant to this section. The director of the department of agriculture shall administer the fund pursuant to this section.

3. A Missouri qualified biodiesel producer shall be eligible for a monthly grant from the fund **provided that fifty-one percent of the feedstock originates in the state of Missouri and that one hundred percent of the feedstock originates in the United States**. A Missouri qualified biodiesel producer shall only be eligible for the grant for a total of sixty months **unless such producers during the sixty months fail, due to a lack of appropriations, to receive the full amount from the fund for which the producers were eligible, in which case such producers shall continue to be eligible for up to twenty-four additional months or until they have received the maximum amount of funding for which such producers were eligible during the original sixty-month time period**. The amount of the grant is determined by calculating the estimated gallons of qualified biodiesel produced during the preceding month from Missouri agricultural products, as certified by the department of agriculture, and applying such figure to the per-gallon incentive credit established in this subsection. Each Missouri qualified biodiesel producer shall be eligible for a total grant in any fiscal year equal to thirty cents per gallon for the first fifteen million gallons of qualified biodiesel produced from Missouri agricultural products in the fiscal year **plus ten cents per gallon for the next fifteen million gallons of qualified biodiesel produced from Missouri agricultural products in the fiscal year**. All such qualified biodiesel produced by a Missouri qualified biodiesel producer in excess of [fifteen] **thirty million** gallons shall not be applied to the computation of a grant pursuant to this subsection. The department of agriculture shall pay all grants for a particular month by the fifteenth day after receipt and approval of the application described in subsection 4 of this section.

4. In order for a Missouri qualified biodiesel producer to obtain a grant from the fund, an application for such funds shall be received no later than fifteen days following the last day of the month for which the grant is sought. The application shall include:

(1) The location of the Missouri qualified biodiesel producer;

(2) The average number of citizens of Missouri employed by the Missouri qualified biodiesel producer in the preceding month, if applicable;

(3) The number of bushel equivalents of Missouri agricultural commodities used by the Missouri qualified biodiesel producer in the production of biodiesel in the preceding month;

(4) The number of gallons of qualified biodiesel the producer manufactures during the month for which the grant is applied;

(5) A copy of the qualified biodiesel producer license required pursuant to subsection 5 of this section, name and address of surety company, and amount of bond to be posted pursuant to subsection 5 of this section; and

(6) Any other information deemed necessary by the department of agriculture to adequately ensure that such grants shall be made only to Missouri qualified biodiesel producers.

5. The director of the department of agriculture, in consultation with the department of revenue, shall promulgate rules and regulations necessary for the administration of the provisions of this section.

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 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, 2002, shall be invalid and void.

142.815. EXEMPTIONS ALLOWED FOR NONHIGHWAY USE. — 1. Motor fuel used for the following nonhighway purposes is exempt from the fuel tax imposed by this chapter, and a refund may be claimed by the consumer, except as provided for in subsection (1) of this section, if the tax has been paid and no refund has been previously issued:

(1) Motor fuel used for nonhighway purposes including fuel for farm tractors or stationary engines owned or leased and operated by any person and used exclusively for agricultural purposes **and including, beginning January 1, 2006, bulk sales of one hundred gallons or more of gasoline made to farmers and delivered by the ultimate vender to a farm location for agricultural purposes only. As used in this section, the term "farmer" shall mean any person engaged in farming in an authorized farm corporation, family farm, or family farm corporation as defined in section 350.010, RSMo.** At the discretion of the ultimate vender, the refund may be claimed by the ultimate vender on behalf of the consumer for sales made to farmers and to persons engaged in construction for agricultural purposes as defined in section 142.800. After December 31, 2000, the refund may be claimed only by the consumer and may not be claimed by the ultimate vender **unless bulk sales of gasoline are made to a farmer after January 1, 2006, as provided in this subdivision and the farmer provides an exemption certificate to the ultimate vender, in which case the ultimate vender may make a claim for refund under section 142.824 but shall be liable for any erroneous refund;**

(2) Kerosene sold for use as fuel to generate power in aircraft engines, whether in aircraft or for training, testing or research purposes of aircraft engines;

(3) Diesel fuel used as heating oil, or in railroad locomotives or any other motorized flanged-wheel rail equipment, or used for other nonhighway purposes other than as expressly exempted pursuant to another provision.

2. Subject to the procedural requirements and conditions set out in this chapter, the following uses are exempt from the tax imposed by section 142.803 on motor fuel, and a deduction or a refund may be claimed:

(1) Motor fuel for which proof of export is available in the form of a terminal-issued destination state shipping paper and which is either:

(a) Exported by a supplier who is licensed in the destination state or through the bulk transfer system;

(b) Removed by a licensed distributor for immediate export to a state for which all the applicable taxes and fees (however nominated in that state) of the destination state have been paid to the supplier, as a trustee, who is licensed to remit tax to the destination state; or which is

destined for use within the destination state by the federal government for which an exemption has been made available by the destination state subject to procedural rules and regulations promulgated by the director; or

(c) Acquired by a licensed distributor and which the tax imposed by this chapter has previously been paid or accrued either as a result of being stored outside of the bulk transfer system immediately prior to loading or as a diversion across state boundaries properly reported in conformity with this chapter and was subsequently exported from this state on behalf of the distributor;

The exemption pursuant to paragraph (a) of this subdivision shall be claimed by a deduction on the report of the supplier which is otherwise responsible for remitting the tax upon removal of the product from a terminal or refinery in this state. The exemption pursuant to paragraphs (b) and (c) of this subdivision shall be claimed by the distributor, upon a refund application made to the director within three years. A refund claim may be made monthly or whenever the claim exceeds one thousand dollars;

(2) Undyed K-1 kerosene sold at retail through dispensers which have been designed and constructed to prevent delivery directly from the dispenser into a vehicle fuel supply tank, and undyed K-1 kerosene sold at retail through nonbarricaded dispensers in quantities of not more than twenty-one gallons for use other than for highway purposes. Exempt use of undyed kerosene shall be governed by rules and regulations of the director. If no rules or regulations are promulgated by the director, then the exempt use of undyed kerosene shall be governed by rules and regulations of the Internal Revenue Service. A distributor or supplier delivering to a retail facility shall obtain an exemption certificate from the owner or operator of such facility stating that its sales conform to the dispenser requirements of this subdivision. A licensed distributor, having obtained such certificate, may provide a copy to his or her supplier and obtain undyed kerosene without the tax levied by section 142.803. Having obtained such certificate in good faith, such supplier shall be relieved of any responsibility if the fuel is later used in a taxable manner. An ultimate vendor who obtained undyed kerosene upon which the tax levied by section 142.803 had been paid and makes sales qualifying pursuant to this subsection, may apply for a refund of the tax pursuant to application, as provided in section 142.818, to the director provided the ultimate vendor did not charge such tax to the consumer;

(3) Motor fuel sold to the United States or any agency or instrumentality thereof. This exemption shall be claimed as provided in section 142.818;

(4) Motor fuel used solely and exclusively as fuel to propel motor vehicles on the public roads and highways of this state when leased or owned and when being operated by a federally recognized Indian tribe in the performance of essential governmental functions, such as providing police, fire, health or water services. The exemption for use pursuant to this subdivision shall be made available to the tribal government upon a refund application stating that the motor fuel was purchased for the exclusive use of the tribe in performing named essential governmental services;

(5) Motor fuel sold within an Indian reservation or within Indian country by a federally recognized Indian tribe to a member of that tribe and used in motor vehicles owned by a member of the tribe within Indian country. This exemption does not apply to sales within an Indian reservation or within Indian country by a federally recognized Indian tribe to non-Indian consumers or to Indian consumers who are not members of the tribe selling the motor fuel. This exemption shall be administered as provided in section 142.821;

(6) That portion of motor fuel used to operate equipment attached to a motor vehicle, if the motor fuel was placed into the fuel supply tank of a motor vehicle that has a common fuel reservoir for travel on a highway and for the operation of equipment, or if the motor fuel was placed in a separate fuel tank and used only for the operation of auxiliary equipment. The exemption for use pursuant to this subdivision shall be claimed by a refund claim filed by the consumer who shall provide evidence of an allocation of use satisfactory to the director;

(7) Motor fuel acquired by a consumer out-of-state and carried into this state, retained within and consumed from the same vehicle fuel supply tank within which it was imported, except interstate motor fuel users;

(8) Motor fuel which was purchased tax-paid and which was lost or destroyed as a direct result of a sudden and unexpected casualty or which had been accidentally contaminated so as to be unsalable as highway fuel as shown by proper documentation as required by the director. The exemption pursuant to this subdivision shall be refunded to the person or entity owning the motor fuel at the time of the contamination or loss. Such person shall notify the director in writing of such event and the amount of motor fuel lost or contaminated within ten days from the date of discovery of such loss or contamination, and within thirty days after such notice, shall file an affidavit sworn to by the person having immediate custody of such motor fuel at the time of the loss or contamination, setting forth in full the circumstances and the amount of the loss or contamination and such other information with respect thereto as the director may require;

(9) Dyed diesel fuel or dyed kerosene used for an exempt purpose. This exemption shall be claimed as follows:

(a) A supplier or importer shall take a deduction against motor fuel tax owed on their monthly report for those gallons of dyed diesel fuel or dyed kerosene imported or removed from a terminal or refinery destined for delivery to a point in this state as shown on the shipping papers;

(b) This exemption shall be claimed by a deduction on the report of the supplier which is otherwise responsible for remitting the tax on removal of the product from a terminal or refinery in this state;

(c) This exemption shall be claimed by the distributor, upon a refund application made to the director within three years. A refund claim may be made monthly or whenever the claim exceeds one thousand dollars.

144.010. DEFINITIONS. — 1. The following words, terms, and phrases when used in sections 144.010 to 144.525 have the meanings ascribed to them in this section, except when the context indicates a different meaning:

(1) "Admission" includes seats and tables, reserved or otherwise, and other similar accommodations and charges made therefor and amount paid for admission, exclusive of any admission tax imposed by the federal government or by sections 144.010 to 144.525;

(2) "Business" includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either direct or indirect, and the classification of which business is of such character as to be subject to the terms of sections 144.010 to 144.525. The isolated or occasional sale of tangible personal property, service, substance, or thing, by a person not engaged in such business, does not constitute engaging in business within the meaning of sections 144.010 to 144.525 unless the total amount of the gross receipts from such sales, exclusive of receipts from the sale of tangible personal property by persons which property is sold in the course of the partial or complete liquidation of a household, farm or nonbusiness enterprise, exceeds three thousand dollars in any calendar year. The provisions of this subdivision shall not be construed to make any sale of property which is exempt from sales tax or use tax on June 1, 1977, subject to that tax thereafter;

(3) "Gross receipts", except as provided in section 144.012, means the total amount of the sale price of the sales at retail including any services other than charges incident to the extension of credit that are a part of such sales made by the businesses herein referred to, capable of being valued in money, whether received in money or otherwise; except that, the term "gross receipts" shall not include the sale price of property returned by customers when the full sale price thereof is refunded either in cash or by credit. In determining any tax due under sections 144.010 to 144.525 on the gross receipts, charges incident to the extension of credit shall be specifically exempted. For the purposes of sections 144.010 to 144.525 the total amount of the sale price above mentioned shall be deemed to be the amount received. It shall also include the lease or

rental consideration where the right to continuous possession or use of any article of tangible personal property is granted under a lease or contract and such transfer of possession would be taxable if outright sale were made and, in such cases, the same shall be taxable as if outright sale were made and considered as a sale of such article, and the tax shall be computed and paid by the lessee upon the rentals paid;

(4) "Livestock", cattle, calves, sheep, swine, ratite birds, including but not limited to, ostrich and emu, aquatic products as defined in section 277.024, RSMo, **llamas, alpaca, buffalo**, elk documented as obtained from a legal source and not from the wild, goats, horses, other equine, or rabbits raised in confinement for human consumption;

(5) "Motor vehicle leasing company" shall be a company obtaining a permit from the director of revenue to operate as a motor vehicle leasing company. Not all persons renting or leasing trailers or motor vehicles need to obtain such a permit; however, no person failing to obtain such a permit may avail itself of the optional tax provisions of subsection 5 of section 144.070, as hereinafter provided;

(6) "Person" includes any individual, firm, copartnership, joint adventure, association, corporation, municipal or private, and whether organized for profit or not, state, county, political subdivision, state department, commission, board, bureau or agency, except the state transportation department, estate, trust, business trust, receiver or trustee appointed by the state or federal court, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular number;

(7) "Purchaser" means a person who purchases tangible personal property or to whom are rendered services, receipts from which are taxable under sections 144.010 to 144.525;

(8) "Research or experimentation activities", are the development of an experimental or pilot model, plant process, formula, invention or similar property, and the improvement of existing property of such type. Research or experimentation activities do not include activities such as ordinary testing or inspection of materials or products for quality control, efficiency surveys, advertising promotions or research in connection with literary, historical or similar projects;

(9) "Sale" or "sales" includes installment and credit sales, and the exchange of properties as well as the sale thereof for money, every closed transaction constituting a sale, and means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for valuable consideration and the rendering, furnishing or selling for a valuable consideration any of the substances, things and services herein designated and defined as taxable under the terms of sections 144.010 to 144.525;

(10) "Sale at retail" means any transfer made by any person engaged in business as defined herein of the ownership of, or title to, tangible personal property to the purchaser, for use or consumption and not for resale in any form as tangible personal property, for a valuable consideration; except that, for the purposes of sections 144.010 to 144.525 and the tax imposed thereby: (i) purchases of tangible personal property made by duly licensed physicians, dentists, optometrists and veterinarians and used in the practice of their professions shall be deemed to be purchases for use or consumption and not for resale; and (ii) the selling of computer printouts, computer output or microfilm or microfiche and computer-assisted photo compositions to a purchaser to enable the purchaser to obtain for his or her own use the desired information contained in such computer printouts, computer output on microfilm or microfiche and computer-assisted photo compositions shall be considered as the sale of a service and not as the sale of tangible personal property. Where necessary to conform to the context of sections 144.010 to 144.525 and the tax imposed thereby, the term "sale at retail" shall be construed to embrace:

(a) Sales of admission tickets, cash admissions, charges and fees to or in places of amusement, entertainment and recreation, games and athletic events;

(b) Sales of electricity, electrical current, water and gas, natural or artificial, to domestic, commercial or industrial consumers;

(c) Sales of local and long distance telecommunications service to telecommunications subscribers and to others through equipment of telecommunications subscribers for the transmission of messages and conversations, and the sale, rental or leasing of all equipment or services pertaining or incidental thereto;

(d) Sales of service for transmission of messages by telegraph companies;

(e) Sales or charges for all rooms, meals and drinks furnished at any hotel, motel, tavern, inn, restaurant, eating house, drugstore, dining car, tourist camp, tourist cabin, or other place in which rooms, meals or drinks are regularly served to the public;

(f) Sales of tickets by every person operating a railroad, sleeping car, dining car, express car, boat, airplane, and such buses and trucks as are licensed by the division of motor carrier and railroad safety of the department of economic development of Missouri, engaged in the transportation of persons for hire;

(11) "Seller" means a person selling or furnishing tangible personal property or rendering services, on the receipts from which a tax is imposed pursuant to section 144.020;

(12) The noun "tax" means either the tax payable by the purchaser of a commodity or service subject to tax, or the aggregate amount of taxes due from the vendor of such commodities or services during the period for which he or she is required to report his or her collections, as the context may require;

(13) "Telecommunications service", for the purpose of this chapter, the transmission of information by wire, radio, optical cable, coaxial cable, electronic impulses, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. Telecommunications service does not include the following if such services are separately stated on the customer's bill or on records of the seller maintained in the ordinary course of business:

(a) Access to the Internet, access to interactive computer services or electronic publishing services, except the amount paid for the telecommunications service used to provide such access;

(b) Answering services and one-way paging services;

(c) Private mobile radio services which are not two-way commercial mobile radio services such as wireless telephone, personal communications services or enhanced specialized mobile radio services as defined pursuant to federal law; or

(d) Cable or satellite television or music services; and

(14) "Product which is intended to be sold ultimately for final use or consumption" means tangible personal property, or any service that is subject to state or local sales or use taxes, or any tax that is substantially equivalent thereto, in this state or any other state.

2. For purposes of the taxes imposed under sections 144.010 to 144.525, and any other provisions of law pertaining to sales or use taxes which incorporate the provisions of sections 144.010 to 144.525 by reference, the term "manufactured homes" shall have the same meaning given it in section 700.010, RSMo.

3. Sections 144.010 to 144.525 may be known and quoted as the "Sales Tax Law".

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] **142.824**, 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, **natural gas, propane, and electricity used by an eligible new generation cooperative or an eligible new generation processing entity as defined in section 348.432, 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, **including field drain tile**, 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.

196.291. FOOD SOLD AT RELIGIOUS EVENTS OR CHARITABLE FUNCTIONS EXEMPT FROM FOOD INSPECTION LAWS AND REGULATIONS, WHEN. — All sales of foods which are not

potentially hazardous foods, as defined by regulation, sold by religious, charitable, or nonprofit organizations at their religious events or at charitable functions and activities shall be exempt from all state laws and regulations relating to food inspection, pursuant to sections 196.190 to 196.271, RSMo.

246.005. EXTENSION OF TIME OF CORPORATE EXISTENCE — REINSTATEMENT PERIOD FOR CERTAIN DISTRICTS. — 1. Notwithstanding any other provision of law, any drainage district, any levee district, or any drainage and levee district organized under the provisions of sections 242.010 to 242.690, RSMo, or sections 245.010 to 245.280, RSMo, which has, prior to April 8, 1994, been granted an extension of the time of corporate existence by the circuit court having jurisdiction, shall be deemed to have fully complied with all provisions of law relating to such extensions, including the time within which application for the extension must be made, unless, for good cause shown, the circuit court shall set aside such extension within ninety days after April 8, 1994.

2. Notwithstanding any other provision of law, any drainage district, any levee district, or any drainage and levee district organized under the provisions of sections 242.010 to 242.690, RSMo, or sections 245.010 to 245.280, RSMo, shall have five years after the lapse of the corporate charter in which to reinstate and extend the time of the corporate existence by the circuit court having jurisdiction, and such circuit court judgment entry and order shall be deemed to have fully complied with all provisions of law relating to such extensions.

261.241. SELLERS OF JAMS, JELLIES, AND HONEY, NO MANUFACTURING FACILITIES REQUIRED, WHEN — COMPLIANCE WITH HEALTH STANDARDS AND REGULATIONS REQUIRED — LABEL REQUIREMENTS. — 1. Sellers of jams, [and] jellies, and honey whose annual sales of jams, [and] jellies, and honey are thirty thousand dollars or less per domicile shall not be required to construct or maintain separate facilities for the manufacture of [food products] jams, jellies, and honey. [However,] Such sellers shall [comply with] be exempt from all remaining health standards and regulations for the manufacture of [food products] jams, jellies, and honey pursuant to [chapter 196, RSMo.] sections 196.190 to 196.271, RSMo, if they meet the following requirements:

(1) Jams, jellies, and honey shall be manufactured in the domicile of the person processing and selling the jams, jellies, and honey and sold by the manufacturer to the end consumer;

(2) Jams, jellies, and honey shall be labeled with the following information in legible English as set forth in subsection 2 of this section;

(3) During the sale of such jams, jellies, and honey, a placard shall be displayed in a prominent location stating the following: "This product has not been inspected by the Department of Health and Senior Services.";

(4) Annual gross sales shall not exceed thirty thousand dollars. The person manufacturing such jams, jellies, and honey, shall maintain a record of sales of jams, jellies, and honey processed and sold. The record shall be available to the regulatory authority when requested.

2. The jams, jellies, and honey shall be labeled with the following information:

(1) Name and address of the persons preparing the food;

(2) Common name of the food;

(3) The name of all ingredients in the food; and

(4) Statement that the jams, jellies, and honey have not been inspected by the department of health and senior services.

3. Sellers of jams, jellies, and honey who violate the provisions of this section may be enjoined from selling jams, jellies, and honey by the department of health and senior services.

262.820. BOARD CREATED. — There is hereby created the "Missouri Wine and Grape Board", a body politic and corporate, an independent instrumentality exercising essential public functions, with duties and powers as set forth in sections 262.820 to 262.859.

262.823. PURPOSE OF THE BOARD, GOALS. — The purpose of the board shall be to further the growth and development of the grape growing industry in the state of Missouri. The board shall have a correlate purpose of fostering the expansion of the grape market for Missouri grapes. To effectuate these goals, the board may:

- (1) Participate in cooperation with state, regional, national, or international activities, groups, and organizations whose objectives are that of developing new and better grape varieties to determine their suitability for growing in Missouri;
- (2) Participate in and develop research projects on improved wine making methods utilizing the new grape varieties to be grown in Missouri;
- (3) Utilize the individual and collective expertise of the board members as well as experts in the fields of enology and viticulture selected by the board, to update and improve the quality of grapes grown in Missouri and advanced methods of producing wines from these Missouri grapes;
- (4) Furnish current information and associated data on research conducted by and for the board to grape growers and vintners in Missouri as well as to interested persons considering entering these fields within the state; and
- (5) Participate in subsequent studies, programs, research, and information and data dissemination in the areas of sales, promotions, and effective distribution of Missouri wines.

262.826. DEFINITIONS. — As used in sections 262.820 to 262.859, the following terms shall mean:

- (1) "Board", the Missouri wine and grape board established pursuant to section 262.820;
- (2) "Council", the Missouri wine marketing and research council established pursuant to section 275.462, RSMo.

262.829. PRINCIPAL OFFICE LOCATION — RESPONSIBILITIES OF BOARD. — The principal office of the board shall be located in Jefferson City, Missouri. The board may have offices at such other places as the board may from time to time designate. The board shall act as the organization within the department of agriculture charged with the promotion, research, and advisement of grapes and grape products in Missouri, and shall be the sole recipient of funding as provided for in section 311.554, RSMo.

262.832. MEMBERSHIP ON BOARD, EFFECT ON EMPLOYMENT OF STATE OFFICERS AND EMPLOYEES. — Notwithstanding the provisions of any other law to the contrary, 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 membership on the board or his or her service thereto.

262.835. BOARD MEMBERS, QUALIFICATIONS, TERMS. — The powers of the board shall be vested in eleven members, who shall be residents of this state. The board shall be composed of seven industry members who shall represent the Missouri grape and wine industry, food service industry, or media marketing industry. These seven members shall be current members of the Missouri grape and wine advisory board as of the effective date of this act. Such members shall serve the remainder of their terms established for the advisory board. Upon the expiration of the terms of such members, the members of the board representing the industry shall be appointed by the governor, with the advice and

consent of the senate. Except for ex-officio members, each board member appointed by the governor shall serve a four-year term ending four years from the date of expiration of the term for which his or her predecessor was appointed; except that a person appointed to fill a vacancy prior to the expiration of such a term shall be appointed for the remainder of the term. No board member appointed under sections 262.820 to 262.859 by the governor shall serve more than two consecutive full terms. Each appointed board member shall hold office for the term of the members appointment and until a successor is appointed and qualified. The board shall have four ex-officio members, including the president of the Missouri Grape Growers Association, the president of the Missouri Vintners Association, the president of the Missouri Wine Marketing and Research Council, and the director of the department of agriculture. Ex-officio members shall be voting members of the board and their terms will coincide with the time they hold the elected or appointed office qualifying them to be a member of the board.

262.838. REMOVAL OF BOARD MEMBER. — A board member shall be removed from office by the governor for malfeasance, willful neglect of duty, or other cause after notice and public hearing, unless such notice or hearing shall be expressly waived in writing.

262.841. CHAIRPERSON AND VICE CHAIRPERSON TO BE ELECTED. — The board members shall annually elect from among their number a chairperson and vice chairperson, and such other officers as they may deem necessary.

262.844. MEETINGS OF THE BOARD. — The board shall meet in Jefferson City within sixty days of the effective date of this act to elect a chairperson and vice chairperson of the board. The committee shall thereafter meet annually, within sixty days of July first, to elect officers and conduct business of the board. Additional meetings shall be held at the call of the chairperson or whenever two board members so request. Six members of the board shall constitute a quorum, and any action taken by the board under the provisions of sections 262.820 to 262.859 may be authorized by resolution approved by a majority, but not less than five, of the board members present at any regular or special meeting. In the absence of the chairman, the vice chairman may preside over the annual meeting of the board or in the absence of the chairman, any meeting requested by two or more commissioners. 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.

262.847. REIMBURSEMENT FOR EXPENSES. — Board members shall receive no compensation for the performance of their duties under sections 262.820 to 262.859, but each board member shall be reimbursed from the funds of the board for actual and necessary expenses incurred in carrying out the member's official duties under sections 262.820 to 262.859.

262.850. EXECUTIVE DIRECTOR TO BE EMPLOYED, DUTIES — TECHNICAL EXPERTS AND OTHER EMPLOYEES PERMITTED. — The board shall employ an executive director. The executive director shall be the secretary of the board and shall administer, manage, and direct the affairs and business of the board, subject to the policies, control, and direction of the board. The board may employ technical experts and such other officers, agents, and employees as they deem necessary, and may fix their qualifications, duties, and compensation. The executive director of the board shall be paid an amount to be determined by the board, but not to exceed that of a division director of the department of agriculture. The executive director and all other employees of the board shall be state employees and eligible for all corresponding benefits. The board may delegate to the executive director, or to one or more of its agents or employees, such powers and duties as it may deem proper.

262.853. DUTIES OF THE SECRETARY. — The secretary shall keep a record of the proceedings of the board and shall be custodian of all books, documents, and papers filed with the board and of its minute book. The secretary shall have the authority to cause to be made copies of all minutes and other records and documents of the board.

262.856. POWERS OF THE BOARD. — The board shall have all of the powers necessary and convenient to carry out and effectuate the purposes and provisions of sections 262.820 to 262.859, including, but not limited to, the power to:

(1) Receive and accept from any source, aid, or contributions of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of sections 262.820 to 262.859, subject to the conditions upon which the grants or contributions are made, including, but not limited to, gifts, or grants from any department, agency, or instrumentality of the United States for any purpose consistent with sections 262.820 to 262.859;

(2) To work with and counsel the viticulture and enology experts on the needs and requirements of grape producers and wine makers so as to optimize their work in developing the best strains of all grape varieties related to soil and climate conditions throughout the state and developing the art of wine making utilizing Missouri produced grapes;

(3) To review progress and final reports from these experts to determine the potential of economic forecasts for developing the Missouri grape and wine industries;

(4) To confer and cooperate with similar boards or councils in other states to further understandings and accords on the grape and wine industries;

(5) To approve and recommend desirable amendments to these powers of the board;

(6) To perform such other duties as may be necessary to proper operations of the board.

262.859. ANNUAL REPORT SUBMITTED TO GENERAL ASSEMBLY AND THE GOVERNOR, CONTENTS. — The board shall, following the close of each fiscal year, submit an annual report of its activities for the preceding year to the governor and the general assembly. Each report shall set forth a complete operating and financial statement for the authority during the fiscal year it covers.

265.300. DEFINITIONS. — The following terms as used in sections 265.300 to 265.470, unless the context otherwise indicates, mean:

(1) "Adulterated", any meat or meat product under one or more of the circumstances listed in Title XXI, Chapter 12, Section 601 of the United States Code as now constituted or hereafter amended;

(2) "Capable of use as human food", any carcass, or part or product of a carcass, of any animal unless it is denatured or otherwise identified, as required by regulation prescribed by the director, to deter its use as human food, or is naturally inedible by humans;

(3) "Cold storage warehouse", any place for storing meat or meat products which contains at any one time over two thousand five hundred pounds of meat or meat products belonging to any one private owner other than the owner or operator of the warehouse;

(4) "Commercial plant", any establishment in which livestock or poultry are slaughtered for transportation or sale as articles of commerce intended for or capable of use for human consumption, or in which meat or meat products are prepared for transportation or sale as articles of commerce, intended for or capable of use for human consumption;

(5) "Director", the director of the department of agriculture of this state, or his authorized representative;

(6) "Livestock", cattle, calves, sheep, swine, ratite birds including but not limited to ostrich and emu, aquatic products as defined in section 277.024, RSMo, **llamas, alpaca, buffalo, elk**

documented as obtained from a legal source and not from the wild, goats, or horses, other equines, or rabbits raised in confinement for human consumption;

- (7) "Meat", any edible portion of livestock or poultry carcass or part thereof;
- (8) "Meat product", anything containing meat intended for or capable of use for human consumption, which is derived, in whole or in part, from livestock or poultry;
- (9) "Misbranded", any meat or meat product under one or more of the circumstances listed in Title XXI, Chapter 12, Section 601 of the United States Code as now constituted or hereafter amended;
- (10) "Official inspection mark", the symbol prescribed by the director stating that an article was inspected and passed or condemned;
- (11) "Poultry", any domesticated bird intended for human consumption;
- (12) "Prepared", slaughtered, canned, salted, rendered, boned, cut up, or otherwise manufactured or processed;
- (13) "Unwholesome":
 - (a) Processed, prepared, packed or held under unsanitary conditions;
 - (b) Produced in whole or in part from livestock or poultry which has died other than by slaughter.

267.565. DEFINITIONS. — Unless the context requires otherwise, as used in sections 267.560 to 267.660, the following terms mean:

- (1) "Accredited approved veterinarian", 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 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", an animal of the equine, bovine, porcine, ovine, caprine, or species domesticated or semidomesticated;
 - (3) "Approved laboratory", a laboratory approved by the department;
 - (4) "Approved vaccine" or "bacterin", a vaccine or bacterin produced under the license of the United States Department of Agriculture and approved by the department for the immunization of animals against infectious and contagious disease;
 - (5) "Bird", a bird of the avian species;
 - (6) "Certified free herd", a herd of cattle, swine, goats or a flock of sheep or birds which has met the requirements and the conditions set forth in sections 267.560 to 267.660 and as required by the department and as recommended by the United States Department of Agriculture, and for such status for a specific disease and for a herd of cattle, swine, goats or flock of sheep or birds 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 animals or birds are domiciled, and as recommended by the United States Department of Agriculture for such status for a specific disease;
 - (7) "Department" or "department of agriculture", 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 agriculture of the state of Missouri, or by the state veterinarian of the state of Missouri or his duly authorized deputies acting under the supervision of the director of agriculture;
 - (8) "Infected animal" or "infected bird", an animal or bird which shows a positive reaction to any recognized serological test or growth on culture or any other recognized test for the detection of any disease of livestock or poultry as approved by the department or when clinical symptoms and history justifies designating such animal or bird as being infected with a contagious or infectious disease;
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(9) "Isolated" or "isolation", a condition in which animals or birds are quarantined to a certain designated premises and quarantined separately and apart from any other animals or birds on adjacent premises;

(10) "Licensed market", a market as defined and licensed under chapter 277, RSMo;

(11) "Livestock", horses, cattle, swine, sheep, goats, ratite birds including but not limited to ostrich and emu, aquatic products as defined in section 277.024, RSMo, **llamas, alpaca, buffalo**, elk documented as obtained from a legal source and not from the wild and raised in confinement for human consumption or animal husbandry, poultry and other domesticated animals or birds;

(12) "Official health certificate" is a legal record covering the requirements of the state of Missouri executed on an official form of the standard size from the state of origin and approved by the proper livestock sanitary official of the state of origin or an equivalent form provided by the United States Department of Agriculture and issued by an approved, accredited, licensed, graduate veterinarian;

(13) "Public stockyards", any public stockyards located within the state of Missouri and subject to regulations of the United States Department of Agriculture or the Missouri department of agriculture;

(14) "Quarantine", a condition in which an animal or bird of any species is restricted in movement to a particular premises under such terms and conditions as may be designated by order of the state veterinarian or his duly authorized deputies;

(15) "Traders" or "dealers", any person, firm or corporation engaged in the business of buying, selling or exchange of livestock on any basis other than on a commission basis at any sale pen, concentration point, farm, truck or other conveyance including persons, firms or corporations employed as an agent of the vendor or purchaser excluding public stockyards under federal supervision or markets licensed under sections 267.560 to 267.660 and under the supervision of the department, breed association sales or any private farm sale.

268.063. CONFIDENTIALITY OF PREMISES REGISTRATION INFORMATION. — Any information related to premises registration shall be confidential information, to be shared with no one except state and federal animal health officials, and shall not be subject to subpoena or other compulsory production.

276.606. DEFINITIONS. — As used in sections 276.600 to 276.661, the following terms mean:

(1) "Agent", any person authorized to act for a livestock dealer;

(2) "Dealer transactions", any purchase, sale, or exchange of livestock by a dealer, or agent, representative, or consignee of a dealer or person in which any interest equitable or legal is acquired or divested whether directly or indirectly;

(3) "Director", the director of the Missouri department of agriculture or his designated representative;

(4) "Engaged in the business of buying, selling, or exchanging in commerce livestock", sales and purchases of greater frequency than the person would make in feeding operation under the normal operation of a farm, if the person is a farmer. If the person is not a farmer he is a dealer engaged in the business of buying, selling, or exchanging in commerce livestock;

(5) "Livestock", cattle, swine, sheep, goats, horses and poultry, **llamas, alpaca, buffalo**, and other domesticated or semidomesticated or exotic animals;

(6) "Livestock dealer", any person engaged in the business of buying, selling, or exchanging in commerce of livestock;

(7) "Livestock transactions", any purchase, sale or exchange of livestock by a person, whether or not a livestock dealer, in which any interest equitable or legal is acquired or divested whether directly or indirectly;

- (8) "Official ear tag", a metal or plastic ear tag prescribed by the director conforming to the nine character alpha-numeric national uniform ear-tagging system;
- (9) "Person", any individual, partnership, corporation, association or other legal entity;
- (10) "State veterinarian", the state veterinarian of the Missouri department of agriculture, or his appointed agent.

277.020. DEFINITIONS. — The following terms as used in this chapter mean:

- (1) "Livestock", cattle, swine, sheep, ratite birds including but not limited to ostrich and emu, aquatic products as defined in section 277.024, **llamas, alpaca, buffalo**, elk documented as obtained from a legal source and not from the wild and raised in confinement for human consumption or animal husbandry, goats and poultry, equine and exotic animals;
- (2) "Livestock market", a place of business or place where livestock is concentrated for the purpose of sale, exchange or trade made at regular or irregular intervals, whether at auction or not, except this definition shall not apply to any public farm sale or purebred livestock sale, or to any sale, transfer, or exchange of livestock from one person to another person for movement or transfer to other farm premises or directly to a licensed market;
- (3) "Livestock sale", the business of mediating, for a commission, or otherwise, sale, purchase, or exchange transactions in livestock, whether or not at a livestock market; except the term "livestock sale" shall not apply to order buyers, livestock dealers or other persons acting directly as a buying agent for any third party;
- (4) "Person", individuals, partnerships, corporations and associations;
- (5) "State veterinarian", the state veterinarian of the Missouri state department of agriculture.

277.200. DEFINITIONS. — As used in sections 277.200 to 277.215, the following terms mean:

- (1) "Department", the department of agriculture;
- (2) "Livestock", live cattle, swine, **llamas, alpaca, buffalo**, or sheep;
- (3) "Packer", a person who is engaged in the business of slaughtering livestock or receiving, purchasing or soliciting livestock for slaughtering, the meat products of which are directly or indirectly to be offered for resale or for public consumption. "Packer" includes an agent of the packer engaged in buying or soliciting livestock for slaughter on behalf of a packer. "Packer" does not include a cold storage plant, a frozen food locker plant exempt from federal inspection requirements, a livestock market or livestock auction agency, any cattle buyer who purchases twenty or fewer cattle per day or one hundred or fewer cattle per week, any hog buyer who purchases fifty or fewer hogs per day or two hundred fifty or fewer hogs per week, or any sheep buyer who purchases fifty or fewer sheep per day or two hundred fifty or fewer sheep per week.

281.040. PRIVATE APPLICATOR'S LICENSE, QUALIFICATIONS FOR, DURATION, RENEWAL — EMERGENCY USE OF RESTRICTED PESTICIDES, WHEN AUTHORIZED. — 1. No private applicator shall use any restricted use pesticide unless he first complies with the requirements determined pursuant to subsection 2 or 5 of this section, as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons, for that specific pesticide use.

2. The private applicator shall qualify for a certified private applicator's license by **either** attending a course **or completing an on-line course** of instruction provided by the director on the use, handling, storage and application of restricted use pesticides. The content of the instruction shall be determined and revised as necessary by the director. Upon completion of the course, the director shall issue a certified private applicator's license to the applicant. The director shall not collect a fee for the issuance of such license, **but the University of Missouri extension service may collect a fee for the actual cost of the materials necessary to complete the course of instruction. However, no fee shall be assessed or collected from an individual**

completing an on-line course of instruction. Both the director of the department and of the University of Missouri extension service shall review such costs annually.

3. A certified private applicator's license shall expire five years from date of issuance and may then be renewed without charge or additional fee. Any certified private applicator holding a valid license may renew that license for the next five years without additional training unless the director determines that additional knowledge related to the use of agricultural pesticides makes additional training necessary.

4. If the director does not qualify the private applicator under this section he shall inform the applicant in writing of the reasons therefor.

5. The private applicator may apply to the director, or his designated agent, for a private applicator permit for the one-time emergency purchase and use of restricted use pesticides. When the private applicator has demonstrated his competence in the use of the pesticides to be purchased and used on a one-time emergency basis, he shall be issued a permit for the one-time emergency purchase and use of restricted use pesticides. The director or his designated agent shall not collect a fee for the issuance of such permit.

311.554. PRIVILEGE OF SELLING WINE, ADDITIONAL REVENUE CHARGES — PURPOSE — MISSOURI WINE AND GRAPE FUND CREATED — LIMITATION ON USE OF REVENUE. — 1. In addition to the charges imposed by section 311.550, there shall be paid to and collected by the director of revenue for the privilege of selling wine, an additional charge of six cents per gallon or fraction thereof. The additional charge shall be paid and collected in the same manner and at the same time that the charges imposed by section 311.550 are paid and collected.

2. **Until June 30, 2006**, the revenue derived from the additional charge imposed by subsection 1 shall be deposited by the state treasurer to the credit of a separate account in the marketing development fund created by section 261.035, RSMo. **Beginning July 1, 2006, the revenue derived from such additional charge shall be deposited by the state treasurer in the Missouri wine and grape fund created by this section.** Moneys to the credit of [the account shall be appropriated annually for use by the division of the state department of agriculture concerned with] **both the marketing development fund and the Missouri wine and grape fund shall be used only** for market development in developing programs for growing, selling, and marketing of grapes and grape products grown in Missouri, including all necessary funding for the employment of experts in the fields of viticulture and enology as deemed necessary, and programs aimed at improving marketing of all varieties of grapes grown in Missouri; and shall be appropriated and used for no other purpose.

3. **There is hereby created in the state treasury the "Missouri Wine and Grape 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 to the department of agriculture for use solely by the Missouri wine and grape board created under section 262.820, RSMo, in accordance with sections 30.170 and 30.180, RSMo. Upon appropriation, money in the fund shall be used solely for the administration of this section. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund.**

4. In addition to the charges imposed by subsection 1 of this section and section 311.550, there shall be paid to and collected by the director of revenue for the privilege of selling wine an additional charge of six cents per gallon or fraction thereof. **Until June 30, 2006**, this additional six cents per gallon shall be deposited by the state treasurer to the credit of a separate account in the marketing development fund created by section 261.035, RSMo. [Moneys to the credit account shall be appropriated annually for the use by the division of the Missouri department of agriculture concerned with the research and advisement of grapes and grape products in

Missouri, including all necessary funding for the employment of experts in the fields of viticulture and enology.] **Beginning July 1, 2006, the revenue derived from such additional charge shall be deposited by the state treasurer in the Missouri wine and grape fund created in this section.**

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 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 may be claimed in the taxable year in which

the contributor contributes funds to the authority. 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.

414.433. PURCHASE OF BIODIESEL FUEL BY SCHOOL DISTRICTS — CONTRACTS WITH NEW GENERATION COOPERATIVES — DEFINITIONS — RULEMAKING AUTHORITY. — 1. As used in this section, the following terms mean:

(1) "B-20", a blend of two fuels of twenty percent by volume biodiesel and eighty percent by volume petroleum-based diesel fuel;

(2) "Biodiesel", as defined in ASTM Standard PS121 or its subsequent standard specification for biodiesel fuel (B 100) blend stock for distillate fuels;

(3) "Eligible new generation cooperative", a nonprofit farmer-owned 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, as defined in section 348.430, RSMo.

2. Beginning with the 2002-03 school year and lasting through the [2005-06] **2011-12** school year, any school district may contract with an eligible new generation cooperative to purchase biodiesel fuel for its buses of a minimum of B-20 under conditions set out in subsection 3 of this section.

3. Every school district that contracts with an eligible new generation cooperative for biodiesel pursuant to subsection 2 of this section shall receive an additional payment through its state transportation aid payment pursuant to section 163.161, RSMo, so that the net price to the contracting district for biodiesel will not exceed the rack price of regular diesel. If there is no incremental cost difference between biodiesel above the rack price of regular diesel, then the state school aid program will not make payment for biodiesel purchased during the period where no incremental cost exists. The payment shall be made based on the incremental cost difference incrementally up to seven-tenths percent of the entitlement authorized by section 163.161, RSMo, for the 1998-99 school year. The payment amount may be increased by four percent each year during the life of the program. No payment shall be authorized pursuant to this subsection or contract required pursuant to subsection 2 of this section if moneys are not appropriated by the general assembly.

4. The department of elementary and secondary education shall promulgate such rules as are necessary to implement this section, including but not limited to a method of calculating the reimbursement of the contracting school districts and waiver procedures if the amount appropriated does not cover the additional costs for the use of biodiesel. 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, 2001, shall be invalid and void.

SECTION B. EMERGENCY CLAUSE. — Because immediate action is necessary to ensure continuation of services in a drainage or levee district after corporate dissolution, the repeal and reenactment of section 246.005 of section A of this act is deemed necessary, and is hereby declared to be an emergency act within the meaning of the constitution, and the repeal and reenactment of section 246.005 of section A of this act shall be in full force and effect upon its passage and approval.

Approved July 7, 2005

SB 367 [SB 367]

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

Changes requirement for payment of overtime hours for nonexempt state employees

AN ACT to repeal sections 105.262 and 105.935, RSMo, and to enact in lieu thereof two new sections relating to state employees, with an effective date.

SECTION

- A. Enacting clause.
 - 105.262. No delinquent taxes, condition of state employment — annual check by department of revenue.
 - 105.935. Overtime hours, state employee may choose compensatory leave time, when — payment for overtime, when — reports on overtime paid — overtime earned under Fair Labor Standards Act, applicability.
- B. Effective date.

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

SECTION A. ENACTING CLAUSE. — Sections 105.262 and 105.935, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 105.262 and 105.935, to read as follows:

105.262. NO DELINQUENT TAXES, CONDITION OF STATE EMPLOYMENT — ANNUAL CHECK BY DEPARTMENT OF REVENUE. — 1. As a condition of continued employment with the state of Missouri, all persons employed full time, part time, or on a temporary or contracted basis by the executive, legislative, or judicial branch shall file all state income tax returns and pay all state income taxes owed.

2. Each chief administrative officer or their designee of each division of each branch of state government shall at least one time each year check the status of every employee within the

division against a database developed by the director of revenue to determine if all state income tax returns have been filed and all state income taxes owed have been paid. The officer or designee shall notify any employee if the database shows any state income tax return has not been filed or taxes are owed under that employee's name or taxpayer number. Upon notification, the employee will have forty-five days to satisfy the liability or provide the officer or designee with a copy of a payment plan approved by the director of revenue. **To satisfy this section, any approved payment plan shall be in the form of a payroll deduction.** Failure to satisfy the liability or provide a copy of the **approved payroll deduction** payment plan within the forty-five days will result in immediate dismissal of the employee from employment by the state. **Nothing in this subsection shall prohibit the director of revenue from approving modifications to an approved payroll deduction payment plan for good cause; however, if an employee voluntarily suspends or terminates an approved payroll deduction without the agreement of the director of revenue before the tax liability is satisfied, then the employee shall be in violation of this section and shall be immediately dismissed as an employee of this state.**

3. The chief administrative officer of each division of the general assembly or their designee shall at least one time each year provide the name and Social Security number of every member of the general assembly to the director of revenue to determine if all state income tax returns have been filed and all state income taxes owed have been paid. The director shall notify any member of the general assembly if the database shows any state income tax return has not been filed or taxes are owed under that member's name or taxpayer number. Upon notification, the member will have forty-five days to satisfy the liability or provide the director with a copy of a payment plan approved by the director of revenue. **To satisfy this section, any approved payment plan shall be in the form of a payroll deduction.** Failure to satisfy the liability or provide a copy of the **approved payroll deduction** payment plan within the forty-five days will result in the member's name being submitted to the appropriate ethics committee for disciplinary action deemed appropriate by the committee. **Nothing in this subsection shall prohibit the director of revenue from approving modifications to an approved payroll deduction payment plan for good cause; however, if a member voluntarily suspends or terminates an approved payroll deduction without the agreement of the director of revenue before the tax liability is satisfied, then the member shall be in violation of this section and the member's name shall be immediately submitted to the appropriate ethics committee for disciplinary action deemed appropriate by the committee.**

4. The chief administrative officer of each division of the judicial branch or their designee shall at least one time each year provide the name and Social Security number of every elected or appointed member of the judicial branch to the director of revenue to determine if all state income tax returns have been filed and all state income taxes owed have been paid. The director shall notify any member if the database shows any state income tax return has not been filed or taxes are owed under that member's name or taxpayer number. Upon notification, the member will have forty-five days to satisfy the liability or provide the director with a copy of a payment plan approved by the director of revenue. **To satisfy this section, any approved payment plan shall be in the form of a payroll deduction.** Failure to satisfy the liability or provide a copy of the **approved payroll deduction** payment plan within the forty-five days will result in the member's name being submitted to the appropriate ethics body for disciplinary action deemed appropriate by that body. **Nothing in this subsection shall prohibit the director of revenue from approving modifications to an approved payroll deduction payment plan for good cause; however, if a member voluntarily suspends or terminates an approved payroll deduction without the agreement of the director of revenue before the tax liability is satisfied, then the member shall be in violation of this section and the member's name shall be immediately submitted to the appropriate ethics body for disciplinary action deemed appropriate by that body.**

5. The director of revenue shall at least one time each year check the status of every statewide elected official against a database developed by the director to determine if all state

income tax returns have been filed and all state income taxes owed have been paid. The director shall notify any elected official if the database shows any state income tax return has not been filed or taxes are owed under that official's name or taxpayer number. Upon notification, the official will have forty-five days to satisfy the liability or agree to a payment plan approved by the director of revenue. **To satisfy this section, any approved payment plan shall be in the form of a payroll deduction.** Failure to satisfy the liability or agree to the **approved payroll deduction** payment plan within the forty-five days will result in the official's name being submitted to the state ethics commission. **Nothing in this subsection shall prohibit the director of revenue from approving modifications to an approved payroll deduction payment plan for good cause; however, if an official voluntarily suspends or terminates an approved payroll deduction without the agreement of the director of revenue before the tax liability is satisfied, then the official shall be in violation of this section and the official's name shall be immediately submitted to the state ethics commission.**

105.935. OVERTIME HOURS, STATE EMPLOYEE MAY CHOOSE COMPENSATORY LEAVE TIME, WHEN — PAYMENT FOR OVERTIME, WHEN — REPORTS ON OVERTIME PAID — OVERTIME EARNED UNDER FAIR LABOR STANDARDS ACT, APPLICABILITY. — 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] **month** following the [quarter] **month** 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.

7. This section is applicable to overtime earned under the Fair Labor Standards Act. This section is applicable to employees who are employed in nonexempt positions providing direct client care or custody in facilities operating on a twenty-four hour seven day a week basis in the department of corrections, the department of mental health, the division of youth services of the department of social services, and the veterans commission of the department of public safety.

SECTION B. EFFECTIVE DATE. — Section A of this act shall become effective on January 1, 2006.

Approved June 21, 2005

SB 372 [HCS SCS SB 372]

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 various measures relating to bicycle safety and the duties owed to bicyclists by motorists

AN ACT to repeal sections 300.330 and 307.180, RSMo, and to enact in lieu thereof six new sections relating to bicycle safety.

SECTION

- A. Enacting clause.
- 300.330. Vehicle shall not be driven on a sidewalk — prohibition on obstruction of bicycle lanes — drivers to yield to bicycles in designated bicycle lanes.
- 300.411. Distance to be maintained when overtaking a bicycle.
- 304.678. Distance to be maintained when overtaking a bicycle — violation, penalty.
- 307.180. Bicycle and motorized bicycle, defined.
- 307.191. Bicycle to operate on the shoulder adjacent to roadway, when — roadway defined.
- 307.192. Bicycle required to give hand or mechanical signals.

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

SECTION A. ENACTING CLAUSE. — Sections 300.330 and 307.180, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 300.330, 300.411, 304.678, 307.180, 307.191, and 307.192, to read as follows:

300.330. VEHICLE SHALL NOT BE DRIVEN ON A SIDEWALK — PROHIBITION ON OBSTRUCTION OF BICYCLE LANES — DRIVERS TO YIELD TO BICYCLES IN DESIGNATED BICYCLE LANES. — The driver of a **motor** vehicle shall not drive within any sidewalk area except as a permanent or temporary driveway. **A designated bicycle lane shall not be obstructed by a parked or standing motor vehicle or other stationary object. A motor vehicle may be driven in a designated bicycle lane only for the purpose of a lawful maneuver to cross the lane or to provide for safe travel. In making an otherwise lawful maneuver that requires traveling in or crossing a designated bicycle lane, the driver of a motor vehicle shall yield to any bicycle in the lane. As used in this section, the term**

"designated bicycle lane" shall mean a portion of the roadway or highway that has been designated by the governing body having jurisdiction over such roadway or highway by striping with signing or striping with pavement markings for the preferential or exclusive use of bicycles.

300.411. DISTANCE TO BE MAINTAINED WHEN OVERTAKING A BICYCLE. — The operator of a motor vehicle overtaking a bicycle proceeding in the same direction on the roadway, as defined in section 300.010, shall leave a safe distance when passing the bicycle, and shall maintain clearance until safely past the overtaken bicycle.

304.678. DISTANCE TO BE MAINTAINED WHEN OVERTAKING A BICYCLE — VIOLATION, PENALTY. — The operator of a motor vehicle overtaking a bicycle proceeding in the same direction on the roadway, as defined in section 300.010, RSMo, shall leave a safe distance when passing the bicycle, and shall maintain clearance until safely past the overtaken bicycle.

307.180. BICYCLE AND MOTORIZED BICYCLE, DEFINED. — As used in sections 307.180 to 307.193:

(1) The word "bicycle" shall mean every vehicle propelled solely by human power upon which any person may ride, having two tandem wheels, **or two parallel wheels and one or two forward or rear wheels, all of which are more than fourteen inches in diameter**, except scooters and similar devices;

(2) The term "motorized bicycle" shall mean any two- 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. A motorized bicycle shall be considered a motor vehicle for purposes of any homeowners' or renters' insurance policy.

307.191. BICYCLE TO OPERATE ON THE SHOULDER ADJACENT TO ROADWAY, WHEN — ROADWAY DEFINED. — **1. A person operating a bicycle at less than the posted speed or slower than the flow of traffic upon a street or highway may operate as described in section 307.190 or may operate on the shoulder adjacent to the roadway.**

2. A bicycle operated on a roadway, or on the shoulder adjacent to a roadway, shall be operated in the same direction as vehicles are required to be driven upon the roadway.

3. For purposes of this section and section 307.190, "roadway" is defined as that portion of a street or highway ordinarily used for vehicular travel, exclusive of the berm or shoulder.

307.192. BICYCLE REQUIRED TO GIVE HAND OR MECHANICAL SIGNALS. — The operator of a bicycle shall signal as required in section 304.019, RSMo, except that a signal by the hand and arm need not be given continuously if the hand is needed in the control or operation of the bicycle. An operator of a bicycle intending to turn the bicycle to the right shall signal as indicated in section 304.019, RSMo, or by extending such operator's right arm in a horizontal position so that the same may be seen in front of and in the rear of the bicycle.

Approved July 12, 2005

SB 378 [SB 378]

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

Allows person to replace two sets of two stolen license plate tabs per year and prohibits issuance of ticket for stolen tabs

AN ACT to repeal section 301.301, RSMo, and to enact in lieu thereof two new sections relating to stolen license plate tabs.

