SB 19 [SCS SB 19]

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

Phases-out the corporate franchise tax over a five-year period.

AN ACT to repeal section 147.010, RSMo, and to enact in lieu thereof one new section relating to the phase-out of the corporate franchise tax.

SECTION
A. Enacting clause.
147.010. Annual franchise tax, rate — exceptions.

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

SECTION A. ENACTING CLAUSE. — Section 147.010, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 147.010, to read as follows:

147.010. ANNUAL FRANCHISE TAX, RATE — EXCEPTIONS. — 1. For the transitional year defined in subsection 4 of this section and each taxable year beginning on or after January 1, 1980, but before January 1, 2000, every corporation organized pursuant to or subject to chapter 351 or pursuant to any other law of this state shall, in addition to all other fees and taxes now required or paid, pay an annual franchise tax to the state of Missouri equal to one-twentieth of one percent of the par value of its outstanding shares and surplus if its outstanding shares and surplus exceed two hundred thousand dollars, or if the outstanding shares of such corporation or any part thereof consist of shares without par value, then, in that event, for the purpose contained in this section, such shares shall be considered as having a value of five dollars per share unless the actual value of such shares exceeds five dollars per share, in which case the tax shall be levied and collected on the actual value and the surplus if the actual value and the surplus exceed two hundred thousand dollars. If such corporation employs a part of its outstanding shares in business in another state or country, then such corporation shall pay an annual franchise tax equal to one-twentieth of one percent of its outstanding shares and surplus employed in this state if its outstanding shares and surplus employed in this state **exceed** two hundred thousand dollars, and for the purposes of sections 147.010 to 147.120, such corporation shall be deemed to have employed in this state that proportion of its entire outstanding shares and surplus that its property and assets employed in this state bears to all its property and assets wherever located. A foreign corporation engaged in business in this state, whether pursuant to a certificate of authority issued pursuant to chapter 351 or not, shall be subject to this section. Any corporation whose outstanding shares and surplus as calculated in this subsection does not exceed two hundred thousand dollars shall state that fact on the annual report form prescribed by the secretary of state. For all taxable years beginning on or after January 1, 2000, but ending before December 31, 2009, the annual franchise tax shall be equal to one-thirtieth of one percent of the corporation's outstanding shares and surplus if the outstanding shares and surplus exceed one million dollars. Any corporation whose outstanding shares and surplus do not exceed one million dollars shall state that fact on the annual report form prescribed by the director of revenue. For taxable years beginning on or after January 1, 2010, **but before December 31, 2011,** the annual franchise tax shall be equal to one-thirtieth of one percent of the corporation's outstanding shares and surplus if the outstanding shares and surplus exceed ten million dollars**[**, and**]. For all taxable years beginning on or after January 1, 2010, but before December 31, 2015,** any corporation whose outstanding shares and surplus do not exceed ten million dollars shall state that fact on the annual report form prescribed by the director of revenue. **For all taxable years beginning on or after January 1, 2011 but before December 31, 2015, a**

corporation's annual tax liability under this chapter shall not exceed the amount of annual franchise tax liability of such corporation for the taxable year ending on or before December 31, 2010. If the corporation had no annual franchise tax liability under this chapter for the taxable year ending on or before December 31, 2010, because such corporation was not in existence or doing business in Missouri, the annual franchise tax for the first taxable year in which such corporation exists shall be determined by applying the applicable rate of tax provided under the provisions of this subsection to the corporation's outstanding shares and surplus if the outstanding shares and surplus exceed ten million dollars, but in no case shall such corporation's tax liability for any subsequent taxable year exceed the amount of annual franchise tax liability of such corporation for the first full taxable year such corporation was in existence or doing business in Missouri. For taxable years beginning on or after January 1, 2012, the annual franchise tax shall be equal to the percentage rate prescribed in this subsection for the corresponding taxable year of the corporation's outstanding shares and surplus if the outstanding shares and surplus exceed the corresponding minimum threshold amount prescribed as follows:

(1) For tax year 2012, the rate shall be one-thirty-seventh of one percent and the threshold amount shall be ten million dollars;

(2) For tax year 2013, the rate shall be one-fiftieth of one percent and the threshold amount shall be ten million dollars;

(3) For tax year 2014, the rate shall be one-seventy-fifth of one percent and the threshold amount shall be ten million dollars;

(4) For tax year 2015, the rate shall be one-hundred-fiftieth of one percent and the threshold amount shall be ten million dollars;

(5) For tax years beginning on or after January 1, 2016, no annual franchise tax shall be imposed under this section.

2. Sections 147.010 to 147.120 shall not apply to corporations not organized for profit, nor to corporations organized pursuant to the provisions of chapter 349, nor to express companies, which now pay an annual tax on their gross receipts in this state, nor to insurance companies, which are subject to an annual tax on their premium receipts in this state, nor to state, district, county, town and farmers' mutual companies now organized or that may be hereafter organized pursuant to any of the laws of this state, organized for the sole purpose of writing fire, lightning, windstorm, tornado, cyclone, hail and plate glass and mutual automobile insurance and for the purpose of paying any loss incurred by any member by assessment, nor to any mutual insurance corporation not having shares, nor to a company or association organized to transact business of life or accident insurance on the assessment plan for the purpose of mutual protection and benefit to its members and the payment of stipulated sums of moneys to the family, heirs, executors, administrators or assigns of the deceased member, nor to foreign life, fire, accident, surety, liability, steam boiler, tornado, health, or other kind of insurance company of whatever nature coming within the provisions of section 147.050 and doing business in this state, nor to savings and loan associations and domestic and foreign regulated investment companies as defined by Section 170 of the Act of Congress commonly known as the Revenue Act of 1942, nor to electric and telephone corporations organized pursuant to chapter 351 and chapter 392 prior to January 1, 1980, which have been declared tax-exempt organizations pursuant to Section 501(c) of the Internal Revenue Code of 1986, nor for taxable years beginning after December 31, 1986, to banking institutions subject to the annual franchise tax imposed by sections 148.010 to 148.110; but bank deposits shall be considered as funds of the individual depositor left for safekeeping and shall not be considered in computing the amount of tax collectible pursuant to the provisions of sections 147.010 to 147.120.

3. A corporation's taxable year for purposes of sections 147.010 to 147.120 shall be its taxable year as provided in section 143.271.

4. A corporation's transitional year for the purposes of sections 147.010 to 147.120 shall be its taxable year which includes parts of each of the years 1979 and 1980.

5. The franchise tax payable for a corporation's transitional year shall be computed by multiplying the amount otherwise due for that year by a fraction, the numerator of which is the number of months between January 1, 1980, and the end of the taxable year and the denominator of which is twelve. The franchise tax payable, if a corporation's taxable year is changed as provided in section 143.271, shall be similarly computed pursuant to regulations prescribed by the director of revenue.

6. All franchise reports and franchise taxes shall be returned to the director of revenue. All checks and drafts remitted for payment of franchise taxes shall be made payable to the director of revenue.

7. Pursuant to section 32.057, the director of revenue shall maintain the confidentiality of all franchise tax reports returned to the director.

8. The director of the department of revenue shall honor all existing agreements between taxpayers and the director of the department of revenue.

Approved April 26, 2011

SB 36 [SB 36]

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

Allows employees of certain employers to take a leave of absence for civil air patrol emergency service duty or counter narcotics missions.

AN ACT to repeal section 41.1000, RSMo, and to enact in lieu thereof one new section relating to leave for members of the civil air patrol, with an emergency clause.

SECTION

A. Enacting clause.
41.1000. Civil air patrol, members who are state employees, leave to be granted — members generally, not subject to discharge from employment due to membership.
B. Emergency clause.

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

SECTION A. ENACTING CLAUSE. — Section 41.1000, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 41.1000, to read as follows:

41.1000. CIVIL AIR PATROL, MEMBERS WHO ARE STATE EMPLOYEES, LEAVE TO BE GRANTED — MEMBERS GENERALLY, NOT SUBJECT TO DISCHARGE FROM EMPLOYMENT DUE TO MEMBERSHIP. — 1. Except as otherwise provided in this subsection, any employee of the state of Missouri who is or may become a member of the civil air patrol and has qualified for a civil air patrol emergency service specialty rating or who is certified to fly counter narcotics missions except members of the Missouri national guard may be granted leave of absence from their respective duties, without loss of time, pay, regular leave, impairment of efficiency rating or of any other rights or benefits to which such person would otherwise be entitled, for periods during which such person is engaged in the performance of civil air patrol emergency service duty or counter narcotics missions. Leave for such service shall be for not more than fifteen working days in any state fiscal year, or without regard to length of time when responding to a state or nationally declared emergency or disaster in the state of Missouri. The employee shall be released from work upon request from the Missouri wing commander or the wing commander's designated representative. The appointing authority shall compensate an employee

granted leave pursuant to this section at the employee's regular rate of pay for regular work hours during which the employee is absent from the employee's regular place of employment for the state of Missouri. Any leave granted pursuant to this section shall not affect the employee's leave status.

2. Before any payment of salary is made covering the period of the leave the employee shall file with the appointing authority or supervising agency evidence that such employee participated in emergency services duty or a counter narcotics mission from the wing commander, or the wing commander's designated representative. In addition to the evidence required by this subsection, such employee shall provide to the employee's immediate supervisor a Drug Enforcement Agency/Civil Air Patrol (DEA/CAP) mission number.

3. No member of the civil air patrol shall be discharged from employment because of being a member of the civil air patrol or holding a civil air patrol emergency services specialty rating, nor otherwise discriminated against or dissuaded from joining or continuing such person's service in the civil air patrol by threat or injury to such person in respect to such person's employment.

4. **Any employee of an employer with fifty or more employees who is or may become a member of the civil air patrol and has qualified for a civil air patrol emergency service specialty or who is certified to fly counter narcotics missions shall be granted a leave of absence from their respective duties, without loss of time, regular leave, or of any other rights or benefits to which the employee would otherwise be entitled, for periods during which the employee is engaged in the performance of civil air patrol emergency service duty or counter narcotics missions. Leave for such service shall be for no more than fifteen working days in any calendar year, or without regard to the length of time when responding to a state or nationally declared emergency in the state of Missouri. The employer shall not be obligated to pay a salary to the employee during this leave of absence. The employer shall have the right to request that the employee be exempted from responding to a specific mission and the Missouri wing commander shall honor such request.**

5. The attorney general shall enforce the rights contained in this section for members of the civil air patrol.

SECTION B. EMERGENCY CLAUSE. — Because of the need for members of the civil air patrol to assist with possible natural disasters, section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and section A of this act shall be in full force and effect upon its passage and approval.

Approved July 1, 2011

SB 38 [SB 38]

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

Establishes a prostate cancer pilot program to provide screening, referral services, treatment and outreach.

AN ACT to amend chapter 191, RSMo, by adding thereto one new section relating to the prostate cancer pilot program.

SECTION

A. Enacting clause.

191.950. Prostate cancer pilot programs — definitions — eligibility — services provided — grants — rulemaking authority — sunset provision.

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

SECTION A. ENACTING CLAUSE. — Chapter 191, RSMo, is amended by adding thereto one new section, to be known as section 191.950, to read as follows:

191.950. PROSTATE CANCER PILOT PROGRAMS — DEFINITIONS — ELIGIBILITY — SERVICES PROVIDED — GRANTS — RULEMAKING AUTHORITY — SUNSET PROVISION. — 1. As used in this section, the following terms mean:

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

(2) "Economically challenged men", men who have a gross income up to one-hundred and fifty percent of the federal poverty level;

(3) "Program", the prostate cancer pilot program established in this section;

(4) "Rural area", a rural area which is in either any county of the third classification without a township form of government and with more than twenty thousand but fewer than twenty thousand one hundred inhabitants, any county of the second classification with more than nineteen thousand seven hundred but fewer than nineteen thousand eight hundred inhabitants, or any county of the third classification with a township form of government and with more than thirty-three thousand one hundred but fewer than thirty-three thousand two hundred inhabitants;

(5) "Uninsured men", men for whom services provided by the program are not covered by private insurance, MO HealthNet or Medicare;

(6) "Urban area", an urban area which is located in a city not within a county.

2. Subject to securing a cooperative agreement with a nonprofit entity for funding of the program, there is hereby established within the department of health and senior services two "Prostate Cancer Pilot Programs" to fund prostate cancer screening and treatment services and to provide education to men residing in this state. One prostate cancer pilot program shall be located in an urban area and one prostate cancer pilot program shall be located in a rural area. The department may directly contract with the Missouri Foundation for Health, or a successor entity, in the delivery of the pilot program. For purposes of this section, the contracting process of the department with these entities need not be governed by the provisions of chapter 34.

3. The program shall be open to:

(1) Uninsured men or economically challenged men who are at least fifty years old; and

(2) On the advice of a physician or at the request of the individual, uninsured men or economically challenged men who are at least thirty-five years of age but less than fifty years of age and who are at high risk for prostate cancer.

4. The program shall provide:

(1) Prostate cancer screening;

(2) Referral services, including services necessary for diagnosis;

(3) Treatment services for individuals who are diagnosed with prostate cancer after being screened; and

(4) Outreach and education activities to ensure awareness and utilization of program services by uninsured men and economically challenged men.

5. Upon appropriation, the department shall distribute grants to administer the program to:

(1) Local health departments; and

(2) Federally qualified health centers.

6. Three years from the date on which the grants were first administered under this section, the department shall report to the governor and general assembly:

(1) The number of individuals screened and treated under the program, including racial and ethnic data on the individuals who were screened and treated; and

(2) To the extent possible, any cost savings achieved by the program as a result of early detection of prostate cancer.

7. The department shall promulgate rules to establish guidelines regarding eligibility for the program and to implement the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, 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 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 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, 2011, shall be invalid and void.

8. Pursuant to section 23.253 of the Missouri sunset act:

(1) The provisions of the 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 six 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.

Approved June 17, 2011

SB 48 [CCS HCS SB 48]

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

Prohibits public utilities from requiring a deposit from certain delinquent customers.

AN ACT to repeal sections 250.236, 386.420, 386.490, 386.510, 386.515, 386.520, 386.530, 386.540, and 393.015, RSMo, and to enact in lieu thereof eleven new sections relating to utilities, with an emergency clause for certain sections.

SECTION

A. Enacting clause.
250.236. Termination of water services for nonpayment of sewer charges, allowed when.
386.420. Persons entitled to be heard — commission to make report, when — depositions authorized — may enforce attendance at hearings — record of proceedings to be kept — detailed reconciliation required, when.
386.490. Service and effect of orders.
386.510. Review by circuit court.
386.515. Rehearing, procedure.
386.520. Appeal, pendency of, staying or suspending operation, when.
386.530. Priority over other civil cases in court actions granted.
386.540. Appeals from appellate court — transcript and exhibits — precedence over other civil cases.
393.015. Sewer company may contract with water company to terminate water services for nonpayment of sewer bill — procedure — immunity — costs, reimbursement.
393.152. Delinquency in payment, deposit or guarantee to continue service prohibited, when — inapplicability.
620.2300. Definitions — applications process.
B. Emergency clause.

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

SECTION A. ENACTING CLAUSE. — Sections 250.236, 386.420, 386.490, 386.510, 386.515, 386.520, 386.530, 386.540, and 393.015, RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 250.236, 386.420, 386.490, 386.510, 386.515, 386.520, 386.530, 386.540, 393.015, 393.152, and 620.2300, to read as follows:

250.236. TERMINATION OF WATER SERVICES FOR NONPAYMENT OF SEWER CHARGES, ALLOWED WHEN. — 1. Any city, town or village may contract with a private or public water company to terminate water services, at the direction of the city, because a customer fails to pay his sewer bill. When charges for sewer services are in arrears for more than three months and after the city sends notice to the customer **[**by certified mail**]**, the city may disconnect the customer's sewer line or request in writing that the private or public water company discontinue water service until such time as the sewer charges and all related costs are paid.

2. A private or public water company acting pursuant to a written request from the city as provided in subsection 1 of this section is not liable for damages related to termination of water services. All costs related to disconnection and reconnections shall be reimbursed to the private water company by the city.

386.420. PERSONS ENTITLED TO BE HEARD — COMMISSION TO MAKE REPORT, WHEN — DEPOSITIONS AUTHORIZED — MAY ENFORCE ATTENDANCE AT HEARINGS — RECORD OF PROCEEDINGS TO BE KEPT — DETAILED RECONCILIATION REQUIRED, WHEN. — 1. At the time fixed for any hearing before the commission or a commissioner, or the time to which the same may have been continued, the complainant, the public counsel and the corporation, person or public utility complained of, and such corporations and persons as the commission may allow to intervene, shall be entitled to be heard and to introduce evidence. The commission shall issue process to enforce the attendance of all necessary witnesses.

2. Whenever an investigation shall be made by the commission, it shall be its duty, to make a report in writing in respect thereto, which shall state the conclusions of the commission, together with its decision, order or requirement in the premises. The commission or any commissioner or any party may, in any investigation or hearing before the commission, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the circuit courts of this state and to that end may compel the attendance of witnesses and the production of books, waybills, documents, papers, memoranda and accounts. Witnesses whose depositions are taken as provided in this section and the officer taking the same shall severally be entitled to the same fees as are paid for like services in the circuit courts of this state.

3. If an order cannot, in the judgment of the commission, be complied with within thirty days, the commission may grant and prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may, on application and for good cause shown, extend the time for compliance fixed in its order.

4. A full and complete record shall be made of all proceedings before the commission or any commissioner on any formal hearing had, and all testimony shall be taken down by a reporter appointed by the commission, and the parties shall be entitled to be heard in person or by attorney. Preparation of a printed transcript may be waived by unanimous consent of all the parties. In case of an action to review any order or decision of the commission, a transcript of such testimony, together with all exhibits or copies thereof introduced and all information secured by the commission on its own initiative and considered by it in rendering its order or decision, and of the pleadings, record and proceedings in the cause, shall constitute the record of the commission; provided, that on review of an order or decision of the commission, the **[**petitioner**]** **appellant** and the commission may stipulate that a certain question or questions alone and a specified portion only of the evidence shall be certified to the **[**circuit**]** **reviewing** court for its judgment, whereupon such stipulation and the question or questions and the evidence therein specified shall constitute the record on review. **In any proceeding resulting**

in the establishment of new rates for a public utility that is not classified as a price-cap or competitive company, the commission shall cause to be prepared, with the assistance of the parties to such proceeding, and shall approve, after allowing the parties a reasonable opportunity to provide written input, a detailed reconciliation containing the dollar value and rate or charge impact of each contested issue decided by the commission, and the customer class billing determinants used by the commission to calculate the rates and charges approved by the commission in such proceeding. Such information shall be sufficient to permit a reviewing court and the commission on remand from a reviewing court to determine how the public utility's rates and charges, including the rates and charges for each customer class, would need to be temporarily and, if applicable, permanently adjusted to provide customers or the public utility with any monetary relief that may be due in accordance with the procedures set forth in section 386.520. In the event there is any dispute over the value of a particular issue or the correctness of a billing determinant, the commission shall also include in the reconciliation a quantification of the dollar value and rate or charge impact associated with the dispute.

386.490. SERVICE AND EFFECT OF ORDERS. — 1. Every order of the commission shall be served upon every person or corporation to be affected thereby, either by personal delivery of a certified copy thereof, **by electronic service,** or by mailing a certified copy thereof, in a sealed package with postage prepaid, to the person to be affected thereby, or, in the case of a corporation, to any officer or agent thereof upon whom a summons may be served in accordance with the provisions of the code of civil procedure.

2. **[**It shall be the duty of every person and corporation to notify the commission forthwith, in writing, of the receipt of the certified copy of every order so served, and in the case of a corporation such notification must be signed and acknowledged by a person or officer duly authorized by the corporation to admit such service. Within a time specified in the order of the commission every person and corporation upon whom it is served must if so required in the order notify the commission in like manner whether the terms of the order are accepted and will be obeyed.

3.**]** Every order or decision of the commission shall of its own force take effect and become operative thirty days after the service thereof, except as otherwise provided, and shall continue in force either for a period which may be designated therein or until changed or abrogated by the commission, unless such order be unauthorized by this law or any other law or be in violation of a provision of the constitution of the state or of the United States.

386.510. REVIEW BY CIRCUIT COURT. — With respect to commission orders or decisions issued on and after the effective date of this section, within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the rendition of the decision on rehearing, the applicant may **[**apply to**] file a notice of appeal with** the **[**circuit court of**] commission, which shall also be served on the parties to the commission proceeding in accordance with section 386.515, and which shall also be filed with the appellate court with the territorial jurisdiction over** the county where the hearing was held or in which the commission has its principal office **[**for a writ of certiorari or review (herein referred to as a writ of review)**]** for the purpose of having the reasonableness or lawfulness of the original order or decision or the order or decision on rehearing inquired into or determined. **[**The writ shall be made returnable not later than thirty days after the date of the issuance thereof, and shall direct the commission to certify its record in the case to the court. On the return day the cause shall be heard by the circuit court, unless for a good cause shown the same be continued.**] Except with respect to a stay or suspension pursuant to subsection 1 of section 386.520,** no new or additional evidence may be introduced **[**upon the hearing**]** in the **[**circuit**] appellate** court but the cause shall be heard by the court without the intervention of a jury on the evidence and exhibits introduced before the commission and certified to by it. **The**

notice of appeal shall include the appellant's application for rehearing, a copy of the reconciliation required by subsection 4 of section 386.420, a concise statement of the issues being appealed, a full and complete list of the parties to the commission proceeding, and any other information specified by the rules of the court. Unless otherwise ordered by the court of appeals, the commission shall, within thirty days of the filing of the notice of appeal, certify its record in the case to the court of appeals. The commission and each party to the action or proceeding before the commission shall have the right to **[**appear**] intervene and participate fully** in the review proceedings. Upon the **[**hearing the circuit**] submission of the case to the** court **of appeals, the court of appeals** shall **[**enter judgment**] render its opinion** either affirming or setting aside**, in whole or in part,** the order **or decision** of the commission under review. In case the order **or decision** is reversed by reason of the commission failing to receive testimony properly proffered, the court shall remand the cause to the commission, with instructions to receive the testimony so proffered and rejected, and enter a new order **or render a new decision** based upon the evidence theretofore taken, and such as it is directed to receive. The court may, in its discretion, remand any cause which is reversed by it to the commission for further action. No court in this state, except **[**the circuit courts to the extent herein specified and**]** the supreme court or the court of appeals **[**on appeal**]**, shall have jurisdiction **or authority** to review, reverse, correct or annul any order or decision of the commission or to suspend or delay the executing or operation thereof, or to enjoin, restrain or interfere with the commission in the performance of its official duties. The **[**circuit**] appellate** courts of this state shall always be deemed open for the trial of suits brought to review the orders and decisions of the commission as provided in the public service commission law and the same shall **where necessary** be tried and determined as suits in equity.

386.515. REHEARING, PROCEDURE. — **[**Prior to August 28, 2001, in proceedings before the Missouri public service commission, consistent with the decision of the supreme court of Missouri in State ex rel. Anderson Motor Service Co., Inc. v. Public Service Commission, 97 S.W.2d 116 (Mo. banc 1936) the review procedure provided for in section 386.510 is exclusive to any other procedure.**] With respect to commission orders or decisions issued on and after the effective date of this section,** an application for rehearing is required to be served on all parties and is a prerequisite to the filing of an **[**application for writ of review**] appeal under section 386.510**. The application for rehearing puts the parties to the proceeding before the commission on notice that **[**a writ of review**] an appeal** can follow and any such review **under the appeal** may proceed **[**without formal notification or summons to**] provided that a copy of the notice of appeal is served on** said parties. **With respect to commission orders or decisions issued** on and after **[**August 28, 2001**] the effective date of this section**, the review procedure provided for in section 386.510 continues to be exclusive except that a copy of **[**any such writ of review**] the notice of appeal required by section 386.510** shall be **[**provided to**] served on** each party to the proceeding before the commission**[**, or his or her attorney of record, by hand delivery or by registered mail, and proof of such delivery or mailing shall be filed in the case as provided by subsection 2 of section 536.110**] by the appellant according to the rules established by the court in which the appeal is filed**.

386.520. APPEAL, PENDENCY OF, STAYING OR SUSPENDING OPERATION, WHEN. — 1. The pendency of **[**a writ of review**] an appeal under section 386.510** shall not of itself stay or suspend the operation of the order or decision of the commission, but **[**during the pendency of such writ, the circuit court in its discretion may stay or suspend, in whole or in part, the operation of the commission's order or decision. No order so staying or suspending an order or decision of the commission shall be made by any circuit court otherwise than on three days' notice and after hearing, and if the order or decision of the commission is suspended the same shall contain a specific finding based upon evidence submitted to the court and identified by reference thereto, that great or irreparable damage would otherwise result to the petitioner and specifying the nature

of the damage. In case the order or decision of the commission is stayed or suspended, the order or judgment of the court shall not become effective until a suspending bond shall first have been executed and filed with, and approved by, the circuit court, payable to the state of Missouri, and sufficient in amount and security to secure the prompt payment, by the party petitioning for the review, of all damages caused by the delay in the enforcement of the order or decision of the commission, and of all moneys which any person or corporation may be compelled to pay, pending the review proceedings, for transportation, transmission, product, commodity or service in excess of the charges fixed by the order or decision of the commission, in case such order or decision is sustained.

2. The circuit court, in case it stays or suspends the order or decision of the commission in any manner affecting rates, fares, tolls, rentals, charges or classifications, shall also by order direct the corporation, person or public utility affected to pay into court, from time to time, there to be impounded until the final decision of the case, or into some bank or trust company paying interest on deposits, under such conditions as the court may prescribe, all sums of money which it may collect from any corporation or person in excess of the sum such corporation or person would have been compelled to pay if the order or decision of the commission had not been stayed or suspended.

3. In case any circuit court stays or suspends any order or decision of the commission lowering any rate, fare, toll, rental, charge or classification, upon the execution and approval of said suspending bond, shall forthwith require the corporation, person or public utility affected, under penalty of the immediate enforcement of the order or decision of the commission, pending the review and notwithstanding the suspending order, to keep such accounts, verified by oath, as may, in the judgment of the court, suffice to show the amounts being charged or received by such corporation, person or public utility, pending the review, in excess of the charges allowed by the order or decision of the commission, together with the names and addresses of the corporations and persons to whom overcharges will be refundable in case the charges made by the corporation, person or public utility, pending the review, be not sustained by the circuit court; provided, that street railroad corporations shall not be required to keep a record of the names and addresses of such persons paying such overcharge of fares, but such street railroad corporations shall give to such persons printed receipts showing such overcharges of fares, the form of such printed receipts to be approved by the commission.

4. The court may, from time to time, require said party petitioning for a review to give additional security on, or to increase, the said suspending bond, whenever in the opinion of the court the same may be necessary to secure the prompt payment of said damages or said overcharges.

5. Upon the decision of the circuit court, all moneys which the corporation, person or public utility may have collected pending the appeal, in excess of those authorized by such decision, together with interest, in case the court ordered the deposit of such moneys in a bank or trust company, shall be promptly paid to the corporations or persons entitled thereto, in such manner and through such methods of distribution as may be prescribed by the court, unless an appeal be granted such corporation, person or public utility, as herein provided**] with respect to commission orders or decisions issued on and after the effective date of this section that do not involve the establishment of new rates and charges for a public utility, the appellate court may in its discretion, or upon the recommendation of a special master appointed for such purpose, and after the posting of an appropriate appeal bond, stay or suspend the operation of the order or decision of the commission, in whole or in part, if in its discretion it determines that great or irreparable damage would otherwise result to the appellant**.

2. With respect to orders or decisions issued on and after the effective date of this section that involve the establishment of new rates or charges for public utilities that are not classified as price-cap or competitive companies, there shall be no stay or suspension of the commission's order or decision, however:

(1) In the event a final and unappealable judicial decision determines that a commission order or decision unlawfully or unreasonably decided an issue or issues in a manner affecting rates, then the court shall instruct the commission to provide temporary rate adjustments and, if new rates and charges have not been approved by the commission before the judicial decision becomes final and unappealable, prospective rate adjustments. Such adjustments shall be calculated based on the record evidence in the proceeding under review and the information contained in the reconciliation and billing determinants provided by the commission under subsection 4 of section 386.420 and in accordance with the procedures set forth in subdivisions (2) to (5) of this subsection;

(2) If the effect of the unlawful or unreasonable commission decision issued on or after the effective date of this section was to increase the public utility's rates and charges in excess of what the public utility would have received had the commission not erred or to decrease the public utility's rates and charges in a lesser amount than would have occurred had the commission not erred, then the commission shall be instructed on remand to approve temporary rate adjustments designed to flow through to the public utility's then existing customers the excess amounts that were collected by the utility plus interest at the higher of the prime bank lending rate minus two percentage points or zero. Such amounts shall be calculated for the period commencing with the date the rate increase or decrease took effect until the earlier of the date when new rates and charges consistent with the court's opinion became effective or when new rates or charges otherwise approved by the commission as a result of a general rate case filing or complaint became effective. Such amounts shall then be reflected as a rate adjustment over a like period of time. The commission shall issue its order on remand within sixty days unless the commission determines that additional time is necessary to properly calculate the temporary or any prospective rate adjustment, in which case the commission shall issue its order within one hundred and twenty days;

(3) If the effect of the unlawful or unreasonable commission decision was to increase the public utility's rates and charges by a lesser amount than what the public utility would have received had the commission not erred or to decrease the public utility's rates and charges in a greater amount than would have occurred had the commission not erred, then the commission shall be instructed on remand to approve temporary rate adjustments designed to allow the public utility to recover from its then existing customers the amounts it should have collected plus interest at the higher of the prime bank lending rate minus two percentage points or zero. Such amounts shall be calculated for the period commencing with the date the rate increase or decrease took effect until the earlier of the date when new permanent rates and charges consistent with the court's opinion became effective or when new permanent rates or charges otherwise approved by the commission as a result of a general rate case filing or complaint became effective. Such amounts shall then be reflected as a rate adjustment over a like period of time. The commission shall issue its order on remand within sixty days unless the commission determines that additional time is necessary to properly calculate the temporary or any prospective rate adjustment, in which case the commission shall issue its order within one hundred and twenty days;

(4) If the effect of the unlawful or unreasonable commission decision was to allocate too much of a rate increase or too little of a rate decrease to a customer class or classes, then the commission shall be instructed on remand to approve temporary rate adjustments for each customer class as necessary to ensure that each customer class is charged the amounts that would have been charged had the commission not erred. Such amounts shall be calculated for the period commencing with the date the rate increase or decrease took effect until the earlier of the date when new rates and charges consistent with the court's opinion became effective or when new rates or charges otherwise approved by the commission as a result of a general rate case filing or complaint became

effective. Such amounts shall then be reflected as a rate adjustment over a like period of time. The commission shall issue its order on remand within sixty days unless the commission determines that additional time is necessary to properly calculate the temporary or any prospective rate adjustment, in which case the commission shall issue its order within one hundred and twenty days;

(5) On and after the effective date of this section, no action affecting the public utility's collection of rates and charges shall be taken in cases where the court cannot make a determination on the merits because the commission failed to include adequate findings of fact to support the commission's decision or failed to receive evidence properly proffered, provided that the commission shall provide such findings of fact or otherwise issue a new order within ninety days of the date of the court's mandate. If such new order is appealed, the period for measuring amounts subject to temporary rate adjustments process set forth in subdivisions (1) to (4) of this subsection shall commence beginning with the date the rate increase or decrease took effect.

386.530. PRIORITY OVER OTHER CIVIL CASES IN COURT ACTIONS GRANTED. — All actions or proceedings under this or any other chapter, and all actions and proceedings commenced or prosecuted by order of the commission, and all actions and proceedings to which the commission, the public counsel or the state may be parties, and in which any question arises under this or any other chapter, or under or concerning any order or decision or action of the commission, shall be preferred over all other civil causes except election contests in all the **[**circuit**]** **appellate** courts of the state of Missouri, and shall be heard and determined in preference to all other civil business pending therein except election contests, irrespective of position on the calendar. The same preference shall be granted upon application of the public counsel or the commission counsel in any action or proceeding in which either or both may be allowed to intervene.

386.540. APPEALS FROM APPELLATE COURT — TRANSCRIPT AND EXHIBITS — PRECEDENCE OVER OTHER CIVIL CASES. — 1. The commission and any party, including the public counsel, who has participated in the **[**commission**]** **court of appeals** proceeding **[**which produced the order or decision may, after the entry of judgment in the circuit court in any action in review, prosecute an appeal to a court having appellate jurisdiction in this state. Such appeal shall be prosecuted as appeals from judgment of the circuit court in civil cases except as otherwise provided in this chapter**]** **and is aggrieved by the opinion of the court may seek rehearing or transfer to the Missouri supreme court under rules established by the court**. The original transcript of the record and testimony and exhibits, certified to by the commission and filed **[**in the circuit court in any action to review an order or decision of the commission, together with a transcript of the proceedings in the circuit court,**]** **with the court of appeals** shall constitute the record on appeal to the supreme court **[**or any court of appeals**]**.

2. Where an appeal is taken to the supreme court **[**or the court of appeals**]**, the cause shall, on the return of the papers to the supreme court **[**or court of appeals**]**, be immediately placed on the docket of the then pending term by the clerk of the court and shall be assigned and brought to a hearing in the same manner as other causes on the then pending term docket, but shall have precedence over all civil causes of a different nature pending in the court. **[**No appeal shall be effective when taken by a corporation, person or public utility unless a cost bond of appeal in the sum of five hundred dollars shall be filed within ten days after the entry of judgment in the circuit court appealed from.**]**

3. **[**The circuit court may in its discretion suspend its judgment pending the hearing in the supreme court or court of appeals on appeal, upon the filing of a bond by the corporation, person or public utility with good and sufficient security conditioned as provided for bonds upon actions for review and by further complying with all terms and conditions of this law for the suspension

of any order or decision of the commission pending the hearing or review in the circuit court. This bond shall be in addition to the cost bond heretofore provided in this section.

4.**]** The general laws relating to appeals to the supreme court and the court of appeals in this state shall, so far as applicable and not in conflict with the provisions of this chapter, apply to appeals taken under the provisions of this chapter.

393.015. SEWER COMPANY MAY CONTRACT WITH WATER COMPANY TO TERMINATE WATER SERVICES FOR NONPAYMENT OF SEWER BILL — PROCEDURE — IMMUNITY — COSTS, REIMBURSEMENT. — 1. Notwithstanding any other provision of law to the contrary, any sewer corporation, municipality or sewer district established under the provisions of chapter 249 or 250, or sections 204.250 to 204.470, or any sewer district created and organized pursuant to constitutional authority, may contract with any water corporation to terminate water services to any customer premises for nonpayment of a sewer bill. No such termination of water service may occur until thirty days after the sewer corporation, municipality or statutory sewer district or sewer district created and organized pursuant to constitutional authority sends a written notice to the customer **[**by certified mail**]**, except that if the water corporation is performing a combined water and sewer billing service for the sewer corporation, municipality or sewer district, no additional notice or any additional waiting period shall be required other than the notice and waiting period already used by the water corporation to disconnect water service for nonpayment of the water bill. Acting pursuant to a contract, the water corporation shall discontinue water service until such time as the sewer charges and all related costs of termination and reestablishment of sewer and water services are paid by the customer.

2. A water corporation acting pursuant to a contract with a sewer corporation, municipality or sewer district as provided in subsection 1 of this section shall not be liable for damages related to termination of water services unless such damage is caused by the negligence of such water corporation, in which case the water corporation shall be indemnified by the sewer corporation, municipality or sewer district. Unless otherwise specified in the contract, all costs related to the termination and reestablishment of services by the water corporation shall be reimbursed by the sewer corporation, municipality, sewer district or sewer district created and organized pursuant to constitutional authority.

393.152. DELINQUENCY IN PAYMENT, DEPOSIT OR GUARANTEE TO CONTINUE SERVICE PROHIBITED, WHEN — INAPPLICABILITY. — 1. A public utility regulated under this chapter shall not require a deposit or guarantee as a condition of continued residential service to any existing customer who has been delinquent in paying his or her utility bill at least five times in twelve consecutive months if:

(1) Such customer has consistently made a payment for each month during the twelve consecutive months, provided that each payment is made by the delinquent date; and

(2) Each payment made in subdivision (1) of this subsection is at least seventy-five dollars or twenty-five percent of the total outstanding balance, provided that the total outstanding balance is three hundred dollars or less.

