

## HB 977 [SCS HCS HB 977]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Authorizes the at-large election of board of aldermen members in certain cities of the fourth class**

AN ACT to repeal section 79.060, RSMo, and to enact in lieu thereof one new section relating to the board of aldermen in fourth class cities.

## SECTION

A. Enacting clause.

79.060. City to be divided into wards — aldermen elected — aldermen at-large permitted for certain cities.

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

**SECTION A. ENACTING CLAUSE.** — Section 79.060, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 79.060, to read as follows:

**79.060. CITY TO BE DIVIDED INTO WARDS — ALDERMEN ELECTED — ALDERMEN AT-LARGE PERMITTED FOR CERTAIN CITIES.** — **1.** The board of aldermen shall, by ordinance, divide the city into not less than two wards, and two aldermen shall be elected from each ward by the qualified voters thereof, at the first election for aldermen in cities adopting the provisions of this chapter. At such election for aldermen, the person receiving the highest number of votes in each ward shall hold his office for two years, and the person receiving the next highest number of votes shall hold his office for one year; but thereafter each ward shall elect annually one alderman, who shall hold his office for two years.

**2. Notwithstanding the provisions of subsection 1 of this section, cities with a population of one thousand or less in the most recent census may, by ordinance, choose to elect aldermen at-large instead of by the method outlined in subsection 1 of this section. Under this option, the seats of aldermen shall be filled at-large as soon as the current terms expire. Each year thereafter, one-half of the board of aldermen shall stand for election at-large for a two-year term.**

Approved June 9, 2006

## HB 978 [SCS HCS HB 978]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Establishes the Vietnam War Medallion Program**

AN ACT to amend chapter 42, RSMo, by adding thereto four new sections relating to the Vietnam War medallion program.

## SECTION

A. Enacting clause.

42.220. Vietnam War medallion program created — eligibility — veteran defined.

- 42.222. Adjutant general to administer program — rulemaking authority — eligibility determination — who may apply — disallowance, statement required.
- 42.224. Design of medallion by veterans commission.
- 42.226. Fund created, use of moneys — termination, when.

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

**SECTION A. ENACTING CLAUSE.** — Chapter 42, RSMo, is amended by adding thereto four new sections, to be known as sections 42.220, 42.222, 42.224, and 42.226, to read as follows:

**42.220. VIETNAM WAR MEDALLION PROGRAM CREATED — ELIGIBILITY — VETERAN DEFINED.** — 1. There is hereby created within the state adjutant general's office the "Vietnam War Medallion Program". Every veteran who honorably served on active duty in the United States military service at any time beginning February 28, 1961, and ending May 7, 1975, shall be entitled to receive a Vietnam War medallion, medal, and a certificate of appreciation under sections 42.220 to 42.226, provided that:

(1) Such veteran is a legal resident of this state or was a legal resident of this state at the time he or she entered or was discharged from military service or at the time of his or her death; and

(2) Such veteran was honorably separated or discharged from military service or is still in active service in an honorable status, or was in active service in an honorable status at the time of his or her death.

2. The Vietnam War medallion, medal, and a certificate shall be awarded regardless of whether or not such veteran served within the United States or in a foreign country. The medallion, medal, and the certificate shall be awarded regardless of whether or not such veteran was under eighteen years of age at the time of enlistment. For purposes of sections 42.220 to 42.226, "veteran" means any person defined as a veteran by the United States Department of Veterans' Affairs or its successor agency.

**42.222. ADJUTANT GENERAL TO ADMINISTER PROGRAM — RULEMAKING AUTHORITY — ELIGIBILITY DETERMINATION — WHO MAY APPLY — DISALLOWANCE, STATEMENT REQUIRED.** — 1. Except as otherwise provided in sections 42.220 to 42.226, the adjutant general of the state of Missouri shall administer the provisions of sections 42.220 to 42.226, and may adopt all rules and regulations necessary to administer the provisions of sections 42.220 to 42.226. 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 42.220 to 42.226 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 42.220 to 42.226 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, 2006, shall be invalid and void.

2. The adjutant general shall determine as expeditiously as possible the persons who are entitled to a Vietnam War medallion, medal, and a certificate under sections 42.220 to 42.226 and distribute the medallions, medals, and the certificates as provided in sections 42.220 to 42.226. Applications for the Vietnam War medallion, medal, and the certificate shall be filed with the office of the adjutant general at any time after January 1, 2007, on forms prescribed and furnished by the adjutant general's office. The adjutant general shall approve all applications that are in order, and shall cause a Vietnam War medallion, medal, and a certificate to be prepared for each approved veteran in the form created by the veterans' commission under section 42.224. The medallions, medals, and certificates shall be awarded until the supply of medallions, medals, and certificates is exhausted. The

adjutant general shall notify the general assembly when such supply totals less than one hundred.

3. The following persons may apply for a Vietnam War medallion, medal, and a certificate under sections 42.220 to 42.226:

(1) Any veteran who is entitled to a Vietnam War medallion, medal, and a certificate under sections 42.220 to 42.226;

(2) Any spouse or eldest living survivor of a deceased veteran who would be entitled to a Vietnam War medallion, medal, and a certificate under sections 42.220 to 42.226 but who died prior to having made application for such medallion, medal, and certificate.

4. If any spouse or eldest living survivor applies for the Vietnam War medallion, medal, and certificate under subsection 3 of this section or if any veteran dies after applying for a Vietnam War medallion, medal, and a certificate under sections 42.220 to 42.226 and such veteran would have been entitled to the Vietnam War medallion, medal, and the certificate, the adjutant general shall give the Vietnam War medallion, medal, and the certificate to the spouse or eldest living survivor of the deceased veteran.

5. If the adjutant general disallows any veteran's claim to a Vietnam War medallion, medal, and a certificate under sections 42.220 to 42.226, a statement of the reason for the disallowance shall be filed with the application and notice of this disallowance shall be mailed to the applicant at the applicant's last known address.

**42.224. DESIGN OF MEDALLION BY VETERANS COMMISSION.** — The veterans' commission shall design the form of the Vietnam War medallion, medal, and the certificate and forward the approved designs to the adjutant general for distribution under sections 42.220 to 42.226. It is the intent of the general assembly to create statewide involvement in the design of these symbols in recognition of this historic endeavor. Therefore, in designing the forms, the veterans' commission may solicit potential designs from elementary and secondary schools, veterans' groups, civic organizations, or any other interested party, and may select the best design from among such solicited designs, or may select another design.

**42.226. FUND CREATED, USE OF MONEYS — TERMINATION, WHEN.** — 1. The "Vietnam War Veterans' Recognition Award Fund" is hereby created in the state treasury, and shall consist of all gifts, donations, and bequests to the fund and all funds transferred to the veterans' commission capital improvement trust fund from any remaining balances in the World War II veterans' recognition award fund and the Korean Conflict veterans' recognition award fund. The fund shall be administered by the adjutant general. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, moneys in the Vietnam veterans' recognition award fund shall not be transferred to the credit of the general revenue fund at the end of the biennium. Interest and moneys earned on the fund shall be credited to the fund.

2. Moneys in the fund shall be used solely to promote the solicitation for designs for, aid in the manufacture of, and aid in the distribution of the medallion, medal, and the certificate.

3. When all allowed Vietnam War medallions, medals, and certificates have been distributed, the fund shall automatically be terminated. Any balance remaining in the fund after all such distributions shall be transferred to the veterans' commission capital improvement trust fund created in section 313.835, RSMo.

Approved June 13, 2006

## HB 983 [HB 983]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Requires the United States and the Missouri state flags to be flown at half-staff on all government buildings on September 11 of each year**

AN ACT to amend chapter 9, RSMo, by adding thereto one new section relating to display of flags on September eleventh.

## SECTION

- A. Enacting clause.  
9.134. United States flag and state flag to be flown at half-staff on September eleventh.

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

**SECTION A. ENACTING CLAUSE.** — Chapter 9, RSMo, is amended by adding thereto one new section, to be known as section 9.134, to read as follows:

**9.134. UNITED STATES FLAG AND STATE FLAG TO BE FLOWN AT HALF-STAFF ON SEPTEMBER ELEVENTH.** — **The United States flag and the Missouri state flag shall be flown at half-staff on all government buildings on each September eleventh in honor of the individuals who died as a result of the terrorist attacks against the United States on September 11, 2001.**

Approved June 13, 2006

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## HB 984 [HB 984]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Encourages all government buildings, businesses, and citizens to display the POW/MIA flag on Memorial Day, July 4, September 11, and Veterans Day**

AN ACT to amend chapter 9, RSMo, by adding thereto one new section relating to the display of the POW/MIA flag.

## SECTION

- A. Enacting clause.  
9.136. POW/MIA flag, display of encouraged on certain dates.

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

**SECTION A. ENACTING CLAUSE.** — Chapter 9, RSMo, is amended by adding thereto one new section, to be known as section 9.136, to read as follows:

**9.136. POW/MIA FLAG, DISPLAY OF ENCOURAGED ON CERTAIN DATES.** — **All government buildings, businesses, and citizens of the state of Missouri are encouraged to display the POW/MIA flag, which is designed to commemorate the service and sacrifice of the members of the armed forces of the United States who were prisoners of war or**

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missing in action, on Memorial Day, the Fourth of July, September eleventh, and Veterans Day.

Approved June 13, 2006

HB 1026 [SS SCS HCS HB 1026]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Prohibits protest activities before or after funeral services**

AN ACT to repeal section 578.501, RSMo, and to enact in lieu thereof two new sections relating to protest activities near funeral services, with penalty provisions, an emergency clause, and a contingent effective date.

SECTION

- A. Enacting clause.
- 578.501. Funeral protests prohibited, when — citation of law — definitions.
- 578.502. Funeral protests prohibited, when — funeral defined.
  - B. Emergency clause.
  - C. Contingency clause.

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

**SECTION A. ENACTING CLAUSE.** — Section 578.501, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 578.501 and 578.502, to read as follows:

**578.501. FUNERAL PROTESTS PROHIBITED, WHEN — CITATION OF LAW — DEFINITIONS.** — 1. This section shall be known as "Sp. Edward Lee Myers' Law".

2. It shall be unlawful for any person to engage in picketing or other protest activities in front of or about any [church, cemetery, or funeral establishment, as defined by section 333.011, RSMo.] **location at which a funeral is held**, within one hour prior to the commencement of any funeral, and until one hour following the cessation of any funeral. Each day on which a violation occurs shall constitute a separate offense. Violation of this section is a class B misdemeanor, unless committed by a person who has previously pled guilty to or been found guilty of a violation of this section, in which case the violation is a class A misdemeanor.

3. For the purposes of this section, "funeral" means the ceremonies, processions and memorial services held in connection with the burial or cremation of the dead.

**578.502. FUNERAL PROTESTS PROHIBITED, WHEN — FUNERAL DEFINED.** — 1. This section shall be known as "Sp. Edward Lee Myers Law".

2. It shall be unlawful for any person to engage in picketing or other protest activities within three hundred feet of or about any **location at which a funeral is held**, within one hour prior to the commencement of any funeral, and until one hour following the cessation of any funeral. Each day on which a violation occurs shall constitute a separate offense. Violation of this section is a class B misdemeanor, unless committed by a person who has previously pled guilty to or been found guilty of a violation of this section, in which case the violation is a class A misdemeanor.

3. For purposes of this section, "funeral" means the ceremonies, processions, and memorial services held in connection with the burial or cremation of the dead.

**SECTION B. EMERGENCY CLAUSE.** — Because immediate action is necessary to protect the emotional well-being of persons paying respects to the deceased, section 578.501 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 578.501 of this act shall be in full force and effect upon its passage and approval.

**SECTION C. CONTINGENCY CLAUSE.** — The enactment of section 578.502 shall become effective only on the date the provisions of section 578.501 are finally declared void or unconstitutional by a court of competent jurisdiction and upon notification by the attorney general to the revisor of statutes.

Approved July 6, 2006

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HB 1053 [HCS HB 1053]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Allows victims of certain offenses against the family access to official court records in certain circumstances**

AN ACT to repeal section 610.105, RSMo, and to enact in lieu thereof one new section relating to victim's access to official case records in certain cases in which imposition of sentence is suspended.

**SECTION**

A. Enacting clause.

610.105. Effect of nolle prosequi — dismissal — sentence suspended on record — not guilty due to mental disease or defect, effect — official records available to victim in certain cases.

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

**SECTION A. ENACTING CLAUSE.** — Section 610.105, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 610.105, to read as follows:

**610.105. EFFECT OF NOLLE PROSEQUI — DISMISSAL — SENTENCE SUSPENDED ON RECORD — NOT GUILTY DUE TO MENTAL DISEASE OR DEFECT, EFFECT — OFFICIAL RECORDS AVAILABLE TO VICTIM IN CERTAIN CASES.** — **1.** If the person arrested is charged but the case is subsequently nolle prossed, dismissed, or the accused is found not guilty or imposition of sentence is suspended in the court in which the action is prosecuted, official records pertaining to the case shall thereafter be closed records when such case is finally terminated except as provided in **subsection 2 of this section** and section 610.120 and except that the court's judgment or order or the final action taken by the prosecutor in such matters may be accessed. If the accused is found not guilty due to mental disease or defect pursuant to section 552.030, RSMo, official records pertaining to the case shall thereafter be closed records upon such findings, except that the disposition may be accessed only by law enforcement agencies, child-care agencies, facilities as defined in section 198.006, RSMo, and in-home services provider agencies as defined in section 660.250, RSMo, in the manner established by section 610.120.

**2.** If the person arrested is charged with an offense found in chapter 566, RSMo, section 568.045, 568.050, 568.060, 568.065, 568.080, 568.090, or 568.175, RSMo, and an imposition of sentence is suspended in the court in which the action is prosecuted, the

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**official records pertaining to the case shall be made available to the victim for the purpose of using the records in his or her own judicial proceeding, or if the victim is a minor to the victim's parents or guardian, upon request.**

Approved June 29, 2006

HB 1138 [HCS HB 1138]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Allows members of the Police Retirement System of Kansas City to receive service credit for time spent in military service during a war**

AN ACT to repeal sections 86.1110, 86.1140, 86.1490, and 86.1500, RSMo, and to enact in lieu thereof four new sections relating to police military leave.

SECTION

- A. Enacting clause.
- 86.1110. Military leave of absence, effect of — service credit for military service, when.
- 86.1140. Leave of absence not to act as termination of membership — creditable service permitted, when.
- 86.1490. Creditable service, inclusions and exclusions.
- 86.1500. Military service, effect on creditable service — election to purchase creditable service, when — service credit for military service, when.

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

**SECTION A. ENACTING CLAUSE.** — Sections 86.1110, 86.1140, 86.1490, and 86.1500, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 86.1110, 86.1140, 86.1490, and 86.1500, to read as follows:

**86.1110. MILITARY LEAVE OF ABSENCE, EFFECT OF — SERVICE CREDIT FOR MILITARY SERVICE, WHEN.** — 1. Whenever a member is given a leave of absence for military service and returns to employment after discharge from the service, such member shall be entitled to creditable service for the years of employment prior to the leave of absence.

2. [Any] **Except as provided in subsection 3 of this section,** a member who served on active duty in the armed forces of the United States and who became a member, or returned to membership, after discharge under honorable conditions, may elect prior to retirement to purchase creditable service equivalent to such service in the armed forces, not to exceed two years, provided the member is not receiving and is not eligible to receive retirement credits or benefits from any other public or private retirement plan for the service to be purchased, other than a United States military service retirement system or United States Social Security benefits attributable to such military service, and an affidavit so stating is filed by the member with the retirement system. A member electing to make such purchase shall pay to the retirement system an amount equal to the actuarial value of the additional benefits attributable to the additional service credit to be purchased, as of the date the member elects to make such purchase. The retirement system shall determine such value using accepted actuarial methods and the same assumptions with respect to interest rates, mortality, future salary increases, and all related factors used in performing the most recent regular actuarial valuation of the retirement system. Payment in full of the amount due from a member electing to purchase creditable service under this subsection shall be made over a period not to exceed five years, measured from the date of election, or prior to the commencement date for payment of benefits to the member from the

retirement system, whichever is earlier, including interest on unpaid balances compounded annually at the interest rate assumed from time to time for actuarial valuations of the retirement system. If payment in full including interest is not made within the prescribed period, any partial payments made by the member shall be refunded, and no creditable service attributable to such election, or as a result of any such partial payments, shall be allowed; provided that if a benefit commencement date occurs because of the death or disability of a member who has made an election under this subsection and if the member is current in payments under an approved installment plan at the time of the death or disability, such election shall be valid if the member, the surviving spouse, or other person entitled to benefit payments pays the entire balance of the remaining amount due, including interest to the date of such payment, within sixty days after the member's death or disability. The time of a disability shall be deemed to be the time when such member is retired by the board of police commissioners for reason of disability as provided in sections 86.900 to 86.1280.

**3. Notwithstanding any other provision of sections 86.900 to 86.1280, a member who is on leave of absence for military service during any portion of which leave the United States is in a state of declared war, or a compulsory draft is in effect for any of the military branches of the United States, or any units of the military reserves of the United States, including the National Guard, are mobilized for combat military operations, and who becomes entitled to reemployment rights and other employment benefits under Title 38, Chapter 43 of the U.S. Code relating to employment and reemployment rights of members of the uniformed services by meeting the requirements for such rights and benefits under section 4312 of said chapter, or the corresponding provisions of any subsequent applicable U.S. statute, shall be entitled to service credit for the time spent in such military service for all purposes of sections 86.900 to 86.1280 and such member shall not be required to pay any member contributions for such time. If it becomes necessary for the years of service to be included in the calculation of such member's compensation for any purpose, such member shall be deemed to have received the same compensation throughout such period of service as the member's base annual salary immediately prior to the commencement of such leave of absence.**

**86.1140. LEAVE OF ABSENCE NOT TO ACT AS TERMINATION OF MEMBERSHIP — CREDITABLE SERVICE PERMITTED, WHEN. —** 1. Should any member be granted leave of absence by the board of police commissioners, such member shall not, because of such absence, cease to be a member.

2. If a member is on leave of absence by authority of the board of police commissioners for thirty consecutive days or less, such member shall receive creditable service for such time.

3. **Except as provided in subsection 3 of section 86.1110,** if a member is on leave of absence for more than thirty consecutive days without compensation, such member shall not receive service credits for such time unless such member shall, within one year after returning from such absence, pay into the retirement system an amount equal to the member's contribution percentage at the time such absence began times an assumed salary figure for the period of such absence, computed by assuming that such member received a salary during such absence at the rate of the base annual salary the member was receiving immediately prior to such absence.

**86.1490. CREDITABLE SERVICE, INCLUSIONS AND EXCLUSIONS. —** 1. **Except as provided in subsection 3 of section 86.1500,** creditable service at retirement on which the retirement allowance of a member is based consists of the membership service rendered by such member for which such member received compensation since such member last became a member.

2. Creditable service also includes any prior service credit to which a member may be entitled by virtue of an authorized purchase of such credit or as otherwise provided in sections 86.1310 to 86.1640.

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3. Creditable service shall not include any time a member was suspended from service without compensation. No contribution is required from either the member under section 86.1400 or from the city under section 86.1390 for such time.

**86.1500. MILITARY SERVICE, EFFECT ON CREDITABLE SERVICE — ELECTION TO PURCHASE CREDITABLE SERVICE, WHEN—SERVICE CREDIT FOR MILITARY SERVICE, WHEN.**

— 1. Whenever a member is given a leave of absence for military service and returns to employment after discharge from the service, such member shall be entitled to creditable service for the years of employment prior to the leave of absence.

2. [Any] **Except as provided in subsection 3 of this section**, a member who served on active duty in the armed forces of the United States and who became a member, or returned to membership, after discharge under honorable conditions, may elect prior to retirement to purchase creditable service equivalent to such service in the armed forces, not to exceed two years, provided the member is not receiving and is not eligible to receive retirement credits or benefits from any other public or private retirement plan for the service to be purchased, other than a United States military service retirement system or United States Social Security benefits attributable to such military service, and an affidavit so stating is filed by the member with the retirement system. A member electing to make such purchase shall pay to the retirement system an amount equal to the actuarial value of the additional benefits attributable to the additional service credit to be purchased, as of the date the member elects to make such purchase. The retirement system shall determine such value using accepted actuarial methods and the same assumptions with respect to interest rates, mortality, future salary increases, and all related factors used in performing the most recent regular actuarial valuation of the retirement system. Payment in full of the amount due from a member electing to purchase creditable service under this subsection shall be made over a period not to exceed five years, measured from the date of election, or prior to the commencement date for payment of benefits to the member from the retirement system, whichever is earlier, including interest on unpaid balances compounded annually at the interest rate assumed from time to time for actuarial valuations of the retirement system. If payment in full including interest is not made within the prescribed period, any partial payments made by the member shall be refunded, and no creditable service attributable to such election, or as a result of any such partial payments, shall be allowed; provided that if a benefit commencement date occurs because of the death or disability of a member who has made an election under this subsection and if the member is current in payments under an approved installment plan at the time of the death or disability, such election shall be valid if the member, the surviving spouse or other person entitled to benefit payments pays the entire balance of the remaining amount due, including interest to the date of such payment, within sixty days after the member's death or disability. The time of a disability shall be deemed to be the time when such member is determined by the retirement board to be totally and permanently disabled as provided in section 86.1560.

**3. Notwithstanding any other provision of sections 86.1310 to 86.1640, a member who is on leave of absence for military service during any portion of which leave the United States is in a state of declared war, or a compulsory draft is in effect for any of the military branches of the United States, or any units of the military reserves of the United States, including the National Guard, are mobilized for combat military operations, and who becomes entitled to reemployment rights and other employment benefits under Title 38, Chapter 43 of the U.S. Code relating to employment and reemployment rights of members of the uniformed services by meeting the requirements for such rights and benefits under section 4312 of said chapter, or the corresponding provisions of any subsequent applicable U.S. statute, shall be entitled to service credit for the time spent in such military service for all purposes of sections 86.1310 to 86.1640 and such member shall not be required to pay any member contributions for such time. If it becomes necessary for the years of service to be included in the calculation of such member's compensation**

**for any purpose, such member shall be deemed to have received the same compensation throughout such period of service as the member's base annual salary immediately prior to the commencement of such leave of absence.**

Approved June 21, 2006

HB 1149 [SCS#2 HCS HB 1149]

**EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.**

**Changes the laws regarding the regulation of water**

AN ACT to repeal sections 227.240, 640.100, 644.016, 644.036, 644.051, 644.054, and 701.450 RSMo, and to enact in lieu thereof eleven new sections relating to the regulation of water.

SECTION

- A. Enacting clause.
- 67.1848. Sewer and water lines in public roads, when permitted, limitations and requirements.
- 227.240. Location and removal of public utility equipment — lines in right-of-way permitted — penalty for violation.
- 640.100. Commission, duties, promulgate rules — political subdivisions may set certain additional standards — certain departments test water supply, when — fees, amount — federal compliance — customer fees, effective, expires, when.
- 644.016. Definitions.
- 644.036. Public hearings — rules and regulations, how promulgated — listings under Clean Water Act, requirements, procedures, expiration date.
- 644.051. Prohibited acts — permits required, when, fee — bond required of permit holders, when — permit application procedures — rulemaking — limitation on use of permit fee moneys.
- 644.054. Fees, billing and collection — administration, generally — fees to become effective, when — fees to expire, when — variances granted, when — joint committee for restructuring fees to be appointed, report — joint committee convened to consider fee restructuring report.
- 644.587. Board may borrow additional \$10,000,000 for purposes of water pollution, improvement of drinking water, and storm water control.
- 644.588. Board may borrow additional \$10,000,000 for purposes of rural water and sewer grants and loans.
- 644.589. Board may borrow additional \$20,000,000 for purposes of storm water control.
- 701.450. Equal number of water closets, diaper changing stations, requirements — extension of time for compliance, requirements (St. Louis City).

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

**SECTION A. ENACTING CLAUSE.** — Sections 227.240, 640.100, 644.016, 644.036, 644.051, 644.054, and 701.450 RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 67.1848, 227.240, 640.100, 644.016, 644.036, 644.051, 644.054, 644.587, 644.588, 644.589, and 701.450 to read as follows:

**67.1848. SEWER AND WATER LINES IN PUBLIC ROADS, WHEN PERMITTED, LIMITATIONS AND REQUIREMENTS.** — All public water supply districts, sewer districts, and municipalities, including villages, shall have the right to lay, install, construct, repair, and maintain sewer and water lines in public highways, roads, streets, and alleys, subject to the reasonable rules and regulations of governmental bodies having jurisdiction of such public places. Due regard shall be taken for the rights of the public in its use of thoroughfares and equal rights of other utilities thereto.

**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, 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, **municipality, public water supply district, sewer district,** 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 **entity,** 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.

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.

**640.100. COMMISSION, DUTIES, PROMULGATE RULES — POLITICAL SUBDIVISIONS MAY SET CERTAIN ADDITIONAL STANDARDS — CERTAIN DEPARTMENTS TEST WATER SUPPLY, WHEN — FEES, AMOUNT — FEDERAL COMPLIANCE — CUSTOMER FEES, EFFECTIVE, EXPIRES, WHEN.** — 1. The safe drinking water commission created in section 640.105 shall promulgate rules necessary for the implementation, administration and enforcement of sections 640.100 to 640.140 and the federal Safe Drinking Water Act as amended.

2. No standard, rule or regulation or any amendment or repeal thereof shall be adopted except after a public hearing to be held by the commission after at least thirty days' prior notice in the manner prescribed by the rulemaking provisions of chapter 536, RSMo, and an opportunity given to the public to be heard; the commission may solicit the views, in writing, of persons who may be affected by, knowledgeable about, or interested in proposed rules and regulations, or standards. Any person heard or registered at the hearing, or making written

request for notice, shall be given written notice of the action of the commission with respect to the subject thereof. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is promulgated to administer and enforce sections 640.100 to 640.140 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 June 9, 1998. All rulemaking authority delegated prior to June 9, 1998, is of no force and effect and repealed as of June 9, 1998, however, nothing in this section shall be interpreted to repeal or affect the validity of any rule adopted or promulgated prior to June 9, 1998. 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 chapter or chapter 644, RSMo, shall affect the validity of any rule adopted and promulgated prior to June 9, 1998.

3. The commission shall promulgate rules and regulations for the certification of public water system operators, backflow prevention assembly testers and laboratories conducting tests pursuant to sections 640.100 to 640.140. Any person seeking to be a certified backflow prevention assembly tester shall satisfactorily complete standard, nationally recognized written and performance examinations designed to ensure that the person is competent to determine if the assembly is functioning within its design specifications. Any such state certification shall satisfy any need for local certification as a backflow prevention assembly tester. However, political subdivisions may set additional testing standards for individuals who are seeking to be certified as backflow prevention assembly testers. Notwithstanding any other provision of law to the contrary, agencies of the state or its political subdivisions shall only require carbonated beverage dispensers to conform to the backflow protection requirements established in the National Sanitation Foundation standard eighteen, and the dispensers shall be so listed by an independent testing laboratory. The commission shall promulgate rules and regulations for collection of samples and analysis of water furnished by municipalities, corporations, companies, state establishments, federal establishments or individuals to the public. The department of natural resources or the department of health and senior services shall, at the request of any supplier, make any analyses or tests required pursuant to the terms of section 192.320, RSMo, and sections 640.100 to 640.140. The department shall collect fees to cover the reasonable cost of laboratory services, both within the department of natural resources and the department of health and senior services, laboratory certification and program administration as required by sections 640.100 to 640.140. The laboratory services and program administration fees pursuant to this subsection shall not exceed two hundred dollars for a supplier supplying less than four thousand one hundred service connections, three hundred dollars for supplying less than seven thousand six hundred service connections, five hundred dollars for supplying seven thousand six hundred or more service connections, and five hundred dollars for testing surface water. Such fees shall be deposited in the safe drinking water fund as specified in section 640.110. The analysis of all drinking water required by section 192.320, RSMo, and sections 640.100 to 640.140 shall be made by the department of natural resources laboratories, department of health and senior services laboratories or laboratories certified by the department of natural resources.

4. The department of natural resources shall establish and maintain an inventory of public water supplies and conduct sanitary surveys of public water systems. Such records shall be available for public inspection during regular business hours.

5. (1) For the purpose of complying with federal requirements for maintaining the primacy of state enforcement of the federal Safe Drinking Water Act, the department is hereby directed to request appropriations from the general revenue fund and all other appropriate sources to fund the activities of the public drinking water program and in addition to the fees authorized pursuant to subsection 3 of this section, an annual fee for each customer service connection with a public water system is hereby authorized to be imposed upon all customers of public water

systems in this state. The fees collected shall not exceed the amounts specified in this subsection and the commission may set the fees, by rule, in a lower amount by proportionally reducing all fees charged pursuant to this subsection from the specified maximum amounts. **Reductions shall be roughly proportional but in each case shall be divisible by twelve.** Each customer of a public water system shall pay an annual fee for each customer service connection.

(2) The annual fee per customer service connection for unmetered customers and customers with meters not greater than one inch in size shall be based upon the number of service connections in the water system serving that customer, and shall not exceed:

1 to 1,000 connections. . . . .	\$ [2.00] <b>3.24</b>
1,001 to 4,000 connections. . . . .	[1.84] <b>3.00</b>
4,001 to 7,000 connections. . . . .	[1.67] <b>2.76</b>
7,001 to 10,000 connections. . . . .	[1.50] <b>2.40</b>
10,001 to 20,000 connections. . . . .	[1.34] <b>2.16</b>
20,001 to 35,000 connections. . . . .	[1.17] <b>1.92</b>
35,001 to 50,000 connections. . . . .	[1.00] <b>1.56</b>
50,001 to 100,000 connections . . . . .	[.84] <b>1.32</b>
More than 100,000 connections . . . . .	[.66] <b>1.08.</b>

(3) The annual user fee for customers having meters greater than one inch but less than or equal to two inches in size shall not exceed [five dollars] **seven dollars and forty-four cents**; for customers with meters greater than two inches but less than or equal to four inches in size shall not exceed [twenty-five dollars] **forty-one dollars and sixteen cents**; and for customers with meters greater than four inches in size shall not exceed [fifty dollars] **eighty-two dollars and forty-four cents.**

(4) Customers served by multiple connections shall pay an annual user fee based on the above rates for each connection, except that no single facility served by multiple connections shall pay a total of more than five hundred dollars per year.

6. Fees imposed pursuant to subsection 5 of this section shall become effective on [August 28, 1992] **August 28, 2006**, and shall be collected by the public water system serving the customer **beginning September 1, 2006, and continuing until such time that the safe drinking water commission, at its discretion, specifies a lower amount under subdivision (1) of subsection 5 of this section.** The commission shall promulgate rules and regulations on the procedures for billing, collection and delinquent payment. Fees collected by a public water system pursuant to subsection 5 of this section are state fees. The annual fee shall be enumerated separately from all other charges, and shall be collected in monthly, quarterly or annual increments. Such fees shall be transferred to the director of the department of revenue at frequencies not less than quarterly. Two percent of the revenue arising from the fees shall be retained by the public water system for the purpose of reimbursing its expenses for billing and collection of such fees.

7. Imposition and collection of the fees authorized in subsection 5 of this section shall be suspended on the first day of a calendar quarter if, during the preceding calendar quarter, the federally delegated authority granted to the safe drinking water program within the department of natural resources to administer the Safe Drinking Water Act, 42 U.S.C. 300g-2, is withdrawn. The fee shall not be reinstated until the first day of the calendar quarter following the quarter during which such delegated authority is reinstated.

8. Fees imposed pursuant to subsection 5 of this section shall expire on September 1, [2007] **2012.**

**644.016. DEFINITIONS.** — When used in sections 644.006 to 644.141 and in standards, rules and regulations promulgated pursuant to sections 644.006 to 644.141, the following words and phrases mean:

(1) "Aquaculture facility", a hatchery, fish farm, or other facility used for the production of aquatic animals that is required to have a permit pursuant to the federal Clean Water Act, as amended, 33 U.S.C. 1251 et seq.;

(2) "Commission", the clean water commission of the state of Missouri created in section 644.021;

(3) "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;

(4) "Department", the department of natural resources;

(5) "Director", the director of the department of natural resources;

(6) "Discharge", the causing or permitting of one or more water contaminants to enter the waters of the state;

(7) "Effluent control regulations", limitations on the discharge of water contaminants;

(8) "General permit", a permit written with a standard group of conditions and with applicability intended for a designated category of water contaminant sources that have the same or similar operations, discharges and geographical locations, and that require the same or similar monitoring, and that would be more appropriately controlled pursuant to a general permit rather than pursuant to a site-specific permit;

(9) "Human sewage", human excreta and wastewater, including bath and toilet waste, residential laundry waste, residential kitchen waste, and other similar waste from household or establishment appurtenances;

(10) "Income" includes retirement benefits, consultant fees, and stock dividends;

(11) "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;

(12) "Permit by rule", a permit granted by rule, not by a paper certificate, and conditioned by the permit holder's compliance with commission rules;

(13) "Permit holders or applicants for a permit" shall not include officials or employees who work full time for any department or agency of the state of Missouri;

(14) "Person", any individual, partnership, copartnership, firm, company, public or private corporation, association, joint stock company, trust, estate, political subdivision, or any agency, board, department, or bureau of the state or federal government, or any other legal entity whatever which is recognized by law as the subject of rights and duties;

(15) "Point source", any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. **Point source does not include agricultural storm water discharges and return flows from irrigated agriculture;**

(16) "Pollution", such contamination or other alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is reasonably certain to create a nuisance or render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, industrial, agricultural, recreational, or other legitimate beneficial uses, or to wild animals, birds, fish or other aquatic life;

(17) "Pretreatment regulations", limitations on the introduction of pollutants or water contaminants into publicly owned treatment works or facilities which the commission determines are not susceptible to treatment by such works or facilities or which would interfere with their operation, except that wastes as determined compatible for treatment pursuant to any federal

water pollution control act or guidelines shall be limited or treated pursuant to this chapter only as required by such act or guidelines;

(18) "Residential housing development", any land which is divided or proposed to be divided into three or more lots, whether contiguous or not, for the purpose of sale or lease as part of a common promotional plan for residential housing;

(19) "Sewer system", pipelines or conduits, pumping stations, and force mains, and all other structures, devices, appurtenances and facilities used for collecting or conducting wastes to an ultimate point for treatment or handling;

(20) "Significant portion of his or her income" shall mean ten percent of gross personal income for a calendar year, except that it shall mean fifty percent of gross personal income for a calendar year if the recipient is over sixty years of age, and is receiving such portion pursuant to retirement, pension, or similar arrangement;

(21) "Site-specific permit", a permit written for discharges emitted from a single water contaminant source and containing specific conditions, monitoring requirements and effluent limits to control such discharges;

(22) "Treatment facilities", any method, process, or equipment which removes, reduces, or renders less obnoxious water contaminants released from any source;

(23) "Water contaminant", any particulate matter or solid matter or liquid or any gas or vapor or any combination thereof, or any temperature change which is in or enters any waters of the state either directly or indirectly by surface runoff, by sewer, by subsurface seepage or otherwise, which causes or would cause pollution upon entering waters of the state, or which violates or exceeds any of the standards, regulations or limitations set forth in sections 644.006 to 644.141 or any federal water pollution control act, or is included in the definition of pollutant in such federal act;

(24) "Water contaminant source", the point or points of discharge from a single tract of property on which is located any installation, operation or condition which includes any point source defined in sections 644.006 to 644.141 and nonpoint source pursuant to any federal water pollution control act, which causes or permits a water contaminant therefrom to enter waters of the state either directly or indirectly;

(25) "Water quality standards", specified concentrations and durations of water contaminants which reflect the relationship of the intensity and composition of water contaminants to potential undesirable effects;

(26) "Waters of the state", all rivers, streams, lakes and other bodies of surface and subsurface water lying within or forming a part of the boundaries of the state which are not entirely confined and located completely upon lands owned, leased or otherwise controlled by a single person or by two or more persons jointly or as tenants in common and includes waters of the United States lying within the state.

**644.036. PUBLIC HEARINGS — RULES AND REGULATIONS, HOW PROMULGATED — LISTINGS UNDER CLEAN WATER ACT, REQUIREMENTS, PROCEDURES, EXPIRATION DATE.**

— 1. No standard, rule or regulation or any amendment or repeal thereof shall be adopted except after a public hearing to be held after thirty days' prior notice by advertisement of the date, time and place of the hearing and opportunity given to the public to be heard. Notice of the hearings and copies of the proposed standard, rule or regulation or any amendment or repeal thereof shall also be given by regular mail, at least thirty days prior to the scheduled date of the hearing, to any person who has registered with the director for the purpose of receiving notice of such public hearings in accordance with the procedures prescribed by the commission at least forty-five days prior to the scheduled date of the hearing. However, this provision shall not preclude necessary changes during this thirty-day period.

2. At the hearing, opportunity to be heard by the commission with respect to the subject thereof shall be afforded any interested person upon written request to the commission, addressed to the director, not later than seven days prior to the hearing, and may be afforded to other

persons if convenient. In addition, any interested persons, whether or not heard, may submit, within seven days subsequent to the hearings, a written statement of their views. The commission may solicit the views, in writing, of persons who may be affected by, or interested in, proposed rules and regulations, or standards. Any person heard or represented at the hearing or making written request for notice shall be given written notice of the action of the commission with respect to the subject thereof.

3. Any standard, rule or regulation or amendment or repeal thereof shall not be deemed adopted or in force and effect until it has been approved in writing by at least four members of the commission. A standard, rule or regulation or an amendment or repeal thereof shall not become effective until a certified copy thereof has been filed with the secretary of state as provided in chapter 536, RSMo.

4. Unless prohibited by any federal water pollution control act, any standard, rule or regulation or any amendment or repeal thereof which is adopted by the commission may differ in its terms and provisions as between particular types and conditions of water quality standards or of water contaminants, as between particular classes of water contaminant sources, and as between particular waters of the state.

5. Any listing required by Section 303(d) of the federal Clean Water Act, as amended, 33 U.S.C. 1251 et seq., to be sent to the U.S. Environmental Protection Agency for [their] its approval that will result in any waters of [this] **the** state being classified as impaired shall be adopted by [rule pursuant to chapter 536, RSMo. Total maximum daily loads shall not be required for any listed waters that subsequently are determined to meet water quality standards] **the commission after a public hearing, or series of hearings, held in accordance with the following procedures. The department of natural resources shall publish in at least six regional newspapers, in advance, a notice by advertisement the availability of a proposed list of impaired waters of the state and such notice shall include at least ninety days' advance notice of the date, time, and place of the public hearing and opportunity given to the public to be heard. Notice of the hearings and copies of the proposed list of impaired waters also shall be posted on the department of natural resources' website and given by regular mail, at least ninety days prior to the scheduled date of the hearing, to any person who has registered with the director for the purpose of receiving notice of such public hearings. The proposed list of impaired waters shall identify the water segment, the uses to be made of such waters, the uses impaired, identify the pollutants causing or expected to cause violations of the applicable water quality standards, and provide a summary of the data relied upon to make the preliminary determination. Contemporaneous with the publication of the notice of public hearing, the department shall make available on its website all data and information it relied upon to prepare the proposed list of impaired waters, including a narrative explanation of how the department determined the water segment was impaired. At any time after the public notice and until seven days after the public hearing, the department shall accept written comments on the proposed list of impaired waters. After the public hearing and after all written comments have been submitted, the department shall prepare a written response to all comments and a revised list of impaired waters. The commission shall adopt a list of impaired waters in a public meeting during which the public shall be afforded an opportunity to respond to the department's written response to comments and revised list of impaired waters. Notice of the meeting shall include the date, time, and place of the public meeting and shall provide notice that the commission will give interested persons the opportunity to respond to the department's revised list of impaired waters and written responses to comments. At its discretion, the commission may extend public comment periods or hold additional public hearings on the proposed and revised lists of impaired waters. The commission shall not vote to add to the list of impaired waters any waters not recommended by the department in the proposed or revised lists of impaired waters without granting the public at least thirty additional days to comment on the proposed addition. The list of impaired waters**

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**adopted by the commission shall not be deemed to be a rule as defined by section 536.010, RSMo. The listing of any water segment on the list of impaired waters adopted by the commission shall be subject to judicial review by any adversely affected party under section 536.150, RSMo. The provisions in this subsection shall expire on August 28, 2009.**

**644.051. PROHIBITED ACTS — PERMITS REQUIRED, WHEN, FEE — BOND REQUIRED OF PERMIT HOLDERS, WHEN — PERMIT APPLICATION PROCEDURES — RULEMAKING — LIMITATION ON USE OF PERMIT FEE MONEYS.**— 1. It is unlawful for any person:

(1) To cause pollution of any waters of the state or to place or cause or permit to be placed any water contaminant in a location where it is reasonably certain to cause pollution of any waters of the state;

(2) To discharge any water contaminants into any waters of the state which reduce the quality of such waters below the water quality standards established by the commission;

(3) To violate any pretreatment and toxic material control regulations, or to discharge any water contaminants into any waters of the state which exceed effluent regulations or permit provisions as established by the commission or required by any federal water pollution control act;

(4) To discharge any radiological, chemical, or biological warfare agent or high-level radioactive waste into the waters of the state.

2. It shall be unlawful for any person to build, erect, alter, replace, operate, use or maintain any water contaminant or point source in this state that is subject to standards, rules or regulations promulgated pursuant to the provisions of sections 644.006 to 644.141 unless such person holds a permit from the commission, subject to such exceptions as the commission may prescribe by rule or regulation. However, no permit shall be required of any person for any emission into publicly owned treatment facilities or into publicly owned sewer systems tributary to publicly owned treatment works.

3. Every proposed water contaminant or point source which, when constructed or installed or established, will be subject to any federal water pollution control act or sections 644.006 to 644.141 or regulations promulgated pursuant to the provisions of such act shall make application to the director for a permit at least thirty days prior to the initiation of construction or installation or establishment. Every water contaminant or point source in existence when regulations or sections 644.006 to 644.141 become effective shall make application to the director for a permit within sixty days after the regulations or sections 644.006 to 644.141 become effective, whichever shall be earlier. The director shall promptly investigate each application, which investigation shall include such hearings and notice, and consideration of such comments and recommendations as required by sections 644.006 to 644.141 and any federal water pollution control act. If the director determines that the source meets or will meet the requirements of sections 644.006 to 644.141 and the regulations promulgated pursuant thereto, the director shall issue a permit with such conditions as he or she deems necessary to ensure that the source will meet the requirements of sections 644.006 to 644.141 and any federal water pollution control act as it applies to sources in this state. If the director determines that the source does not meet or will not meet the requirements of either act and the regulations pursuant thereto, the director shall deny the permit pursuant to the applicable act and issue any notices required by sections 644.006 to 644.141 and any federal water pollution control act.

4. Before issuing a permit to build or enlarge a water contaminant or point source or reissuing any permit, the director shall issue such notices, conduct such hearings, and consider such factors, comments and recommendations as required by sections 644.006 to 644.141 or any federal water pollution control act. The director shall determine if any state or any provisions of any federal water pollution control act the state is required to enforce, any state or federal effluent limitations or regulations, water quality-related effluent limitations, national standards of performance, toxic and pretreatment standards, or water quality standards which apply to the source, or any such standards in the vicinity of the source, are being exceeded, and shall

determine the impact on such water quality standards from the source. The director, in order to effectuate the purposes of sections 644.006 to 644.141, shall deny a permit if the source will violate any such acts, regulations, limitations or standards or will appreciably affect the water quality standards or the water quality standards are being substantially exceeded, unless the permit is issued with such conditions as to make the source comply with such requirements within an acceptable time schedule. Prior to the development or renewal of a general permit or permit by rule, for aquaculture, the director shall convene a meeting or meetings of permit holders and applicants to evaluate the impacts of permits and to discuss any terms and conditions that may be necessary to protect waters of the state. Following the discussions, the director shall finalize a draft permit that considers the comments of the meeting participants and post the draft permit on notice for public comment. The director shall concurrently post with the draft permit an explanation of the draft permit and shall identify types of facilities which are subject to the permit conditions. Affected public or applicants for new general permits, renewed general permits or permits by rule may request a hearing with respect to the new requirements in accordance with this section. If a request for a hearing is received, the commission shall hold a hearing to receive comments on issues of significant technical merit and concerns related to the responsibilities of the Missouri clean water law. The commission shall conduct such hearings in accordance with this section. After consideration of such comments, a final action on the permit shall be rendered. The time between the date of the hearing request and the hearing itself shall not be counted as time elapsed pursuant to subdivision (1) of subsection 13 of this section.

5. The director shall grant or deny the permit within sixty days after all requirements of the Federal Water Pollution Control Act concerning issuance of permits have been satisfied unless the application does not require any permit pursuant to any federal water pollution control act. The director or the commission may require the applicant to provide and maintain such facilities or to conduct such tests and monitor effluents as necessary to determine the nature, extent, quantity or degree of water contaminant discharged or released from the source, establish and maintain records and make reports regarding such determination.

6. The director shall promptly notify the applicant in writing of his or her action and if the permit is denied state the reasons therefor. The applicant may appeal to the commission from the denial of a permit or from any condition in any permit by filing notice of appeal with the commission within thirty days of the notice of denial or issuance of the permit. The commission shall set the matter for hearing not less than thirty days after the notice of appeal is filed. In no event shall a permit constitute permission to violate the law or any standard, rule or regulation promulgated pursuant thereto.

7. In any hearing held pursuant to this section the burden of proof is on the applicant for a permit. Any decision of the commission made pursuant to a hearing held pursuant to this section is subject to judicial review as provided in section 644.071.

8. In any event, no permit issued pursuant to this section shall be issued if properly objected to by the federal government or any agency authorized to object pursuant to any federal water pollution control act unless the application does not require any permit pursuant to any federal water pollution control act.

9. Unless a site-specific permit is requested by the applicant, aquaculture facilities shall be governed by a general permit issued pursuant to this section with a fee not to exceed two hundred fifty dollars pursuant to subdivision (5) of subsection 6 of section 644.052. However, any aquaculture facility which materially violates the conditions and requirements of such permit may be required to obtain a site-specific permit.

10. No manufacturing or processing plant or operating location shall be required to pay more than one operating fee. Operating permits shall be issued for a period not to exceed five years after date of issuance, except that general permits shall be issued for a five-year period, and also except that neither a construction nor an annual permit shall be required for a single residence's waste treatment facilities. Applications for renewal of an operating permit shall be filed at least one hundred eighty days prior to the expiration of the existing permit.

11. Every permit issued to municipal or any publicly owned treatment works or facility shall require the permittee to provide the clean water commission with adequate notice of any substantial new introductions of water contaminants or pollutants into such works or facility from any source for which such notice is required by sections 644.006 to 644.141 or any federal water pollution control act. Such permit shall also require the permittee to notify the clean water commission of any substantial change in volume or character of water contaminants or pollutants being introduced into its treatment works or facility by a source which was introducing water contaminants or pollutants into its works at the time of issuance of the permit. Notice must describe the quality and quantity of effluent being introduced or to be introduced into such works or facility by a source which was introducing water contaminants or pollutants into its works at the time of issuance of the permit. Notice must describe the quality and quantity of effluent being introduced or to be introduced into such works or facility and the anticipated impact of such introduction on the quality or quantity of effluent to be released from such works or facility into waters of the state.

12. The director or the commission may require the filing or posting of a bond as a condition for the issuance of permits for construction of temporary or future water treatment facilities **or facilities that utilize innovative technology for wastewater treatment** in an amount determined by the commission to be sufficient to ensure compliance with all provisions of sections 644.006 to 644.141, and any rules or regulations of the commission and any condition as to such construction in the permit. **For the purposes of this section, "innovative technology for wastewater treatment" shall mean a completely new and generally unproven technology in the type or method of its application that bench testing or theory suggest has environmental, efficiency, and cost benefits beyond the standard technologies. No bond shall be required for designs approved by any federal agency or environmental regulatory agency of another state.** The bond shall be signed by the applicant as principal, and by a corporate surety licensed to do business in the state of Missouri and approved by the commission. The bond shall remain in effect until the terms and conditions of the permit are met and the provisions of sections 644.006 to 644.141 and rules and regulations promulgated pursuant thereto are complied with.

13. (1) The department shall issue or deny applications for construction and site-specific operating permits received after January 1, 2001, within one hundred eighty days of the department's receipt of an application. For general construction and operating permit applications received after January 1, 2001, that do not require a public participation process, the department shall issue or deny the requested permits within sixty days of the department's receipt of an application.

(2) If the department fails to issue or deny with good cause a construction or operating permit application within the time frames established in subdivision (1) of this subsection, the department shall refund the full amount of the initial application fee within forty-five days of failure to meet the established time frame. If the department fails to refund the application fee within forty-five days, the refund amount shall accrue interest at a rate established pursuant to section 32.065, RSMo.

(3) Permit fee disputes may be appealed to the commission within thirty days of the date established in subdivision (2) of this subsection. If the applicant prevails in a permit fee dispute appealed to the commission, the commission may order the director to refund the applicant's permit fee plus interest and reasonable attorney's fees as provided in sections 536.085 and 536.087, RSMo. A refund of the initial application or annual fee does not waive the applicant's responsibility to pay any annual fees due each year following issuance of a permit.

(4) No later than December 31, 2001, the commission shall promulgate regulations defining shorter review time periods than the time frames established in subdivision (1) of this subsection, when appropriate, for different classes of construction and operating permits. In no case shall commission regulations adopt permit review times that exceed the time frames established in subdivision (1) of this subsection. The department's failure to comply with the

commission's permit review time periods shall result in a refund of said permit fees as set forth in subdivision (2) of this subsection. On a semiannual basis, the department shall submit to the commission a report which describes the different classes of permits and reports on the number of days it took the department to issue each permit from the date of receipt of the application and show averages for each different class of permits.

(5) During the department's technical review of the application, the department may request the applicant submit supplemental or additional information necessary for adequate permit review. The department's technical review letter shall contain a sufficient description of the type of additional information needed to comply with the application requirements.

(6) Nothing in this subsection shall be interpreted to mean that inaction on a permit application shall be grounds to violate any provisions of sections 644.006 to 644.141 or any rules promulgated pursuant to sections 644.006 to 644.141.

14. The department shall respond to all requests for individual certification under Section 401 of the Federal Clean Water Act within the lesser of sixty days or the allowed response period established pursuant to applicable federal regulations without request for an extension period unless such extension is determined by the commission to be necessary to evaluate significant impacts on water quality standards and the commission establishes a timetable for completion of such evaluation in a period of no more than one hundred eighty days.

15. All permit fees generated pursuant to this chapter shall not be used for the development or expansion of total maximum daily loads studies on either the Missouri or Mississippi rivers.

**644.054. FEES, BILLING AND COLLECTION — ADMINISTRATION, GENERALLY — FEES TO BECOME EFFECTIVE, WHEN — FEES TO EXPIRE, WHEN — VARIANCES GRANTED, WHEN — JOINT COMMITTEE FOR RESTRUCTURING FEES TO BE APPOINTED, REPORT — JOINT COMMITTEE CONVENED TO CONSIDER FEE RESTRUCTURING REPORT.** — 1. Fees imposed in sections 644.052 and 644.053 shall, except for those fees imposed pursuant to subsection 4 and subsections 6 to 13 of section 644.052, become effective October 1, 1990, and shall expire December 31, [2007] **2009**. Fees imposed pursuant to subsection 4 and subsections 6 to 13 of section 644.052 shall become effective August 28, 2000, and shall expire on December 31, [2007] **2009**. The clean water commission shall promulgate rules and regulations on the procedures for billing and collection. All sums received through the payment of fees shall be placed in the state treasury and credited to an appropriate subaccount of the natural resources protection fund created in section 640.220, RSMo. Moneys in the subaccount shall be expended, upon appropriation, solely for the administration of sections 644.006 to 644.141. Fees collected pursuant to subsection 10 of section 644.052 by a city, a public sewer district, a public water district or other publicly owned treatment works are state fees. Five percent of the fee revenue collected shall be retained by the city, public sewer district, public water district or other publicly owned treatment works as reimbursement of billing and collection expenses.

2. The commission may grant a variance pursuant to section 644.061 to reduce fees collected pursuant to section 644.052 for facilities that adopt systems or technologies that reduce the discharge of water contaminants substantially below the levels required by commission rules.

3. Fees imposed in subsections 2 to 6 of section 644.052 shall be due [in accordance with the following schedule after August 27, 2000:

(1) For new or renewed permits, fees shall be due] on the date of application and on each anniversary date of permit issuance thereafter until the permit is terminated[;

(2) For permits in effect on August 27, 2000, fees shall be due on each anniversary date of permit issuance until the permit is terminated;

(3) For general permits issued pursuant to subdivisions (2) and (4) of subsection 6 of section 644.052 and in effect on August 27, 2000, the permittee will be credited thirty dollars on each anniversary date of permit issuance that falls between August 27, 2000, and the date the permit expires].

4. There shall be convened a joint committee appointed by the president pro tem of the senate and the speaker of the house of representatives to consider proposals for restructuring the fees imposed in sections 644.052 and 644.053. The committee shall review stormwater programs, the state's implementation of the federal clean water program and related state clean water responsibilities and evaluate the costs to the state for maintaining the programs. The committee shall prepare and submit a report including recommendations on funding the state clean water program and stormwater programs to the governor, the house of representatives, and the senate no later than December 31, 2008.

**644.587. BOARD MAY BORROW ADDITIONAL \$10,000,000 FOR PURPOSES OF WATER POLLUTION, IMPROVEMENT OF DRINKING WATER, AND STORM WATER CONTROL.** — In addition to those sums authorized prior to August 28, 2007, 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 purposes set out, in chapter 640, RSMo, and this chapter.

**644.588. 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, 2007, 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 the purposes set out, in chapter 640, RSMo, and in this chapter.

**644.589. BOARD MAY BORROW ADDITIONAL \$20,000,000 FOR PURPOSES OF STORM WATER CONTROL.** — In addition to those sums authorized prior to August 28, 2007, 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.

**701.450. EQUAL NUMBER OF WATER CLOSETS, DIAPER CHANGING STATIONS, REQUIREMENTS — EXTENSION OF TIME FOR COMPLIANCE, REQUIREMENTS (ST. LOUIS CITY).** — 1. For any facility for which construction commences after August 28, 1995, which is constructed as a place of assembly for public amusement including, but not limited to, sports stadiums and arenas, auditoriums and assembly halls, there shall be provided an equal number of water closets for women as there are the number of water closets and urinals provided for men, and there shall be provided an equal number of diaper changing stations for men as there are the number provided for women.

2. Each facility described in subsection 1 of this section constructed or under construction prior to August 28, 1995, shall provide water closets in the same ratio as required in subsection 1 of this section whenever such facility undergoes major structural renovation.

3. As used in subsection 2 of this section, the term "major structural renovation" means any reconstruction, rehabilitation, addition or other improvement which required more than fifty percent of the gross floor area of the existing facility to be rebuilt. The provisions of this act shall only apply to such portions of the building being renovated and not to the entire building.

**4. Notwithstanding any other provision of this section to the contrary, if any facility described in subsection 1 of this section located in any city not within a county is constructed in compliance with the requirements of the applicable building and plumbing codes of such city related to the minimum number of water closets that are designated for**

women, such facility shall not be required to comply with the requirements of subsection 1 of this section until one year following the date of its substantial completion.

Approved July 12, 2006

HB 1180 [HCS HB 1180]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Allows certain school districts to provide transportation to students who live less than one mile from school and be reimbursed by the state if unsafe traffic situations can be demonstrated**

AN ACT to repeal section 167.231, RSMo, and to enact in lieu thereof one new section relating to student transportation.

SECTION

A. Enacting clause.

167.231. Transportation of pupils by districts, except metropolitan — mileage limits for state aid — extra transportation, district expense — election, ballot form.

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

**SECTION A. ENACTING CLAUSE.** — Section 167.231, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 167.231, to read as follows:

**167.231. TRANSPORTATION OF PUPILS BY DISTRICTS, EXCEPT METROPOLITAN — MILEAGE LIMITS FOR STATE AID — EXTRA TRANSPORTATION, DISTRICT EXPENSE — ELECTION, BALLOT FORM.** — 1. Within all school districts except metropolitan districts the board of education shall provide transportation to and from school for all pupils living more than three and one-half miles from school and may provide transportation for all pupils. State aid for transportation shall be paid as provided in section 163.161, RSMo, only on the basis of the cost of pupil transportation for those pupils living one mile or more from school, including transportation provided to and from publicly operated university laboratory schools. The board of education may provide transportation for pupils living less than one mile from school at the expense of the district and may prescribe reasonable rules and regulations as to eligibility of pupils for transportation, **and, notwithstanding any other provision of law, no such district shall be subject to an administrative penalty when the district demonstrates pursuant to rule established by the state board of education that such students are required to cross a state highway or county arterial in the absence of sidewalks, traffic signals, or a crossing guard and that no existing bus stop location has been changed to permit a district to evade such penalty.** If no increase in the tax levy of the school district is required to provide transportation for pupils living less than one mile from the school, the board may transport said pupils. If an increase in the tax levy of the school district is required to provide transportation for pupils living less than one mile from school, the board shall submit the question at a public election. If a two-thirds majority of the voters voting on the question at the election are in favor of providing the transportation, the board shall arrange and provide therefor.

2. The proposal and the ballots may be in substantially the following form:

Shall the board of education of the ..... school district provide transportation at the expense of the district for pupils living less than one mile from school and be authorized to levy an

additional tax of ..... cents on the one hundred dollars assessed valuation to provide funds to pay for such transportation service?

YES  NO

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

3. The board of education of any school district may provide transportation to and from school for any public school pupil not otherwise eligible for transportation under the provisions of state law, and may prescribe reasonable rules and regulations as to eligibility for transportation, if the parents or guardian of the pupil agree in writing to pay the actual cost of transporting the pupil. The minimum charge would be the actual cost of transporting the pupil for ninety school days, which actual cost is to be determined by the average per pupil cost of transporting children in the school district during the preceding school year. The full actual cost shall be paid by the parent or guardian of the pupil and shall not be paid out of any state school aid funds or out of any other revenues of the school district. The cost of transportation may be paid in installments, and the board of education shall establish the cost of the transportation and the time or times and method of payment.

Approved June 21, 2006

## HB 1182 [HCS HB 1182]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Allows parents, legal guardians, or other persons with custodial rights to petition a court to extend his or her child's age of majority to 18 for all purposes under state law**

AN ACT to repeal section 167.031, RSMo, and to enact in lieu thereof two new sections relating to jurisdiction of the juvenile court.

### SECTION

- A. Enacting clause.
- 167.031. School attendance compulsory, who may be excused — nonattendance, penalty — home school, definition, requirements — school year defined — daily log, defense to prosecution — compulsory attendance age for the district defined.
- 211.034. Extension of juvenile court jurisdiction permitted, when — procedure — immunity from liability for certain persons, when.

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

**SECTION A. ENACTING CLAUSE.** — Section 167.031, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 167.031 and 211.034, to read as follows:

**167.031. SCHOOL ATTENDANCE COMPULSORY, WHO MAY BE EXCUSED — NONATTENDANCE, PENALTY — HOME SCHOOL, DEFINITION, REQUIREMENTS — SCHOOL YEAR DEFINED — DAILY LOG, DEFENSE TO PROSECUTION — COMPULSORY ATTENDANCE AGE FOR THE DISTRICT DEFINED.** — 1. Every parent, guardian or other person in this state having charge, control or custody of a child not enrolled in a public, private, parochial, parish school or full-time equivalent attendance in a combination of such schools and between the ages of seven years and the compulsory attendance age for the district is responsible for enrolling the child in a program of academic instruction which complies with subsection 2 of this section. Any parent, guardian or other person who enrolls a child between the ages of five and seven

years in a public school program of academic instruction shall cause such child to attend the academic program on a regular basis, according to this section. Nonattendance by such child shall cause such parent, guardian or other responsible person to be in violation of the provisions of section 167.061, except as provided by this section. A parent, guardian or other person in this state having charge, control, or custody of a child between the ages of seven years of age and the compulsory attendance age for the district shall cause the child to attend regularly some public, private, parochial, parish, home school or a combination of such schools not less than the entire school term of the school which the child attends; except that

(1) A child who, to the satisfaction of the superintendent of public schools of the district in which he resides, or if there is no superintendent then the chief school officer, is determined to be mentally or physically incapacitated may be excused from attendance at school for the full time required, or any part thereof;

(2) A child between fourteen years of age and the compulsory attendance age for the district may be excused from attendance at school for the full time required, or any part thereof, by the superintendent of public schools of the district, or if there is none then by a court of competent jurisdiction, when legal employment has been obtained by the child and found to be desirable, and after the parents or guardian of the child have been advised of the pending action; or

(3) A child between five and seven years of age shall be excused from attendance at school if a parent, guardian or other person having charge, control or custody of the child makes a written request that the child be dropped from the school's rolls.

2. (1) As used in sections 167.031 to 167.071, a "home school" is a school, whether incorporated or unincorporated, that:

(a) Has as its primary purpose the provision of private or religious-based instruction;

(b) Enrolls pupils between the ages of seven years and the compulsory attendance age for the district, of which no more than four are unrelated by affinity or consanguinity in the third degree; and

(c) Does not charge or receive consideration in the form of tuition, fees, or other remuneration in a genuine and fair exchange for provision of instruction;

(2) As evidence that a child is receiving regular instruction, the parent shall, except as otherwise provided in this subsection:

(a) Maintain the following records:

a. A plan book, diary, or other written record indicating subjects taught and activities engaged in; and

b. A portfolio of samples of the child's academic work; and

c. A record of evaluations of the child's academic progress; or

d. Other written, or credible evidence equivalent to subparagraphs a., b. and c.; and

(b) Offer at least one thousand hours of instruction, at least six hundred hours of which will be in reading, language arts, mathematics, social studies and science or academic courses that are related to the aforementioned subject areas and consonant with the pupil's age and ability. At least four hundred of the six hundred hours shall occur at the regular home school location;

(3) The requirements of subdivision (2) of this subsection shall not apply to any pupil above the age of sixteen years.

3. Nothing in this section shall require a private, parochial, parish or home school to include in its curriculum any concept, topic, or practice in conflict with the school's religious doctrines or to exclude from its curriculum any concept, topic, or practice consistent with the school's religious doctrines. Any other provision of the law to the contrary notwithstanding, all departments or agencies of the state of Missouri shall be prohibited from dictating through rule, regulation or other device any statewide curriculum for private, parochial, parish or home schools.

4. A school year begins on the first day of July and ends on the thirtieth day of June following.

5. The production by a parent of a daily log showing that a home school has a course of instruction which satisfies the requirements of this section or, in the case of a pupil over the age of sixteen years who attended a metropolitan school district the previous year, a written statement that the pupil is attending home school in compliance with this section shall be a defense to any prosecution under this section and to any charge or action for educational neglect brought pursuant to chapter 210, RSMo.

6. As used in sections 167.031 to 167.051, the term "compulsory attendance age for the district" shall mean:

(1) Seventeen years of age for any metropolitan school district for which the school board adopts a resolution to establish such compulsory attendance age; provided that such resolution shall take effect no earlier than the school year next following the school year during which the resolution is adopted; and

(2) Sixteen years of age in all other cases.

The school board of a metropolitan school district for which the compulsory attendance age is seventeen years may adopt a resolution to lower the compulsory attendance age to sixteen years; provided that such resolution shall take effect no earlier than the school year next following the school year during which the resolution is adopted.

**7. The provisions of this section shall apply to any parent, guardian, or other person in this state having charge, control, or custody of a child between the ages of fifteen and eighteen if such child has not received a high school diploma or its equivalent and a court order has been issued as to such child under section 211.034, RSMo.**

**211.034. EXTENSION OF JUVENILE COURT JURISDICTION PERMITTED, WHEN — PROCEDURE — IMMUNITY FROM LIABILITY FOR CERTAIN PERSONS, WHEN. — 1. Any parent, legal guardian, or other person having legal custody of a minor child may, at any time after the minor child attains fifteen years of age and before the minor child attains eighteen years of age, petition the circuit court for the county where the minor child and parent, legal guardian, or other person having legal custody of the minor child reside to extend the jurisdiction of the juvenile court until the minor child reaches the age of eighteen years.**

**2. The petition shall be accompanied by verified proof of service on the minor child and certified copies of documents demonstrating that the petitioner is the parent, legal guardian, or other legal custodian of the minor child. If the petitioner is not the natural parent of the minor child, the petition shall be accompanied by:**

**(1) An affidavit from at least one of the child's natural parents consenting to the granting of the petition; or**

**(2) An affidavit from the petitioner stating that the natural parents:**

**(a) Are deceased;**

**(b) Have been declared legally incompetent;**

**(c) Have had their parental rights as to the minor child terminated by a court of competent jurisdiction;**

**(d) Have voluntarily surrendered their parental rights as to the minor child;**

**(e) Have abandoned the minor child;**

**(f) Are unknown; or**

**(g) Are otherwise unavailable, in which case, the affidavit shall state the reasons why the natural parents are unavailable.**

**In all cases where any parent, legal guardian, or other person having legal custody of a minor child petitions the court to extend the jurisdiction of the juvenile court until the minor child's eighteenth birthday, the court shall appoint an attorney to represent the minor child. An individual filing the petition shall pay the attorney fees of the minor child.**

**3. Upon the filing of a petition under this section and a determination by the court in favor of the petitioner, the circuit court shall issue an order declaring that the minor**

child shall remain under the jurisdiction of the juvenile court for all purposes under state law until the minor child reaches eighteen years of age; except that, for purposes of criminal law and procedure, including arrest, prosecution, trial, and punishment, if the minor is certified as an adult, the minor shall remain a certified adult despite the issuance of a court order under this section. Such minor child shall be subject to the compulsory school attendance requirements of section 167.031, RSMo, until the minor child receives a high school diploma or its equivalent, or reaches eighteen years of age. The court order shall be filed with the circuit clerk for the county where the petitioner resides.

4. Nothing in this section shall be construed as creating any civil or criminal liability for any law enforcement officer, juvenile officer, school personnel, or court personnel for any action taken or failure to take any action involving a minor child who remains under the jurisdiction of the juvenile court under this section if such action or failure to take action is based on a good faith belief by such officer or personnel that the minor child is not under the jurisdiction of the juvenile court.

Approved June 12, 2006

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HB 1204 [HB 1204]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Authorizes jailers to serve arrest warrants on persons who are already inmates in the custody of the facility in which the jailer is employed**

AN ACT to amend chapter 221, RSMo, by adding thereto one new section relating to duties of jailers.

SECTION

A. Enacting clause.

221.515. Jailers authorized to serve arrest warrants on inmates.

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

**SECTION A. ENACTING CLAUSE.** — Chapter 221, RSMo, is amended by adding thereto one new section, to be known as section 221.515, to read as follows:

**221.515. JAILERS AUTHORIZED TO SERVE ARREST WARRANTS ON INMATES.** — Any person designated a jailer under the provisions of this chapter shall have the power to serve an arrest warrant on any person who is already an inmate in the custody of the facility in which such jailer is employed.

Approved June 9, 2006

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HB 1222 [HB 1222]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

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**Authorizes the appointment of special deputy coroners or medical examiners in the event of a natural disaster, mass casualties, or other emergency**

AN ACT to amend chapter 58, RSMo, by adding thereto one new section relating to special deputy coroners and medical examiners.

SECTION

- A. Enacting clause.  
58.217. Special deputy coroner or special deputy medical examiner may be appointed, when — record-keeping requirements.

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

**SECTION A. ENACTING CLAUSE.** — Chapter 58, RSMo, is amended by adding thereto one new section, to be known as section 58.217, to read as follows:

**58.217. SPECIAL DEPUTY CORONER OR SPECIAL DEPUTY MEDICAL EXAMINER MAY BE APPOINTED, WHEN — RECORD-KEEPING REQUIREMENTS. — 1. The coroner or medical examiner of any county or any city not within a county may, for a period not to exceed thirty days, appoint a special deputy coroner or special deputy medical examiner in the event of any natural disaster, mass casualty, or other emergency situation. Such special deputy coroners or medical examiners shall be the coroner or medical examiner or deputy coroner or medical examiner of any other county in the state who is willing to serve under this section. Any special deputy coroner or medical examiner appointed under this section shall be directly supervised by the coroner or medical examiner making the appointment, and shall not receive any compensation for services rendered, but shall be reimbursed for all actual and necessary expenses incurred in the performance of official duties under this section. Such expenses shall be paid upon the receipt of an itemized record of such expenses approved by the coroner or medical examiner making the appointment.**

**2. The coroner or medical examiner making the appointment shall keep accurate records of all persons appointed under this section, and such records shall include the full name, address, date of birth, date of appointment, and date released from the appointment of the special deputy coroner or medical examiner appointed under this section. The coroner or medical examiner making an appointment under this section shall file such records with the county clerk in such coroner or medical examiner's county.**

Approved June 29, 2006

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HB 1234 [HB 1234]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Revises the Nursing Student Repayment Loan Program by changing the definition of "eligible student" and allows the financial assistance to be forgiven upon completion of a nursing degree program**

AN ACT to repeal sections 335.212 and 335.233, RSMo, and to enact in lieu thereof two new sections relating to the nursing student loan program.

SECTION

- A. Enacting clause.
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- 335.212. Definitions.  
335.233. Schedule for repayment of loan — interest, amount.

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

**SECTION A. ENACTING CLAUSE.** — Sections 335.212 and 335.233, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 335.212 and 335.233, to read as follows:

**335.212. DEFINITIONS.** — As used in sections 335.212 to 335.242, the following terms mean:

- (1) "Board", the Missouri state board of nursing;
- (2) "Department", the Missouri department of health and senior services;
- (3) "Director", director of the Missouri department of health and senior services;
- (4) "Eligible student", a resident who has [made application to be] **been accepted** as a full-time student in a formal course of instruction leading to an associate degree, a diploma, a bachelor of science, or a master of science in nursing or leading to the completion of educational requirements for a licensed practical nurse;
- (5) "Participating school", an institution within this state which is approved by the board for participation in the professional and practical nursing student loan program established by sections 335.212 to 335.242, having a nursing department and offering a course of instruction based on nursing theory and clinical nursing experience;
- (6) "Qualified applicant", an eligible student approved by the board for participation in the professional and practical nursing student loan program established by sections 335.212 to 335.242;
- (7) "Qualified employment", employment on a full-time basis in Missouri in a position requiring licensure as a licensed practical nurse or registered professional nurse in any hospital as defined in section 197.020, RSMo, or public or nonprofit agency, institution, or organization located in an area of need as determined by the department of health and senior services. Any forgiveness of such principal and interest for any qualified applicant engaged in qualified employment on a less than full-time basis may be prorated to reflect the amounts provided in this section;
- (8) "Resident", any person who has lived in this state for one or more years for any purpose other than the attending of an educational institution located within this state.

**335.233. SCHEDULE FOR REPAYMENT OF LOAN — INTEREST, AMOUNT.** — The department shall establish schedules for repayment of the principal and interest on any financial assistance made under the provisions of sections 335.212 to 335.242. Interest at the rate of nine and one-half percent per annum shall be charged on all financial assistance made under the provisions of sections 335.212 to 335.242, but [twenty-five percent of] the interest and principal of the total financial assistance granted to a qualified applicant at the time of the successful completion of a nursing degree, diploma program or a practical nursing program shall be forgiven [for each year of] **through** qualified employment.

Approved July 10, 2006

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HB 1245 [HB 1245]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

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**Allows school nurses to keep on hand and administer prefilled syringes of epinephrine to any student who the nurse believes is having an anaphylactic reaction**

AN ACT to amend chapter 167, RSMo, by adding thereto one new section relating to school nurses.

SECTION

- A. Enacting clause.  
167.630. Epinephrine prefilled auto syringes, school nurse authorized to maintain adequate supply — administration authorized, when.

*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 167.630, to read as follows:

**167.630. EPINEPHRINE PREFILLED AUTO SYRINGES, SCHOOL NURSE AUTHORIZED TO MAINTAIN ADEQUATE SUPPLY — ADMINISTRATION AUTHORIZED, WHEN.** — **1. Each school board may authorize a school nurse licensed under chapter 335, RSMo, who is employed by the school district and for whom the board is responsible for to maintain an adequate supply of prefilled auto syringes of epinephrine with fifteen hundredths milligram or three-tenths milligram delivery at the school. The nurse shall recommend to the school board the number of prefilled epinephrine auto syringes that the school should maintain.**

**2. To obtain prefilled epinephrine auto syringes for a school district, a prescription written by a licensed physician, a physician's assistant, or nurse practitioner is required. For such prescriptions, the school district shall be designated as the patient, the nurse's name shall be required, and the prescription shall be filled at a licensed pharmacy.**

**3. A school nurse shall have the discretion to use an epinephrine auto syringe on any student the school nurse believes is having a life threatening anaphylactic reaction based on the nurse's training in recognizing an acute episode of an anaphylactic reaction.**

Approved July 12, 2006

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HB 1256 [HCS HB 1256]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Establishes February 4 as "Rosa Parks Day" and makes it a state observance**

AN ACT to amend chapter 9, RSMo, by adding thereto one new section relating to the designation of Rosa Parks Day in Missouri.

SECTION

- A. Enacting clause.  
9.163. Rosa Parks Day to be proclaimed annually on February fourth.

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

**SECTION A. ENACTING CLAUSE.** — Chapter 9, RSMo, is amended by adding thereto one new section, to be known as section 9.163, to read as follows:

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**9.163. ROSA PARKS DAY TO BE PROCLAIMED ANNUALLY ON FEBRUARY FOURTH. —** The governor shall issue annually a proclamation setting apart the fourth day of February as "Rosa Parks Day" and recommending to the people of the state that the day be appropriately observed in honor of and out of respect for Rosa Parks, an African American woman who refused to give up her bus seat to a white man, an act of defiance that opened a decisive chapter in the civil rights movement in the United States.

Approved June 29, 2006

HB 1270 [CCS SCS HCS HB 1270 & 1027]

**EXPLANATION —** Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Requires all gasoline sold in Missouri after January 1, 2008, to be an ethanol-blend containing at least 10% fuel ethanol**

AN ACT to repeal section 142.031, RSMo, and to enact in lieu thereof two new sections relating to ethanol blend fuel.

SECTION

- A. Enacting clause.
- 142.031. Missouri qualified biodiesel producer fund created — eligibility for grants — rulemaking authority — expiration date.
- 414.255. Definitions — ethanol-blended gasoline required, when — exemptions — rulemaking authority.

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

**SECTION A. ENACTING CLAUSE. —** Section 142.031, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 142.031 and 414.255, to read as follows:

**142.031. MISSOURI QUALIFIED BIODIESEL PRODUCER FUND CREATED — ELIGIBILITY FOR GRANTS — RULEMAKING AUTHORITY — EXPIRATION DATE. —** 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) "**Missouri** 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:

(a) **Is** at least fifty-one percent [is] owned by agricultural producers **who are residents of this state and who are** actively engaged in agricultural production for commercial purposes; **or**

(b) **At least eighty percent of the feedstock used by the facility originates in the state of Missouri. For purposes of this section, "feedstock" means a Missouri agricultural product as defined in section 348.400, RSMo.**

2. The "Missouri Qualified Biodiesel Producer Incentive Fund" is hereby created and subject to appropriations 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. **However, the director may waive the feedstock requirements on a month-to-month basis if the facility provides verification that adequate feedstock is not available.** 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 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.

**7. This section shall expire on December 31, 2009. However, Missouri qualified biodiesel producers receiving any grants awarded prior to December 31, 2009, shall continue to be eligible for the remainder of the original sixty-month time period under the same terms and conditions of this section unless such producer during such sixty months failed, due to a lack of appropriations, to receive the full amount from the fund for which he or she was eligible. In such 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 they were eligible during the original sixty-month time period.

**414.255. DEFINITIONS — ETHANOL-BLENDED GASOLINE REQUIRED, WHEN — EXEMPTIONS — RULEMAKING AUTHORITY. — 1.** This section shall be known and may be cited as the "Missouri Renewable Fuel Standard Act".

**2.** For purposes of this section, the following terms shall mean:

(1) "Aviation fuel", any motor fuel specifically compounded for use in reciprocating aircraft engines;

(2) "Distributor", a person who either produces, refines, blends, compounds or manufactures motor fuel, imports motor fuel into a state or exports motor fuel out of a state, or who is engaged in distribution of motor fuel;

(3) "Fuel ethanol-blended gasoline", a mixture of ninety percent gasoline and ten percent fuel ethanol in which the fuel ethanol meets ASTM International Specification D 4806, as amended. The ten percent fuel ethanol portion may be derived from any agricultural source;

(4) "Position holder", the person who holds the inventory position in motor fuel in a terminal, as reflected on the records of the terminal operator. A person holds the inventory position in motor fuel when that person has a contract with the terminal operator for the use of storage facilities and terminating services for motor fuel at the terminal. The term includes a terminal operator who owns motor fuel in the terminal;

(5) "Premium gasoline", gasoline with an antiknock index number of ninety-one or greater;

(6) "Price", the cost of the fuel ethanol plus fuel taxes and transportation expenses less tax credits, if any; or the cost of the fuel ethanol-blended gasoline plus fuel taxes and transportation expenses less tax credits, if any; or the cost of the unblended gasoline plus fuel taxes and transportation expenses less tax credits, if any;

(7) "Qualified terminal", a terminal that has been assigned a terminal control number ("tcn") by the Internal Revenue Service;

(8) "Supplier", a person that is:

(a) Registered or required to be registered pursuant to 26 U.S.C., Section 4101, for transactions in motor fuels in the bulk transfer/terminal distribution system; and

(b) One or more of the following:

a. The position holder in a terminal or refinery in this state;

b. Imports motor fuel into this state from a foreign country;

c. Acquires motor fuel from a terminal or refinery in this state from a position holder pursuant to either a two-party exchange or a qualified buy-sell arrangement which is treated as an exchange and appears on the records of the terminal operator; or

d. The position holder in a terminal or refinery outside this state with respect to motor fuel which that person imports into this state. A terminal operator shall not be considered a supplier based solely on the fact that the terminal operator handles motor fuel consigned to it within a terminal. "Supplier" also means a person that produces fuel grade alcohol or alcohol-derivative substances in this state, produces fuel grade alcohol or alcohol-derivative substances for import to this state into a terminal, or acquires upon import by truck, rail car or barge into a terminal, fuel grade alcohol or alcohol-derivative substances. "Supplier" includes a permissive supplier unless specifically provided otherwise;

(9) "Terminal", a bulk storage and distribution facility which includes:

(a) For the purposes of motor fuel, is a qualified terminal;

(b) For the purposes of fuel grade alcohol, is supplied by truck, rail car, boat, barge or pipeline and the products are removed at a rack; and

(10) "Unblended gasoline", gasoline that has not been blended with fuel ethanol.

3. Except as otherwise provided under subsections 4 and 5 of this section, on and after January 1, 2008, all gasoline sold or offered for sale in Missouri at retail shall be fuel ethanol-blended gasoline.

4. If a distributor is unable to obtain fuel ethanol or fuel ethanol-blended gasoline from a position holder or supplier at the terminal at the same or lower price as unblended gasoline, then the purchase of unblended gasoline by the distributor and the sale of the unblended gasoline at retail shall not be deemed a violation of this section. The position holder, supplier, distributor, and ultimate vendor shall, upon request, provide the required documentation regarding the sales transaction and price of fuel ethanol, fuel ethanol-blended gasoline, and unblended gasoline to the department of agriculture and the department of revenue. All information obtained by the departments from such sources shall be confidential and not disclosed except by court order or as otherwise provided by law.

5. The following shall be exempt from the provisions of this section:

- (1) Aviation fuel and automotive gasoline used in aircraft;
- (2) Premium gasoline;
- (3) E75-E85 fuel ethanol;
- (4) Any specific exemptions declared by the United States Environmental Protection Agency; and
- (5) Bulk transfers between terminals.

The director of the department of agriculture may by rule exempt or rescind additional gasoline uses from the requirements of this section. The governor may by executive order waive the requirements of this section or any part thereof in part or in whole for all or any portion of this state for reasons related to air quality. Any regional waiver shall be issued and implemented in such a way as to minimize putting any region of the state at a competitive advantage or disadvantage with any other region of the state.

6. The provisions of section 414.152 shall apply for purposes of enforcement of this section.

7. The department of agriculture is hereby authorized to promulgate rules to ensure implementation of, and compliance and consistency with, 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, 2006, shall be invalid and void.