SECTION

- A. Enacting clause.
- 301.301. Stolen license plate tabs, replacement at no cost, when, procedure, limitation.
- 301.302. Missing license plate tab, no citation issued, when.

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

SECTION A. ENACTING CLAUSE. — Section 301.301, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 301.301 and 301.302, to read as follows:

301.301. STOLEN LICENSE PLATE TABS, REPLACEMENT AT NO COST, WHEN, PROCEDURE, LIMITATION. — Any person replacing a stolen license plate tab may receive at no cost up to two **sets of two** license plate tabs per year when the application for the replacement tab is accompanied with a police report that is corresponding with the stolen license plate tab.

301.302. MISSING LICENSE PLATE TAB, NO CITATION ISSUED, WHEN. — **A citation shall not be issued to any person stopped by law enforcement for a missing license plate tab or tabs if such person indicates that the tab or tabs have been stolen and a check on such person's vehicle registration reveals that the vehicle is properly registered. A law enforcement officer may issue a warning under these circumstances. In the event a citation is improperly issued to a person for missing tabs when the requirements of this section are met, any court costs shall be waived.**

Approved June 30, 2005

SB 394 [SB 394]

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

Repeals law requiring the State Treasurer to maintain a list of financial institutions doing business in Northern Ireland

AN ACT to repeal section 30.720, RSMo, relating to financial institutions doing business in northern Ireland.

SECTION

- A. Enacting clause.

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

SECTION A. ENACTING CLAUSE. — Section 30.720, RSMo, is repealed, to read as follows:

[30.720. 1. Beginning January 1, 1995, and each year thereafter, the state treasurer shall:

(1) Compile a list of banks, financial institutions or any other corporations that, directly or through subsidiaries, do business in Northern Ireland and in whose stock or obligations any state agency, including retirement systems, have invested any state funds;

(2) Determine whether each bank, financial institution or other corporation on the list has, during the preceding year, taken affirmative action to eliminate religious or ethnic discrimination in Northern Ireland.

2. In making the determination required by subdivision (2) of subsection 1 of this section, the state treasurer shall consider whether a bank, financial institution or other corporation has, during the preceding year, taken substantial action designed to lead toward the achievement of the following goals:

(1) Increasing representation of persons from underrepresented religious groups at all levels in its work force;

(2) Adequate security for employees who are members of minority religious groups, both at the workplace and while traveling to and from work;

(3) Creating a climate in the workplace free from religious or political provocation;

(4) Publicly advertising all job openings and making special recruiting efforts to attract applicants from underrepresented religious groups;

(5) Providing that layoff, recall and termination procedures do not favor workers who are members of particular religious groups;

(6) Abolishing job reservations, apprenticeship restrictions and differential employment criteria that discriminate on the basis of religious or ethnic origin;

(7) Developing new programs and expanding existing programs to prepare current employees who are members of minority religious groups for skilled jobs;

(8) Establishing procedures to assess, identify and recruit employees who are members of minority religious groups and who have potential for advancement; and

(9) Appointing senior management employees to oversee affirmative action efforts and the setting of timetables for carrying out the provisions of this subsection.

3. Whenever feasible, the state treasurer shall sponsor, cosponsor or support shareholder resolutions designed to encourage the bank, financial institution or other corporation in which the state treasurer or other state agency has invested state funds to pursue a policy of affirmative action in Northern Ireland.

4. Nothing in this section shall be construed to require the state treasurer or any other state agency to dispose of existing investments or to make future investments that violate sound investment policy.]

Approved July 14, 2005

SB 396 [SB 396]

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

Extends sunset of transfer of jet fuel tax to the aviation trust fund and increases air control tower funding

AN ACT to repeal sections 144.805 and 305.230, RSMo, and to enact in lieu thereof two new sections relating to aviation.

SECTION

- A. Enacting clause.
- 144.805. Aviation jet fuel sold to common carriers in interstate transporting or storage exempt from all sales and use tax, when — qualification, procedure — common carrier to make direct payment to revenue — tax revenues to be deposited in aviation trust fund — expires when.
- 305.230. Aeronautics program, highways and transportation commission to administer — purposes — aviation trust fund, administration, uses — appropriation — immediate availability of funds in the event of a disaster.

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

SECTION A. ENACTING CLAUSE. — Section 144.805 and 305.230, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 144.805 and 305.230, to read as follows:

144.805. AVIATION JET FUEL SOLD TO COMMON CARRIERS IN INTERSTATE TRANSPORTING OR STORAGE EXEMPT FROM ALL SALES AND USE TAX, WHEN — QUALIFICATION, PROCEDURE — COMMON CARRIER TO MAKE DIRECT PAYMENT TO REVENUE — TAX REVENUES TO BE DEPOSITED IN AVIATION TRUST FUND — EXPIRES WHEN.

— 1. In addition to the exemptions granted pursuant to the provisions of section 144.030, there shall also be specifically exempted from the provisions of sections 144.010 to 144.525, sections 144.600 to 144.748, and section 238.235, RSMo, and the provisions of any local sales tax law, as defined in section 32.085, RSMo, and from the computation of the tax levied, assessed or payable pursuant to sections 144.010 to 144.525, sections 144.600 to 144.748, and section 238.235, RSMo, and the provisions of any local sales tax law, as defined in section 32.085, RSMo, all sales of aviation jet fuel in a given calendar year to common carriers engaged in the interstate air transportation of passengers and cargo, and the storage, use and consumption of such aviation jet fuel by such common carriers, if such common carrier has first paid to the state of Missouri, in accordance with the provisions of this chapter, state sales and use taxes pursuant to the foregoing provisions and applicable to the purchase, storage, use or consumption of such aviation jet fuel in a maximum and aggregate amount of one million five hundred thousand dollars of state sales and use taxes in such calendar year.

2. To qualify for the exemption prescribed in subsection 1 of this section, the common carrier shall furnish to the seller a certificate in writing to the effect that an exemption pursuant to this section is applicable to the aviation jet fuel so purchased, stored, used and consumed. The director of revenue shall permit any such common carrier to enter into a direct-pay agreement with the department of revenue, pursuant to which such common carrier may pay directly to the department of revenue any applicable sales and use taxes on such aviation jet fuel up to the maximum aggregate amount of one million five hundred thousand dollars in each calendar year. The director of revenue shall adopt appropriate rules and regulations to implement the provisions of this section, and to permit appropriate claims for refunds of any excess sales and use taxes collected in calendar year 1993 or any subsequent year with respect to any such common carrier and aviation jet fuel.

3. The provisions of this section shall apply to all purchases and deliveries of aviation jet fuel from and after May 10, 1993.

4. All sales and use tax revenues upon aviation jet fuel received pursuant to this chapter, less the amounts specifically designated pursuant to the constitution or pursuant to section 144.701, for other purposes, shall be deposited to the credit of the aviation trust fund established pursuant to section 305.230, RSMo; provided however, the amount of such state sales and use tax revenues deposited to the credit of such aviation trust fund shall not exceed six million dollars in each calendar year.

5. The provisions of this section and section 144.807 shall expire on December 31, [2008] **2013.**

305.230. AERONAUTICS PROGRAM, HIGHWAYS AND TRANSPORTATION COMMISSION TO ADMINISTER — PURPOSES — AVIATION TRUST FUND, ADMINISTRATION, USES — APPROPRIATION — IMMEDIATE AVAILABILITY OF FUNDS IN THE EVENT OF A DISASTER. —

1. The state highways and transportation commission shall administer an aeronautics program within this state. The commission shall encourage, foster and participate with the political subdivisions of this state in the promotion and development of aeronautics. The commission may provide financial assistance in the form of grants from funds appropriated for such purpose to any political subdivision or instrumentality of this state acting independently or jointly or to the owner or owners of any privately owned airport designated as a reliever by the Federal Aviation Administration for the planning, acquisition, construction, improvement or maintenance of airports, or for other aeronautical purposes.

2. Any political subdivision or instrumentality of this state or the owner or owners of any privately owned airport designated as a reliever by the Federal Aviation Administration receiving state funds for the purchase, construction, or improvement, except maintenance, of an airport shall agree before any funds are paid to it to control by ownership or lease the airport for a period equal to the useful life of the project as determined by the commission following the last payment of state or federal funds to it. In the event an airport authority ceases to exist for any reason, this obligation shall be carried out by the governing body which created the authority.

3. Unless otherwise provided, grants to political subdivisions, instrumentalities or to the owner or owners of any privately owned airport designated as a reliever by the Federal Aviation Administration shall be made from the aviation trust fund. In making grants, the commission shall consider whether the local community has given financial support to the airport in the past. Priority shall be given to airports with local funding for the past five years with no reduction in such funding. The aviation trust fund is a revolving trust fund exempt from the provisions of section 33.080, RSMo, relating to the transfer of funds to the general revenue funds of the state by the state treasurer. All interest earned upon the balance in the aviation trust fund shall be deposited to the credit of the same fund.

4. The moneys in the aviation trust fund shall be administered by the commission and, when appropriated, shall be used for the following purposes:

(1) As matching funds on an up to ninety percent state/ten percent local basis, except in the case where federal funds are being matched, when the ratio of state and local funds used to match the federal funds shall be fifty percent state/fifty percent local:

(a) For preventive maintenance of runways, taxiways and aircraft parking areas, and for emergency repairs of the same;

(b) For the acquisition of land for the development and improvement of airports;

(c) For the earthwork and drainage necessary for the construction, reconstruction or repair of runways, taxiways, and aircraft parking areas;

(d) For the construction, or restoration of runways, taxiways, or aircraft parking areas;

(e) For the acquisition of land or easements necessary to satisfy Federal Aviation Administration safety requirements;

(f) For the identification, marking or removal of natural or manmade obstructions to airport control zone surfaces and safety areas;

(g) For the installation of runway, taxiway, boundary, ramp, or obstruction lights, together with any work directly related to the electrical equipment;

(h) For the erection of fencing on or around the perimeter of an airport;

(i) For purchase, installation or repair of air navigational and landing aid facilities and communication equipment;

(j) For engineering related to a project funded under the provisions of this section and technical studies or consultation related to aeronautics;

(k) For airport planning projects including master plans and site selection for development of new airports, for updating or establishing master plans and airport layout plans at existing airports;

(1) For the purchase, installation, or repair of safety equipment and such other capital improvements and equipment as may be required for the safe and efficient operation of the airport;

(2) As total funds, with no local match:

(a) For providing air markers, windsocks, and other items determined to be in the interest of the safety of the general flying public;

(b) For the printing and distribution of state aeronautical charts and state airport directories on an annual basis, and a newsletter on a quarterly basis or the publishing and distribution of any public interest information deemed necessary by the commission;

(c) For the conducting of aviation safety workshops;

(d) For the promotion of aerospace education;

(3) As total funds with no local match, up to five hundred thousand dollars per year may be used for the cost of operating existing air traffic control towers that do not receive funding from the Federal Aviation Administration or the United States Department of Defense, except no more than one hundred [twenty-five] **sixty-seven** thousand dollars per year may be used for any individual control tower.

5. In the event of a natural or manmade disaster which closes any runway or renders inoperative any electronic or visual landing aid at an airport, any funds appropriated for the purpose of capital improvements or maintenance of airports may be made immediately available for necessary repairs once they are approved by the commission. For projects designated as emergencies by the commission, all requirements relating to normal procurement of engineering and construction services are waived.

6. As used in this section, the term "instrumentality of the state" shall mean any state educational institution as defined in section 176.010, RSMo, or any state agency which owned or operated an airport on January 1, 1997, and continues to own or operate such airport.

Approved June 27, 2005

SB 401 [HCS SB 401]

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 three-child limit in police pension systems

AN ACT to repeal sections 86.260, 86.280, 86.283, and 86.287, RSMo, and to enact in lieu thereof four new sections relating to police relief and pension systems.

SECTION

A. Enacting clause.

86.260. Disability allowance, how calculated — members as special consultants, when — benefits for children.

86.280. Death benefit — dependents' allowances.

86.283. Death benefits of retired member — dependents' allowances — cost-of-living adjustment.

86.287. Accidental death benefit — dependents' allowances.

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

SECTION A. ENACTING CLAUSE. — Sections 86.260, 86.280, 86.283, and 86.287, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 86.260, 86.280, 86.283, and 86.287, to read as follows:

86.260. DISABILITY ALLOWANCE, HOW CALCULATED — MEMBERS AS SPECIAL CONSULTANTS, WHEN — BENEFITS FOR CHILDREN. — 1. Upon termination of employment as a police officer and actual retirement for ordinary disability a member shall receive a service retirement allowance if the member has attained the age of fifty-five or completed twenty years of creditable service; otherwise the member shall receive an ordinary disability retirement allowance which shall be equal to ninety percent of the member's accrued service retirement in section 86.253, but not less than one-fourth of the member's average final compensation; provided, however, that no such allowance shall exceed ninety percent of the member's accrued service retirement benefit based on continuation of the member's creditable service to the age set out in section 86.250.

2. Effective October 1, 1999, the ordinary disability retirement allowance will be increased by fifteen percent of the member's average final compensation for each unmarried dependent child of the disabled member who is under the age of eighteen, or who, regardless of age, is totally and permanently mentally or physically disabled and incapacitated from engaging in gainful occupation sufficient to support himself or herself[, but not in excess of a total of three children; provided, however, that the combined benefit shall not exceed seventy percent of such average final compensation].

3. Any member receiving benefits pursuant to the provisions of this section immediately prior to October 1, 1999, shall upon application to the board of trustees, be made, constituted, appointed and employed by the board of trustees as a special consultant on the problems of retirement, aging and other matters while the member is receiving such benefits, and upon request of the board of trustees shall give opinions in writing or orally in response to such requests as may be required. Beginning October 1, 1999, for such services as may be required, there shall be payable an additional monthly compensation of one hundred dollars or five percent of the member's average final compensation, whichever is greater, for each unmarried dependent child of the member[, but not in excess of a total of three children].

4. Any benefit payable to or for the benefit of a child or children under the age of eighteen years pursuant to the provisions of subsections 2 and 3 of this section shall continue to be paid beyond the age of eighteen years through the age of twenty-two years in those cases where the child is a full-time student at a regularly accredited college, business school, nursing school, school for technical or vocational training, or university, but such extended benefit shall cease whenever the child ceases to be a student. A college or university shall be deemed to be regularly accredited which maintains membership in good standing in a national or regional accrediting agency recognized by any state college or university.

5. No benefits pursuant to this section shall be paid to a child over eighteen years of age who is totally and permanently disabled if such child is a patient or resident of a public-supported institution, nor shall such benefits be paid unless such disability occurred prior to such child reaching the age of eighteen.

86.280. DEATH BENEFIT — DEPENDENTS' ALLOWANCES. — Upon the receipt of proper proofs of the death of a member in service and provided no other benefits are payable under the retirement system, there shall be paid the following benefits:

(1) Effective October 1, 1999, a pension to the surviving spouse until the surviving spouse dies or remarries, whichever is earlier, of forty percent of the deceased member's average final compensation plus fifteen percent of such compensation to, or for the benefit of, each unmarried dependent child of the deceased member, who is either under the age of eighteen, or who, regardless of age, is totally and permanently mentally or physically disabled and incapacitated from engaging in gainful occupation sufficient to support himself or herself[, but not in excess of a total of three children];

(2) Any surviving spouse or unmarried dependent child receiving benefits pursuant to the provisions of this section immediately prior to October 1, 1999, shall, upon application to the board of trustees, be made, constituted, appointed and employed by the board of trustees as a

special consultant on the problems of retirement, aging and other matters while the surviving spouse or unmarried dependent child is receiving such benefits, and upon request of the board of trustees shall give opinions in writing or orally in response to such requests as may be required. Beginning October 1, 1999, for such services as may be required, the surviving spouse shall receive additional monthly compensation in an amount equal to fifteen percent of the deceased member's average final compensation, and there shall be payable an additional monthly compensation of one hundred dollars or five percent of the member's average final compensation, whichever is greater, for each unmarried dependent child of the member[, but not in excess of a total of three children]. The additional monthly compensation payable to a surviving spouse pursuant to this subdivision shall be adjusted for any cost-of-living increases that apply, pursuant to subdivision (8) of this section, to the benefit the surviving spouse was receiving prior to October 1, 1999;

(3) If no surviving spouse benefits are payable pursuant to subdivisions (1) and (2) of this section, such total pension as would have been paid pursuant to subdivisions (1) and (2) of this section had there been a surviving spouse shall be divided among the unmarried dependent children under age eighteen and such unmarried dependent children, regardless of age, who are totally and permanently mentally or physically disabled and incapacitated from engaging in a gainful occupation sufficient to support themselves. The benefit shall be divided equally among the eligible dependent children, and the share of a child who is no longer eligible shall be divided equally among the remaining eligible dependent children; provided that not more than one-half of the surviving spouse's benefit shall be paid for one child;

(4) If there is no surviving spouse or dependent children, the return of accumulated contributions to the designated beneficiary as set forth in section 86.293;

(5) No benefits pursuant to this section shall be paid to a child over eighteen years of age who is totally and permanently disabled if such child is a patient or resident of a public-supported institution, nor shall such benefits be paid unless such disability occurred prior to such child reaching the age of eighteen;

(6) Wherever any dependent child designated by the board of trustees to receive benefits pursuant to this section is in the care of the surviving spouse of the deceased member, such benefits may be paid to such surviving spouse for the child;

(7) Any benefit payable to, or for the benefit of, a child or children under the age of eighteen years pursuant to subdivisions (1) to (3) of this section shall continue to be paid beyond the age of eighteen years through the age of twenty-two years if the child is a full-time student at a regularly accredited college, business school, nursing school, school for technical or vocational training, or university, but such extended benefit shall cease whenever the child ceases to be a student. A college or university shall be deemed to be regularly accredited which maintains membership in good standing in a national or regional accrediting agency recognized by any state college or university;

(8) The benefits payable pursuant to this section to the surviving spouse of a member who died in service after attaining the age of fifty-five or completing twenty years of creditable service shall be increased in the same percentages and pursuant to the same method as is provided in section 86.253 for adjustments in the service retirement allowance of a retired member.

86.283. DEATH BENEFITS OF RETIRED MEMBER — DEPENDENTS' ALLOWANCES — COST-OF-LIVING ADJUSTMENT. — Upon receipt of proper proofs of the death of a retired member who retired while in service, including retirement for service, ordinary disability or accidental disability, and provided no other benefits are payable from the retirement system, there shall be paid the following benefits:

(1) Effective October 1, 1999, a pension to the surviving spouse until the surviving spouse dies or remarries, whichever is earlier, of forty percent of the deceased member's average final compensation plus fifteen percent of such compensation to, or for the benefit of, each unmarried dependent child of the deceased member, who is either under the age of eighteen, or who,

regardless of age, is totally and permanently mentally or physically disabled and incapacitated from engaging in a gainful occupation sufficient to support himself or herself[, but not in excess of three children];

(2) Any surviving spouse or unmarried dependent child receiving benefits pursuant to this section immediately prior to October 1, 1999, shall upon application to the board of trustees, be made, constituted, appointed and employed by the board of trustees as a special consultant on the problems of retirement, aging and other matters while the surviving spouse or unmarried dependent child is receiving such benefits, and upon request of the board of trustees shall give opinions in writing or orally in response to such requests as may be required. Beginning October 1, 1999, for such services as may be required, a surviving spouse shall receive additional monthly compensation equal to the amount which when added to the benefits the surviving spouse was receiving pursuant to this section prior to October 1, 1999, determined without regard to any increase applied to such benefits prior to October 1, 1999, pursuant to subdivision (8) of this section, will increase the surviving spouse's total monthly payment pursuant to this section to forty percent of the deceased member's average final compensation, and there shall be payable an additional monthly compensation of one hundred dollars or five percent of the member's average final compensation, whichever is greater, for each unmarried dependent child of the member[, but not in excess of a total of three children]. The additional monthly compensation payable to a surviving spouse pursuant to this subdivision shall be adjusted for any cost-of-living increases that apply to the benefit the surviving spouse was receiving prior to October 1, 1999;

(3) If no surviving spouse benefits are payable pursuant to subdivisions (1) and (2) of this section, such total pension as would have been paid pursuant to subdivisions (1) and (2) of this section had there been a surviving spouse, determined without regard to any increase which would have applied to the surviving spouse's benefits pursuant to subdivision (8) of this section, shall be divided among the unmarried dependent children under age eighteen and unmarried dependent children, regardless of age, who are totally and permanently mentally or physically disabled and incapacitated from engaging in a gainful occupation sufficient to support themselves. The benefit shall be divided equally among the eligible dependent children, and the share of a child who is no longer eligible shall be divided equally among the remaining eligible dependent children; provided that not more than one-half of the surviving spouse's benefits shall be paid for one child;

(4) No benefits pursuant to this section shall be paid to a child over eighteen years of age who is totally and permanently disabled if such child is a patient or resident of a public-supported institution, nor shall such benefits be paid unless such disability occurred prior to such child reaching the age of eighteen;

(5) Whenever any dependent child designated by the board of trustees to receive benefits pursuant to this section is in the care of the surviving spouse of the deceased member, such benefits may be paid to such surviving spouse for the child;

(6) In the event of the death of a retired member receiving accidental disability benefits before such benefits have been paid for five years, the member's surviving spouse until the surviving spouse dies or remarries, whichever is earlier, shall receive an additional pension of ten percent of the deceased member's final average compensation;

(7) Any benefit payable to, or for the benefit of, a child or children under the age of eighteen years pursuant to subdivisions (1) to (3) of this section shall continue to be paid beyond the age of eighteen years through the age of twenty-two years if the child is a full-time student at a regularly accredited college, business school, nursing school, school for technical or vocational training, or university, but such extended benefit shall cease whenever the child ceases to be a student. A college or university shall be deemed to be regularly accredited which maintains membership in good standing in a national or regional accrediting agency recognized by any state college or university;

(8) The benefits payable pursuant to this section to the surviving spouse of a retired member who received or was entitled to receive a service retirement allowance shall be increased in the

same percentages and pursuant to the same method as is provided in section 86.253 for adjustments in the service retirement allowance of a retired member.

86.287. ACCIDENTAL DEATH BENEFIT — DEPENDENTS' ALLOWANCES. — Upon the receipt by the board of trustees of evidence and proof that the death of a member was the natural and proximate result of an accident occurring at some definite time and place while the member was in the actual performance of duty and not caused by negligence on the part of the member, there shall be paid in lieu of the benefits pursuant to sections 86.280 to 86.283:

(1) Effective October 1, 1999, a pension to the surviving spouse until the surviving spouse dies or remarries, whichever is earlier, of seventy-five percent of the deceased member's average final compensation plus fifteen percent of such compensation to, or for the benefit of, each unmarried dependent child of the deceased member, who is either under the age of eighteen, or who, regardless of age, is totally and permanently disabled and incapacitated from engaging in a gainful occupation sufficient to support himself or herself[, but not in excess of three children];

(2) Any surviving spouse or unmarried dependent child receiving benefits pursuant to this section immediately prior to October 1, 1999, shall upon application to the board of trustees, be made, constituted, appointed and employed by the board of trustees as a special consultant on the problems of retirement, aging and other matters while the surviving spouse or unmarried dependent child is receiving such benefits, and upon request of the board of trustees shall give opinions in writing or orally in response to such requests as may be required. Beginning October 1, 1999, for such services as may be required, a surviving spouse shall receive additional monthly compensation equal to the amount which when added to the benefits the surviving spouse was receiving pursuant to this section prior to October 1, 1999, will increase the surviving spouse's total monthly benefit payment pursuant to this section to seventy-five percent of the deceased member's average final compensation, and there shall be payable an additional monthly compensation of one hundred dollars or five percent of the member's average final compensation, whichever is greater, for each unmarried dependent child of the member[, but not in excess of a total of three children];

(3) If no surviving spouse benefits are payable pursuant to subdivisions (1) and (2) of this section, such total pension as would have been paid pursuant to subdivisions (1) and (2) of this section had there been a surviving spouse shall be divided among the unmarried dependent children under age eighteen and such unmarried dependent children, regardless of age, who are totally and permanently disabled and incapacitated from engaging in a gainful occupation sufficient to support themselves. The benefit shall be divided equally among the eligible dependent children, and the share of a child who is no longer eligible shall be divided equally among the remaining eligible dependent children; provided that not more than one-half of the surviving spouse's benefit shall be paid for one child;

(4) If there is no surviving spouse or unmarried dependent children of either class mentioned in subdivision (3) of this section, then an amount equal to the surviving spouse's benefit shall be paid to the member's dependent father or dependent mother to continue until remarriage or death;

(5) No benefits pursuant to this section shall be paid to a child over eighteen years of age who is totally and permanently disabled if such child is a patient or resident of a public-supported institution, nor shall such benefits be paid unless such disability occurred prior to such child reaching the age of eighteen;

(6) Wherever any dependent child designated by the board of trustees to receive benefits pursuant to this section is in the care of the surviving spouse of the deceased member, such benefits may be paid to such surviving spouse for the child;

(7) Any benefit payable to, or for the benefit of, a child or children under the age of eighteen years pursuant to subdivisions (1) to (3) of this section shall continue to be paid beyond the age of eighteen years through the age of twenty-two years in those cases where the child is a full-time student at a regularly accredited college, business school, nursing school, school for

technical or vocational training, or university, but such extended benefit shall cease whenever the child ceases to be a student. A college or university shall be deemed to be regularly accredited which maintains membership in good standing in a national or regional accrediting agency recognized by any state college or university.

Approved July 14, 2005

SB 402 [HCS SS SB 402]

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

Modifies laws relating to underage drinking

AN ACT to repeal sections 311.310, 311.325, 570.223, and 577.500, RSMo, and to enact in lieu thereof seven new sections relating to substance abuse, with penalty provisions.

SECTION

- A. Enacting clause.
- 160.069. Policy on consequences of possession or drinking alcohol at school or during extracurricular activities.
- 311.310. Sale to minor — certain other persons, misdemeanor — exceptions — permitting drinking or possession by a minor, penalty, exception.
- 311.325. Purchase or possession by minor, a misdemeanor — container need not be opened and contents verified, when — burden of proof on violator to prove not intoxicating liquor.
- 311.326. Expungement of record permitted, when.
- 311.722. Alcohol and tobacco control, minors not to be used in enforcement, exceptions — standards — minors immune from liability, when.
- 570.223. Identity theft — penalty — restitution — other civil remedies available — exempted activities.
- 577.500. Suspension or revocation of driving privileges, persons under twenty-one years of age — violation of certain laws — surrender of licenses — court to forward to director of revenue — period of suspension.

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

SECTION A. ENACTING CLAUSE. — Sections 311.310, 311.325, 570.223, and 577.500, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 160.069, 311.310, 311.325, 311.326, 311.722, 570.223, and 577.500, to read as follows:

160.069. POLICY ON CONSEQUENCES OF POSSESSION OR DRINKING ALCOHOL AT SCHOOL OR DURING EXTRACURRICULAR ACTIVITIES. — **Every school district shall develop a policy by June 30, 2006, detailing the consequences that will result for a student at school if the student is found to be in possession or drinking alcohol either on school property or while representing the school at extracurricular activities.**

311.310. SALE TO MINOR — CERTAIN OTHER PERSONS, MISDEMEANOR — EXCEPTIONS — PERMITTING MINOR TO CONSUME INTOXICATION LIQUOR ON PROPERTY, VIOLATION, PENALTY — DEFENSES. — **1.** Any licensee under this chapter, or his employee, who shall sell, vend, give away or otherwise supply any intoxicating liquor in any quantity whatsoever to any person under the age of twenty-one years, or to any person intoxicated or appearing to be in a state of intoxication, or to a habitual drunkard, and any person whomsoever except his parent or guardian who shall procure for, sell, give away or otherwise supply intoxicating liquor to any person under the age of twenty-one years, or to any intoxicated person or any person appearing to be in a state of intoxication, or to a habitual drunkard, shall be deemed guilty of a misdemeanor, except that this section shall not apply to the supplying of intoxicating liquor to

a person under the age of twenty-one years for medical purposes only, or to the administering of such intoxicating liquor to any person by a duly licensed physician. No person shall be denied a license or renewal of a license issued under this chapter solely due to a conviction for unlawful sale or supply to a minor when serving in the capacity as an employee of a licensed establishment.

2. Any owner, occupant, or other person or legal entity with a lawful right to the use and enjoyment of any property, except for a parent or guardian, who knowingly allows any person under the age of twenty-one years to consume intoxicating liquor on such property, or knowingly fails to stop any person under the age of twenty-one years from consuming intoxicating liquor on such property shall be deemed guilty of a class B misdemeanor.

3. It shall be a defense to prosecution under this section if:

(1) The defendant is a licensed retailer, club, drinking establishment, or caterer or holds a temporary permit, or an employee thereof;

(2) The defendant sold the intoxicating liquor to the minor with reasonable cause to believe that the minor was twenty-one or more years of age; and

(3) To purchase the intoxicating liquor, the person exhibited to the defendant a driver's license, Missouri nondriver's identification card, or other official or apparently official document, containing a photograph of the minor and purporting to establish that such minor was twenty-one years of age and of the legal age for consumption of intoxicating liquor.

311.325. PURCHASE OR POSSESSION BY MINOR, A MISDEMEANOR — CONTAINER NEED NOT BE OPENED AND CONTENTS VERIFIED, WHEN — BURDEN OF PROOF ON VIOLATOR TO PROVE NOT INTOXICATING LIQUOR. — 1. Any person under the age of twenty-one years, who purchases or attempts to purchase, or has in his **or her** possession, any intoxicating liquor as defined in section 311.020 **or who is visibly intoxicated as defined in section 577.001, RSMo, or has a detectable blood alcohol content of more than two-hundredths of one percent or more by weight of alcohol in such person's blood** is guilty of a misdemeanor. For purposes of prosecution under this section or any other provision of this chapter involving an alleged illegal sale or transfer of intoxicating liquor to a person under twenty-one years of age, a manufacturer-sealed container describing that there is intoxicating liquor therein need not be opened or the contents therein tested to verify that there is intoxicating liquor in such container. The alleged violator may allege that there was not intoxicating liquor in such container, but the burden of proof of such allegation is on such person, as it shall be presumed that such a sealed container describing that there is intoxicating liquor therein contains intoxicating liquor.

2. For purposes of determining violations of any provision of this chapter, or of any rule or regulation of the supervisor of alcohol and tobacco control, a manufacturer-sealed container describing that there is intoxicating liquor therein need not be opened or the contents therein tested to verify that there is intoxicating liquor in such container. The alleged violator may allege that there was not intoxicating liquor in such container, but the burden of proof of such allegation is on such person, as it shall be presumed that such a sealed container describing that there is intoxicating liquor therein contains intoxicating liquor.

311.326. EXPUNGEMENT OF RECORD PERMITTED, WHEN. — **After a period of not less than one year, or upon reaching the age of twenty-one, whichever occurs first, a person who has pleaded guilty to or has been found guilty of violating section 311.325 for the first time, and who since such conviction has not been convicted of any other alcohol-related offense, may apply to the court in which he or she was sentenced for an order to expunge all official records of his or her arrest, plea, trial and conviction. If the court determines, upon review, that such person has not been convicted of any other alcohol-related offense at the time of the application for expungement, and the person has had no other alcohol-**

related enforcement contacts, as defined in section 302.525, the court shall enter an order of expungement. The effect of such an order shall be to restore such person to the status he or she occupied prior to such arrest, plea or conviction, as if such event had never happened. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge such arrest, plea, trial, conviction or expungement in response to any inquiry made of him or her for any purpose whatsoever. A person shall be entitled to only one expungement pursuant to this section. Nothing contained in this section shall prevent courts or other state officials from maintaining such records as are necessary to ensure that an individual receives only one expungement pursuant to this section.

311.722. ALCOHOL AND TOBACCO CONTROL, MINORS NOT TO BE USED IN ENFORCEMENT, EXCEPTIONS — STANDARDS — MINORS IMMUNE FROM LIABILITY, WHEN. — 1. The supervisor of alcohol and tobacco control shall not use minors, to enforce the laws of this chapter or chapter 312, RSMo, unless the supervisor promulgates rules and regulations that establish standards for the use of minors. The standards shall include those in subsection 2 of this section.

2. The supervisor shall establish, by July 1, 2006, permissive standards for the use of minors in investigations by any state, county, municipal or other local law enforcement authority, and which shall, at a minimum, provide for the following:

- (1) The minor shall be eighteen or nineteen years of age;
- (2) The minor shall have a youthful appearance and the minor, if a male, shall not have facial hair or a receding hairline;
- (3) The minor shall carry his or her own identification showing the minor's correct date of birth and shall, upon request, produce such identification to the seller of the intoxicating liquor or nonintoxicating beer at the licensed establishment;
- (4) The minor shall answer truthfully any questions about his or her age and shall not remain silent when asked questions regarding his or her age, nor misrepresent anything in order to induce a sale of intoxicating liquor or nonintoxicating beer.

3. The supervisor of alcohol and tobacco control shall not participate with any state, county, municipal, or other local law enforcement agency, nor discipline any licensed establishment when any state, county, municipal, or other law enforcement agency chooses not to follow the supervisor's permissive standards.

4. Any minors used in investigations under this section shall be exempt from any violations under chapter 311 and chapter 312, during the time they are under direct control of the state, county, municipal, or other law enforcement authorities.

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. 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 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. This section and section 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. **Nothing in this subdivision shall affect the provisions of subsection 10 of this section;**
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(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. Any person who obtains, transfers, or uses any means of identification for the purpose of manufacturing and providing or selling a false identification card to a person under the age of twenty-one for the purpose of purchasing or obtaining alcohol shall be guilty of a class A misdemeanor.

11. Notwithstanding the provisions of subdivision (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.] **12.** 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.] **13.** 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.

577.500. SUSPENSION OR REVOCATION OF DRIVING PRIVILEGES, PERSONS UNDER TWENTY-ONE YEARS OF AGE — VIOLATION OF CERTAIN LAWS — SURRENDER OF LICENSES — COURT TO FORWARD TO DIRECTOR OF REVENUE — PERIOD OF SUSPENSION. — 1. A court of competent jurisdiction shall, upon a plea of guilty, conviction or finding of guilt, or, if the court is a juvenile court, upon a finding of fact that the offense was committed by a juvenile, enter an order suspending or revoking the driving privileges of any person determined to have committed one of the following offenses and who, at the time said offense was committed, was under twenty-one years of age:

(1) Any alcohol related traffic offense in violation of state law or a county or, beginning July 1, 1992, municipal ordinance, where the judge in such case was an attorney and the defendant was represented by or waived the right to an attorney in writing;

(2) Any offense in violation of state law or, beginning July 1, 1992, a county or municipal ordinance, where the judge in such case was an attorney and the defendant was represented by or waived the right to an attorney in writing, involving the possession or use of alcohol, committed while operating a motor vehicle;

(3) Any offense involving the possession or use of a controlled substance as defined in chapter 195, RSMo, in violation of the state law or, beginning July 1, 1992, a county or municipal ordinance, where the judge in such case was an attorney and the defendant was represented by or waived the right to an attorney in writing;

(4) Any offense involving the alteration, modification or misrepresentation of a license to operate a motor vehicle in violation of section 311.328, RSMo;

(5) Any offense in violation of state law or, beginning July 1, 1992, a county or municipal ordinance, where the judge in such case was an attorney and the defendant was represented by or waived the right to an attorney in writing, involving the possession or use of alcohol for a second time; except that a determination of guilt or its equivalent shall have been made for the

first offense and both offenses shall have been committed by the person when the person was under eighteen years of age.

2. **A court of competent jurisdiction shall, upon a plea of guilty or nolo contendere, conviction or finding of guilt, or, if the court is a juvenile court, upon a finding of fact that the offense was committed by a juvenile, enter an order suspending or revoking the driving privileges of any person determined to have committed a crime or violation of section 311.325, RSMo, and who, at the time said crime or violation was committed, was more than fifteen years of age and under twenty-one years of age.**

3. The court shall require the surrender to it of any license to operate a motor vehicle, **temporary instruction permit, intermediate driver's license or any other driving privilege** then held by any person against whom a court has entered an order suspending or revoking driving privileges under [subsection] **subsections 1 and 2** of this section.

[3.] 4. The court, if other than a juvenile court, shall forward to the director of revenue the order of suspension or revocation of driving privileges and any licenses, **temporary instruction permits, intermediate driver's licenses, or any other driving privilege** acquired under subsection [2] **3** of this section.

[4.] 5. (1) The court, if a juvenile court, shall forward to the director of revenue the order of suspension or revocation of driving privileges and any licenses, **temporary instruction permits, intermediate driver's licenses, or any other driving privilege** acquired under subsection [2] **3** of this section for any person sixteen years of age or older, the provision of chapter 211, RSMo, to the contrary notwithstanding.

(2) The court, if a juvenile court, shall hold the order of suspension or revocation of driving privileges for any person less than sixteen years of age until thirty days before the person's sixteenth birthday, at which time the juvenile court shall forward to the director of revenue the order of suspension or revocation of driving privileges, the provision of chapter 211, RSMo, to the contrary notwithstanding.

[5.] 6. The period of suspension for a first offense under **subsection 1** of this section shall be ninety days. Any second or subsequent offense under **subsection 1** of this section shall result in revocation of the offender's driving privileges for one year. **The period of suspension for a first offense under subsection 2 of this section shall be thirty days. The period of suspension for a second offense under subsection 2 of this section shall be ninety days. Any third or subsequent offense under subsection 2 of this section shall result in revocation of the offender's driving privileges for one year.**

Approved July 13, 2005

SB 407 [SCS SB 407]

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

Modifies definition of "owner" in beneficiary deeds

AN ACT to repeal section 461.005, RSMo, and to enact in lieu thereof one new section relating to beneficiary deeds.

SECTION

- A. Enacting clause.
- 461.005. Definitions.

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

SECTION A. ENACTING CLAUSE. — Section 461.005, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 461.005, to read as follows:

461.005. DEFINITIONS. — In sections 461.003 to 461.081, unless the context otherwise requires, the following terms mean:

(1) "Beneficiary", a person or persons designated or entitled to receive property pursuant to a nonprobate transfer on surviving one or more persons;

(2) "Beneficiary designation", a provision in writing that is not a will that designates the beneficiary of a nonprobate transfer, including the transferee in an instrument that makes the transfer effective on death of the owner, and that complies with the conditions of any governing instrument, the rules of any transferring entity and applicable law;

(3) "Death of the owner", in the case of joint owners, means death of the last surviving owner;

(4) "In proper form", a phrase which applies to a beneficiary designation or a revocation or change thereof, or a request to make, revoke or change a beneficiary designation, which complies with the terms of the governing instrument, the rules of the transferring entity and applicable law, including any requirements with respect to supplemental documents;

(5) "Joint owners", persons who hold property as joint tenants with right of survivorship and a husband and wife who hold property as tenants by the entirety;

(6) "LDPS", an abbreviation of lineal descendants per stirpes which may be used in a beneficiary designation to designate a substitute beneficiary as provided in section 461.045;

(7) "Nonprobate transfer", a transfer of property taking effect upon the death of the owner, pursuant to a beneficiary designation. A nonprobate transfer under sections 461.003 to 461.081 does not include survivorship rights in property held as joint tenants or tenants by the entirety, a transfer to a remainderman on termination of a life tenancy, a transfer under a trust established by an individual, either inter vivos or testamentary, a transfer pursuant to the exercise or nonexercise of a power of appointment, or a transfer made on death of a person who did not have the right to designate his or her estate as the beneficiary of the transfer;

(8) "Owner", a person or persons having a right, exercisable alone or with others, **regardless of the terminology used to refer to the owner in any written beneficiary designation**, to designate the beneficiary of a nonprobate transfer, and includes joint owners. **The provisions of this subdivision shall apply to all beneficiary deeds executed and filed at any time, including, but not limited to, those executed and filed on or before August 28, 2005;**

(9) "Ownership in beneficiary form", holding property pursuant to a registration in beneficiary form or other writing that names the owner of the property followed by a transfer on death direction and the designation of a beneficiary;

(10) "Person", living individuals, entities capable of owning property and fiduciaries;

(11) "Proof of death", includes a death certificate or record or report that is prima facie proof or evidence of death under section 472.290, RSMo;

(12) "Property", any present or future interest in property, real or personal, tangible or intangible, legal or equitable. Property includes a right to direct or receive payment of a debt, money or other benefits due under a contract, account agreement, deposit agreement, employment contract, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust or law, a right to receive performance remaining due under a contract, a right to receive payment under a promissory note or a debt maintained in a written account record, rights under a certificated or uncertificated security, rights under an instrument evidencing ownership of property issued by a governmental agency and rights under a document of title within the meaning of section 400.1-201, RSMo;

(13) "Registration in beneficiary form", titling of an account record, certificate, or other written instrument evidencing ownership of property in the name of the owner followed by a transfer on death direction and the designation of a beneficiary;

(14) "Security", a certificated or uncertificated security as defined in section 400.8-102, RSMo, including securities as defined in section 409.401, RSMo;

(15) "Transfer on death direction", the phrase "transfer on death to" or the phrase "pay on death to" or the abbreviation "TOD" or "POD" after the name of the owners and before the designation of the beneficiary; and

(16) "Transferring entity", a person who owes a debt or is obligated to pay money or benefits, render contract performance, deliver or convey property, or change the record of ownership of property on the books, records and accounts of an enterprise or on a certificate or document of title that evidences property rights, and includes any governmental agency, business entity or transfer agent that issues certificates of ownership or title to property and a person acting as a custodial agent for an owner's property.

Approved July 14, 2005

SB 420 [CCS HCS SCS SBs 420 & 344]

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

Modifies numerous provisions regarding judicial procedures and personnel

AN ACT to repeal sections 105.711, 105.726, 210.117, 210.950, 211.038, 211.181, 238.216, 452.340, 455.516, 461.005, 472.060, 478.255, 478.550, 478.570, 478.600, 483.537, 486.200, 488.031, 488.445, 488.607, 488.5030, 494.430, 494.432, 516.130, 534.090, 545.550, and 570.123, RSMo, and to enact in lieu thereof thirty-seven new sections relating to judicial procedures and personnel, with a penalty provision.

SECTION

A. Enacting clause.

- 44.045. Voluntary deployment of health care professionals during a declared emergency — certain confidential contact information may be released.
- 105.711. Legal expense fund created — officers, employees, agencies, certain health care providers covered, procedure — rules regarding contract procedures and documentation of care — certain claims, limitations — funds not transferable to general revenue — rules.
- 105.726. Law, how construed — moneys unavailable, when — representation by attorney general, when.
- 210.116. Qualified immunity for private contractor, when — exceptions.
- 210.117. Child not reunited with parents or placed in a home, when — discretion to return, when.
- 210.950. Safe place for newborns act — definitions — procedure — immunity from liability.
- 211.038. Children not to be reunited with parents or placed in a home, when — discretion to return, 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.
- 217.860. Task force created, duties, members, meetings — expiration date.
- 238.216. Election procedure, duties of court — application for ballot, contents — mail-in elections, affidavit form, procedure — unanimous verified petition submitted, when — results entered, how.
- 452.340. Child support, how allocated — factors to be considered — abatement or termination of support, when — support after age eighteen, when — public policy of state — payments may be made directly to child, when — child support guidelines, rebuttable presumption, use of guidelines, when — retroactivity — obligation terminated, how.
- 455.516. Hearings, when, procedure, standard of proof — duration of orders — videotaped testimony permitted — renewal of orders, when — service of respondent, failure to serve not to affect validity of order — notice to law enforcement agencies.
- 455.524. Jurisdiction for orders — compliance review hearings permitted — remedies for enforcement of orders.
- 461.005. Definitions.
- 472.060. Disqualification of judge.
- 478.255. Disqualification of judge, reassignment procedure — applicability to probate judges.

- 478.550. Circuit No. 23, number of judges, divisions — when judges elected — family court commissioner and drug court commissioner to become associate circuit judge positions, when.
- 478.570. Circuit No. 17, number of judges, divisions — when judges elected.
- 478.600. Circuit No. 11, number of judges, divisions — when judges elected — drug commissioner to become associate circuit judge position.
- 483.537. Passports, accounting for fees charged, use of moneys collected.
- 486.200. Definitions.
- 488.014. Overpayment of court costs, no duty to refund, when.
- 488.031. Additional fees for civil and criminal actions and proceedings, collection of.
- 488.445. Funding shelters — fees for marriage licenses — surcharge for filing of civil case, how established, amount — reports.
- 488.607. Additional surcharges authorized for municipal and associate circuit courts for cities and towns having shelters for victims of domestic violence, amount, exceptions.
- 488.5030. Contracting for collection of delinquent court-ordered payments authorized — fees added to amount due.
- 494.430. Persons entitled to be excused from jury service — determinations made by judge — undue or extreme physical or financial hardship defined — documentation required, when.
- 494.432. Postponement of jury duty, when.
- 516.130. What actions within three years.
- 534.090. Serving of summons — service by mail — publication of notice.
- 545.550. Defendant in custody, to be removed, when — which county jail to house defendant.
- 570.123. Civil action for damages for passing bad checks, only original holder may bring action — limitations — notice requirements — payroll checks, action to be against employer.
1. Posting of certain information regarding elected or appointed officials prohibited — request for removal of posted material.
 2. Residential loans, imposition of fee to complete documentation not deemed engaging in the unauthorized practice of law.
 3. Family court commissioner position.
 4. Drug court commissioner position.
 5. Drug court commissioner position to be state-funded.

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

SECTION A. ENACTING CLAUSE. — Sections 105.711, 105.726, 210.117, 210.950, 211.038, 211.181, 238.216, 452.340, 455.516, 461.005, 472.060, 478.255, 478.550, 478.570, 478.600, 483.537, 486.200, 488.031, 488.445, 488.607, 488.5030, 494.430, 494.432, 516.130, 534.090, 545.550, and 570.123, RSMo, are repealed and thirty-seven new sections enacted in lieu thereof, to be known as sections 44.045, 105.711, 105.726, 210.116, 210.117, 210.950, 211.038, 211.181, 217.860, 238.216, 452.340, 455.516, 455.524, 461.005, 472.060, 478.255, 478.550, 478.570, 478.600, 483.537, 486.200, 488.014, 488.031, 488.445, 488.607, 488.5030, 494.430, 494.432, 516.130, 534.090, 545.550, 570.123, 1, 2, 3, 4, and 5, to read as follows:

44.045. VOLUNTARY DEPLOYMENT OF HEALTH CARE PROFESSIONALS DURING A DECLARED EMERGENCY — CERTAIN CONFIDENTIAL CONTACT INFORMATION MAY BE RELEASED. — **1. Subject to approval by the state emergency management agency during an emergency declared by the governor or state legislature, any health care professional licensed, registered, or certified in this state who volunteers to be so deployed may be deployed to provide care as necessitated by the emergency.**

2. In a declared state of emergency, the department of health and senior services or the division of professional registration within the department of economic development may release otherwise confidential contact and licensure, registration, or certification information relating to health care professionals to state, local, and private agencies to facilitate deployment.

105.711. LEGAL EXPENSE FUND CREATED — OFFICERS, EMPLOYEES, AGENCIES, CERTAIN HEALTH CARE PROVIDERS COVERED, PROCEDURE — RULES REGARDING CONTRACT PROCEDURES AND DOCUMENTATION OF CARE — CERTAIN CLAIMS, LIMITATIONS — FUNDS NOT TRANSFERABLE TO GENERAL REVENUE — RULES. — **1.** There is hereby created a "State Legal Expense Fund" which shall consist of moneys appropriated to the fund

by the general assembly and moneys otherwise credited to such fund pursuant to section 105.716.

2. Moneys in the state legal expense fund shall be available for the payment of any claim or any amount required by any final judgment rendered by a court of competent jurisdiction against:

(1) The state of Missouri, or any agency of the state, pursuant to section 536.050 or 536.087, RSMo, or section 537.600, RSMo;

(2) Any officer or employee of the state of Missouri or any agency of the state, including, without limitation, elected officials, appointees, members of state boards or commissions, and members of the Missouri national guard upon conduct of such officer or employee arising out of and performed in connection with his or her official duties on behalf of the state, or any agency of the state, provided that moneys in this fund shall not be available for payment of claims made under chapter 287, RSMo; or

(3) (a) Any physician, psychiatrist, pharmacist, podiatrist, dentist, nurse, or other health care provider licensed to practice in Missouri under the provisions of chapter 330, 332, 334, 335, 336, 337 or 338, RSMo, who is employed by the state of Missouri or any agency of the state, under formal contract to conduct disability reviews on behalf of the department of elementary and secondary education or provide services to patients or inmates of state correctional facilities [or county jails] on a part-time basis, **and any physician, psychiatrist, pharmacist, podiatrist, dentist, nurse, or other health care provider licensed to practice in Missouri under the provisions of chapter 330, 332, 334, 335, 336, 337, or 338, RSMo, who is under formal contract to provide services to patients or inmates at a county jail on a part-time basis;**

(b) Any physician licensed to practice medicine in Missouri under the provisions of chapter 334, RSMo, and his professional corporation organized pursuant to chapter 356, RSMo, who is employed by or under contract with a city or county health department organized under chapter 192, RSMo, or chapter 205, RSMo, or a city health department operating under a city charter, or a combined city-county health department to provide services to patients for medical care caused by pregnancy, delivery, and child care, if such medical services are provided by the physician pursuant to the contract without compensation or the physician is paid from no other source than a governmental agency except for patient co-payments required by federal or state law or local ordinance;

(c) Any physician licensed to practice medicine in Missouri under the provisions of chapter 334, RSMo, who is employed by or under contract with a federally funded community health center organized under Section 315, 329, 330 or 340 of the Public Health Services Act (42 U.S.C. 216, 254c) to provide services to patients for medical care caused by pregnancy, delivery, and child care, if such medical services are provided by the physician pursuant to the contract or employment agreement without compensation or the physician is paid from no other source than a governmental agency or such a federally funded community health center except for patient co-payments required by federal or state law or local ordinance. In the case of any claim or judgment that arises under this paragraph, the aggregate of payments from the state legal expense fund shall be limited to a maximum of one million dollars for all claims arising out of and judgments based upon the same act or acts alleged in a single cause against any such physician, and shall not exceed one million dollars for any one claimant;

(d) Any physician licensed pursuant to chapter 334, RSMo, who is affiliated with and receives no compensation from a nonprofit entity qualified as exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, which offers a free health screening in any setting or any physician, nurse, physician assistant, dental hygienist, or dentist licensed or registered pursuant to chapter 332, RSMo, chapter 334, RSMo, or chapter 335, RSMo, who provides medical, dental, or nursing treatment within the scope of his license or registration at a city or county health department organized under chapter 192, RSMo, or chapter 205, RSMo, a city health department operating under a city charter, or a combined city-county health department, or a nonprofit community health center qualified as exempt from federal

taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, if such treatment is restricted to primary care and preventive health services, provided that such treatment shall not include the performance of an abortion, and if such medical, dental, or nursing services are provided by the physician, dentist, physician assistant, dental hygienist, or nurse without compensation. Medicaid or medicare payments for primary care and preventive health services provided by a physician, dentist, physician assistant, dental hygienist, or nurse who volunteers at a free health clinic is not compensation for the purpose of this section if the total payment is assigned to the free health clinic. For the purposes of the section, "free health clinic" means a nonprofit community health center qualified as exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1987, as amended, that provides primary care and preventive health services to people without health insurance coverage for the services provided without charge. In the case of any claim or judgment that arises under this paragraph, the aggregate of payments from the state legal expense fund shall be limited to a maximum of five hundred thousand dollars, for all claims arising out of and judgments based upon the same act or acts alleged in a single cause and shall not exceed five hundred thousand dollars for any one claimant, and insurance policies purchased pursuant to the provisions of section 105.721 shall be limited to five hundred thousand dollars. Liability or malpractice insurance obtained and maintained in force by or on behalf of any physician, dentist, physician assistant, dental hygienist, or nurse shall not be considered available to pay that portion of a judgment or claim for which the state legal expense fund is liable under this paragraph; or

(e) Any physician, nurse, physician assistant, dental hygienist, or dentist licensed or registered to practice medicine, nursing, or dentistry or to act as a physician assistant or dental hygienist in Missouri under the provisions of chapter 332, RSMo, chapter 334, RSMo, or chapter 335, RSMo, who provides medical, nursing, or dental treatment within the scope of his license or registration to students of a school whether a public, private, or parochial elementary or secondary school, if such physician's treatment is restricted to primary care and preventive health services and if such medical, dental, or nursing services are provided by the physician, dentist, physician assistant, dental hygienist, or nurse without compensation. In the case of any claim or judgment that arises under this paragraph, the aggregate of payments from the state legal expense fund shall be limited to a maximum of five hundred thousand dollars, for all claims arising out of and judgments based upon the same act or acts alleged in a single cause and shall not exceed five hundred thousand dollars for any one claimant, and insurance policies purchased pursuant to the provisions of section 105.721 shall be limited to five hundred thousand dollars; or

(4) Staff employed by the juvenile division of any judicial circuit; or

(5) Any attorney licensed to practice law in the state of Missouri who practices law at or through a nonprofit community social services center qualified as exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or through any agency of any federal, state, or local government, if such legal practice is provided by the attorney without compensation. In the case of any claim or judgment that arises under this subdivision, the aggregate of payments from the state legal expense fund shall be limited to a maximum of five hundred thousand dollars for all claims arising out of and judgments based upon the same act or acts alleged in a single cause and shall not exceed five hundred thousand dollars for any one claimant, and insurance policies purchased pursuant to the provisions of section 105.721 shall be limited to five hundred thousand dollars.