2. This section shall not apply to any customer whose total outstanding balance exceeds three hundred dollars or to any customer making payments under a pay plan previously arranged with the utility.

620.2300. DEFINITIONS — APPLICATIONS PROCESS. — 1. As used in this section, the following terms shall mean;

(1) "Department", the Missouri department of economic development;

(2) "Biomass facility", a biomass renewable energy facility or biomass fuel production facility that will not be a major source for air quality permitting purposes;

(3) "Commission", the Missouri public service commission;

(4) "County average wage", the average wages in each county as determined by the department for the most recently completed full calendar year. However, if the computed county average wage is above the statewide average wage, the statewide average wage shall be deemed the county average wage for such county for the purpose of determining eligibility. The department shall publish the county average wage for each county at least annually. Notwithstanding the provisions of this subdivision to the contrary, for any project that is relocating employees from a Missouri county with a higher county average wage, the company shall obtain the endorsement of the governing body of the community from which jobs are being relocated or the county average wage for their project shall be the county average wage for the county from which the employees are being relocated;

(5) "Full-time employee", an employee of the project facility that is scheduled to work an average of at least thirty-five hours per week for a twelve-month period, and one for which the employer offers health insurance and pays at least fifty percent of such insurance premiums;

(6) "Major source", the same meaning as is provided under 40 C.F.R. 70.2;

(7) "New job", the number of full-time employees located at the project facility that exceeds the project facility base employment less any decrease in the number of full-time employees at related facilities below the related facility base employment. An employee that spends less than fifty percent of the employee's work time at the project facility is still considered to be located at a facility if the employee receives his or her directions and control from that facility, is on the facility's payroll, one hundred percent of the employee's income from such employment is Missouri income, and the employee is paid at or above the state average wage;

(8) "Park", an area consisting of a parcel or tract of land, or any combination of parcels or contiguous land that meet all of the following requirements:

(a) The area consists of at least fifty contiguous acres;

(b) The property within the area is subject to remediation under a clean up program supervised by the Missouri department of natural resources or United States environmental protection agency;

(c) The area contains a manufacturing facility that is closed, undergoing closure, idle, underutilized, or curtailed and that at one time employed at least two hundred employees;

(d) The development plan for the area includes a biomass facility; and

(e) Property located within the area will be used for the development of renewable energy and the demonstration of industrial on-site energy generation;

(9) "Project", a clean fields renewable energy demonstration project located within a park that will result in the creation of at least fifty new jobs and the retention of at least fifty existing jobs;

(10) "Project application", an application submitted to the department, by an owner of all or a portion of a park, on a form provided by the department, requesting benefits provided under this section;

(11) "Project facility", a biomass facility at which the new jobs will be located. A project facility may include separate buildings that are located within fifty miles of each other or within the same county such that their purpose and operations are interrelated;

(12) "Project facility base employment", the greater of the number of full-time employees located at the project facility on the date of the project application or for the twelve-month period prior to the date of the project application, the average number of full-time employees located at the project facility. In the event the project facility has not been in operation for a full twelve-month period, the average number of full-time employees for the number of months the project facility has been in operation prior to the date of the project application.

2. The owner of a park seeking to establish a project shall submit a project application to the department for certification of such project. The department shall

review all project applications received under this section and, in consultation with the department of natural resources, verify satisfaction of the requirements of this section. If the department approves a project application, the department shall forward such application and approval to the commission.

3. Notwithstanding provisions of section 393.1030 to the contrary, upon receipt of an application and approval from the department, the commission shall assign double credit to any electric power, renewable energy, renewable energy credits, or any successor credit generated from:

(1) Renewable energy resources purchased from the biomass facility located in the park by an electric power supplier;

(2) Electric power generated off-site by utilizing biomass fuel sold by the biomass facility located at the park; or

(3) Electric power generated off-site by renewable energy resources utilizing storage equipment manufactured at the park that increases the quantity of electricity delivered to the electric power supplier.

SECTION B. EMERGENCY CLAUSE. — Because of the immediate need to provide meaningful and equitable relief to parties who may successfully pursue review of Missouri Public Service Commission orders or decisions and the need to ensure the creation of jobs through the utilization of alternative energy sources, the repeal and reenactment of sections 386.420, 386.510, 386.515, 386.520, 386.530, and 386.540 and the enactment of section 620.2300 of section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the repeal and reenactment of sections 386.420, 386.510, 386.515, 386.520, 386.530, and 386.540 and the enactment of section 620.2300 of section A of this act shall be in full force and effect upon its passage and approval.

Approved July 1, 2011

SB 54 [SCS SB 54]

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

Creates the Amy Hestir Student Protection Act.

AN ACT to repeal sections 37.710, 160.261, 168.021, 168.071, 168.133, 210.135, 210.145, 210.152, 210.915, 210.922, and 556.037, RSMo, and to enact in lieu thereof eighteen new sections relating to protecting children from sexual offenders, with penalty provisions.

SECTION

A. Enacting clause.
37.710. Access to information — authority of office — confidentiality of information.
160.085. Citation of law — statutes involved.
160.261. Discipline, written policy established by local boards of education — contents — reporting requirements — additional restrictions for certain suspensions — weapons offense, mandatory suspension or expulsion — no civil liability for authorized personnel — spanking not child abuse, when — investigation procedure — officials falsifying reports, penalty.
160.262. Mediation, office of the child advocate to coordinate, when — procedures — binding agreement, when.
160.2100. Citation of law — task force created, members, duties, expiration date.
160.2110. Adoption and implementation of policy, content.
162.014. Registered sex offenders prohibited from being school board candidates.
162.068. Former employees, information provided by school district, written policy required — suspension of employee under investigation — immunity from liability, when, exception.

162.069. Communications between students and school employees and teachers, written policy required, contents — internet sites, limitations — training materials, required content.
168.021. Issuance of teachers' licenses — effect of certification in another state and subsequent employment in this state.
168.071. Revocation, suspension or refusal of certificate or license, grounds — procedure — appeal.
168.133. Criminal background checks required for school personnel, when, procedure — rulemaking authority.
210.135. Immunity from liability granted to reporting person or institution, when — exception.
210.145. Telephone hotline for reports on child abuse — division duties, protocols, law enforcement contacted immediately, investigation conducted, when, exception — chief investigator named — family support team meetings, who may attend — reporter's right to receive information — admissibility of reports in custody cases.
210.152. Reports of abuse or neglect — division to retain certain information — confidential, released only to authorized persons — report removal, when — notice of agency's determination to retain or remove, sent when — case reopened, when — administrative review of determination — de novo judicial review.
210.915. Departmental collaboration on registry information — rulemaking authority.
210.922. Use of registry information by certain departments, when.
556.037. Time limitations for prosecutions for sexual offenses involving a person under eighteen.

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

SECTION A. ENACTING CLAUSE. — Sections 37.710, 160.261, 168.021, 168.071, 168.133, 210.135, 210.145, 210.152, 210.915, 210.922, and 556.037, RSMo, are repealed and eighteen new sections enacted in lieu thereof, to be known as sections 37.710, 160.085, 160.261, 160.262, 160.2100, 160.2110, 162.014, 162.068, 162.069, 168.021, 168.071, 168.133, 210.135, 210.145, 210.152, 210.915, 210.922, and 556.037, to read as follows:

37.710. ACCESS TO INFORMATION — AUTHORITY OF OFFICE — CONFIDENTIALITY OF INFORMATION. — 1. The office shall have access to the following information:

(1) The names and physical location of all children in protective services, treatment, or other programs under the jurisdiction of the children's division, the department of mental health, and the juvenile court;

(2) All written reports of child abuse and neglect; and

(3) All current records required to be maintained pursuant to chapters 210 and 211, RSMo.

2. The office shall have the authority:

(1) To communicate privately by any means possible with any child under protective services and anyone working with the child, including the family, relatives, courts, employees of the department of social services and the department of mental health, and other persons or entities providing treatment and services;

(2) To have access, including the right to inspect, copy and subpoena records held by the clerk of the juvenile or family court, juvenile officers, law enforcement agencies, institutions, public or private, and other agencies, or persons with whom a particular child has been either voluntarily or otherwise placed for care, or has received treatment within this state or in another state;

(3) To work in conjunction with juvenile officers and guardians ad litem;

(4) **To file any findings or reports of the child advocate regarding the parent or child with the court, and issue recommendations regarding the disposition of an investigation, which may be provided to the court and to the investigating agency;**

(5) To file amicus curiae briefs on behalf of the interests of the parent or child;

[(5)**]** **(6)** To initiate meetings with the department of social services, the department of mental health, the juvenile court, and juvenile officers;

[(6)**]** **(7)** To take whatever steps are appropriate to see that persons are made aware of the services of the child advocate's office, its purpose, and how it can be contacted;

[(7)**]** **(8)** To apply for and accept grants, gifts, and bequests of funds from other states, federal, and interstate agencies, and independent authorities, private firms, individuals, and foundations to carry out his or her duties and responsibilities. The funds shall be deposited in

a dedicated account established within the office to permit moneys to be expended in accordance with the provisions of the grant or bequest; **[**and**]**

[(8)**] (9)** Subject to appropriation, to establish as needed local panels on a regional or county basis to adequately and efficiently carry out the functions and duties of the office, and address complaints in a timely manner**; and**

(10) To mediate between alleged victims of sexual misconduct and school districts as provided in subsection 1 of section 160.262.

3. For any information obtained from a state agency or entity under sections 37.700 to 37.730, the office of child advocate shall be subject to the same disclosure restrictions and confidentiality requirements that apply to the state agency or entity providing such information to the office of child advocate. For information obtained directly by the office of child advocate under sections 37.700 to 37.730, the office of child advocate shall be subject to the same disclosure restrictions and confidentiality requirements that apply to the children's division regarding information obtained during a child abuse and neglect investigation resulting in an unsubstantiated report.

160.085. CITATION OF LAW — STATUTES INVOLVED. — The provisions of sections 37.710, 160.085, 160.261, 160.262, 162.014, 162.068, 162.069, 168.021, 168.071, 168.133, 210.135, 210.145, 210.152, 210.915, 210.922, and 556.037 relating to protecting children from sexual offenders shall be known as the "Amy Hestir Student Protection Act".

160.261. DISCIPLINE, WRITTEN POLICY ESTABLISHED BY LOCAL BOARDS OF EDUCATION — CONTENTS — REPORTING REQUIREMENTS — ADDITIONAL RESTRICTIONS FOR CERTAIN SUSPENSIONS — WEAPONS OFFENSE, MANDATORY SUSPENSION OR EXPULSION — NO CIVIL LIABILITY FOR AUTHORIZED PERSONNEL — SPANKING NOT CHILD ABUSE, WHEN — INVESTIGATION PROCEDURE — OFFICIALS FALSIFYING REPORTS, PENALTY. — 1. The local board of education of each school district shall clearly establish a written policy of discipline, including the district's determination on the use of corporal punishment and the procedures in which punishment will be applied. A written copy of the district's discipline policy and corporal punishment procedures, if applicable, shall be provided to the pupil and parent or legal guardian of every pupil enrolled in the district at the beginning of each school year and also made available in the office of the superintendent of such district, during normal business hours, for public inspection. All employees of the district shall annually receive instruction related to the specific contents of the policy of discipline and any interpretations necessary to implement the provisions of the policy in the course of their duties, including but not limited to approved methods of dealing with acts of school violence, disciplining students with disabilities and instruction in the necessity and requirements for confidentiality.

2. The policy shall require school administrators to report acts of school violence to all teachers at the attendance center and, in addition, to other school district employees with a need to know. For the purposes of this chapter or chapter 167, "need to know" is defined as school personnel who are directly responsible for the student's education or who otherwise interact with the student on a professional basis while acting within the scope of their assigned duties. As used in this section, the phrase "act of school violence" or "violent behavior" means the exertion of physical force by a student with the intent to do serious physical injury as defined in subdivision (6) of section 565.002 to another person while on school property, including a school bus in service on behalf of the district, or while involved in school activities. The policy shall at a minimum require school administrators to report, as soon as reasonably practical, to the appropriate law enforcement agency any of the following crimes, or any act which if committed by an adult would be one of the following crimes:

(1) First degree murder under section 565.020;

(2) Second degree murder under section 565.021;

(3) Kidnapping under section 565.110;

(4) First degree assault under section 565.050;
(5) Forcible rape under section 566.030;
(6) Forcible sodomy under section 566.060;
(7) Burglary in the first degree under section 569.160;
(8) Burglary in the second degree under section 569.170;
(9) Robbery in the first degree under section 569.020;
(10) Distribution of drugs under section 195.211;
(11) Distribution of drugs to a minor under section 195.212;
(12) Arson in the first degree under section 569.040;
(13) Voluntary manslaughter under section 565.023;
(14) Involuntary manslaughter under section 565.024;
(15) Second degree assault under section 565.060;
(16) Sexual assault under section 566.040;
(17) Felonious restraint under section 565.120;
(18) Property damage in the first degree under section 569.100;
(19) The possession of a weapon under chapter 571;
(20) Child molestation in the first degree pursuant to section 566.067;
(21) Deviate sexual assault pursuant to section 566.070;
(22) Sexual misconduct involving a child pursuant to section 566.083;
(23) Sexual abuse pursuant to section 566.100;
(24) Harassment under section 565.090; or
(25) Stalking under section 565.225; committed on school property, including but not limited to actions on any school bus in service on behalf of the district or while involved in school activities. The policy shall require that any portion of a student's individualized education program that is related to demonstrated or potentially violent behavior shall be provided to any teacher and other school district employees who are directly responsible for the student's education or who otherwise interact with the student on an educational basis while acting within the scope of their assigned duties. The policy shall also contain the consequences of failure to obey standards of conduct set by the local board of education, and the importance of the standards to the maintenance of an atmosphere where orderly learning is possible and encouraged.

3. The policy shall provide that any student who is on suspension for any of the offenses listed in subsection 2 of this section or any act of violence or drug-related activity defined by school district policy as a serious violation of school discipline pursuant to subsection 9 of this section shall have as a condition of his or her suspension the requirement that such student is not allowed, while on such suspension, to be within one thousand feet of any school property in the school district where such student attended school or any activity of that district, regardless of whether or not the activity takes place on district property unless:

(1) Such student is under the direct supervision of the student's parent, legal guardian, or custodian and the superintendent or the superintendent's designee has authorized the student to be on school property;

(2) Such student is under the direct supervision of another adult designated by the student's parent, legal guardian, or custodian, in advance, in writing, to the principal of the school which suspended the student and the superintendent or the superintendent's designee has authorized the student to be on school property;

(3) Such student is enrolled in and attending an alternative school that is located within one thousand feet of a public school in the school district where such student attended school; or

(4) Such student resides within one thousand feet of any public school in the school district where such student attended school in which case such student may be on the property of his or her residence without direct adult supervision.

4. Any student who violates the condition of suspension required pursuant to subsection 3 of this section may be subject to expulsion or further suspension pursuant to the provisions of

sections 167.161, 167.164, and 167.171. In making this determination consideration shall be given to whether the student poses a threat to the safety of any child or school employee and whether such student's unsupervised presence within one thousand feet of the school is disruptive to the educational process or undermines the effectiveness of the school's disciplinary policy. Removal of any pupil who is a student with a disability is subject to state and federal procedural rights. This section shall not limit a school district's ability to:

(1) Prohibit all students who are suspended from being on school property or attending an activity while on suspension;

(2) Discipline students for off-campus conduct that negatively affects the educational environment to the extent allowed by law.

5. The policy shall provide for a suspension for a period of not less than one year, or expulsion, for a student who is determined to have brought a weapon to school, including but not limited to the school playground or the school parking lot, brought a weapon on a school bus or brought a weapon to a school activity whether on or off of the school property in violation of district policy, except that:

(1) The superintendent or, in a school district with no high school, the principal of the school which such child attends may modify such suspension on a case-by-case basis; and

(2) This section shall not prevent the school district from providing educational services in an alternative setting to a student suspended under the provisions of this section.

6. For the purpose of this section, the term "weapon" shall mean a firearm as defined under 18 U.S.C. 921 and the following items, as defined in section 571.010: a blackjack, a concealable firearm, an explosive weapon, a firearm, a firearm silencer, a gas gun, a knife, knuckles, a machine gun, a projectile weapon, a rifle, a shotgun, a spring gun or a switchblade knife; except that this section shall not be construed to prohibit a school board from adopting a policy to allow a Civil War reenactor to carry a Civil War era weapon on school property for educational purposes so long as the firearm is unloaded. The local board of education shall define weapon in the discipline policy. Such definition shall include the weapons defined in this subsection but may also include other weapons.

7. All school district personnel responsible for the care and supervision of students are authorized to hold every pupil strictly accountable for any disorderly conduct in school or on any property of the school, on any school bus going to or returning from school, during school-sponsored activities, or during intermission or recess periods.

8. Teachers and other authorized district personnel in public schools responsible for the care, supervision, and discipline of schoolchildren, including volunteers selected with reasonable care by the school district, shall not be civilly liable when acting in conformity with the established policies developed by each board, including but not limited to policies of student discipline or when reporting to his or her supervisor or other person as mandated by state law acts of school violence or threatened acts of school violence, within the course and scope of the duties of the teacher, authorized district personnel or volunteer, when such individual is acting in conformity with the established policies developed by the board. Nothing in this section shall be construed to create a new cause of action against such school district, or to relieve the school district from liability for the negligent acts of such persons.

9. Each school board shall define in its discipline policy acts of violence and any other acts that constitute a serious violation of that policy. "Acts of violence" as defined by school boards shall include but not be limited to exertion of physical force by a student with the intent to do serious bodily harm to another person while on school property, including a school bus in service on behalf of the district, or while involved in school activities. School districts shall for each student enrolled in the school district compile and maintain records of any serious violation of the district's discipline policy. Such records shall be made available to teachers and other school district employees with a need to know while acting within the scope of their assigned duties, and shall be provided as required in section 167.020 to any school district in which the student subsequently attempts to enroll.

10. **[**(1)**]** Spanking, when administered by certificated personnel and in the presence of a witness who is an employee of the school district, or the use of reasonable force to protect persons or property, when administered by personnel of a school district in a reasonable manner in accordance with the local board of education's written policy of discipline, is not abuse within the meaning of chapter 210. The provisions of sections 210.110 to 210.165 notwithstanding, the children's division shall not have jurisdiction over or investigate any report of alleged child abuse arising out of or related to the use of reasonable force to protect persons or property when administered by personnel of a school district or any spanking administered in a reasonable manner by any certificated school personnel in the presence of a witness who is an employee of the school district pursuant to a written policy of discipline established by the board of education of the school district, as long as no allegation of sexual misconduct arises from the spanking or use of force.

11. If a student reports alleged sexual misconduct on the part of a teacher or other school employee to a person employed in a school facility who is required to report such misconduct to the children's division under section 210.115, such person and the superintendent of the school district shall forward the allegation to the children's division within twenty-four hours of receiving the information. Reports made to the children's division under this subsection shall be investigated by the division in accordance with the provisions of sections 210.145 to 210.153 and shall not be investigated by the school district under subsections 12 to 20 of this section for purposes of determining whether the allegations should or should not be substantiated. The district may investigate the allegations for the purpose of making any decision regarding the employment of the accused employee.

[(2)**] 12.** Upon receipt of any reports of child abuse by the children's division **other than reports provided under subsection 11 of this section,** pursuant to sections 210.110 to 210.165 which allegedly involve personnel of a school district, the children's division shall notify the superintendent of schools of the district or, if the person named in the alleged incident is the superintendent of schools, the president of the school board of the school district where the alleged incident occurred.

13. If, after an initial investigation, the superintendent of schools or the president of the school board finds that the report involves an alleged incident of child abuse other than the administration of a spanking by certificated school personnel or the use of reasonable force to protect persons or property when administered by school personnel pursuant to a written policy of discipline or that the report was made for the sole purpose of harassing a public school employee, the superintendent of schools or the president of the school board shall immediately refer the matter back to the children's division and take no further action. **[**(3)**]** In all matters referred back to the children's division, the division shall treat the report in the same manner as other reports of alleged child abuse received by the division.

14. If the report pertains to an alleged incident which arose out of or is related to a spanking administered by certificated personnel or the use of reasonable force to protect persons or property when administered by personnel of a school district pursuant to a written policy of discipline or a report made for the sole purpose of harassing a public school employee, a notification of the reported child abuse shall be sent by the superintendent of schools or the president of the school board to the juvenile officer of the county in which the alleged incident occurred.

15. The report shall be jointly investigated by the juvenile officer or a law enforcement officer designated by the juvenile officer and the superintendent of schools or, if the subject of the report is the superintendent of schools, by the juvenile officer or a law enforcement officer designated by the juvenile officer and the president of the school board or such president's designee.

[(4)**] 16.** The investigation shall begin no later than forty-eight hours after notification from the children's division is received, and shall consist of, but need not be limited to, interviewing

and recording statements of the child and the child's parents or guardian within two working days after the start of the investigation, of the school district personnel allegedly involved in the report, and of any witnesses to the alleged incident.

17. The juvenile officer or a law enforcement officer designated by the juvenile officer and the investigating school district personnel shall issue separate reports of their findings and recommendations after the conclusion of the investigation to the school board of the school district within seven days after receiving notice from the children's division.

18. The reports shall contain a statement of conclusion as to whether the report of alleged child abuse is substantiated or is unsubstantiated.

[(5)**]** **19.** The school board shall consider the separate reports **referred to in subsection 17 of this section** and shall issue its findings and conclusions and the action to be taken, if any, within seven days after receiving the last of the two reports. The findings and conclusions shall be made in substantially the following form:

[(a)**]** **(1)** The report of the alleged child abuse is unsubstantiated. The juvenile officer or a law enforcement officer designated by the juvenile officer and the investigating school board personnel agree that **[**the evidence shows that no**]** **there was not a preponderance of evidence to substantiate that** abuse occurred;

[(b)**]** **(2)** The report of the alleged child abuse is substantiated. The juvenile officer or a law enforcement officer designated by the juvenile officer and the investigating school district personnel agree that the **preponderance of** evidence is sufficient to support a finding that the alleged incident of child abuse did occur;

[(c)**]** **(3)** The issue involved in the alleged incident of child abuse is unresolved. The juvenile officer or a law enforcement officer designated by the juvenile officer and the investigating school personnel are unable to agree on their findings and conclusions on the alleged incident.

[11.**]** **20.** The findings and conclusions of the school board under **[**subdivision (5) of**]** subsection **[**10**]** **19** of this section shall be sent to the children's division. If the findings and conclusions of the school board are that the report of the alleged child abuse is unsubstantiated, the investigation shall be terminated, the case closed, and no record shall be entered in the children's division central registry. If the findings and conclusions of the school board are that the report of the alleged child abuse is substantiated, the children's division shall report the incident to the prosecuting attorney of the appropriate county along with the findings and conclusions of the school district and shall include the information in the division's central registry. If the findings and conclusions of the school board are that the issue involved in the alleged incident of child abuse is unresolved, the children's division shall report the incident to the prosecuting attorney of the appropriate county along with the findings and conclusions of the school board, however, the incident and the names of the parties allegedly involved shall not be entered into the central registry of the children's division unless and until the alleged child abuse is substantiated by a court of competent jurisdiction.

[12.**]** **21.** Any superintendent of schools, president of a school board or such person's designee or juvenile officer who knowingly falsifies any report of any matter pursuant to this section or who knowingly withholds any information relative to any investigation or report pursuant to this section is guilty of a class A misdemeanor.

[13.**]** **22.** In order to ensure the safety of all students, should a student be expelled for bringing a weapon to school, violent behavior, or for an act of school violence, that student shall not, for the purposes of the accreditation process of the Missouri school improvement plan, be considered a dropout or be included in the calculation of that district's educational persistence ratio.

160.262. MEDIATION, OFFICE OF THE CHILD ADVOCATE TO COORDINATE, WHEN — PROCEDURES — BINDING AGREEMENT, WHEN. — 1. The office of the child advocate as created in section 37.705 shall be authorized to coordinate mediation efforts between

school districts and students when requested by both parties when allegations of child abuse arise in a school setting. The office of the child advocate shall maintain a list of individuals who are qualified mediators. The child advocate shall be available as one of the mediators on the list from which parents can choose.

2. Mediation procedures shall meet the following requirements:

(1) The mediation process shall not be used to deny or delay any other complaint process available to the parties; and

(2) The mediation process shall be conducted by a qualified and impartial mediator trained in effective mediation techniques who is not affiliated with schools or school professional associations, is not a mandated reporter of child abuse under state law or regulation, and who is available as a public service.

3. No student, parent of a student, school employee, or school district shall be required to participate in mediation under this section. If either the school district or the student or student's parent does not wish to enter into mediation, mediation shall not occur.

4. Each session in the mediation process shall be scheduled in a timely manner and be held in a location that is convenient to the parties in dispute.

5. Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent administrative proceeding, administrative hearing, nor in any civil or criminal proceeding of any state or federal court.

6. If the parties resolve a dispute through the mediation process, the parties shall execute a legally binding agreement that sets forth the resolution and:

(1) States that all discussions that occurred during the mediation process shall remain confidential and may not be used as evidence in any subsequent administrative proceeding, administrative hearing, or civil proceeding of any federal or state court; and

(2) Is signed by a representative of each party who has authority to bind the party.

160.2100. CITATION OF LAW — TASK FORCE CREATED, MEMBERS, DUTIES, EXPIRATION DATE. — 1. Sections 160.2100 and 160.2110 shall be known and may be cited as "Erin's Law".

2. The "Task Force on the Prevention of Sexual Abuse of Children" is hereby created to study the issue of sexual abuse of children until January 1, 2013. The task force shall consist of all of the following members:

(1) One member of the general assembly appointed by the president pro tem of the senate;

(2) One member of the general assembly appointed by the minority floor leader of the senate;

(3) One member of the general assembly appointed by the speaker of the house of representatives;

(4) One member of the general assembly appointed by the minority leader of the house of representatives;

(5) The director of the department of social services or his or her designee;

(6) The commissioner of education or his or her designee;

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

(8) The director of the office of prosecution services or his or her designee;

(9) A representative representing law enforcement appointed by the governor;

(10) Three active teachers employed in Missouri appointed by the governor;

(11) A representative of an organization involved in forensic investigation relating to child abuse in this state appointed by the governor;

(12) A school superintendent appointed by the governor;

(13) A representative of the state domestic violence coalition appointed by the governor;

(14) A representative from the juvenile and family court appointed by the governor;

(15) A representative from Missouri Network of Child Advocacy Centers appointed by the governor;

(16) An at-large member appointed by the governor.

3. Members of the task force shall be individuals who are actively involved in the fields of the prevention of child abuse and neglect and child welfare. The appointment of members shall reflect the geographic diversity of the state.

4. The task force shall elect a presiding officer by a majority vote of the membership of the task force. The task force shall meet at the call of the presiding officer.

5. The task force shall make recommendations for reducing child sexual abuse in Missouri. In making those recommendations, the task force shall:

(1) Gather information concerning child sexual abuse throughout the state;

(2) Receive reports and testimony from individuals, state and local agencies, community-based organizations, and other public and private organizations;

(3) Create goals for state policy that would prevent child sexual abuse; and

(4) Submit a final report with its recommendations to the governor, general assembly, and the state board of education by January 1, 2013.

6. The recommendations may include proposals for specific statutory changes and methods to foster cooperation among state agencies and between the state and local government.

7. The task force shall consult with employees of the department of social services, the department of public safety, department of elementary and secondary education, and any other state agency, board, commission, office, or department as necessary to accomplish the task force's responsibilities under this section.

8. The members of the task force shall serve without compensation and shall not be reimbursed for their expenses.

9. The provisions of sections 160.2100 and 160.2110 shall expire on January 1, 2013.

160.2110. ADOPTION AND IMPLEMENTATION OF POLICY, CONTENT. — 1. The task force on the prevention of sexual abuse of children established in section 160.2100 may adopt and implement a policy addressing sexual abuse of children that may include:

(1) Age-appropriate curriculum for students in pre-K through fifth grade;

(2) Training for school personnel on child sexual abuse;

(3) Educational information to parents or guardians provided in the school handbook on the warning signs of a child being abused, along with any needed assistance, referral, or resource information;

(4) Available counseling and resources for students affected by sexual abuse; and

(5) Emotional and educational support for a child of abuse to continue to be successful in school.

2. Any policy adopted may address without limitation:

(1) Methods for increasing teacher, student, and parent awareness of issues regarding sexual abuse of children, including knowledge of likely warning signs indicating that a child may be a victim of sexual abuse;

(2) Actions that a child who is a victim of sexual abuse could take to obtain assistance and intervention; and

(3) Available counseling options for students affected by sexual abuse.

162.014. REGISTERED SEX OFFENDERS PROHIBITED FROM BEING SCHOOL BOARD CANDIDATES. — No person shall be a candidate for a member or director of the school board in any school district in this state if such person is registered or is required to be

registered as a sex offender under sections 589.400 to 589.425. Any member or director of the school board of any school district who is registered or required to be registered as a sex offender under sections 589.400 to 589.425 shall be ineligible to serve as a member or director of a school board of any school district at the conclusion of his or her term of office.

162.068. FORMER EMPLOYEES, INFORMATION PROVIDED BY SCHOOL DISTRICT, WRITTEN POLICY REQUIRED — SUSPENSION OF EMPLOYEE UNDER INVESTIGATION — IMMUNITY FROM LIABILITY, WHEN, EXCEPTION. — 1. By July 1, 2012, every school district shall adopt a written policy on information that the district provides about former employees, both certificated and noncertificated, to other public schools. The policy shall include who is permitted to respond to requests for information from potential employers and the information the district would provide when responding to such a request. The policy shall require that notice of this provision be provided to all current employees and to all potential employers who contact the school district regarding the possible employment of a school district employee.

2. Any school district that employs a person about whom the children's division conducts an investigation involving allegations of sexual misconduct with a student and reaches a finding of substantiated shall immediately suspend the employment of such person, notwithstanding any other provision of law, but the district may return the person to his or her employment if the child abuse and neglect review board's finding that the allegation is substantiated is reversed by a court on appeal and becomes final. Nothing shall preclude a school district from otherwise lawfully terminating the employment of any employee about whom there has been a finding of unsubstantiated resulting from an investigation by the children's division involving allegations of sexual misconduct with a student.

3. Any school district employee who is permitted to respond to requests for information regarding former employees under a policy adopted by his or her school district under subsection 2 of this section and who communicates only the information which such policy directs, and who acts in good faith and without malice shall be immune against any civil action for damages brought by the former employee arising out of the communication of such information. If any such action is brought, the school district employee may, at his or her option, request the attorney general to defend him or her in such suit and the attorney general shall provide such defense, except that if the attorney general represents the school district or the department of elementary and secondary education in a pending licensing matter under section 168.071 the attorney general shall not represent the school district employee.

4. Notwithstanding the provisions of subsection 2 of this section, if a district that has employed any employee whose job involves contact with children receives allegations of sexual misconduct concerning the employee and as a result of such allegations or as a result of such allegations being substantiated by the child abuse and neglect review board dismisses the employee or allows the employee to resign in lieu of being fired and fails to disclose the allegations of sexual misconduct when furnishing a reference for the former employee or responding to a potential employer's request for information regarding such employee, the district shall be directly liable for damages to any student of a subsequent employing district who is found by a court of competent jurisdiction to be a victim of the former employee's sexual misconduct, and the district shall bear third-party liability to the employing district for any legal liability, legal fees, costs, and expenses incurred by the employing district caused by the failure to disclose such information to the employing district.

5. If a school district has previously employed a person about whom the children's division has conducted an investigation involving allegations of sexual misconduct with a

student and has reached a finding of substantiated and another public school contacts the district for a reference for the former employee, the district shall disclose the results of the children's division's investigation to the public school.

6. Any school district employee, acting in good faith, who reports alleged sexual misconduct on the part of a teacher or other school employee shall not be discharged or otherwise discriminated against in any fashion because of such reporting.

162.069. COMMUNICATIONS BETWEEN STUDENTS AND SCHOOL EMPLOYEES AND TEACHERS, WRITTEN POLICY REQUIRED, CONTENTS — INTERNET SITES, LIMITATIONS — TRAINING MATERIALS, REQUIRED CONTENT. — 1. Every school district shall, by January 1, 2012, promulgate a written policy concerning teacher-student communication and employee-student communication. Such policy shall contain at least the following elements:

(1) Appropriate oral and nonverbal personal communication, which may be combined with or included in any policy on sexual harassment; and

(2) Appropriate use of electronic media such as text messaging and internet sites for both instructional and personal purposes, with an element concerning use of social networking sites no less stringent than the provisions of subsections 2, 3, and 4 of this section.

2. As used in this section, the following terms shall mean:

(1) "Exclusive access", the information on the website is available only to the owner (teacher) and user (student) by mutual explicit consent and where third parties have no access to the information on the website absent an explicit consent agreement with the owner (teacher);

(2) "Former student", any person who was at one time a student at the school at which the teacher is employed and who is eighteen years of age or less and who has not graduated;

(3) "Nonwork-related internet site", any internet website or web page used by a teacher primarily for personal purposes and not for educational purposes;

(4) "Work-related internet site", any internet website or web pages used by a teacher for educational purposes.

3. No teacher shall establish, maintain, or use a work-related internet site unless such site is available to school administrators and the child's legal custodian, physical custodian, or legal guardian.

4. No teacher shall establish, maintain, or use a nonwork-related internet site which allows exclusive access with a current or former student. Nothing in this subsection shall be construed as prohibiting a teacher from establishing a nonwork related internet site, provided the site is used in accordance with this section.

5. Every school district shall, by July 1, 2012, include in its teacher and employee training, a component that provides up-to-date and reliable information on identifying signs of sexual abuse in children and danger signals of potentially abusive relationships between children and adults. The training shall emphasize the importance of mandatory reporting of abuse under section 210.115 including the obligation of mandated reporters to report suspected abuse by other mandated reporters, and how to establish an atmosphere of trust so that students feel their school has concerned adults with whom they feel comfortable discussing matters related to abuse.

168.021. ISSUANCE OF TEACHERS' LICENSES — EFFECT OF CERTIFICATION IN ANOTHER STATE AND SUBSEQUENT EMPLOYMENT IN THIS STATE. — 1. Certificates of license to teach in the public schools of the state shall be granted as follows:

(1) By the state board, under rules and regulations prescribed by it:

(a) Upon the basis of college credit;

(b) Upon the basis of examination;

(2) By the state board, under rules and regulations prescribed by the state board with advice from the advisory council established by section 168.015 to any individual who presents to the state board a valid doctoral degree from an accredited institution of higher education accredited by a regional accrediting association such as North Central Association. Such certificate shall be limited to the major area of postgraduate study of the holder, shall be issued only after successful completion of the examination required for graduation pursuant to rules adopted by the state board of education, and shall be restricted to those certificates established pursuant to subdivision (1) of subsection 3 of this section;

(3) By the state board, which shall issue the professional certificate classification in both the general and specialized areas most closely aligned with the current areas of certification approved by the state board, commensurate with the years of teaching experience of the applicant, and based upon the following criteria:

(a) Recommendation of a state-approved baccalaureate-level teacher preparation program;

(b) Successful attainment of the Missouri qualifying score on the exit assessment for teachers or administrators designated by the state board of education. Applicants who have not successfully achieved a qualifying score on the designated examinations will be issued a two-year nonrenewable provisional certificate; and

(c) Upon completion of a background check **as prescribed in section 168.133** and possession of a valid teaching certificate in the state from which the applicant's teacher preparation program was completed;

(4) By the state board, under rules prescribed by it, on the basis of a relevant bachelor's degree, or higher degree, and a passing score for the designated exit examination, for individuals whose academic degree and professional experience are suitable to provide a basis for instruction solely in the subject matter of banking or financial responsibility, at the discretion of the state board. Such certificate shall be limited to the major area of study of the holder and shall be restricted to those certificates established under subdivision (1) of subsection 3 of this section. Holders of certificates granted under this subdivision shall be exempt from the teacher tenure act under sections 168.102 to 168.130 and each school district shall have the decision-making authority on whether to hire the holders of such certificates; or

(5) By the state board, under rules and regulations prescribed by it, on the basis of certification by the American Board for Certification of Teacher Excellence (ABCTE) and verification of ability to work with children as demonstrated by sixty contact hours in any one of the following areas as validated by the school principal: sixty contact hours in the classroom, of which at least forty-five must be teaching; sixty contact hours as a substitute teacher, with at least thirty consecutive hours in the same classroom; sixty contact hours of teaching in a private school; or sixty contact hours of teaching as a paraprofessional, for an initial four-year ABCTE certificate of license to teach, except that such certificate shall not be granted for the areas of early childhood education, elementary education, or special education. Upon the completion of the requirements listed in paragraphs (a), (b), (c), and (d) of this subdivision, an applicant shall be eligible to apply for a career continuous professional certificate under subdivision (2) of subsection 3 of this section:

(a) Completion of thirty contact hours of professional development within four years, which may include hours spent in class in an appropriate college curriculum;

(b) Validated completion of two years of the mentoring program of the American Board for Certification of Teacher Excellence or a district mentoring program approved by the state board of education;

(c) Attainment of a successful performance-based teacher evaluation; and

(d) Participate in a beginning teacher assistance program.