8. All terminals in Missouri that sell gasoline shall offer for sale, in cooperation with position holders and suppliers, fuel ethanol-blended gasoline, fuel ethanol, and unblended gasoline. Terminals that only offer for sale federal reformulated gasolines, in cooperation with position holders and suppliers, shall not be required to offer for sale unblended gasoline.

9. Notwithstanding any other law to the contrary, all fuel retailers, wholesalers, distributors, and marketers shall be allowed to purchase fuel ethanol from any terminal, position holder, fuel ethanol producer, fuel ethanol wholesaler, or supplier. In the event a court of competent jurisdiction finds that this subsection does not apply to or improperly

**impairs existing contractual relationships, then this subsection shall only apply to and impact future contractual relationships.**

Approved July 6, 2006

HB 1339 [HCS HB 1339]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Changes the laws regarding the licensure of real estate brokers**

AN ACT to repeal sections 339.010, 339.040, and 339.100, RSMo, and to enact in lieu thereof three new sections relating to real estate brokers.

SECTION

A. Enacting clause.

339.010. Definitions — applicability of chapter.

339.040. Licenses granted to whom — examination — qualifications — fee — temporary broker's license, when — renewal, requirements.

339.100. Investigation of certain practices, procedure — subpoenas — formal complaints — revocation or suspension of licenses — digest may be published — revocation of licenses for certain offenses.

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

**SECTION A. ENACTING CLAUSE.** — Sections 339.010, 339.040, and 339.100, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 339.010, 339.040, and 339.100, to read as follows:

**339.010. DEFINITIONS — APPLICABILITY OF CHAPTER.** — 1. A "real estate broker" is any person, partnership, association, or corporation, foreign or domestic who, for another, and for a compensation or valuable consideration, does, or attempts to do, any or all of the following:

- (1) Sells, exchanges, purchases, rents, or leases real estate;
- (2) Offers to sell, exchange, purchase, rent or lease real estate;
- (3) Negotiates or offers or agrees to negotiate the sale, exchange, purchase, rental or leasing of real estate;
- (4) Lists or offers or agrees to list real estate for sale, lease, rental or exchange;
- (5) Buys, sells, offers to buy or sell or otherwise deals in options on real estate or improvements thereon;
- (6) Advertises or holds himself or herself out as a licensed real estate broker while engaged in the business of buying, selling, exchanging, renting, or leasing real estate;
- (7) Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, leasing or rental of real estate;
- (8) Assists or directs in the negotiation of any transaction calculated or intended to result in the sale, exchange, leasing or rental of real estate;
- (9) Engages in the business of charging to an unlicensed person an advance fee in connection with any contract whereby the real estate broker undertakes to promote the sale of that person's real estate through its listing in a publication issued for such purpose intended to be circulated to the general public;
- (10) Performs any of the foregoing acts as an employee of, or on behalf of, the owner of real estate, or interest therein, or improvements affixed thereon, for compensation.

2. A "real estate salesperson" is any person who for a compensation or valuable consideration becomes associated, either as an independent contractor or employee, either directly or indirectly, with a real estate broker to do any of the things above mentioned. The provisions of sections 339.010 to 339.180 and sections 339.710 to 339.860 shall not be construed to deny a real estate salesperson who is compensated solely by commission the right to be associated with a broker as an independent contractor.

3. The term "commission" as used in sections 339.010 to 339.180 and sections 339.710 to 339.860 means the Missouri real estate commission.

4. "Real estate" for the purposes of sections 339.010 to 339.180 and sections 339.710 to 339.860 shall mean, and include, leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold or nonfreehold, and the real estate is situated in this state.

5. **"Advertising" shall mean any communication, whether oral or written, between a licensee or other entity acting on behalf of one or more licensees and the public; it shall include, but not be limited to, business cards, signs, insignias, letterheads, radio, television, newspaper and magazine ads, Internet advertising, web sites, display or group ads in telephone directories, and billboards.**

6. The provisions of sections 339.010 to 339.180 and sections 339.710 to 339.860 shall not apply to:

(1) Any person, partnership, association, or corporation who as owner, lessor, or lessee shall perform any of the acts described in subsection 1 of this section with reference to property owned or leased by them, or to the regular employees thereof, provided such owner, lessor, or lessee is not engaged in the real estate business;

(2) Any licensed attorney-at-law;

(3) An auctioneer employed by the owner of the property;

(4) Any person acting as receiver, trustee in bankruptcy, administrator, executor, or guardian or while acting under a court order or under the authority of a will, trust instrument or deed of trust or as a witness in any judicial proceeding or other proceeding conducted by the state or any governmental subdivision or agency;

(5) Any person employed or retained to manage real property by, for, or on behalf of, the agent or the owner, of any real estate shall be exempt from holding a license, if the person is limited to one or more of the following activities:

(a) Delivery of a lease application, a lease, or any amendment thereof, to any person;

(b) Receiving a lease application, lease, or amendment thereof, a security deposit, rental payment, or any related payment, for delivery to, and made payable to, a broker or owner;

(c) Showing a rental unit to any person, as long as the employee is acting under the direct instructions of the broker or owner, including the execution of leases or rental agreements;

(d) Conveying information prepared by a broker or owner about a rental unit, a lease, an application for lease, or the status of a security deposit, or the payment of rent, by any person;

(e) Assisting in the performance of brokers' or owners' functions, administrative, clerical or maintenance tasks;

(f) If the person described in this section is employed or retained by, for, or on behalf of a real estate broker, the real estate broker shall be subject to discipline under this chapter for any conduct of the person that violates this chapter or the regulations promulgated thereunder;

(6) Any officer or employee of a federal agency or the state government or any political subdivision thereof performing official duties;

(7) Railroads and other public utilities regulated by the state of Missouri, or their subsidiaries or affiliated corporations, or to the officers or regular employees thereof, unless performance of any of the acts described in subsection 1 of this section is in connection with the sale, purchase, lease or other disposition of real estate or investment therein unrelated to the principal business activity of such railroad or other public utility or affiliated or subsidiary corporation thereof;

(8) Any bank, trust company, savings and loan association, credit union, insurance company, mortgage banker, or farm loan association organized under the laws of this state or of the United States when engaged in the transaction of business on its own behalf and not for others;

(9) Any newspaper, magazine, periodical, [or] Internet site [whereby the advertising of real estate is incidental to its operation], **Internet communications**, or [to] any form of communications regulated or licensed by the Federal Communications Commission or any successor agency or commission **whereby the advertising of real estate is incidental to its operation**;

(10) Any developer selling Missouri land owned by the developer;

(11) Any employee acting on behalf of a nonprofit community, or regional economic development association, agency or corporation which has as its principal purpose the general promotion and economic advancement of the community at large, provided that such entity:

(a) Does not offer such property for sale, lease, rental or exchange on behalf of another person or entity;

(b) Does not list or offer or agree to list such property for sale, lease, rental or exchange; or

(c) Receives no fee, commission or compensation, either monetary or in kind, that is directly related to sale or disposal of such properties. An economic developer's normal annual compensation shall be excluded from consideration as commission or compensation related to sale or disposal of such properties; or

(12) Any neighborhood association, as that term is defined in section 441.500, RSMo, that without compensation, either monetary or in kind, provides to prospective purchasers or lessors of property the asking price, location, and contact information regarding properties in and near the association's neighborhood, including any publication of such information in a newsletter, Internet site, or other medium.

**339.040. LICENSES GRANTED TO WHOM — EXAMINATION — QUALIFICATIONS — FEE — TEMPORARY BROKER'S LICENSE, WHEN — RENEWAL, REQUIREMENTS.** — 1. Licenses shall be granted only to persons who present, and corporations, associations, or partnerships whose officers, associates, or partners present, satisfactory proof to the commission that they:

(1) Are persons of good moral character; and

(2) Bear a good reputation for honesty, integrity, and fair dealing; and

(3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

2. In order to determine an applicant's qualifications to receive a license under sections 339.010 to 339.180 and sections 339.710 to 339.860, the commission shall hold oral or written examinations at such times and places as the commission may determine.

3. Each applicant for a broker or salesperson license shall be at least eighteen years of age and shall pay the broker examination fee or the salesperson examination fee.

4. Each applicant for a broker license shall be required to have satisfactorily completed the salesperson license examination prescribed by the commission. For the purposes of this section only, the commission may permit a person who is not associated with a licensed broker to take the salesperson examination.

5. Each application for a broker license shall include a certificate from the applicant's broker or brokers that the applicant has been actively engaged in the real estate business as a licensed salesperson for at least [one year] **two years** immediately preceding the date of application, [or, in lieu thereof,] **and** shall include a certificate from a school accredited by the commission under the provisions of section 339.045 that the applicant has, within six months prior to the date of application, successfully completed the prescribed broker curriculum or broker correspondence course offered by such school, except that the commission may waive

all or part of the [educational] requirements set forth in this subsection when an applicant presents proof of other educational background or experience acceptable to the commission.

6. Each application for a salesperson license shall include a certificate from a school accredited by the commission under the provisions of section 339.045 that the applicant has, within six months prior to the date of application, successfully completed the prescribed salesperson curriculum or salesperson correspondence course offered by such school, except that the commission may waive all or part of the educational requirements set forth in this subsection when an applicant presents proof of other educational background or experience acceptable to the commission.

7. The commission may issue a temporary work permit pending final review and printing of the license to an applicant who appears to have satisfied the requirements for licenses. The commission may, at its discretion, withdraw the work permit at any time.

8. Every active broker, salesperson, officer, partner, or associate shall provide upon request to the commission evidence that during the two years preceding he or she has completed twelve hours of real estate instruction in courses approved by the commission. The commission may, by rule and regulation, provide for individual waiver of this requirement.

9. Each entity that provides continuing education required under the provisions of subsection 8 of this section may make available instruction courses that the entity conducts through means of distance delivery. The commission shall by rule set standards for such courses. The commission may by regulation require the individual completing such distance-delivered course to complete an examination on the contents of the course. Such examination shall be designed to ensure that the licensee displays adequate knowledge of the subject matter of the course, and shall be designed by the entity producing the course and approved by the commission.

10. In the event of the death or incapacity of a licensed broker, or of one or more of the licensed partners, officers, or associates of a real estate partnership, corporation, or association whereby the affairs of the broker, partnership, or corporation cannot be carried on, the commission may issue, without examination or fee, to the legal representative or representatives of the deceased or incapacitated individual, or to another individual approved by the commission, a temporary broker license which shall authorize such individual to continue for a period to be designated by the commission to transact business for the sole purpose of winding up the affairs of the broker, partnership or corporation under the supervision of the commission.

**339.100. INVESTIGATION OF CERTAIN PRACTICES, PROCEDURE — SUBPOENAS — FORMAL COMPLAINTS — REVOCATION OR SUSPENSION OF LICENSES — DIGEST MAY BE PUBLISHED — REVOCATION OF LICENSES FOR CERTAIN OFFENSES.** — 1. The commission may, upon its own motion, and shall upon receipt of a written complaint filed by any person, investigate any real estate-related activity of a licensee licensed under sections 339.010 to 339.180 and sections 339.710 to 339.860 or an individual or entity acting as or representing themselves as a real estate licensee. In conducting such investigation, if the questioned activity or written complaint involves an affiliated licensee, the commission may forward a copy of the information received to the affiliated licensee's designated broker. The commission shall have the power to hold an investigatory hearing to determine whether there is a probability of a violation of sections 339.010 to 339.180 and sections 339.710 to 339.860. The commission shall have the power to issue a subpoena to compel the production of records and papers bearing on the complaint. The commission shall have the power to issue a subpoena and to compel any person in this state to come before the commission to offer testimony or any material specified in the subpoena. Subpoenas and subpoenas duces tecum issued pursuant to this section shall be served in the same manner as subpoenas in a criminal case. The fees and mileage of witnesses shall be the same as that allowed in the circuit court in civil cases.

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621, RSMo, against any person or entity

licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

(1) Failure to maintain and deposit in a special account, separate and apart from his or her personal or other business accounts, all moneys belonging to others entrusted to him or her while acting as a real estate broker or as the temporary custodian of the funds of others, until the transaction involved is consummated or terminated, unless all parties having an interest in the funds have agreed otherwise in writing;

(2) Making substantial misrepresentations or false promises or suppression, concealment or omission of material facts in the conduct of his or her business or pursuing a flagrant and continued course of misrepresentation through agents, salespersons, advertising or otherwise in any transaction;

(3) Failing within a reasonable time to account for or to remit any moneys, valuable documents or other property, coming into his or her possession, which belongs to others;

(4) Representing to any lender, guaranteeing agency, or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon;

(5) Failure to timely deliver a duplicate original of any and all instruments to any party or parties executing the same where the instruments have been prepared by the licensee or under his or her supervision or are within his or her control, including, but not limited to, the instruments relating to the employment of the licensee or to any matter pertaining to the consummation of a lease, listing agreement or the purchase, sale, exchange or lease of property, or any type of real estate transaction in which he or she may participate as a licensee;

(6) Acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts, or accepting a commission or valuable consideration for services from more than one party in a real estate transaction without the knowledge of all parties to the transaction;

(7) Paying a commission or valuable consideration to any person for acts or services performed in violation of sections 339.010 to 339.180 and sections 339.710 to 339.860;

(8) Guaranteeing or having authorized or permitted any licensee to guarantee future profits which may result from the resale of real property;

(9) Having been finally adjudicated and been found guilty of the violation of any state or federal statute which governs the sale or rental of real property or the conduct of the real estate business as defined in subsection 1 of section 339.010;

(10) Obtaining a certificate or registration of authority, permit or license for himself or herself or anyone else by false or fraudulent representation, fraud or deceit;

(11) Representing a real estate broker other than the broker with whom associated without the express written consent of the broker with whom associated;

(12) Accepting a commission or valuable consideration for the performance of any of the acts referred to in section 339.010 from any person except the broker with whom associated at the time the commission or valuable consideration was earned;

(13) Using prizes, money, gifts or other valuable consideration as inducement to secure customers or clients to purchase, lease, sell or list property when the awarding of such prizes, money, gifts or other valuable consideration is conditioned upon the purchase, lease, sale or listing; or soliciting, selling or offering for sale real property by offering free lots, or conducting lotteries or contests, or offering prizes for the purpose of influencing a purchaser or prospective purchaser of real property;

(14) Placing a sign on or advertising any property offering it for sale or rent without the written consent of the owner or his or her duly authorized agent;

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860, or of any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860;

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(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

(17) Failure to timely inform seller of all written offers unless otherwise instructed in writing by the seller;

(18) Been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of this state or any other state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence;

(20) Disciplinary action against the holder of a license or other right to practice any profession regulated under sections 339.010 to 339.180 and sections 339.710 to 339.860 granted by another state, territory, federal agency, or country upon grounds for which revocation, suspension, or probation is authorized in this state;

(21) Been found by a court of competent jurisdiction of having used any controlled substance, as defined in chapter 195, RSMo, to the extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by sections 339.010 to 339.180 and sections 339.710 to 339.860;

(22) Been finally adjudged insane or incompetent by a court of competent jurisdiction;

(23) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated under sections 339.010 to 339.180 and sections 339.710 to 339.860 who is not registered and currently eligible to practice under sections 339.010 to 339.180 and sections 339.710 to 339.860;

(24) Use of any advertisement or solicitation which is knowingly false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed.

3. After the filing of such complaint, the proceedings will be conducted in accordance with the provisions of law relating to the administrative hearing commission. A finding of the administrative hearing commissioner that the licensee has performed or attempted to perform one or more of the foregoing acts shall be grounds for the suspension or revocation of his license by the commission, or the placing of the licensee on probation on such terms and conditions as the real estate commission shall deem appropriate.

4. The commission may prepare a digest of the decisions of the administrative hearing commission which concern complaints against licensed brokers or salespersons and cause such digests to be mailed to all licensees periodically. Such digests may also contain reports as to new or changed rules adopted by the commission and other information of significance to licensees.

5. Notwithstanding other provisions of this section, a broker or salesperson's license shall be revoked, or in the case of an applicant, shall not be issued, if the licensee or applicant has pleaded guilty **to, entered a plea of nolo contendere,** to or been found guilty of any of the following offenses or offenses of a similar nature established under the laws of this, any other state, the United States, or any other country, notwithstanding whether sentence is imposed:

(1) Any dangerous felony as defined under section 556.061, RSMo, or murder in the first degree;

(2) Any of the following sexual offenses: rape, statutory rape in the first degree, statutory rape in the second degree, sexual assault, forcible sodomy, statutory sodomy in the first degree, statutory sodomy in the second degree, child molestation in the first degree, child molestation in the second degree, deviate sexual assault, sexual misconduct involving a child, sexual misconduct in the first degree, sexual abuse, enticement of a child, or attempting to entice a child;

(3) Any of the following offenses against the family and related offenses: incest, abandonment of a child in the first degree, abandonment of a child in the second degree,

endangering the welfare of a child in the first degree, abuse of a child, using a child in a sexual performance, promoting sexual performance by a child, or trafficking in children; and

(4) Any of the following offenses involving child pornography and related offenses: promoting obscenity in the first degree, promoting obscenity in the second degree when the penalty is enhanced to a class D felony, promoting child pornography in the first degree, promoting child pornography in the second degree, possession of child pornography in the first degree, possession of child pornography in the second degree, furnishing child pornography to a minor, furnishing pornographic materials to minors, or coercing acceptance of obscene material.

6. A person whose license was revoked under subsection 5 of this section may appeal such revocation to the **administrative hearing** commission. Notice of such appeal must be received by the administrative hearing commission within ninety days of **mailing, by certified mail, the** notice of revocation. Failure of a person whose license was revoked to notify the **administrative hearing** commission of his or her intent to appeal waives all rights to appeal the revocation. Upon notice of such person's intent to appeal, a hearing shall be held before the administrative hearing commissioner.

Approved July 10, 2006

## HB 1343 [HCS HB 1343]

**EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.**

### **Repeals the requirement that the City of Canton provide the resources and space for a circuit court in Lewis County**

AN ACT to repeal sections 478.337, 478.340, 478.343, 478.347, 478.350, and 478.353, RSMo, relating to provision of local circuit court facilities at Canton in Lewis County, with an effective date.

#### SECTION

- A. Enacting clause.
- 478.337. Circuit court of Lewis County at Canton.
- 478.340. Jurisdiction.
- 478.343. Change of venue.
- 478.347. Removal of suits by consent of parties.
- 478.350. Judgments to become lien, when.
- 478.353. Liens filed, where.
- B. Effective date.

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

**SECTION A. ENACTING CLAUSE.** — Sections 478.337, 478.340, 478.343, 478.347, 478.350, and 478.353, RSMo, are repealed.

**[478.337. CIRCUIT COURT OF LEWIS COUNTY AT CANTON.** — Regular sessions of the circuit court of Lewis County shall be held in the city of Canton in said county, in a building to be provided by the city council of said city, which shall be known and designated as the "Courthouse at Canton", and said city council is hereby given power and authority to appropriate money necessary to provide and prepare such building with a room for said court, and office for the clerk of said court, and for jury rooms, and also records, fuel and such incidental expenses

for said court and clerk, all of which shall be provided by said town free of expense to said county.]

**[478.340. JURISDICTION.** — The circuit court at Canton shall have jurisdiction as follows:

(1) Original and concurrent jurisdiction in all civil cases, either in law or equity, arising in all that part of Lewis County lying east of the range line between ranges six and seven, except that cases which are within the probate jurisdiction and cases of a type which an associate circuit judge may hear without special assignment shall be filed, heard and determined at the county seat;

(2) Original and concurrent jurisdiction in all felony cases arising in all the said before mentioned and described territory, except that proceedings prior to the filing of an information or indictment shall be at the county seat.]

**[478.343. CHANGE OF VENUE.** — Changes of venue may be had and taken to and from said court, and all cases taken by change of venue from any other county to the circuit court of Lewis County may be transferred and certified into the circuit court, either at the town of Canton or at the county seat, unless one of said courts be designated in the order of removal; in which case said cause shall be certified into the court so designated in the order granting the change of venue; and changes of venue may be awarded in said circuit court at Canton to any other county for the same cause and upon like conditions as are now or may be provided by law for changes of venue in the circuit courts of this state.]

**[478.347. REMOVAL OF SUITS BY CONSENT OF PARTIES.** — The parties to any suit or proceeding pending in the circuit court of Lewis County may, by agreement in writing, signed by the said parties or their counsel, and filed therein, remove the same from the circuit court at the town of Canton to the circuit court at the county seat or from the circuit court at the county seat to the circuit court at the town of Canton, or the judge of the circuit court of said Lewis County, upon the application of either party, may for good cause shown by affidavit or otherwise, remove any cause as aforesaid from the circuit court at Canton to the circuit court at the county seat or from the circuit court at the county seat to the circuit court at Canton, and in all such cases the judge of said court shall order the original papers transferred, together with a copy of the record entries theretofore made in the cause, and the cause so transferred and removed shall be proceeded with in every respect as in change of venue cases from one county to another.]

**[478.350. JUDGMENTS TO BECOME LIEN, WHEN.** — All judgments, orders and decrees of said court shall be a lien upon real estate to the same extent, and shall have like force and effect in every part of said county as similar judgments, orders, decrees and process of the circuit court of said Lewis County, held at the county seat of said county, and all real estate taken in execution by the sheriff of Lewis County under judgments rendered by said circuit court at Canton on real estate situated in said county and sold in pursuance of the judgment, order or decree thereof, shall be exposed to sale at the door of the courthouse in the town of Canton in the same time and manner as is or may be regulated by law; provided, that the lien of such judgment, order or decree shall not take effect or be in force in that part of said county, west of the range line between said ranges six and seven, until an abstract of same shall be filed in the office of the clerk of the circuit court at the county seat, but when so filed, such abstract shall be notice to all persons of such judgment, order or decree.]

**[478.353. LIENS FILED, WHERE.** — All liens provided by law in favor of mechanics and others on buildings, erections or improvements upon land situated in Lewis County, east of the range line between ranges six and seven, and all equitable liens and notices thereof affecting lands therein, and all liens as provided by law for contractors, materialmen and laborers against

railroads within said territory, and all papers, notices and process necessary to be filed or taken in the circuit court to obtain, maintain and complete a lien of any kind authorized by law upon real estate situated east of said range line between ranges six and seven in said county, or upon any personal property, debts, credits, bonds, notes, assets or effects whatsoever, shall be filed and taken in the circuit court at the town of Canton; and all suits and process for the enforcement thereof, shall be brought in said court where filed.]

**SECTION B. EFFECTIVE DATE.** — The repeal of sections 478.337, 478.340, 478.343, 478.347, 478.350, and 478.353 shall become effective on December 31, 2006.

Approved June 9, 2006

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HB 1344 [HCS HB 1344]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Expands the investment options of the Firemen's Retirement System of St. Louis**

AN ACT to repeal section 87.260, RSMo, and to enact in lieu thereof one new section relating to the firefighter's retirement and relief system, with an emergency clause.

SECTION

- A. Enacting clause.
- 87.260. Board of trustees shall have exclusive authority to invest and reinvest funds in property.
- B. Emergency clause.

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

**SECTION A. ENACTING CLAUSE.** — Section 87.260, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 87.260, to read as follows:

**87.260. BOARD OF TRUSTEES SHALL HAVE EXCLUSIVE AUTHORITY TO INVEST AND REINVEST FUNDS IN PROPERTY.** — [Notwithstanding any other provisions of law to the contrary, the board of trustees shall be the trustees of the several funds created by sections 87.120 to 87.370 and shall have full power to invest and reinvest the funds in

- (1) Bonds of the United States government, general obligation bonds of the state of Missouri and of any political subdivision of Missouri, including school districts;
- (2) Savings and loan associations;
- (3) Corporate bonds;
- (4) Common and preferred stocks of corporations;
- (5) Investment trust shares;
- (6) Real estate mortgages only in Missouri; and
- (7) Commercial banks and trust companies.

No trustee or member of the retirement system shall have any direct interest in the gains or profits made by the retirement board on any investment, nor, as such, shall receive any compensation for his service.] **The board of trustees of the firefighter's retirement system shall have the exclusive authority and discretion to invest and reinvest the funds in property of any kind, real or personal. The board of trustees shall invest and manage the fund as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the firefighter's retirement system. In satisfying**

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**this standard, the board of trustees shall exercise reasonable care, skill, and caution. No trustee shall have any interest as a trustee in the gains or profits made on any investment, except benefits from interest in investments common to all members of the plan, if entitled thereto.**

**SECTION B. EMERGENCY CLAUSE.** — Because immediate action is necessary to expand investment opportunities to the firefighter's retirement system, 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 12, 2006

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HB 1380 [SCS HCS HB 1380]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Establishes the Missouri Public-Private Partnerships Transportation Act to allow a private partner to finance, develop, and/or operate a toll bridge between Illinois and Missouri in St. Louis**

AN ACT to amend chapter 227, RSMo, by adding thereto twenty-four new sections relating to the Missouri public-private partnerships transportation act, with penalty provisions.

SECTION

- A. Enacting clause.
- 227.600. Citation of law — definitions.
- 227.603. Legislative findings — construction.
- 227.606. Requests for approval, contents — fee.
- 227.609. Procurement process — notice — responsive bids, processing fee prohibited.
- 227.612. Process for receiving and reviewing requests, requirements — policy prohibiting agreements with sponsors of terrorism.
- 227.615. Approval of projects.
- 227.618. Tentative approval, criteria — interim agreements, requirements.
- 227.621. Approval of comprehensive agreements, requirements.
- 227.624. Terminating negotiations, rejecting requests and responses.
- 227.627. Closed records, when, open records, when.
- 227.630. Powers of private partners.
- 227.633. Private partner to provide financial information — bond may be required.
- 227.636. Powers of the commission.
- 227.639. User fees.
- 227.642. Additional powers of commission, assistance, contracts — loans to private partners.
- 227.645. Financing terms and conditions — private partner may issue bonds, requirements — contract to issue bonds and loan proceeds.
- 227.648. Agreements authorizing private partner regarding procurement.
- 227.651. Private partner to provide plan, contents.
- 227.654. Right-of-way or easement authorized.
- 227.657. Condemnation authorized — requirements — surveying, damages to private property.
- 227.660. Collection of user fees — notice of tolls — penalty — admissibility of reports and telephone calls — toll collection and traffic citation procedures.
- 227.663. Limitation of liability.
- 227.666. Notice of material default and opportunity to cure — remedies.
- 227.669. Annual status report.

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

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**SECTION A. ENACTING CLAUSE.** — Chapter 227, RSMo, is amended by adding thereto twenty-four new sections, to be known as sections 227.600, 227.603, 227.606, 227.609, 227.612, 227.615, 227.618, 227.621, 227.624, 227.627, 227.630, 227.633, 227.636, 227.639, 227.642, 227.645, 227.648, 227.651, 227.654, 227.657, 227.660, 227.663, 227.666, and 227.669, to read as follows:

**227.600. CITATION OF LAW — DEFINITIONS.** — 1. Sections 227.600 to 227.669 shall be known and may be cited as the "Missouri Public-Private Partnerships Transportation Act".

2. As used in sections 227.600 to 227.669, unless the context clearly requires otherwise, the following terms mean:

- (1) "Commission", the Missouri highways and transportation commission;
- (2) "Comprehensive agreement", the final binding written comprehensive project agreement between a private partner and the commission required in section 227.621 to finance, develop, and/or operate the project;
- (3) "Department", the Missouri department of transportation;
- (4) "Develop" or "development", to plan, locate, relocate, establish, acquire, lease, design, or construct;
- (5) "Finance", to fund the costs, expenses, liabilities, fees, profits, and all other charges incurred to finance, develop, and/or operate the project;
- (6) "Interim agreement", a preliminary binding written agreement between a private partner and the commission that provides for completion of studies and any other activities to advance the financing, development, and/or operation of the project required by section 227.618;
- (7) "Material default", any uncured default by a private partner in the performance of its duties that jeopardizes adequate service to the public from the project as determined by the commission;
- (8) "Operate" or "operation", to improve, maintain, equip, modify, repair, administer, or collect user fees;
- (9) "Private partner", any natural person, corporation, partnership, limited liability company, joint venture, business trust, nonprofit entity, other business entity, or any combination thereof;
- (10) "Project", a bridge to be owned by the commission and the Illinois department of transportation or any other suitable public body of the state of Illinois, which is located across the boundaries of the state of Illinois and the state of Missouri in a city not within a county to be financed, developed, and/or operated under agreement between the commission, a private partner, the Illinois department of transportation, and, if appropriate, any other suitable public body of the state of Illinois;
- (11) "Public use", a finding by the commission that the project to be financed, developed, and/or operated by a private partner under sections 227.600 to 227.669 will improve or is needed as a necessary addition to the state highway system;
- (12) "Revenues", include but are not limited to the following which arise out of or in connection with the financing, development, and/or operation of the project:
  - (a) Income;
  - (b) Earnings;
  - (c) Proceeds;
  - (d) User fees;
  - (e) Lease payments;
  - (f) Allocations;
  - (g) Federal, state, and local moneys; or
  - (h) Private sector moneys, grants, bond proceeds, and/or equity investments;
- (13) "State", the state of Missouri;

(14) "State highway system", the state system of highways and bridges planned, located, relocated, established, acquired, constructed, and maintained by the commission under section 30(b), article IV, Constitution of Missouri;

(15) "User fees", tolls, fees, or other charges authorized to be imposed by the commission and collected by the private partner for the use of all or a portion of a project under a comprehensive agreement.

**227.603. LEGISLATIVE FINDINGS — CONSTRUCTION. — 1.** The general assembly finds that:

(1) The present and prospective traffic congestion in the designated region of the project and the limited availability of state moneys require such project for the public safety, health, and welfare; and

(2) Sections 227.600 to 227.669 will encourage private sector innovation and investment in the state to accomplish the project that would not otherwise be undertaken, thereby serving the public safety, health, and welfare.

2. Sections 227.600 to 227.669 shall be liberally construed to accomplish the legislative findings and purposes set forth in this section.

**227.606. REQUESTS FOR APPROVAL, CONTENTS — FEE. — 1.** Any potential private partner may submit a request for approval to the commission to finance, develop, and/or operate a project. The commission may request such additional information and material in a form and manner determined by the commission.

2. The commission may charge a reasonable fee to cover the costs of processing, reviewing, and evaluating a request for approval submitted by a potential private partner.

**227.609. PROCUREMENT PROCESS — NOTICE — RESPONSIVE BIDS, PROCESSING FEE PROHIBITED. — 1.** The commission shall use a competitive procurement process to form a public-private partnership under sections 227.600 to 227.669 and may proceed with a project under sections 227.600 to 227.669 only if the commission issues a request for proposals for the financing, development, and/or operation of the project on the commission's own initiative or in response to a request for approval submitted by a potential private partner under section 227.606.

2. The commission shall publish a public notice of the commission's request for proposals, including any deadline for submission of such proposals. The notice shall be published once a week for two consecutive weeks in:

(1) A newspaper of general circulation in the city where the proposed project is located;

(2) At least one construction industry trade publication that is nationally distributed; and

(3) Such other publications or manner as the commission may determine.

3. The material and information required for submission by a potential private partner to be responsive to the commission's request for proposal shall be set forth in the proposal. Notwithstanding the provisions of subsection 2 of section 227.606, the commission shall not charge a processing and review fee.

**227.612. PROCESS FOR RECEIVING AND REVIEWING REQUESTS, REQUIREMENTS — POLICY PROHIBITING AGREEMENTS WITH SPONSORS OF TERRORISM. — 1.** The commission shall establish a process for the receipt and review of a request for approval or request for proposal. Such process shall, at a minimum, establish a specific schedule for review by the commission of the request for approval and competing proposals, a process for alteration of such schedule by the commission as the commission deems such changes are necessary

due to the scope or complexity of proposals received and the type and amount of information necessary for adequate review of proposals in each stage of review.

2. To promote and support the objectives of the United States of America's foreign policy regarding terrorism, the commission shall establish, prior to the receipt and review of any request for approval or response to a request for proposal, a policy that prohibits a private partner from being eligible to enter into an interim or comprehensive agreement with the commission to finance, develop and/or operate the project if such private partner, its subsidiaries or affiliated entities, are known to sponsor terrorism or aid the government of countries that are known to sponsor terrorism.

**227.615. APPROVAL OF PROJECTS.** — The commission may by commission minute approve the project if the commission determines the project will improve and is a needed addition to the state highway system.

**227.618. TENTATIVE APPROVAL, CRITERIA — INTERIM AGREEMENTS, REQUIREMENTS.**

— 1. The commission may by commission minute grant tentative approval of the potential private partner whose request for approval or response to a request for proposal provides the best value to the state for financing, developing, and/or operating the project. The commission shall establish criteria for making a determination including:

(1) The general reputation, qualifications, industry experience, and financial capacity of the potential private partner;

(2) The proposed plans for developing and/or operating the project; and

(3) Other criteria that the commission deems appropriate.

2. Prior to the granting of tentative approval by the commission for a potential private partner to finance, develop, and/or operate a project, the commission may review and approve by commission minute an interim agreement with the private partner. Such interim agreement shall be in a form prescribed by the commission and:

(1) May authorize the potential private partner to commence activities for which it may be compensated relating to the proposed project;

(2) Shall establish the process and timing of the negotiation of the comprehensive agreement between the commission and the private partner; and

(3) Shall contain any other provisions that the commission and the potential partner deems appropriate.

**227.621. APPROVAL OF COMPREHENSIVE AGREEMENTS, REQUIREMENTS.** — Prior to granting its final approval of a private partner to finance, develop, and/or operate the project, the commission shall review and approve by commission minute a comprehensive agreement in a form and manner prescribed by the commission that shall, at a minimum, provide for:

(1) The start date for construction of the project and any other dates the commission deems necessary to develop and/or operate the project;

(2) Review and approval by the commission of the final plans and specifications for the development and/or operation of the project to ensure that such plans and specifications conform to the standards acceptable to the commission;

(3) A detailed financing plan, contingent upon review and approval by the commission; and

(4) Any other provisions the commission and private partner deem appropriate.

**227.624. TERMINATING NEGOTIATIONS, REJECTING REQUESTS AND RESPONSES.** — If the commission is not satisfied with the results of negotiations with a potential private partner for an agreement, the commission may terminate negotiations with the potential

private partner. The commission may reject any and all requests for approval and responses to a request for proposals.

**227.627. CLOSED RECORDS, WHEN, OPEN RECORDS, WHEN.** — All information of any kind submitted by a potential private partner to the commission under a request for approval as provided in section 227.606 or under a response to a request for proposal as provided in section 227.609 shall be a closed record under chapter 610, RSMo; provided that, after the private partner and the commission execute the comprehensive agreement information provided by the private partner, the interim agreement and the comprehensive agreement shall be an open record under chapter 610, RSMo.

**227.630. POWERS OF PRIVATE PARTNERS.** — The private partner shall have the following powers:

- (1) To contract with a federal agency, a state or its agencies and political subdivisions, the commission, a local or regional transportation authority, a corporation, a partnership, or any person to finance, develop, and/or operate the project;
- (2) To lease or acquire any right to use or finance, develop, and/or operate the project with the length of any term to be established in the comprehensive agreement;
- (3) To collect user fees in connection with the use of the project by the traveling public. The collection and enforcement of such user fees shall be consistent with sections 227.660 and 227.666;
- (4) To borrow money for project purposes at such rates or interest as the private partner may determine; and
- (5) Any other powers delegated to such private partner in the comprehensive agreement with the commission.

**227.633. PRIVATE PARTNER TO PROVIDE FINANCIAL INFORMATION — BOND MAY BE REQUIRED.** — 1. The private partner shall, in connection with the financing, development, and/or operation of the project, provide the following:

- (1) Security and warranties in the forms and amounts satisfactory to the commission;
- (2) An annual financial statement audited by an independent certified public accountant approved by the commission and such other financial reports and information as required by the commission and in a form acceptable to the commission;
- (3) A summary of any and all compensation from all sources for the project to the private partner;
- (4) Evidence satisfactory to the commission of procurement and maintenance at the private partner's expense of commercial insurance for such purposes and in an amount required by the commission, including but not limited to:
  - (a) Commercial general liability insurance for all damages and losses imposed by law and assumed under the comprehensive agreement. Commercial general liability insurance shall be in coverage and amount consistent with section 227.663 and shall name the state of Missouri for the benefit of the state legal expense fund, and the commission and the commission's members, agents, and employee's as additional insureds. Each commercial general liability insurance policy and commercial automobile liability insurance policy shall also contain a separation of insureds conditions; and
  - (b) Workers' compensation insurance or evidence provided by the private partner that the private partner is qualified by the division of workers' compensation as self-insured and carries insurance for employer's liability sufficient to comply with all obligations under state law relating to workers' compensation and employer's liability.

2. Notwithstanding the provisions of section 107.170, RSMo, and section 227.100 to the contrary, a bid bond shall not be required for the project; except that, the commission

may require the private partner to provide such other bonds in such amounts determined by the commission to be adequate for the protection of the commission and provided by a surety or sureties satisfactory to the commission, including but not limited to:

- (1) A performance bond;
- (2) A payment bond for the protection of all persons supplying labor and material in carrying out the work provided for in the comprehensive agreement for the project. The amount of the payment bond shall equal the total amount payable under the terms of the comprehensive agreement unless the commission determines in writing supported by specific findings that a payment bond in such amount is impractical, in which case the commission shall establish the amount of the payment bond; except that, the amount of the payment bond shall not be less than the amount of the performance bond.

**227.636. POWERS OF THE COMMISSION.** — The commission may:

- (1) Delegate any of the commission's powers under sections 227.600 to 227.669 to the department to carry out the purposes of sections 227.600 to 227.669;
- (2) Promulgate rules to implement the provisions of sections 227.600 to 227.669. 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, 2006, shall be invalid and void; and
- (3) Make all final decisions concerning the performance and the acceptance of the project work, including claims for additional time and compensation.

**227.639. USER FEES.** — The commission may impose user fees for the project. The comprehensive agreement shall provide the rate of such user fees as may be established by agreement of the commission and the private partner. Such user fees shall be set in an amount that takes into account any lease payments, reasonable costs of financing, development, and/or operation. A rate schedule of the current user fees imposed and collected for use of the project shall be made available by the private partner or the commission to any member of the public upon request. Such fees shall be the same for persons using the project under similar conditions, except as required by agreement between the commission and the private partner to preserve capacity and prevent congestion on the project. The collection and enforcement of such user fees shall be consistent with sections 227.660 and 227.666. The commission may authorize the private partner by the comprehensive agreement to collect and enforce user fees for the project.

**227.642. ADDITIONAL POWERS OF COMMISSION, ASSISTANCE, CONTRACTS — LOANS TO PRIVATE PARTNERS.** — 1. The commission may take any action to obtain federal, state, or local government or private sector assistance for the project and may enter into any contracts required for such assistance.

2. In the comprehensive agreement, the commission may agree to loan moneys received from any federal, state, or local government or the private sector to the private partner for the development and/or operation of the project from time to time; provided that the commission shall obtain from the private partner such security for any loan made to the private partner in any type or amount as the commission deems necessary.

**227.645. FINANCING TERMS AND CONDITIONS — PRIVATE PARTNER MAY ISSUE BONDS, REQUIREMENTS — CONTRACT TO ISSUE BONDS AND LOAN PROCEEDS.** — 1. Any financing

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of the project may be in such amounts and upon such terms and conditions as may be determined by the commission and the private partner in the interim or comprehensive agreement. The commission and the private partner may use any and all revenues that may be available to them and may, to the fullest extent permitted by applicable law, issue debt, equity, or other securities or obligations.

2. The private partner may issue corporate bonds, private activity bonds, refunding bonds, notes, and other obligations, and may secure any of such obligations by mortgage, pledge, or deed of trust of any or all of the property and income of the private partner. The commission may contract with the private partner to assist in issuing bonds, notes, and other obligations under this subsection. The private partner shall not mortgage, pledge, or give a deed of trust on any real property or interests obtained by eminent domain acquired from the state of Missouri or any agency or political subdivision of the state. Bonds, notes, and other obligations issued under this subsection shall exclusively be the responsibility of the private partner payable solely out of private partner moneys and property and shall not constitute debt or liability of the commission, the state of Missouri, or any other agency or political subdivision of the state. The private partner and the commission shall not be obligated to pay such bonds, notes, or other obligations with any moneys other than those specifically pledged to repayment. Any such bonds, notes, or other obligations issued by the private partner or the commission shall state on the face that they are not obligations of the state of Missouri or any agency or political subdivision of the state. Any private partner bonds issued under this subsection, the interest thereon, and any proceeds from such bonds shall be exempt from taxation by the state of Missouri for all purposes except the state estate tax.

3. The private partner may also contract with the commission for the commission to issue state road bonds for the project and to loan the proceeds thereof to the private partner.

**227.648. AGREEMENTS AUTHORIZING PRIVATE PARTNER REGARDING PROCUREMENT.**

— The commission may by agreement authorize or require a private partner to exercise any of the following provisions regarding procurement for the financing, development, and/or operation of the project:

(1) Use any project delivery method for the efficient development and/or operation of the project. Such project delivery methods shall include but are not limited to project delivery methods established in section 8.285, RSMo, or sections 227.100 and 227.107. In addition, the limitation in subsection 1 of section 227.107 on the number of design-build contracts authorized to be let by the commission shall not apply to the project;

(2) Make available to the commission, upon request, all procurement records for financing, development, and/or operation of the project;

(3) Exempt the project from the general procurement laws in chapter 34, RSMo.

**227.651. PRIVATE PARTNER TO PROVIDE PLAN, CONTENTS.** — The private partner shall provide the commission a detailed disadvantaged business enterprise participation plan that conforms to commission reporting requirements for the federal disadvantaged business enterprise program under federal law and regulations on federal-aid highway projects. The plan shall also provide information describing the experience of the private partner in meeting disadvantaged business enterprise participation goals, how the private partner will meet the departments disadvantaged business participation goals, and such other qualifications the commission considers to be in the best interest of the state.

**227.654. RIGHT-OF-WAY OR EASEMENT AUTHORIZED.** — The commission may lease to or for the use of a private partner the project or such right-of-way or other easement in such real estate as the commission deems necessary for the development and/or

operation of the project. Such lease by the commission shall be for such value as determined by the commission. No such lease of any real property interest by the commission under this section shall be deemed to amend or modify the public use restrictions acquired by the commission in such real property.

**227.657. CONDEMNATION AUTHORIZED — REQUIREMENTS — SURVEYING, DAMAGES TO PRIVATE PROPERTY. — 1.** The commission may condemn lands for the project in the name of the state of Missouri.

**2.** If condemnation becomes necessary, the commission shall act under chapter 523, RSMo, and may condemn a fee simple or other interest in land. Any amounts to be paid in such condemnation proceeding shall be paid by the private partner under the comprehensive agreement.

**3.** The private partner may, after prior notice to the owner to enter upon the private property subject to the taking, survey and determine the most advantageous route and design. The private partner shall be liable for all damages to the property resulting from such inspection.

**227.660. COLLECTION OF USER FEES — NOTICE OF TOLLS — PENALTY — ADMISSIBILITY OF REPORTS AND TELEPHONE CALLS — TOLL COLLECTION AND TRAFFIC CITATION PROCEDURES. — 1.** The private partner may use any method for collecting and enforcing user fees for the use of the project which may include, but are not limited to, toll tickets, barrier toll facilities, billing accounts, commuter passes, and electronic recording or identification devices. The display of a recording or identification device issued or authorized by the private partner for such purposes on or near the windshield of a motor vehicle shall not be a violation of any law or rule in the state of Missouri unless the device is attached in a manner that obstructs the operator's clear view of the project.

**2.** The private partner operating the project as a toll facility shall post notice on or around such facility in the plain view of operators of motor vehicles using such facility which reads as follows:

**"NOTICE: FAILURE TO PAY THE REQUIRED TOLL IS A TRAFFIC VIOLATION. TOLL BOOTH OPERATORS WILL REPORT ANY FAILURE TO PAY REQUIRED TOLLS TO LAW ENFORCEMENT OFFICIALS WHO WILL ISSUE A TRAFFIC CITATION."**

**3.** The owner of a motor vehicle involved in a violation for failure to pay the required toll is guilty of an infraction and upon conviction shall be required to pay the amount of the toll that was the subject of the violation which shall be remitted to the private partner and a fine in an amount not to exceed two hundred dollars.

**4.** A written report or telephone call from a toll enforcement officer, law enforcement officer, or photo monitoring system evidence that indicates a required toll was not paid is admissible in any proceeding to enforce this section, subject to foundation evidence to establish the authenticity of the report, call, or photographs. Photo monitoring system evidence that shows the motor vehicle, whether operated by the owner or another operator, has failed to pay a toll shall raise a rebuttable presumption that the motor vehicle shown in the photographic evidence was used to commit a violation of this section. If charges are filed against multiple owners of a motor vehicle, only one of the owners shall be convicted and court costs may be assessed against only one of the owners. If the motor vehicle involved in the violation is registered in the name of a rental or leasing company and the vehicle is rented or leased to another person at the time of the violation, the rental or leasing company may rebut the presumption by providing law enforcement or the prosecuting authority with a copy of the rental or lease agreement in effect at the time of the violation. No prosecuting authority shall bring any legal proceeding against a rental or leasing company under this section unless prior written notice of the violation has been

given to such rental or leasing company by registered mail at the address appearing on the motor vehicle's registration and the rental or leasing company has failed to provide the rental or leasing agreement copy within fifteen days of receipt of such notice.

5. The following procedures shall be taken for the enforcement of toll collections and issuance of traffic citations under this section:

(1) Any toll booth operator witnessing a failure to pay a required toll in violation of this section shall report such violation to a law enforcement officer or agency. The report may be in one of the following forms:

(a) A telephone call from a toll enforcement officer to a law enforcement agency indicating a violation and a reasonable description of the motor vehicle violating the toll enforcement provisions of this section, including but not limited to the license plate number, make, model, and color of the motor vehicle;

(b) A certificate or a written report sworn to or affirmed by a toll enforcement officer, agent, private partner, Missouri state highway patrol officer, city police officer, or a sheriff's department deputy which alleges that a violation of this section occurred, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape, or other recorded images produced by a photo monitoring system or a photograph from a photo monitoring system shall be prima facie evidence of the facts contained therein, subject to foundation evidence to establish the authenticity of such photographs, microphotographs, videotape, or other recorded images produced by a photo monitoring system, and shall be admissible in any proceeding charging a violation of the toll collection provisions in this section; provided that, any photographs, microphotographs, videotape, or other recorded images evidencing such a violation shall be available for inspection and admission into evidence in any proceeding to adjudicate the liability for such violation;

(2) After a report has been provided to a Missouri law enforcement agency, such agency is authorized to issue a traffic citation for failure to pay the required toll;

(3) The law enforcement agency responsible for the issuance of a traffic citation for failure to pay a toll is responsible for prosecution of such citation.

The provisions of this section shall not prohibit a law enforcement officer from issuing a citation for a violation of any other traffic laws and regulations on the project.

**227.663. LIMITATION OF LIABILITY. — 1.** As a result of the project being a public use and serving the public safety, health, and welfare, tort liability caps are hereby established in this section and made applicable to any private partner and such private partner's employees, agents, and insureds that develops and/or operates the project under sections 227.600 to 227.669. Such tort liability caps shall be a per person cap and a per occurrence cap and shall be in amounts identical to the tort liability caps established in section 537.610, RSMo, as such caps are annually amended by the Implicit Price Deflator for Personal Consumption Expenditures under subsection 5 of section 537.610, RSMo.

2. Commercial general liability insurance policy or policies purchased by the private partner under sections 227.600 to 227.669 shall not be used to expand the coverage and amount of the tort liability caps imposed in this section.

**227.666. NOTICE OF MATERIAL DEFAULT AND OPPORTUNITY TO CURE — REMEDIES. — 1.** Prior to exercising any of the remedies under this section, the commission shall provide notice of a material default and the opportunity to cure the default for the benefit of the private partner and any persons specified under the comprehensive agreement as providing financing for the project.

2. Upon the occurrence of and during the continuation of any material default, the commission may exercise any or all of the following remedies:

(1) Make or cause to be made any appropriate claims under the bonds required in section 227.633;

(2) By notice to the private partner by certified mail, terminate the comprehensive agreement and exercise any other rights and remedies which may be available to the commission at law or in equity;

(3) Condemn under chapter 523, RSMo, any real property interest of the private partner in the project. Any person who provides financing for the project, to the extent of such person's capital investment, may participate in the condemnation proceedings with standing of a property owner;

(4) Collect and enforce user fees for the use of the project under section 227.660.

**227.669. ANNUAL STATUS REPORT.** — The commission shall submit an annual status report to the governor and general assembly following execution of the comprehensive agreement as an individual component of the annual report submitted by the commission to the joint transportation oversight committee in accordance with section 21.795, RSMo. The annual report shall assess the advantages and disadvantages of the public-private partnership method of financing, developing, and/or operating the project.

Approved June 29, 2006

HB 1382 [SCS HCS HB 1382 & 1158]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Removes the one-set limit on special military license plates and allows for a special license plate for members of the Disabled American Veterans and a "SOME GAVE ALL" special license plate**

AN ACT to repeal sections 301.445, 301.447, 301.451, 301.456, 301.457, 301.464, 301.465, 301.3054, 301.3085, 301.3090, 301.3116, and 301.4000, RSMo, and to enact in lieu thereof fifteen new sections relating to special license plates for military personnel.

SECTION

- A. Enacting clause.
- 301.445. Combat infantryman special license plates — application — license how marked — proof required — fee.
- 301.447. Pearl Harbor survivor license plates — how marked — application — proof required — transferable when.
- 301.451. Purple heart medal, special license plates.
- 301.456. Silver star, special license plate — application procedure — design — fee.
- 301.457. Vietnam veterans, special license plates — application procedure — fees, restrictions.
- 301.464. Korean War veteran, special license plates.
- 301.465. World War II veteran, special license plates.
- 301.3030. No limit on certain special license plates for qualified persons.
- 301.3054. Honorable discharge from the military special license plates, application, fee.
- 301.3061. Disabled American Veterans special license plate — design, fee — pickup truck plates — rulemaking authority.
- 301.3085. United States Marine Corps, active duty combat, special license plate authorized.
- 301.3090. Operation Enduring Freedom special license plates, application, fee.
- 301.3116. Operation Noble Eagle special license plate, application, fee.
- 301.3141. Some Gave All special license plate — contribution — fee, design — rulemaking authority — exception.
- 301.4000. Military service special license plates for motorcycles, application, fees.

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

**SECTION A. ENACTING CLAUSE.** — Sections 301.445, 301.447, 301.451, 301.456, 301.457, 301.464, 301.465, 301.3054, 301.3085, 301.3090, 301.3116, and 301.4000, RSMo, are repealed and fifteen new sections enacted in lieu thereof, to be known as sections 301.445, 301.447, 301.451, 301.456, 301.457, 301.464, 301.465, 301.3030, 301.3054, 301.3061, 301.3085, 301.3090, 301.3116, 301.3141, and 301.4000, to read as follows:

**301.445. COMBAT INFANTRYMAN SPECIAL LICENSE PLATES — APPLICATION — LICENSE HOW MARKED — PROOF REQUIRED — FEE.** — Any person who has been awarded the combat infantry badge may apply for special motor vehicle license plates for any vehicle such person owns, either solely or jointly, for issuance either to passenger motor vehicles subject to the registration fees provided in section 301.055, or for a nonlocal property-carrying commercial motor vehicle licensed for a gross weight not in excess of twelve thousand pounds as provided in section 301.057. Any such person shall make application for the special license plates on a form provided by the director of revenue and furnish such proof as a recipient of the combat infantry badge as the director may require. The director shall then issue license plates bearing the words "COMBAT INFANTRYMAN" in place of the words "SHOW-ME STATE" in a form prescribed by the director, except that such license plates shall be made with fully reflective material, shall have a white background with a blue and red configuration at the discretion of the director, shall be clearly visible at night, and shall be aesthetically attractive, as prescribed by section 301.130. Such plates shall also bear an image of the combat infantry badge. There shall be an additional fee charged for each set of special combat infantry badge license plates issued equal to the fee charged for personalized license plates in section 301.144. [No more than one set of combat infantry badge license plates shall be issued to a qualified applicant.] **There shall be no limit on the number of license plates any person qualified under this section may obtain so long as each set of license plates issued under this section is issued for vehicles owned solely or jointly by such person.** License plates issued pursuant to the provisions of this section shall not be transferable to any other person except that any registered co-owner of the motor vehicle shall be entitled to operate the motor vehicle with such plates for the duration of the year licensed in the event of the death of the qualified person.

**301.447. PEARL HARBOR SURVIVOR LICENSE PLATES — HOW MARKED — APPLICATION — PROOF REQUIRED — TRANSFERABLE WHEN.** — 1. Any member of the United States Military Service who was stationed on or within three miles of the Hawaiian Island of Oahu on December 7, 1941, during the enemy attack on Pearl Harbor and other related military installations may apply for special motor vehicle license plates for one vehicle he owns, either solely or jointly, as provided in this section. Any such person shall make application for the special license plates on a form provided by the director of revenue and pay an additional fee equal to the fee charged for personalized license plates in section 301.144 for the issuance of the license plates provided for herein. Applications for license plates issued under this section shall be accompanied by such proof of eligibility as the director may require.

2. Notwithstanding the provisions of section 301.130, each such license plate shall be embossed with the words "PEARL HARBOR SURVIVOR" at the bottom of the plate in the form prescribed by the advisory committee established in section 301.129. Such license plates shall be made with fully reflective material, shall have a white background with a blue and red configuration at the discretion of the advisory committee established in section 301.129, shall be clearly visible at night, and shall be aesthetically attractive, as prescribed by section 301.130. Such plates shall be available for issuance either to passenger motor vehicles subject to the registration fees provided in section 301.055, or to nonlocal property-carrying commercial motor vehicles licensed for a gross weight of six thousand pounds up through and including twelve thousand pounds as provided in section 301.057.

3. [No more than one set of Pearl Harbor survivor plates shall be issued to a qualified applicant.] **There shall be no limit on the number of license plates any person qualified**

**under this section may obtain so long as each set of license plates issued under this section is issued for vehicles owned solely or jointly by such person.** License plates issued under the provisions of this section shall not be transferable to any other person except as provided herein. Any registered co-owner of a motor vehicle will be entitled to operate the motor vehicle for the duration of the year licensed in the event of the death of the qualified applicant. Pearl Harbor survivor plates issued under the provisions of this section shall be transferable only to a widow or widower of a Pearl Harbor survivor.

**301.451. PURPLE HEART MEDAL, SPECIAL LICENSE PLATES.** — Any person who has been awarded the purple heart medal may apply for special motor vehicle license plates for any vehicle he owns, either solely or jointly, other than commercial vehicles weighing over twelve thousand pounds. Any such person shall make application for the special license plates on a form provided by the director of revenue and furnish such proof as a recipient of the purple heart medal as the director may require. The director shall then issue license plates bearing letters or numbers or a combination thereof, with the words "PURPLE HEART" in place of the words "SHOW-ME STATE" in a form prescribed by the advisory committee established in section 301.129. Such license plates shall be made with fully reflective material with a common color scheme and design, shall be clearly visible at night, and shall be aesthetically attractive, as prescribed by section 301.130. There shall be an additional fee charged for each set of special purple heart license plates issued equal to the fee charged for personalized license plates, but the additional fee shall only have to be paid once by the qualified applicant at the time of initial application. [No more than two sets of purple heart license plates shall be issued to a qualified applicant.] **There shall be no limit on the number of license plates any person qualified under this section may obtain so long as each set of license plates issued under this section is issued for vehicles owned solely or jointly by such person.** License plates issued under the provisions of this section shall not be transferable to any other person except that any registered co-owner of the motor vehicle shall be entitled to operate the motor vehicle for the duration of the year licensed in the event of the death of the qualified person.

**301.456. SILVER STAR, SPECIAL LICENSE PLATE — APPLICATION PROCEDURE — DESIGN — FEE.** — Any person who has been awarded the military service award known as the "Silver Star" may apply for special motor vehicle license plates for any vehicle such person owns, either solely or jointly, other than an apportioned motor vehicle or a commercial motor vehicle licensed in excess of eighteen thousand pounds gross weight. Any such person shall make application for the special license plates on a form provided by the director of revenue and furnish such proof as a recipient of the silver star as the director may require. The director shall then issue license plates bearing letters or numbers or a combination thereof as determined by the advisory committee established in section 301.129, with the words "SILVER STAR" in place of the words "SHOW-ME STATE". Such license plates shall be made with fully reflective material with a common color scheme and design, shall be clearly visible at night, and shall be aesthetically attractive, as prescribed by section 301.130. Such plates shall also bear an image of the silver star. There shall be an additional fee charged for each set of silver star license plates issued pursuant to this section equal to the fee charged for personalized license plates. [No more than two sets of silver star license plates shall be issued to a qualified applicant.] **There shall be no limit on the number of license plates any person qualified under this section may obtain so long as each set of license plates issued under this section is issued for vehicles owned solely or jointly by such person.** License plates issued under the provisions of this section shall not be transferable to any other person except that any registered co-owner of the motor vehicle shall be entitled to operate the motor vehicle with such plates for the duration of the year licensed in the event of the death of the qualified person.

**301.457. VIETNAM VETERANS, SPECIAL LICENSE PLATES — APPLICATION PROCEDURE — FEES, RESTRICTIONS.** — Any person who served in the Vietnam Conflict and either currently serves in any branch of the United States armed forces or was honorably discharged from such service may apply for special motor vehicle license plates, either solely or jointly, for issuance either for any passenger motor vehicle subject to the registration fees provided in section 301.055 or for a nonlocal property-carrying commercial motor vehicle licensed for a gross weight of nine thousand one pounds to twelve thousand pounds as provided in section 301.057, whether such vehicle is owned solely or jointly. Any such person shall make application for the special license plates on a form provided by the director of revenue and furnish such proof of service in the Vietnam Conflict and status as currently serving in a branch of the armed forces of the United States or as an honorably discharged veteran as the director may require. Upon presentation of the proof of eligibility and annual payment of the fee required for personalized license plates prescribed by section 301.144, and other fees and documents which may be required by law, the director shall then issue license plates bearing letters or numbers or a combination thereof as determined by the advisory committee established in section 301.129, with the words "VIETNAM VETERAN" in place of the words "SHOW-ME STATE". Such plates shall also bear an image of the Vietnam service medal. The plates shall be clearly visible at night and shall be aesthetically attractive, as prescribed by section 301.130. [No more than one set of special license plates shall be issued pursuant to this section to a qualified applicant.] **There shall be no limit on the number of license plates any person qualified under this section may obtain so long as each set of license plates issued under this section is issued for vehicles owned solely or jointly by such person.** License plates issued pursuant to this section shall not be transferable to any other person except that any registered co-owner of the motor vehicle may operate the motor vehicle for the duration of the year licensed in the event of the death of the qualified person.

**301.464. KOREAN WAR VETERAN, SPECIAL LICENSE PLATES.** — Any person who served in the Korean War and was honorably discharged from such service may apply for special motor vehicle license plates, either solely or jointly, for issuance for any vehicle the person owns, either solely or jointly, other than an apportioned motor vehicle or commercial motor vehicle licensed in excess of eighteen thousand pounds. Any such person shall make application for the special license plates on a form provided by the director of revenue and furnish such proof of service in the Korean War and status as an honorably discharged veteran as the director may require. Upon presentation of the proof of eligibility and annual payment of the fee required for personalized license plates prescribed by section 301.144, and other fees and documents which may be required by law, the director shall then issue license plates bearing letters or numbers or a combination thereof as determined by the advisory committee established in section 301.129, with the words "KOREAN WAR VETERAN" in place of the words "SHOW-ME STATE". Such plates shall also bear an image of the Korean War service medal. The plates shall be clearly visible at night and shall be aesthetically attractive, as prescribed by section 301.130. [No more than one set of special license plates shall be issued pursuant to this section to a qualified applicant.] **There shall be no limit on the number of license plates any person qualified under this section may obtain so long as each set of license plates issued under this section is issued for vehicles owned solely or jointly by such person.** License plates issued pursuant to this section shall not be transferable to any other person except that any registered co-owner of the motor vehicle may operate the motor vehicle for the duration of the year licensed in the event of the death of the qualified person.

**301.465. WORLD WAR II VETERAN, SPECIAL LICENSE PLATES.** — Any person who served in World War II and was honorably discharged from such service may apply for special motor vehicle license plates, either solely or jointly, for issuance either for any passenger motor vehicle subject to the registration fees provided in section 301.055, or for a nonlocal property

carrying commercial motor vehicle licensed for a gross weight of nine thousand one pounds to twelve thousand pounds as provided in section 301.057, whether such vehicle is owned solely or jointly. Any such person shall make application for the special license plates on a form provided by the director of revenue and furnish such proof of service in World War II and status as an honorably discharged veteran as the director may require. Upon presentation of the proof of eligibility and annual payment of the fee required for personalized license plates prescribed by section 301.144, and other fees and documents which may be required by law, the director shall then issue license plates bearing letters or numbers or a combination thereof as determined by the advisory committee established in section 301.129, with the words "WORLD WAR II VETERAN" in place of the words "SHOW-ME-STATE". Such plates shall also bear an image of the World War II service medal. The plates shall be clearly visible at night and shall be aesthetically attractive, as prescribed by section 301.130. [No more than one set of special license plates shall be issued pursuant to this section to a qualified applicant.] **There shall be no limit on the number of license plates any person qualified under this section may obtain so long as each set of license plates issued under this section is issued for vehicles owned solely or jointly by such person.** License plates issued pursuant to this section shall not be transferable to any other person except that any registered co-owner of the motor vehicle may operate the motor vehicle for the duration of the year licensed in the event of the death of the qualified person.

**301.3030. NO LIMIT ON CERTAIN SPECIAL LICENSE PLATES FOR QUALIFIED PERSONS.** — Any special license plates involving military actions or personnel that are authorized after the effective date of this section shall not limit the number of license plates any person qualified for such special license plate may obtain so long as each set of license plates issued is issued for vehicles owned solely or jointly by the qualified applicant.

**301.3054. HONORABLE DISCHARGE FROM THE MILITARY SPECIAL LICENSE PLATES, APPLICATION, FEE.** — 1. Any person who served in the active military service in a branch of the armed services of the United States and was honorably discharged from such service may apply for special personalized license plates for any vehicle other than an apportioned motor vehicle or a commercial motor vehicle licensed in excess of eighteen thousand pounds gross weight. Any such person shall make application for the special license plates on a form provided by the director of revenue and furnish such proof of service and status as an honorably discharged veteran as the director may require.

2. Upon presentation of proof of eligibility and payment of a fifteen dollar fee in addition to the regular registration fees, and presentation of any documents which may be required by law, the director shall issue to the vehicle owner special personalized license plates with the words "U.S. VET" in place of the words "SHOW-ME STATE". Such license plates shall be made with fully reflective material with a common color scheme and design, shall be clearly visible at night, shall have a reflective white background with a blue and red configuration in the area of the plate configuration, and shall be aesthetically attractive, as prescribed by section 301.130. Notwithstanding the provisions of section 301.144, no additional fee shall be charged for the personalization of license plates pursuant to this section.

3. [No more than one set of special license plates shall be issued pursuant to this section to a qualified applicant.] **There shall be no limit on the number of license plates any person qualified under this section may obtain so long as each set of license plates issued under this section is issued for vehicles owned solely or jointly by such person.** License plates issued pursuant to this section shall not be transferable to any other person except that any registered co-owner of the vehicle may operate the vehicle for the duration of the registration in the event of the death of the qualified person. The director of revenue shall make necessary rules and regulations for the enforcement of this section, and shall design all necessary forms required by this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,

that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

**301.3061. DISABLED AMERICAN VETERANS SPECIAL LICENSE PLATE — DESIGN, FEE — PICKUP TRUCK PLATES — RULEMAKING AUTHORITY. — 1.** Any person eligible for membership in the Disabled American Veterans and who possess a valid membership card issued by the Disabled American Veterans may apply for Missouri Disabled American Veterans license plates for any motor vehicle the person owns, either solely or jointly, other than an apportioned motor vehicle or a commercial motor vehicle licensed in excess of eighteen thousand pounds gross weight. The Missouri Disabled American Veterans hereby authorizes the use of its official emblem to be affixed on multiyear personalized license plates as provided in this section.

2. Upon presentation of a current photo identification, the person's valid membership card issued by the Disabled American Veterans, and payment of a fifteen dollar fee in addition to the regular registration fees and presentation of other documents which may be required by law, the department of revenue shall issue a personalized license plate to the vehicle owner, which shall bear the emblem of the Disabled American Veterans, an emblem consisting exclusively of a red letter "D", followed by a white letter "A" and a blue letter "V" in modified block letters, with each letter having a black shaded edging, and shall engrave the words "WARTIME DISABLED" in red letters centered near the bottom of the plate. Such license plates shall be made with fully reflective material with a common color scheme and design, shall be clearly visible at night, and shall be aesthetically attractive, as prescribed by section 301.130. A fee for the issuance of personalized license plates issued under section 301.144 shall not be required for plates issued under this section.

3. Any person who applies for a Disabled American Veterans license plate under this section to be used on a vehicle commonly known and referred to as a pickup truck may be issued a Disabled American Veterans license plate with the designation "beyond local" indicated in the upper right corner of the plate.

4. The director 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, 2006, shall be invalid and void.

**301.3085. UNITED STATES MARINE CORPS, ACTIVE DUTY COMBAT, SPECIAL LICENSE PLATE AUTHORIZED.** — Any person who has participated in active duty combat action while serving in the United States Marine Corps or the United States Navy may apply for special motor vehicle license plates for any vehicle such person owns, either solely or jointly, other than an apportioned motor vehicle licensed in excess of eighteen thousand pounds gross weight. Any such person shall make application for the special license plates on a form provided by the director of revenue and furnish such proof as a recipient of the combat infantry badge as the director may require. The director shall then issue license plates bearing the words "COMBAT

ACTION RIBBON" in place of the words "SHOW-ME STATE" in a form prescribed by the director, except that such license plates shall be made with fully reflective material, shall have a white background with a blue and red configuration at the discretion of the director, shall be clearly visible at night, and shall be aesthetically attractive, as prescribed by section 301.130. Such plates shall also bear an image of a blue, yellow, and red ribbon. There shall be an additional fee charged for each set of special combat action ribbon license plates issued equal to the fee charged for personalized license plates in section 301.144. [No more than one set of combat action ribbon license plates shall be issued to a qualified applicant.] **There shall be no limit on the number of license plates any person qualified under this section may obtain so long as each set of license plates issued under this section is issued for vehicles owned solely or jointly by such person.** License plates issued pursuant to the provisions of this section shall not be transferable to any other person except that any registered co-owner of the motor vehicle shall be entitled to operate the motor vehicle with such plates for the duration of the year licensed in the event of the death of the qualified person.

**301.3090. OPERATION ENDURING FREEDOM SPECIAL LICENSE PLATES, APPLICATION, FEE.** — Any person who is serving on active duty or has served in any branch of the United States military, including the reserves or national guard, during any part of Operation Enduring Freedom and has not been dishonorably discharged may receive special motor vehicle license plates for any motor vehicle such person owns, either solely or jointly, other than an apportioned motor vehicle or a commercial motor vehicle licensed in excess of eighteen thousand pounds gross weight. Any such person shall make application for the special license plates on a form provided by the director of revenue and furnish such proof of service during Operation Enduring Freedom or proof of status as an honorably discharged veteran as the director may require. Upon presentation of the proof of eligibility and annual payment of the fee required for personalized license plates prescribed by section 301.144, and other fees and documents which may be required by law, the director shall then issue license plates bearing letters or numbers or a combination thereof as determined by the advisory committee established in section 301.129, with the words "OPERATION ENDURING FREEDOM" in place of the words "SHOW-ME STATE". Such plates shall also bear an image of the American flag. The plates shall be clearly visible at night and shall be aesthetically attractive, as prescribed by section 301.130. [No more than one set of special license plates shall be issued pursuant to this section to a qualified applicant.] **There shall be no limit on the number of license plates any person qualified under this section may obtain so long as each set of license plates issued under this section is issued for vehicles owned solely or jointly by such person.** License plates issued pursuant to this section shall not be transferable to any other person except that any registered co-owner of the motor vehicle may operate the motor vehicle for the duration of the year licensed in the event of the death of the qualified person.

**301.3116. OPERATION NOBLE EAGLE SPECIAL LICENSE PLATE, APPLICATION, FEE.** — Any person who is serving or has served in any branch of the United States military, including the reserves or national guard, during any part of Operation Noble Eagle and has not been dishonorably discharged may receive special motor vehicle license plates for any motor vehicle such person owns, either solely or jointly, other than an apportioned motor vehicle or a commercial motor vehicle licensed in excess of eighteen thousand pounds gross weight. Any such person shall make application for the special license plates on a form provided by the director of revenue and furnish such proof of service during Operation Noble Eagle or proof of status as an honorably discharged veteran as the director may require. Upon presentation of the proof of eligibility and annual payment of the fee required for personalized license plates prescribed by section 301.144, and other fees and documents which may be required by law, the director shall then issue license plates bearing letters or numbers or a combination thereof as determined by the advisory committee established in section 301.129, with the words

"OPERATION NOBLE EAGLE" in place of the words "SHOW-ME STATE". Such plates shall also bear an image of the American flag. The plates shall be clearly visible at night and shall be aesthetically attractive, as prescribed by section 301.130. [No more than one set of special license plates shall be issued pursuant to this section to a qualified applicant.] **There shall be no limit on the number of license plates any person qualified under this section may obtain so long as each set of license plates issued under this section is issued for vehicles owned solely or jointly by such person.** License plates issued pursuant to this section shall not be transferable to any other person except that any registered co-owner of the motor vehicle may operate the motor vehicle for the duration of the year licensed in the event of the death of the qualified person.

**301.3141. SOME GAVE ALL SPECIAL LICENSE PLATE — CONTRIBUTION — FEE, DESIGN — RULEMAKING AUTHORITY — EXCEPTION. — 1.** Any parent or sibling who has had a member of his or her immediate family die in the line of duty while serving in the U.S. armed forces, after making an annual payment described in subsection 2 of this section to the Veterans of Foreign Wars Department of Missouri and paying all applicable registration fees, may receive special license plates for any vehicle the person owns, either solely or jointly, other than an apportioned motor vehicle or a commercial motor vehicle licensed in excess of eighteen thousand pounds gross weight. The Veterans of Foreign Wars Department of Missouri, in conjunction with the director of the department of revenue, shall design the special license plate. Any immediate family member of a fallen soldier may apply annually for the use of the emblem.

2. Upon making a twenty-five dollar contribution to the Veterans of Foreign Wars Department of Missouri, the motor vehicle owner may apply for the special license plate described in this section. If the contribution is made directly to the Veterans of Foreign Wars Department of Missouri, the Veterans of Foreign Wars Department of Missouri shall issue the individual making the contribution a receipt, verifying the contribution, that may be used to apply for the special license plate. If the contribution is made directly to the director of revenue, the director shall note the contribution, and the owner then may apply for the special license plate. All contribution fees shall be remitted to the Veterans of Foreign Wars Department of Missouri.

3. Upon presentation of the receipt described in subsection 2 of this section or payment of the twenty-five dollar contribution directly to the department of revenue, payment of a fifteen dollar fee in addition to the regular registration fees, presentation of any documents that may be required by law, and any proof that the applicant's family member died in the line of duty while serving in the United States armed forces as the director may require, the director of revenue shall issue to the vehicle owner a special license plate that shall bear the emblem of a five-pointed star and the words "SOME GAVE ALL" in place of the words "SHOW-ME STATE". Such license plates shall be made with fully reflective material with a common color scheme and design of the standard license plate, shall be clearly visible at night, shall have a reflective white background in the area of the plate configuration, and shall be aesthetically attractive, as prescribed by section 301.130. Notwithstanding the provisions of section 301.144, no additional fee shall be charged for the personalization of license plates under this section.

4. A vehicle owner who previously was issued a special license plate authorized by this section, but who does not provide a receipt as described under subsection 2 of this section at a subsequent time of registration, shall be issued a new plate that does not bear the emblem described in this section, as otherwise provided by law. The director of revenue shall make necessary rules and regulations for the enforcement of this section and shall design all necessary forms required by this section. 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, 2006, shall be invalid and void.

5. The provisions of section 301.3150 shall not apply to the specialized license plate created under this section.

**301.4000. MILITARY SERVICE SPECIAL LICENSE PLATES FOR MOTORCYCLES, APPLICATION, FEES.** — Any person who served in the active military service in a branch of the armed forces of the United States and was honorably discharged from such service may apply for special motorcycle license plates, either solely or jointly, for issuance for any motorcycle subject to the registration fees provided in section 301.055. Any such person shall make application for the special license plates on a form provided by the director of revenue and furnish such proof of service and status as an honorably discharged veteran as the director may require. Upon presentation of the proof of eligibility and payment of a fifteen dollar fee in addition to the regulation registration fees, and presentation of other documents which may be required by law, the director shall then issue license plates bearing letters or numbers or a combination thereof as determined by the director, with the words "U.S. VET" in place of the words "SHOW-ME STATE". The plates shall be clearly visible at night and shall be aesthetically attractive, as prescribed by section 301.130. [No more than one set of special license plates shall be issued pursuant to this section to a qualified applicant.] **There shall be no limit on the number of license plates any person qualified under this section may obtain so long as each set of license plates issued under this section is issued for vehicles owned solely or jointly by such person.** License plates issued pursuant to this section shall not be transferable to any other person except that any registered co-owner of the motorcycle may operate the motorcycle for the duration of the year licensed in the event of the death of the qualified person.

Approved June 21, 2006

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HB 1393 [HB 1393]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Authorizes the Superintendent of the State Highway Patrol to establish guidelines under which members of the patrol may accept other secondary employment**

AN ACT to repeal section 43.060, RSMo, and to enact in lieu thereof one new section relating to secondary employment for the members of the Missouri state highway patrol.

SECTION

- A. Enacting clause.  
43.060. Qualifications, patrol and radio personnel — limitations on activities, exceptions — school board membership permitted — secondary employment permitted.

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

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**SECTION A. ENACTING CLAUSE.** — Section 43.060, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 43.060, to read as follows:

**43.060. QUALIFICATIONS, PATROL AND RADIO PERSONNEL — LIMITATIONS ON ACTIVITIES, EXCEPTIONS — SCHOOL BOARD MEMBERSHIP PERMITTED — SECONDARY EMPLOYMENT PERMITTED.** — 1. Patrolmen and radio personnel shall not be less than twenty-one years of age. No person shall be appointed as superintendent or member of the patrol or as a member of the radio personnel who has been convicted of a felony or any crime involving moral turpitude, or against whom any indictment or information may then be pending charging the person with having committed a crime, nor shall any person be appointed who is not of good character or who is not a citizen of the United States and who at the time of appointment is not a citizen of the state of Missouri; or who is not a graduate of an accredited four-year high school or in lieu thereof has not obtained a certificate of equivalency from the state department of elementary and secondary education or other source recognized by that department, or who does not possess ordinary physical strength, and who is not able to pass the physical and mental examination that the superintendent prescribes.

2. Except as provided in [subsection] **subsections 3 and 4** of this section, no member of the patrol shall hold any other commission or office, elective or appointive, while a member of the patrol, except that the superintendent may authorize specified members to accept federal commissions providing investigative and arrest authority to enforce federal statutes while working with or at the direction of a federal law enforcement agency. No member of the patrol shall accept any other employment, compensation, reward, or gift other than regular salary and expenses as herein provided except with the written permission of the superintendent. No member of the patrol shall perform any police duty connected with the conduct of any election, nor shall any member of the patrol at any time or in any manner electioneer for or against any party ticket, or any candidate for nomination or election to office on any party ticket, nor for or against any proposition of any kind or nature to be voted upon at any election.

3. Members of the patrol shall be permitted to be candidates for and members or directors of the school board in any school district where they meet the requirements for that position as set forth in chapter 162, RSMo. Members of the patrol who become school board directors or members within the state shall be permitted to receive benefits or compensation for their service to the school board as provided by chapter 162, RSMo.

**4. The superintendent may, by general order, set forth the circumstances under which members of the patrol may, in addition to their duties as members of the patrol, be engaged in secondary employment.**

Approved June 12, 2006

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HB 1427 [HB 1427]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Authorizes the Secretary of State to waive fees and other penalties when a corporation is dissolved for failure to file its annual report due to military service**

AN ACT to repeal section 351.488, RSMo, and to enact in lieu thereof one new section relating to reinstatement of dissolved corporations.

SECTION

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- A. Enacting clause.  
351.488. Reinstatement following dissolution — name of reinstated corporation — administrative dissolution, effect of.

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

**SECTION A. ENACTING CLAUSE.** — Section 351.488, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 351.488, to read as follows:

**351.488. REINSTATEMENT FOLLOWING DISSOLUTION — NAME OF REINSTATED CORPORATION — ADMINISTRATIVE DISSOLUTION, EFFECT OF.** — 1. A corporation administratively dissolved pursuant to section 351.486 may apply to the secretary of state for reinstatement. The application must:

- (1) Recite the name of the corporation and the effective date of its administrative dissolution;
- (2) State that the ground or grounds for dissolution either did not exist or have been eliminated;
- (3) State that the corporation's name satisfies the requirements of section 351.110;
- (4) Contain a certificate from the department of revenue reciting that all taxes owed by the corporation, including all liabilities owed as determined by the division of employment security pursuant to chapter 288, RSMo, have been paid or that a tax payback plan has been arranged with the department of revenue for liabilities owed to the department of revenue and a tax payback plan has been arranged with the department of labor and industrial relations division of employment security for any liabilities owed as determined by the division of employment security pursuant to chapter 288, RSMo; and
- (5) Be accompanied by a reinstatement fee in the amount of fifty dollars plus any delinquent fees, penalties, and charges that might have accrued.

2. If the secretary of state determines that the application contains the information and is accompanied by the fees required by subsection 1 of this section and that the information and fees are correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation as provided in section 351.380.

3. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

4. **In the event a corporation was administratively dissolved for failure to file an annual registration report, and the secretary of state determines that such failure was due to military service, as described in section 41.950, RSMo, the secretary of state may determine to waive the requirements of subsection 1 of this section, including waiver of the reinstatement fee described in subdivision (5) of subsection 1 of this section, and shall waive any penalties or charges. Upon making the determination that failure to file an annual registration report was due to military service, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation as provided in section 351.380. Nothing in this subsection shall be construed so as to waive the annual registration report fees due for the year or years in which no annual registration report was filed.**

5. In the event the name was reissued prior to the time application for reinstatement was filed, the corporation applying for reinstatement may elect to reinstate using a new name that complies with the requirements of section 351.110, and that has been approved by appropriate action of the corporation for changing the name thereof.

Approved June 21, 2006

HB 1437 [SCS HB 1437]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Dissolves the Advisory Committee on Poison Control and transfers its powers and certain duties to the Department of Health and Senior Services and dissolves the Committee on Radiation Control**

AN ACT to repeal sections 190.350, 190.353, 190.355, 192.400, 192.410, and 192.420, RSMo, and to enact in lieu thereof five new sections relating to poison and radiation control.

SECTION

- A. Enacting clause.
- 190.353. Powers and duties of department of health and senior services — establishment of regional poison information center — center to provide certain services.
- 190.355. Use of existing resources required.
- 192.400. Definitions.
- 192.410. Powers and duties of department.
- 192.420. Department to make rules — procedure.
- 190.350. Advisory committee on poison control created — members, qualifications, appointment — terms — meetings — expenses.

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

**SECTION A. ENACTING CLAUSE.** — Sections 190.350, 190.353, 190.355, 192.400, 192.410, and 192.420, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 190.353, 190.355, 192.400, 192.410, and 192.420, to read as follows:

**190.353. POWERS AND DUTIES OF DEPARTMENT OF HEALTH AND SENIOR SERVICES — ESTABLISHMENT OF REGIONAL POISON INFORMATION CENTER — CENTER TO PROVIDE CERTAIN SERVICES.** — 1. The [advisory committee on poison control] **department of health and senior services** shall:

- (1) Provide for the establishment of a "Missouri Regional Poison Information Center" capable of providing the services described in subsection [3] **2** of this section based on the best demonstrated ability to perform such services as evidenced by past performance of such services and by current certification as a regional poison control center by the American Association of Poison Control Centers[;]. **The department shall, in conjunction with local health agencies and health care providers, determine the region to be served by the center; and**
- (2) Provide for the establishment of a "Missouri Poison Control Network" to consist of poison prevention and treatment centers throughout the state of Missouri, representing all federally designated emergency medical services areas[;]
- (3) Establish policies for data collection at poison treatment centers and procedures for the medical treatment of victims of poisoning and overdose;
- (4) Develop a systematic plan for the statewide education of the general public and health care professionals on the control and proper use of poisonous substances and the treatment of poison victims;
- (5) Cooperate with the Missouri poison information center in systems evaluation and in review of morbidity and mortality rates among poison victims; and

(6) Fund educational programs at area poison treatment centers for the general public and for health care professionals.