3. The department of health and senior services shall promulgate rules regarding contract procedures and the documentation of care provided under paragraphs (b), (c), (d), and (e) of subdivision (3) of subsection 2 of this section. The limitation on payments from the state legal expense fund or any policy of insurance procured pursuant to the provisions of section 105.721, provided in subsection 6 of this section, shall not apply to any claim or judgment arising under paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section. Any claim or judgment arising under paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of

this section shall be paid by the state legal expense fund or any policy of insurance procured pursuant to section 105.721, to the extent damages are allowed under sections 538.205 to 538.235, RSMo. Liability or malpractice insurance obtained and maintained in force by any physician, dentist, physician assistant, dental hygienist, or nurse for coverage concerning his or her private practice and assets shall not be considered available under subsection 6 of this section to pay that portion of a judgment or claim for which the state legal expense fund is liable under paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section. However, a physician, nurse, dentist, physician assistant, or dental hygienist may purchase liability or malpractice insurance for coverage of liability claims or judgments based upon care rendered under paragraphs (c), (d), and (e) of subdivision (3) of subsection 2 of this section which exceed the amount of liability coverage provided by the state legal expense fund under those paragraphs. Even if paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section is repealed or modified, the state legal expense fund shall be available for damages which occur while the pertinent paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section is in effect.

4. The attorney general shall promulgate rules regarding contract procedures and the documentation of legal practice provided under subdivision (5) of subsection 2 of this section. The limitation on payments from the state legal expense fund or any policy of insurance procured pursuant to section 105.721 as provided in subsection 6 of this section shall not apply to any claim or judgment arising under subdivision (5) of subsection 2 of this section. Any claim or judgment arising under subdivision (5) of subsection 2 of this section shall be paid by the state legal expense fund or any policy of insurance procured pursuant to section 105.721 to the extent damages are allowed under sections 538.205 to 538.235, RSMo. Liability or malpractice insurance otherwise obtained and maintained in force shall not be considered available under subsection 6 of this section to pay that portion of a judgment or claim for which the state legal expense fund is liable under subdivision (5) of subsection 2 of this section. However, an attorney may obtain liability or malpractice insurance for coverage of liability claims or judgments based upon legal practice rendered under subdivision (5) of subsection 2 of this section that exceed the amount of liability coverage provided by the state legal expense fund under subdivision (5) of subsection 2 of this section. Even if subdivision (5) of subsection 2 of this section is repealed or amended, the state legal expense fund shall be available for damages that occur while the pertinent subdivision (5) of subsection 2 of this section is in effect.

5. All payments shall be made from the state legal expense fund by the commissioner of administration with the approval of the attorney general. Payment from the state legal expense fund of a claim or final judgment award against a physician, dentist, physician assistant, dental hygienist, or nurse described in paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section, or against an attorney in subdivision (5) of subsection 2 of this section, shall only be made for services rendered in accordance with the conditions of such paragraphs. **In the case of any claim or judgment against an officer or employee of the state or any agency of the state based upon conduct of such officer or employee arising out of and performed in connection with his or her official duties on behalf of the state or any agency of the state that would give rise to a cause of action under section 537.600, RSMo, the state legal expense fund shall be liable, excluding punitive damages, for:**

- (1) Economic damages to any one claimant; and
- (2) Up to three hundred fifty thousand dollars for noneconomic damages.

The state legal expense fund shall be the exclusive remedy and shall preclude any other civil actions or proceedings for money damages arising out of or relating to the same subject matter against the state officer or employee, or the officer's or employee's estate. No officer or employee of the state or any agency of the state shall be individually liable in his or her personal capacity for conduct of such officer or employee arising out of and performed in connection with his or her official duties on behalf of the state or any agency of the state. The provisions of this subsection shall not apply to any defendant who is not

an officer or employee of the state or any agency of the state in any proceeding against an officer or employee of the state or any agency of the state. Nothing in this subsection shall limit the rights and remedies otherwise available to a claimant under state law or common law in proceedings where one or more defendants is not an officer or employee of the state or any agency of the state.

6. The limitation on awards for noneconomic damages provided for in this subsection shall be increased or decreased on an annual basis effective January first of each year in accordance with the Implicit Price Deflator for Personal Consumption Expenditures as published by the Bureau of Economic Analysis of the United States Department of Commerce. The current value of the limitation shall be calculated by the director of the department of insurance, who shall furnish that value to the secretary of state, who shall publish such value in the Missouri Register as soon after each January first as practicable, but it shall otherwise be exempt from the provisions of section 536.021, RSMo.

[6.] 7. Except as provided in subsection 3 of this section, in the case of any claim or judgment that arises under sections 537.600 and 537.610, RSMo, against the state of Missouri, or an agency of the state, the aggregate of payments from the state legal expense fund and from any policy of insurance procured pursuant to the provisions of section 105.721 shall not exceed the limits of liability as provided in sections 537.600 to 537.610, RSMo. No payment shall be made from the state legal expense fund or any policy of insurance procured with state funds pursuant to section 105.721 unless and until the benefits provided to pay the claim by any other policy of liability insurance have been exhausted.

[7.] 8. The provisions of section 33.080, RSMo, notwithstanding, any moneys remaining to the credit of the state legal expense fund at the end of an appropriation period shall not be transferred to general revenue.

[8.] 9. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is promulgated under the authority delegated in sections 105.711 to 105.726 shall become effective only if it has been promulgated pursuant to the provisions of chapter 536, RSMo. 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 the provisions of chapter 536, 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, 1999, shall be invalid and void.

105.726. LAW, HOW CONSTRUED — MONEYS UNAVAILABLE, WHEN — REPRESENTATION BY ATTORNEY GENERAL, WHEN. — 1. Nothing in sections 105.711 to 105.726 shall be construed to broaden the liability of the state of Missouri beyond the provisions of sections 537.600 to 537.610, RSMo, nor to abolish or waive any defense at law which might otherwise be available to any agency, officer, or employee of the state of Missouri. **Sections 105.711 to 105.726 do not waive the sovereign immunity of the state of Missouri.**

2. The creation of the state legal expense fund and the payment therefrom of such amounts as may be necessary for the benefit of any person covered thereby are deemed necessary and proper public purposes for which funds of this state may be expended.

3. **Moneys in the state legal expense fund shall not be available for the payment of any claim or any amount required by any final judgment rendered by a court of competent jurisdiction against a board of police commissioners established under chapter 84, RSMo, including the commissioners, any police officer, notwithstanding sections 84.330 and 84.710, RSMo, or other provisions of law, other employees, agents, representative, or any other individual or entity acting or purporting to act on its or their behalf. Such was the intent of the general assembly in the original enactment of sections 105.711 to 105.726, and it is made express by this section in light of the decision in *Wayman Smith, III, et al. v. State of Missouri*, 152 S.W.3d 275. Except that the commissioner of administration shall**

reimburse from the legal expense fund any board of police commissioners established under chapter 84, RSMo, for liability claims otherwise eligible for payment under section 105.711 paid by such boards on an equal share basis per claim up to a maximum of one million dollars per fiscal year.

4. If the representation of the attorney general is requested by a board of police commissioners, the attorney general shall represent, investigate, defend, negotiate, or compromise all claims under sections 105.711 to 105.726 for the board of police commissioners, any police officer, other employees, agents, representatives, or any other individual or entity acting or purporting to act on their behalf. The attorney general may establish procedures by rules promulgated under chapter 536, RSMo, under which claims must be referred for the attorney general's representation. The attorney general and the officials of the city which the police board represents shall meet and negotiate reasonable expenses or charges that will fairly compensate the attorney general and the office of administration for the cost of the representation of the claims under this section.

5. Claims tendered to the attorney general promptly after the claim was asserted as required by section 105.716 and prior to August 28, 2005, may be investigated, defended, negotiated, or compromised by the attorney general and full payments may be made from the state legal expense fund on behalf of the entities and individuals described in this section as a result of the holding in *Wayman Smith, III et al. v. State of Missouri*, 152 S.W.3d 275.

210.116. QUALIFIED IMMUNITY FOR PRIVATE CONTRACTOR, WHEN — EXCEPTIONS. —

1. Except as otherwise provided in section 207.085, RSMo, a private contractor, as defined in subdivision (4) of section 210.110, with the children's division that receives state moneys from the division or the department for providing services to children and their families shall have qualified immunity from civil liability for providing such services when the child is not in the physical care of such private contractor to the same extent that the children's division has qualified immunity from civil liability when the division or department directly provides such services.

2. This section shall not apply if a private contractor described above knowingly violates a stated or written policy of the division, any rule promulgated by the division, or any state law directly related to child abuse and neglect or any local ordinance relating to the safety condition of the property.

210.117. CHILD NOT REUNITED WITH PARENTS OR PLACED IN A HOME, WHEN — DISCRETION TO RETURN, WHEN. — [No]

1. A child taken into the custody of the state shall not 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 a 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] **any of the following offenses when a child was the victim:**

(1) A felony violation of section 566.030, 566.032, 566.040, 566.060, 566.062, 566.064, 566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111, 566.151, 566.203, 566.206, 566.209, 566.212, or 566.215, RSMo;

- (2) A violation of section 568.020, RSMo;
- (3) A violation of subdivision (2) of subsection 1 of section 568.060, RSMo;
- (4) A violation of section 568.065, RSMo;
- (5) A violation of section 568.080, RSMo;
- (6) A violation of section 568.090, RSMo; or
- (7) A violation of section 568.175, RSMo.

2. For all other violations of offenses in chapters 566 and 568, RSMo, not specifically listed in subsection 1 of this section or for a violation of an offense committed in another state when a child is the victim that would be a violation of chapter 566 or 568, RSMo, if committed in Missouri, the division may exercise its discretion regarding the placement of a child taken into the custody of the state in which a parent or any person residing in the home has been found guilty of, or pled guilty to, any such offense.

3. In any case where the children's division determines, based on a substantiated report of child abuse, that a child has abused another child, the abusing child shall be prohibited from returning to or residing in any residence, facility, or school within one thousand feet of the residence of the abused child, unless and until a court of competent jurisdiction determines that the alleged abuse did not occur or the abused child reaches the age of eighteen, whichever earlier occurs. The provisions of this subsection shall not apply when the abusing child and the abused child are children living in the same home.

210.950. SAFE PLACE FOR NEWBORNS ACT — DEFINITIONS — PROCEDURE — IMMUNITY FROM LIABILITY. — 1. This section shall be known and may be cited as the "Safe Place for Newborns Act of 2002". The purpose of this section is to protect newborn children from injury and death caused by abandonment by a parent, and to provide safe and secure alternatives to such abandonment.

2. As used in this section, the following terms mean:

- (1) "Hospital", as defined in section 197.020, RSMo;
- (2) "Nonrelinquishing parent", the biological parent who does not leave a newborn infant with any person listed in subsection 3 of this section in accordance with this section;
- (3) "Relinquishing parent", the biological parent or person acting on such parent's behalf who leaves a newborn infant with any person listed in subsection 3 of this section in accordance with this section.

3. A parent shall not be prosecuted for a violation of section 568.030, 568.032, 568.045 or 568.050, RSMo, for actions related to the voluntary relinquishment of a child up to five days old pursuant to this section and it shall be an affirmative defense to prosecution for a violation of sections 568.030, 568.032, 568.045 and 568.050, RSMo, that a parent who is a defendant voluntarily relinquished a child [no less than six days old but] no more than [thirty days] **one year** old pursuant to this section if:

- (1) Expressing intent not to return for the child, the parent voluntarily delivered the child safely to the physical custody of any of the following persons:
 - (a) An employee, agent, or member of the staff of any hospital, in a health care provider position or on duty in a nonmedical paid or volunteer position;
 - (b) A firefighter or emergency medical technician on duty in a paid position or on duty in a volunteer position; or
 - (c) A law enforcement officer;
- (2) The child was no more than [thirty days] **one year** old when delivered by the parent to any person listed in subdivision (1) of this subsection; and
- (3) The child has not been abused or neglected by the parent prior to such voluntary delivery.

4. A person listed in subdivision (1) of subsection 3 of this section shall, without a court order, take physical custody of a child the person reasonably believes to be no more than [thirty days] **one year** old and is delivered in accordance with this section by a person purporting to be

the child's parent. If delivery of a newborn is made pursuant to this section in any place other than a hospital, the person taking physical custody of the child shall arrange for the immediate transportation of the child to the nearest hospital licensed pursuant to chapter 197, RSMo.

5. The hospital, its employees, agents and medical staff shall perform treatment in accordance with the prevailing standard of care as necessary, to protect the physical health or safety of the child. The hospital shall notify the division of family services and the local juvenile officer upon receipt of a child pursuant to this section. The local juvenile officer shall immediately begin protective custody proceedings and request the child be made a ward of the court during the child's stay in the medical facility. Upon discharge of the child from the medical facility and pursuant to a protective custody order ordering custody of the child to the division, the division of family services shall take physical custody of the child. The parent's voluntary delivery of the child in accordance with this section shall constitute the parent's implied consent to any such act and a voluntary relinquishment of such parent's parental rights.

6. In any termination of parental rights proceeding initiated after the relinquishment of a child pursuant to this section, the juvenile officer shall make public notice that a child has been relinquished, including the sex of the child, and the date and location of such relinquishment. Within thirty days of such public notice, the nonrelinquishing parent wishing to establish parental rights shall identify himself or herself to the court and state his or her intentions regarding the child. The court shall initiate proceedings to establish paternity, or if no person identifies himself as the father within thirty days, maternity. The juvenile officer shall make examination of the putative father registry established in section 192.016, RSMo, to determine whether attempts have previously been made to preserve parental rights to the child. If such attempts have been made, the juvenile officer shall make reasonable efforts to provide notice of the abandonment of the child to such putative father.

7. (1) If a relinquishing parent of a child relinquishes custody of the child to any person listed in subsection 3 of this section in accordance with this section and to preserve the parental rights of the nonrelinquishing parent, the nonrelinquishing parent shall take such steps necessary to establish parentage within thirty days after the public notice or specific notice provided in subsection 6 of this section.

(2) If a nonrelinquishing parent fails to take steps to establish parentage within the thirty-day period specified in subdivision (1) of this subsection, the nonrelinquishing parent may have all of his or her rights terminated with respect to the child.

(3) When a nonrelinquishing parent inquires at a hospital regarding a child whose custody was relinquished pursuant to this section, such facility shall refer the nonrelinquishing parent to the division of family services and the juvenile court exercising jurisdiction over the child.

8. The persons listed in subdivision (1) of subsection 3 of this section shall be immune from civil, criminal, and administrative liability for accepting physical custody of a child pursuant to this section if such persons accept custody in good faith. Such immunity shall not extend to any acts or omissions, including negligent or intentional acts or omissions, occurring after the acceptance of such child.

9. The division of family services shall:

(1) Provide information and answer questions about the process established by this section on the statewide, toll-free telephone number maintained pursuant to section 210.145;

(2) Provide information to the public by way of pamphlets, brochures, or by other ways to deliver information about the process established by this section.

10. Nothing in this section shall be construed as conflicting with section 210.125.

211.038. CHILDREN NOT TO BE REUNITED WITH PARENTS OR PLACED IN A HOME, WHEN — DISCRETION TO RETURN, WHEN. — [No] 1. A child under the jurisdiction of the juvenile court shall **not** 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 a 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] **any of the following offenses when a child was the victim:**

(1) A felony violation of section 566.030, 566.032, 566.040, 566.060, 566.062, 566.064, 566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111, 566.151, 566.203, 566.206, 566.209, 566.212, or 566.215, RSMo;

(2) A violation of section 568.020, RSMo;

(3) A violation of subdivision (2) of subsection 1 of section 568.060, RSMo;

(4) A violation of section 568.065, RSMo;

(5) A violation of section 568.080, RSMo;

(6) A violation of section 568.090, RSMo; or

(7) A violation of section 568.175, RSMo.

2. For all other violations of offenses in chapters 566 and 568, RSMo, not specifically listed in subsection 1 of this section or for a violation of an offense committed in another state when a child is the victim that would be a violation of chapter 566 or 568, RSMo, if committed in Missouri, the juvenile court may exercise its discretion regarding the placement of a child under the jurisdiction of the juvenile court in a home in which a parent or any person residing in the home has been found guilty of, or pled guilty to, any such offense.

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; **provided that, no child who has been adjudicated a delinquent by a juvenile court for committing or attempting to commit a sex-related offense which if committed by an adult would be considered a felony offense pursuant to chapter 566, RSMo, including but not limited to rape, forcible sodomy, child molestation, and sexual abuse, and in which the victim was a child, shall be placed in any residence within one thousand feet of the residence of the victim of that offense until the victim reaches the age of eighteen, and provided further that the provisions of this subdivision regarding placement within one thousand feet of the victim child shall not apply when the abusing child and the victim are children living in the same home;**

(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.

217.860. TASK FORCE CREATED, DUTIES, MEMBERS, MEETINGS — EXPIRATION DATE.

— 1. **There is hereby created within the department of corrections a "Task Force on Alternative Sentencing". The primary duty of the task force is to develop a statewide plan for alternative sentencing programs. The plan shall include, but not be limited to, the following:**

- (1) Public-private partnerships;**
- (2) Job training;**
- (3) Job placement;**
- (4) Conflict resolution treatment; and**
- (5) Alcohol and drug rehabilitation.**

2. In developing this statewide plan the task force shall at a minimum acquire and review the following information:

- (1) The cost per year to incarcerate one offender;**
- (2) The cost of the proposed alternative sentencing program or programs per year;**
- (3) The recidivism rate for different types of offenses; and**
- (4) Information and research to assist the task force in determining which classes of offenders should be targeted in alternative sentencing programs.**

3. The task force created in this section shall be comprised of the following members or their designees from the entity represented:

- (1) The director;
- (2) The director of the division of probation and parole;
- (3) Two probation and parole officers or supervisors, who shall be appointed by the director of the division of probation and parole;
- (4) One member of the department of economic development's workforce development office who shall be appointed by the director of the department of economic development;
- (5) Two circuit or associate circuit judges who shall be appointed by the governor;
- (6) Two chief executive officers of two different private businesses that employ a minimum of twenty employees each who shall be appointed by the governor;
- (7) Two prosecuting attorneys who shall be appointed by the governor;
- (8) Two members of the house of representatives, one of whom shall be appointed by the speaker of the house and one of whom shall be appointed by the house minority leader; and
- (9) Two members of the senate, one of whom shall be appointed by the president pro tem of the senate and one of whom shall be appointed by the senate minority leader.

4. The task force shall meet at least quarterly and shall submit its recommendations and statewide plan for an alternative sentencing program or programs to the governor, to the general assembly, and to the director by December 31, 2006.

5. Members of the task force shall receive no additional compensation but shall be eligible for reimbursement for mileage directly related to the performance of task force duties.

6. The provisions of this section terminate on May 31, 2007.

238.216. ELECTION PROCEDURE, DUTIES OF COURT — APPLICATION FOR BALLOT, CONTENTS — MAIL-IN ELECTIONS, AFFIDAVIT FORM, PROCEDURE — UNANIMOUS VERIFIED PETITION SUBMITTED, WHEN — RESULTS ENTERED, HOW. — 1. Except as otherwise provided in section 238.220 with respect to the election of directors, in order to call any election required or allowed under sections 238.200 to 238.275, the circuit court shall:

(1) Order the county clerk to cause the questions to appear on the ballot on the next regularly scheduled general, primary or special election day, which date shall be the same in each county or portion of a county included within and voting upon the proposed district;

(2) If the election is to be a mail-in election, specify a date on which ballots for the election shall be mailed, which date shall be a Tuesday, and shall be not earlier than the eighth Tuesday from the issuance of the order, and shall not be on the same day as an election conducted under the provisions of chapter 115, RSMo; or

(3) If all the owners of property in the district joined in the petition for formation of the district, such owners may cast their ballot by unanimous **verified** petition approving any measure submitted to them as voters pursuant to this chapter. Each owner shall receive one vote per acre owned. Fractional votes shall be allowed. The **verified** petition shall be [submitted to] **filed with** the circuit court clerk [who shall verify the authenticity of all signatures thereon]. The filing of a unanimous petition shall constitute an election under sections 238.200 to 238.275 and the results of said election shall be entered pursuant to subsection 6 of this section.

2. Application for a ballot shall be conducted as follows:

- (1) Only qualified voters shall be entitled to apply for a ballot;
- (2) Such persons shall apply with the clerk of the circuit court in which the petition was filed;
- (3) 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. 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 ownership, and identifies the real property by location;

(4) No person shall apply later than the fourth Tuesday before the date for mailing ballots specified in the circuit court's order.

3. If the election is to be a mail-in election, the circuit court shall mail a ballot to each qualified voter who applied for a ballot pursuant to subsection 2 of this section along with a return addressed envelope directed to the circuit court 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.

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

.....
Authorized Signature

.....
Printed Name of Voter

.....
Signature of notary or other
officer authorized to
administer oaths.

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

4. Except as otherwise provided in subsection 2 of section 238.220, with respect to the election of directors, each qualified voter shall have one vote. 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 voted ballot shall be signed with the authorized signature.

5. Mail-in voted ballots shall be returned to the circuit court clerk's office by mail or hand delivery no later than 5:00 p.m. on the sixth Tuesday after the date for mailing the ballots as set forth in the circuit court's order. The circuit court's clerk 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 circuit court from lists compiled by the 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 circuit court. Any qualified voter who voted in such election may contest the result in the same manner as provided in chapter 115, RSMo.

6. The results of the election shall be entered upon the records of the circuit court of the county in which the petition was filed. Also, a certified copy thereof shall be filed with the county clerk of each county in which a portion of the proposed district lies, who shall cause the same to be spread upon the records of the county commission.

452.340. CHILD SUPPORT, HOW ALLOCATED — FACTORS TO BE CONSIDERED — ABATEMENT OR TERMINATION OF SUPPORT, WHEN — SUPPORT AFTER AGE EIGHTEEN, WHEN — PUBLIC POLICY OF STATE — PAYMENTS MAY BE MADE DIRECTLY TO CHILD, WHEN — CHILD SUPPORT GUIDELINES, REBUTTABLE PRESUMPTION, USE OF GUIDELINES, WHEN — RETROACTIVITY — OBLIGATION TERMINATED, HOW. — 1. In a proceeding for dissolution of marriage, legal separation or child support, the court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or

necessary for the support of the child, including an award retroactive to the date of filing the petition, without regard to marital misconduct, after considering all relevant factors including:

- (1) The financial needs and resources of the child;
- (2) The financial resources and needs of the parents;
- (3) The standard of living the child would have enjoyed had the marriage not been dissolved;
- (4) The physical and emotional condition of the child, and the child's educational needs;
- (5) The child's physical and legal custody arrangements, including the amount of time the child spends with each parent and the reasonable expenses associated with the custody or visitation arrangements; and
- (6) The reasonable work-related child care expenses of each parent.

2. The obligation of the parent ordered to make support payments shall abate, in whole or in part, for such periods of time in excess of thirty consecutive days that the other parent has voluntarily relinquished physical custody of a child to the parent ordered to pay child support, notwithstanding any periods of visitation or temporary physical and legal or physical or legal custody pursuant to a judgment of dissolution or legal separation or any modification thereof. In a IV-D case, the division of child support enforcement may determine the amount of the abatement pursuant to this subsection for any child support order and shall record the amount of abatement in the automated child support system record established pursuant to chapter 454, RSMo. If the case is not a IV-D case and upon court order, the circuit clerk shall record the amount of abatement in the automated child support system record established in chapter 454, RSMo.

3. Unless the circumstances of the child manifestly dictate otherwise and the court specifically so provides, the obligation of a parent to make child support payments shall terminate when the child:

- (1) Dies;
 - (2) Marries;
 - (3) Enters active duty in the military;
 - (4) Becomes self-supporting, provided that the custodial parent has relinquished the child from parental control by express or implied consent;
 - (5) Reaches age eighteen, unless the provisions of subsection 4 or 5 of this section apply;
- or
- (6) Reaches age twenty-two, unless the provisions of the child support order specifically extend the parental support order past the child's twenty-second birthday for reasons provided by subsection 4 of this section.

4. If the child is physically or mentally incapacitated from supporting himself and insolvent and unmarried, the court may extend the parental support obligation past the child's eighteenth birthday.

5. If when a child reaches age eighteen, the child is enrolled in and attending a secondary school program of instruction, the parental support obligation shall continue, if the child continues to attend and progresses toward completion of said program, until the child completes such program or reaches age twenty-one, whichever first occurs. If the child is enrolled in an institution of vocational or higher education not later than October first following graduation from a secondary school or completion of a graduation equivalence degree program and so long as the child enrolls for and completes at least twelve hours of credit each semester, not including the summer semester, at an institution of vocational or higher education and achieves grades sufficient to reenroll at such institution, the parental support obligation shall continue until the child completes his or her education, or until the child reaches the age of twenty-two, whichever first occurs. To remain eligible for such continued parental support, at the beginning of each semester the child shall submit to each parent a transcript or similar official document provided by the institution of vocational or higher education which includes the courses the child is enrolled in and has completed for each term, the grades and credits received for each such

course, and an official document from the institution listing the courses which the child is enrolled in for the upcoming term and the number of credits for each such course. If the circumstances of the child manifestly dictate, the court may waive the October first deadline for enrollment required by this subsection. **If the child has pursued a path of continuous attendance and has demonstrated evidence of a plan to continue to do so, the court may enter a judgment abating support for a period of up to five months for any semester in which the child completes at least six but less than twelve credit hours; however, such five-month period of abatement shall only be granted one time for each child.** If the child is enrolled in such an institution, the child or parent obligated to pay support may petition the court to amend the order to direct the obligated parent to make the payments directly to the child. As used in this section, an "institution of vocational education" means any postsecondary training or schooling for which the student is assessed a fee and attends classes regularly. "Higher education" means any junior college, community college, college, or university at which the child attends classes regularly. A child who has been diagnosed with a learning disability, or whose physical disability or diagnosed health problem limits the child's ability to carry the number of credit hours prescribed in this subsection, shall remain eligible for child support so long as such child is enrolled in and attending an institution of vocational or higher education, and the child continues to meet the other requirements of this subsection. A child who is employed at least fifteen hours per week during the semester may take as few as nine credit hours per semester and remain eligible for child support so long as all other requirements of this subsection are complied with.

6. The court shall consider ordering a parent to waive the right to claim the tax dependency exemption for a child enrolled in an institution of vocational or higher education in favor of the other parent if the application of state and federal tax laws and eligibility for financial aid will make an award of the exemption to the other parent appropriate.

7. 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. In order to effectuate this public policy, a court with jurisdiction shall enforce visitation, custody and child support orders in the same manner. A court with jurisdiction may abate, in whole or in part, any past or future obligation of support and may transfer the physical and legal or physical or legal custody of one or more children if it finds that a parent has, without good cause, failed to provide visitation or physical and legal or physical or legal custody to the other parent pursuant to the terms of a judgment of dissolution, legal separation or modifications thereof. The court shall also award, if requested and for good cause shown, reasonable expenses, attorney's fees and court costs incurred by the prevailing party.

8. The Missouri supreme court shall have in effect a rule establishing guidelines by which any award of child support shall be made in any judicial or administrative proceeding. Said guidelines shall contain specific, descriptive and numeric criteria which will result in a computation of the support obligation. The guidelines shall address how the amount of child support shall be calculated when an award of joint physical custody results in the child or children spending substantially equal time with both parents. Not later than October 1, 1998, the Missouri supreme court shall publish child support guidelines and specifically list and explain the relevant factors and assumptions that were used to calculate the child support guidelines. Any rule made pursuant to this subsection shall be reviewed by the promulgating body not less than once every [three] **four** years to ensure that its application results in the determination of appropriate child support award amounts.

9. There shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the guidelines established pursuant to subsection 8 of this section is the correct amount of child support to be awarded. A written finding or specific finding on the record in a judicial or

administrative proceeding that the application of the guidelines would be unjust or inappropriate in a particular case, after considering all relevant factors, including the factors set out in subsection 1 of this section, is required if requested by a party and shall be sufficient to rebut the presumption in the case. The written finding or specific finding on the record shall detail the specific relevant factors that required a deviation from the application of the guidelines.

10. Pursuant to this or any other chapter, when a court determines the amount owed by a parent for support provided to a child by another person, other than a parent, prior to the date of filing of a petition requesting support, or when the director of the division of child support enforcement establishes the amount of state debt due pursuant to subdivision (2) of subsection 1 of section 454.465, RSMo, the court or director shall use the guidelines established pursuant to subsection 8 of this section. The amount of child support resulting from the application of the guidelines shall be applied retroactively for a period prior to the establishment of a support order and the length of the period of retroactivity shall be left to the discretion of the court or director. There shall be a rebuttable presumption that the amount resulting from application of the guidelines under subsection 8 of this section constitutes the amount owed by the parent for the period prior to the date of the filing of the petition for support or the period for which state debt is being established. In applying the guidelines to determine a retroactive support amount, when information as to average monthly income is available, the court or director may use the average monthly income of the noncustodial parent, as averaged over the period of retroactivity, in determining the amount of presumed child support owed for the period of retroactivity. The court or director may enter a different amount in a particular case upon finding, after consideration of all relevant factors, including the factors set out in subsection 1 of this section, that there is sufficient cause to rebut the presumed amount.

11. The obligation of a parent to make child support payments may be terminated as follows:

(1) Provided that the child support order contains the child's date of birth, the obligation shall be deemed terminated without further judicial or administrative process when the child reaches age twenty-two if the child support order does not specifically require payment of child support beyond age twenty-two for reasons provided by subsection 4 of this section;

(2) The obligation shall be deemed terminated without further judicial or administrative process when the parent receiving child support furnishes a sworn statement or affidavit notifying the obligor parent of the child's emancipation in accordance with the requirements of subsection 4 of section 452.370, and a copy of such sworn statement or affidavit is filed with the court which entered the order establishing the child support obligation, or the division of child support enforcement;

(3) The obligation shall be deemed terminated without further judicial or administrative process, when the parent paying child support files a sworn statement or affidavit with the court which entered the order establishing the child support obligation, or the division of child support enforcement, stating that the child is emancipated and reciting the factual basis for such statement; which statement or affidavit is served by the court or division on the child support obligee; and which is either acknowledged and affirmed by the child support obligee in writing, or which is not responded to in writing within thirty days of receipt by the child support obligee;

(4) The obligation shall be terminated as provided by this subdivision by the court which entered the order establishing the child support obligation, or the division of child support enforcement, when the parent paying child support files a sworn statement or affidavit with the court which entered the order establishing the child support obligation, or the division of child support enforcement, stating that the child is emancipated and reciting the factual basis for such statement; and which statement or affidavit is served by the court or division on the child support obligee. If the obligee denies the statement or affidavit, the court or division shall thereupon treat the sworn statement or affidavit as a motion to modify the support obligation pursuant to section 452.370 or section 454.496, RSMo, and shall proceed to hear and adjudicate such motion as

provided by law; provided that the court may require the payment of a deposit as security for court costs and any accrued court costs, as provided by law, in relation to such motion to modify.

12. The court may enter a judgment terminating child support pursuant to subdivisions (1) to (3) of subsection 11 of this section without necessity of a court appearance by either party. The clerk of the court shall mail a copy of a judgment terminating child support entered pursuant to subsection 11 of this section on both the obligor and obligee parents. The supreme court may promulgate uniform forms for sworn statements and affidavits to terminate orders of child support obligations for use pursuant to subsection 11 of this section and subsection 4 of section 452.370.

455.516. HEARINGS, WHEN, PROCEDURE, STANDARD OF PROOF — DURATION OF ORDERS — VIDEOTAPED TESTIMONY PERMITTED — RENEWAL OF ORDERS, WHEN — SERVICE OF RESPONDENT, FAILURE TO SERVE NOT TO AFFECT VALIDITY OF ORDER — NOTICE TO LAW ENFORCEMENT AGENCIES. — 1. Not later than fifteen days after the filing of a petition under sections 455.500 to 455.538, a hearing shall be held unless the court deems, for good cause shown, that a continuance should be granted. At the hearing, which may be an open or a closed hearing at the discretion of the court, whichever is in the best interest of the child, if the petitioner has proved the allegation of abuse of a child by a preponderance of the evidence, the court may issue a full order of protection for [a definite period of time, not to exceed] **at least one hundred eighty days and not more than one year**. The court may allow as evidence any in camera videotape made of the testimony of the child pursuant to section 491.699, RSMo. The provisions of section 491.075, RSMo, relating to admissibility of statements of a child under the age of twelve shall apply to any hearing under the provisions of sections 455.500 to 455.538. Upon motion by either party, the guardian ad litem or the court-appointed special advocate, and after a hearing by the court, the full order of protection may be renewed for a period [not to exceed] **of time the court deems appropriate, except that the protective order shall be valid for at least one hundred eighty days and not more than one year** from the expiration date of the originally issued full order of protection. If for good cause a hearing cannot be held on the motion to renew the full order of protection prior to the expiration date of the originally issued full order of protection, an ex parte order of protection may be issued until a hearing is held on the motion. Upon motion by either party, the guardian ad litem or the court appointed special advocate, and after a hearing by the court, the second full order of protection may be renewed for an additional period [not to exceed] **of time the court deems appropriate, except that the protective order shall be valid for at least one hundred eighty days and not more than one year** from the expiration date of the second full order of protection. If for good cause a hearing cannot be held on the motion to renew the second full order of protection prior to the expiration date of the second order, an ex parte order of protection may be issued until a hearing is held on the motion. [The total time period for the consecutive orders of protection based upon the original petition shall not exceed eighteen months.] For purposes of this subsection, a finding by the court of a subsequent act of abuse is not required for a renewal order of protection.

2. The court shall cause a copy of the petition and notice of the date set for the hearing on such petition and any ex parte order of protection to be personally served upon the respondent by personal process server as provided by law or by any sheriff or police officer at least three days prior to such hearing. Such shall be served at the earliest time, and service of such shall take priority over service in other actions, except those of a similar emergency nature. The court shall cause a copy of any full order of protection to be served upon or mailed by certified mail to the respondent at [his] **the respondent's** last known address. Failure to serve or mail a copy of the full order of protection to the respondent shall not affect the validity or enforceability of a full order of protection.

3. A copy of any order of protection granted under sections 455.500 to 455.538 shall be issued to the petitioner and to the local law enforcement agency in the jurisdiction where the petitioner resides. The clerk shall also issue a copy of any order of protection to the local law

enforcement agency responsible for maintaining the Missouri uniform law enforcement system (MULES) or any other comparable law enforcement system the same day the order is granted. The law enforcement agency responsible for maintaining MULES shall enter information contained in the order for purposes of verification within twenty-four hours from the time the order is granted. A notice of expiration or of termination of any order of protection shall be issued to such local law enforcement agency and to the law enforcement agency responsible for maintaining MULES or any other comparable law enforcement system. The law enforcement agency responsible for maintaining the applicable law enforcement system shall enter such information in the system. The information contained in an order of protection may be entered in the Missouri uniform law enforcement system or comparable law enforcement system using a direct automated data transfer from the court automated system to the law enforcement system.

4. A copy of the petition and notice of the date set for the hearing on such petition and any order of protection granted pursuant to sections 455.500 to 455.538 shall be issued to the juvenile office in the jurisdiction where the petitioner resides. A notice of expiration or of termination of any order of protection shall be issued to such juvenile office.

455.524. JURISDICTION FOR ORDERS — COMPLIANCE REVIEW HEARINGS PERMITTED — REMEDIES FOR ENFORCEMENT OF ORDERS. — 1. The court shall retain jurisdiction over the full order of protection issued under sections 455.500 to 455.538 for its entire duration. The court may schedule compliance review hearings to monitor the respondent's compliance with the order.

2. The terms of the child order of protection issued under this chapter are enforceable by all remedies available at law for the enforcement of a judgment, and the court may punish a respondent who willfully violates the child order of protection to the same extent as provided by law for contempt of the court in any suit or proceeding cognizable by the court.

461.005. DEFINITIONS. — In sections 461.003 to 461.081, unless the context otherwise requires, the following terms mean:

(1) "Beneficiary", a person or persons designated or entitled to receive property pursuant to a nonprobate transfer on surviving one or more persons;

(2) "Beneficiary designation", a provision in writing that is not a will that designates the beneficiary of a nonprobate transfer, including the transferee in an instrument that makes the transfer effective on death of the owner, and that complies with the conditions of any governing instrument, the rules of any transferring entity and applicable law;

(3) "Death of the owner", in the case of joint owners, means death of the last surviving owner;

(4) "In proper form", a phrase which applies to a beneficiary designation or a revocation or change thereof, or a request to make, revoke or change a beneficiary designation, which complies with the terms of the governing instrument, the rules of the transferring entity and applicable law, including any requirements with respect to supplemental documents;

(5) "Joint owners", persons who hold property as joint tenants with right of survivorship and a husband and wife who hold property as tenants by the entirety;

(6) "LDPS", an abbreviation of lineal descendants per stirpes which may be used in a beneficiary designation to designate a substitute beneficiary as provided in section 461.045;

(7) "Nonprobate transfer", a transfer of property taking effect upon the death of the owner, pursuant to a beneficiary designation. A nonprobate transfer under sections 461.003 to 461.081 does not include survivorship rights in property held as joint tenants or tenants by the entirety, a transfer to a remainderman on termination of a life tenancy, a transfer under a trust established by an individual, either inter vivos or testamentary, a transfer pursuant to the exercise or nonexercise of a power of appointment, or a transfer made on death of a person who did not have the right to designate his or her estate as the beneficiary of the transfer;

(8) "Owner", a person or persons having a right, exercisable alone or with others, **regardless of the terminology used to refer to the owner in any written beneficiary designation**, to designate the beneficiary of a nonprobate transfer, and includes joint owners. **The provisions of this subdivision shall apply to all beneficiary deeds executed and filed at any time, including, but not limited to, those executed and filed on or before August 28, 2005;**

(9) "Ownership in beneficiary form", holding property pursuant to a registration in beneficiary form or other writing that names the owner of the property followed by a transfer on death direction and the designation of a beneficiary;

(10) "Person", living individuals, entities capable of owning property and fiduciaries;

(11) "Proof of death", includes a death certificate or record or report that is prima facie proof or evidence of death under section 472.290, RSMo;

(12) "Property", any present or future interest in property, real or personal, tangible or intangible, legal or equitable. Property includes a right to direct or receive payment of a debt, money or other benefits due under a contract, account agreement, deposit agreement, employment contract, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust or law, a right to receive performance remaining due under a contract, a right to receive payment under a promissory note or a debt maintained in a written account record, rights under a certificated or uncertificated security, rights under an instrument evidencing ownership of property issued by a governmental agency and rights under a document of title within the meaning of section 400.1-201, RSMo;

(13) "Registration in beneficiary form", titling of an account record, certificate, or other written instrument evidencing ownership of property in the name of the owner followed by a transfer on death direction and the designation of a beneficiary;

(14) "Security", a certificated or uncertificated security as defined in section 400.8-102, RSMo, including securities as defined in section 409.401, RSMo;

(15) "Transfer on death direction", the phrase "transfer on death to" or the phrase "pay on death to" or the abbreviation "TOD" or "POD" after the name of the owners and before the designation of the beneficiary; and

(16) "Transferring entity", a person who owes a debt or is obligated to pay money or benefits, render contract performance, deliver or convey property, or change the record of ownership of property on the books, records and accounts of an enterprise or on a certificate or document of title that evidences property rights, and includes any governmental agency, business entity or transfer agent that issues certificates of ownership or title to property and a person acting as a custodial agent for an owner's property.

472.060. DISQUALIFICATION OF JUDGE. — No judge of probate shall sit in a case in which [he] **the judge** is interested, or in which [he] **the judge** is biased or prejudiced against any interested party, or in which [he] **the judge** has been counsel or a material witness, or when [he] **the judge** is related to either party, or in the determination of any cause or proceeding in the administration and settlement of any estate of which [he] **the judge** has been personal representative, conservator, or guardian, when any party in interest objects in writing, verified by affidavit; and when the objections are made, the cause shall be transferred to another judge, in accordance with the [rules of civil procedure relating to change of judge] **provisions of section 478.255, RSMo**, who shall hear and determine same; and the clerk of the circuit court or division clerk shall deliver to the probate division of the circuit court a full and complete transcript of the judgment, order or decree made in the cause, which shall be kept with the papers in the office pertaining to such cause.

478.255. DISQUALIFICATION OF JUDGE, REASSIGNMENT PROCEDURE — APPLICABILITY TO PROBATE JUDGES. — 1. When the presiding judge assigns an associate circuit judge to sit as a circuit judge in a particular case and, thereafter, the associate circuit judge is disqualified

from hearing the case, the case shall be returned to the presiding judge for reassignment to another judge of the circuit court including the presiding judge himself should that be necessary in the discretion of the presiding judge.

2. When a presiding judge elects to hear and determine a case but subsequently is disqualified, [he] **such judge** is disqualified for all purposes and the chief justice of the supreme court shall assign a competent judge to hear and determine the case, except as provided in subsection 3 of this section.

3. In any circuit, which has four circuit judges or less, when a presiding judge elects to hear and determine a case but subsequently is disqualified, such presiding judge may assign another judge within the circuit, qualified to hear the case, to hear and determine the case. If there is no other judge within the circuit qualified to hear the case, the chief justice of the supreme court shall assign a competent judge to hear and determine the case.

4. The provisions of this section shall apply to disqualification of any judge in the probate division of a circuit court.

478.550. CIRCUIT NO. 23, NUMBER OF JUDGES, DIVISIONS — WHEN JUDGES ELECTED — FAMILY COURT COMMISSIONER AND DRUG COURT COMMISSIONER TO BECOME ASSOCIATE CIRCUIT JUDGE POSITIONS, WHEN. — 1. There shall be four circuit judges in the twenty-third judicial circuit consisting of the county of Jefferson. These judges shall sit in divisions numbered one, two, three and four. **Beginning on January 1, 2007, there shall be six circuit judges in the twenty-third judicial district and these judges shall sit in divisions numbered one, two, three, four, five, and six. The division eleven associate circuit judge position and the division twelve associate circuit judge shall become circuit judge positions beginning January 1, 2007. The division eleven associate circuit judge shall be numbered as division five and the division twelve associate circuit judge shall be numbered as division six.**

2. The circuit judge in division three shall be elected in 1980. The circuit judges in divisions one and four shall be elected in 1982. The circuit judge in division two shall be elected in 1984. **The circuit judges in division five and six shall be elected for a six-year term in 2006.**

3. **Beginning January 1, 2007, the family court commissioner position in the twenty-third judicial district appointed under section 487.020, RSMo, shall become an associate circuit judge position in all respects and shall be designated as division eleven. This position may retain the duties and responsibilities with regard to the family court. The associate circuit judge in division eleven shall be elected in 2006 for a full four-year term. This associate circuit judgeship shall not be included in the statutory formula for authorizing additional associate circuit judgeships per county under section 478.320.**

4. **Beginning January 1, 2007, the drug court commissioner position in the twenty-third judicial district appointed under section 478.003, RSMo, shall become an associate circuit judge position in all respects and shall be designated as division twelve. This position may retain the duties and responsibilities with regard to the drug court. The associate circuit judge in division twelve shall be elected in 2006 for a full four-year term. This associate circuit judgeship shall not be included in the statutory formula for authorizing additional associate circuit judgeships per county under section 478.320.**

478.570. CIRCUIT NO. 17, NUMBER OF JUDGES, DIVISIONS — WHEN JUDGES ELECTED. — 1. There shall be two circuit judges in the seventeenth judicial circuit consisting of the counties of Cass and Johnson. These judges shall sit in divisions numbered one and two.

2. The circuit judge in division two shall be elected in 1980. The circuit judge in division one shall be elected in 1982.

3. **Beginning on January 1, 2007, there shall be one additional associate circuit judge position in Cass County than is provided under section 478.320.**

478.600. CIRCUIT NO. 11, NUMBER OF JUDGES, DIVISIONS — WHEN JUDGES ELECTED — DRUG COMMISSIONER TO BECOME ASSOCIATE CIRCUIT JUDGE POSITION. — 1. There shall be four circuit judges in the eleventh judicial circuit consisting of the county of St. Charles. These judges shall sit in divisions numbered one, two, three and four. **Beginning on January 1, 2007, there shall be six circuit judges in the eleventh judicial circuit and these judges shall sit in divisions numbered one, two, three, four, five, and seven. The division five associate circuit judge position and the division seven associate circuit judge position shall become circuit judge positions beginning January 1, 2007, and shall be numbered as divisions five and seven.**

2. The circuit judge in division two shall be elected in 1980. The circuit judge in division four shall be elected in 1982. The circuit judge in division one shall be elected in 1984. The circuit judge in division three shall be elected in 1992. **The circuit judges in divisions five and seven shall be elected for a six-year term in 2006.**

3. **Beginning January 1, 2007, the family court commissioner positions in the eleventh judicial circuit appointed under section 487.020, RSMo, shall become associate circuit judge positions in all respects and shall be designated as divisions nine and ten respectively. These positions may retain the duties and responsibilities with regard to the family court. The associate circuit judges in divisions nine and ten shall be elected in 2006 for full four-year terms.**

4. **Beginning on January 1, 2007, the drug court commissioner position in the eleventh judicial circuit appointed under section 478.003 shall become an associate circuit judge position in all respects and shall be designated as division eleven. This position retains the duties and responsibilities with regard to the drug court. Such associate circuit judge shall be elected in 2006 for a full four-year term. This associate circuit judgeship shall not be included in the statutory formula for authorizing additional associate circuit judgeships per county under section 478.320.**

483.537. PASSPORTS, ACCOUNTING FOR FEES CHARGED, USE OF MONEYS COLLECTED. — The clerk of any state court who, by deputy or otherwise, takes or processes applications for passports or their renewal shall account for the fees charged for such service[, and remit eighty percent of the same on the last day of each month to the state, and twenty percent to the county where the application was taken] **and for the expenditure of such fee in an annual report made to the presiding judge and the office of the state courts administrator. Such fees shall be used only for the maintenance of the courthouse or to fund operations of the circuit court.**

486.200. DEFINITIONS. — As used in sections 486.200 to 486.405

- (1) "County" means any of the several counties of this state or the city of St. Louis;
- (2) "County clerk" means any of the several county clerks of this state or the clerk of the circuit court in the city of St. Louis;
- (3) "Facsimile" means an exact copy preserving all the written or printed marks of the original;
- (4) "Notarization" means the performance of a notarial act;
- (5) "Notary public" and "notary" means any person appointed and commissioned to perform notarial acts, **including any attorney licensed to practice law in this state;**
- (6) "Official misconduct" means the wrongful exercise of a power or the wrongful performance of a duty. The term "wrongful" as used in the definition of official misconduct means unauthorized, unlawful, abusive, negligent, reckless, or injurious.

488.014. OVERPAYMENT OF COURT COSTS, NO DUTY TO REFUND, WHEN. — **No court of record in this state, municipal division of the circuit court, or any entity collecting court costs on their behalf shall be required to refund any overpayment of court costs in an**

amount not exceeding five dollars or to collect any due court costs in an amount of less than five dollars. Any such overpaid funds may be retained by the county for the operation of the circuit court.

488.031. ADDITIONAL FEES FOR CIVIL AND CRIMINAL ACTIONS AND PROCEEDINGS, COLLECTION OF. — 1. In addition to other fees authorized by law, the clerk of each court shall collect the following fees on the filing of any civil or criminal action or proceeding, including an appeal, except that no fee shall be imposed pursuant to this section on any case that is filed charging traffic violations except alcohol-related offenses:

Supreme court and [courts] court of appeals	\$20.00;
Circuit [courts] division	\$10.00;
Associate circuit courts	\$8.00; and
Small claims courts	No additional fee

2. Court filing surcharges pursuant to this section shall be collected in the same manner as other fees, fines, or costs in the case. The amounts so collected shall be paid by the clerk to the office of the state courts administrator and credited to the special fund designated as the basic civil legal services fund. However, the additional fees prescribed by this section shall not be collected when a criminal proceeding or defendant has been dismissed by the court or when costs are waived or are to be paid by the state, county, municipality, or other political subdivision of this state.

488.445. FUNDING SHELTERS — FEES FOR MARRIAGE LICENSES — SURCHARGE FOR FILING OF CIVIL CASE, HOW ESTABLISHED, AMOUNT — REPORTS. — 1. The governing body of any county, or of any city not within a county, by order or ordinance [to be effective prior to January 1, 2001.] may impose a fee upon the issuance of a marriage license and may impose a surcharge upon any civil case filed in the circuit court. The surcharge shall not be charged when costs are waived or are to be paid by the state, county or municipality.

2. The fee imposed upon the issuance of a marriage license shall be five dollars, shall be paid by the person applying for the license and shall be collected by the recorder of deeds at the time the license is issued. The surcharge imposed upon the filing of a civil action shall be two dollars, shall be paid by the party who filed the petition and shall be collected and disbursed by the clerk of the court in the manner provided by sections 488.010 to 488.020. Such amounts shall be payable to the treasuries of the counties from which such surcharges were paid.

3. At the end of each month, the recorder of deeds shall file a verified report with the county commission of the fees collected pursuant to the provisions of subsection 2 of this section. The report may be consolidated with the monthly report of other fees collected by such officers. Upon the filing of the reports the recorder of deeds shall forthwith pay over to the county treasurer all fees collected pursuant to subsection 2 of this section. The county treasurer shall deposit all such fees upon receipt in a special fund to be expended only to provide financial assistance to shelters for victims of domestic violence as provided in sections 455.200 to 455.230, RSMo.

488.607. ADDITIONAL SURCHARGES AUTHORIZED FOR MUNICIPAL AND ASSOCIATE CIRCUIT COURTS FOR CITIES AND TOWNS HAVING SHELTERS FOR VICTIMS OF DOMESTIC VIOLENCE, AMOUNT, EXCEPTIONS. — [In addition to all other court costs for county or municipal ordinance violations.] **The governing body of** any county or any city having a shelter for victims of domestic violence established pursuant to sections 455.200 to 455.230, RSMo, or any municipality within a county which has such shelter, or any county or municipality whose residents are victims of domestic violence and are admitted to such shelters **in another county**, may, by order or ordinance provide for an additional surcharge in the amount of two dollars per case for each criminal case [and each county or municipal ordinance violation case filed before a municipal division judge or associate circuit judge], **including violations of any county or**

municipal ordinance. No surcharge shall be collected in any proceeding when the proceeding or defendant has been dismissed by the court or when costs are to be paid by the state, county or municipality. Such surcharges collected by municipal clerks in municipalities electing or required to have violations of municipal ordinances tried before a municipal judge pursuant to section 479.020, RSMo, or to employ judicial personnel pursuant to section 479.060, RSMo, shall be disbursed to the city at least monthly, and such surcharges collected by circuit court clerks shall be collected and disbursed as provided by sections 488.010 to 488.020. Such fees shall be payable to the city or county wherein such fees originated. The county or city shall use such moneys only for the purpose of providing operating expenses for shelters for battered persons as defined in sections 455.200 to 455.230, RSMo.