2. All valid teaching certificates issued pursuant to law or state board policies and regulations prior to September 1, 1988, shall be exempt from the professional development requirements of this section and shall continue in effect until they expire, are revoked or

suspended, as provided by law. When such certificates are required to be renewed, the state board or its designee shall grant to each holder of such a certificate the certificate most nearly equivalent to the one so held. Anyone who holds, as of August 28, 2003, a valid PC-I, PC-II, or continuous professional certificate shall, upon expiration of his or her current certificate, be issued the appropriate level of certificate based upon the classification system established pursuant to subsection 3 of this section.

3. Certificates of license to teach in the public schools of the state shall be based upon minimum requirements prescribed by the state board of education **which shall include completion of a background check as prescribed in section 168.133**. The state board shall provide for the following levels of professional certification: an initial professional certificate and a career continuous professional certificate.

(1) The initial professional certificate shall be issued upon completion of requirements established by the state board of education and shall be valid based upon verification of actual teaching within a specified time period established by the state board of education. The state board shall require holders of the four-year initial professional certificate to:

(a) Participate in a mentoring program approved and provided by the district for a minimum of two years;

(b) Complete thirty contact hours of professional development, which may include hours spent in class in an appropriate college curriculum, or for holders of a certificate under subdivision (4) of subsection 1 of this section, an amount of professional development in proportion to the certificate holder's hours in the classroom, if the certificate holder is employed less than full time; and

(c) Participate in a beginning teacher assistance program;

(2) (a) The career continuous professional certificate shall be issued upon verification of completion of four years of teaching under the initial professional certificate and upon verification of the completion of the requirements articulated in paragraphs (a), (b), and (c) of subdivision (1) of this subsection or paragraphs (a), (b), (c), and (d) of subdivision (5) of subsection 1 of this section.

(b) The career continuous professional certificate shall be continuous based upon verification of actual employment in an educational position as provided for in state board guidelines and completion of fifteen contact hours of professional development per year which may include hours spent in class in an appropriate college curriculum. Should the possessor of a valid career continuous professional certificate fail, in any given year, to meet the fifteen-hour professional development requirement, the possessor may, within two years, make up the missing hours. In order to make up for missing hours, the possessor shall first complete the fifteen-hour requirement for the current year and then may count hours in excess of the current year requirement as make-up hours. Should the possessor fail to make up the missing hours within two years, the certificate shall become inactive. In order to reactivate the certificate, the possessor shall complete twenty-four contact hours of professional development which may include hours spent in the classroom in an appropriate college curriculum within the six months prior to or after reactivating his or her certificate. The requirements of this paragraph shall be monitored and verified by the local school district which employs the holder of the career continuous professional certificate.

(c) A holder of a career continuous professional certificate shall be exempt from the professional development contact hour requirements of paragraph (b) of this subdivision if such teacher has a local professional development plan in place within such teacher's school district and meets two of the three following criteria:

a. Has ten years of teaching experience as defined by the state board of education;

b. Possesses a master's degree; or

c. Obtains a rigorous national certification as approved by the state board of education.

4. Policies and procedures shall be established by which a teacher who was not retained due to a reduction in force may retain the current level of certification. There shall also be

established policies and procedures allowing a teacher who has not been employed in an educational position for three years or more to reactivate his or her last level of certification by completing twenty-four contact hours of professional development which may include hours spent in the classroom in an appropriate college curriculum within the six months prior to or after reactivating his or her certificate.

5. The state board shall, upon **[**an appropriate**]** **completion of a** background check **as prescribed in section 168.133**, issue a professional certificate classification in the areas most closely aligned with an applicant's current areas of certification, commensurate with the years of teaching experience of the applicant, to any person who is hired to teach in a public school in this state and who possesses a valid teaching certificate from another state or certification under subdivision (4) of subsection 1 of this section, provided that the certificate holder shall annually complete the state board's requirements for such level of certification, and shall establish policies by which residents of states other than the state of Missouri may be assessed a fee for a certificate license to teach in the public schools of Missouri. Such fee shall be in an amount sufficient to recover any or all costs associated with the issuing of a certificate of license to teach. The board shall promulgate rules to authorize the issuance of a provisional certificate of license, which shall allow the holder to assume classroom duties pending the completion of a criminal background check under section 168.133, for any applicant who:

(1) Is the spouse of a member of the armed forces stationed in Missouri;

(2) Relocated from another state within one year of the date of application;

(3) Underwent a criminal background check in order to be issued a teaching certificate of license from another state; and

(4) Otherwise qualifies under this section.

6. The state board may assess to holders of an initial professional certificate a fee, to be deposited into the excellence in education revolving fund established pursuant to section 160.268, for the issuance of the career continuous professional certificate. However, such fee shall not exceed the combined costs of issuance and any criminal background check required as a condition of issuance. Applicants for the initial ABCTE certificate shall be responsible for any fees associated with the program leading to the issuance of the certificate, but nothing in this section shall prohibit a district from developing a policy that permits fee reimbursement.

7. Any member of the public school retirement system of Missouri who entered covered employment with ten or more years of educational experience in another state or states and held a certificate issued by another state and subsequently worked in a school district covered by the public school retirement system of Missouri for ten or more years who later became certificated in Missouri shall have that certificate dated back to his or her original date of employment in a Missouri public school.

8. The provisions of subdivision (5) of subsection 1 of this section, as well as any other provision of this section relating to the American Board for Certification of Teacher Excellence, shall terminate on August 28, 2014.

168.071. REVOCATION, SUSPENSION OR REFUSAL OF CERTIFICATE OR LICENSE, GROUNDS — PROCEDURE — APPEAL. — 1. The state board of education may refuse to issue or renew a certificate, or may, upon hearing, discipline the holder of a certificate of license to teach for the following causes:

(1) A certificate holder or applicant for a certificate has pleaded to or been found guilty of a felony or crime involving moral turpitude under the laws of this state, any other state, of the United States, or any other country, whether or not sentence is imposed;

(2) The certification was obtained through use of fraud, deception, misrepresentation or bribery;

(3) There is evidence of incompetence, immorality, or neglect of duty by the certificate holder;

(4) A certificate holder has been subject to disciplinary action relating to certification issued by another state, territory, federal agency, or country upon grounds for which discipline is authorized in this section; or

(5) If charges are filed by the local board of education, based upon the annulling of a written contract with the local board of education, for reasons other than election to the general assembly, without the consent of the majority of the members of the board that is a party to the contract.

2. A public school district may file charges seeking the discipline of a holder of a certificate of license to teach based upon any cause or combination of causes outlined in subsection 1 of this section, including annulment of a written contract. Charges shall be in writing, specify the basis for the charges, and be signed by the chief administrative officer of the district, or by the president of the board of education as authorized by a majority of the board of education. The board of education may also petition the office of the attorney general to file charges on behalf of the school district for any cause other than annulment of contract, with acceptance of the petition at the discretion of the attorney general.

3. The department of elementary and secondary education may file charges seeking the discipline of a holder of a certificate of license to teach based upon any cause or combination of causes outlined in subsection 1 of this section, other than annulment of contract. Charges shall be in writing, specify the basis for the charges, and be signed by legal counsel representing the department of elementary and secondary education.

4. If the underlying conduct or actions which are the basis for charges filed pursuant to this section are also the subject of a pending criminal charge against the person holding such certificate, the certificate holder may request, in writing, a delayed hearing on advice of counsel under the fifth amendment of the Constitution of the United States. Based upon such a request, no hearing shall be held until after a trial has been completed on this criminal charge.

5. The certificate holder shall be given not less than thirty days' notice of any hearing held pursuant to this section.

6. Other provisions of this section notwithstanding, the certificate of license to teach shall be revoked or, in the case of an applicant, a certificate shall not be issued, if the certificate holder or applicant has pleaded guilty to or been found guilty of any of the following offenses established pursuant to Missouri law or offenses of a similar nature established under the laws of any other state or of the United States, or any other country, whether or not the sentence is imposed:

(1) Any dangerous felony as defined in section 556.061, RSMo, or murder in the first degree **under section 565.020**;

(2) Any of the following sexual offenses: rape **under section 566.030**; statutory rape in the first degree **under section 566.032**; statutory rape in the second degree **under section 566.034**; sexual assault **under section 566.040**; forcible sodomy **under section 566.060**; statutory sodomy in the first degree **under section 566.062**; statutory sodomy in the second degree **under section 566.064**; child molestation in the first degree **under section 566.067**; child molestation in the second degree **under section 566.068**; deviate sexual assault **under section 566.070**; sexual misconduct involving a child **under section 566.083**; **sexual contact with a student while on public school property under section 566.086;** sexual misconduct in the first degree **under section 566.090**; **sexual misconduct in the second degree under section 566.093; sexual misconduct in the third degree under section 566.095;** sexual abuse **under section 565.100**; enticement of a child **under section 566.151**; or attempting to entice a child;

(3) Any of the following offenses against the family and related offenses: incest **under section 568.020**; abandonment of child in the first degree **under section 568.030**; abandonment of child in the second degree **under section 568.032**; endangering the welfare of a child in the first degree **under section 568.045**; abuse of a child **under section 568.060**; child used in a sexual performance **under section 568.080**; promoting sexual performance by a child **under section 568.090**; or trafficking in children **under section 568.175**; and

(4) Any of the following offenses involving child pornography and related offenses: promoting obscenity in the first degree **under section 573.020**; promoting obscenity in the second degree when the penalty is enhanced to a class D felony **under section 573.030**; promoting child pornography in the first degree **under section 573.025**; promoting child pornography in the second degree **under section 573.035**; possession of child pornography **[**in the first degree**] under section 573.037**; **[**possession of child pornography in the second degree; furnishing child pornography to a minor;**]** furnishing pornographic materials to minors **under section 573.040**; or coercing acceptance of obscene material **under section 573.065**.

7. When a certificate holder pleads guilty or is found guilty of any offense that would authorize the state board of education to seek discipline against that holder's certificate of license to teach, the local board of education or the department of elementary and secondary education shall immediately provide written notice to the state board of education and the attorney general regarding the plea of guilty or finding of guilty.

8. The certificate holder whose certificate was revoked pursuant to subsection 6 of this section may appeal such revocation to the state board of education. Notice of this appeal must be received by the commissioner of education within ninety days of notice of revocation pursuant to this subsection. Failure of the certificate holder to notify the commissioner of the intent to appeal waives all rights to appeal the revocation. Upon notice of the certificate holder's intent to appeal, an appeal hearing shall be held by a hearing officer designated by the commissioner of education, with the final decision made by the state board of education, based upon the record of that hearing. The certificate holder shall be given not less than thirty days' notice of the hearing, and an opportunity to be heard by the hearing officer, together with witnesses.

9. In the case of any certificate holder who has surrendered or failed to renew his or her certificate of license to teach, the state board of education may refuse to issue or renew, or may suspend or revoke, such certificate for any of the reasons contained in this section.

10. In those cases where the charges filed pursuant to this section are based upon an allegation of misconduct involving a minor child, the hearing officer may accept into the record the sworn testimony of the minor child relating to the misconduct received in any court or administrative hearing.

11. Hearings, appeals or other matters involving certificate holders, licensees or applicants pursuant to this section may be informally resolved by consent agreement or agreed settlement or voluntary surrender of the certificate of license pursuant to the rules promulgated by the state board of education.

12. The final decision of the state board of education is subject to judicial review pursuant to sections 536.100 to 536.140, RSMo.

13. A certificate of license to teach to an individual who has been convicted of a felony or crime involving moral turpitude, whether or not sentence is imposed, shall be issued only upon motion of the state board of education adopted by a unanimous affirmative vote of those members present and voting.

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 **school district shall be responsible for conducting the criminal** background check **[**shall be conducted**]** on drivers employed by the school district **[**or**]. For drivers** employed by a pupil transportation company under contract with the school district**, the criminal background check shall be conducted pursuant to section 43.540 and conform to the requirements established**

in the National Child Protection Act of 1993, as amended by the Volunteers for Children Act. Personnel who have successfully undergone a criminal background check and a check of the family care safety registry as part of the professional license application process under section 168.021 and who have received clearance on the checks within one prior year of employment shall be considered to have completed the background check requirement. A criminal background check under this section shall include a search of any information publicly available in an electronic format through a public index or single case display.

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

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

4. **The department of elementary and secondary education shall facilitate an annual check of employed persons holding current active certificates under section 168.021 against criminal history records in the central repository under section 43.530, the sexual offender registry under sections 589.400 to 589.475, and child abuse central registry under sections 210.109 to 210.183. The department of elementary and secondary education shall facilitate procedures for school districts to submit personnel information annually for persons employed by the school districts who do not hold a current valid certificate who are required by subsection 1 of this section to undergo a criminal background check, sexual offender registry check, and child abuse central registry check. The Missouri state highway patrol shall provide ongoing electronic updates to criminal history background checks of those persons previously submitted, both those who have an active certificate and those who do not have an active certificate, by the department of elementary and secondary education. This shall fulfill the annual check against the criminal history records in the central repository under section 43.530.**

5. 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.**] 6.** 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.**] 7.** 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.**] 8.** 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.**]** **9.** A criminal background check and fingerprint collection conducted under subsections 1 and 2 of this section shall be valid for at least a period of one year and transferrable from one school district to another district. **A school district may, in its discretion, conduct a new criminal background check and fingerprint collection under subsections 1 and 2 for a newly hired employee at the district's expense.** A teacher's change in type of certification shall have no effect on the transferability or validity of such records.

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

[10.**]** **11.** 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.

210.135. IMMUNITY FROM LIABILITY GRANTED TO REPORTING PERSON OR INSTITUTION, WHEN — EXCEPTION. — **1.** Any person, official, or institution complying with the provisions of sections 210.110 to 210.165 in the making of a report, the taking of color photographs, or the making of radiologic examinations pursuant to sections 210.110 to 210.165, or both such taking of color photographs and making of radiologic examinations, or the removal or retaining a child pursuant to sections 210.110 to 210.165, or in cooperating with the division, or any other law enforcement agency, juvenile office, court, or child-protective service agency of this or any other state, in any of the activities pursuant to sections 210.110 to 210.165, or any other allegation of child abuse, neglect or assault, pursuant to sections 568.045 to 568.060, RSMo, shall have immunity from any liability, civil or criminal, that otherwise might result by reason of such actions. Provided, however, any person, official or institution intentionally filing a false report, acting in bad faith, or with ill intent, shall not have immunity from any liability, civil or criminal. Any such person, official, or institution shall have the same immunity with respect to participation in any judicial proceeding resulting from the report.

2. Any person, who is not a school district employee, who makes a report to any employee of the school district of child abuse by a school employee shall have immunity from any liability, civil or criminal, that otherwise might result because of such report. Provided, however, that any such person who makes a false report, knowing that the report is false, or who acts in bad faith or with ill intent in making such report shall not have immunity from any liability, civil or criminal. Any such person shall have the same immunity with respect to participation in any judicial proceeding resulting from the report.

210.145. TELEPHONE HOTLINE FOR REPORTS ON CHILD ABUSE — DIVISION DUTIES, PROTOCOLS, LAW ENFORCEMENT CONTACTED IMMEDIATELY, INVESTIGATION CONDUCTED, WHEN, EXCEPTION — CHIEF INVESTIGATOR NAMED — FAMILY SUPPORT TEAM MEETINGS, WHO MAY ATTEND — REPORTER'S RIGHT TO RECEIVE INFORMATION — ADMISSIBILITY OF REPORTS IN CUSTODY CASES. — 1. The division shall develop protocols which give priority to:

(1) Ensuring the well-being and safety of the child in instances where child abuse or neglect has been alleged;

(2) Promoting the preservation and reunification of children and families consistent with state and federal law;

(3) Providing due process for those accused of child abuse or neglect; and

(4) Maintaining an information system operating at all times, capable of receiving and maintaining reports. This information system shall have the ability to receive reports over a single, statewide toll-free number. Such information system shall maintain the results of all investigations, family assessments and services, and other relevant information.

2. The division shall utilize structured decision-making protocols for classification purposes of all child abuse and neglect reports. The protocols developed by the division shall give priority to ensuring the well-being and safety of the child. All child abuse and neglect reports shall be initiated within twenty-four hours and shall be classified based upon the reported risk and injury to the child. The division shall promulgate rules regarding the structured decision-making protocols to be utilized for all child abuse and neglect reports.

3. Upon receipt of a report, the division shall determine if the report merits investigation, including reports which if true would constitute a suspected violation of any of the following: section 565.020, 565.021, 565.023, 565.024, or 565.050, RSMo, if the victim is a child less than eighteen years of age, section 566.030 or 566.060, RSMo, if the victim is a child less than eighteen years of age, or other crimes under chapter 566, RSMo, if the victim is a child less than eighteen years of age and the perpetrator is twenty-one years of age or older, section 567.050, RSMo, if the victim is a child less than eighteen years of age, section 568.020, 568.030, 568.045, 568.050, 568.060, 568.080, or 568.090, RSMo, section 573.025, 573.035, 573.037, or 573.040, RSMo, or an attempt to commit any such crimes. The division shall immediately communicate all reports that merit investigation to its appropriate local office and any relevant information as may be contained in the information system. The local division staff shall determine, through the use of protocols developed by the division, whether an investigation or the family assessment and services approach should be used to respond to the allegation. The protocols developed by the division shall give priority to ensuring the well-being and safety of the child.

4. The local office shall contact the appropriate law enforcement agency immediately upon receipt of a report which division personnel determine merits an investigation and provide such agency with a detailed description of the report received. In such cases the local division office shall request the assistance of the local law enforcement agency in all aspects of the investigation of the complaint. The appropriate law enforcement agency shall either assist the division in the investigation or provide the division, within twenty-four hours, an explanation in writing detailing the reasons why it is unable to assist.

5. The local office of the division shall cause an investigation or family assessment and services approach to be initiated in accordance with the protocols established in subsection 2 of this section, except in cases where the sole basis for the report is educational neglect. If the report indicates that educational neglect is the only complaint and there is no suspicion of other neglect or abuse, the investigation shall be initiated within seventy-two hours of receipt of the report. If the report indicates the child is in danger of serious physical harm or threat to life, an investigation shall include direct observation of the subject child within twenty-four hours of the receipt of the report. Local law enforcement shall take all necessary steps to facilitate such direct observation. If the parents of the child are not the alleged abusers, a parent of the child must be notified prior to the child being interviewed by the division. If the abuse is alleged to have occurred in a school or child-care facility the division shall not meet with the child in any school building or child-care facility building where abuse of such child is alleged to have occurred. When the child is reported absent from the residence, the location and the well-being of the child shall be verified. For purposes of this subsection, child-care facility shall have the same meaning as such term is defined in section 210.201.

6. The director of the division shall name at least one chief investigator for each local division office, who shall direct the division response on any case involving a second or subsequent incident regarding the same subject child or perpetrator. The duties of a chief investigator shall include verification of direct observation of the subject child by the division and shall ensure information regarding the status of an investigation is provided to the public school district liaison. The public school district liaison shall develop protocol in conjunction with the

chief investigator to ensure information regarding an investigation is shared with appropriate school personnel. The superintendent of each school district shall designate a specific person or persons to act as the public school district liaison. Should the subject child attend a nonpublic school the chief investigator shall notify the school principal of the investigation. Upon notification of an investigation, all information received by the public school district liaison or the school shall be subject to the provisions of the federal Family Educational Rights and Privacy Act (FERPA), 20 U.S.C., Section 1232g, and federal rule 34 C.F.R., Part 99.

7. The investigation shall include but not be limited to the nature, extent, and cause of the abuse or neglect; the identity and age of the person responsible for the abuse or neglect; the names and conditions of other children in the home, if any; the home environment and the relationship of the subject child to the parents or other persons responsible for the child's care; any indication of incidents of physical violence against any other household or family member; and other pertinent data.

8. When a report has been made by a person required to report under section 210.115, the division shall contact the person who made such report within forty-eight hours of the receipt of the report in order to ensure that full information has been received and to obtain any additional information or medical records, or both, that may be pertinent.

9. Upon completion of the investigation, if the division suspects that the report was made maliciously or for the purpose of harassment, the division shall refer the report and any evidence of malice or harassment to the local prosecuting or circuit attorney.

10. Multidisciplinary teams shall be used whenever conducting the investigation as determined by the division in conjunction with local law enforcement. Multidisciplinary teams shall be used in providing protective or preventive social services, including the services of law enforcement, a liaison of the local public school, the juvenile officer, the juvenile court, and other agencies, both public and private.

11. For all family support team meetings involving an alleged victim of child abuse or neglect, the parents, legal counsel for the parents, foster parents, the legal guardian or custodian of the child, the guardian ad litem for the child, and the volunteer advocate for the child shall be provided notice and be permitted to attend all such meetings. Family members, other than alleged perpetrators, or other community informal or formal service providers that provide significant support to the child and other individuals may also be invited at the discretion of the parents of the child. In addition, the parents, the legal counsel for the parents, the legal guardian or custodian and the foster parents may request that other individuals, other than alleged perpetrators, be permitted to attend such team meetings. Once a person is provided notice of or attends such team meetings, the division or the convenor of the meeting shall provide such persons with notice of all such subsequent meetings involving the child. Families may determine whether individuals invited at their discretion shall continue to be invited.

12. If the appropriate local division personnel determine after an investigation has begun that completing an investigation is not appropriate, the division shall conduct a family assessment and services approach. The division shall provide written notification to local law enforcement prior to terminating any investigative process. The reason for the termination of the investigative process shall be documented in the record of the division and the written notification submitted to local law enforcement. Such notification shall not preclude nor prevent any investigation by law enforcement.

13. If the appropriate local division personnel determines to use a family assessment and services approach, the division shall:

(1) Assess any service needs of the family. The assessment of risk and service needs shall be based on information gathered from the family and other sources;

(2) Provide services which are voluntary and time-limited unless it is determined by the division based on the assessment of risk that there will be a high risk of abuse or neglect if the family refuses to accept the services. The division shall identify services for families where it is determined that the child is at high risk of future abuse or neglect. The division shall thoroughly

document in the record its attempt to provide voluntary services and the reasons these services are important to reduce the risk of future abuse or neglect to the child. If the family continues to refuse voluntary services or the child needs to be protected, the division may commence an investigation;

(3) Commence an immediate investigation if at any time during the family assessment and services approach the division determines that an investigation, as delineated in sections 210.109 to 210.183, is required. The division staff who have conducted the assessment may remain involved in the provision of services to the child and family;

(4) Document at the time the case is closed, the outcome of the family assessment and services approach, any service provided and the removal of risk to the child, if it existed.

14. Within thirty days of an oral report of abuse or neglect, the local office shall update the information in the information system. The information system shall contain, at a minimum, the determination made by the division as a result of the investigation, identifying information on the subjects of the report, those responsible for the care of the subject child and other relevant dispositional information. The division shall complete all investigations within thirty days, unless good cause for the failure to complete the investigation is documented in the information system. If a child involved in a pending investigation dies, the investigation shall remain open until the division's investigation surrounding the death is completed. If the investigation is not completed within thirty days, the information system shall be updated at regular intervals and upon the completion of the investigation. The information in the information system shall be updated to reflect any subsequent findings, including any changes to the findings based on an administrative or judicial hearing on the matter.

15. A person required to report under section 210.115 to the division and any person making a report of child abuse or neglect made to the division which is not made anonymously shall be informed by the division of his or her right to obtain information concerning the disposition of his or her report. Such person shall receive, from the local office, if requested, information on the general disposition of his or her report. Such person may receive, if requested, findings and information concerning the case. Such release of information shall be at the discretion of the director based upon a review of the reporter's ability to assist in protecting the child or the potential harm to the child or other children within the family. The local office shall respond to the request within forty-five days. The findings shall be made available to the reporter within five days of the outcome of the investigation. If the report is determined to be unsubstantiated, the reporter may request that the report be referred by the division to the office of child advocate for children's protection and services established in sections 37.700 to 37.730, RSMo. Upon request by a reporter under this subsection, the division shall refer an unsubstantiated report of child abuse or neglect to the office of child advocate for children's protection and services.

16. **The division shall provide to any individual, who is not satisfied with the results of an investigation, information about the office of child advocate and the services it may provide under sections 37.700 to 37.730.**

17. In any judicial proceeding involving the custody of a child the fact that a report may have been made pursuant to sections 210.109 to 210.183 shall not be admissible. However:

(1) Nothing in this subsection shall prohibit the introduction of evidence from independent sources to support the allegations that may have caused a report to have been made; and

(2) The court may on its own motion, or shall if requested by a party to the proceeding, make an inquiry not on the record with the children's division to determine if such a report has been made. If a report has been made, the court may stay the custody proceeding until the children's division completes its investigation.

[17.**]** **18.** In any judicial proceeding involving the custody of a child where the court determines that the child is in need of services pursuant to subdivision (d) of subsection 1 of section 211.031, RSMo, and has taken jurisdiction, the child's parent, guardian or custodian shall not be entered into the registry.

[18.**]** **19.** The children's division is hereby granted the authority to promulgate rules and regulations pursuant to the provisions of section 207.021, RSMo, and chapter 536, RSMo, to carry out the provisions of sections 210.109 to 210.183.

[19.**]** **20.** Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2000, shall be invalid and void.

210.152. REPORTS OF ABUSE OR NEGLECT — DIVISION TO RETAIN CERTAIN INFORMATION — CONFIDENTIAL, RELEASED ONLY TO AUTHORIZED PERSONS — REPORT REMOVAL, WHEN — NOTICE OF AGENCY'S DETERMINATION TO RETAIN OR REMOVE, SENT WHEN — CASE REOPENED, WHEN — ADMINISTRATIVE REVIEW OF DETERMINATION — DE NOVO JUDICIAL REVIEW. — 1. All identifying information, including telephone reports reported pursuant to section 210.145, relating to reports of abuse or neglect received by the division shall be retained by the division and removed from the records of the division as follows:

(1) For investigation reports contained in the central registry, identifying information shall be retained by the division;

(2) (a) For investigation reports initiated against a person required to report pursuant to section 210.115, where insufficient evidence of abuse or neglect is found by the division and where the division determines the allegation of abuse or neglect was made maliciously, for purposes of harassment or in retaliation for the filing of a report by a person required to report, identifying information shall be expunged by the division within forty-five days from the conclusion of the investigation;

(b) For investigation reports, where insufficient evidence of abuse or neglect is found by the division and where the division determines the allegation of abuse or neglect was made maliciously, for purposes of harassment or in retaliation for the filing of a report, identifying information shall be expunged by the division within forty-five days from the conclusion of the investigation;

(c) For investigation reports initiated by a person required to report under section 210.115, where insufficient evidence of abuse or neglect is found by the division, identifying information shall be retained for five years from the conclusion of the investigation. For all other investigation reports where insufficient evidence of abuse or neglect is found by the division, identifying information shall be retained for two years from the conclusion of the investigation. Such reports shall include any exculpatory evidence known by the division, including exculpatory evidence obtained after the closing of the case. At the end of such time period, the identifying information shall be removed from the records of the division and destroyed;

(3) For reports where the division uses the family assessment and services approach, identifying information shall be retained by the division;

(4) For reports in which the division is unable to locate the child alleged to have been abused or neglected, identifying information shall be retained for ten years from the date of the report and then shall be removed from the records of the division.

2. Within ninety days after receipt of a report of abuse or neglect that is investigated, the alleged perpetrator named in the report and the parents of the child named in the report, if the alleged perpetrator is not a parent, shall be notified in writing of any determination made by the division based on the investigation. The notice shall advise either:

(1) That the division has determined by a probable cause finding prior to August 28, 2004, or by a preponderance of the evidence after August 28, 2004, that abuse or neglect exists and that the division shall retain all identifying information regarding the abuse or neglect; that such

information shall remain confidential and will not be released except to law enforcement agencies, prosecuting or circuit attorneys, or as provided in section 210.150; that the alleged perpetrator has sixty days from the date of receipt of the notice to seek reversal of the division's determination through a review by the child abuse and neglect review board as provided in subsection 3 of this section; or

(2) That the division has not made a probable cause finding or determined by a preponderance of the evidence that abuse or neglect exists.

3. **The children's division may reopen a case for review at the request of the alleged perpetrator, the alleged victim, or the office of the child advocate if new, specific, and credible evidence is obtained that the division's decision was based on fraud or misrepresentation of material facts relevant to the division's decision and there is credible evidence that absent such fraud or misrepresentation the division's decision would have been different. If the alleged victim is under the age of eighteen, the request for review may be made by the alleged victim's parent, legal custodian, or legal guardian. All requests to reopen an investigation for review shall be made within a reasonable time and not more than one year after the children's division made its decision. The division shall not reopen a case for review based on any information which the person requesting the review knew, should have known, or could by the exercise of reasonable care have known before the date of the division's final decision in the case, unless the person requesting the review shows by a preponderance of the evidence that he or she could not have provided such information to the division before the date of the division's final decision in the case. Any person, other than the office of the child advocate, who makes a request to reopen a case for review based on facts which the person knows to be false or misleading or who acts in bad faith or with the intent to harass the alleged victim or perpetrator shall not have immunity from any liability, civil or criminal, for providing the information and requesting that the division reopen the investigation. Any person who makes a request to reopen an investigation based on facts which the person knows to be false shall be guilty of a class A misdemeanor. The children's division shall not reopen an investigation under any circumstances while the case is pending before a court of this state nor when a court has entered a final judgment after de novo judicial review pursuant to section 210.152.**

4. Any person named in an investigation as a perpetrator who is aggrieved by a determination of abuse or neglect by the division as provided in this section may seek an administrative review by the child abuse and neglect review board pursuant to the provisions of section 210.153. Such request for review shall be made within sixty days of notification of the division's decision under this section. In those cases where criminal charges arising out of facts of the investigation are pending, the request for review shall be made within sixty days from the court's final disposition or dismissal of the charges.

[4.**]** **5.** In any such action for administrative review, the child abuse and neglect review board shall sustain the division's determination if such determination was supported by evidence of probable cause prior to August 28, 2004, or is supported by a preponderance of the evidence after August 28, 2004, and is not against the weight of such evidence. The child abuse and neglect review board hearing shall be closed to all persons except the parties, their attorneys and those persons providing testimony on behalf of the parties.

[5.**]** **6.** If the alleged perpetrator is aggrieved by the decision of the child abuse and neglect review board, the alleged perpetrator may seek de novo judicial review in the circuit court in the county in which the alleged perpetrator resides and in circuits with split venue, in the venue in which the alleged perpetrator resides, or in Cole County. If the alleged perpetrator is not a resident of the state, proper venue shall be in Cole County. The case may be assigned to the family court division where such a division has been established. The request for a judicial review shall be made within sixty days of notification of the decision of the child abuse and neglect review board decision. In reviewing such decisions, the circuit court shall provide the alleged perpetrator the opportunity to appear and present testimony. The alleged perpetrator may

subpoena any witnesses except the alleged victim or the reporter. However, the circuit court shall have the discretion to allow the parties to submit the case upon a stipulated record.

[6.**]** **7.** In any such action for administrative review, the child abuse and neglect review board shall notify the child or the parent, guardian or legal representative of the child that a review has been requested.

210.915. DEPARTMENTAL COLLABORATION ON REGISTRY INFORMATION — RULEMAKING AUTHORITY. — The department of corrections, the department of public safety, the department of social services**, the department of elementary and secondary education,** and the department of mental health shall collaborate with the department to compare records on child-care, elder-care, mental health, and personal-care workers, **including those individuals required to undergo a background check under the provisions of section 168.133,** and the records of persons with criminal convictions and the background checks pursuant to subdivisions (1) to (8) of subsection 2 of section 210.903, and to enter into any interagency agreements necessary to facilitate the receipt of such information and the ongoing updating of such information. The department shall promulgate rules and regulations concerning such updating, including subsequent background reviews as listed in subsection 1 of section 210.909.

210.922. USE OF REGISTRY INFORMATION BY CERTAIN DEPARTMENTS, WHEN. — The department of health and senior services, department of mental health, **department of elementary and secondary education,** and department of social services may use the registry information to carry out the duties assigned to the department pursuant to this chapter and chapters **168,** 190, 195, 197, 198, 630, and 660, RSMo.

556.037. TIME LIMITATIONS FOR PROSECUTIONS FOR SEXUAL OFFENSES INVOLVING A PERSON UNDER EIGHTEEN. — Notwithstanding the provisions of section 556.036, prosecutions for unlawful sexual offenses involving a person eighteen years of age or under must be commenced within **[**twenty**]** **thirty** years after the victim reaches the age of eighteen unless the prosecutions are for forcible rape, attempted forcible rape, forcible sodomy, kidnapping, or attempted forcible sodomy in which case such prosecutions may be commenced at any time.

Approved July 14, 2011

SB 55 [SS SB 55]

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

Classifies sawmills and planning mills as agricultural and horticultural property for tax purposes.

AN ACT to repeal section 137.016, RSMo, and to enact in lieu thereof one new section relating to classification of certain real property.

SECTION

A. Enacting clause.

137.016. Real property, subclasses of, defined — political subdivision may adjust operating levy to recoup revenue, when — reclassification to apply, when — placement of certain property within proper subclass, factors considered.

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

SECTION A. ENACTING CLAUSE. — Section 137.016, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 137.016, to read as follows:

137.016. REAL PROPERTY, SUBCLASSES OF, DEFINED — POLITICAL SUBDIVISION MAY ADJUST OPERATING LEVY TO RECOUP REVENUE, WHEN — RECLASSIFICATION TO APPLY, WHEN — PLACEMENT OF CERTAIN PROPERTY WITHIN PROPER SUBCLASS, FACTORS CONSIDERED. — 1. As used in section 4(b) of article X of the Missouri Constitution, the following terms mean:

(1) "Agricultural and horticultural property", 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, showing, and boarding of horses; to dairying, or to any other combination thereof; and buildings and structures customarily associated with farming, agricultural, and horticultural uses. Agricultural and horticultural property 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. Agricultural and horticultural property shall further include land and improvements, exclusive of structures, on privately owned airports that qualify as reliever airports under the Nation Plan of Integrated Airports System, to receive federal airport improvement project funds through the Federal Aviation Administration. Real property classified as forest croplands shall not be agricultural or horticultural property so long as it is classified as forest croplands and shall be taxed in accordance with the laws enacted to implement section 7 of article X of the Missouri Constitution**. Agricultural and horticultural property shall also include any sawmill or planing mill defined in the U.S. Department of Labor's Standard Industrial Classification (SIC) Manual under Industry Group 242 with the SIC number 2421**;

(2) "Residential property", all real property improved by a structure which is used or intended to be used for residential living by human occupants, vacant land in connection with an airport, land used as a golf course, and manufactured home parks, but residential property shall not include other similar facilities used primarily for transient housing. For the purposes of this section, "transient housing" means all rooms available for rent or lease for which the receipts from the rent or lease of such rooms are subject to state sales tax pursuant to subdivision (6) of subsection 1 of section 144.020;

(3) "Utility, industrial, commercial, railroad and other real property", all real property used directly or indirectly, for any commercial, mining, industrial, manufacturing, trade, professional, business, or similar purpose, including all property centrally assessed by the state tax commission but shall not include floating docks, portions of which are separately owned and the remainder of which is designated for common ownership and in which no one person or business entity owns more than five individual units. All other real property not included in the property listed in subclasses (1) and (2) of section 4(b) of article X of the Missouri Constitution, as such property is defined in this section, shall be deemed to be included in the term "utility, industrial, commercial, railroad and other real property".