2. The committee shall submit an annual report to the presiding officers of each house of the general assembly and the department of health and senior services concerning the administration of the Missouri poison control network, and shall cooperate with the department of health and senior services for the purpose of providing data for health planning].

[3.] **2.** The Missouri poison information center shall provide:

(1) A twenty-four hour toll-free telephone referral and information service for the general public and health care professionals, supervised by a physician who is board-certified in the field of clinical toxicology and staffed by licensed professionals who are certified as information specialists or whose certification is pending, according to the requirements of the American Association of Poison Control Centers;

(2) Design and coordination of appropriate public and professional education services in the area of poison treatment and prevention;

(3) Plans for cooperation between the Missouri poison control network and health and emergency service agencies and associations involved in poison control activities;

(4) Program evaluation and systematic data collection on poison exposures in cooperation with the department of health and senior services; and

(5) Coordination of poison control, treatment, and education activities of poison prevention and treatment centers.

**190.355. USE OF EXISTING RESOURCES REQUIRED.** — The [advisory committee on poison control may contract for services from such private persons, agencies, and corporations as are necessary to fully effectuate the purposes of sections 190.350 to 190.355, and] **Missouri regional poison information center** shall fully utilize existing institutions and services for the control and treatment of poisons.

**192.400. DEFINITIONS.** — The following words and terms as used in sections 192.400 to 192.490 mean:

(1) ["Committee on radiation control", a subcommittee of the Missouri atomic energy commission;

(2)] "Radiation", any or all of the following forms of ionizing radiation: gamma and X rays, alpha and beta particles, high speed electrons, neutrons, protons and other nuclear or atomic particles or rays, and other radiant energies including, by way of extension but not of limitation, radium, strontium 90, cesium 137 and cobalt 60, but radiation as herein defined does not include sound or radio waves or visible, infrared or ultraviolet light;

[(3)] (2) "Radiation machine", any device that produces radiation;

[(4)] (3) "Unnecessary radiation", the use of radiation as herein defined in such a manner as to be hazardous to the health of the people or the industrial or agricultural potentials of the state.

**192.410. POWERS AND DUTIES OF DEPARTMENT.** — The department of health and senior services[, with the guidance and advice of the committee on radiation,] shall:

(1) Develop comprehensive policies and programs for the evaluation and determination of hazards associated with the use of radiation and for their abatement or elimination;

(2) Employ, and, if necessary, train the personnel needed to carry out the provisions of sections 192.400 to 192.490;

(3) Advise, consult and cooperate with other agencies of this state, the federal government, other states, and interstate agencies, and with affected groups, political subdivisions and industries in furtherance of the purposes of sections 192.400 to 192.490;

(4) Accept and administer loans, grants or other funds or gifts from the federal government and from other sources, public or private, for carrying out any of its functions;

(5) Encourage, participate in or conduct studies, investigations, training, research and demonstrations relating to the control of radiation hazards, the measurement of radiation, the effects on health of exposure to radiation and related problems as it may deem necessary or advisable for the discharge of its duties under sections 192.400 to 192.490 or for the protection of public health;

(6) Collect and disseminate information relating to the determination and control of radiation exposure and hazards;

(7) Review and approve plans and specifications for radiation sources submitted pursuant to rules and regulations promulgated under sections 192.400 to 192.490;

(8) Inspect radiation sources, their shielding and immediate surroundings and records for the determination of any possible radiation hazard and may examine any records or memoranda pertaining to the question of radiation machines and the use of radioactive materials.

**192.420. DEPARTMENT TO MAKE RULES — PROCEDURE.** — The department of health and senior services shall administer sections 192.400 to 192.490 and may[, with the approval of the committee on radiation control,] formulate and promulgate rules on radiation, including registration of radiation sources and machines, as may be necessary to prohibit and prevent unnecessary radiation. Rules shall be promulgated pursuant to the provisions of this section and chapter 536, RSMo. No rule or portion of a rule promulgated under the authority of sections 192.400 to 192.490 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

**[190.350. ADVISORY COMMITTEE ON POISON CONTROL CREATED — MEMBERS, QUALIFICATIONS, APPOINTMENT — TERMS — MEETINGS — EXPENSES.** — 1. The "Advisory Committee on Poison Control" is hereby created within the department of health and senior services.

2. The committee shall consist of nine members, as follows:

(1) The director of the department of health and senior services or his designee;

(2) One health care professional with demonstrated ability and experience in the area of poison from each of the seven federally designated emergency medical services areas in this state. Such members shall be appointed by the governing body of each area, or, in cases where no governing body has been formed, by the director of the department of health and senior services, and shall serve terms of four years; and

(3) The director of the Missouri poison information center established pursuant to section 190.353.

3. The committee shall meet within ten days after September 28, 1985, and organize by selecting a chairman and vice chairman. A majority of the members shall constitute a quorum.

4. The members of the committee shall serve without compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of their official duties.]

Approved June 29, 2006

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HB 1440 [SCS HCS HB 1440]

**EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.**

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**Authorizes a checkoff on the Missouri individual and corporate income tax forms for donations for cervical cancer awareness and treatment and the calculation for individual net operating losses**

AN ACT to repeal section 143.121, RSMo, and to enact in lieu thereof two new sections relating to Missouri income tax.

SECTION

A. Enacting clause.

143.121. Missouri adjusted gross income.

143.1007. Missouri public health services fund, tax refund may be designated — director of revenue duties.

*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 two new sections enacted in lieu thereof, to be known as sections 143.121 and 143.1007, to read as follows:

**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 **taxable** income [taxes] but disallowed [against] **for** Missouri income [taxes] **tax purposes** pursuant to this paragraph [since July 1,] **after June 18, 2002**, may be carried forward and taken against any [loss] **income** 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;

(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; and

**(i) For all tax years ending on or after July 1, 2002, with respect to qualified property that is sold or otherwise disposed of during a taxable year by a taxpayer and for which an addition modification was made under paragraph (c) of subsection 2 of this section, the amount by which addition modification made under paragraph (c) of subsection 2 of this section on qualified property has not been recovered through the additional subtractions provided in paragraph (g) of this subsection.**

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.

**143.1007. MISSOURI PUBLIC HEALTH SERVICES FUND, TAX REFUND MAY BE DESIGNATED — DIRECTOR OF REVENUE DUTIES. — 1. For all tax years beginning on or after January 1, 2006, each individual or corporation entitled to a tax refund in an amount**

sufficient to make an irrevocable designation under this section may designate that any amount, on a single or a combined return, of the refund due be credited to the Missouri public services health fund established in section 192.900, RSMo. The director of revenue shall establish a method that allows the contribution designations authorized by this section to be indicated on the first page of each income tax return form provided by this state. The method may allow for a separate instruction list for the tax return that lists each authorized contribution designation. If any individual or corporation which is not entitled to a tax refund in an amount sufficient to make a designation under this section wishes to make a contribution to the 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 fund, and the department of revenue shall forward such amount to the state treasurer for deposit to the designated fund as provided in 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 designated fund.

3. The director of revenue shall transfer at least monthly all contributions designated by corporations under this section, less one percent of the amount in the fund at the time of the transfer for the cost of collection and handling by the department of revenue, to be deposited in the state's general revenue fund, to the state treasurer for deposit to the designated fund.

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

5. The moneys transferred and deposited under this section shall be administered by the department of health and senior services, and shall be used solely for the following purposes:

(1) To provide information on cervical cancer, early detection, testing, and prevention to the public and healthcare providers in this state;

(2) To collect statistical information on cervical cancer, including but not limited to age, ethnicity, region, and socioeconomic status of women in this state; and

(3) To provide services and funding for early detection, testing, and prevention of cervical cancer.

6. Not more than twenty percent of the moneys collected under this section shall be used for the costs of administering this section. Not more than thirty percent of the moneys collected under this section shall be used for the purposes listed in subdivision (1) of subsection 5 of this section. Not more than fifty percent of the moneys collected under this section shall be used for the purposes listed in subdivision (3) of subsection 5 of this section.

7. The directors of revenue and the department of health and senior services are authorized to promulgate rules and regulations necessary to administer and enforce this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2006, shall be invalid and void.

8. The director of the department of health and senior services shall determine no later than January 31, 2010, whether moneys sufficient to carry out the provisions of this section have been transferred and deposited under this section. Upon a determination

that insufficient moneys have been transferred and deposited under this section, this section shall expire on February 1, 2010, and any moneys remaining in the fund established in this section shall be used solely for existing cancer programs administered by the department of health and senior services. The director shall notify the revisor of statutes upon such determination that this section has expired.

Approved July 10, 2006

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HB 1449 [SCS HCS HB 1449]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Prohibits the state from requiring a substitute or part-time teacher employed within one year of the teacher's retirement to be subject to a background check by a school district**

AN ACT to repeal section 168.133, RSMo, and to enact in lieu thereof one new section relating to background checks for teachers.

SECTION

A. Enacting clause.

168.133. Criminal background checks required for school personnel, when, procedure — rulemaking authority.

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

**SECTION A. ENACTING CLAUSE.** — Section 168.133, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 168.133, to read as follows:

**168.133. CRIMINAL BACKGROUND CHECKS REQUIRED FOR SCHOOL PERSONNEL, WHEN, PROCEDURE — RULEMAKING AUTHORITY.** — 1. The school district shall ensure that a criminal background check is conducted on any person employed after January 1, 2005, authorized to have contact with pupils and prior to the individual having contact with any pupil. Such persons include, but are not limited to, administrators, teachers, aides, paraprofessionals, assistants, secretaries, custodians, cooks, and nurses. The school district shall also ensure that a criminal background check is conducted for school bus drivers. The district may allow such drivers to operate buses pending the result of the criminal background check. For bus drivers, the background check shall be conducted on drivers employed by the school district or employed by a pupil transportation company under contract with the school district.

2. In order to facilitate the criminal history background check on any person employed after January 1, 2005, the applicant shall submit two sets of fingerprints collected pursuant to standards determined by the Missouri highway patrol. One set of fingerprints shall be used by the highway patrol to search the criminal history repository and the family care safety registry pursuant to sections 210.900 to 210.936, RSMo, and the second set shall be forwarded to the Federal Bureau of Investigation for searching the federal criminal history files.

3. The applicant shall pay the fee for the state criminal history record information pursuant to section 43.530, RSMo, and sections 210.900 to 210.936, RSMo, and pay the appropriate fee determined by the Federal Bureau of Investigation for the federal criminal history record when he or she applies for a position authorized to have contact with pupils pursuant to this section. The department shall distribute the fees collected for the state and federal criminal histories to the Missouri highway patrol.

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4. The school district may adopt a policy to provide for reimbursement of expenses incurred by an employee for state and federal criminal history information pursuant to section 43.530, RSMo.

5. If, as a result of the criminal history background check mandated by this section, it is determined that the holder of a certificate issued pursuant to section 168.021 has pled guilty or nolo contendere to, or been found guilty of a crime or offense listed in section 168.071, or a similar crime or offense committed in another state, the United States, or any other country, regardless of imposition of sentence, such information shall be reported to the department of elementary and secondary education.

6. Any school official making a report to the department of elementary and secondary education in conformity with this section shall not be subject to civil liability for such action.

7. **For any teacher who is employed by a school district on a substitute or part-time basis within one year of such teacher's retirement from a Missouri school, the state of Missouri shall not require such teacher to be subject to any additional background checks prior to having contact with pupils. Nothing in this subsection shall be construed as prohibiting or otherwise restricting a school district from requiring additional background checks for such teachers employed by the school district.**

8. Nothing in this section shall be construed to alter the standards for suspension, denial, or revocation of a certificate issued pursuant to this chapter.

[8.] 9. The state board of education may promulgate rules for criminal history background checks made pursuant to this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after January 1, 2005, shall be invalid and void.

Approved June 12, 2006

## HB 1456 [SS#2 SCS HCS HB 1456]

**EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.**

### **Changes the laws regarding employment security**

AN ACT to repeal sections 288.030, 288.032, 288.035, 288.036, 288.038, 288.040, 288.045, 288.050, 288.060, 288.120, 288.121, 288.122, 288.128, 288.175, 288.190, 288.330, 288.380, 288.381, and 288.500, RSMo, and to enact in lieu thereof twenty-one new sections relating to employment security, with penalty provisions and an effective date.

#### SECTION

- A. Enacting clause.
- 288.030. Definitions — calculation of Missouri average annual wage.
- 288.032. Employer defined, exceptions.
- 288.035. Owner and operator leasing motor vehicle with driver to a for-hire common or contract carrier not deemed employed for unemployment compensation, exception.
- 288.036. Wages defined — state taxable wage base.
- 288.038. Maximum weekly benefit amount defined.
- 288.040. Eligibility for benefits — exceptions — report, contents.

- 288.042. War on terror veterans, defined — eligible for benefits — time period — penalty — offer of similar wages — fund — rulemaking authority.
- 288.045. Misconduct connected with the claimant's work, when — controlled substance and blood alcohol content levels — notice — tests conducted, when — violation, penalty — preemployment testing — testing provision not to apply, when — specimens for testing — confirmation tests — prescriptions — section not applicable, when — implementation of testing program.
- 288.046. General assembly's intent to abrogate certain case law — determining misconduct, evidence of impairment.
- 288.050. Benefits denied unemployed workers, when — pregnancy, requirements for benefit eligibility.
- 288.060. Benefits, how paid — wage credits — benefits due decedent — benefit warrants canceled, when — electronic funds transfer system, allowed — remote claims filing procedures required, contents, duties.
- 288.120. Employer's contribution rate, how determined — exception shared work plan, how computed — surcharges for employers taxed at the maximum rate.
- 288.121. Rate increased when average balance in fund is less than certain amount, how — rate calculations for certain years.
- 288.122. If cash in fund exceeds certain amounts, contribution rate to decrease, amount — table — effective when.
- 288.128. Additional assessment for interest on federal advancements and proceeds of credit instruments, procedure — excess collections, use of — credit instrument and financing agreement repayment surcharge.
- 288.175. Debtor's federal income tax refund may be intercepted — debt defined — debtor defined — use of collection agencies authorized.
- 288.190. Administrative appeals on disputed determinations — party subject to appeal decision, right to counsel.
- 288.330. State liability for benefits limited, authority for application and repayment of federal advances — board of unemployment fund financing created, duties, requirements, powers — disposition of unobligated funds.
- 288.380. Void agreements — offenses, penalties — deductions of support obligations and uncollected overissuance of food stamps — offset for overpayment of benefits by other states, when — definitions.
- 288.381. Collection of benefits paid when claimant later determined ineligible or awarded back pay — violation, damages.
- 288.500. Shared work program created — definitions — plan, requirements — plan denied, submission of new plan, when — contribution by employer, how computed — benefits.
- B. Effective date.

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

**SECTION A. ENACTING CLAUSE.** — Sections 288.030, 288.032, 288.035, 288.036, 288.038, 288.040, 288.045, 288.050, 288.060, 288.120, 288.121, 288.122, 288.128, 288.175, 288.190, 288.330, 288.380, 288.381, and 288.500, RSMo, are repealed and twenty-one new sections enacted in lieu thereof, to be known as sections 288.030, 288.032, 288.035, 288.036, 288.038, 288.040, 288.042, 288.045, 288.046, 288.050, 288.060, 288.120, 288.121, 288.122, 288.128, 288.175, 288.190, 288.330, 288.380, 288.381, and 288.500 to read as follows:

**288.030. DEFINITIONS — CALCULATION OF MISSOURI AVERAGE ANNUAL WAGE.** — 1. As used in this chapter, unless the context clearly requires otherwise, the following terms mean:

- (1) "Appeals tribunal", a referee or a body consisting of three referees appointed to conduct hearings and make decisions on appeals from administrative determinations, petitions for reassessment, and claims referred pursuant to subsection 2 of section 288.070;
- (2) "Base period", the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year;
- (3) "Benefit year", the one-year period beginning with the first day of the first week with respect to which an insured worker first files an initial claim for determination of such worker's insured status, and thereafter the one-year period beginning with the first day of the first week with respect to which the individual, providing the individual is then an insured worker, next files such an initial claim after the end of the individual's last preceding benefit year;
- (4) "Benefits", the money payments payable to an insured worker, as provided in this chapter, with respect to such insured worker's unemployment;
- (5) "Calendar quarter", the period of three consecutive calendar months ending on March thirty-first, June thirtieth, September thirtieth, or December thirty-first;

(6) "Claimant", an individual who has filed an initial claim for determination of such individual's status as an insured worker, a notice of unemployment, a certification for waiting week credit, or a claim for benefits;

(7) "Commission", the labor and industrial relations commission of Missouri;

(8) "Common paymaster", two or more related corporations in which one of the corporations has been designated to disburse remuneration to concurrently employed individuals of any of the related corporations;

(9) "Contributions", the money payments to the unemployment compensation fund required by this chapter, exclusive of interest and penalties;

(10) "Decision", a ruling made by an appeals tribunal or the commission after a hearing;

(11) "Deputy", a representative of the division designated to make investigations and administrative determinations on claims or matters of employer liability or to perform related work;

(12) "Determination", any administrative ruling made by the division without a hearing;

(13) "Director", the administrative head of the division of employment security;

(14) "Division", the division of employment security which administers this chapter;

(15) "Employing unit", any individual, organization, partnership, corporation, common paymaster, or other legal entity, including the legal representatives thereof, which has or, subsequent to June 17, 1937, had in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this chapter. Each individual engaged to perform or to assist in performing the work of any person in the service of an employing unit shall be deemed to be engaged by such employing unit for all the purposes of this chapter, whether such individual was engaged or paid directly by such employing unit or by such person, provided the employing unit had actual or constructive knowledge of the work;

(16) "Employment office", a free public employment office operated by this or any other state as a part of a state controlled system of public employment offices including any location designated by the state as being a part of the one-stop career system;

(17) "Equipment", a motor vehicle, straight truck, tractor, semi-trailer, full trailer, any combination of these and any other type of equipment used by authorized carriers in the transportation of property for hire;

(18) "Fund", the unemployment compensation fund established by this chapter;

(19) "Governmental entity", the state, any political subdivision thereof, any instrumentality of any one or more of the foregoing which is wholly owned by this state and one or more other states or political subdivisions and any instrumentality of this state or any political subdivision thereof and one or more other states or political subdivisions;

(20) "Initial claim", an application, in a form prescribed by the division, made by an individual for the determination of the individual's status as an insured worker;

(21) "Insured work", employment in the service of an employer;

(22) (a) As to initial claims filed after December 31, 1990, "insured worker", a worker who has been paid wages for insured work in the amount of one thousand dollars or more in at least one calendar quarter of such worker's base period and total wages in the worker's base period equal to at least one and one-half times the insured wages in that calendar quarter of the base period in which the worker's insured wages were the highest, or in the alternative, a worker who has been paid wages in at least two calendar quarters of such worker's base period and whose total base period wages are at least one and one-half times the maximum taxable wage base, taxable to any one employer, in accordance with subsection 2 of section 288.036. For the purposes of this definition, "wages" shall be considered as wage credits with respect to any benefit year, only if such benefit year begins subsequent to the date on which the employing unit by which such wages were paid has become an employer;

(b) As to initial claims filed after December 31, 2004, wages for insured work in the amount of one thousand two hundred dollars or more, after December 31, 2005, one thousand three hundred dollars or more, after December 31, 2006, one thousand four hundred dollars or more, after December 31, 2007, one thousand five hundred dollars or more in at least one calendar quarter of such worker's base period and total wages in the worker's base period equal to at least one and one-half times the insured wages in that calendar quarter of the base period in which the worker's insured wages were the highest, or in the alternative, a worker who has been paid wages in at least two calendar quarters of such worker's base period and whose total base period wages are at least one and one-half times the maximum taxable wage base, taxable to any one employer, in accordance with subsection 2 of section 288.036;

(23) [ "Lessor", in a lease, the party granting the use of equipment, with or without a driver to another;

(24)] "Misconduct", an act of wanton or willful disregard of the employer's interest, a deliberate violation of the employer's rules, a disregard of standards of behavior which the employer has the right to expect of his or her employee, or negligence in such degree or recurrence as to manifest culpability, wrongful intent or evil design, or show an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to the employer;

[(25)] (24) "Referee", a representative of the division designated to serve on an appeals tribunal;

[(26)] (25) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada;

[(27)] (26) "Temporary employee", an employee assigned to work for the clients of a temporary help firm;

[(28)] (27) "Temporary help firm", a firm that hires its own employees and assigns them to clients to support or supplement the clients' workforce in work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects;

[(29)] (28) (a) An individual shall be deemed "totally unemployed" in any week during which the individual performs no services and with respect to which no wages are payable to such individual;

(b) a. An individual shall be deemed "partially unemployed" in any week of less than full-time work if the wages payable to such individual for such week do not equal or exceed the individual's weekly benefit amount plus twenty dollars;

b. Effective for calendar year 2007 and each year thereafter, an individual shall be deemed "partially unemployed" in any week of less than full-time work if the wages payable to such individual for such week do not equal or exceed the individual's weekly benefit amount plus twenty dollars or twenty percent of his or her weekly benefit amount, whichever is greater;

(c) An individual's "week of unemployment" shall begin the first day of the calendar week in which the individual registers at an employment office except that, if for good cause the individual's registration is delayed, the week of unemployment shall begin the first day of the calendar week in which the individual would have otherwise registered. The requirement of registration may by regulation be postponed or eliminated in respect to claims for partial unemployment or may by regulation be postponed in case of a mass layoff due to a temporary cessation of work;

[(30)] (29) "Waiting week", the first week of unemployment for which a claim is allowed in a benefit year or if no waiting week has occurred in a benefit year in effect on the effective date of a shared work plan, the first week of participation in a shared work unemployment compensation program pursuant to section 288.500.

2. The Missouri average annual wage shall be computed as of June thirtieth of each year, and shall be applicable to the following calendar year. The Missouri average annual wage shall be calculated by dividing the total wages reported as paid for insured work in the preceding

calendar year by the average of mid-month employment reported by employers for the same calendar year. The Missouri average weekly wage shall be computed by dividing the Missouri average annual wage as computed in this subsection by fifty-two.

**288.032. EMPLOYER DEFINED, EXCEPTIONS.** — 1. After December 31, 1977, "employer" means:

(1) Any employing unit which in any calendar quarter in either the current or preceding calendar year paid for service in employment wages of one thousand five hundred dollars or more except that for the purposes of this definition, wages paid for "agricultural labor" as defined in paragraph (a) of subdivision (1) of subsection 12 of section 288.034 and for "domestic services" as defined in subdivisions (2) and (13) of subsection 12 of section 288.034 shall not be considered;

(2) Any employing unit which for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, had in employment at least one individual (irrespective of whether the same individual was in employment in each such day); except that for the purposes of this definition, services performed in "agricultural labor" as defined in paragraph (a) of subdivision (1) of subsection 12 of section 288.034 and in "domestic services" as defined in subdivisions (2) and (13) of subsection 12 of section 288.034 shall not be considered;

(3) Any governmental entity for which service in employment as defined in subsection 7 of section 288.034 is performed;

(4) Any employing unit for which service in employment as defined in subsection 8 of section 288.034 is performed during the current or preceding calendar year;

(5) Any employing unit for which service in employment as defined in paragraph (b) of subdivision (1) of subsection 12 of section 288.034 is performed during the current or preceding calendar year;

(6) Any employing unit for which service in employment as defined in subsection 13 of section 288.034 is performed during the current or preceding calendar year;

(7) Any individual, type of organization or employing unit which has been determined to be a successor pursuant to section 288.110;

(8) Any individual, type of organization or employing unit which has elected to become subject to this law pursuant to subdivision (1) of subsection 3 of section 288.080;

(9) Any individual, type of organization or employing unit which, having become an employer, has not pursuant to section 288.080 ceased to be an employer;

(10) Any employing unit subject to the Federal Unemployment Tax Act or which, as a condition for approval of this law for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such act, to be an employer pursuant to this law.

2. (1) Notwithstanding any other provisions of this law, any employer, individual, organization, partnership, corporation, other legal entity or employing unit that meets the definition of "lessor employing unit", as defined in subdivision (5) of this subsection, shall be liable for contributions on wages paid by the lessor employing unit to individuals performing services for client lessees of the lessor employing unit. Unless the lessor employing unit has timely complied with the provisions of subdivision (3) of this subsection, any employer, individual, organization, partnership, corporation, other legal entity or employing unit which is leasing individuals from any lessor employing unit shall be jointly and severally liable for any unpaid contributions, interest and penalties due pursuant to this law from any lessor employing unit attributable to wages for services performed for the client lessee entity by individuals leased to the client lessee entity, and the lessor employing unit shall keep separate records and submit separate quarterly contribution and wage reports for each of its client lessee entities. Delinquent contributions, interest and penalties shall be collected in accordance with the provisions of this chapter.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, any governmental entity or nonprofit organization that meets the definition of "lessor employing unit", as defined in subdivision (5) of this subsection, and has elected to become liable for payments in lieu of contributions as provided in subsection 3 of section 288.090, shall pay the division payments in lieu of contributions, interest, penalties and surcharges in accordance with section 288.090 on benefits paid to individuals performing services for the client lessees of the lessor employing unit. If the lessor employing unit has not timely complied with the provisions of subdivision (3) of this subsection, any client lessees with services attributable to and performed for the client lessees shall be jointly and severally liable for any unpaid payments in lieu of contributions, interest, penalties and surcharges due pursuant to this law. The lessor employing unit shall keep separate records and submit separate quarterly contribution and wage reports for each of its client lessees. Delinquent payments in lieu of contributions, interest, penalties and surcharges shall be collected in accordance with subsection 3 of section 288.090. The election to be liable for payments in lieu of contributions made by a governmental entity or nonprofit organization meeting the definition of "lessor employing unit" may be terminated by the division in accordance with subsection 3 of section 288.090.

(3) In order to relieve a client lessees from joint and several liability and the separate reporting requirements imposed pursuant to this subsection, any lessor employing unit may post and maintain a surety bond issued by a corporate surety authorized to do business in Missouri in an amount equivalent to the contributions or payments in lieu of contributions for which the lessor employing unit was liable in the last calendar year in which he or she accrued contributions or payments in lieu of contributions, or one hundred thousand dollars, whichever amount is the greater, to ensure prompt payment of contributions or payments in lieu of contributions, interest, penalties and surcharges for which the lessor employing unit may be, or becomes, liable pursuant to this law. In lieu of a surety bond, the lessor employing unit may deposit in a depository designated by the director, securities with marketable value equivalent to the amount required for a surety bond. The securities so deposited shall include authorization to the director to sell any securities in an amount sufficient to pay any contributions or payments in lieu of contributions, interest, penalties and surcharges which the lessor employing unit fails to promptly pay when due. In lieu of a surety bond or securities as described in this subdivision, any lessor employing unit may provide the director with an irrevocable letter of credit, as defined in section 409.5-103, RSMo, issued by any state or federally chartered financial institution, in an amount equivalent to the amount required for a surety bond as described in this subdivision. In lieu of a surety bond, securities or an irrevocable letter of credit, a lessor employing unit may obtain a certificate of deposit issued by any state or federally chartered financial institution, in an amount equivalent to the amount required for a surety bond as described in this subdivision. The certificate of deposit shall be pledged to the director until release by the director. As used in this subdivision, the term "certificate of deposit" means a certificate representing any deposit of funds in a state or federally chartered financial institution for a specified period of time which earns interest at a fixed or variable rate, where such funds cannot be withdrawn prior to a specified time without forfeiture of some or all of the earned interest.

(4) Any lessor employing unit which is currently engaged in the business of leasing individuals to client lessees shall comply with the provisions of subdivision (3) of this subsection by September 28, 1992. Lessor employing units not currently engaged in the business of leasing individuals to client lessees shall comply with subdivision (3) of this subsection before entering into a written lease agreement with client lessees.

(5) As used in this subsection, the term "lessor employing unit" means an independently established business entity, governmental entity as defined in subsection 1 of section 288.030 or nonprofit organization as defined in subsection 3 of section 288.090 which, pursuant to a written lease agreement between the lessor employing unit and the client lessees, engages in the business of providing individuals to any other employer, individual, organization, partnership, corporation, other legal entity or employing unit referred to in this subsection as a client lessee.

(6) The provisions of this subsection shall not be applicable to private employment agencies who provide their employees to employers on a temporary help basis provided the private employment agencies are liable as employers for the payment of contributions on wages paid to temporary workers so employed.

3. After September 30, 1986, notwithstanding any provision of section 288.034, for the purpose of this law, in no event shall a for-hire motor carrier as regulated by the Missouri division of motor carrier and railroad safety or whose operations are confined to a commercial zone be determined to be the employer of a lessor as defined in [section 288.030 or of a driver receiving remuneration from a lessor] **49 CFR section 376.2(f), or of a driver receiving remuneration from a lessor as defined in 49 CFR 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.

4. The owner or operator of a beauty salon or similar establishment shall not be determined to be the employer of a person who utilizes the facilities of the owner or operator but who receives neither salary, wages or other compensation from the owner or operator and who pays the owner or operator rent or other payments for the use of the facilities.

**288.035. OWNER AND OPERATOR LEASING MOTOR VEHICLE WITH DRIVER TO A FOR-HIRE COMMON OR CONTRACT CARRIER NOT DEEMED EMPLOYED FOR UNEMPLOYMENT COMPENSATION, EXCEPTION.** — Notwithstanding the provisions of section 288.034, RSMo, in the case of 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, or operating under a certificate issued by [the motor carrier and railroad safety division of the department of economic development under provisions of this chapter or by the interstate commerce commission] **the Missouri department of transportation or by the United States Department of Transportation or any of its subagencies**, such owner/operator shall not be deemed to be an employee, provided, however, such individual owner and operator shall be deemed to be in employment if the for-hire common or contract vehicle carrier is an organization described in section 501(c)(3) of the Internal Revenue Code or any governmental entity.

**288.036. WAGES DEFINED — STATE TAXABLE WAGE BASE.** — 1. "Wages" means all remuneration, payable or paid, for personal services including commissions and bonuses and, except as provided in subdivision (7) of this section, the cash value of all remuneration paid in any medium other than cash. Gratuities, including tips received from persons other than the employing unit, shall be considered wages only if required to be reported as wages pursuant to the Federal Unemployment Tax Act, 26 U.S.C. Sec. 3306, and shall be, for the purposes of this chapter, treated as having been paid by the employing unit. Severance pay shall be considered as wages to the extent required pursuant to the Federal Unemployment Tax Act, 26 U.S.C. Section 3306(b). Vacation pay and holiday pay shall be considered as wages for the week with respect to which it is payable. The term "wages" shall not include:

(1) The amount of any payment made (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment) to, or on behalf of, an individual under a plan or system established by an employing unit which makes provision generally for individuals performing services for it or for a class or classes of such individuals, on account of:

(a) Sickness or accident disability, but in case of payments made to an employee or any of the employee's dependents this paragraph shall exclude from the term "wages" only payments which are received pursuant to a workers' compensation law; or

(b) Medical and hospitalization expenses in connection with sickness or accident disability;

or

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- (c) Death;
- (2) The amount of any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employing unit to, or on behalf of, an individual performing services for it after the expiration of six calendar months following the last calendar month in which the individual performed services for such employing unit;
- (3) The amount of any payment made by an employing unit to, or on behalf of, an individual performing services for it or his or her beneficiary:
- (a) From or to a trust described in 26 U.S.C. 401(a) which is exempt from tax pursuant to 26 U.S.C. 501(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such an employee and not as a beneficiary of the trust; or
- (b) Under or to an annuity plan which, at the time of such payments, meets the requirements of section 404(a)(2) of the Federal Internal Revenue Code (26 U.S.C.A. Sec. 404);
- (4) The amount of any payment made by an employing unit (without deduction from the remuneration of the individual in employment) of the tax imposed pursuant to section 3101 of the Federal Internal Revenue Code (26 U.S.C.A. Sec. 3101) upon an individual with respect to remuneration paid to an employee for domestic service in a private home or for agricultural labor;
- (5) Remuneration paid in any medium other than cash to an individual for services not in the course of the employing unit's trade or business;
- (6) Remuneration paid in the form of meals provided to an individual in the service of an employing unit where such remuneration is furnished on the employer's premises and at the employer's convenience, except that remuneration in the form of meals that is considered wages and required to be reported as wages pursuant to the Federal Unemployment Tax Act, 26 U.S.C. Sec. 3306 shall be reported as wages as required thereunder;
- (7) For the purpose of determining wages paid for agricultural labor as defined in paragraph (b) of subdivision (1) of subsection 12 of section 288.034 and for domestic service as defined in subsection 13 of section 288.034, only cash wages paid shall be considered;
- (8) Beginning on October 1, 1996, any payment to, or on behalf of, an employee or the employee's beneficiary under a cafeteria plan, if such payment would not be treated as wages pursuant to the Federal Unemployment Tax Act.
2. The increases or decreases to the state taxable wage base for the remainder of calendar year 2004 shall be eight thousand dollars, and the state taxable wage base in calendar year 2005, and each calendar year thereafter, shall be determined by the provisions within this subsection. On January 1, 2005, the state taxable wage base for calendar year 2005, 2006, and 2007 shall be eleven thousand dollars. The taxable wage base for calendar year 2008[, and each year thereafter.] shall be twelve thousand dollars. The state taxable wage base for each calendar year thereafter shall be determined by the [preceding September thirtieth balance] **average balance of the unemployment compensation trust fund of the four preceding calendar quarters (September thirtieth, June thirtieth, March thirty-first, and December thirty-first of the preceding calendar year)**, less any outstanding federal Title XII advances received pursuant to section 288.330, [or if the fund is not utilizing federal Title XII advances received pursuant to section 288.330, then less the principal, interest, and administrative expenses related to credit instruments issued under section 288.330, or the principal, interest, and administrative expenses related to financial agreements under subdivision (17) of subsection 2 of section 288.330, or the principal, interest, and administrative expenses related to a combination of Title XII advances, credit instruments, and financial agreements] **less the principal, interest, and administrative expenses related to any credit instrument issued under section 288.030, and less the principal, interest, and administrative expenses related to any financial agreements under subdivision (17) of subsection 2 of section 288.330.** When the [September thirtieth unemployment compensation trust fund balance, or, if the] average balance[, less any federal advances] of the unemployment

compensation trust fund of the four preceding quarters (September thirtieth, June thirtieth, March thirty-first, and December thirty-first of the preceding calendar year) [is less any outstanding federal Title XII advances received pursuant to section 288.330], **as so determined** is:

(1) Less than, or equal to, three hundred fifty million dollars, then the wage base shall increase by one thousand dollars; or

(2) Six hundred fifty million or more, then the state taxable wage base for the subsequent calendar year shall be decreased by five hundred dollars. In no event, however, shall the state taxable wage base increase beyond twelve thousand **five hundred** dollars, or decrease to less than seven thousand dollars. For calendar year 2009, the tax wage base shall be twelve thousand five hundred dollars. For calendar year 2010 and each calendar year thereafter, in no event shall the state taxable wage base increase beyond thirteen thousand dollars, or decrease to less than seven thousand dollars.

For any calendar year, the state taxable wage base shall not be reduced to less than that part of the remuneration which is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation trust fund. Nothing in this section shall be construed to prevent the wage base from increasing or decreasing by increments of five hundred dollars.

**288.038. MAXIMUM WEEKLY BENEFIT AMOUNT DEFINED.** — With respect to initial claims filed during calendar years 2004 and 2005, the "maximum weekly benefit amount" means four percent of the total wages paid to an eligible insured worker during that quarter of the worker's base period in which the worker's wages were the highest, but the maximum weekly benefit amount shall not exceed two hundred fifty dollars in the calendar years 2004 and 2005. With respect to initial claims filed during calendar years 2006 and 2007 the "maximum weekly benefit amount" means [three and three-fourths] **four** percent of the total wages paid to an eligible insured worker during that quarter of the worker's base period in which the worker's wages were the highest, but the maximum weekly benefit amount shall not exceed two hundred seventy dollars in calendar year 2006 and the maximum weekly benefit amount shall not exceed two hundred eighty dollars in calendar year 2007. With respect to initial claims filed during calendar year 2008 and each calendar year thereafter, the "maximum weekly benefit amount" means four percent of the total wages paid to an eligible insured worker during the average of the two highest quarters of the worker's base period, but the maximum weekly benefit amount shall not exceed three hundred [dollars in calendar year 2008, three hundred ten dollars in calendar year 2009, three hundred] twenty dollars [in calendar year 2010, and each calendar year thereafter]. If such benefit amount is not a multiple of one dollar, such amount shall be reduced to the nearest lower full dollar amount.

**288.040. ELIGIBILITY FOR BENEFITS — EXCEPTIONS — REPORT, CONTENTS.** — 1. A claimant who is unemployed and has been determined to be an insured worker shall be eligible for benefits for any week only if the deputy finds that:

(1) The claimant has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the division may prescribe;

(2) The claimant is able to work and is available for work. No person shall be deemed available for work unless such person has been and is actively and earnestly seeking work. Upon the filing of an initial or renewed claim, and prior to the filing of each weekly claim thereafter, the deputy shall notify each claimant of the number of work search contacts required to constitute an active search for work. No person shall be considered not available for work, pursuant to this subdivision, solely because he or she is a substitute teacher or is on jury duty. A claimant shall not be determined to be ineligible pursuant to this subdivision because of not actively and earnestly seeking work if:

(a) The claimant is participating in training approved pursuant to Section 236 of the Trade Act of 1974, as amended, (19 U.S.C.A. Sec. 2296, as amended);

(b) The claimant is temporarily unemployed through no fault of his or her own and has a definite recall date within eight weeks of his or her first day of unemployment; however, upon application of the employer responsible for the claimant's unemployment, such eight-week period may be extended not to exceed a total of sixteen weeks at the discretion of the director;

(3) The claimant has reported in person to an office of the division as directed by the deputy, but at least once every four weeks, except that a claimant shall be exempted from the reporting requirement of this subdivision if:

(a) The claimant is claiming benefits in accordance with division regulations dealing with partial or temporary total unemployment; or

(b) The claimant is temporarily unemployed through no fault of his or her own and has a definite recall date within eight weeks of his or her first day of unemployment; or

(c) The claimant resides in a county with an unemployment rate, as published by the division, of ten percent or more and in which the county seat is more than forty miles from the nearest division office;

(d) The director of the division of employment security has determined that the claimant belongs to a group or class of workers whose opportunities for reemployment will not be enhanced by reporting in person, or is prevented from reporting due to emergency conditions that limit access by the general public to an office that serves the area where the claimant resides, but only during the time such circumstances exist.

Ineligibility pursuant to this subdivision shall begin on the first day of the week which the claimant was scheduled to claim and shall end on the last day of the week preceding the week during which the claimant does report in person to the division's office;

(4) Prior to the first week of a period of total or partial unemployment for which the claimant claims benefits he or she has been totally or partially unemployed for a waiting period of one week. No more than one waiting week will be required in any benefit year. During calendar year 2008 and each calendar year thereafter, the one-week waiting period shall become compensable once his or her remaining balance on the claim is equal to or less than the compensable amount for the waiting period. No week shall be counted as a week of total or partial unemployment for the purposes of this subsection unless it occurs within the benefit year which includes the week with respect to which the claimant claims benefits;

(5) The claimant has made a claim for benefits;

(6) The claimant is participating in reemployment services, such as job search assistance services, as directed by the deputy if the claimant has been determined to be likely to exhaust regular benefits and to need reemployment services pursuant to a profiling system established by the division, unless the deputy determines that:

(a) The individual has completed such reemployment services; or

(b) There is justifiable cause for the claimant's failure to participate in such reemployment services.

2. A claimant shall be ineligible for waiting week credit or benefits for any week for which the deputy finds he or she is or has been suspended by his or her most recent employer for misconduct connected with his or her work. Suspensions of four weeks or more shall be treated as discharges.

3. (1) Benefits based on "service in employment", defined in subsections 7 and 8 of section 288.034, shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this law; except that:

(a) With respect to service performed in an instructional, research, or principal administrative capacity for an educational institution, benefits shall not be paid based on such services for any week of unemployment commencing during the period between two successive academic years or terms, or during a similar period between two regular but not successive terms,

or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if such individual performs such services in the first of such academic years (or terms) and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms;

(b) With respect to services performed in any capacity (other than instructional, research, or principal administrative capacity) for an educational institution, benefits shall not be paid on the basis of such services to any individual for any week which commences during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a contract or a reasonable assurance that such individual will perform such services in the second of such academic years or terms;

(c) With respect to services described in paragraphs (a) and (b) of this subdivision, benefits shall not be paid on the basis of such services to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performed such services in the period immediately before such vacation period or holiday recess, and there is reasonable assurance that such individual will perform such services immediately following such vacation period or holiday recess;

(d) With respect to services described in paragraphs (a) and (b) of this subdivision, benefits payable on the basis of services in any such capacity shall be denied as specified in paragraphs (a), (b), and (c) of this subdivision to any individual who performed such services at an educational institution while in the employ of an educational service agency, and for this purpose the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

(2) If compensation is denied for any week pursuant to paragraph (b) or (d) of subdivision (1) of this subsection, to any individual performing services at an educational institution in any capacity (other than instructional, research or principal administrative capacity), and such individual was not offered an opportunity to perform such services for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of paragraph (b) or (d) of subdivision (1) of this subsection.

4. (1) A claimant shall be ineligible for waiting week credit, benefits or shared work benefits for any week for which he or she is receiving or has received remuneration exceeding his or her weekly benefit amount or shared work benefit amount in the form of:

(a) Compensation for temporary partial disability pursuant to the workers' compensation law of any state or pursuant to a similar law of the United States;

(b) A governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment which is based on the previous work of such claimant to the extent that such payment is provided from funds provided by a base period or chargeable employer pursuant to a plan maintained or contributed to by such employer; but, except for such payments made pursuant to the Social Security Act or the Railroad Retirement Act of 1974 (or the corresponding provisions of prior law), the provisions of this paragraph shall not apply if the services performed for such employer by the claimant after the beginning of the base period (or remuneration for such services) do not affect eligibility for or increase the amount of such pension, retirement or retired pay, annuity or similar payment.

(2) If the remuneration referred to in this subsection is less than the benefits which would otherwise be due, the claimant shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration, and, if such benefit is not a multiple of one dollar, such amount shall be lowered to the next multiple of one dollar.

(3) Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, if a claimant has contributed in any way to the Social Security Act or the Railroad Retirement Act of 1974, or the corresponding provisions of prior law, no part of the payments received pursuant

to such federal law shall be deductible from the amount of benefits received pursuant to this chapter.

5. A claimant shall be ineligible for waiting week credit or benefits for any week for which or a part of which he or she has received or is seeking unemployment benefits pursuant to an unemployment insurance law of another state or the United States; provided, that if it be finally determined that the claimant is not entitled to such unemployment benefits, such ineligibility shall not apply.

6. (1) A claimant shall be ineligible for waiting week credit or benefits for any week for which the deputy finds that such claimant's total or partial unemployment is due to a stoppage of work which exists because of a labor dispute in the factory, establishment or other premises in which such claimant is or was last employed. In the event the claimant secures other employment from which he or she is separated during the existence of the labor dispute, the claimant must have obtained bona fide employment as a permanent employee for at least the major part of each of two weeks in such subsequent employment to terminate his or her ineligibility. If, in any case, separate branches of work which are commonly conducted as separate businesses at separate premises are conducted in separate departments of the same premises, each such department shall for the purposes of this subsection be deemed to be a separate factory, establishment or other premises. This subsection shall not apply if it is shown to the satisfaction of the deputy that:

(a) The claimant is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(b) The claimant does not belong to a grade or class of workers of which, immediately preceding the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute.

(2) "Stoppage of work" as used in this subsection means a substantial diminution of the activities, production or services at the establishment, plant, factory or premises of the employing unit. This definition shall not apply to a strike where the employees in the bargaining unit who initiated the strike are participating in the strike. Such employees shall not be eligible for waiting week credit or benefits during the period when the strike is in effect, regardless of diminution, unless the employer has been found guilty of an unfair labor practice by the National Labor Relations Board or a federal court of law for an act or actions preceding or during the strike.

7. On or after January 1, 1978, benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).

8. Benefits shall not be payable on the basis of services performed by an alien, unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of Section 212(d)(5) of the Immigration and Nationality Act).

(1) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(2) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of such individual's alien status shall be made except upon a preponderance of the evidence.

9. The directors of the division of employment security and the division of workforce development shall submit to the governor, the speaker of the house of representatives, and the president pro tem of the senate no later than October 15, 2006, a report outlining their recommendations for how to improve work search verification and claimant re-employment activities. The recommendations shall include, but not limited to how to best utilize "greathires.org", and how to reduce the average duration of unemployment insurance claims. Each calendar year thereafter, the directors shall submit a report containing their recommendations on these issues by December thirty-first of each year.

**288.042. WAR ON TERROR VETERANS, DEFINED — ELIGIBLE FOR BENEFITS — TIME PERIOD — PENALTY — OFFER OF SIMILAR WAGES — FUND — RULEMAKING AUTHORITY. —**

1. For purposes of this chapter, a "war on terror veteran" is a person who serves or has served in the military and to whom the following criteria apply:

- (1) The person is or was a member of the national guard or a member of a United States armed forces reserves unit;
- (2) The person was deployed as part of his or her military unit at any time after September 11, 2001, and such deployment caused the person to be unable to continue working for his or her employer;
- (3) The person was employed either part time or full time before deployment; and
- (4) The person was unemployed in his or her non-military employment either during or within thirty days after the completion of his or her deployment.

2. Notwithstanding any provisions of sections 288.010 to 288.500, any war on terror veteran shall be entitled to receive unemployment compensation benefits under this chapter. A war on terror veteran shall be entitled to a maximum weekly benefit of eight percent of the wages paid to the war on terror veteran during that quarter during which the war on terror veteran earned the highest amount within the five quarters during which the war on terror veteran received wages before deployment. The maximum amount of a maximum weekly benefit shall be one thousand one hundred fifty-three dollars and sixty-four cents, annually adjusted by the consumer price index.

3. A war on terror veteran shall be entitled to a maximum weekly benefit for twenty-six weeks.

4. Any employer who is found in any Missouri court or United States district court located in Missouri to have terminated, demoted, or taken an adverse employment action against a war on terror veteran due to his or her absence while deployed shall be subject to an administrative penalty in the amount of twenty-five thousand dollars. The director shall take judicial notice of judgments in suits brought under the Uniformed Service Employment and Reemployment Rights Act (38 U.S.C. 4301). Such judgments may be considered to have a res judicata effect on the director's determination.

5. A war on terror veteran shall not be considered to have voluntarily quit his or her employment if he or she is not offered the same wages, benefits, and similar work schedule upon his or her return after deployment.

6. There is hereby created in the state treasury the "War on Terror Unemployment Compensation 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 section 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 money earned on such investments shall be credited to the fund.

7. The division of employment security may promulgate rules to enforce this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2006, shall be invalid and void.

**288.045. MISCONDUCT CONNECTED WITH THE CLAIMANT'S WORK, WHEN — CONTROLLED SUBSTANCE AND BLOOD ALCOHOL CONTENT LEVELS — NOTICE — TESTS CONDUCTED, WHEN — VIOLATION, PENALTY — PREEMPLOYMENT TESTING — TESTING PROVISION NOT TO APPLY, WHEN — SPECIMENS FOR TESTING — CONFIRMATION TESTS — PRESCRIPTIONS — SECTION NOT APPLICABLE, WHEN — IMPLEMENTATION OF TESTING PROGRAM.** — 1. If a claimant is at work with a detectible amount of alcohol or a controlled substance as defined in section 195.010, RSMo, in the claimant's system, in violation of the employer's alcohol and controlled substance workplace policy, the claimant shall have committed misconduct connected with the claimant's work.

2. [For carboxy-tetrahydrocannabinol, a chemical test result of fifty nanograms per milliliter or more shall be considered a detectible amount. For alcohol, a blood alcohol content of eight-hundredths of one percent or more by weight of alcohol in the claimant's blood shall be considered a detectible amount.

3. If the] A test [is] conducted by a laboratory certified by the United States Department of [Transportation, the test results] **Health and Human Services, or another certifying organization so long as the certification requirements meet the minimum standards of the United States Department of Health and Human Services**, and the laboratory's trial packet shall be included in the administrative record and considered as evidence.

[4. For this section to be applicable,] **3.** The claimant must have previously been notified of the employer's alcohol and controlled substance workplace policy by conspicuously posting the policy in the workplace, by including the policy in a written personnel policy or handbook, or by statement of such policy in a collective bargaining agreement governing employment of the employee. The policy, **public posting, handbook, collective bargaining agreement or other written notice provided to the employee** must state that a positive test result [shall be deemed misconduct and] may result in suspension or termination of employment.

[5. For this section to be applicable, testing] **4.** **Test results** shall be [conducted only if sufficient cause exists to suspect alcohol or controlled substance use by the claimant. If sufficient cause exists to suspect prior alcohol or controlled substance use by the claimant, or] **admissible if the employer's policy clearly states [that there will] an employee may be subject to random, preemployment, reasonable suspicion or post-accident testing**[, then testing of the claimant may be conducted randomly.

6. Notwithstanding any provision of this chapter to the contrary, any claimant found to be in violation of this section shall be subject to the cancellation of all or part of the claimants wage credits as provided by subdivision (2) of subsection 2 of section 288.050.

**7.] An employer may require a preemployment test for alcohol or controlled substance use as a condition of employment, and test results shall be admissible so long as the claimant was informed of the test requirement prior to taking the test. A random, preemployment, reasonable suspicion or post-accident test result, conducted under this section, which is positive for alcohol or controlled substance use shall be considered misconduct.**

5. The application [of the alcohol and controlled substance testing provisions] of this section **for alcohol and controlled substance testing, relating only to methods of testing,**

**criteria for testing, chain of custody for samples or specimens and due process for employee notification procedures** shall not apply in the event that the claimant is subject to the provisions of any applicable collective bargaining agreement, [which] **so long as said agreement** contains methods for alcohol or controlled substance testing **that meet or exceed the minimum standards established in this section**. Nothing in this chapter is intended to authorize any employer to test any applicant or employee for alcohol or drugs in any manner inconsistent with Missouri or United States constitution, law, statute or regulation, including those imposed by the Americans with Disabilities Act and the National Labor Relations Act.

[8.] **6.** All specimen collection [and testing] for drugs and alcohol under this chapter shall be performed in accordance with the procedures provided for by the United States Department of Transportation rules for workplace drug and alcohol testing compiled at 49 C.F.R., Part 40. Any employer that performs drug testing or specimen collection shall use chain-of-custody procedures established by regulations of the United States Department of Transportation. "Specimen" means tissue, fluid, or a product of the human body capable of revealing the presence of alcohol or drugs or their metabolites. "Chain of custody" refers to the methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances, and providing for accountability at each stage in handling, testing, and storing specimens and reporting test results.

[9. For this section to be applicable.] **7.** The employee may request that a confirmation test on the specimen be conducted. "Confirmation test" means a second analytical procedure used to identify the presence of a specific drug or alcohol or metabolite in a specimen, which test must be different in scientific principle from that of the initial test procedure and must be capable of providing requisite specificity, sensitivity and quantitative accuracy. In the event that a confirmation test is requested, such shall be obtained from a separate, unrelated certified laboratory and shall be at the employee's expense only if said test confirms **the original, positive test results** [as specified in subsection 2 of this section] . **For purposes of this section, "confirmation test" shall be a split specimen test.**

[10.] **8.** Use of a controlled substance as defined under section 195.010, RSMo, under and in conformity with the lawful order of a healthcare practitioner, shall not be deemed to be misconduct connected with work for the purposes of this section.

[11.] **9.** This section shall have no effect on employers who do not avail themselves of the requirements and regulations for alcohol and controlled drug testing determinations that are required to affirm misconduct connected with work findings.

[12.] **10.** Any employer that initiates an alcohol and drug testing policy after January 1, 2005, shall ensure that at least sixty days elapse between a general one-time notice to all employees that an alcohol and drug testing workplace policy is being implemented and the effective date of the program.

[13. (1) In applying provisions of this chapter, it is the intent of the legislature to reject and abrogate previous case law interpretations of "misconduct connected with work" requiring a finding of evidence of impairment of work performance, including, but not limited to, the holdings contained in *Baldor Electric Company v. Raylene Reasoner* and *Missouri Division of Employment Security*, 66 S.W.3d 130 (Mo.App. E.D. 2001).

(2) In determining whether or not misconduct connected with work has occurred, neither the state, any agency of the state, nor any court of the state of Missouri shall require a finding of evidence of impairment of work performance.

[14.] **11.** Notwithstanding any provision of this chapter to the contrary, any claimant found to be in violation of this section shall be subject to the cancellation of all or part of the claimants wage credits as provided by [subdivision (2) of] subsection 2 of section 288.050.

**288.046. GENERAL ASSEMBLY'S INTENT TO ABROGATE CERTAIN CASE LAW — DETERMINING MISCONDUCT, EVIDENCE OF IMPAIRMENT. — 1. In applying provisions of**

this chapter, it is the intent of the general assembly to reject and abrogate previous case law interpretations of "misconduct connected with work" requiring a finding of evidence of impairment of work performance, including but not limited to, the holdings contained in *Baldor Electric Company v. Raylene Reasoner and Missouri Division of Employment Security*, 66 S.W.3d 130 (Mo.App. E.D. 2001).

2. In determining whether misconduct connected with work has occurred, neither the state, any agency of the state, nor any court of the state of Missouri shall require a finding of evidence of impairment of work performance.

**288.050. BENEFITS DENIED UNEMPLOYED WORKERS, WHEN — PREGNANCY, REQUIREMENTS FOR BENEFIT ELIGIBILITY.** — 1. Notwithstanding the other provisions of this law, a claimant shall be disqualified for waiting week credit or benefits until after the claimant has earned wages for work insured pursuant to the unemployment compensation laws of any state equal to ten times the claimant's weekly benefit amount if the deputy finds:

(1) That the claimant has left work voluntarily without good cause attributable to such work or to the claimant's employer. A temporary employee of a temporary help firm will be deemed to have voluntarily quit employment if the employee does not contact the temporary help firm for reassignment prior to filing for benefits. Failure to contact the temporary help firm will not be deemed a voluntary quit unless the claimant has been advised of the obligation to contact the firm upon completion of assignments and that unemployment benefits may be denied for failure to do so. The claimant shall not be disqualified:

(a) If the deputy finds the claimant quit such work for the purpose of accepting a more remunerative job which the claimant did accept and earn some wages therein;

(b) If the claimant quit temporary work to return to such claimant's regular employer; or

(c) If the deputy finds the individual quit work, which would have been determined not suitable in accordance with paragraphs (a) and (b) of subdivision (3) of this subsection, within twenty-eight calendar days of the first day worked;

(d) As to initial claims filed after December 31, 1988, if the claimant presents evidence supported by competent medical proof that she was forced to leave her work because of pregnancy, notified her employer of such necessity as soon as practical under the circumstances, and returned to that employer and offered her services to that employer as soon as she was physically able to return to work, as certified by a licensed and practicing physician, but in no event later than ninety days after the termination of the pregnancy. An employee shall have been employed for at least one year with the same employer before she may be provided benefits pursuant to the provisions of this paragraph;

(2) That the claimant has retired pursuant to the terms of a labor agreement between the claimant's employer and a union duly elected by the employees as their official representative or in accordance with an established policy of the claimant's employer; or

(3) That the claimant failed without good cause either to apply for available suitable work when so directed by [the] a deputy of the division or designated staff of an employment office as defined in subsection 16 of section 288.030, or to accept suitable work when offered the claimant, either through the division or directly by an employer by whom the individual was formerly employed, or to return to the individual's customary self-employment, if any, when so directed by the deputy. An offer of work shall be rebuttably presumed if an employer notifies the claimant in writing of such offer by sending an acknowledgment via any form of certified mail issued by the United States Postal Service stating such offer to the claimant at the claimant's last known address. Nothing in this subdivision shall be construed to limit the means by which the deputy may establish that the claimant has or has not been sufficiently notified of available work.

(a) In determining whether or not any work is suitable for an individual, the division shall consider, among other factors and in addition to those enumerated in paragraph (b) of this subdivision, the degree of risk involved to the individual's health, safety and morals, the

individual's physical fitness and prior training, the individual's experience and prior earnings, the individual's length of unemployment, the individual's prospects for securing work in the individual's customary occupation, the distance of available work from the individual's residence and the individual's prospect of obtaining local work; except that, if an individual has moved from the locality in which the individual actually resided when such individual was last employed to a place where there is less probability of the individual's employment at such individual's usual type of work and which is more distant from or otherwise less accessible to the community in which the individual was last employed, work offered by the individual's most recent employer if similar to that which such individual performed in such individual's last employment and at wages, hours, and working conditions which are substantially similar to those prevailing for similar work in such community, or any work which the individual is capable of performing at the wages prevailing for such work in the locality to which the individual has moved, if not hazardous to such individual's health, safety or morals, shall be deemed suitable for the individual;

(b) Notwithstanding any other provisions of this law, no work shall be deemed suitable and benefits shall not be denied pursuant to this law to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- a. If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- b. If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- c. If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

2. If a deputy finds that a claimant has been discharged for misconduct connected with the claimant's work, such claimant shall be disqualified for waiting week credit and benefits, and no benefits shall be paid nor shall the cost of any benefits be charged against any employer for any period of employment within the base period until the claimant has earned wages for work insured under the unemployment laws of this state or any other state as prescribed in this section. In addition to the disqualification for benefits pursuant to this provision the division may in the more aggravated cases of misconduct, cancel all or any part of the individual's wage credits, which were established through the individual's employment by the employer who discharged such individual, according to the seriousness of the misconduct. A disqualification provided for pursuant to this subsection shall not apply to any week which occurs after the claimant has earned wages for work insured pursuant to the unemployment compensation laws of any state in an amount equal to six times the claimant's weekly benefit amount. **Should a claimant be disqualified on a second or subsequent occasion within the base period or subsequent to the base period the claimant shall be required to earn wages in an amount equal to or in excess of six times the claimant's weekly benefit amount for each disqualification.**

3. Absenteeism or tardiness may constitute a **rebuttable presumption** of misconduct, regardless of whether the last incident alone constitutes misconduct[. In determining whether the degree of absenteeism or tardiness constitutes a pattern for which misconduct may be found, the division shall consider whether] , **if** the discharge was the result of a violation of the employer's attendance policy, provided the employee had received knowledge of such policy prior to the occurrence of any absence or tardy upon which the discharge is based.

4. Notwithstanding the provisions of subsection 1 of this section, a claimant may not be determined to be disqualified for benefits because the claimant is in training approved pursuant to Section 236 of the Trade Act of 1974, as amended, (19 U.S.C.A. Sec. 2296, as amended), or because the claimant left work which was not "suitable employment" to enter such training. For the purposes of this subsection "suitable employment" means, with respect to a worker, work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work at not less than eighty percent of the worker's average weekly wage as determined for the purposes of the Trade Act of 1974.

**288.060. BENEFITS, HOW PAID — WAGE CREDITS — BENEFITS DUE DECEDENT — BENEFIT WARRANTS CANCELED, WHEN — ELECTRONIC FUNDS TRANSFER SYSTEM, ALLOWED — REMOTE CLAIMS FILING PROCEDURES REQUIRED, CONTENTS, DUTIES. — 1.**

All benefits shall be paid through employment offices in accordance with such regulations as the division may prescribe.

2. Each eligible insured worker who is totally unemployed in any week shall be paid for such week a sum equal to his or her weekly benefit amount.

3. Each eligible insured worker who is partially unemployed in any week shall be paid for such week a partial benefit. Such partial benefit shall be an amount equal to the difference between his or her weekly benefit amount and that part of his or her wages for such week in excess of twenty dollars, and, if such partial benefit amount is not a multiple of one dollar, such amount shall be reduced to the nearest lower full dollar amount. For calendar year 2007 and each year thereafter, such partial benefit shall be an amount equal to the difference between his or her weekly benefit amount and that part of his or her wages for such week in excess of twenty dollars or twenty percent of his or her weekly benefit amount, whichever is greater, and, if such partial benefit amount is not a multiple of one dollar, such amount shall be reduced to the nearest lower full dollar amount. Termination pay, severance pay or pay received by an eligible insured worker who is a member of the organized militia for training or duty authorized by section 502(a)(1) of Title 32, United States Code, shall not be considered wages for the purpose of this subsection.

4. The division shall compute the wage credits for each individual by crediting him or her with the wages paid to him or her for insured work during each quarter of his or her base period or twenty-six times his or her weekly benefit amount, whichever is the lesser. In addition, if a claimant receives wages in the form of termination pay or severance pay and such payment appears in a base period established by the filing of an initial claim, the claimant may, at his or her option, choose to have such payment included in the calendar quarter in which it was paid or choose to have it prorated equally among the quarters comprising the base period of the claim. The maximum total amount of benefits payable to any insured worker during any benefit year shall not exceed twenty-six times his or her weekly benefit amount, or thirty-three and one-third percent of his or her wage credits, whichever is the lesser. For the purpose of this section, wages shall be counted as wage credits for any benefit year, only if such benefit year begins subsequent to the date on which the employing unit by whom such wages were paid has become an employer. The wage credits of an individual earned during the period commencing with the end of a prior base period and ending on the date on which he or she filed an allowed initial claim shall not be available for benefit purposes in a subsequent benefit year unless, in addition thereto, such individual has subsequently earned either wages for insured work in an amount equal to at least five times his or her current weekly benefit amount or wages in an amount equal to at least ten times his or her current weekly benefit amount.

5. In the event that benefits are due a deceased person and no petition has been filed for the probate of the will or for the administration of the estate of such person within thirty days after his or her death, the division may by regulation provide for the payment of such benefits to such person or persons as the division finds entitled thereto and every such payment shall be a valid payment to the same extent as if made to the legal representatives of the deceased.

6. The division is authorized to cancel any benefit warrant remaining outstanding and unpaid one year after the date of its issuance and there shall be no liability for the payment of any such benefit warrant thereafter.

7. The division may establish an electronic funds transfer system to transfer directly to claimants' accounts in financial institutions benefits payable to them pursuant to this chapter. To receive benefits by electronic funds transfer, a claimant shall satisfactorily complete a direct deposit application form authorizing the division to deposit benefit payments into a designated checking or savings account. Any electronic funds transfer system created pursuant to this subsection shall be administered in accordance with regulations prescribed by the division.

8. The division may issue a benefit warrant covering more than one week of benefits.

9. Prior to January 1, 2005, the division shall institute procedures including, but not limited to, name, date of birth, and Social Security verification matches for remote claims filing via the use of telephone or the Internet in accordance with such regulations as the division shall prescribe. At a minimum, the division shall verify the Social Security number and date of birth when an individual claimant initially files for unemployment insurance benefits. If verification information does not match what is on file in division databases to what the individual is stating, the division shall require the claimant to submit a division-approved form requesting an affidavit of eligibility prior to the payment of additional future benefits. The division of employment security shall cross-check unemployment compensation applicants and recipients with Social Security Administration data maintained by the federal government [on the most frequent basis recommended by the United States Department of Labor, or absent a recommendation,] at least [monthly] **weekly**. The division of employment security shall cross-check at least monthly unemployment compensation applicants and recipients with department of revenue drivers license databases.

**288.120. EMPLOYER'S CONTRIBUTION RATE, HOW DETERMINED — EXCEPTION SHARED WORK PLAN, HOW COMPUTED — SURCHARGES FOR EMPLOYERS TAXED AT THE MAXIMUM RATE.** — 1. On each June thirtieth, or within a reasonable time thereafter as may be fixed by regulation, the balance of an employer's experience rating account, except an employer participating in a shared work plan under section 288.500, shall determine his contribution rate for the following calendar year as determined by the following table:

Percentage the Employer's Experience Rating Account is to that Employer's Average Annual Payroll		
Equals or Exceeds	Less Than	Contribution Rate
---	-12.0	6.0%
-12.0	-11.0	5.8%
-11.0	-10.0	5.6%
-10.0	-9.0	5.4%
-9.0	-8.0	5.2%
-8.0	-7.0	5.0%
-7.0	-6.0	4.8%
-6.0	-5.0	4.6%
-5.0	-4.0	4.4%
-4.0	-3.0	4.2%
-3.0	-2.0	4.0%
-2.0	-1.0	3.8%
-1.0	0	3.6%
0	2.5	2.7%
2.5	3.5	2.6%
3.5	4.5	2.5%
4.5	5.0	2.4%
5.0	5.5	2.3%
5.5	6.0	2.2%
6.0	6.5	2.1%
6.5	7.0	2.0%
7.0	7.5	1.9%
7.5	8.0	1.8%
8.0	8.5	1.7%
8.5	9.0	1.6%
9.0	9.5	1.5%
9.5	10.0	1.4%

10.0	10.5	1.3%
10.5	11.0	1.2%
11.0	11.5	1.1%
11.5	12.0	1.0%
12.0	12.5	0.9%
12.5	13.0	0.8%
13.0	13.5	0.6%
13.5	14.0	0.4%
14.0	14.5	0.3%
14.5	15.0	0.2%
15.0	---	0.0%

2. Using the same mathematical principles used in constructing the table provided in subsection 1 of this section, the following table has been constructed. The contribution rate for the following calendar year of any employer participating in a shared work plan under section 288.500 during the current calendar year or any calendar year during a prior three-year period shall be determined from the balance in such employer's experience rating account as of the previous June thirtieth, or within a reasonable time thereafter as may be fixed by regulation, from the following table:

Percentage the Employer's Experience Rating Account is to that Employer's Average Annual Payroll		
Equals or Exceeds	Less Than	Contribution Rate
---	-27.0	9.0%
-27.0	-26.0	8.8%
-26.0	-25.0	8.6%
-25.0	-24.0	8.4%
-24.0	-23.0	8.2%
-23.0	-22.0	8.0%
-22.0	-21.0	7.8%
-21.0	-20.0	7.6%
-20.0	-19.0	7.4%
-19.0	-18.0	7.2%
-18.0	-17.0	7.0%
-17.0	-16.0	6.8%
-16.0	-15.0	6.6%
-15.0	-14.0	6.4%
-14.0	-13.0	6.2%
-13.0	-12.0	6.0%
-12.0	-11.0	5.8%
-11.0	-10.0	5.6%
-10.0	-9.0	5.4%
-9.0	-8.0	5.2%
-8.0	-7.0	5.0%
-7.0	-6.0	4.8%
-6.0	-5.0	4.6%
-5.0	-4.0	4.4%
-4.0	-3.0	4.2%
-3.0	-2.0	4.0%
-2.0	-1.0	3.8%
-1.0	0	3.6%
0	2.5	2.7%
2.5	3.5	2.6%
3.5	4.5	2.5%

4.5	5.0	2.4%
5.0	5.5	2.3%
5.5	6.0	2.2%
6.0	6.5	2.1%
6.5	7.0	2.0%
7.0	7.5	1.9%
7.5	8.0	1.8%
8.0	8.5	1.7%
8.5	9.0	1.6%
9.0	9.5	1.5%
9.5	10.0	1.4%
10.0	10.5	1.3%
10.5	11.0	1.2%
11.0	11.5	1.1%
11.5	12.0	1.0%
12.0	12.5	0.9%
12.5	13.0	0.8%
13.0	13.5	0.6%
13.5	14.0	0.4%
14.0	14.5	0.3%
14.5	15.0	0.2%
15.0	---	0.0%

3. Notwithstanding the provisions of subsection 2 of section 288.090, any employer participating in a shared work plan under section 288.500 who has not had at least twelve calendar months immediately preceding the calculation date throughout which his account could have been charged with benefits shall have a contribution rate equal to the highest contribution rate in the table in subsection 2 of this section, until such time as his account has been chargeable with benefits for the period of time sufficient to enable him to qualify for a computed rate on the same basis as other employers participating in shared work plans.

4. Employers who have been taxed at the maximum rate pursuant to this section for two consecutive years shall have a surcharge of one-quarter percent added to their contribution rate calculated pursuant to this section. In the event that an employer remains at the maximum rate pursuant to this section for a third or subsequent year, an additional surcharge of one-quarter percent shall be annually assessed, but in no case shall [this] **the surcharge authorized in this subsection** cumulatively exceed one percent. Additionally, if an employer continues to remain at the maximum rate pursuant to this section an additional surcharge of one-half percent shall be assessed. In no case shall the total surcharge assessed to any employer exceed one and one-half percent in any given year.

**288.121. RATE INCREASED WHEN AVERAGE BALANCE IN FUND IS LESS THAN CERTAIN AMOUNT, HOW — RATE CALCULATIONS FOR CERTAIN YEARS.** — 1. On October first of each calendar year, if the average balance, less any federal advances, of the unemployment compensation trust fund of the four preceding quarters (September thirtieth, June thirtieth, March thirty-first and December thirty-first of the preceding calendar year) is less than four hundred fifty million dollars, then each employer's contribution rate calculated for the four calendar quarters of the succeeding calendar year shall be increased by the percentage determined from the following table:

Balance in Trust Fund		Percentage of Increase
Less Than	Equals or Exceeds	
\$450,000,000	\$400,000,000	
10%		

\$400,000,000	\$350,000,000
20%	
\$350,000,000	30%

For calendar years 2005, 2006, and 2007, the contribution rate of any employer who is paying the maximum contribution rate shall be increased by forty percent, instead of thirty percent as previously indicated in the table in this section.

2. For calendar [years 2005, 2006, and] **year 2007 and each year thereafter**, an employer's total contribution rate shall equal the employer's contribution rate plus a temporary debt indebtedness assessment equal to the amount to be determined in subdivision (6) of subsection 2 of section 288.330 added to the contribution rate plus the increase authorized under subsection 1 of this section. Any moneys overcollected beyond the actual administrative, interest and principal repayment costs for the credit instruments used shall be deposited into the state unemployment insurance trust fund and credited to the employer's experience account. [The temporary debt indebtedness assessment shall expire upon the last day of the fourth calendar quarter of 2007.]

**288.122. IF CASH IN FUND EXCEEDS CERTAIN AMOUNTS, CONTRIBUTION RATE TO DECREASE, AMOUNT — TABLE — EFFECTIVE WHEN.** — On October first of each calendar year, if the average balance, less any federal advances, of the unemployment compensation trust fund of the four preceding quarters (September thirtieth, June thirtieth, March thirty-first and December thirty-first of the preceding calendar year) is more than [five] **six** hundred million dollars, then each employer's contribution rate calculated for the four calendar quarters of the succeeding calendar year shall be decreased by the percentage determined from the following table:

		Balance in Trust Fund	
More Than	[But] Equal to or	Less Than	Percentage of Decrease
\$600,000,000	\$750,000,000		7%
\$750,000,000			12%

Notwithstanding the table in this section, if the balance in the unemployment insurance compensation trust fund as calculated in this section is more than seven hundred fifty million dollars, the percentage of decrease of the employer's contribution rate calculated for the four calendar quarters of the succeeding calendar year shall be no greater than ten percent for any employer whose calculated contribution rate under section 288.120 is six percent or greater.

**288.128. ADDITIONAL ASSESSMENT FOR INTEREST ON FEDERAL ADVANCEMENTS AND PROCEEDS OF CREDIT INSTRUMENTS, PROCEDURE — EXCESS COLLECTIONS, USE OF — CREDIT INSTRUMENT AND FINANCING AGREEMENT REPAYMENT SURCHARGE.** — 1. [In addition to all other contributions due under this chapter,] If the fund is utilizing moneys advanced by the federal government under the provisions of 42 U.S.C.A., Section 1321 pursuant to section 288.330, [or if the fund is not utilizing moneys advanced by the federal government, then from the proceeds of credit instruments issued under section 288.330, or from the moneys advanced under financial agreements under subdivision (17) of subsection 2 of section 288.330, or a combination of credit instruments proceeds and moneys advanced under financial agreements,] each employer [shall] **may** be assessed an amount solely for the payment of interest due on such federal advancements[, or if the fund is not utilizing moneys advanced by the federal government, or in the case of issuance of credit instruments for the payment of the principal, interest, and administrative expenses related to such credit instruments, or in the case of financial

agreements for the payment of principal, interest, and administrative expenses related to such financial agreements, or in the case of a combination of credit instruments and financial agreements for the payment of principal, interest, and administrative expenses for both]. The rate shall be determined by dividing the interest due on federal advancements [or if the fund is not utilizing moneys advanced by the federal government, then the principal, interest, and administrative expenses related to credit instruments, or the principal, interest, and administrative expenses related to financial agreements under subdivision (17) of subsection 2 of section 288.330, or the principal, interest, and administrative expenses related to a combination of credit instruments and financial agreements] by ninety-five percent of the total taxable wages paid by all Missouri employers in the preceding calendar year. Each employer's proportionate share shall be the product obtained by multiplying such employer's total taxable wages for the preceding calendar year by the rate specified in this section. Each employer shall be notified of the amount due under this section by June thirtieth of each year and such amount shall be considered delinquent thirty days thereafter. The moneys collected from each employer for the payment of interest due on federal advances[, or if the fund is not utilizing moneys advanced by the federal government, then the payment of principal, interest, and administrative expenses related to credit instruments, or the payment of the principal, interest, and administrative expenses related to financial agreements under subdivision (17) of subsection 2 of section 288.330, or the payment of the principal, interest, and administrative expenses related to a combination of credit instruments and financial agreements,] shall be deposited in the special employment security fund.

2. If on December thirty-first of any year the money collected under [this] **subsection 1 of this** section exceeds the amount of interest due on federal advancements by one hundred thousand dollars or more, then each employer's experience rating account shall be credited with an amount which bears the same ratio to the excess moneys collected under this section as that employer's payment collected under this section bears to the total amount collected under this section. Further, if on December thirty-first of any year the moneys collected under this section exceed the amount of interest due on the federal advancements by less than one hundred thousand dollars, the balance shall be transferred from the special employment security fund to the Secretary of the Treasury of the United States to be credited to the account of this state in the unemployment trust fund.

3. [In addition to all other contributions due under this chapter,] If the fund is utilizing moneys from the proceeds of credit instruments issued under section 288.330, or from the moneys advanced under financial agreements under subdivision (17) of subsection 2 of section 288.330, or a combination of credit instrument proceeds and moneys advanced under financial agreements each employer [shall] **may** be assessed a credit instrument and financing agreement repayment surcharge. The total of such surcharge shall be calculated as an amount up to one hundred fifty percent of the amount required in the twelve-month period following the due date for the payment of such surcharge for the payment of the principal, interest, and administrative expenses related to such credit instruments, or in the case of financial agreements for the payment of principal, interest, and administrative expenses related to such financial agreements, or in the case of a combination of credit instruments and financial agreements for the payment of principal, interest, and administrative expenses for both. **The total annual surcharge to be collected shall be calculated by the division as a percentage of the total statewide contributions collected during the previous calendar year.** Each employer's proportionate share shall be the product obtained by multiplying the [total statewide credit instrument and financing agreement repayment surcharge by a number obtained by dividing the employer's total taxable wages for the prior year by the total taxable wages in the state for the prior year] **percentage calculated under this subsection by each employer's contributions due under this chapter for each filing period during the preceding calendar year.** Each employer shall be notified **by the division** of the amount due under this section by [(January)] **April** thirtieth of each year and such amount shall be considered delinquent thirty days thereafter.

**288.175. DEBTOR'S FEDERAL INCOME TAX REFUND MAY BE INTERCEPTED — DEBT DEFINED — DEBTOR DEFINED — USE OF COLLECTION AGENCIES AUTHORIZED.** — 1. Notwithstanding any other provisions to the contrary, the division may collect any debt by interception of the debtor's federal income tax refund, in the manner and to the extent allowed by federal law.

2. "Debt" shall mean any established overpayment or sum past due that is legally owed and enforceable under the Missouri employment security law, which has accrued through contract or operation of law and which has become final under state law and remains uncollected.

3. "Debtor" shall mean any individual, sole proprietorship, partnership, corporation, limited liability company, or other legal entity owing a debt.

**4. The division may utilize collection agencies to collect any debt as defined in this section to the extent and manner allowed by federal law.**

**288.190. ADMINISTRATIVE APPEALS ON DISPUTED DETERMINATIONS — PARTY SUBJECT TO APPEAL DECISION, RIGHT TO COUNSEL.** — 1. The director shall designate an impartial referee or referees to hear and decide disputed determinations, claims referred pursuant to subsection 2 of section 288.070, and petitions for reassessment. No employee of the division shall participate on behalf of the division in any case in which the division employee is an interested party.

2. The manner in which disputed determinations, referred claims, and petitions for reassessment shall be presented and the conduct of hearings shall be in accordance with regulations prescribed by the division for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules of procedure. When the same or substantially similar evidence is relevant and material to the matters in issue in claims by more than one individual or in claims by a single individual in respect to two or more weeks of unemployment, the same time and place for considering each such claim or claims may be fixed, hearings thereon jointly conducted, a single record of the proceedings made, and evidence introduced with respect to one proceeding considered as introduced in the others, if in the judgment of the appeals tribunal or the commission having jurisdiction of the proceeding such consolidation would not be prejudicial to any party. A full and complete record shall be kept of all proceedings in connection with a disputed determination, referred claim, or petition for reassessment. The appeals tribunal shall include in the record and consider as evidence all records of the division that are material to the issues. All testimony at any hearing shall be recorded but need not be transcribed unless the matter is further appealed.

3. Unless an appeal on a disputed determination or referred claim is withdrawn, an appeals tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm, modify, or reverse the determination of the deputy, or shall remand the matter to the deputy with directions. In addition, in any case wherein the appellant, after having been duly notified of the date, time, and place of the hearing, shall fail to appear at such hearing, the appeals tribunal may enter an order dismissing the appeal. The director may transfer to another appeals tribunal the proceedings on an appeal determination before an appeals tribunal. The parties shall be duly notified of an appeals tribunal's decision or order, together with its reason therefor, which shall be deemed to be the final decision or order of the division unless, within thirty days after the date of notification or mailing of such decision, further appeal is initiated pursuant to section 288.200; except that, within thirty days of either notification or mailing of the appeals tribunal's decision or order, the appeals tribunal, on its own motion, **or on motion of any party to the case**, may reconsider any decision or order when it appears that such reconsideration is essential to the accomplishment of the object and purpose of this law. **The authority of the appeals tribunal to reconsider any decision or order under this section shall continue throughout the thirty-day time limit, regardless of whether any party has initiated further appeal under section 288.200 during the thirty-day period.**

4. Unless a petition for reassessment is withdrawn or is allowed without a hearing, the petitioners shall be given a reasonable opportunity for a fair hearing before an appeals tribunal upon each such petition. The appeals tribunal shall promptly notify the interested parties of its decision upon such petition together with its reason therefor. In addition, in any case wherein the appellant, after having been duly notified of the date, time, and place of the hearing, shall fail to appear at such hearing, the appeals tribunal may enter an order dismissing the appeal. In the absence of the filing of an application for review of such decision, the decision, whether it results in a reassessment or otherwise, shall become final thirty days after the date of notification or mailing thereof; except that, within thirty days of either notification or mailing of the appeals tribunal's decision or order, the appeals tribunal, on its own motion, **or on motion of any party to the case**, may reconsider any decision or order when it appears that such reconsideration is essential to the accomplishment of the object and purposes of this law. **The authority of the appeals tribunal to reconsider any decision under this section shall continue throughout the thirty-day time limit, regardless of whether any party has initiated further appeal under section 288.200 during that thirty-day period.**

5. Any party subject to any decision of an appeals tribunal pursuant to this chapter has a right to counsel and shall be notified prior to a hearing conducted pursuant to this chapter that a decision of the appeals tribunal is presumptively conclusive for the purposes of this chapter as provided in section 288.200.

**288.330. STATE LIABILITY FOR BENEFITS LIMITED, AUTHORITY FOR APPLICATION AND REPAYMENT OF FEDERAL ADVANCES — BOARD OF UNEMPLOYMENT FUND FINANCING CREATED, DUTIES, REQUIREMENTS, POWERS — DISPOSITION OF UNOBLIGATED FUNDS. —**

1. Benefits shall be deemed to be due and payable only to the extent that moneys are available to the credit of the unemployment compensation fund and neither the state nor the division shall be liable for any amount in excess of such sums. The governor is authorized to apply for an advance to the state unemployment fund and to accept the responsibility for the repayment of such advance in order to secure to this state and its citizens the advantages available under the provisions of federal law.