488.5030. CONTRACTING FOR COLLECTION OF DELINQUENT COURT-ORDERED PAYMENTS AUTHORIZED — FEES ADDED TO AMOUNT DUE. — To collect on past-due court-ordered penalties, fines, restitution, sanctions, court costs, including restitution and juvenile monetary assessments, or judgments to the state of Missouri or one of its political subdivisions, any division of the circuit court may contract with public agencies or **with private entities operating under a contract with a state agency or the office of state courts administrator.** Any fees or costs associated with such collection efforts shall be added to the amount due, but such fees and costs shall not exceed twenty percent of the amount collected.

494.430. PERSONS ENTITLED TO BE EXCUSED FROM JURY SERVICE — DETERMINATIONS MADE BY JUDGE — UNDUE OR EXTREME PHYSICAL OR FINANCIAL HARDSHIP DEFINED — DOCUMENTATION REQUIRED, WHEN. — 1. Upon timely application to the court, the following persons shall be excused from service as a petit or grand juror:

(1) Any person who has served on a state or federal petit or grand jury within the preceding two years;

(2) Any person whose absence from his or her regular place of employment would, in the judgment of the court, tend materially and adversely to affect the public safety, health, welfare or interest;

(3) Any person upon whom service as a juror would in the judgment of the court impose an undue or extreme physical or financial hardship;

(4) Any person licensed [to engage in and actively engaged in the practice of medicine, osteopathy, chiropractic, dentistry or pharmacy] **as a health care provider as such term is defined in section 538.205, RSMo,** but only if such person provides a written statement to the court certifying that he or she is actually providing health care services to patients, and that the person's service as a juror would be detrimental to the health of the person's patients;

(5) Any employee of a religious institution whose religious obligations or constraints prohibit their serving on a jury. The certification of the employment and obligation or constraint may be provided by the employee's religious supervisor.

2. A judge of the court for which the individual was called to jury service shall make undue or extreme physical or financial hardship determinations. The authority to make these determinations is delegable only to court officials or personnel who are authorized by the laws of this state to function as members of the judiciary.

3. A person asking to be excused based on a finding of undue or extreme physical or financial hardship must take all actions necessary to have obtained a ruling on that request by no later than the date on which the individual is scheduled to appear for jury duty.

4. **Unless it is apparent to the court that the physical hardship would significantly impair the person's ability to serve as a juror,** for purposes of sections 494.400 to 494.460 undue or extreme physical or financial hardship is limited to circumstances in which an individual would:

(1) Be required to abandon a person under his or her personal care or supervision due to the impossibility of obtaining an appropriate substitute caregiver during the period of participation in the jury pool or on the jury; or

(2) Incur costs that would have a substantial adverse impact on the payment of the individual's necessary daily living expenses or on those for whom he or she provides the principal means of support; or

(3) Suffer physical hardship that would result in illness or disease.

5. Undue or extreme physical or financial hardship does not exist solely based on the fact that a prospective juror will be required to be absent from his or her place of employment.

6. A person asking a judge to grant an excuse based on undue or extreme physical or financial hardship shall [be required to] provide the judge with documentation **as required by the judge**, such as, but not limited to, federal and state income tax returns, medical statements from licensed physicians, proof of dependency or guardianship, and similar documents, which the judge finds to clearly support the request to be excused. Failure to provide satisfactory documentation shall result in a denial of the request to be excused. Such documents shall be filed under seal.

7. After two years, a person excused from jury service shall become eligible once again for qualification as a juror unless the person was excused from service permanently. A person is excused from jury service permanently only when the deciding judge determines that the underlying grounds for being excused are of a permanent nature.

494.432. POSTPONEMENT OF JURY DUTY, WHEN. — 1. Individuals scheduled to appear for jury service have the right to postpone the date of their initial appearance for jury service one time only for reasons other than undue influence or extreme physical or financial hardship. When requested, postponements shall be granted, provided that:

(1) The prospective juror has not previously been granted a postponement;

(2) The prospective juror appears in person or contacts the board of jury commissioners by telephone, electronic mail, or in writing to request a postponement; and

(3) Prior to the grant of a postponement [with the concurrence of the board of jury commissioners, the prospective juror fixes a date certain] **the court shall set the date** on which [he or she] **the prospective juror** will appear for jury service that is not more than six months after the date on which the prospective juror originally was called to serve and on which date the court will be in session. **If** a prospective juror [who] is a full-time student of any accredited institution [may fix a date certain], **the court shall set the date** on which [he or she] **the prospective juror** will appear for jury service that is not more than twelve months after the date on which the prospective juror originally was called to serve and on which the court will be in session.

2. A subsequent request to postpone jury service may be approved by a judicial officer only in the event of an extreme emergency, such as a death in the family, sudden grave illness, or a natural disaster or national emergency in which the prospective juror is personally involved, that could not have been anticipated at the time the initial postponement was granted. Prior to the grant of a second postponement, the prospective juror must fix a date certain on which the individual will appear for jury service within six months of the postponement on a date when the court will be in session.

516.130. WHAT ACTIONS WITHIN THREE YEARS. — Within three years:

(1) An action against a sheriff, coroner or other officer, upon a liability incurred by the doing of an act in his official capacity and in virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution or otherwise;

(2) An action upon a statute for a penalty or forfeiture, where the action is given to the party aggrieved, or to such party and the state;

(3) **An action under section 290.300, RSMo.**

534.090. SERVING OF SUMMONS — SERVICE BY MAIL — PUBLICATION OF NOTICE. —

1. Such summons shall be served as in other civil cases at least four days before the court date specified in such summons.

2. If the summons in such action cannot be served in the ordinary manner as provided by law, it shall be the duty of the judge before whom the proceeding is commenced, at the request of the plaintiff, to make an order directing that notices shall be set up for ten days on the premises in question and in one public place in the county where the defendant was believed to dwell, informing the defendant of the commencement of the proceedings against the defendant and to make an order directing that a copy of the summons be delivered to the defendant at the defendant's last known address by [certified mail, return receipt requested, delivered to addressee only] **ordinary mail**. [On proof of the notice and of the mailing of the notice by certified mail by affidavit of some competent witness] **If the officer, or other person empowered to execute the summons, shall return that the defendant is not found, or that the defendant has absconded or vacated his or her usual place of abode in this state, and if proof be made by affidavit of the posting and of the mailing of a copy of the summons and complaint**, the judge shall proceed to hear the case as if there had been personal service, and judgment shall be rendered and proceedings had as in other cases, except that where the defendant is in default no money judgment shall be granted the plaintiff under the order of publication and [certified] **ordinary mail** procedure set forth in this section. If such summons is returned executed, then the judge shall set the case on the next available court date.

545.550. DEFENDANT IN CUSTODY, TO BE REMOVED, WHEN — WHICH COUNTY JAIL TO HOUSE DEFENDANT. — **1.** If the defendant be in actual custody or confinement, the court or officer granting the order of removal shall, **subject to any arrangements made pursuant to subsection 2 of this section**, also make an order commanding the sheriff to remove the body of the defendant to the jail of the county into which the cause is to be removed, and then deliver him to the keeper of such jail, together with the warrant or process, by virtue of which he is imprisoned or held.

2. **The sheriff of the county granting the change of venue and the sheriff of the county into which the cause is removed, may agree as to which county's jail will house the defendant. If the sheriffs do not agree where the defendant will be confined, the defendant will be confined in the county into which the cause is removed. In the event that the county granting the change of venue continues to house the defendant, the sheriff of that county shall be responsible for the timely transportation of the defendant for all court appearances that require the presence of the defendant.**

570.123. CIVIL ACTION FOR DAMAGES FOR PASSING BAD CHECKS, ONLY ORIGINAL HOLDER MAY BRING ACTION — LIMITATIONS — NOTICE REQUIREMENTS — PAYROLL CHECKS, ACTION TO BE AGAINST EMPLOYER. — In addition to all other penalties provided by law, any person who makes, utters, draws, or delivers any check, draft, or order for the payment of money upon any bank, savings and loan association, credit union, or other depository, financial institution, person, firm, or corporation which is not honored because of lack of funds or credit to pay or because of not having an account with the drawee and who fails to pay the amount for which such check, draft, or order was made in cash to the holder within thirty days after notice and a written demand for payment, deposited as certified or registered mail in the United States mail, or by regular mail, supported by an affidavit of service by mailing, notice deemed conclusive three days following the date the affidavit is executed, and addressed to the maker and to the endorser, if any, of the check, draft, or order at each of their addresses as it appears on the check, draft, or order or to the last known address, shall, in addition to the face amount owing upon such check, draft, or order, be liable to the holder for three times the face amount owed or one hundred dollars, whichever is greater, plus **reasonable** attorney fees incurred in bringing an action pursuant to this section. Only the original holder, whether the holder is a person, bank, savings and loan association, credit union, or other depository, financial institution, firm or corporation, may bring an action pursuant to this section. No original holder shall bring an action pursuant to this section if the original holder has been paid the face amount

of the check and costs recovered by the prosecuting attorney or circuit attorney pursuant to subsection 6 of section 570.120. If the issuer of the check has paid the face amount of the check and costs pursuant to subsection 6 of section 570.120, such payment shall be an affirmative defense to any action brought pursuant to this section. The original holder shall elect to bring an action pursuant to this section or section 570.120, but may not bring an action pursuant to both sections. In no event shall the damages allowed pursuant to this section exceed five hundred dollars, exclusive of **reasonable** attorney fees. In situations involving payroll checks, the damages allowed pursuant to this section shall only be assessed against the employer who issued the payroll check and not against the employee to whom the payroll check was issued. The provisions of sections 408.140 and 408.233, RSMo, to the contrary notwithstanding, a lender may bring an action pursuant to this section. The provisions of this section will not apply in cases where there exists a bona fide dispute over the quality of goods sold or services rendered.

SECTION 1. POSTING OF CERTAIN INFORMATION REGARDING ELECTED OR APPOINTED OFFICIALS PROHIBITED — REQUEST FOR REMOVAL OF POSTED MATERIAL. — 1. No court or state or local agency shall post the home address, Social Security number, or telephone number of any elected or appointed official on the Internet without first obtaining the written permission of such official.

2. No person shall knowingly post the home address, Social Security number, or telephone number of any elected or appointed official, or of such official's residing spouse or child on the Internet knowing that person is an elected or appointed official and intending to cause imminent great bodily harm that is likely to occur or threatening to cause imminent great bodily harm to such official, spouse, or child. Any person who violates this subsection is guilty of a class C misdemeanor.

3. For purposes of this section, "elected or appointed official" includes but is not limited to all of the following:

- (1) State constitutional officers;**
- (2) Members of the Missouri general assembly;**
- (3) Judges, court commissioners, and circuit clerks;**
- (4) Directors of state departments;**
- (5) Prosecuting attorneys and assistant prosecuting attorneys;**
- (6) Public defenders;**
- (7) County commissioners;**
- (8) Members of a city council;**
- (9) Mayors;**
- (10) City attorneys and county counselors;**
- (11) Police chiefs and sheriffs;**
- (12) Peace officers under chapter 590, RSMo;**
- (13) Probation and parole officers, and members of the parole board.**

4. Upon becoming aware that his or her home address, Social Security number, or telephone number has been made available over the Internet, any person covered by this section shall inform the court or state or local agency of such fact and request removal of such information. Upon becoming aware, the failure of a person covered by this section to notify a state or public agency shall relieve such agency of the obligation to remove prohibited information.

SECTION 2. RESIDENTIAL LOANS, IMPOSITION OF FEE TO COMPLETE DOCUMENTATION NOT DEEMED ENGAGING IN THE UNAUTHORIZED PRACTICE OF LAW. — No bank or lending institution that makes residential loans and imposes a fee of less than two hundred dollars for completing residential loan documentation for loans made by that institution shall be deemed to be engaging in the unauthorized practice of law.

SECTION 3. FAMILY COURT COMMISSIONER POSITION. — Beginning January 1, 2007, there is hereby created a state-funded family court commissioner position in the twenty-ninth judicial circuit.

SECTION 4. DRUG COURT COMMISSIONER POSITION. — Beginning January 1, 2007, there is hereby created a state-funded drug court commissioner position in the forty-second judicial circuit.

SECTION 5. DRUG COURT COMMISSIONER POSITION TO BE STATE-FUNDED. — Any drug court commissioner authorized pursuant to section 478.001, RSMo, and appointed in the twenty-third judicial circuit pursuant to section 478.003, RSMo, shall be a state-funded position.

Approved July 13, 2005

SB 422 [HCS SB 422]

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

Requires expunged records to be confidential

AN ACT to repeal section 610.123, RSMo, and section 577.054 as enacted by house substitute for senate substitute for senate committee substitute for senate bills nos. 1233, 840, & 843, ninety-second general assembly, second regular session, and section 577.054 as enacted by house bill no. 3, eighty-fifth general assembly, first extraordinary session, and to enact in lieu thereof two new sections relating to expungement petitions.

SECTION

- A. Enacting clause.
- 577.054. Alcohol-related driving offenses, expunged from records, when — procedures, effect — limitations
- 577.054. Alcohol-related driving offenses, expunged from records, when — procedures, effect — limitations
- 610.123. Procedure to expunge, supreme court to promulgate rules — similar to small claims.

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

SECTION A. ENACTING CLAUSE. — Section 610.123, RSMo, and section 577.054 as enacted by house substitute for senate substitute for senate committee substitute for senate bills nos. 1233, 840, & 843, ninety-second general assembly, second regular session, and section 577.054 as enacted by house bill no. 3, eighty-fifth general assembly, first extraordinary session, are repealed and two new sections enacted in lieu thereof, to be known as sections 577.054 and 610.123, to read as follows:

577.054. ALCOHOL-RELATED DRIVING OFFENSES, EXPUNGED FROM RECORDS, WHEN — PROCEDURES, EFFECT — LIMITATIONS — 1. After a period of not less than ten years, an individual who has pleaded guilty or has been convicted for a first alcohol-related driving offense which is a misdemeanor or a county or city ordinance violation and which is not a conviction for driving a commercial motor vehicle while under the influence of alcohol and who since such date has not been convicted of any other alcohol-related driving offense may apply to the court in which he or she pled guilty or was sentenced for an order to expunge from all official records all recordations of his or her arrest, plea, trial or conviction. If the court determines, after

hearing, that such person has not been convicted of any alcohol-related driving offense in the ten years prior to the date of the application for expungement, and has no other alcohol-related enforcement contacts as defined in section 302.525, RSMo, during that ten-year period, the court shall enter an order of expungement. **Upon granting of the order of expungement, the records and files maintained in any administrative or court proceeding in an associate or circuit division of the circuit court under this section shall be confidential and only available to the parties or by order of the court for good cause shown.** The effect of such order shall be to restore such person to the status he or she occupied prior to such arrest, plea or conviction and as if such event had never taken place. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge such arrest, plea, trial, conviction or expungement in response to any inquiry made of him or her for any purpose whatsoever and no such inquiry shall be made for information relating to an expungement under this section. A person shall only be entitled to one expungement pursuant to this section. Nothing contained in this section shall prevent the director from maintaining such records as to ensure that an individual receives only one expungement pursuant to this section for the purpose of informing the proper authorities of the contents of any record maintained pursuant to this section.

2. The provisions of this section shall not apply to any individual who has been issued a commercial driver's license or is required to possess a commercial driver's license issued by this state or any other state.

[577.054. ALCOHOL-RELATED DRIVING OFFENSES, EXPUNGED FROM RECORDS, WHEN — PROCEDURES, EFFECT — LIMITATIONS — After a period of not less than ten years, an individual who has pleaded guilty or has been convicted for a first alcohol-related driving offense which is a misdemeanor or a county or city ordinance violation and which is not a conviction for driving a commercial motor vehicle while under the influence of alcohol and who since such date has not been convicted of any other alcohol-related driving offense may apply to the court in which he pled guilty or was sentenced for an order to expunge from all official records all recordations of his arrest, plea, trial or conviction. If the court determines, after hearing, that such person has not been convicted of any alcohol-related driving offense in the ten years prior to the date of the application for expungement, and has no other alcohol-related enforcement contacts as defined in section 302.525, RSMo, during that ten-year period, the court shall enter an order of expungement. The effect of such order shall be to restore such person to the status he occupied prior to such arrest, plea or conviction and as if such event had never taken place. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, plea, trial, conviction or expungement in response to any inquiry made of him for any purpose whatsoever and no such inquiry shall be made for information relating to an expungement under this section. A person shall only be entitled to one expungement pursuant to this section. Nothing contained in this section shall prevent the director from maintaining such records as to ensure that an individual receives only one expungement pursuant to this section for the purpose of informing the proper authorities of the contents of any record maintained pursuant to this section.]

610.123. PROCEDURE TO EXPUNGE, SUPREME COURT TO PROMULGATE RULES — SIMILAR TO SMALL CLAIMS. — 1. Any person who wishes to have a record of arrest expunged pursuant to section 610.122 may file a verified petition for expungement in the civil division of the circuit court in the county of the arrest as provided in subsection 4 of this section. The petition shall include the following information or shall be dismissed if the information is not given:

- (1) The petitioner's:

- (a) Full name;
- (b) Sex;
- (c) Race;
- (d) Date of birth;
- (e) Driver's license number;
- (f) Social Security number; and
- (g) Address at the time of the arrest;
- (2) The offense charged against the petitioner;
- (3) The date the petitioner was arrested;
- (4) The name of the county where the petitioner was arrested and if the arrest occurred in a municipality, the name of the municipality;
- (5) The name of the agency that arrested the petitioner;
- (6) The case number and court of the offense;
- (7) Petitioner's fingerprints on a standard fingerprint card at the time of filing a petition to expunge a record that will be forwarded to the central repository for the sole purpose of positively identifying the petitioner.

2. The petition shall name as defendants all law enforcement agencies, courts, prosecuting attorneys, central state depositories of criminal records or others who the petitioner has reason to believe may possess the records subject to expungement. The court's order shall not affect any person or entity not named as a defendant in the action.

3. The court shall set a hearing on the matter no sooner than thirty days from the filing of the petition and shall give reasonable notice of the hearing to each official or agency or other entity named in the petition.

4. If the court finds that the petitioner is entitled to expungement of any record that is the subject of the petition, it shall enter an order directing expungement. **Upon granting of the order of expungement, the records and files maintained in any administrative or court proceeding in an associate or circuit division of the circuit court under this section shall be confidential and only available to the parties or by order of the court for good cause shown.** A copy of the order shall be provided to each agency identified in the petition pursuant to subsection 2 of this section.

5. The supreme court shall promulgate rules establishing procedures for the handling of cases filed pursuant to the provisions of this section and section 610.122. Such procedures shall be similar to the procedures established in chapter 482, RSMo, for the handling of small claims.

Approved July 12, 2005

SB 423 [HCS SCS SB 423]

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

Creates new provisions and makes modifications to certain statutes relating to the DNA profiling system

AN ACT to repeal sections 488.5050, 650.050, 650.052, and 650.055, RSMo, and to enact in lieu thereof four new sections relating to a DNA profiling system, with penalty provisions.

SECTION

- A. Enacting clause.
 - 488.5050. Surcharges on all criminal cases, amount — deposit in DNA profiling analysis fund — expiration date.
 - 650.050. DNA profiling system to be established in department of public safety, purpose.
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- 650.052. Consultation with crime laboratories — DNA system, powers and duties — expert testimony — rulemaking authority.
- 650.055. Felony convictions for certain offenses to have biological samples collected, when — use of sample — highway patrol and department of corrections, duty — DNA records and biological materials to be closed record, disclosure, when — expungement of record, when — liability of guilty person.

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

SECTION A. ENACTING CLAUSE. — Sections 488.5050, 650.050, 650.052, and 650.055, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 488.5050, 650.050, 650.052, and 650.055, to read as follows:

488.5050. SURCHARGES ON ALL CRIMINAL CASES, AMOUNT — DEPOSIT IN DNA PROFILING ANALYSIS FUND — EXPIRATION DATE. — 1. In addition to any other surcharges authorized by statute, the clerk of each court of this state shall collect the surcharges provided for in subsection 2 of this section.

2. A surcharge of thirty dollars shall be assessed as costs in each circuit court proceeding filed within this state in all criminal cases in which the defendant pleads guilty or nolo contendere to or is convicted of a felony. A surcharge of fifteen dollars shall be assessed as costs in each court proceeding filed within this state in all criminal cases, **except for traffic violations cases** in which the defendant pleads guilty or nolo contendere to or is convicted of a misdemeanor.

3. Notwithstanding any other provisions 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 section 488.010 to 488.020, and shall be payable to the state treasurer.

4. The state treasurer shall deposit such moneys or other gifts, grants, or moneys received on a monthly basis into the "DNA Profiling Analysis Fund", which is hereby created in the state treasury. The fund shall be administered by the department of public safety. The moneys deposited into the DNA profiling analysis fund shall be used only for DNA profiling analysis of convicted offender samples performed to fulfill the purposes of the DNA profiling system pursuant to section 650.052, RSMo.

5. The provisions of subsections 1 and 2 of this section shall expire on August 28, 2006.

650.050. DNA PROFILING SYSTEM TO BE ESTABLISHED IN DEPARTMENT OF PUBLIC SAFETY, PURPOSE. — 1. The Missouri department of public safety shall develop and establish a "DNA Profiling System", referred to in sections 650.050 to [650.057] **650.100** as the system to assist federal, state, and local criminal justice and law enforcement agencies in the identification, investigation, and prosecution of individuals as well as the identification of missing or unidentified persons. This DNA profiling system shall consist of qualified Missouri forensic laboratories approved by the Federal Bureau of Investigation. The Missouri state highway patrol crime laboratory shall be the administrator of the state's DNA index system.

2. The DNA profiling system as established in this section shall be compatible with that used by the Federal Bureau of Investigation to ensure that DNA records are fully exchangeable between DNA laboratories and that quality assurance standards issued by the director of the Federal Bureau of Investigation are applied and performed.

650.052. CONSULTATION WITH CRIME LABORATORIES — DNA SYSTEM, POWERS AND DUTIES — EXPERT TESTIMONY — RULEMAKING AUTHORITY. — 1. The state's DNA profiling system shall:

(1) Assist federal, state and local criminal justice and law enforcement agencies in the identification, detection or exclusion of individuals who are subjects of the investigation or prosecution of criminal offenses in which biological evidence is recovered or obtained; and

(2) If personally identifiable information is removed, support development of forensic validation studies, forensic protocols, and the establishment and maintenance of a population statistics database, for federal, state, or local crime laboratories of law enforcement agencies; and

(3) Assist in the recovery or identification of human remains from mass disasters, or for other humanitarian purposes, including identification of missing persons.

2. The Missouri state highway patrol shall act as the central repository for the DNA profiling system and shall collaborate with the Federal Bureau of Investigation and other criminal justice agencies relating to the state's participation in CODIS and the National DNA Index System or in any DNA database.

3. The Missouri state highway patrol may promulgate rules and regulations to implement the provisions of sections 650.050 to 650.100 in accordance with Federal Bureau of Investigation recommendations for the form and manner of collection of blood or other scientifically accepted biological samples and other procedures for the operation of sections 650.050 to [650.057] **650.100**. 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 section 536.024, RSMo.

4. The Missouri state highway patrol shall provide the necessary components for collection of the convicted offender's biological samples. For qualified offenders as defined by section 650.055 who are under custody and control of the department of corrections, the DNA sample collection shall be performed by the department of corrections and the division of probation and parole, or their authorized designee or contracted third party. For qualified offenders as defined by section 650.055 who are under custody and control of a county jail, the DNA sample collections shall be performed by the county jail or its authorized designee or contracted third party. **For qualified offenders as defined by section 650.055 who are under the custody and control of companies contracted by the county or court to perform supervision and/or treatment of the offender, the sheriff's department of the county assigned to the offender shall perform the DNA sample collection.** The specimens shall thereafter be forwarded to the Missouri state highway patrol crime laboratory. Any DNA profiling analysis or collection of DNA samples by the state or any county performed pursuant to sections 650.050 to 650.100 shall be subject to appropriations.

5. The state's participating forensic DNA laboratories shall meet quality assurance standards specified by the Missouri state highway patrol crime laboratory and the Federal Bureau of Investigation to ensure quality DNA identification records submitted to the central repository.

6. The state's participating forensic DNA laboratories may provide the system for identification purposes to criminal justice, law enforcement officials and prosecutors in the preparation and utilization of DNA evidence for presentation in court and provide expert testimony in court on DNA evidentiary issues.

7. The department of public safety shall have the authority to promulgate rules and regulations to carry out the provisions of sections 650.050 to 650.100. 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.

650.055. FELONY CONVICTIONS FOR CERTAIN OFFENSES TO HAVE BIOLOGICAL SAMPLES COLLECTED, WHEN — USE OF SAMPLE — HIGHWAY PATROL AND DEPARTMENT OF CORRECTIONS, DUTY — DNA RECORDS AND BIOLOGICAL MATERIALS TO BE CLOSED RECORD, DISCLOSURE, WHEN — EXPUNGEMENT OF RECORD, WHEN — LIABILITY OF GUILTY PERSON. — 1. Every individual who pleads guilty or nolo contendere to or is convicted in a Missouri circuit court, of a felony or any offense under chapter 566, RSMo, or has been determined beyond a reasonable doubt to be a sexually violent predator pursuant to sections 632.480 to 632.513, RSMo, shall have a blood or scientifically accepted biological sample collected for purposes of DNA profiling analysis:

(1) Upon entering **or before release from** the department of corrections reception and diagnostic centers; or

(2) **Upon entering or** before release from a county jail or detention facility, state correctional facility, or any other detention facility or institution, **whether operated by private, local, or state agency**, or any mental health facility if committed as a sexually violent predator pursuant to sections 632.480 to 632.513, RSMo; or

(3) When the state accepts a person from another state under any interstate compact, or under any other reciprocal agreement with any county, state, or federal agency, or any other provision of law, whether or not the person is confined or released, the acceptance is conditional on the person providing a DNA sample if the person was convicted of, pleaded guilty to, or pleaded nolo contendere to an offense in any other jurisdiction which would be considered a qualifying offense as defined in this section if committed in this state, or if the person was convicted of, pleaded guilty to, or pleaded nolo contendere to any equivalent offense in any other jurisdiction; or

(4) If such individual is under the jurisdiction of the department of corrections. Such jurisdiction includes persons currently incarcerated, persons on probation, as defined in section 217.650, RSMo, and on parole, as also defined in section 217.650, RSMo.

2. The Missouri state highway patrol and department of corrections shall be responsible for ensuring adherence to the law. Any person required to provide a DNA sample pursuant to this section shall be required to provide such sample, without the right of refusal, at a collection site designated by the Missouri state highway patrol and the department of corrections. Authorized personnel collecting or assisting in the collection of samples shall not be liable in any civil or criminal action when the act is performed in a reasonable manner. Such force may be used as necessary to the effectual carrying out and application of such processes and operations. The enforcement of these provisions by the authorities in charge of state correctional institutions and others having custody or jurisdiction over those who have been convicted of, pleaded guilty to, or pleaded nolo contendere to felony offenses which shall not be set aside or reversed is hereby made mandatory. The board of probation or parole shall recommend that an individual who refuses to provide a DNA sample have his or her probation or parole revoked. In the event that a person's DNA sample is not adequate for any reason, the person shall provide another sample for analysis.

3. The procedure and rules for the collection, analysis, storage, expungement, use of DNA database records and privacy concerns shall not conflict with procedures and rules applicable to the Missouri DNA profiling system and the Federal Bureau of Investigation's DNA data bank system.

4. Unauthorized uses or dissemination of individually identifiable DNA information in a database for purposes other than criminal justice or law enforcement is a class A misdemeanor.

5. Implementation of [section] **sections** 650.050 [and this section] **to 650.100** shall be subject to future appropriations to keep Missouri's DNA system compatible with the Federal Bureau of Investigation's DNA data bank system.

6. All DNA records and biological materials retained in the DNA profiling system are considered closed records pursuant to chapter 610, RSMo. All records containing any information held or maintained by any person or by any agency, department, or political subdivision of the state concerning an individual's DNA profile shall be strictly confidential and shall not be disclosed, except to:

(1) Peace officers, as defined in section 590.010, RSMo, and other employees of law enforcement agencies who need to obtain such records to perform their public duties;

(2) The attorney general or any assistant attorneys general acting on his or her behalf, as defined in chapter 27, RSMo;

(3) Prosecuting attorneys or circuit attorneys as defined in chapter 56, RSMo, and their employees who need to obtain such records to perform their public duties; or

(4) Associate circuit judges, circuit judges, judges of the courts of appeals, supreme court judges, and their employees who need to obtain such records to perform their public duties.

7. Any person who obtains records pursuant to the provisions of this section shall use such records only for investigative and prosecutorial purposes, including but not limited to use at any criminal trial, hearing, or proceeding; or for law enforcement identification purposes, including identification of human remains. Such records shall be considered strictly confidential and shall only be released as authorized by this section.

8. An individual may request expungement of his or her DNA sample and DNA profile through the court issuing the reversal or dismissal. A certified copy of the court order establishing that such conviction has been reversed or guilty plea or plea of nolo contendere has been set aside shall be sent to the Missouri state highway patrol crime laboratory. Upon receipt of the court order, the laboratory will determine that the requesting individual has no other qualifying offense as a result of any separate plea or conviction prior to expungement.

(1) A person whose DNA record or DNA profile has been included in the state DNA database in accordance with this section, section 488.5050, RSMo, and sections 650.050, 650.052, and 650.100 may request expungement on the grounds that the conviction has been reversed, or the guilty plea or plea of nolo contendere on which the authority for including that person's DNA record or DNA profile was based has been set aside.

(2) Upon receipt of a written request for expungement, a certified copy of the final court order reversing the conviction or setting aside the plea and any other information necessary to ascertain the validity of the request, the Missouri state highway patrol crime laboratory shall expunge all DNA records and identifiable information in the database pertaining to the person and destroy the DNA sample of the person, unless the Missouri state highway patrol determines that the person is otherwise obligated to submit a DNA sample. Within thirty days after the receipt of the court order, the Missouri state highway patrol shall notify the individual that it has expunged his or her DNA sample and DNA profile, or the basis for its determination that the person is otherwise obligated to submit a DNA sample.

(3) The Missouri state highway patrol is not required to destroy any item of physical evidence obtained from a DNA sample if evidence relating to another person would thereby be destroyed.

(4) Any identification, warrant, arrest, or evidentiary use of a DNA match derived from the database shall not be excluded or suppressed from evidence, nor shall any conviction be invalidated or reversed or plea set aside due to the failure to expunge or a delay in expunging DNA records.

9. Notwithstanding the sovereign immunity of the state, an individual who is determined to be "actually innocent" of a crime may be paid restitution in accordance with this subsection. The individual may receive an amount of fifty dollars per day for each day of postconviction incarceration for the crime for which the individual is determined to be actually innocent. The petition for the payment of said restitution shall be filed with the sentencing court within one year of the release from confinement after August 28, 2003. For the purposes of this subsection the term "actually innocent" shall mean:

(1) The individual was convicted of a felony for which a final order of release was entered by the court;

(2) All appeals of the order of release have been exhausted;

(3) The individual was not serving any term of a sentence for any other crime concurrently with the sentence for which they are determined to be actually innocent; and

(4) Testing ordered pursuant to section 547.035, RSMo, demonstrates a person's innocence of the crime for which the person is in custody.

An individual who receives restitution pursuant to this subsection shall be prohibited from seeking any civil redress from the state, its departments and agencies, or any employee thereof, or any political subdivision or its employees. This subsection shall not be construed as a waiver of sovereign immunity for any purposes other than the restitution provided for herein. All

restitution paid pursuant to this subsection shall be paid from moneys in the DNA profiling analysis fund. The department shall determine the aggregate amount of restitution owed during a fiscal year. If moneys remain in the fund on June thirtieth of each fiscal year, the remaining moneys shall be used to pay restitution to those individuals who have received an order awarding restitution under this subsection during the past fiscal year. If insufficient moneys remain in the fund on June thirtieth of each fiscal year to pay restitution to such persons, the department shall pay each individual who has received an order awarding restitution a pro rata share of the amount such person is owed. The remaining amounts owed to such individual shall be paid from the fund on June thirtieth of each subsequent fiscal year, provided moneys remain in the fund on June thirtieth, until such time as the restitution to the individual has been paid in full. No interest on unpaid restitution shall be awarded to the individual. If there are no moneys remaining in the DNA profiling analysis fund, then no payments shall be made under this subsection. No individual who has been determined by the court to be actually innocent shall be responsible for the costs of care under section 217.831, RSMo.

10. If the results of the DNA testing confirm the person's guilt, then the person filing for DNA testing under section 547.035, RSMo, shall:

- (1) Be liable for any reasonable costs incurred when conducting the DNA test, including but not limited to the cost of the test. Such costs shall be determined by the court and shall be included in the findings of fact and conclusions of law made by the court; and
- (2) Be sanctioned under the provisions of section 217.262, RSMo.

Approved July 13, 2005

SB 431 [SB 431]

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

Permits sales tax on food for the City of Independence

AN ACT to repeal section 144.518, RSMo, and to enact in lieu thereof two new sections relating to local sales taxes for museum and tourism-related activities, with an emergency clause.

SECTION

- A. Enacting clause.
- 82.850. Retail sales of food, tax on gross receipts permitted — definitions — ballot language — trust fund established (City of Independence).
- 144.518. Exemption for machines or parts for machines used in a commercial, coin-operated amusement and vending business.
- B. Emergency clause.

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

SECTION A. ENACTING CLAUSE. — Section 144.518, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 82.850 and 144.518, to read as follows:

82.850. RETAIL SALES OF FOOD, TAX ON GROSS RECEIPTS PERMITTED — DEFINITIONS — BALLOT LANGUAGE — TRUST FUND ESTABLISHED (CITY OF INDEPENDENCE). — **1. As used in this section, the following terms shall mean:**

- (1) "Food", all articles commonly used for food or drink, including alcoholic beverages, the provisions of Chapter 311, RSMo, notwithstanding;
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(2) "Food establishment", any café, cafeteria, lunchroom, or restaurant which sells food at retail;

(3) "Gross receipts", the gross receipts from retail sales of food prepared on the premises and delivered to the purchaser, excluding sales tax;

(4) "Museum", any museum dedicated to the preservation of the history of the westward expansion movement of the United States by covered wagon, train, water, or similar means of transportation, which is or was owned by the state of Missouri on the effective date of the tax and operated by a city or other person;

(5) "Person", any individual, corporation, partnership, or other entity;

(6) "Tourism-related activities", those activities commonly associated with the development, promotion, and operation of tourism and related facilities for the city, including historic preservation.

2. The city council of any home rule city with more than one hundred thirteen thousand two hundred but less than one hundred thirteen thousand three hundred inhabitants may impose a tax on the gross receipts derived from all retail sales of food by every person operating a food establishment situated in the city or a portion thereof. The tax authorized in this section may be imposed in increments of one-eighth of one percent, up to a maximum of two percent of such gross receipts. One-half of any such tax imposed by a city pursuant to this section shall be used solely for the development, promotion and operation of a museum. Such tax shall be in addition to all other sales taxes imposed on such food establishments, and shall be stated separately from all other charges and taxes. Such tax shall not become effective unless the city council, by order or ordinance, submits to the voters of the city a proposal to authorize the city council to impose a tax under this section on any day available for such city to hold municipal elections or at a special election called for the purpose.

3. 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 gross receipts derived from the retail sales of food at any food establishment situated in (name of city) at a rate of (insert rate of percent) percent for the sole purpose of providing funds for the development, promotion, and operation of museum and tourism-related activities and facilities?

[] 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.

4. The tax imposed under this section shall be known as the "Museum and Tourism-Related Activities Tax". Each city imposing a tax under this section shall establish separate trust funds to be known as the "Museum Trust Fund" and the "Tourism-Related Trust Fund". The city treasurer shall deposit the revenue derived from the tax imposed under this section for museum purposes in the museum trust fund, and shall deposit the revenue derived for tourism-related purposes in the tourism-related trust fund. The proceeds of such tax shall be appropriated by the city council exclusively for the development, promotion, and operation of museum and tourism-related activities and facilities in the city.

5. All applicable provisions in chapter 144, RSMo, relating to state sales tax, and in section 32.057, RSMo, relating to confidentiality, shall apply to the collection of any tax imposed under this section.

6. All exemptions for government agencies, organizations, individuals, and on the sale of certain tangible personal property and taxable services granted under sections 144.010 to 144.525, RSMo, shall be applicable to the imposition and collection of any tax imposed under this section.

7. The same sales tax permits, exemption certificates, and retail certificates required for the administration and collection of state sales tax in chapter 144, RSMo, shall be deemed adequate for the administration and collection of any tax imposed under this section, and no additional permit, exemption certificate, or retail certificate shall be required, provided that the director of the department of revenue may prescribe a form of exemption certificate for an exemption from any tax imposed under this section.

8. Any individual, firm, or corporation subject to any tax imposed under this section shall collect the tax from the patrons of the food establishment, and each such patron of the food establishment shall pay the amount of the tax due to the individual, firm, or corporation required to collect the tax. The city shall permit the individual required to remit the tax to deduct and retain an amount equal to two percent of the taxes collected. The city council may either require the license collector of the city to collect the tax, or may enter into an agreement with the director of the department of revenue to have the director collect the tax on behalf of the city. In the event such an agreement is entered into, the director shall perform all functions incident to the collection, enforcement, and operation of such tax, and shall collect the tax on behalf of the city and shall transfer the funds collected to the city license collector, except for an amount not less than one percent nor more than three percent, which shall be retained by the director for the costs of collecting the tax. If the director is to collect such tax, the tax shall be collected and reported upon such forms and under such administrative rules and regulations as the director may prescribe. All refunds and penalties as provided in sections 144.010 to 144.525, RSMo, are hereby made applicable to violations of this section.

9. It is unlawful for any person to advertise or hold out or state to the public or to any food establishment patron, directly or indirectly, that the tax or any part thereof imposed by this section, and required to be collected by that person, will be absorbed by that person, or anyone on behalf of that person, or that it will not be separately stated and added to the price of the food establishment bill, or if added, that it or any part thereof will be refunded.

144.518. EXEMPTION FOR MACHINES OR PARTS FOR MACHINES USED IN A COMMERCIAL, COIN-OPERATED AMUSEMENT AND VENDING BUSINESS. — In addition to the exemptions granted pursuant to section 144.030, there is hereby specifically exempted from the provisions of sections 66.600 to 66.635, RSMo, sections 67.391 to 67.395, RSMo, sections 67.500 to 67.545, RSMo, section 67.547, RSMo, sections 67.550 to 67.594, RSMo, sections 67.665 to 67.667, RSMo, sections 67.671 to 67.685, RSMo, sections 67.700 to 67.727, RSMo, section 67.729, RSMo, sections 67.730 to 67.739, RSMo, sections 67.1000 to 67.1012, RSMo, **section 82.850, RSMo**, sections 92.325 to 92.340, RSMo, sections 92.400 to 92.421, RSMo, sections 94.500 to 94.570, RSMo, section 94.577, RSMo, sections 94.600 to 94.655, RSMo, section 94.660, RSMo, sections 94.700 to 94.755, RSMo, sections 94.800 to 94.825, RSMo, section 94.830, RSMo, sections 94.850 to 94.857, RSMo, sections 94.870 to 94.881, RSMo, section 94.890, RSMo, sections 144.010 to 144.525, and sections 144.600 to 144.761, sections 190.335 to 190.337, RSMo, sections 238.235 and 238.410, RSMo, section 321.242, RSMo, section 573.505, RSMo, and section 644.032, RSMo, and from the computation of the tax levied, assessed or payable pursuant to sections 66.600 to 66.635, RSMo, sections 67.391 to 67.395, RSMo, sections 67.500 to 67.545, RSMo, section 67.547, RSMo, sections 67.550 to 67.594, RSMo, sections 67.665 to 67.667, RSMo, sections 67.671 to 67.685, RSMo, sections 67.700 to 67.727, RSMo, section 67.729, RSMo, sections 67.730 to 67.739, RSMo, sections 67.1000 to 67.1012, RSMo, **section 82.850, RSMo**, sections 92.325 to 92.340, RSMo, sections

92.400 to 92.421, RSMo, sections 94.500 to 94.570, RSMo, section 94.577, RSMo, sections 94.600 to 94.655, RSMo, section 94.660, RSMo, sections 94.700 to 94.755, RSMo, sections 94.800 to 94.825, RSMo, section 94.830, RSMo, sections 94.850 to 94.857, RSMo, sections 94.870 to 94.881, RSMo, section 94.890, RSMo, sections 144.010 to 144.525, sections 144.600 to 144.761, sections 190.335 to 190.337, RSMo, sections 238.235 and 238.410, RSMo, section 321.242, RSMo, section 573.505, RSMo, and section 644.032, RSMo, machines or parts for machines used in a commercial, coin-operated amusement and vending business where sales tax is paid on the gross receipts derived from the use of commercial, coin-operated amusement and vending machines.

SECTION B. EMERGENCY CLAUSE. — Because immediate action is necessary to meet an electoral deadline, 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 July 14, 2005

SB 450 [HCS SCS SB 450]

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 Governor to convey various pieces of state property

AN ACT to authorize the sale of certain state property, with an emergency clause.

SECTION

1. Conveyance of property known as the Midtown Habilitation Center to St. Louis University.
2. Conveyance of state property in St. Louis City to the Land Reutilization Authority of the City of St. Louis.
3. Conveyance of certain state property in St. Louis City.
4. Conveyance of certain state property in St. Louis County.
5. Conveyance of certain state property in St. Louis City.
6. Conveyance of certain state property in St. Louis County.
7. Conveyance of certain state property in St. Louis County.
- A. Emergency clause.

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

SECTION 1. CONVEYANCE OF PROPERTY KNOWN AS THE MIDTOWN HABILITATION CENTER TO ST. LOUIS UNIVERSITY. — **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 the Midtown Habilitation Center to Saint Louis University. The property to be conveyed is more particularly described as follows:**

Tract A:

Part of Lot 1 of Renard's Subdivision and in Block

No. 1278-A of the City of St. Louis, fronting 25 feet 1-3/8 inches of the North line of Park Avenue, by a depth Northwardly of 113 feet 6-1/2 inches of its East line and 116 feet 1/4 inch of the West line to the North line of a private alley 10 feet wide, having a width thereon of 25 feet; bounded East by a line 75 feet West of the West line of Carr Lane Avenue.

Tract B

Part of Lot 1 in Block 1 of Renard's Subdivision, and in Block 1278-A of the City of St. Louis, fronting 25 feet 1-3/8 inches on the North Line of Park Avenue, by a depth Northwardly of 108 feet, 7 inches on the East line and of 111 feet, 1 inch of the West line to the North line of a private alley 10 feet wide, having a width thereon of 25 feet; bounded East by a line parallel to and distant 25 feet West of the West line of Carr Lane Avenue.

Tract C

Part of Lots 1 and 2 in Block 1 of Renard's Subdivision, and in Block 1278-A of the City of St. Louis, beginning at a point in the North line of Park Avenue 50 feet, 2 3/4 inches West of the West line of Carr Lane Avenue; thence Northwardly parallel with the West line of Carr Lane Avenue 111 feet, 1 inch, more or less, to the North Line of private alley; thence Westwardly 25 feet; thence Southwardly parallel with Carr Lane Avenue, 113 feet, 6 inches, more or less, to the North line of Park Avenue; thence Eastwardly along said North line of Park Avenue 25 feet, 1-3/8 inches to the point of beginning.

Tract D

Part of Lot 1 in Block 1 of Renard's Subdivision and in City Block Number 1278-A, of the City of St. Louis, said part of said Lot having a front of Twenty Five Feet One and Three Eight inches (25' 1 3/8") on the North line of Park Avenue, by a depth North of One Hundred Sixteen Feet and One Fourth inch (116' 1/4") on its East line and One Hundred Eighteen Feet Six inches (118' 6") on its West line, to the North line of a private alley Ten (10) feet wide, and has a width of Twenty-five (25) feet on said private alley, and is bounded East by a line parallel to and distant Westwardly One Hundred (100) feet more or less from the West line of Carr Lane Avenue.

Tract E

Part of Lots 1 and 2 in Block 1 of Subdivision of Lot 20 of CITY COMMONS BY ADOLPH RENARD and in Block 1278A of the City of St. Louis, having a front of 25 feet 1-3/8 inches on the Northern Line of Park Avenue, by a depth Northwardly along the Western line of Carr Lane Avenue of 106 feet 1-1/4 inches to the Northern line of a private alley, on which said Lot has a width of 25 feet, the Northern line of said private alley is parallel with and distant 100 feet 5-1/2 inches South of the Southern line of Lot 3 of said Subdivision.

Tract F

Part of Lots 1 and 2 in Block 1 of Renard's Subdivision and in Block No. 1278A of the City of St. Louis and described as follows:

Beginning in the East line of Grand Boulevard 61 feet 3-3/4 inches North of the North line of Park Avenue; thence Eastwardly parallel with the South line of lot 3 of said Block and Subdivision 133 feet to the East line of a private alley 15 feet wide; thence North along the East line of said private alley, 15 feet wide, 70 feet 5 inches to a point; thence Eastwardly and along the North line of a private alley and parallel with the South line of Lot 3 of said Block and Subdivision 125 feet to a point in the West line of Carr Lane Avenue; thence North along the West line of Carr Lane Avenue 100 feet 5-1/2 inches to the South line of Lot 3 of said Block and Subdivision; thence Westwardly and parallel to the South line of said Lot 3 of said Block and Subdivision, 258 feet to a point in the East line of Grand Boulevard; thence Southwardly along the East line of Grand Boulevard 171 feet to the point of beginning.

Tract G

Lot 3 and part of Lot 4 in Block 1 of Renard's Subdivision, and in Block 1278A of the City of St. Louis, together fronting 123 feet 7 inches on the East line of Grand Boulevard, by a depth Eastwardly of 258 feet 3 inches, more or less, on the North line and of 258 feet 1 inch, more or less, on the South line to the West line of Carr Lane Avenue, and having a width thereon of 126 feet 9-1/4 inches, more or less, bounded on the North by Vista Avenue and on the South by Lot 2 of said Block and Subdivision.

2. The sale price of the property described in subsection 1 of this section shall be for the amount agreed upon by the commissioner of administration and the president of Saint Louis University based upon an appraisal process approved by both. 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 time, place, and terms of the sale.

3. The attorney general shall approve as to form the instrument of conveyance.

SECTION 2. CONVEYANCE OF STATE PROPERTY IN ST. LOUIS CITY TO THE LAND REUTILIZATION AUTHORITY OF THE CITY OF ST. LOUIS. — 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 City of St. Louis to the Land Reutilization Authority of the City of St. Louis. The property to be conveyed is more particularly described as follows:

Tract #1: Part of Lots No. 1, 2, and 3 in Block No. 4 of the fourth Subdivision of the City Commons and in Block No. 1254 of the City of St. Louis, fronting 18 feet 9 inches on the West line of Grattan Street, by a depth Westwardly between parallel lines of 85 feet to the West line of said Lot No. 3; Rounded South by a line passing through a partition wall between building numbered 1441-43 Grattan Street, and distant 34 feet 9 inches North of and parallel with the North Line of Carroll Street, according to survey by Joyce Company, Surveyors and Engineers, executed on May 27, 1963.

Tract #2: The Northern 66 feet 6 inches of Lots 1, 2, and 3 in Block 4 of Fourth Subdivision of the City Commons, and in Block No. 1254 of the City of St. Louis together fronting 66 feet 6 inches on the West line of Grattan Street, by a depth Westwardly of 85 feet to the West line of said Lot No. 3; Bounded North by the South line of an alley, and South by a line 53 feet 6 inches North of and parallel with the North line of Carroll Street, according to Survey by Joyce Company, Surveyors and Engineers, executed on May 27, 1953.

Tract #3: The Southern 34 feet 9 inches of Lots 1, 2, and 3 in Block 4 of the Subdivision of Block 3 of the City Commons and in Block 1254 of the City of St. Louis, fronting 34 feet 9 inches on the West line of Grattan Street, by a depth Westwardly between parallel lines of 85 feet to the West line of said Lot 3; Bounded North by a line passing through a partition wall between buildings Nos. 1441 and 1443 Grattan Street and South by the North line of Carroll Street.

Track #4: Lots 4 and 5 in Block 4 of the Subdivision of Block 3 of the City Commons and in Block No. 1254 of the City of St. Louis, together fronting 50 feet on the North line of Carroll Street, by a depth Northwardly of 120 feet to an alley.

Track # 5: Lots 22 and 23 in Block 4 of Fourth Subdivision of Block 3 of the City Commons and in Block No. 1254 of the City of St. Louis, together fronting 55 feet 11 1/4 inches on the West line of Grattan Street, by a depth Westwardly of 125 feet on the South line of Lot 23 and of 126 feet 8 1/2 inches in North line of Lot 22 to an alley, having a width in the rear of 76 feet 6 1/2 inches.

Tract #6: Lots 24, 25 and 26 in block 4 of Fourth Subdivision of Block 3 of the City Commons and in Block No. 1254 of the City of St. Louis, together fronting 75 feet on the West line of Grattan Street, by a depth Westwardly of 125 feet to an alley.

Tract #7: Lots 27, 28, 29 and 30 in Block 4 of Fourth Subdivision of Block 3 of the City Commons and in Block No. 1254 of the City of St. Louis, together fronting 100 feet on the West line of Grattan Street, by a depth Westwardly of 125 feet to an alley.

Tract #8: A portion of the twenty foot (20') wide East and West alley in City Block 1254, being more particularly described as follows:

The twenty foot (20') wide East and West alley in City Block 1254 from the West line of Grattan Street, sixty feet (60') wide Westwardly to the east line of the existing twenty

foot (20') wide North and South alley a distance of one hundred twenty-five feet, more or less (125 feet more or less).

2. Consideration for the conveyance described in this section shall be one dollar and other valuable consideration.

3. The commissioner of administration shall set the final terms and conditions for the sale as the commissioner deems reasonable.

4. The attorney general shall approve the form of the instrument of conveyance.

SECTION 3. CONVEYANCE OF CERTAIN STATE PROPERTY IN ST. LOUIS CITY. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, and convey all interest in property owned by the state. The property to be conveyed is more particularly described as follows:

Lots 38, 39 and 40 of Lindenwood, and in Block 4989 of the City of St. Louis, together fronting 150 feet on the North line of Bancroft Avenue, by a depth Northwardly of 150 feet to the dividing line of said Block; bounded East by Wabash Avenue. Together with all improvements thereon, being known as and numbered 7109 Bancroft Avenue. Subject to easements, conditions, restrictions, reservations, rights-of-way, building lines, zoning laws or ordinances affecting said property. Subject to restrictions according to deed recorded in Book 1094 page 436.

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. CONVEYANCE OF CERTAIN STATE PROPERTY IN ST. LOUIS COUNTY. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, and convey all interest in property owned by the state. The property to be conveyed is more particularly described as follows:

Lot 212 of Old Farm Estates addition plat ten, as per plat thereof recorded in plat book 124 page 48 of the St. Louis County Records. Subject to restrictions of record, conditions, reservations and easements, zoning ordinances, if any, and general taxes and assessments, not yet due and payable. Together with all improvements thereon, being known as and numbered 13100 Greenbough Drive.

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. CONVEYANCE OF CERTAIN STATE PROPERTY IN ST. LOUIS CITY. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, and convey all interest in property owned by the state. The property to be conveyed is more particularly described as follows:

Lot 20 in Block A of Compton Heights, and in Block 1365 of the City of St. Louis, fronting 100 feet 0-3/8 inch on the North line of Longfellow Boulevard, by a depth Northwardly on the East line of 160 feet, and of 159 feet 5 inches on the West line of the North line of said Lot, on which there is a frontage of 100 feet, bounded East by Compton Avenue. Together with all improvements thereon known and numbered as 3205 Longfellow. Subject to existing building lines, easements, conditions, restrictions, zoning regulations, etc., now of record, if any.

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 6. CONVEYANCE OF CERTAIN STATE PROPERTY IN ST. LOUIS COUNTY. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, and convey all interest in property owned by the state. The property to be conveyed is more particularly described as follows:

Parcel B of a tract of land being Lot 4 of the "Resubdivision of Hazelview Court" and part of Lot 18 of "AIRSHIRE ACRES, as per plat thereof recorded in Plat Book 252 page 1 of the St. Louis County Records. Subject to deed restrictions, easements, rights-of-way of record, and zoning regulations, if any.