2. Pursuant to article X of the state constitution, any taxing district may adjust its operating levy to recoup any loss of property tax revenue, except revenues from the surtax imposed pursuant to article X, subsection 2 of section 6 of the constitution, as the result of changing the classification of structures intended to be used for residential living by human occupants which contain five or more dwelling units if such adjustment of the levy does not exceed the highest tax rate in effect subsequent to the 1980 tax year. For purposes of this section, loss in revenue shall include the difference between the revenue that would have been collected on such property under its classification prior to enactment of this section and the amount to be collected under its classification under this section. The county assessor of each county or city not within a county shall provide information to each taxing district within its boundaries regarding the difference in assessed valuation of such property as the result of such change in classification.

3. All reclassification of property as the result of changing the classification of structures intended to be used for residential living by human occupants which contain five or more dwelling units shall apply to assessments made after December 31, 1994.

4. Where real property is used or held for use for more than one purpose and such uses result in different classifications, the county assessor shall allocate to each classification the percentage of the true value in money of the property devoted to each use; except that, where agricultural and horticultural property, as defined in this section, also contains a dwelling unit or units, the farm dwelling, appurtenant residential-related structures and up to five acres immediately surrounding such farm dwelling shall be residential property, as defined in this section.

5. All real property which is vacant, unused, or held for future use; which is used for a private club, a not-for-profit or other nonexempt lodge, club, business, trade, service organization, or similar entity; or for which a determination as to its classification cannot be made under the definitions set out in subsection 1 of this section, shall be classified according to its immediate most suitable economic use, which use shall be determined after consideration of:

(1) Immediate prior use, if any, of such property;

(2) Location of such property;

(3) Zoning classification of such property; except that, such zoning classification shall not be considered conclusive if, upon consideration of all factors, it is determined that such zoning classification does not reflect the immediate most suitable economic use of the property;

(4) Other legal restrictions on the use of such property;

(5) Availability of water, electricity, gas, sewers, street lighting, and other public services for such property;

(6) Size of such property;

(7) Access of such property to public thoroughfares; and

(8) Any other factors relevant to a determination of the immediate most suitable economic use of such property.

6. All lands classified as forest croplands shall not, for taxation purposes, be classified as subclass (1), subclass (2), or subclass (3) real property, as such classes are prescribed in section 4(b) of article X of the Missouri Constitution and defined in this section, but shall be taxed in accordance with the laws enacted to implement section 7 of article X of the Missouri Constitution.

Approved July 13, 2011

SB 57 [HCS SCS SB 57]

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

Requires courts to transfer certain cases upon the request of the public administrator.

AN ACT to repeal sections 475.115 and 537.620, RSMo, and to enact in lieu thereof two new sections relating to public administrators.

SECTION

A. Enacting clause.
475.115. Appointment of successor guardian or conservator — transfer of case, procedure.
537.620. Political subdivisions may jointly create entity to provide insurance — entity created not deemed an insurance company or insurer.

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

SECTION A. ENACTING CLAUSE. — Sections 475.115 and 537.620, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 475.115 and 537.620, to read as follows:

475.115. APPOINTMENT OF SUCCESSOR GUARDIAN OR CONSERVATOR — TRANSFER OF CASE, PROCEDURE. — **1.** When a guardian or conservator dies, is removed by order of the court, or resigns and his **or her** resignation is accepted by the court, the court shall have the same authority as it has in like cases over personal representatives and their sureties and may appoint another guardian or conservator in the same manner and subject to the same requirements as are herein provided for an original appointment of a guardian or conservator.

2. A public administrator may request transfer of any case to the jurisdiction of another county by filing a petition for transfer. If the receiving county meets the venue requirements of section 475.035 and the public administrator of the receiving county consents to the transfer, the court shall transfer the case. The court with jurisdiction over the receiving county shall, without the necessity of any hearing required by section 475.075, appoint the public administrator of the receiving county as successor guardian and/or successor conservator and issue letters therein. In the case of a conservatorship, the final settlement of the public administrator's conservatorship shall be filed within thirty days of the court's transfer of the case, in the court with jurisdiction over the original conservatorship, and forwarded to the receiving county upon audit and approval.

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, 377, or 379, 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, 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 the department of insurance, financial institutions and professional registration under sections 375.930 to 375.948, sections 375.1000 to 375.1018, 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. **Risk coverages procured under this section shall not be deemed to constitute a contract, purchase, or expenditure of public funds for which a public governmental body, quasi-public governmental body, or political subdivision is required to solicit competitive bids.**

Approved July 8, 2011

SB 59 [CCS HCS SB 59]

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

Modifies the Uniform Trust Code.

AN ACT to repeal sections 404.710, 456.3-301, 456.5-505, 456.8-813, 469.411, 469.437, 469.459, 475.060, 475.061, 475.115, 482.305, and 482.315, RSMo, and to enact in lieu thereof forty-two new sections relating to judicial procedures.

SECTION

A. Enacting clause.
34.376. Citation of act — definitions.
34.378. Contingent fee contracts, limitations — written proposals, when — standard addendum — posting of contracts on website — record-keeping requirements — report, contents.
34.380. Contractual authority not expanded.
404.710. Power of attorney with general powers.
456.3-301. Representation, basic effect — prohibited, when.
456.4-419. Distributions of income and principal of first trusts and second trusts, discretionary power of trustee — notice requirements.
456.5-505. Creditor's claim against settlor.
456.5-508. Attachment and judicial sale of trust property prohibited, when — definitions.
456.8-813. Duty to inform and report — inapplicable, when.
469.411. Determination of unitrust amount — definitions — exclusions to average net fair market value of assets — applicability of section to certain trusts — net income of trust to be unitrust amount, when.
469.437. Distributions allocated as income, when — definitions — balance allocated to principal, when — effect of separate accounts or funds — marital deduction, effect of.
469.459. Taxes to be paid from income or principal, when.
475.060. Application for guardianship — petition for guardianship requirements — incapacitated persons, petition requirements.
475.061. Application for conservatorship — may combine with petition for guardian of person.
475.115. Appointment of successor guardian or conservator — transfer of case, procedure.
475.501. Short title.
475.502. Definitions.
475.503. International application of act.
475.504. Communication between courts.
475.505. Cooperation between courts.
475.506. Taking testimony in another state.
475.521. Definitions — significant connection factors.
475.522. Exclusive basis.
475.523. Jurisdiction.
475.524. Special jurisdiction.
475.525. Exclusive and continuing jurisdiction.
475.526. Appropriate forum.
475.527. Jurisdiction declined by reason of conduct.
475.528. Notice of proceeding.
475.529. Proceedings in more than one state.
475.531. Transfer of guardianship or conservatorship to another state.
475.532. Accepting guardianship or conservatorship transferred from another state.
475.541. Registration of guardianship orders.
475.542. Registration of protective orders.
475.543. Effect of registration.
475.544. State law applicability.
475.551. Uniformity of application and construction.
475.552. Relation to Electronic Signatures in Global and National Commerce Act.
475.555. Effective date.
482.305. Jurisdiction of small claims court.
482.315. Procedure if amount of claim exceeds jurisdictional amount — amendment of claim in transferred action not to exceed jurisdictional amount of court to which transferred.
1. Definition — property and interests in property, how held — death of settlor, effect of — marital property rights, effect on.

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

SECTION A. ENACTING CLAUSE. — Sections 404.710, 456.3-301, 456.5-505, 456.8-813, 469.411, 469.437, 469.459, 475.060, 475.061, 475.115, 482.305, and 482.315, RSMo, are repealed and forty-two new sections enacted in lieu thereof, to be known as sections 34.376, 34.378, 34.380, 404.710, 456.3-301, 456.4-419, 456.5-505, 456.5-508, 456.8-813, 469.411, 469.437, 469.459, 475.060, 475.061, 475.115, 475.501, 475.502, 475.503, 475.504, 475.505, 475.506, 475.521, 475.522, 475.523, 475.524, 475.525, 475.526, 475.527, 475.528, 475.529, 475.531, 475.532, 475.541, 475.542, 475.543, 475.544, 475.551, 475.552, 475.555, 482.305, and 482.315 and 1, to read as follows:

34.376. CITATION OF ACT — DEFINITIONS. — 1. Sections 34.376 to 34.380 may be known as the "Transparency in Private Attorney Contracts Act".

2. As used in sections 34.376 to 34.380, the following terms shall mean:

(1) "Government attorney", an attorney employed by the state as an assistant attorney general;

(2) "Private attorney", any private attorney or law firm;

(3) "State", the state of Missouri, in any action instituted by the attorney general pursuant to section 27.060.

34.378. CONTINGENT FEE CONTRACTS, LIMITATIONS — WRITTEN PROPOSALS, WHEN — STANDARD ADDENDUM — POSTING OF CONTRACTS ON WEBSITE — RECORD-KEEPING REQUIREMENTS — REPORT, CONTENTS. — 1. The state shall not enter into a contingency fee contract with a private attorney unless the attorney general makes a written determination prior to entering into such a contract that contingency fee representation is both cost-effective and in the public interest. Any written determination shall include specific findings for each of the following factors:

(1) Whether there exists sufficient and appropriate legal and financial resources within the attorney general's office to handle the matter;

(2) The time and labor required; the novelty, complexity, and difficulty of the questions involved; and the skill requisite to perform the attorney services properly;

(3) The geographic area where the attorney services are to be provided; and

(4) The amount of experience desired for the particular kind of attorney services to be provided and the nature of the private attorney's experience with similar issues or cases.

2. If the attorney general makes the determination described in subsection 1 of this section, the attorney general shall request written proposals from private attorneys to represent the state, unless the attorney general determines that requesting proposals is not feasible under the circumstances and sets forth the basis for this determination in writing. If a request for proposals is issued, the attorney general shall choose the lowest and best bid or request the office of administration establish an independent panel to evaluate the proposals and choose the lowest and best bid.

3. The state shall not enter into a contract for contingency fee attorney services unless the following requirements are met throughout the contract period and any extensions to the contract:

(1) The government attorneys shall retain complete control over the course and conduct of the case;

(2) A government attorney with supervisory authority shall oversee the litigation;

(3) The government attorneys shall retain veto power over any decisions made by outside counsel;

(4) A government attorney with supervisory authority for the case shall attend all settlement conferences; and

(5) Decisions regarding settlement of the case shall be reserved exclusively to the discretion of the attorney general.

4. The attorney general shall develop a standard addendum to every contract for contingent fee attorney services that shall be used in all cases, describing in detail what is expected of both the contracted private attorney and the state, including, without limitation, the requirements listed in subsection 4 of this section.

5. Copies of any executed contingency fee contract and the attorney general's written determination to enter into a contingency fee contract with the private attorney shall be posted on the attorney general's website for public inspection within five business days after the date the contract is executed and shall remain posted on the website for the duration of the contingency fee contract, including any extensions or amendments to the

contract. Any payment of contingency fees shall be posted on the attorney general's website within fifteen days after the payment of such contingency fees to the private attorney and shall remain posted on the website for at least three hundred sixty-five days.

6. Any private attorney under contract to provide services to the state on a contingency fee basis shall, from the inception of the contract until at least four years after the contract expires or is terminated, maintain detailed current records, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that concern the provision of such attorney services. The private attorney shall maintain detailed contemporaneous time records for the attorneys and paralegals working on the matter in increments of no greater than one tenth of an hour and shall promptly provide these records to the attorney general, upon request. Any request under chapter 610 for inspection and copying of such records shall be served upon and responded to by the attorney general's office.

7. By February first of each year, the attorney general shall submit a report to the president pro tem of the senate and the speaker of the house of representatives describing the use of contingency fee contracts with private attorneys in the preceding calendar year. At a minimum, the report shall:

(1) Identify all new contingency fee contracts entered into during the year and all previously executed contingency fee contracts that remain current during any part of the year, and for each contract describe:

(a) The name of the private attorney with whom the department has contracted, including the name of the attorney's law firm;

(b) The nature and status of the legal matter;

(c) The name of the parties to the legal matter;

(d) The amount of any recovery; and

(e) The amount of any contingency fee paid.

(2) Include copies of any written determinations made under subsections 1 and 2 of this section.

34.380. CONTRACTUAL AUTHORITY NOT EXPANDED. — Nothing in sections 34.376 to 34.380 shall be construed to expand the authority of any state agency or state agent to enter into contracts where no such authority previously existed.

404.710. POWER OF ATTORNEY WITH GENERAL POWERS. — 1. A principal may delegate to an attorney in fact in a power of attorney general powers to act in a fiduciary capacity on the principal's behalf with respect to all lawful subjects and purposes or with respect to one or more express subjects or purposes. A power of attorney with general powers may be durable or not durable.

2. If the power of attorney states that general powers are granted to the attorney in fact and further states in substance that it grants power to the attorney in fact to act with respect to all lawful subjects and purposes or that it grants general powers for general purposes or does not by its terms limit the power to the specific subject or purposes set out in the instrument, then the authority of the attorney in fact acting under the power of attorney shall extend to and include each and every action or power which an adult who is nondisabled and nonincapacitated may carry out through an agent specifically authorized in the premises, with respect to any and all matters whatsoever, except as provided in subsections 6 and 7 of this section. When a power of attorney grants general powers to an attorney in fact to act with respect to all lawful subjects and purposes, the enumeration of one or more specific subjects or purposes does not limit the general authority granted by that power of attorney, unless otherwise provided in the power of attorney.

3. If the power of attorney states that general powers are granted to an attorney in fact with respect to one or more express subjects or purposes for which general powers are conferred, then

the authority of the attorney in fact acting under the power of attorney shall extend to and include each and every action or power, but only with respect to the specific subjects or purposes expressed in the power of attorney that an adult who is nondisabled and nonincapacitated may carry out through an agent specifically authorized in the premises, with respect to any and all matters whatsoever, except as provided in subsections 6 and 7 of this section.

4. Except as provided in subsections 6 and 7 of this section, an attorney in fact with general powers has, with respect to the subjects or purposes for which the powers are conferred, all rights, power and authority to act for the principal that the principal would have with respect to his or her own person or property, including property owned jointly or by the entireties with another or others, as a nondisabled and nonincapacitated adult; and without limiting the foregoing has with respect to the subjects or purposes of the power complete discretion to make a decision for the principal, to act or not act, to consent or not consent to, or withdraw consent for, any act, and to execute and deliver or accept any deed, bill of sale, bill of lading, assignment, contract, note, security instrument, consent, receipt, release, proof of claim, petition or other pleading, tax document, notice, application, acknowledgment or other document necessary or convenient to implement or confirm any act, transaction or decision. An attorney in fact with general powers, whether power to act with respect to all lawful subjects and purposes, or only with respect to one or more express subjects or purposes, shall have the power, unless specifically denied by the terms of the power of attorney, to make, execute and deliver to or for the benefit of or at the request of a third person, who is requested to rely upon an action of the attorney in fact, an agreement indemnifying and holding harmless any third person or persons from any liability, claims or expenses, including legal expenses, incurred by any such third person by reason of acting or refraining from acting pursuant to the request of the attorney in fact, and such indemnity agreement shall be binding upon the principal who has executed such power of attorney and upon the principal's successor or successors in interest. No such indemnity agreement shall protect any third person from any liability, claims or expenses incurred by reason of the fact that, and to the extent that, the third person has honored the power of attorney for actions outside the scope of authority granted by the power of attorney. In addition, the attorney in fact has complete discretion to employ and compensate real estate agents, brokers, attorneys, accountants and subagents of all types to represent and act for the principal in any and all matters, including tax matters involving the United States government or any other government or taxing entity, including, but not limited to, the execution of supplemental or additional powers of attorney in the name of the principal in form that may be required or preferred by any such taxing entity or other third person, and to deal with any or all third persons in the name of the principal without limitation. No such supplemental or additional power of attorney shall broaden the scope of authority granted to the attorney in fact in the original power of attorney executed by the principal.

5. An attorney in fact, who is granted general powers for all subjects and purposes or with respect to any express subjects or purposes, shall exercise the powers conferred according to the principal's instructions, in the principal's best interest, in good faith, prudently and in accordance with sections 404.712 and 404.714.

6. Any power of attorney, whether durable or not durable, and whether or not it grants general powers for all subjects and purposes or with respect to express subjects or purposes, shall be construed to grant power or authority to an attorney in fact to carry out any of the actions described in this subsection if the actions are expressly enumerated and authorized in the power of attorney. Any power of attorney may grant power of authority to an attorney in fact to carry out any of the following actions if the actions are expressly authorized in the power of attorney:

(1) To execute, amend or revoke any trust agreement;

(2) To fund with the principal's assets any trust not created by the principal;

(3) To make or revoke a gift of the principal's property in trust or otherwise;

(4) To disclaim a gift or devise of property to or for the benefit of the principal;

(5) To create or change survivorship interests in the principal's property or in property in which the principal may have an interest; provided, however, that the inclusion of the authority set out in this **[**paragraph**]** **subdivision** shall not be necessary in order to grant to an attorney in fact acting under a power of attorney granting general powers with respect to all lawful subjects and purposes the authority to withdraw funds or other property from any account, contract or other similar arrangement held in the names of the principal and one or more other persons with any financial institution, brokerage company or other depository to the same extent that the principal would be authorized to do if the principal were present, not disabled or incapacitated, and seeking to act in the principal's own behalf;

(6) To designate or change the designation of beneficiaries to receive any property, benefit or contract right on the principal's death;

(7) To give or withhold consent to an autopsy or postmortem examination;

(8) To make **[**a**]** **an anatomical** gift of, or **[**decline to make a**]** **prohibit an anatomical** gift of, **all or part of** the principal's body **[**parts**]** under the **Revised** Uniform Anatomical Gift Act **or to exercise the right of sepulcher over the principal's body under section 194.119**;

(9) To nominate a guardian or conservator for the principal; and if so stated in the power of attorney, the attorney in fact may nominate himself as such;

(10) To give consent to or prohibit any type of health care, medical care, treatment or procedure to the extent authorized by sections 404.800 to 404.865; or

(11) To designate one or more substitute or successor or additional attorneys in fact.

7. No power of attorney, whether durable or not durable, and whether or not it delegates general powers, may delegate or grant power or authority to an attorney in fact to do or carry out any of the following actions for the principal:

(1) To make, publish, declare, amend or revoke a will for the principal;

(2) To make, execute, modify or revoke a living will declaration for the principal;

(3) To require the principal, against his or her will, to take any action or to refrain from taking any action; or

(4) To carry out any actions specifically forbidden by the principal while not under any disability or incapacity.

8. A third person may freely rely on, contract and deal with an attorney in fact delegated general powers with respect to the subjects and purposes encompassed or expressed in the power of attorney without regard to whether the power of attorney expressly identifies the specific property, account, security, storage facility or matter as being within the scope of a subject or purpose contained in the power of attorney, and without regard to whether the power of attorney expressly authorizes the specific act, transaction or decision by the attorney in fact.

9. It is the policy of this state that an attorney in fact acting pursuant to the provisions of a power of attorney granting general powers shall be accorded the same rights and privileges with respect to the personal welfare, property and business interests of the principal, and if the power of attorney enumerates some express subjects or purposes, with respect to those subjects or purposes, as if the principal himself or herself were personally present and acting or seeking to act; and any provision of law and any purported waiver, consent or agreement executed or granted by the principal to the contrary shall be void and unenforceable.

10. Sections 404.700 to 404.735 shall not be construed to preclude any person or business enterprise from providing in a contract with the principal as to the procedure that thereafter must be followed by the principal or the principal's attorney in fact in order to give a valid notice to the person or business enterprise of any modification or termination of the appointment of an attorney in fact by the principal; and any such contractual provision for notice shall be valid and binding on the principal and the principal's successors so long as such provision is reasonably capable of being carried out.

456.3-301. REPRESENTATION, BASIC EFFECT — PROHIBITED, WHEN. — 1. Notice to a person who may represent and bind another person under sections 456.3-301 to 456.3-305 has the same effect as if notice were given directly to the other person.

2. The consent of a person who may represent and bind another person under sections 456.3-301 to 456.3-305 is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective. **Except that, such consent is binding on the person represented regardless of whether the person represented objects under this subsection, if the person who may represent and bind is:**

(1) The holder of a testamentary power of appointment described in section 456.3-302 and the interests of the person represented are subject to the power;

(2) The conservator, conservator ad litem, or guardian described in subdivisions (1), (2), or (3) of section 456.3-303 and the person represented is disabled; or

(3) A parent described in subdivision (4) of section 456.3-303 and the person represented is a minor or unborn child of the parent.

3. Except as otherwise provided in sections 456.4A-411 and 456.6-602, a person who under sections 456.3-301 to 456.3-305 may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

4. A settlor may not represent and bind a beneficiary under sections 456.3-301 to 456.3-305 with respect to the termination or modification of a trust under section 456.4A-411.

456.4-419. DISTRIBUTIONS OF INCOME AND PRINCIPAL OF FIRST TRUSTS AND SECOND TRUSTS, DISCRETIONARY POWER OF TRUSTEE — NOTICE REQUIREMENTS. — 1. Unless the terms of the trust instrument expressly provide otherwise, a trustee who has discretionary power under the terms of a trust to make a distribution of income or principal, whether or not limited by an ascertainable standard, to or for the benefit of one or more beneficiaries of a trust, the "first trust", may instead exercise such discretionary power by appointing all or part of the income or principal subject to such discretionary power in favor of a trustee of a second trust, the "second trust", created under either the same or different trust instrument in the event that the trustee of the first trust decides that the appointment is necessary or desirable after taking into account the terms and purposes of the first trust, the terms and purposes of the second trust, and the consequences of the distribution.

2. The following provisions apply to any exercise of the authority granted by subsection 1 of this section:

(1) The second trust may have as beneficiaries only one or more of those beneficiaries of the first trust to or for whom any discretionary distribution may be made from the first trust and who are proper objects of the exercise of the power, or one or more of those other beneficiaries of the first trust to or for whom a distribution of income or principal may have been made in the future from the first trust at a time or upon the happening of an event specified under the first trust;

(2) Unless the exercise of such power is limited by an ascertainable standard, no trustee of the first trust may exercise such authority to make a distribution from the first trust if:

(a) Such trustee is a beneficiary of the first trust; or

(b) Any beneficiary may remove and replace the trustee of the first trust with a related or subordinate party to such beneficiary within the meaning of Section 672(c) of the Internal Revenue Code;

(3) Except if participating in a change that is needed for a distribution to any such beneficiary under an ascertainable standard, no trustee shall exercise such authority to the extent that doing so would have the effect either of:

(a) Increasing the distributions that can be made in the future from the second trust to the trustee of the first trust or to a beneficiary who can remove and replace the trustee

of the first trust with a related or subordinate party to such beneficiary within the meaning of Section 672(c) of the Internal Revenue Code; or

(b) Removing restrictions on discretionary distributions imposed by the instrument under which the first trust was created;

(4) In the case of any trust contributions which have been treated as gifts qualifying for the exclusion from gift tax described in Section 2503(b) of the Internal Revenue Code, by reason of the application of Section 2503(c), the governing instrument for the second trust shall provide that the beneficiary's remainder interest shall vest no later than the date upon which such interest would have vested under the terms of the governing instrument for the first trust;

(5) The exercise of such authority may not reduce any income interest of any income beneficiary of any of the following trusts:

(a) A trust for which a marital deduction has been taken for federal tax purposes under Section 2056 or 2523 of the Internal Revenue Code or for state tax purposes under any comparable provision of applicable state law;

(b) A charitable remainder trust under Section 664 of the Internal Revenue Code;

(c) A grantor retained annuity trust under Section 2702 of the Internal Revenue Code; or

(d) A trust which has been qualified as a Subchapter S trust under Section 1361(d) of the Internal Revenue Code or an electing small business trust under Section 1361(e) of the Internal Revenue Code;

(6) The exercise of such authority does not apply to trust property subject to a presently exercisable power of withdrawal held by a trust beneficiary to whom, or for the benefit of whom, the trustee has authority to make distributions, unless after the exercise of such authority, such beneficiary's power of withdrawal is unchanged with respect to the trust property; and

(7) A spendthrift clause or a provision in the trust instrument that prohibits amendment or revocation of the trust shall not preclude the trustee from exercising the authority granted by subsection 1 of this section.

3. At least sixty days prior to making a discretionary distribution under subsection 1 of this section, the trustee of the first trust shall notify the permissible distributees of the second trust, or the qualified beneficiaries of the second trust if there are no permissible distributees of the second trust, of the distribution. A beneficiary may waive the right to the notice required by this subsection and, with respect to future distributions, may withdraw a waiver previously given.

4. In exercising the authority granted by subsection 1 of this section, the trustee shall remain subject to all fiduciary duties otherwise imposed under the trust instrument and Missouri law.

5. This section does not impose on a trustee a duty to exercise the authority granted by subsection 1 of this section in favor of another trust or to consider exercising such authority in favor of another trust.

6. This section is intended to codify and, from and after enactment, to provide certain limitations to the common law of this state, and this section applies to any trust governed by the laws of this state, including a trust whose principal place of administration is transferred to this state before or after the enactment of this section.

456.5-505. CREDITOR'S CLAIM AGAINST SETTLOR. — 1. Whether or not the terms of a trust contain a spendthrift provision, during the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

2. With respect to an irrevocable trust without a spendthrift provision, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may

reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

3. With respect to an irrevocable trust with a spendthrift provision, a spendthrift provision will prevent the settlor's creditors from satisfying claims from the trust assets except:

(1) Where the conveyance of assets to the trust was fraudulent as to creditors pursuant to the provisions of chapter 428; or

(2) To the extent of the settlor's beneficial interest in the trust assets, if at the time the trust became irrevocable:

(a) The settlor was the sole beneficiary of either the income or principal of the trust or retained the power to amend the trust; or

(b) The settlor was one of a class of beneficiaries and retained a right to receive a specific portion of the income or principal of the trust that was determinable solely from the provisions of the trust instrument.

4. **In the event that a trust meets the requirements set forth in subsection 3 of this section, a settlor's creditors may not reach the settlor's beneficial interest in that trust regardless of any testamentary power of appointment retained by the settlor that is exercisable by the settlor in favor of any appointees other than the settlor, the settlor's estate, the settlor's creditors, or the creditors of the settlor's estate.**

5. Any trustee who has a duty or power to pay the debts of a deceased settlor may publish a notice in a newspaper published in the county designated in subdivision (3) of this subsection once a week for four consecutive weeks in substantially the following form:

To all persons interested in the estate of ....., decedent. The undersigned ..... is acting as Trustee under a trust the terms of which provide that the debts of the decedent may be paid by the Trustee(s) upon receipt of proper proof thereof. The address of the Trustee is ..... All creditors of the decedent are noticed to present their claims to the undersigned within six (6) months from the date of the first publication of this notice or be forever barred.

.....

Trustee

(1) If such publication is duly made by the trustee, any debts not presented to the trustee within six months from the date of the first publication of the preceding notice shall be forever barred as against the trustee and the trust property.

(2) A trustee shall not be liable to account to the decedent's personal representative under the provisions of section 461.300 by reason of any debt barred under the provisions of this subsection.

(3) Such publication shall be in a newspaper published in:

(a) The county in which the domicile of the settlor at the time of his or her death is situated;

(b) If the settlor had no domicile in this state at the time of his or her death, any county wherein trust assets are located; except that, when the major part of the trust assets in this state consist of real estate, the notice shall be published in the county in which the real estate or the major part thereof is located; or

(c) If the settlor had no domicile in this state at the time of his or her death and no trust assets are located therein, the county wherein the principal place of administration of the trust is located.

(4) For purposes of this subsection, the term "domicile" means the place in which the settlor voluntarily fixed his or her abode, not for a mere special or temporary purpose, but with a present intention of remaining there permanently or for an indefinite term.

[5.**]** **6.** For purposes of this section:

(1) During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and

(2) Upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in Sections 2041(b)(2), 2514(e) or 2503(b) of the Internal Revenue Code.

[6.**]** **7.** This section shall not apply to a spendthrift trust described, defined, or established in section 456.014.

456.5-508. ATTACHMENT AND JUDICIAL SALE OF TRUST PROPERTY PROHIBITED, WHEN — DEFINITIONS. — 1. A creditor or other claimant of a beneficiary or other person holding a special power of appointment or a testamentary general power of appointment may not attach trust property or beneficial interests subject to the power, obtain an order from a court forcing a judicial sale of the trust property, compel the exercise of the power, or reach the trust property or beneficial interests by any other means.

2. This section shall not limit the ability of a creditor or other claimant to reach a beneficial interest as otherwise provided in sections 456.5-501 to 456.5-507.

3. In this section "special power of appointment" means a power of appointment exercisable in favor of one or more appointees other than the holder, the holder's estate, the holder's creditors, or the creditors of the holder's estate, and a "testamentary general power of appointment" means a power of appointment exercisable at the death of the holder, without the consent of the creator of the power or of a person holding an adverse interest in favor of the holder, the holder's estate, the holder's creditors, or the creditors of the holder's estate.

456.8-813. DUTY TO INFORM AND REPORT — INAPPLICABLE, WHEN. — 1. (1) A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. A trustee shall be presumed to have fulfilled this duty if the trustee complies with the notice and information requirements prescribed in subsections 2 to 7 of this section.

(2) Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust.

2. A trustee:

(1) upon request of a beneficiary, shall promptly furnish to the beneficiary a copy of the trust instrument;

(2) within **[**60**]** **one hundred and twenty** days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number;

(3) within **[**sixty**]** **one hundred and twenty** days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in subsection 3 of this section; and

(4) shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.

3. A trustee shall send to the permissible distributees of trust income or principal, and to other beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee. A personal representative, conservator, or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.

4. A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

5. A trustee may charge a reasonable fee to a beneficiary for providing information under this section.

6. The request of any beneficiary for information under any provision of this section shall be with respect to a single trust that is sufficiently identified to enable the trustee to locate the records of the trust.

7. If the trustee is bound by any confidentiality restrictions with respect to an asset of a trust, any beneficiary who is eligible to receive information pursuant to this section about such asset shall agree to be bound by the confidentiality restrictions that bind the trustee before receiving such information from the trustee.

8. This section does not apply to a trust created under a trust instrument that became irrevocable before January 1, 2005, and the law in effect prior to January 1, 2005, regarding the subject matter of this section shall continue to apply to those trusts.

469.411. DETERMINATION OF UNITRUST AMOUNT — DEFINITIONS — EXCLUSIONS TO AVERAGE NET FAIR MARKET VALUE OF ASSETS — APPLICABILITY OF SECTION TO CERTAIN TRUSTS — NET INCOME OF TRUST TO BE UNITRUST AMOUNT, WHEN. — 1. If the provisions of this section apply to a trust, the unitrust amount **[**shall be determined as follows:**] determined for each accounting year of the trust shall be a percentage between three and five percent of the average net fair market value of the trust, as of the first day of the trust's current accounting year. The percentage applicable to a trust shall be that percentage specified by the terms of the governing instrument or by the election made in accordance with subdivision (2) of subsection 5 of this section.**

(1) **[**For the first three accounting periods of the trust, the unitrust amount for a current valuation year of the trust shall be a percentage between three and five percent that is specified by the terms of the governing instrument or by the election made in accordance with subdivision (2) of subsection 5 of this section, of the net fair market values of the assets held in the trust on the first business day of the current valuation year;

(2) Beginning with the fourth accounting period of the trust, the unitrust amount for a current valuation year of the trust shall be a percentage between three and five percent that is specified by the terms of the governing instrument or by the election made in accordance with subdivision (2) of subsection 5 of this section, of the average of the net fair market values of the assets held in the trust on the first business day of the current valuation year and the net fair market values of the assets held in the trust on the first business day of each prior valuation year, regardless of whether this section applied to the ascertainment of net income for all valuation years;

(3)**]** The unitrust amount for the current **[**valuation**] accounting** year computed pursuant to **[**subdivision (1) or (2) of this subsection**] this section** shall be proportionately reduced for any distributions, in whole or in part, other than distributions of the unitrust amount, and for any payments of expenses, including debts, disbursements and taxes, from the trust within a current **[**valuation**] accounting** year that the trustee determines to be material and substantial, and shall be proportionately increased for the receipt, other than a receipt that represents a return on investment, of any additional property into the trust within a current **[**valuation**] accounting** year;

[(4)**] (2)** For purposes of **[**subdivision (2) of this subsection**] this section**, the net fair market values of the assets held in the trust on the first business day of a prior **[**valuation year**] accounting quarter** shall be adjusted to reflect any reduction, in the case of a distribution or payment, or increase, in the case of a receipt, for the prior **[**valuation**] accounting** year pursuant to subdivision **[**(3)**] (1)** of this subsection, as if the distribution, payment or receipt had occurred on the first day of the prior **[**valuation**] accounting** year;

[(5)**] (3)** In the case of a short accounting period, the trustee shall prorate the unitrust amount on a daily basis;

[(6)**] (4)** In the case where the net fair market value of an asset held in the trust has been incorrectly determined **[**either in a current valuation year or in a prior valuation year**] in any quarter**, the unitrust amount shall be increased in the case of an undervaluation, or be decreased in the case of an overvaluation, by an amount equal to the difference between the unitrust amount determined based on the correct valuation of the asset and the unitrust amount originally determined.

2. As used in this section, the following terms mean:

(1) **"Average net fair market value", a rolling average of the fair market value of the assets held in the trust on the first business day of the lessor of the number of accounting quarters of the trust from the date of inception of the trust to the determination of the trust's average net fair market value, or twelve accounting quarters of the trust, regardless of whether this section applied to the ascertainment of net income for all valuation quarters;**

(2) "Current **[**valuation**] accounting** year", the accounting period of the trust for which the unitrust amount is being determined**[**;

(2) "Prior valuation year", each of the two accounting periods of the trust immediately preceding the current valuation year**]**.

3. In determining the **[**sum of the**] average** net fair market **[**values**] value** of the assets held in the trust **[**for purposes of subdivisions (1) and (2) of subsection 1 of this section**]**, there shall not be included the value of:

(1) Any residential property or any tangible personal property that, as of the first business day of the current valuation year, one or more income beneficiaries of the trust have or had the right to occupy, or have or had the right to possess or control, other than in a capacity as trustee, and instead the right of occupancy or the right to possession or control shall be deemed to be the unitrust amount with respect to the residential property or the tangible personal property; or

(2) Any asset specifically given to a beneficiary under the terms of the trust and the return on investment on that asset, which return on investment shall be distributable to the beneficiary.

4. In determining the **average** net fair market value of **[**each asset**] the assets** held in the trust pursuant to **[**subdivisions (1) and (2) of**]** subsection 1 of this section, the trustee shall, not less often than annually, determine the fair market value of each asset of the trust that consists primarily of real property or other property that is not traded on a regular basis in an active market by appraisal or other reasonable method or estimate, and that determination, if made reasonably and in good faith, shall be conclusive as to all persons interested in the trust. Any claim based on a determination made pursuant to this subsection shall be barred if not asserted in a judicial proceeding brought by any beneficiary with any interest whatsoever in the trust within two years after the trustee has sent a report to all qualified beneficiaries that adequately discloses the facts constituting the claim. The rules set forth in subsection 2 of section 469.409 shall apply to the barring of claims pursuant to this subsection.

5. This section shall apply to the following trusts:

(1) Any trust created after August 28, 2001, with respect to which the terms of the trust clearly manifest an intent that this section apply;

(2) Any trust created under an instrument that became irrevocable on, before, or after August 28, 2001, if the trustee, in the trustee's discretion, elects to have this section apply unless the instrument creating the trust specifically prohibits an election under this subdivision. The trustee shall deliver notice to all qualified beneficiaries and the settlor of the trust, if he or she is then living, of the trustee's intent to make such an election at least sixty days before making that election. The trustee shall have sole authority to make the election. Section 469.402 shall apply for all purposes of this subdivision. An action or order by any court shall not be required. The election shall be made by a signed writing delivered to the settlor of the trust, if he or she is then living, and to all qualified beneficiaries. The election is irrevocable, unless revoked by order of

the court having jurisdiction of the trust. The election may specify the percentage used to determine the unitrust amount pursuant to this section, provided that such percentage is between three and five percent, or if no percentage is specified, then that percentage shall be three percent. In making an election pursuant to this subsection, the trustee shall be subject to the same limitations and conditions as apply to an adjustment between income and principal pursuant to subsections 3 and 4 of section 469.405; **and**

(3) No action of any kind based on an election made by a trustee pursuant to subdivision (2) of this subsection shall be brought against the trustee by any beneficiary of that trust three years from the effective date of that election**[**;

(4) If this section is made applicable under this subdivision to an institutional endowment fund, as defined in section 402.130, the restrictions contained in section 402.134 shall not apply to the extent payment of a unitrust amount would otherwise be prohibited**]**.

6. (1) Once the provisions of this section become applicable to a trust, the net income of the trust shall be the unitrust amount.