2. (1) The purpose of this subsection is to provide a method of providing funds for the payment of unemployment benefits or maintaining an adequate fund balance in the unemployment compensation fund, and as an alternative to borrowing or obtaining advances from the federal unemployment trust fund or for refinancing those loans or advances.

(2) For the purposes of this subsection, "credit instrument" means any type of borrowing obligation issued under this section, including any bonds, commercial line of credit note, tax anticipation note or similar instrument.

(3) (a) There is hereby created for the purposes of implementing the provisions of this subsection a body corporate and politic to be known as the "Board of Unemployment Fund Financing". The powers of the board shall be vested in five board members who shall be the governor, lieutenant governor, attorney general, director of the department of labor, and the commissioner of administration. The board shall have all powers necessary to effectuate its purposes including, without limitation, the power to provide a seal, keep records of its proceedings, and provide for professional services. The governor shall serve as chair, the lieutenant governor shall serve as vice chair, and the commissioner of administration shall serve as secretary. Staff support for the board shall be provided by the commissioner of administration;

(b) Notwithstanding the provisions of any other law to the contrary:

a. No officer or employee of this state shall be deemed to have forfeited or shall forfeit his or her office or employment by reason of his or her acceptance of an appointment as a board member or for his or her service to the board;

b. Board members shall receive no compensation for the performance of their duties under this subsection, but each commissioner shall be reimbursed from the funds of the

commission for his or her actual and necessary expenses incurred in carrying out his or her official duties under this subsection.

(c) In the event that any of the board members or officers of the board whose signatures or facsimile signatures appear on any credit instrument shall cease to be board members or officers before the delivery of such credit instrument, their signatures or facsimile signatures shall be valid and sufficient for all purposes as if such board members or officers had remained in office until delivery of such credit instrument.

(d) Neither the board members executing the credit instruments of the board nor any other board members shall be subject to any personal liability or accountability by reason of the issuance of the credit instruments.

(4) The board is authorized, by offering for public negotiated sale, to issue, sell, and deliver credit instruments, bearing interest at a fixed or variable rate as shall be determined by the board, which shall mature no later than [three] **ten** years after issuance, in the name of the board in an amount determined by the board [not to exceed a total of four hundred fifty million dollars, less the principal amount of any financing agreement entered into under subdivision (17) of this subsection], **provided that the unpaid principal amount of any outstanding credit instruments, combined with the unpaid principal amount of any financing agreement entered into under subdivision (17) of this subsection, shall not exceed four hundred fifty million dollars at any one time. Such credit instruments may be issued, sold, and delivered** for the purposes set forth in subdivision (1) of this subsection. Such credit instrument may only be issued upon the approval of a resolution authorizing such issuance by a simple majority of the members of the board, with no other proceedings required. [No credit instrument may be outstanding hereunder after January 15, 2008.]

(5) The board shall provide for the payment of the principal of the credit instruments, any redemption premiums, the interest on the credit instruments, and the costs attributable to the credit instruments being issued or outstanding as provided in this **chapter** [subsection and in section 288.310]. Unless the board directs otherwise, the credit instrument shall be repaid in the same time frame and in the same amounts as would be required for loans issued pursuant to 42 U.S.C. Section 1321; however, in no case shall credit instruments be outstanding for more than [three] **ten** years [and further provided that no credit instruments shall be outstanding hereunder after January 15, 2008].

(6) The board may irrevocably pledge money received from the credit instrument and financing agreement repayment surcharge under subsection 3 of section 288.128, and other money legally available to it, which is deposited in an account [created] **authorized** for credit instrument repayment in the special employment security fund, provided that the general assembly has first appropriated moneys received from such surcharge and other moneys deposited in such account for the payment of credit instruments.

(7) Credit instruments issued under this section shall not constitute debts of this state or of the board or any agency, political corporation, or political subdivision of this state and are not a pledge of the faith and credit of this state, the board or of any of those governmental entities and shall not constitute an indebtedness within the meaning of any constitutional or statutory limitation upon the incurring of indebtedness. The credit instruments are payable only from revenue provided for under this chapter. The credit instruments shall contain a statement to the effect that:

(a) Neither the state nor the board nor any agency, political corporation, or political subdivision of the state shall be obligated to pay the principal or interest on the credit instruments except as provided by this section; and

(b) Neither the full faith and credit nor the taxing power of the state nor the board nor any agency, political corporation, or political subdivision of the state is pledged to the payment of the principal, premium, if any, or interest on the credit instruments.

(8) The board pledges and agrees with the owners of any credit instruments issued under this section that the state will not limit or alter the rights vested in the board to fulfill the terms

of any agreements made with the owners or in any way impair the rights and remedies of the owners until the credit instruments are fully discharged.

(9) The board may prescribe the form, details, and incidents of the credit instruments and make such covenants that in its judgment are advisable or necessary to properly secure the payment thereof. If such credit instruments shall be authenticated by the bank or trust company acting as registrar for such by the manual signature of a duly authorized officer or employee thereof, the duly authorized officers of the board executing and attesting such credit instruments may all do so by facsimile signature provided such signatures have been duly filed as provided in the uniform facsimile signature of public officials law, sections 105.273 to 105.278, RSMo, when duly authorized by resolution of the board, and the provisions of section 108.175, RSMo, shall not apply to such credit instruments. The board may provide for the flow of funds and the establishment and maintenance of separate accounts within the special employment security fund, including the interest and sinking account, the reserve account, and other necessary accounts, and may make additional covenants with respect to the credit instruments in the documents authorizing the issuance of credit instruments including refunding credit instruments. The resolutions authorizing the issuance of credit instruments may also prohibit the further issuance of credit instruments or other obligations payable from appropriated moneys or may reserve the right to issue additional credit instruments to be payable from appropriated moneys on a parity with or subordinate to the lien and pledge in support of the credit instruments being issued and may contain other provisions and covenants as determined by the board, provided that any terms, provisions or covenants provided in any resolution of the board shall not be inconsistent with the provisions of this section.

(10) The board may issue credit instruments to refund all or any part of the outstanding credit instruments issued under this section including matured but unpaid interest. As with other credit instruments issued under this section, such refunding credit instruments may bear interest at a fixed or variable rate as determined by the board. [No such refunding credit instruments may be outstanding for more than three years or after January 15, 2008.]

(11) The credit instruments issued by the board, any transaction relating to the credit instruments, and profits made from the sale of the credit instruments are free from taxation by the state or by any municipality, court, special district, or other political subdivision of the state.

(12) As determined necessary by the board the proceeds of the credit instruments less the cost of issuance shall be placed in the state's unemployment compensation fund and may be used for the purposes for which that fund may otherwise be used. If those net proceeds are not placed immediately in the unemployment compensation fund they shall be held in the special employment security fund in an account designated for that purpose until they are transferred to the unemployment compensation fund provided that the proceeds of refunding credit instruments may be placed in an escrow account or such other account or instrument as determined necessary by the board.

(13) The board may enter into any contract or agreement deemed necessary or desirable to effectuate cost-effective financing hereunder. Such agreements may include credit enhancement, credit support, or interest rate agreements including, but not limited to, arrangements such as municipal bond insurance; surety bonds; tax anticipation notes; liquidity facilities; forward agreements; tender agreements; remarketing agreements; option agreements; interest rate swap, exchange, cap, lock or floor agreements; letters of credit; and purchase agreements. Any fees or costs associated with such agreements shall be deemed administrative expenses for the purposes of calculating the credit instrument and financing agreement repayment surcharge under subsection 3 of section 288.128. The board, with consideration of all other costs being equal, shall give preference to Missouri-headquartered financial institutions, or those out-of-state-based financial institutions with at least one hundred Missouri employees.

(14) To the extent this section conflicts with other laws the provisions of this section prevail. This section shall not be subject to the provisions of sections 23.250 to 23.298, RSMo.

(15) If the United States Secretary of Labor holds that a provision of this subsection or of any provision related to the levy or use of the credit instrument and financial agreement repayment surcharge does not conform with a federal statute or would result in the loss to the state of any federal funds otherwise available to it the board, in cooperation with the department of labor and industrial relations, may administer this subsection, and other provisions related to the credit instrument and financial agreement repayment surcharge, to conform with the federal statute until the general assembly meets in its next regular session and has an opportunity to amend this subsection or other sections, as applicable.

(16) Nothing in this chapter shall be construed to prohibit the officials of the state from borrowing from the government of the United States in order to pay unemployment benefits under subsection 1 of this section or otherwise.

(17) (a) As used in this subdivision the term "lender" means any state or national bank.

(b) The board is authorized to enter financial agreements with any lender for the purposes set forth in subdivision (1) of this subsection, or to refinance other financial agreements in whole or in part, upon the approval of the simple majority of the members of the board of a resolution authorizing such financial agreements, with no other proceedings required. The total amount of the outstanding obligation under all such agreements **at any one time** shall not exceed the difference of four hundred fifty million dollars and the principal amount of credit instruments [issued] **outstanding** under this subsection. In no instance shall the outstanding obligation under any financial agreement continue for more than [three] **ten** years[, and no such financial agreement, whether entered into for refinancing purposes or otherwise, shall be outstanding after January 15, 2008]. Repayment of obligations to lenders shall be made from the special employment security fund, section 288.310, subject to appropriation by the general assembly.

(c) Financial agreements entered into under this subdivision shall not constitute debts of this state or of the board or any agency, political corporation, or political subdivision of this state and are not a pledge of the faith and credit of this state, the board or of any of those governmental entities and shall not constitute an indebtedness within the meaning of any constitutional or statutory limitation upon the incurring of indebtedness. The financial agreements are payable only from revenue provided for under this chapter. The financial agreements shall contain a statement to the effect that:

a. Neither the state nor the board nor any agency, political corporation, or political subdivision of the state shall be obligated to pay the principal or interest on the financial agreements except as provided by this section; and

b. Neither the full faith and credit nor the taxing power of the state nor the board nor any agency, political corporation, or political subdivision of the state is pledged to the payment of the principal, premium, if any, or interest on the financial agreements.

(d) Neither the board members executing the financial agreements nor any other board members shall be subject to any personal liability or accountability by reason of the execution of such financial agreements.

(e) The board may prescribe the form, details and incidents of the financing agreements and make such covenants that in its judgment are advisable or necessary to properly secure the payment thereof provided that any terms, provisions or covenants provided in any such financing agreement shall not be inconsistent with the provisions of this section. If such financing agreements shall be authenticated by the bank or trust company acting as registrar for such by the manual signature of a duly authorized officer or employee thereof, the duly authorized officers of the board executing and attesting such financing agreements may all do so by facsimile signature provided such signatures have been duly filed as provided in the uniform facsimile signature of public officials law, sections 105.273 to 105.278, RSMo, when duly authorized by resolution of the board and the provisions of section 108.175, RSMo, shall not apply to such financing agreements.

(18) The commission may issue credit instruments to refund all or any part of the outstanding borrowing issued under this section including matured but unpaid interest.

(19) The credit instruments issued by the commission, any transaction relating to the credit instruments, and profits made from the issuance of credit are free from taxation by the state or by any municipality, court, special district, or other political subdivision of the state.

3. In event of the suspension of this law, any unobligated funds in the unemployment compensation fund, and returned by the United States Treasurer because such Federal Social Security Act is inoperative, shall be held in custody by the treasurer and under supervision of the division until the legislature shall provide for the disposition thereof. In event no disposition is made by the legislature at the next regular meeting subsequent to suspension of said law, then all unobligated funds shall be returned ratably to those who contributed thereto.

4. For purposes of this section, as contained in senate substitute no. 2 for senate committee substitute for house substitute for house committee substitute for house bill nos. 1268 and 1211, ninety-second general assembly, second regular session, the revisor of statutes shall renumber subdivision (16) of subsection 2 of such section as subdivision (17) of such subsection and renumber subdivision (17) of subsection 2 of such section as subdivision (16) of such subsection.

**288.380. VOID AGREEMENTS — OFFENSES, PENALTIES — DEDUCTIONS OF SUPPORT OBLIGATIONS AND UNCOLLECTED OVERISSUANCE OF FOOD STAMPS — OFFSET FOR OVERPAYMENT OF BENEFITS BY OTHER STATES, WHEN — DEFINITIONS. —**

1. Any agreement by a worker to waive, release, or commute such worker's rights to benefits or any other rights pursuant to this chapter or pursuant to an employment security law of any other state or of the federal government shall be void. Any agreement by a worker to pay all or any portion of any contributions required shall be void. No employer shall directly or indirectly make any deduction from wages to finance the employer's contributions required from him or her, or accept any waiver of any right pursuant to this chapter by any individual in his or her employ.

2. No employing unit or any agent of an employing unit or any other person shall make a false statement or representation knowing it to be false, nor shall knowingly fail to disclose a material fact to prevent or reduce the payment of benefits to any individual, nor to avoid becoming or remaining an employer, nor to avoid or reduce any contribution or other payment required from any employing unit, nor shall willfully fail or refuse to make any contributions or payments nor to furnish any required reports nor to produce or permit the inspection or copying of required records. Each such requirement shall apply regardless of whether it is a requirement of this chapter, of an employment security law of any other state or of the federal government.

3. No person shall make a false statement or representation knowing it to be false or knowingly fail to disclose a material fact, to obtain or increase any benefit or other payment pursuant to this chapter, or under an employment security law of any other state or of the federal government either for himself or herself or for any other person.

4. No person shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in such person's power so to do in obedience to a subpoena of the director, the commission, an appeals tribunal, or any duly authorized representative of any one of them.

5. No individual claiming benefits shall be charged fees of any kind in any proceeding pursuant to this chapter by the division, or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the division or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the division.

6. No employee of the division or any person who has obtained any list of applicants for work or of claimants for or recipients of benefits pursuant to this chapter shall use or permit the use of such lists for any political purpose.

7. Any person who shall willfully violate any provision of this chapter, or of an employment security law of any other state or of the federal government or any rule or

regulation, the observance of which is required under the terms of any one of such laws, shall upon conviction be deemed guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment, and each such violation or each day such violation continues shall be deemed to be a separate offense.

8. In case of contumacy by, or refusal to obey a subpoena issued to, any person, any court of this state within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the director, the commission, an appeals tribunal, or any duly authorized representative of any one of them shall have jurisdiction to issue to such person an order requiring such person to appear before the director, the commission, an appeals tribunal or any duly authorized representative of any one of them, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by the court as a contempt thereof.

9. (1) Any individual or employer who receives or denies unemployment benefits by intentionally misrepresenting, misstating, or failing to disclose any material fact has committed fraud. After the discovery of facts indicating fraud, a deputy shall make a written determination that the individual obtained or denied unemployment benefits by fraud and that the individual must promptly repay the unemployment benefits to the fund. In addition, the deputy shall assess a penalty equal to twenty-five percent of the amount fraudulently obtained or denied. If division records indicate that the individual or employer had a prior established overpayment or record of denial due to fraud, the deputy shall, on the present overpayment or determination, assess a penalty equal to one hundred percent of the amount fraudulently obtained.

(2) Unless the individual or employer within thirty calendar days after notice of such determination of overpayment by fraud is either delivered in person or mailed to the last known address of such individual or employer files an appeal from such determination, it shall be final. Proceedings on the appeal shall be conducted in accordance with section 288.190.

(3) If the individual or employer fails to repay the unemployment benefits and penalty, assessed as a result of the deputy's determination that the individual or employer obtained or denied unemployment benefits by fraud, such sum shall be collectible in the manner provided in sections 288.160 and 288.170 for the collection of past due contributions. If the individual or employer fails to repay the unemployment benefits that the individual or employer denied or obtained by fraud, the division may offset from any future unemployment benefits otherwise payable the amount of the overpayment, or may take such steps as are necessary to effect payment from the individual or employer. Future benefits may not be used to offset the penalty due. Money received in repayment of fraudulently obtained or denied unemployment benefits and penalties shall first be applied to the unemployment benefits overpaid, then to the penalty amount due. Payments made toward the penalty amount due shall be credited to the special employment security fund.

(4) If fraud or evasion on the part of any employer is discovered by the division, the employer will be subject to the fraud provisions of subsection 4 of section 288.160.

(5) The provisions of this subsection shall become effective July 1, 2005.

10. An individual who willfully fails to disclose amounts earned during any week with respect to which benefits are claimed by him or her, willfully fails to disclose or has falsified as to any fact which would have disqualified him or her or rendered him or her ineligible for benefits during such week, or willfully fails to disclose a material fact or makes a false statement or representation in order to obtain or increase any benefit pursuant to this chapter shall forfeit all of his or her benefit rights, and all of his or her wage credits accrued prior to the date of such failure to disclose or falsification shall be canceled, and any benefits which might otherwise have become payable to him or her subsequent to such date based upon such wage credits shall be forfeited; except that, the division may, upon good cause shown, modify such reduction of benefits and cancellation of wage credits. It shall be presumed that such failure or falsification

was willful in any case in which an individual signs and certifies a claim for benefits and fails to disclose or falsifies as to any fact relative to such claim.

11. (1) Any assignment, pledge, or encumbrance of any rights to benefits which are or may become due or payable pursuant to this chapter shall be void; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or the individual's spouse or dependents during the time such individual was unemployed. Any waiver of any exemption provided for in this subsection shall be void; except that this section shall not apply to:

(a) Support obligations, as defined pursuant to paragraph (g) of subdivision (2) of this subsection, which are being enforced by a state or local support enforcement agency against any individual claiming unemployment compensation pursuant to this chapter; or

(b) Uncollected overissuances (as defined in Section 13(c)(1) of the Food Stamp Act of 1977) of food stamp coupons;

(2) (a) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not the individual owes support obligations, as defined pursuant to paragraph (g) of this subdivision or owes uncollected overissuances of food stamp coupons (as defined in Section 13(c)(1) of the Food Stamp Act of 1977). If any such individual discloses that he or she owes support obligations or uncollected overissuances of food stamp coupons, and is determined to be eligible for unemployment compensation, the division shall notify the state or local support enforcement agency enforcing the support obligation or the state food stamp agency to which the uncollected food stamp overissuance is owed that such individual has been determined to be eligible for unemployment compensation;

(b) The division shall deduct and withhold from any unemployment compensation payable to an individual who owes support obligations as defined pursuant to paragraph (g) of this subdivision or who owes uncollected food stamp overissuances:

a. The amount specified by the individual to the division to be deducted and withheld pursuant to this paragraph if neither subparagraph b. nor subparagraph c. of this paragraph is applicable; or

b. The amount, if any, determined pursuant to an agreement submitted to the division pursuant to Section 454(20)(B)(i) of the Social Security Act by the state or local support enforcement agency, unless subparagraph c. of this paragraph is applicable; or the amount (if any) determined pursuant to an agreement submitted to the state food stamp agency pursuant to Section 13(c)(3)(a) of the Food Stamp Act of 1977; or

c. Any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to properly served legal process, as that term is defined in Section 459(i) of the Social Security Act; or any amount otherwise required to be deducted and withheld from the unemployment compensation pursuant to Section 13(c)(3)(b) of the Food Stamp Act of 1977;

(c) Any amount deducted and withheld pursuant to paragraph (b) of this subdivision shall be paid by the division to the appropriate state or local support enforcement agency or state food stamp agency;

(d) Any amount deducted and withheld pursuant to paragraph (b) of this subdivision shall, for all purposes, be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the state or local support enforcement agency in satisfaction of the individual's support obligations or to the state food stamp agency to which the uncollected overissuance is owed as repayment of the individual's uncollected overissuance;

(e) For purposes of paragraphs (a), (b), (c), and (d) of this subdivision, the term "unemployment compensation" means any compensation payable pursuant to this chapter,

including amounts payable by the division pursuant to an agreement pursuant to any federal law providing for compensation, assistance, or allowances with respect to unemployment;

(f) Deductions will be made pursuant to this section only if appropriate arrangements have been made for reimbursement by the state or local support enforcement agency, or the state food stamp agency, for the administrative costs incurred by the division pursuant to this section which are attributable to support obligations being enforced by the state or local support enforcement agency or which are attributable to uncollected overissuances of food stamp coupons;

(g) The term "support obligations" is defined for purposes of this subsection as including only obligations which are being enforced pursuant to a plan described in Section 454 of the Social Security Act which has been approved by the Secretary of Health and Human Services pursuant to Part D of Title IV of the Social Security Act;

(h) The term "state or local support enforcement agency", as used in this subsection, means any agency of a state, or political subdivision thereof, operating pursuant to a plan described in paragraph (g) of this subdivision;

(i) The term "state food stamp agency" as used in this subsection, means any agency of a state, or political subdivision thereof, operating pursuant to a plan described in the Food Stamp Act of 1977;

(j) The director may prescribe the procedures to be followed and the form and contents of any documents required in carrying out the provisions of this subsection;

(k) The division shall comply with the following priority when deducting and withholding amounts from any unemployment compensation payable to an individual:

a. Before withholding any amount for child support obligations or uncollected overissuances of food stamp coupons, the division shall first deduct and withhold from any unemployment compensation payable to an individual the amount, as determined by the division, owed pursuant to subsection 12 or 13 of this section;

b. If, after deductions are made pursuant to subparagraph a. of this paragraph, an individual has remaining unemployment compensation amounts due and owing, and the individual owes support obligations or uncollected overissuances of food stamp coupons, the division shall first deduct and withhold any remaining unemployment compensation amounts for application to child support obligations owed by the individual;

c. If, after deductions are made pursuant to subparagraphs a. and b. of this paragraph, an individual has remaining unemployment compensation amounts due and owing, and the individual owes uncollected overissuances of food stamp coupons, the division shall deduct and withhold any remaining unemployment compensation amounts for application to uncollected overissuances of food stamp coupons owed by the individual.

12. Any person who, by reason of the nondisclosure or misrepresentation by such person or by another of a material fact, has received any sum as benefits pursuant to this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in such person's case, or while he or she was disqualified from receiving benefits, shall, in the discretion of the division, either be liable to have such sums deducted from any future benefits payable to such person pursuant to this chapter or shall be liable to repay to the division for the unemployment compensation fund a sum equal to the amounts so received by him or her[, and such sum shall be collectible in the manner provided in sections 288.160 and 288.170 for the collection of past due contributions].

13. Any person who, by reason of any error or omission or because of a lack of knowledge of material fact on the part of the division, has received any sum of benefits pursuant to this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in such person's case, or while such person was disqualified from receiving benefits, shall after an opportunity for a fair hearing pursuant to subsection 2 of section 288.190 have such sums deducted from any further benefits payable to such person pursuant to this chapter, provided that the division may elect not to process such possible overpayments where the amount of same is not over twenty percent of the maximum state weekly benefit amount in effect at the time the

error or omission was discovered. [Recovering overpaid unemployment compensation benefits which are a result of error or omission on the part of the claimant shall be pursued by the division through billing and setoffs against state income tax refunds.]

**14. Recovering overpaid unemployment compensation benefits shall be pursued by the division against any person receiving such overpaid unemployment compensation benefits through billing, setoffs against state and federal tax refunds to the extent permitted by federal law, intercepts of lottery winnings under section 313.321, RSMo, and collection efforts as provided for in sections 288.160, 288.170, and 288.175.**

**15.** Any person who has received any sum as benefits under the laws of another state, or under any unemployment benefit program of the United States administered by another state while any conditions for the receipt of benefits imposed by the law of such other state were not fulfilled in his or her case, shall after an opportunity for a fair hearing pursuant to subsection 2 of section 288.190 have such sums deducted from any further benefits payable to such person pursuant to this chapter, but only if there exists between this state and such other state a reciprocal agreement under which such entity agrees to recover benefit overpayments, in like fashion, on behalf of this state.

**288.381. COLLECTION OF BENEFITS PAID WHEN CLAIMANT LATER DETERMINED INELIGIBLE OR AWARDED BACK PAY — VIOLATION, DAMAGES.** — 1. The provisions of subsection 6 of section 288.070 notwithstanding, benefits paid to a claimant pursuant to subsection 5 of section 288.070 to which the claimant was not entitled based on a subsequent determination, redetermination or decision which has become final, shall be collectible by the division as provided in subsections [11 and] 12 **and 13** of section 288.380.

2. Notwithstanding any other provision of law to the contrary, when a claimant who has been separated from his employment receives benefits under this chapter and subsequently receives a back pay award pursuant to action by a governmental agency, court of competent jurisdiction or as a result of arbitration proceedings, for a period of time during which no services were performed, the division shall establish an overpayment equal to the lesser of the amount of the back pay award or the benefits paid to the claimant which were attributable to the period covered by the back pay award. After the claimant has been provided an opportunity for a fair hearing under the provision of section 288.190, the employer shall withhold from the employee's backpay award the amount of benefits so received and shall pay such amount to the division and separately designate such amount.

3. For the purposes of subsection 2 of this section, the division shall provide the employer with the amount of benefits paid to the claimant.

4. Any individual, company, association, corporation, partnership, bureau, agency or the agent or employee of the foregoing who interferes with, obstructs, or otherwise causes an employer to fail to comply with the provisions of subsection 2 of this section shall be liable for damages in the amount of three times the amount owed by the employer to the division. The division shall proceed to collect such damages under the provisions of sections 288.160 and 288.170.

**288.500. SHARED WORK PROGRAM CREATED — DEFINITIONS — PLAN, REQUIREMENTS — PLAN DENIED, SUBMISSION OF NEW PLAN, WHEN — CONTRIBUTION BY EMPLOYER, HOW COMPUTED — BENEFITS.** — 1. There is created under this section a voluntary "Shared Work Unemployment Compensation Program". In connection therewith, the division may adopt rules and establish procedures, not inconsistent with this section, which are necessary to administer this program.

2. As used in this section, the following terms mean:

- (1) "Affected unit", a specified department, shift, or other unit of three or more employees which is designated by an employer to participate in a shared work plan;
- (2) "Division", the division of employment security;

(3) "Fringe benefit", health insurance, a retirement benefit received under a pension plan, a paid vacation day, a paid holiday, sick leave, and any other analogous employee benefit that is provided by an employer;

(4) "Normal weekly hours of work", as to any individual, the lesser of forty hours or the average obtained by dividing the total number of hours worked per week in the preceding twelve-week period by the number twelve;

(5) "Participating employee", an employee who works a reduced number of hours under a shared work plan;

(6) "Participating employer", an employer who has a shared work plan in effect;

(7) "Shared work benefit", an unemployment compensation benefit that is payable to an individual in an affected unit because the individual works reduced hours under an approved shared work plan;

(8) "Shared work plan", a program for reducing unemployment under which employees who are members of an affected unit share the work remaining after a reduction in their normal weekly hours of work;

(9) "Shared work unemployment compensation program", a program designed to reduce unemployment and stabilize the work force by allowing certain employees to collect unemployment compensation benefits if the employees share the work remaining after a reduction in the total number of hours of work and a corresponding reduction in wages.

3. An employer who wishes to participate in the shared work unemployment compensation program established under this section shall submit a written shared work plan in a form acceptable to the division for approval. As a condition for approval by the division, a participating employer shall agree to furnish the division with reports relating to the operation of the shared work plan as requested by the division. The employer shall monitor and evaluate the operation of the established shared work plan as requested by the division and shall report the findings to the division.

4. The division may approve a shared work plan if:

(1) The employer has filed all reports required to be filed under this chapter for all past and current periods and has paid all contributions due for all past and current periods;

(2) The shared work plan applies to and identifies a specified affected unit;

(3) The employees in the affected unit are identified by name and Social Security number;

(4) The shared work plan reduces the normal weekly hours of work for an employee in the affected unit by not less than twenty percent and not more than forty percent;

(5) The shared work plan applies to at least ten percent of the employees in the affected unit;

(6) The shared work plan describes the manner in which the participating employer treats the fringe benefits of each employee in the affected unit; and

(7) The employer certifies that the implementation of a shared work plan and the resulting reduction in work hours is in lieu of temporary layoffs that would affect at least ten percent of the employees in the affected unit and that would result in an equivalent reduction in work hours.

5. If any of the employees who participate in a shared work plan under this section are covered by a collective bargaining agreement, the shared work plan shall be approved in writing by the collective bargaining agent.

6. No shared work plan which will subsidize seasonal employers during the off-season or subsidize employers, at least fifty percent of the employees of which have normal weekly hours of work equaling thirty-two hours or less, shall be approved by the division. No shared work plan benefits will be initiated [for pay periods] when the reduced hours [reflect] **coincide with** holiday earnings already committed to be paid by the employer. **Shared work-plan benefits may not be denied in any week containing a holiday for which holiday earnings are committed to be paid by the employer unless the shared work benefits to be paid are for the same hours in the same day as the holiday earnings.**

7. The division shall approve or deny a shared work plan not later than the thirtieth day after the day on which the shared work plan is received by the division. The division shall approve or deny a plan in writing. If the division denies a plan, the division shall notify the employer of the reasons for the denial. Approval or denial of a plan by the division shall be final and such determination shall be subject to review in the manner otherwise provided by law. If approval of a plan is denied by the division, the employer may submit a new plan to the division for consideration no sooner than forty-five calendar days following the date on which the division disapproved the employer's previously submitted plan.

8. The division may revoke approval of a shared work plan and terminate the plan if it determines that the shared work plan is not being executed according to the terms and intent of the shared work unemployment compensation program, or if it is determined by the division that the approval of the shared work plan was based, in whole or in part, upon information contained in the plan which was either false or substantially misleading.

9. Each shared work plan approved by the division shall become effective on the first day of the week in which it is approved by the division or on a later date as specified in the shared work plan. Each shared work plan approved by the division shall expire on the last day of the twelfth full calendar month after the effective date of such shared work plan.

10. An employer may modify a shared work plan created under this section to meet changed conditions if the modification conforms to the basic provisions of the shared work plan as originally approved by the division. The employer shall report the changes made to the plan in writing to the division at least seven days before implementing such changes. The division shall reevaluate the shared work plan and may approve the modified shared work plan if it meets the requirements for approval under subsection 4 of this section. The approval of a modified shared work plan shall not, under any circumstances, affect the expiration date originally set for the shared work plan. If modifications cause the shared work plan to fail to meet the requirements for approval, the division shall deny approval of the modifications as provided in subsection 7 of this section.

11. Notwithstanding any other provisions of this chapter, an individual is unemployed for the purposes of this section in any week in which the individual, as an employee in an affected unit, works less than his normal weekly hours of work in accordance with an approved shared work plan in effect for that week.

12. An individual who is otherwise entitled to receive regular unemployment insurance benefits under this chapter shall be eligible to receive shared work benefits with respect to any week in which the division finds that:

(1) The individual is employed as a member of an affected unit subject to a shared work plan that was approved before the week in question and is in effect for that week;

(2) Notwithstanding the provisions of subdivision (2) of subsection 1 of section 288.040, the individual is able to work, available for work and works all available hours with the participating employer;

(3) The individual's normal weekly hours of work have been reduced by at least twenty percent but not more than forty percent, with a corresponding reduction in wages; and

(4) The individual has served a "waiting week" as defined in section 288.030.

13. A waiting week served under the provisions of subdivision (3) of subsection 1 of section 288.040 shall serve to meet the requirements of subdivision (4) of subsection 12 of this section and a waiting week served under the provisions of subdivision (4) of subsection 12 of this section shall serve to meet the requirements of section 288.040. Notwithstanding any other provisions of this chapter, an individual who files a new initial claim during the pendency of the twelve-month period in which a shared work plan is in effect shall serve a waiting week whether or not the individual has served a waiting week under this subsection.

14. The division shall not deny shared work benefits for any week to an otherwise eligible individual by reason of the application of any provision of this chapter that relates to availability

for work, active search for work, or refusal to apply for or accept work with an employer other than the participating employer under the plan.

15. The division shall pay an individual who is eligible for shared work benefits under this section a weekly shared work benefit amount equal to the individual's regular weekly benefit amount for a period of total unemployment less any deductible amounts under this chapter except wages received from any employer, multiplied by the full percentage of reduction in the individual's hours as set forth in the employer's shared work plan. If the shared work benefit amount calculated under this subsection is not a multiple of one dollar, the division shall round the amount so calculated to the next lowest multiple of one dollar. An individual shall be ineligible for shared work benefits for any week in which the individual performs paid work for the participating employer in excess of the reduced hours established under the shared work plan.

16. An individual shall not be entitled to receive shared work benefits and regular unemployment compensation benefits in an aggregate amount which exceeds the maximum total amount of benefits payable to that individual in a benefit year as provided under section 288.038. Notwithstanding any other provisions of this chapter, an individual shall not be eligible to receive shared work benefits for more than twenty-six calendar weeks during the twelve-month period of the shared work plan. No week shall be counted as a week of unemployment for the purposes of this subsection unless it occurs within the twelve-month period of the shared work plan.

17. Notwithstanding any other provision of this chapter, all benefits paid under a shared work plan which are chargeable to the participating employer or any other base period employer of a participating employee shall be charged to the account of the participating employer under the plan.

18. An individual who has received all of the shared work benefits and regular unemployment compensation benefits available in a benefit year is an exhaustee under section 288.062 and is entitled to receive extended benefits under section 288.062 if the individual is otherwise eligible under that section.

**SECTION B. EFFECTIVE DATE.** — The provisions of this act shall become effective on October 1, 2006.

Approved June 14, 2006

## HB 1485 [SCS HCS HB 1485]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Authorizes an income tax credit for contributions to qualified pregnancy resource centers and children in crisis centers**

AN ACT to repeal sections 135.327 and 135.333, RSMo, and to enact in lieu thereof three new sections relating to tax credits for contributions to centers providing social services.

## SECTION

## A. Enacting clause.

- 135.327. Special needs child adoption tax credit — definitions — nonrecurring adoption expenses, amount — individual and business entities tax credit, amount, time for filing application — assignment of tax credit, when — children in crisis tax credit, amount, verification, time for filing — amount of tax credits redeemed, allocation, availability of unclaimed allocations — application procedure — credit denial resulting in balance due — appropriation calculations — rulemaking authority — sunset provision.
- 135.333. Credit exceeding tax due or applied for, not refunded — may be carried forward, time limit — effect of assignment, transfer or sale of tax credit.
- 135.630. Tax credit for contributions to pregnancy resource centers, definitions — amount — limitations — determination of qualifying centers — cumulative amount of credits — apportionment procedure, reapportionment of credits — identity of contributors provided to director, confidentiality — sunset provision.

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

**SECTION A. ENACTING CLAUSE.** — Sections 135.327 and 135.333, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 135.327, 135.333, and 135.630, to read as follows:

**135.327. SPECIAL NEEDS CHILD ADOPTION TAX CREDIT — DEFINITIONS — NONRECURRING ADOPTION EXPENSES, AMOUNT — INDIVIDUAL AND BUSINESS ENTITIES TAX CREDIT, AMOUNT, TIME FOR FILING APPLICATION — ASSIGNMENT OF TAX CREDIT, WHEN — CHILDREN IN CRISIS TAX CREDIT, AMOUNT, VERIFICATION, TIME FOR FILING — AMOUNT OF TAX CREDITS REDEEMED, ALLOCATION, AVAILABILITY OF UNCLAIMED ALLOCATIONS — APPLICATION PROCEDURE — CREDIT DENIAL RESULTING IN BALANCE DUE — APPROPRIATION CALCULATIONS — RULEMAKING AUTHORITY — SUNSET PROVISION.** — 1.

As used in this section, the following terms shall mean:

- (1) "CASA", an entity which receives funding from the court appointed special advocate fund established under section 476.777, RSMo;
- (2) "Child advocacy centers", the regional child assessment centers listed in subsection 2 of section 210.001, RSMo;
- (3) "Contribution", amount of donation to qualified agency;
- (4) "Crisis care", temporary care for children whose age ranges from birth through seventeen years of age whose parents or guardian are experiencing an unexpected and unstable or serious condition that requires immediate action resulting in short term care, usually three to five continuous, uninterrupted days, for children who may be at risk for child abuse, neglect, or in an emergency situation;
- (5) "Department", the department of revenue;
- (6) "Director", the director of the department of revenue;
- (7) "Qualified agency", CASA, child advocacy centers, or a crisis care center;
- (8) "Tax liability", the tax due under chapter 143, RSMo, other than taxes withheld under sections 143.191 to 143.265, RSMo.

2. Any person residing in this state who legally adopts a special needs child on or after January 1, 1988, and before January 1, 2000, shall be eligible to receive a tax credit of up to ten thousand dollars for nonrecurring adoption expenses for each child adopted that may be applied to taxes due under chapter 143, RSMo. Any business entity providing funds to an employee to enable that employee to legally adopt a special needs child shall be eligible to receive a tax credit of up to ten thousand dollars for nonrecurring adoption expenses for each child adopted that may be applied to taxes due under such business entity's state tax liability, except that only one ten thousand dollar credit is available for each special needs child that is adopted.

[2.] 3. Any person residing in this state who proceeds in good faith with the adoption of a special needs child on or after January 1, 2000, shall be eligible to receive a tax credit of up to ten thousand dollars for nonrecurring adoption expenses for each child that may be applied to taxes due under chapter 143, RSMo; provided, however, that beginning on or after July 1, 2004, [a minimum of fifty percent] **two million dollars** of the tax credits allowed shall be allocated for the adoption of special needs children who are residents or wards of residents of this state at the time the adoption is initiated. Any business entity providing funds to an employee to enable that employee to proceed in good faith with the adoption of a special needs child shall be eligible to receive a tax credit of up to ten thousand dollars for nonrecurring adoption expenses for each child that may be applied to taxes due under such business entity's state tax liability, except that only one ten thousand dollar credit is available for each special needs child that is adopted.

[3.] 4. Individuals and business entities may claim a tax credit for their total nonrecurring adoption expenses in each year that the expenses are incurred. A claim for fifty percent of the credit shall be allowed when the child is placed in the home. A claim for the remaining fifty percent shall be allowed when the adoption is final. The total of these tax credits shall not exceed the maximum limit of ten thousand dollars per child. The cumulative amount of tax credits which may be claimed by taxpayers claiming the credit for nonrecurring adoption expenses in any one fiscal year prior to July 1, 2004, shall not exceed two million dollars [and shall not exceed four million dollars]. **The cumulative amount of tax credits that may be claimed by taxpayers claiming the credit for nonrecurring adoption expenses shall not be less than four million dollars but may be increased by appropriation** in any one fiscal year beginning on or after July 1, 2004; provided, however, that [in the first ninety days] **by December thirty-first** following each July [first], if less than two million dollars in credits have been issued for adoption of special needs children who are not residents or wards of residents of this state at the time the adoption is initiated, the remaining amount of the [four million dollar] cap shall be available for the adoption of special needs children who are residents or wards of residents of this state at the time the adoption is initiated. **For all fiscal years beginning on or after July 1, 2006, applications to claim the adoption tax credit for special needs children who are residents or wards of residents of this state at the time the adoption is initiated shall be filed between July first and April fifteenth of each fiscal year. For all fiscal years beginning on or after July 1, 2006, applications to claim the adoption tax credit for special needs children who are not residents or wards of residents of this state at the time the adoption is initiated shall be filed between July first and December thirty-first of each fiscal year.**

[4.] 5. Notwithstanding any provision of law to the contrary, any individual or business entity may assign, transfer or sell tax credits allowed in this section. Any sale of tax credits claimed pursuant to this section shall be at a discount rate of seventy-five percent or greater of the amount sold.

[5.] 6. The director of revenue shall establish a procedure by which, for each fiscal year, the cumulative amount of tax credits authorized in this section is equally apportioned among all taxpayers within the two categories specified in subsection 2 of this section claiming the credit in that fiscal year. To the maximum extent possible, the director of revenue shall establish the procedure described in this subsection in such a manner as to ensure that taxpayers within each

category can claim all the tax credits possible up to the cumulative amount of tax credits available for the fiscal year.

[6. The director of revenue shall submit to the general assembly, by January 1, 2005, and each succeeding year, information by income levels of those individual taxpayers who have qualified and claimed the credit authorized in this section, regardless of whether those taxpayers have assigned, transferred, or sold such credits. The information shall indicate the number of such taxpayers with federal adjusted gross income in the immediately preceding tax year of less than one hundred fifty thousand dollars, of one hundred fifty thousand dollars to and including one hundred ninety thousand dollars, and of more than one hundred ninety thousand dollars.]

**7. For all tax years beginning on or after January 1, 2006, a tax credit may be claimed in an amount equal to up to fifty percent of a verified contribution to a qualified agency and shall be named the "children in crisis" tax credit. The minimum amount of any tax credit issued shall not be less than fifty dollars and shall be applied to taxes due under chapter 143, RSMo, excluding sections 143.191 to 143.265, RSMo. A contribution verification shall be issued to the taxpayer by the agency receiving the contribution. Such contribution verification shall include the taxpayer's name, Social Security number, amount of tax credit, amount of contribution, the name and address of the agency receiving the credit, and the date the contribution was made. The tax credit provided under this subsection shall be initially filed in the year in which the verified contribution is made.**

**8. The cumulative amount of the tax credits redeemed shall not exceed the unclaimed portion of the resident adoption category allocation as described in this section. The director of revenue shall determine the unclaimed portion available. The amount available shall be equally divided among the agencies meeting the definition of qualified agency to be used towards tax credits issued. In the event tax credits claimed under one agency do not total the allocated amount for that agency, the unused portion for that agency will be made available to the remaining agencies as needed. In the event the total amount of tax credits claimed exceeds the amount available, the amount redeemed will be apportioned equally to all eligible taxpayers claiming the credit. After all children in crisis tax credits have been claimed, any remaining unclaimed portion of the reserved allocation for adoptions of special needs children who are residents or wards of residents of this state shall then be made available for adoption tax credit claims of special needs children who are not residents or wards of residents of this state at the time the adoption is initiated.**

**9. Prior to December thirty-first of each year, the entities listed under the definition of qualified agency shall apply to the department of social services in order to verify their qualified agency status. Upon a determination that the agency is eligible to be a qualified agency, the department of social services shall provide a letter of eligibility to such agency. No later than February first of each year, the department of social services shall provide a list of qualified agencies to the department of revenue. All tax credit applications to claim the children in crisis tax credit shall be filed between July first and April fifteenth of each fiscal year. A taxpayer shall apply for the children in crisis tax credit by attaching a copy of the contribution verification provided by a qualified agency to such taxpayer's income tax return.**

**10. The tax credits provided under this section shall be subject to the provisions of section 135.333.**

**11. (1) In the event a credit denial, due to lack of available funds, causes a balance due notice to be generated by the department of revenue, or any other redeeming agency, the taxpayer will not be held liable for any penalty or interest, provided the balance is paid, or approved payment arrangements have been made, within sixty days from the notice of denial.**

(2) In the event the balance is not paid within sixty days from the notice of denial, the remaining balance shall be due and payable under the provisions of chapter 143, RSMo.

12. The director shall calculate the level of appropriation necessary to issue all tax credits for non-resident special needs adoptions applied for under this section and provide such calculation to the speaker of the house of representatives, the president pro tempore of the senate, and the director of the office of budget and planning in the office of administration by January thirty-first of each year.

13. The department may promulgate such rules or regulations as are necessary 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, 2006, shall be invalid and void.

14. Pursuant to section 23.253, RSMo, of the Missouri sunset act:

(1) The provisions of the new program authorized under subsections 7 to 12 of this section shall automatically sunset six years after the effective date of this section unless reauthorized by an act of the general assembly; and

(2) If such program is reauthorized, the program authorized under this section shall automatically sunset twelve years after the effective date of the reauthorization of this section; and

(3) This section shall terminate on September first of the calendar year immediately following the calendar year in which the program authorized under this section is sunset.

**135.333. CREDIT EXCEEDING TAX DUE OR APPLIED FOR, NOT REFUNDED — MAY BE CARRIED FORWARD, TIME LIMIT — EFFECT OF ASSIGNMENT, TRANSFER OR SALE OF TAX CREDIT.** — 1. Any amount of tax credit which exceeds the tax due or which is applied for and otherwise eligible for issuance but not issued shall not be refunded but may be carried over to any subsequent taxable year, not to exceed a total of five years for which a tax credit may be taken for each child adopted.

2. Tax credits that are assigned, transferred or sold as allowed in section 135.327 may be assigned, transferred or sold in their entirety notwithstanding the taxpayer's tax due.

**135.630. TAX CREDIT FOR CONTRIBUTIONS TO PREGNANCY RESOURCE CENTERS, DEFINITIONS — AMOUNT — LIMITATIONS — DETERMINATION OF QUALIFYING CENTERS — CUMULATIVE AMOUNT OF CREDITS — APPORTIONMENT PROCEDURE, REAPPORTIONMENT OF CREDITS — IDENTITY OF CONTRIBUTORS PROVIDED TO DIRECTOR, CONFIDENTIALITY — SUNSET PROVISION.** — 1. As used in this section, the following terms mean:

(1) "Contribution", a donation of cash, stock, bonds, or other marketable securities, or real property;

(2) "Director", the director of the department of social services;

(3) "Pregnancy resource center", a nonresidential facility located in this state:

(a) Established and operating primarily to provide assistance to women with crisis pregnancies or unplanned pregnancies by offering pregnancy testing, counseling, emotional and material support, and other similar services to encourage and assist such women in carrying their pregnancies to term; and

(b) Where childbirths are not performed; and

(c) Which does not perform, induce, or refer for abortions and which does not hold itself out as performing, inducing, or referring for abortions; and

(d) Which provides direct client services at the facility, as opposed to merely providing counseling or referral services by telephone; and

(e) Which provides its services at no cost to its clients; and

(f) When providing medical services, such medical services must be performed in accordance with Missouri statute; and

(g) Which is exempt from income taxation pursuant to the Internal Revenue Code of 1986, as amended;

(4) "State tax liability", in the case of a business taxpayer, any liability incurred by such taxpayer pursuant to the provisions of chapters 143, 147, 148, and 153, RSMo, excluding sections 143.191 to 143.265, RSMo, and related provisions, and in the case of an individual taxpayer, any liability incurred by such taxpayer pursuant to the provisions of chapter 143, RSMo, excluding sections 143.191 to 143.265, RSMo, and related provisions;

(5) "Taxpayer", a person, firm, a partner in a firm, corporation, or a shareholder in an S corporation doing business in the state of Missouri and subject to the state income tax imposed by the provisions of chapter 143, RSMo, or a corporation subject to the annual corporation franchise tax imposed by the provisions of chapter 147, RSMo, or an insurance company paying an annual tax on its gross premium receipts in this state, or other financial institution paying taxes to the state of Missouri or any political subdivision of this state pursuant to the provisions of chapter 148, RSMo, or an express company which pays an annual tax on its gross receipts in this state pursuant to chapter 153, RSMo, or an individual subject to the state income tax imposed by the provisions of chapter 143, RSMo.

2. For all tax years beginning on or after January 1, 2007, a taxpayer shall be allowed to claim a tax credit against the taxpayer's state tax liability, in an amount equal to fifty percent of the amount such taxpayer contributed to a pregnancy resource center.

3. The amount of the tax credit claimed shall not exceed the amount of the taxpayer's state tax liability for the taxable year for which the credit is claimed, and such taxpayer shall not be allowed to claim a tax credit in excess of fifty thousand dollars per taxable year. However, any tax credit that cannot be claimed in the taxable year the contribution was made may be carried over to the next four succeeding taxable years until the full credit has been claimed.

4. Except for any excess credit which is carried over pursuant to subsection 3 of this section, a taxpayer shall not be allowed to claim a tax credit unless the total amount of such taxpayer's contribution or contributions to a pregnancy resource center or centers in such taxpayer's taxable year has a value of at least one hundred dollars.

5. The director shall determine, at least annually, which facilities in this state may be classified as pregnancy resource centers. The director may require of a facility seeking to be classified as a pregnancy resource center whatever information which is reasonably necessary to make such a determination. The director shall classify a facility as a pregnancy resource center if such facility meets the definition set forth in subsection 1 of this section.

6. The director shall establish a procedure by which a taxpayer can determine if a facility has been classified as a pregnancy resource center. Pregnancy resource centers shall be permitted to decline a contribution from a taxpayer. The cumulative amount of tax credits which may be claimed by all the taxpayers contributing to pregnancy resource centers in any one fiscal year shall not exceed two million dollars. Tax credits shall be issued in the order contributions are received.

7. The director shall establish a procedure by which, from the beginning of the fiscal year until some point in time later in the fiscal year to be determined by the director, the cumulative amount of tax credits are equally apportioned among all facilities classified as

pregnancy resource centers. If a pregnancy resource center fails to use all, or some percentage to be determined by the director, of its apportioned tax credits during this predetermined period of time, the director may reapportion these unused tax credits to those pregnancy resource centers that have used all, or some percentage to be determined by the director, of their apportioned tax credits during this predetermined period of time. The director may establish more than one period of time and reapportion more than once during each fiscal year. To the maximum extent possible, the director shall establish the procedure described in this subsection in such a manner as to ensure that taxpayers can claim all the tax credits possible up to the cumulative amount of tax credits available for the fiscal year.

8. Each pregnancy resource center shall provide information to the director concerning the identity of each taxpayer making a contribution to the pregnancy resource center who is claiming a tax credit pursuant to this section and the amount of the contribution. The director shall provide the information to the director of revenue. The director shall be subject to the confidentiality and penalty provisions of section 32.057, RSMo, relating to the disclosure of tax information.

9. Pursuant to section 23.253, RSMo, of the Missouri Sunset Act:

(1) Any new program authorized under this section shall automatically sunset six years after the effective date of this section, unless reauthorized by an act of the general assembly; and

(2) If such program is reauthorized, the program authorized under this section shall automatically sunset twelve years after the effective date of the reauthorization of this section; and

(3) This section shall terminate on September first of the calendar year immediately following the calendar year in which a program authorized under this section is sunset.

Approved July 10, 2006

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HB 1488 [HB 1488]

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

**Designates a portion of Interstate 55 in Jefferson County as the "Officer Thomas G. Smith Jr. Memorial Highway"**

AN ACT to amend chapter 227, RSMo, by adding thereto one new section relating to designation of a memorial highway.

SECTION

A. Enacting clause.

227.379. Officer Thomas G. Smith Jr. Memorial Highway designated for a portion of I-55 in St. Louis County.

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

**SECTION A. ENACTING CLAUSE.** — Chapter 227, RSMo, is amended by adding thereto one new section, to be known as section 227.379, to read as follows:

**227.379. OFFICER THOMAS G. SMITH JR. MEMORIAL HIGHWAY DESIGNATED FOR A PORTION OF I-55 IN ST. LOUIS COUNTY.** — **The portion of Interstate 55 in St. Louis County**

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between Butler Hill Road and Meramec Bottom Road shall be designated the "Officer Thomas G. Smith Jr. Memorial Highway".

Approved June 29, 2006

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HB 1491 [HB 1491]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Requires the Family Support Division to encourage applicants or recipients of state medical assistance benefits to seek federal benefits prior to receipt of any state benefits**

AN ACT to amend chapter 208, RSMo, by adding thereto one new section relating to medical assistance.

SECTION

A. Enacting clause.

208.143. Veterans medical services, division to determine if applicant for medical assistance is eligible.

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

**SECTION A. ENACTING CLAUSE.** — Chapter 208, RSMo, is amended by adding thereto one new section, to be known as section 208.143, to read as follows:

**208.143. VETERANS MEDICAL SERVICES, DIVISION TO DETERMINE IF APPLICANT FOR MEDICAL ASSISTANCE IS ELIGIBLE.** — **1.** The family support division shall, in accordance with the provisions of section 208.215, determine whether persons applying for and/or receiving Medicaid benefits are eligible for medical services from the Missouri veterans commission. If an applicant or recipient is eligible for such VA medical services, the division shall urge and encourage the applicant or recipient to receive medical services as a person eligible for VA benefits. Nothing in this section shall be construed as requiring an applicant or recipient of medical assistance benefits to exhaust any VA benefits prior to receipt of any state medical assistance benefits.

**2.** The family support division shall consult with the Missouri veterans commission regarding a method of determining whether an applicant or recipient of state medical assistance benefits is eligible for VA benefits.

Approved June 13, 2006

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HB 1494 [HB 1494]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Authorizes the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects to issue land surveying and engineering licenses**

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AN ACT to repeal section 327.391, RSMo, and to enact in lieu thereof two new sections relating to licensing of engineers and professional land surveyors.

SECTION

- A. Enacting clause.  
 327.391. License, examination requirements.  
 327.392. Professional engineering license issued, when.

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

**SECTION A. ENACTING CLAUSE.** — Section 327.391, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 327.391 and 327.392, to read as follows:

**327.391. LICENSE, EXAMINATION REQUIREMENTS.** — The board shall upon application issue a license to any [engineer or professional land surveyor who is at least fifty years of age,] **individual** who has at least twenty years of satisfactory experience, and who passes [a written examination or holds a degree at the bachelor's level or higher in engineering or science and passes an oral examination,] **the Fundamentals of Land Surveying examination, the Professional Land Surveying examination, and the Missouri State Specific examination** provided that any such application is accompanied by the required fee.

**327.392. PROFESSIONAL ENGINEERING LICENSE ISSUED, WHEN.** — **1. The board shall upon application issue a professional engineering license to any individual who holds a degree at the bachelor's level or higher in engineering and who has at least twenty years of satisfactory engineering experience, and who passes part two of the written examination defined in section 327.241, provided that any such application is accompanied by the required fee.**

**2. The board shall upon application issue a professional engineering license to any individual who holds a degree from an Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology (ABET, INC.) or its equivalent and a doctorate in engineering from an institution that offers Engineering Accreditation Commission programs, and who passes part two of the written examination defined in section 327.241, provided that any such application is accompanied by the required fee. The doctorate degree must be approved by the board for the candidate to qualify.**

Approved June 29, 2006

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HB 1509 [SCS HB 1509]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Expands the duties of the State Fire Marshal in the Division of Fire Safety**

AN ACT to repeal section 320.202, RSMo, and to enact in lieu thereof one new section relating to the division of fire safety.

SECTION

- A. Enacting clause.  
 320.202. Division of fire safety, created — duties of division and fire marshal — rulemaking authority.

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

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**SECTION A. ENACTING CLAUSE.** — Section 320.202, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 320.202, to read as follows:

**320.202. DIVISION OF FIRE SAFETY, CREATED — DUTIES OF DIVISION AND FIRE MARSHAL — RULEMAKING AUTHORITY.** — 1. There is hereby established within the department of public safety a "Division of Fire Safety", which shall have as its chief executive officer the fire marshal appointed under section 320.205. The fire marshal and the division shall be responsible for:

(1) The **voluntary** training of firefighters, investigators, **inspectors**, and [any state] **public or private** employees [performing fire inspections pursuant to state statutes or state licensing requirements] **or volunteers in the field of emergency response, rescue, fire prevention or preparedness;**

(2) Establishing and maintaining a statewide reporting system, which shall, as a minimum, include the records required by section 320.235 and a record of all fires occurring in Missouri showing:

(a) The name of all owners of personal and real property affected by the fire;

(b) The name of each occupant of each building in which a fire occurred;

(c) The total amount of insurance carried by, the total amount of insurance collected by, and the total amount of loss to each owner of property affected by the fire; and

(d) All the facts, statistics and circumstances, including, but not limited to, the origin of the fire, which are or may be determined by any investigation conducted by the division or any local firefighting agency under the laws of this state.

All records maintained under this subdivision shall be open to public inspections during all normal business hours of the division;

(3) Conducting all investigations of fires mandated by sections 320.200 to 320.270;

(4) Conducting all fire inspections required of any private premises in order for any license relating to such private premises to be issued under any licensing law of this state, except those organizations and institutions licensed pursuant to chapters 197 and 198, RSMo;

**(5) Establishing and maintaining a voluntary training and certification program based upon nationally recognized standards. A certification testing fee and recertification fee shall be established by promulgated rules and regulations by the state fire marshal under the provisions of section 536.024, RSMo. Fees collected shall be deposited into the general revenue fund.**

2. The state fire marshal shall exercise and perform all powers and duties necessary to carry out the responsibilities imposed by subsection 1 of this section, including, but not limited to, the power to contract with any person, firm, corporation, state agency, or political subdivision for services necessary to accomplish any of the responsibilities imposed by subsection 1 of this section.

**3. The state fire marshal shall have the authority to promulgate rules and regulations under the provisions of section 536.024, RSMo, to carry out the provisions of this section.**

Approved June 14, 2006

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HB 1511 [HCS HB 1511]

**EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.**

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**Requires the Department of Elementary and Secondary Education to develop standards for early childhood education**

AN ACT to amend chapter 161, RSMo, by adding thereto one new section relating to early childhood education.

SECTION

A. Enacting clause.

161.213. High-quality early childhood education standards required — rulemaking authority.

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

**SECTION A. ENACTING CLAUSE.** — Chapter 161, RSMo, is amended by adding thereto one new section, to be known as section 161.213, to read as follows:

**161.213. HIGH-QUALITY EARLY CHILDHOOD EDUCATION STANDARDS REQUIRED — RULEMAKING AUTHORITY.** — **1. The department of elementary and secondary education shall develop standards for high-quality early childhood education no later than June 30, 2007. The standards shall be applicable to all public school prekindergarten programs that receive Title I or Missouri preschool project funds.**

**2. Such standards shall include, but not be limited to, the following principles:**

- (1) Access for all children whose parents or guardians choose to participate;**
- (2) Focus on cognitive, language, physical, and social/emotional development;**
- (3) Assessment of needs of children and their families;**
- (4) Highly qualified and properly certified teachers; and**
- (5) Delivery of comprehensive services supported by strong and accessible technical assistance and professional development.**

**3. In developing such standards, the department shall involve representatives of the business community, parents as teachers, head start, early childhood start, early childhood special education, Missouri preschool project, first steps, Title I preschools, school district personnel, private providers, and faith-based providers.**

**4. Unless otherwise prohibited by federal law, public school districts shall not be prohibited from charging tuition and related charges for early childhood education programs.**

**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, 2006, shall be invalid and void.**

Approved June 12, 2006

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HB 1515 [HCS HB 1515]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

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**Requires physicians to report to the State Board of Registration for the Healing Arts any collaborative practice agreements entered into and authorizes the board to conduct audits for compliance**

AN ACT to repeal section 334.104, RSMo, and to enact in lieu thereof one new section relating to collaborative practice.

SECTION

A. Enacting clause.

- 334.104. Collaborative practice arrangements, form, delegation of authority — rules, approval, restrictions — disciplinary actions — notice of collaborative practice or physician assistant agreements to board, when — nurses may provide anesthesia services, when.

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

**SECTION A. ENACTING CLAUSE.** — Section 334.104, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 334.104, to read as follows:

**334.104. COLLABORATIVE PRACTICE ARRANGEMENTS, FORM, DELEGATION OF AUTHORITY — RULES, APPROVAL, RESTRICTIONS — DISCIPLINARY ACTIONS — NOTICE OF COLLABORATIVE PRACTICE OR PHYSICIAN ASSISTANT AGREEMENTS TO BOARD, WHEN — NURSES MAY PROVIDE ANESTHESIA SERVICES, WHEN.** — 1. A physician may enter into collaborative practice arrangements with registered professional nurses. Collaborative practice arrangements shall be in the form of written agreements, jointly agreed-upon protocols, or standing orders for the delivery of health care services. Collaborative practice arrangements, which shall be in writing, may delegate to a registered professional nurse the authority to administer or dispense drugs and provide treatment as long as the delivery of such health care services is within the scope of practice of the registered professional nurse and is consistent with that nurse's skill, training and competence.

2. Collaborative practice arrangements, which shall be in writing, may delegate to a registered professional nurse the authority to administer, dispense or prescribe drugs and provide treatment if the registered professional nurse is an advanced practice nurse as defined in subdivision (2) of section 335.016, RSMo. Such collaborative practice arrangements shall be in the form of written agreements, jointly agreed-upon protocols or standing orders for the delivery of health care services.

3. The state board of registration for the healing arts pursuant to section 334.125 and the board of nursing pursuant to section 335.036, RSMo, may jointly promulgate rules regulating the use of collaborative practice arrangements. Such rules shall be limited to specifying geographic areas to be covered, the methods of treatment that may be covered by collaborative practice arrangements and the requirements for review of services provided pursuant to collaborative practice arrangements. Any rules relating to dispensing or distribution of medications or devices by prescription or prescription drug orders under this section shall be subject to the approval of the state board of pharmacy. In order to take effect, such rules shall be approved by a majority vote of a quorum of each board. Neither the state board of registration for the healing arts nor the board of nursing may separately promulgate rules relating to collaborative practice arrangements. Such jointly promulgated rules shall be consistent with guidelines for federally funded clinics. The rulemaking authority granted in this subsection shall not extend to collaborative practice arrangements of hospital employees providing inpatient care within hospitals as defined pursuant to chapter 197, RSMo.

4. The state board of registration for the healing arts shall not deny, revoke, suspend or otherwise take disciplinary action against a physician for health care services delegated to a registered professional nurse provided the provisions of this section and the rules promulgated thereunder are satisfied. Upon the written request of a physician subject to a disciplinary action imposed as a result of an agreement between a physician and a registered professional nurse or

registered physician assistant, whether written or not, prior to August 28, 1993, all records of such disciplinary licensure action and all records pertaining to the filing, investigation or review of an alleged violation of this chapter incurred as a result of such an agreement shall be removed from the records of the state board of registration for the healing arts and the division of professional registration and shall not be disclosed to any public or private entity seeking such information from the board or the division. The state board of registration for the healing arts shall take action to correct reports of alleged violations and disciplinary actions as described in this section which have been submitted to the National Practitioner Data Bank. In subsequent applications or representations relating to his medical practice, a physician completing forms or documents shall not be required to report any actions of the state board of registration for the healing arts for which the records are subject to removal under this section.

5. **Within thirty days of any change and on each renewal, the state board of registration for the healing arts shall require every physician to identify whether the physician is engaged in any collaborative practice agreement or physician assistant agreement and also report to the board the name of each licensed professional with whom the physician has entered into such agreement. The board may make this information available to the public. The board shall track the reported information and may routinely conduct random reviews of such agreements to ensure that agreements are carried out for compliance under this chapter.**

6. Notwithstanding anything to the contrary in this section, a registered nurse who has graduated from a school of nurse anesthesia accredited by the Council on Accreditation of Educational Programs of Nurse Anesthesia or its predecessor and has been certified or is eligible for certification as a nurse anesthetist by the Council on Certification of Nurse Anesthetists shall be permitted to provide anesthesia services without a collaborative practice arrangement provided that he or she is under the supervision of an anesthesiologist or other physician, dentist, or podiatrist who is immediately available if needed.

Approved June 29, 2006  
HB 1552 [HCS HB 1552]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Allows homeless veterans to use the post office box or voice mail address of a charitable or religious organization on applications for state or federal assistance**

AN ACT to amend chapter 42, RSMo, by adding thereto one new section relating to veterans.

SECTION

- A. Enacting clause.  
42.035. Homeless veterans may use address of charitable or religious organization to receive state or federal assistance, when.

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

**SECTION A. ENACTING CLAUSE.** — Chapter 42, RSMo, is amended by adding thereto one new section, to be known as section 42.035, to read as follows:

**42.035. HOMELESS VETERANS MAY USE ADDRESS OF CHARITABLE OR RELIGIOUS ORGANIZATION TO RECEIVE STATE OR FEDERAL ASSISTANCE, WHEN.** — **Notwithstanding any other provision of law a veteran who is homeless may use the post office box or voice mail address of any charitable organization or religious organization as those terms are defined in section 407.453, RSMo, or fraternal or veterans' organization, provided that the legitimate purpose of such organization is to provide charitable, religious, fraternal,**

veterans services and provided that such organization has been providing such legitimate services for a period of at least ten years, as a substitute address on any applications or forms which are necessary to receive any type of assistance from the state or federal government and which require an address or voice mail address, so long as the charitable or religious organization is willing to provide such post office box or voice mail address to the homeless veteran for his or her use.

Approved June 13, 2006

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HB 1559 [HCS HB 1559]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Adds grocery and convenience stores to the list of donors that can donate food to a charity or nonprofit organization for distribution without being liable for damages resulting from the food's condition**

AN ACT to repeal section 192.081, RSMo, and to enact in lieu thereof one new section relating to donation of food.

SECTION

A. Enacting clause.

192.081. Donation of canned or perishable food — definitions — procedure — immunity from liability, when — department to provide information.

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

**SECTION A. ENACTING CLAUSE.** — Section 192.081, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 192.081, to read as follows:

**192.081. DONATION OF CANNED OR PERISHABLE FOOD — DEFINITIONS — PROCEDURE — IMMUNITY FROM LIABILITY, WHEN — DEPARTMENT TO PROVIDE INFORMATION.** — 1. As used in this section, the following terms mean:

- (1) "Canned food", food that is commercially processed in hermetically sealed containers;
- (2) "Donor", any restaurant, cafeteria, fast food restaurant, delicatessen, or other facility principally engaged in selling food for consumption on the premises, **or any grocery store or convenience store**;
- (3) "Food", any raw, cooked, canned, perishable, or prepared edible substance, ice, beverage, or ingredient used or intended for use in whole or in part for human consumption;
- (4) "Hermetically sealed container", a container that is designed and intended to be secure against the entry of microorganisms and thereby to maintain the commercial sterility of its content after processing;
- (5) "Perishable food", any food having a significant risk of spoilage, loss of value, or loss of palatability within ninety days of the date of packaging;
- (6) "Prepared food", any food prepared, designed, or intended for human consumption including, without limitation, those foods prepared principally from agricultural, dairy, or horticultural produce or with meat, fish, or poultry.

2. Each potential donor, to the greatest extent possible and practicable, may make **surplus or excess canned or perishable food** available to any bona fide charitable or nonprofit

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organization, to any representative or volunteer acting on behalf of such organization, to an uncompensated person acting in a philanthropic manner providing services similar to those of such an organization, or to a transporter of any surplus or excess canned or perishable food for use by such organization or person to feed homeless persons or other persons who are in need of food and are otherwise unable to provide food for themselves. In achieving this intent, the following provisions shall apply:

(1) Each donor may contact charitable or nonprofit organizations in the community in which the donor operates in order to provide for the collection by such organizations of any surplus or excess canned food or perishable food from the donor;

(2) Each charitable or nonprofit organization in this state which provides to the community in which it operates food for persons who are in need of food or are otherwise unable to provide food for themselves, or which collects and transports such food to such organizations, shall make every reasonable effort to contact any donors within the organization's area of operations for purposes of collecting any surplus or excess canned food or perishable food for use in providing such services.

3. A good faith donor of any canned or perishable food, apparently fit for human consumption, to a bona fide charitable or nonprofit organization for free distribution shall not be subject to criminal penalty or civil damages arising from the condition of the food, unless an injury is caused by the gross negligence, recklessness, or intentional misconduct of the donor.

4. A bona fide charitable or nonprofit organization, or any representative or volunteer acting on behalf of such organization or an uncompensated person acting in a philanthropic manner providing services similar to those of such an organization or transporter of any surplus or excess canned or perishable food for use by such organization which in good faith accepts, collects, transports, or distributes any canned or perishable food for free distribution and which reasonably inspects the food at the time of the donation and finds the food apparently fit for human consumption shall not be subject to criminal penalty or civil damages arising from the condition of the food, unless an injury is caused by the gross negligence, recklessness, or intentional misconduct of an agent of the charitable or nonprofit organization.

5. The department of health and senior services shall make available information detailing the need of food-recovery programs, the benefit of food-recovery programs, the manner in which such organizations may become involved in food-recovery programs and the food-recovery entities or food banks that exist in the state. This information must be updated annually.

Approved June 6, 2006

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## HB 1601 [SCS HB 1601]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Exempts research programs and experimental medical procedures for patients with life-threatening emergencies from the informed consent requirement under certain conditions**

AN ACT to repeal section 431.064, RSMo, and to enact in lieu thereof one new section relating to emergency medical treatment, with an emergency clause.

SECTION

A. Enacting clause.

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- 431.064. Experimental treatment, tests, and drugs, consent to administer by third party — life-threatening emergencies, consent by whom.
- B. Emergency clause.

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

**SECTION A. ENACTING CLAUSE.** — Section 431.064, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 431.064, to read as follows:

**431.064. EXPERIMENTAL TREATMENT, TESTS, AND DRUGS, CONSENT TO ADMINISTER BY THIRD PARTY — LIFE-THREATENING EMERGENCIES, CONSENT BY WHOM.** — 1. When an adult person, because of a medical condition, is treated by a teaching hospital for a medical school accredited by the American Osteopathic Association or the American Medical Association and such person is incapable of giving informed consent for an experimental treatment, test or drug, then such treatment, test or drug may proceed upon obtaining consent of a legal guardian, attorney-in-fact, or a family member in the following order of priority:

(1) Spouse unless the patient has no spouse, or is separated, or the spouse is physically or mentally incapable of giving consent, or the spouse's whereabouts is unknown or the spouse is overseas;

(2) Adult child;

(3) Parent;

(4) Brother or sister;

(5) Relative by blood or marriage.

2. Nothing in this section shall authorize such legal guardian, attorney-in-fact, or family member to consent to treatment in contravention to such incapacitated person's expressed permission regarding such treatment.

**3. In a life-threatening emergency, consent of such an incapacitated person to any research program or experimental procedure shall not be required when the institutional review board responsible for the review, approval, and continuing review of the research activity has approved both the research activity and a waiver of informed consent and has both found and documented that the requirements for an exception from informed consent requirements for emergency research, as provided under Part 50 of Title 21 or Part 46 of Title 45 of the Code of Federal Regulations, as amended, have been satisfied.**

**SECTION B. EMERGENCY CLAUSE.** — Because immediate action is necessary to ensure proper treatment of persons with life-threatening emergencies, 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 12, 2006

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HB 1617 [HCS HB 1617 & 1374]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Changes the restrictions regarding the liability of a landowner who invites or permits persons to use the land for recreational purposes to include state-administered recreational access programs**

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AN ACT to repeal section 537.347, RSMo, and to enact in lieu thereof one new section relating to landowner liability.

## SECTION

A. Enacting clause.

537.347. Landowner directly or indirectly invites or permits persons on land for recreation, effect.

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

**SECTION A. ENACTING CLAUSE.** — Section 537.347, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 537.347, to read as follows:

**537.347. LANDOWNER DIRECTLY OR INDIRECTLY INVITES OR PERMITS PERSONS ON LAND FOR RECREATION, EFFECT.** — Except as provided in sections 537.345 to 537.348, an owner of land who directly or indirectly invites or permits any person to enter his **or her** land for recreational use, without charge, whether or not the land is posted, **or who directly or indirectly invites or permits any person to enter his or her land for recreational use in compliance with a state-administered recreational access program,** does not thereby:

- (1) Extend any assurance that the premises are safe for any purpose;
- (2) Confer upon such person the status of an invitee, or any other status requiring of the owner a duty of special or reasonable care;
- (3) Assume responsibility for or incur liability for any injury to such person or property caused by any natural or artificial condition, structure or personal property on the premises; or
- (4) Assume responsibility for any damage or injury to any other person or property caused by an act or omission of such person.

Approved June 9, 2006

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HB 1687 [HB 1687]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Allows unused or unaccepted drugs donated to the Prescription Drug Repository Program to be distributed to out-of-state charitable repositories**

AN ACT to repeal sections 196.973, 196.979, and 196.981, RSMo, and to enact in lieu thereof three new sections relating to unused prescription drugs, with penalty provisions.

## SECTION

A. Enacting clause.

196.973. Definitions.

196.979. Donation of prescription drugs to the program, procedure — distribution to out-of-state charitable repositories, when.

196.981. Immunity from civil or criminal liability, when.

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

**SECTION A. ENACTING CLAUSE.** — Sections 196.973, 196.979, and 196.981, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 196.973, 196.979, and 196.981, to read as follows:

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**196.973. DEFINITIONS.** — As used in sections 196.970 to 196.984, the following terms shall mean:

(1) "Health care professional", any of the following persons licensed and authorized to prescribe and dispense drugs and to provide medical, dental, or other health-related diagnoses, care, or treatment:

- (a) A licensed physician or surgeon;
- (b) A registered nurse or licensed practical nurse;
- (c) A physician assistant;
- (d) A dentist;
- (e) A dental hygienist;
- (f) An optometrist;
- (g) A pharmacist; and
- (h) A podiatrist;

(2) "Hospital", the same meaning as such term is defined in section 197.020, RSMo;

(3) "Nonprofit clinic", a facility organized as not for profit in which advice, counseling, diagnosis, treatment, surgery, care, or services relating to the preservation or maintenance of health are provided on an outpatient basis for a period of less than twenty-four consecutive hours to persons not residing or confined at such facility;

(4) **"Out-of-state charitable repository", any of the following:**

**(a) A bona fide charitable, religious, or nonprofit organization, licensed or registered in this state as an out-of-state wholesale drug distributor under sections 338.210 to 338.370, RSMo, and that otherwise qualifies as an exempt organization under section 501(c)(3) of Title 26, United States Code, as amended; or**

**(b) A foreign medical aid mission group that distributes pharmaceuticals and healthcare supplies to needy persons abroad;**

(5) "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.

**196.979. DONATION OF PRESCRIPTION DRUGS TO THE PROGRAM, PROCEDURE — DISTRIBUTION TO OUT-OF-STATE CHARITABLE REPOSITORIES, WHEN.** — 1. Any person, including but not limited to a prescription drug manufacturer or health care facility, may donate prescription drugs to the prescription drug repository program. The drugs shall be donated at a pharmacy, hospital, or nonprofit clinic that elects to participate in the prescription drug repository program and meets the criteria for participation established by rule of the department pursuant to section 196.984. Participation in the program by pharmacies, hospitals, and nonprofit clinics shall be voluntary. Nothing in sections 196.970 to 196.984 shall require any pharmacy, hospital, or nonprofit clinic to participate in the program.

2. A pharmacy, hospital, or nonprofit clinic which meets the eligibility requirements established in section 196.984 may dispense prescription drugs donated under the program to persons who are residents of Missouri and who meet the eligibility requirements of the program, or to other governmental entities and nonprofit private entities to be dispensed to persons who meet the eligibility requirements of the program. A prescription drug shall be dispensed only pursuant to a prescription issued by a health care professional who is authorized by statute to prescribe drugs. A pharmacy, hospital, or nonprofit clinic which accepts donated prescription drugs shall comply with all applicable federal and state laws dealing with the storage and distribution of dangerous drugs and shall inspect all prescription drugs prior to dispensing the prescription drugs to determine that they are not adulterated as described in section 196.095. The pharmacy, hospital, or nonprofit clinic may charge persons receiving donated prescription drugs a handling fee, not to exceed a maximum of two hundred percent of the Medicaid dispensing fee, established by rule of the department promulgated pursuant to section 196.984. Prescription drugs donated to the program shall not be resold. Any individual who knowingly resells any

donated prescription drugs pursuant to sections 196.970 to 196.984 shall be guilty of a class D felony.

**3. Drugs donated under this section that are not used or accepted by any pharmacy, hospital, or nonprofit clinic in this state may be distributed to out-of-state charitable repositories for use outside of this state. Such donated drugs may be repackaged in a manner appropriate for distribution by participating pharmacies, hospitals, and nonprofit clinics.**

**196.981. IMMUNITY FROM CIVIL OR CRIMINAL LIABILITY, WHEN.** — 1. The following persons and entities when acting in good faith shall not be subject to criminal or civil liability for injury, death, or loss to person or property, or professional disciplinary action for matters related to donating, accepting, or dispensing prescription drugs under the prescription drug repository program:

- (1) The department of health and senior services;
- (2) The director of the department of health and senior services;
- (3) Any prescription drug manufacturer, governmental entity, or person donating prescription drugs to the program;
- (4) Any pharmacy, hospital, nonprofit clinic, **out-of-state charitable repository**, or health care professional that prescribes, accepts or dispenses prescription drugs under the program; and
- (5) Any pharmacy, hospital, [or] nonprofit clinic, **or out-of-state charitable repository** that employs or has a hospital medical staff affiliation with a health care professional who accepts or dispenses prescription drugs under the program.

2. A prescription drug manufacturer shall not, in the absence of bad faith, be subject to criminal or civil liability for injury, death, or loss to person or property for matters related to the donation, acceptance, or dispensing of a prescription drug manufactured by the prescription drug manufacturer that is donated by any person under the program, including but not limited to liability for failure to transfer or communicate product or consumer information or the expiration date of the donated prescription drug.

Approved July 12, 2006

HB 1688 [HB 1688]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Excludes any sales tax imposed by Jackson County for the purpose of sports stadium improvement from the additional 50% economic activity tax revenue allocation for tax increment financing projects**

AN ACT to repeal section 99.845, RSMo, and to enact in lieu thereof one new section relating to the sole purpose of excluding a sales tax imposed by Jackson County for sports stadium improvement from economic activity tax revenues for tax increment finance projects.

**SECTION**

- A. Enacting clause.
- 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.

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

**SECTION A. ENACTING CLAUSE.** — Section 99.845, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 99.845, to read as follows:

**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, **or any sales tax imposed by a county with a charter form of government and with more than six hundred thousand but fewer than seven hundred thousand inhabitants, for the purpose of sports stadium improvement**, 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 benefiting 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 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
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annual amount of the new state revenues approved for disbursements from the Missouri supplemental tax increment financing fund exceed 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. 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.

Approved March 16, 2006

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HB 1698 [CCS SS SCS HCS HB 1698, 1236, 995, 1362 & 1290]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Changes the laws regarding sexual offenders**

AN ACT to repeal sections 43.650, 217.735, 544.671, 547.170, 556.061, 558.018, 559.100, 559.106, 566.010, 566.020, 566.030, 566.032, 566.060, 566.062, 566.067, 566.083,

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566.086, 566.090, 566.145, 566.147, 566.151, 568.020, 573.010, 575.195, 589.400, 589.402, 589.403, 589.405, 589.407, 589.414, 589.425, 600.042, 632.484, 632.489, 632.495, 632.498, 632.501, 632.504, and 632.507, RSMo, and to enact in lieu thereof fifty-three new sections relating to sexual offenders, with penalty provisions and an emergency clause.

## SECTION

- A. Enacting clause.
- 43.533. Toll-free number for information on registered sexual offenders, contents, procedure, publication — rulemaking authority.
- 43.650. Internet site to be maintained, registered sex offender search — confidentiality, release of information, when.
- 188.023. Reports of rape or under age eighteen sexual abuse, required to report, how.
- 217.735. Lifetime supervision required for certain offenders — electronic monitoring — termination at age sixty-five permitted, when — rulemaking authority.
- 351.609. Records possessed by corporations providing certain services to the public, definitions — applicability of section — records provided under subpoena or warrant — accelerated or extended time for production of records — motion to quash — authenticity verified — Missouri corporations — no cause of action, when.
- 489.042. Authority to require registered sexual offenders to provide access to personal home computer.
- 544.671. Certain defendants not entitled to bail for certain offenses.
- 547.170. Prisoner, when let to bail.
- 556.061. Code definitions.
- 558.018. Persistent sexual offender, predatory sexual offender, defined, extension of term, when, minimum term.
- 559.100. Circuit courts, power to place on probation or parole — revocation — conditions — restitution.
- 559.106. Lifetime supervision of certain sexual offenders — electronic monitoring — termination at age sixty-five permitted, when.
- 566.010. Chapter 566 and chapter 568 definitions.
- 566.020. Mistake as to incapacity or age — consent not a defense, when.
- 566.030. Forcible rape and attempted forcible rape, penalties — suspended sentences not granted, when.
- 566.032. Statutory rape, attempt, first degree, penalties.
- 566.060. Forcible sodomy, penalties — suspended sentence not granted, when.
- 566.062. Statutory sodomy, attempt, first degree, penalties.
- 566.067. Child molestation, first degree, penalties.
- 566.083. Sexual misconduct involving a child, penalty — applicability of section — affirmative defense not allowed, when.
- 566.086. Sexual contact with a student while on public school property.
- 566.090. Sexual misconduct, first degree, penalties.
- 566.145. Sexual contact with prisoner or offender — definitions — penalty — consent not a defense.
- 566.147. Certain offenders not to reside within one thousand feet of a school or child-care facility.
- 566.149. Certain offenders not to be present within five hundred feet of school property, exception — permission required for parents or guardians who are offenders, procedure — penalty.
- 566.151. Enticement of a child, penalties.
- 566.213. Sexual trafficking of a child under age twelve — affirmative defense not allowed, when — penalty.
- 566.265. Penalties for violations by corporations or businesses.
- 567.085. Promoting travel for prostitution — penalty.
- 567.087. Prohibitions on travel agencies or tour operators — rebuttable presumption, advertisements.
- 567.089. Offering travel for purpose of prostitution prohibited — penalties.
- 568.020. Incest.
- 573.010. Definitions.
- 575.159. Aiding a sexual offender — penalty — applicability of section.
- 575.195. Escape from commitment, detention, or conditional release — penalty.
- 589.400. Registration of certain offenders with chief law officers of county of residence — time limitation — cities may request copy of registration — fees — automatic removal from registry — petitions for removal — procedure, notice, denial of petition — higher education students and workers — persons removed.
- 589.402. Internet search capability of registered sex offenders to be maintained — information to be made available — newspaper publication.
- 589.403. Correctional facility or mental health institution releasing on parole or discharge, official in charge, duties.
- 589.405. Court's duties upon release of sexual offender.
- 589.407. Registration, required information — substantiating accuracy of information.
- 589.414. Registrant's duties on change of address — time limitations for certain notifications.
- 589.425. Failure to register, penalty — subsequent violations, penalty.
- 600.042. Director's duties and powers — cases for which representation is authorized — rules, procedure — discretionary powers of defender system — bar members appointment authorized.