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 7. CONVEYANCE OF CERTAIN STATE PROPERTY IN ST. LOUIS COUNTY. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, and convey all interest in property owned by the state. The property to be conveyed is more particularly described as follows:

Parcel 1:

A tract of land in the Southwest 1/4 of Northeast 1/4 of Section 10, Township 44 North, Range 4 East in St. Louis County, Missouri, and described as: Beginning at intersection of the North line of Southwest 1/4 of Northeast 1/4 of Section 10 and the East line of New Ballwin Road, 80 feet wide, thence along the East line of New Ballwin Road, South 0 degrees 30 minutes West 234.58 feet to a point; thence South 90 degrees 00 minutes East 340 feet to a point; thence North 0 degrees 00 minutes East 183 feet to a point; thence South 90 degrees 00 minutes East 213 feet to a point; thence South 0 degrees 00 minutes West 348 feet, more or less to a point in the centerline of a creek, thence following the centerline of said creek in a Southeast direction to its intersection with the East line of said Southwest 1/4 of Northeast 1/4, thence North 0 degrees 32 minutes 20 seconds East 717 feet to the Northeast corner of said Southwest 1/4 of Northeast 1/4, thence West along the North line of said Southwest 1/4 of Northeast 1/4, North 89 degrees 23 minutes West 1307.10 feet to a point of beginning, according to Survey executed by Clayton Surveying & Engineering Company on March 8, 1971.

Parcel 2:

A tract of land in the Southwest 1/4 of the Northeast 1/4 of Section 10, Township 44 North, Range 4 East, St. Louis County, Missouri and described as follows: Commencing at a point in the centerline of New Ballwin, 80 feet wide Road, said point being distant South 0 degrees 30 minutes West 235.00 feet from the Northwest corner of the Southwest 1/4 of the Northeast 1/4 of said Section 10; thence leaving said point and running South 90 degrees 00 minutes East, 354.00 feet to the point of beginning of the herein described tract of land, said point also being the centerline of a creek as located by Rowland Surveying Company, Inc., December 11, 1969; thence continuing South 90 degrees 00 minutes East 26.00 feet to a point; thence North 0 degrees 00 minutes East, 183.00 feet to a point; thence South 90 degrees 00 minutes East 213.00 feet to a point; thence South 0 degrees 00 minutes West, 348 feet, more or less to a point in the centerline of the aforementioned creek; thence along the centerline meanders of said creek Westwardly; Northwardly and Northwestwardly 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 A. EMERGENCY CLAUSE. — Because immediate action is necessary to provide needed space in St. Louis, 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 this act shall be in full force and effect upon its passage and approval.

Approved June 22, 2005

SB 453 [SB 453]

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

Modifies nuisance law.

AN ACT to repeal section 82.291, RSMo, and to enact in lieu thereof one new section relating to removal of nuisances, with an expiration date.

SECTION

- A. Enacting clause.
82.291. Derelict vehicle, removal as a nuisance (Hazelwood) — definition, procedure — termination date.

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

SECTION A. ENACTING CLAUSE. — Section 82.291, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 82.291, to read as follows:

82.291. DERELICT VEHICLE, REMOVAL AS A NUISANCE (HAZELWOOD) — DEFINITION, PROCEDURE — TERMINATION DATE. — 1. For purposes of this section, "derelict vehicle" means any motor vehicle or trailer that was originally designed or manufactured to transport persons or property on a public highway, road, or street and that is junked, scrapped, dismantled, disassembled, or in a condition otherwise harmful to the public health, welfare, peace, and safety.

2. The owner of any property located in any home rule city with more than twenty-six thousand two hundred but less than twenty-six thousand three hundred inhabitants, except any property subclassed as agricultural and horticultural property pursuant to section 4(b), article X, of the Constitution of Missouri or any property containing any licensed vehicle service or repair facility, who permits derelict vehicles or substantial parts of derelict vehicles to remain on the property other than inside a fully enclosed permanent structure designed and constructed for vehicle storage shall be liable for the removal of the vehicles or the parts if they are declared to be a public nuisance.

3. To declare derelict vehicles or parts of derelict vehicles to be a public nuisance, the governing body of the city shall give a hearing upon ten days' notice, either personally or by United States mail to the owner or agent, or by posting a notice of the hearing on the property. At the hearing, the governing body may declare the vehicles or the parts to be public nuisances, and may order the nuisance to be removed within five business days. If the nuisance is not removed within the five days, the governing body or the designated city official shall have the nuisance removed and shall certify the costs of the removal to the city clerk or the equivalent official, who shall cause a special tax bill for the removal to be prepared against the property and collected by the collector with other taxes assessed on the property, and to be assessed any interest and penalties for delinquency as other delinquent tax bills are assessed as permitted by law.

4. The provisions of this section shall terminate on August 28, [2005] **2010**.

Approved June 22, 2005

SB 462 [HCS SS SCS SB 462]

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

Modifies acquisition of sewer or water corporations by public utilities

AN ACT to repeal sections 8.255, 8.260, 8.270, 393.145, and 432.070, RSMo, and to enact in lieu thereof six new sections relating to receivership of certain sewer and water corporations, with an emergency clause.

SECTION

- A. Enacting clause.
- 8.255. Standing contracts, advertisement and bids — director, duties — agency reports.
- 8.260. Appropriations of \$100,000 or more for buildings, how paid out.
- 8.270. Appropriations for less than \$100,000, how paid out.
- 393.145. Certain utility may be placed under control of receiver — commission determination, procedure — appointment of receiver, bond.
- 393.146. Acquisition of small water or sewer corporation by capable public utility, when — definitions — alternatives to be discussed, factors to consider — price for acquisition, how determined — plan for improvements required — rate case procedure to be used — rulemaking authority.
- 432.070. Contracts, execution of by counties, towns — form of contract — exception, city of St. Charles.
- B. Emergency clause.

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

SECTION A. ENACTING CLAUSE. — Sections 8.255, 8.260, 8.270, 393.145, and 432.070, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 8.255, 8.260, 8.270, 393.145, 393.146, and 432.070, to read as follows:

8.255. STANDING CONTRACTS, ADVERTISEMENT AND BIDS — DIRECTOR, DUTIES — AGENCY REPORTS. — 1. The director may authorize any agency of the state to establish standing contracts for the purpose of accomplishing construction, renovation, maintenance and repair projects not exceeding [twenty-five] **one hundred** thousand dollars. Such contracts shall be advertised and bid in the same manner as contracts for work which exceeds [twenty-five] **one hundred** thousand dollars, except that each contract shall allow for multiple projects, the cost of each of which does not exceed [twenty-five] **one hundred** thousand dollars. Each contract shall be of a stated duration and shall have a stated maximum total expenditure.

2. The director, with full documentation, shall have the authority to authorize any agency to contract for any design or construction, renovation, maintenance, or repair work which in his judgment can best be procured directly by such agency. The director shall establish, by rule, the procedures which the agencies must follow to procure contracts for design, construction, renovation, maintenance or repair work. Each agency which procures such contracts pursuant to a delegation shall file an annual report as required by rule. The director shall provide general supervision over the process. The director may establish procedures by which such contracts are to be procured, either generally or in accordance with each authorization.

3. The director, in his sole discretion, may with full documentation approve a recommendation from a project designer that a material, product or system within a specification for construction, renovation or repair work be designated by brand, trade name or individual

mark, when it is determined to be in the best interest of the state. The specification may include a preestablished price for purchase of the material, product or system where required by the director.

8.260. APPROPRIATIONS OF \$100,000 OR MORE FOR BUILDINGS, HOW PAID OUT. — All appropriations made by the general assembly amounting to [twenty-five] **one hundred** thousand dollars or more for the construction, renovation, or repair of facilities shall be expended in the following manner:

(1) The agency requesting payment shall provide the commissioner of administration with satisfactory evidence that a bona fide contract, procured in accordance with all applicable procedures, exists for the work for which payment is requested;

(2) All requests for payment shall be approved by the architect or engineer registered to practice in the state of Missouri who designed the project or who has been assigned to oversee it;

(3) In order to guarantee completion of the contract, the agency or officer shall retain a portion of the contract value in accordance with the provisions of section 34.057, RSMo;

(4) A contractor may be paid for materials delivered to the site or to a storage facility approved by the director of the division of design and construction as having adequate safeguards against loss, theft or conversion.

In no case shall the amount contracted for exceed the amount appropriated by the general assembly for the purpose.

8.270. APPROPRIATIONS FOR LESS THAN \$100,000, HOW PAID OUT. — If the amount appropriated is less than [twenty-five] **one hundred** thousand dollars for constructing, renovating or for repairing, or for both building and repairing, no warrant shall be drawn on the state treasury payable out of the appropriation for any part thereof, until satisfactory evidence is furnished to the commissioner of administration that the work has been completed according to the contract, and not in excess of the amount appropriated therefor.

393.145. CERTAIN UTILITY MAY BE PLACED UNDER CONTROL OF RECEIVER — COMMISSION DETERMINATION, PROCEDURE — APPOINTMENT OF RECEIVER, BOND. — 1. If, **after hearing**, the commission [shall determine] **determines** that any sewer or water corporation [having one thousand or fewer customers] **that regularly provides service to eight thousand or fewer customer connections** is unable or unwilling to provide safe and adequate service [or], has been actually or effectively abandoned by its owners, or has defaulted on a bond, note or loan issued or guaranteed by any department, office, commission, board, authority or other unit of state government, the commission may petition the circuit court for an order attaching the assets of the utility and placing the utility under the control and responsibility of a receiver. **The venue of such cases shall, at the option of the commission, be in the circuit court of Cole County or in the circuit court of the county in which the utility company has its principal place of business.**

2. **If the commission orders its general counsel to petition the circuit court for the appointment of a receiver under subsection 1 of this section, it may in the same order appoint an interim receiver for the sewer or water corporation. The interim receiver shall have the authority generally granted to a receiver under subsection 6 of this section, except that the commission cannot authorize the interim receiver to transfer by sale or liquidate the assets of the utility. The interim receiver shall be compensated in an amount to be determined by the commission. The interim receiver shall serve until a judgment on a petition for writ of review of the commission's order, if any, is final and unappealable, and until the circuit court thereafter determines under subsection 5 of this section whether to grant the commission's petition for appointment of receiver.**

3. When the commission files its petition for appointment of receiver in the circuit court, it shall attach to its petition an official copy of its determination under subsection 1 of this section. The commission shall not file such action until its determination under subsection 1 of this section is final and unappealable.

4. The summons and petition for an order attaching the assets of the utility and appointing a receiver shall be served as in other civil cases at least five days before the return date of the summons. In addition to attempted personal service, upon request of the commission, the judge before whom the proceeding is commenced shall make an order directing that the officer or other person empowered to execute the summons shall also serve the same by securely affixing a copy of the summons and petition in a conspicuous place on the utility system in question at least ten days before the return date of the summons, and by also mailing a copy of the summons and petition to the defendant at its last known address by ordinary mail and by certified mail, return receipt requested, deliver to addressee only, at least ten days before the return date. If the officer or other person empowered to execute the summons makes return that personal service cannot be obtained on the defendant, and if proof be made by affidavit of the posting and of the mailing of a copy of the summons and petition, the judge shall, at the request of the commission, proceed to hear the case as if there had been personal service, and judgment shall be rendered and proceedings had as in other cases. If the commission does not request service of the original summons by posting and mailing, and if the officer or other person empowered to execute the summons makes return that personal service cannot be obtained on the defendant, the commission may request the issuance of an alias summons and service of the same by posting and mailing in the time and manner provided in this subsection. Upon proof by affidavit of the posting and of the mailing of a copy of the alias summons and the petition, the judge shall proceed to hear the case as if there had been personal service, and judgment shall be rendered and proceedings had as in other cases.

[3.] **5.** The court [shall], after hearing [determine whether to], **may grant the commission's petition for appointment of a receiver.** Where the defendant is in default, the court shall mail to the defendant at its last known address by certified mail with a request for return receipt and with directions to deliver to the addressee only, a notice informing the defendant of the judgment and the date it was entered. A receiver appointed pursuant to this section shall be a responsible person, partnership, or corporation knowledgeable in the operation of utilities.

[4.] **6.** The receiver shall give bond, and have the same powers and be subject to all the provisions, as far as they may be applicable, enjoined upon a receiver appointed by virtue of the law providing for suits by attachment. The receiver shall operate the utility so as to preserve the assets of the utility and to serve the best interests of its customers. The receiver shall be compensated from the assets of the utility in an amount to be determined by the court **with the assistance of the commission staff. Any receiver or interim receiver appointed under this section shall be immune from personal liability for any civil damages arising from acts performed in his or her official capacity for actions for which the receiver or interim receiver would not otherwise be liable except for his or her affiliation with the utility. This immunity shall not, however, apply to intentional conduct, wanton or willful conduct, or gross negligence. Nothing in this subsection shall be construed to create or abolish an immunity in favor of the utility itself.**

[5.] **7.** Control of and responsibility for the utility shall remain in the receiver until the utility can, in the best interests of its customers, be returned to the owners. [If] **However, if the commission or another interested party petitions and the court determines, after hearing, that control of and responsibility for the utility should not, in the best interests of its customers, be returned to the owners, [the receiver shall proceed to] the court shall direct the receiver to transfer by sale or liquidate the assets of the utility in the manner provided by law.**

[6.] **8.** The appointment of a receiver **or an interim receiver** shall be in addition to any other remedies provided by law.

9. Notwithstanding the requirement of section 386.600, RSMo, to the contrary, penalties for violations of the public service commission law or related commission regulations that are collected from a sewer or water corporation that has been placed in receivership under the provisions of this section or for which the commission has appointed an interim receiver under the provisions of this section may, upon the order of the court that imposed the penalties, be used to support the operation of the subject small sewer or water corporation while it is under the control of the receiver.

393.146. ACQUISITION OF SMALL WATER OR SEWER CORPORATION BY CAPABLE PUBLIC UTILITY, WHEN — DEFINITIONS — ALTERNATIVES TO BE DISCUSSED, FACTORS TO CONSIDER — PRICE FOR ACQUISITION, HOW DETERMINED — PLAN FOR IMPROVEMENTS REQUIRED — RATE CASE PROCEDURE TO BE USED — RULEMAKING AUTHORITY. — 1. As used in this section the following terms shall mean:

(1) "Capable public utility", a public utility that regularly provides the same type of service as a small water corporation or a small sewer corporation to more than eight thousand customer connections, that is not an affiliate of a small water corporation or a small sewer corporation, and that provides safe and adequate service; and shall not include a sewer district established pursuant to article IV, section 30(a) of the Missouri Constitution, sewer districts established under the provisions of chapters 204, 249 or 250, RSMo, public water supply districts established under the provisions of chapter 247, RSMo, or municipalities that own and operate water or sewer systems;

(2) "Department", the department of natural resources;

(3) "Small sewer corporation", a public utility that regularly provides sewer service to eight thousand or fewer customer connections;

(4) "Small water corporation", a public utility that regularly provides water service to eight thousand or fewer customer connections.

2. The commission may order a capable public utility to acquire a small water or sewer corporation if, after providing notice and an opportunity to be heard, the commission determines:

(1) That the small water or sewer corporation is in violation of statutory or regulatory standards that affect the safety and adequacy of the service provided by the small water or sewer corporation, including but not limited to the public service commission law, the federal clean water law, the federal Safe Drinking Water Act, as amended, and the regulations adopted under these laws; or

(2) That the small water or sewer corporation has failed to comply, within a reasonable period of time, with any order of the department or the commission concerning the safety and adequacy of service, including but not limited to the availability of water, the potability of water, the palatability of water, the provision of water at adequate volume and pressure, the prevention of discharge of untreated or inadequately treated sewage to the waters of the state, and the prevention of environmental damage; or

(3) That it is not reasonable to expect that the small water or sewer corporation will furnish and maintain safe and adequate service and facilities in the future; and

(4) That the commission has considered alternatives to acquisition in accordance with subsection 3 of this section and has determined that they are impractical or not economically feasible; and

(5) That the acquiring capable public utility is financially, managerially, and technically capable of acquiring and operating the small water or sewer corporation in compliance with applicable statutory and regulatory standards.

3. Except when there is an imminent threat of serious harm to life or property, before the commission may order the acquisition of a small water or sewer corporation in accordance with subsection 2 of this section, the commission shall discuss alternatives to

acquisition with the small water or sewer corporation and shall give such small water or sewer corporation thirty days to investigate alternatives to acquisition, including:

(1) The reorganization of the small water or sewer corporation under new management;

(2) The entering of a contract with another public utility or a management or service company to operate the small water or sewer corporation;

(3) The merger of the small water or sewer corporation with one or more other public utilities; and

(4) The acquisition of the small water or sewer corporation by a municipality, a municipal authority, a public water supply district, a public sewer district, or a cooperative.

4. When the commission determines that there is an imminent threat of serious harm to life or property, the commission may appoint an interim receiver prior to the opportunity for hearing, provided that the commission shall provide opportunity for hearing as soon as practicable after the issuance of such order.

5. In making a determination under subsection 2 of this section, the commission shall consider:

(1) The financial, managerial, and technical ability of the small water or sewer corporation;

(2) The financial, managerial, and technical ability of all proximate public utilities that provide the same type of service and constitute an alternative to acquisition;

(3) The expenditures that are needed to improve the facilities of the small water or sewer corporation to assure compliance with applicable statutory and regulatory standards concerning the adequacy, efficiency, safety, and reasonableness of utility service, and to sufficiently provide safe and adequate service to the customers of the small water or sewer corporation;

(4) The potential for expansion of the certificated service area of the small water or sewer corporation; and

(5) The opinion and advice, if any, of the department as to what steps may be necessary to assure compliance with applicable statutory or regulatory standards concerning the safety and adequacy of utility service.

6. Subsequent to the determination required under subsection 2 of this section, the commission shall issue an order for the acquisition of a small water or sewer corporation by a capable public utility. Such order shall include granting a certificate of public convenience and necessity to the acquiring capable public utility for the small water or sewer corporation's established service area.

7. The price for the acquisition of a small water or sewer corporation shall be determined by agreement between the small water or sewer corporation and the acquiring capable public utility, subject to a determination by the commission that the price is reasonable. If the small water or sewer corporation and the acquiring capable public utility are unable to agree on the acquisition price, or the commission disapproves the acquisition price to which the utilities agreed, the commission shall issue an order directing the acquiring capable public utility to acquire the small water or sewer corporation at an acquisition price that is equal to the ratemaking rate base as determined by the commission after notice and hearing, or providing that the acquiring capable public utility will not be allowed to earn a rate of return on the portion of the purchase price that is in excess of the ratemaking rate base determined by the commission after notice and hearing. The burden of establishing the ratemaking rate base shall be upon the small water or sewer corporation.

8. Any capable public utility that is ordered by the commission to acquire a small water or sewer corporation shall, within thirty days after acquisition, submit a plan, including a timetable, for bringing the small water or sewer corporation into compliance

with applicable statutory and regulatory standards to the commission for approval. The capable public utility shall also provide a copy of the plan to the department and such other state or local agency as the commission may direct. The commission shall give the department adequate opportunity to comment on the plan and shall consider any comments submitted by the department and shall expeditiously decide whether to approve the plan.

9. Upon the acquisition of a small water or sewer corporation by a capable public utility, and approval by the commission of a plan for improvements submitted under subsection 8 of this section, the acquiring capable public utility shall not be liable for any damages if the cause of those damages is proximately related to violations of applicable statutes or regulations by the small water or sewer corporation and the acquiring capable public utility remains in compliance with the plan for improvements submitted under subsection 8 of this section. This subsection shall not apply:

- (1) Beyond the end of the timetable in the plan for improvements;
- (2) Whenever the acquiring capable public utility is not in compliance with the plan for improvements; or
- (3) If, within sixty days after receipt of notice of the proposed plan for improvements, the department submitted written objections to the commission and those objections have not subsequently been withdrawn.

10. Upon approval by the commission of a plan for improvements submitted under subsection 8 of this section, and the acquisition of a small water or sewer corporation by a capable public utility, the acquiring capable utility shall not be subject to any enforcement actions by state or local agencies that had notice of the plan, if the basis of such enforcement action is proximately related to violations of applicable statutes or regulations by the small water or sewer corporation. This subsection shall not apply:

- (1) Beyond the end of the timetable in the plan for improvements;
- (2) Whenever the acquiring capable public utility is not in compliance with the plan for improvements;
- (3) If, within sixty days of having received notice of the proposed plan for improvements, the department submitted written objections to the commission and those objections have not subsequently been withdrawn; or
- (4) To emergency interim actions of the commission or the department, including but not limited to the ordering of boil-water advisories or other water supply warnings, of emergency treatment, or of temporary alternate supplies of water or sewer services.

11. If the commission orders the acquisition of a small water or sewer corporation, the commission shall authorize the acquiring capable public utility to utilize the commission's small company rate case procedure for establishing the rates to be applicable to the system being acquired. Such rates may be designed to recover the costs of operating the acquired system and to recover one hundred percent of the revenues necessary to provide a net after-tax return on the ratemaking rate base value of the small water or sewer corporation's facilities acquired by the capable public utility, and the ratemaking rate base value of any improvements made to the facilities by the acquiring capable public utility subsequent to the acquisition, at a rate of return equivalent to one hundred basis points above the rate of return authorized for the acquiring capable public utility in its last general rate proceeding. The acquiring capable public utility may utilize the commission's small company rate case procedure for the purposes stated in this section until such time that a determination is made on the acquiring utility's next company-wide general rate increase, but not in excess of three years from the date of the acquisition of the subject small water or sewer corporation.

12. Proceedings under this section may be initiated by complaint filed by the staff of the commission, the office of the public counsel, the mayor, or the president or chair of the board of aldermen, or a majority of the council, commission, or other legislative body of

any city, town, village, or county within which the alleged unsafe or inadequate service is provided, or by not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of the utility service provided by a small water or sewer corporation. The complainant shall have the burden of proving that the acquisition of the small water or sewer corporation would be in the public interest and in compliance with the provisions of this section.

13. The notice required by subsection 2 of this section, or any other provision of this section, shall be served upon the small water or sewer corporation affected, the office of the public counsel, the department, all proximate public utilities providing the same type of service as the small water or sewer corporation, all proximate municipalities and municipal authorities providing the same type of service as the small water or sewer corporation, and the municipalities served by the small water or sewer corporation. The commission shall order the affected small water or sewer corporation to provide notice to its customers of the initiation of proceedings under this section in the same manner in which the utility is required to notify its customers of proposed general rate increases.

14. A public utility that would otherwise be a capable public utility except for the fact that it has fewer than eight thousand customer connections may petition the commission to be designated a capable public utility for the purposes of this section regardless of the number of its customer connections and regardless of whether it is proximate to the small water corporation or small water corporation to be acquired. The commission may grant such a petition upon finding that designating the petitioning public utility as a capable public utility is not detrimental to the public interest.

15. Notwithstanding the requirement of section 386.600, RSMo, to the contrary, penalties for violations of the public service commission law or related commission regulations that have been imposed on a small sewer or water corporation that has been placed in receivership under the provisions of section 393.145 may, upon the order of the court that imposed the penalties, be used to reduce the purchase price paid by a capable public utility for the acquisition of the assets of the subject small sewer or water corporation. In such a case, the commission shall make a corresponding reduction to the ratemaking rate base value of the subject assets for purposes of future ratemaking activities.

16. The commission shall, no later than the effective date of this section, initiate a rulemaking, pursuant to the provisions of its internal rulemaking procedures, to promulgate rules to carry out the purposes 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 August 28, 2005, shall be invalid and void.

432.070. CONTRACTS, EXECUTION OF BY COUNTIES, TOWNS — FORM OF CONTRACT — EXCEPTION, CITY OF ST. CHARLES. — No county, city, town, village, school township, school district or other municipal corporation shall make any contract, unless the same shall be within the scope of its powers or be expressly authorized by law, nor unless such contract be made upon a consideration wholly to be performed or executed subsequent to the making of the contract; and such contract, including the consideration, shall be in writing and dated when made, and shall be subscribed by the parties thereto, or their agents authorized by law and duly appointed and authorized in writing. **Notwithstanding the foregoing, any home rule city with more than sixty thousand three hundred but fewer than sixty thousand four hundred**

inhabitants which after January 1, 2003, has committed or agreed in writing to provide sewer service or has in fact directly or indirectly provided such service to any homes within a subdivision shall give its customers two years prior written notice of its intent to discontinue service and during such two-year period shall continue to connect and provide sanitary sewer service to all homes constructed in such subdivision. In no event shall any sewer service connected prior to the expiration of such two-year period be discontinued.

SECTION B. EMERGENCY CLAUSE. — Because immediate action is necessary to bring certain sewer and water corporations into compliance with applicable statutory and regulatory standards, 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 29, 2005

SB 480 [SB 480]

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

An Act relating to effective involvement by parents and families in support of their children's education

AN ACT to amend chapter 167, RSMo, by adding thereto one new section relating to effective involvement by parents and families in support of their children's education.

SECTION

A. Enacting clause.

167.700. Involvement of parents and families, state board and school districts to adopt policies, content — review of policies.

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

SECTION A. ENACTING CLAUSE. — Chapter 167, RSMo, is amended by adding thereto one new section, to be known as section 167.700, to read as follows:

167.700. INVOLVEMENT OF PARENTS AND FAMILIES, STATE BOARD AND SCHOOL DISTRICTS TO ADOPT POLICIES, CONTENT — REVIEW OF POLICIES. — 1. The state board shall, in consultation with the boards of education of school districts, educational personnel, local associations, and organizations of parents whose children are enrolled in public schools throughout this state and individual parents and legal guardians whose children are enrolled in public schools throughout this state, adopt a policy by December 1, 2005, which encourages effective involvement by parents and families in support of their children and the education of their children. The policy adopted by the state board must be considered when the board:

(1) Consults with the boards of education of school districts in the adoption of policies pursuant to subsection 3 of this section; and

(2) Interacts with school districts, public schools, educational personnel, parents and legal guardians of pupils, and members of the general public in carrying out its duties pursuant to this title.

2. The policy adopted by the state board pursuant to subsection 1 of this section must include the following elements and goals:

- (1) Promotion of regular, two-way, meaningful communication between home and school;
- (2) Promotion and support of responsible parenting;
- (3) Recognition of the fact that parents and families play an integral role in assisting their children to learn;
- (4) Promotion of a safe and open atmosphere for parents and families to visit the school that their children attend and active solicitation of parental and familial support and assistance for school programs;
- (5) Inclusion of parents as full partners in decisions affecting their children and families; and
- (6) Availability of community resources to strengthen and promote school programs, family practices, and the achievement of pupils.

3. The board of education of each school district shall, in consultation with the state board, educational personnel, local associations, and organizations of parents whose children are enrolled in public schools of the school district and individual parents and legal guardians whose children are enrolled in public schools of the school district, adopt policies no later than March 1, 2006, which encourage effective involvement by parents and families in support of their children and the education of their children. The policies adopted pursuant to this subsection must:

- (1) Be consistent, to the extent applicable, with the policy adopted by the state board pursuant to subsection 1 of this section; and
- (2) Include the elements and goals specified in subsection 2 of this section.

4. The state board and the board of trustees of each school district shall, at least once each year, review and amend their respective policies as necessary.

Approved July 12, 2005

SB 488 [SB 488]

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

Exempts salvage vehicles with cosmetic damage from highway patrol examination inspections for purposes of titling.

AN ACT to repeal sections 301.020 and 301.190, RSMo, and to enact in lieu thereof two new sections relating to motor vehicle registration, with penalty provisions.

SECTION

- A. Enacting clause.
- 301.020. Application for registration of motor vehicles, contents — certain vehicles, special provisions — penalty for failure to comply — optional blindness assistance donation — donation to organ donor program permitted.
- 301.190. Certificate of ownership — application, contents — special requirements, certain vehicles — fees — failure to obtain within time limit, delinquency penalty — duration of certificate — unlawful to operate without certificate — certain vehicles brought into state in a wrecked or damaged condition or after being towed, inspection — certain vehicles previously registered in other states, designation — reconstructed motor vehicles, procedure.

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

SECTION A. ENACTING CLAUSE. — Sections 301.020 and 301.190, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 301.020 and 301.190, to read as follows:

301.020. APPLICATION FOR REGISTRATION OF MOTOR VEHICLES, CONTENTS — CERTAIN VEHICLES, SPECIAL PROVISIONS — PENALTY FOR FAILURE TO COMPLY — OPTIONAL BLINDNESS ASSISTANCE DONATION — DONATION TO ORGAN DONOR PROGRAM PERMITTED. — 1. Every owner of a motor vehicle or trailer, which shall be operated or driven upon the highways of this state, except as herein otherwise expressly provided, shall annually file, by mail or otherwise, in the office of the director of revenue, an application for registration on a blank to be furnished by the director of revenue for that purpose containing:

(1) A brief description of the motor vehicle or trailer to be registered, including the name of the manufacturer, the vehicle identification number, the amount of motive power of the motor vehicle, stated in figures of horsepower and whether the motor vehicle is to be registered as a motor vehicle primarily for business use as defined in section 301.010;

(2) The name, the applicant's identification number and address of the owner of such motor vehicle or trailer;

(3) The gross weight of the vehicle and the desired load in pounds if the vehicle is a commercial motor vehicle or trailer.

2. If the vehicle is a motor vehicle primarily for business use as defined in section 301.010 and if such vehicle is five years of age or less, the director of revenue shall retain the odometer information provided in the vehicle inspection report, and provide for prompt access to such information, together with the vehicle identification number for the motor vehicle to which such information pertains, for a period of five years after the receipt of such information. This section shall not apply unless:

(1) The application for the vehicle's certificate of ownership was submitted after July 1, 1989; and

(2) The certificate was issued pursuant to a manufacturer's statement of origin.

3. If the vehicle is any motor vehicle other than a motor vehicle primarily for business use, a recreational motor vehicle, motorcycle, motortricycle, bus or any commercial motor vehicle licensed for over twelve thousand pounds and if such motor vehicle is five years of age or less, the director of revenue shall retain the odometer information provided in the vehicle inspection report, and provide for prompt access to such information, together with the vehicle identification number for the motor vehicle to which such information pertains, for a period of five years after the receipt of such information. This subsection shall not apply unless:

(1) The application for the vehicle's certificate of ownership was submitted after July 1, 1990; and

(2) The certificate was issued pursuant to a manufacturer's statement of origin.

4. If the vehicle qualifies as a reconstructed motor vehicle, motor change vehicle, specially constructed motor vehicle, non-USA-std motor vehicle, as defined in section 301.010, or prior salvage as referenced in section 301.573, the owner or lienholder shall surrender the certificate of ownership. The owner shall make an application for a new certificate of ownership, pay the required title fee, and obtain the vehicle examination certificate required pursuant to **subsection 9 of section 301.190. If an insurance company which pays a claim on a salvage vehicle as defined in section 301.010 and the insured is retaining ownership of the vehicle, as prior salvage and the vehicle shall only be required to meet the examination requirements under subsection 10 of section 301.190.** Notarized bills of sale along with a copy of the front and back of the certificate of ownership for all major component parts installed on the vehicle and invoices for all essential parts which are not defined as major component parts shall accompany the application for a new certificate of ownership. If the vehicle is a specially constructed motor vehicle, as defined in section 301.010, two pictures of the vehicle shall be submitted with the application. If the vehicle is a kit vehicle, the applicant shall submit the

invoice and the manufacturer's statement of origin on the kit. If the vehicle requires the issuance of a special number by the director of revenue or a replacement vehicle identification number, the applicant shall submit the required application and application fee. All applications required under this subsection shall be submitted with any applicable taxes which may be due on the purchase of the vehicle or parts. The director of revenue shall appropriately designate "Reconstructed Motor Vehicle", "Motor Change Vehicle", "Non-USA-Std Motor Vehicle", or "Specially Constructed Motor Vehicle" on the current and all subsequent issues of the certificate of ownership of such vehicle.

5. Every insurance company which pays a claim for repair of a motor vehicle which as the result of such repairs becomes a reconstructed motor vehicle as defined in section 301.010 or which pays a claim on a salvage vehicle as defined in section 301.010 and the insured is retaining ownership of the vehicle, shall in writing notify the claimant, if he is the owner of the vehicle, and the lienholder if a lien is in effect, that he is required to surrender the certificate of ownership, and the documents and fees required pursuant to subsection 4 of this section to obtain a reconstructed motor vehicle certificate of ownership or documents and fees as otherwise required by law to obtain a salvage certificate of ownership, from the director of revenue. The insurance company shall within thirty days of the payment of such claims report to the director of revenue the name and address of such claimant, the year, make, model, vehicle identification number, and license plate number of the vehicle, and the date of loss and payment.

6. Anyone who fails to comply with the requirements of this section shall be guilty of a class B misdemeanor.

7. An applicant for registration may make a donation of one dollar to promote a blindness education, screening and treatment program. The director of revenue shall collect the donations and deposit all such donations in the state treasury to the credit of the blindness education, screening and treatment program fund established in section 192.935, RSMo. Moneys in the blindness education, screening and treatment program fund shall be used solely for the purposes established in section 192.935, RSMo, except that the department of revenue shall retain no more than one percent for its administrative costs. The donation prescribed in this subsection is voluntary and may be refused by the applicant for registration at the time of issuance or renewal. The director shall inquire of each applicant at the time the applicant presents the completed application to the director whether the applicant is interested in making the one-dollar donation prescribed in this subsection.

8. An applicant for registration may make a donation of one dollar to promote an organ donor program. The director of revenue shall collect the donations and deposit all such donations in the state treasury to the credit of the organ donor program fund as established in sections 194.297 to 194.304, RSMo. Moneys in the organ donor fund shall be used solely for the purposes established in sections 194.297 to 194.304, RSMo, except that the department of revenue shall retain no more than one percent for its administrative costs. The donation prescribed in this subsection is voluntary and may be refused by the applicant for registration at the time of issuance or renewal. The director shall inquire of each applicant at the time the applicant presents the completed application to the director whether the applicant is interested in making the one-dollar donation prescribed in this subsection.

301.190. CERTIFICATE OF OWNERSHIP — APPLICATION, CONTENTS — SPECIAL REQUIREMENTS, CERTAIN VEHICLES — FEES — FAILURE TO OBTAIN WITHIN TIME LIMIT, DELINQUENCY PENALTY — DURATION OF CERTIFICATE — UNLAWFUL TO OPERATE WITHOUT CERTIFICATE — CERTAIN VEHICLES BROUGHT INTO STATE IN A WRECKED OR DAMAGED CONDITION OR AFTER BEING TOWED, INSPECTION — CERTAIN VEHICLES PREVIOUSLY REGISTERED IN OTHER STATES, DESIGNATION — RECONSTRUCTED MOTOR VEHICLES, PROCEDURE. — 1. No certificate of registration of any motor vehicle or trailer, or number plate therefor, shall be issued by the director of revenue unless the applicant therefor shall make application for and be granted a certificate of ownership of such motor vehicle or

trailer, or shall present satisfactory evidence that such certificate has been previously issued to the applicant for such motor vehicle or trailer. Application shall be made within thirty days after the applicant acquires the motor vehicle or trailer upon a blank form furnished by the director of revenue and shall contain the applicant's identification number, a full description of the motor vehicle or trailer, the vehicle identification number, and the mileage registered on the odometer at the time of transfer of ownership, as required by section 407.536, RSMo, together with a statement of the applicant's source of title and of any liens or encumbrances on the motor vehicle or trailer, provided that for good cause shown the director of revenue may extend the period of time for making such application.

2. The director of revenue shall use reasonable diligence in ascertaining whether the facts stated in such application are true and shall, to the extent possible without substantially delaying processing of the application, review any odometer information pertaining to such motor vehicle that is accessible to the director of revenue. If satisfied that the applicant is the lawful owner of such motor vehicle or trailer, or otherwise entitled to have the same registered in his name, the director shall thereupon issue an appropriate certificate over his signature and sealed with the seal of his office, procured and used for such purpose. The certificate shall contain on its face a complete description, vehicle identification number, and other evidence of identification of the motor vehicle or trailer, as the director of revenue may deem necessary, together with the odometer information required to be put on the face of the certificate pursuant to section 407.536, RSMo, a statement of any liens or encumbrances which the application may show to be thereon, and, if ownership of the vehicle has been transferred, the name of the state issuing the transferor's title and whether the transferor's odometer mileage statement executed pursuant to section 407.536, RSMo, indicated that the true mileage is materially different from the number of miles shown on the odometer, or is unknown.

3. The director of revenue shall appropriately designate on the current and all subsequent issues of the certificate the words "Reconstructed Motor Vehicle", "Motor Change Vehicle", "Specially Constructed Motor Vehicle", or "Non-USA-Std Motor Vehicle", as defined in section 301.010. Effective July 1, 1990, on all original and all subsequent issues of the certificate for motor vehicles as referenced in subsections 2 and 3 of section 301.020, the director shall print on the face thereof the following designation: "Annual odometer updates may be available from the department of revenue.". On any duplicate certificate, the director of revenue shall reprint on the face thereof the most recent of either:

- (1) The mileage information included on the face of the immediately prior certificate and the date of purchase or issuance of the immediately prior certificate; or
- (2) Any other mileage information provided to the director of revenue, and the date the director obtained or recorded that information.

4. The certificate of ownership issued by the director of revenue shall be manufactured in a manner to prohibit as nearly as possible the ability to alter, counterfeit, duplicate, or forge such certificate without ready detection. In order to carry out the requirements of this subsection, the director of revenue may contract with a nonprofit scientific or educational institution specializing in the analysis of secure documents to determine the most effective methods of rendering Missouri certificates of ownership nonalterable or noncounterfeitable.

5. The fee for each original certificate so issued shall be eight dollars and fifty cents, in addition to the fee for registration of such motor vehicle or trailer. If application for the certificate is not made within thirty days after the vehicle is acquired by the applicant, a delinquency penalty fee of twenty-five dollars for the first thirty days of delinquency and twenty-five dollars for each thirty days of delinquency thereafter, not to exceed a total of one hundred dollars before November 1, 2003, and not to exceed a total of two hundred dollars on or after November 1, 2003, shall be imposed, but such penalty may be waived by the director for a good cause shown. If the director of revenue learns that any person has failed to obtain a certificate within thirty days after acquiring a motor vehicle or trailer or has sold a vehicle without obtaining a certificate, he shall cancel the registration of all vehicles registered in the name of the person, either as sole

owner or as a co-owner, and shall notify the person that the cancellation will remain in force until the person pays the delinquency penalty fee provided in this section, together with all fees, charges and payments which he should have paid in connection with the certificate of ownership and registration of the vehicle. The certificate shall be good for the life of the motor vehicle or trailer so long as the same is owned or held by the original holder of the certificate and shall not have to be renewed annually.

6. Any applicant for a certificate of ownership requesting the department of revenue to process an application for a certificate of ownership in an expeditious manner requiring special handling shall pay a fee of five dollars in addition to the regular certificate of ownership fee.

7. It is unlawful for any person to operate in this state a motor vehicle or trailer required to be registered under the provisions of the law unless a certificate of ownership has been issued as herein provided.

8. Before an original Missouri certificate of ownership is issued, an inspection of the vehicle and a verification of vehicle identification numbers shall be made by the Missouri state highway patrol on vehicles for which there is a current title issued by another state if a Missouri salvage certificate of title has been issued for the same vehicle but no prior inspection and verification has been made in this state, except that if such vehicle has been inspected in another state by a law enforcement officer in a manner comparable to the inspection process in this state and the vehicle identification numbers have been so verified, the applicant shall not be liable for the twenty-five dollar inspection fee if such applicant submits proof of inspection and vehicle identification number verification to the director of revenue at the time of the application. The applicant, who has such a title for a vehicle on which no prior inspection and verification have been made, shall pay a fee of twenty-five dollars for such verification and inspection, payable to the director of revenue at the time of the request for the application, which shall be deposited in the state treasury to the credit of the state highways and transportation department fund.

9. Each application for an original Missouri certificate of ownership for a vehicle which is classified as a reconstructed motor vehicle, specially constructed motor vehicle, kit vehicle, motor change vehicle, non-USA-std motor vehicle, or other vehicle as required by the director of revenue shall be accompanied by a vehicle examination certificate issued by the Missouri state highway patrol, or other law enforcement agency as authorized by the director of revenue. The vehicle examination shall include a verification of vehicle identification numbers and a determination of the classification of the vehicle. The owner of a vehicle which requires a vehicle examination certificate shall present the vehicle for examination and obtain a completed vehicle examination certificate prior to submitting an application for a certificate of ownership to the director of revenue. The fee for the vehicle examination application shall be twenty-five dollars and shall be collected by the director of revenue at the time of the request for the application and shall be deposited in the state treasury to the credit of the state highways and transportation department fund.

10. When an application is made for an original Missouri certificate of ownership for a motor vehicle previously registered or titled in a state other than Missouri **or as required by section 301.020**, it shall be accompanied by a current inspection form certified by a duly authorized official inspection station as described in chapter 307, RSMo. The completed form shall certify that the manufacturer's identification number for the vehicle has been inspected, that it is correctly displayed on the vehicle and shall certify the reading shown on the odometer at the time of inspection. The inspection station shall collect the same fee as authorized in section 307.365, RSMo, for making the inspection, and the fee shall be deposited in the same manner as provided in section 307.365, RSMo. If the vehicle is also to be registered in Missouri, the safety and emissions inspections required in chapter 307, RSMo, shall be completed and only the fees required by sections 307.365 and 307.366, RSMo, shall be charged to the owner. This section shall not apply to vehicles being transferred on a manufacturer's statement of origin.

11. Motor vehicles brought into this state in a wrecked or damaged condition or after being towed as an abandoned vehicle pursuant to another state's abandoned motor vehicle procedures

shall, in lieu of the inspection required by subsection 10 of this section, be inspected by the Missouri state highway patrol in accordance with subsection 9 of this section. If the inspection reveals the vehicle to be in a salvage or junk condition, the director shall so indicate on any Missouri certificate of ownership issued for such vehicle. Any salvage designation shall be carried forward on all subsequently issued certificates of title for the motor vehicle.

12. When an application is made for an original Missouri certificate of ownership for a motor vehicle previously registered or titled in a state other than Missouri, and the certificate of ownership has been appropriately designated by the issuing state as a reconstructed motor vehicle, motor change vehicle, or specially constructed motor vehicle, the director of revenue shall appropriately designate on the current Missouri and all subsequent issues of the certificate of ownership the name of the issuing state and such prior designation.

13. When an application is made for an original Missouri certificate of ownership for a motor vehicle previously registered or titled in a state other than Missouri, and the certificate of ownership has been appropriately designated by the issuing state as non-USA-std motor vehicle, the director of revenue shall appropriately designate on the current Missouri and all subsequent issues of the certificate of ownership the words "Non-USA-Std Motor Vehicle".

14. The director of revenue and the superintendent of the Missouri state highway patrol shall make and enforce rules for the administration of the inspections required by this section.

15. Each application for an original Missouri certificate of ownership for a vehicle which is classified as a reconstructed motor vehicle, manufactured forty or more years prior to the current model year, and which has a value of three thousand dollars or less shall be accompanied by:

(1) A proper affidavit submitted by the owner explaining how the motor vehicle or trailer was acquired and, if applicable, the reasons a valid certificate of ownership cannot be furnished;

(2) Photocopies of receipts, bills of sale establishing ownership, or titles, and the source of all major component parts used to rebuild the vehicle;

(3) A fee of one hundred fifty dollars in addition to the fees described in subsection 5 of this section. Such fee shall be deposited in the state treasury to the credit of the state highways and transportation department fund; and

(4) An inspection certificate, other than a motor vehicle examination certificate required under subsection 9 of this section, completed and issued by the Missouri state highway patrol, or other law enforcement agency as authorized by the director of revenue. The inspection performed by the highway patrol or other authorized local law enforcement agency shall include a check for stolen vehicles.

The department of revenue shall issue the owner a certificate of ownership designated with the words "Reconstructed Motor Vehicle" and deliver such certificate of ownership in accordance with the provisions of this chapter. Notwithstanding subsection 9 of this section, no owner of a reconstructed motor vehicle described in this subsection shall be required to obtain a vehicle examination certificate issued by the Missouri state highway patrol.

Approved July 12, 2005

SB 490 [HCS SB 490]

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

Allows Warrensburg to annex areas along a road up to 2.5 miles from existing boundaries of the city

AN ACT to repeal section 67.1350, RSMo, and to enact in lieu thereof one new section relating to annexation procedures for cities and towns.

SECTION

A. Enacting clause.

67.1350. Annexation by certain cities to promote economic development (Warrensburg).

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

SECTION A. ENACTING CLAUSE. — Section 67.1350, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 67.1350, to read as follows:

67.1350. ANNEXATION BY CERTAIN CITIES TO PROMOTE ECONOMIC DEVELOPMENT (WARRENSBURG). — Notwithstanding the provisions of any other law to the contrary, the governing body of any third class city with a population of at least fifteen thousand but not more than seventeen thousand inhabitants which is the county seat of a county of the fourth classification which has a state university located in such city may annex areas along a road or highway up to two **and one-half** miles from the existing boundaries of the city for the purpose of promoting economic development through the refurbishing of existing structures and the construction and maintenance of infrastructure and property for the enhancement of community development of an existing airport.

Approved June 22, 2005

SB 500 [CCS HCS SCS SB 500]

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 family cost participation in the Part C early intervention system

AN ACT to repeal section 162.700, RSMo, and to enact in lieu thereof ten new sections relating to family cost participation in the Missouri Part C early intervention system.

SECTION

A. Enacting clause.

160.900. Participation — lead agency designation — rulemaking authority.

160.905. State interagency coordinating council established, members, meetings, duties.

160.910. Lead agency to maintain Part C early intervention system — compilation of data — monitoring of expenditures — bidding process to be established — centralized system of enrollment.

160.915. Regional office proposals, contents.

160.920. Funding limitations — third-party payers — schedule of fees for family cost participation — collection of fees.

160.925. Fund created, use of moneys.

162.700. Special educational services, required, when — diagnostic reports, how obtained — special services, ages three and four — remedial reading program, how funded.

208.144. Medicaid reimbursement for children participating in the Part C early intervention system (First Steps).

376.1218. Insurance coverage for children enrolled in the Part C early intervention system (First Steps).

1. Sunset provision (First Steps).

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

SECTION A. ENACTING CLAUSE. — Section 162.700, RSMo, is repealed and ten new sections enacted in lieu thereof, to be known as sections 160.900, 160.905, 160.910, 160.915, 160.920, 160.925, 162.700, 208.144, 376.1218, and 1, to read as follows:

160.900. PARTICIPATION — LEAD AGENCY DESIGNATION — RULEMAKING AUTHORITY.

— 1. The state of Missouri shall participate in the federal Infant and Toddler Program, Part C of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1431, et seq., and provide early intervention services to infants and toddlers determined eligible under state regulations.

2. The state agency designated by the governor as the lead agency shall be responsible for the administration and implementation of Part C of IDEA through a regional Part C early intervention system and shall promulgate rules implementing the requirements of Part C of IDEA consistent with federal regulations, 34 C.F.R. 303, et seq.

3. 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 160.900 to 160.925 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. Sections 160.900 to 160.925 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 July 1, 2005, shall be invalid and void.

160.905. STATE INTERAGENCY COORDINATING COUNCIL ESTABLISHED, MEMBERS, MEETINGS, DUTIES. — 1. The lead agency shall establish a "State Interagency Coordinating Council" for the state Part C early intervention system. The composition of the council shall include the members required under Part C of the IDEA consistent with federal regulations, 34 C.F.R.303.601, appointed by the governor.

2. The state interagency coordinating council shall meet at least quarterly and shall comply with chapter 610, RSMo.

3. The state interagency coordinating council shall advise and assist the lead agency pursuant to IDEA requirements, 34 C.F.R. 303.650 to 303.654.

4. The state interagency coordinating council shall assist the lead agency in the preparation and submission of an annual report to the governor and to the secretary of the United States Department of Education on the status of infant and toddler early intervention programs in the state and report any recommendations for improvements to such programs.

5. The lead agency, in consultation with any other state agencies involved in the Part C early intervention system, shall submit rules and regulations, other than emergency rules and regulations, to the council for review prior to the lead agency's final approval. The council shall review all proposed rules and regulations and report its recommendations thereon to the lead agency within thirty days. The lead agency shall respond to the council's recommendations providing reasons for proposed rules and regulations that are not consistent with the council's recommendations.

160.910. LEAD AGENCY TO MAINTAIN PART C EARLY INTERVENTION SYSTEM — COMPILATION OF DATA — MONITORING OF EXPENDITURES — BIDDING PROCESS TO BE ESTABLISHED — CENTRALIZED SYSTEM OF ENROLLMENT. — 1. The lead agency shall maintain a state Part C early intervention system under Part C of the Individuals with Disabilities Education Act, 20 U.S.C. Section 1431, et seq., for eligible children and families of such children which shall be administered through the regional Part C early intervention system.

2. The lead agency shall compile data in the system on the number of eligible children in the state in need of early intervention services, the number of eligible children and their families served, the types of services provided, and other information as deemed necessary by the agency.

3. The state Part C early intervention system shall include a comprehensive child-find system and public awareness program to ensure that eligible children are identified, located, referred to the system, and evaluated for eligibility.

4. The lead agency shall monitor system expenditures for administrative services and regional offices to ensure maximum utilization of state funds for all children determined to be eligible for early intervention services. The lead agency or its designee shall provide regional offices with the necessary financial data to assist regional offices in monitoring their expenditures and the cost of direct services. Such data shall include the number of children eligible from the most recent child count from that region and monthly data reports on the costs spent by providers in their network.

5. The lead agency shall establish a bidding process for determining regional offices across the state. The bidding process shall establish criteria for allowing regions to implement models that will serve the unique needs of their community. Such process shall encourage organizations bidding for a center to demonstrate agreements:

(1) With other state and local government entities that provide services to infants and toddlers with developmental disabilities including regional centers as defined in section 633.005, RSMo, and boards established under sections 205.968 to 205.973, RSMo; and

(2) To collaborate with established, quality early intervention providers in the region to establish a network for early intervention services.

6. The lead agency shall establish a centralized system of provider enrollment to assure that all Part C early intervention system providers meet requirements of Part C regulations and the Missouri state plan.

160.915. REGIONAL OFFICE PROPOSALS, CONTENTS. — 1. Each regional office shall include in their proposal the following assurances and documentation of their plan to:

(1) Provide those functions that are specifically identified under federal and state regulations implementing Part C of IDEA, 20 U.S.C. Section 1431, as functions to be provided at public expense, with no cost to the parent;

(2) Contract with established community early intervention providers or hire providers as geographic necessity requires to ensure all services are available and accessible within the region;

(3) Implement a system of provider oversight to ensure:

(a) That all services are available and accessible within that region including the use of providers hired by the regional office where geographic necessity requires this practice; and

(b) Compliance by all providers in the regional office's provider network, including but not limited to upholding the requirements of Part C of IDEA;

(4) Include in each child's individual family service plan family oriented approaches to support the child's developmental goals;

(5) Incorporate as the focus of the individualized family service plan best available practices and coaching approaches that support the family's capacity to meet the developmental needs of their child;

(6) Develop or maintain resources or utilize multiple funding sources for providing early intervention services for children with disabilities in the region for which they are bidding; and

(7) Implement a system for reutilization of assistive technology devices and oversight of assistive technology authorizations.

2. The lead agency may determine other assurances and request additional documentation they deem to be necessary and reasonable to achieve the purpose of this section and to comply with applicable federal law and regulation.

160.920. FUNDING LIMITATIONS — THIRD-PARTY PAYERS — SCHEDULE OF FEES FOR FAMILY COST PARTICIPATION — COLLECTION OF FEES. — 1. No funds appropriated to the lead agency for the implementation and administration of sections 160.900 to 160.925 shall be used to satisfy a financial commitment for services that should have been paid from another public or private source. Federal funds available under Part C of the IDEA, 20 U.S.C. Section 1431, et seq., shall be used whenever necessary to prevent the delay of early intervention services to the eligible child or family. When funds are used to reimburse the service provider to prevent a delay of the provision of services, the funds shall be recovered from the public or private source that has ultimate responsibility for the payment.

2. Nothing in this section shall be construed to permit any other state agency providing medically related services to reduce medical assistance to eligible children.

3. Payments for the provision of direct early intervention services to children and families shall be paid in the manner prescribed by the lead agency.

4. The lead agency shall promulgate rules for the reimbursement of services from all third-party payers, both private and public.

5. The lead agency or its designee shall, in the first instance and where applicable, seek payment from all third-party payers prior to claiming payment from the state Part C early intervention system for services rendered to eligible children.