(2) Unless otherwise provided by the governing instrument, the unitrust amount distributed each year shall be paid from the following sources for that year up to the full value of the unitrust amount in the following order:

(a) Net income as determined if the trust were not a unitrust;

(b) Other ordinary income as determined for federal income tax purposes;

(c) Assets of the trust principal for which there is a readily available market value; and

(d) Other trust principal.

(3) Additionally, the trustee may allocate to trust income for each taxable year of the trust, or portion thereof:

(a) Net short-term capital gain described in the Internal Revenue Code, 26 U.S.C. Section 1222(5), for such year, or portion thereof, but only to the extent that the amount so allocated together with all other amounts to trust income, as determined under the provisions of this chapter without regard to this section, for such year, or portion thereof, does not exceed the unitrust amount for such year, or portion thereof;

(b) Net long-term capital gain described in the Internal Revenue Code, 26 U.S.C. Section 1222(7), for such year, or portion thereof, but only to the extent that the amount so allocated together with all other amounts, including amounts described in paragraph (a) of this subdivision, allocated to trust income for such year, or portion thereof, does not exceed the unitrust amount for such year, or portion thereof.

7. A trust with respect to which this section applies on August 28, 2011, may calculate the unitrust amount in accordance with the provisions of this section, as it existed either before or after such date, as the trustee of such trust shall determine in a writing kept with the records of the trust in the trustee's discretion.

469.437. DISTRIBUTIONS ALLOCATED AS INCOME, WHEN — DEFINITIONS — BALANCE ALLOCATED TO PRINCIPAL, WHEN — EFFECT OF SEPARATE ACCOUNTS OR FUNDS — MARITAL DEDUCTION, EFFECT OF. — 1. As used in this section, the following terms mean:

(1) "Payment", an amount that is:

(a) Received or withdrawn from a plan; or

(b) One of a series of distributions that have been or will be received over a fixed number of years or during the life of one or more individuals under any contractual or other arrangement, or is a single payment from a plan that the trustee could have received over a fixed number of years or during the life of one or more individuals;

(2) "Plan", a contractual, custodial, trust or other arrangement that provides for distributions to the trust, including, but not limited to, qualified retirement plans, Individual Retirement Accounts, Roth Individual Retirement Accounts, public and private annuities, and deferred

compensation, including payments received directly from an entity as defined in section 469.423 regardless of whether or not such distributions are made from a specific fund or account.

2. If any portion of a payment is characterized as a distribution to the trustee of interest, dividends or a dividend equivalent, the trustee shall allocate the portion so characterized to income. The trustee shall allocate the balance of that payment to principal.

3. If no part of a payment is allocated to income pursuant to subsection 2 of this section, then for each accounting period of the trust that any payment is received by the trust with respect to the trust's interest in a plan, the trustee shall allocate to income that portion of the aggregate value of all payments received by the trustee in that accounting period equal to the amount of plan income attributable to the trust's interest in the plan for that calendar year. The trustee shall allocate the balance of that payment to principal.

4. For purposes of this section, if a payment is received from a plan that maintains a separate account or fund for its participants or account holders, including, but not limited to, defined contribution retirement plans, Individual Retirement Accounts, Roth Individual Retirement Accounts, and some types of deferred compensation plans, the phrase "plan income" shall mean either the amount of the plan account or fund held for the benefit of the trust that, if the plan account or fund were a trust, would be allocated to income pursuant to sections 469.401 to 469.467 for that accounting period, or four percent of the value of the plan account or fund on the first day of that accounting period. The method of determining plan income pursuant to this subsection shall be chosen by the trustee in the trustee's discretion. The trustees may change the method of determining plan income pursuant to this subsection for any future accounting period.

5. For purposes of this section if the payment is received from a plan that does not maintain a separate account or fund for its participants or account holders, including by way of example and not limitation defined benefit retirement plans and some types of deferred compensation plans, the term "plan income" shall mean four percent of the total present value of the trust's interest in the plan as of the first day of the accounting period, based on reasonable actuarial assumptions as determined by the trustee.

6. **Notwithstanding subsections 1 to 5 of this section, with respect to a trust where an election to qualify for a marital deduction under Section 2056(b)(7) or Section 2523(f) of the Internal Revenue Code of 1986, as amended, has been made, or a trust that qualified for the marital deduction under either Section 2056(b)(5) or Section 2523(e) of the Internal Revenue Code of 1986, as amended, a trustee shall determine the plan income for the accounting period as if the plan were a trust subject to sections 469.401 to 469.467. Upon request of the surviving spouse, the trustee shall demand that the person administering the plan distribute the plan income to the trust. The trustee shall allocate a payment from the plan to income to the extent of the plan income and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the plan income exceeds payments made from the plan to the trust during the accounting period.**

7. If, to obtain an estate or gift tax marital deduction for a trust, a trustee shall allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

469.459. TAXES TO BE PAID FROM INCOME OR PRINCIPAL, WHEN. — 1. A tax required to be paid by a trustee based on receipts allocated to income shall be paid from income.

2. A tax required to be paid by a trustee based on receipts allocated to principal shall be paid from principal, even if the tax is called an income tax by the taxing authority.

3. A tax required to be paid by a trustee on the trust's share of an entity's taxable income shall be paid **[**proportionately**]**:

(1) From income to the extent that receipts from the entity are allocated to income; and

(2) From principal to the extent that**[**:

(a)**]** receipts from the entity are allocated **only** to principal**[**; and

(b) The trust's share of the entity's taxable income exceeds the total receipts described in subdivision (1) of this subsection and paragraph (a) of this subdivision**]**.

4. **[**For purposes of this section, receipts allocated to principal or income shall be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax**] After applying subsections 1 to 3 of this section, the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payment made to a beneficiary**.

475.060. APPLICATION FOR GUARDIANSHIP — PETITION FOR GUARDIANSHIP REQUIREMENTS — INCAPACITATED PERSONS, PETITION REQUIREMENTS. — 1. Any person may file a petition for the appointment of himself **or herself** or some other qualified person as guardian of a minor **[**or guardian of an incapacitated person**]**. Such petition shall state:

(1) The name, age, domicile, actual place of residence and post office address of the minor **[**or incapacitated person**]** if known and if any of these facts is unknown, the efforts made to ascertain that fact;

(2) The estimated value of **[**his**] the minor's** real and personal property**, and the location and value of any real property owned by the minor outside of this state**;

(3) If the minor **[**or incapacitated person**]** has no domicile or place of residence in this state, the county in which the property or major part thereof of the minor **[**or incapacitated person**]** is located;

(4) The name and address of the parents of the minor **[**or incapacitated person**]** and whether they are living or dead;

(5) The name and address of the spouse, and the names, ages and addresses of all living children of the minor **[**or incapacitated person**]**;

(6) The name and address of the person having custody of the person of the minor **[**or incapacitated person**]**;

(7) The name and address of any guardian of the person or conservator of the estate of the minor **[**or incapacitated person**]** appointed in this or any other state;

(8) If appointment is sought for a natural person, other than the public administrator, the names and addresses of wards and disabled persons for whom such person is already guardian or conservator;

(9) **[**In the case of an incapacitated person, the fact that the person for whom guardianship is sought is unable by reason of some specified physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that the person lacks capacity to meet essential requirements for food, clothing, shelter, safety or other care such that serious physical injury, illness or disease is likely to occur**] The name and address of the trustees and the purpose of any trust of which the minor is a qualified beneficiary**;

(10) The reasons why the appointment of a guardian is sought;

(11) A petition for the appointment of a guardian of a minor may be filed for the sole and specific purpose of school registration or medical insurance coverage. Such a petition shall clearly set out this limited request and shall not be combined with a petition for conservatorship.

2. Any person may file a petition for the appointment of himself or herself or some other qualified person as guardian of an incapacitated person. Such petition shall state:

(1) If known, the name, age, domicile, actual place of residence and post office address of the alleged incapacitated person and for the period of three years before the filing of the petition, the most recent addresses, up to three, at which the alleged incapacitated person lived prior to the most recent address, and if any of these facts is unknown, the efforts made to ascertain that fact. In the case of a petition filed by a public official in his or her official capacity, the information required by this subdivision need only be supplied to the extent it is reasonably available to the petitioner;

(2) The estimated value of the alleged incapacitated person's real and personal property, and the location and value of any real property owned by the alleged incapacitated person outside of this state;

(3) If the alleged incapacitated person has no domicile or place of residence in this state, the county in which the property or major part thereof of the alleged incapacitated person is located;

(4) The name and address of the parents of the alleged incapacitated person and whether they are living or dead;

(5) The name and address of the spouse, the names, ages, and addresses of all living children of the alleged incapacitated person, the names and addresses of the alleged incapacitated person's closest known relatives, and the names and relationship, if known, of any adults living with the alleged incapacitated person; if no spouse, adult child, or parent is listed, the names and addresses of the siblings and children of deceased siblings of the alleged incapacitated person; the name and address of any agent appointed by the alleged incapacitated person in any durable power of attorney, and of the presently acting trustees of any trust of which the alleged incapacitated person is the grantor or is a qualified beneficiary or is or was the trustee or co-trustee and the purpose of the power of attorney or trust;

(6) The name and address of the person having custody of the person of the alleged incapacitated person;

(7) The name and address of any guardian of the person or conservator of the estate of the alleged incapacitated person appointed in this or any other state;

(8) If appointment is sought for a natural person, other than the public administrator, the names and addresses of wards and disabled persons for whom such person is already guardian or conservator;

(9) The fact that the person for whom guardianship is sought is unable by reason of some specified physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that the person lacks capacity to meet essential requirements for food, clothing, shelter, safety, or other care such that serious physical injury, illness, or disease is likely to occur;

(10) The reasons why the appointment of a guardian is sought.

475.061. APPLICATION FOR CONSERVATORSHIP — MAY COMBINE WITH PETITION FOR GUARDIAN OF PERSON. — 1. Any person may file a petition in the probate division of the circuit court of the county of proper venue for the appointment of himself or some other qualified person as conservator of the estate of a minor or disabled person. The petition shall contain the same allegations as are set forth in subdivisions (1), (8), and (10) **of subsection 2** of section 475.060 with respect to the appointment of a guardian for an incapacitated person and, in addition thereto, an allegation that the respondent is unable by reason of some specific physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that the respondent lacks ability to manage his financial resources or that the respondent is under the age of eighteen years.

2. A petition for appointment of a conservator or limited conservator of the estate may be combined with a petition for appointment of a guardian or limited guardian of the person. In such a combined petition allegations need not be repeated.

475.115. APPOINTMENT OF SUCCESSOR GUARDIAN OR CONSERVATOR — TRANSFER OF CASE, PROCEDURE. — **1.** When a guardian or conservator dies, is removed by order of the court, or resigns and his **or her** resignation is accepted by the court, the court shall have the same authority as it has in like cases over personal representatives and their sureties and may appoint another guardian or conservator in the same manner and subject to the same requirements as are herein provided for an original appointment of a guardian or conservator.

2. A public administrator may request transfer of any case to the jurisdiction of another county by filing a petition for transfer. If the receiving county meets the venue requirements of section 475.035 and the public administrator of the receiving county consents to the transfer, the court shall transfer the case. The court with jurisdiction over the receiving county shall, without the necessity of any hearing as required by section 475.075, appoint the public administrator of the receiving county as successor guardian and/or successor conservator and issue letters therein. In the case of a conservatorship, the final settlement of the public administrator's conservatorship shall be filed within thirty days of the court's transfer of the case, in the court with jurisdiction over the original conservatorship, and forwarded to the receiving county upon audit and approval.

ARTICLE 1
GENERAL PROVISIONS

475.501. SHORT TITLE. — Sections 475.501 to 475.555 may be cited as the "Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act".

475.502. DEFINITIONS. — Notwithstanding the definitions in section 475.010, when used in sections 475.501 to 475.555, the following terms mean:

(1) "Adult", an individual who has attained eighteen years of age;

(2) "Conservator", a person appointed by the court to administer the property of an adult, including a person appointed under this chapter;

(3) "Guardian", a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under this chapter;

(4) "Guardianship order", an order appointing a guardian;

(5) "Guardianship proceeding", a proceeding in which an order for the appointment of a guardian is sought or has been issued;

(6) "Incapacitated person", an adult for whom a guardian has been appointed;

(7) "Party", the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding;

(8) "Person", except in the term "incapacitated person" or "protected person", an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

(9) "Protected person", an adult for whom a protective order has been issued;

(10) "Protective order", an order appointing a conservator or other order related to management of an adult's property;

(11) "Protective proceeding", a judicial proceeding in which a protective order is sought or has been issued;

(12) "Record", information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(13) "Respondent", an adult for whom a protective order or the appointment of a guardian is sought;

(14) "State", a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

475.503. INTERNATIONAL APPLICATION OF ACT. — A court of this state may treat a foreign country as if it were a state for the purpose of applying this article and articles 2, 3, and 5.

475.504. COMMUNICATION BETWEEN COURTS. — 1. A court of this state may communicate with a court in another state concerning a proceeding arising under sections

475.501 to 475.555. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection 2 of this section, the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

2. Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

475.505. COOPERATION BETWEEN COURTS. — 1. In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to:

(1) Hold an evidentiary hearing;

(2) Order a person in that state to produce evidence or give testimony pursuant to procedures of that state;

(3) Order that an evaluation or assessment be made of the respondent;

(4) Order any appropriate investigation of a person involved in a proceeding;

(5) Forward to the court of this state a certified copy of the transcript or other record of a hearing under subdivision (1) of subsection 1 of this section or any other proceeding, any evidence otherwise produced under subdivision (2) of subsection 1 of this section, and any evaluation or assessment prepared in compliance with an order under subdivisions (3) and (4) of subsection 1 of this section;

(6) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person;

(7) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 CFR 160.103, as amended.

2. If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection 1 of this section, a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

475.506. TAKING TESTIMONY IN ANOTHER STATE. — 1. In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

2. In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with court of the other state in designating an appropriate location for the deposition or testimony.

3. Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.

ARTICLE 2
JURISDICTION

475.521. DEFINITIONS — SIGNIFICANT CONNECTION FACTORS. — 1. In this article, the following terms mean:

(1) "Emergency", a circumstance that likely will result in substantial harm to a respondent's health, safety, or welfare, and for which the appointment of a guardian is

necessary because no other person has authority and is willing to act on the respondent's behalf;

(2) "Home state", the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition;

(3) "Significant-connection state", a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

2. In determining under section 475.523 and subsection 5 of section 475.531 whether a respondent has a significant connection with a particular state, the court shall consider:

(1) The location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;

(2) The length of time the respondent at any time was physically present in the state and the duration of any absence;

(3) The location of the respondent's property; and

(4) The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

475.522. EXCLUSIVE BASIS. — This article provides the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

475.523. JURISDICTION. — A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

(1) This state is the respondent's home state;

(2) On the date a petition is filed, this state is a significant-connection state and:

(a) The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or

(b) The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order:

a. A petition for an appointment or order is not filed in the respondent's home state;

b. An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

c. The court in this state concludes that it is an appropriate forum under the factors set forth in section 475.526;

(3) This state does not have jurisdiction under either subdivisions (1) or (2) of this section, the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or

(4) The requirements for special jurisdiction under section 475.524 are met.

475.524. SPECIAL JURISDICTION. — 1. A court of this state lacking jurisdiction under section 475.523 has special jurisdiction to do any of the following:

(1) Appoint a guardian in an emergency for a term not exceeding ninety days for a respondent who is physically present in this state;

(2) Issue a protective order with respect to real or tangible personal property located in this state;

(3) Appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to section 475.531.

2. If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

475.525. EXCLUSIVE AND CONTINUING JURISDICTION. — Except as otherwise provided in section 475.524, a court that has appointed a guardian or issued a protective order consistent with sections 475.501 to 475.555 has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

475.526. APPROPRIATE FORUM. — 1. A court of this state having jurisdiction under section 475.523 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

2. If a court of this state declines to exercise its jurisdiction under subsection 1 of this section, it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or protective order be promptly filed in another state.

3. In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

(1) Any expressed preference of the respondent;

(2) Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;

(3) The length of time the respondent was physically present in or was a legal resident of this or another state;

(4) The distance of the respondent from the court in each state;

(5) The financial circumstances of the respondent's estate;

(6) The nature and location of the evidence;

(7) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;

(8) The familiarity of the court of each state with the facts and issues in the proceeding; and

(9) If an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

475.527. JURISDICTION DECLINED BY REASON OF CONDUCT. — 1. If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

(1) Decline to exercise jurisdiction;

(2) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or

(3) Continue to exercise jurisdiction after considering:

(a) The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(b) Whether it is a more appropriate forum than the court of any other state under the factors set forth in subsection 3 of section 475.526; and

(c) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section 475.523.

2. If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than sections 475.501 to 475.555.

475.528. NOTICE OF PROCEEDING. — If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition shall be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice shall be given in the same manner as notice is required to be given in this state.

475.529. PROCEEDINGS IN MORE THAN ONE STATE. — Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state as provided in subdivision (1) or (2) of subsection 1 of section 475.524, if a petition for the appointment of a guardian or issuance of a protective order is filed in this and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the court in this state has jurisdiction under section 475.523, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to section 475.523 before the appointment or issuance of the order.

(2) If the court in this state does not have jurisdiction under section 475.523, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.

ARTICLE 3
TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

475.531. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO ANOTHER STATE. — 1. A guardian or conservator appointed in this state may petition the court to transfer the guardianship or conservatorship to another state.

2. Notice of a petition under subsection 1 of this section shall be given to those persons that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator.

3. On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection 1 of this section.

4. The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state

if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(1) The incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

(2) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and

(3) Plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

5. The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

(1) The protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors set forth in subsection 2 of section 475.521;

(2) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(3) Adequate arrangements will be made for management of the protected person's property.

6. The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

(1) A provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to section 475.532; and

(2) The documents required to terminate a guardianship or conservatorship in this state.

475.532. ACCEPTING GUARDIANSHIP OR CONSERVATORSHIP TRANSFERRED FROM ANOTHER STATE. — 1. To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to those in section 475.531, the guardian or conservator shall petition the court in this state to accept the guardianship or conservatorship. The petition shall include a certified copy of the other state's provisional order of transfer.

2. Notice of a petition under subsection 1 of this section shall be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice shall be given in the same manner as notice is required to be given in this state.

3. On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection 1 of this section.

4. The court shall issue an order provisionally granting a petition filed under subsection 1 of this section unless:

(1) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(2) The guardian or conservator is ineligible for appointment in this state.

5. The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to section 475.531 transferring the proceeding to this state.

6. Not later than ninety days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state.

7. In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

8. The denial by a court of this state of a petition to accept guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under this chapter if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

ARTICLE 4
REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

475.541. REGISTRATION OF GUARDIANSHIP ORDERS. — If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office.

475.542. REGISTRATION OF PROTECTIVE ORDERS. — If a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a court of this state, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

475.543. EFFECT OF REGISTRATION. — 1. Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

2. A court of this state may grant any relief available under sections 475.501 to 475.555 and other law of this state to enforce a registered order.

475.544. STATE LAW APPLICABILITY. — Except where inconsistent with sections 475.541, 475.542, and 475.543, the laws of this state relating to the registration and recognition of the acts of a foreign guardian, curator, or conservator contained in sections 475.335 to 475.340 shall be applicable.

ARTICLE 5
MISCELLANEOUS PROVISIONS

475.551. UNIFORMITY OF APPLICATION AND CONSTRUCTION. — In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

475.552. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. — Sections 475.501 to 475.555 modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

475.555. EFFECTIVE DATE. — 1. Sections 475.501 to 475.555 apply to guardianship and protective proceedings begun on or after August 28, 2011.

2. Articles 1, 3, 4, and sections 475.551 and 475.552 apply to proceedings begun before August 28, 2011, regardless of whether a guardianship or protective order has been issued.

482.305. JURISDICTION OF SMALL CLAIMS COURT. — When sitting as a small claims court, the judge shall have original jurisdiction of all civil cases, whether tort or contract, where the amount in controversy does not exceed **[**three**]** **five** thousand dollars, exclusive of interest or costs, or as provided in this chapter.

482.315. PROCEDURE IF AMOUNT OF CLAIM EXCEEDS JURISDICTIONAL AMOUNT — AMENDMENT OF CLAIM IN TRANSFERRED ACTION NOT TO EXCEED JURISDICTIONAL AMOUNT OF COURT TO WHICH TRANSFERRED. — 1. If the amount in controversy in an action exceeds **[**three**]** **five** thousand dollars, a plaintiff may file and prosecute a small claims action for recovery of money, but such plaintiff waives any claim for any sum in excess of **[**three**]** **five** thousand dollars in that or in any subsequent proceeding involving the same parties and issues.

2. In an action transferred under section 482.325, the plaintiff or defendant may amend the claim or counterclaim to a dollar amount not to exceed the jurisdictional limit of the division of the circuit court to which the action was transferred.

SECTION 1. DEFINITION — PROPERTY AND INTERESTS IN PROPERTY, HOW HELD — DEATH OF SETTLOR, EFFECT OF — MARITAL PROPERTY RIGHTS, EFFECT ON. — 1. As used in this section, "qualified spousal trust" means a trust:

(1) The settlors of which are husband and wife at the time of the creation of the trust; and

(2) The terms of which provide that during the joint lives of the settlors all property or interests in property transferred to, or held by, the trustee are either:

(a) Held and administered in one trust for the benefit of both settlors, revocable by either or both settlors acting together while either or both are alive, and each settlor having the right to receive distributions of income or principal, whether mandatory or within the discretion of the trustee, from the entire trust for the joint lives of the settlors and for the survivor's life; or

(b) Held and administered in two separate shares of one trust for the benefit of each of the settlors, with the trust revocable by each settlor with respect to that settlor's separate share of that trust without the participation or consent of the other settlor, and each settlor having the right to receive distributions of income or principal, whether mandatory or within the discretion of the trustee, from that settlor's separate share for that settlor's life.

2. A qualified spousal trust may contain any other trust terms that are not inconsistent with the provisions of this section.

3. Property or interests in property held as tenants by the entirety by a husband and wife that is at any time transferred to the trustee of a qualified spousal trust of which the husband and wife are the settlors shall be held and administered as provided by the trust terms in accordance with either paragraph (a) or (b) of subdivision (2) of subsection 1 of this section, and all such property and interests in property, including the proceeds

thereof, the income thereon, and any property into which such property, proceeds, or income may be converted, shall thereafter have the same immunity from the claims of the separate creditors of the settlors as would have existed if the settlors had continued to hold that property as husband and wife as tenants by the entirety, so long as:

(1) Both settlors are alive and remain married; and

(2) The property, proceeds, or income continue to be held in trust by the trustee of the qualified spousal trust.

4. Property or interests in property held by a husband and wife or held in the sole name of a husband or wife that is not held as tenants by the entirety and is transferred to a qualified spousal trust shall be held as directed in the qualified spousal trust's governing instrument or in the instrument of transfer and the rights of any claimant to any interest in that property shall not be affected by this section.

5. Upon the death of each settlor, all property and interests in property held by the trustee of the qualified spousal trust shall be distributed as directed by the then current terms of the governing instrument of such trust. Upon the death of the first settlor to die, if immediately prior to death the predeceased settlor's interest in the qualified spousal trust was then held in such settlor's separate share, the property or interests in property in such settlor's separate share may pass into an irrevocable trust for the benefit of the surviving settlor upon such terms as the governing instrument shall direct, including without limitation a spendthrift provision as provided in section 456.5-502.

6. No transfer by a husband and wife as settlors to a qualified spousal trust shall affect or change either settlor's marital property rights to the transferred property or interest therein immediately prior to such transfer in the event of dissolution of marriage of the spouses, unless both spouses otherwise expressly agree in writing.

7. This section shall apply to all trusts which fulfill the criteria set forth in this section for a qualified spousal trust regardless of whether such trust was created before or after August 28, 2011.

Approved July 8, 2011

SB 62 [HCS SS#2 SCS SB 62]

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

Allows providers to include any retrieval fee for outsourced records storage service in the fee for release of medical records.

AN ACT to repeal sections 190.839, 191.227, 198.439, 208.437, 208.480, 338.550, and 633.401, RSMo, and to enact in lieu thereof nine new sections relating to health care providers.

SECTION

A. Enacting clause.
190.839. Expiration date.
191.227. Medical records to be released to patient, when, exception — fee permitted, amount — liability of provider limited — annual handling fee adjustment.
198.439. Expiration date.
208.437. Reimbursement allowance period — notification of balance due, when — delinquent payments, procedure, basis for denial of licensure — expiration date.
208.480. Federal reimbursement allowance expiration date.
338.550. Expiration date of tax, when.
376.1190. Health care mandates — review by oversight division — actuarial analysis.

633.401. Definitions — assessment imposed, formula — rates of payment — fund created, use of moneys — record-keeping requirements — report — appeal process — rulemaking authority — expiration date.
1. Nonseverability clause.

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

SECTION A. ENACTING CLAUSE. — Sections 190.839, 191.227, 198.439, 208.437, 208.480, 338.550, and 633.401, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 190.839, 191.227, 198.439, 208.437, 208.480, 338.550, 376.1190, 633.401, and 1, to read as follows:

190.839. EXPIRATION DATE. — Sections 190.800 to 190.839 shall expire on September 30, **[**2011**]** **2015**.

191.227. MEDICAL RECORDS TO BE RELEASED TO PATIENT, WHEN, EXCEPTION — FEE PERMITTED, AMOUNT — LIABILITY OF PROVIDER LIMITED — ANNUAL HANDLING FEE ADJUSTMENT. — 1. All physicians, chiropractors, hospitals, dentists, and other duly licensed practitioners in this state, herein called "providers", shall, upon written request of a patient, or guardian or legally authorized representative of a patient, furnish a copy of his or her record of that patient's health history and treatment rendered to the person submitting a written request, except that such right shall be limited to access consistent with the patient's condition and sound therapeutic treatment as determined by the provider. Beginning August 28, 1994, such record shall be furnished within a reasonable time of the receipt of the request therefor and upon payment of a fee as provided in this section.

2. Health care providers may condition the furnishing of the patient's health care records to the patient, the patient's authorized representative or any other person or entity authorized by law to obtain or reproduce such records upon payment of a fee for:

(1) **(a)** Copying, in an amount not more than **[**seventeen**]** **twenty-one** dollars and **[**five**]** **thirty-six** cents plus **[**forty**]** **fifty** cents per page for the cost of supplies and labor **plus, if the health care provider has contracted for off-site records storage and management, any additional labor costs of outside storage retrieval, not to exceed twenty dollars, as adjusted annually pursuant to subsection 5 of this section; or**

(b) If the health care provider stores records in an electronic or digital format, and provides the requested records and affidavit, if requested, in an electronic or digital format, not more than five dollars plus fifty cents per page or twenty-five dollars total, whichever is less;

(2) Postage, to include packaging and delivery cost; and

(3) Notary fee, not to exceed two dollars, if requested.

3. Notwithstanding provisions of this section to the contrary, providers may charge for the reasonable cost of all duplications of health care record material or information which cannot routinely be copied or duplicated on a standard commercial photocopy machine.

4. The transfer of the patient's record done in good faith shall not render the provider liable to the patient or any other person for any consequences which resulted or may result from disclosure of the patient's record as required by this section.

5. Effective February first of each year, the fees listed in subsection 2 of this section shall be increased or decreased annually based on the annual percentage change in the unadjusted, U.S. city average, annual average inflation rate of the medical care component of the Consumer Price Index for All Urban Consumers (CPI-U). The current reference base of the index, as published by the Bureau of Labor Statistics of the United States Department of Labor, shall be used as the reference base. For purposes of this subsection, the annual average inflation rate shall be based on a twelve-month calendar year beginning in January and ending in December of each preceding calendar year. The department of health and senior services shall report the annual

adjustment and the adjusted fees authorized in this section on the department's Internet website by February first of each year.

198.439. EXPIRATION DATE. — Sections 198.401 to 198.436 shall expire on September 30, **[**2011**]** **2015**.

208.437. REIMBURSEMENT ALLOWANCE PERIOD — NOTIFICATION OF BALANCE DUE, WHEN — DELINQUENT PAYMENTS, PROCEDURE, BASIS FOR DENIAL OF LICENSURE — EXPIRATION DATE. — 1. A Medicaid managed care organization reimbursement allowance period as provided in sections 208.431 to 208.437 shall be from the first day of July to the thirtieth day of June. The department shall notify each Medicaid managed care organization with a balance due on the thirtieth day of June of each year the amount of such balance due. If any managed care organization fails to pay its managed care organization reimbursement allowance within thirty days of such notice, the reimbursement allowance shall be delinquent. The reimbursement allowance may remain unpaid during an appeal.

2. Except as otherwise provided in this section, if any reimbursement allowance imposed under the provisions of sections 208.431 to 208.437 is unpaid and delinquent, the department of social services may compel the payment of such reimbursement allowance in the circuit court having jurisdiction in the county where the main offices of the Medicaid managed care organization are located. In addition, the director of the department of social services or the director's designee may cancel or refuse to issue, extend or reinstate a Medicaid contract agreement to any Medicaid managed care organization which fails to pay such delinquent reimbursement allowance required by sections 208.431 to 208.437 unless under appeal.

3. Except as otherwise provided in this section, failure to pay a delinquent reimbursement allowance imposed under sections 208.431 to 208.437 shall be grounds for denial, suspension or revocation of a license granted by the department of insurance, financial institutions and professional registration. The director of the department of insurance, financial institutions and professional registration may deny, suspend or revoke the license of a Medicaid managed care organization with a contract under 42 U.S.C. Section 1396b(m) which fails to pay a managed care organization's delinquent reimbursement allowance unless under appeal.

4. Nothing in sections 208.431 to 208.437 shall be deemed to effect or in any way limit the tax-exempt or nonprofit status of any Medicaid managed care organization with a contract under 42 U.S.C. Section 1396b(m) granted by state law.

5. Sections 208.431 to 208.437 shall expire on September 30, **[**2011**]** **2015**.

208.480. FEDERAL REIMBURSEMENT ALLOWANCE EXPIRATION DATE. — Notwithstanding the provisions of section 208.471 to the contrary, sections 208.453 to 208.480 shall expire on September 30, **[**2011**]** **2015**.

338.550. EXPIRATION DATE OF TAX, WHEN. — 1. The pharmacy tax required by sections 338.500 to 338.550 shall expire ninety days after any one or more of the following conditions are met:

(1) The aggregate dispensing fee as appropriated by the general assembly paid to pharmacists per prescription is less than the fiscal year 2003 dispensing fees reimbursement amount; or

(2) The formula used to calculate the reimbursement as appropriated by the general assembly for products dispensed by pharmacies is changed resulting in lower reimbursement to the pharmacist in the aggregate than provided in fiscal year 2003; or

(3) September 30, **[**2011**]** **2015**.

The director of the department of social services shall notify the revisor of statutes of the expiration date as provided in this subsection. The provisions of sections 338.500 to 338.550 shall not apply to pharmacies domiciled or headquartered outside this state which are engaged

in prescription drug sales that are delivered directly to patients within this state via common carrier, mail or a carrier service.

2. Sections 338.500 to 338.550 shall expire on September 30, **[**2011**]** **2015**.

376.1190. HEALTH CARE MANDATES — REVIEW BY OVERSIGHT DIVISION — ACTUARIAL ANALYSIS. — 1. Health carriers shall permit individuals to learn the amount of cost-sharing, including deductibles, copayments, and coinsurance, under the individual's health benefit plan or coverage that the individual would be responsible for paying with respect to the furnishing of a specific item or service by a participating provider in a timely manner upon the request of the individual. At a minimum, such information shall be made available to such individual through an internet website and such other means for individuals without access to the internet. As used in this section, the terms "health carrier" and "health benefit plans" shall have the same meanings assigned to them in section 376.1350.

2. This section shall not apply to a supplemental insurance policy, including a life care contract, accident-only policy, specified disease policy, hospital policy providing a fixed daily benefit only, Medicare supplement policy, long-term care policy, hospitalization-surgical care policy, short-term major medical policy of six months or less duration, or any other supplemental policy.

3. Any health care benefit mandate proposed after August 28, 2011, shall be subject to review by the oversight division of the joint committee on legislative research. The oversight division shall perform an actuarial analysis of the cost impact to private and public payers of any new or revised mandated health care benefit proposed by the General Assembly after August 28, 2011 and a recommendation shall be delivered to the Speaker and the President Pro Tem prior to mandate being enacted.

4. The provisions of subsections 1 and 2 shall become effective on January 1, 2014.

633.401. DEFINITIONS — ASSESSMENT IMPOSED, FORMULA — RATES OF PAYMENT — FUND CREATED, USE OF MONEYS — RECORD-KEEPING REQUIREMENTS — REPORT — APPEAL PROCESS — RULEMAKING AUTHORITY — EXPIRATION DATE. — 1. For purposes of this section, the following terms mean:

(1) "Engaging in the business of providing health benefit services", accepting payment for health benefit services;

(2) "Intermediate care facility for the mentally retarded", a private or department of mental health facility which admits persons who are mentally retarded or developmentally disabled for residential habilitation and other services pursuant to chapter 630. Such term shall include habilitation centers and private or public intermediate care facilities for the mentally retarded that have been certified to meet the conditions of participation under 42 CFR, Section 483, Subpart 1;

(3) "Net operating revenues from providing services of intermediate care facilities for the mentally retarded" shall include, without limitation, all moneys received on account of such services pursuant to rates of reimbursement established and paid by the department of social services, but shall not include charitable contributions, grants, donations, bequests and income from nonservice related fund-raising activities and government deficit financing, contractual allowance, discounts or bad debt;

(4) "Services of intermediate care facilities for the mentally retarded" has the same meaning as the term used in Title 42 United States Code, Section 1396b(w)(7)(A)(iv), as amended, and as such qualifies as a class of health care services recognized in federal Public Law 102-234, the Medicaid Voluntary Contribution and Provider Specific Tax Amendment of 1991.

2. Beginning July 1, 2008, each provider of services of intermediate care facilities for the mentally retarded shall, in addition to all other fees and taxes now required or paid, pay assessments on their net operating revenues for the privilege of engaging in the business of

providing services of the intermediate care facilities for the mentally retarded or developmentally disabled in this state.

3. Each facility's assessment shall be based on a formula set forth in rules and regulations promulgated by the department of mental health.

4. For purposes of determining rates of payment under the medical assistance program for providers of services of intermediate care facilities for the mentally retarded, the assessment imposed pursuant to this section on net operating revenues shall be a reimbursable cost to be reflected as timely as practicable in rates of payment applicable within the assessment period, contingent, for payments by governmental agencies, on all federal approvals necessary by federal law and regulation for federal financial participation in payments made for beneficiaries eligible for medical assistance under Title XIX of the federal Social Security Act.

5. Assessments shall be submitted by or on behalf of each provider of services of intermediate care facilities for the mentally retarded on a monthly basis to the director of the department of mental health or his or her designee and shall be made payable to the director of the department of revenue.

6. In the alternative, a provider may direct that the director of the department of social services offset, from the amount of any payment to be made by the state to the provider, the amount of the assessment payment owed for any month.

7. Assessment payments shall be deposited in the state treasury to the credit of the "Intermediate Care Facility Mentally Retarded Reimbursement Allowance Fund", which is hereby created in the state treasury. All investment earnings of this fund shall be credited to the fund. Notwithstanding the provisions of section 33.080 to the contrary, any unexpended balance in the intermediate care facility mentally retarded reimbursement allowance fund at the end of the biennium shall not revert to the general revenue fund but shall accumulate from year to year. The state treasurer shall maintain records that show the amount of money in the fund at any time and the amount of any investment earnings on that amount.

8. Each provider of services of intermediate care facilities for the mentally retarded shall keep such records as may be necessary to determine the amount of the assessment for which it is liable under this section. On or before the forty-fifth day after the end of each month commencing July 1, 2008, each provider of services of intermediate care facilities for the mentally retarded shall submit to the department of social services a report on a cash basis that reflects such information as is necessary to determine the amount of the assessment payable for that month.

9. Every provider of services of intermediate care facilities for the mentally retarded shall submit a certified annual report of net operating revenues from the furnishing of services of intermediate care facilities for the mentally retarded. The reports shall be in such form as may be prescribed by rule by the director of the department of mental health. Final payments of the assessment for each year shall be due for all providers of services of intermediate care facilities for the mentally retarded upon the due date for submission of the certified annual report.

10. The director of the department of mental health shall prescribe by rule the form and content of any document required to be filed pursuant to the provisions of this section.