- 632.484. Detention and evaluation of persons alleged to be sexually violent predators — duties of attorney general and department of mental health — expiration date.
- 632.489. Probable cause determined — sexually violent predator taken into custody, when — hearing, procedure — examination by department of mental health.
- 632.495. Unanimous verdict required — offender committed to custody of department of mental health, when — release, when — mistrial procedures.
- 632.498. Annual examination of mental condition, not required, when — annual review by the court — petition for release, hearing, procedures (when director disapproves).
- 632.501. Petition for release — hearing (when director approves).
- 632.504. Subsequent petitions for release — approval or denial procedures.
- 632.505. Conditional release — interagency agreements for supervision, plan — court review of plan, order, conditions — copy of order — continuing control and care — modifications — violations — agreements with private entities — fee, rulemaking authority — escape.
- 632.507. Attorney general to inform victims — notification of proceedings.
- 650.120. Grants to fund investigations of Internet sex crimes against children — panel, membership, terms — local matching amounts — priorities — training standards — information sharing — panel recommendation — sunset provision.
  - 1. Notification of monitoring to highway patrol — information entered into MULES and sexual offender registry.
  - B. Emergency clause.

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

**SECTION A. ENACTING CLAUSE.** — Sections 43.650, 217.735, 544.671, 547.170, 556.061, 558.018, 559.100, 559.106, 566.010, 566.020, 566.030, 566.032, 566.060, 566.062, 566.067, 566.083, 566.086, 566.090, 566.145, 566.147, 566.151, 568.020, 573.010, 575.195, 589.400, 589.402, 589.403, 589.405, 589.407, 589.414, 589.425, 600.042, 632.484, 632.489, 632.495, 632.498, 632.501, 632.504, and 632.507, RSMo, are repealed and fifty-three new sections enacted in lieu thereof, to be known as sections 43.533, 43.650, 188.023, 217.735, 351.609, 489.042, 544.671, 547.170, 556.061, 558.018, 559.100, 559.106, 566.010, 566.020, 566.030, 566.032, 566.060, 566.062, 566.067, 566.083, 566.086, 566.090, 566.145, 566.147, 566.149, 566.151, 566.213, 566.265, 567.085, 567.087, 567.089, 568.020, 573.010, 575.159, 575.195, 589.400, 589.402, 589.403, 589.405, 589.407, 589.414, 589.425, 600.042, 632.484, 632.489, 632.495, 632.498, 632.501, 632.504, 632.505, 632.507, 650.120, and 1, to read as follows:

**43.533. TOLL-FREE NUMBER FOR INFORMATION ON REGISTERED SEXUAL OFFENDERS, CONTENTS, PROCEDURE, PUBLICATION — RULEMAKING AUTHORITY. — 1.** The highway patrol shall, subject to appropriation, operate a toll-free telephone number in order to disseminate registration information provided by individuals who are required to register under sections 589.400 to 589.425, RSMo, and receive information from persons regarding the residency of a registered sexual offender. The information available via the telephone number shall include only information that offenders are required to provide under section 589.407, RSMo. When the highway patrol provides such information regarding a sexual offender, the patrol personnel shall advise the person making the inquiry that positive identification of a person believed to be a sexual offender cannot be established unless a fingerprint comparison is made, and that it is illegal to use such information regarding a registered sexual offender to facilitate the commission of a crime. The toll-free telephone number shall be published on the highway patrol's sexual offender registry website maintained under section 43.650.

2. The patrol shall promulgate rules to effect the enforcement 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, 2006, shall be invalid and void.

**43.650. INTERNET SITE TO BE MAINTAINED, REGISTERED SEX OFFENDER SEARCH — CONFIDENTIALITY, RELEASE OF INFORMATION, WHEN.** — 1. The patrol shall, subject to appropriation, 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 4 of this section, if known, on offenders registered in this state pursuant to sections 589.400 to 589.425, RSMo, 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 web site.

3. The registered sexual offender search shall include the capability to search for sexual offenders by name, zip code, and by typing in an address and specifying a search within a certain number of miles radius from that address.

4. 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 **and any known aliases** of the offender;
- (2) **The date of birth and any known alias dates of birth of the offender;**
- (3) **A physical description of the offender;**
- (4) The [last known address] **residence, temporary, work, and school addresses** of the offender, including the street address, city, county, state, and zip code;

[ (3) A photograph] (5) **Any photographs** of the offender; [and

(4) The crime or crimes for which the offender was convicted that caused him or her to have to register.]

(6) **A physical description of the offender's vehicles, including the year, make, model, color, and license plate number;**

(7) **The nature and dates of all offenses qualifying the offender to register;**

(8) **The date on which the offender was released from the department of mental health, prison, or jail, or placed on parole, supervised release, or probation for the offenses qualifying the offender to register; and**

(9) **Compliance status of the offender with the provisions of section 589.400 to 589.425, RSMo.**

**188.023. REPORTS OF RAPE OR UNDER AGE EIGHTEEN SEXUAL ABUSE, REQUIRED TO REPORT, HOW.** — Any licensed health care professional who delivers a baby or performs an abortion, who has prima facie evidence that a patient has been the victim of statutory rape in the first degree or statutory rape in the second degree, or if the patient is under the age of eighteen, that he or she has been a victim of sexual abuse, including forcible rape, sexual assault, or incest, shall be required to report such offenses in the same manner as provided for by section 210.115, RSMo.

**217.735. LIFETIME SUPERVISION REQUIRED FOR CERTAIN OFFENDERS — ELECTRONIC MONITORING — TERMINATION AT AGE SIXTY-FIVE PERMITTED, WHEN — RULEMAKING AUTHORITY.** — 1. Notwithstanding any other provision of law to the contrary, the board shall supervise an offender for the duration of his or her natural life when the offender has pleaded guilty to or been found guilty of an offense under section 566.030, 566.032, 566.060, or 566.062, RSMo, based on an act committed on or after August 28, 2006, or the offender has pleaded guilty to or has been found guilty of an offense under section 566.067, 566.083, 566.100, 566.151, 566.212, **566.213**, 568.020, 568.080, or 568.090, RSMo, based on an act committed on or after August 28, [2005] **2006**, against a victim who was less than fourteen years old and the offender is a prior sex offender as defined in subsection 2 of this section.

2. For the purpose of this section, a prior sex offender is a person who has previously **pleaded guilty to or** been found guilty of an offense contained in chapter 566, RSMo, **or violating section 568.020, RSMo, when the person had sexual intercourse or deviate sexual intercourse with the victim, or violating subdivision (2) of subsection 1 of section 568.045, RSMo.**

3. Subsection 1 of this section applies to offenders who have been granted probation, and to offenders who have been released on parole, conditional release, or upon serving their full sentence without early release. Supervision of an offender who was released after serving his or her full sentence will be considered as supervision on parole.

4. A mandatory condition of lifetime supervision of an offender under this section is that the offender be electronically monitored. Electronic monitoring shall be based on a global positioning system or other technology that identifies and records the offender's location at all times.

5. In appropriate cases as determined by a risk assessment, the board may terminate the supervision of an offender who is being supervised under this section when the offender is sixty-five years of age or older.

6. In accordance with section 217.040, the board may adopt rules relating to supervision and electronic monitoring of offenders under this section.

**351.609. RECORDS POSSESSED BY CORPORATIONS PROVIDING CERTAIN SERVICES TO THE PUBLIC, DEFINITIONS — APPLICABILITY OF SECTION — RECORDS PROVIDED UNDER SUBPOENA OR WARRANT — ACCELERATED OR EXTENDED TIME FOR PRODUCTION OF RECORDS — MOTION TO QUASH — AUTHENTICITY VERIFIED — MISSOURI CORPORATIONS — NO CAUSE OF ACTION, WHEN. — 1. For the purposes of this section, the following terms shall mean:**

(1) "Adverse result", danger to the life or physical safety of an individual, a flight from prosecution, the destruction of or tampering with evidence, the intimidation of potential witnesses, or serious jeopardy to an investigation or undue delay of a trial that occurs as a result of the notification of a subpoena or search warrant.

(2) "Electronic communication services" and "remote computing services", the same meaning as provided by the Electronic Communications Privacy Act in Chapter 121 (commencing with Section 2701) of Part I of Title 18 of the United States Code Annotated, as amended. This section shall not apply to corporations that do not provide electronic communication services or remote computing services to the general public.

(3) "Foreign corporation", the same meaning as defined in section 351.015, and in addition, those corporations organized under the laws of the United States government.

(4) "Missouri corporation", any corporation governed by the general and business corporation law of Missouri under the provisions of this chapter that files its articles of incorporation with the Missouri secretary of state and is issued a certificate of incorporation under section 351.060, RSMo.

(5) "Properly served", a subpoena or search warrant that has been delivered by hand, or in a manner reasonably allowing for proof of delivery by United States mail, overnight delivery service, or facsimile to any officer of a foreign corporation or its general manager in this state, or if the corporation is a bank to a cashier or an assistant cashier, or to any natural person designated by the foreign corporation as an agent for the service of process, or any person named in the latest certificate of the corporate agent if the corporation has designated such a corporate agent. A copy of the statement and designation, or a copy of the latest statement filed and certified by the secretary of state is sufficient evidence of the appointment of an agent for the service of process.

2. The provisions of this section shall apply to any subpoena or search warrant issued to search for records that are in the actual or constructive possession of a foreign corporation that provides electronic communication services or remote computing services

to the general public, where those records would reveal the identity of the customers using the service, data stored by, or on behalf of, the customer, the customer's usage of those services, the recipient or destination of communications sent to or from those customers, or the content of those communications.

3. When properly served with a subpoena or search warrant issued by a Missouri court, a foreign corporation shall provide to the peace officer to whom the subpoena or search warrant was issued, all records sought under the subpoena or search warrant within five business days of receipt, including any records maintained or located outside the state.

4. Where the peace officer to whom a subpoena or search warrant was issued makes a showing and the issuing judge finds that failure to produce records within five business days will cause an adverse result, the subpoena or search warrant may require production of records within less than five business days. A court may reasonably extend the time required for production of the records upon finding that the foreign corporation has shown good cause for that extension and that an extension of time would not cause an adverse result.

5. A foreign corporation seeking to quash the subpoena or search warrant shall seek relief from the court that issued the subpoena or search warrant within the time required for production of records under this section. The issuing court shall hear and decide that motion no later than five court days after the motion is filed.

6. The foreign corporation shall verify the authenticity of records that it produces by providing a verified affidavit. Such records shall be admissible as evidence.

7. A Missouri corporation that provides electronic communication services or remote computing services to the general public, when served with a subpoena or search warrant issued by another state to produce records that reveal the identity of the customers using those services, data stored by, or on behalf of, the customer, the customer's usage of those services, the recipient or destination of communications sent to or from those customers, or the content of those communications, shall produce those records as if the subpoena or search warrant was issued by a court of this state.

8. No cause of action shall lie against any foreign corporation or Missouri corporation subject to this section, its officers, employees, agents, or other specified persons for providing records, information, facilities, or assistance in accordance with the terms of a subpoena or search warrant subject to this section.

**489.042. AUTHORITY TO REQUIRE REGISTERED SEXUAL OFFENDERS TO PROVIDE ACCESS TO PERSONAL HOME COMPUTER.** — The court or the board of probation and parole shall have the authority to require a person who is required to register as a sexual offender under sections 589.400 to 589.425, RSMo, to give his or her assigned probation or parole officer access to his or her personal home computer as a condition of probation or parole in order to monitor and prevent such offender from obtaining and keeping child pornography or from committing an offense under chapter 566, RSMo. Such access shall allow the probation or parole officer to view the internet use history, computer hardware, and computer software of any computer, including a laptop computer, that the offender owns.

**544.671. CERTAIN DEFENDANTS NOT ENTITLED TO BAIL FOR CERTAIN OFFENSES.** — Notwithstanding any supreme court rule or judicial ruling to the contrary, no defendant under a sentence of death or imprisonment in the penitentiary for life, or [a] any sentence of imprisonment for a violation of section 195.222, 565.021, or 565.050, RSMo, [or subsection 1 of] section 566.030, 566.032, 566.040, 566.060, 566.062, 566.070, or 566.100, RSMo, and no defendant who has pled guilty to or been found guilty of any felony sexual offense under chapter 566, RSMo, where the victim was less than seventeen years of age at the time the

**crime was committed, any sexual offense under chapter 568, RSMo, where the victim was less than seventeen years of age at the time the crime was committed, or any pornographic offense involving a minor as set forth in sections 573.023, 573.025, 573.035, and 573.037, and any felony violation of section 573.040, RSMo,** shall be entitled to bail pending appeal after June 29, 1994. Pursuant to the prerogative of the general assembly to declare the public policy of this state in matters regarding criminal liability of persons and to enact laws relating to judicial procedure, the general assembly declares that subsequent to June 29, 1994, no person shall be entitled to bail or continuation of bail pursuant to section 547.170, RSMo, if that person is under a sentence of death or imprisonment in the penitentiary for life, or [a] **any** sentence of imprisonment for a violation of section 195.222, 565.021, or 565.050, RSMo, [or subsection 1 of] section 566.030, **566.032, 566.040, 566.060, 566.062, 566.070, or 566.100, RSMo, and no defendant who has pled guilty to or been found guilty of any felony sexual offense under chapter 566, RSMo, where the victim was less than seventeen years of age at the time the crime was committed, any sexual offense under chapter 568, RSMo, where the victim was less than seventeen years of age at the time the crime was committed, or any pornographic offense involving a minor as set forth in sections 573.023, 573.025, 573.035, and 573.037, and any felony violation of section 573.040, RSMo.**

**547.170. PRISONER, WHEN LET TO BAIL.** — In all cases where an appeal or writ of error is prosecuted from a judgment in a criminal cause, except where the defendant is under sentence of death or imprisonment in the penitentiary for life, or [a] **any** sentence of imprisonment for a violation of sections 195.222, RSMo, 565.021, RSMo, 565.050, RSMo, [subsections 1 and 2 of] section 566.030, 566.032, 566.040, 566.060, 566.062, 566.070, 566.100, RSMo, **or where the defendant has entered a plea of guilty to or been found guilty of any sexual offense under chapter 566, RSMo, where the victim was less than seventeen years of age at the time the crime was committed, any sexual offense under chapter 568, RSMo, where the victim was less than seventeen years of age at the time the crime was committed, or any pornographic offense involving a minor as set forth in sections 573.023, 573.025, 573.035, 573.037, and 573.040, RSMo,** any court or officer authorized to order a stay of proceedings under the preceding provisions may allow a writ of habeas corpus, to bring up the defendant, and may thereupon let him to bail upon a recognizance, with sufficient sureties, to be approved by such court or judge.

**556.061. CODE DEFINITIONS.** — In this code, unless the context requires a different definition, the following shall apply:

- (1) "Affirmative defense" has the meaning specified in section 556.056;
- (2) "Burden of injecting the issue" has the meaning specified in section 556.051;
- (3) "Commercial film and photographic print processor", any person who develops exposed photographic film into negatives, slides or prints, or who makes prints from negatives or slides, for compensation. The term commercial film and photographic print processor shall include all employees of such persons but shall not include a person who develops film or makes prints for a public agency;
- (4) "Confinement":
  - (a) A person is in confinement when such person is held in a place of confinement pursuant to arrest or order of a court, and remains in confinement until:
    - a. A court orders the person's release; or
    - b. The person is released on bail, bond, or recognizance, personal or otherwise; or
    - c. A public servant having the legal power and duty to confine the person authorizes his release without guard and without condition that he return to confinement;
  - (b) A person is not in confinement if:
    - a. The person is on probation or parole, temporary or otherwise; or

b. The person is under sentence to serve a term of confinement which is not continuous, or is serving a sentence under a work-release program, and in either such case is not being held in a place of confinement or is not being held under guard by a person having the legal power and duty to transport the person to or from a place of confinement;

(5) "Consent": consent or lack of consent may be expressed or implied. Assent does not constitute consent if:

(a) It is given by a person who lacks the mental capacity to authorize the conduct charged to constitute the offense and such mental incapacity is manifest or known to the actor; or

(b) It is given by a person who by reason of youth, mental disease or defect, or intoxication, is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or

(c) It is induced by force, duress or deception;

(6) "Criminal negligence" has the meaning specified in section 562.016, RSMo;

(7) "Custody", a person is in custody when the person has been arrested but has not been delivered to a place of confinement;

(8) "Dangerous felony" means the felonies of arson in the first degree, assault in the first degree, attempted forcible rape if physical injury results, attempted forcible sodomy if physical injury results, forcible rape, forcible sodomy, kidnaping, murder in the second degree, assault of a law enforcement officer in the first degree, domestic assault in the first degree, elder abuse in the first degree, robbery in the first degree, statutory rape in the first degree when the victim is a child less than twelve years of age at the time of the commission of the act giving rise to the offense, statutory sodomy in the first degree when the victim is a child less than twelve years of age at the time of the commission of the act giving rise to the offense, and, abuse of a child pursuant to subdivision (2) of subsection 3 of section 568.060, RSMo, **and child kidnapping**;

(9) "Dangerous instrument" means any instrument, article or substance, which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury;

(10) "Deadly weapon" means any firearm, loaded or unloaded, or any weapon from which a shot, readily capable of producing death or serious physical injury, may be discharged, or a switchblade knife, dagger, billy, blackjack or metal knuckles;

(11) "Felony" has the meaning specified in section 556.016;

(12) "Forcible compulsion" means either:

(a) Physical force that overcomes reasonable resistance; or

(b) A threat, express or implied, that places a person in reasonable fear of death, serious physical injury or kidnaping of such person or another person;

(13) "Incapacitated" means that physical or mental condition, temporary or permanent, in which a person is unconscious, unable to appraise the nature of such person's conduct, or unable to communicate unwillingness to an act. A person is not incapacitated with respect to an act committed upon such person if he or she became unconscious, unable to appraise the nature of such person's conduct or unable to communicate unwillingness to an act, after consenting to the act;

(14) "Infraction" has the meaning specified in section 556.021;

(15) "Inhabitable structure" has the meaning specified in section 569.010, RSMo;

(16) "Knowingly" has the meaning specified in section 562.016, RSMo;

(17) "Law enforcement officer" means any public servant having both the power and duty to make arrests for violations of the laws of this state, and federal law enforcement officers authorized to carry firearms and to make arrests for violations of the laws of the United States;

(18) "Misdemeanor" has the meaning specified in section 556.016;

(19) "Offense" means any felony, misdemeanor or infraction;

(20) "Physical injury" means physical pain, illness, or any impairment of physical condition;

(21) "Place of confinement" means any building or facility and the grounds thereof wherein a court is legally authorized to order that a person charged with or convicted of a crime be held;

(22) "Possess" or "possessed" means having actual or constructive possession of an object with knowledge of its presence. A person has actual possession if such person has the object on his or her person or within easy reach and convenient control. A person has constructive possession if such person has the power and the intention at a given time to exercise dominion or control over the object either directly or through another person or persons. Possession may also be sole or joint. If one person alone has possession of an object, possession is sole. If two or more persons share possession of an object, possession is joint;

(23) "Public servant" means any person employed in any way by a government of this state who is compensated by the government by reason of such person's employment, any person appointed to a position with any government of this state, or any person elected to a position with any government of this state. It includes, but is not limited to, legislators, jurors, members of the judiciary and law enforcement officers. It does not include witnesses;

(24) "Purposely" has the meaning specified in section 562.016, RSMo;

(25) "Recklessly" has the meaning specified in section 562.016, RSMo;

(26) "Ritual" or "ceremony" means an act or series of acts performed by two or more persons as part of an established or prescribed pattern of activity;

(27) "Serious emotional injury", an injury that creates a substantial risk of temporary or permanent medical or psychological damage, manifested by impairment of a behavioral, cognitive or physical condition. Serious emotional injury shall be established by testimony of qualified experts upon the reasonable expectation of probable harm to a reasonable degree of medical or psychological certainty;

(28) "Serious physical injury" means physical injury that creates a substantial risk of death or that causes serious disfigurement or protracted loss or impairment of the function of any part of the body;

(29) "Sexual conduct" means acts of human masturbation; deviate sexual intercourse; sexual intercourse; or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast of a female in an act of apparent sexual stimulation or gratification;

(30) "Sexual contact" means any touching of the genitals or anus of any person, or the breast of any female person, or any such touching through the clothing, for the purpose of arousing or gratifying sexual desire of any person;

(31) "Sexual performance", any performance, or part thereof, which includes sexual conduct by a child who is less than seventeen years of age;

(32) "Voluntary act" has the meaning specified in section 562.011, RSMo.

**558.018. PERSISTENT SEXUAL OFFENDER, PREDATORY SEXUAL OFFENDER, DEFINED, EXTENSION OF TERM, WHEN, MINIMUM TERM.** — 1. The court shall sentence a person who has pleaded guilty to or has been found guilty of the felony of forcible rape, statutory rape in the first degree, forcible sodomy, statutory sodomy in the first degree or an attempt to commit any of the crimes designated in this subsection to an extended term of imprisonment if it finds the defendant is a persistent sexual offender.

2. A "persistent sexual offender" is one who has previously pleaded guilty to or has been found guilty of the felony of forcible rape, rape, statutory rape in the first degree, forcible sodomy, sodomy, statutory sodomy in the first degree or an attempt to commit any of the crimes designated in this subsection.

3. The term of imprisonment for one found to be a persistent sexual offender shall be [not less than thirty years, which term shall be served without] **imprisonment for life without eligibility for probation or parole. Subsection 4 of section 558.019 shall not apply to any person imprisoned under this subsection, and "imprisonment for life" shall mean imprisonment for the duration of the person's natural life.**

4. The court shall sentence a person who has pleaded guilty to or has been found guilty of the felony of forcible rape, statutory rape in the first degree, forcible sodomy, statutory sodomy in the first degree, or an attempt to commit any of the preceding crimes or child molestation in the first degree when classified as a class B felony or sexual abuse when classified as a class B felony to an extended term of imprisonment as provided for in this section if it finds the defendant is a predatory sexual offender.

5. For purposes of this section, a "predatory sexual offender" is a person who:

(1) Has previously pleaded guilty to or has been found guilty of the felony of forcible rape, rape, statutory rape in the first degree, forcible sodomy, sodomy, statutory sodomy in the first degree, or an attempt to commit any of the preceding crimes or child molestation in the first degree when classified as a class B felony or sexual abuse when classified as a class B felony; or

(2) Has previously committed an act which would constitute an offense listed in subsection 4 of this section, whether or not the act resulted in a conviction; or

(3) Has committed an act or acts against more than one victim which would constitute an offense or offenses listed in subsection 4 of this section, whether or not the defendant was charged with an additional offense or offenses as a result of such act or acts.

6. A person found to be a predatory sexual offender shall be imprisoned for life with eligibility for parole, however subsection 4 of section 558.019 shall not apply to persons found to be predatory sexual offenders for the purposes of determining the minimum prison term or the length of sentence as defined or used in such subsection. Notwithstanding any other provision of law, in no event shall a person found to be a predatory sexual offender receive a final discharge from parole.

7. Notwithstanding any other provision of law, the court shall set the minimum time required to be served before a predatory sexual offender is eligible for parole, conditional release or other early release by the department of corrections. The minimum time to be served by a person found to be a predatory sexual offender who:

(1) Has previously pleaded guilty to or has been found guilty of the felony of forcible rape, rape, statutory rape in the first degree, forcible sodomy, sodomy, statutory sodomy in the first degree, or an attempt to commit any of the preceding crimes and pleads guilty to or is found guilty of the felony of forcible rape, statutory rape in the first degree, forcible sodomy, statutory sodomy in the first degree or an attempt to commit any of the preceding crimes shall be any number of years but not less than thirty years;

(2) Has previously pleaded guilty to or has been found guilty of child molestation in the first degree when classified as a class B felony or sexual abuse when classified as a class B felony and pleads guilty to or is found guilty of attempting to commit or committing forcible rape, statutory rape in the first degree, forcible sodomy or statutory sodomy in the first degree shall be any number of years but not less than fifteen years;

(3) Has previously pleaded guilty to or has been found guilty of the felony of forcible rape, rape, statutory rape in the first degree, forcible sodomy, sodomy, statutory sodomy in the first degree, or an attempt to commit any of the preceding crimes and pleads guilty to or is found guilty of child molestation in the first degree when classified as a class B felony or sexual abuse when classified as a class B felony shall be any number of years but not less than fifteen years;

(4) Has previously pleaded guilty to or has been found guilty of child molestation in the first degree when classified as a class B felony or sexual abuse when classified as a class B felony, and pleads guilty to or is found guilty of child molestation in the first degree when classified as a class B felony or sexual abuse when classified as a class B felony shall be any number of years but not less than fifteen years;

(5) Is found to be a predatory sexual offender pursuant to subdivision (2) or (3) of subsection 5 of this section shall be any number of years within the range to which the person could have been sentenced pursuant to the applicable law if the person was not found to be a predatory sexual offender.

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8. Notwithstanding any provision of law to the contrary, the department of corrections, or any division thereof, may not furlough an individual found to be and sentenced as a persistent sexual offender or a predatory sexual offender.

**559.100. CIRCUIT COURTS, POWER TO PLACE ON PROBATION OR PAROLE — REVOCATION — CONDITIONS — RESTITUTION.** — 1. The circuit courts of this state shall have power, herein provided, to place on probation or to parole persons convicted of any offense over which they have jurisdiction, except as otherwise provided in sections 195.275 to 195.296, RSMo, section 558.018, RSMo, **section 559.115**, section 565.020, RSMo, **sections 566.030, 566.060, 566.067, 566.151, and 566.213**, RSMo, section 571.015, RSMo, and [section 559.115] **subsection 3 of section 589.425, RSMo.**

2. The circuit court shall have the power to revoke the probation or parole previously granted and commit the person to the department of corrections. The circuit court shall determine any conditions of probation or parole for the defendant that it deems necessary to ensure the successful completion of the probation or parole term, including the extension of any term of supervision for any person while on probation or parole. The circuit court may require that the defendant pay restitution for his crime. The probation or parole may be revoked for failure to pay restitution or for failure to conform his behavior to the conditions imposed by the circuit court. The circuit court may, in its discretion, credit any period of probation or parole as time served on a sentence.

**559.106. LIFETIME SUPERVISION OF CERTAIN SEXUAL OFFENDERS — ELECTRONIC MONITORING — TERMINATION AT AGE SIXTY-FIVE PERMITTED, WHEN.** — 1. Notwithstanding any statutory provision to the contrary, when a court grants probation to an offender who has pleaded guilty to or has been found guilty of an offense in section 566.030, 566.032, 566.060, or 566.062, **RSMo, based on an act committed on or after August 28, 2006, or the offender has pleaded guilty to or has been found guilty of an offense under section 566.067, 566.083, 566.100, 566.151, 566.212, 566.213, 568.020, 568.080, or 568.090, RSMo, based on an act committed on or after August 28, [2005] 2006,** against a victim who was less than fourteen years old and the offender is a prior sex offender as defined in subsection 2 of this section, the court shall order that the offender be supervised by the board of probation and parole for the duration of his or her natural life.

2. For the purpose of this section, a prior sex offender is a person who has previously pleaded guilty to or has been found guilty of an offense contained in chapter 566, RSMo, **or violating section 568.020, RSMo, when the person had sexual intercourse or deviate sexual intercourse with the victim, or of violating subdivision (2) of subsection 1 of section 568.045, RSMo.**

3. When probation for the duration of the offender's natural life has been ordered, a mandatory condition of such probation is that the offender be electronically monitored. Electronic monitoring shall be based on a global positioning system or other technology that identifies and records the offender's location at all times.

4. In appropriate cases as determined by a risk assessment, the court may terminate the probation of an offender who is being supervised under this section when the offender is sixty-five years of age or older.

**566.010. CHAPTER 566 AND CHAPTER 568 DEFINITIONS.** — As used in this chapter and chapter 568, RSMo, the following terms mean:

(1) "Deviate sexual intercourse", any act involving the genitals of one person and the hand, mouth, tongue, or anus of another person or a sexual act involving the penetration, however slight, of the male or female sex organ or the anus by a finger, instrument or object done for the purpose of arousing or gratifying the sexual desire of any person **or for the purpose of terrorizing the victim;**

- (2) "Sexual conduct", sexual intercourse, deviate sexual intercourse or sexual contact;
- (3) "Sexual contact", any touching of another person with the genitals or any touching of the genitals or anus of another person, or the breast of a female person, or such touching through the clothing, for the purpose of arousing or gratifying sexual desire of any person;
- (4) "Sexual intercourse", any penetration, however slight, of the female sex organ by the male sex organ, whether or not an emission results.

**566.020. MISTAKE AS TO INCAPACITY OR AGE — CONSENT NOT A DEFENSE, WHEN. —**

1. Whenever in this chapter the criminality of conduct depends upon a victim's being incapacitated, no crime is committed if the actor reasonably believed that the victim was not incapacitated and reasonably believed that the victim consented to the act. The defendant shall have the burden of injecting the issue of belief as to capacity and consent.

2. Whenever in this chapter the criminality of conduct depends upon a child being thirteen years of age or younger, it is no defense that the defendant believed the child to be older.

3. Whenever in this chapter the criminality of conduct depends upon a child being under seventeen years of age, it is an affirmative defense that the defendant reasonably believed that the child was seventeen years of age or older.

**4. Consent is not an affirmative defense to any offense under Chapter 566 if the alleged victim is less than twelve years of age.**

**566.030. FORCIBLE RAPE AND ATTEMPTED FORCIBLE RAPE, PENALTIES — SUSPENDED SENTENCES NOT GRANTED, WHEN. —**

1. A person commits the crime of forcible rape if such person has sexual intercourse with another person by the use of forcible compulsion. Forcible compulsion includes the use of a substance administered without a victim's knowledge or consent which renders the victim physically or mentally impaired so as to be incapable of making an informed consent to sexual intercourse.

2. Forcible rape or an attempt to commit forcible rape is a felony for which the authorized term of imprisonment is life imprisonment or a term of years not less than five years, unless:

(1) In the course thereof the actor inflicts serious physical injury or displays a deadly weapon or dangerous instrument in a threatening manner or subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person, in which case the authorized term of imprisonment is life imprisonment or a term of years not less than [ten] **fifteen** years; or

(2) **The victim is a child less than twelve years of age, in which case the required term of imprisonment is life imprisonment without eligibility for probation or parole until the defendant has served not less than thirty years of such sentence or unless the defendant has reached the age of seventy-five years and has served at least fifteen years of such sentence. Subsection 4 of section 558.019, RSMo, shall not apply to the sentence of a person who has pleaded guilty to or has been found guilty of forcible rape when the victim is under the age of twelve, and "life imprisonment" shall mean imprisonment for the duration of a person's natural life for the purposes of this section.**

3. **No person found guilty of or pleading guilty to forcible rape or an attempt to commit forcible rape shall be granted a suspended imposition of sentence or suspended execution of sentence.**

**566.032. STATUTORY RAPE, ATTEMPT, FIRST DEGREE, PENALTIES. —** 1. A person commits the crime of statutory rape in the first degree if he has sexual intercourse with another person who is less than fourteen years old.

2. Statutory rape in the first degree **or an attempt to commit statutory rape in the first degree** is a felony for which the authorized term of imprisonment is life imprisonment or a term of years not less than five years, unless in the course thereof the actor inflicts serious physical injury on any person, displays a deadly weapon or dangerous instrument in a threatening manner,

subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person, or the victim is less than twelve years of age in which case the authorized term of imprisonment is life imprisonment or a term of years not less than ten years.

**566.060. FORCIBLE SODOMY, PENALTIES — SUSPENDED SENTENCE NOT GRANTED, WHEN.** — 1. A person commits the crime of forcible sodomy if such person has deviate sexual intercourse with another person by the use of forcible compulsion. Forcible compulsion includes the use of a substance administered without a victim's knowledge or consent which renders the victim physically or mentally impaired so as to be incapable of making an informed consent to sexual intercourse.

2. Forcible sodomy or an attempt to commit forcible sodomy is a felony for which the authorized term of imprisonment is life imprisonment or a term of years not less than five years, unless:

(1) In the course thereof the actor inflicts serious physical injury or displays a deadly weapon or dangerous instrument in a threatening manner or subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person, in which case the authorized term of imprisonment is life imprisonment or a term of years not less than ten years; **or**

(2) **The victim is a child less than twelve years of age, in which case the required term of imprisonment is life imprisonment without eligibility for probation or parole until the defendant has served not less than thirty years of such sentence or unless the defendant has reached the age of seventy-five years and has served at least fifteen years of such sentence. Subsection 4 of section 558.019, RSMo, shall not apply to the sentence of a person who has pleaded guilty to or has been found guilty of forcible sodomy when the victim is under the age of twelve, and "life imprisonment" shall mean imprisonment for the duration of a person's natural life for the purposes of this section.**

3. **No person found guilty of or pleading guilty to forcible sodomy or an attempt to commit forcible sodomy shall be granted a suspended imposition of sentence or suspended execution of sentence.**

**566.062. STATUTORY SODOMY, ATTEMPT, FIRST DEGREE, PENALTIES.** — 1. A person commits the crime of statutory sodomy in the first degree if he has deviate sexual intercourse with another person who is less than fourteen years old.

2. Statutory sodomy in the first degree **or an attempt to commit statutory sodomy in the first degree** is a felony for which the authorized term of imprisonment is life imprisonment or a term of years not less than five years, unless in the course thereof the actor inflicts serious physical injury on any person, displays a deadly weapon or dangerous instrument in a threatening manner, subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person, or the victim is less than twelve years of age, in which case the authorized term of imprisonment is life imprisonment or a term of years not less than ten years.

**566.067. CHILD MOLESTATION, FIRST DEGREE, PENALTIES.** — 1. A person commits the crime of child molestation in the first degree if he or she subjects another person who is less than fourteen years of age to sexual contact.

2. Child molestation in the first degree is a class B felony unless:

(1) The actor has previously been convicted of an offense under this chapter or in the course thereof the actor inflicts serious physical injury, displays a deadly weapon or deadly instrument in a threatening manner, or the offense is committed as part of a ritual or ceremony, in which case the crime is a class A felony; **or**

(2) **The victim is a child less than twelve years of age and:**

(a) **The actor has previously been convicted of an offense under this chapter; or**

(b) **In the course thereof the actor inflicts serious physical injury, displays a deadly weapon or deadly instrument in a threatening manner, or if the offense is committed as**

**part of a ritual or ceremony, in which case, the crime is a class A felony and such person shall serve his or her term of imprisonment without eligibility for probation or parole.**

**566.083. SEXUAL MISCONDUCT INVOLVING A CHILD, PENALTY — APPLICABILITY OF SECTION — AFFIRMATIVE DEFENSE NOT ALLOWED, WHEN.** — 1. A person commits the crime of sexual misconduct involving a child if the person:

(1) Knowingly exposes his or her genitals to a child less than fourteen years of age under circumstances in which he or she knows that his or her conduct is likely to cause affront or alarm to the child;

(2) Knowingly exposes his or her genitals to a child less than fourteen years of age for the purpose of arousing or gratifying the sexual desire of any person, including the child; or

(3) Knowingly coerces or induces a child less than fourteen years of age to expose the child's genitals for the purpose of arousing or gratifying the sexual desire of any person, including the child.

2. [As used in this section, the term "sexual act" means any of the following, whether performed or engaged in either with any other person or alone: sexual or anal intercourse, masturbation, bestiality, sadism, masochism, fetishism, fellatio, cunnilingus, any other sexual activity or nudity, if such nudity is to be depicted for the purpose of sexual stimulation or gratification of any individual who may view such depiction.

3. Violation of this section] **The provisions of this section shall apply regardless of whether the person violates the section in person or via the Internet or other electronic means.**

**3. It is not an affirmative defense to prosecution for a violation of this section that the other person was a peace officer masquerading as a minor.**

**4. Sexual misconduct involving a child** is a class D felony unless the actor has previously pleaded guilty to or been [convicted] **found guilty** of an offense pursuant to this chapter or the actor has previously pleaded guilty to or has been convicted of an offense against the laws of another state or jurisdiction which would constitute an offense under this chapter, in which case it is a class C felony.

**566.086. SEXUAL CONTACT WITH A STUDENT WHILE ON PUBLIC SCHOOL PROPERTY.** — 1. A person commits the crime of sexual contact with a student while on public school property if he or she **has sexual contact with a student of the public school while on any public school property and is:**

(1) A teacher, as that term is defined in subdivisions (4), (5), and (7) of section 168.104, RSMo[, and he or she has sexual contact with a student of the public school while on any public school property] ;

(2) **A student teacher;**

(3) **An employee of the school;**

(4) **A volunteer of the school or of an organization working with the school on a project or program; or**

(5) **A person employed by an entity that contracts with the public school district to provide services.**

2. For the purposes of this section, "public school property" shall mean property of any public school in this state serving kindergarten through grade twelve **or any school bus used by the public school district.**

3. Sexual contact with a student while on public school property is a class D felony.

**566.090. SEXUAL MISCONDUCT, FIRST DEGREE, PENALTIES.** — 1. A person commits the crime of sexual misconduct in the first degree if [he has deviate sexual intercourse with another person of the same sex or he] **such person** purposely subjects another person to sexual contact without that person's consent.

2. Sexual misconduct in the first degree is a class A misdemeanor unless the actor has previously been convicted of an offense under this chapter or unless in the course thereof the actor displays a deadly weapon in a threatening manner or the offense is committed as a part of a ritual or ceremony, in which case it is a class D felony.

**566.145. SEXUAL CONTACT WITH PRISONER OR OFFENDER — DEFINITIONS — PENALTY — CONSENT NOT A DEFENSE.** — 1. A person commits the crime of sexual contact with [an inmate] **a prisoner or offender** if:

(1) Such person is an employee of, or assigned to work in, any jail, prison or correctional facility and such person has sexual intercourse or deviate sexual intercourse with [an inmate or resident of the facility] **a prisoner or offender**; or

(2) **Such person is a probation and parole officer and has sexual intercourse or deviate sexual intercourse with an offender who is under the direct supervision of the officer.**

2. **For the purposes of this section the following terms shall mean:**

(1) **"Prisoner", includes any person who is in the custody of a jail, whether pretrial or after disposition of a charge;**

(2) **"Offender", includes any person in the custody of a prison or correctional facility and any person who is under the supervision of the state board of probation and parole.**

3. Sexual contact with [an inmate] **a prisoner or offender** is a class D felony.

[3. The victim's consent] **4. Consent of a prisoner or offender** is not an affirmative defense.

**566.147. CERTAIN OFFENDERS NOT TO RESIDE WITHIN ONE THOUSAND FEET OF A SCHOOL OR CHILD-CARE FACILITY.** — 1. Any person who, **since July 1, 1979, has been or hereafter** has pleaded guilty or nolo contendere to, or been convicted of, or been found guilty of violating any of the provisions of this chapter or the provisions of [section 565.253, RSMo, invasion of privacy;] subsection 2 of section 568.020, RSMo, incest; section 568.045, RSMo, endangering the welfare of a child in the first degree; subsection 2 of section 568.080, RSMo, use of a child in a sexual performance; section 568.090, RSMo, promoting a sexual performance by a child; section 573.023, RSMo, sexual exploitation of a minor; section 573.025, RSMo, promoting child pornography in the first degree; section 573.035, RSMo, promoting child pornography in the second degree; section 573.037, RSMo, possession of child pornography, or section 573.040, RSMo, furnishing pornographic material to minors; shall not [establish residency] **reside** within one thousand feet of any public school as defined in section 160.011, RSMo, or any private school giving instruction in a grade or grades not higher than the twelfth grade, or child-care facility as defined in section 210.201, RSMo, which is in existence at the time [such residency is established] **the individual begins to reside at the location.**

2. If such person has already established a residence and a public school, a private school, or child-care facility is subsequently built or placed within one thousand feet of such person's residence, then such person shall, within one week of the opening of such public school, private school, or child-care facility, notify the county sheriff where such public school, private school, or child-care facility is located that he or she is now residing within one thousand feet of such public school, private school, or child-care facility and shall provide verifiable proof to the sheriff that he or she resided there prior to the opening of such public school, private school, or child-care facility.

3. **For purposes of this section, "resides" means sleeps in a residence, which may include more than one location and may be mobile or transitory.**

4. Violation of the provisions of subsection 1 of this section is a class D felony except that the second or any subsequent violation is a class B felony. Violation of the provisions of subsection 2 of this section is a class A misdemeanor except that the second or subsequent violation is a class D felony.

**566.149. CERTAIN OFFENDERS NOT TO BE PRESENT WITHIN FIVE HUNDRED FEET OF SCHOOL PROPERTY, EXCEPTION — PERMISSION REQUIRED FOR PARENTS OR GUARDIANS WHO ARE OFFENDERS, PROCEDURE — PENALTY. — 1.** Any person who has pleaded guilty or nolo contendere to, or been convicted of, or been found guilty of violating any of the provisions of this chapter or the provisions of subsection 2 of section 568.020, RSMo, incest; section 568.045, RSMo, endangering the welfare of a child in the first degree; subsection 2 of section 568.080, RSMo, use of a child in a sexual performance; section 568.090, RSMo, promoting a sexual performance by a child; section 573.023, RSMo, sexual exploitation of a minor; section 573.025, RSMo, promoting child pornography; or section 573.040, RSMo, furnishing pornographic material to minors; shall not be present in or loiter within five hundred feet of any school building, on real property comprising any school, or in any conveyance owned, leased, or contracted by a school to transport students to or from school or a school-related activity when persons under the age of eighteen are present in the building, on the grounds, or in the conveyance, unless the offender is a parent, legal guardian, or custodian of a student present in the building and has met the conditions set forth in subsection 2 of this section.

2. No parent, legal guardian, or custodian who has pleaded guilty or nolo contendere to, or been convicted of, or been found guilty of violating any of the offenses listed in subsection 1 of this section shall be present in any school building, on real property comprising any school, or in any conveyance owned, leased, or contracted by a school to transport students to or from school or a school-related activity when persons under the age of eighteen are present in the building, on the grounds or in the conveyance unless the parent, legal guardian, or custodian has permission to be present from the superintendent or school board or in the case of a private school from the principal. In the case of a public school, if permission is granted, the superintendent or school board president must inform the principal of the school where the sex offender will be present. Permission may be granted by the superintendent, school board, or in the case of a private school from the principal for more than one event at a time, such as a series of events, however, the parent, legal guardian, or custodian must obtain permission for any other event he or she wishes to attend for which he or she has not yet had permission granted.

3. Violation of the provisions of this section shall be a class A misdemeanor.

**566.151. ENTICEMENT OF A CHILD, PENALTIES. — 1.** A person at least twenty-one years of age or older commits the crime of enticement of a child if that person persuades, solicits, coaxes, entices, or lures whether by words, actions or through communication via the Internet or any electronic communication, any person who is less than fifteen years of age for the purpose of engaging in sexual conduct [with a child].

2. It is not an affirmative defense to a prosecution for a violation of this section that the other person was a peace officer masquerading as a minor.

3. [Attempting to entice a child is a class D felony.]

4.] Enticement of a child or an attempt to commit enticement of a child is a [class C felony unless the person has previously pled guilty to or been found guilty of violating the provisions of this section, section 568.045, 568.050, or 568.060, RSMo, or this chapter, in which case it is a class B felony] felony for which the authorized term of imprisonment shall be not less than five years and not more than thirty years. No person convicted under this section shall be eligible for parole, probation, conditional release, or suspended imposition or execution of sentence for a period of five calendar years.

**566.213. SEXUAL TRAFFICKING OF A CHILD UNDER AGE TWELVE — AFFIRMATIVE DEFENSE NOT ALLOWED, WHEN — PENALTY. — 1.** A person commits the crime of sexual trafficking of a child under the age of twelve if the individual knowingly:

(1) Recruits, entices, harbors, transports, provides, or obtains by any means a person under the age of twelve to participate in a commercial sex act or benefits, financially or by receiving anything of value, from participation in such activities; or

(2) Causes a person under the age of twelve to engage in a commercial sex act.

2. It shall not be an affirmative defense that the defendant believed that the person was twelve years of age or older.

3. Sexual trafficking of a child less than twelve years of age shall be a felony for which the authorized term of imprisonment is life imprisonment without eligibility for probation or parole until the defendant has served not less than twenty-five years of such sentence. Subsection 4 of section 558.019, RSMo, shall not apply to the sentence of a person who has pleaded guilty to or been found guilty of sexual trafficking of a child less than twelve years of age, and "life imprisonment" shall mean imprisonment for the duration of a person's natural life for the purposes of this section.

**566.265. PENALTIES FOR VIOLATIONS BY CORPORATIONS OR BUSINESSES.** — If a corporation or other business pleads guilty to or is found guilty of violating section 566.203, 566.206, 566.209, 566.212, 566.213, or 566.215, in addition to the criminal penalties described in such sections and other remedies provided for by law, the court may:

(1) Order its dissolution or reorganization;

(2) Order the suspension or revocation of any license, permit, or prior approval granted to it by the state;

(3) Order the surrender of its charter if it is organized under Missouri law or the revocation of its certificate to conduct business in Missouri if it is not organized under Missouri law.

**567.085. PROMOTING TRAVEL FOR PROSTITUTION — PENALTY.** — 1. A person commits the crime of promoting travel for prostitution if the person knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in prostitution as defined by section 567.010.

2. The crime of promoting travel for prostitution is a class C felony.

**567.087. PROHIBITIONS ON TRAVEL AGENCIES OR TOUR OPERATORS — REBUTTABLE PRESUMPTION, ADVERTISEMENTS.** — 1. No travel agency or charter tour operator shall:

(1) Promote travel for prostitution under section 567.085;

(2) Sell, advertise, or otherwise offer to sell travel services or facilitate travel:

(a) For the purpose of engaging in a commercial sex act as defined in section 566.200, RSMo;

(b) That consists of tourism packages or activities using and offering any sexual contact as defined in section 566.010, RSMo, as enticement for tourism; or

(c) That provides or purports to provide access to or that facilitates the availability of sex escorts or sexual services.

2. There shall be a rebuttable presumption that any travel agency or charter tour operator using advertisements that include the term "sex tours" or "sex travel" or include depictions of human genitalia is in violation of this section.

**567.089. OFFERING TRAVEL FOR PURPOSE OF PROSTITUTION PROHIBITED — PENALTIES.** — 1. No travel agency or charter tour operator shall engage in selling, advertising, or otherwise offering to sell travel services, tourism packages, or activities that solicit, encourage, or facilitate travel for the purpose of engaging in prostitution.

**2. Upon violation of this section by a travel agency or charter tour operator, the secretary of state shall revoke the articles of incorporation of the travel agency or charter tour operator. The secretary of state, as part of a proceeding brought under this section, may order a freeze of the bank or deposit accounts of the travel agency or charter tour operator.**

**568.020. INCEST.** — 1. A person commits the crime of incest if he marries or purports to marry or engages in sexual intercourse or deviate sexual intercourse with a person he knows to be, without regard to legitimacy:

- (1) His ancestor or descendant by blood or adoption; or
- (2) His stepchild, while the marriage creating that relationship exists; or
- (3) His brother or sister of the whole or half-blood; or
- (4) His uncle, aunt, nephew or niece of the whole blood.

2. [For purposes of this section:

(1) "Sexual intercourse" means any penetration, however slight, of the female sex organ by the male sex organ;

(2) "Deviate sexual intercourse" means any act of sexual gratification between persons not lawfully married to one another, involving the genitals of one person and the mouth, tongue or anus of another.

3.] Incest is a class D felony.

**573.010. DEFINITIONS.** — As used in this chapter the following terms shall mean:

(1) "Child", any person under the age of fourteen;

(2) "Child pornography"[,] :

(a) Any obscene material or performance depicting sexual conduct, sexual contact, or a sexual performance, as these terms are defined in section 556.061, RSMo, and which has as one of its participants or portrays as an observer of such conduct, contact, or performance a [child] **minor** under the age of eighteen; or

(b) **Any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct where:**

**a. The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;**

**b. Such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or**

**c. Such visual depiction has been created, adapted, or modified to show that an identifiable minor is engaging in sexually explicit conduct;**

(3) "Displays publicly", exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a street, highway or public sidewalk, or from the property of others or from any portion of the person's store, or the exhibitor's store or property when items and material other than this material are offered for sale or rent to the public;

(4) "Explicit sexual material", any pictorial or three dimensional material depicting human masturbation, deviate sexual intercourse, sexual intercourse, direct physical stimulation or unclothed genitals, sadomasochistic abuse, or emphasizing the depiction of postpubertal human genitals; provided, however, that works of art or of anthropological significance shall not be deemed to be within the foregoing definition;

(5) "Furnish", to issue, sell, give, provide, lend, mail, deliver, transfer, circulate, disseminate, present, exhibit or otherwise provide;

(6) **"Graphic"**, when used with respect to a depiction of sexually explicit conduct, that a viewer can observe any part of the genitals or pubic area of any depicted person or animal during any part of the time that the sexually explicit conduct is being depicted;

(7) **"Identifiable minor"**:

(a) A person:

a. (i) Who was a minor at the time the visual depiction was created, adapted, or modified; or

(ii) Whose image as a minor was used in creating, adapting, or modifying the visual depiction; and

b. Who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and

(b) The term shall not be construed to require proof of the actual identity of the identifiable minor;

(8) **"Indistinguishable"**, when used with respect to a depiction, virtually indistinguishable, in that the depiction is such that an ordinary person viewing the depiction would conclude that the depiction is of an actual minor engaged in sexually explicit conduct. Indistinguishable does not apply to depictions that are drawings, cartoons, sculptures, or paintings depicting minors or adults;

(9) **"Material"**, anything printed or written, or any picture, drawing, photograph, motion picture film, videotape or videotape production, or pictorial representation, or any recording or transcription, or any mechanical, chemical, or electrical reproduction, or stored computer data, or anything which is or may be used as a means of communication. "Material" includes undeveloped photographs, molds, printing plates, stored computer data and other latent representational objects;

[(7)] (10) **"Minor"**, any person under the age of eighteen;

[(8)] (11) **"Nudity"**, the showing of postpubertal human genitals or pubic area, with less than a fully opaque covering;

[(9)] (12) **"Obscene"**, any material or performance is obscene if, taken as a whole:

(a) Applying contemporary community standards, its predominant appeal is to prurient interest in sex; and

(b) The average person, applying contemporary community standards, would find the material depicts or describes sexual conduct in a patently offensive way; and

(c) A reasonable person would find the material lacks serious literary, artistic, political or scientific value;

[(10)] (13) **"Performance"**, any play, motion picture film, videotape, dance or exhibition performed before an audience of one or more;

[(11)] (14) **"Pornographic for minors"**, any material or performance is pornographic for minors if the following apply:

(a) The average person, applying contemporary community standards, would find that the material or performance, taken as a whole, has a tendency to cater or appeal to a prurient interest of minors; and

(b) The material or performance depicts or describes nudity, sexual conduct, sexual excitement, or sadomasochistic abuse in a way which is patently offensive to the average person applying contemporary adult community standards with respect to what is suitable for minors; and

(c) The material or performance, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors;

[(12)] (15) **"Promote"**, to manufacture, issue, sell, provide, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same, by any means including a computer;

[(13)] **(16)** "Sadomasochistic abuse", flagellation or torture by or upon a person as an act of sexual stimulation or gratification;

[(14)] **(17)** "Sexual conduct", actual or simulated, normal or perverted acts of human masturbation; deviate sexual intercourse; sexual intercourse; or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast of a female in an act of apparent sexual stimulation or gratification or any sadomasochistic abuse or acts including animals or any latent objects in an act of apparent sexual stimulation or gratification;

**(18)** "Sexually explicit conduct", actual or simulated:

**(a)** Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex:

**(b)** Bestiality;

**(c)** Masturbation;

**(d)** Sadistic or masochistic abuse; or

**(e)** Lascivious exhibition of the genitals or pubic area of any person;

[(15)] **(19)** "Sexual excitement", the condition of human male or female genitals when in a state of sexual stimulation or arousal;

**(20)** "Visual depiction", includes undeveloped film and videotape, and data stored on computer disk or by electronic means which is capable of conversion into a visual image;

[(16)] **(21)** "Wholesale promote", to manufacture, issue, sell, provide, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, or to offer or agree to do the same for purposes of resale or redistribution.

**575.159. AIDING A SEXUAL OFFENDER — PENALTY — APPLICABILITY OF SECTION. —**

**1.** A person commits the crime of aiding a sexual offender if such person knows that another person is a convicted sexual offender who is required to register as a sexual offender and has reason to believe that such sexual offender is not complying, or has not complied with the requirements of sections 589.400 to 589.425, RSMo, and who, with the intent to assist the sexual offender in eluding a law enforcement agency that is seeking to find the sexual offender to question the offender about, or to arrest the offender for, his or her noncompliance with the requirements of sections 589.400 to 589.425, RSMo:

**(1)** Withholds information from or does not notify the law enforcement agency about the sexual offender's noncompliance with the requirements of sections 589.400 to 589.425, RSMo, and if known the whereabouts of the sexual offender;

**(2)** Harbors or attempts to harbor or assists another person in harboring or attempting to harbor the sexual offender;

**(3)** Conceals or attempts to conceal or assists another person in concealing or attempting to conceal the sexual offender; or

**(4)** Provides information to the law enforcement agency regarding the sexual offender which the person knows to be false information.

**2.** Aiding a sexual offender is a class D felony.

**3.** The provisions of this section do not apply if the sexual offender is incarcerated in or is in the custody of a state correctional facility, a private correctional facility, a local jail, or a federal correctional facility.

**575.195. ESCAPE FROM COMMITMENT, DETENTION, OR CONDITIONAL RELEASE — PENALTY. —** 1. A person commits the crime of escape from commitment [or] , detention, or conditional release if he or she has been committed to a state mental hospital under the provisions of sections 552.010 to 552.080, RSMo, or [of] sections 632.480 to 632.513, RSMo, or has been ordered to be taken into custody, detained, or held pursuant to sections 632.480 to 632.513, RSMo, or as provided by section 632.475, RSMo, has been committed to the department of mental health as a criminal sexual psychopath under statutes in effect

before August 13, 1980, or has been granted a conditional release under the provisions of sections 552.010 to 552.080, RSMo, or sections 632.480 to 632.513, RSMo, and he or she escapes from such commitment [or] , detention, or conditional release.

2. Escape from commitment [or] , detention, or conditional release is a class D felony.

**589.400. REGISTRATION OF CERTAIN OFFENDERS WITH CHIEF LAW OFFICERS OF COUNTY OF RESIDENCE — TIME LIMITATION — CITIES MAY REQUEST COPY OF REGISTRATION — FEES — AUTOMATIC REMOVAL FROM REGISTRY — PETITIONS FOR REMOVAL — PROCEDURE, NOTICE, DENIAL OF PETITION — HIGHER EDUCATION STUDENTS AND WORKERS — PERSONS REMOVED.** — 1. Sections 589.400 to 589.425 shall apply to:

(1) Any person who, since July 1, 1979, has been or is hereafter convicted of, been found guilty of, or pled guilty or nolo contendere to committing, or attempting to commit, a felony offense of chapter 566, RSMo, **including sexual trafficking of a child and sexual trafficking of a child under the age of twelve**, or any offense of chapter 566, RSMo, where the victim is a minor; or

(2) Any person who, since July 1, 1979, has been or is hereafter convicted of, been found guilty of, or pled guilty or nolo contendere to committing, or attempting to commit one or more of the following offenses: kidnapping[, pursuant to section 565.110, RSMo] **when the victim was a child and the defendant was not a parent or guardian of the child**; felonious restraint **when the victim was a child and the defendant is not a parent or guardian of the child**; **sexual contact or sexual intercourse with a resident of a nursing home, under section 565.200, RSMo**; **endangering the welfare of a child under section 568.045, RSMo, when the endangerment is sexual in nature**; **genital mutilation of a female child, under section 568.065, RSMo**; promoting prostitution in the first degree; promoting prostitution in the second degree; promoting prostitution in the third degree; sexual exploitation of a minor; promoting child pornography in the first degree; promoting child pornography in the second degree; possession of child pornography; furnishing pornographic material to minors; public display of explicit sexual material; coercing acceptance of obscene material; promoting obscenity in the first degree; promoting pornography for minors or obscenity in the second degree; incest; [abuse of a child, pursuant to section 568.060, RSMo;] use of a child in a sexual performance; or promoting sexual performance by a child; and committed or attempted to commit the offense against a victim who is a minor, defined for the purposes of sections 589.400 to 589.425 as a person under eighteen years of age; or

(3) Any person who, since July 1, 1979, has been committed to the department of mental health as a criminal sexual psychopath; or

(4) Any person who, since July 1, 1979, has been found not guilty as a result of mental disease or defect of any offense listed in subdivision (1) or (2) of this subsection; or

(5) Any person who is a resident of this state who has, since July 1, 1979, or is hereafter convicted of, been found guilty of, or pled guilty to or nolo contendere in any other state, foreign country, or under federal or military jurisdiction to committing, or attempting to commit, an offense which, if committed in this state, would be a violation of chapter 566, RSMo, or a felony violation of any offense listed in subdivision (2) of this subsection or has been or is required to register in another state or has been or is required to register under federal or military law; or

(6) Any person who has been or is required to register in another state or has been or is required to register under federal or military law and who works or attends school or training on a full-time or on a part-time basis **or has a temporary residence** in Missouri. "Part-time" in this subdivision means for more than fourteen days in any twelve-month period.

2. Any person to whom sections 589.400 to 589.425 apply shall, within ten days of conviction, release from incarceration, or placement upon probation, register with the chief law enforcement official of the county **or city not within a county** in which such person resides unless such person has already registered in that county for the same offense. Any person to whom sections 589.400 to 589.425 apply if not currently registered in their county of residence

shall register with the chief law enforcement official of such county **or city not within a county** within ten days of August 28, 2003. The chief law enforcement official shall forward a copy of the registration form required by section 589.407 to a city, town, village, or campus law enforcement agency located within the county of the chief law enforcement official, if so requested. Such request may ask the chief law enforcement official to forward copies of all registration forms filed with such official. The chief law enforcement official may forward a copy of such registration form to any city, town, village, or campus law enforcement agency, if so requested.

3. The registration requirements of sections 589.400 through 589.425 are lifetime registration requirements unless:

- (1) All offenses requiring registration are reversed, vacated or set aside [or unless] ;
- (2) The registrant is pardoned of the offenses requiring registration;
- (3) **The registrant is no longer required to register and his or her name shall be removed from the registry under the provisions of subsection 6 of this section; or**
- (4) **The registrant may petition the court for removal from the registry under subsection 7 or 8 of this section and the court orders the removal of such person from the registry.**

4. For processing an initial sex offender registration the chief law enforcement officer of the county **or city not within a county** may charge the offender registering a fee of up to ten dollars.

5. For processing any change in registration required pursuant to section 589.414 the chief law enforcement official of the county **or city not within a county** may charge the person changing their registration a fee of five dollars for each change made after the initial registration.

6. **Effective August 28, 2006, any person currently on the sexual offender registry for being convicted of, found guilty of, or pleading guilty or nolo contendere to, committing felonious restraint when the victim was a child and he or she was the parent or guardian of the child, non-sexual child abuse that was committed under section 568.060, RSMo, or kidnapping when the victim was a child and he or she was the parent or guardian of the child, shall be removed from the registry. However, such person shall remain on the sexual offender registry for any other offense for which he or she is required to register under sections 589.400 to 589.425.**

7. **Effective August 28, 2006, any person currently on the sexual offender registry for having been convicted of, found guilty of, or having pleaded guilty or nolo contendere to, promoting prostitution in the second degree, promoting prostitution in the third degree, public display of explicit sexual material, statutory rape in the second degree, and no physical force or threat of physical force was used in the commission of the crime, may file a petition in the civil division of the circuit court in the county in which the offender was convicted or found guilty of or pled guilty or nolo contendere to the offense or offenses for the removal of his or her name from the sexual offender registry after ten years have passed from the date he or she was required to register.**

8. **Effective August 28, 2006, any person on the sexual offender registry for having been convicted of, found guilty of, or having pled guilty or nolo contendere to an offense included under subsection 1 of this section may file a petition after two years have passed from the date the offender was convicted or found guilty of or pled guilty or nolo contendere to the offense or offenses in the civil division of the circuit court in the county in which the offender was convicted or found guilty of or pled guilty or nolo contendere to the offense or offenses for removal of his or her name from the registry if such person was nineteen years of age or younger and the victim was thirteen years of age or older at the time of the offense and no physical force or threat of physical force was used in the commission of the offense.**

9. (1) **The court may grant such relief under subsection 7 or 8 of this section if such person demonstrates to the court that he or she has complied with the provisions of this**

section and is not a current or potential threat to public safety. The prosecuting attorney in the circuit court in which the petition is filed must be given notice, by the person seeking removal from the registry, of the petition to present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. Failure of the person seeking removal from the registry to notify the prosecuting attorney of the petition shall result in an automatic denial of such person's petition. If the prosecuting attorney is notified of the petition he or she shall make reasonable efforts to notify the victim of the crime for which the person was required to register, of the petition and the dates and times of any hearings or other proceedings in connection with that petition.

(2) If the petition is denied, such person shall wait at least twelve months before petitioning the court again. If the court finds that the petitioner is entitled to relief, which removes such person's name from the registry, a certified copy of the written findings or order shall be forwarded by the court to the chief law enforcement official having jurisdiction over the offender and to the Missouri state highway patrol in order to have such person's name removed from the registry.

10. Any nonresident worker or nonresident student shall register for the duration of such person's employment or attendance at any school of higher education and is not entitled to relief under the provisions of subsection 9 of this section. Any registered offender from another state who has a temporary residence in this state and resides more than fourteen days in a twelve-month period shall register for the duration of such person's temporary residency and is not entitled to the provisions of subsection 9 of this section.

11. Any person whose name is removed from the sexual offender registry under subsection 7 or 8 of this section shall no longer be required to fulfill the registration requirements of sections 589.400 to 589.425, unless such person is required to register for committing another offense after being removed from the registry.

**589.402. INTERNET SEARCH CAPABILITY OF REGISTERED SEX OFFENDERS TO BE MAINTAINED — INFORMATION TO BE MADE AVAILABLE — NEWSPAPER PUBLICATION. —**

1. The chief law enforcement officer of the county **or city not within a 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 web site.

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 **and any known aliases** of the offender;
- (2) **The date of birth and any known alias dates of birth of the offender;**
- (3) **A physical description of the offender;**
- (4) The [last known address] **residence, temporary, work, and school addresses** of the offender, including the street address, city, county, state, and zip code;
- [(3) A photograph] (5) **Any photographs** of the offender; [and
- (4) The crime or crimes for which the offender was convicted that caused him or her to have to register.]
- (6) **A physical description of the offender's vehicles, including the year, make, model, color, and license plate number;**
- (7) **The nature and dates of all offenses qualifying the offender to register;**

(8) The date on which the offender was released from the department of mental health, prison, or jail, or placed on parole, supervised release, or probation for the offenses qualifying the offender to register; and

(9) Compliance status of the offender with the provisions of sections 589.400 to 589.425.

4. The chief law enforcement officer of any county or city not within a county may publish in any newspaper distributed in the county or city not within a county the sexual offender information provided under subsection 3 of this section for any offender residing in the county or city not within a county.

**589.403. CORRECTIONAL FACILITY OR MENTAL HEALTH INSTITUTION RELEASING ON PAROLE OR DISCHARGE, OFFICIAL IN CHARGE, DUTIES.** — Any person to whom subsection 1 of section 589.400 applies who is paroled, discharged, or otherwise released from any correctional facility of the department of corrections or any mental health institution where such person was confined, shall be informed by the official in charge of such correctional facility or mental health institution of the person's possible duty to register pursuant to sections 589.400 to 589.425. If such person is required to register pursuant to sections 589.400 to 589.425, the official in charge of the correctional facility or the mental health institution shall obtain the address where the person expects to reside upon discharge, parole or release, and shall report such address to the chief law enforcement official of the county or city not within a county where the person expects to reside upon discharge, parole or release.

**589.405. COURT'S DUTIES UPON RELEASE OF SEXUAL OFFENDER.** — Any person to whom subsection 1 of section 589.400 applies who is released on probation, discharged upon payment of a fine, or released after confinement in a county jail shall, prior to such release or discharge, be informed of the possible duty to register pursuant to sections 589.400 to 589.425 by the court having jurisdiction over the case. If such person is required to register pursuant to sections 589.400 to 589.425, the court shall obtain the address where the person expects to reside upon discharge, parole or release and shall report such address to the chief law enforcement official of the county or city not within a county where the person expects to reside upon discharge, parole or release.

**589.407. REGISTRATION, REQUIRED INFORMATION— SUBSTANTIATING ACCURACY OF INFORMATION.** — 1. Any registration pursuant to sections 589.400 to 589.425 shall consist of completion of an offender registration form developed by the Missouri state highway patrol. Such form shall include, but is not limited to the following:

(1) A statement in writing signed by the person, giving the name, address, Social Security number and phone number of the person, **the license plate number and vehicle description, including the year, make, model, and color of each vehicle owned or operated by the offender**, the place of employment of such person, enrollment within any institutions of higher education, the crime which requires registration, whether the person was sentenced as a persistent or predatory offender pursuant to section 558.018, RSMo, the date, place, and a brief description of such crime, the date and place of the conviction or plea regarding such crime, the age and gender of the victim at the time of the offense and whether the person successfully completed the Missouri sexual offender program pursuant to section 589.040, if applicable; and

(2) The fingerprints and a photograph of the person.

2. **The offender shall provide positive identification and documentation to substantiate the accuracy of the information completed on the offender registration form, including but not limited to the following:**

(1) A photocopy of a valid driver's license or non-driver's identification card;

(2) A document verifying proof of the offender's residency; and

(3) A photocopy of the vehicle registration for each of the offender's vehicles.

**589.414. REGISTRANT'S DUTIES ON CHANGE OF ADDRESS — TIME LIMITATIONS FOR CERTAIN NOTIFICATIONS.** — 1. If any person required by sections 589.400 to 589.425 to register changes residence or address within the same county **or city not within a county** as such person's previous address, the person shall inform the chief law enforcement official in writing within ten days of such new address and phone number, if the phone number is also changed.

2. If any person required by sections 589.400 to 589.425 to register changes such person's residence or address to a different county, the person shall appear in person and shall inform both the chief law enforcement official with whom the person last registered and the chief law enforcement official of the county **or city not within a county** having jurisdiction over the new residence or address in writing within ten days of such new address and phone number, if the phone number is also changed. If any person required by sections 589.400 to 589.425 to register changes their state of residence, the person shall appear in person and shall inform both the chief law enforcement official with whom the person was last registered and the chief law enforcement official of the area in the new state having jurisdiction over the new residence or address within ten days of such new address. Whenever a registrant changes residence, the chief law enforcement official of the county **or city not within a county** where the person was previously registered shall promptly inform the Missouri state highway patrol of the change. When the registrant is changing the residence to a new state, the Missouri state highway patrol shall promptly inform the responsible official in the new state of residence.

3. Any person required by sections 589.400 to 589.425 to register who changes his or her enrollment or employment status with any institution of higher education within this state, by either beginning or ending such enrollment or employment, shall inform the chief law enforcement officer of such change within seven days after such change is made.

4. Any person required by sections 589.400 to 589.425 to register who officially changes such person's name shall inform the chief law enforcement officer of such name change within seven days after such change is made.

5. In addition to the requirements of subsections 1 and 2 of this section, the following offenders shall report in person to the [county] **chief** law enforcement agency every ninety days to verify the information contained in their statement made pursuant to section 589.407:

(1) Any offender registered as a predatory or persistent sexual offender under the definitions found in section 558.018, RSMo;

(2) Any offender who is registered for a crime where the victim was less than eighteen years of age at the time of the offense; and

(3) Any offender who has pled guilty or been found guilty pursuant to section 589.425 of failing to register or submitting false information when registering.

6. In addition to the requirements of subsections 1 and 2 of this section, all registrants shall report [annually] **semi-annually** in person in the month of their birth **and six months thereafter** to the [county] **chief** law enforcement agency to verify the information contained in their statement made pursuant to section 589.407. **All registrants shall provide an updated photograph of himself or herself in the month of his or her birth to the chief law enforcement agency. The photograph must depict a clear likeness of the registrant or the registrant shall be in violation of this section.**

7. In addition to the requirements of subsections 1 and 2 of this section, all Missouri registrants who work or attend school or training on a full-time or part-time basis in any other state shall be required to report in person to the chief law enforcement officer in the area of the state where they work or attend school or training and register in that state. "Part-time" in this subsection means for more than fourteen days in any twelve-month period.

**589.425. FAILURE TO REGISTER, PENALTY — SUBSEQUENT VIOLATIONS, PENALTY.** — 1. [Any person who is required to register pursuant to sections 589.400 to 589.425 and does not meet all requirements of sections 589.400 to 589.425 is guilty of a class A misdemeanor, unless

the person has been convicted pursuant to chapter 566 of an unclassified felony, class A felony, class B felony, or any felony involving a child under the age of fourteen, in which case the person is guilty of a class D felony.

2. Any person who commits a second or subsequent violation of subsection 1 of this section is guilty of a class D felony, unless the person has been convicted pursuant to chapter 566 of an unclassified felony, class A felony, class B felony, or any felony involving a child under the age of fourteen, in which case the person is guilty of a class C felony.] **A person commits the crime of failing to register as a sex offender when the person is required to register under sections 589.400 to 589.425 and fails to comply with any requirement of sections 589.400 to 589.425. Failing to register as a sex offender is a class A misdemeanor unless the person is required to register based on having committed an offense in chapter 566, RSMo, which was an unclassified felony, a class A or B felony, or a felony involving a child under the age of fourteen, in which case it is a class D felony.**

2. **A person commits the crime of failing to register as a sex offender as a second offense by failing to comply with any requirement of sections 589.400 to 589.425 and he or she has previously pled guilty to or has previously been found guilty of failing to register as a sex offender. Failing to register as a sex offender as a second offense is a class D felony unless the person is required to register based on having committed an offense in chapter 566, RSMo, which was an unclassified felony, a class A or B felony, or a felony involving a child under the age of fourteen, in which case it is a class C felony.**

3. **A person commits the crime of failing to register as a sex offender as a third offense by failing to meet the requirements of sections 589.400 to 589.425 and he or she has, on two or more occasions, previously pled guilty to or has previously been found guilty of failing to register as a sex offender. Failing to register as a sex offender as a third offense is a felony which shall be punished by a term of imprisonment of not less than ten years and not more than thirty years.**

(1) **No court may suspend the imposition or execution of sentence of a person who pleads guilty to or is found guilty of failing to register as a sex offender as a third offense. No court may sentence such person to pay a fine in lieu of a term of imprisonment.**

(2) **A person sentenced under this subsection shall not be eligible for conditional release or parole until he or she has served at least two years of imprisonment.**

(3) **Upon release, an offender who has committed failing to register as a sex offender as a third offense shall be electronically monitored as a mandatory condition of supervision. Electronic monitoring may be based on a global positioning system or any other technology which identifies and records the offender's location at all times.**

**600.042. DIRECTOR'S DUTIES AND POWERS — CASES FOR WHICH REPRESENTATION IS AUTHORIZED — RULES, PROCEDURE — DISCRETIONARY POWERS OF DEFENDER SYSTEM — BAR MEMBERS APPOINTMENT AUTHORIZED. — 1. The director shall:**

(1) **Direct and supervise the work of the deputy directors and other state public defender office personnel appointed pursuant to this chapter; and he and the chief deputy director may participate in the trial and appeal of criminal actions at the request of the defender or upon order of the commission;**

(2) **Submit to the commission, between August fifteenth and September fifteenth of each year, a report which shall include all pertinent data on the operation of the state public defender system, the costs, projected needs, and recommendations for statutory changes. Prior to October fifteenth of each year, the commission shall submit such report along with such recommendations, comments, conclusions, or other pertinent information it chooses to make to the chief justice, the governor, and the general assembly. Such reports shall be a public record, shall be maintained in the office of the state public defender, and shall be otherwise distributed as the commission shall direct;**

(3) With the approval of the commission, establish such divisions, facilities and offices and select such professional, technical and other personnel, including investigators, as he deems reasonably necessary for the efficient operation and discharge of the duties of the state public defender system under this chapter;

(4) Administer and coordinate the operations of defender services and be responsible for the overall supervision of all personnel, offices, divisions and facilities of the state public defender system, except that the director shall have no authority to direct or control the legal defense provided by a defender to any person served by the state public defender system;

(5) Develop programs and administer activities to achieve the purposes of this chapter;

(6) Keep and maintain proper financial records with respect to the providing of all public defender services for use in the calculating of direct and indirect costs of any or all aspects of the operation of the state public defender system;

(7) Supervise the training of all public defenders, assistant public defenders, deputy public defenders and other personnel and establish such training courses as shall be appropriate;

(8) With approval of the commission, promulgate necessary rules, regulations and instructions consistent with this chapter defining the organization of his office and the responsibilities of public defenders, assistant public defenders, deputy public defenders and other personnel;

(9) With the approval of the commission, apply for and accept on behalf of the public defender system any funds which may be offered or which may become available from government grants, private gifts, donations or bequests or from any other source. Such moneys shall be deposited in the state general revenue fund;

(10) Contract for legal services with private attorneys on a case-by-case basis and with assigned counsel as the commission deems necessary considering the needs of the area, for fees approved and established by the commission;

(11) With the approval and on behalf of the commission, contract with private attorneys for the collection and enforcement of liens and other judgments owed to the state for services rendered by the state public defender system.

2. 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.

3. The director and defenders shall, within guidelines as established by the commission and as set forth in subsection 4 of this section, accept requests for legal services from eligible persons entitled to counsel under this chapter or otherwise so entitled under the constitution or laws of the United States or of the state of Missouri and provide such persons with legal services when, in the discretion of the director or the defenders, such provision of legal services is appropriate.

4. The director and defenders shall provide legal services to an eligible person:

(1) Who is detained or charged with a felony, including appeals from a conviction in such a case;

(2) Who is detained or charged with a misdemeanor which will probably result in confinement in the county jail upon conviction, including appeals from a conviction in such a case;

(3) Who is detained or charged with a violation of probation or parole;

(4) Who has been taken into custody pursuant to section 632.489, RSMo, including appeals from a determination that the person is a sexually violent predator **and petitions for release**, notwithstanding any provisions of law to the contrary;

(5) For whom the federal constitution or the state constitution requires the appointment of counsel; and

(6) For whom, in a case in which he faces a loss or deprivation of liberty, any law of this state requires the appointment of counsel; however, the director and the defenders shall not be

required to provide legal services to persons charged with violations of county or municipal ordinances.

5. The director may:

(1) Delegate the legal representation of any person to any member of the state bar of Missouri;

(2) Designate persons as representatives of the director for the purpose of making indigency determinations and assigning counsel.

**632.484. DETENTION AND EVALUATION OF PERSONS ALLEGED TO BE SEXUALLY VIOLENT PREDATORS — DUTIES OF ATTORNEY GENERAL AND DEPARTMENT OF MENTAL HEALTH — EXPIRATION DATE.** — 1. When the attorney general receives written notice from any law enforcement agency that a person, who has pled guilty to or been convicted of a sexually violent offense and who is not presently in the physical custody of an agency with jurisdiction:

(1) Has committed a recent overt act; or

(2) Has been in the custody of an agency with jurisdiction within the preceding ten years and may meet the criteria of a sexually violent predator;

the attorney general may file a petition for detention and evaluation with the probate division of the court in which the person was convicted, or committed pursuant to chapter 552, RSMo, alleging the respondent may meet the definition of a sexually violent predator and should be detained for evaluation for a period of up to nine days. The written notice shall include the previous conviction record of the person, a description of the recent overt act, if applicable, and any other evidence which tends to show the person to be a sexually violent predator. The attorney general shall provide notice of the petition to the prosecuting attorney of the county where the petition was filed.

2. Upon a determination by the court that the person may meet the definition of a sexually violent predator, the court shall order the detention and transport of such person to a secure facility to be determined by the department of mental health **under provisions of section 632.495**. The attorney general shall immediately give written notice of such to the department of mental health.

3. Upon receiving physical custody of the person and written notice pursuant to subsection 2 of this section, the department of mental health shall, through either a psychiatrist or psychologist as defined in section 632.005, make a determination whether or not the person meets the definition of a sexually violent predator. The department of mental health shall, within seven days of receiving physical custody of the person, provide the attorney general with a written report of the results of its investigation and evaluation. The attorney general shall provide any available records of the person that are retained by the department of corrections to the department of mental health for the purposes of this section. If the department of mental health is unable to make a determination within seven days, the attorney general may request an additional detention of ninety-six hours from the court for good cause shown.

4. If the department determines that the person may meet the definition of a sexually violent predator, the attorney general shall provide the results of the investigation and evaluation to the prosecutors' review committee. The prosecutors' review committee shall, by majority vote, determine whether or not the person meets the definition of a sexually violent predator within twenty-four hours of written notice from the attorney general's office. If the prosecutors' review committee determines that the person meets the definition of a sexually violent predator, the prosecutors' review committee shall provide written notice to the attorney general of its determination. The attorney general may file a petition pursuant to section 632.486 within forty-eight hours after obtaining the results from the department.

5. For the purposes of this section "recent overt act" means any act that creates a reasonable apprehension of harm of a sexually violent nature.

6. The provisions of subdivision (2) of subsection 1 of this section shall expire December 31, 2001.

**632.489. PROBABLE CAUSE DETERMINED — SEXUALLY VIOLENT PREDATOR TAKEN INTO CUSTODY, WHEN — HEARING, PROCEDURE — EXAMINATION BY DEPARTMENT OF MENTAL HEALTH.** — 1. Upon filing a petition pursuant to section 632.484 or 632.486, the judge shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If such probable cause determination is made, the judge shall direct that person be taken into custody and direct that the person be transferred to an appropriate secure facility, including, but not limited to, a county jail. If the person is ordered to the department of mental health, the director of the department of mental health shall determine the appropriate secure facility to house the person **under the provisions of section 632.495.**

2. Within seventy-two hours after a person is taken into custody pursuant to subsection 1 of this section, excluding Saturdays, Sundays and legal holidays, such person shall be provided with notice of, and an opportunity to appear in person at, a hearing to contest probable cause as to whether the detained person is a sexually violent predator. At this hearing the court shall:

(1) Verify the detainee's identity; and

(2) Determine whether probable cause exists to believe that the person is a sexually violent predator. The state may rely upon the petition and supplement the petition with additional documentary evidence or live testimony.

3. At the probable cause hearing as provided in subsection 2 of this section, the detained person shall have the following rights in addition to the rights previously specified:

(1) To be represented by counsel;

(2) To present evidence on such person's behalf;

(3) To cross-examine witnesses who testify against such person; and

(4) To view and copy all petitions and reports in the court file, including the assessment of the multidisciplinary team.