6. The lead agency or its designee may pay required deductibles, copayments, coinsurance or other out-of-pocket expenses for a Part C early intervention program eligible child directly to a provider.

7. The lead agency shall promulgate rules that establish a schedule of monthly cost participation fees for early intervention services per qualifying family regardless of the number of children participating or the amount of services provided. Such fees shall not include services to be provided to the family at no cost as established in Part C of IDEA, 20 U.S.C. Section 1431, et seq. Fees shall be based on a sliding scale to become effective October 1, 2005, that contemplates the following elements:

(1) Adjusted gross income, family size, financial hardship and Medicaid eligibility with the fee implementation beginning at two hundred percent of the federal poverty guidelines;

(2) A minimum fee amount of five dollars to the maximum amount of one hundred dollars monthly, with the lead agency retaining the right to revise the fee schedule no earlier than the third year after the family cost participation effective date;

(3) An increased fee schedule for parents who have insurance and elect not to assign such right of recovery or indemnification to the lead agency;

(4) Procedures for notifying the regional office that a family is not complying with the cost participation fee and procedures for suspending services.

8. All amounts generated by family cost participation, insurance reimbursements, and Medicaid reimbursement shall be deposited to the fund created in section 160.925.

9. The lead agency may assign the collection of early intervention participation fees, payments, and public or private insurance to a designee, contractor, provider, third-party agent, or designated clearinghouse participating in the Part C early intervention system. Such fees, payments, or insurance amounts shall be paid to the department, its designee, contractor, provider, third-party agent, or designated clearinghouse in a timely manner. Notice of collection procedures, schedule of fees or payments, and guidelines for inability to pay shall be made available to parents of eligible children.

160.925. FUND CREATED, USE OF MONEYS. — There is hereby created in the state treasury the "Part C Early Intervention System Fund" for implementing the provisions of sections 160.900 to 160.925. Moneys deposited in the fund shall be considered state funds under article IV, section 15 of the Missouri Constitution. The state treasurer shall

be custodian of the fund and shall disburse moneys from the fund in accordance with sections 30.170 and 30.180, RSMo. Upon appropriation, money in the fund shall be used solely for the administration of sections 160.900 to 160.925. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund.

162.700. SPECIAL EDUCATIONAL SERVICES, REQUIRED, WHEN — DIAGNOSTIC REPORTS, HOW OBTAINED — SPECIAL SERVICES, AGES THREE AND FOUR — REMEDIAL READING PROGRAM, HOW FUNDED. — 1. The board of education of each school district in this state, except school districts which are part of a special school district, and the board of education of each special school district shall provide special educational services for handicapped children three years of age or more residing in the district as required by P.L. 99-457, as codified and as may be amended. Any child, determined to be handicapped, shall be eligible for such services upon reaching his or her third birthday and state school funds shall be apportioned accordingly. This subsection shall apply to each full school year beginning on or after July 1, 1991. In the event that federal funding fails to be appropriated at the authorized level as described in 20 U.S.C. 1419(b)(2), the implementation of this subsection relating to services for handicapped children three and four years of age may be delayed until such time as funds are appropriated to meet such level. Each local school district and each special school district shall be responsible to engage in a planning process to design the service delivery system necessary to provide special education and related services for children three and four years of age with handicaps. The planning process [may] **shall** include public, private and private not-for-profit agencies which have provided such services for this population. The school district, or school districts, or special school district, shall be responsible for designing an efficient service delivery system which uses the present resources of the local community which may be funded by the department of elementary and secondary education or the department of mental health. School districts may coordinate with public, private and private not-for-profit agencies presently in existence. The service delivery system shall be consistent with the requirements of the department of elementary and secondary education to provide appropriate special education services in the least restrictive environment.

2. Every local school district or, if a special district is in operation, every special school district shall obtain current appropriate diagnostic reports for each handicapped child prior to assignment in a special program. These records may be obtained with parental permission from previous medical or psychological evaluation, may be provided by competent personnel of such district or special district, or may be secured by such district from competent and qualified medical, psychological or other professional personnel.

3. Where special districts have been formed to serve handicapped children under the provisions of sections 162.670 to 162.995, such children shall be educated in programs of the special district, except that component districts may provide education programs for handicapped children ages three and four inclusive in accordance with regulations and standards adopted by the state board of education.

4. For the purposes of this act, remedial reading programs are not a special education service as defined by subdivision (4) of section 162.675 but shall be funded in accordance with the provisions of section 162.975.

5. Any and all state costs required to fund special education services for three- and four-year-old children pursuant to this section shall be provided for by a specific, separate appropriation and shall not be funded by a reallocation of money appropriated for the public school foundation program.

6. School districts providing early childhood special education shall give [preference] **consideration to the value of continuing services with Part C early intervention system**

providers for the remainder of the school year when developing an individualized education program for a student who [had] has received services pursuant to Part C of the Individuals With Disabilities Education Act[, to continue services with the student's Part C provider, unless this would result in a cost which exceeds the average cost per student in early childhood special education for the district responsible for educating the student] **and reaches the age of three years during a regular school year.** Services provided shall be only those permissible according to Section 619 of the Individuals with Disabilities Education Act.

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. 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, 2002, shall be invalid and void.

208.144. MEDICAID REIMBURSEMENT FOR CHILDREN PARTICIPATING IN THE PART C EARLY INTERVENTION SYSTEM (FIRST STEPS). — The department of social services shall recognize the Part C early intervention system established under sections 160.900 to 160.925, RSMo, as an eligible program and shall pay all claims for reimbursement for Medicaid-eligible children to the Part C early intervention system. For those eligible children having other private insurance, the department of social services shall seek reimbursement as appropriate from the lead agency for payments made to the Part C early intervention system for covered benefits provided by health benefit plans under section 376.1218, RSMo.

376.1218. INSURANCE COVERAGE FOR CHILDREN ENROLLED IN THE PART C EARLY INTERVENTION SYSTEM (FIRST STEPS). — 1. Any health carrier or health benefit plan that offers or issues health benefit plans, other than Medicaid health benefit plans, which are delivered, issued for delivery, continued, or renewed in this state on or after January 1, 2006, shall provide coverage for early intervention services described in this section that are delivered by early intervention specialists who are health care professionals licensed by the state of Missouri and acting within the scope of their professions for children from birth to age three identified by the Part C early intervention system as eligible for services under Part C of the Individuals with Disabilities Education Act, 20 U.S.C. Section 1431, et seq. Such coverage shall be limited to three thousand dollars for each covered child per policy per calendar year, with a maximum of nine thousand dollars per child.

2. As used in this section, "health carrier" and "health benefit plan" shall have the same meaning as such terms are defined in section 376.1350.

3. In the event that any health benefit plan is found not to be required to provide coverage under subsection 1 of this section because of preemption by a federal law, including but not limited to the act commonly known as ERISA contained in Title 29 of the United States Code, or in the event that subsection 1 of this section is found to be unconstitutional, then the lead agency shall be responsible for payment and provision of any benefit provided under this section.

4. For purposes of this section, "early intervention services" means medically necessary speech and language therapy, occupational therapy, physical therapy, and assistive technology devices for children from birth to age three who are identified by the Part C early intervention system as eligible for services under Part C of the Individuals with Disabilities Education Act, 20 U.S.C. Section 1431, et seq. Early intervention services shall include services under an active individualized family service plan that enhance functional ability without effecting a cure. An individualized family service plan is a

written plan for providing early intervention services to an eligible child and the child's family that is adopted in accordance with 20 U.S.C. Section 1436. The Part C early intervention system, on behalf of its contracted regional Part C early intervention system centers and providers, shall be considered the rendering provider of services for purposes of this section.

5. No payment made for specified early intervention services shall be applied by the health carrier or health benefit plan against any maximum lifetime aggregate specified in the policy or health benefit plan if the carrier opts to satisfy its obligations under this section under subdivision (2) of subsection 7 of this section. A health benefit plan shall be billed at the applicable Medicaid rate at the time the covered benefit is delivered, and the health benefit plan shall pay the Part C early intervention system at such rate for benefits covered by this section. Services under the Part C early intervention system shall be delivered as prescribed by the individualized family service plan and an electronic claim filed in accordance with the carrier's or plan's standard format. Beginning January 1, 2007, such claims' payments shall be made in accordance with the provisions of sections 376.383 and 376.384.

6. The health care service required by this section shall not be subject to any greater deductible, copayment, or coinsurance than other similar health care services provided by the health benefit plan.

7. (1) Subject to the provisions of this section, payments made during a calendar year by a health carrier or group of carriers affiliated by or under common ownership or control to the Part C early intervention system for services provided to children covered by the Part C early intervention system shall not exceed one-half of one percent of the direct written premium for health benefit plans as reported to the department of insurance on the health carrier's most recently filed annual financial statement.

(2) In lieu of reimbursing claims under this section, a carrier or group of carriers affiliated by or under common ownership or control, may, on behalf of all of the carrier's or carriers' health benefit plan or plans providing coverage under this section, directly pay the Part C early intervention system by January thirty-first of the calendar year an amount equal to one-half of one percent of the direct written premium for health benefit plans as reported to the department of insurance on the health carrier's most recently filed annual financial statement, or five hundred thousand dollars, whichever is less, and such payment shall constitute full and complete satisfaction of the health benefit plan's obligation for the calendar year. Nothing in this subsection shall require a health carrier or health benefit plan providing coverage under this section to amend or modify any provision of an existing policy or plan relating to the payment or reimbursement of claims by the health carrier or health benefit plan.

8. This section shall not apply to a supplemental insurance policy, including a life care contract, specified disease policy, hospital policy providing a fixed daily benefit only, Medicare supplement policy, hospitalization-surgical care policy, policy that is individually underwritten or provides such coverage for specific individuals and members of their families, long-term care policy, or short-term major medical policies of six months or less duration.

9. Except for health carriers or health benefit plans making payments under subdivision (2) of subsection 7 of this section, the department of insurance shall collect data related to the number of children receiving private insurance coverage under this section and the total amount of moneys paid on behalf of such children by private health carriers or health benefit plans. The department shall report to the general assembly regarding the department's findings no later than January 30, 2007, and annually thereafter.

SECTION 1. SUNSET PROVISION (FIRST STEPS). — Pursuant to section 23.253, RSMo, of the Missouri Sunset Act:

(1) The provisions of the program authorized under sections 160.900 to 160.925, RSMo, section 162.700, RSMo, and section 376.1218, RSMo, of this act shall automatically sunset two years after the effective date of sections 160.900 to 160.925, RSMo, section 162.700, RSMo, and section 1 of this act unless reauthorized by an act of the general assembly; and

(2) If such program is reauthorized, the program authorized under sections 160.900 to 160.925, RSMo, section 162.700, RSMo, and section 376.1218, RSMo, of this act shall automatically sunset twelve years after the effective date of the reauthorization of sections 160.900 to 160.925, RSMo, section 162.700, RSMo, and section 376.1218 of this act; and

(3) Sections 160.900 to 160.925, RSMo, section 162.700, RSMo, and section 376.1218, RSMo, of this act shall terminate on September first of the calendar year immediately following the calendar year in which the program authorized under sections 160.900 to 160.925, RSMo, section 162.700, RSMo, and section 376.1218, RSMo, of this act is sunset.

Approved June 24, 2005

SB 501 [SCS SB 501]

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 "Office of Comprehensive Child Mental Health"

AN ACT to amend chapter 630, RSMo, by adding thereto two new sections relating to the office of comprehensive child mental health.

SECTION

- A. Enacting clause.
 630.1000. Office of comprehensive child mental health established, duties — staff authorized.
 630.1005. Comprehensive child mental health clinical advisory council established, members, duties.

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

SECTION A. ENACTING CLAUSE. — Chapter 630, RSMo, is amended by adding thereto two new sections, to be known as sections 630.1000 and 630.1005, to read as follows:

630.1000. OFFICE OF COMPREHENSIVE CHILD MENTAL HEALTH ESTABLISHED, DUTIES — STAFF AUTHORIZED. — **1.** There is hereby established in the department of mental health an "Office of Comprehensive Child Mental Health". The office of comprehensive child mental health, under the supervision of the director of the department of mental health, shall provide leadership in developing and implementing the comprehensive child mental health service system plan established under section 630.097. The office shall:

- (1) Assure oversight and monitoring of the implementation of the comprehensive child mental health service system plan;
- (2) Provide support, technical assistance and training to all departments participating in the development and implementation of the comprehensive child mental health service system established under section 630.097;
- (3) Develop and coordinate service system, financing and quality assurance policy for all children's mental health services within the department of mental health;
- (4) Provide leadership in program development for children's mental health services within the department of mental health, to include developing program standards and providing technical assistance in developing program capacity;

(5) Provide clinical consultation, technical assistance and clinical leadership for all child mental health within the department and to other child-serving agencies participating in the comprehensive child mental health system;

(6) Participate in the work of the coordinating board for early childhood;

(7) Participate in interagency child mental health initiatives as directed; and

(8) Provide staff support and leadership to the state comprehensive system management team established under section 630.097.

2. The departments participating in the comprehensive child mental health service system established under section 630.097 shall designate staff to represent their respective department on the state comprehensive system management team.

630.1005. COMPREHENSIVE CHILD MENTAL HEALTH CLINICAL ADVISORY COUNCIL ESTABLISHED, MEMBERS, DUTIES. — 1. There is hereby established in the department of mental health a "Comprehensive Child Mental Health Clinical Advisory Council". The council, under the supervision of the director of the department of mental health, shall advise the office of comprehensive child mental health established under section 630.1000. The council shall be comprised of not more than ten members and shall include, but not be limited to, individuals representing the following disciplines: pediatric medicine, child psychiatry, child psychology, social work, clinical counseling, school psychologist, research, financing, and evaluation. The director of the department of mental health, or his or her designee, and a member of the office of comprehensive child mental health established under section 630.1000, shall serve as ex officio members of the council.

2. The members of the council, other than the ex officio members, shall be appointed by the director of the department of mental health and shall serve for three-year terms. Members shall serve on the council without compensation but may be reimbursed for the actual and necessary expenses from moneys appropriated to the department of mental health for that purpose. Members of the advisory council shall:

(1) Share with the council and department information on state and national trends, evidenced-based practices and research findings within their respective fields;

(2) Serve as a liaison with their respective discipline to obtain and disseminate information;

(3) Identify funding and research opportunities within their respective field; and

(4) Advise the department in ways that knowledge from their respective field can be merged within other fields to provide a comprehensive system.

Approved June 24, 2005

SB 507 [SB 507]

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

Raises the dollar value of property for which the county auditor in counties of the first and second classification are required to inventory.

AN ACT to repeal section 55.160, RSMo, and to enact in lieu thereof one new section relating to inventory of county property.

SECTION

A. Enacting clause.

55.160. Duties (second classification and certain first classification counties).

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

SECTION A. ENACTING CLAUSE. — Section 55.160, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 55.160, to read as follows:

55.160. DUTIES (SECOND CLASSIFICATION AND CERTAIN FIRST CLASSIFICATION COUNTIES). — The auditor of each county of the first class not having a charter form of government and of each county of the second class shall keep an inventory of all county property under the control and management of the various officers and departments and shall annually take an inventory of such property at an original value of [two hundred fifty] **one thousand** dollars or more showing the amount, location and estimated value thereof. [He] **The auditor** shall keep accounts of all appropriations and expenditures made by the county commission, and no warrant shall be drawn or obligation incurred without [his] **the auditor's** certification that an unencumbered balance, sufficient to pay the same, remain in the appropriate account or in the anticipated revenue fund against which such warrant or obligation is to be charged. [He] **The auditor** shall audit the accounts of all officers of the county annually or upon their retirement from office. The auditor shall audit, examine and adjust all accounts, demands, and claims of every kind and character presented for payment against the county, and shall in [his] **the auditor's** discretion approve to the county commission of the county all lawful, true, just and legal accounts, demands and claims of every kind and character payable out of the county revenue or out of any county funds before the same shall be allowed and a warrant issued therefor by the commission. Whenever the auditor thinks it necessary to the proper examination of any account, demand or claim, [he] **the auditor** may examine the parties, witnesses, and others on oath or affirmation touching any matter or circumstance in the examination of such account, demand or claim before [he] **the auditor** allows same. The auditor shall not be personally liable for any cost for any proceeding instituted against [him] **the auditor** in [his] **the auditor's** official capacity. The auditor shall keep a correct account between the county and all county and township officers, and shall examine all records and settlements made by them for and with the county commission or with each other, and the auditor shall, whenever [he] **the auditor** desires, have access to all books, county records or papers kept by any county or township officer or road overseer. The auditor shall, during the first four days of each month, strike a balance in the case of each county and township officer, showing the amount of money collected by each, the amount of money due from each to the county, and the amount of money due from any source whatever to such office, and the auditor shall include in such balance any fees that have been returned to the county commission or to the auditor as unpaid and which since having been returned have been collected.

Approved July 6, 2005

SB 516 [SB 516]

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

Eliminates a provision in Section 99.847 allowing districts to receive reimbursement for emergency services.

AN ACT to repeal section 99.847, RSMo, and to enact in lieu thereof one new section relating to districts providing emergency services.

SECTION

A. Enacting clause.

99.847. No new TIF projects authorized for flood plain areas in St. Charles County, applicability of restriction.

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

SECTION A. ENACTING CLAUSE. — Section 99.847, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 99.847, to read as follows:

99.847. NO NEW TIF PROJECTS AUTHORIZED FOR FLOOD PLAIN AREAS IN ST. CHARLES COUNTY, APPLICABILITY OF RESTRICTION. — 1. [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.

2.] Notwithstanding the provisions of sections 99.800 to 99.865 to the contrary, no new tax increment financing project shall be authorized in any area which is within an area designated as flood plain by the Federal Emergency Management Agency and which is located in or partly within a county with a charter form of government with greater than two hundred fifty thousand inhabitants but fewer than three hundred thousand inhabitants.

[3.] **2.** This subsection shall not apply to tax increment financing projects or districts approved prior to July 1, 2003, and shall allow the aforementioned tax increment financing projects to modify, amend or expand such projects including redevelopment project costs by not more than forty percent of such project original projected cost including redevelopment project costs as such projects including redevelopment project costs as such projects redevelopment projects including redevelopment project costs existed as of June 30, 2003, and shall allow the aforementioned tax increment financing district to modify, amend or expand such districts by not more than five percent as such districts existed as of June 30, 2003.

Approved July 12, 2005

SB 518 [SB 518]

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 Assistive Technology Trust Fund for assistive technology.

AN ACT to repeal section 191.859, RSMo, and to enact in lieu thereof two new sections relating to the advisory assistive technology council.

SECTION

A. Enacting clause.

191.859. Duties of council.

191.861. Assistive technology trust fund created, use of moneys.

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

SECTION A. ENACTING CLAUSE. — Section 191.859, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 191.859 and 191.861, to read as follows:

191.859. DUTIES OF COUNCIL. — The council shall [serve as an] advocate for **assistive technology** policies, regulations and programs [to], **and shall** establish a consumer-responsive, comprehensive assistive technology service delivery system. The council shall:

- (1) Promote awareness of the needs of individuals with disabilities for assistive technology devices and services and the efficacy of providing such devices and services to allow persons with disabilities to be productive and independent;
- (2) Gain an understanding of current policies, practices, and procedures that facilitate or impede the availability or provision of assistive technology and recommend methods to streamline such policies;
- (3) Research and study data from the major public and private providers of assistive technology regarding numbers and types of devices and services delivered;
- (4) Establish interagency coordination mechanisms among state agencies and public and private entities that provide assistive technology devices and services in an effort to eliminate gaps and reduce duplication of such services to individuals with disabilities;
- (5) Foster the capacity of public and private entities to provide assistive technology devices and services so that individuals with disabilities of all ages will, to the extent appropriate, be able to secure and maintain possession of assistive technology as needed to function independently and productively;
- (6) Recommend **and implement** specific methods **and programs** to increase availability of and funding for [the provision of] assistive technology devices and assistive technology services for individuals with disabilities;
- (7) **Employ staff necessary to implement assistive technology services and programs assigned to the council, with all employees exempt from the state merit system under chapter 36, RSMo;**
- (8) **Enter into grants or contracts with public or private agencies, schools, or qualified individuals or organizations to deliver federally-required or otherwise necessary assistive technology programs and services, including but not limited to assistive device demonstration programs, device recycling programs, device loan programs, financial loan programs, and assistive technology assessments, installation, and usage training for individuals with disabilities, with or without utilizing the procurement procedures of the office of administration;**
- (9) **Administer the assistive technology trust fund created in section 191.861, including the formation of a not-for-profit corporation that qualifies as a Section 501(c)(3) organization under the Internal Revenue Code of 1986, as amended;**
- (10) **Accept, administer, and disburse federal moneys as the lead agency for the federal Assistive Technology Act of 2004, P.L. 108-364, and any amendments or successors thereto, as well as moneys from the assistive technology trust fund created in section 191.861, and any other moneys appropriated, granted, or given for the purpose of implementing assistive technology programs and services; and**
- (11) Report annually by January first to the governor and the general assembly on council activities and the results of its studies, **programs, services,** and recommendations to increase access to assistive technology.

191.861. ASSISTIVE TECHNOLOGY TRUST FUND CREATED, USE OF MONEYS. — 1. There is hereby created in the state treasury the "Assistive Technology Trust Fund" which shall be a public/private partnership fund administered by the advisory assistive technology council. The fund shall consist of gifts, donations, grants, and bequests from individuals, private organizations, foundations, or other sources granted or given for the specific purpose of assistive technology, and moneys transferred or paid to the council in return for goods and services provided by the council.

2. Upon appropriation, moneys in the fund shall be used to establish and maintain assistive technology programs and services provided by the council under section 191.859 and shall not be used to supplant any existing program or service.

3. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund.

4. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund.

Approved July 14, 2005

SB 521 [SB 521]

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

Expands the membership of the Community Service Commission to include the Lieutenant Governor.

AN ACT to repeal section 26.607, RSMo, and to enact in lieu thereof one new section relating to the powers and duties of the lieutenant governor.

SECTION

A. Enacting clause.

26.607. Members of commission, appointment, qualifications — terms, vacancies — expenses — chairperson and officers election — meeting requirements.

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

SECTION A. ENACTING CLAUSE. — Section 26.607, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 26.607, to read as follows:

26.607. MEMBERS OF COMMISSION, APPOINTMENT, QUALIFICATIONS — TERMS, VACANCIES — EXPENSES — CHAIRPERSON AND OFFICERS ELECTION — MEETING REQUIREMENTS. — 1. The commission shall include at least fifteen but no more than twenty-five voting members appointed by the governor, with the advice and consent of the senate. The commission shall include the following voting members:

- (1) A representative of local government;
- (2) The commissioner of the department of elementary and secondary education or the designee of such person;
- (3) An individual with experience in promoting the involvement of older adults in service and volunteerism;
- (4) A representative of a national service program;
- (5) An individual with expertise in the educational, training and development needs of youth, particularly disadvantaged youth;
- (6) An individual between the ages of sixteen and twenty-five years who is a participant in or supervisor of a service program for school age youth, or a campus-based or national service program;
- (7) A representative of community-based agencies or organizations in the state;
- (8) A representative of labor organizations;
- (9) A member representing the business community;
- (10) **The lieutenant governor or his or her designee;**
- (11) A representative from the Corporation for National and Community Service, who shall serve as a nonvoting, ex officio member;
- [11] (12) Other members, at the discretion of and appointed by the governor, provided that there are at least fifteen but not more than twenty-five voting members, and provided that

no more than twenty-five percent of the voting members are officers or employees of the state, and provided further that not more than fifty percent plus one of the voting members of the commission are members of the same political party;

[(12)] (13) The governor may appoint any number of other nonvoting, ex officio members who shall serve at the pleasure of the governor.

2. Appointments to the commission shall reflect the race, ethnicity, age, gender and disability characteristics of the population of the state as a whole.

3. Voting members shall serve renewable terms of three years, except that of the first members appointed, one-third shall serve for a term of one year, one-third shall serve for a term of two years, and one-third shall serve for a term of three years. If a commission vacancy occurs, the governor shall appoint a new member to serve for the remainder of the unexpired term. Vacancies shall not affect the power of the remaining members to execute the commission's duties.

4. The members of the commission shall receive no compensation for their services on the commission, but shall be reimbursed for ordinary and necessary expenses incurred in the performance of their duties.

5. The voting members of the commission shall elect one of their members to serve as chairperson of the commission. The voting members may elect such other officers as deemed necessary.

6. The commission shall meet at least quarterly.

Approved July 14, 2005

SB 539 [SS SB 539]

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

Modifies provisions in various health care and social services programs

AN ACT to repeal sections 178.661, 178.662, 178.664, 178.666, 178.669, 178.671, 178.673, 208.010, 208.146, 208.151, 208.152, 208.162, 208.215, 208.225, 208.550, 208.553, 208.556, 208.559, 208.562, 208.565, 208.568, 208.571, 208.640, 453.072, and 453.073, RSMo, and to enact in lieu thereof thirty new sections relating to health care and social services, with penalty provisions and a termination date for a certain section.

SECTION

A. Enacting clause.

- 208.010. Eligibility for public assistance, how determined — means test — certain medical assistance benefits to include payment of deductible and coinsurance — prevention of spousal impoverishments, division of assets, community spouse defined — burial lots defined — diversion of institutionalized spouse's income.
 - 208.014. Medicaid reform commission established, members, reimbursement for expenses, meetings, consultants, recommendations.
 - 208.147. Annual income and eligibility verification required for medical assistance recipients — documentation required.
 - 208.151. Medical assistance, persons eligible — rulemaking authority.
 - 208.152. Medical services for which payment will be made — reasonable cost, determination of — federal standards to be met — enrollment of qualified residential care facilities.
 - 208.212. Annuities, affect on Medicaid eligibility — rulemaking authority.
 - 208.215. Payer of last resort — liability for debt due the state, ceiling — rights of department, when, procedure, exception — report of injuries required, form, recovery of funds — recovery of medical assistance paid, when — court may adjudicate rights of parties, when.
 - 208.225. Medicaid per diem rate recalculation for nursing homes, amount.
 - 208.640. Co-payments required, when, amount, limitations.
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- 208.780. Definitions.
208.782. Missouri Rx plan established, purpose — rulemaking authority.
208.784. Coordination of prescription drug coverage with Medicare Part D — enrollment in program — Medicaid dual eligibles, effect of.
208.786. Authority of department in providing benefits — start of program benefits, when.
208.788. Program not an entitlement — payer of last resort requirements.
208.790. Applicants required to have fixed place of residence, rules.
208.792. Advisory commission established, members, duties.
208.794. Fund created.
208.798. Contingent termination date — sunset provision.
453.072. Qualified relatives to receive subsidies, when.
453.073. Subsidy to adopted child — determination of — how paid — written agreement.
660.661. Definitions.
660.664. Financial assistance for personal care, eligibility requirements.
660.667. Determination of eligibility — personal care service plan to be developed — reevaluation required .
660.670. Responsibilities of recipients and vendors
660.673. Abuse and neglect reporting — investigation procedures — content of reports — employee disqualification list maintained.
660.676. Misappropriation of consumer's property or funds, report to the department — content of report — investigation procedures — employee disqualification list maintained.
660.679. Vendor requirements, philosophy and services.
660.681. Denial of eligibility, applicant entitled to hearing.
660.684. Discontinuation of services, when.
660.687. Rulemaking authority.
178.661. Definitions.
178.662. Persons eligible for assistance — financial assistance, amount, how determined — accounting functions, who performs — local monitoring and supervision responsibility — attendant not employee of division or state.
178.664. Financial need how determined, annual review — adjustment when.
178.666. Client receiving personal care assistance, responsibilities — time sheets accumulation, payment.
178.669. Vendors furnishing services, requirements for certification.
178.671. Hearing for applicant, when, procedure.
178.673. Rules, promulgation — filing, disapproval, effect — ratification of disapproval by general assembly, publication.
208.146. Continuation of medical assistance for employed disabled persons, when, criteria — premiums collected, when.
208.162. Medical assistance for persons receiving general relief — rules, procedure.
208.550. Definitions.
208.553. Commission for the Missouri Senior Rx program established, members, terms, duties, expenses.
208.556. Missouri Senior Rx program established, administration, drug benefits, eligibility, applications — deductibles, coinsurance, and enrollment fees — quarterly reports — rulemaking authority — penalty for false statements.
208.559. Enrollment periods.
208.562. Use of generic drugs — reimbursement of pharmacies.
208.565. Rebates, amount, use of.
208.568. Missouri Senior Rx program fund created, administration, use of funds.
208.571. Missouri Senior Rx clearinghouse established, duties, administration.

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

SECTION A. ENACTING CLAUSE. — Sections 178.661, 178.662, 178.664, 178.666, 178.669, 178.671, 178.673, 208.010, 208.146, 208.151, 208.152, 208.162, 208.215, 208.225, 208.550, 208.553, 208.556, 208.559, 208.562, 208.565, 208.568, 208.571, 208.640, 453.072, and 453.073, RSMo, are repealed and thirty new sections enacted in lieu thereof, to be known as sections 208.010, 208.014, 208.147, 208.151, 208.152, 208.212, 208.215, 208.225, 208.640, 208.780, 208.782, 208.784, 208.786, 208.788, 208.790, 208.792, 208.794, 208.798, 453.072, 453.073, 660.661, 660.664, 660.667, 660.670, 660.673, 660.676, 660.679, 660.681, 660.684, and 660.687 to read as follows:

208.010. ELIGIBILITY FOR PUBLIC ASSISTANCE, HOW DETERMINED — MEANS TEST — CERTAIN MEDICAL ASSISTANCE BENEFITS TO INCLUDE PAYMENT OF DEDUCTIBLE AND COINSURANCE — PREVENTION OF SPOUSAL IMPOVERISHMENTS, DIVISION OF ASSETS,

COMMUNITY SPOUSE DEFINED — BURIAL LOTS DEFINED — DIVERSION OF INSTITUTIONALIZED SPOUSE'S INCOME. —

1. In determining the eligibility of a claimant for public assistance pursuant to this law, it shall be the duty of the division of family services to consider and take into account all facts and circumstances surrounding the claimant, including his or her living conditions, earning capacity, income and resources, from whatever source received, and if from all the facts and circumstances the claimant is not found to be in need, assistance shall be denied. In determining the need of a claimant, the costs of providing medical treatment which may be furnished pursuant to sections 208.151 to 208.158 and 208.162 shall be disregarded. The amount of benefits, when added to all other income, resources, support, and maintenance shall provide such persons with reasonable subsistence compatible with decency and health in accordance with the standards developed by the division of family services; provided, when a husband and wife are living together, the combined income and resources of both shall be considered in determining the eligibility of either or both. "Living together" for the purpose of this chapter is defined as including a husband and wife separated for the purpose of obtaining medical care or nursing home care, except that the income of a husband or wife separated for such purpose shall be considered in determining the eligibility of his or her spouse, only to the extent that such income exceeds the amount necessary to meet the needs (as defined by rule or regulation of the division) of such husband or wife living separately. In determining the need of a claimant in federally aided programs there shall be disregarded such amounts per month of earned income in making such determination as shall be required for federal participation by the provisions of the federal Social Security Act (42 U.S.C.A. 301 et seq.), or any amendments thereto. When federal law or regulations require the exemption of other income or resources, the division of family services may provide by rule or regulation the amount of income or resources to be disregarded.

2. Benefits shall not be payable to any claimant who:

(1) Has or whose spouse with whom he or she is living has, prior to July 1, 1989, given away or sold a resource within the time and in the manner specified in this subdivision. In determining the resources of an individual, unless prohibited by federal statutes or regulations, there shall be included (but subject to the exclusions pursuant to subdivisions (4) and (5) of this subsection, and subsection 5 of this section) any resource or interest therein owned by such individual or spouse within the twenty-four months preceding the initial investigation, or at any time during which benefits are being drawn, if such individual or spouse gave away or sold such resource or interest within such period of time at less than fair market value of such resource or interest for the purpose of establishing eligibility for benefits, including but not limited to benefits based on December, 1973, eligibility requirements, as follows:

(a) Any transaction described in this subdivision shall be presumed to have been for the purpose of establishing eligibility for benefits or assistance pursuant to this chapter unless such individual furnishes convincing evidence to establish that the transaction was exclusively for some other purpose;

(b) The resource shall be considered in determining eligibility from the date of the transfer for the number of months the uncompensated value of the disposed of resource is divisible by the average monthly grant paid or average Medicaid payment in the state at the time of the investigation to an individual or on his or her behalf under the program for which benefits are claimed, provided that:

a. When the uncompensated value is twelve thousand dollars or less, the resource shall not be used in determining eligibility for more than twenty-four months; or

b. When the uncompensated value exceeds twelve thousand dollars, the resource shall not be used in determining eligibility for more than sixty months;

(2) The provisions of subdivision (1) of subsection 2 of this section shall not apply to a transfer, other than a transfer to claimant's spouse, made prior to March 26, 1981, when the claimant furnishes convincing evidence that the uncompensated value of the disposed of resource

or any part thereof is no longer possessed or owned by the person to whom the resource was transferred;

(3) Has received, or whose spouse with whom he or she is living has received, benefits to which he or she was not entitled through misrepresentation or nondisclosure of material facts or failure to report any change in status or correct information with respect to property or income as required by section 208.210. A claimant ineligible pursuant to this subsection shall be ineligible for such period of time from the date of discovery as the division of family services may deem proper; or in the case of overpayment of benefits, future benefits may be decreased, suspended or entirely withdrawn for such period of time as the division may deem proper;

(4) Owns or possesses resources in the sum of one thousand dollars or more; provided, however, that if such person is married and living with spouse, he or she, or they, individually or jointly, may own resources not to exceed two thousand dollars; and provided further, that in the case of a temporary assistance for needy families claimant, the provision of this subsection shall not apply;

(5) Prior to October 1, 1989, owns or possesses property of any kind or character, excluding amounts placed in an irrevocable prearranged funeral or burial contract pursuant to subsection 2 of section 436.035, RSMo, and subdivision (5) of subsection 1 of section 436.053, RSMo, or has an interest in property, of which he or she is the record or beneficial owner, the value of such property, as determined by the division of family services, less encumbrances of record, exceeds twenty-nine thousand dollars, or if married and actually living together with husband or wife, if the value of his or her property, or the value of his or her interest in property, together with that of such husband and wife, exceeds such amount;

(6) In the case of temporary assistance for needy families, if the parent, stepparent, and child or children in the home owns or possesses property of any kind or character, or has an interest in property for which he or she is a record or beneficial owner, the value of such property, as determined by the division of family services and as allowed by federal law or regulation, less encumbrances of record, exceeds one thousand dollars, excluding the home occupied by the claimant, amounts placed in an irrevocable prearranged funeral or burial contract pursuant to subsection 2 of section 436.035, RSMo, and subdivision (5) of subsection 1 of section 436.053, RSMo, one automobile which shall not exceed a value set forth by federal law or regulation and for a period not to exceed six months, such other real property which the family is making a good-faith effort to sell, if the family agrees in writing with the division of family services to sell such property and from the net proceeds of the sale repay the amount of assistance received during such period. If the property has not been sold within six months, or if eligibility terminates for any other reason, the entire amount of assistance paid during such period shall be a debt due the state;

(7) Is an inmate of a public institution, except as a patient in a public medical institution.

3. In determining eligibility and the amount of benefits to be granted pursuant to federally aided programs, the income and resources of a relative or other person living in the home shall be taken into account to the extent the income, resources, support and maintenance are allowed by federal law or regulation to be considered.

4. In determining eligibility and the amount of benefits to be granted pursuant to federally aided programs, the value of burial lots or any amounts placed in an irrevocable prearranged funeral or burial contract pursuant to subsection 2 of section 436.035, RSMo, and subdivision (5) of subsection 1 of section 436.053, RSMo, shall not be taken into account or considered an asset of the burial lot owner or the beneficiary of an irrevocable prearranged funeral or funeral contract. For purposes of this section, "burial lots" means any burial space as defined in section 214.270, RSMo, and any memorial, monument, marker, tombstone or letter marking a burial space. If the beneficiary, as defined in chapter 436, RSMo, of an irrevocable prearranged funeral or burial contract receives any public assistance benefits pursuant to this chapter and if the purchaser of such contract or his or her successors in interest cancel or amend the contract so that any person will be entitled to a refund, such refund shall be paid to the state of Missouri up

to the amount of public assistance benefits provided pursuant to this chapter with any remainder to be paid to those persons designated in chapter 436, RSMo.

5. In determining the total property owned pursuant to subdivision (5) of subsection 2 of this section, or resources, of any person claiming or for whom public assistance is claimed, there shall be disregarded any life insurance policy, or prearranged funeral or burial contract, or any two or more policies or contracts, or any combination of policies and contracts, which provides for the payment of one thousand five hundred dollars or less upon the death of any of the following:

(1) A claimant or person for whom benefits are claimed; or

(2) The spouse of a claimant or person for whom benefits are claimed with whom he or she is living. If the value of such policies exceeds one thousand five hundred dollars, then the total value of such policies may be considered in determining resources; except that, in the case of temporary assistance for needy families, there shall be disregarded any prearranged funeral or burial contract, or any two or more contracts, which provides for the payment of one thousand five hundred dollars or less per family member.

6. Beginning September 30, 1989, when determining the eligibility of institutionalized spouses, as defined in 42 U.S.C. Section 1396r-5, for medical assistance benefits as provided for in section 208.151 and 42 U.S.C. Sections 1396a et seq., the division of family services shall comply with the provisions of the federal statutes and regulations. As necessary, the division shall by rule or regulation implement the federal law and regulations which shall include but not be limited to the establishment of income and resource standards and limitations. The division shall require:

(1) That at the beginning of a period of continuous institutionalization that is expected to last for thirty days or more, the institutionalized spouse, or the community spouse, may request an assessment by the division of family services of total countable resources owned by either or both spouses;

(2) That the assessed resources of the institutionalized spouse and the community spouse may be allocated so that each receives an equal share;

(3) That upon an initial eligibility determination, if the community spouse's share does not equal at least twelve thousand dollars, the institutionalized spouse may transfer to the community spouse a resource allowance to increase the community spouse's share to twelve thousand dollars;

(4) That in the determination of initial eligibility of the institutionalized spouse, no resources attributed to the community spouse shall be used in determining the eligibility of the institutionalized spouse, except to the extent that the resources attributed to the community spouse do exceed the community spouse's resource allowance as defined in 42 U.S.C. Section 1396r-5;

(5) That beginning in January, 1990, the amount specified in subdivision (3) of this subsection shall be increased by the percentage increase in the consumer price index for all urban consumers between September, 1988, and the September before the calendar year involved; and

(6) That beginning the month after initial eligibility for the institutionalized spouse is determined, the resources of the community spouse shall not be considered available to the institutionalized spouse during that continuous period of institutionalization.

7. Beginning July 1, 1989, institutionalized individuals shall be ineligible for the periods required and for the reasons specified in 42 U.S.C. Section 1396p.

8. The hearings required by 42 U.S.C. Section 1396r-5 shall be conducted pursuant to the provisions of section 208.080.

9. Beginning October 1, 1989, when determining eligibility for assistance pursuant to this chapter there shall be disregarded unless otherwise provided by federal or state statutes, the home of the applicant or recipient when the home is providing shelter to the applicant or recipient, or his or her spouse or dependent child. The division of family services shall establish by rule or regulation in conformance with applicable federal statutes and regulations a definition of the

home and when the home shall be considered a resource that shall be considered in determining eligibility.

10. Reimbursement for services provided by an enrolled Medicaid provider to a recipient who is duly entitled to Title XIX Medicaid and Title XVIII Medicare Part B, Supplementary Medical Insurance (SMI) shall include payment in full of deductible and coinsurance amounts as determined due pursuant to the applicable provisions of federal regulations pertaining to Title XVIII Medicare Part B, except the applicable Title XIX cost sharing.

11. A "community spouse" is defined as being the noninstitutionalized spouse.

12. An institutionalized spouse applying for Medicaid and having a spouse living in the community shall be required, to the maximum extent permitted by law, to divert income to such community spouse to raise the community spouse's income to the level of the minimum monthly needs allowance, as described in 42 U.S.C. Section 1396r-5. Such diversion of income shall occur before the community spouse is allowed to retain assets in excess of the community spouse protected amount described in 42 U.S.C. Section 1396-r.

208.014. MEDICAID REFORM COMMISSION ESTABLISHED, MEMBERS, REIMBURSEMENT FOR EXPENSES, MEETINGS, CONSULTANTS, RECOMMENDATIONS. — 1. There is hereby established the "Medicaid Reform Commission". The commission shall have as its purpose the study and review of recommendations for reforms of the state Medicaid system. The commission shall consist of ten members:

- (1) Five members of the house of representatives appointed by the speaker; and
- (2) Five members of the senate appointed by the pro tem.

No more than three members from each house shall be of the same political party. The directors of the department of social services, the department of health and senior services, and the department of mental health or the directors' designees shall serve as ex officio members of the commission.

2. Members of the commission shall be reimbursed for the actual and necessary expenses incurred in the discharge of the member's official duties.

3. A chair of the commission shall be selected by the members of the commission.

4. The commission shall meet as necessary.

5. The commission is authorized to contract with a consultant. The compensation of the consultant and other personnel shall be paid from the joint contingent fund or jointly from the senate and house contingent funds until an appropriation is made therefor.

6. The commission shall make recommendations in a report to the general assembly by January 1, 2006, on reforming, redesigning, and restructuring a new, innovative state Medicaid healthcare delivery system under Title XIX, Public Law 89-97, 1965, amendments to the federal Social Security Act (42 U.S.C. Section 30 et. seq.) as amended, to replace the current state Medicaid system under Title XIX, Public Law 89-97, 1965, amendments to the federal Social Security Act (42 U.S.C. Section 30, et seq.), which shall sunset on June 30, 2008.

208.147. ANNUAL INCOME AND ELIGIBILITY VERIFICATION REQUIRED FOR MEDICAL ASSISTANCE RECIPIENTS — DOCUMENTATION REQUIRED. — 1. The family support division shall conduct an annual income and eligibility verification review of each recipient of medical assistance. Such review shall be completed not later than twelve months after the recipient's last eligibility determination.

2. The annual eligibility review requirement may be satisfied by the completion of a periodic food stamp redetermination for the household.

3. The family support division shall annually send a re-verification eligibility form letter to the recipient requiring the recipient to respond within ten days of receiving the letter and to provide income verification documentation described in subsection 4 of this section. If the division does not receive the recipient's response and documentation within

the ten days, the division shall send a letter notifying the recipient that he or she has ten days to file an appeal or the case will be closed.

4. The family support division shall require recipients to provide documentation for income verification for purposes of eligibility review described in subsection 1 of this section. Such documentation may include, but not be limited to:

- (1) Current wage stubs;
- (2) A current W-2 form;
- (3) Statements from the recipient's employer;
- (4) A wage match with the division of employment security; and
- (5) Bank statements.

208.151. MEDICAL ASSISTANCE, PERSONS ELIGIBLE — RULEMAKING AUTHORITY. —

1. For the purpose of paying medical assistance on behalf of needy persons and to comply with Title XIX, Public Law 89-97, 1965 amendments to the federal Social Security Act (42 U.S.C. Section 301 et seq.) as amended, the following needy persons shall be eligible to receive medical assistance to the extent and in the manner hereinafter provided:

- (1) All recipients of state supplemental payments for the aged, blind and disabled;
- (2) All recipients of aid to families with dependent children benefits, including all persons under nineteen years of age who would be classified as dependent children except for the requirements of subdivision (1) of subsection 1 of section 208.040;
- (3) All recipients of blind pension benefits;
- (4) All persons who would be determined to be eligible for old age assistance benefits, permanent and total disability benefits, or aid to the blind benefits under the eligibility standards in effect December 31, 1973, or less restrictive standards as established by rule of the **family support** division [of family services], who are sixty-five years of age or over and are patients in state institutions for mental diseases or tuberculosis;
- (5) All persons under the age of twenty-one years who would be eligible for aid to families with dependent children except for the requirements of subdivision (2) of subsection 1 of section 208.040, and who are residing in an intermediate care facility, or receiving active treatment as inpatients in psychiatric facilities or programs, as defined in 42 U.S.C. 1396d, as amended;
- (6) All persons under the age of twenty-one years who would be eligible for aid to families with dependent children benefits except for the requirement of deprivation of parental support as provided for in subdivision (2) of subsection 1 of section 208.040;
- (7) All persons eligible to receive nursing care benefits;
- (8) All recipients of family foster home or nonprofit private child-care institution care, subsidized adoption benefits and parental school care wherein state funds are used as partial or full payment for such care;
- (9) All persons who were recipients of old age assistance benefits, aid to the permanently and totally disabled, or aid to the blind benefits on December 31, 1973, and who continue to meet the eligibility requirements, except income, for these assistance categories, but who are no longer receiving such benefits because of the implementation of Title XVI of the federal Social Security Act, as amended;
- (10) Pregnant women who meet the requirements for aid to families with dependent children, except for the existence of a dependent child in the home;
- (11) Pregnant women who meet the requirements for aid to families with dependent children, except for the existence of a dependent child who is deprived of parental support as provided for in subdivision (2) of subsection 1 of section 208.040;
- (12) Pregnant women or infants under one year of age, or both, whose family income does not exceed an income eligibility standard equal to one hundred eighty-five percent of the federal poverty level as established and amended by the federal Department of Health and Human Services, or its successor agency;

(13) Children who have attained one year of age but have not attained six years of age who are eligible for medical assistance under 6401 of P.L. 101-239 (Omnibus Budget Reconciliation Act of 1989). The **family support** division [of family services] shall use an income eligibility standard equal to one hundred thirty-three percent of the federal poverty level established by the Department of Health and Human Services, or its successor agency;

(14) Children who have attained six years of age but have not attained nineteen years of age. For children who have attained six years of age but have not attained nineteen years of age, the **family support** division [of family services] shall use an income assessment methodology which provides for eligibility when family income is equal to or less than equal to one hundred percent of the federal poverty level established by the Department of Health and Human Services, or its successor agency. As necessary to provide Medicaid coverage under this subdivision, the department of social services may revise the state Medicaid plan to extend coverage under 42 U.S.C. 1396a (a)(10)(A)(i)(III) to children who have attained six years of age but have not attained nineteen years of age as permitted by paragraph (2) of subsection (n) of 42 U.S.C. 1396d using a more liberal income assessment methodology as authorized by paragraph (2) of subsection (r) of 42 U.S.C. 1396a;

(15) [The following children with family income which does not exceed two hundred percent of the federal poverty guideline for the applicable family size:

(a) Infants who have not attained one year of age with family income greater than one hundred eighty-five percent of the federal poverty guideline for the applicable family size;

(b) Children who have attained one year of age but have not attained six years of age with family income greater than one hundred thirty-three percent of the federal poverty guideline for the applicable family size; and

(c) Children who have attained six years of age but have not attained nineteen years of age with family income greater than one hundred percent of the federal poverty guideline for the applicable family size. Coverage under this subdivision shall be subject to the receipt of notification by the director of the department of social services and the revisor of statutes of approval from the secretary of the U.S. Department of Health and Human Services of applications for waivers of federal requirements necessary to promulgate regulations to implement this subdivision. The director of the department of social services shall apply for such waivers. The regulations may provide for a basic primary and preventive health care services package, not to include all medical services covered by section 208.152, and may also establish co-payment, coinsurance, deductible, or premium requirements for medical assistance under this subdivision. Eligibility for medical assistance under this subdivision shall be available only to those infants and children who do not have or have not been eligible for employer-subsidized health care insurance coverage for the six months prior to application for medical assistance. Children are eligible for employer-subsidized coverage through either parent, including the noncustodial parent. The division of family services may establish a resource eligibility standard in assessing eligibility for persons under this subdivision. The division of medical services shall define the amount and scope of benefits which are available to individuals under this subdivision in accordance with the requirement of federal law and regulations. Coverage under this subdivision shall be subject to appropriation to provide services approved under the provisions of this subdivision;

(16) The **family support** division [of family services] shall not establish a resource eligibility standard in assessing eligibility for persons under subdivision (12), (13) or (14) of this subsection. The division of medical services shall define the amount and scope of benefits which are available to individuals eligible under each of the subdivisions (12), (13), and (14) of this subsection, in accordance with the requirements of federal law and regulations promulgated thereunder [except that the scope of benefits shall include case management services];

[(17)] (16) Notwithstanding any other provisions of law to the contrary, ambulatory prenatal care shall be made available to pregnant women during a period of presumptive eligibility pursuant to 42 U.S.C. Section 1396r-1, as amended;

[(18)] (17) A child born to a woman eligible for and receiving medical assistance under this section on the date of the child's birth shall be deemed to have applied for medical assistance and to have been found eligible for such assistance under such plan on the date of such birth and to remain eligible for such assistance for a period of time determined in accordance with applicable federal and state law and regulations so long as the child is a member of the woman's household and either the woman remains eligible for such assistance or for children born on or after January 1, 1991, the woman would remain eligible for such assistance if she were still pregnant. Upon notification of such child's birth, the **family support** division [of family services] shall assign a medical assistance eligibility identification number to the child so that claims may be submitted and paid under such child's identification number;

[(19)] (18) Pregnant women and children eligible for medical assistance pursuant to subdivision (12), (13) or (14) of this subsection shall not as a condition of eligibility for medical assistance benefits be required to apply for aid to families with dependent children. The **family support** division [of family services] shall utilize an application for eligibility for such persons which eliminates information requirements other than those necessary to apply for medical assistance. The division shall provide such application forms to applicants whose preliminary income information indicates that they are ineligible for aid to families with dependent children. Applicants for medical assistance benefits under subdivision (12), (13) or (14) shall be informed of the aid to families with dependent children program and that they are entitled to apply for such benefits. Any forms utilized by the **family support** division [of family services] for assessing eligibility under this chapter shall be as simple as practicable;

[(20)] (19) Subject to appropriations necessary to recruit and train such staff, the **family support** division [of family services] shall provide one or more full-time, permanent case workers to process applications for medical assistance at the site of a health care provider, if the health care provider requests the placement of such case workers and reimburses the division for the expenses including but not limited to salaries, benefits, travel, training, telephone, supplies, and equipment, of such case workers. The division may provide a health care provider with a part-time or temporary case worker at the site of a health care provider if the health care provider requests the placement of such a case worker and reimburses the division for the expenses, including but not limited to the salary, benefits, travel, training, telephone, supplies, and equipment, of such a case worker. The division may seek to employ such case workers who are otherwise qualified for such positions and who are current or former welfare recipients. The division may consider training such current or former welfare recipients as case workers for this program;

[(21)] (20) Pregnant women who are eligible for, have applied for and have received medical assistance under subdivision (2), (10), (11) or (12) of this subsection shall continue to be considered eligible for all pregnancy-related and postpartum medical assistance provided under section 208.152 until the end of the sixty-day period beginning on the last day of their pregnancy;

[(22)] (21) Case management services for pregnant women and young children at risk shall be a covered service. To the greatest extent possible, and in compliance with federal law and regulations, the department of health and senior services shall provide case management services to pregnant women by contract or agreement with the department of social services through local health departments organized under the provisions of chapter 192, RSMo, or chapter 205, RSMo, or a city health department operated under a city charter or a combined city-county health department or other department of health and senior services designees. To the greatest extent possible the department of social services and the department of health and senior services shall mutually coordinate all services for pregnant women and children with the crippled children's program, the prevention of mental retardation program and the prenatal care program administered by the department of health and senior services. The department of social services shall by regulation establish the methodology for reimbursement for case management services provided by the department of health and senior services. For purposes of this section, the term

"case management" shall mean those activities of local public health personnel to identify prospective Medicaid-eligible high-risk mothers and enroll them in the state's Medicaid program, refer them to local physicians or local health departments who provide prenatal care under physician protocol and who participate in the Medicaid program for prenatal care and to ensure that said high-risk mothers receive support from all private and public programs for which they are eligible and shall not include involvement in any Medicaid prepaid, case-managed programs;

[(23)] **(22)** By January 1, 1988, the department of social services and the department of health and senior services shall study all significant aspects of presumptive eligibility for pregnant women and submit a joint report on the subject, including projected costs and the time needed for implementation, to the general assembly. The department of social services, at the direction of the general assembly, may implement presumptive eligibility by regulation promulgated pursuant to chapter 207, RSMo;

[(24)] **(23)** All recipients who would be eligible for aid to families with dependent children benefits except for the requirements of paragraph (d) of subdivision (1) of section 208.150;

[(25)] **(24) (a)** All persons who would be determined to be eligible for old age assistance benefits[, permanent and total disability benefits, or aid to the blind benefits,] under the eligibility standards in effect December 31, 1973, **as authorized by 42 U.S.C. Section 1396a(f), or less restrictive methodologies as contained in the Medicaid state plan as of January 1, 2005;** except that, on or after July 1, [2002] **2005**, less restrictive income methodologies, as authorized in 42 U.S.C. Section 1396a(r)(2), [shall] **may** be used to [raise] **change** the income limit [to eighty percent of the federal poverty level and, as of July 1, 2003, less restrictive income methodologies, as authorized in 42 U.S.C. Section 1396a(r)(2), shall be used to raise the income limit to ninety percent of the federal poverty level and, as of July 1, 2004,] **if authorized by annual appropriation;**

(b) All persons who would be determined to be eligible for aid to the blind benefits under the eligibility standards in effect December 31, 1973, as authorized by 42 U.S.C. Section 1396a(f), or less restrictive methodologies as contained in the Medicaid state plan as of January 1, 2005, except that less restrictive income methodologies, as authorized in 42 U.S.C. Section 1396a(r)(2), shall be used to raise the income limit to one hundred percent of the federal poverty level[. If federal law or regulation authorizes the division of family services to, by rule, exclude the income or resources of a parent or parents of a person under the age of eighteen and such exclusion of income or resources can be limited to such parent or parents, then notwithstanding the provisions of section 208.010:

(a) The division may by rule exclude such income or resources in determining such person's eligibility for permanent and total disability benefits; and

(b)];

(c) All persons who would be determined to be eligible for permanent and total disability benefits under the eligibility standards in effect December 31, 1973, as authorized by 42 U.S.C. 1396a(f); or less restrictive methodologies as contained in the Medicaid state plan of January 1, 2005; except that, on or after July 1, 2005, less restrictive income methodologies, as authorized in 42 U.S.C. Section 1396a(r)(2), may be used to change the income limit if authorized by annual appropriations. Eligibility standards for permanent and total disability benefits shall not be limited by age;

[(26) Within thirty days of the effective date of an initial appropriation authorizing medical assistance on behalf of "medically needy" individuals for whom federal reimbursement is available under 42 U.S.C. 1396a (a)(10)(c), the department of social services shall submit an amendment to the Medicaid state plan to provide medical assistance on behalf of, at a minimum, an individual described in subclause (I) or (II) of clause 42 U.S.C. 1396a (a)(10)(C)(ii);

[(27)] **(25)** Persons who have been diagnosed with breast or cervical cancer and who are eligible for coverage pursuant to 42 U.S.C. 1396a (a)(10)(A)(ii)(XVIII). Such persons shall be eligible during a period of presumptive eligibility in accordance with 42 U.S.C. 1396r-1.