11. Upon receipt of notification from the director of the department of mental health of a provider's delinquency in paying assessments required under this section, the director of the department of social services shall withhold, and shall remit to the director of the department of revenue, an assessment amount estimated by the director of the department of mental health from any payment to be made by the state to the provider.

12. In the event a provider objects to the estimate described in subsection 11 of this section, or any other decision of the department of mental health related to this section, the provider of services may request a hearing. If a hearing is requested, the director of the department of mental health shall provide the provider of services an opportunity to be heard and to present evidence bearing on the amount due for an assessment or other issue related to this section within thirty days after collection of an amount due or receipt of a request for a hearing, whichever is later.

The director shall issue a final decision within forty-five days of the completion of the hearing. After reconsideration of the assessment determination and a final decision by the director of the department of mental health, an intermediate care facility for the mentally retarded provider's appeal of the director's final decision shall be to the administrative hearing commission in accordance with sections 208.156 and 621.055.

13. Notwithstanding any other provision of law to the contrary, appeals regarding this assessment shall be to the circuit court of Cole County or the circuit court in the county in which the facility is located. The circuit court shall hear the matter as the court of original jurisdiction.

14. Nothing in this section shall be deemed to affect or in any way limit the tax-exempt or nonprofit status of any intermediate care facility for the mentally retarded granted by state law.

15. The director of the department of mental health shall promulgate rules and regulations to implement this section. Any rule or portion of a rule, as that term is defined in section 536.010, 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 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 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, 2008, shall be invalid and void.

16. The provisions of this section shall expire on September 30, **[**2011**] 2015**.

SECTION 1. NONSEVERABILITY CLAUSE. — Notwithstanding the provisions of section 1.140 to the contrary, the provisions of this act shall be nonseverable, and if any provision is for any reason held to be invalid, such decision shall invalidate all of the remaining provisions of this act.

Approved June 10, 2011

SB 65 [SS SCS SB 65]

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

Modifies provisions relating to abortion with respect to viability.

AN ACT to repeal sections 188.015, 188.029, and 188.030, RSMo, and to enact in lieu thereof two new sections relating to abortion, with penalty provisions.

SECTION

A. Enacting clause.
188.015. Definitions.
188.030. Abortion of viable unborn child prohibited, exceptions — physician duties — violations, penalty — severability — right of intervention, when.
188.029. Physician, determination of viability, duties.

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

SECTION A. ENACTING CLAUSE. — Sections 188.015, 188.029, and 188.030, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 188.015 and 188.030, to read as follows:

188.015. DEFINITIONS. — As used in this chapter, the following terms mean:

(1) "Abortion"**[**, the intentional destruction of the life of an embryo or fetus in his or her mother's womb or the intentional termination of the pregnancy of a mother with an intention other than to increase the probability of a live birth or to remove a dead or dying unborn child**]:**

(a) The act of using or prescribing any instrument, device, medicine, drug, or any other means or substance with the intent to destroy the life of an embryo or fetus in his or her mother's womb; or

(b) The intentional termination of the pregnancy of a mother by using or prescribing any instrument, device, medicine, drug, or other means or substance with an intention other than to increase the probability of a live birth or to remove a dead or dying unborn child;

(2) "Abortion facility", a clinic, physician's office, or any other place or facility in which abortions are performed or induced other than a hospital;

(3) "Conception", the fertilization of the ovum of a female by a sperm of a male;

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

(5) "Gestational age", length of pregnancy as measured from the first day of the woman's last menstrual period;

(6) "Medical emergency", a condition which, **[**on the basis of a physician's good faith clinical**] based on reasonable medical** judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert the death of the pregnant woman or for which a delay will create a serious risk of substantial and irreversible **physical** impairment of a major bodily function of the pregnant woman;

(7) "Physician", any person licensed to practice medicine in this state by the state board of registration for the healing arts;

(8) **"Reasonable medical judgment", a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved;**

(9) "Unborn child", the offspring of human beings from the moment of conception until birth and at every stage of its biological development, including the human conceptus, zygote, morula, blastocyst, embryo, and fetus;

[(9)**] (10)** "Viability" **or "viable"**, that stage of fetal development when the life of the unborn child may be continued indefinitely outside the womb by natural or artificial life-supportive systems.

188.030. ABORTION OF VIABLE UNBORN CHILD PROHIBITED, EXCEPTIONS — PHYSICIAN DUTIES — VIOLATIONS, PENALTY — SEVERABILITY — RIGHT OF INTERVENTION, WHEN. — 1. **Except in the case of a medical emergency,** no abortion of a viable unborn child shall be performed **or induced** unless **[**necessary to preserve the life or health of the woman. Before a physician may perform an abortion upon a pregnant woman after such time as her unborn child has become viable, such physician shall first certify in writing that the abortion is necessary to preserve the life or health of the woman and shall further certify in writing the medical indications for such abortion and the probable health consequences.

2. Any physician who performs an abortion upon a woman carrying a viable unborn child shall utilize the available method or technique of abortion most likely to preserve the life and health of the unborn child. In cases where the method or technique of abortion which would most likely preserve the life and health of the unborn child would present a greater risk to the life and health of the woman than another available method or technique, the physician may utilize such other method or technique. In all cases where the physician performs an abortion upon a viable unborn child, the physician shall certify in writing the available method or techniques considered and the reasons for choosing the method or technique employed.

3. An abortion of a viable unborn child shall be performed or induced only when there is in attendance a physician other than the physician performing or inducing the abortion who shall take control of and provide immediate medical care for a child born as a result of the abortion.

During the performance of the abortion, the physician performing it, and subsequent to the abortion, the physician required by this section to be in attendance, shall take all reasonable steps in keeping with good medical practice, consistent with the procedure used, to preserve the life and health of the viable unborn child; provided that it does not pose an increased risk to the life or health of the woman.**] the abortion is necessary to preserve the life of the pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, or when continuation of the pregnancy will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman. For purposes of this section, "major bodily function" includes, but is not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.**

2. Except in the case of a medical emergency:

(1) Prior to performing or inducing an abortion upon a woman, the physician shall determine the gestational age of the unborn child in a manner consistent with accepted obstetrical and neonatal practices and standards. In making such determination, the physician shall make such inquiries of the pregnant woman and perform or cause to be performed such medical examinations, imaging studies, and tests as a reasonably prudent physician, knowledgeable about the medical facts and conditions of both the woman and the unborn child involved, would consider necessary to perform and consider in making an accurate diagnosis with respect to gestational age.

(2) If the physician determines that the gestational age of the unborn child is twenty weeks or more, prior to performing or inducing an abortion upon the woman, the physician shall determine if the unborn child is viable by using and exercising that degree of care, skill, and proficiency commonly exercised by a skillful, careful, and prudent physician. In making this determination of viability, the physician shall perform or cause to be performed such medical examinations and tests as are necessary to make a finding of the gestational age, weight, and lung maturity of the unborn child and shall enter such findings and determination of viability in the medical record of the woman.

(3) If the physician determines that the gestational age of the unborn child is twenty weeks or more, and further determines that the unborn child is not viable and performs or induces an abortion upon the woman, the physician shall report such findings and determinations and the reasons for such determinations to the health care facility in which the abortion is performed and to the state board of registration for the healing arts, and shall enter such findings and determinations in the medical records of the woman and in the individual abortion report submitted to the department under section 188.052.

(4) (a) If the physician determines that the unborn child is viable, the physician shall not perform or induce an abortion upon the woman unless the abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the woman.

(b) Before a physician may proceed with performing or inducing an abortion upon a woman when it has been determined that the unborn child is viable, the physician shall first certify in writing the medical threat posed to the life of the pregnant woman, or the medical reasons that continuation of the pregnancy would cause a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman. Upon completion of the abortion, the physician shall report the reasons and determinations for the abortion of a viable unborn child to the health care facility in which the abortion is performed and to the state board of registration for the healing arts, and shall enter such findings and determinations in the medical record of the woman and in the individual abortion report submitted to the department under section 188.052.

(c) Before a physician may proceed with performing or inducing an abortion upon a woman when it has been determined that the unborn child is viable, the physician who is to perform the abortion shall obtain the agreement of a second physician with knowledge of accepted obstetrical and neonatal practices and standards who shall concur that the abortion is necessary to preserve the life of the pregnant woman, or that continuation of the pregnancy would cause a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman. This second physician shall also report such reasons and determinations to the health care facility in which the abortion is to be performed and to the state board of registration for the healing arts, and shall enter such findings and determinations in the medical record of the woman and the individual abortion report submitted to the department under section 188.052. The second physician shall not have any legal or financial affiliation or relationship with the physician performing or inducing the abortion, except that such prohibition shall not apply to physicians whose legal or financial affiliation or relationship is a result of being employed by or having staff privileges at the same hospital as the term "hospital" is defined in section 197.020.

(d) Any physician who performs or induces an abortion upon a woman when it has been determined that the unborn child is viable shall utilize the available method or technique of abortion most likely to preserve the life or health of the unborn child. In cases where the method or technique of abortion most likely to preserve the life or health of the unborn child would present a greater risk to the life or health of the woman than another legally permitted and available method or technique, the physician may utilize such other method or technique. In all cases where the physician performs an abortion upon a viable unborn child, the physician shall certify in writing the available method or techniques considered and the reasons for choosing the method or technique employed.

(e) No physician shall perform or induce an abortion upon a woman when it has been determined that the unborn child is viable unless there is in attendance a physician other than the physician performing or inducing the abortion who shall take control of and provide immediate medical care for a child born as a result of the abortion. During the performance of the abortion, the physician performing it, and subsequent to the abortion, the physician required to be in attendance, shall take all reasonable steps in keeping with good medical practice, consistent with the procedure used, to preserve the life or health of the viable unborn child; provided that it does not pose an increased risk to the life of the woman or does not pose an increased risk of substantial and irreversible physical impairment of a major bodily function of the woman.

3. Any person who knowingly performs or induces an abortion of an unborn child in violation of the provisions of this section is guilty of a class C felony, and upon a finding of guilt or plea of guilty, shall be imprisoned for a term of not less than one year, and, notwithstanding the provisions of section 560.011, shall be fined not less than ten thousand nor more than fifty thousand dollars.

4. Any physician who pleads guilty to or is found guilty of performing or inducing an abortion of an unborn child in violation of this section shall be subject to suspension or revocation of his or her license to practice medicine in the state of Missouri by the state board of registration for the healing arts under the provisions of sections 334.100 and 334.103.

5. Any hospital licensed in the state of Missouri that knowingly allows an abortion of an unborn child to be performed or induced in violation of this section may be subject to suspension or revocation of its license under the provisions of section 197.070.

6. Any ambulatory surgical center licensed in the state of Missouri that knowingly allows an abortion of an unborn child to be performed or induced in violation of this section may be subject to suspension or revocation of its license under the provisions of section 197.220.

7. A woman upon whom an abortion is performed or induced in violation of this section shall not be prosecuted for a conspiracy to violate the provisions of this section.

8. Nothing in this section shall be construed as creating or recognizing a right to abortion, nor is it the intention of this section to make lawful any abortion that is currently unlawful.

9. It is the intent of the legislature that this section be severable as noted in section 1.140. In the event that any section, subsection, subdivision, paragraph, sentence, or clause of this section be declared invalid under the Constitution of the United States or the Constitution of the State of Missouri, it is the intent of the legislature that the remaining provisions of this section remain in force and effect as far as capable of being carried into execution as intended by the legislature.

10. The general assembly may, by concurrent resolution, appoint one or more of its members who sponsored or co-sponsored this act in his or her official capacity, to intervene as a matter of right in any case in which the constitutionality of this law is challenged.

[188.029. PHYSICIAN, DETERMINATION OF VIABILITY, DUTIES. — Before a physician performs an abortion on a woman he has reason to believe is carrying an unborn child of twenty or more weeks gestational age, the physician shall first determine if the unborn child is viable by using and exercising that degree of care, skill, and proficiency commonly exercised by the ordinarily skillful, careful, and prudent physician engaged in similar practice under the same or similar conditions. In making this determination of viability, the physician shall perform or cause to be performed such medical examinations and tests as are necessary to make a finding of the gestational age, weight, and lung maturity of the unborn child and shall enter such findings and determination of viability in the medical record of the mother.**]**

No action taken by Governor, bill becomes law pursuant to Article III, Section 31, of the Missouri Constitution.

SB 68 [SCS SB 68]

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

Authorizes the issuance of subpoenas for the production of records by the General Assembly.

AN ACT to repeal section 21.400, RSMo, and to enact in lieu thereof one new section relating to subpoenas issued by the general assembly.

SECTION

A. Enacting clause.
21.400. Subpoenas shall be issued — attested, how.

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

SECTION A. ENACTING CLAUSE. — Section 21.400, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 21.400, to read as follows:

21.400. SUBPOENAS SHALL BE ISSUED — ATTESTED, HOW. — Subpoenas for witnesses **and the production of records** shall be issued at the request of any member of **[**either house**]**

the senate or the house of representatives, or the party accused, or any member of any committee; and all process awarded by the senate or house of representatives, and subpoenas and other process for witnesses whose attendance is required by either the senate or the house, or before any committee, shall be under the hand of the president **pro tem,** or the speaker and attested by the secretary or chief clerk, as the case may be, and shall be executed by the sergeant at arms of such house, or by a special messenger appointed for that purpose.

Approved June 17, 2011

SB 70 [CCS SS SCS SB 70]

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

Modifies provisions relating to the Missouri Family Trust.

AN ACT to repeal sections 402.199, 402.200, 402.205, 402.210, 402.215, 402.217, 402.220, 473.657, and 475.093, RSMo, and section 402.210 as truly agreed to and finally passed by senate substitute no. 2 for house bill no. 648, ninety-sixth general assembly, first regular session, and to enact in lieu thereof twelve new sections relating to the Missouri family trust.

SECTION

A. Enacting clause.
402.199. Declaration of policy — contributions to Missouri family trust not to adversely impact other benefits of beneficiaries.
402.200. Definitions.
402.201. Board of trustees created, members, expenses — accounting of funds required — assets not state moneys — immunity from liability, when.
402.202. Trust accounts, restricted trust accounts, charitable trust — administered as Missouri family trust — pooling permitted — additional board powers.
402.203. Contribution of assets, by whom — trust account to be created — cotrustees and successors — breach of fiduciary duty, effect of — death of beneficiary, procedure — remainder distribution.
402.204. Settlor may contribute assets — trust account created — cotrustees and successors — breach of fiduciary duty, effect of — death of beneficiary, procedure — remainder distribution.
402.205. Withdrawal from trust account, when — revocation or termination of trust, when, distribution — trust principal and income held for benefit of beneficiary.
402.206. First and third party trusts, account held and administered, how.
402.207. Charitable trust established, when.
402.208. Fees authorized — periodic reports — no property interest in trust account, when.
473.657. Distribution.
475.093. Court may authorize participation in family trust.
402.210. Board of trustees — members, appointment, term, qualifications, expenses — annual accounting — rules and regulations.
402.210. Board of trustees — members, appointment, term, qualifications, expenses — annual accounting — rules and regulations.
402.215. Board of trustees, duties — provisions for trust documents.
402.217. Restrictions — income not subject to seizure — certain interests in income not alienable.
402.220. Liability of trustees, limitations on.

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

SECTION A. ENACTING CLAUSE. — Sections 402.199, 402.200, 402.205, 402.210, 402.215, 402.217, 402.220, 473.657, and 475.093, RSMo, and section 402.210 as truly agreed to and finally passed by senate substitute no. 2 for house bill no. 648, ninety-sixth general assembly, first regular session, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 402.199, 402.200, 402.201, 402.202, 402.203, 402.204, 402.205, 402.206, 402.207, 402.208, 473.657, and 475.093, to read as follows:

402.199. DECLARATION OF POLICY — CONTRIBUTIONS TO MISSOURI FAMILY TRUST NOT TO ADVERSELY IMPACT OTHER BENEFITS OF BENEFICIARIES. — 1. The general assembly hereby finds and declares the following:

(1) It is an essential function of state government to provide basic support **and services** for **certain** persons with **[**a mental or physical impairment that substantially limits one or more major life activities, whether the impairment is congenital or acquired by accident, injury or disease**]** **disabilities**;

(2) **[**The cost of providing basic support for persons with a mental or physical impairment is difficult for many to afford and they are forced to**]** **Many persons with disabilities lack financial resources and must** rely upon the government to provide **[**such**]** **services and** support; **and**

(3) **[**Families and friends of persons with a mental or physical impairment desire to supplement, but not replace, the basic support provided by state government and other governmental programs;

(4) The cost of medical, social or other supplemental services is often provided by families and friends of persons with mental or physical impairments, for the lifetime of such persons;

(5)**]** It is in the best interest of the **[**people of this**]** state **and is necessary and desirable for the public health, safety, and welfare** to encourage, enhance and foster the ability of **[**families and friends of Missouri residents and residents of adjacent states with mental or physical impairments to supplement, but not to replace, the basic support provided by state government and other governmental programs and to provide for medical, social or other supplemental services for such persons;

(6) Permitting and assisting families and friends of Missouri residents and residents of adjacent states with mental or physical impairments to supplement, but not to replace, the basic support provided by state government and other governmental programs and to provide medical, social or other supplemental services for such persons as necessary and desirable for the public health, safety and welfare of this state**] individuals with disabilities who reside in Missouri or who reside in one of the eight states adjacent to Missouri, and in the best interests of their families and friends to supplement, but not replace, the services and support provided by state government and other governmental programs**.

2. In light of the findings and declarations described in subsection 1 of this section, the general assembly **hereby** declares **[**the purpose of the Missouri family trust to be the encouragement, enhancement and fostering of the provision of medical, social or other supplemental services for persons with a mental or physical impairment by family and friends of such persons**] that contributions to a trust account administered as part of the Missouri family trust by the Missouri family trust board of trustees as authorized in sections 402.199 to 402.208, shall in no way reduce, impair, or diminish the benefits to which the beneficiary of the trust account is otherwise entitled by law, nor shall the administration of the Missouri family trust or any trust account therein be taken into consideration in determining appropriations for programs or services for persons with disabilities, and unless otherwise prohibited by federal statutes or regulations, all state agencies shall disregard the trust account as a resource when determining the eligibility of a resident for assistance under chapter 208**.

402.200. DEFINITIONS. — As used in sections 402.199 to **[**402.220**] 402.208**, the following terms mean:

(1) **"Beneficiary", also referred to as "life beneficiary", a person who:**

(a) Has been determined to have a disability or to be a disabled person;

(b) Is a resident of Missouri or one of the eight states adjacent to Missouri; and

(c) Is the person designated as the sole, primary beneficiary of a trust account administrated as part of the Missouri family trust by the board of trustees;

(2) "Board of trustees", **[**the**] "board", or "**Missouri family trust board of trustees**", the body corporate and instrumentality of the state, established as the Missouri family trust board of trustees pursuant to section 402.201**;

[(2)**] (3)** "Charitable trust", **[**the trust to provide benefits for**] an account** established **and administered as part of the Missouri family trust for the benefit of disabled** individuals, as **[**set forth**] provided** in section **[**402.215**] 402.207**;

(4) "Co-trustee", that person designated by the settlor to act together with the trustee as co-trustee of a trust account;

[(3)**] (5)** "Department", the department of mental health;

[(4)**] (6)** "Disability"**[**,**]:**

(a) A mental or physical impairment that substantially limits one or more major life activities, whether the impairment is congenital or acquired by accident, injury or disease, and where the impairment is verified by medical findings**; or**

(b) As is defined in section 1614(a)(3) of the Social Security Act, 42 U.S.C. 1382c(a)(3);

[(5) "Life beneficiary" or "beneficiary", a designated beneficiary of the Missouri family trust;

(6)**] (7) "Missouri family trust" or "trust", the trust established pursuant to section 402.202 and administered by the board of trustees, as trustee, pursuant to sections 402.199 to 402.208;**

(8) "Net income", the earnings received on investments less administrative expenses and fees;

[(7)**] (9)** "Principal balance", the fair market value of all contributions made to a particular account, less distributions, determined as of the end of the calendar month immediately preceding the occurrence giving rise to any determination of principal balance;

[(8) "Requesting party", the party desiring arbitration;

(9) "Responding party", the other party in arbitration of a dispute regarding benefits to be provided by the trust;**]**

(10) **"Remainder beneficiaries", the person or persons designated to receive the applicable portion of the principal balance of a trust account remaining after the death of the beneficiary;**

(11) "Restricted account", an account established and administered as part of the trust for the benefit of persons with disabilities as provided in section 402.206;

(12) "**[**Successor**] Standby** trust", the trust established upon distribution **of a trust account** by the board of trustees pursuant to notice of withdrawal or termination and administered as set forth in **subsection 3 of** section **[**402.215**] 402.205**;

[(11)**] (13)** "Trust **account**", **an account established and administered as part of** the Missouri family trust **[**established pursuant to**] for the benefit of a beneficiary as provided in** sections **[**402.200 to 402.220**] 402.203 and 402.204**;

[(12)**] (14)** "Trustee", **[**a member of the Missouri family trust**] the** board of trustees **acting in its capacity as trustee of a trust account, the charitable trust, or a restricted account as used in section 402.201**.

402.201. BOARD OF TRUSTEES CREATED, MEMBERS, EXPENSES — ACCOUNTING OF FUNDS REQUIRED — ASSETS NOT STATE MONEYS — IMMUNITY FROM LIABILITY, WHEN. — 1. There is hereby created the "Missouri Family Trust Board of Trustees", which shall be a body corporate and an instrumentality of the state, and which shall be incorporated as a Missouri general not-for-profit corporation. The board of trustees is authorized to apply for and qualify for recognition as an exempt organization pursuant to section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended.

2. The board of trustees shall consist of nine members who are natural persons appointed by the governor with the advice and consent of the senate. The members' terms of office shall be three years and until their successors are appointed and qualified.

The members shall be persons who are not prohibited from serving by sections 105.450 to 105.482. The board shall be composed of the following:

(1) Three members of the immediate family of persons who have a disability of mental illness. The department's state advisory council for comprehensive psychiatric services, created pursuant to section 632.020, shall submit a panel of nine proposed members of the board to the governor, from which the governor shall appoint three. One shall be appointed for a term of one year, one for two years, and one for three years. Thereafter, as the term of a member of the board appointed under this subdivision expires each year, the state advisory council for comprehensive psychiatric services shall submit to the governor a panel of not less than three nor more than five proposed members of the board of trustees, and the governor shall appoint one member from such panel for a term of three years;

(2) Three members of the immediate family of persons who have a developmental disability. The department's Missouri planning council for developmental disabilities, created pursuant to section 633.020, shall submit a panel of nine proposed members of the board to the governor, from which the governor shall appoint three. One shall be appointed for a term of one year, one for two years, and one for three years. Thereafter, as the term of a member of the board appointed under this subdivision expires each year, the Missouri planning council for developmental disabilities shall submit to the governor a panel of not less than three nor more than five proposed members of the board of trustees, and the governor shall appoint one member from such panel for a term of three years; and

(3) Three persons recognized for their expertise in general business matters and procedures. Of the three business persons to be appointed by the governor, one shall be appointed for one year, one for two years, and one for three years. Thereafter, as the term of a member of the board of trustees appointed under this subdivision expires each year, the governor shall appoint one business person as member for a term of three years.

3. As used in subdivisions (1) and (2) of subsection 2 of this section, "immediate family" includes spouse, parents, parents of spouse, children, spouses of children, and siblings.

4. No member of the board of trustees shall receive compensation for services as a member of the board. The board shall reimburse the members of the board for necessary expenses actually incurred in the performance of their duties.

5. The board of trustees shall be subject to the provisions of sections 610.010 to 610.029 and is considered a public governmental body under section 610.010.

6. The board of trustees shall annually prepare or cause to be prepared an accounting of funds administered by the board and shall transmit a copy of the accounting to the governor, the president pro tempore of the senate and the speaker of the house of representatives.

7. The board of trustees shall establish policies, procedures, and other rules and regulations necessary to implement the provisions of sections 402.199 to 402.208.

8. The board of trustees is authorized to advise, consult with, coordinate and render services to those departments, agencies, political subdivisions, and governmental instrumentalities of Missouri and of the states adjacent to Missouri, and those not-for-profit organizations that qualify as organizations pursuant to Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, that provide services or support to persons with disabilities who are residents of Missouri or one of the states adjacent to Missouri.

9. The assets of the board of trustees shall not be considered state money, assets of the state or revenue for any purposes of the state constitution or statutes. The property of the board of trustees and its income and operations shall be exempt from all taxation by the state or any of its political subdivisions.

10. No trustee or any member of the board of trustees, co-trustee, or successor co-trustee serving pursuant to the provisions of sections 402.200 to 402.208 shall at any time be held liable for any mistake of law or fact, or of both law and fact, or errors of judgment, nor for any loss sustained as a result thereof, unless such trustee, co-trustee, or successor co-trustee acted in bad faith or with reckless indifference to the terms of the trust or the interest of the beneficiary.

402.202. TRUST ACCOUNTS, RESTRICTED TRUST ACCOUNTS, CHARITABLE TRUST — ADMINISTERED AS MISSOURI FAMILY TRUST — POOLING PERMITTED — ADDITIONAL BOARD POWERS. — 1. Trust accounts, restricted trust accounts, and the charitable trust shall be held and administered in trust as the Missouri family trust. The charitable trust, the restricted accounts and the trust accounts shall each be maintained in trust as separate accounts, but may be pooled for purposes of investment and management. Assets of the Missouri family trust shall not be considered state money, assets of the state or revenue for any purposes of the state constitution or statutes.

2. The board of trustees shall act as the trustee of the Missouri family trust. The board of trustees, as trustee, shall administer the Missouri family trust pursuant to the provisions of sections 402.199 to 402.208 and pursuant to the policies, procedures, rules, and regulations of the board of trustees.

3. In addition to the powers and duties granted to the board pursuant to sections 402.199 to 402.208, in its capacity as trustee of the trust the board shall have all powers granted to trustees acting under chapter 456, as now in effect or hereafter amended; provided, that section 456.8-813 regarding the duty to inform and report to the beneficiaries shall not apply to the trust, except as mandated under section 456.1-105.

402.203. CONTRIBUTION OF ASSETS, BY WHOM — TRUST ACCOUNT TO BE CREATED — COTRUSTEES AND SUCCESSORS — BREACH OF FIDUCIARY DUTY, EFFECT OF — DEATH OF BENEFICIARY, PROCEDURE — REMAINDER DISTRIBUTION. — 1. A beneficiary who is a person with disabilities as defined in Section 1614(a)(3) of the Social Security Act 42 U.S.C. 1382c(a)(3), or the parent, grandparent, or legal guardian of a beneficiary, or a court, as settlor, may contribute assets of the beneficiary in trust to the board as trustee, for the benefit of the beneficiary as part of a pooled trust described by 42 U.S.C. Section 1396p(d)(4)(C). Upon such contribution, the settlor's completion and execution of trust documents provided by the trustee, and the trustee's review, approval and execution of the trust documents, a trust account for the beneficiary shall thereby be created. A trust account to which the assets of a beneficiary are contributed shall be referred to as a "first party trust account" and shall be held and administered in trust for the benefit of the beneficiary as provided in this section.

2. The settlor may designate a co-trustee, and a successor or successors to the co-trustee, to act together with the trustee as trustees of the first-party trust account; provided that the beneficiary may not act as a co-trustee or successor co-trustee; and provided further that court approval of the beneficiary, co-trustee or successor trustee shall be required in connection with any first party trust account created pursuant to section 473.657 or section 475.093.

3. If the board determines, in its good faith judgment, that a co-trustee has breached his or her fiduciary duties, either as a result of an act of commission or omission, then the board may seek removal of such co-trustee and the appointment of a successor co-trustee upon application to a court of competent jurisdiction.

4. At the death of the beneficiary, the board of trustees shall provide notice that the trust account has terminated to each state of which the board of trustees has knowledge that such state has provided medical assistance on behalf of the beneficiary under a state plan for medical assistance under Title 42 of the United States Code. After distribution

of twenty-five percent of the principal balance of the trust account to the charitable trust, the board of trustees shall pay over and distribute to such states all amounts remaining in the trust account up to an amount equal to the total medical assistance paid by such states on behalf of the beneficiary under the state plan for medical assistance under Title 42 of the United States Code. In the event that the beneficiary has received medical assistance from more than one state with claims on the proceeds for reimbursement of medical assistance payments under Title 42 of the United States Code and there are insufficient assets to pay the entire balance due to each state then the proceeds shall be distributed to each state on a pro rata basis based upon each state's proportionate share of the total medical assistance paid by all states.

5. To the extent any amounts remain in the trust account after distribution to the charitable trust and the state or states for state reimbursement claims, the remainder shall be distributed to such person, entities, or organizations designated as remainder beneficiaries by the settlor in the trust documents. If any individual remainder beneficiary named by the settlor is not then living, then in the absence of contrary instruction in the trust documents completed by the settlor, such remainder beneficiary's distribution shall be made to such remainder beneficiary's heirs at law, as determined by the laws of the state of the beneficiary's residence at the time of the beneficiary's death.

402.204. SETTLOR MAY CONTRIBUTE ASSETS — TRUST ACCOUNT CREATED — COTRUSTEES AND SUCCESSORS — BREACH OF FIDUCIARY DUTY, EFFECT OF — DEATH OF BENEFICIARY, PROCEDURE — REMAINDER DISTRIBUTION. — 1. Any person, as settlor, except a beneficiary or a beneficiary's spouse, may contribute assets not including assets of the beneficiary or the beneficiary's spouse in trust to the board as trustee, for the benefit of the beneficiary. Upon such contribution, the settlor's completion and execution of trust documents provided by the trustee, and the trustee's review, approval and execution of the trust documents, a trust account for the beneficiary shall thereby be created. A trust account to which assets that do not include assets of a beneficiary or of a beneficiary's spouse are contributed shall be referred to as a "third party trust account", and shall be held and administered in trust for the benefit of the beneficiary as provided in this section.

2. The settlor may designate a co-trustee, and a successor or successors to the co-trustee, to act together with the trustee as trustees of the third party trust account; provided that the beneficiary or the beneficiary's spouse may not act as co-trustee or successor co-trustee; and provided further that court approval of the beneficiary, co-trustee or successor trustee shall be required in connection with any third party trust account created pursuant to subsection 2 of section 473.657.

3. If the board determines, in its good faith judgment, that a co-trustee has breached his or her fiduciary duties, either as a result of an act of commission or omission, then the board may, by written notice to such co-trustee, remove such co-trustee, appoint a successor co-trustee, or serve as sole trustee.

4. At the death of the beneficiary, the board of trustees shall promptly determine the principal balance of the trust account and, after payment of any expenses of the beneficiary as the board may authorize and all fees and expenses of the board, shall distribute to the persons, entities, or organizations designated by the settlor as remainder beneficiaries in the trust documents:

(1) An amount equal to one hundred percent of the principal balance if the beneficiary shall not have received any benefits provided by use of trust account income or principal; or

(2) An amount equal to seventy-five percent of the principal balance if the beneficiary shall have received any benefits provided by use of trust account income or principal; and

(3) Any principal not distributed pursuant to the provisions of subdivision (2) of this subsection, and any undistributed income shall be distributed to the charitable trust established pursuant to the provisions of section 402.207;

(4) If any individual remainder beneficiary named by the settlor is not then living, then in the absence of contrary instructions in the trust documents completed by the settlor, such remainder beneficiary's share shall be distributed to such remainder beneficiary's heirs at law, as determined by the laws of the state of the beneficiary's residence at the time of the beneficiary's death.

5. Notwithstanding the provisions of subsection 4 of this section to the contrary, the settlor may voluntarily agree that a smaller percentage of the principal balance in any trust account established by such settlor than is provided in subsection 4 of this section be distributed to the remainder beneficiaries designated in the trust documents; and that a corresponding larger percentage of the principal balance in such trust account be distributed either to the charitable trust or to a designated restricted account within the charitable trust.

402.205. WITHDRAWAL FROM TRUST ACCOUNT, WHEN — REVOCATION OR TERMINATION OF TRUST, WHEN, DISTRIBUTION — TRUST PRINCIPAL AND INCOME HELD FOR BENEFIT OF BENEFICIARY. — 1. **[**The families, friends and guardians of persons who have a disability or are eligible for services provided by the department of mental health, or both, may participate in a trust which may supplement the care, support, and treatment of such persons pursuant to the provisions of sections 402.199 to 402.220. Neither the contribution to the trust for the benefit of a life beneficiary nor the use of trust income to provide benefits shall in any way reduce, impair or diminish the benefits to which such person is otherwise entitled by law; and the administration of the trust shall not be taken into consideration in appropriations for the department of mental health to render services required by law.

2. Unless otherwise prohibited by federal statutes or regulations, all state agencies shall disregard the trust as a resource when determining eligibility of Missouri residents for assistance under chapter 208.

3. The assets of the board of trustees and assets held in trust pursuant to the provisions of sections 402.199 to 402.220 shall not be considered state money, assets of the state or revenue for any purposes of the state constitution or statutes. The property of the board of trustees and its income and operations shall be exempt from all taxation by the state or any of its political subdivisions.**] The settlor of a revocable third party trust account or the co-trustee of a revocable third party trust account if authorized by the settlor in the trust documents, upon written notice to the board and with the board's consent may, from time to time, withdraw such part of the trust account as the settlor or such authorized co-trustee may determine; provided, however, neither the settlor nor such authorized co-trustee may withdraw an amount that when aggregated with all withdrawals within the prior twelve months shall reduce the remaining principal balance of the trust account below the greater of the amount due the board, if the trust account had terminated at the time of such withdrawal or the minimum amount required by the board, from time to time, for an account.**

2. The settlor of a revocable third party trust account or the co-trustee of a revocable third party trust account if authorized by the settlor in the trust documents, upon written notice to the board and with the board's consent may revoke and terminate the trust account. Upon receipt of such notice, the board shall promptly determine the principal balance of the trust account and after payment of all fees and expenses of the board shall distribute:

(1) In the case of revocation and termination by the settlor:

(a) An amount equal to one hundred percent of the principal balance to the settlor if the beneficiary shall not have received any benefits provided by use of trust account income or principal; or

(b) An amount equal to seventy-five percent of the principal balance to the settlor if the beneficiary shall have received any benefits provided by use of trust account income or principal; and

(c) Any principal not distributed pursuant to the provisions of paragraph (b) of this subdivision, and any undistributed income to the charitable trust;

(2) In the case of revocation and termination by an authorized co-trustee:

(a) An amount equal to one hundred percent of the principal balance shall be distributed to the trustees of the standby trust, if the beneficiary shall not have received any benefits provided by use of trust account income or principal, to be held, administered, and distributed in accordance with the provisions of subsection 3 of this section; or

(b) An amount equal to seventy-five percent of the then principal balance shall be distributed to the trustees of the standby trust, if the beneficiary shall have received any benefits provided by use of trust account income or principal, to be held, administered, and distributed in accordance with the provisions of subsection 3 of this section; and

(c) Any principal not distributed pursuant to the provisions of paragraph (b) of this subdivision, and any undistributed income shall be distributed to the charitable trust.

3. The trustee or trustees of the standby trust shall hold, administer, and distribute the principal and income of the standby trust, in the discretion of such trustee, for the support, health, education, and general well-being of the beneficiary during the beneficiary's life, recognizing that it is the purpose of the standby trust to supplement, not replace, any government benefits for the beneficiary's basic support to which such beneficiary may be entitled and to increase the quality of such beneficiary's life by providing the beneficiary those amenities which cannot otherwise be provided by public assistance or entitlements or other available sources. Permissible expenditures include, but are not limited to, those described in subdivision (2) of section 402.206.