4. If the probable cause determination is made, the court shall direct that the person be transferred to an appropriate secure facility, including, but not limited to, a county jail, for an evaluation as to whether the person is a sexually violent predator. If the person is ordered to the department of mental health, the director of the department of mental health shall determine the appropriate secure facility to house the person. The court shall direct the director of the department of mental health to have the person examined by a psychiatrist or psychologist as defined in section 632.005 who was not a member of the multidisciplinary team that previously reviewed the person's records. In addition, such person may be examined by a consenting psychiatrist or psychologist of the person's choice at the person's own expense. Any examination shall be conducted in the facility in which the person is confined. Any examinations ordered shall be made at such time and under such conditions as the court deems proper; except that, if the order directs the director of the department of mental health to have the person examined, the director shall determine the time, place and conditions under which the examination shall be conducted. The psychiatrist or psychologist conducting such an examination shall be authorized to interview family and associates of the person being examined, as well as victims and witnesses of the person's offense or offenses, for use in the examination unless the court for good cause orders otherwise. The psychiatrist or psychologist shall have access to all materials provided to and considered by the multidisciplinary team and to any police reports related to sexual offenses committed by the person being examined. Any examination performed pursuant to this section shall be completed and filed with the court within sixty days of the date the order is received by the director or other evaluator unless the court for good cause orders otherwise. One examination shall be provided at no charge by the department. All costs of any subsequent evaluations shall be assessed to the party requesting the evaluation.

**632.495. UNANIMOUS VERDICT REQUIRED — OFFENDER COMMITTED TO CUSTODY OF DEPARTMENT OF MENTAL HEALTH, WHEN — RELEASE, WHEN — MISTRIAL PROCEDURES.** — 1. The court or jury shall determine whether, [beyond a reasonable doubt] **by clear and**

**convincing evidence**, the person is a sexually violent predator. If such determination that the person is a sexually violent predator is made by a jury, such determination shall be by unanimous verdict of such jury. Any determination as to whether a person is a sexually violent predator may be appealed.

2. If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the director of the department of mental health for control, care and treatment until such time as the person's mental abnormality has so changed that the person is safe to be at large. Such control, care and treatment shall be provided by the department of mental health.

3. At all times, **persons ordered to the department of mental health after a determination by the court that such persons may meet the definition of a sexually violent predator, persons ordered to the department of mental health after a finding of probable cause under section 632.489, and** persons committed for control, care and treatment by the department of mental health pursuant to sections 632.480 to 632.513 shall be kept in a secure facility designated by the director of the department of mental health and such persons shall be segregated at all times from any other patient under the supervision of the director of the department of mental health. The department of mental health shall not place or house [an offender determined to be a sexually violent predator] **a person ordered to the department of mental health after a determination by the court that such person may meet the definition of a sexually violent predator, a person ordered to the department of mental health after a finding of probable cause under section 632.489, or a person committed for control, care, and treatment by the department of mental health**, pursuant to sections 632.480 to 632.513, with other mental health patients [who have not been determined to be sexually violent predators]. **The provisions of this subsection shall not apply to a person who has been conditionally released under section 632.505.**

4. The department of mental health is authorized to enter into an interagency agreement with the department of corrections for the confinement of such persons. Such persons who are in the confinement of the department of corrections pursuant to an interagency agreement shall be housed and managed separately from offenders in the custody of the department of corrections, and except for occasional instances of supervised incidental contact, shall be segregated from such offenders.

5. If the court or jury is not satisfied [beyond a reasonable doubt] **by clear and convincing evidence** that the person is a sexually violent predator, the court shall direct the person's release.

6. Upon a mistrial, the court shall direct that the person be held at an appropriate secure facility, including, but not limited to, a county jail, until another trial is conducted. If the person is ordered to the department of mental health, the director of the department of mental health shall determine the appropriate secure facility to house the person. Any subsequent trial following a mistrial shall be held within ninety days of the previous trial, unless such subsequent trial is continued as provided in section 632.492.

**632.498. ANNUAL EXAMINATION OF MENTAL CONDITION, NOT REQUIRED, WHEN — ANNUAL REVIEW BY THE COURT — PETITION FOR RELEASE, HEARING, PROCEDURES (WHEN DIRECTOR DISAPPROVES). — 1.** Each person committed pursuant to sections 632.480 to 632.513 shall have a current examination of the person's mental condition made once every year by the director of the department of mental health or designee. The yearly report shall be provided to the court that committed the person pursuant to sections 632.480 to 632.513. The court shall conduct an annual review of the status of the committed person. **The court shall not conduct an annual review of a person's status if he or she has been conditionally released pursuant to section 632.505.**

2. Nothing contained in sections 632.480 to 632.513 shall prohibit the person from otherwise petitioning the court for [discharge] **release**. The director of the department of mental

health shall provide the committed person **who has not been conditionally released** with an annual written notice of the person's right to petition the court for release over the director's objection. The notice shall contain a waiver of rights. The director shall forward the notice and waiver form to the court with the annual report.

**3. If the committed person petitions the court for conditional release over the director's objection, the petition shall be served upon the court that committed the person, the director of the department of mental health, the head of the facility housing the person, and the attorney general.**

4. The committed person shall have a right to have an attorney represent the person at the hearing but the person is not entitled to be present at the hearing. If the court at the hearing determines by a preponderance of the evidence that the person no longer suffers from a mental abnormality that makes the person likely to engage in acts of sexual violence if [discharged] **released**, then the court shall set a [hearing] **trial** on the issue. [At the hearing, the]

**5. The trial shall be governed by the following provisions:**

(1) **The committed person shall be entitled to be present and entitled to the benefit of all constitutional protections that were afforded the person at the initial commitment proceeding [.] ;**

(2) **The attorney general shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by a psychiatrist or psychologist not employed by the department of mental health or the department of corrections. In addition, the person may be examined by a consenting psychiatrist or psychologist of the person's choice at the person's own expense[.] ;**

(3) **The burden of proof at the trial shall be upon the state to prove [beyond a reasonable doubt] by clear and convincing evidence that the committed person's mental abnormality remains such that the person is not safe to be at large and if released is likely to engage in acts of sexual violence. If such determination is made by a jury, the verdict must be unanimous;**

(4) **If the court or jury finds that the person's mental abnormality remains such that the person is not safe to be at large and if released is likely to engage in acts of sexual violence, the person shall remain in the custody of the department of mental health in a secure facility designated by the director of the department of mental health. If the court or jury finds that the person's mental abnormality has so changed that the person is not likely to commit acts of sexual violence if released, the person shall be conditionally released as provided in section 632.505.**

**632.501. PETITION FOR RELEASE — HEARING (WHEN DIRECTOR APPROVES).** — If the director of the department of mental health determines that the person's mental abnormality has so changed that the person is not likely to commit acts of sexual violence if released, the director shall authorize the person to petition the court for release. The petition shall be served upon the court **that committed the person, the director of the department of mental health, the head of the facility housing the person,** and the attorney general. [The court, upon receipt of the petition for release, shall order a hearing within thirty days. The attorney general shall represent the state, and shall have the right to have the petitioner examined by a consenting psychiatrist or psychologist not employed by the department of mental health or department of corrections. The hearing shall be before a jury if demanded by either the petitioner or the attorney general. The burden of proof shall be upon the attorney general to show beyond a reasonable doubt that the petitioner's mental abnormality remains such that the petitioner is not safe to be at large and that if discharged is likely to commit acts of sexual violence.] **The hearing and trial, if any, shall be conducted according to the provisions of section 632.498.**

**632.504. SUBSEQUENT PETITIONS FOR RELEASE — APPROVAL OR DENIAL PROCEDURES.** — Nothing in sections 632.480 to 632.513 shall prohibit a person from filing a petition for

[discharge] **release** pursuant to sections 632.480 to 632.513. However, if a person has previously filed a petition for [discharge] **release** without the director's [of the department of mental health] approval and the court determined either upon review of the petition or following a hearing, that the petitioner's petition was frivolous or that the petitioner's condition had not so changed that the person was safe to be at large, then the court shall deny the subsequent petition unless the petition contains facts upon which a court could find the condition of the petitioner had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from committed persons without the director's approval, the court shall endeavor whenever possible to review the petition and determine if the petition is based upon frivolous grounds and if so shall deny the petition without a hearing.

**632.505. CONDITIONAL RELEASE — INTERAGENCY AGREEMENTS FOR SUPERVISION, PLAN — COURT REVIEW OF PLAN, ORDER, CONDITIONS — COPY OF ORDER — CONTINUING CONTROL AND CARE — MODIFICATIONS — VIOLATIONS — AGREEMENTS WITH PRIVATE ENTITIES — FEE, RULEMAKING AUTHORITY — ESCAPE. — 1.** Upon determination by a court or jury that the person's mental abnormality has so changed that the person is not likely to commit acts of sexual violence if released, the court shall place the person on conditional release pursuant to the terms of this section. The primary purpose of conditional release is to provide outpatient treatment and monitoring to prevent the person's condition from deteriorating to the degree that the person would need to be returned to a secure facility designated by the director of the department of mental health.

2. The department of mental health is authorized to enter into an interagency agreement with the department of corrections for the supervision of persons granted a conditional release by the court. In conjunction with the department of corrections, the department of mental health shall develop a conditional release plan which contains appropriate conditions for the person to be released. The plan shall address the person's need for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol and drug treatment. The department of mental health shall submit the proposed plan for conditional release to the court.

3. The court shall review the plan and determine the conditions that it deems necessary to meet the person's need for treatment and supervision and to protect the safety of the public. The court shall order that the person shall be subject to the following conditions and other conditions as deemed necessary:

(1) Maintain a residence approved by the department of mental health and not change residence unless approved by the department of mental health;

(2) Maintain employment unless engaged in other structured activity approved by the department of mental health;

(3) Obey all federal and state laws;

(4) Not possess a firearm or dangerous weapon;

(5) Not be employed or voluntarily participate in an activity that involves contact with children without approval of the department of mental health;

(6) Not consume alcohol or use a controlled substance except as prescribed by a treating physician and to submit, upon request, to any procedure designed to test for alcohol or controlled substance use;

(7) Not associate with any person who has been convicted of a felony unless approved by the department of mental health;

(8) Not leave the state without permission of the department of mental health;

(9) Not have contact with specific persons, including but not limited to, the victim or victim's family, as directed by the department of mental health;

(10) Not have any contact with any child without specific approval by the department of mental health;

(11) Not possess material that is pornographic, sexually oriented, or sexually stimulating;

(12) Not enter a business providing sexually stimulating or sexually oriented entertainment;

(13) Submit to a polygraph, plethysmograph, or other electronic or behavioral monitoring or assessment;

(14) Submit to electronic monitoring which may be based on a global positioning system or other technology which identifies and records a person's location at all times;

(15) Attend and fully participate in assessment and treatment as directed by the department of mental health;

(16) Take all psychiatric medications as prescribed by a treating physician;

(17) Authorize the department of mental health to access and obtain copies of confidential records pertaining to evaluation, counseling, treatment, and other such records and provide the consent necessary for the release of any such records;

(18) Pay fees to the department of mental health and the department of corrections to cover the costs of services and monitoring;

(19) Report to or appear in person as directed by the department of mental health and the department of corrections, and to follow all directives of such departments;

(20) Comply with any registration requirements under sections 589.400 to 589.425, RSMo; and

(21) Comply with any other conditions that the court determines to be in the best interest of the person and society.

4. The court shall provide a copy of the order containing the conditions of release to the person, the attorney general, the department of mental health, the head of the facility housing the person, and the department of corrections.

5. A person who is conditionally released and supervised by a probation and parole officer employed by the department of corrections remains under the control, care, and treatment of the department of mental health.

6. The court may modify conditions of release upon its own motion or upon the petition of the department of mental health, the department of corrections, or the person on conditional release.

7. The following provisions shall apply to violations of conditional release:

(1) If any probation and parole officer has reasonable cause to believe that a person on conditional release has violated a condition of release or that the person is no longer a proper subject for conditional release, the officer may issue a warrant for the person's arrest. The warrant shall contain a brief recitation of the facts supporting the officer's belief. The warrant shall direct any peace officer to take the person into custody immediately so that the person can be returned to a secure facility;

(2) If the director of the department of mental health or the director's designee has reasonable cause to believe that a person on conditional release has violated a condition of release or that the person is no longer a proper subject for conditional release, the director or the director's designee may request that a peace officer take the person into custody immediately, or request that a probation and parole officer or the court which ordered the release, issue a warrant for the person's arrest so that the person can be returned to a secure facility;

(3) At any time during the period of a conditional release, the court which ordered the release may issue a notice to the released person to appear to answer a charge of a violation of the terms of the release and the court may issue a warrant of arrest for the violation. Such notice shall be personally served upon the released person. The warrant shall authorize the return of the released person to the custody of the court or to the custody of the director of mental health or the director's designee;

(4) No peace officer responsible for apprehending and returning the person to the facility upon the request of the director of the department of mental health or the director's designee or a probation and parole officer shall be civilly liable for

apprehending or transporting such person to the facility so long as such duties were performed in good faith and without negligence;

(5) The department of mental health shall promptly notify the court that the person has been apprehended and returned to a secure facility;

(6) Within seven days of the person's return to a secure facility, the department of mental health must either request that the attorney general file a petition to revoke the person's conditional release or continue the person on conditional release;

(7) If a petition to revoke conditional release is filed, the person shall remain in custody until a hearing is held on the petition. The hearing shall be given priority on the court's docket. If upon hearing the evidence, the court finds by preponderance of the evidence that the person has violated a condition of release and that the violation of the condition was sufficient to render the person no longer suitable for conditional release, the court shall revoke the conditional release and order the person returned to a secure facility designated by the director of the department of mental health. If the court determines that revocation is not required, the court may modify or increase the conditions of release or order the person's release on the existing conditions of release;

(8) A person whose conditional release has been revoked may petition the court for subsequent release pursuant to sections 632.498, 632.501, and 632.504 no sooner than six months after the person's return to a secure facility.

8. The department of mental health may enter into agreements with the department of corrections and other departments and may enter into contracts with private entities for the purpose of supervising a person on conditional release.

9. The department of mental health and the department of corrections may require a person on conditional release to pay a reasonable fee to cover the costs of providing services and monitoring while the person is released. Each department may adopt rules with respect to establishing, waiving, collecting, and using fees. 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, 2006, shall be invalid and void.

10. In the event a person on conditional release escapes from custody, the department of mental health shall notify the court, the department of corrections, the attorney general, the chief law enforcement officer of the county or city not within a county from where the person escaped or absconded, and any other persons necessary to protect the safety of the public or to assist in the apprehension of the person. The attorney general shall notify victims and witnesses. Upon receiving such notice, the attorney general shall file escape from commitment charges under section 575.195, RSMo.

**632.507. ATTORNEY GENERAL TO INFORM VICTIMS — NOTIFICATION OF PROCEEDINGS.** — 1. The attorney general shall in a timely manner inform victims of a sexually violent offense committed by a person:

(1) That a written notice has been given by the agency with jurisdiction to the attorney general and the multidisciplinary team pursuant to subsection 1 of section 632.483;

(2) Of the decision of the prosecutor's review committee in determining whether or not the person may be a sexually violent predator;

(3) That a petition has been filed with the circuit court pursuant to section 632.484 or 632.486;

(4) Of the outcome of a trial held pursuant to the provisions of section 632.492;

(5) Of the filing of any petition or pending proceedings held pursuant to the provisions of sections 632.498 to [632.504] **632.505**;

**(6) Of the escape of any person committed under sections 632.480 to 632.513.**

2. Such victims shall have the right to be present at any proceeding held pursuant to the provisions of sections 632.480 to 632.513. Failure to notify shall not be a reason for postponement of release. Nothing in this section shall create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section.

**650.120. GRANTS TO FUND INVESTIGATIONS OF INTERNET SEX CRIMES AGAINST CHILDREN — PANEL, MEMBERSHIP, TERMS — LOCAL MATCHING AMOUNTS — PRIORITIES — TRAINING STANDARDS — INFORMATION SHARING — PANEL RECOMMENDATION — SUNSET PROVISION. — 1. Subject to appropriation, the department of public safety shall create a program to distribute grants to multijurisdictional Internet cyber crime law enforcement task forces and other law enforcement agencies. The grants shall be awarded and used to pay the salaries of detectives and computer forensic personnel whose focus is investigating Internet sex crimes against children, including but not limited to enticement of a child, possession or promotion of child pornography, and to provide funding for the training of law enforcement personnel. The funding for such training may be used to cover the travel expenses of those persons participating.**

2. A panel is hereby established in the department of public safety to award grants under this program and shall be comprised of the following members:

- (1) The director of the department of public safety, or his or her designee;
- (2) Two members shall be appointed by the director of the department of public safety from a list of six nominees submitted by the Missouri Police Chief's Association;
- (3) Two members shall be appointed by the director of the department of public safety from a list of six nominees submitted by the Missouri Sheriffs' Association;
- (4) Two members of the state highway patrol shall be appointed by the director of the department of public safety from a list of six nominees submitted by the Missouri State Troopers Association;
- (5) One member of the house of representatives who shall be appointed by the speaker of the house of representatives; and
- (6) One member of the senate who shall be appointed by the president pro tem.

The panel members who are appointed under subdivisions (2), (3), and (4) of this subsection 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. However, a person appointed to fill a vacancy prior to the expiration of such a term shall be appointed for the remainder of the term. Such members shall hold office for the term of his or her appointment and until a successor is appointed. The members of the panel shall receive no additional compensation but shall be eligible for reimbursement for mileage directly related to the performance of panel duties.

3. Local matching amounts, which may include new or existing funds or in-kind resources including but not limited to equipment or personnel, are required for multijurisdictional Internet cyber crime law enforcement task forces and other law enforcement agencies to receive grants awarded by the panel. Such amounts shall be determined by the state appropriations process or by the panel.

4. When awarding grants, priority should be given to newly hired detectives and computer forensic personnel.

5. The panel shall establish minimum training standards for detectives and computer forensic personnel participating in the grant program established in subsection 1 of this section.

6. Multijurisdictional Internet cyber crime law enforcement task forces and other law enforcement agencies participating in the grant program established in subsection 1 of this section shall share information and cooperate with the highway patrol and with existing Internet Crimes Against Children task force programs.

7. The panel may make recommendations to the general assembly regarding the need for additional resources or appropriations.

8. Under section 23.253, RSMo, of the Missouri sunset act:

(1) The provisions of the new program authorized under this section shall sunset automatically six years after the effective date of this section unless reauthorized by an act of the general assembly; and

(2) If such program is reauthorized, the program authorized under this section shall sunset automatically twelve years after the effective date of the reauthorization of this section; and

(3) This section shall terminate on September first of the calendar year immediately following the calendar year in which the program authorized under this section is sunset.

**SECTION 1. NOTIFICATION OF MONITORING TO HIGHWAY PATROL — INFORMATION ENTERED INTO MULES AND SEXUAL OFFENDER REGISTRY. — 1.** The department of corrections shall notify the highway patrol of any offender who is required as a mandatory condition of lifetime supervision to be electronically monitored, under section 217.735, RSMo, and section 559.106, RSMo, and shall notify the highway patrol when the supervision of the offender has been terminated in appropriate cases as determined by a risk assessment when the offender is sixty-five years of age or older.

2. The highway patrol shall enter the electronic monitoring of the offender into the Missouri law enforcement system (MULES) and sexual offender registry where it is available to members of the criminal justice system, and other entities as provided by law, upon inquiry.

**SECTION B. EMERGENCY CLAUSE.** — Because of the need to protect Missouri citizens from sexual offenders, 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 5, 2006

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HB 1703 [HCS#2 HB 1703]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Changes the laws regarding insurance pooling by political subdivisions**

AN ACT to repeal sections 537.620 and 537.640, RSMo, and to enact in lieu thereof two new sections relating to insurance pooling.

**SECTION**

A. Enacting clause.

537.620. Political subdivisions may jointly create entity to provide insurance — entity created not deemed an insurance company or insurer.

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537.640. Director of insurance to examine — renewal license fee — amendments to articles.

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

**SECTION A. ENACTING CLAUSE.** — Sections 537.620 and 537.640, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 537.620 and 537.640, to read as follows:

**537.620. POLITICAL SUBDIVISIONS MAY JOINTLY CREATE ENTITY TO PROVIDE INSURANCE — ENTITY CREATED NOT DEEMED AN INSURANCE COMPANY OR INSURER.** — Notwithstanding any direct or implied prohibitions in chapter 375, RSMo, 377, RSMo, or 379, RSMo, any three or more political subdivisions of this state may form a business entity for the purpose of providing liability and all other insurance, including insurance for elderly or low-income housing in which the political subdivision has an insurable interest, for any of the subdivisions upon the assessment plan as provided in sections 537.600 to 537.650. Any **public governmental body or quasi-public governmental body, as defined in section 610.010, RSMo, and any political subdivision of this state or any other state** may join this entity and use public funds to pay any necessary assessments. **Except for being subject to the regulation of the director of insurance under sections 375.930 to 375.948, RSMo, sections 375.1000 to 375.1018, RSMo, and sections 537.600 to 537.650, any such business entity shall not be deemed to be an insurance company or insurer under the laws of this state, and the coverage provided by such entity and the administration of such entity shall not be deemed to constitute the transaction of an insurance business.**

**537.640. DIRECTOR OF INSURANCE TO EXAMINE — RENEWAL LICENSE FEE — AMENDMENTS TO ARTICLES.** — 1. The director of insurance shall be authorized in accordance with [sections 375.171 and 375.173] **section 374.205**, RSMo, to examine into the affairs of any association organized under the provisions of sections 537.620 to 537.650 and may, in accordance with section [375.426] **374.045**, RSMo, make such rules and regulations as may be necessary for the execution of the functions vested in him. Annually thereafter, within thirty days before the expiration of its license, each association shall pay a renewal license fee of one hundred dollars and shall file a statement with the director of insurance giving a report of its activities for the preceding year.

2. Any existing association shall also, at the time it files for renewal of its license, file any amendments to its articles of association or bylaws which have been adopted in the preceding year.

Approved June 21, 2006

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HB 1707 [SCS HB 1707]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Allows the State Registrar within the Department of Health and Senior Services to appoint a local registrar and allows instruments affecting real property in Jackson County to be recorded in Independence**

AN ACT to repeal sections 59.170 and 193.065, RSMo, and to enact in lieu thereof two new sections relating to local officials.

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## SECTION

- A. Enacting clause.
- 59.170. Branch of Jackson County recorder's office in Kansas City — recording of documents at county seat of Jackson County permitted.
- 193.065. Local registrars, qualifications, appointment — deputies — duties — recorder of deeds appointed as local registrar (St. Louis City).

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

**SECTION A. ENACTING CLAUSE.** — Sections 59.170 and 193.065, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 59.170 and 193.065, to read as follows:

**59.170. BRANCH OF JACKSON COUNTY RECORDER'S OFFICE IN KANSAS CITY — RECORDING OF DOCUMENTS AT COUNTY SEAT OF JACKSON COUNTY PERMITTED.** — The recorder of deeds for Jackson County, Missouri, shall open an office at Kansas City, in which [shall] **may** be recorded [all] deeds, deeds of trust, mortgages and other instruments affecting real property situated [in range thirty-three] in that county, and in which [shall] **may** be filed or filed for record all financing statements and other instruments or statements incidental thereto affecting personal property, fixtures, or other collateral [as to which it is the proper place, or one of the proper places, to file or to file for record as provided by law]. **Deeds, deeds of trust, mortgages, and other instruments affecting real property, and financing statements and other instruments incidental thereto affecting personal property, fixtures, or other collateral may also be recorded or filed for record at the recorder's office located at the county seat of any county with a charter form of government and with more than six hundred thousand but fewer than seven hundred thousand inhabitants.**

**193.065. LOCAL REGISTRARS, QUALIFICATIONS, APPOINTMENT — DEPUTIES — DUTIES — RECORDER OF DEEDS APPOINTED AS LOCAL REGISTRAR (ST. LOUIS CITY).** — The state registrar may appoint local registrars, each of whom shall be a person employed by an official county **or city** health agency except as otherwise herein provided. Each local registrar shall be authorized under the provisions of section 193.255 and subsection 2 of section 193.265 to issue certifications of death records. A local registrar, with the approval of the state registrar, may appoint deputies to carry out some or all of the responsibilities of the local registrar as provided in sections 193.005 to 193.325 or the regulations promulgated pursuant thereto. The local registrars shall immediately report to the state registrar violations of sections 193.005 to 193.325 or the regulations promulgated pursuant thereto. In any city not within a county, the state registrar shall appoint the recorder of deeds for such city as the local registrar.

Approved June 29, 2006

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HB 1715 [HB 1715]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Grants appraisal rights to all voting and non-voting shareholders of a corporation which is a party to a merger or consolidation**

AN ACT to repeal sections 351.295, 351.355, and 351.455, RSMo, and to enact in lieu thereof three new sections relating to corporations.

SECTION

- A. Enacting clause.
- 351.295. Stock certificate, form, contents, authorized signatures.
- 351.355. Officer, director, employee, or agent of corporation indemnified, when, methods authorized.
- 351.455. Shareholder entitled to appraisal and payment of fair value, when — remedy exclusive, when.

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

**SECTION A. ENACTING CLAUSE.** — Sections 351.295, 351.355, and 351.455, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 351.295, 351.355, and 351.455, to read as follows:

**351.295. STOCK CERTIFICATE, FORM, CONTENTS, AUTHORIZED SIGNATURES.** — 1. The shares of a corporation shall be represented by certificates, provided that the articles of incorporation or bylaws, or a resolution or resolutions of the board of directors of the corporation, may provide that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such provision of the articles of incorporation or bylaws or resolution of the board of directors shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Notwithstanding such a provision of the articles of incorporation or bylaws, or the adoption of such a resolution by the board of directors, every holder of stock represented by certificates shall be entitled to have a certificate. **Except as otherwise provided in the articles of incorporation or bylaws, such certificate shall be signed** by the president or a vice president and by the secretary or an assistant secretary or the treasurer or an assistant treasurer of such corporation and sealed with the seal of the corporation. Any or all the signatures on the certificate may be a facsimile and the seal may be facsimile, engraved or printed. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed on a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, the certificate may nevertheless be issued by the corporation with the same effect as if the person were an officer, transfer agent or registrar at the date of issue. Every holder of uncertificated shares is entitled to receive a statement of holdings as evidence of share ownership.

2. Every certificate for shares without par value shall have plainly stated upon its face the number of shares which it represents, and no certificate shall express any par value for such shares or a rate of dividend to which such shares shall be entitled in terms of percentage of any par or other value.

**351.355. OFFICER, DIRECTOR, EMPLOYEE, OR AGENT OF CORPORATION INDEMNIFIED, WHEN, METHODS AUTHORIZED.** — 1. A corporation created under the laws of this state may indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the corporation, by reason of the fact that he or she is or was a director, officer, employee or agent of the corporation, or is or was serving

at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

2. The corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses, including attorneys' fees, and amounts paid in settlement actually and reasonably incurred by him in connection with the defense or settlement of the action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the corporation unless and only to the extent that the court in which the action or suit was brought determines upon application that, despite the adjudication of liability and in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

3. Except as otherwise provided in the articles of incorporation or the bylaws, to the extent that a director, officer, employee or agent of the corporation has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in subsections 1 and 2 of this section, or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the action, suit, or proceeding.

4. Any indemnification under subsections 1 and 2 of this section, unless ordered by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in this section. The determination shall be made by the board of directors by a majority vote of a quorum consisting of directors who were not parties to the action, suit, or proceeding, or if such a quorum is not obtainable, or even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or by the shareholders.

5. Expenses incurred in defending [a] **any** civil [or], criminal, **administrative, or investigative** action, suit or proceeding may be paid by the corporation in advance of the final disposition of the action, suit, or proceeding as authorized by the board of directors in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he or she is entitled to be indemnified by the corporation as authorized in this section.

6. The indemnification provided by this section shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the articles of incorporation or bylaws or any agreement, vote of shareholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director,

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officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

7. A corporation created under the laws of this state shall have the power to give any further indemnity, in addition to the indemnity authorized or contemplated under other subsections of this section, including subsection 6, to any person who is or was a director, officer, employee or agent, or to any person who is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, provided such further indemnity is either (i) authorized, directed, or provided for in the articles of incorporation of the corporation or any duly adopted amendment thereof or (ii) is authorized, directed, or provided for in any bylaw or agreement of the corporation which has been adopted by a vote of the shareholders of the corporation, and provided further that no such indemnity shall indemnify any person from or on account of such person's conduct which was finally adjudged to have been knowingly fraudulent, deliberately dishonest or willful misconduct. Nothing in this subsection shall be deemed to limit the power of the corporation under subsection 6 of this section to enact bylaws or to enter into agreements without shareholder adoption of the same.

8. The corporation may purchase and maintain insurance or another arrangement on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section. Without limiting the power of the corporation to procure or maintain any kind of insurance or other arrangement the corporation may for the benefit of persons indemnified by the corporation create a trust fund, establish any form of self insurance, secure its indemnity obligation by grant of a security interest or other lien on the assets of the corporation, or establish a letter of credit, guaranty, or surety arrangement. The insurance or other arrangement may be procured, maintained, or established within the corporation or with any insurer or other person deemed appropriate by the board of directors regardless of whether all or part of the stock or other securities of the insurer or other person are owned in whole or in part by the corporation. In the absence of fraud the judgment of the board of directors as to the terms and conditions of the insurance or other arrangement and the identity of the insurer or other person participating in an arrangement shall be conclusive and the insurance or arrangement shall not be voidable and shall not subject the directors approving the insurance or arrangement to liability on any ground regardless of whether directors participating in the approval are beneficiaries of the insurance arrangement.

9. Any provision of this chapter to the contrary notwithstanding, the provisions of this section shall apply to all existing and new domestic corporations, including but not limited to banks, trust companies, insurance companies, building and loan associations, savings bank and safe deposit companies, mortgage loan companies, corporations formed for benevolent, religious, scientific or educational purposes and nonprofit corporations.

10. For the purpose of this section, references to "the corporation" include all constituent corporations absorbed in a consolidation or merger as well as the resulting or surviving corporation so that any person who is or was a director, officer, employee or agent of such a constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise shall stand in the same position under the provisions of this section with respect to the resulting or surviving corporation as he or she would if he or she had served the resulting or surviving corporation in the same capacity.

11. For purposes of this section, the term "other enterprise" shall include employee benefit plans; the term "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and the term "serving at the request of the corporation" shall include any

service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this section.

**351.455. SHAREHOLDER ENTITLED TO APPRAISAL AND PAYMENT OF FAIR VALUE, WHEN — REMEDY EXCLUSIVE, WHEN. — 1.** [If a shareholder of a corporation which is a party to a merger or consolidation and, in the case of a shareholder owning voting stock as of the record date, at the meeting of shareholders at which the plan of merger or consolidation is submitted to a vote shall file with such corporation prior to or at such meeting a written objection to such plan of merger or consolidation, and shall not vote in favor thereof, and such shareholder, within twenty days after the merger or consolidation is effected, shall make written demand on the surviving or new corporation for payment of the fair value of his or her shares as of the day prior to the date on which the vote was taken approving the merger or consolidation.] **Any shareholder shall be deemed a dissenting shareholder and entitled to appraisal under this section if such shareholder:**

**(1) Owns stock of a corporation which is a party to a merger or consolidation as of the record date for the meeting of shareholders at which the plan of merger or consolidation is submitted to a vote;**

**(2) Files with the corporation before or at such meeting a written objection to such plan of merger or consolidation;**

**(3) Does not vote in favor thereof if the shareholder owns voting stock as of such record date; and**

**(4) Makes written demand on the surviving or new corporation within twenty days after the merger or consolidation is effected for payment of the fair value of such shareholder's shares as of the day before the date on which the vote was taken approving the merger or consolidation.**

2. The surviving or new corporation shall pay to **each** such **dissenting** shareholder, upon surrender of his or her certificate or certificates representing said shares **in the case of certificated shares**, the fair value thereof. Such demand shall state the number and class of the shares owned by such dissenting shareholder. Any shareholder [failing to make demand within the twenty-day period] **who:**

**(1) Fails to file a written objection prior to or at such meeting;**

**(2) Fails to make demand within the twenty-day period; or**

**(3) In the case of a shareholder owning voting stock as of such record date, votes in favor of the merger or consolidation;**

shall be conclusively presumed to have consented to the merger or consolidation and shall be bound by the terms thereof **and shall not be deemed to be a dissenting shareholder.**

**3. Notwithstanding the provisions of subsection 1 of section 351.230, notice under the provisions of subsection 1 of section 351.230 stating the purpose for which the meeting is called shall be given to each shareholder owning stock as of the record date for the meeting of shareholders at which the plan of merger or consolidation is submitted to a vote, whether or not such shareholder is entitled to vote.**

[2.] **4.** If within thirty days after the date on which such merger or consolidation was effected the value of such shares is agreed upon between the dissenting shareholder and the surviving or new corporation, payment therefor shall be made within ninety days after the date on which such merger or consolidation was effected, upon the surrender of his or her certificate or certificates representing said shares **in the case of certificated shares.** Upon payment of the agreed value the dissenting shareholder shall cease to have any interest in such shares or in the corporation.

[3.] 5. If within such period of thirty days the shareholder and the surviving or new corporation do not so agree, then the dissenting shareholder may, within sixty days after the expiration of the thirty-day period, file a petition in any court of competent jurisdiction within the county in which the registered office of the surviving or new corporation is situated, asking for a finding and determination of the fair value of such shares, and shall be entitled to judgment against the surviving or new corporation for the amount of such fair value as of the day prior to the date on which such vote was taken approving such merger or consolidation, together with interest thereon to the date of such judgment. The judgment shall be payable only upon and simultaneously with the surrender to the surviving or new corporation of the certificate or certificates representing said shares **in the case of certificated shares**. Upon the payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares, or in the surviving or new corporation. Such shares may be held and disposed of by the surviving or new corporation as it may see fit. Unless the dissenting shareholder shall file such petition within the time herein limited, such shareholder and all persons claiming under such shareholder shall be conclusively presumed to have approved and ratified the merger or consolidation, and shall be bound by the terms thereof.

[4.] 6. The right of a dissenting shareholder to be paid the fair value of such shareholder's shares as herein provided shall cease if and when the corporation shall abandon the merger or consolidation.

[5.] 7. When the remedy provided for in this section is available with respect to a transaction, such remedy shall be the exclusive remedy of the shareholder as to that transaction, except in the case of fraud or lack of authorization for the transaction.

Approved July 10, 2006

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HB 1732 [HB 1732]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Requires school districts to grant authorization to students for the possession and self-administration of medications for the treatment of asthma and anaphylaxis**

AN ACT to repeal section 167.627, RSMo, and to enact in lieu thereof one new section relating to the possession and self-administration of medications by pupils.

SECTION

A. Enacting clause.

167.627. Possession and self-administration of medication in school — requirements.

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

**SECTION A. ENACTING CLAUSE.** — Section 167.627, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 167.627, to read as follows:

**167.627. POSSESSION AND SELF-ADMINISTRATION OF MEDICATION IN SCHOOL — REQUIREMENTS.** — 1. [Any board of education of any school district may permit the self-administration of medication administered by way of a metered-dose inhaler by a pupil for asthma or other potentially life-threatening respiratory illnesses provided that:

(1) The parents or guardians of the pupil provide to the board of education written authorization for the self-administration of medication and a written medical history of the pupil's

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experience with the potentially life-threatening respiratory illness and a plan of action for addressing any emergency situations that could reasonably be anticipated as a consequence of administering the medication and having the potentially life-threatening respiratory illness;

(2) The parents or guardians of the pupil provide to the board of education written certification from the physician of the pupil that the pupil has asthma or another potentially life-threatening respiratory illness and is capable of, and has been instructed in, the proper method of self-administration of medication and informed of the dangers of permitting other persons to use medicine prescribed for the pupil;

(3) The board informs the parents or guardians of the pupil in writing that the district and its employees or agents shall incur no liability as a result of any injury arising from the self-administration of medication by the pupil, absent any negligence by the district, its employees or its agents, or as a result of providing all relevant information provided pursuant to subdivisions (1) and (2) of this subsection with the school nurse, absent any negligence by the district, its employees or its agents, or in the absence of such nurse, to the school administrator;

(4) The parents or guardians of the pupil sign a statement acknowledging that the district shall incur no liability as a result of any injury arising from the self-administration of medication by the pupil and that the parents or guardians shall indemnify and hold harmless the district and its employees or agents against any claims arising out of the self-administration of medication by the pupil; and

(5) The permission is effective for the school year for which it is granted and is renewed for each subsequent school year upon fulfillment of the requirements of subdivisions (1) through (4) of this subsection.

2. Nothing in this section shall be construed to prevent a school district from requiring pupils to maintain current duplicate prescription medications with the school nurse or in the absence of such nurse, the school administrator.

3. The state board of education shall promulgate such rules and regulations as it deems necessary to effectuate the purposes of this section.

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 the provisions of section 536.024, RSMo.] **For purposes of this section, the following terms shall mean:**

(1) **"Medication", any medicine prescribed or ordered by a physician for the treatment of asthma or anaphylaxis, including without limitation inhaled bronchodilators and auto-injectible epinephrine;**

(2) **"Self-administration", a pupil's discretionary use of medication prescribed by a physician or under a written treatment plan from a physician.**

2. **Each board of education, and its employees and agents in this state shall grant any pupil in the school authorization for the possession and self-administration of medication to treat such pupil's asthma or anaphylaxis if:**

(1) **A licensed physician prescribed or ordered such medication for use by the pupil and instructed such pupil in the correct and responsible use of such medication;**

(2) **The pupil has demonstrated to the pupil's licensed physician or the licensed physician's designee, and the school nurse, if available, the skill level necessary to use the medication and any device necessary to administer such medication prescribed or ordered;**

(3) **The pupil's physician has approved and signed a written treatment plan for managing asthma or anaphylaxis episodes of the pupil and for medication for use by the pupil. Such plan shall include a statement that the pupil is capable of self-administering the medication under the treatment plan;**

(4) **The pupil's parent or guardian has completed and submitted to the school any written documentation required by the school, including the treatment plan required under subdivision (3) of this subsection and the liability statement required under subdivision (5) of this subsection; and**

(5) The pupil's parent or guardian has signed a statement acknowledging that the school district and its employees or agents shall incur no liability as a result of any injury arising from the self-administration of medication by the pupil or the administration of such medication by school staff. Such statement shall not be construed to release the school district and its employees or agents from liability for negligence.

3. An authorization granted under subsection 2 of this section shall:

(1) Permit such pupil to possess and self-administer such pupil's medication while in school, at a school-sponsored activity, and in transit to or from school or school-sponsored activity; and

(2) Be effective only for the same school and school year for which it is granted. Such authorization shall be renewed by the pupil's parent or guardian each subsequent school year in accordance with this section.

4. Any current duplicate prescription medication, if provided by a pupil's parent or guardian or by the school, shall be kept at a pupil's school in a location at which the pupil or school staff has immediate access in the event of an asthma or anaphylaxis emergency.

5. The information described in subdivisions (3) and (4) of subsection 2 of this section shall be kept on file at the pupil's school in a location easily accessible in the event of an asthma or anaphylaxis emergency.

Approved July 10, 2006

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HB 1739 [HCS HB 1739]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Allows a vermiculture operation, which is a business raising earthworms under a controlled environment, to receive certain agricultural loans**

AN ACT to repeal sections 30.800, 30.810, 30.820, 30.830, 30.840, 30.850, and 348.015, RSMo, and to enact in lieu thereof seven new sections relating to agricultural property loans.

**SECTION**

- A. Enacting clause.
- 30.800. Definitions.
- 30.810. Application of linked deposits law.
- 30.820. Limitations on linked deposit loans.
- 30.830. Program funding limitation.
- 30.840. Renewal.
- 30.850. Use of proceeds.
- 348.015. Definitions.

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

**SECTION A. ENACTING CLAUSE.** — Sections 30.800, 30.810, 30.820, 30.830, 30.840, 30.850, and 348.015, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 30.800, 30.810, 30.820, 30.830, 30.840, 30.850, and 348.015, to read as follows:

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**30.800. DEFINITIONS.** — As used in sections 30.800 to 30.850, the following terms shall mean:

(1) "Eligible guaranteed agribusiness", a person, corporation or other business entity engaged in the processing or adding of value to agricultural products produced in Missouri, which is located in Missouri, and which has received a loan guarantee pursuant to the provisions of sections 348.400 to 348.415, RSMo;

(2) "Eligible guaranteed livestock operation", a person engaged in the production of livestock or poultry in Missouri in an authorized farm corporation, family farm, or family farm corporation as defined in section 350.010, RSMo, who has received a single-purpose animal facilities loan guarantee pursuant to the provisions of sections 348.185 to 348.225, RSMo;

(3) "**Eligible guaranteed vermiculture operation**", a person, corporation, or other business entity engaged in the raising of earthworms under a controlled environment which is located in Missouri and which has received a single-purpose animal facilities loan guarantee under sections 348.185 to 348.225, RSMo.

**30.810. APPLICATION OF LINKED DEPOSITS LAW.** — Except for specific provisions to the contrary in sections 30.800 to 30.850, all definitions, requirements, responsibilities, rights, remedies and other matters set forth in sections 30.750 to 30.767 shall apply to linked deposits and linked deposit loans to eligible guaranteed agribusinesses [and], eligible guaranteed livestock operations, **and eligible guaranteed vermiculture operations.**

**30.820. LIMITATIONS ON LINKED DEPOSIT LOANS.** — A linked deposit loan to an eligible guaranteed agribusiness [or], an eligible guaranteed livestock operation, **or an eligible guaranteed vermiculture operation** may not exceed two hundred fifty thousand dollars, and no service of separate loans to such entities may be made which exceeds such limit.

**30.830. PROGRAM FUNDING LIMITATION.** — The state treasurer may utilize up to sixty million dollars of the 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, **and eligible guaranteed vermiculture operations.**

**30.840. RENEWAL.** — The state treasurer may renew a linked deposit for an eligible guaranteed agribusiness [or], an eligible guaranteed livestock operation, **or an eligible guaranteed vermiculture operation** for additional, up to five-year, terms, not to exceed ten years.

**30.850. USE OF PROCEEDS.** — The proceeds of a linked deposit loan to an eligible guaranteed agribusiness [or], an eligible guaranteed livestock operation, **or an eligible guaranteed vermiculture operation** shall be used exclusively for necessary production expenses as set forth in subsection 2 of section 30.753.

**348.015. DEFINITIONS.** — As used in sections 348.005 to 348.225, the following terms shall mean:

(1) "Agricultural development loan", a loan for the acquisition, construction, improvement, or rehabilitation of agricultural property;

(2) "Agricultural property", any land and easements and real and personal property, including, but not limited to, buildings, structures, improvements, equipment, and livestock, which is used or is to be used in Missouri by Missouri residents for:

(a) The operation of a farm or ranch;

(b) Planting, cultivating, or harvesting cereals, natural fibers, fruits, vegetables, or trees;

- (c) Grazing, feeding, or the care of livestock, poultry, or fish;
  - (d) Dairy production;
  - (e) Storing, transporting, or processing farm and ranch products, including, without limitation, facilities such as grain elevators, cotton gins, shipping heads, livestock pens, warehouses, wharfs, docks, creameries, or feed plants; [and]
  - (f) Supplying and conserving water, draining or irrigating land, collecting, treating, and disposing of liquid and solid waste, or controlling pollution, as needed for the operations set out in this subdivision; **and**
  - (g) **A vermiculture operation. For purposes of this paragraph, "vermiculture" means the raising of earthworms under a controlled environment;**
  - (3) "Authority", the Missouri agricultural and small business development authority organized pursuant to the provisions of sections 348.005 to 348.180;
  - (4) "Bonds", any bonds, notes, debentures, interim certificates, bond, grant, or revenue anticipation notes, or any other evidences of indebtedness;
  - (5) "Borrower", any individual, partnership, corporation, including a corporation or other entity organized pursuant to section 274.220, RSMo, firm, cooperative, association, trust, estate, political subdivision, state agency, or other legal entity or its representative executing a note or other evidence of a loan;
  - (6) "Eligible borrower", a borrower qualifying for an agricultural development loan, a small business development loan, or a small business pollution control facility loan under such criteria and priorities as may be established in rules of the authority or in procedural manuals issued thereunder for the purpose of directing the use of available loan funds on the basis of need for and value of each loan for the maintenance of the agricultural economy or small business and on the meeting of pollution control objectives and assuring conformity with conditions established by insurers or guarantors of loans and the preservation of the security of bonds or notes issued to finance the loan;
  - (7) "Insurer" or "guarantor", the Farmers Home Administration of the Department of Agriculture of the United States, the United States Small Business Administration, or any other or successor agency or instrumentality of the United States having power, or any insurance company qualified under Missouri law, to ensure or guarantee the payment of agricultural development loans, small business development loans, or small business pollution control facility loans and interest thereon, or any portion thereof;
  - (8) "Lender", any state or national bank, federal land bank, production credit association, bank for cooperatives, federal or state-chartered savings and loan association or building and loan association or small business investment company that is subject to credit examination by an agency of the state or federal government, or any other lending institution approved by the insurer or guarantor of an agricultural development loan, small business development loan, or small business pollution control facility loan which undertakes to make or service such a loan;
  - (9) "Pollution", any form of environmental pollution including, but not limited to, water pollution, air pollution, land pollution, solid waste pollution, thermal pollution, radiation contamination, or noise pollution;
  - (10) "Pollution control facility" or "facilities", any land, interest in land, building, structure, facility, system, fixture, improvement, appurtenance, machinery, equipment, or any combination thereof, and all real and personal property deemed necessary therewith, having to do with, or the end purpose of which is, reducing, controlling, or preventing pollution;
  - (11) "Small business", those enterprises which, at the time of their application to the authority, meet the criteria, as interpreted and applied by the authority, for definition as a "small business" established for the Small Business Administration and set forth in Section 121.301 of Part 121 of Title 13 of the Code of Federal Regulations;
  - (12) "Small business development loan", a loan for the acquisition, construction, improvement, or rehabilitation of property owned or to be acquired by a small business as defined herein;
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(13) "Small business pollution control facility loan", a loan for the acquisition, construction, improvement, or rehabilitation of a pollution control facility or facilities by a small business;

(14) "Value-added agricultural products", any product or products that are the result of:

(a) Using an agricultural product grown in this state to produce a meat or dairy product in this state;

(b) A change in the physical state or form of the original agricultural product;

(c) An agricultural product grown in this state whose value has been enhanced by special production methods such as organically grown products; or

(d) A physical segregation of a commodity or agricultural product grown in this state that enhances its value such as identity preserved marketing systems.

Approved June 21, 2006

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## HB 1759 [HCS HB 1759]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

### **Changes the laws regarding the licensing of athletic trainers**

AN ACT to repeal sections 334.706, 334.708, 334.715, and 334.721, RSMo, and to enact in lieu thereof four new sections relating to athletic trainers.

#### SECTION

A. Enacting clause.

334.706. Board of healing arts, powers and duties — rules and regulations, procedure.

334.708. Qualifications of athletic trainers seeking licensure.

334.715. Refusal — suspension — revocation of license, grounds — reinstatement, procedure.

334.721. Athletic trainers not to be construed as practicing medicine — persons exempt from registration provision.

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

**SECTION A. ENACTING CLAUSE.** — Sections 334.706, 334.708, 334.715, and 334.721, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 334.706, 334.708, 334.715, and 334.721, to read as follows:

**334.706. BOARD OF HEALING ARTS, POWERS AND DUTIES — RULES AND REGULATIONS, PROCEDURE.** — 1. The board shall license applicants who meet the qualifications for athletic trainers, who file for licensure, and who pay all fees required for this licensure.

2. The board shall:

(1) Prescribe application forms to be furnished to all persons seeking licensure pursuant to sections 334.700 to 334.725;

(2) [Prepare and conduct examinations for applicants for licensure pursuant to sections 334.700 to 334.725;

(3)] Prescribe the form and design of the licensure to be issued pursuant to sections 334.700 to 334.725;

[(4)] (3) Set the fee for [examination,] licensure[, and renewal thereof;

[(5)] (4) Keep a record of all of its proceedings regarding the Missouri athletic trainers act and of all athletic trainers licensed in this state;

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[(6)] (5) Annually prepare a roster of the names and addresses of all athletic trainers licensed in this state, copies of which shall be made available upon request to any person paying the fee therefor;

[(7)] (6) Set the fee for the roster at an amount sufficient to cover the actual cost of publishing and distributing the roster;

[(8)] (7) Appoint members of the Missouri athletic trainer advisory committee;

[(9)] (8) Adopt an official seal.

3. The board may:

(1) Issue subpoenas to compel witnesses to testify or produce evidence in proceedings to deny, suspend, or revoke a license or licensure;

(2) Promulgate rules pursuant to chapter 536, RSMo, in order to carry out the provisions of sections 334.700 to 334.725;

(3) Establish guidelines for athletic trainers in sections 334.700 to 334.725.

4. No rule or portion of a rule promulgated under the authority of sections 334.700 to 334.725 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

**334.708. QUALIFICATIONS OF ATHLETIC TRAINERS SEEKING LICENSURE.** — 1. Any person seeking licensure pursuant to sections 334.700 to 334.725 **after August 28, 2006**, must be a resident or in the process of establishing residency in this state and [must meet at least one set of the following qualifications:

(1) has met [all of] **and passed** the National Athletic Trainers Association [certification qualifications;

(2) Holds a degree in physical therapy with at least a minor in physical education or health which included a basic athletic training course and has spent at least two academic years, military duty included, working under the direct supervision of a certified athletic trainer;

(3) Can show proof acceptable to the board of experience and educational quality equal to that in subdivision (1), and can pass the examination for licensure pursuant to sections 334.700 to 334.725] **Board of Certification or its successor agency examination.**

2. The board shall grant, without examination, licensure to any qualified nonresident athletic trainer holding a license or licensure in another state if such other state recognizes licenses or licensure of the state of Missouri in the same manner.

**334.715. REFUSAL — SUSPENSION — REVOCATION OF LICENSE, GROUNDS — REINSTATEMENT, PROCEDURE.** — 1. The board may refuse to license any applicant or may suspend, revoke, or refuse to renew the license of any licensee for any one or any combination of the causes provided in section 334.100, or if the applicant or licensee:

(1) Violated or conspired to violate any provision of sections 334.700 to 334.725 or any provision of any rule promulgated pursuant to sections 334.700 to 334.725; or

(2) Has been found guilty of unethical conduct as defined in the ethical standards of the National Athletic Trainers Association or the National Athletic Trainers Association Board of Certification **or its successor agency** as adopted and published by the committee and the board and filed with the secretary of state.

2. Upon receipt of a written application made in the form and manner prescribed by the board, the board may reinstate any license which has expired, been suspended or been revoked or may issue any license which has been denied; provided, that no application for reinstatement or issuance of license or licensure shall be considered until at least six months have elapsed from the date of denial, expiration, suspension, or revocation when the license to be reinstated or issued was denied issuance or renewal or was suspended or revoked for one of the causes listed in subsection 1 of this section.

**334.721. ATHLETIC TRAINERS NOT TO BE CONSTRUED AS PRACTICING MEDICINE — PERSONS EXEMPT FROM REGISTRATION PROVISION.** — 1. Nothing in sections 334.700 to 334.725 shall be construed to authorize the practice of medicine by any person not licensed by the state board of registration for the healing arts.

2. The provisions of sections 334.700 to 334.725 shall not apply to the following persons:

- (1) Physicians and surgeons licensed by the state board of registration for the healing arts;
- (2) Dentists licensed by the Missouri dental board who confine their practice strictly to dentistry;
- (3) Optometrists licensed by the state board of optometry who confine their practice strictly to optometry, as defined in section 336.010, RSMo;
- (4) Nurses licensed by the state board of nursing who confine their practice strictly to nursing;
- (5) Chiropractors licensed by the state board of chiropractic examiners who confine themselves strictly to the practice of chiropractic, as defined in section 331.010, RSMo;
- (6) Podiatrists licensed by the state board of chiropody or podiatry who confine their practice strictly to that of a podiatrist, as defined in section 330.010, RSMo;
- (7) Professional physical therapists licensed by the state board of registration for the healing arts who confine their practice strictly to professional physical therapy, as defined in section 334.500;
- (8) Coaches and physical education instructors in the performance of their duties;
- (9) [Apprentice] Athletic [trainers] **training students** who confine themselves strictly to their duties as defined in sections 334.700 to 334.725;
- (10) Athletic trainers from other nations, states, or territories performing their duties for their respective teams or organizations if they restrict their duties only to their teams or organizations and only during the course of their teams' or organizations' stay in this state.

Approved June 29, 2006

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HB 1762 [SCS HCS HB 1762]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Exempts a person who presents proof of permanent disability from Veterans Administration from the four-year certification requirement for renewal of disabled license plates**

AN ACT to repeal section 301.142, RSMo, and to enact in lieu thereof one new section relating to disabled license plates, with a penalty provision.

SECTION

A. Enacting clause.

- 301.142. Physically disabled, temporarily disabled, defined — plates for disabled and placard for windshield, issued when — physician statements, requirements — death of disabled person, effect — lost or stolen placard, replacement of, fee — recertification and review by director, when — penalties for certain fraudulent acts.

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

**SECTION A. ENACTING CLAUSE.** — Section 301.142, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 301.142, to read as follows:

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**301.142. PHYSICALLY DISABLED, TEMPORARILY DISABLED, DEFINED — PLATES FOR DISABLED AND PLACARD FOR WINDSHIELD, ISSUED WHEN — PHYSICIAN STATEMENTS, REQUIREMENTS — DEATH OF DISABLED PERSON, EFFECT — LOST OR STOLEN PLACARD, REPLACEMENT OF, FEE — RECERTIFICATION AND REVIEW BY DIRECTOR, WHEN — PENALTIES FOR CERTAIN FRAUDULENT ACTS.** — 1. As used in sections 301.141 to 301.143, the following terms mean:

(1) "Department", the department of revenue;

(2) "Director", the director of the department of revenue;

(3) "Other authorized health care practitioner" includes [only] **advanced practice registered nurses licensed pursuant to chapter 335, RSMo**, chiropractors licensed pursuant to chapter 331, RSMo, podiatrists licensed pursuant to chapter 330, RSMo, and optometrists licensed pursuant to chapter 336, RSMo;

(4) "Physically disabled", a natural person who is blind, as defined in section 8.700, RSMo, or a natural person with medical disabilities which prohibits, limits, or severely impairs one's ability to ambulate or walk, as determined by a licensed physician or other authorized health care practitioner as follows:

(a) The person cannot ambulate or walk fifty or less feet without stopping to rest due to a severe and disabling arthritic, neurological, orthopedic condition, or other severe and disabling condition; or

(b) The person cannot ambulate or walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device; or

(c) Is restricted by a respiratory or other disease to such an extent that the person's forced respiratory expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than sixty mm/hg on room air at rest; or

(d) Uses portable oxygen; or

(e) Has a cardiac condition to the extent that the person's functional limitations are classified in severity as class III or class IV according to standards set by the American Heart Association; or

(f) A person's age, in and of itself, shall not be a factor in determining whether such person is physically disabled or is otherwise entitled to disabled license plates and/or disabled windshield hanging placards within the meaning of sections 301.141 to 301.143;

(5) "Physician", a person licensed to practice medicine pursuant to chapter 334, RSMo;

(6) "Physician's statement", a statement personally signed by a duly authorized person which certifies that a person is disabled as defined in this section;

(7) "Temporarily disabled person", a disabled person as defined in this section whose disability or incapacity is expected to last no more than one hundred eighty days.

2. Other authorized health care practitioners may furnish to a disabled or temporarily disabled person a physician's statement for only those physical health care conditions for which such health care practitioner is legally authorized to diagnose and treat.

3. A physician's statement shall:

(1) Be on a form prescribed by the director of revenue;

(2) Set forth the specific diagnosis and medical condition which renders the person physically disabled or temporarily disabled as defined in this section;

(3) Include the physician's or other authorized health care practitioner's license number; and

(4) Be personally signed by the issuing physician or other authorized health care practitioner.

4. If it is the professional opinion of the physician or other authorized health care practitioner issuing the statement that the physical disability of the applicant, user, or member of the applicant's household is permanent, it shall be noted on the statement. Otherwise, the physician or other authorized health care practitioner shall note on the statement the anticipated length of the disability which period may not exceed one hundred eighty days. If the physician

or health care practitioner fails to record an expiration date on the physician's statement, the director shall issue a temporary windshield placard for a period of thirty days.

5. A physician or other authorized health care practitioner who issues or signs a physician's statement so that disabled plates or a disabled windshield placard may be obtained shall maintain in such disabled person's medical chart documentation that such a certificate has been issued, the date the statement was signed, the diagnosis or condition which existed that qualified the person as disabled pursuant to this section and shall contain sufficient documentation so as to objectively confirm that such condition exists.

6. The medical or other records of the physician or other authorized health care practitioner who issued a physician's statement shall be open to inspection and review by such practitioner's licensing board, in order to verify compliance with this section. Information contained within such records shall be confidential unless required for prosecution, disciplinary purposes, or otherwise required to be disclosed by law.

7. Owners of motor vehicles who are residents of the state of Missouri, and who are physically disabled, owners of motor vehicles operated at least fifty percent of the time by a physically disabled person, or owners of motor vehicles used to primarily transport physically disabled members of the owner's household may obtain disabled person license plates. Such owners, upon application, accompanied by the documents and fees provided for in this section, a current physician's statement which has been issued within ninety days preceding the date the application is made and proof of compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles, shall be issued motor vehicle license plates for vehicles, other than commercial vehicles with a gross weight in excess of twenty-four thousand pounds, upon which shall be inscribed the international wheelchair accessibility symbol and the word "DISABLED" in addition to a combination of letters and numbers. Such license plates shall be made with fully reflective material with a common color scheme and design, shall be clearly visible at night, and shall be aesthetically attractive, as prescribed by section 301.130.

8. The director shall further issue, upon request, to such applicant one, and for good cause shown, as the director may define by rule and regulations, not more than two, removable disabled windshield hanging placards for use when the disabled person is occupying a vehicle or when a vehicle not bearing the permanent handicap plate is being used to pick up, deliver, or collect the physically disabled person issued the disabled motor vehicle license plate or disabled windshield hanging placard.

9. No additional fee shall be paid to the director for the issuance of the special license plates provided in this section, except for special personalized license plates and other license plates described in this subsection. Priority for any specific set of special license plates shall be given to the applicant who received the number in the immediately preceding license period subject to the applicant's compliance with the provisions of this section and any applicable rules or regulations issued by the director. If determined feasible by the advisory committee established in section 301.129, any special license plate issued pursuant to this section may be adapted to also include the international wheelchair accessibility symbol and the word "DISABLED" as prescribed in this section and such plate may be issued to any applicant who meets the requirements of this section and the other appropriate provision of this chapter, subject to the requirements and fees of the appropriate provision of this chapter.

10. Any physically disabled person, or the parent or guardian of any such person, or any not-for-profit group, organization, or other entity which transports more than one physically disabled person, may apply to the director of revenue for a removable windshield placard. The placard may be used in motor vehicles which do not bear the permanent handicap symbol on the license plate. Such placards must be hung from the front, middle rearview mirror of a parked motor vehicle and may not be hung from the mirror during operation. These placards may only be used during the period of time when the vehicle is being used by a disabled person, or when the vehicle is being used to pick up, deliver, or collect a disabled person. When there is no rearview mirror, the placard shall be displayed on the dashboard on the driver's side.

11. The removable windshield placard shall conform to the specifications, in respect to size, color, and content, as set forth in federal regulations published by the Department of Transportation. The fee for each removable windshield placard shall be four dollars and the removable windshield placard shall be renewed every two years. The director may stagger the expiration dates to equalize workload. Only one removable placard may be issued to an applicant who has been issued disabled person license plates. Upon request, one additional windshield placard may be issued to an applicant who has not been issued disabled person license plates, at the appropriate fee.

12. A temporary windshield placard shall be issued to any physically disabled person, or the parent or guardian of any such person who otherwise qualifies except that the physical disability, in the opinion of the physician, is not expected to exceed a period of one hundred eighty days. The temporary windshield placard shall conform to the specifications, in respect to size, color, and content, as set forth in federal regulations published by the Department of Transportation. The fee for the temporary windshield placard shall be two dollars. Upon request, and for good cause shown, one additional temporary windshield placard may be issued to an applicant. Temporary windshield placards shall be issued upon presentation of the physician's statement provided by this section and shall be displayed in the same manner as removable windshield placards. A person or entity shall be qualified to possess and display a temporary removable windshield placard for six months and the placard may be renewed once for an additional six months if a physician's statement pursuant to this section is supplied to the director of revenue at the time of renewal.

13. Application for license plates or windshield placards issued pursuant to this section shall be made to the director of revenue and shall be accompanied by a statement signed by a licensed physician or other authorized health care practitioner which certifies that the applicant, user, or member of the applicant's household is a physically disabled person as defined by this section.

14. The placard shall be renewable only by the person or entity to which the placard was originally issued. Any placard issued pursuant to this section shall only be used when the physically disabled occupant for whom the disabled plate or placard was issued is in the motor vehicle at the time of parking or when a physically disabled person is being delivered or collected. A disabled license plate and/or a removable windshield hanging placard are not transferable and may not be used by any other person whether disabled or not.

15. At the time the disabled plates or windshield hanging placards are issued, the director shall issue a registration certificate which shall include the applicant's name, address, and other identifying information as prescribed by the director, or if issued to an agency, such agency's name and address. This certificate shall further contain the disabled license plate number or, for windshield hanging placards, the registration or identifying number stamped on the placard. The validated registration receipt given to the applicant shall serve as the registration certificate.

16. The director shall, upon issuing any disabled registration certificate for license plates and/or windshield hanging placards, provide information which explains that such plates or windshield hanging placards are nontransferable, and the restrictions explaining who and when a person or vehicle which bears or has the disabled plates or windshield hanging placards may be used or be parked in a disabled reserved parking space, and the penalties prescribed for violations of the provisions of this act.

17. Every new applicant for a disabled license plate or placard shall be required to present a new physician's statement dated no more than ninety days prior to such application. Renewal applicants will be required to submit a physician's statement dated no more than ninety days prior to such application upon their first renewal occurring on or after August 1, 2005. Upon completing subsequent renewal applications, a physician's statement dated no more than ninety days prior to such application shall be required every fourth year. Such physician's statement shall state the expiration date for the temporary windshield placard. If the physician fails to

record an expiration date on the physician's statement, the director shall issue the temporary windshield placard for a period of thirty days.

18. The director of revenue upon receiving a physician's statement pursuant to this subsection shall check with the state board of registration for the healing arts created in section 334.120, RSMo, **or the Missouri state board of nursing established in section 335.021, RSMo, with respect to physician's statements signed by advanced practice registered nurses**, or the Missouri state board of chiropractic examiners established in section 331.090, RSMo, with respect to physician's statements signed by licensed chiropractors, or with the board of optometry established in section 336.130, RSMo, with respect to physician's statements signed by licensed optometrists, or the state board of podiatric medicine created in section 330.100, RSMo, with respect to physician's statements signed by physicians of the foot or podiatrists to determine whether the physician is duly licensed and registered pursuant to law. **If such applicant obtaining a disabled license plate or placard presents proof of disability in the form of a statement from the United States Veterans' Administration verifying that the person is permanently disabled, the applicant shall be exempt from the four-year certification requirement of this subsection for renewal of the plate or placard. Initial applications shall be accompanied by the physician's statement required by this section.**

19. The boards shall cooperate with the director and shall supply information requested pursuant to this subsection. The director shall, in cooperation with the boards which shall assist the director, establish a list of all Missouri physicians and other authorized health care practitioners and of any other information necessary to administer this section.

20. Where the owner's application is based on the fact that the vehicle is used at least fifty percent of the time by a physically disabled person, the applicant shall submit a statement stating this fact, in addition to the physician's statement. The statement shall be signed by both the owner of the vehicle and the physically disabled person. The applicant shall be required to submit this statement with each application for license plates. No person shall willingly or knowingly submit a false statement and any such false statement shall be considered perjury and may be punishable pursuant to section 301.420.

21. The director of revenue shall retain all physicians' statements and all other documents received in connection with a person's application for disabled license plates and/or disabled windshield placards.

22. The director of revenue shall enter into reciprocity agreements with other states or the federal government for the purpose of recognizing disabled person license plates or windshield placards issued to physically disabled persons.

23. When a person to whom disabled person license plates or a removable or temporary windshield placard or both have been issued dies, the personal representative of the decedent or such other person who may come into or otherwise take possession of the disabled license plates or disabled windshield placard shall return the same to the director of revenue under penalty of law. Failure to return such plates or placards shall constitute a class B misdemeanor.

24. The director of revenue may order any person issued disabled person license plates or windshield placards to submit to an examination by a chiropractor, osteopath, or physician, or to such other investigation as will determine whether such person qualifies for the special plates or placards.

25. If such person refuses to submit or is found to no longer qualify for special plates or placards provided for in this section, the director of revenue shall collect the special plates or placards, and shall furnish license plates to replace the ones collected as provided by this chapter.

26. In the event a removable or temporary windshield placard is lost, stolen, or mutilated, the lawful holder thereof shall, within five days, file with the director of revenue an application and an affidavit stating such fact, in order to purchase a new placard. The fee for the replacement windshield placard shall be four dollars.

27. Fraudulent application, renewal, issuance, procurement or use of disabled person license plates or windshield placards shall be a class A misdemeanor. It is a class B

misdeemeanor for a physician, chiropractor, podiatrist or optometrist to certify that an individual or family member is qualified for a license plate or windshield placard based on a disability, the diagnosis of which is outside their scope of practice or if there is no basis for the diagnosis.

Approved June 21, 2006

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HB 1787 [SCS HCS HB 1787]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Establishes the Guard at Home Program to assist the spouse of an active-duty National Guard or reservist with immediate needs and employment to prevent the family from falling into poverty**

AN ACT to amend chapter 620, RSMo, by adding thereto one new section relating to the guard at home program, with an emergency clause.

SECTION

- A. Enacting clause.
- 620.515. Guard at home program established to assist members of the national guard and their families — report to general assembly.
- B. Emergency clause, effective date.

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

**SECTION A. ENACTING CLAUSE.** — Chapter 620, RSMo, is amended by adding thereto one new section, to be known as section 620.515, to read as follows:

**620.515. GUARD AT HOME PROGRAM ESTABLISHED TO ASSIST MEMBERS OF THE NATIONAL GUARD AND THEIR FAMILIES — REPORT TO GENERAL ASSEMBLY. — 1. This section shall be known and may be cited as the "Guard at Home" program whose purpose is to:**

(1) Assist the spouse of an active duty national guard or reserve component service member reservist to address immediate needs and employment in an attempt to keep the family from falling into poverty while the primary income earner is on active duty; and

(2) Assist returning national guard troops with finding work in situations where an individual needs to rebuild business clientele or where an individual's job has been eliminated while such individual was deployed.

2. Subject to appropriation, the department of economic development shall enter into a contract with qualified providers through local workforce investment boards to provide the guard at home program. The department shall develop the criteria of the contract based on the following criteria:

- (1) Eligible participants in the program shall be those families where:
  - (a) The primary income earner was called to active duty in defense of the United States for a period of more than four months;
  - (b) The family's primary income is no longer available;
  - (c) The family is experiencing significant hardship due to financial burdens; and
  - (d) The family has no outside resources available to assist with such hardships;
- (2) Services that may be provided to the family will be aimed at ameliorating the immediate crisis and providing a path for economic stability while the primary income is

not available due to the active military commitment. Services may include, but not be limited to the following:

- (a) Financial assistance to families facing financial crisis from overdue bills due to reduced income after the deployment of a spouse;
  - (b) Help paying daycare costs to pursue training and or employment;
  - (c) Help covering the costs of transportation to training and or employment;
  - (d) Vocational evaluation and vocational counseling to help the individual choose a visible employment goal;
  - (e) Vocational training to acquire or upgrade skills needed to be marketable in the workforce;
  - (f) Paid internships and subsidized employment to train on the job; and
  - (g) Job placement assistance for those who don't require skills training;
- (3) The department shall ensure the eligible providers are:
- (a) Community-based not-for-profit agencies which have significant experience in job training, placement, and social services;
  - (b) Providers with extensive experience providing such services to veterans and implementing contracts with veteran organizations such as the department of veteran affairs;
  - (c) Providers which have attained the distinction of being accredited through a national accreditation body for training and or human services;
  - (d) Providers which are able to provide a twenty percent match to the program either through indirect or direct expenditures; and
  - (e) Providers with experience in the regions targeted for the program.

3. The department shall structure the contract such that payment will be based on delivering the services described in this section as well as performance to guarantee the greatest possible effectiveness of the program.

4. Because of the important nature of this program to the health and welfare of Missourians, this section shall become effective on July 1, 2006. The department shall make every reasonable effort to ensure that the guard at home program is serving families by August 1, 2006.

5. The department shall prepare a report on the operations and progress of the program to be delivered to the speaker of the house of representatives and the president pro tem of the senate no later than January 1, 2007.

**SECTION B. EMERGENCY CLAUSE, EFFECTIVE DATE.** — Because immediate action is necessary to protect the health and welfare of Missouri national guard troops and reservists, 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 on July 1, 2006, or upon its passage and approval.

Approved June 13, 2006

HB 1827 [HB 1827]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Changes the authorized categories of business and premium requirements on health insurance policies issued to an association of small and large employers**

AN ACT to repeal section 376.421, RSMo, and to enact in lieu thereof one new section relating to group health insurance.

SECTION

A. Enacting clause.

376.421. Group health insurance, authorized categories.

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

**SECTION A. ENACTING CLAUSE.** — Section 376.421, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 376.421, to read as follows:

**376.421. GROUP HEALTH INSURANCE, AUTHORIZED CATEGORIES.** — 1. Except as provided in subsection 2 of this section, no policy of group health insurance shall be delivered in this state unless it conforms to one of the following descriptions:

(1) A policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

(a) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietorships or partnerships, if the business of the employer and of such affiliated corporations, proprietorships or partnerships is under common control. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietorship or partnership. The policy may provide that the term "employees" shall include retired employees, former employees and directors of a corporate employer. A policy issued to insure the employees of a public body may provide that the term "employees" shall include elected or appointed officials;

(b) The premium for the policy shall be paid either from the employer's funds or from funds contributed by the insured employees, or from both. Except as provided in paragraph (c) of this subdivision, a policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, except those who reject such coverage in writing; and

(c) An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer in a policy insuring fewer than ten employees and in a policy insuring ten or more employees if:

a. Application is not made within thirty-one days after the date of eligibility for insurance;

or

b. The person voluntarily terminated the insurance while continuing to be eligible for insurance under the policy; or

c. After the expiration of an open enrollment period during which the person could have enrolled for the insurance or could have elected another level of benefits under the policy;

(2) A policy issued to a creditor or its parent holding company or to a trustee or trustees or agent designated by two or more creditors, which creditor, holding company, affiliate, trustee, trustees or agent shall be deemed the policyholder, to insure debtors of the creditor or creditors with respect to their indebtedness subject to the following requirements:

(a) The debtors eligible for insurance under the policy shall be all of the debtors of the creditor or creditors, or all of any class or classes thereof. The policy may provide that the term "debtors" shall include:

a. Borrowers of money or purchasers or lessees of goods, services, or property for which payment is arranged through a credit transaction;

b. The debtors of one or more subsidiary corporations; and  
c. The debtors of one or more affiliated corporations, proprietorships or partnerships if the business of the policyholder and of such affiliated corporations, proprietorships or partnerships is under common control;

(b) The premium for the policy shall be paid either from the creditor's funds or from charges collected from the insured debtors, or from both. Except as provided in paragraph (c) of this subdivision, a policy on which no part of the premium is to be derived from funds contributed by insured debtors specifically for their insurance must insure all eligible debtors;

(c) An insurer may exclude any debtors as to whom evidence of individual insurability is not satisfactory to the insurer in a policy insuring fewer than ten debtors and in a policy insuring ten or more debtors if:

a. Application is not made within thirty-one days after the date of eligibility for insurance;  
or

b. The person voluntarily terminated the insurance while continuing to be eligible for insurance under the policy; or

c. After the expiration of an open enrollment period during which the person could have enrolled for the insurance or could have elected another level of benefits under the policy;

(d) The total amount of insurance payable with respect to an indebtedness shall not exceed the greater of the scheduled or actual amount of unpaid indebtedness to the creditor. The insurer may exclude any payments which are delinquent on the date the debtor becomes disabled as defined in the policy;

(e) The insurance may be payable to the creditor or to any successor to the right, title, and interest of the creditor. Such payment or payments shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of each such payment and any excess of insurance shall be payable to the insured or the estate of the insured;

(f) Notwithstanding the preceding provisions of this subdivision, insurance on agricultural credit transaction commitments may be written up to the amount of the loan commitment, and insurance on educational credit transaction commitments may be written up to the amount of the loan commitment less the amount of any repayments made on the loan;

(3) A policy issued to a labor union or similar employee organization, which shall be deemed to be the policyholder, to insure members of such union or organization for the benefit of persons other than the union or organization or any of its officials, representatives, or agents, subject to the following requirements:

(a) The members eligible for insurance under the policy shall be all of the members of the union or organization, or all of any class or classes thereof;

(b) The premium for the policy shall be paid either from funds of the union or organization or from funds contributed by the insured members specifically for their insurance, or from both. Except as provided in paragraph (c) of this subdivision, a policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, except those who reject such coverage in writing;

(c) An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer in a policy insuring fewer than ten members and in a policy insuring ten or more members if:

a. Application is not made within thirty-one days after the date of eligibility for insurance;  
or

b. The person voluntarily terminated the insurance while continuing to be eligible for insurance under the policy; or

c. After the expiration of an open enrollment period during which the person could have enrolled for the insurance or could have elected another level of benefits under the policy;

(4) A policy issued to a trust, or to the trustee of a fund, established or adopted by two or more employers, or by one or more labor unions or similar employee organizations, or by one or more employers and one or more labor unions or similar employee organizations, which trust

or trustee shall be deemed the policyholder, to insure employees of the employers or members of the unions or organizations for the benefit of persons other than the employers or the unions or organizations, subject to the following requirements:

(a) The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions or organizations, or all of any class or classes thereof. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietorships or partnerships if the business of the employer and of such affiliated corporations, proprietorships or partnerships is under common control. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietorship or partnership. The policy may provide that the term "employees" shall include retired employees, former employees and directors of a corporate employer. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship;

(b) The premium for the policy shall be paid from funds contributed by the employer or employers of the insured persons or by the union or unions or similar employee organizations, or by both, or from funds contributed by the insured persons or from both the insured persons and the employer or union or similar employee organization. Except as provided in paragraph (c) of this subdivision, a policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance, must insure all eligible persons except those who reject such coverage in writing;

(c) An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer;

(5) A policy issued to an association or to a trust or to the trustees of a fund established, created and maintained for the benefit of members of one or more associations. The association or associations shall have at the outset a minimum of [one hundred persons] **fifty members**; shall have been organized and maintained in good faith for purposes other than that of obtaining insurance; shall have been in active existence for at least two years; shall have a constitution and bylaws which provide that the association or associations shall hold regular meetings not less than annually to further the purposes of the members; shall, except for credit unions, collect dues or solicit contributions from members; and shall provide the members with voting privileges and representation on the governing board and committees. The policy shall be subject to the following requirements:

(a) The policy may insure members of such association or associations, employees thereof, or employees of members, or one or more of the preceding, or all of any class or classes thereof for the benefit of persons other than the employee's employer;

(b) The premium for the policy shall be paid from funds contributed by the association or associations or by employer members, or by both, or from funds contributed by the covered persons or from both the covered persons and the association, associations, or employer members;

(c) Except as provided in paragraph (d) of this subdivision, a policy on which no part of the premium is to be derived from funds contributed by the covered persons specifically for their insurance must insure all eligible persons, except those who reject such coverage in writing;

(d) An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer;

**(e) If the health benefit plan, as defined in section 376.1350, is delivered, issued for delivery, continued or renewed, is providing coverage to any resident of this state, and is providing coverage to both small employers as defined in subsection 2 of section 379.930, RSMo, and large employers, the insurer providing the coverage to the association or trust or trustees of a fund established, created, and maintained for the benefit of members of one or more associations may be exempt from subdivision (1) of subsection 1 of section 379.936, RSMo, as it relates to the association plans established under this section. The**

director shall find that an exemption would be in the public interest and approved and that additional classes of business may be approved under subsection 4 of section 379.934, RSMo, if the director determines that the health benefit plan:

- a. Is underwritten and rated as a single employer;
- b. Has a uniform health benefit plan design option or options for all participating association members or employers;
- c. Has guarantee issue to all association members and all eligible employees, as defined in subsection 2 of section 379.930, RSMo, of any participating association member company; and
- d. Complies with all other federal and state insurance requirements, including but not limited to the small employer health insurance and availability act under sections 379.930 to 379.952, RSMo;

(6) A policy issued to a credit union or to a trustee or trustees or agent designated by two or more credit unions, which credit union, trustee, trustees or agent shall be deemed the policyholder, to insure members of such credit union or credit unions for the benefit of persons other than the credit union or credit unions, trustee or trustees, or agent or any of their officials, subject to the following requirements:

- (a) The members eligible for insurance shall be all of the members of the credit union or credit unions, or all of any class or classes thereof;
- (b) The premium for the policy shall be paid by the policyholder from the credit union's funds and, except as provided in paragraph (c) of this subdivision, must insure all eligible members;
- (c) An insurer may exclude or limit the coverage on any member as to whom evidence of individual insurability is not satisfactory to the insurer;

(7) A policy issued to cover persons in a group where that group is specifically described by a law of this state as one which may be covered for group life insurance. The provisions of such law relating to eligibility and evidence of insurability shall apply.

2. Group health insurance offered to a resident of this state under a group health insurance policy issued to a group other than one described in subsection 1 of this section shall be subject to the following requirements:

- (1) No such group health insurance policy shall be delivered in this state unless the director finds that:
  - (a) The issuance of such group policy is not contrary to the best interest of the public;
  - (b) The issuance of the group policy would result in economies of acquisition or administration; and
  - (c) The benefits are reasonable in relation to the premiums charged;
- (2) No such group health insurance coverage may be offered in this state by an insurer under a policy issued in another state unless this state or another state having requirements substantially similar to those contained in subdivision (1) of this subsection has made a determination that such requirements have been met;
- (3) The premium for the policy shall be paid either from the policyholder's funds, or from funds contributed by the covered persons, or from both;
- (4) An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer.

Approved July 12, 2006

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Changes the laws regarding medical malpractice insurance and the enforcement powers of the Department of Insurance and creates the Health Care Stabilization Fund Feasibility Board**

AN ACT to repeal sections 374.046, 383.010, 383.035, and 383.105, RSMo, and to enact in lieu thereof eighteen new sections relating to malpractice insurance.

**SECTION**

- A. Enacting clause.
- 374.046. Relief issued by director for violations of state laws — considerations — notice — effective date of order — contents of order, procedures — penalty — costs — powers of director — service — order filed — noncompliance — modification of order — additional penalties — definitions.
- 374.047. Willful violation of state law, order — notice.
- 374.048. Violations of state laws, action in circuit court — relief — bond — venue — judgment — fund created.
- 374.049. Classification of violations — orders, penalties — enhancement of penalties — reduction of penalties — deposit and use of penalties — effective date.
- 383.010. Authority to form business entity to provide malpractice insurance — nonresidents may be members, when.
- 383.016. Articles of association and bylaws, additional contents.
- 383.035. Association subject to certain laws — grace period for certain associations, limitations — certification filed with annual statement — rules and regulations, director may promulgate — impaired association, director's powers, review of — rating plans, filing of.
- 383.105. Report of medical malpractice claims by certain insurers, contents, insurer defined.
- 383.106. Reporting standards — risk reporting categories — information compiled — report of rates.
- 383.107. Publication of market rate.
- 383.108. Publication of comparison of base rates.
- 383.124. Administrative orders for violations of state laws or rules — civil action for violations.
- 383.196. Definition of insurer
- 383.197. Rates filed with director — form — open to public, copies.
- 383.198. Sale of health care provider policy prohibited, when — determining factors — insurer may charge additional premium or grant discount, when — supporting data — rulemaking authority.
- 383.199. Rate increases over fifteen percent prohibited without notice, exception.
- 383.450. Insurer defined — prohibitions on insurers — failure to provide notice, continuation of coverage.
- 383.515. Health care stabilization fund feasibility board created, duties, report — members — appointment, meetings, reports — powers — staff — compensation — expiration date.