2. Rules and regulations to implement this section shall be promulgated in accordance with section 431.064, RSMo, and chapter 536, RSMo. 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, 2002, shall be invalid and void.

3. After December 31, 1973, and before April 1, 1990, any family eligible for assistance pursuant to 42 U.S.C. 601 et seq., as amended, in at least three of the last six months immediately preceding the month in which such family became ineligible for such assistance because of increased income from employment shall, while a member of such family is employed, remain eligible for medical assistance for four calendar months following the month in which such family would otherwise be determined to be ineligible for such assistance because of income and resource limitation. After April 1, 1990, any family receiving aid pursuant to 42 U.S.C. 601 et seq., as amended, in at least three of the six months immediately preceding the month in which such family becomes ineligible for such aid, because of hours of employment or income from employment of the caretaker relative, shall remain eligible for medical assistance for six calendar months following the month of such ineligibility as long as such family includes a child as provided in 42 U.S.C. 1396r-6. Each family which has received such medical assistance during the entire six-month period described in this section and which meets reporting requirements and income tests established by the division and continues to include a child as provided in 42 U.S.C. 1396r-6 shall receive medical assistance without fee for an additional six months. The division of medical services may provide by rule **and as authorized by annual appropriation** the scope of medical assistance coverage to be granted to such families.

4. [For purposes of Section 1902(1), (10) of Title XIX of the federal Social Security Act, as amended, any individual who, for the month of August, 1972, was eligible for or was receiving aid or assistance pursuant to the provisions of Titles I, X, XIV, or Part A of Title IV of such act and who, for such month, was entitled to monthly insurance benefits under Title II of such act, shall be deemed to be eligible for such aid or assistance for such month thereafter prior to October, 1974, if such individual would have been eligible for such aid or assistance for such month had the increase in monthly insurance benefits under Title II of such act resulting from enactment of Public Law 92-336 amendments to the federal Social Security Act (42 U.S.C. 301 et seq.), as amended, not been applicable to such individual.

5.] When any individual has been determined to be eligible for medical assistance, such medical assistance will be made available to him **or her** for care and services furnished in or after the third month before the month in which he made application for such assistance if such individual was, or upon application would have been, eligible for such assistance at the time such care and services were furnished; provided, further, that such medical expenses remain unpaid.

[6.] **5.** The department of social services may apply to the federal Department of Health and Human Services for a Medicaid waiver amendment to the Section 1115 demonstration waiver or for any additional Medicaid waivers necessary [and desirable to implement the increased income limit, as authorized in subdivision (25) of subsection 1 of this section] **not to exceed one million dollars in additional costs to the state. A request for such a waiver so submitted shall only become effective by executive order not sooner than ninety days after the final adjournment of the session of the general assembly to which it is submitted, unless it is disapproved within sixty days of its submission to a regular session by a senate or house resolution adopted by a majority vote of the respective elected members thereof.**

6. Notwithstanding any other provision of law to the contrary, in any given fiscal year, any persons made eligible for medical assistance benefits under subdivisions (1) to (22) of subsection 1 of this section shall only be eligible if annual appropriations are made

for such eligibility. This subsection shall not apply to classes of individuals listed in 42 U.S.C. Section 1396a(a)(10)(A)(i).

208.152. MEDICAL SERVICES FOR WHICH PAYMENT WILL BE MADE — REASONABLE COST, DETERMINATION OF — FEDERAL STANDARDS TO BE MET — ENROLLMENT OF QUALIFIED RESIDENTIAL CARE FACILITIES. — 1. Benefit payments for medical assistance shall be made on behalf of those eligible needy persons **as defined in section 208.151** who are unable to provide for it in whole or in part, with any payments to be made on the basis of the reasonable cost of the care or reasonable charge for the services as defined and determined by the division of medical services, unless otherwise hereinafter provided, for the following:

(1) Inpatient hospital services, except to persons in an institution for mental diseases who are under the age of sixty-five years and over the age of twenty-one years; provided that the division of medical services shall provide through rule and regulation an exception process for coverage of inpatient costs in those cases requiring treatment beyond the seventy-fifth percentile professional activities study (PAS) or the Medicaid children's diagnosis length-of-stay schedule; and provided further that the division of medical services shall take into account through its payment system for hospital services the situation of hospitals which serve a disproportionate number of low-income patients;

(2) All outpatient hospital services, payments therefor to be in amounts which represent no more than eighty percent of the lesser of reasonable costs or customary charges for such services, determined in accordance with the principles set forth in Title XVIII A and B, Public Law 89-97, 1965 amendments to the federal Social Security Act (42 U.S.C. 301, et seq.), but the division of medical services may evaluate outpatient hospital services rendered under this section and deny payment for services which are determined by the division of medical services not to be medically necessary, in accordance with federal law and regulations;

(3) Laboratory and X-ray services;

(4) Nursing home services for recipients, except to persons in an institution for mental diseases who are under the age of sixty-five years, when residing in a hospital licensed by the department of health and senior services or a nursing home licensed by the department of health and senior services or appropriate licensing authority of other states or government-owned and -operated institutions which are determined to conform to standards equivalent to licensing requirements in Title XIX of the federal Social Security Act (42 U.S.C. 301, et seq.), as amended, for nursing facilities. The division of medical services may recognize through its payment methodology for nursing facilities those nursing facilities which serve a high volume of Medicaid patients. The division of medical services when determining the amount of the benefit payments to be made on behalf of persons under the age of twenty-one in a nursing facility may consider nursing facilities furnishing care to persons under the age of twenty-one as a classification separate from other nursing facilities;

(5) Nursing home costs for recipients of benefit payments under subdivision (4) of this subsection for those days, which shall not exceed twelve per any period of six consecutive months, during which the recipient is on a temporary leave of absence from the hospital or nursing home, provided that no such recipient shall be allowed a temporary leave of absence unless it is specifically provided for in his plan of care. As used in this subdivision, the term "temporary leave of absence" shall include all periods of time during which a recipient is away from the hospital or nursing home overnight because he is visiting a friend or relative;

(6) Physicians' services, whether furnished in the office, home, hospital, nursing home, or elsewhere;

(7) [Dental services;

(8) Services of podiatrists as defined in section 330.010, RSMo;

(9)] Drugs and medicines when prescribed by a licensed physician, dentist, or podiatrist; **except that no payment for drugs and medicines prescribed on and after January 1, 2006,**

by a licensed physician, dentist, or podiatrist may be made on behalf of any person who qualifies for prescription drug coverage under the provisions of P.L. 108-173;

[(10)] (8) Emergency ambulance services and, effective January 1, 1990, medically necessary transportation to scheduled, physician-prescribed nonelective treatments[. The department of social services may conduct demonstration projects related to the provision of medically necessary transportation to recipients of medical assistance under this chapter. Such demonstration projects shall be funded only by appropriations made for the purpose of such demonstration projects. If funds are appropriated for such demonstration projects, the department shall submit to the general assembly a report on the significant aspects and results of such demonstration projects];

[(11)] (9) Early and periodic screening and diagnosis of individuals who are under the age of twenty-one to ascertain their physical or mental defects, and health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby. Such services shall be provided in accordance with the provisions of Section 6403 of P.L. 101-239 and federal regulations promulgated thereunder;

[(12)] (10) Home health care services;

[(13)] (11) Optometric services as defined in section 336.010, RSMo;

[(14)] (12) Family planning as defined by federal rules and regulations; provided, however, that such family planning services shall not include abortions unless such abortions are certified in writing by a physician to the Medicaid agency that, in his professional judgment, the life of the mother would be endangered if the fetus were carried to term;

[(15)] (13) Orthopedic devices or other prosthetics, including eye glasses, dentures, hearing aids, and wheelchairs;

[(16)] (14) Inpatient psychiatric hospital services for individuals under age twenty-one as defined in Title XIX of the federal Social Security Act (42 U.S.C. 1396d, et seq.);

[(17)] (15) Outpatient surgical procedures, including presurgical diagnostic services performed in ambulatory surgical facilities which are licensed by the department of health and senior services of the state of Missouri; except, that such outpatient surgical services shall not include persons who are eligible for coverage under Part B of Title XVIII, Public Law 89-97, 1965 amendments to the federal Social Security Act, as amended, if exclusion of such persons is permitted under Title XIX, Public Law 89-97, 1965 amendments to the federal Social Security Act, as amended;

[(18)] (16) Personal care services which are medically oriented tasks having to do with a person's physical requirements, as opposed to housekeeping requirements, which enable a person to be treated by his physician on an outpatient, rather than on an inpatient or residential basis in a hospital, intermediate care facility, or skilled nursing facility. Personal care services shall be rendered by an individual not a member of the recipient's family who is qualified to provide such services where the services are prescribed by a physician in accordance with a plan of treatment and are supervised by a licensed nurse. Persons eligible to receive personal care services shall be those persons who would otherwise require placement in a hospital, intermediate care facility, or skilled nursing facility. Benefits payable for personal care services shall not exceed for any one recipient one hundred percent of the average statewide charge for care and treatment in an intermediate care facility for a comparable period of time;

[(19)] (17) Mental health services. The state plan for providing medical assistance under Title XIX of the Social Security Act, 42 U.S.C. 301, as amended, shall include the following mental health services when such services are provided by community mental health facilities operated by the department of mental health or designated by the department of mental health as a community mental health facility or as an alcohol and drug abuse facility or as a child-serving agency within the comprehensive children's mental health service system established in section 630.097, RSMo. The department of mental health shall establish by administrative rule the definition and criteria for designation as a community mental health facility and for designation as an alcohol and drug abuse facility. Such mental health services shall include:

(a) Outpatient mental health services including preventive, diagnostic, therapeutic, rehabilitative, and palliative interventions rendered to individuals in an individual or group setting by a mental health professional in accordance with a plan of treatment appropriately established, implemented, monitored, and revised under the auspices of a therapeutic team as a part of client services management;

(b) Clinic mental health services including preventive, diagnostic, therapeutic, rehabilitative, and palliative interventions rendered to individuals in an individual or group setting by a mental health professional in accordance with a plan of treatment appropriately established, implemented, monitored, and revised under the auspices of a therapeutic team as a part of client services management;

(c) Rehabilitative mental health and alcohol and drug abuse services including home and community-based preventive, diagnostic, therapeutic, rehabilitative, and palliative interventions rendered to individuals in an individual or group setting by a mental health or alcohol and drug abuse professional in accordance with a plan of treatment appropriately established, implemented, monitored, and revised under the auspices of a therapeutic team as a part of client services management. As used in this section, "mental health professional" and "alcohol and drug abuse professional" shall be defined by the department of mental health pursuant to duly promulgated rules.

With respect to services established by this subdivision, the department of social services, division of medical services, shall enter into an agreement with the department of mental health. Matching funds for outpatient mental health services, clinic mental health services, and rehabilitation services for mental health and alcohol and drug abuse shall be certified by the department of mental health to the division of medical services. The agreement shall establish a mechanism for the joint implementation of the provisions of this subdivision. In addition, the agreement shall establish a mechanism by which rates for services may be jointly developed;

[(20)] Comprehensive day rehabilitation services beginning early posttrauma as part of a coordinated system of care for individuals with disabling impairments. Rehabilitation services must be based on an individualized, goal-oriented, comprehensive and coordinated treatment plan developed, implemented, and monitored through an interdisciplinary assessment designed to restore an individual to optimal level of physical, cognitive and behavioral function. The division of medical services shall establish by administrative rule the definition and criteria for designation of a comprehensive day rehabilitation service facility, benefit limitations and payment mechanism;

(21) Hospice care. As used in this subsection, the term "hospice care" means a coordinated program of active professional medical attention within a home, outpatient and inpatient care which treats the terminally ill patient and family as a unit, employing a medically directed interdisciplinary team. The program provides relief of severe pain or other physical symptoms and supportive care to meet the special needs arising out of physical, psychological, spiritual, social and economic stresses which are experienced during the final stages of illness, and during dying and bereavement and meets the Medicare requirements for participation as a hospice as are provided in 42 CFR Part 418. Beginning July 1, 1990, the rate of reimbursement paid by the division of medical services to the hospice provider for room and board furnished by a nursing home to an eligible hospice patient shall not be less than ninety-five percent of the rate of reimbursement which would have been paid for facility services in that nursing home facility for that patient, in accordance with subsection (c) of Section 6408 of P.L. 101-239 (Omnibus Budget Reconciliation Act of 1989);

[(22)] (16) Such additional services as defined by the division of medical services to be furnished under waivers of federal statutory requirements as provided for and authorized by the federal Social Security Act (42 U.S.C. 301, et seq.) subject to appropriation by the general assembly;

[(23)] (17) Beginning July 1, 1990, the services of a certified pediatric or family nursing practitioner to the extent that such services are provided in accordance with chapter 335, RSMo,

and regulations promulgated thereunder, regardless of whether the nurse practitioner is supervised by or in association with a physician or other health care provider;

[(24)] Subject to appropriations, the department of social services shall conduct demonstration projects for nonemergency, physician-prescribed transportation for pregnant women who are recipients of medical assistance under this chapter in counties selected by the director of the division of medical services. The funds appropriated pursuant to this subdivision shall be used for the purposes of this subdivision and for no other purpose. The department shall not fund such demonstration projects with revenues received for any other purpose. This subdivision shall not authorize transportation of a pregnant woman in active labor. The division of medical services shall notify recipients of nonemergency transportation services under this subdivision of such other transportation services which may be appropriate during active labor or other medical emergency;

(25)] **(18)** Nursing home costs for recipients of benefit payments under subdivision (4) of this subsection to reserve a bed for the recipient in the nursing home during the time that the recipient is absent due to admission to a hospital for services which cannot be performed on an outpatient basis, subject to the provisions of this subdivision:

(a) The provisions of this subdivision shall apply only if:

a. The occupancy rate of the nursing home is at or above ninety-seven percent of Medicaid certified licensed beds, according to the most recent quarterly census provided to the department of health and senior services which was taken prior to when the recipient is admitted to the hospital; and

b. The patient is admitted to a hospital for a medical condition with an anticipated stay of three days or less;

(b) The payment to be made under this subdivision shall be provided for a maximum of three days per hospital stay;

(c) For each day that nursing home costs are paid on behalf of a recipient pursuant to this subdivision during any period of six consecutive months such recipient shall, during the same period of six consecutive months, be ineligible for payment of nursing home costs of two otherwise available temporary leave of absence days provided under subdivision (5) of this subsection; and

(d) The provisions of this subdivision shall not apply unless the nursing home receives notice from the recipient or the recipient's responsible party that the recipient intends to return to the nursing home following the hospital stay. If the nursing home receives such notification and all other provisions of this subsection have been satisfied, the nursing home shall provide notice to the recipient or the recipient's responsible party prior to release of the reserved bed.

2. Additional benefit payments for medical assistance shall be made on behalf of those eligible needy children, pregnant women and blind persons with any payments to be made on the basis of the reasonable cost of the care or reasonable charge for the services as defined and determined by the division of medical services, unless otherwise hereinafter provided, for the following:

(1) Dental services;

(2) Services of podiatrists as defined in section 330.010, RSMo;

(3) Optometric services as defined in section 336.010, RSMo;

(4) Orthopedic devices or other prosthetics, including eye glasses, dentures, hearing aids, and wheelchairs;

(5) Hospice care. As used in this subsection, the term "hospice care" means a coordinated program of active professional medical attention within a home, outpatient and inpatient care which treats the terminally ill patient and family as a unit, employing a medically directed interdisciplinary team. The program provides relief of severe pain or other physical symptoms and supportive care to meet the special needs arising out of physical, psychological, spiritual, social, and economic stresses which are experienced during the final stages of illness, and during dying and bereavement and meets the

Medicare requirements for participation as a hospice as are provided in 42 CFR Part 418. The rate of reimbursement paid by the division of medical services to the hospice provider for room and board furnished by a nursing home to an eligible hospice patient shall not be less than ninety-five percent of the rate of reimbursement which would have been paid for facility services in that nursing home facility for that patient, in accordance with subsection (c) of Section 6408 of P.L. 101-239 (Omnibus Budget Reconciliation Act of 1989);

(6) Comprehensive day rehabilitation services beginning early posttrauma as part of a coordinated system of care for individuals with disabling impairments. Rehabilitation services must be based on an individualized, goal-oriented, comprehensive and coordinated treatment plan developed, implemented, and monitored through an interdisciplinary assessment designed to restore an individual to optimal level of physical, cognitive, and behavioral function. The division of medical services shall establish by administrative rule the definition and criteria for designation of a comprehensive day rehabilitation service facility, benefit limitations and payment mechanism; 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 subdivision 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, 2005, shall be invalid and void.

3. Benefit payments for medical assistance for surgery as defined by rule duly promulgated by the division of medical services, and any costs related directly thereto, shall be made only when a second medical opinion by a licensed physician as to the need for the surgery is obtained prior to the surgery being performed.

[3.] 4. The division of medical services may require any recipient of medical assistance to pay part of the charge or cost, as defined by rule duly promulgated by the division of medical services, [for dental services, drugs and medicines, optometric services, eye glasses, dentures, hearing aids, and other services,] **for all covered services except for those services covered under subdivisions (14) and (15) of subsection 1 of this section and sections 208.631 to 208.657** to the extent and in the manner authorized by Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.) and regulations thereunder. When substitution of a generic drug is permitted by the prescriber according to section 338.056, RSMo, and a generic drug is substituted for a name brand drug, the division of medical services may not lower or delete the requirement to make a co-payment pursuant to regulations of Title XIX of the federal Social Security Act. A provider of goods or services described under this section must collect from all recipients the partial payment that may be required by the division of medical services under authority granted herein, if the division exercises that authority, to remain eligible as a provider. Any payments made by recipients under this section shall be [in addition to, and not in lieu of,] **reduced from** any payments made by the state for goods or services described herein **except the recipient portion of the pharmacy professional dispensing fee shall be in addition to, and not in lieu of payments to pharmacists.** A provider may collect the copayment at the time a service is provided or at a later date. A provider shall not refuse to provide a service if a recipient is unable to pay a required cost sharing. If it is the routine business practice of a provider to terminate future services to an individual with an unclaimed debt, the provider may include uncollected copayments under this practice. Providers who elect not to undertake the provision of services based on a history of bad debt shall give recipients advance notice and a reasonable opportunity for payment. A provider, representative, employee, independent contractor, or agent of a pharmaceutical manufacturer, shall not make copayment for a recipient. This subsection shall not apply

to other qualified children, pregnant women, or blind persons. If the Centers for Medicare and Medicaid Services does not approve the Missouri Medicaid state plan amendment submitted by the department of social services that would allow a provider to deny future services to an individual with uncollected copayments, the denial of services shall not be allowed. The department of social services shall inform providers regarding the acceptability of denying services as the result of unpaid copayments.

[4.] **5.** The division of medical services shall have the right to collect medication samples from recipients in order to maintain program integrity.

[5.] **6.** Reimbursement for obstetrical and pediatric services under subdivision (6) of subsection 1 of this section shall be timely and sufficient to enlist enough health care providers so that care and services are available under the state plan for medical assistance at least to the extent that such care and services are available to the general population in the geographic area, as required under subparagraph (a)(30)(A) of 42 U.S.C. 1396a and federal regulations promulgated thereunder.

[6.] **7.** Beginning July 1, 1990, reimbursement for services rendered in federally funded health centers shall be in accordance with the provisions of subsection 6402(c) and section 6404 of P.L. 101-239 (Omnibus Budget Reconciliation Act of 1989) and federal regulations promulgated thereunder.

[7.] **8.** Beginning July 1, 1990, the department of social services shall provide notification and referral of children below age five, and pregnant, breast-feeding, or postpartum women who are determined to be eligible for medical assistance under section 208.151 to the special supplemental food programs for women, infants and children administered by the department of health and senior services. Such notification and referral shall conform to the requirements of Section 6406 of P.L. 101-239 and regulations promulgated thereunder.

[8.] **9.** Providers of long-term care services shall be reimbursed for their costs in accordance with the provisions of Section 1902 (a)(13)(A) of the Social Security Act, 42 U.S.C. 1396a, as amended, and regulations promulgated thereunder.

[9.] **10.** Reimbursement rates to long-term care providers with respect to a total change in ownership, at arm's length, for any facility previously licensed and certified for participation in the Medicaid program shall not increase payments in excess of the increase that would result from the application of Section 1902 (a)(13)(C) of the Social Security Act, 42 U.S.C. 1396a (a)(13)(C).

[10.] **11.** The department of social services, division of medical services, may enroll qualified residential care facilities, as defined in chapter 198, RSMo, as Medicaid personal care providers.

208.212. ANNUITIES, AFFECT ON MEDICAID ELIGIBILITY — RULEMAKING AUTHORITY.
— **1. For purposes of Medicaid eligibility, investment in annuities shall be limited to those annuities that:**

(1) Are actuarially sound as measured against the Social Security Administration Life Expectancy Tables, as amended;

(2) Provide equal or nearly equal payments for the duration of the device and which exclude "balloon" style final payments; and

(3) Provide the state of Missouri secondary or contingent beneficiary status ensuring payment if the individual predeceases the duration of the annuity, in an amount equal to the Medicaid expenditure made by the state on the individual's behalf.

2. The department shall establish a sixty month look-back period to review any investment in an annuity by an applicant for Medicaid benefits. If an investment in an annuity is determined by the department to have been made in anticipation of obtaining or with an intent to obtain eligibility for Medicaid benefits, the department shall have available all remedies and sanctions permitted under federal and state law regarding such investment. The fact that an investment in an annuity which occurred prior to the

effective date of this section does not meet the criteria established in subsection 1 of this section shall not automatically result in a disallowance of such investment.

3. The department of social services shall promulgate rules to administer 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 August 28, 2005, shall be invalid and void.

208.215. PAYER OF LAST RESORT — LIABILITY FOR DEBT DUE THE STATE, CEILING — RIGHTS OF DEPARTMENT, WHEN, PROCEDURE, EXCEPTION — REPORT OF INJURIES REQUIRED, FORM, RECOVERY OF FUNDS — RECOVERY OF MEDICAL ASSISTANCE PAID, WHEN — COURT MAY ADJUDICATE RIGHTS OF PARTIES, WHEN. — 1. Medicaid is payer of last resort unless otherwise specified by law. When any person, corporation, institution, public agency or private agency is liable, either pursuant to contract or otherwise, to a recipient of public assistance on account of personal injury to or disability or disease or benefits arising from a health insurance plan to which the recipient may be entitled, payments made by the department of social services shall be a debt due the state and recoverable from the liable party or recipient for all payments made in behalf of the recipient and the debt due the state shall not exceed the payments made from medical assistance provided under sections 208.151 to 208.158 and section 208.162 and section 208.204 on behalf of the recipient, minor or estate for payments on account of the injury, disease, or disability or benefits arising from a health insurance program to which the recipient may be entitled.

2. The department of social services may maintain an appropriate action to recover funds due under this section in the name of the state of Missouri against the person, corporation, institution, public agency, or private agency liable to the recipient, minor or estate.

3. Any recipient, minor, guardian, conservator, personal representative, estate, including persons entitled under section 537.080, RSMo, to bring an action for wrongful death who pursues legal rights against a person, corporation, institution, public agency, or private agency liable to that recipient or minor for injuries, disease or disability or benefits arising from a health insurance plan to which the recipient may be entitled as outlined in subsection 1 of this section shall upon actual knowledge that the department of social services has paid medical assistance benefits as defined by this chapter, promptly notify the department as to the pursuit of such legal rights.

4. Every applicant or recipient by application assigns his right to the department of any funds recovered or expected to be recovered to the extent provided for in this section. All applicants and recipients, including a person authorized by the probate code, shall cooperate with the department of social services in identifying and providing information to assist the state in pursuing any third party who may be liable to pay for care and services available under the state's plan for medical assistance as provided in sections 208.151 to 208.159 and sections 208.162 and 208.204. All applicants and recipients shall cooperate with the agency in obtaining third-party resources due to the applicant, recipient, or child for whom assistance is claimed. Failure to cooperate without good cause as determined by the department of social services in accordance with federally prescribed standards, shall render the applicant or recipient ineligible for medical assistance under sections 208.151 to 208.159 and sections 208.162 and 208.204.

5. Every person, corporation or partnership who acts for or on behalf of a person who is or was eligible for medical assistance under sections 208.151 to 208.159 and sections 208.162 and 208.204 for purposes of pursuing the applicant's or recipient's claim which accrued as a result of a nonoccupational or nonwork-related incident or occurrence resulting in the payment

of medical assistance benefits shall notify the department upon agreeing to assist such person and further shall notify the department of any institution of a proceeding, settlement or the results of the pursuit of the claim and give thirty days' notice before any judgment, award, or settlement may be satisfied in any action or any claim by the applicant or recipient to recover damages for such injuries, disease, or disability, or benefits arising from a health insurance program to which the recipient may be entitled.

6. Every recipient, minor, guardian, conservator, personal representative, estate, including persons entitled under section 537.080, RSMo, to bring an action for wrongful death, or his attorney or legal representative shall promptly notify the department of any recovery from a third party and shall immediately reimburse the department from the proceeds of any settlement, judgment, or other recovery in any action or claim initiated against any such third party.

7. The department director shall have a right to recover the amount of payments made to a provider under this chapter because of an injury, disease, or disability, or benefits arising from a health insurance plan to which the recipient may be entitled for which a third party is or may be liable in contract, tort or otherwise under law or equity.

8. The department of social services shall have a lien upon any moneys to be paid by any insurance company or similar business enterprise, person, corporation, institution, public agency or private agency in settlement or satisfaction of a judgment on any claim for injuries or disability or disease benefits arising from a health insurance program to which the recipient may be entitled which resulted in medical expenses for which the department made payment. This lien shall also be applicable to any moneys which may come into the possession of any attorney who is handling the claim for injuries, or disability or disease or benefits arising from a health insurance plan to which the recipient may be entitled which resulted in payments made by the department. In each case, a lien notice shall be served by certified mail or registered mail, upon the party or parties against whom the applicant or recipient has a claim, demand or cause of action. The lien shall claim the charge and describe the interest the department has in the claim, demand or cause of action. The lien shall attach to any verdict or judgment entered and to any money or property which may be recovered on account of such claim, demand, cause of action or suit from and after the time of the service of the notice.

9. On petition filed by the department, or by the recipient, or by the defendant, the court, on written notice of all interested parties, may adjudicate the rights of the parties and enforce the charge. The court may approve the settlement of any claim, demand or cause of action either before or after a verdict, and nothing in this section shall be construed as requiring the actual trial or final adjudication of any claim, demand or cause of action upon which the department has charge. The court may determine what portion of the recovery shall be paid to the department against the recovery. In making this determination the court shall conduct an evidentiary hearing and shall consider competent evidence pertaining to the following matters:

(1) The amount of the charge sought to be enforced against the recovery when expressed as a percentage of the gross amount of the recovery; the amount of the charge sought to be enforced against the recovery when expressed as a percentage of the amount obtained by subtracting from the gross amount of the recovery the total attorney's fees and other costs incurred by the recipient incident to the recovery; and whether the department should, as a matter of fairness and equity, bear its proportionate share of the fees and costs incurred to generate the recovery from which the charge is sought to be satisfied;

(2) The amount, if any, of the attorney's fees and other costs incurred by the recipient incident to the recovery and paid by the recipient up to the time of recovery, and the amount of such fees and costs remaining unpaid at the time of recovery;

(3) The total hospital, doctor and other medical expenses incurred for care and treatment of the injury to the date of recovery therefor, the portion of such expenses theretofore paid by the recipient, by insurance provided by the recipient, and by the department, and the amount of such previously incurred expenses which remain unpaid at the time of recovery and by whom such incurred, unpaid expenses are to be paid;

(4) Whether the recovery represents less than substantially full recompense for the injury and the hospital, doctor and other medical expenses incurred to the date of recovery for the care and treatment of the injury, so that reduction of the charge sought to be enforced against the recovery would not likely result in a double recovery or unjust enrichment to the recipient;

(5) The age of the recipient and of persons dependent for support upon the recipient, the nature and permanency of the recipient's injuries as they affect not only the future employability and education of the recipient but also the reasonably necessary and foreseeable future material, maintenance, medical rehabilitative and training needs of the recipient, the cost of such reasonably necessary and foreseeable future needs, and the resources available to meet such needs and pay such costs;

(6) The realistic ability of the recipient to repay in whole or in part the charge sought to be enforced against the recovery when judged in light of the factors enumerated above.

10. The burden of producing evidence sufficient to support the exercise by the court of its discretion to reduce the amount of a proven charge sought to be enforced against the recovery shall rest with the party seeking such reduction.

11. The court may reduce and apportion the department's lien proportionate to the recovery of the claimant. The court may consider the nature and extent of the injury, economic and noneconomic loss, settlement offers, comparative negligence as it applies to the case at hand, hospital costs, physician costs, and all other appropriate costs. The department shall pay its pro rata share of the attorney's fees based on the department's lien as it compares to the total settlement agreed upon. This section shall not affect the priority of an attorney's lien under section 484.140, RSMo. The charges of the department described in this section, however, shall take priority over all other liens and charges existing under the laws of the state of Missouri with the exception of the attorney's lien under such statute.

12. Whenever the department of social services has a statutory charge under this section against a recovery for damages incurred by a recipient because of its advancement of any assistance, such charge shall not be satisfied out of any recovery until the attorney's claim for fees is satisfied, irrespective of whether or not an action based on recipient's claim has been filed in court. Nothing herein shall prohibit the director from entering into a compromise agreement with any recipient, after consideration of the factors in subsections 9 to 13 of this section.

13. This section shall be inapplicable to any claim, demand or cause of action arising under the workers' compensation act, chapter 287, RSMo. From funds recovered pursuant to this section the federal government shall be paid a portion thereof equal to the proportionate part originally provided by the federal government to pay for medical assistance to the recipient or minor involved. The department shall [have the right to] enforce TEFRA liens, 42 U.S.C. 1396p, as authorized by federal law and regulation **on permanently institutionalized individuals. The department shall have the right to enforce TEFRA liens, 42 U.S.C. 1396p, as authorized by federal law and regulation on all other institutionalized individuals.** For the purposes of this subsection, "**permanently institutionalized individuals**" **includes those people who the department determines cannot reasonably be expected to be discharged and return home, and** "property" includes the homestead and all other personal and real property in which the recipient has sole legal interest or a legal interest based upon co-ownership of the property which is the result of a transfer of property for less than the fair market value within thirty months prior to the recipient's entering the nursing facility. The following provisions shall apply to such liens:

(1) The lien shall be for the debt due the state for medical assistance paid or to be paid on behalf of a recipient. The amount of the lien shall be for the full amount due the state at the time the lien is enforced;

(2) The director of the department or the director's designee shall file for record, with the recorder of deeds of the county in which any real property of the recipient is situated, a written notice of the lien. The notice of lien shall contain the name of the recipient and a description of the real estate. The recorder shall note the time of receiving such notice, and shall record and

index the notice of lien in the same manner as deeds of real estate are required to be recorded and indexed. The director or the director's designee may release or discharge all or part of the lien and notice of the release shall also be filed with the recorder;

(3) No such lien may be imposed against the property of any individual prior to his death on account of medical assistance paid except:

(a) In the case of the real property of an individual:

a. Who is an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution, to spend for costs of medical care all but a minimal amount of his income required for personal needs; and

b. With respect to whom the director of the department of social services or the director's designee determines, after notice and opportunity for hearing, that he cannot reasonably be expected to be discharged from the medical institution and to return home. The hearing, if requested, shall proceed under the provisions of chapter 536, RSMo, before a hearing officer designated by the director of the department of social services; or

(b) Pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual;

(4) No lien may be imposed under paragraph (b) of subdivision (3) of this subsection on such individual's home if one or more of the following persons is lawfully residing in such home:

(a) The spouse of such individual;

(b) Such individual's child who is under twenty-one years of age, or is blind or permanently and totally disabled; or

(c) A sibling of such individual who has an equity interest in such home and who was residing in such individual's home for a period of at least one year immediately before the date of the individual's admission to the medical institution;

(5) Any lien imposed with respect to an individual pursuant to subparagraph b of paragraph (a) of subdivision (3) of this subsection shall dissolve upon that individual's discharge from the medical institution and return home.

14. The debt due the state provided by this section is subordinate to the lien provided by section 484.130, RSMo, or section 484.140, RSMo, relating to an attorney's lien and to the recipient's expenses of the claim against the third party.

15. Application for and acceptance of medical assistance under this chapter shall constitute an assignment to the department of social services of any rights to support for the purpose of medical care as determined by a court or administrative order and of any other rights to payment for medical care.

16. All recipients of benefits as defined in this chapter shall cooperate with the state by reporting to the division of family services or the division of medical services, within thirty days, any occurrences where an injury to their persons or to a member of a household who receives medical assistance is sustained, on such form or forms as provided by the division of family services or the division of medical services.

17. If a person fails to comply with the provision of any judicial or administrative decree or temporary order requiring that person to maintain medical insurance on or be responsible for medical expenses for a dependent child, spouse, or ex-spouse, in addition to other remedies available, that person shall be liable to the state for the entire cost of the medical care provided pursuant to eligibility under any public assistance program on behalf of that dependent child, spouse, or ex-spouse during the period for which the required medical care was provided. Where a duty of support exists and no judicial or administrative decree or temporary order for support has been entered, the person owing the duty of support shall be liable to the state for the entire cost of the medical care provided on behalf of the dependent child or spouse to whom the duty of support is owed.

18. The department director or his designee may compromise, settle or waive any such claim in whole or in part in the interest of the medical assistance program.

208.225. MEDICAID PER DIEM RATE RECALCULATION FOR NURSING HOMES, AMOUNT.

— 1. To implement fully the provisions of section 208.152, the division of medical services shall [recalculate annually] **calculate** the Medicaid per diem reimbursement rates of each nursing home participating in the Medicaid program as a provider of nursing home services based on its costs reported in the Title XIX cost report filed with the division of medical services for its fiscal year [preceding the two facility fiscal years preceding the effective date of the recalculated rates] **as provided in subsection 2 of this section.**

2. The recalculation of Medicaid rates to all Missouri facilities will be performed [over three state fiscal years in three separate payments beginning July 1, 2004,] as follows: [(1)] Effective July 1, 2004, the department of social services shall use the Medicaid cost report containing adjusted costs for the facility fiscal year ending in 2001 and redetermine the allowable per-patient day costs for each facility. The department shall recalculate the class ceilings in the patient care, one hundred twenty percent of the median; ancillary, one hundred twenty percent of the median; and administration, one hundred ten percent of the median cost centers. Each facility shall receive as a rate increase one-third of the amount that is unpaid based on the recalculated cost determination[;

(2) Effective July 1, 2005, the department shall perform the same calculations described in subdivision (1) of this subsection, except that the calculations will be performed using the Medicaid cost report containing adjusted costs for the facility fiscal year ending in 2002. The facility shall receive as a rate increase one-third of the amount that it is underpaid;

(3) Effective July 1, 2006, the department shall perform the same calculations described in subdivision (1) of this subsection, except that the calculations will be performed using the Medicaid cost report containing adjusted costs for the facility fiscal year ending in 2003. The facility shall receive as a rate increase one-third of the amount that it is underpaid;

(4) Effective July 1, 2007, each facility shall receive a full Medicaid rate recalculation based upon its 2004 Medicaid cost report of adjusted costs].

208.640. CO-PAYMENTS REQUIRED, WHEN, AMOUNT, LIMITATIONS. — [1. Parents and guardians of uninsured children with available incomes between one hundred eighty-six and two hundred twenty-five percent of the federal poverty level are responsible for a five-dollar co-payment.

2.] Parents and guardians of uninsured children with incomes between [two hundred twenty-six] **one hundred fifty-one** and three hundred percent of the federal poverty level who do not have access to affordable employer-sponsored health care insurance or other affordable health care coverage may obtain coverage pursuant to this [subsection] **section**. For the purposes of sections 208.631 to 208.657, "affordable employer-sponsored health care insurance or other affordable health care coverage" refers to health insurance requiring a monthly premium less than or equal to one hundred thirty-three percent of the monthly average premium required in the state's current Missouri consolidated health care plan. The parents and guardians of eligible uninsured children pursuant to this [subsection] **section** are responsible [for co-payments equal to the average co-payments required in the current Missouri consolidated health care plan rounded to the nearest dollar, and] a monthly premium equal to the average premium required for the Missouri consolidated health care plan; provided that the total aggregate cost sharing for a family covered by these sections shall not exceed five percent of such family's income for the years involved. No co-payments or other cost sharing is permitted with respect to benefits for well-baby and well-child care including age-appropriate immunizations. Cost-sharing provisions pursuant to sections 208.631 to 208.657 shall not exceed the limits established by 42 U.S.C. Section 1397cc(e).

208.780. DEFINITIONS. — **As used in sections 208.780 to 208.798, the following terms shall mean:**

- (1) "Asset test", the asset limits as defined by the Medicare Prescription Drug Improvement and Modernization Act, P.L. 108-173;
- (2) "Contractor", the person, partnership, or corporate entity which has an approved contract with the department to administer the pharmaceutical assistance program established under sections 208.780 to 208.798 and this chapter;
- (3) "Department", the department of social services;
- (4) "Division", the department of social services, division of medical services;
- (5) "Enrollee", a resident of this state who meets the conditions specified in sections 208.780 to 208.798 and in department regulations relating to eligibility for participation in the Missouri Rx plan and whose application for enrollment in the Missouri Rx plan has been approved by the department;
- (6) "Federal poverty guidelines", the federal poverty guidelines updated annually in the Federal Register by the United States Department of Health and Human Services under the authority of 42 U.S.C. Section 9902(2);
- (7) "Liquid assets", assets used in the eligibility determination process as defined by the Medicare Modernization Act;
- (8) "Medicaid dual eligible" or "dual eligible", a person who is eligible for both Medicare and Medicaid as defined by the Medicare Modernization Act;
- (9) "Medicare Modernization Act" or "MMA", the Medicare Prescription Drug, Improvement and Modernization Act of 2003, P.L. 108-173;
- (10) "Medicare Part D prescription drug benefit", the prescription benefit provided under the Medicare Modernization Act, as it may vary from one prescription drug plan to another;
- (11) "Missouri resident", a person who has or intends to have a fixed place of residence in Missouri, with the present intent of maintaining a permanent home in Missouri for the indefinite future;
- (12) "Missouri Rx plan", the state pharmacy assistance program created in section 208.782, or the combination of state and federal programs providing services to the population described in section 208.784;
- (13) "Participating pharmacy", a pharmacy that elects to participate as a pharmaceutical provider and enters into a participating network agreement with the department or contractor;
- (14) "Prescription drugs", outpatient prescription drugs that have been approved as safe and effective by the United States Food and Drug Administration. Prescription drugs do not include experimental drugs or over-the-counter pharmaceutical products;
- (15) "Prescription drug plan" or "PDP", nongovernmental drug plans under contract with the Center for Medicare and Medicaid Services to provide prescription benefits under the Medicare Modernization Act;
- (16) "Program", the Missouri Rx plan created under sections 208.780 to 208.798.

208.782. MISSOURI RX PLAN ESTABLISHED, PURPOSE — RULEMAKING AUTHORITY. —

1. There is hereby established a state pharmaceutical assistance program within the meaning of federal law at 42 U.S.C. Section 1395 w-133(b), to be known as the "Missouri Rx Plan". The purpose of the Missouri Rx plan, established within the department of social services, is to provide certain pharmaceutical benefits to certain elderly and disabled residents of this state, to facilitate coordination of benefits between the Missouri Rx plan and the federal Medicare Part D drug benefit program established by the Medicare, Prescription, Drug, Improvement and Modernization Act of 2003, P.L. 108-173, and as well as to enroll such individuals in said program.

2. The Missouri Rx plan shall assist eligible elderly and disabled individuals, including individuals qualified as dual eligibles by virtue of their eligibility for receipt of benefits under both the Medicaid and Medicare programs, in defraying the cost of medically

necessary prescription drugs through coordination with the Medicare Part D drug benefit program. The Missouri Rx plan may select one or more prescription drug plans, as approved by the federal Centers for Medicare and Medicaid Services, as the preferred plan for purposes of the coordination of benefits between the Missouri Rx plan and the Medicare Part D drug. To ensure Medicare eligible seniors receive a coordinated benefit, the Missouri Rx plan may preliminarily enroll or re-enroll beneficiaries of the Missouri Rx plan into a preferred prescription drug plan or plans in the absence of any action or application of the individual beneficiary seeking such enrollment, provided that each individual so enrolled shall be promptly informed of:

- (1) The procedures by which the individual may disenroll from the preferred PDP;
- (2) The existence of an alternative PDP or PDPs authorized to provide Medicare Part D benefits in the region in which the individual resides;
- (3) The manner by which the individual may change his or her enrollment to an alternative, non-preferred PDP or obtain assistance in doing so; and
- (4) That enrollment in a non-preferred PDP will not adversely affect either the individual's eligibility for enrollment in the Missouri Rx plan or the amount of benefits the individual may be eligible to receive from the Missouri Rx plan. The enrollment authority under this section shall also include the authority to withdraw individuals from non-preferred plans in order to maximize the benefit to the individual.

3. The department shall promulgate rules and regulations, including benefit limits, as may be necessary to implement the Missouri Rx plan. 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, 2005, shall be invalid and void.

4. The department may delegate administrative responsibilities as necessary to implement the Missouri Rx plan. The department may designate or enter into contracts with other entities including but not limited to other states, governmental purchasing pools, or for-profit or non-profit organizations to assist in the administration of the program.

5. When requested by the department, other state agencies shall provide assistance or information necessary for the administration of the program.

208.784. COORDINATION OF PRESCRIPTION DRUG COVERAGE WITH MEDICARE PART D — ENROLLMENT IN PROGRAM — MEDICAID DUAL ELIGIBLES, EFFECT OF. — 1. The program shall coordinate prescription drug coverage with the Medicare Part D prescription drug benefit, including related supplies as determined by the department, who:

- (1) Is a resident of the state of Missouri and is either:
 - (a) Sixty-five years of age or older; or
 - (b) Is disabled and receiving a Social Security benefit and is enrolled in the Medicare program;
- (2) Is enrolled in a Medicare Part D drug plan;
- (3) Is not a member of a Medicare Advantage Plan that provides a prescription drug benefit;
- (4) Is not a member of a retirement plan that is receiving a benefit under the Medicare Prescription Drug, Improvement and Modernization Act of 2003, P.L. 108-173.

2. The department shall give initial enrollment priority to the Medicaid dual eligible population. A second enrollment priority will be afforded to Medicare eligible applicants

with annual household incomes at or below one hundred fifty percent of the federal poverty guidelines who also meet the asset test. Medicaid dual eligible persons may be automatically enrolled into the program, as long as they may opt out of the program if they so choose. The department shall determine the procedures for automatic enrollment in, and election out of, the Missouri Rx plan. Applicants meeting the eligibility requirements set forth in this section may begin enrolling in the program as determined by the department.

3. An individual or married couple who meet the eligibility requirements in subsection 1 of this section and who are not Medicaid dual eligible persons may apply for enrollment in the program by submitting an application to the department, or the department's designee, that attests to the age, residence, household income, and liquid assets of the individual or couple.

208.786. AUTHORITY OF DEPARTMENT IN PROVIDING BENEFITS — START OF PROGRAM BENEFITS, WHEN. — 1. In providing program benefits, the department shall have the authority to:

(1) Adopt, amend, and rescind such rules and regulations necessary to perform its duties under this law to maximize the benefits;

(2) Enter into a contract with one or more prescription drug plans to coordinate the prescription benefits of the Missouri Rx plan and the Medicare Part D prescription benefit;

(3) Require that pharmaceutical manufacturers provide Medicaid level or greater rebates for enrollees at or below two hundred percent of the federal poverty level who also meet the asset test for Medicare Part D prescription benefit in order for the manufacturer's products to be available to the enrollees of the Missouri Rx plan. These rebates shall be no less than those provided to Medicaid under Section 1927 of Title XIX of the Social Security Act, 42 U.S.C. Section 1396r-8. If revenue is generated for the program from sources other than appropriation, the additional revenue shall be deposited in the Missouri Rx plan fund. This additional revenue shall be used to fund program benefits and make payments, as may be required, under the Medicare Prescription, Drug Improvement and Modernization Act of 2003, P.L. 108-173;

(4) Preliminarily enroll beneficiaries into a preferred Medicare Part D prescription drug plan, with an "opt out" provision for the individual. Individuals who opt out of the preferred PDP shall remain enrolled in the Missouri Rx plan unless they choose to withdraw from the program;

(5) Prescribe the application and enrollment procedures for prospective enrollees in the Missouri Rx plan;

(6) Select in accordance with applicable procurement laws, a contractor to assist in the administration of the Missouri Rx plan or negotiate the provision of administrative function for the Missouri Rx plan.

2. Program benefits shall begin January 1, 2006. For persons meeting the eligibility requirements in section 208.784, the program may, subject to appropriation and contingent upon available funds, pay all or some of the deductibles, coinsurance payments, premiums, and copayments required under the Medicare Part D pharmacy benefit.

208.788. PROGRAM NOT AN ENTITLEMENT — PAYER OF LAST RESORT REQUIREMENTS. — 1. The program created in sections 208.780 to 208.798 is not an entitlement. The program created in or authorized under sections 208.780 to 208.798 is subject to the annual appropriation of funds by the general assembly. Benefits are limited by monies appropriated in the appropriations bill and signed by the governor less actions by the governor under article IV, sections 26 and 27 of the Missouri Constitution and section 33.290, RSMo.

2. The program is the payor of last resort, and shall only cover costs for participants that are not covered by the Medicare Part D prescription benefit.

3. Except for dual eligibles during the transition period in which they are being transferred from the Medicaid program to a prescription drug plan, applicants who are qualified for coverage of payments for prescription drugs under a public assistance program, other than MMA benefits, are ineligible for the Missouri Rx plan as long as they are so qualified.

4. Applicants who are qualified for full coverage of payments for prescription drugs under another plan of assistance or insurance are ineligible to receive benefits from the Missouri Rx plan as long as they are eligible to receive prescription drug benefits from another plan.

5. Applicants who are qualified for partial payments for prescription drugs under another insurance plan are eligible for the Missouri Rx plan, but may receive reduced assistance from the Missouri Rx plan.

208.790. APPLICANTS REQUIRED TO HAVE FIXED PLACE OF RESIDENCE, RULES. — 1. The applicant shall have or intend to have a fixed place of residence in Missouri, with the present intent of maintaining a permanent home in Missouri for the indefinite future. The burden of establishing proof of residence within this state is on the applicant. The requirement also applies to persons residing in long-term care facilities located in the state of Missouri.

2. The department shall promulgate rules outlining standards for documenting proof of residence in Missouri. Documents used to show proof of residence shall include the applicant's name and address in the state of Missouri.

208.792. ADVISORY COMMISSION ESTABLISHED, MEMBERS, DUTIES. — 1. There is hereby established the "Missouri Rx Plan Advisory Commission" within the department of health and senior services, division of senior services and regulation to provide advice on the benefit design and operational policy of the Missouri Rx plan established in sections 208.782 to 208.798. The commission shall consist of the following fifteen members:

- (1) The lieutenant governor, in his or her capacity as advocate for the elderly;
- (2) Two members of the senate, with one member from the majority party appointed by the president pro tem of the senate and one member of the minority party appointed by the president pro tem of the senate with the concurrence of the minority floor leader of the senate;
- (3) Two members of the house of representatives, with one member from the majority party appointed by the speaker of the house of representatives and one member of the minority party appointed by the speaker of the house of representatives with the concurrence of the minority floor leader of the house of representatives;
- (4) The director of the division of medical services in the department of social services;
- (5) The director of the division of senior services and regulation in the department of health and senior services;
- (6) The chairperson of the governor's commission on special health, psychological and social needs of minority older individuals;
- (7) The following four members appointed by the governor, with the advice and consent of the senate:
 - (a) A licensed pharmacist;
 - (b) A licensed physician;
 - (c) A representative from a senior advocacy group; and
 - (d) A representative from an area agency on aging;

(8) A representative from the pharmaceutical manufacturers industry as a nonvoting member appointed by the president pro tem of the senate and the speaker of the house of representatives;

(9) One public member appointed by the president pro tem of the senate; and

(10) One public member appointed by the speaker of the house of representatives. In making the initial appointment to the committee, the governor, president pro tem, and speaker shall stagger the terms of the appointees so that four members serve initial terms of two years, four members serve initial terms of three years, four members serve initial terms of four years, and one member serves an initial term of one year. All members appointed thereafter shall serve three-year terms. All members shall be eligible for reappointment. The commission shall elect a chair and may employ an executive director and such professional, clerical, and research personnel as may be necessary to assist in the performance of the commission's duties.

2. Recognizing the unique medical needs of the senior African American population, the president pro tem of the senate, speaker of the house of representatives, and governor will collaborate to ensure that there is adequate minority representation among legislative members and other members of the commission.

3. The commission:

(1) May provide advice on guidelines, policies, and procedures necessary to establish the Missouri Rx plan;

(2) Shall educate Missouri residents on quality prescription drug programs and cost containment strategies in medication therapy;

(3) Shall assist Missouri residents in enrolling or accessing prescription drug assistance programs for which they are eligible; and

(4) Shall hold quarterly meetings and other meetings as deemed necessary.

4. The members of the commission shall receive no compensation for their service on the commission, but shall be reimbursed for ordinary and necessary expenses incurred in the performance of their duties as a member of the commission.

208.794. FUND CREATED. — 1. There is hereby created in the state treasury the "Missouri Rx Plan Fund", which shall consist of all moneys deposited in the fund under sections 208.780 to 208.798, and all moneys which may be appropriated to it by the general assembly from federal or other sources.