402.206. FIRST AND THIRD PARTY TRUSTS, ACCOUNT HELD AND ADMINISTERED, HOW. — Each first party trust account and third party trust account shall be held and administered in trust as follows:

(1) The board of trustees shall hold, administer, and distribute the principal and income of the trust account, in the discretion of the trustee, in consultation with the co-trustee, for the health, education, and general well-being of the beneficiary, recognizing that the purpose of the trust account is to supplement, not replace, any government benefits for the beneficiary's basic support to which such beneficiary may be entitled;

(2) Expenditure of trust account funds shall be made solely for benefit of the beneficiary, to increase the quality of the beneficiary's life by providing those amenities that cannot otherwise be provided by public assistance or entitlements or other available sources. Permissible expenditures include, but are not limited to, dental, medical, and diagnostic work or treatment that is not otherwise available from public benefits or assistance; private rehabilitative training; supplementary education aid; entertainment; periodic vacations and outings; expenditures to foster the interests, talents, and hobbies of the beneficiary; and expenditures to purchase personal property and services that will make life more comfortable and enjoyable for the beneficiary but that will not defeat his or her eligibility for public benefits or assistance. The trustee, with consultation of the co-trustee, may make payments for a person to accompany the beneficiary on vacations and outings and for the transportation of the beneficiary or of friends and relatives of the beneficiary to visit the beneficiary;

(3) Expenditures of trust account funds shall not be made for the primary support or maintenance of the beneficiary, including basic food or shelter, if, as a result, the beneficiary would no longer be eligible to receive public benefits or assistance to which the beneficiary is then entitled;

(4) The co-trustee, with consent of the trustee, shall not less frequently than annually determine the amount of income or principal or income and principal which may be used to provide noncash benefits and the nature and type of benefits to be provided for the beneficiary. Any net income which is not used shall be added to the principal annually;

(5) In the event that the trustee and the co-trustee shall be unable to agree either on:

(a) The amount of income or principal to be used;

(b) The benefits to be provided; or

(c) The administration of the trust account,

then the co-trustee shall have the right to appeal the decision of the trustee in accordance with the rules and regulations established by the board.

402.207. CHARITABLE TRUST ESTABLISHED, WHEN. — 1. The board of trustees shall establish a charitable trust for the benefit of individuals with disabilities.

2. The board of trustees shall accept contributions to the charitable trust at the termination of trust accounts and other contributions from donors in accordance with policies and procedures adopted by the board of trustees.

3. The trustees shall as necessary determine the amount of income and principal of the charitable trust to be used to provide benefits for individuals with disabilities. Benefits provided shall only be those that have no negative effect on the individual's entitlement to government benefits. Any income not used to provide benefits shall be added to the principal annually.

4. Any person with the consent of the board of trustees may establish a restricted account within the charitable trust and may determine, with the consent of the board of trustees, the class of individuals eligible to be recipients of funds from the restricted account, so long as the eligible recipients are individuals with disabilities as set forth in section 402.200.

402.208. FEES AUTHORIZED — PERIODIC REPORTS — NO PROPERTY INTEREST IN TRUST ACCOUNT, WHEN. — 1. The board may establish and collect fees for administering trust accounts established pursuant to the provisions of sections 402.199 to 402.220.

2. The board shall establish policies and procedures for providing periodic reports to the co-trustees of each trust account established pursuant to the provisions of sections 402.199 to 402.220.

3. (1) No beneficiary shall have any vested or property rights or interests in any trust account, nor shall any beneficiary have the power to anticipate, assign, convey, alienate, or otherwise encumber any interest in the income or principal of any trust account.

(2) The income or the principal or any interest of any beneficiary in the trust account shall not be liable for any debt incurred by such beneficiary, nor shall the principal or income of any trust account be subject to seizure by any creditor or any beneficiary under any writ or proceeding in law or in equity.

4. Except for the right of a settlor to withdraw from or revoke any revocable trust account under section 402.205, and the right of any acting co-trustee, other than the original settlor, to withdraw all or a portion of the principal balance of a revocable trust account under section 402.205, neither the settlor nor any acting co-trustee shall have the right to sell, assign, convey, alienate, or otherwise encumber, for consideration or otherwise, any interest in the income or principal of the trust account. The income or the principal or any interest of any beneficiary of a revocable trust account shall not be liable for any debt incurred by the settlor or any acting co-trustee, nor shall the principal or

income of the trust account be subject to seizure by any creditor of any settlor or any acting co-trustee under any writ or proceeding in law or in equity.

473.657. DISTRIBUTION. — 1. Distribution to a distributee may be made to the distributee or to a person holding a power of attorney properly executed by the distributee in accordance with the law of the place of execution, or to the distributee's personal representative, guardian, or conservator.

2. Distribution may be made to the trustees of a trust **account** established pursuant to sections 402.199 to **[**402.225**] 402.208** if the court finds that **[**such distribution**] the distributee qualifies as a life beneficiary under subdivision (1) of section 402.200 and that such distribution** would be in the best interest of the distributee as prescribed by section 475.093.

475.093. COURT MAY AUTHORIZE PARTICIPATION IN FAMILY TRUST. — 1. If the court finds that the establishment of a trust would be in the protectee's best interest, the court may authorize the establishment of a trust **account** for the benefit of a protectee pursuant to sections 402.199 to **[**402.255**] 402.208**, if it finds that the protectee qualifies as a life beneficiary pursuant to **subdivision (1) of** section **[**402.205**] 402.200**, or the court may authorize the establishment of such trust for the benefit of a protectee pursuant to section 475.092.

2. A trust **account** established pursuant to sections 402.199 to **[**402.225**] 402.208** will be in the best interest of the protectee, notwithstanding the fact that a sum not exceeding twenty-five percent of the principal balance as defined in subdivision **[**(7)**] (9)** of section 402.200 will be distributed to the charitable trust **of the Missouri family trust** as prescribed by section **[**402.215**] 402.203**.

[402.210. BOARD OF TRUSTEES — MEMBERS, APPOINTMENT, TERM, QUALIFICATIONS, EXPENSES — ANNUAL ACCOUNTING — RULES AND REGULATIONS. — 1. There is hereby created the "Missouri Family Trust Board of Trustees", which shall be a body corporate and an instrumentality of the state. The board of trustees shall consist of nine persons appointed by the governor with the advice and consent of the senate. The members' terms of office shall be three years and until their successors are appointed and qualified. The trustees shall be persons who are not prohibited from serving by sections 105.450 to 105.482 and who are not otherwise employed by the department of mental health. The board of trustees shall be composed of the following:

(1) Three members of the immediate family of persons who have a disability or are the recipients of services provided by the department in the treatment of mental illness. The advisory council for comprehensive psychiatric services, created pursuant to section 632.020, shall submit a panel of nine names to the governor, from which he shall appoint three. One shall be appointed for a term of one year, one for two years, and one for three years. Thereafter, as the term of a trustee expires each year, the Missouri advisory council for comprehensive psychiatric services shall submit to the governor a panel of not less than three nor more than five proposed trustees, and the governor shall appoint one trustee from such panel for a term of three years;

(2) Three members of the immediate family of persons who are recipients of services provided by the department in the habilitation of the mentally retarded or developmentally disabled. The Missouri advisory council on mental retardation and developmental disabilities, created pursuant to section 633.020, shall submit a panel of nine names to the governor, from which he shall appoint three. One shall be appointed for one year, one for two years and one for three years. Thereafter, as the term of a trustee expires each year, the Missouri advisory council on mental retardation and developmental disabilities shall submit to the governor a panel of not less than three

nor more than five proposed trustees, and the governor shall appoint one trustee from such panel for a term of three years;

(3) Three persons who are recognized for their expertise in general business matters and procedures. Of the three business people to be appointed by the governor, one shall be appointed for one year, one for two years and one for three years. Thereafter, as the term of a trustee expires each year, the governor shall appoint one business person as trustee for a term of three years.

2. The trustees shall receive no compensation for their services. The trust shall reimburse the trustees for necessary expenses actually incurred in the performance of their duties.

3. As used in this section, the term "immediate family" includes spouse, parents, parents of spouse, children, spouses of children and siblings.

4. The board of trustees shall be subject to the provisions of sections 610.010 to 610.120.

5. The board of trustees shall annually prepare or cause to be prepared an accounting of the trust funds and shall transmit a copy of the accounting to the governor, the president pro tempore of the senate and the speaker of the house of representatives.

6. The board of trustees shall establish policies, procedures and other rules and regulations necessary to implement the provisions of sections 402.199 to 402.220.**]**

[402.210. BOARD OF TRUSTEES — MEMBERS, APPOINTMENT, TERM, QUALIFICATIONS, EXPENSES — ANNUAL ACCOUNTING — RULES AND REGULATIONS. — 1. There is hereby created the "Missouri Family Trust Board of Trustees", which shall be a body corporate and an instrumentality of the state. The board of trustees shall consist of nine persons appointed by the governor with the advice and consent of the senate. The members' terms of office shall be three years and until their successors are appointed and qualified. The trustees shall be persons who are not prohibited from serving by sections 105.450 to 105.482 and who are not otherwise employed by the department of mental health. The board of trustees shall be composed of the following:

(1) Three members of the immediate family of persons who have a disability or are the recipients of services provided by the department in the treatment of mental illness. The advisory council for comprehensive psychiatric services, created pursuant to section 632.020, shall submit a panel of nine names to the governor, from which he shall appoint three. One shall be appointed for a term of one year, one for two years, and one for three years. Thereafter, as the term of a trustee expires each year, the Missouri advisory council for comprehensive psychiatric services shall submit to the governor a panel of not less than three nor more than five proposed trustees, and the governor shall appoint one trustee from such panel for a term of three years;

(2) Three members of the immediate family of persons who are recipients of services provided by the department in the habilitation of **[**the mentally retarded or developmentally disabled**]** persons with intellectual disabilities or developmental disabilities. The Missouri **[**advisory council on mental retardation and**]** developmental disabilities **council**, created pursuant to section 633.020, shall submit a panel of nine names to the governor, from which he shall appoint three. One shall be appointed for one year, one for two years and one for three years. Thereafter, as the term of a trustee expires each year, the Missouri **[**advisory council on mental retardation and**]** developmental disabilities **council** shall submit to the governor a panel of not less than three nor more than five proposed trustees, and the governor shall appoint one trustee from such panel for a term of three years;

(3) Three persons who are recognized for their expertise in general business matters and procedures. Of the three business people to be appointed by the governor, one shall be appointed for one year, one for two years and one for three years. Thereafter, as the term of a trustee expires each year, the governor shall appoint one business person as trustee for a term of three years.

2. The trustees shall receive no compensation for their services. The trust shall reimburse the trustees for necessary expenses actually incurred in the performance of their duties.

3. As used in this section, the term "immediate family" includes spouse, parents, parents of spouse, children, spouses of children and siblings.

4. The board of trustees shall be subject to the provisions of sections 610.010 to 610.120.

5. The board of trustees shall annually prepare or cause to be prepared an accounting of the trust funds and shall transmit a copy of the accounting to the governor, the president pro tempore of the senate and the speaker of the house of representatives.

6. The board of trustees shall establish policies, procedures and other rules and regulations necessary to implement the provisions of sections 402.199 to 402.220.**]**

[402.215. BOARD OF TRUSTEES, DUTIES — PROVISIONS FOR TRUST DOCUMENTS. — 1. The board of trustees is authorized and directed to establish and administer the Missouri family trust and to advise, consult with, and render services to departments and agencies of the state of Missouri and to other nonprofit organizations which qualify as organizations pursuant to Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and which provide services to Missouri residents with a disability. The board shall be authorized to execute all documents necessary to establish and administer the trust including the formation of a not-for-profit corporation created pursuant to chapter 355 and to qualify as an organization pursuant to Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended.

2. The trust documents shall include and be limited by the following provisions:

(1) The Missouri family trust shall be authorized to accept contributions from any source including trustees, personal representatives, personal custodians pursuant to chapter 404, and other fiduciaries, and, subject to the provisions of subdivision (11) of this subsection, from the life beneficiaries and their respective spouses, to be held, administered, managed, invested and distributed in order to facilitate the coordination and integration of private financing for individuals who have a disability or are eligible for services provided by the Missouri department of mental health, or both, while maintaining the eligibility of such individuals for government entitlement funding. All contributions, and the earnings thereon, shall be administered as one trust fund; however, separate accounts shall be established for each designated beneficiary. The income earned, after deducting administrative expenses, shall be credited to the accounts of the respective life beneficiaries in proportion to the principal balance in the account for each such life beneficiary, to the total principal balances in the accounts for all life beneficiaries;

(2) Every donor may designate a specific person as the life beneficiary of the contribution made by such donor. In addition, each donor may name a cotrustee, including the donor, and a successor or successors to the cotrustee, to act with the trustees of the trust on behalf of the designated life beneficiary; provided, however, a life beneficiary shall not be eligible to be a cotrustee or a successor cotrustee; provided, however, that court approval of the specific person designated as life beneficiary and

as cotrustee or successor trustee shall be required in connection with any trust created pursuant to section 473.657 or section 475.093;

(3) The cotrustee, with the consent of the trust, shall from time to time but not less frequently than annually determine the amount of income or principal or income and principal to be used to provide noncash benefits and the nature and type of benefits to be provided for the life beneficiary. Any net income which is not used shall be added to principal annually. In the event that the trust and the cotrustee shall be unable to agree either on the amount of income or principal or income and principal to be used or the benefits to be provided, then either the trust or the cotrustee shall have the right to request that the matter be resolved by arbitration which shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The requesting party shall send a written request for arbitration to the responding party and shall in such request set forth the name, address and telephone number of such requesting party's arbitrator. The responding party shall, within ten days after receipt of the request for arbitration, set forth in writing to the requesting party the name, address and telephone number of the responding party's arbitrator. Copies of the request for arbitration and response shall be sent to the director of the department. If the two designated arbitrators shall be unable to agree upon a third arbitrator within ten days after the responding party shall have identified such party's arbitrator, then the director of the department shall designate the third arbitrator by written notice to the requesting and responding parties' arbitrators. The three arbitrators shall meet, conduct a hearing, and render a decision within thirty days after the appointment of the third arbitrator. A decision of a majority of the arbitrators shall be binding upon the requesting and responding parties. Each party shall pay the fees and expenses of such party's arbitrator and the fees and expenses of the third arbitrator shall be borne equally by the parties. Judgment on the arbitrators' award may be entered in any court of competent jurisdiction;

(4) Any donor, during his or her lifetime, except for a trust created pursuant to section 473.657 or section 475.093, may revoke any gift made to the trust; provided, however, any donor may, at any time, voluntarily waive the right to revoke. In the event that at the time the donor shall have revoked his or her gift to the trust the life beneficiary shall not have received any benefits provided by use of trust income or principal, then an amount equal to one hundred percent of the principal balance shall be returned to the donor. Any undistributed net income shall be distributed to the charitable trust. In the event that at the time the donor shall have revoked his or her gift to the trust the life beneficiary shall have received any benefits provided by the use of trust income or principal, then an amount equal to ninety percent of the principal balance shall be returned to the donor. The balance of the principal balance together with all undistributed net income shall be distributed to the charitable trust;

(5) Any acting cotrustee, except a cotrustee of a trust created pursuant to section 473.657 or section 475.093, other than the original donor of a life beneficiary's account, shall have the right, for good and sufficient reason upon written notice to the trust and the department stating such reason, to withdraw all or a portion of the principal balance. In such event, the applicable portion, as set forth in subdivision (7) of this subsection, of the principal balance shall then be distributed to the successor trust and the balance of the principal balance together with any undistributed net income shall be distributed to the charitable trust;

(6) In the event that a life beneficiary for whose benefit a contribution or contributions shall have been made to the family trust shall cease to be eligible for services provided by the department of mental health and neither the donor nor the then acting cotrustee, except a cotrustee of a trust created pursuant to section 473.657 or section 475.093, shall revoke or withdraw the applicable portion, as set for in

subdivision (7) of this subsection, of the principal balance, then the board of trustees may, by written notice to such donor or acting cotrustee, terminate the trust as to such beneficiary and thereupon shall distribute the applicable portion, as set forth in subdivision (7) of this subsection, of the principal balance, to the trustee of the successor trust to be held, administered and distributed by such trustee in accordance with the provisions of the successor trust described in subdivision (12) of this subsection;

(7) If at the time of withdrawal or termination as provided in subdivision (6) of this subsection of a life beneficiary's account from the trust either the life beneficiary shall not have received any benefits provided by the use of the trust income or principal or the life beneficiary shall have received benefits provided by the use of trust income or principal for a period of not more than five years from the date a contribution shall have first been made to the trust for such life beneficiary, then an amount equal to ninety percent of the principal balance shall be distributed to the successor trust, and the balance of the principal balance together with all undistributed net income shall be distributed to the charitable trust; provided, however, if the life beneficiary at the time of such withdrawal by the cotrustee or termination as provided above shall have received any benefits provided by the use of trust income or principal for a period of more than five years from the date a contribution shall have first been made to the trust for such life beneficiary, then an amount equal to seventy-five percent of the principal balance shall be distributed to the successor trust, and the balance of the principal balance together with all undistributed net income shall be distributed to the charitable trust;

(8) Subject to the provisions of subdivision (9) of this subsection, if the life beneficiary dies before receiving any benefits provided by the use of trust income or principal, then an amount equal to one hundred percent of the principal balance shall be distributed to such person or persons as the donor shall have designated. Any undistributed net income shall be distributed to the charitable trust. If at the time of death of the life beneficiary, the life beneficiary shall have been receiving benefits provided by the use of trust income or principal or income and principal, then, in such event, an amount equal to seventy-five percent of the principal balance shall be distributed to such person or persons as the donor designated, and the balance of the principal balance, together with all undistributed net income, shall be distributed to the charitable trust;

(9) In the event the trust is created as a result of a distribution from a personal representative of an estate of which the life beneficiary is a distributee, then if the life beneficiary dies before receiving any benefits provided by the use of trust income or principal, an amount equal to one hundred percent of the principal balance shall be distributed to such person or persons who are the life beneficiary's heirs at law. Any undistributed income shall be distributed to the charitable trust. If at the time of death of the life beneficiary the life beneficiary shall have been receiving benefits provided by the use of trust income or principal or income and principal, then, an amount equal to seventy-five percent of the principal balance shall be distributed to such person or persons who are the life beneficiary's heirs at law. The balance of the principal balance together with all undistributed income shall be distributed to the charitable trust. If there are no heirs at the time of either such distribution, the then-principal balance together with all undistributed income shall be distributed to the charitable trust;

(10) In the event the trust is created as a result of the recovery of damages by reason of a personal injury to the life beneficiary, then if the life beneficiary dies before receiving any benefits provided by the use of trust income or principal, the state of Missouri shall receive all amounts remaining in the life beneficiary's account up to an amount equal to the total medical assistance paid on behalf of such life beneficiary

under a state plan under Title 42 of the United States Code, and then to the extent there is any amount remaining in the life beneficiary's account, an amount equal to one hundred percent of the principal balance shall be distributed to such person or persons who are the life beneficiary's heirs at law. If there are no heirs, the balance, if any, of the principal balance together with all undistributed income shall be distributed to the charitable trust. If at the time of death of the life beneficiary the life beneficiary should have been receiving benefits provided by the use of trust income or principal or income and principal then the state of Missouri shall receive all amounts remaining in the life beneficiary's account up to an amount equal to the total medical assistance paid on behalf of such life beneficiary under a state plan under Title 42 of the United States Code, and then to the extent there is any amount remaining in the life beneficiary's account, an amount equal to seventy-five percent of the principal balance shall be distributed to such person or persons who are the life beneficiary's heirs at law and the balance of the principal balance together with all undistributed income shall be distributed to the charitable trust. If there are no heirs, the balance of the principal balance, together with all undistributed income, shall be distributed to the charitable trust;

(11) In the event an account is established with the assets of the beneficiary by the beneficiary, a family member, the beneficiary's guardian, or pursuant to a court order, all in accordance with Title 42 of the United States Code Section 1396p(d)(4)(C), then upon the death of the life beneficiary the state of Missouri shall receive all amounts remaining in the life beneficiary's account up to an amount equal to the total medical assistance paid on behalf of such life beneficiary under a state plan under Title 42 of the United States Code, and then to the extent there is any amount remaining in the life beneficiary's account, an amount equal to seventy-five percent of the principal balance shall be distributed to such person or persons who are the life beneficiary's heirs at law and the balance of the principal balance together with all undistributed income shall be distributed to the charitable trust. If there are no heirs, the balance of the principal balance together with all undistributed income shall be distributed to the charitable trust;

(12) Notwithstanding the provisions of subdivisions (4) to (8) of this subsection to the contrary, the donor may voluntarily agree to a smaller percentage of the principal balance in any account established by such donor than is provided in this subsection to be returned to the donor or distributed to the successor trust, as the case may be; and a corresponding larger percentage of the principal balance in such account to be distributed either to the charitable trust or to a designated restricted account within the charitable trust;

(13) Upon receipt of a notice of withdrawal from a designated cotrustee, other than the original donor, and a determination by the board of trustees that the reason for such withdrawal is good and sufficient, or upon the issuance of notice of termination by the board of trustees, the board of trustees shall distribute and pay over to the designated trustee of the successor trust the applicable portion of the principal balance as set forth in subdivision (7) of this subsection; provided, however, that court approval of distribution to a successor trustee shall be required in connection with any trust created pursuant to section 473.657 or section 475.093. The designated trustee of the successor trust shall hold, administer and distribute the principal and income of the successor trust, in the discretion of such trustee, for the maintenance, support, health, education and general well-being of the beneficiary, recognizing that it is the purpose of the successor trust to supplement, not replace, any government benefits for the beneficiary's basic support to which such beneficiary may be entitled and to increase the quality of such beneficiary's life by providing the beneficiary with those amenities which cannot otherwise be provided by public assistance or entitlements or other

available sources. Permissible expenditures include, but are not limited to, more sophisticated dental, medical and diagnostic work or treatment than is otherwise available from public assistance, private rehabilitative training, supplementary education aid, entertainment, periodic vacations and outings, expenditures to foster the interests, talents and hobbies of the beneficiary, and expenditures to purchase personal property and services which will make life more comfortable and enjoyable for the beneficiary but which will not defeat his or her eligibility for public assistance. Expenditures may include payment of the funeral and burial costs of the beneficiary. The designated trustee, in his or her discretion, may make payments from time to time for a person to accompany the beneficiary on vacations and outings and for the transportation of the beneficiary or of friends and relatives of the beneficiary to visit the beneficiary. Any undistributed income shall be added to the principal from time to time. Expenditures shall not be made for the primary support or maintenance of the beneficiary, including basic food, shelter and clothing, if, as a result, the beneficiary would no longer be eligible to receive public benefits or assistance to which the beneficiary is then entitled. After the death and burial of the beneficiary, the remaining balance of the successor trust shall be distributed to such person or persons as the donor shall have designated;

(14) The charitable trust shall be administered as part of the family trust, but as a separate account. The income attributable to the charitable trust shall be used to provide benefits for individuals who have a disability or who are eligible for services provided by or through the department and who either have no immediate family or whose immediate family, in the reasonable opinion of the trustees, is financially unable to make a contribution to the trust sufficient to provide benefits for such individuals, while maintaining such individuals' eligibility for government entitlement funding. The trustees may from time to time determine to use part of the principal of the charitable trust to provide such benefits. As used in this section, the term "immediate family" includes parents, children and siblings. The individuals to be beneficiaries of the charitable trust shall be recommended to the trustees by the department and others from time to time. The trustees shall annually determine the amount of charitable trust income or principal to be used to provide benefits and the nature and type of benefits to be provided for each identified beneficiary of the charitable trust. Any income not used shall be added to principal annually;

(15) Any person, with the consent of the board of trustees, may establish a restricted account within the charitable trust and shall be permitted to determine, with the consent of the board of trustees, the beneficiaries of such restricted account provided such beneficiaries qualify as participants of the trust as set forth in subsection 1 of section 402.205.**]**

[402.217. RESTRICTIONS — INCOME NOT SUBJECT TO SEIZURE — CERTAIN INTERESTS IN INCOME NOT ALIENABLE. — 1. No beneficiary shall have any vested or property rights or interests in the family trust, nor shall any beneficiary have the power to anticipate, assign, convey, alienate, or otherwise encumber any interest in the income or principal of the family trust, nor shall such income or the principal or any interest of any beneficiary thereunder be liable for any debt incurred by such beneficiary, nor shall the principal or income of the family trust be subject to seizure by any creditor or any beneficiary under any writ or proceeding in law or in equity.

2. Except for the right of a donor to revoke any gift made to the trust, pursuant to subdivision (4) of subsection 2 of section 402.215, and the right of any acting cotrustee, other than the original donor, to withdraw all or a portion of the principal balance, pursuant to subdivision (5) of subsection 2 of section 402.215, neither the donor nor any acting cotrustee shall have the right to sell, assign, convey, alienate or

otherwise encumber, for consideration or otherwise, any interest in the income or principal of the family trust, nor shall such income or the principal or any interest of any beneficiary thereunder be liable for any debt incurred by the donor or any acting cotrustee, nor shall the principal or income of the family trust be subject to seizure by any creditor of any donor or any acting cotrustee under any writ or proceeding in law or in equity.**]**

[402.220. LIABILITY OF TRUSTEES, LIMITATIONS ON. — No trustee, cotrustee or successor cotrustee serving pursuant to the provisions of sections 402.200 to 402.220 shall at any time be held liable for any mistake of law or fact, or of both law and fact, or errors of judgment, nor for any loss sustained by the trust estate or by any beneficiary under the provisions of sections 402.200 to 402.220, or by any other person, except through actual fraud or willful misconduct on the part of such trustee, cotrustee or successor cotrustee.**]**

Approved July 5, 2011

SB 77 [HCS SB 77]

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

Expands the types of directional signs which may be erected and maintained within highway right-of-ways.

AN ACT to repeal sections 226.520 and 227.410, RSMo, and to enact in lieu thereof six new sections relating to roadway signs.

SECTION

A. Enacting clause.
226.520. Permitted signs — specifications.
227.410. Rabbi Ernest I. Jacob Memorial Highway designated for portion of Highway 160 in Greene County.
227.424. Missouri State Highway Patrol Sergeant Joseph G. Schuengel Memorial Highway designated for portion of I-40/64 in St. Louis County.
227.425. Truman/Eisenhower Presidential Highway designated for portion of I-70 from City of Independence to Kansas state line.
227.429. Representative Otto Bean Memorial Highway designated for a portion of Highway 25 in Dunklin and Stoddard counties.
227.430. SFC Wm. Brian Woods, Jr. Memorial Highway designated for portion of Highway 30 in Jefferson County.

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

SECTION A. ENACTING CLAUSE. — Sections 226.520 and 227.410, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 226.520, 227.410, 227.424, 227.425, 227.429, and 227.430, to read as follows:

226.520. PERMITTED SIGNS — SPECIFICATIONS. — On and after March 30, 1972, no outdoor advertising shall be erected or maintained within six hundred sixty feet of the nearest edge of the right-of-way and visible from the main traveled way of any highway which is part of the federal-aid primary highways as of June 1, 1991, and all highways designated as part of the National Highway System by the National Highway System Designation Act of 1995 and those highways subsequently designated as part of the National Highway System in this state except the following:

(1) Directional and other official signs, including, but not limited to, signs pertaining to natural wonders, scenic**, cultural (including agricultural activities or attractions), scientific, educational, religious sites,** and historical attractions, which are required or authorized by law, and which comply with regulations which shall be promulgated by the department relative to their lighting, size, number, spacing and such other requirements as may be appropriate to implement sections 226.500 to 226.600, but such regulations shall not be inconsistent with, nor more restrictive than, such national standards as may be promulgated from time to time by the Secretary of the Department of Transportation of the United States, under subsection (c) of Section 131 of Title 23 of the United States Code;

(2) Signs, displays, and devices advertising activities conducted on the property upon which they are located, or services and products therein provided;

(3) Outdoor advertising located in areas which are zoned industrial, commercial or the like as provided in sections 226.500 to 226.600 or under other authority of law;

(4) Outdoor advertising located in unzoned commercial or industrial areas as defined and determined pursuant to sections 226.500 to 226.600;

(5) Outdoor advertising for tourist-oriented businesses, and scoreboards used in sporting events or other electronic signs with changeable messages which are not prohibited by federal regulations or local zoning ordinances. Outdoor advertising which is authorized by this subdivision (5) shall only be allowed to the extent that such outdoor advertising is not prohibited by Title 23, United States Code, Section 131, as now or thereafter amended, and lawful regulations promulgated thereunder. The general assembly finds and declares it to be the policy of the state of Missouri that the tourism industry is of major and critical importance to the economic well-being of the state and that directional signs, displays and devices providing directional information about goods and services in the interest of the traveling public are essential to the economic welfare of the tourism industry. The general assembly further finds and declares that the removal of directional signs advertising tourist-oriented businesses is harmful to the tourism industry in Missouri and that the removal of directional signs within or near areas of the state where there is high concentration of tourist-oriented businesses would have a particularly harmful effect upon the economies within such areas. The state highways and transportation commission is authorized and directed to determine those specific areas of the state of Missouri in which there is high concentration of tourist-oriented businesses, and within such areas, no directional signs, displays and devices which are lawfully erected, which are maintained in good repair, which provide directional information about goods and services in the interest of the traveling public, and which would otherwise be required to be removed because they are not allowed to be maintained under the provisions of sections 226.500 through 226.600 shall be required to be removed until such time as such removal has been finally ordered by the United States Secretary of Transportation;

(6) The provisions of this section shall not be construed to require removal of signs advertising churches or items of religious significance, items of native arts and crafts, woodworking in native products, or native items of artistic, historical, geologic significance, or hospitals or airports.

227.410. RABBI ERNEST I. JACOB MEMORIAL HIGHWAY DESIGNATED FOR PORTION OF HIGHWAY 160 IN GREENE COUNTY. — **[**The portion of U.S. Highway 160 in Greene County from the intersection of Farm Road 142 to the intersection of West Sunshine Street shall be designated the "Rabbi Abraham Joshua Heschel Memorial Highway".**] The portion of U.S. Highway 160 in Greene County from the intersection of West Mount Vernon Street to one-half mile south of the intersection of West Sunshine Street shall be designated the "Rabbi Ernest I. Jacob Memorial Highway".** The department of transportation shall erect and maintain appropriate signs designating such highway, with the costs for such designation to be paid for by private donation.

227.424. MISSOURI STATE HIGHWAY PATROL SERGEANT JOSEPH G. SCHUENGEL MEMORIAL HIGHWAY DESIGNATED FOR PORTION OF I-40/64 IN ST. LOUIS COUNTY. — The portion of Interstate 40/64 in St. Louis County from the Boone's Crossing overpass at mile marker 17.0 west to the Spirit of St. Louis Airport overpass at mile marker 13.8 shall be designated as the "Missouri State Highway Patrol Sergeant Joseph G. Schuengel Memorial Highway". The department of transportation shall erect and maintain appropriate signs designating such highway, with the costs to be paid for by private donations.

227.425. TRUMAN/EISENHOWER PRESIDENTIAL HIGHWAY DESIGNATED FOR PORTION OF I-70 FROM CITY OF INDEPENDENCE TO KANSAS STATE LINE. — 1. The portion of Interstate 70 from the eastern city limits of Independence west to the Kansas state line shall be designated the "Truman/Eisenhower Presidential Highway", with signs erected at both ends of the designated highway. At a later point in time, two signs designating such highway may be placed at the intersection of Interstate 70 and Interstate 435, and two signs may be placed at the intersection of Interstate 70 and Interstate 29/35. All appropriate signage shall be paid for, prior to installation, by private donations.

2. The naming of the Truman/Eisenhower Presidential Highway under this section shall be contingent upon the designation by the state of Kansas of the portion of Interstate 70 in Kansas from the Missouri state line west to Abilene, Kansas, as the "Eisenhower/Truman Presidential Highway".

227.429. REPRESENTATIVE OTTO BEAN MEMORIAL HIGHWAY DESIGNATED FOR A PORTION OF HIGHWAY 25 IN DUNKLIN AND STODDARD COUNTIES. — The portion of Highway 25 from US Route 412 to Route U/Route Z in Dunklin and Stoddard counties shall be designated the "Representative Otto Bean Memorial Highway". The department of transportation shall erect and maintain appropriate signs designating such highway, with the cost to be paid for by private donations.

227.430. SFC WM. BRIAN WOODS, JR. MEMORIAL HIGHWAY DESIGNATED FOR PORTION OF HIGHWAY 30 IN JEFFERSON COUNTY. — The portion of Missouri Highway 30 from State Route NN north three miles to one tenth of a mile southwest of old Missouri 30 in Jefferson County shall be designated the "SFC Wm. Brian Woods, Jr. Memorial Highway". The department of transportation shall erect and maintain appropriate signs designating such highway, with the cost to be paid for by private donations.

Approved July 8, 2011

SB 81 [CCS SCS SB 81]

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

Modifies provisions relating to fine arts education.

AN ACT to repeal sections 143.183, 163.037, and 165.011, RSMo, and to enact in lieu thereof three new sections relating to education, with an emergency clause for certain sections.

SECTION

A. Enacting clause.

143.183. Professional athletes and entertainers, state income tax revenues from nonresidents — transfers to Missouri arts council trust fund, Missouri humanities council trust fund, Missouri state library networking

fund, Missouri public television broadcasting corporation special fund and Missouri historic preservation revolving fund.
162.1195. Fine arts, professional development education assistance.
165.011. Tuition — accounting of school moneys, funds — uses — transfers to and from incidental fund, when — effect of unlawful transfers — transfers to debt service fund, when.
163.037. Weighted average daily attendance to include portion of summer school average daily attendance, when.
B. Emergency clause.

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

SECTION A. ENACTING CLAUSE. — Sections 143.183, 163.037, and 165.011, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 143.183, 162.1195, and 165.011, to read as follows:

143.183. PROFESSIONAL ATHLETES AND ENTERTAINERS, STATE INCOME TAX REVENUES FROM NONRESIDENTS — TRANSFERS TO MISSOURI ARTS COUNCIL TRUST FUND, MISSOURI HUMANITIES COUNCIL TRUST FUND, MISSOURI STATE LIBRARY NETWORKING FUND, MISSOURI PUBLIC TELEVISION BROADCASTING CORPORATION SPECIAL FUND AND MISSOURI HISTORIC PRESERVATION REVOLVING FUND. — 1. As used in this section, the following terms mean:

(1) "Nonresident entertainer", a person residing or registered as a corporation outside this state who, for compensation, performs any vocal, instrumental, musical, comedy, dramatic, dance or other performance in this state before a live audience and any other person traveling with and performing services on behalf of a nonresident entertainer, including a nonresident entertainer who is paid compensation for providing entertainment as an independent contractor, a partnership that is paid compensation for entertainment provided by nonresident entertainers, a corporation that is paid compensation for entertainment provided by nonresident entertainers, or any other entity that is paid compensation for entertainment provided by nonresident entertainers;

(2) "Nonresident member of a professional athletic team", a professional athletic team member who resides outside this state, including any active player, any player on the disabled list if such player is in uniform on the day of the game at the site of the game, and any other person traveling with and performing services on behalf of a professional athletic team;

(3) "Personal service income" includes exhibition and regular season salaries and wages, guaranteed payments, strike benefits, deferred payments, severance pay, bonuses, and any other type of compensation paid to the nonresident entertainer or nonresident member of a professional athletic team, but does not include prizes, bonuses or incentive money received from competition in a livestock, equine or rodeo performance, exhibition or show;

(4) "Professional athletic team" includes, but is not limited to, any professional baseball, basketball, football, soccer and hockey team.

2. Any person, venue, or entity who pays compensation to a nonresident entertainer shall deduct and withhold from such compensation as a prepayment of tax an amount equal to two percent of the total compensation if the amount of compensation is in excess of three hundred dollars paid to the nonresident entertainer.

3. Any person, venue, or entity required to deduct and withhold tax pursuant to subsection 2 of this section shall, for each calendar quarter, on or before the last day of the month following the close of such calendar quarter, remit the taxes withheld in such form or return as prescribed by the director of revenue and pay over to the director of revenue or to a depository designated by the director of revenue the taxes so required to be deducted and withheld.

4. Any person, venue, or entity subject to this section shall be considered an employer for purposes of section 143.191, and shall be subject to all penalties, interest, and additions to tax provided in this chapter for failure to comply with this section.

5. Notwithstanding other provisions of this chapter to the contrary, the commissioner of administration, for all taxable years beginning on or after January 1, 1999, but none after

December 31, 2015, shall annually estimate the amount of state income tax revenues collected pursuant to this chapter which are received from nonresident members of professional athletic teams and nonresident entertainers. For fiscal year 2000, and for each subsequent fiscal year for a period of sixteen years, sixty percent of the annual estimate of taxes generated from the nonresident entertainer and professional athletic team income tax shall be allocated annually to the Missouri arts council trust fund, and shall be transferred from the general revenue fund to the Missouri arts council trust fund established in section 185.100 and any amount transferred shall be in addition to such agency's budget base for each fiscal year. The director shall by rule establish the method of determining the portion of personal service income of such persons that is allocable to Missouri.