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

**SECTION A. ENACTING CLAUSE.** — Sections 374.046, 383.010, 383.035, and 383.105, RSMo, are repealed and eighteen new sections enacted in lieu thereof, to be known as sections 374.046, 374.047, 374.048, 374.049, 383.010, 383.016, 383.035, 383.105, 383.106, 383.107, 383.108, 383.124, 383.196, 383.197, 383.198, 383.199, 383.450, and 383.515, to read as follows:

**374.046. RELIEF ISSUED BY DIRECTOR FOR VIOLATIONS OF STATE LAWS — CONSIDERATIONS — NOTICE — EFFECTIVE DATE OF ORDER — CONTENTS OF ORDER, PROCEDURES — PENALTY — COSTS — POWERS OF DIRECTOR — SERVICE — ORDER FILED — NONCOMPLIANCE — MODIFICATION OF ORDER — ADDITIONAL PENALTIES — DEFINITIONS.**— 1. [(1) The director may issue cease and desist orders whenever it appears to him upon competent and substantial evidence that any person is acting in violation of any law of this state or any rule or regulation promulgated by the director relating to the business of insurance. Before any cease and desist order shall be issued, a copy of the proposed order together with an order to show cause why such cease and desist order should not be issued shall be served either personally or by certified mail on any person named therein.

(2) (a) Upon issuing any order to show cause the director shall notify the person named therein that the person is entitled to a public hearing before the director if a request for a hearing

is made in writing to the director within fifteen days from the day of the service of the order to show cause why the cease and desist order should not be issued.

(b) The cease and desist order shall be issued fifteen days after the service of the order to show cause if no request for a public hearing is made as above provided.

(c) Upon receipt of a request for a hearing the director shall set a time and place for the hearing which shall not be less than ten days or more than fifteen days from the receipt of the request or as otherwise agreed upon by the parties. Notice of the time and place shall be given by the director not less than five days before the hearing.

(d) At the hearing the person may be represented by counsel and shall be entitled to be advised of the nature and source of any adverse evidence procured by the director and shall be given the opportunity to submit any relevant written or oral evidence in his behalf to show cause why the cease and desist order should not be issued.

(e) At the hearing the director shall have such powers as are conferred upon him in section 374.190.

(f) At the conclusion of the hearing, or within ten days thereafter, the director shall issue the cease and desist order as proposed or as subsequently modified or notify the person that no order shall be issued.

(g) The circuit court of Cole County shall have jurisdiction to review any cease and desist order of the director under the provisions of sections 536.100 to 536.150, RSMo; and, if any person against whom an order is issued fails to request judicial review, or if, after judicial review, the director's cease and desist order is upheld, the order shall become final.

**2.] If the director determines based upon substantial and competent evidence that a person has engaged, is engaging in or has taken a substantial step toward engaging in an act, practice, omission, or course of business constituting a violation of the laws of this state relating to insurance in this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo, or a rule adopted or order issued pursuant thereto or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of the laws of this state relating to insurance in this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo, or a rule adopted or order issued pursuant thereto, the director may order the following relief:**

**(1) An order directing the person to cease and desist from engaging in the act, practice, omission, or course of business;**

**(2) A curative order or order directing the person to take other action necessary or appropriate to comply with the insurance laws of this state;**

**(3) Order a civil penalty or forfeiture as provided in section 374.049; and**

**(4) Award reasonable costs of the investigation.**

**2. In determining any relief sought, the director shall consider, among other factors, whether:**

**(1) The violations are likely to continue or reoccur;**

**(2) Actual financial loss was sustained by consumers and restitution has been made;**

**(3) The act, practice, omission, or course of business was detected as part of a self-audit or internal compliance program and immediately reported to the director; and**

**(4) The act, practice, omission, or course of business had previously been detected, but inadequate policies and procedures were implemented to prevent reoccurrence.**

**3. Unless the director determines that a summary order is appropriate under subsection 4 of this section, the director shall provide notice of the intent to initiate administrative enforcement by serving a statement of the reasons for the action upon any person subject to the proceedings. A statement of reasons, together with an order to show cause why a cease and desist order and other relief should not be issued, shall be served either personally or by certified mail on any person named therein. The director shall schedule a time and place at least ten days thereafter, for hearing, and after notice of and**

opportunity for hearing to each person subject to the order, the director may issue a final order under subsection 6 of this section.

4. If the director determines that sections 375.014, 375.144, or 375.310, RSMo, are being violated and consumers are being aggrieved by the violations, the order issued under subdivision (1) of subsection 1 of this section may be summary and be effective on the date of issuance. Upon issuance of the order, the director shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered.

5. A summary order issued under subsection 4 of this section must include a statement of the reasons for the order, notice within five days after receipt of a request in a record from the person that the matter will be scheduled for a hearing, and a statement whether the department is seeking a civil penalty or costs of the investigation. If a person subject to the order does not request a hearing and none is ordered by the director within thirty days after the date of service of the order, the order becomes final as to that person by operation of law. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

6. If a hearing is requested or ordered pursuant to subsection 3 or subsection 5 of this section, a hearing before the director or a hearing officer designated by the director must be provided. A final order may not be issued unless the director makes findings of fact and conclusions of law in a record in accordance with the provisions of chapter 536, RSMo, and procedural rules promulgated by the director. The final order may make final, vacate, or modify the order issued under subsection 5 of this section.

7. In a final order under subsection 6 of this section, the director may impose a civil penalty or forfeiture as provided in section 374.049. No civil penalty or forfeiture may be imposed against a person unless the person has engaged in the act, practice, omission, or course of business constituting the violation.

8. In a final order under subsection 6 of this section, the director may charge the actual cost of an investigation or proceeding for a violation of the insurance laws of this state or a rule adopted or order issued pursuant thereto. These funds shall be paid to the director to the credit of the insurance dedicated fund.

9. The director is authorized to issue subpoenas, compel attendance of witnesses, administer oaths, hear testimony of witnesses, receive evidence, and require the production of books, papers, records, correspondence, and all other written instruments or documents relevant to the proceeding and authorized in contested cases under the provisions of chapter 536, RSMo, and procedural rules promulgated by the director.

10. Statements of charges, notices, orders, and other processes of the director may be served by anyone duly authorized by the director either in the manner provided by law for service of process in civil actions, or by registering or certifying and mailing a copy thereof to the person affected by such statement, notice, order, or other process at his or its residence or principal office or place of business. The verified return by the person so serving such statement, notice, order, or other process setting forth the manner of such service shall be proof of the same, and the return postcard receipt for such statement, notice, order, or other process, registered and mailed as aforesaid, shall be proof of the service of the same.

11. If a petition for judicial review of a final order is not filed in accordance with section 374.055, the director may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

12. If a person violates or does not comply with an order under this section, the director may under section 374.048 petition a court of competent jurisdiction to enforce

the order. The court may not require the director to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may, in addition to relief authorized in section 374.048, adjudge the person in civil contempt of the order. A violation of or failure to comply with an order under this section is a level three violation under section 374.049. The court may impose a further civil penalty against the person for contempt in an amount not less than five thousand dollars but not greater than one hundred thousand dollars for each violation and may grant any other relief the court determines is just and proper in the circumstances.

13. Until the expiration of the time allowed under section 374.055 for filing a petition for judicial review, if no such petition has been duly filed within such time or if a petition for review has been filed within such time, then until the transcript of the record in the proceeding has been filed in the circuit court of Cole County, the director may at any time, upon such notice and in such manner as he shall deem proper, modify or set aside in whole or in part any order issued by him under this section.

14. The enforcement authority of the director under this section is cumulative to any other statutory authority of the director.

15. The director is authorized to issue administrative consent orders in the public interest as complete or partial settlement of any investigation, examination, or other proceeding, which curative orders may contain any provision necessary or appropriate to assure compliance with the insurance laws of this state, require payment of restitution to be distributed directly or by the director to any aggrieved consumers, civil penalties, or voluntary forfeiture, reimbursement for costs of investigation or examination, or any other relief deemed by the director to be necessary and appropriate. Any remaining matters not addressed in settlement may be submitted to the director through a contested proceeding under this section.

16. (1) Any person willfully violating any provision of any cease and desist order of the director after it becomes final, while the same is in force, upon conviction thereof shall be punished by a fine of not more than one **hundred** thousand dollars [or one year in jail] , **by imprisonment of up to ten years**, or by both such fine and [jail sentence] **imprisonment**.

(2) In addition to any other penalty provided, violation of any cease and desist order shall subject the violator to suspension or revocation of any certificate of authority or license as may be applicable under the laws of this state relating to the business of insurance.

[3. (1) When it appears to the director that there is a violation of the laws of this state or any rule or regulation promulgated by the director relating to the business of insurance, and that the continuance of the acts or actions of any person as herein defined would produce injury to the insuring public or to any other person in this state, or when it appears that a person is doing or threatening to do some act in violation of the laws of this state relating to insurance, the director may file a petition for injunction in the circuit court of Cole County, Missouri, in which he may ask for a temporary injunction or restraining order as well as a permanent injunction to restrain the act or threatened act. In the event the temporary injunction or restraining order or a permanent injunction is issued by the circuit court of Cole County, Missouri, no person against whom the temporary injunction or restraining order or permanent injunction is granted shall do or continue to do any of the acts or actions complained of in the petition for injunction, unless and until the temporary injunction or restraining order or permanent injunction is vacated, dismissed or otherwise terminated.

(2) Any writ of injunction issued under this law may be served and enforced as provided by law in injunctions issued in other cases, but the director of the insurance department shall not be required to give any bond as preliminary to or in the course of any proceedings to which he is a party as director under this section, either for costs or for any injunction, or in case of appeal to either the supreme court or to any appellate court.

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4.] 17. The term "person" as used in this [section] **chapter** shall include any individual, partnership, corporation, association or trust, or any other legal entity.

18. The term "order" as used in this chapter shall include a formal administrative direction or command of the director issued under this section or in any contested case subject to the provisions of section 536.063, RSMo, or any lawful administrative proceeding subject to judicial review, but shall not include department bulletins, no-action letters, advisory opinions, or any other statement of general applicability that should be adopted by rule.

**374.047. WILLFUL VIOLATION OF STATE LAW, ORDER — NOTICE. — 1.** If the director determines, based on substantial and competent evidence, that a corporation or insurer with a certificate of authority under the laws relating to insurance willfully has engaged in an act, practice, omission, or course of business constituting a level three, four, or five violation of the laws of this state relating to insurance in this chapter, chapter 354 and chapters 375 to 385, RSMo, or been convicted of any felony or misdemeanor under any state or federal law, the director may, after hearing, issue an order suspending or revoking the certificate of authority.

2. Prior to issuance of the order under this section, the director shall give at least thirty days' notice with a statement of reasons for the action and afford such corporation or insurer the opportunity for a hearing upon written request. If such corporation or insurer requests a hearing in writing, a final order of suspension or revocation may not be issued unless the director makes findings of fact and conclusions of law in a record in accordance with the contested case provisions of chapter 536, RSMo, and procedural rules promulgated by the director.

3. The enforcement authority of the director under this section is cumulative to any other statutory authority of the director.

**374.048. VIOLATIONS OF STATE LAWS, ACTION IN CIRCUIT COURT — RELIEF — BOND — VENUE — JUDGMENT — FUND CREATED. — 1.** If the director believes that a person has engaged, is engaging in or has taken a substantial step toward engaging in an act, practice, omission, or course of business constituting a violation of the laws of this state relating to insurance in this chapter, chapter 354 and chapters 375 to 385, RSMo, or a rule adopted or order issued pursuant thereto or that a person has or is engaging in an act, practice, omission, or course of business that materially aids a violation of the laws of this state relating to insurance in this chapter, chapter 354 and chapters 375 to 385, RSMo, or a rule adopted or order issued pursuant thereto, the director may maintain an action in the circuit court of any county of the state or any city not within a county to enjoin the act, practice, omission, or course of business and to enforce compliance with the laws of this state relating to insurance or a rule adopted or order issued by the director.

2. In an action under this section and on a proper showing, the court may:

(1) Issue a permanent or temporary injunction, restraining order, or declaratory judgment;

(2) Order other appropriate or ancillary relief, which may include:

(a) An asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, which may be the director, for the defendant or the defendant's assets;

(b) Ordering the director to take charge and control of a defendant's property, including accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property;

(c) Imposing a civil penalty or forfeiture as provided in section 374.049;

(d) Upon showing financial loss, injury, or harm to identifiable consumers, imposing an order of restitution or disgorgement directed to a person who has engaged in an act,

practice, omission, or course of business in violation of the laws or rules relating to insurance;

(e) Ordering the payment of prejudgment and post-judgment interest;  
(f) Ordering reasonable costs of investigation and prosecution; and  
(g) Ordering the payment to the insurance dedicated fund an additional amount equal to ten percent of the total restitution or disgorgement ordered, or such other amount as awarded by the court, which shall be appropriated to an insurance consumer education program administered by the director; or

(3) Order such other relief as the court considers necessary or appropriate.

3. The director may not be required to post a bond in an action or proceeding under this section.

4. The case may be brought in the circuit court of Cole County, any county or city not within a county in which a violation has occurred, or any county or city not within a county, which has venue of an action against the person, partnership, or corporation under other provisions of law.

5. The enforcement authority of the director under this section is cumulative to any other authority of the director to impose orders under other provisions of the laws relating to insurance in this state.

6. If the director determines it to be in the public interest, the director is authorized to enter into a consent injunction and judgment in the settlement of any proceeding under the laws of this state relating to insurance in this chapter, chapter 354 and chapters 375 to 385, RSMo.

7. A "Consumer Restitution Fund" shall be created for the purpose of preserving and distributing to aggrieved consumers disgorgement or restitution funds obtained through enforcement proceedings brought by the director. In addition to the equitable powers of the court authorized above, the court may order that such funds be paid into the consumer restitution fund for distribution to aggrieved consumers. It shall be the duty of the director to distribute such funds to those persons injured by the unlawful acts, practices, omissions, or courses of business by the subject of the proceeding. Notwithstanding the provisions of section 33.080, RSMo, any funds remaining in the director's consumer restitution fund at the end of any biennium shall not be transferred to the general revenue fund, but if the director is unable with reasonable efforts to ascertain the aggrieved consumers, then the funds may be transferred to the insurance dedicated fund to be used for consumer education.

**374.049. CLASSIFICATION OF VIOLATIONS — ORDERS, PENALTIES — ENHANCEMENT OF PENALTIES — REDUCTION OF PENALTIES — DEPOSIT AND USE OF PENALTIES — EFFECTIVE DATE. — 1. Violations of the laws of this state relating to insurance in this chapter, chapter 354 and chapters 375 to 385, RSMo, or a rule adopted or order issued by the director, are classified for the purpose of civil penalties and forfeitures into the following five classifications:**

- (1) Level one violations;
- (2) Level two violations;
- (3) Level three violations;
- (4) Level four violations; and
- (5) Level five violations.

2. An order to impose a civil penalty or forfeiture, when imposed by the director in an administrative proceeding under section 374.046 on a person for any violation of the laws of this state relating to insurance in this chapter, chapter 354 and chapters 375 to 385, RSMo, or a rule adopted or order issued by the director, shall be an order to pay an amount not exceeding the following:

- (1) No civil penalty or forfeiture for a level one violation;

(2) One thousand dollars per each level two violation, up to an aggregate civil penalty or forfeiture of fifty thousand dollars per annum for multiple violations;

(3) Five thousand dollars per each level three violation, up to an aggregate civil penalty or forfeiture of one hundred thousand dollars per annum for multiple violations;

(4) Ten thousand dollars per each level four violation, up to an aggregate civil penalty or forfeiture of two hundred fifty thousand dollars per annum for multiple violations;

(5) Fifty thousand dollars per each level five violation, up to an aggregate civil penalty or forfeiture of two hundred fifty thousand dollars per annum for multiple violations.

3. An order to impose a civil penalty or forfeiture, when imposed by the court in an enforcement proceeding under section 374.048 on a person for any violation of the laws of this state relating to insurance in this chapter, chapter 354 and chapters 375 to 385, RSMo, or a rule adopted or order issued by the director, shall be an order to pay an amount not exceeding the following:

(1) No civil penalty or forfeiture for a level one violation;

(2) One thousand dollars per each level two violation, up to an aggregate civil penalty or forfeiture of fifty thousand dollars per annum for multiple violations;

(3) Five thousand dollars per each level three violation, up to an aggregate civil penalty or forfeiture of two hundred thousand dollars per annum for multiple violations;

(4) Twenty thousand dollars per each level four violation, up to an aggregate civil penalty or forfeiture of one million dollars per annum for multiple violations;

(5) One million dollars per each level five violation, with no limit to civil penalties or forfeitures for multiple violations;

4. No civil penalty or forfeiture may be imposed against a person, unless the person has engaged in the act, practice, omission or course of business constituting the violation.

5. Any violation of the laws of this state relating to insurance in this chapter, chapter 354 and chapters 375 to 385, RSMo, which is not classified or does not authorize a specific range for a civil penalty or forfeiture for violations, shall be classified as a level one violation. In bringing an action to enforce a rule adopted by the director, unless the conduct that violates the rule also violates the enabling statute, the violation shall be classified as a level one violation and shall not be subject to any provision in this section regarding the enhancement of a civil penalty or forfeiture.

6. The civil penalties or forfeitures set forth in this section establish a maximum range. The court, or the director in administrative enforcement, shall consider all of the circumstances, including the nature of violations to determine whether, and to any extent, a civil penalty or forfeiture is justified.

7. In any enforcement proceeding, the court, or director in administrative enforcement, may enhance the civil penalty or forfeiture with a one classification step increase under this section, if the violation was knowing. The court, or director in administrative enforcement, may enhance the civil penalty or forfeiture with a two level increase if the violation was knowingly committed in conscious disregard of the law.

8. In any enforcement proceeding, the court, or director in administrative enforcement, may, after consideration of the factors specified in subsection 2 of section 374.046, enhance the civil penalty or forfeiture with a one classification step increase under this section, if the violations resulted in actual financial loss to consumers.

9. In any enforcement proceeding, the court, or director in administrative enforcement, shall reduce the civil penalty or forfeiture on that person with up to a two classification step reduction under this section, if prior to receiving notice of the violation from the department, the person detects the violation through a self-audit or internal compliance program reasonably designed to detect and prevent insurance law violations and immediately reports the violation to the director.

10. If more than one error is caused by a single act or omission in the use of data processing equipment and such errors are not known by the violator at the time the error occurs, then any such errors shall be regarded as a single violation under this section.

11. Any civil penalty or forfeiture recovered by the director shall be paid to the treasurer and then distributed to the public schools as required by Article IX, section 7 of the Missouri Constitution.

12. The penalties and forfeitures authorized by this section govern all actions and proceedings that are instituted on the basis of conduct occurring after August 28, 2006.

**383.010. AUTHORITY TO FORM BUSINESS ENTITY TO PROVIDE MALPRACTICE INSURANCE — NONRESIDENTS MAY BE MEMBERS, WHEN.** — 1. Notwithstanding any direct or implied prohibitions in chapter 375, 377, or 379, RSMo, any three or more persons, residents of this state, being licensed under the provisions of chapter 330, 331, 332, 334, 335, 336, 338 or 339, RSMo, or under rule 8 of the supreme court of Missouri or architects licensed pursuant to chapter 327, RSMo, may, as provided in sections 383.010 to 383.040, form a business entity for the purpose of providing malpractice insurance or indemnification for such persons upon the assessment plan, and upon compliance with section 379.260, RSMo, liability and automobile insurance as defined in subdivisions (1) and (3) of section 379.230, RSMo, may be provided upon the assessment plan to those persons licensed pursuant to chapter 197, RSMo, and for whom medical malpractice insurance is provided under this section, except that automobile insurance shall be provided only for ambulances as defined in section 190.100, RSMo. [Hospitals, public or private, whether incorporated or not, as defined in chapter 197, RSMo, if licensed by the state of Missouri,] **Any entity licensed under chapter 197, RSMo, professional corporations [formed under the provisions of chapter 356, RSMo, for the practice of law and corporations, copartnerships or associations licensed under the provisions of chapter 339, RSMo], and limited liability companies, corporations, limited liability partnerships, partnerships, and other similar entities formed for the practice of law or medicine** may also become members of any such entity. The term "persons" as used in sections 383.010 to 383.040 includes such hospitals, professional corporations and real estate business entities.

2. Anything in this section to the contrary notwithstanding, any persons duly licensed under the provisions of the laws of any other state who, if licensed under any similar provisions of the laws of this state, would be eligible to become members and insureds of an entity created under the authority of this section, may become members and insureds of such an entity, irrespective of whether such persons are residents of this state; provided, however, that any such persons must be employed by, or be a partner, shareholder or member of, a professional corporation, corporation, copartnership or association insured by or to be insured by such an entity.

3. Notwithstanding any provision of law which might be construed to the contrary, sections 379.882 and 379.888, RSMo, defining "commercial casualty insurance", shall not include professional malpractice insurance policies issued by any insurer in this state.

**383.016. ARTICLES OF ASSOCIATION AND BYLAWS, ADDITIONAL CONTENTS.** — **The articles of association and the bylaws of any association created under the provisions of sections 383.010 to 383.040 shall:**

(1) **Specify and define the types of assessments, including but not limited to initial, regular, operating, special, any other assessment to cover losses and expenses incurred in the operation of the association, or any other assessment to maintain or restore the association's assets, solvency, or surplus;**

(2) **Specify by type of assessment the assessments that shall apply to members, former members, or both members and former members of the association; and**

(3) With respect to any assessment to cover losses and expenses incurred in the operation of the association and any assessment to maintain or restore the association's assets, solvency, or surplus specify:

- (a) The exact method and criteria by which the amounts of each type of assessment are to be determined;
- (b) The time in which the assessments must be paid;
- (c) That such assessments shall be made without limitation as to frequency;
- (d) The maximum amount of any single assessment; and
- (e) How such assessments apply to members and former members.

**383.035. ASSOCIATION SUBJECT TO CERTAIN LAWS — GRACE PERIOD FOR CERTAIN ASSOCIATIONS, LIMITATIONS — CERTIFICATION FILED WITH ANNUAL STATEMENT — RULES AND REGULATIONS, DIRECTOR MAY PROMULGATE — IMPAIRED ASSOCIATION, DIRECTOR'S POWERS, REVIEW OF — RATING PLANS, FILING OF.** — 1. Any association licensed pursuant to the provisions of sections 383.010 to 383.040 shall be subject to the provisions of the following provisions of the revised statutes of Missouri:

(1) Sections 374.010, 374.040, 374.046 to **374.049**, 374.110, 374.115, 374.122, 374.170, **374.190**, 374.210, 374.215, 374.216, 374.230, 374.240, 374.250 and 374.280, RSMo, relating to the general authority of the director of the department of insurance;

(2) Sections 375.022, 375.031, 375.033, 375.035, 375.037 and 375.039, RSMo, relating to dealings with licensed agents and brokers;

(3) Sections 375.041 and 379.105, RSMo, relating to annual statements;

(4) Section 375.163, RSMo, relating to the competence of managing officers;

(5) Section 375.246, RSMo, relating to reinsurance requirements, except that no association shall be required to maintain reinsurance, and for insurance issued to members who joined the association on or before January 1, 1993, an association shall be allowed credit, as an asset or as a deduction from liability, for reinsurance which is payable to the ceding association's insured by the assuming insurer on the basis of the liability of the ceding association under contracts reinsured without diminution because of the insolvency of the ceding association;

(6) Section 375.390, RSMo, relating to the use of funds by officers for private gain;

(7) Section 375.445, RSMo, relating to insurers operating fraudulently;

(8) Section 379.080, RSMo, relating to permissible investments, except that limitations in such section shall apply only to assets equal to such positive surplus as is actually maintained by the association;

(9) Section 379.102, RSMo, relating to the maintenance of unearned premium and loss reserves as liabilities, except that any such loss reserves may be discounted in accordance with reasonable actuarial assumptions;

**(10) Sections 383.100 to 383.125 relating to reports from medical malpractice insurers;**

**(11) Sections 383.196 to 383.199 and 383.450 relating to notification, data reporting, and rating requirements.**

2. [Any association which was licensed pursuant to the provisions of sections 383.010 to 383.040 on or before January 1, 1992, shall be allowed until December 31, 1995, to comply with the provisions of this section as they relate to investments, reserves and reinsurance.

3.] Any association licensed pursuant to the provisions of sections 383.010 to 383.040 shall file with its annual statement a certification by a fellow or an associate of the Casualty Actuarial Society. Such certification shall conform to the National Association of Insurance Commissioners annual statement instructions unless otherwise provided by the director [of the department of insurance].

[4.] **3.** The director [of the department of insurance] shall have authority in accordance with section 374.045, RSMo, to make all reasonable rules and regulations to accomplish the purpose of sections 383.010 to 383.040, including the extent to which insurance provided by an

association may be extended to provide payment to a covered person resulting from a specific illness possessed by such covered person; except that no rule or regulation may place limitations or restrictions on the amount of premium an association may write or on the amount of insurance or limit of liability an association may provide.

[5.] 4. Other than as provided in this section, no other insurance law of the state of Missouri shall apply to an association licensed pursuant to the provisions of this chapter, unless such law shall expressly state it is applicable to such associations.

[6.] 5. If, [after August 28, 1992, and] after its second full calendar year of operation, any association licensed under the provisions of sections 383.010 to 383.040 shall file an annual statement which shows a surplus as regards policyholders of less than zero dollars, or if the director [of the department of insurance] has other conclusive and credible evidence more recent than the last annual statement indicating the surplus as regards policyholders of an association is less than zero dollars, the director [of the department of insurance] may order such association to submit, within ninety days following such order, a voluntary plan under which the association will restore its surplus as regards policyholders to at least zero dollars. The director [of the department of insurance] may monitor the performance of the association's plan and may order modifications thereto, including assessments or rate or premium increases, if the association fails to meet any targets proposed in such plan for three consecutive quarters.

[7.] 6. If the director [of the department of insurance] issues an order in accordance with subsection [6] 5 of this section, the association may, in accordance with chapter 536, RSMo, file a petition for review of such order. Any association subject to an order issued in accordance with subsection [6] 5 of this section shall be allowed a period of three years, or such longer period as the director may allow, to accomplish its plan to restore its surplus as regards policyholders to at least zero dollars. If at the end of the authorized period of time the association has failed to restore its surplus to at least zero dollars, or if the director [of the department of insurance] has ordered modifications of the voluntary plan and the association's surplus has failed to increase within three consecutive quarters after such modification, the director [of the department of insurance] may allow an additional time for the implementation of the voluntary plan or may exercise [his] **the director's** powers to take charge of the association as [he] **the director** would a mutual casualty company pursuant to sections 375.1150 to 375.1246, RSMo. Sections 375.1150 to 375.1246, RSMo, shall apply to associations licensed pursuant to sections 383.010 to 383.040 only after the conditions set forth in this section are met. When the surplus as regards policyholders of an association subject to subsection [6] 5 of this section has been restored to at least zero dollars, the authority and jurisdiction of the director [of the department of insurance] under subsections **5 and 6** [and 7] of this section shall terminate, but this subsection may again thereafter apply to such association if the conditions set forth in subsection [6] 5 of this section for its application are again satisfied.

[8.] 7. Any association licensed pursuant to the provisions of sections 383.010 to 383.040 shall place on file with the director [of the department of insurance], except as to excess liability risks which by general custom are not written according to manual rates or rating plans, a copy of every manual of classifications, rules, underwriting rules and rates, every rating plan and every modification of the foregoing which it uses. Filing with the director [of the department of insurance] within ten days after such manuals, rating plans or modifications thereof are effective shall be sufficient compliance with this subsection. Any rates, rating plans, rules, classifications or systems in effect or in use by an association on August 28, 1992, may continue to be used by the association. Upon written application of a member of an association, stating his **or her** reasons therefor, filed with the association, a rate in excess of that provided by a filing otherwise applicable may be used by the association for that member.

**383.105. REPORT OF MEDICAL MALPRACTICE CLAIMS BY CERTAIN INSURERS, CONTENTS, INSURER DEFINED.** — 1. Every insurer providing medical malpractice insurance to a Missouri health care provider and every health care provider who maintains professional

liability coverage through a plan of self-insurance shall submit to the director [of the department of insurance] a report of all claims, both open claims filed during the reporting period and closed claims filed during the reporting period, for medical malpractice made against any of its Missouri insureds during the preceding three-month period.

2. The report shall be in writing and contain the following information:

- (1) Name and address of the insured and the person working for the insured who rendered the service which gave rise to the claim, if the two are different;
- (2) Specialty coverage of the insured;
- (3) Insured's policy number;
- (4) Nature and substance of the claim;
- (5) Date and place in which the claim arose;
- (6) Name, address and age of the claimant or plaintiff;
- (7) Within six months after final disposition of the claim, the amounts paid, if any, and the date and manner of disposition (judgment, settlement or otherwise);
- (8) Expenses incurred; and
- (9) Such additional information as the director may require.

3. As used in [this section] **sections 383.100 to 383.125**, "insurer" includes every insurance company authorized to transact insurance business in this state, every unauthorized insurance company transacting business pursuant to chapter 384, RSMo, every risk retention group, every insurance company issuing insurance to or through a purchasing group, **every entity operating under this chapter**, and any other person providing insurance coverage in this state[. With respect to any insurer transacting business pursuant to chapter 384, RSMo, filing the report required by this section shall be the obligation of the surplus lines broker or licensee originating or accepting the insurance] , **including self-insured health care providers**.

**383.106. REPORTING STANDARDS — RISK REPORTING CATEGORIES — INFORMATION COMPILED — REPORT OF RATES. — 1. To effectively monitor the insurance marketplace, rates, financial solvency, and affordability and availability of medical malpractice coverage, the director shall establish by rule or order reporting standards for insurers by which the insurers, or an advisory organization designated by the director, shall annually report such Missouri medical malpractice insurance premium, loss, exposure, and other information as the director may require.**

2. The director shall, prior to May 30, 2007, establish risk reporting categories for medical malpractice insurance, as defined in section 383.150, and shall establish regulations for the reporting of all base rates and premiums charged in those categories as determined by the director. The director shall consider the history of prior court judgments for claims under this chapter in each county of the state in establishing the risk reporting categories.

3. The director shall collect the information required in this section and compile it in a manner appropriate for assisting Missouri medical malpractice insurers in developing their future base rates, schedule rating, or individual risk rating factors and other aspects of their rating plans. In compiling the information and making it available to Missouri insurers and the public, the director shall remove any individualized information that identifies a particular insurer as the source of the information. The director may combine such information with similar information obtained through insurer examinations so as to cover periods of more than one year.

4. All insurers with regards to medical malpractice insurance as defined in section 383.150, shall provide to the director, beginning on June 1, 2008, and not less than annually thereafter, an accurate report as to the actual rates, including assessments levied against members, charged by such company for such insurance, for each of the risk reporting categories established under this section.

**383.107. PUBLICATION OF MARKET RATE.** — Not later than December 31, 2009, and at least annually thereafter, the director shall, utilizing the information provided pursuant to section 383.106, establish and publish a market rate reflecting the median of the actual rates charged for each of the risk reporting categories for the preceding year by all insurers with at least a three percent market share of the medical malpractice insurance market as of December thirty-first of the prior year, which are certified to have rates which are not inadequate by an actuary selected and approved by the director.

**383.108. PUBLICATION OF COMPARISON OF BASE RATES.** — The director shall, utilizing the information provided under section 383.106, publish comparisons of the base rates charged by each insurer actively writing medical malpractice insurance.

**383.124. ADMINISTRATIVE ORDERS FOR VIOLATIONS OF STATE LAWS OR RULES — CIVIL ACTION FOR VIOLATIONS.** — 1. If the director determines that a person has engaged, is engaging, or is about to engage in a violation of sections 383.100 to 383.125 or a rule adopted or order issued pursuant thereto, or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, omission, or course of business constituting a violation of sections 383.100 to 383.125 or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. A violation of any provisions under these sections is a level two violation under section 374.049, RSMo. The director of insurance may also suspend or revoke the license or certificate of authority of any person for any such willful violation as authorized under section 374.047, RSMo.

2. If the director believes that a person has engaged, is engaging, or is about to engage in a violation of sections 383.100 to 383.125 or a rule adopted or order issued pursuant thereto, or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, omission, or course of business constituting a violation of sections 383.100 to 383.125 or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo. A violation of any provision under these sections is a level two violation under section 374.049, RSMo.

**383.196. DEFINITION OF INSURER** — As used in sections 383.196 to 383.199, "insurer" includes any insurance company, mutual insurance company, medical malpractice association, any entity created under this chapter, or other entity providing any insurance to any health care provider, as defined in section 538.205, RSMo, practicing in the state of Missouri, against claims for malpractice or professional negligence; provided, however, that the term "insurer" or "insurers" shall not mean any surplus lines insurer operating under chapter 384, RSMo, or any entity to the extent it is self-insuring its exposure to medical malpractice liability.

**383.197. RATES FIELD WITH DIRECTOR — FORM — OPEN TO PUBLIC, COPIES.** — 1. Every insurer shall file with the director all rates and supplementary rate information which is to be used in this state. Such rates and supplementary rate information shall be filed before use.

2. Rates filed pursuant to this section shall be filed in such form and manner as prescribed by the director. Whenever a filing is not accompanied by such information as the director has required under this section, the director shall so inform the insurer within thirty days.

3. All rates and supplementary rate information shall, as soon as filed, be open to public inspection at any reasonable time. Copies may be obtained by any person on request and upon payment of a reasonable charge.

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**383.198. SALE OF HEALTH CARE PROVIDER POLICY PROHIBITED, WHEN — DETERMINING FACTORS — INSURER MAY CHARGE ADDITIONAL PREMIUM OR GRANT DISCOUNT, WHEN — SUPPORTING DATA — RULEMAKING AUTHORITY. — 1.** Notwithstanding the provisions of sections 383.037 and 383.160, no insurer shall issue or sell in the state of Missouri a policy insuring a health care provider, as defined in section 538.205, RSMo, for damages for personal injury or death arising out of the rendering of or failure to render health care services if the director finds, based upon competent and compelling evidence, that the base rates of such insurer are excessive, inadequate, or unfairly discriminatory. A rate may be used by an insurer immediately after it has been filed with the director, until or unless the director has determined under this section that a rate is excessive, inadequate, or unfairly discriminatory.

2. In making a determination under subsection 1 of this section, the director of the department of insurance may use the following factors:

(1) Rates shall not be excessive or inadequate, nor shall they be unfairly discriminatory;

(2) No rate shall be held to be excessive unless such rate is unreasonably high for the insurance proved with respect to the classification to which such rate is applicable;

(3) No rate shall be held to be inadequate unless such rate is unreasonably low for the insurance provided with respect to the classification to which such rate is applicable;

(4) To the extent Missouri loss experience is available, rates and projected losses shall be based on Missouri loss experience and not the insurance company's or the insurance industry's loss experiences in states other than Missouri unless the failure to do so jeopardizes the financial stability of the insurer; provided however, that loss experiences relating to the specific proposed insured occurring outside the state of Missouri may be considered in allowing a surcharge to such insured's premium rate;

(5) Investment income or investment losses of the insurance company for the ten-year period prior to the request for rate approval may be considered in reviewing rates. Investment income or investment losses for a period of less than ten years shall not be considered in reviewing rates. Industry-wide investment income or investment losses for the ten-year period prior to the request for rate approval may be considered for any insurance company that has not been authorized to issue insurance for more than ten years;

(6) The locale in which the health care practice is occurring;

(7) Inflation;

(8) Reasonable administrative costs of the insurer;

(9) Reasonable costs of defense of claims against Missouri health care providers;

(10) A reasonable rate of return on investment for the owners or shareholders of the insurer when compared to other similar investments at the time of the rate request; except that, such factor shall not be used to offset losses in other states or in activities of the insurer other than the sale of policies of insurance to Missouri health care providers; and

(11) Any other reasonable factors may be considered in the disapproval of the rate request.

3. The director's determination under subsection 1 of this section of whether a base rate is excessive, inadequate, or unfairly discriminatory may be based on any subcategory or subspecialty of the health care industry that the director determines to be reasonable.

4. If actuarially supported and included in a filed rate, rating plan, rule, manual, or rating system, an insurer may charge an additional premium or grant a discount rate to any health care provider based on criteria as it relates to a specified insured health care provider or other specific health care providers within the specific insured's employ or business entity. Such criteria may include:

(1) Loss experiences;

- (2) Training and experience;
- (3) Number of employees of the insured entity;
- (4) Availability of equipment, capital, or hospital privileges;
- (5) Loss prevention measures taken by the insured;
- (6) The number and extent of claims not resulting in losses;
- (7) The specialty or subspecialty of the health care provider;
- (8) Access to equipment and hospital privileges; and
- (9) Any other reasonable criteria identified by the insurer and filed with the department of insurance.

5. Supporting actuarial data shall be filed in support of a rate, rating plan, or rating system filing, when requested by the director to determine whether rates should be disapproved as excessive, inadequate, or unfairly discriminatory, whether or not the insurer has begun using the rate.

6. The director of the department of insurance shall promulgate rules for the administration and enforcement 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, 2006, shall be invalid and void.

**383.199. RATE INCREASES OVER FIFTEEN PERCENT PROHIBITED WITHOUT NOTICE, EXCEPTION.** — Notwithstanding any other provision of law, no insurer shall, with regards to medical malpractice insurance, as defined in section 383.150, implement any rate increase of more than fifteen percent without first providing clear and conspicuous written notice by United States mail to the insured at least sixty days prior to implementation of the rate increase, unless the increase is due to the request of the insured or due to a material change in the nature of the insured's health care practice or individuals risk characteristics.

**383.450. INSURER DEFINED — PROHIBITIONS ON INSURERS — FAILURE TO PROVIDE NOTICE, CONTINUATION OF COVERAGE.** — 1. As used in this section, "insurer" includes every insurance company authorized to transact business in this state, every unauthorized insurance company transacting business pursuant to chapter 384, RSMo, every risk retention group, every insurance company issuing policies or providing benefits to or through a purchasing group, and any other person providing medical malpractice insurance coverage in this state.

2. Notwithstanding any other provision of law, no insurer shall, with regards to medical malpractice insurance, as defined in section 383.150:

- (1) Fail or refuse to renew the insurance without first providing written notice by certified United States mail to the insured at least sixty days prior to the effective date of such actions, unless such failure or refusal to renew is based upon a failure to pay sums due or a termination or suspension of the health care provider's license to practice medicine in the state of Missouri, termination of the insurer's reinsurance program, or a material change in the nature of the insured's health care practice; or

- (2) Cease the issuance of such policies of insurance in the state of Missouri without first providing written notice by certified United States mail to the insured and to the Missouri department of insurance at least one hundred eighty days prior to the effective date of such actions.

3. Any insurer that fails to provide the notice required under subdivision (1) of subsection 2 of this section shall, at the option of the insured, continue the coverage for the remainder of the notice period plus an additional thirty days at the premium rate of the existing policy.

**383.515. HEALTH CARE STABILIZATION FUND FEASIBILITY BOARD CREATED, DUTIES, REPORT — MEMBERS — APPOINTMENT, MEETINGS, REPORTS — POWERS — STAFF — COMPENSATION — EXPIRATION DATE. — 1.** There is hereby created within the department of insurance the "Health Care Stabilization Fund Feasibility Board". The primary duty of the board is to determine whether a health care stabilization fund should be established in Missouri to provide excess medical malpractice insurance coverage for health care providers. As part of its duties, the board shall develop a comprehensive study detailing whether a health care stabilization fund is feasible within Missouri, or specified geographic regions thereof, or whether a health care stabilization fund would be feasible for specific medical specialties. The board shall analyze medical malpractice insurance data collected by the department of insurance under sections 383.105 to 383.106 and any other data the board deems necessary to its mission. In addition to analyzing data collected from the Missouri medical malpractice insurance market, the board may study the experience of other states that have established health care stabilization funds or patient compensation funds. If a health care stabilization fund is determined to be feasible within Missouri, the report shall also recommend to the general assembly how the fund should be structured, designed, and funded. The report may contain any other recommendations relevant to the establishment of a health care stabilization fund, including but not limited to, specific recommendations for any statutory or regulatory changes necessary for the establishment of a health care stabilization fund.

2. The board shall consist of ten members. Other than the director, the house members and the senate members, the remainder of the board's members shall be appointed by the director of the department of insurance as provided for in this subsection. The board shall be composed of:

- (1) The director of the department of insurance, or his or her designee;
- (2) Two members of the Missouri senate appointed by the president pro tem of the senate with no more than one from any political party;
- (3) Two members of the Missouri house of representatives appointed by the speaker of the house with no more than one member from any political party;
- (4) One member who is licensed to practice medicine as a medical doctor who is on a list of nominees submitted to the director by an organization representing Missouri's medical society;
- (5) One member who practices medicine as a doctor of osteopathy and who is on a list of nominees submitted to the director by an organization representing Missouri doctors of osteopathy;
- (6) One member who is a licensed nurse in Missouri and who is on a list submitted to the director by an organization representing Missouri nurses;
- (7) One member who is a representative of Missouri hospitals and who is on a list of nominees submitted to the director by an organization representing Missouri hospitals; and
- (8) One member who is a physician and who is on a list submitted to the director by an organization representing family physicians in the state of Missouri.

3. The director shall appoint the members of the board, other than the general assembly members, no later than January 1, 2007. Once appointed, the board shall meet at least quarterly, and shall submit its final report and recommendations regarding the feasibility of a health care stabilization fund to the governor and the general assembly no

later than December 31, 2010. The board shall also submit annual interim reports to the general assembly regarding the status of its progress.

4. The board shall have the authority to convene conferences and hold hearings. All conferences and hearings shall be held in accordance with chapter 610, RSMo.

5. The director of the department of insurance shall provide and coordinate staff and equipment services to the board to facilitate the board's duties.

6. Board members shall receive no additional compensation but shall be eligible for reimbursement for expenses directly related to the performance of their duties.

7. The provisions of this section shall expire December 31, 2010.

Approved July 10, 2006

HB 1857 [HB 1857]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Specifies that a prosecution is commenced for a misdemeanor or infraction when the information is filed and for a felony when the complaint is filed**

AN ACT to repeal section 556.036, RSMo, and to enact in lieu thereof one new section relating to commencement of prosecution.

SECTION

A. Enacting clause.

556.036. Time limitations.

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

**SECTION A. ENACTING CLAUSE.** — Section 556.036, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 556.036, to read as follows:

**556.036. TIME LIMITATIONS.** — 1. A prosecution for murder, forcible rape, attempted forcible rape, forcible sodomy, attempted forcible sodomy, or any class A felony may be commenced at any time.

2. Except as otherwise provided in this section, prosecutions for other offenses must be commenced within the following periods of limitation:

- (1) For any felony, three years;
- (2) For any misdemeanor, one year;
- (3) For any infraction, six months.

3. If the period prescribed in subsection 2 of this section has expired, a prosecution may nevertheless be commenced for:

- (1) Any offense a material element of which is either fraud or a breach of fiduciary obligation within one year 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 himself or herself not a party to the offense, but in no case shall this provision extend the period of limitation by more than three years. As used in this subdivision, the term "person who has a legal duty to represent an aggrieved party" shall mean the attorney general or the prosecuting or circuit attorney having jurisdiction pursuant to section 407.553, RSMo, for purposes of offenses committed pursuant to sections 407.511 to 407.556, RSMo; and

(2) Any offense based upon misconduct in office by a public officer or employee at any time when the defendant is in public office or employment or within two years thereafter, but in no case shall this provision extend the period of limitation by more than three years; and

(3) Any offense based upon an intentional and willful fraudulent claim of child support arrearage to a public servant in the performance of his or her duties within one year after discovery of the offense, but in no case shall this provision extend the period of limitation by more than three years.

4. An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.

5. A prosecution is commenced [either when an indictment is found or an information filed] **for a misdemeanor or infraction when the information is filed and for a felony when the complaint or indictment is filed.**

6. The period of limitation does not run:

(1) During any time when the accused is absent from the state, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years; or

(2) During any time when the accused is concealing himself from justice either within or without this state; or

(3) During any time when a prosecution against the accused for the offense is pending in this state; or

(4) During any time when the accused is found to lack mental fitness to proceed pursuant to section 552.020, RSMo.

Approved June 9, 2006

## HB 1858 [HB 1858]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Authorizes prosecuting and circuit attorneys to dismiss a complaint, information, or indictment without the consent of the court**

AN ACT to amend chapter 56, RSMo, by adding thereto one new section relating to prosecuting and circuit attorneys' power to dismiss charges.

### SECTION

A. Enacting clause.

56.087. Dismissal of complaints, information, indictments, or counts by prosecuting or circuit attorneys without consent of the court — procedure.

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

**SECTION A. ENACTING CLAUSE.** — Chapter 56, RSMo, is amended by adding thereto one new section, to be known as section 56.087, to read as follows:

**56.087. DISMISSAL OF COMPLAINTS, INFORMATION, INDICTMENTS, OR COUNTS BY PROSECUTING OR CIRCUIT ATTORNEYS WITHOUT CONSENT OF THE COURT — PROCEDURE.**  
**— 1. The prosecuting or circuit attorney has the power, in his or her discretion, to dismiss a complaint, information, or indictment, or any count or counts thereof, and in order to**

exercise that power it is not necessary for the prosecutor or circuit attorney to obtain the consent of the court. The dismissal may be made orally by the prosecuting or circuit attorney in open court, or by a written statement of the dismissal signed by the prosecuting or circuit attorney and filed with the clerk of court.

2. A dismissal filed by the prosecuting or circuit attorney prior to the time double jeopardy has attached is without prejudice. A dismissal filed by the prosecuting or circuit attorney after double jeopardy has attached is with prejudice, unless the criminal defendant has consented to having the case dismissed without prejudice.

3. A dismissal without prejudice means that the prosecutor or circuit attorney has complete discretion to refile the case, as long as it is refiled within the time specified by the applicable statute of limitations. A dismissal with prejudice means that the prosecutor or circuit attorney cannot refile the case.

4. For the purposes of this section, double jeopardy attaches in a jury trial when the jury has been impaneled and sworn. It attaches in a court-tried case when the court begins to hear evidence.

Approved June 9, 2006

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HB 1900 [CCS SS HCS HB 1900]

**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Changes the laws regarding lobbyist reporting requirements and campaign contribution disclosures for public officials**

AN ACT to repeal sections 105.470, 105.473, 105.485, 105.957, 105.959, 105.963, 130.011, 130.016, 130.032, 130.046, 130.050, and 130.054, RSMo, and to enact in lieu thereof sixteen new sections relating to ethics, with an effective date.

**SECTION**

- A. Enacting clause.
  - 105.470. Definitions.
  - 105.473. Duties of lobbyist — report required, contents — exception — penalties — supersession of local ordinances or charters.
  - 105.485. Financial interest statements — form — contents — political subdivisions, compliance.
  - 105.957. Receipt of complaints — form — investigation — dismissal of frivolous complaints, damages, public report.
  - 105.959. Review of reports and statements, notice — audits and investigations — formal investigations — report — referral of report.
  - 105.963. Assessments of committees, campaign disclosure reports — notice — penalty — assessments of financial interest statements — notice — penalties — effective date.
  - 115.342. Disqualification for delinquent taxes — affidavit, form — complaints, investigation, notice, payment of taxes.
  - 115.350. Conviction or plea under state laws, disqualification for elective public office.
  - 130.011. Definitions.
  - 130.016. Certain candidates exempt from filing requirements — procedure for exemption — restrictions on subsequent contributions and expenditures — rejection of exemption — candidate committees for certain general assembly leadership offices prohibited.
  - 130.032. Monetary contributions from political party committees prohibited — contributions not to be accepted during legislative session, exception.
  - 130.042. Posting of expenditures supporting and opposing candidates.
  - 130.046. Times for filing of disclosure — periods covered by reports — certain disclosure reports not required — supplemental reports, when — certain disclosure reports filed electronically — rulemaking authority.
  - 130.050. Out-of-state committees, reporting, contents — late contribution or loan, defined.
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130.054. Complaint, filing procedure, when — ethics commission to investigate, procedure — limitation on accepting complaints.

1. Study and report on political telephone solicitations.
- B. Effective date.

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

**SECTION A. ENACTING CLAUSE.** — Sections 105.470, 105.473, 105.485, 105.957, 105.959, 105.963, 130.011, 130.016, 130.032, 130.046, 130.050, and 130.054, RSMo, are repealed and sixteen new sections enacted in lieu thereof, to be known as sections 105.470, 105.473, 105.485, 105.957, 105.959, 105.963, 115.342, 115.350, 130.011, 130.016, 130.032, 130.042, 130.046, 130.050, 130.054, and 1, to read as follows:

**105.470. DEFINITIONS.** — As used in section 105.473, unless the context requires otherwise, the following words and terms mean:

(1) **"Elected local government official lobbyist", any natural person employed specifically for the purpose of attempting to influence any action by a local government official elected in a county, city, town, or village with an annual operating budget of over ten million dollars;**

(2) **"Executive lobbyist", any natural person who acts for the purpose of attempting to influence any action by the executive branch of government or by any elected or appointed official, employee, department, division, agency or board or commission thereof and in connection with such activity, meets the requirements of any one or more of the following:**

(a) Is acting in the ordinary course of employment on behalf of or for the benefit of such person's employer; or

(b) Is engaged for pay or for any valuable consideration for the purpose of performing such activity; or

(c) Is designated to act as a lobbyist by any person, business entity, governmental entity, religious organization, nonprofit corporation, association or other entity; or

(d) Makes total expenditures of fifty dollars or more during the twelve-month period beginning January first and ending December thirty-first for the benefit of one or more public officials or one or more employees of the executive branch of state government in connection with such activity.

An "executive lobbyist" shall not include a member of the general assembly, an elected state official, or any other person solely due to such person's participation in any of the following activities:

a. Appearing or inquiring in regard to a complaint, citation, summons, adversary proceeding, or contested case before a state board, commission, department, division or agency of the executive branch of government or any elected or appointed officer or employee thereof;

b. Preparing, filing or inquiring, or responding to any audit, regarding any tax return, any public document, permit or contract, any application for any permit or license or certificate, or any document required or requested to be filed with the state or a political subdivision;

c. Selling of goods or services to be paid for by public funds, provided that such person is attempting to influence only the person authorized to authorize or enter into a contract to purchase the goods or services being offered for sale;

d. Participating in public hearings or public proceedings on rules, grants, or other matters;

e. Responding to any request for information made by any public official or employee of the executive branch of government;

f. Preparing or publication of an editorial, a newsletter, newspaper, magazine, radio or television broadcast, or similar news medium, whether print or electronic;

g. Acting within the scope of employment by the general assembly, or acting within the scope of employment by the executive branch of government when acting with respect to the department, division, board, commission, agency or elected state officer by which such person

is employed, or with respect to any duty or authority imposed by law to perform any action in conjunction with any other public official or state employee; or

h. Testifying as a witness before a state board, commission or agency of the executive branch;

[(2)] (3) "Expenditure", any payment made or charge, expense, cost, debt or bill incurred; any gift, honorarium or item of value bestowed including any food or beverage; any price, charge or fee which is waived, forgiven, reduced or indefinitely delayed; any loan or debt which is canceled, reduced or otherwise forgiven; the transfer of any item with a reasonably discernible cost or fair market value from one person to another or provision of any service or granting of any opportunity for which a charge is customarily made, without charge or for a reduced charge; except that the term "expenditure" shall not include the following:

(a) Any item, service or thing of value transferred to any person within the third degree of consanguinity of the transferor which is unrelated to any activity of the transferor as a lobbyist;

(b) Informational material such as books, reports, pamphlets, calendars or periodicals informing a public official regarding such person's official duties, or souvenirs or mementos valued at less than ten dollars;

(c) Contributions to the public official's campaign committee or candidate committee which are reported pursuant to the provisions of chapter 130, RSMo;

(d) Any loan made or other credit accommodations granted or other payments made by any person or entity which extends credit or makes loan accommodations or such payments in the regular ordinary scope and course of business, provided that such are extended, made or granted in the ordinary course of such person's or entity's business to persons who are not public officials;

(e) Any item, service or thing of de minimis value offered to the general public, whether or not the recipient is a public official or a staff member, employee, spouse or dependent child of a public official, and only if the grant of the item, service or thing of de minimis value is not motivated in any way by the recipient's status as a public official or staff member, employee, spouse or dependent child of a public official;

(f) The transfer of any item, provision of any service or granting of any opportunity with a reasonably discernible cost or fair market value when such item, service or opportunity is necessary for a public official or employee to perform his or her duty in his or her official capacity, including but not limited to entrance fees to any sporting event, museum, or other venue when the official or employee is participating in a ceremony, public presentation or official meeting therein;

(g) Any payment, gift, compensation, fee, expenditure or anything of value which is bestowed upon or given to any public official or a staff member, employee, spouse or dependent child of a public official when it is compensation for employment or given as an employment benefit and when such employment is in addition to their employment as a public official;

[(3)] (4) "Judicial lobbyist", any natural person who acts for the purpose of attempting to influence any purchasing decision by the judicial branch of government or by any elected or appointed official or any employee thereof and in connection with such activity, meets the requirements of any one or more of the following:

(a) Is acting in the ordinary course of employment which primary purpose is to influence the judiciary in its purchasing decisions on a regular basis on behalf of or for the benefit of such person's employer, except that this shall not apply to any person who engages in lobbying on an occasional basis only and not as a regular pattern of conduct; or

(b) Is engaged for pay or for any valuable consideration for the purpose of performing such activity; or

(c) Is designated to act as a lobbyist by any person, business entity, governmental entity, religious organization, nonprofit corporation or association; or

(d) Makes total expenditures of fifty dollars or more during the twelve-month period beginning January first and ending December thirty-first for the benefit of one or more public

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officials or one or more employees of the judicial branch of state government in connection with attempting to influence such purchasing decisions by the judiciary.

A "judicial lobbyist" shall not include a member of the general assembly, an elected state official, or any other person solely due to such person's participation in any of the following activities:

- a. Appearing or inquiring in regard to a complaint, citation, summons, adversary proceeding, or contested case before a state court;
- b. Participating in public hearings or public proceedings on rules, grants, or other matters;
- c. Responding to any request for information made by any judge or employee of the judicial branch of government;
- d. Preparing, distributing or publication of an editorial, a newsletter, newspaper, magazine, radio or television broadcast, or similar news medium, whether print or electronic; or
- e. Acting within the scope of employment by the general assembly, or acting within the scope of employment by the executive branch of government when acting with respect to the department, division, board, commission, agency or elected state officer by which such person is employed, or with respect to any duty or authority imposed by law to perform any action in conjunction with any other public official or state employee;

[(4)] (5) "Legislative lobbyist", any natural person who acts for the purpose of attempting to influence the taking, passage, amendment, delay or defeat of any official action on any bill, resolution, amendment, nomination, appointment, report or any other action or any other matter pending or proposed in a legislative committee in either house of the general assembly, or in any matter which may be the subject of action by the general assembly and in connection with such activity, meets the requirements of any one or more of the following:

- (a) Is acting in the ordinary course of employment, which primary purpose is to influence legislation on a regular basis, on behalf of or for the benefit of such person's employer, except that this shall not apply to any person who engages in lobbying on an occasional basis only and not as a regular pattern of conduct; or
- (b) Is engaged for pay or for any valuable consideration for the purpose of performing such activity; or
- (c) Is designated to act as a lobbyist by any person, business entity, governmental entity, religious organization, nonprofit corporation, association or other entity; or
- (d) Makes total expenditures of fifty dollars or more during the twelve-month period beginning January first and ending December thirty-first for the benefit of one or more public officials or one or more employees of the legislative branch of state government in connection with such activity.

A "legislative lobbyist" shall include an attorney at law engaged in activities on behalf of any person unless excluded by any of the following exceptions. A "legislative lobbyist" shall not include any member of the general assembly, an elected state official, or any other person solely due to such person's participation in any of the following activities:

- a. Responding to any request for information made by any public official or employee of the legislative branch of government;
- b. Preparing or publication of an editorial, a newsletter, newspaper, magazine, radio or television broadcast, or similar news medium, whether print or electronic;
- c. Acting within the scope of employment of the legislative branch of government when acting with respect to the general assembly or any member thereof;
- d. Testifying as a witness before the general assembly or any committee thereof;

[(5)] (6) "Lobbyist", any natural person defined as an executive lobbyist, judicial lobbyist, **elected local government official lobbyist**, or a legislative lobbyist;

[(6)] (7) "Lobbyist principal", any person, business entity, governmental entity, religious organization, nonprofit corporation or association who employs, contracts for pay or otherwise compensates a lobbyist;

[(7)] (8) "Public official", any member or member-elect of the general assembly, judge or judicial officer, or any other person holding an elective office of state government or any agency

head, department director or division director of state government or any member of any state board or commission and any designated decision-making public servant designated by persons described in this subdivision.

**105.473. DUTIES OF LOBBYIST — REPORT REQUIRED, CONTENTS — EXCEPTION — PENALTIES — SUPERSESION OF LOCAL ORDINANCES OR CHARTERS.** — 1. Each lobbyist shall, not later than **January fifth of each year** or five days after beginning any activities as a lobbyist, file standardized registration forms, verified by a written declaration that it is made under the penalties of perjury, along with a filing fee of ten dollars, with the commission. The forms shall include the lobbyist's name and business address, the name and address of all persons such lobbyist employs for lobbying purposes, the name and address of each lobbyist principal by whom such lobbyist is employed or in whose interest such lobbyist appears or works. The commission shall maintain files on all lobbyists' filings, which shall be open to the public. Each lobbyist shall file an updating statement under oath within one week of any addition, deletion, or change in the lobbyist's employment or representation. The filing fee shall be deposited to the general revenue fund of the state. The lobbyist principal or a lobbyist employing another person for lobbying purposes may notify the commission that a judicial, executive or legislative lobbyist is no longer authorized to lobby for the principal or the lobbyist and should be removed from the commission's files.

2. Each person shall, before giving testimony before any committee of the general assembly, give to the secretary of such committee such person's name and address and the identity of any lobbyist or organization, if any, on whose behalf such person appears. A person who is not a lobbyist as defined in section 105.470 shall not be required to give such person's address if the committee determines that the giving of such address would endanger the person's physical health.

3. (1) During any period of time in which a lobbyist continues to act as an executive lobbyist, judicial lobbyist [or a], legislative lobbyist, **or elected local government official lobbyist**, the lobbyist shall file with the commission on standardized forms prescribed by the commission monthly reports which shall be due at the close of business on the tenth day of the following month;

(2) Each report filed pursuant to this subsection shall include a statement, verified by a written declaration that it is made under the penalties of perjury, setting forth the following:

(a) The total of all expenditures by the lobbyist or his or her lobbyist principals made on behalf of all public officials, their staffs and employees, and their spouses and dependent children, which expenditures shall be separated into at least the following categories by the executive branch, judicial branch and legislative branch of government: printing and publication expenses; media and other advertising expenses; travel; **the time, venue, and nature of any entertainment; honoraria; meals, food and beverages; and gifts;**

(b) **The total of all expenditures by the lobbyist or his or her lobbyist principals made on behalf of all elected local government officials, their staffs and employees, and their spouses and children. Such expenditures shall be separated into at least the following categories: printing and publication expenses; media and other advertising expenses; travel; the time, venue, and nature of any entertainment; honoraria; meals; food and beverages; and gifts;**

(c) An itemized listing of the name of the recipient and the nature and amount of each expenditure by the lobbyist or his or her lobbyist principal, including a service or anything of value, for all expenditures made during any reporting period, paid or provided to or for a public official **or elected local government official**, such official's staff, employees, spouse or dependent children;

[(c)] (d) The total of all expenditures made by a lobbyist or lobbyist principal for occasions and the identity of the group invited, the date and description of the occasion and the amount of the expenditure for each occasion when any of the following are invited in writing:

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- a. All members of the senate;
- b. All members of the house of representatives;
- c. All members of a joint committee of the general assembly or a standing committee of either the house of representatives or senate; or
- d. All members of a caucus of the [general assembly if the caucus consists of at least ten members, a list of the members of the caucus has been previously filed with the ethics committee of the house or the senate, and such list has been approved by either of such ethics committees] **majority party of the house of representatives, minority party of the house of representatives, majority party of the senate, or minority party of the senate;**

[(d)] (e) Any expenditure made on behalf of a public official, **an elected local government official** or [the public] **such** official's staff, employees, spouse or dependent children, if such expenditure is solicited by such [public] official, the [public] official's staff, employees, or spouse or dependent children, from the lobbyist or his or her lobbyist principals and the name of such person or persons, except any expenditures made to any not-for-profit corporation, charitable, fraternal or civic organization or other association formed to provide for good in the order of benevolence;

[(e)] (f) A statement detailing any direct business relationship or association or partnership the lobbyist has with any public official **or elected local government official**. The reports required by this subdivision shall cover the time periods since the filing of the last report or since the lobbyist's employment or representation began, whichever is most recent.

4. No expenditure reported pursuant to this section shall include any amount expended by a lobbyist or lobbyist principal on himself or herself. All expenditures disclosed pursuant to this section shall be valued on the report at the actual amount of the payment made, or the charge, expense, cost, or obligation, debt or bill incurred by the lobbyist or the person the lobbyist represents. Whenever a lobbyist principal employs more than one lobbyist, expenditures of the lobbyist principal shall not be reported by each lobbyist, but shall be reported by one of such lobbyists. **No expenditure shall be made on behalf of a state senator or state representative, or such public official's staff, employees, spouse, or dependent children for travel or lodging outside the state of Missouri unless such travel or lodging was approved prior to the date of the expenditure by the administration and accounts committee of the house or the administration committee of the senate.**

5. Any lobbyist principal shall provide in a timely fashion whatever information is reasonably requested by the lobbyist principal's lobbyist for use in filing the reports required by this section.

6. All information required to be filed pursuant to the provisions of this section with the commission shall be kept available by the executive director of the commission at all times open to the public for inspection and copying for a reasonable fee for a period of five years from the date when such information was filed.

7. No person shall knowingly employ any person who is required to register as a registered lobbyist but is not registered pursuant to this section. Any person who knowingly violates this subsection shall be subject to a civil penalty in an amount of not more than ten thousand dollars for each violation. Such civil penalties shall be collected by action filed by the commission.

8. No lobbyist shall knowingly omit, conceal, or falsify in any manner information required pursuant to this section.

9. The prosecuting attorney of Cole County shall be reimbursed only out of funds specifically appropriated by the general assembly for investigations and prosecutions for violations of this section.

10. Any public official or other person whose name appears in any lobbyist report filed pursuant to this section who contests the accuracy of the portion of the report applicable to such person may petition the commission for an audit of such report and shall state in writing in such petition the specific disagreement with the contents of such report. The commission shall

investigate such allegations in the manner described in section 105.959. If the commission determines that the contents of such report are incorrect, incomplete or erroneous, it shall enter an order requiring filing of an amended or corrected report.

11. The commission shall provide a report listing the total spent by a lobbyist for the month and year to any member or member-elect of the general assembly, judge or judicial officer, or any other person holding an elective office of state government **or any elected local government official** on or before the twentieth day of each month. For the purpose of providing accurate information to the public, the commission shall not publish information in either written or electronic form for ten working days after providing the report pursuant to this subsection. The commission shall not release any portion of the lobbyist report if the accuracy of the report has been questioned pursuant to subsection 10 of this section unless it is conspicuously marked "Under Review".

12. Each lobbyist or lobbyist principal by whom the lobbyist was employed, or in whose behalf the lobbyist acted, shall provide a general description of the proposed legislation or action by the executive branch or judicial branch which the lobbyist or lobbyist principal supported or opposed. This information shall be supplied to the commission on March fifteenth and May thirtieth of each year.

**13. The provisions of this section shall supersede any contradicting ordinances or charter provisions.**

**105.485. FINANCIAL INTEREST STATEMENTS — FORM — CONTENTS — POLITICAL SUBDIVISIONS, COMPLIANCE.** — 1. Each financial interest statement required by sections 105.483 to 105.492 shall be on a form prescribed by the commission and shall be signed and verified by a written declaration that it is made under penalties of perjury; provided, however, the form shall not seek information which is not specifically required by sections 105.483 to 105.492.

2. Each person required to file a financial interest statement pursuant to subdivisions (1) to (12) of section 105.483 shall file the following information for himself, his spouse and dependent children at any time during the period covered by the statement, whether singularly or collectively; provided, however, that said person, if he does not know and his spouse will not divulge any information required to be reported by this section concerning the financial interest of his spouse, shall state on his financial interest statement that he has disclosed that information known to him and that his spouse has refused or failed to provide other information upon his bona fide request, and such statement shall be deemed to satisfy the requirements of this section for such financial interest of his spouse; and provided further if the spouse of any person required to file a financial interest statement is also required by section 105.483 to file a financial interest statement, the financial interest statement filed by each need not disclose the financial interest of the other, provided that each financial interest statement shall state that the spouse of the person has filed a separate financial interest statement and the name under which the statement was filed:

(1) The name and address of each of the employers of such person from whom income of one thousand dollars or more was received during the year covered by the statement;

(2) The name and address of each sole proprietorship which he owned; the name, address and the general nature of the business conducted of each general partnership and joint venture in which he was a partner or participant; the name and address of each partner or coparticipant for each partnership or joint venture unless such names and addresses are filed by the partnership or joint venture with the secretary of state; the name, address and general nature of the business conducted of any closely held corporation or limited partnership in which the person owned ten percent or more of any class of the outstanding stock or limited partners' units; and the name of any publicly traded corporation or limited partnership which is listed on a regulated stock exchange or automated quotation system in which the person owned two percent or more of any class of outstanding stock, limited partnership units or other equity interests;

(3) The name and address of any other source not reported pursuant to subdivisions (1) and (2) and subdivisions (4) to (9) of this subsection from which such person received one thousand dollars or more of income during the year covered by the statement, including, but not limited to, any income otherwise required to be reported on any tax return such person is required by law to file; except that only the name of any publicly traded corporation or limited partnership which is listed on a regulated stock exchange or automated quotation system need be reported pursuant to this subdivision;

(4) The location by county, the subclassification for property tax assessment purposes, the approximate size and a description of the major improvements and use for each parcel of real property in the state, other than the individual's personal residence, having a fair market value of ten thousand dollars or more in which such person held a vested interest including a leasehold for a term of ten years or longer, and, if the property was transferred during the year covered by the statement, the name and address of the persons furnishing or receiving consideration for such transfer;

(5) The name and address of each entity in which such person owned stock, bonds or other equity interest with a value in excess of ten thousand dollars; except that, if the entity is a corporation listed on a regulated stock exchange, only the name of the corporation need be listed; and provided that any member of any board or commission of the state or any political subdivision who does not receive any compensation for his services to the state or political subdivision other than reimbursement for his actual expenses or a per diem allowance as prescribed by law for each day of such service, need not report interests in publicly traded corporations or limited partnerships which are listed on a regulated stock exchange or automated quotation system pursuant to this subdivision; and provided further that the provisions of this subdivision shall not require reporting of any interest in any qualified plan or annuity pursuant to the Employees' Retirement Income Security Act;

(6) The name and address of each corporation for which such person served in the capacity of a director, officer or receiver;

(7) The name and address of each not-for-profit corporation and each association, organization, or union, whether incorporated or not, except not-for-profit corporations formed to provide church services, fraternal organizations or service clubs from which the officer or employee draws no remuneration, in which such person was an officer, director, employee or trustee at any time during the year covered by the statement, and for each such organization, a general description of the nature and purpose of the organization;

(8) The name and address of each source from which such person received a gift or gifts, or honorarium or honoraria in excess of two hundred dollars in value per source during the year covered by the statement other than gifts from persons within the third degree of consanguinity or affinity of the person filing the financial interest statement. For the purposes of this section, a gift shall not be construed to mean political contributions otherwise required to be reported by law or hospitality such as food, beverages or admissions to social, art, or sporting events or the like, or informational material. For the purposes of this section, a gift shall include gifts to or by creditors of the individual for the purpose of canceling, reducing or otherwise forgiving the indebtedness of the individual to that creditor;

(9) The lodging and travel expenses provided by any third person for expenses incurred outside the state of Missouri whether by gift or in relation to the duties of office of such official, except that such statement shall not include travel or lodging expenses:

(a) Paid in the ordinary course of business for businesses described in subdivisions (1), (2), (5) and (6) of this subsection which are related to the duties of office of such official; or

(b) For which the official may be reimbursed as provided by law; or

(c) Paid by persons related by the third degree of consanguinity or affinity to the person filing the statement; or

(d) Expenses which are reported by the campaign committee or candidate committee of the person filing the statement pursuant to the provisions of chapter 130, RSMo; or

(e) Paid for purely personal purposes which are not related to the person's official duties by a third person who is not a lobbyist, a lobbyist principal or member, or officer or director of a member, of any association or entity which employs a lobbyist. The statement shall include the name and address of such person who paid the expenses, the date such expenses were incurred, the amount incurred, the location of the travel and lodging, and the nature of the services rendered or reason for the expenses;

(10) The assets in any revocable trust of which the individual is the settlor if such assets would otherwise be required to be reported under this section;

(11) The name, position and relationship of any relative within the first degree of consanguinity or affinity to any other person who:

(a) Is employed by the state of Missouri, by a political subdivision of the state or special district, as defined in section 115.013, RSMo, of the state of Missouri;

(b) Is a lobbyist; or

(c) Is a fee agent of the department of revenue;

**(12) The name and address of each campaign committee, political committee, candidate committee, or continuing committee for which such person or any corporation listed on such person's financial interest statement received payment.**

3. For the purposes of subdivisions (1), (2) and (3) of subsection 2 of this section, an individual shall be deemed to have received a salary from his employer or income from any source at the time when he shall receive a negotiable instrument whether or not payable at a later date and at the time when under the practice of his employer or the terms of an agreement, he has earned or is entitled to anything of actual value whether or not delivery of the value is deferred or right to it has vested. The term "income" as used in this section shall have the same meaning as provided in the Internal Revenue Code of 1986, and amendments thereto, as the same may be or becomes effective, at any time or from time to time for the taxable year, provided that income shall not be considered received or earned for purposes of this section from a partnership or sole proprietorship until such income is converted from business to personal use.

4. Each official, officer or employee or candidate of any political subdivision described in subdivision (11) of section 105.483 shall be required to file a financial interest statement as required by subsection 2 of this section, unless the political subdivision biennially adopts an ordinance, order or resolution at an open meeting by September fifteenth of the preceding year, which establishes and makes public its own method of disclosing potential conflicts of interest and substantial interests and therefore excludes the political subdivision or district and its officers and employees from the requirements of subsection 2 of this section. A certified copy of the ordinance, order or resolution shall be sent to the commission within ten days of its adoption. The commission shall assist any political subdivision in developing forms to complete the requirements of this subsection. The ordinance, order or resolution shall contain, at a minimum, the following requirements with respect to disclosure of substantial interests:

(1) Disclosure in writing of the following described transactions, if any such transactions were engaged in during the calendar year:

(a) For such person, and all persons within the first degree of consanguinity or affinity of such person, the date and the identities of the parties to each transaction with a total value in excess of five hundred dollars, if any, that such person had with the political subdivision, other than compensation received as an employee or payment of any tax, fee or penalty due to the political subdivision, and other than transfers for no consideration to the political subdivision;

(b) The date and the identities of the parties to each transaction known to the person with a total value in excess of five hundred dollars, if any, that any business entity in which such person had a substantial interest, had with the political subdivision, other than payment of any tax, fee or penalty due to the political subdivision or transactions involving payment for providing utility service to the political subdivision, and other than transfers for no consideration to the political subdivision;

(2) The chief administrative officer and chief purchasing officer of such political subdivision shall disclose in writing the information described in subdivisions (1), (2) and (6) of subsection 2 of this section;

(3) Disclosure of such other financial interests applicable to officials, officers and employees of the political subdivision, as may be required by the ordinance or resolution;

(4) Duplicate disclosure reports made pursuant to this subsection shall be filed with the commission and the governing body of the political subdivision. The clerk of such governing body shall maintain such disclosure reports available for public inspection and copying during normal business hours.

**105.957. RECEIPT OF COMPLAINTS — FORM — INVESTIGATION — DISMISSAL OF FRIVOLOUS COMPLAINTS, DAMAGES, PUBLIC REPORT.** — 1. The commission shall receive any complaints alleging violation of the provisions of:

- (1) The requirements imposed on lobbyists by sections 105.470 to 105.478;
- (2) The financial interest disclosure requirements contained in sections 105.483 to 105.492;
- (3) The campaign finance disclosure requirements contained in chapter 130, RSMo;
- (4) Any code of conduct promulgated by any department, division or agency of state government, or by state institutions of higher education, or by executive order;
- (5) The conflict of interest laws contained in sections 105.450 to 105.468 and section 171.181, RSMo; and
- (6) The provisions of the constitution or state statute or order, ordinance or resolution of any political subdivision relating to the official conduct of officials or employees of the state and political subdivisions.

2. Complaints filed with the commission shall be in writing and filed only by a natural person. The complaint shall contain all facts known by the complainant that have given rise to the complaint and the complaint shall be sworn to, under penalty of perjury, by the complainant. No complaint shall be investigated unless the complaint alleges facts which, if true, fall within the jurisdiction of the commission. **Within five days after receipt of a complaint by the commission, a copy of the complaint, including the name of the complainant, shall be delivered to the alleged violator.**

3. No complaint shall be investigated which concerns alleged criminal conduct which allegedly occurred previous to the period of time allowed by law for criminal prosecution for such conduct. The commission may refuse to investigate any conduct which is the subject of civil or criminal litigation. The commission, its executive director or an investigator shall not investigate any complaint concerning conduct which is not criminal in nature which occurred more than two years prior to the date of the complaint. A complaint alleging misconduct on the part of a candidate for public office, other than those alleging failure to file the appropriate financial interest statements or campaign finance disclosure reports, shall not be accepted by the commission within sixty days prior to the primary election at which such candidate is running for office, and until after the general election.

4. **If the commission finds that any complaint is frivolous in nature or finds no probable cause to believe that there has been a violation, the commission shall dismiss the case. For purposes of this subsection, "frivolous" shall mean a complaint clearly lacking any basis in fact or law. Any person who submits a frivolous complaint shall be liable for actual and compensatory damages to the alleged violator for holding the alleged violator before the public in a false light. If the commission finds that a complaint is frivolous or that there is not probable cause to believe there has been a violation, the commission shall issue a public report to the complainant and the alleged violator stating with particularity its reasons for dismissal of the complaint. Upon such issuance, the complaint and all materials relating to the complaint shall be a public record as defined in chapter 610, RSMo.**

5. Complaints which allege violations as described in this section which are filed with the commission shall be handled as provided by section 105.961.

**105.959. REVIEW OF REPORTS AND STATEMENTS, NOTICE — AUDITS AND INVESTIGATIONS — FORMAL INVESTIGATIONS — REPORT — REFERRAL OF REPORT. — 1.** The executive director of the commission, under the supervision of the commission, shall review reports and statements filed with the commission or other appropriate officers pursuant to sections 105.470, 105.483 to 105.492, and chapter 130, RSMo, for completeness, accuracy and timeliness of filing of the reports or statements, and upon review, if there are reasonable grounds to believe that a violation has occurred, shall conduct an audit of such reports and statements. All investigations by the executive director of an alleged violation shall be strictly confidential with the exception of notification of the commission and the complainant or the person under investigation. **All investigations by the executive director shall be limited to the information contained in the reports or statements. The commission shall notify the complainant or the person under investigation, by registered mail, within five days of the decision to conduct such investigation.** Revealing any such confidential investigation information shall be cause for removal or dismissal of the executive director or a commission member or employee.

2. Upon findings of the appropriate filing officer which are reported to the commission in accordance with the provisions of section 130.056, RSMo, the executive director shall audit disclosure reports, statements and records pertaining to such findings within a reasonable time after receipt of the reports from the appropriate filing officer.

3. Upon a sworn written complaint of any natural person filed with the commission pursuant to section 105.957, the commission shall audit and investigate alleged violations. Within sixty days after receipt of a sworn written complaint alleging a violation, the executive director shall notify the complainant in writing of the action, if any, the executive director has taken and plans to take on the complaint. If an investigation conducted pursuant to this subsection fails to establish reasonable grounds to believe that a violation has occurred, the investigation shall be terminated and the complainant and the person who had been under investigation shall be notified of the reasons for the disposition of the complaint.

4. The commission may make such investigations and inspections within or outside of this state as are necessary to determine compliance.

5. If, during an audit or investigation, the commission determines that a formal investigation is necessary, the commission shall assign the investigation to a special investigator in the manner provided by subsection 1 of section 105.961.

6. After completion of an audit or investigation, the executive director shall provide a detailed report of such audit or investigation to the commission. Upon determination that there are reasonable grounds to believe that a person has violated the requirements of sections 105.470, 105.483 to 105.492, or chapter 130, RSMo, by a vote of four members of the commission, the commission may refer the report with the recommendations of the commission to the appropriate prosecuting authority together with a copy of the audit and the details of the investigation by the commission as is provided in subsection 2 of section 105.961.

**105.963. ASSESSMENTS OF COMMITTEES, CAMPAIGN DISCLOSURE REPORTS — NOTICE — PENALTY — ASSESSMENTS OF FINANCIAL INTEREST STATEMENTS — NOTICE — PENALTIES — EFFECTIVE DATE. — 1.** The executive director shall assess every [candidate for state or local office] **committee, as defined in section 130.011, RSMo,** failing to file with a filing officer other than a local election authority as provided by section 130.026, RSMo, a campaign disclosure report as required by chapter 130, RSMo, other than the report required pursuant to subdivision (1) of subsection 1 of section 130.046, RSMo, a late filing fee of ten dollars for each day after such report is due to the commission. The executive director shall mail a notice, by registered mail, to any candidate and [candidate committee treasurer and deputy treasurer] **the treasurer of any committee** who fails to file such report informing such person

of such failure and the fees provided by this section. If the candidate **or treasurer of any committee** persists in such failure for a period in excess of thirty days beyond receipt of such notice, the amount of the late filing fee shall increase to one hundred dollars for each day that the report is not filed, provided that the total amount of such fees assessed pursuant to this subsection per report shall not exceed three thousand dollars.

2. (1) Any candidate for state or local office who fails to file a campaign disclosure report required pursuant to subdivision (1) of subsection 1 of section 130.046, RSMo, other than a report required to be filed with a local election authority as provided by section 130.026, RSMo, shall be assessed by the executive director a late filing fee of one hundred dollars for each day that the report is not filed, until the first day after the date of the election. After such election date, the amount of such late filing fee shall accrue at the rate of ten dollars per day that such report remains unfiled, except as provided in subdivision (2) of this subsection.

(2) The executive director shall mail a notice, by certified mail or other means to give actual notice, to any candidate [and candidate committee treasurer and deputy treasurer] who fails to file the report described in subdivision (1) of this subsection informing such person of such failure and the fees provided by this section. If the candidate persists in such failure for a period in excess of thirty days beyond receipt of such notice, the amount of the late filing fee shall increase to one hundred dollars for each day that the report is not filed, provided that the total amount of such fees assessed pursuant to this subsection per report shall not exceed six thousand dollars.

3. The executive director shall assess every person required to file a financial interest statement pursuant to sections 105.483 to 105.492 failing to file such a financial interest statement with the commission a late filing fee of ten dollars for each day after such statement is due to the commission. The executive director shall mail a notice, by certified mail, to any person who fails to file such statement informing the individual required to file of such failure and the fees provided by this section. If the person persists in such failure for a period in excess of thirty days beyond receipt of such notice, the amount of the late filing fee shall increase to one hundred dollars for each day thereafter that the statement is late, provided that the total amount of such fees assessed pursuant to this subsection per statement shall not exceed six thousand dollars.

4. Any person assessed a late filing fee may seek review of such assessment or the amount of late filing fees assessed, at the person's option, by filing a petition within fourteen days after receiving actual notice of assessment with the administrative hearing commission, or without exhausting the person's administrative remedies may seek review of such issues with the circuit court of Cole County.

5. The executive director of the Missouri ethics commission shall collect such late filing fees as are provided for in this section. Unpaid late filing fees shall be collected by action filed by the commission. The commission shall contract with the appropriate entity to collect such late filing fees after a thirty-day delinquency. If not collected within one hundred twenty days, the Missouri ethics commission shall file a petition in Cole County circuit court to seek a judgment on said fees. All late filing fees collected pursuant to this section shall be transmitted to the state treasurer and deposited to the general revenue fund.

6. The late filing fees provided by this section shall be in addition to any penalty provided by law for violations of sections 105.483 to 105.492 or chapter 130, RSMo.