2. The state treasurer shall be custodian of the fund and shall approve disbursements from the fund in accordance with sections 30.170 and 30.180, RSMo. Upon appropriation, money in the fund shall be used solely for the administration of sections 208.780 to 208.798. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund.

3. All funds collected by or due and payable to the Missouri Rx plan fund shall remain in and accrue to said fund.

4. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, moneys in the fund shall not revert to the credit of the general revenue fund at the end of the biennium.

208.798. CONTINGENT TERMINATION DATE — SUNSET PROVISION. — 1. The provisions of sections 208.550 to 208.568 shall terminate following notice to the revisor of statutes by the Missouri RX plan advisory commission that the Medicare Prescription Drug, Improvement & Modernization Act of 2003 has been fully implemented.

2. Pursuant to section 23.253, RSMo, of the Missouri Sunset Act, the provisions of the new program authorized under sections 208.780 to 208.798 shall automatically sunset

six years after the effective date of sections 208.780 to 208.798 unless reauthorized by an act of the general assembly.

453.072. QUALIFIED RELATIVES TO RECEIVE SUBSIDIES, WHEN. — Any subsidies available to adoptive parents pursuant to section 453.073 and section 453.074 shall also be available to a qualified relative of a child who is granted legal guardianship of the child in the same manner as such subsidies are available for adoptive parents, **including income restrictions as provided in subsection 4 of section 453.073.** As used in this section "relative" means any grandparent, aunt, uncle, adult sibling of the child or adult first cousin of the child.

453.073. SUBSIDY TO ADOPTED CHILD — DETERMINATION OF — HOW PAID — WRITTEN AGREEMENT. — 1. The **children's** division [of family services] is authorized to grant a subsidy to a child in one of the forms of allotment defined in section 453.065. Determination of the amount of monetary need is to be made by the division at the time of placement, if practicable, and in reference to the needs of the child, including consideration of the physical and mental condition, and age of the child in each case; provided, however, that the subsidy amount shall not exceed the expenses of foster care and medical care for foster children paid under the homeless, dependent and neglected foster care program.

2. The subsidy shall be paid for children who have been in the care and custody of the **children's** division [of family services] under the homeless, dependent and neglected foster care program. In the case of a child who has been in the care and custody of a private child-caring or child-placing agency or in the care and custody of the division of youth services or the department of mental health, a subsidy shall be available from the **children's** division [of family services] subsidy program in the same manner and under the same circumstances and conditions as provided for a child who has been in the care and custody of the **children's** division [of family services].

3. Within thirty days after the authorization for the grant of a subsidy by the **children's** division [of family services], a written agreement shall be entered into by the division and the parents. The agreement shall set forth the following terms and conditions:

- (1) The type of allotment;
- (2) The amount of assistance payments;
- (3) The services to be provided;
- (4) The time period for which the subsidy is granted[, if that period is reasonably ascertainable] **shall not exceed one year. The agreement can be renewed for subsequent years at the discretion of the director. All existing agreements will have deemed to have expired one year after they were initially entered into;**

(5) The obligation of the parents to inform the division when they are no longer providing support to the child or when events affect the subsidy eligibility of the child;

(6) The eligibility of the child for Medicaid.

4. The subsidy shall only be granted to children who reside in a household with an income that does not exceed two hundred percent of the federal poverty level or are eligible for Title IV-E adoption assistance.

660.661. DEFINITIONS. — As used in sections 660.661 to 660.687, the following terms mean:

- (1) "Consumer", a physically disabled person determined by the department to be eligible to receive personal care assistance services. "Consumer" does not include any individual with a legal limitation of his or her ability to make decisions, including the appointment of a guardian or conservator, or who has an effective power of attorney that authorizes another person to act as the agent or on behalf of the individual for any of the duties required by the consumer-directed program;

- (2) "Consumer-directed", the hiring, training, supervising, and directing of the personal care attendant by the consumer;
- (3) "Department", the department of health and senior services;
- (4) "Live independently", to reside and perform routine tasks in a noninstitutional or unsupervised residential setting;
- (5) "Personal care assistance services", those routine tasks provided to meet the unmet needs required by the consumer to enable him or her to live independently;
- (6) "Personal care attendant", a person, other than the consumer's spouse, who performs personal care assistance services for the consumer;
- (7) "Physically disabled", loss of, or loss of use of, all or part of the neurological, muscular, or skeletal functions of the body to the extent that a person requires the assistance of another person to accomplish routine tasks;
- (8) "Routine tasks":
 - (a) Bowel and bladder elimination;
 - (b) Dressing and undressing;
 - (c) Moving into and out of bed;
 - (d) Preparation and consumption of food and drink;
 - (e) Bathing and grooming;
 - (f) Use of prostheses, aids, equipment, and other similar devices; or
 - (g) Ambulation, housekeeping, and other functions of daily living;
- (9) "Unmet needs", those routine tasks which are allowable by the Medicaid state plan but which cannot reasonably be met by the members of the consumer's household or other current support systems;
- (10) "Vendor", any organization having a written agreement with the department to provide services including monitoring and oversight of the personal care attendant, orientation, and training of the consumer, and fiscal conduit services necessary for delivery of personal care assistance services to consumers.

660.664. FINANCIAL ASSISTANCE FOR PERSONAL CARE, ELIGIBILITY REQUIREMENTS.

— 1. Subject to appropriations, the department shall provide financial assistance for consumer-directed personal care assistance services through eligible vendors to each person determined eligible to participate under guidelines established by the Medicaid state plan and who:

- (1) Is capable of living independently with personal care assistance services;
- (2) Is physically disabled;
- (3) Is eighteen years of age or older;
- (4) Is able to direct his or her own care;
- (5) Is able to document proof of Medicaid eligibility under Title XIX of the Social Security Act under federal and state laws and regulations;
- (6) Requires at least a nursing home level of care under regulations established by the department;
- (7) Participates in an assessment or evaluation, or both, by the department; and
- (8) Can have their unmet needs safely met at a cost that shall not exceed the average monthly Medicaid cost of nursing facility care as determined by the department of social services.

2. Upon certification of the employment of a personal care attendant chosen by the consumer in accordance with sections 660.661 to 660.687, the vendor shall perform the payroll and fringe benefit accounting functions for the consumer. The vendor shall be responsible for filing claims with the Missouri Medicaid program. Statutorily required fringe benefit costs shall be paid from the personal care assistant appropriation. The department shall establish the statewide rate for personal care attendant services. For purposes of this section, the personal care attendant is considered the employee of the

consumer only for the period of time subsidized by personal care assistant funds. Nothing in this section shall be construed to mean that the attendant is the employee of the vendor, the department, or the state of Missouri.

660.667. DETERMINATION OF ELIGIBILITY — PERSONAL CARE SERVICE PLAN TO BE DEVELOPED — REEVALUATION REQUIRED. — 1. The department shall initiate the determination of an applicant's eligibility for personal care assistance services as follows:

(1) For all persons who had been receiving personal care assistance services on the effective date of this act, the department shall initiate re-verification of the consumer's eligibility for personal care assistance services not later than one year following the effective date of this act. For all such re-verifications in which the person is found to remain eligible, the department shall also review the person's personal care assistance authorized by the department to determine if it shall be maintained, adjusted, or eliminated according to the person's current situation at the re-verification;

(2) For all applicants for personal care assistance services who apply for such services on or after the effective date of this act, the department shall initiate the determination of an applicant's eligibility for personal care assistance services within thirty days of receipt of a completed application;

(3) After the assessment described in subdivisions (1) and (2) of this subsection, the department shall re-verify the applicant's eligibility for personal care assistance services at least every twelve months;

(4) All such determinations made under subdivisions (1), (2), and (3) of this subsection shall be made using the same common assessment tool used by the department for assessment of other disabled and aged adults;

(5) All such determinations made under subdivisions (1), (2), and (3) shall be made in strict compliance with the provisions of subsection 2 of section 660.670.

2. The applicant shall be notified of the initial determination of the department on his or her eligibility for personal care assistance services within ten days of determination.

3. Upon a determination of eligibility, the department shall develop a personal care assistance services plan which shall include, but is not limited to, the following:

(1) The maximum number of units of fifteen minute increments of personal care assistance services to be provided; and

(2) Dates of initiation of, and re-verification of the personal care assistance services provided.

4. Upon a determination of eligibility and completion of a personal care assistance services plan, the consumer shall choose a vendor of personal care assistance services from a list of eligible vendors maintained by the department. The vendor shall be responsible for maintaining a list of eligible personal care attendants. The personal care assistance services plan shall be signed by the consumer and a representative of the department. Copies of the plan shall be provided to the consumer, the vendor, and the department.

5. The needs of the consumer shall be re-evaluated annually by the department, and the amount of assistance authorized by the department shall be maintained, adjusted, or eliminated accordingly.

660.670. RESPONSIBILITIES OF RECIPIENTS AND VENDORS. — 1. Consumers receiving personal care assistance services shall be responsible for:

(1) Supervising their personal care attendant;

(2) Verifying wages to be paid to the personal care attendant;

(3) Preparing and submitting time sheets, signed by both the consumer and personal care attendant, to the vendor on a biweekly basis;

(4) Promptly notifying the department within ten days of any changes in circumstances affecting the personal care assistance services plan or in the consumer's place of residence; and

(5) Reporting any problems resulting from the quality of services rendered by the personal care attendant to the vendor. If the consumer is unable to resolve any problems resulting from the quality of service rendered by the personal care attendant with the vendor, the consumer shall report the situation to the department.

2. Participating vendors shall be responsible for:

(1) Collecting time sheets and certifying their accuracy;

(2) The Medicaid reimbursement process, including the filing of claims and reporting data to the department as required by rule;

(3) Transmitting the individual payment directly to the personal care attendant on behalf of the consumer;

(4) Monitoring the performance of the personal care assistance services plan.

3. No state or federal financial assistance shall be authorized or expended to pay for services provided to a consumer under sections 660.661 to 660.687, if the primary benefit of the services is to the household unit, or is a household task that the members of the consumer's household may reasonably be expected to share or do for one another when they live in the same household, unless such service is above and beyond typical activities household members may reasonably provide for another household member without a disability.

4. No state or federal financial assistance shall be authorized or expended to pay for personal care assistance services provided by a personal care attendant who is listed on any of the background check lists in the family care safety registry under sections 210.900 to 210.937, RSMo, unless a good cause waiver is first obtained from the department in accordance with section 660.317, RSMo.

660.673. ABUSE AND NEGLECT REPORTING — INVESTIGATION PROCEDURES — CONTENT OF REPORTS — EMPLOYEE DISQUALIFICATION LIST MAINTAINED. — 1. When any adult day care worker; chiropractor, Christian Science practitioner, coroner, dentist, embalmer, employee of the departments of social services, mental health, or health and senior services; employee of a local area agency on aging or an organized area agency on aging program; funeral director; home health agency or home health agency employee; hospital and clinic personnel engaged in examination, care, or treatment of persons; in-home services owner, provider, operator, or employee; law enforcement officer; long-term care facility administrator or employee; medical examiner; medical resident or intern; mental health professional; minister; nurse; nurse practitioner; optometrist; other health practitioner; peace officer; pharmacist; physical therapist; physician; physician's assistant; podiatrist; probation or parole officer; psychologist; vendor as defined in section 660.661; personal care attendant; or social worker has reasonable cause to believe that a consumer has been abused or neglected as defined in section 660.250 as a result of the delivery of or failure to deliver personal care assistance services, he or she shall immediately report or cause a report to be made to the department. If the report is made by a physician of the consumer, the department shall maintain contact with the physician regarding the progress of the investigation.

2. When a report of deteriorating physical condition resulting in possible abuse or neglect of a consumer is received by the department, the department's case manager and the department nurse shall be notified. The case manager shall investigate and immediately report the results of the investigation to the department nurse.

3. If requested, local area agencies on aging shall provide volunteer training to those persons listed in subsection 1 of this section regarding the detection and reporting of abuse and neglect under this section.

4. Any person required in subsection 1 of this section to report or cause a report to be made to the department who fails to do so within a reasonable time after the act of abuse or neglect is guilty of a class A misdemeanor.

5. The report shall contain the names and addresses of the vendor, the personal care attendant, and the consumer, and information regarding the nature of the abuse or neglect, the name of the complainant, and any other information which might be helpful in an investigation.

6. In addition to those persons required to report under subsection 1 of this section, any other person having reasonable cause to believe that a consumer has been abused or neglected by a personal care attendant may report such information to the department.

7. If the investigation indicates possible abuse or neglect of a consumer, the investigator shall refer the complaint together with his or her report to the department director or his or her designee for appropriate action. If, during the investigation or at its completion, the department has reasonable cause to believe that immediate action is necessary to protect the consumer from abuse or neglect, the department or the local prosecuting attorney may, or the attorney general upon request of the department shall, file a petition for temporary care and protection of the consumer in a circuit court of competent jurisdiction. The circuit court in which the petition is filed shall have equitable jurisdiction to issue an ex parte order granting the department authority for the temporary care and protection of consumer, for a period not to exceed thirty days.

8. Reports shall be confidential, as provided under section 660.320.

9. Anyone, except any person who has abused or neglected a consumer, who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability for making such a report or for testifying, except for liability for perjury, unless such person acted negligently, recklessly, in bad faith, or with malicious purpose.

10. Within five working days after a report required to be made under this section is received, the person making the report shall be notified of its receipt and of the initiation of the investigation.

11. No person who directs or exercises any authority as a vendor, and no personal care attendant, shall harass, dismiss or retaliate against a consumer because he or she or any member of his or her family has made a report of any violation or suspected violation of laws, standards or regulations applying to the vendor or personal care attendant which he or she has reasonable cause to believe has been committed or has occurred.

12. The department shall place on the employee disqualification list established in section 660.315 the names of any persons who have been finally determined by the department, to have recklessly, knowingly or purposely abused or neglected a consumer while employed by a vendor, or employed by a consumer as a personal care attendant.

13. The department shall provide the list maintained pursuant to section 660.315 to vendors as defined in section 660.661.

14. Any person, corporation or association who received the employee disqualification list under subsection 13 of this section, or any person responsible for providing health care service, who declines to employ or terminates a person whose name is listed in this section shall be immune from suit by that person or anyone else acting for or in behalf of that person for the failure to employ or for the termination of the person whose name is listed on the employee disqualification list.

660.676. MISAPPROPRIATION OF CONSUMER'S PROPERTY OR FUNDS, REPORT TO THE DEPARTMENT — CONTENT OF REPORT — INVESTIGATION PROCEDURES — EMPLOYEE DISQUALIFICATION LIST MAINTAINED. — 1. Any person having reasonable cause to believe that a misappropriation of a consumer's property or funds, or the falsification of any documents verifying personal care assistance services delivery to the consumer has occurred, may report such information to the department.

2. For each report the department shall attempt to obtain the name and address of the vendor, the personal care attendant, the personal care assistance services consumer,

information regarding the nature of the misappropriation or falsification, the name of the complainant, and any other information which might be helpful in an investigation.

3. Any personal care assistance services vendor, or personal care attendant who puts to his or her own use or the use of the personal care assistance services vendor or otherwise diverts from the personal care assistance services consumer's use any personal property or funds of the consumer, or falsifies any documents for service delivery, is guilty of a class A misdemeanor.

4. Upon receipt of a report, the department shall immediately initiate an investigation and report information gained from such investigation to appropriate law enforcement authorities.

5. If the investigation indicates probable misappropriation of property or funds, or falsification of any documents for service delivery of a personal care assistance services consumer, the investigator shall refer the complaint together with the investigator's report to the department director or the director's designee for appropriate action.

6. Reports shall be confidential, as provided under section 660.320.

7. Anyone, except any person participating in or benefitting from the misappropriation of funds, who makes a report under this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability for making such a report or for testifying except for liability for perjury, unless such person acted negligently, recklessly, in bad faith, or with malicious purpose.

8. Within five working days after a report required to be made under this section is received, the person making the report shall be notified in writing of its receipt and of the initiation of the investigation.

9. No person who directs or exercises any authority in a personal care assistance services vendor agency shall harass, dismiss or retaliate against a personal care assistance services consumer or a personal care attendant because he or she or any member of his or her family has made a report of any violation or suspected violation of laws, ordinances or regulations applying to the personal care assistance services vendor or any personal care attendant which he or she has reasonable cause to believe has been committed or has occurred.

10. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any personal care attendants who are or have been employed by a personal care assistance services consumer, and the names of any persons who are or have been employed by a vendor as defined in subdivision (10) of section 660.661, and who have been finally determined by the department under section 660.315 to have misappropriated any property or funds, or falsified any documents for service delivery to a personal care assistance services consumer and who came to be known to the consumer, directly, or indirectly by virtue of the consumers participation in the personal care assistance services program.

660.679. VENDOR REQUIREMENTS, PHILOSOPHY AND SERVICES. — 1. In order to qualify for an agreement with the department, the vendor shall have a philosophy that promotes the consumer's ability to live independently in the most integrated setting or the maximum community inclusion of persons with physical disabilities, and shall demonstrate the ability to provide, directly or through contract, the following services:

- (1) Orientation of consumers concerning the responsibilities of being an employer, supervision of personal care attendants including the preparation and verification of time sheets;
 - (2) Training for consumers about the recruitment and training of personal care attendants;
 - (3) Maintenance of a list of persons eligible to be a personal care attendant;
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(4) Processing of inquiries and problems received from consumers and personal care attendants;

(5) Ensuring the personal care attendants are registered with the family care safety registry as provided in sections 210.900 to 210.937, RSMo; and

(6) The capacity to provide fiscal conduit services.

2. In order to maintain its agreement with the department, a vendor shall comply with the provisions of subsection 1 of this section and shall:

(1) Demonstrate sound fiscal management as evidenced on accurate quarterly financial reports and annual audit submitted to the department; and

(2) Demonstrate a positive impact on consumer outcomes regarding the provision of personal care assistance services as evidenced on accurate quarterly and annual service reports submitted to the department;

(3) Implement a quality assurance and supervision process that ensures program compliance and accuracy of records; and

(4) Comply with all provisions of sections 660.661 to 660.687, and the regulations promulgated thereunder.

660.681. DENIAL OF ELIGIBILITY, APPLICANT ENTITLED TO HEARING. — 1. Applicants for personal care assistance services and consumers receiving such services are entitled to a hearing with the department of social services if eligibility for personal care assistance services is denied, if the type or amount of services is set at a level less than the consumer believes is necessary, if disputes arise after preparation of the personal care assistance services plan concerning the provision of such services, or if services are discontinued as provided in section 660.648.

2. A request for a hearing shall be made to the department of social services in writing in the form prescribed by the department of social services within ninety days after the mailing or delivery of the written decision of the department of health and senior services. The procedures for such requests and for the hearings shall be as set forth in section 208.080, RSMo.

660.684. DISCONTINUATION OF SERVICES, WHEN. — A consumer's personal care assistance services may be discontinued under circumstances such as the following:

(1) The department learns of circumstances that require closure of a consumer's case, including one or more of the following: death, admission into a long term care facility, no longer needing service, or inability of the consumer to consumer-direct personal care assistance service;

(2) The consumer has falsified records or committed fraud;

(3) The consumer is noncompliant with the plan of care. Noncompliance requires persistent actions by the consumer which negate the services provided in the plan of care;

(4) The consumer or member of the consumer's household threatens or abuses the personal care attendant or vendor to the point where their welfare is in jeopardy and corrective action has failed;

(5) The maintenance needs of a consumer are unable to continue to be met because the plan of care hours exceed availability; and

(6) The personal care attendant is not providing services as set forth in the personal care assistance services plan and attempts to remedy the situation have been unsuccessful.

660.687. RULEMAKING AUTHORITY. — The department may promulgate rules and regulations to implement the provisions of sections 660.661 to 660.687. 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. Any provisions of the existing rules regarding the personal care assistance program promulgated by the department of elementary and secondary education in title 5, code of state regulation, division 90, chapter 7, which are inconsistent with the provisions of sections 660.661 to 660.687 are void and of no force and effect.

[178.661. DEFINITIONS. — As used in sections 178.661 to 178.673, the following terms mean:

(1) "After-tax income", the sum of all income from all sources to an individual including, but not limited to, salary, wages, tips, interest, dividends, annuities, pensions, and disability payments, less the sum of all federal, state, and local taxes on such income;

(2) "Client", a physically disabled person determined by the division to be eligible to receive personal care assistance services;

(3) "Counselor", an employee of the division responsible for determining eligibility for personal care assistance services and for developing and implementing a personal care assistance services plan;

(4) "Division", the division of vocational rehabilitation of the department of elementary and secondary education;

(5) "Employment", a minimum of sixteen hours per week for which an individual receives remuneration;

(6) "Live independently", to reside and perform routine tasks in a noninstitutional or unsupervised residential setting;

(7) "Participant-directed", hiring, training, supervising, and directing of the personal care attendant by the physically disabled person;

(8) "Personal care assistance services", those services required by a physically disabled person to enable him to perform those routine tasks necessary to enter and to maintain employment or to live independently;

(9) "Personal care attendant", a person who performs personal care assistance tasks for a physically disabled person;

(10) "Physically disabled", loss of, or loss of use of, all or part of the neurological, muscular, or skeletal functions of the body to the extent that a person requires the assistance of another person to accomplish routine tasks;

(11) "Routine tasks":

(a) Bowel and bladder elimination;

(b) Dressing and undressing;

(c) Moving into and out of bed;

(d) Preparation and consumption of food and drink;

(e) Bathing and grooming;

(f) Use of prostheses, aids, equipment, and other similar devices; or

(g) Ambulation and other functions of daily living;

(12) "Sleeping-hours attendant", a person who provides personal care assistance services to a physically disabled person during a daily eight-hour period when the physically disabled person normally sleeps;

(13) "Vendor", any person, firm or corporation certified by the division as eligible to provide evaluation and fiscal conduit services necessary for delivery of personal care assistance services to physically disabled persons.]

[178.662. PERSONS ELIGIBLE FOR ASSISTANCE — FINANCIAL ASSISTANCE, AMOUNT, HOW DETERMINED — ACCOUNTING FUNCTIONS, WHO PERFORMS — LOCAL MONITORING AND SUPERVISION RESPONSIBILITY — ATTENDANT NOT EMPLOYEE OF DIVISION OR STATE. — 1. Subject to appropriations, the division shall provide financial assistance for participant-directed personal care assistance services through eligible vendors, except for the provisions of

subsection 3 of this section, to each person selected to participate under guidelines established by the division and who:

- (1) Is employed or is ready for employment, or is capable of living independently with personal care assistance;
- (2) Is physically disabled;
- (3) Has a documented need for a minimum of seven or a maximum of forty-two hours per week of personal care assistance or, if more than forty-two hours per week are required, substantial documentation may be used to support a request for additional time; and
- (4) Is in financial need as determined by the division according to a standard means test.

2. Personal care assistance services shall be provided, at cost to the division, to the client to the extent that he is determined to be in financial need. Such need shall be determined by reducing the client's after-tax income by an amount equal to the client's necessary living expenses. Financial assistance shall be decreased as the client's ability to pay increases, in accordance with a schedule set out in the client's personal care assistance plan.

3. Upon vendor certification of the employment of a personal care attendant, the division or the vendor, at the vendor's option, shall perform the payroll and fringe benefit accounting functions for the client. The vendor shall accumulate required employee authorizing documentation and forward to the division. Although the division or the vendor shall perform the payroll and fringe benefit functions, all local monitoring and supervision of the attendant shall be the responsibility of the vendor and client. Statutorily required fringe benefit costs shall be paid from the personal care assistant appropriation. The division shall establish the statewide hourly rate for attendant services. For purposes of this section, the attendant is considered the employee of the client only for the period of time subsidized by personal care assistant funds. Nothing in this section shall be construed such that the attendant is the employee of the division or the state of Missouri.]

[178.664. FINANCIAL NEED HOW DETERMINED, ANNUAL REVIEW — ADJUSTMENT WHEN. — 1. Upon application by a physically disabled person for personal care assistance services at any local division office, a counselor shall meet with the applicant and shall:

(1) Determine whether the applicant meets the criteria for eligibility set forth in section 178.662, meets the guidelines for participation; and

(2) Determine the extent of the applicant's financial need.

2. The applicant shall be notified within thirty days of his initial application of the determination of the division on his eligibility for personal care assistance services.

3. Upon a determination of eligibility, the counselor shall refer the client to an eligible vendor of personal care assistance services for evaluation and shall develop a personal care assistance services plan which shall include, but is not limited to, the following:

(1) The maximum hours of personal care assistance services to be provided;

(2) The maximum amount of financial assistance to be provided by the division for such services;

(3) Authorization for a sleeping-hours attendant, if necessary; and

(4) Dates of evaluation for, initiation of, and reevaluations of the personal care assistance services.

4. The personal care assistance services plan shall be signed by the client, the counselor, and the vendor, and copies of the plan shall be provided to each.

5. The financial need of the client shall be reevaluated annually, and the amount of assistance received by the client shall be adjusted or eliminated accordingly.]

[178.666. CLIENT RECEIVING PERSONAL CARE ASSISTANCE, RESPONSIBILITIES — TIME SHEETS ACCUMULATION, PAYMENT. — Clients receiving personal care assistance services shall be responsible for the supervision of their personal care attendant, payment of wages to the personal care attendant, and preparation and submission of time sheets, signed by both the client

and personal care attendant, to the vendor on a biweekly basis. The vendor shall accumulate time sheets, certify accuracy, and forward to the division for processing. The division shall mail the individual payment directly to the employee. In addition, the client shall promptly notify the division and his counselor of any changes in his need for personal care assistance services, in his financial status, or in his place of residence. Any problems resulting from the quality of service rendered by the personal care attendant shall be reported to the vendor.]

[178.669. VENDORS FURNISHING SERVICES, REQUIREMENTS FOR CERTIFICATION. — 1. In order to be certified by the division as an eligible vendor of personal care assistance services, a vendor shall be a not-for-profit corporation organized under the provisions of chapter 355, RSMo.

2. In addition, the vendor shall demonstrate the ability to provide, directly or through contract, the following services:

- (1) Evaluation of the extent of a client's need for personal care assistance services;
- (2) Orientation of clients concerning the supervision of personal care attendants including the preparation of time sheets;
- (3) Training to clients in the recruitment and training of personal care attendants;
- (4) Maintenance of a list of persons interested in being personal care attendants; and
- (5) Processing of inquiries and problems received from clients and personal care attendants.]

[178.671. HEARING FOR APPLICANT, WHEN, PROCEDURE. — 1. Applicants for personal care assistance services and clients receiving such services are entitled to a hearing before the assistant commissioner of the division if eligibility for personal care assistance services is denied, if financial assistance for such services is denied or set at a level below what the client believes is necessary, or if disputes arise after preparation of the personal care assistance services plan concerning the provision of such services.

2. Requests for a hearing shall be made in writing in the form prescribed by the division to the assistant commissioner of the division within thirty days after the denial of eligibility, the denial of financial assistance, the determination of the level of financial assistance, or the signing of the personal care assistance services plan.]

[178.673. RULES, PROMULGATION — FILING, DISAPPROVAL, EFFECT — RATIFICATION OF DISAPPROVAL BY GENERAL ASSEMBLY, PUBLICATION. — The division is authorized to adopt, promulgate, amend, and repeal rules, regulations, and standards to carry out the provisions of sections 178.661 to 178.673, but all rules and regulations shall be adopted and promulgated in accordance with the provisions of section 178.652 and chapter 536, RSMo.]

[208.146. CONTINUATION OF MEDICAL ASSISTANCE FOR EMPLOYED DISABLED PERSONS, WHEN, CRITERIA — PREMIUMS COLLECTED, WHEN. — 1. Pursuant to the federal Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIA) (Public Law 106-170), the medical assistance provided for in section 208.151 may be paid for a person who is employed and who:

- (1) Meets the definition of disabled under the supplemental security income program or meets the definition of an employed individual with a medically improved disability under TWWIA;
- (2) Meets the asset limits in subsection 2 of this section; and
- (3) Has a gross income of two hundred fifty percent or less of the federal poverty guidelines. For purposes of this subdivision, "income" does not include any income of the person's spouse up to one hundred thousand dollars or children. Individuals with incomes in excess of one hundred fifty percent of the federal poverty level shall pay a premium for participation in accordance with subsection 5 of this section.

2. For purposes of determining eligibility pursuant to this section, a person's assets shall not include:

- (1) Any spousal assets up to one hundred thousand dollars, one-half of any marital assets and all assets excluded pursuant to section 208.010;
- (2) Retirement accounts, including individual accounts, 401(k) plans, 403(b) plans, Keogh plans and pension plans;
- (3) Medical expense accounts set up through the person's employer;
- (4) Family development accounts established pursuant to sections 208.750 to 208.775; or
- (5) PASS plans.

3. A person who is otherwise eligible for medical assistance pursuant to this section shall not lose his or her eligibility if such person maintains an independent living development account. For purposes of this section, an "independent living development account" means an account established and maintained to provide savings for transportation, housing, home modification, and personal care services and assistive devices associated with such person's disability. Independent living development accounts and retirement accounts pursuant to subdivision (2) of subsection 2 of this section shall be limited to deposits of earned income and earnings on such deposits made by the eligible individual while participating in the program and shall not be considered an asset for purposes of determining and maintaining eligibility pursuant to section 208.151 until such person reaches the age of sixty-five.

4. If an eligible individual's employer offers employer-sponsored health insurance and the department of social services determines that it is more cost effective, the individual shall participate in the employer-sponsored insurance. The department shall pay such individual's portion of the premiums, co-payments and any other costs associated with participation in the employer-sponsored health insurance.

5. Any person whose income exceeds one hundred fifty percent of the federal poverty level shall pay a premium for participation in the medical assistance provided in this section. The premium shall be:

- (1) For a person whose income is between one hundred fifty-one and one hundred seventy-five percent of the federal poverty level, four percent of income at one hundred sixty-three percent of the federal poverty level;
- (2) For a person whose income is between one hundred seventy-six and two hundred percent of the federal poverty level, five percent of income at one hundred eighty-eight percent of the federal poverty level;
- (3) For a person whose income is between two hundred one and two hundred twenty-five percent of the federal poverty level, six percent of income at two hundred thirteen percent of the federal poverty level;
- (4) For a person whose income is between two hundred twenty-six and two hundred fifty percent of the federal poverty level, seven percent of income at two hundred thirty-eight percent of the federal poverty level.

6. If the department elects to pay employer-sponsored insurance pursuant to subsection 4 of this section then the medical assistance established by this section shall be provided to an eligible person as a secondary or supplemental policy to any employer-sponsored benefits which may be available to such person.

7. The department of social services shall submit the appropriate documentation to the federal government for approval which allows the resources listed in subdivisions (1) to (5) of subsection 2 of this section and subsection 3 of this section to be exempt for purposes of determining eligibility pursuant to this section.

8. The department of social services shall apply for any and all grants which may be available to offset the costs associated with the implementation of this section.

9. The department of social services shall not contract for the collection of premiums pursuant to this chapter. To the best of their ability, the department shall collect premiums through the monthly electronic funds transfer or employer deduction.

10. Recipients of services through this chapter who pay a premium shall do so by electronic funds transfer or employer deduction unless good cause is shown to pay otherwise.]

[208.162. MEDICAL ASSISTANCE FOR PERSONS RECEIVING GENERAL RELIEF — RULES, PROCEDURE. — 1. Benefit payments for medical assistance shall be made on behalf of those individuals who are receiving general relief benefits under section 208.015, with any payments to be made on the basis of reasonable cost of the care or reasonable charge for the services as defined and determined by the division of family services, for the following, provided that the division of family services may negotiate a rate of payment for hospital services different than the Medicare rate for such services:

(1) Inpatient hospital services, including the first three pints of whole blood unless available to the patient from other sources; provided, that in the case of eligible persons who are provided benefits under Title XVIII A, Public Law 89-97, 1965 amendments to the federal Social Security Act (42 U.S.C.A. section 301 et seq.), as amended, payment for the first ninety days during any spell of illness shall not exceed the cost of any deductibles imposed by such title, plus coinsurance after the first sixty days;

(2) All outpatient hospital services, including diagnostic services; provided, however, that the division of family services shall evaluate outpatient hospital services rendered under this section and deny payment for services which are determined by the division of family services not to be medically necessary;

(3) Laboratory and X-ray services;

(4) Physicians' services, whether furnished in the office, home, hospital, nursing home, or elsewhere;

(5) Drugs and medicines when prescribed by a licensed physician;

(6) Emergency ambulance services;

(7) Any other services provided under section 208.152, to the extent and in the manner as defined and determined by the division of family services.

2. The division of family services shall have the right to collect medication samples from recipients in order to maintain program integrity.

3. Payments shall be prorated within the limits of the appropriation.

4. 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.]

[208.550. DEFINITIONS. — As used in sections 208.550 to 208.571, the following terms mean:

(1) "Clearinghouse", the Missouri Senior Rx clearinghouse established in section 208.571;

(2) "Commission", the commission for the Missouri Senior Rx program established in section 208.553;

(3) "Direct seller", any person, partnership, corporation, institution or entity engaged in the selling of pharmaceutical products directly to consumers in this state;

(4) "Distributor", a private entity under contract with the original labeler or holder of the national code number to manufacture, package or market the covered prescription drug;

(5) "Division", the division of aging within the department of health and senior services;

(6) "FDA", the Food and Drug Administration of the Public Health Services of the Department of Health and Human Services;

(7) "Generic drug", a chemically equivalent copy of a brand-name drug for which the patent has expired. Drug formulations must be of identical composition with respect to the active ingredient and must meet official standards of identity, purity, and quality of active ingredient as approved by the Food and Drug Administration;

(8) "Household income", the amount of income as defined in section 135.010, RSMo. For purposes of this section, household income shall be the household income of the applicant for the previous calendar year;

- (9) "Innovator multiple-source drugs", a multiple-source drug that was originally marketed under a new drug application approved by the FDA. The term includes:
- (a) Covered prescription drugs approved under Product License Approval (PLA), Establishment Licenses Approval (ELA), or Antibiotic Drug Approval (ADA); and
 - (b) A covered prescription drug marketed by a cross-licensed producer or distributor under the Approved New Drug Application (ANDA) when the drug product meets this definition;
- (10) "Manufacturer", shall include:
- (a) An entity which is engaged in any of the following:
 - a. The production, preparation, propagation, compounding, conversion or processing of prescription drug products:
 - (i) Directly or indirectly by extraction from substances of natural origin;
 - (ii) Independently by means of chemical synthesis; or
 - (iii) By a combination of extraction and chemical synthesis;
 - b. The packaging, repackaging, labeling or relabeling, or distribution of prescription drug products;
 - (b) The entity holding legal title to or possession of the national drug code number for the covered prescription drug;
 - (c) The term does not include a wholesale distributor of drugs, drugstore chain organization or retail pharmacy licensed by the state;
- (11) "Medicaid", the program for medical assistance established pursuant to Title XIX of the federal Social Security Act and administered by the department of social services;
- (12) "Missouri resident", an individual who establishes residence for a period of twelve months in a settled or permanent home or domicile within the state of Missouri with the intention of remaining in this state. An individual is a resident of this state until the individual establishes a permanent residence outside this state;
- (13) "National drug code number", the identifying drug number maintained by the FDA. The complete eleven-digit number must include the labeler code, product code and package size code;
- (14) "New drug", a covered prescription drug approved as a new drug under Section 201(p) of the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040, 21 U.S.C. S 321(p));
- (15) "Prescription drug", a drug which may be dispensed only upon prescription by an authorized prescriber and which is approved for safety and effectiveness as a prescription drug under Section 505 or 507 of the Federal Food, Drug, and Cosmetic Act;
- (16) "Program", the Missouri Senior Rx program established pursuant to section 208.556;
- (17) "Single-source drugs", legend drug products for which the FDA has not approved on Abbreviated New Drug Application (ANDA);
- (18) "Third-party administrator", a private party contracted to administer the Missouri Senior Rx program established in section 208.556, with duties that may include, but shall not be limited to, devising applications, enrolling members, administration of prescription drug benefits, and implementation of cost-control measures, including such programs as disease management programs, early refill edits, and fraud and abuse detection system and auditing programs;
- (19) "Unit", a drug unit in the lowest identifiable amount, such as tablet or capsule for solid dosage forms, milliliter for liquid forms and gram for ointments or creams. The manufacturer shall specify the unit for each dosage form and strength of each covered prescription drug in accordance with the instructions developed by the Center for Medicare and Medicaid Services (CMS) for purposes of the Federal Medicaid Rebate Program under Section 1927 of Title XIX of the Social Security Act (49 Stat. 620, 42 U.S.C. Section 301 et seq.);
- (20) "Wholesaler", any person, partnership, corporation, institution or entity to which the manufacturer sells the covered prescription drug, including a pharmacy or chain of pharmacies.]

[208.553. COMMISSION FOR THE MISSOURI SENIOR RX PROGRAM ESTABLISHED, MEMBERS, TERMS, DUTIES, EXPENSES. — 1. There is hereby established the "Commission for

the Missouri Senior Rx Program" within the division of aging in the department of health and senior services to govern the operation of the Missouri Senior Rx program established in section 208.556. The commission shall consist of the following fifteen members:

- (1) The lieutenant governor, in his or her capacity as advocate for the elderly;
- (2) Two members of the senate, with one member from the majority party appointed by the president pro tem of the senate and one member of the minority party appointed by the president pro tem of the senate with the concurrence of the minority floor leader of the senate;
- (3) Two members of the house of representatives, with one member from the majority party appointed by the speaker of the house of representatives and one member of the minority party appointed by the speaker of the house of representatives with the concurrence of the minority floor leader of the house of representatives;
- (4) The director of the division of medical services in the department of social services;
- (5) The director of the division of aging in the department of health and senior services;
- (6) The chairperson of the commission on special health, psychological and social needs of minority older individuals;
- (7) The following four members appointed by the governor with the advice and consent of the senate:
 - (a) A pharmacist;
 - (b) A physician;
 - (c) A representative from a senior advocacy group; and
 - (d) A representative from an area agency on aging;
- (8) A representative from the pharmaceutical manufacturers industry as a nonvoting member appointed by the president pro tem of the senate and the speaker of the house of representatives;
- (9) One public member appointed by the president pro tem of the senate; and
- (10) One public member appointed by the speaker of the house of representatives. In making the initial appointment to the committee, the governor, president pro tem, and speaker shall stagger the terms of the appointees so that four members serve initial terms of two years, four members serve initial terms of three years, four members serve initial terms of four years and one member serves an initial term of one year. All members appointed thereafter shall serve three-year terms. All members shall be eligible for reappointment. The commission shall elect a chair and may employ an executive director and such professional, clerical, and research personnel as may be necessary to assist in the performance of the commission's duties.

2. Recognizing the unique medical needs of the senior African American population, the president pro tem of the senate, speaker of the house of representatives and governor will collaborate to ensure that there is adequate minority representation among legislative members and other members of the commission.

3. The commission:

- (1) May establish guidelines, policies, and procedures necessary to establish the Missouri Senior Rx program;
 - (2) Shall hold quarterly meetings within fifteen days of the submission of each quarterly report required in subsection 16 of section 208.556, and other meetings as deemed necessary;
 - (3) May establish guidelines and collect information and data to promote and facilitate the program;
 - (4) May, after implementation of the program, evaluate and make recommendations to the governor and general assembly regarding the creation of a senior prescription drug benefit available to seniors who are not eligible for the program due to income that does not meet the program requirements;
 - (5) Shall have rulemaking authority for the implementation and administration of the program;
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(6) The commission shall utilize the definition of "generic drug" as defined pursuant to section 208.550 as a general guideline and the commission may revise such definition, by rule, for the purpose of maximizing the use of generic drugs in the program.

4. The members of the commission shall receive no compensation for their service on the commission, but shall be reimbursed for ordinary and necessary expenses incurred in the performance of their duties as a member of the commission.]

[208.556. MISSOURI SENIOR RX PROGRAM ESTABLISHED, ADMINISTRATION, DRUG BENEFITS, ELIGIBILITY, APPLICATIONS — DEDUCTIBLES, COINSURANCE, AND ENROLLMENT FEES — QUARTERLY REPORTS — RULEMAKING AUTHORITY — PENALTY FOR FALSE STATEMENTS. — 1. There is hereby established the "Missouri Senior Rx Program" within the division of aging in the department of health and senior services to help defray the costs of prescription drugs for elderly Missouri residents. The division shall provide technical assistance to the commission for the administration and implementation of the program. The commission shall solicit requests for proposals from private contractors for the third-party administration of the program; except that, the commission shall either administer the rebate program established in section 208.565 or contract with the division of medical services for such rebate program. The program shall be governed by the commission for the Missouri Senior Rx program established in section 208.553.

2. Administration of the program shall include, but not be limited to, devising program applications, enrolling participants, administration of prescription drug benefits, and implementation of cost-control measures, including such strategies as disease management programs, early refill edits, drug utilization review which includes retroactive approval systems, fraud and abuse detection system, and auditing programs. The commission shall select a responsive, cost-effective bid from the requests for proposal; however, if no responsive, cost-effective bids are received, the program shall be administered collaboratively by the department of health and senior services and the department of social services.

3. Prescription drug benefits shall not include coverage of the following drugs or classes of drugs, or their medical uses:

- (1) Agents when used for anorexia or weight gain;
- (2) Agents when used to promote fertility;
- (3) Agents when used for cosmetic purposes or hair growth;
- (4) Agents when used for the symptomatic relief of cough and colds;
- (5) Agents when used to promote smoking cessation;
- (6) Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations;
- (7) Nonprescription drugs;
- (8) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee;
- (9) Barbiturates;
- (10) Benzodiazepines.

4. Subject to appropriations, available funds and other cost-control measures authorized herein, any Missouri resident sixty-five years of age or older, who has not had access to employer-subsidized health care insurance that offers a pharmacy benefit for six months prior to application, who is not currently ineligible pursuant to subsection 8 of this section:

(1) Who has a household income at or below twelve thousand dollars for an individual or at or below seventeen thousand dollars for a married couple is eligible to participate in the program; or

(2) Who has a household income at or below seventeen thousand dollars for an individual or at or below twenty-three thousand dollars for a married couple is eligible to participate in the program.

(3) However, the commission may restrict income eligibility limits as a last resort to obtain program cost control.

5. The commission shall have the authority to set and adjust coinsurance, deductibles and enrollment fees at different amounts pursuant to subdivisions (1) and (2) of subsection 4 of this section as a cost-containment measure.

6. Any person who has retired and received employer-sponsored health insurance while employed, but whose employer does not offer health insurance coverage to retirees shall not be subject to the six-month uninsured requirement.

7. The program established in this section is not an entitlement. Benefits shall be limited to the level supported by the moneys explicitly appropriated pursuant to this section. If in any fiscal year the commission projects that the total cost of the program will exceed the amount currently appropriated for the program, the commission may direct the third-party administrator to implement cost-control measures to reduce the projected cost. Such cost-control measures may include, but are not limited to, increasing the enrollment fees in subsection 12 of this section, the deductibles in subsection 11 of this section, and the coinsurance outlined in subsection 12 of this section. The Missouri Senior Rx program is a payer of last resort. If the federal government establishes a pharmaceutical assistance program that covers program-eligible seniors under Medicare or another program, the Missouri Senior Rx program shall cover only eligible costs not covered by the federal program.

8. Any person who is receiving Medicaid benefits shall not be eligible to participate in the program. The Missouri Senior Rx program is a payer of last resort. If a senior has coverage for pharmaceutical benefits through a health benefit plan, as defined in section 376.1350, RSMo, including a Medicare supplement or Medicare+Choice plan, or through a self-funded employee benefit plan, the Missouri Senior Rx program shall pay only for eligible costs not provided by such coverage. Individuals who have benefits with an actuarial value greater than or equal to the benefits in the program are not eligible for the program.

9. Applicants for the program shall submit an annual application to the division, or the division's designee, that attests to the age, residence, any third-party health insurance coverage, previous year prescription drug costs, annual household income for an individual or couple, if married, and any other information the commission deems necessary. The third-party administrator shall prescribe the form of the application for enrollment in the program, which shall be approved by the division. The commission shall develop and implement a means test by which applicants must demonstrate that they meet the income requirement of the program. Information provided by applicants and enrollees pursuant to sections 208.550 to 208.571 is confidential and shall not be disclosed by the commission, the division or any other state agency or contractor therein in any form.

10. Nothing in this section shall be construed as requiring an applicant to accept Medicaid benefits in lieu of participation in this program.

11. The following deductibles shall apply to enrollees in the program:

(1) For an individual with a household income at or below twelve thousand dollars, the deductible shall, in the initial year, not be less than two hundred fifty dollars;

(2) For a married couple with a household income at or below seventeen thousand dollars, the deductible shall, in the initial year, not be less than two hundred fifty dollars for each person;

(3) For an individual with a household income between twelve thousand one dollars and seventeen thousand dollars, the deductible shall, in the initial year, not be less than five hundred dollars; and

(4) For a married couple with a household income between seventeen thousand one dollars and twenty-three thousand dollars, the deductible shall, in the initial year, not be less than five hundred dollars for each person.

12. For prescription drugs, enrollees shall pay a forty percent coinsurance. The division may implement a higher coinsurance at the recommendation of the commission. Such coinsurance may be adjusted annually by the commission and shall be used to reduce the state's

cost for the program. In addition, each enrollee with an annual household income at or below twelve thousand dollars for an individual or at or below seventeen thousand dollars for a married couple shall pay, in the initial year, not less than an annual twenty-five dollar enrollment fee and each enrollee with a household income between twelve thousand one dollars and seventeen thousand dollars for an individual or at or below between seventeen thousand one dollars and twenty-three thousand dollars for a married couple shall pay, in the initial year, not less than an annual thirty-five dollar enrollment fee to offset the administrative costs of the program.

13. The total annual expenditures for each enrollee under this program may be up to but shall not exceed five thousand dollars for each participant.

14. In providing program benefits, the department may enter into a contract with a private individual, corporation or agency to implement the program.

15. The division shall utilize area agencies on aging, senior citizens centers, and other senior-focused entities to provide outreach, enrollment referral assistance, and education services to potentially eligible seniors for the Missouri Senior Rx program. The division and third-party administrators shall be responsible for informing eligible seniors on the availability of and providing information about pharmaceutical company benefits which may be applicable.

16. The commission shall submit quarterly reports to the governor, the senate appropriations committee, the house of representatives budget committee, the speaker of the house of representatives, the president pro tem of the senate, and the division that include:

- (1) Quantified data as to the number of program applicants;
- (2) An estimate of whether the current rate of expenditures will exceed the existing appropriation for the program in the current fiscal year; and
- (3) Information regarding the commission's recommendations for changes to income eligibility, enrollment fees, coinsurance, deductibles, and benefit caps for enrollees in the program.

17. 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 208.550 to 208.571 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. Sections 208.550 to 208.571 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, 2002, shall be invalid and void.

18. Any person who knowingly makes any false statements, falsifies or permits to be falsified any records, or engages in conduct in an attempt to defraud the program is guilty of a misdemeanor and shall forfeit all rights to which he or she may be entitled hereunder.]

[208.559. ENROLLMENT PERIODS. — 1. The Missouri Senior Rx program shall be operational no later than July 1, 2002. The division shall accept applications for enrollment during an initial open enrollment period from April 1, 2002, through May 30, 2002. Beginning with the enrollment period for fiscal year 2004, open enrollment periods for the program shall be held from January first through February twenty-eighth.

2. A person may apply for participation in the program outside the enrollment periods listed in subsection 1 of this section within thirty days of such person attaining the age and income eligibility requirements of the program established in section 208.556.]

[208.562. USE OF GENERIC DRUGS — REIMBURSEMENT OF PHARMACIES. — 1. Generic prescription drugs shall be used for the program when available. An enrollee may receive a name-brand drug when a generic drug is available only if both the physician and enrollee request that the name-brand drug be dispensed and the enrollee pays the coinsurance on the generic drug plus the difference in cost between the name-brand drug and the generic drug.

2. Pharmacists participating in the Missouri Senior Rx program shall be reimbursed for the price of prescription drugs based on the following formula:

(1) For generic prescription drugs, the average wholesale price minus twenty percent, plus a four dollar and nine cent dispensing fee; and

(2) For name-brand prescription drugs, the average wholesale price minus ten and forty-three one-hundredths percent, plus a four dollar and nine cent dispensing fee.]

[208.565. REBATES, AMOUNT, USE OF. — 1. The division shall negotiate with manufacturers for participation in the program. The division shall issue a certificate of participation to pharmaceutical manufacturers participating in the Missouri Senior Rx program. A pharmaceutical manufacturer may apply for participation in the program with an application form prescribed by the commission. A certificate of participation shall remain in effect for an initial period of not less than one year and shall be automatically renewed unless terminated by either the manufacturer or the state with sixty days' notification.

2. For all transactions occurring prior to July 1, 2003, the rebate amount for each drug shall be fifteen percent of the average manufacturers' price as defined pursuant to 42 U.S.C. 1396r-8(k)(1). For all transactions occurring on or after July 1, 2003, the rebate amount for name brand prescription drugs shall be fifteen percent and the rebate amount for generic prescription drugs shall be eleven percent of the average manufacturers' price as defined pursuant to 42 U.S.C. 1396r-8(k)(1). No other discounts shall apply. In order to receive a certificate of participation a manufacturer or distributor participating in the Missouri Senior Rx program shall provide the division of aging the average manufacturers' price for their contracted products. The following shall apply to the providing of average manufacturers' price information to the division of aging:

(1) Any manufacturer or distributor with an agreement under this section that knowingly provides false information is subject to a civil penalty in an amount not to exceed one hundred thousand dollars for each provision of false information. Such penalties shall be in addition to other penalties as prescribed by law;

(2) Notwithstanding any other provision of law, information disclosed by manufacturers or wholesalers pursuant to this subsection or under an agreement with the division pursuant to this section is confidential and shall not be disclosed by the division or any other state agency or contractor therein in any form which discloses the identity of a specific manufacturer or wholesaler or prices charged for drugs by such manufacturer or wholesaler, except to permit the state auditor to review the information provided and the division of medical services for rebate administration.

3. All rebates received through the program shall be used toward refunding the program. If a pharmaceutical manufacturer refuses to participate in the rebate program, such refusal shall not affect the manufacturer's status under the current Medicaid program. There shall be no drug formulary, prior approval system, or any similar restriction imposed on the coverage of outpatient drugs made by pharmaceutical manufacturers who have agreements to pay rebates for drugs utilized in the Missouri Senior Rx program, provided that such outpatient drugs were approved by the Food and Drug Administration.

4. Any prescription drug of a manufacturer that does not participate in the program shall not be reimbursable.]

[208.568. MISSOURI SENIOR RX PROGRAM FUND CREATED, ADMINISTRATION, USE OF FUNDS. — 1. There is hereby created in the state treasury the "Missouri Senior Rx Fund", which shall consist of all moneys deposited in the fund pursuant to sections 208.550 to 208.571 and all moneys which may be appropriated to it by the general assembly, from federal or other sources.

2. The state treasurer shall administer the fund and credit all interest to the fund and the moneys in the fund shall be used solely by the commission for the Missouri Senior Rx program

and the division of aging for the implementation of the program for seniors established in sections 208.550 to 208.571.

3. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, moneys in the fund shall not revert to the credit of the general revenue fund at the end of the biennium.]

[208.571. MISSOURI SENIOR RX CLEARINGHOUSE ESTABLISHED, DUTIES, ADMINISTRATION. — 1. Subject to appropriations, there is hereby established the "Missouri Senior Rx Clearinghouse" within the commission for the Missouri Senior Rx program established pursuant to section 208.553. The commission may submit requests for proposal for the third-party administration of the clearinghouse. The third-party administrator of the Missouri Senior Rx program may submit a request for proposal for administration of the clearinghouse. The purpose of the clearinghouse shall include, but not be limited to:

- (1) Assist all Missouri residents in accessing prescription drug programs;
- (2) Educate the public on quality drug programs and cost-containment strategies;
- (3) Serve as a resource for pharmaceutical benefit issues.

2. The administration of the clearinghouse shall include, but not be limited to:

- (1) Providing a one-stop-shopping clearinghouse for all information for seniors regarding prescription drug coverage programs and health insurance issues;
- (2) Targeting outreach and education including print and media, social service and health care providers to promote the program;
- (3) Maintaining a toll-free 800-phone number staffed by trained customer service representatives;
- (4) Providing the state with measurable data to identify the progress and success of the program, including but not limited to, the number of individuals served, length and type of assistance, follow-up and program evaluation.]

Approved April 26, 2005

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