7. If any candidate fails to file a campaign disclosure report in a timely manner and that candidate is assessed a late filing fee, the candidate, candidate committee treasurer or assistant treasurer may file an appeal of the assessment of the late filing fee with the commission. The commission may forgive the assessment of the late filing fee upon a showing of good cause. Such appeal shall be filed within ten days of the receipt of notice of the assessment of the late filing fee.

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**115.342. DISQUALIFICATION FOR DELINQUENT TAXES — AFFIDAVIT, FORM — COMPLAINTS, INVESTIGATION, NOTICE, PAYMENT OF TAXES. — 1.** Any person who files as a candidate for election to a public office shall be disqualified from participation in the election for which the candidate has filed if such person is delinquent in the payment of any state income taxes, personal property taxes, real property taxes on the place of residence, as stated on the declaration of candidacy, or if the person is a past or present corporate officer of any fee office that owes any taxes to the state.

2. Each potential candidate for election to a public office shall file an affidavit with the department of revenue and include a copy of the affidavit with the declaration of candidacy required under section 115.349, RSMo. Such affidavit shall be in substantially the following form:

"**AFFIRMATION OF TAX PAYMENTS:**

I hereby declare under penalties of perjury that I am not currently aware of any delinquency in the filing or payment of any state income taxes, personal property taxes, real property taxes on the place of residence, as stated on the declaration of candidacy, or that I am a past or present corporate officer of any fee office that owes any taxes to the state, other than those taxes which may be in dispute.

..... Candidate's Signature

..... Printed Name of Candidate."

3. Upon receipt of a complaint alleging a delinquency of the candidate in the filing or payment of any state income taxes, personal property taxes, real property taxes on the place of residence, as stated on the declaration of candidacy, or if the person is a past or present corporate officer of any fee office that owes any taxes to the state, the department of revenue shall investigate such potential candidate to verify the claim contained in the complaint. If the department of revenue finds a positive affirmation to be false, the department shall contact the secretary of state, or the election official who accepted such candidate's declaration of candidacy, and the potential candidate. The department shall notify the candidate of the outstanding tax owed and give the candidate thirty days to remit any such outstanding taxes owed which are not the subject of dispute between the department and the candidate. If the candidate fails to remit such amounts in full within thirty days, the candidate shall be disqualified from participating in the current election and barred from refiling for an entire election cycle even if the individual pays all of the outstanding taxes that were the subject of the complaint.

**115.350. CONVICTION OR PLEA UNDER STATE LAWS, DISQUALIFICATION FOR ELECTIVE PUBLIC OFFICE. —** No person shall qualify as a candidate for elective public office in the state of Missouri who has been convicted of or found guilty of or pled guilty to a felony under the laws of this state.

**130.011. DEFINITIONS. —** As used in this chapter, unless the context clearly indicates otherwise, the following terms mean:

(1) "Appropriate officer" or "appropriate officers", the person or persons designated in section 130.026 to receive certain required statements and reports;

(2) "Ballot measure" or "measure", any proposal submitted or intended to be submitted to qualified voters for their approval or rejection, including any proposal submitted by initiative petition, referendum petition, or by the general assembly or any local governmental body having authority to refer proposals to the voter;

(3) "Candidate", an individual who seeks nomination or election to public office. The term "candidate" includes an elected officeholder who is the subject of a recall election, an individual who seeks nomination by the individual's political party for election to public office, an individual standing for retention in an election to an office to which the individual was previously appointed, an individual who seeks nomination or election whether or not the specific elective

public office to be sought has been finally determined by such individual at the time the individual meets the conditions described in paragraph (a) or (b) of this subdivision, and an individual who is a "write-in candidate" as defined in subdivision (28) of this section. A candidate shall be deemed to seek nomination or election when the person first:

(a) Receives contributions or makes expenditures or reserves space or facilities with intent to promote the person's candidacy for office; or

(b) Knows or has reason to know that contributions are being received or expenditures are being made or space or facilities are being reserved with the intent to promote the person's candidacy for office; except that, such individual shall not be deemed a candidate if the person files a statement with the appropriate officer within five days after learning of the receipt of contributions, the making of expenditures, or the reservation of space or facilities disavowing the candidacy and stating that the person will not accept nomination or take office if elected; provided that, if the election at which such individual is supported as a candidate is to take place within five days after the person's learning of the above-specified activities, the individual shall file the statement disavowing the candidacy within one day; or

(c) Announces or files a declaration of candidacy for office;

(4) "Cash", currency, coin, United States postage stamps, or any negotiable instrument which can be transferred from one person to another person without the signature or endorsement of the transferor;

(5) "Check", a check drawn on a state or federal bank, or a draft on a negotiable order of withdrawal account in a savings and loan association or a share draft account in a credit union;

(6) "Closing date", the date through which a statement or report is required to be complete;

(7) "Committee", a person or any combination of persons, who accepts contributions or makes expenditures for the primary or incidental purpose of influencing or attempting to influence the action of voters for or against the nomination or election to public office of one or more candidates or the qualification, passage or defeat of any ballot measure or for the purpose of paying a previously incurred campaign debt or obligation of a candidate or the debts or obligations of a committee or for the purpose of contributing funds to another committee:

(a) "Committee", does not include:

a. A person or combination of persons, if neither the aggregate of expenditures made nor the aggregate of contributions received during a calendar year exceeds five hundred dollars and if no single contributor has contributed more than two hundred fifty dollars of such aggregate contributions;

b. An individual, other than a candidate, who accepts no contributions and who deals only with the individual's own funds or property;

c. A corporation, cooperative association, partnership, proprietorship, or joint venture organized or operated for a primary or principal purpose other than that of influencing or attempting to influence the action of voters for or against the nomination or election to public office of one or more candidates or the qualification, passage or defeat of any ballot measure, and it accepts no contributions, and all expenditures it makes are from its own funds or property obtained in the usual course of business or in any commercial or other transaction and which are not contributions as defined by subdivision (12) of this section;

d. A labor organization organized or operated for a primary or principal purpose other than that of influencing or attempting to influence the action of voters for or against the nomination or election to public office of one or more candidates, or the qualification, passage, or defeat of any ballot measure, and it accepts no contributions, and expenditures made by the organization are from its own funds or property received from membership dues or membership fees which were given or solicited for the purpose of supporting the normal and usual activities and functions of the organization and which are not contributions as defined by subdivision (12) of this section;

e. A person who acts as an authorized agent for a committee in soliciting or receiving contributions or in making expenditures or incurring indebtedness on behalf of the committee

if such person renders to the committee treasurer or deputy treasurer or candidate, if applicable, an accurate account of each receipt or other transaction in the detail required by the treasurer to comply with all record keeping and reporting requirements of this chapter;

f. Any department, agency, board, institution or other entity of the state or any of its subdivisions or any officer or employee thereof, acting in the person's official capacity;

(b) The term "committee" includes, but is not limited to, each of the following committees: campaign committee, candidate committee, continuing committee and political party committee;

(8) "Campaign committee", a committee, other than a candidate committee, which shall be formed by an individual or group of individuals to receive contributions or make expenditures and whose sole purpose is to support or oppose the qualification and passage of one or more particular ballot measures in an election or the retention of judges under the nonpartisan court plan, such committee shall be formed no later than thirty days prior to the election for which the committee receives contributions or makes expenditures, and which shall terminate the later of either thirty days after the general election or upon the satisfaction of all committee debt after the general election, except that no committee retiring debt shall engage in any other activities in support of a measure for which the committee was formed;

(9) "Candidate committee", a committee which shall be formed by a candidate to receive contributions or make expenditures in behalf of the person's candidacy and which shall continue in existence for use by an elected candidate or which shall terminate the later of either thirty days after the general election for a candidate who was not elected or upon the satisfaction of all committee debt after the election, except that no committee retiring debt shall engage in any other activities in support of the candidate for which the committee was formed. Any candidate for elective office shall have only one candidate committee for the elective office sought, which is controlled directly by the candidate for the purpose of making expenditures. A candidate committee is presumed to be under the control and direction of the candidate unless the candidate files an affidavit with the appropriate officer stating that the committee is acting without control or direction on the candidate's part;

(10) "Continuing committee", a committee of continuing existence which is not formed, controlled or directed by a candidate, and is a committee other than a candidate committee or campaign committee, whose primary or incidental purpose is to receive contributions or make expenditures to influence or attempt to influence the action of voters whether or not a particular candidate or candidates or a particular ballot measure or measures to be supported or opposed has been determined at the time the committee is required to file any statement or report pursuant to the provisions of this chapter. "Continuing committee" includes, but is not limited to, any committee organized or sponsored by a business entity, a labor organization, a professional association, a trade or business association, a club or other organization and whose primary purpose is to solicit, accept and use contributions from the members, employees or stockholders of such entity and any individual or group of individuals who accept and use contributions to influence or attempt to influence the action of voters. Such committee shall be formed no later than [thirty] **sixty** days prior to the election for which the committee receives contributions or makes expenditures;

(11) "Connected organization", any organization such as a corporation, a labor organization, a membership organization, a cooperative, or trade or professional association which expends funds or provides services or facilities to establish, administer or maintain a committee or to solicit contributions to a committee from its members, officers, directors, employees or security holders. An organization shall be deemed to be the connected organization if more than fifty percent of the persons making contributions to the committee during the current calendar year are members, officers, directors, employees or security holders of such organization or their spouses;

(12) "Contribution", a payment, gift, loan, advance, deposit, or donation of money or anything of value for the purpose of supporting or opposing the nomination or election of any candidate for public office or the qualification, passage or defeat of any ballot measure, or for the

support of any committee supporting or opposing candidates or ballot measures or for paying debts or obligations of any candidate or committee previously incurred for the above purposes. A contribution of anything of value shall be deemed to have a money value equivalent to the fair market value. "Contribution" includes, but is not limited to:

(a) A candidate's own money or property used in support of the person's candidacy other than expense of the candidate's food, lodging, travel, and payment of any fee necessary to the filing for public office;

(b) Payment by any person, other than a candidate or committee, to compensate another person for services rendered to that candidate or committee;

(c) Receipts from the sale of goods and services, including the sale of advertising space in a brochure, booklet, program or pamphlet of a candidate or committee and the sale of tickets or political merchandise;

(d) Receipts from fund-raising events including testimonial affairs;

(e) Any loan, guarantee of a loan, cancellation or forgiveness of a loan or debt or other obligation by a third party, or payment of a loan or debt or other obligation by a third party if the loan or debt or other obligation was contracted, used, or intended, in whole or in part, for use in an election campaign or used or intended for the payment of such debts or obligations of a candidate or committee previously incurred, or which was made or received by a committee;

(f) Funds received by a committee which are transferred to such committee from another committee or other source, except funds received by a candidate committee as a transfer of funds from another candidate committee controlled by the same candidate but such transfer shall be included in the disclosure reports;

(g) Facilities, office space or equipment supplied by any person to a candidate or committee without charge or at reduced charges, except gratuitous space for meeting purposes which is made available regularly to the public, including other candidates or committees, on an equal basis for similar purposes on the same conditions;

(h) The direct or indirect payment by any person, other than a connected organization, of the costs of establishing, administering, or maintaining a committee, including legal, accounting and computer services, fund raising and solicitation of contributions for a committee;

(i) "Contribution" does not include:

a. Ordinary home hospitality or services provided without compensation by individuals volunteering their time in support of or in opposition to a candidate, committee or ballot measure, nor the necessary and ordinary personal expenses of such volunteers incidental to the performance of voluntary activities, so long as no compensation is directly or indirectly asked or given;

b. An offer or tender of a contribution which is expressly and unconditionally rejected and returned to the donor within ten business days after receipt or transmitted to the state treasurer;

c. Interest earned on deposit of committee funds;

d. The costs incurred by any connected organization listed pursuant to subdivision (4) of subsection 5 of section 130.021 for establishing, administering or maintaining a committee, or for the solicitation of contributions to a committee which solicitation is solely directed or related to the members, officers, directors, employees or security holders of the connected organization;

(13) "County", any one of the several counties of this state or the city of St. Louis;

(14) "Disclosure report", an itemized report of receipts, expenditures and incurred indebtedness which is prepared on forms approved by the Missouri ethics commission and filed at the times and places prescribed;

(15) "Election", any primary, general or special election held to nominate or elect an individual to public office, to retain or recall an elected officeholder or to submit a ballot measure to the voters, and any caucus or other meeting of a political party or a political party committee at which that party's candidate or candidates for public office are officially selected. A primary election and the succeeding general election shall be considered separate elections;

(16) "Expenditure", a payment, advance, conveyance, deposit, donation or contribution of money or anything of value for the purpose of supporting or opposing the nomination or election of any candidate for public office or the qualification or passage of any ballot measure or for the support of any committee which in turn supports or opposes any candidate or ballot measure or for the purpose of paying a previously incurred campaign debt or obligation of a candidate or the debts or obligations of a committee; a payment, or an agreement or promise to pay, money or anything of value, including a candidate's own money or property, for the purchase of goods, services, property, facilities or anything of value for the purpose of supporting or opposing the nomination or election of any candidate for public office or the qualification or passage of any ballot measure or for the support of any committee which in turn supports or opposes any candidate or ballot measure or for the purpose of paying a previously incurred campaign debt or obligation of a candidate or the debts or obligations of a committee. An expenditure of anything of value shall be deemed to have a money value equivalent to the fair market value. "Expenditure" includes, but is not limited to:

(a) Payment by anyone other than a committee for services of another person rendered to such committee;

(b) The purchase of tickets, goods, services or political merchandise in connection with any testimonial affair or fund-raising event of or for candidates or committees, or the purchase of advertising in a brochure, booklet, program or pamphlet of a candidate or committee;

(c) The transfer of funds by one committee to another committee;

(d) The direct or indirect payment by any person, other than a connected organization for a committee, of the costs of establishing, administering or maintaining a committee, including legal, accounting and computer services, fund raising and solicitation of contributions for a committee; but

(e) "Expenditure" does not include:

a. Any news story, commentary or editorial which is broadcast or published by any broadcasting station, newspaper, magazine or other periodical without charge to the candidate or to any person supporting or opposing a candidate or ballot measure;

b. The internal dissemination by any membership organization, proprietorship, labor organization, corporation, association or other entity of information advocating the election or defeat of a candidate or candidates or the passage or defeat of a ballot measure or measures to its directors, officers, members, employees or security holders, provided that the cost incurred is reported pursuant to subsection 2 of section 130.051;

c. Repayment of a loan, but such repayment shall be indicated in required reports;

d. The rendering of voluntary personal services by an individual of the sort commonly performed by volunteer campaign workers and the payment by such individual of the individual's necessary and ordinary personal expenses incidental to such volunteer activity, provided no compensation is, directly or indirectly, asked or given;

e. The costs incurred by any connected organization listed pursuant to subdivision (4) of subsection 5 of section 130.021 for establishing, administering or maintaining a committee, or for the solicitation of contributions to a committee which solicitation is solely directed or related to the members, officers, directors, employees or security holders of the connected organization;

f. The use of a candidate's own money or property for expense of the candidate's personal food, lodging, travel, and payment of any fee necessary to the filing for public office, if such expense is not reimbursed to the candidate from any source;

(17) "Exploratory committees", a committee which shall be formed by an individual to receive contributions and make expenditures on behalf of this individual in determining whether or not the individual seeks elective office. Such committee shall terminate no later than December thirty-first of the year prior to the general election for the possible office;

(18) "Fund-raising event", an event such as a dinner, luncheon, reception, coffee, testimonial, rally, auction or similar affair through which contributions are solicited or received

by such means as the purchase of tickets, payment of attendance fees, donations for prizes or through the purchase of goods, services or political merchandise;

(19) "In-kind contribution" or "in-kind expenditure", a contribution or expenditure in a form other than money;

(20) "Labor organization", any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work;

(21) "Loan", a transfer of money, property or anything of ascertainable monetary value in exchange for an obligation, conditional or not, to repay in whole or in part and which was contracted, used, or intended for use in an election campaign, or which was made or received by a committee or which was contracted, used, or intended to pay previously incurred campaign debts or obligations of a candidate or the debts or obligations of a committee;

(22) "Person", an individual, group of individuals, corporation, partnership, committee, proprietorship, joint venture, any department, agency, board, institution or other entity of the state or any of its political subdivisions, union, labor organization, trade or professional or business association, association, political party or any executive committee thereof, or any other club or organization however constituted or any officer or employee of such entity acting in the person's official capacity;

(23) "Political merchandise", goods such as bumper stickers, pins, hats, ties, jewelry, literature, or other items sold or distributed at a fund-raising event or to the general public for publicity or for the purpose of raising funds to be used in supporting or opposing a candidate for nomination or election or in supporting or opposing the qualification, passage or defeat of a ballot measure;

(24) "Political party", a political party which has the right under law to have the names of its candidates listed on the ballot in a general election;

(25) "Political party committee", a state, district, county, city, or area committee of a political party, as defined in section 115.603, RSMo, which may be organized as a not-for-profit corporation under Missouri law, and which committee is of continuing existence, and has the primary or incidental purpose of receiving contributions and making expenditures to influence or attempt to influence the action of voters on behalf of the political party;

(26) "Public office" or "office", any state, judicial, county, municipal, school or other district, ward, township, or other political subdivision office or any political party office which is filled by a vote of registered voters;

(27) "Regular session", includes that period beginning on the first Wednesday after the first Monday in January and ending following the first Friday after the second Monday in May;

(28) "Write-in candidate", an individual whose name is not printed on the ballot but who otherwise meets the definition of "candidate" in subdivision (3) of this section.

**130.016. CERTAIN CANDIDATES EXEMPT FROM FILING REQUIREMENTS — PROCEDURE FOR EXEMPTION — RESTRICTIONS ON SUBSEQUENT CONTRIBUTIONS AND EXPENDITURES — REJECTION OF EXEMPTION — CANDIDATE COMMITTEES FOR CERTAIN GENERAL ASSEMBLY LEADERSHIP OFFICES PROHIBITED.** — 1. No candidate for statewide elected office, general assembly, or municipal office in a city with a population of more than one hundred thousand shall be required to comply with the requirements to file a statement of organization or disclosure reports of contributions and expenditures for any election in which neither the aggregate of contributions received nor the aggregate of expenditures made on behalf of such candidate exceeds five hundred dollars and no single contributor, other than the candidate, has contributed more than the amount of the limitation on contributions to elect an individual to the office of state representative as calculated in subsection 2 of section 130.032, provided that:

(1) The candidate files a sworn exemption statement with the appropriate officer that the candidate does not intend to either receive contributions or make expenditures in the aggregate

of more than five hundred dollars or receive contributions from any single contributor, other than the candidate, that aggregate more than the amount of the limitation on contributions to elect an individual to the office of state representative as calculated in subsection 2 of section 130.032, and that the total of all contributions received or expenditures made by the candidate and all committees or any other person with the candidate's knowledge and consent in support of the candidacy will not exceed five hundred dollars and that the aggregate of contributions received from any single contributor will not exceed the amount of the limitation on contributions to elect an individual to the office of state representative as calculated in subsection 2 of section 130.032. Such exemption statement shall be filed no later than the date set forth in section 130.046 on which a disclosure report would otherwise be required if the candidate does not file the exemption statement. The exemption statement shall be filed on a form furnished to each appropriate officer by the executive director of the Missouri ethics commission. Each appropriate officer shall make the exemption statement available to candidates and shall direct each candidate's attention to the exemption statement and explain its purpose to the candidate; and

(2) The sworn exemption statement includes a statement that the candidate understands that records of contributions and expenditures must be maintained from the time the candidate first receives contributions or makes expenditures and that an exemption from filing a statement of organization or disclosure reports does not exempt the candidate from other provisions of this chapter. Each candidate described in this subsection who files a statement of exemption shall file a statement of limited activity for each reporting period described in section 130.046.

2. Any candidate who has filed an exemption statement as provided in subsection 1 of this section shall not accept any contribution or make any expenditure in support of the person's candidacy, either directly or indirectly or by or through any committee or any other person acting with the candidate's knowledge and consent, which would cause such contributions or expenditures to exceed the limits specified in subdivision (1) of subsection 1 of this section unless the candidate later rejects the exemption pursuant to subsection 3 of this section. Any contribution received in excess of such limits shall be returned to the donor or transmitted to the state treasurer to escheat to the state.

3. If, after filing the exemption statement provided for in this section, the candidate subsequently determines the candidate wishes to exceed any of the limits in subdivision (1) of subsection 1 of this section, the candidate shall file a notice of rejection of the exemption with the appropriate officer; however, such rejection shall not be filed later than thirty days before election. A notice of rejection of exemption shall be accompanied by a statement of organization as required by section 130.021 and any other statements and reports which would have been required if the candidate had not filed an exemption statement.

4. A primary election and the immediately succeeding general election are separate elections, and restrictions on contributions and expenditures set forth in subsection 2 of this section shall apply to each election; however, if a successful primary candidate has correctly filed an exemption statement prior to the primary election and has not filed a notice of rejection prior to the date on which the first disclosure report applicable to the succeeding general election is required to be filed, the candidate shall not be required to file an exemption statement for that general election if the limitations set forth in subsection 1 of this section apply to the succeeding general election.

5. A candidate who has an existing candidate committee formed for a prior election for which all statements and reports required by this chapter have been properly filed shall be eligible to file the exemption statement as provided in subsection 1 of this section and shall not be required to file the disclosure reports pertaining to the election for which the candidate is eligible to file the exemption statement if the candidate and the treasurer or deputy treasurer of such existing candidate committee continue to comply with the requirements, limitations and restrictions set forth in subsections 1, 2, 3 and 4 of this section. The exemption permitted by this subsection does not exempt a candidate or the treasurer of the candidate's existing candidate

committee from complying with the requirements of subsections 6 and 7 of section 130.046 applicable to a prior election.

6. No candidate for supreme court, circuit court, or associate circuit court, or candidate for political party office, or for county office or municipal office in a city of one hundred thousand or less, or for any special purpose district office shall be required to file an exemption statement pursuant to this section in order to be exempted from forming a committee and filing disclosure reports required of committees pursuant to this chapter if the aggregate of contributions received or expenditures made by the candidate and any other person with the candidate's knowledge and consent in support of the person's candidacy does not exceed one thousand dollars and the aggregate of contributions from any single contributor does not exceed the amount of the limitation on contributions to elect an individual to the office of state representative as calculated in subsection 2 of section 130.032. No candidate for any office listed in this subsection shall be excused from complying with the provisions of any section of this chapter, other than the filing of an exemption statement under the conditions specified in this subsection.

7. If any candidate for an office listed in subsection 6 of this section exceeds the limits specified in subsection 6 of this section, the candidate shall form a committee no later than thirty days prior to the election for which the contributions were received or expended which shall comply with all provisions of this chapter for committees.

**8. No member of or candidate for the general assembly shall form a candidate committee for the office of speaker of the house of representatives or president pro tem of the senate.**

**130.032. MONETARY CONTRIBUTIONS FROM POLITICAL PARTY COMMITTEES PROHIBITED — CONTRIBUTIONS NOT TO BE ACCEPTED DURING LEGISLATIVE SESSION, EXCEPTION.** — 1. [In addition to the limitations imposed pursuant to section 130.031, the amount of contributions made by or accepted from any person other than the candidate in any one election shall not exceed the following:

- (1) To elect an individual to the office of governor, lieutenant governor, secretary of state, state treasurer, state auditor or attorney general, one thousand dollars;
- (2) To elect an individual to the office of state senator, five hundred dollars;
- (3) To elect an individual to the office of state representative, two hundred fifty dollars;
- (4) To elect an individual to any other office, including judicial office, if the population of the electoral district, ward, or other unit according to the latest decennial census is under one hundred thousand, two hundred fifty dollars;
- (5) To elect an individual to any other office, including judicial office, if the population of the electoral district, ward, or other unit according to the latest decennial census is at least one hundred thousand but less than two hundred fifty thousand, five hundred dollars; and
- (6) To elect an individual to any other office, including judicial office, if the population of the electoral district, ward, or other unit according to the latest decennial census is at least two hundred fifty thousand, one thousand dollars.

2. For purposes of this subsection "base year amount" shall be the contribution limits prescribed in this section on January 1, 1995. Such limits shall be increased on the first day of January in each even-numbered year by multiplying the base year amount by the cumulative consumer price index, as defined in section 104.010, RSMo, and rounded to the nearest twenty-five-dollar amount, for all years since January 1, 1995.

3. Candidate committees, exploratory committees, campaign committees and continuing committees, other than those continuing committees which are political party committees, shall be subject to the limits prescribed in subsection 1 of this section. The provisions of this subsection shall not limit the amount of contributions which may be accumulated by a candidate committee and used for expenditures to further the nomination or election of the candidate who controls such candidate committee, except as provided in section 130.052.

4. Except as limited by this subsection, the amount of cash contributions, and a separate amount for the amount of in-kind contributions, made by or accepted from a political party committee in any one election shall not exceed the following:

- (1) To elect an individual to the office of governor, lieutenant governor, secretary of state, state treasurer, state auditor or attorney general, ten thousand dollars;
- (2) To elect an individual to the office of state senator, five thousand dollars;
- (3) To elect an individual to the office of state representative, two thousand five hundred dollars; and
- (4) To elect an individual to any other office of an electoral district, ward or unit, ten times the allowable contribution limit for the office sought.

The amount of contributions which may be made by or accepted from a political party committee in the primary election to elect any candidate who is unopposed in such primary shall be fifty percent of the amount of the allowable contributions as determined in this subsection.

5. Contributions from persons under fourteen years of age shall be considered made by the parents or guardians of such person and shall be attributed toward any contribution limits prescribed in this chapter. Where the contributor under fourteen years of age has two custodial parents or guardians, fifty percent of the contribution shall be attributed to each parent or guardian, and where such contributor has one custodial parent or guardian, all such contributions shall be attributed to the custodial parent or guardian.

6. Contributions received and expenditures made prior to January 1, 1995, shall be reported as a separate account and pursuant to the laws in effect at the time such contributions are received or expenditures made. Contributions received and expenditures made after January 1, 1995, shall be reported as a separate account from the aforementioned account and pursuant to the provisions of this chapter. The account reported pursuant to the prior law shall be retained as a separate account and any remaining funds in such account may be used pursuant to this chapter and section 130.034.

7. Any committee which accepts or gives contributions other than those allowed shall be subject to a surcharge of one thousand dollars plus an amount equal to the contribution per nonallowable contribution, to be paid to the ethics commission and which shall be transferred to the director of revenue, upon notification of such nonallowable contribution by the ethics commission, and after the candidate has had ten business days after receipt of notice to return the contribution to the contributor. The candidate and the candidate committee treasurer or deputy treasurer owing a surcharge shall be personally liable for the payment of the surcharge or may pay such surcharge only from campaign funds existing on the date of the receipt of notice. Such surcharge shall constitute a debt to the state enforceable under, but not limited to, the provisions of chapter 143, RSMo.] **Monetary contributions shall not be made from any political party committee as defined in subdivision (25) of section 130.011 to any candidate committee, continuing committee, or political party committee. Nothing in this section shall be construed to limit any candidate committee from making contributions to any other committee.**

2. **Any candidate for the office of state representative, the office of state senator, or a statewide elected office shall not accept any contributions from the first Wednesday after the first Monday in January through the first Friday after the second Monday of May of each year at 6:00 p.m. Only candidates for special election to the house of representatives, senate, or statewide elected office may, during such time, accept contributions from the date of the candidate's nomination by his or her respective political party until thirty days after the date of the election.**

**130.042. POSTING OF EXPENDITURES SUPPORTING AND OPPOSING CANDIDATES. — The Missouri ethics commission shall post on its website in an easily accessible and conspicuous manner, a listing organized by candidate showing all expenditures required to be disclosed by sections 130.041 and 130.050, made in support of and against each candidate, together**

with the date and amount of each expenditure. The commission shall post each expenditure within seven days of notification of the expenditure. The list underlying each candidate shall be further organized into the following two categories:

- (1) Expenditures in support of the candidate; and
- (2) Expenditures in opposition to the candidate.

**130.046. TIMES FOR FILING OF DISCLOSURE — PERIODS COVERED BY REPORTS — CERTAIN DISCLOSURE REPORTS NOT REQUIRED — SUPPLEMENTAL REPORTS, WHEN — CERTAIN DISCLOSURE REPORTS FILED ELECTRONICALLY — RULEMAKING AUTHORITY. —**

1. The disclosure reports required by section 130.041 for all committees shall be filed at the following times and for the following periods:

(1) Not later than the eighth day before an election for the period closing on the twelfth day before the election if the committee has made any contribution or expenditure either in support or opposition to any candidate or ballot measure;

(2) Not later than the thirtieth day after an election for a period closing on the twenty-fifth day after the election, if the committee has made any contribution or expenditure either in support of or opposition to any candidate or ballot measure; except that, a successful candidate who takes office prior to the twenty-fifth day after the election shall have complied with the report requirement of this subdivision if a disclosure report is filed by such candidate and any candidate committee under the candidate's control before such candidate takes office, and such report shall be for the period closing on the day before taking office; and

(3) Not later than the fifteenth day following the close of each calendar quarter.

Notwithstanding the provisions of this subsection, if any committee accepts contributions or makes expenditures in support of or in opposition to a ballot measure or a candidate, and the report required by this subsection for the most recent calendar quarter is filed prior to the fortieth day before the election on the measure or candidate, the committee shall file an additional disclosure report not later than the fortieth day before the election for the period closing on the forty-fifth day before the election.

2. In the case of a ballot measure to be qualified to be on the ballot by initiative petition or referendum petition, or a recall petition seeking to remove an incumbent from office, disclosure reports relating to the time for filing such petitions shall be made as follows:

(1) In addition to the disclosure reports required to be filed pursuant to subsection 1 of this section the treasurer of a committee, other than a continuing committee, supporting or opposing a petition effort to qualify a measure to appear on the ballot or to remove an incumbent from office shall file an initial disclosure report fifteen days after the committee begins the process of raising or spending money. After such initial report, the committee shall file quarterly disclosure reports as required by subdivision (3) of subsection 1 of this section until such time as the reports required by subdivisions (1) and (2) of subsection 1 of this section are to be filed. In addition the committee shall file a second disclosure report no later than the fifteenth day after the deadline date for submitting such petition. The period covered in the initial report shall begin on the day the committee first accepted contributions or made expenditures to support or oppose the petition effort for qualification of the measure and shall close on the fifth day prior to the date of the report;

(2) If the measure has qualified to be on the ballot in an election and if a committee subject to the requirements of subdivision (1) of this subsection is also required to file a preelection disclosure report for such election any time within thirty days after the date on which disclosure reports are required to be filed in accordance with subdivision (1) of this subsection, the treasurer of such committee shall not be required to file the report required by subdivision (1) of this subsection, but shall include in the committee's preelection report all information which would otherwise have been required by subdivision (1) of this subsection.

3. The candidate, if applicable, treasurer or deputy treasurer of a committee shall file disclosure reports pursuant to this section, except for any calendar quarter in which the

contributions received by the committee or the expenditures or contributions made by the committee do not exceed five hundred dollars. The reporting dates and periods covered for such quarterly reports shall not be later than the fifteenth day of January, April, July and October for periods closing on the thirty-first day of December, the thirty-first day of March, the thirtieth day of June and the thirtieth day of September. No candidate, treasurer or deputy treasurer shall be required to file the quarterly disclosure report required not later than the fifteenth day of any January immediately following a November election, provided that such candidate, treasurer or deputy treasurer shall file the information required on such quarterly report on the quarterly report to be filed not later than the fifteenth day of April immediately following such November election. Each report by such committee shall be cumulative from the date of the last report. In the case of the continuing committee's first report, the report shall be cumulative from the date of the continuing committee's organization. Every candidate, treasurer or deputy treasurer shall file, at a minimum, the campaign disclosure reports covering the quarter immediately preceding the date of the election and those required by subdivisions (1) and (2) of subsection 1 of this section. A continuing committee shall submit additional reports if it makes aggregate expenditures, other than contributions to a committee, of five hundred dollars or more, within the reporting period at the following times for the following periods:

(1) Not later than the eighth day before an election for the period closing on the twelfth day before the election;

(2) Not later than ~~[forty-eight]~~ **twenty-four** hours after aggregate expenditures of ~~[five]~~ **two** hundred ~~fifty~~ dollars or more are made after the twelfth day before the election; and

(3) Not later than the thirtieth day after an election for a period closing on the twenty-fifth day after the election.

4. The reports required to be filed no later than the thirtieth day after an election and any subsequently required report shall be cumulative so as to reflect the total receipts and disbursements of the reporting committee for the entire election campaign in question. The period covered by each disclosure report shall begin on the day after the closing date of the most recent disclosure report filed and end on the closing date for the period covered. If the committee has not previously filed a disclosure report, the period covered begins on the date the committee was formed; except that in the case of a candidate committee, the period covered begins on the date the candidate became a candidate according to the definition of the term candidate in section 130.011.

5. Notwithstanding any other provisions of this chapter to the contrary:

(1) Certain disclosure reports pertaining to any candidate who receives nomination in a primary election and thereby seeks election in the immediately succeeding general election shall not be required in the following cases:

(a) If there are less than fifty days between a primary election and the immediately succeeding general election, the disclosure report required to be filed quarterly; provided that, any other report required to be filed prior to the primary election and all other reports required to be filed not later than the eighth day before the general election are filed no later than the final dates for filing such reports;

(b) If there are less than eighty-five days between a primary election and the immediately succeeding general election, the disclosure report required to be filed not later than the thirtieth day after the primary election need not be filed; provided that any report required to be filed prior to the primary election and any other report required to be filed prior to the general election are filed no later than the final dates for filing such reports; and

(2) No disclosure report needs to be filed for any reporting period if during that reporting period the committee has neither received contributions aggregating more than five hundred dollars nor made expenditure aggregating more than five hundred dollars and has not received contributions aggregating more than three hundred dollars from any single contributor and if the committee's treasurer files a statement with the appropriate officer that the committee has not exceeded the identified thresholds in the reporting period. Any contributions received or

expenditures made which are not reported because this statement is filed in lieu of a disclosure report shall be included in the next disclosure report filed by the committee. This statement shall not be filed in lieu of the report for two or more consecutive disclosure periods if either the contributions received or expenditures made in the aggregate during those reporting periods exceed five hundred dollars. This statement shall not be filed, in lieu of the report, later than the thirtieth day after an election if that report would show a deficit of more than one thousand dollars.

6. (1) If the disclosure report required to be filed by a committee not later than the thirtieth day after an election shows a deficit of unpaid loans and other outstanding obligations in excess of five thousand dollars, semiannual supplemental disclosure reports shall be filed with the appropriate officer for each succeeding semiannual period until the deficit is reported in a disclosure report as being reduced to five thousand dollars or less; except that, a supplemental semiannual report shall not be required for any semiannual period which includes the closing date for the reporting period covered in any regular disclosure report which the committee is required to file in connection with an election. The reporting dates and periods covered for semiannual reports shall be not later than the fifteenth day of January and July for periods closing on the thirty-first day of December and the thirtieth day of June;

(2) Committees required to file reports pursuant to subsection 2 or 3 of this section which are not otherwise required to file disclosure reports for an election shall file semiannual reports as required by this subsection if their last required disclosure report shows a total of unpaid loans and other outstanding obligations in excess of five thousand dollars.

7. In the case of a committee which disbands and is required to file a termination statement pursuant to the provisions of section 130.021 with the appropriate officer not later than the tenth day after the committee was dissolved, the candidate, committee treasurer or deputy treasurer shall attach to the termination statement a complete disclosure report for the period closing on the date of dissolution. A committee shall not utilize the provisions of subsection 8 of section 130.021 or the provisions of this subsection to circumvent or otherwise avoid the reporting requirements of subsection 6 or 7 of this section.

8. Disclosure reports shall be filed with the appropriate officer not later than 5:00 p.m. prevailing local time of the day designated for the filing of the report and a report postmarked not later than midnight of the day previous to the day designated for filing the report shall be deemed to have been filed in a timely manner. The appropriate officer may establish a policy whereby disclosure reports may be filed by facsimile transmission.

**9. Each candidate for the office of state representative, state senator, and for statewide elected office shall file all disclosure reports described in section 130.041 electronically with the Missouri ethics commission. The Missouri ethics commission shall promulgate rules establishing the standard for electronic filings with the commission and shall propose such rules for the importation of files to the reporting program.**

**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 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, 2006, shall be invalid and void.**

**130.050. OUT-OF-STATE COMMITTEES, REPORTING, CONTENTS — LATE CONTRIBUTION OR LOAN, DEFINED.** — 1. An out-of-state committee which, according to the provisions of subsection 10 of section 130.021, is not required to file a statement of organization and is not required to file the full disclosure reports required by section 130.041 shall file reports with the Missouri ethics commission according to the provisions of this subsection if the committee

makes contributions or expenditures in support of or in opposition to candidates or ballot measures in this state in any election covered by this chapter or makes contributions to any committee domiciled in this state. An initial report shall be filed on or within fourteen days prior to the date such out-of-state committee first makes a contribution or expenditure in this state, and thereafter reports shall be filed at the times and for the reporting periods prescribed in subsection 1 of section 130.046. Each report shall contain:

(1) The full name, address and domicile of the committee making the report and the name, residential and business addresses, domicile and telephone numbers of the committee's treasurer;

(2) The name and address of any entity such as a labor union, trade or business or professional association, club or other organization or any business entity with which the committee is affiliated;

(3) A statement of the total dollar amount of all funds received by the committee in the current calendar year and a statement of the total contributions in the same period from persons domiciled in this state and a list by name, address, date and amount of each Missouri resident who contributed an aggregate of more than two hundred dollars in the current calendar year;

(4) A list by name, address, date and amount regarding any contributor to the out-of-state committee, regardless of state of residency, who made a contribution during the reporting period which was restricted or designated in whole or in part for use in supporting or opposing a candidate, ballot measure or committee in this state or was restricted for use in this state at the committee's discretion, or a statement that no such contributions were received;

(5) A statement as to whether the committee is required to file reports with the Federal Election Commission, and a listing of agencies in other states with which the committee files reports, if any;

(6) A separate listing showing contributions made in support of or opposition to each candidate or ballot measure in this state, together with the date and amount of each contribution;

(7) A separate listing showing contributions made to any committee domiciled in this state with the date and amount of each contribution.

2. In the case of a political party committee's selection of an individual to be the party's nominee for public office in an election covered by this chapter, any individual who seeks such nomination and who is a candidate according to the definition of the term candidate in section 130.011 shall be required to comply with all requirements of this chapter; except that, for the purposes of this subsection, the reporting dates and reporting periods in section 130.046 shall not apply, and the first reporting date shall be no later than the fifteenth day after the date on which a nomination covered by this subsection was made and for the period beginning on the date the individual became a candidate, as the term candidate is defined in section 130.011, and closing on the tenth day after the date the nomination was made, with subsequent reports being made as closely as practicable to the times required in section 130.046.

3. The receipt of any late contribution or loan of more than two hundred fifty dollars by a candidate committee supporting a candidate for statewide office or by any other committee shall be reported to the appropriate officer no later than [forty-eight] **twenty-four** hours after receipt. For purposes of this subsection the term "late contribution or loan" means a contribution or loan received after the closing date of the last disclosure report required to be filed before an election but received prior to the date of the election itself. The disclosure report of a late contribution may be made by any written means of communication, setting forth the name and address of the contributor or lender and the amount of the contribution or loan and need not contain the signatures and certification required for a full disclosure report described in section 130.041. A late contribution or loan shall be included in subsequent disclosure reports without regard to any special reports filed pursuant to this subsection.

**130.054. COMPLAINT, FILING PROCEDURE, WHEN — ETHICS COMMISSION TO INVESTIGATE, PROCEDURE — LIMITATION ON ACCEPTING COMPLAINTS. — 1.** Notwithstanding the provisions of subsection 3 of section 105.957, RSMo, any natural person

may file a complaint with the Missouri ethics commission alleging failure to timely or accurately file a personal financial disclosure statement, a campaign finance disclosure report or a violation of the provisions of this chapter by any candidate for elective office, within sixty days prior to the primary election at which such candidate is running for office, until after the general election. Any such complaint shall be in writing, shall state all facts known by the complainant which have given rise to the complaint, and shall be sworn to, under penalty of perjury, by the complainant.

2. Within the first business day after receipt of a complaint pursuant to this section, the executive director shall supply a copy of the complaint to the person or entity named in the complaint, deleting any material identifying the name of the complainant. The executive director shall notify the complainant and the person or entity named in the complaint of the date and time at which the commission shall audit and investigate the allegations contained in the complaint pursuant to subsection 3 of this section.

3. Within fifteen business days of receipt of a complaint pursuant to this section, the commission shall audit and investigate the allegations contained in the complaint and shall determine by a vote of at least four members of the commission that there are reasonable grounds to believe that a violation of law has occurred within the jurisdiction of the commission. The respondent may reply in writing or in person to the allegations contained in the complaint and may state justifications to dismiss the complaint. The complainant may also present evidence in support of the allegations contained in the complaint, but such evidence shall be limited in scope to the allegations contained in the original complaint, and such complaint may not be supplemented or otherwise enlarged in scope.

4. If, after audit and investigation of the complaint and upon a vote of at least four members of the commission, the commission determines that there are reasonable grounds to believe that a violation of law has occurred within the jurisdiction of the commission, the commission shall proceed with such complaint as provided by sections 105.957 to 105.963, RSMo. If the commission does not determine that there are reasonable grounds to believe that such a violation of law has occurred, the complaint shall be dismissed. If a complaint is dismissed, the fact that such complaint was dismissed, with a statement of the nature of the complaint, shall be made public within twenty-four hours of the commission's action.

5. Any complaint made pursuant to this section, and all proceedings and actions concerning such a complaint, shall be subject to the provisions of subsection 15 of section 105.961, RSMo.

**6. No complaint shall be accepted by the commission within fifteen days prior to the primary or general election at which such candidate is running for office.**

**SECTION 1. STUDY AND REPORT ON POLITICAL TELEPHONE SOLICITATIONS. — The ethics commission shall study methods to improve the regulation of persons and organizations that conduct or utilize political telephone solicitations. The commission shall issue a report containing recommendations to the general assembly no later than January 1, 2007.**

**SECTION B. EFFECTIVE DATE. —** Section A of this act shall become effective January 1, 2007.

Approved July 12, 2006

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HB 1944 [CCS SS SCS HCS HB 1944]

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**EXPLANATION** — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**Changes the laws regarding the use of eminent domain**

AN ACT to repeal sections 99.120, 99.460, 100.420, 238.247, 353.130, 523.040, 523.055, 523.060, 523.200, and 523.205, RSMo, and to enact in lieu thereof twenty-eight new sections relating to eminent domain, with a severability clause.

**SECTION**

- A. Enacting clause.
  - 99.120. Acquisition of property.
  - 99.460. Power of eminent domain — procedure.
  - 100.420. Authority may exercise power of eminent domain.
  - 238.247. Condemnation, subject to commission or authority approval, ordinance of local governing body — procedures — relocation expenses to be paid, how.
  - 353.130. Redevelopment corporation may acquire property.
  - 523.001. Definitions.
  - 523.039. Just compensation for condemned property, amount.
  - 523.040. Appointment of commissioners — duties — notice of property viewing.
  - 523.055. Possession of land delivered, when, notice — writ of possession, executed how.
  - 523.060. Right of trial by jury in condemnation proceedings — jury responsibility in determining fair market value.
  - 523.061. Determination of homestead taking and heritage value.
  - 523.200. Definitions.
  - 523.205. Relocation assistance given, when — definitions — relocation plans — contents — residential payments — business payments — advance payments — waiver — notice — report — ineligibility for tax abatement, when — additional requirements.
  - 523.250. Notice of intended acquisition — mailing requirements.
  - 523.253. Written offer, requirements — explanation of determination of property value.
  - 523.256. Good faith negotiation required, findings, remedies.
  - 523.259. Abandonment of condemnation, remedies — applicability.
  - 523.261. Legislative determinations of areas to be condemned to be supported by substantial evidence, hearing, appeal.
  - 523.262. Power of eminent domain limited, how — private entities to have power of eminent domain — notice.
  - 523.265. Alternative locations for condemnation, procedure.
  - 523.271. Exercise of eminent domain over private property for economic development purposes prohibited — definition.
  - 523.274. Consideration of each parcel of property — time limit on commencement of eminent domain acquisitions.
  - 523.277. Office of ombudsman for property rights.
  - 523.282. Blanket easements void, when — definitions.
  - 523.283. Easement or right-of-way by certain entities fixed by use — definition — commissioners appointed by court — attorneys' fees and costs for prevailing property owners.
    - 1. Declaration of farmland as blighted prohibited — definition.
    - 2. Deduction for gain from conversion of property through condemnation.
    - 3. Petition for vacation of abandoned easement.
- B. Severability clause.

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

**SECTION A. ENACTING CLAUSE.** — Sections 99.120, 99.460, 100.420, 238.247, 353.130, 523.040, 523.055, 523.060, 523.200, and 523.205, RSMo, are repealed and twenty-eight new sections enacted in lieu thereof, to be known as sections 99.120, 99.460, 100.420, 238.247, 353.130, 523.001, 523.039, 523.040, 523.055, 523.060, 523.061, 523.200, 523.205, 523.250, 523.253, 523.256, 523.259, 523.261, 523.262, 523.265, 523.271, 523.274, 523.277, 523.282, 523.283, 1, 2, and 3, to read as follows:

**99.120. ACQUISITION OF PROPERTY.** — An authority whose board members are appointed by one or more elected officials shall have the right to acquire by the exercise of the power of eminent domain any real property in fee simple or other estate which it may deem necessary for its purposes under sections 99.010 to 99.230 after the adoption by it of a resolution

declaring that the acquisition of the real property described therein is necessary for such purposes. An authority may exercise the power of eminent domain in the manner provided for corporations in chapter 523, RSMo; or it may exercise the power of eminent domain in the manner provided by any other applicable statutory provision for the exercise of the power of eminent domain]. Property already devoted to a public use may be acquired in like manner, provided that no real property belonging to the city, the county, the state or any political subdivision thereof may be acquired without its consent.

**99.460. POWER OF EMINENT DOMAIN — PROCEDURE.** — 1. An authority **whose board members are appointed by one or more elected officials** shall have the right to acquire by the exercise of the power of eminent domain any real property which it may deem necessary for a land clearance project or for its purposes under this law after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. An authority may exercise the power of eminent domain in the manner and under the procedure provided for corporations in [sections 523.010 to 523.070, inclusive, and 523.090 and 523.100] **chapter 523, RSMo**, and acts amendatory thereof or supplementary thereto; or it may exercise the power of eminent domain in the manner now or which may be hereafter provided by any other statutory provision available to the community, and, as to an authority in a constitutional charter city in the manner provided in the charter of said city for the exercise of the power of eminent domain] .

2. Property already devoted to a public use may be acquired in like manner, provided that no real property belonging to the municipality, the county or the state may be acquired without its consent.

**100.420. AUTHORITY MAY EXERCISE POWER OF EMINENT DOMAIN.** — 1. An authority **whose board members are appointed by one or more elected officials** shall have the right to acquire by the exercise of the power of eminent domain any real property which it may deem necessary for a project or for its purposes under this law after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. Any authority may exercise the power of eminent domain in the manner and under the procedure provided for corporations in [sections 523.010 to 523.070, inclusive, and 523.090 and 523.100] **chapter 523, RSMo**, and acts amendatory thereof or supplementary thereto; or it may exercise the power of eminent domain in the manner now or which may be hereafter provided by any other statutory provision available to the city, and, as to an authority in a constitutional charter city, in the manner provided in the charter of said city for the exercise of the power of eminent domain] .

2. Property already devoted to a public use may be acquired in like manner, provided that no real property belonging to the municipality, the county or the state may be acquired without its consent.

**238.247. CONDEMNATION, SUBJECT TO COMMISSION OR AUTHORITY APPROVAL, ORDINANCE OF LOCAL GOVERNING BODY — PROCEDURES — RELOCATION EXPENSES TO BE PAID, HOW.** — 1. The district may condemn lands for a project in the name of the state of Missouri, upon prior approval by the commission, or the local transportation authority **and by ordinance of the local governing body** as appropriate, as to the necessity for the taking of the description of the parcel and the interest taken in that parcel.

2. If condemnation becomes necessary the district shall act under chapter 523, RSMo, and may condemn a fee simple or other interest in land.

3. The district may, after prior notice to the owner to enter upon private property, survey and determine the most advantageous route and design. The district shall be liable for all damages done to the property by such inspection.

4. Any person who involuntarily transfers any interest in land to a district which becomes insolvent and comes under the jurisdiction of a court may reacquire that property by paying to the district the total amount of the condemnation award for that parcel, plus statutory interest at the statutory rate from the date of taking on the amount of that award, if the project will not be completed by either the district, the commission or a local transportation authority.

5. Whenever a district undertakes any project which results in the acquisition of real property or in any person or persons being displaced from their homes, businesses, or farms, the district shall provide relocation assistance and make relocation payments to such displaced person and do such other acts and follow such procedures as would be necessary to comply with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

**353.130. REDEVELOPMENT CORPORATION MAY ACQUIRE PROPERTY.** — 1. An urban redevelopment corporation may acquire real property or secure options in its own name or, in the name of nominees, it may acquire real property by gift, grant, lease, purchase, or otherwise.

2. An urban redevelopment corporation **operating pursuant to a redevelopment agreement with a municipality for a particular redevelopment area, which agreement was executed prior to or on December 31, 2006**, shall have the right to acquire by the exercise of the power of eminent domain any real property **in such redevelopment area** in fee simple or other estate which is necessary to accomplish the purpose of this chapter, under such conditions and only when so empowered by the legislative authority of the cities affected by this chapter.

3. An urban redevelopment corporation **operating pursuant to a redevelopment agreement with a municipality for a particular redevelopment area, which agreement was executed prior to or on December 31, 2006**, may exercise the power of eminent domain **in such redevelopment area** in the manner provided for corporations in chapter 523, RSMo; or it may exercise the power of eminent domain in the manner provided by any other applicable statutory provision for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired in like manner, provided that no real property belonging to any city, county, or the state, or any political subdivision thereof may be acquired without its consent.

**523.001. DEFINITIONS.** — For the purposes of this chapter, the following terms shall mean:

(1) "Fair market value", the value of the property taken after considering comparable sales in the area, capitalization of income, and replacement cost less depreciation, singularly or in combination, as appropriate, and additionally considering the value of the property based upon its highest and best use, using generally accepted appraisal practices. If less than the entire property is taken, fair market value shall mean the difference between the fair market value of the entire property immediately prior to the taking and the fair market value of the remaining or burdened property immediately after the taking;

(2) "Heritage value", the value assigned to any real property, including but not limited to, real property owned by a business enterprise with fewer than one hundred employees, that has been owned within the same family for fifty or more years, such value to be fifty percent of fair market value;

(3) "Homestead taking", any taking of a dwelling owned by the property owner and functioning as the owner's primary place of residence or any taking of the owner's property within three hundred feet of the owner's primary place of residence that prevents the owner from utilizing the property in substantially the same manner as it is currently being utilized.

**523.039. JUST COMPENSATION FOR CONDEMNED PROPERTY, AMOUNT.** — In all condemnation proceedings filed after December 31, 2006, just compensation for

condemned property shall be determined under one of the three following subdivisions, whichever yields the highest compensation, as applicable to the particular type of property and taking:

- (1) An amount equivalent to the fair market value of such property;
- (2) For condemnations that result in a homestead taking, an amount equivalent to the fair market value of such property multiplied by one hundred twenty-five percent; or
- (3) For condemnations of property that result in any taking that prevents the owner from utilizing property in substantially the same manner as it was currently being utilized on the day of the taking and involving property owned within the same family for fifty or more years, an amount equivalent to the sum of the fair market value and heritage value. For the purposes of this subdivision, family ownership of property may be established through evidence of ownership by children, grandchildren, siblings, or nephews or nieces of the family member owning the property fifty years prior to the taking; and in addition, may be established through marriage or adoption by such family members. If any entity owns the real property, members of the family shall have an ownership interest in more than fifty percent of the entity in order to be within the family line of ownership for the purposes of this subdivision. The property owner shall have the burden of proving to the commissioners or jury that the property has been owned within the same family for fifty or more years.

**523.040. APPOINTMENT OF COMMISSIONERS — DUTIES — NOTICE OF PROPERTY VIEWING. — 1.** The court, or judge thereof in vacation, on being satisfied that due notice of the pendency of the petition has been given, shall appoint three disinterested commissioners, who shall be residents of the county in which the real estate or a part thereof is situated, to assess the damages which the owners may severally sustain by reason of such appropriation, who, **within forty-five days after appointment by the court, which forty-five days may be extended by the court to a date certain with good cause shown, after applying the definition of fair market value contained in subdivision (1) of section 523.001, and** after having viewed the property, shall return to the clerk of such court, under oath, their report in duplicate, of such assessment of damages, setting forth the amount of damages allowed to the person or persons named as owning or claiming the tract of land condemned, and should more than one tract be condemned in the petition, then the damages allowed to the owner, owners, claimant or claimants of each tract, respectively, shall be stated separately, together with a specific description of the tracts for which such damages are assessed; and the clerk shall file one copy of said report in his office and record the same in the order book of the court, and he shall deliver the other copy, duly certified by him, to the recorder of deeds of the county where the land lies (or to the recorder of deeds of the city of St. Louis, if the land lies in said city) who shall record the same in his office, and index each tract separately as provided in section 59.440, RSMo, and the fee for so recording shall be taxed by the clerk as costs in the proceedings; and thereupon such company shall pay to the clerk the amount thus assessed for the party in whose favor such damages have been assessed; and on making such payment it shall be lawful for such company to hold the interest in the property so appropriated for the uses prescribed in this section; and upon failure to pay the assessment, the court may, upon motion and notice by the party entitled to such damages, enforce the payment of the same by execution, unless the said company shall, within ten days from the return of such assessment, elect to abandon the proposed appropriation of any parcel of land, by an instrument in 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 shall be void.

**2.** Prior to the issuance of any report under subsection 1 of this section, a commissioner shall notify all parties named in the condemnation petition no less than ten days prior to the commissioners' viewing of the property of the named parties' opportunity to accompany the commissioners on the commissioners' viewing of the

property and of the named parties' opportunity to present information to the commissioners.

3. The commissioners shall view the property, hear arguments, and review other relevant information that may be offered by the parties.

**523.055. POSSESSION OF LAND DELIVERED, WHEN, NOTICE — WRIT OF POSSESSION, EXECUTED HOW.** — In any action to condemn lands under the power of eminent domain, where the condemnor has paid into the office of the clerk of the circuit court the amount of damages assessed by commissioners pursuant to law, the circuit clerk shall give the owners or those in possession written notice of such fact within five days. If the owners or those in possession do not deliver possession of the property condemned within ten days after the receipt of notice of the payment of the award, then on the request of the condemnor the court shall issue a writ of possession directing the sheriff to deliver the possession of such property to the condemnor forthwith; except that the court may upon the motion of [said] **the occupants or** owners grant them such extension of time, not to exceed ninety days, as the court finds to be reasonable under all the circumstances. **However, any displaced owner of a principal place of residence shall have one hundred days from the date of the award.** The writ of possession shall be executed in the manner provided by law for the execution of writs of possession in ejectment suits for the recovery of land. If a writ of possession is issued or a motion filed asking for an extension [by said owners], then all costs accrued in executing the writ and in the hearing of the motion may be assessed against the said owners.

**523.060. RIGHT OF TRIAL BY JURY IN CONDEMNATION PROCEEDINGS — JURY RESPONSIBILITY IN DETERMINING FAIR MARKET VALUE.** — 1. Any plaintiff or defendant, individual or corporate, shall have the right of trial by jury of twelve persons, if either party file exceptions to the award of commissioners in any condemnation case.

2. **Such jury shall use the definition of fair market value provided for in subdivision (1) of section 523.001.**

**523.061. DETERMINATION OF HOMESTEAD TAKING AND HERITAGE VALUE.** — **After the filing of the commissioners' report pursuant to section 523.040, the circuit judge presiding over the condemnation proceeding shall apply the provisions of section 523.039 and shall determine whether a homestead taking has occurred and shall determine whether heritage value is payable and shall increase the commissioners' award to provide for the additional compensation due where a homestead taking occurs or where heritage value applies, in accordance with the just compensation provisions of section 523.039. If a jury trial of exceptions occurs under section 523.060, the circuit judge presiding over the condemnation proceeding shall apply the provisions of section 523.039 and shall determine whether a homestead taking has occurred and shall determine whether heritage value is payable and shall increase the jury verdict to provide for the additional compensation due where a homestead taking occurs or where heritage value applies, in accordance with the just compensation provisions of section 523.039.**

**523.200. DEFINITIONS.** — As used in sections 523.200 to 523.215, the following words mean:

(1) "Displaced person", any person that moves from the real property or moves his personal property from the real property permanently and voluntarily as a direct result of the acquisition, rehabilitation or demolition of, or the written notice of intent to acquire such real property, in whole or in part, for a public purpose;

(2) "Public agency", the state of Missouri or any political subdivision or any branch, bureau or department thereof, **any public school district**, and any quasi-public corporation created or

existing by law which are authorized to acquire real property for public purpose and which acquire any such property either partly or wholly with aid or reimbursement from federal funds;

(3) "Urban redevelopment corporation", as defined in section 353.020, RSMo.

**523.205. RELOCATION ASSISTANCE GIVEN, WHEN — DEFINITIONS — RELOCATION PLANS — CONTENTS — RESIDENTIAL PAYMENTS — BUSINESS PAYMENTS — ADVANCE PAYMENTS — WAIVER — NOTICE — REPORT — INELIGIBILITY FOR TAX ABATEMENT, WHEN—ADDITIONAL REQUIREMENTS.** — 1. Any public agency as defined in section 523.200 which is required, as a condition to the receipt of federal funds[,] to give relocation assistance to any displaced person, is hereby authorized and directed to give similar relocation assistance to displaced persons when the property involved is being acquired for the same public purpose through the same procedures, and is being purchased solely through expenditure of state or local funds.

2. [The governing body of any city, or agency thereof, prior to approval of a plan, project or area for redevelopment under the operation of chapter 99, RSMo, chapter 100, RSMo, or chapter 353, RSMo,] **Any political subdivision, governmental entity, or corporation created under chapter 353, RSMo, initiating condemnation proceedings** which [proposes or includes within its provisions or necessitates] **may necessitate** displacement of persons, when such displacement is not subject to the provisions of the Federal Uniform Relocation and Real Property Acquisition Policies Act of 1970 (42 U.S.C. sections 4601 to 4655, as amended) or subsection 1 of this section, shall establish by ordinance or rule a relocation policy which shall include, but not be limited to, the provisions and requirements of subsections 2 to 15 of this section, or in lieu thereof, such relocation policy shall contain provisions and requirements which are equivalent to the requirements of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. sections 4601 to 4655, as amended).

3. As used in this section, the following terms shall mean:

(1) "Business", any lawful activity that is conducted:

(a) Primarily for the purchase, sale or use of personal or real property or for the manufacture, processing or marketing of products or commodities; [or]

(b) Primarily for the sale of services to the public; **or**

(c) **On a not-for-profit basis by any organization that has obtained an exemption from the payment of federal income taxes as provided in section 501(c)(3) of Title 26, U.S.C., as amended, and veterans organizations;**

(2) "Decent, safe and sanitary dwelling", a dwelling which meets applicable housing and occupancy codes. The dwelling shall:

(a) Be structurally sound, weathertight and in good repair;

(b) Contain a safe electrical wiring system;

(c) Contain an adequate heating system;

(d) Be adequate in size with respect to the number of rooms needed to accommodate the displaced person; and

(e) For a handicapped person, be free of any barriers which would preclude reasonable ingress, egress or use of the dwelling;

(3) "Handicapped person", any person who is deaf, legally blind or orthopedically disabled to the extent that acquisition of another residence presents a greater burden than other persons would encounter or to the extent that modifications to the replacement residence would be necessary;

(4) ["Initiation of negotiations", the delivery of the initial written offer of just compensation by the acquiring entity, to the owner of the real property, to purchase such real property for the project, or the notice to the person that he will be displaced by rehabilitation or demolition;

(5) "Person", any individual, family, partnership, corporation, or association, **that has a legal right to occupy the property, including but not limited to, month-to-month tenants.**

4. Every urban redevelopment corporation acquiring property within a redevelopment area shall submit a relocation plan as part of the redevelopment plan.

5. Unless the property acquisition under the operation of chapter 99, RSMo, chapter 100, RSMo, or chapter 353, RSMo, is subject to federal relocation standards or subsection 1 of this section, the relocation plan shall provide for the following:

(1) Payments to all eligible displaced persons, as defined in **section 523.200**, who occupied the property to be acquired for not less than ninety days prior to the initiation of negotiations who are required to vacate the premises;

(2) A program for identifying special needs of displaced persons with specific consideration given to income, age, size of family, nature of business, availability of suitable replacement facilities and vacancy rates of affordable facilities;

(3) **A program for providing proper and timely notice to all displaced persons, including a general description of their potential rights and benefits if they are displaced, their eligibility for relocation assistance, and the nature of that assistance. The notices required for compliance with this section are as follows:**

(a) **A general information notice that shall be issued at the approval and selection of a designated redeveloper and shall inform residential and nonresidential owners and occupants of a potential project, including the potential acquisition of the property;**

(b) **A notice of relocation eligibility that shall be issued as soon as feasible after the execution of the redevelopment agreement and shall inform residential and nonresidential occupants within the project area who will be displaced of their relocation assistance and nature of that assistance, including ninety days advance notice of the date the occupants must vacate;**

(4) A program for referrals of displaced persons with provisions for a minimum of three decent, safe and sanitary housing referrals for residential persons or suitable referral sites for displaced businesses, a minimum of ninety days' notice of referral sites for [handicapped displaced persons and sixty days' notice of referral sites for] all [other] displaced persons prior to the date such displaced persons are required to vacate the premises, and arrangements for transportation to inspect referral sites; and

~~[(4)]~~ (5) Every displaced person shall be given a ninety-day notice to vacate, prior to the date such displaced person is required to vacate the premises.

6. All displaced residential persons eligible for payments shall be provided with relocation payments based upon one of the following, at the option of the person:

(1) A [five-hundred-dollar] **one thousand dollar fixed moving expense** payment; or

(2) Actual reasonable costs of relocation including, **but not limited to**, actual moving costs, utility deposits, key deposits, storage of personal property up to one month, utility transfer and connection fees and other initial rehousing deposits including first and last month's rent and security deposit. **Such costs of relocation shall not include the cost of a replacement property or any capital improvements thereto.**

7. All displaced businesses eligible for payments shall be provided with relocation payments based upon the following, at the option of the business:

(1) A [one-thousand-five-hundred-dollar] **three thousand dollar fixed moving expense payment and up to an additional ten thousand dollars for reestablishment expenses. Reestablishment expenses are limited to costs incurred for physical improvements to the replacement property to accommodate the particular business at issue;** or

(2) Actual costs of moving including costs for packing, crating, disconnection, dismantling, reassembling and installing all personal equipment and costs for relettering similar signs and similar replacement stationery, **and up to an additional ten thousand dollars for reestablishment expenses. Reestablishment expenses are limited to actual costs incurred for physical improvements to the replacement property to accommodate the particular business at issue.**

8. If a displaced person demonstrates the need for an advance relocation payment, in order to avoid or reduce a hardship, the developer or public agency shall issue the payment subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished. Payment for a satisfactory claim shall be made within thirty days following receipt of sufficient documentation to support the claim. All claims for relocation payment shall be filed with the displacing agency within six months after:

- (1) For tenants, the date of displacement;
- (2) For owners, the date of displacement or the final payment for the acquisition of the real property, whichever is later.

9. Any displaced person, who is also the owner of the premises, may waive relocation payments as part of the negotiations for acquisition of the interest held by such person. Such waiver shall be in writing, shall disclose the person's knowledge of the provisions of this section and his entitlement to payment and shall be filed with the acquiring public agency. **However, any such waiver shall not include a waiver of any notice provisions of this section, and a displaced person shall remain entitled to all of the provisions regarding programs which are contained in subdivisions (2) and (3) of subsection 5 of this section.**

10. All persons eligible for relocation benefits shall be notified in writing of the availability of such relocation payments and assistance, with such notice to be given concurrently with the notice of referral sites as required in subdivision (3) of subsection 5 of this section.

11. Any urban redevelopment corporation, its assigns or transferees, which have been provided any assistance under the operation of chapter 99, RSMo, chapter 100, RSMo, chapter 353, RSMo, or this chapter, with land acquisition by the local governing body, shall be required to make a report to the local governing body or appropriate public agency which shall include, but not be limited to, the addresses of all occupied residential buildings and structures within the redevelopment area and the names and addresses of persons displaced by the redeveloper and specific relocation benefits provided to each person, as well as a sample notice provided to each person.

12. An urban redevelopment corporation which fails to comply with the relocation requirements provided in this section shall not be eligible for tax abatement as provided for in chapter 353, RSMo.

13. The requirements set out in this section shall be considered minimum standards. In reviewing any proposed relocation plan under the operation of chapter 99, RSMo, chapter 100, RSMo, or chapter 353, RSMo, the local governing body or public agency shall determine the adequacy of the proposal and may require additional elements to be provided.

14. Relocation assistance shall not be provided to any person who purposely resides or locates his business in a redevelopment area solely for the purpose of obtaining relocation benefits.

15. The provisions of sections 523.200 and 523.205 shall apply to land acquisitions under the operation of chapter 99, RSMo, chapter 100, RSMo, or chapter 353, RSMo, filed for approval, approved or amended on or after August 31, 1991, **and, as provided by subsection 2 of this section, any other land acquisition by a political subdivision or governmental entity through condemnation proceedings initiated after December 31, 2006.**

**523.250. NOTICE OF INTENDED ACQUISITION — MAILING REQUIREMENTS. — 1. At least sixty days before filing of a condemnation petition seeking to acquire an interest in real property, the condemning authority shall provide the owner of record of such property with a written notice concerning the intended acquisition. Such notice shall include:**

- (1) Identification of the interest in real property to be acquired and a statement of the legal description or commonly known location of the property;**
- (2) The purpose or purposes for which the property is to be acquired;**
- (3) A statement that the property owner has the right to:**

- (a) Seek legal counsel at the owner's expense;
- (b) Make a counteroffer and engage in further negotiations;
- (c) Obtain such owner's own appraisal of just compensation;
- (d) Have just compensation determined preliminarily by court-appointed condemnation commissioners and, ultimately, by a jury;
- (e) Seek assistance from the office of the ombudsman for property rights created under section 523.277;
- (f) Contest the right to condemn in the condemnation proceeding; and
- (g) Exercise the rights to request vacation of an easement under the procedures and circumstances provided for in section 3 of this act.

An owner may waive the requirements of this subsection prescribed above in a writing executed by the owner.

2. The written notice required by this section shall be deposited in the United States mail, certified or registered, and with postage prepaid, addressed to the owner of record as listed in the office of the city or county assessor for the city or county in which the property is located. The receipt issued to the condemning authority by the United States Post Office for certified or registered mail shall constitute proof of compliance with this notice requirement; provided, however, that nothing in this section shall preclude a condemning authority from proving compliance with this notice requirement by other competent evidence.

**523.253. WRITTEN OFFER, REQUIREMENTS — EXPLANATION OF DETERMINATION OF PROPERTY VALUE.** — 1. A condemning authority shall present a written offer to all owners of record of the property. The offer must be made at least thirty days before filing a condemnation petition and shall be held open for the thirty-day period unless an agreement is reached sooner. The offer shall be deposited in the United States mail, certified or registered, and with postage prepaid, addressed to the owner of record as listed in the office of the city or county assessor for the city or county in which the property is located. The receipt issued to the condemning authority by the United States Post Office for certified or registered mail shall constitute proof of compliance with this requirement; provided, however, that nothing in this section shall preclude a condemning authority from proving compliance with this requirement by other competent evidence. Nothing in this section shall prohibit the parties from negotiating during the thirty-day period.

2. (1) Any condemning authority shall, at the time of the offer, provide the property owner with an appraisal or an explanation with supporting financial data for its determination of the value of the property for purposes of the offer made in subsection 1 of this section.

(2) Any appraisal referred to in this section shall be made by a state-licensed or state-certified appraiser using generally accepted appraisal practices.

**523.256. GOOD FAITH NEGOTIATION REQUIRED, FINDINGS, REMEDIES.** — Before a court may enter an order of condemnation, the court shall find that the condemning authority engaged in good faith negotiations prior to filing the condemnation petition. A condemning authority shall be deemed to have engaged in good faith negotiations if:

- (1) It has properly and timely given all notices to owners required by this chapter;
- (2) Its offer under section 523.253 was no lower than the amount reflected in an appraisal performed by a state-licensed or state-certified appraiser for the condemning authority, provided an appraisal is given to the owner pursuant to subsection 2 of section 523.253 or, in other cases, the offer is no lower than the amount provided in the basis for its determination of the value of the property as provided to the owner under subsection 2 of section 523.253;

(3) The owner has been given an opportunity to obtain his or her own appraisal from a state-licensed or state-certified appraiser of his or her choice; and

(4) Where applicable, it has considered an alternate location suggested by the owner under section 523.265.

If the court does not find that good faith negotiations have occurred, the court shall dismiss the condemnation petition, without prejudice, and shall order the condemning authority to reimburse the owner for his or her actual reasonable attorneys' fees and costs incurred with respect to the condemnation proceeding which has been dismissed.

**523.259. ABANDONMENT OF CONDEMNATION, REMEDIES — APPLICABILITY. — 1.** If any condemning authority abandons a condemnation, each owner of interests sought to be condemned shall be entitled to recover:

(1) Their reasonable attorneys' fees, expert expenses and costs; and

(2) The lesser of:

(a) The owner's actual damages accruing as a direct and proximate result of the pendency of the condemnation if proven by the owner; or

(b) The damages required to be paid to an owner in the event of an abandonment under the terms of the applicable redevelopment plan or agreement.

In the event that the applicable redevelopment plan or agreement is silent as to damages required to be paid to an owner in the event of an abandonment, a court shall order the condemning authority to pay the owner's actual reasonable attorneys' fees and expenses, and shall award damages accruing as a direct and proximate result of the pendency of the condemnation if proven by the landowner.

2. The provisions of this section shall only apply to redevelopment plans or agreements entered into after December 31, 2006.

**523.261. LEGISLATIVE DETERMINATIONS OF AREAS TO BE CONDEMNED TO BE SUPPORTED BY SUBSTANTIAL EVIDENCE, HEARING, APPEAL. —** Solely with regard to condemnation actions pursuant to the authority granted by section 21, article VI, Constitution of Missouri and laws enacted pursuant thereto, any legislative determination that an area is blighted, substandard, or unsanitary shall not be arbitrary or capricious or induced by fraud, collusion, or bad faith and shall be supported by substantial evidence. A condemning authority or the affected property owner may seek a determination as to whether these standards have been met by a court of competent jurisdiction in any condemnation action filed to acquire the owner's property or in an action seeking a declaratory judgment. Upon the filing of such a declaratory judgment or when such a defense is raised in a condemnation proceeding, the circuit court shall give the case preference in the order of hearing to all other cases, except elections cases, to the extent necessary to conclude the case within thirty days of having been filed. Either party may thereafter file an interlocutory appeal of the circuit court's order upholding or rejecting the legislative body's determination. Any subsequent or interlocutory appeal to a higher court on the appeal of the legislative determination shall be given preference and concluded in an expedited manner similar to the manner set forth herein for a hearing in circuit court. An interlocutory appeal shall not stay proceedings in the court unless the court of appeals so orders.

**523.262. POWER OF EMINENT DOMAIN LIMITED, HOW — PRIVATE ENTITIES TO HAVE POWER OF EMINENT DOMAIN — NOTICE. — 1.** Except as set forth in subsection 2 of this section, the power of eminent domain shall only be vested in governmental bodies or agencies whose governing body is elected or whose governing body is appointed by elected officials or in an urban redevelopment corporation operating pursuant to a redevelopment

agreement with the municipality for a particular redevelopment area, which agreement was executed prior to or on December 31, 2006.

2. A private utility company, public utility, rural electric cooperative, municipally owned utility, pipeline, railroad or common carrier shall have the power of eminent domain as may be granted pursuant to the provisions of other sections of the revised statutes of Missouri. For the purposes of this section, the term "common carrier" shall not include motor carriers, contract carriers, or express companies. Where a condemnation by such an entity results in a displaced person, as defined in section 523.200, the provisions of subsections 3 and 6 to 10 of section 523.205 shall apply unless the condemning entity is subject to the relocation assistance provisions of the federal Uniform Relocation Assistance Act.

3. Any entity with the power of eminent domain and pursuing the acquisition of property for the purpose of constructing a power generation facility after December 31, 2006, after providing notice in a newspaper of general circulation in the county where the facility is to be constructed, shall conduct a public meeting disclosing the purpose of the proposed facility prior to making any offer to purchase property in pursuit thereof or, alternatively, shall provide the property owner with notification of the identity of the condemning authority and the proposed purpose for which the condemned property shall be used at the time of making the initial offer.

**523.265. ALTERNATIVE LOCATIONS FOR CONDEMNATION, PROCEDURE.** — With regard to property interests acquired by condemnation or negotiations in lieu of the exercise thereof, within thirty days of receiving a written notice sent under section 523.250, the landowner may propose to the condemning authority in writing an alternative location for the property to be condemned, which alternative location shall be on the same parcel of the landowner's property as the property the condemning authority seeks to condemn. The proposal shall describe the alternative location in such detail that the alternative location is clearly defined for the condemning authority. The condemning authority shall consider all such alternative locations. This section shall not apply to takings of an entire parcel of land. A written statement by the condemning authority to the landowner that it has considered all such alternative locations, and briefly stating why they were rejected or accepted, is conclusive evidence that sufficient consideration was given to the alternative locations.

**523.271. EXERCISE OF EMINENT DOMAIN OVER PRIVATE PROPERTY FOR ECONOMIC DEVELOPMENT PURPOSES PROHIBITED — DEFINITION.** — 1. No condemning authority shall acquire private property through the process of eminent domain for solely economic development purposes.

2. For the purposes of this section, "economic development" shall mean a use of a specific piece of property or properties which would provide an increase in the tax base, tax revenues, employment, and general economic health, and does not include the elimination of blighted, substandard, or unsanitary conditions, or conditions rendering the property or its surrounding area a conservation area as defined in section 99.805, RSMo.

**523.274. CONSIDERATION OF EACH PARCEL OF PROPERTY — TIME LIMIT ON COMMENCEMENT OF EMINENT DOMAIN ACQUISITIONS.** — 1. Where eminent domain authority is based upon a determination that a defined area is blighted, the condemning authority shall individually consider each parcel of property in the defined area with regard to whether the property meets the relevant statutory definition of blight. If the condemning authority finds a preponderance of the defined redevelopment area is blighted, it may proceed with condemnation of any parcels in such area.

2. No action to acquire property by eminent domain within a redevelopment area shall be commenced later than five years from the date of the legislative determination, by ordinance, or otherwise, that the property is blighted, substandard, contains unsanitary conditions, or is eligible for classification within a conservation area as defined in section 99.805, RSMo. However, such determination may be renewed for successive five-year periods by the legislative body.

**523.277. OFFICE OF OMBUDSMAN FOR PROPERTY RIGHTS.** — The office of public counsel shall create an office of ombudsman for property rights by appointing a person to the position of ombudsman. The ombudsman shall assist citizens by providing guidance, which shall not constitute legal advice, to individuals seeking information regarding the condemnation process and procedures. The ombudsman shall document the use of eminent domain within the state and any issues associated with its use and shall submit a report to the general assembly on January 1, 2008, and on such date each year thereafter.

**523.282. BLANKET EASEMENTS VOID, WHEN — DEFINITIONS.** — 1. Any blanket easement created after December 31, 2006, shall be void as against public policy and wholly unenforceable. For the purposes of this section, the term "blanket easement" shall mean an easement in real property acquired by condemnation or negotiations in lieu of the exercise thereof where the instrument or order of condemnation, by its terms, allows the easement holder to locate its facilities at an undefined location on, over, under, or across the burdened property.

2. Notwithstanding the provisions of subsection 1 of this section to the contrary, the term "blanket easement" shall not apply to any instrument containing language that upon completion of the initial structure explicitly fixes the burden, scope of use, and footprint within the express terms of the instrument and also contains an express statement that the location of the burden shall be fixed to the degree occupied by the initial structure upon completion of such structure. Nothing in this section shall prohibit the expansion or upgrade of the initially completed structure provided that the purpose or purposes and footprint of said expansion or upgrade were explicitly described in the original terms of the instrument.

**523.283. EASEMENT OR RIGHT-OF-WAY BY CERTAIN ENTITIES FIXED BY USE — DEFINITION — COMMISSIONERS APPOINTED BY COURT — ATTORNEYS' FEES AND COSTS FOR PREVAILING PROPERTY OWNERS.** — 1. Easements or right-of-way interests acquired after August 28, 2006, by a private utility company, public utility, rural electric cooperative, municipally owned utility, pipeline, or railroad, by either formal condemnation proceedings or by negotiations in lieu of condemnation proceedings, are fixed and determined by the particular use for which the property was acquired as described in either the instrument of conveyance or in the condemnation petition. Expanded use of the property beyond that which is described in the instrument of conveyance or the condemnation petition shall require either an additional condemnation proceeding in order to acquire the additional rights or by new negotiations for the expanded use of the property and appropriate consideration and damages to the current owner of the property for the expanded use.

2. For purposes of this section, the term "expanded use" shall mean:

(1) The exclusion of use by the current owner of the burdened property from an area greater than the area originally described at the time of acquisition by the condemning authority; or

(2) An increased footprint or burden greater than the footprint or burden originally described in the instrument of conveyance or condemnation petition. As used in this

subdivision, the term "increased footprint or burden" shall mean a different type of use or a use presenting an unreasonably burdensome impact on the property, the landowner, or the activities being conducted on the property by the landowner.

3. Commissioners appointed by the court under section 523.040 and, where applicable, a jury on a trial of exceptions from the commissioners' award, shall be entitled to assume, in assessing the just compensation due for a taking, that the condemning authority shall exercise, from and after the date the property interest is acquired, each and every right acquired to the fullest extent allowed by the condemnation petition.

4. If a property owner prevails in an action for trespass or expanded use against a private utility company, public utility, rural electric cooperative, municipally owned utility, pipeline, or railroad, such property owner may be awarded reasonable attorneys' fees, costs, and expenses.

**SECTION 1. DECLARATION OF FARMLAND AS BLIGHTED PROHIBITED — DEFINITION.**

— 1. No condemning authority shall declare farmland blighted for the purposes of exercising eminent domain.

2. For the purposes of this section only, the term "farmland" shall mean all real property classified as forest cropland or all real property used for agricultural purposes and devoted primarily to the raising and harvesting of crops; to the feeding, breeding, and management of livestock which shall include breeding and boarding of horses; to dairy operations, or to any combination thereof; and buildings and structures customarily associated with farming, agricultural, and horticultural uses. "Farmland" shall also include land devoted to and qualifying for payments or other compensation under a soil conservation or agricultural assistance program under an agreement with an agency of the federal government.

**SECTION 2. DEDUCTION FOR GAIN FROM CONVERSION OF PROPERTY THROUGH CONDEMNATION.** — In addition to the modifications to a taxpayer's federal adjusted gross income in section 143.121, RSMo, to calculate Missouri adjusted gross income there shall be subtracted from the taxpayer's federal adjusted gross income any gain recognized pursuant to section 1033 of the Internal Revenue Code of 1986, as amended, arising from compulsory or involuntary conversion of property as a result of condemnation or the imminence thereof.

**SECTION 3. PETITION FOR VACATION OF ABANDONED ACCOUNT.** — A property owner of land burdened by an easement created after December 31, 2006, abandoned in whole for a period in excess of ten years, may petition a court of competent jurisdiction to obtain the rights previously transferred and vacation of the easement for monetary consideration equal to the original consideration obtained by the property owner in exchange for the easement. The holder of the easement shall be a party to such action. The holder of any such easement shall be allowed to maintain the easement upon a showing that the holder, in good faith, plans to make future use of the easement. The right to request that an easement be vacated may be waived by the property owner of record from whom the easement was originally acquired or by such property owner's successor in title to the burdened property either in the original instrument of conveyance or in a subsequent signed writing.

**SECTION B. SEVERABILITY CLAUSE.** — Pursuant to section 1.140, RSMo, the provisions of this act are severable. If any provision of this act is declared invalid or unconstitutional, it is

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the intent of the legislature at the remaining portions of this act shall remain and be in full force and effect.

Approved July 13, 2006

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