6. Notwithstanding the provisions of sections 186.050 to 186.067 to the contrary, the commissioner of administration, for all taxable years beginning on or after January 1, 1999, but for none after December 31, 2015, shall estimate annually the amount of state income tax revenues collected pursuant to this chapter which are received from nonresident members of professional athletic teams and nonresident entertainers. For fiscal year 2000, and for each subsequent fiscal year for a period of sixteen years, ten percent of the annual estimate of taxes generated from the nonresident entertainer and professional athletic team income tax shall be allocated annually to the Missouri humanities council trust fund, and shall be transferred from the general revenue fund to the Missouri humanities council trust fund established in section 186.055 and any amount transferred shall be in addition to such agency's budget base for each fiscal year.

7. Notwithstanding other provisions of section 182.812 to the contrary, the commissioner of administration, for all taxable years beginning on or after January 1, 1999, but for none after December 31, 2015, shall estimate annually the amount of state income tax revenues collected pursuant to this chapter which are received from nonresident members of professional athletic teams and nonresident entertainers. For fiscal year 2000, and for each subsequent fiscal year for a period of sixteen years, ten percent of the annual estimate of taxes generated from the nonresident entertainer and professional athletic team income tax shall be allocated annually to the Missouri state library networking fund, and shall be transferred from the general revenue fund to the secretary of state for distribution to public libraries for acquisition of library materials as established in section 182.812 and any amount transferred shall be in addition to such agency's budget base for each fiscal year.

8. Notwithstanding other provisions of section 185.200 to the contrary, the commissioner of administration, for all taxable years beginning on or after January 1, 1999, but for none after December 31, 2015, shall estimate annually the amount of state income tax revenues collected pursuant to this chapter which are received from nonresident members of professional athletic teams and nonresident entertainers. For fiscal year 2000, and for each subsequent fiscal year for a period of sixteen years, ten percent of the annual estimate of taxes generated from the nonresident entertainer and professional athletic team income tax shall be allocated annually to the Missouri public television broadcasting corporation special fund, and shall be transferred from the general revenue fund to the Missouri public television broadcasting corporation special fund, and any amount transferred shall be in addition to such agency's budget base for each fiscal year; provided, however, that twenty-five percent of such allocation shall be used for grants to public radio stations which were qualified by the corporation for public broadcasting as of November 1, 1996. Such grants shall be distributed to each of such public radio stations in this state after receipt of the station's certification of operating and programming expenses for the prior fiscal year. Certification shall consist of the most recent fiscal year financial statement submitted by a station to the corporation for public broadcasting. The grants shall be divided into two categories, an annual basic service grant and an operating grant. The basic service grant shall be equal to thirty-five percent of the total amount and shall be divided equally among the public radio stations receiving grants. The remaining amount shall be distributed as an operating grant to the stations on the basis of the proportion that the total operating expenses of the

individual station in the prior fiscal year bears to the aggregate total of operating expenses for the same fiscal year for all Missouri public radio stations which are receiving grants.

9. Notwithstanding other provisions of section 253.402 to the contrary, the commissioner of administration, for all taxable years beginning on or after January 1, 1999, but for none after December 31, 2015, shall estimate annually the amount of state income tax revenues collected pursuant to this chapter which are received from nonresident members of professional athletic teams and nonresident entertainers. For fiscal year 2000, and for each subsequent fiscal year for a period of sixteen years, ten percent of the annual estimate of taxes generated from the nonresident entertainer and professional athletic team income tax shall be allocated annually to the Missouri department of natural resources Missouri historic preservation revolving fund, and shall be transferred from the general revenue fund to the Missouri department of natural resources Missouri historic preservation revolving fund established in section 253.402 and any amount transferred shall be in addition to such agency's budget base for each fiscal year. As authorized pursuant to subsection 2 of section 30.953, it is the intention and desire of the general assembly that the state treasurer convey, to the Missouri investment trust on January 1, 1999, up to one hundred percent of the balances of the Missouri arts council trust fund established pursuant to section 185.100 and the Missouri humanities council trust fund established pursuant to section 186.055. The funds shall be reconveyed to the state treasurer by the investment trust as follows: the Missouri arts council trust fund, no earlier than January 2, 2009; and the Missouri humanities council trust fund, no earlier than January 2, 2009.

10. This section shall not be construed to apply to any person who makes a presentation for professional or technical education purposes or to apply to any presentation that is part of a seminar, conference, convention, school, or similar program format designed to provide professional or technical education.

162.1195. FINE ARTS, PROFESSIONAL DEVELOPMENT EDUCATION ASSISTANCE. — 1. Beginning in fiscal year 2013, the office of quality schools within the department of elementary and secondary education may ensure that each regional professional development center in the state provides professional development educational assistance for fine arts.

2. The emphasis may include the following:

(1) To act as a resource for school districts under the regional office of professional development with regard to fine arts education, as delivered by certified arts specialists, and the integration of the arts into non-arts curricula;

(2) To work with school districts in staff development and curriculum issues related to fine arts education and fine arts integration;

(3) To collaborate with regional office of professional development personnel and other regional personnel associated with the regional office of professional development;

(4) To coordinate services available from other entities involved in fine arts education and fine arts integration;

(5) To assist and support local school districts in providing fine arts education and the integration of the fine arts; and

(6) To contribute to the development and implementation of in-service training, regionally and statewide, which responds to the needs of arts specialists, and other educators pertaining to the needs of Missouri students in fine arts and the integration of the arts.

165.011. TUITION — ACCOUNTING OF SCHOOL MONEYS, FUNDS — USES — TRANSFERS TO AND FROM INCIDENTAL FUND, WHEN — EFFECT OF UNLAWFUL TRANSFERS — TRANSFERS TO DEBT SERVICE FUND, WHEN. — 1. The following funds are created for the accounting of all school moneys: teachers' fund, incidental fund, capital projects fund and debt service fund. The treasurer of the school district shall open an account for each fund specified

in this section, and all moneys received from the county school fund and all moneys derived from taxation for teachers' wages shall be placed to the credit of the teachers' fund. All tuition fees, state moneys received under section 163.031, and all other moneys received from the state except as herein provided shall be placed to the credit of the teachers' and incidental funds at the discretion of the district board of education, except as provided in subsection 6 of section 163.031. Money received from other districts for transportation and money derived from taxation for incidental expenses shall be credited to the incidental fund. All money derived from taxation or received from any other source for the erection of buildings or additions thereto and the remodeling or reconstruction of buildings and the furnishing thereof, for the payment of lease-purchase obligations, for the purchase of real estate, or from sale of real estate, schoolhouses or other buildings of any kind, or school furniture, from insurance, from sale of bonds other than refunding bonds shall be placed to the credit of the capital projects fund. All moneys derived from the sale or lease of sites, buildings, facilities, furnishings, and equipment by a school district as authorized under section 177.088 shall be credited to the capital projects fund. Money derived from taxation for the retirement of bonds and the payment of interest thereon shall be credited to the debt service fund, which shall be maintained as a separate bank account. Receipts from delinquent taxes shall be allocated to the several funds on the same basis as receipts from current taxes, except that where the previous years' obligations of the district would be affected by such distribution, the delinquent taxes shall be distributed according to the tax levies made for the years in which the obligations were incurred. All refunds received shall be placed to the credit of the fund from which the original expenditures were made. Money donated to the school districts shall be placed to the credit of the fund where it can be expended to meet the purpose for which it was donated and accepted. Money received from any other source whatsoever shall be placed to the credit of the fund or funds designated by the board.

2. The school board may transfer any portion of the unrestricted balance remaining in the incidental fund to the teachers' fund. Any district that uses an incidental fund transfer to pay for more than twenty-five percent of the annual certificated compensation obligation of the district and has an incidental fund balance on June thirtieth in any year in excess of fifty percent of the combined incidental teachers' fund expenditures for the fiscal year just ended shall be required to transfer the excess from the incidental fund to the teachers' fund. If a balance remains in the debt service fund, after the total outstanding indebtedness for which the fund was levied is paid, the board may transfer the unexpended balance to the capital projects fund. If a balance remains in the bond proceeds after completion of the project for which the bonds were issued, the balance shall be transferred from the incidental or capital projects fund to the debt service fund. After making all placements of interest otherwise provided by law, a school district may transfer from the capital projects fund to the incidental fund the interest earned from undesignated balances in the capital projects fund. A school district may borrow from one of the following funds: teachers' fund, incidental fund, or capital projects fund, as necessary to meet obligations in another of those funds; provided that the full amount is repaid to the lending fund within the same fiscal year.

3. Tuition shall be paid from either the teachers' or incidental funds. Employee benefits for certificated staff shall be paid from the teachers' fund.

4. Other provisions of law to the contrary notwithstanding, the school board of a school district that meets the provisions of subsection 6 of section 163.031 may transfer from the incidental fund to the capital projects fund the sum of:

(1) The amount to be expended for transportation equipment that is considered an allowable cost under state board of education rules for transportation reimbursements during the current year; plus

(2) Any amount necessary to satisfy obligations of the capital projects fund for state-approved area vocational-technical schools; plus

(3) Current year obligations for lease-purchase obligations entered into prior to January 1, 1997; plus

(4) The amount necessary to repay costs of one or more guaranteed energy savings performance contracts to renovate buildings in the school district, provided that the contract is only for energy conservation measures as defined in section 640.651 and provided that the contract specifies that no payment or total of payments shall be required from the school district until at least an equal total amount of energy and energy-related operating savings and payments from the vendor pursuant to the contract have been realized by the school district; plus

(5) An amount not to exceed the greater of:

(a) One hundred sixty-two thousand three hundred twenty-six dollars; or

(b) Seven percent of the state adequacy target multiplied by the district's weighted average daily attendance, provided that transfer amounts in excess of current year obligations of the capital projects fund authorized under this subdivision may be transferred only by a resolution of the school board approved by a majority of the board members in office when the resolution is voted on and identifying the specific capital projects to be funded directly by the district by the transferred funds and an estimated expenditure date.

5. Beginning in the 2006-07 school year, a district meeting the provisions of subsection 6 of section 163.031 and not making the transfer under subdivision (5) of subsection 4 of this section, nor making payments or expenditures related to obligations made under section 177.088 may transfer from the incidental fund to the debt service fund or the capital projects fund the greater of:

(1) The state aid received in the 2005-06 school year as a result of no more than eighteen cents of the sum of the debt service and capital projects levy used in the foundation formula and placed in the respective debt service or capital projects fund, whichever fund had the designated tax levy; or

(2) Five percent of the state adequacy target multiplied by the district's weighted average daily attendance.

6. Beginning in the 2006-07 school year, the department of elementary and secondary education shall deduct from a school district's state aid calculated pursuant to section 163.031 an amount equal to the amount of any transfer of funds from the incidental fund to the capital projects fund or debt service fund performed during the previous year in violation of this section; except that the state aid shall be deducted over no more than five school years following the school year of an unlawful transfer based on a plan from the district approved by the commissioner of elementary and secondary education.

7. A school district may transfer unrestricted funds from the capital projects fund to the incidental fund in any year **[**in which that year's June thirtieth combined incidental and teachers' funds unrestricted balance compared to the combined incidental and teachers' funds expenditures would be less than ten percent without such transfer**]** **to avoid becoming financially stressed as defined in subsection 1 of section 161.520. If on June thirtieth of any fiscal year the sum of unrestricted balances in a school district's incidental fund and teacher's fund is less than twenty percent of the sum of the school district's expenditures from those funds for the fiscal year ending on that June thirtieth, the school district may, during the next succeeding fiscal year, transfer to its incidental fund an amount up to and including the amount of the unrestricted balance in its capital projects fund on that June thirtieth. For purposes of this subsection, in addition to any other restrictions that may apply to funds in the school district's capital projects fund, any funds that are derived from the proceeds of one or more general obligation bond issues shall be considered restricted funds and shall not be transferred to the school district's incidental fund**.

[163.037. WEIGHTED AVERAGE DAILY ATTENDANCE TO INCLUDE PORTION OF SUMMER SCHOOL AVERAGE DAILY ATTENDANCE, WHEN. — In any school year after the 2009-10 school year, if there is a twenty-five percent decrease in the statewide percentage of average daily attendance attributable to summer school compared to the percentage of average daily attendance attributable to summer school in the 2005-06

school year, then for the subsequent school year, weighted average daily attendance, as such term is defined in section 163.011, shall include the addition of the product of twenty-five hundredth times the average daily attendance for summer school.**]**

SECTION B. EMERGENCY CLAUSE. — Because of the need to provide adequate funding to school districts, the repeal of section 163.037 and the repeal and reenactment of section 165.011 of section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the repeal of section 163.037 and the repeal and reenactment of section 165.011 of section A of this act shall be in full force and effect upon its passage and approval.

Approved June 10, 2011

SB 83 [SB 83]

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

Allows for the sale of deficiency waiver addendums and other similar products with respect to certain loan transactions.

AN ACT to repeal sections 408.140, 408.233, and 408.300, RSMo, and to enact in lieu thereof four new sections relating to the sale of deficiency waiver addendums and other similar products in certain loan transactions.

SECTION

A. Enacting clause.
408.140. Additional charges or fees prohibited, exceptions — no finance charges if purchases are paid for within certain time limit, exception.
408.233. Additional charges authorized.
408.300. Time charges, amount authorized on retail time contracts — retail charge agreements, time charges authorized.
408.380. Sale of certain financial products and plans associated with certain loan transactions not prohibited.

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

SECTION A. ENACTING CLAUSE. — Sections 408.140, 408.233, and 408.300, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 408.140, 408.233, 408.300, and 408.380, to read as follows:

408.140. ADDITIONAL CHARGES OR FEES PROHIBITED, EXCEPTIONS — NO FINANCE CHARGES IF PURCHASES ARE PAID FOR WITHIN CERTAIN TIME LIMIT, EXCEPTION. — 1. No further or other charge or amount whatsoever shall be directly or indirectly charged, contracted for or received for interest, service charges or other fees as an incident to any such extension of credit except as provided and regulated by sections 367.100 to 367.200 and except:

(1) On loans for thirty days or longer which are other than "open-end credit" as such term is defined in the federal Consumer Credit Protection Act and regulations thereunder, a fee, not to exceed five percent of the principal amount loaned not to exceed seventy-five dollars may be charged by the lender; however, no such fee shall be permitted on any extension, refinance, restructure or renewal of any such loan, unless any investigation is made on the application to extend, refinance, restructure or renew the loan;

(2) The lawful fees actually and necessarily paid out by the lender to any public officer for filing, recording, or releasing in any public office any instrument securing the loan, which fees may be collected when the loan is made or at any time thereafter; however, premiums for insurance in lieu of perfecting a security interest required by the lender may be charged if the premium does not exceed the fees which would otherwise be payable;

(3) If the contract so provides, a charge for late payment on each installment or minimum payment in default for a period of not less than fifteen days in an amount not to exceed five percent of each installment due or the minimum payment due or fifteen dollars, whichever is greater, not to exceed fifty dollars. If the contract so provides, a charge for late payment on each twenty-five dollars or less installment in default for a period of not less than fifteen days shall not exceed five dollars;

(4) If the contract so provides, a charge for late payment for a single payment note in default for a period of not less than fifteen days in an amount not to exceed five percent of the payment due; provided that, the late charge for a single payment note shall not exceed fifty dollars;

(5) Charges or premiums for insurance written in connection with any loan against loss of or damage to property or against liability arising out of ownership or use of property as provided in section 367.170; however, notwithstanding any other provision of law, with the consent of the borrower, such insurance may cover property all or part of which is pledged as security for the loan, and charges or premiums for insurance providing life, health, accident, or involuntary unemployment coverage;

(6) Reasonable towing costs and expenses of retaking, holding, preparing for sale, and selling any personal property in accordance with section 400.9;

(7) Charges assessed by any institution for processing a refused instrument plus a handling fee of not more than twenty-five dollars;

(8) If the contract or promissory note, signed by the borrower, provides for attorney fees, and if it is necessary to bring suit, such attorney fees may not exceed fifteen percent of the amount due and payable under such contract or promissory note, together with any court costs assessed. The attorney fees shall only be applicable where the contract or promissory note is referred for collection to an attorney, and is not handled by a salaried employee of the holder of the contract;

(9) Provided the debtor agrees in writing, the lender may collect a fee in advance for allowing the debtor to defer up to three monthly loan payments, so long as the fee is no more than the lesser of fifty dollars or ten percent of the loan payments deferred, no extensions are made until the first loan payment is collected and no more than one deferral in a twelve-month period is agreed to and collected on any one loan; this subdivision applies to nonprecomputed loans only and does not affect any other subdivision;

(10) If the open-end credit contract is tied to a transaction account in a depository institution, such account is in the institution's assets and such contract provides for loans of thirty-one days or longer which are "open-end credit", as such term is defined in the federal Consumer Credit Protection Act and regulations thereunder, the creditor may charge a credit advance fee of the lesser of twenty-five dollars or five percent of the credit advanced from time to time from the line of credit; such credit advance fee may be added to the open-end credit outstanding along with any interest, and shall not be considered the unlawful compounding of interest as that term is defined in section 408.120**;**

(11) A deficiency waiver addendum, guaranteed asset protection, or a similar product purchased as part of a loan transaction with collateral and at the borrower's consent, provided the cost of the product is disclosed in the loan contract, is reasonable, and the requirements of section 408.380 are met.

2. Other provisions of law to the contrary notwithstanding, an open-end credit contract under which a credit card is issued by a company, financial institution, savings and loan or other credit issuing company whose credit card operations are located in Missouri may charge an

annual fee, provided that no finance charge shall be assessed on new purchases other than cash advances if such purchases are paid for within twenty-five days of the date of the periodic statement therefor.

3. Notwithstanding any other provision of law to the contrary, in addition to charges allowed pursuant to section 408.100, an open-end credit contract provided by a company, financial institution, savings and loan or other credit issuing company which is regulated pursuant to this chapter may charge an annual fee not to exceed fifty dollars.

408.233. ADDITIONAL CHARGES AUTHORIZED. — 1. No charge other than that permitted by section 408.232 shall be directly or indirectly charged, contracted for or received in connection with any second mortgage loan, except as provided in this section:

(1) Fees and charges prescribed by law actually and necessarily paid to public officials for perfecting, releasing, or satisfying a security interest related to the second mortgage loan;

(2) Taxes;

(3) Bona fide closing costs paid to third parties, which shall include:

(a) Fees or premiums for title examination, title insurance, or similar purposes including survey;

(b) Fees for preparation of a deed, settlement statement, or other documents;

(c) Fees for notarizing deeds and other documents;

(d) Appraisal fees; and

(e) Fees for credit reports;

(4) Charges for insurance as described in subsection 2 of this section;

(5) A nonrefundable origination fee not to exceed five percent of the principal which may be used by the lender to reduce the rate on a second mortgage loan;

(6) Any amounts paid to the lender by any person, corporation or entity, other than the borrower, to reduce the rate on a second mortgage loan or to assist the borrower in qualifying for the loan;

(7) For revolving loans, an annual fee not to exceed fifty dollars may be assessed.

2. An additional charge may be made for insurance written in connection with the loan, including insurance protecting the lender against the borrower's default or other credit loss, and:

(1) For insurance against loss of or damage to property where no such coverage already exists; and

(2) For insurance providing life, accident, health or involuntary unemployment coverage.

3. The cost of any insurance shall not exceed the rates filed with the department of insurance, financial institutions and professional registration, and the insurance shall be obtained from an insurance company duly authorized to conduct business in this state. Any person or entity making second mortgage loans, or any of its employees, may be licensed to sell insurance permitted in this section.

4. On any second mortgage loan, a default charge may be contracted for and received for any installment or minimum payment not paid in full within fifteen days of its scheduled due date equal to five percent of the amount or fifteen dollars, whichever is greater, not to exceed fifty dollars. A default charge may be collected only once on an installment or a payment due however long it remains in default. A default charge may be collected at the time it accrues or at any time thereafter and for purposes of subsection 3 of section 408.234 a default charge shall be treated as a payment. No default charge may be collected on an installment or a payment due which is paid in full within fifteen days of its scheduled due date even though an earlier installment or payment or a default charge on earlier installment or payments may not have been paid in full.

5. The lender shall, in addition to the charge authorized by subsection 4 of this section, be allowed to assess the borrower or other maker of refused instrument the actual charge made by any institution for processing the negotiable instrument, plus a handling fee of not more than twenty-five dollars; and, if the contract or promissory note, signed by the borrower, provides for

attorney fees, and if it is necessary to bring suit, such attorney fees may not exceed fifteen percent of the amount due and payable under such contract or promissory note, together with any court costs assessed. The attorney fees shall only be applicable where the contract or promissory note is referred for collection to an attorney, and are not handled by a salaried employee of the holder of the contract or note.

6. No provision of this section shall be construed to prohibit the sale of a deficiency waiver addendum, guaranteed asset protection, or a similar product purchased as part of a loan transaction with collateral and at the borrower's consent, provided the cost of the product is disclosed in the loan contract, is reasonable, and the requirements of section 408.380 are met.

408.300. TIME CHARGES, AMOUNT AUTHORIZED ON RETAIL TIME CONTRACTS — RETAIL CHARGE AGREEMENTS, TIME CHARGES AUTHORIZED. — 1. Notwithstanding the provisions of any other law, the seller or other holder under a retail time contract may charge, receive and collect a time charge, which shall be in lieu of any interest charges, except such as may arise under the terms of sections 408.250 to 408.370 after maturity of the time contract and which charge shall not exceed the amount agreed to by the parties to the retail time contract. The time charge under this subsection shall be computed on the principal balance of each transaction, as determined under subsection 5 of section 408.260, on contracts payable in successive monthly payments substantially equal in amount from the date of the contract to the maturity of the final payment, notwithstanding that the total time balance thereof is required to be paid in one or more deferred payments, or if goods are delivered or services performed more than ten days after that date, with the date of commencement of delivery of goods or performance of services to the maturity of the final payment. When a retail time contract provides for payment other than in substantially equal successive monthly payments, the time charge shall not exceed the amount which will provide the same return as is permitted on substantially equal monthly payment contracts. Each day may be counted as one-thirtieth of a month. In lieu of any other charge, a minimum time charge of twelve dollars may be charged, received, and collected on each such contract.

2. Notwithstanding the provisions of any other law, the seller and assignee under a retail charge agreement may charge, receive and collect a time charge which shall not exceed the amount agreed to by the parties to the retail charge agreement. The time charge under this subsection shall be computed on an amount not exceeding the greater of either:

(1) The average daily balance of the account in the billing cycle for which the charge is made, which is the sum of the amount unpaid each day during that cycle divided by the number of days in that cycle; amount unpaid on a day is determined by adding to any balance unpaid as of the beginning of that day all purchases and other debits and deducting all payments and other credits made or received as of that day; or

(2) The unpaid balance of the account on the last day of the billing cycle after first deducting all payments, credits and refunds during the billing cycle; or for all unpaid balances within a range of not in excess of ten dollars on the basis of the median amount within such range, if as so computed such time charge is applied to all unpaid balances within such range. A minimum time charge not in excess of seventy cents per month may be charged, received and collected.

3. The time charge shall include all charges incident to investigating and making any retail time transaction. No fee, expense, delinquency charge, collection charge, or other charge whatsoever, shall be charged, received, or collected except as provided in sections 408.250 to 408.370.

4. No provision of this section shall be construed to prohibit the sale of a deficiency waiver addendum, guaranteed asset protection, or a similar product purchased as part of a loan transaction with collateral and at the borrower's consent, provided the cost of

the product is disclosed in the loan contract, is reasonable, and the requirements of section 408.380 are met.

408.380. SALE OF CERTAIN FINANCIAL PRODUCTS AND PLANS ASSOCIATED WITH CERTAIN LOAN TRANSACTIONS NOT PROHIBITED. — 1. Notwithstanding any provision of sections 408.140, 408.233, 408.300, or any other law to the contrary, no provision of such sections shall be construed to prohibit the sale of a deficiency waiver addendum, guaranteed asset protection, or a similar product purchased as part of a loan transaction with collateral and at the borrower's consent, provided the cost of the product is reasonable and is disclosed in the loan contract. The borrower's consent to the purchase of the deficiency waiver addendum, guaranteed asset protection, or a similar product shall be in writing and acknowledge receipt of the required disclosures by the borrower. The creditor shall retain a copy for the file.

2. Each deficiency waiver addendum, guaranteed asset protection, or other similar product shall provide that in the event of termination of the product prior to the scheduled maturity date of the indebtedness, any refund of an amount paid by the debtor for such product shall be paid or credited promptly to the person entitled thereto; provided, however, that no refund of less than one dollar need be made. The formula to be used in computing the refund shall be the pro rata method.

3. Any debtor may cancel a deficiency waiver addendum, guaranteed asset protection, or other similar product within fifteen days of its purchase and shall receive a complete refund or credit of premium. This right shall be set forth in the loan contract, or by separate written disclosure. This right shall be disclosed at the time the debt is incurred in ten-point type and in a manner reasonably calculated to inform the debtor of this right.

Approved June 30, 2011

SB 96 [HCS#2 SB 96]

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

Conveys certain state property in St. Francois County and the City of Cape Girardeau.

AN ACT to authorize the conveyance of various properties owned by the state, with an emergency clause.

SECTION

1. Conveyance of state property in Farmington to St. Francois County.
2. Conveyance of Habitat for Humanity property in Farmington.
3. Conveyance of Southeast Missouri State University property to Cape Area Habitat for Humanity.
4. Conveyance of Algoa Correctional Center property in Jefferson City.
5. Conveyance of Boonville Correctional Center property in Boonville.
6. Conveyance of Western Reception and Diagnostic Correctional Center property in St. Joseph.
7. Conveyance of Central Missouri Correctional Center property in Jefferson City.
8. Conveyance of Farmington Correctional Center property in Farmington.
9. Conveyance of state property in Farmington.
10. Conveyance of Fulton Reception and Diagnostic Correctional Center property in Fulton.
11. Conveyance of Maryville Treatment Center property in Maryville.
12. Conveyance of Eastern Reception Diagnostic Correctional Center property in Bonne Terre.
13. Conveyance of Missouri Eastern Correctional Center property in Pacific.
14. Conveyance of South Central Correctional Center property in Licking.
15. Conveyance of Potosi Correctional Center property in Potosi.
16. Conveyance of Chillicothe Correctional Center property in Chillicothe.

17. Conveyance of Tipton Correctional Center property in Tipton.
18. Conveyance of Women's Eastern Reception and Diagnostic Correctional Center property in Vandalia.
19. Conveyance of Moberly Correctional Center property in Moberly.
20. Conveyance of St. Francois County Correctional Facility property in Farmington to St. Francois County.
21. Conveyance of a permanent sidewalk easement for Adrians Island property in Cole County to Jefferson City.
22. Conveyance of a permanent levee easement on Church Farm property in Cole County to Cole Junction Levee District.
23. Conveyance of a permanent pipeline easement on Moberly Correctional Center property in Moberly to Panhandle Eastern Pipeline Company.
24. Conveyance of South East Missouri Mental Health Center property in Farmington to Missouri Highways and Transportation Commission.
25. Reauthorization of conveyance of South East Missouri Mental Health Center property in Farmington.
26. Conveyance of National Guard property in Centertown.
27. Conveyance of a permanent drainage easement on State School for the Severely Disabled property in Joplin.

B. Emergency clause.

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

SECTION 1. CONVEYANCE OF STATE PROPERTY IN FARMINGTON TO ST. FRANCOIS COUNTY. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, convey, remise, release and forever quitclaim all interest of the state of Missouri in real property located in Farmington, St. Francois County, Missouri, to St. Francois County. The property to be conveyed is more particularly described as follows:

Tract 1

A tract of land situated in the city of Farmington, county of St. Francois and the state of Missouri, lying in part of Lot 94 of United States Survey 2969, Township 35 North, Range 5 East of the Fifth Principal Meridian, described as follows, to-wit: Commencing at a found iron rod marking the Northwest corner of Lot 6A of Farmington Industrial Park - Plat 4, a subdivision filed for record in Plat Book 16 at Page 624; thence South 82°43'21" East 274.11' on the North line of said Lot 6A to a set No.4 rebar at the intersection of said North line with the extension of the West right-of-way line of Pullan Road, the POINT OF BEGINNING of the tract herein described; thence leaving said North line, North 07°16'39" East 1551.20' on said extension of said West right-of-way line to a found iron rod at the intersection of said West right-of-way line with the South right-of-way line of Doubet Road, marking the Northeast corner of Doubet Subdivision, a subdivision recorded as Document 2008R-07328; thence leaving said West right-of-way line, South 82°13'40" East 50.00' on said South right-of-way line to a set No.5 rebar; thence leaving said South right-of-way line, South 07°16'39" West 1550.78' on a line parallel with and fifty feet (50') East of said West right-of-way line of Pullan Road and it's extension to a set No.5 rebar on said North line of Lot 6A of Farmington Industrial Park - Plat 4; thence North 82°43'21" West 50.00' on said North line to the point of beginning. Containing 1.78 acres, more or less.

Tract 2

A tract of land situated in the city of Farmington, county of St. Francois and the state of Missouri, lying in part of Lot 94 of United States Survey 2969, Township 35 North, Range 5 East of the Fifth Principal Meridian, described as follows, to wit: Commencing at a found iron rod marking the Northwest corner of Lot 6A of Farmington Industrial Park - Plat 4, a subdivision filed for record in Plat Book 16 at Page 624; thence South 82°43'21" East 324.11' on the North line of Farmington Industrial Park - Plat 4 to a set No.5 rebar at the Southwest corner of a cemetery; thence leaving said North line, North 07°16'39" East 515.48' to a set No.4 rebar, the POINT OF BEGINNING of the tract herein described;

thence continue North 07°16'39" East 807.46' to a set No.4 rebar; thence South 82°43'21" East 466.88' to a set No.4 rebar on the West line of a tract of land described in a lease recorded in Book 1265 at Page 285-302; thence South 08°30'07" West 806.79' on the West line of said Book 1265 at Page 285-302 and on the West line of a tract of land described in Book 1619 at Page 197 to a set No.4 rebar on said West line of Book 1619 at Page 197; thence leaving said West line, North 82°49'53" West 449.64' to the point of beginning. Containing 8.49 acres, more or less.

2. The commissioner of administration shall set the terms and conditions for the conveyance as the commissioner deems reasonable. Such terms and conditions may include, but not be limited to, the number of appraisals required, the time, place, and terms of the conveyance.

3. The attorney general shall approve as to form the instrument of conveyance.

SECTION 2. CONVEYANCE OF HABITAT FOR HUMANITY PROPERTY IN FARMINGTON. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, convey, remise, release and forever quitclaim all interest of the state of Missouri in real property located in Farmington, St. Francois County, Missouri, to Habitat for Humanity of St. Francois County, Inc. The property to be conveyed is more particularly described as follows:

Tract 1

A tract of land situated in the city of Farmington, county of St. Francois and the state of Missouri, lying in part of Lot 94 of United States Survey 2969, Township 35 North, Range 5 East of the Fifth Principal Meridian, described as follows, to-wit: Commencing at a found iron rod marking the Northwest corner of Lot 6A of Farmington Industrial Park - Plat 4, a subdivision filed for record in Plat Book 16 at Page 624; thence North 82°43'21" West 23.12' on the North line of said Farmington Industrial Park - Plat 4 to a set No.4 rebar marking the Southeast corner of a tract of land described in Book 1164 at Page 627, the POINT OF BEGINNING of the tract herein described; thence leaving said North line, North 07°10'39" East 512.52' on the East line of said Book 1164 at page 627 to a set No.4 rebar; thence leaving said East line South 82°49'53" East 298.12' to a set No.4 rebar; thence South 07°16'39" West 515.38' to a set No.4 rebar on said North line of Farmington Industrial Park - Plat 4; thence North 82°16'52" West 297.23' on said North line to the point of beginning. Containing 3.51 acres, more or less.

Tract 2

A tract of land situated in the city of Farmington, county of St. Francois and the state of Missouri, lying in part of Lot 94 of United States Survey 2969, Township 35 North, Range 5 East of the Fifth Principal Meridian, described as follows, to-wit: Commencing at a found iron rod marking the Northwest corner of Lot 6A of Farmington Industrial Park - Plat 4, a subdivision filed for record in Plat Book 16 at Page 624; thence South 82°43'21" East 324.11' on the North line of Farmington Industrial Park - Plat 4 to a set No.5 rebar at the Southwest corner of a cemetery; the thence leaving said North line, North 07°16' 39" East 173.34' to a set No.4 rebar marking the Northwest corner of said cemetery, the POINT OF BEGINNING of the tract herein described; thence continue North 07°16'39" East 342.14' to a set No.4 rebar; thence South 82°49'53" East 449.64' to a set No.4 rebar on the West line of a tact of land described in Book 1309 at Page 109; thence South 08°30'07" West 342.95' on said West line to a set No.4 rebar marking the Northeast corner of said cemetery; thence leaving said West line,

North 82°44'16" West 442.30' on the North line of said cemetery to the point of beginning. Containing 3.51 acres, more or less.

2. The commissioner of administration shall set the terms and conditions for the conveyance as the commissioner deems reasonable. Such terms and conditions may include, but not be limited to, the number of appraisals required, the time, place, and terms of the conveyance.

3. The attorney general shall approve as to form the instrument of conveyance.

SECTION 3. CONVEYANCE OF SOUTHEAST MISSOURI STATE UNIVERSITY PROPERTY TO CAPE AREA HABITAT FOR HUMANITY. — 1. The board of regents of Southeast Missouri State University is hereby authorized and empowered to sell, transfer, grant, and convey all interest in fee simple absolute in property owned by Southeast Missouri State University in the City of Cape Girardeau to the Cape Area Habitat for Humanity. The property to be conveyed is located at 319 S. Ellis in the City of Cape Girardeau and is more particularly described as follows:

All of the North 50 feet of lot 70 in range H in the City of Cape Girardeau.

2. The parties shall negotiate and set the terms and conditions for the conveyance. Such terms and conditions may include, but are not limited to, the number of appraisals required, the time, place, and terms of the conveyance.

3. The attorney general shall approve the form of the instrument of conveyance.

SECTION 4. CONVEYANCE OF ALGOA CORRECTIONAL CENTER PROPERTY IN JEFFERSON CITY. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, convey, remise, release and forever quitclaim all interest of the state of Missouri in property located at the Algoa Correctional Center in Jefferson City, Cole County, Missouri, described as follows:

TRACT A

Part of U.S. PRIVATE SURVEY NO. 2611, Township 44 North, Range 10 West, Cole County, Missouri, more particularly described as follows:

From the northwest corner of the Northeast Fractional Quarter of Section 20, Township 44 North, Range 10 West; thence S86°50'10"E, along the Section Line, 1045.00 feet to the southeast corner of Lot No. 5 of the Plat of Ewing Farm, a subdivision of record in Plat Book 1, page 69, Cole County Recorder's Office and said corner being the POINT OF BEGINNING for this description; thence N0°16'00"E, along the east line of said Lot No. 5, 1758.90 feet to a point on the south bank of the Missouri River, said point being the northwest corner of U.S. Private Survey No. 2611; thence Easterly, along the north line of said U.S. Private Survey No. 2611, and the south bank of the Missouri River, the following courses: N73°08'46"E, 503.97 feet; thence N83°20'48"E, 1039.99 feet to the northwest corner of the original Section 16, Township 44 North, Range 10 West; thence leaving the north line of said U.S. Private Survey No. 2611 and the south bank of the Missouri River, S1°02'02"W, along the original line between Sections 16 and 17, 683.12 feet to the northwest corner of the Southwest Quarter of the Southwest Quarter of said original Section 16 and said corner being the southwesterly corner of a tract described by deed of record in Book 277, page 458, Cole County Recorder's Office; thence Easterly along the southerly boundary of said tract described in Book 277, page 458, the following courses: S88°39'30"E, along the Quarter, Quarter Section Line, 108.50 feet; thence S51°39'48"E, 419.63 feet; thence S79°38'25"E, 186.02 feet to the most northerly corner of a tract described by deed of record in Book 409, page 749, Cole County Recorder's Office; thence leaving the southerly boundary of said tract described

in Book 277, page 458, S18°17'34"W, along the westerly line of said tract described in Book 409, page 749, 136.06 feet to the southwesterly corner thereof; thence S84°00'29"E, along the southerly line of said tract described in Book 409, page 749, 144.32 feet to the most easterly corner thereof and said corner being the southeasterly corner of a tract described by deed of record in Book 406, page 897, Cole County Recorder's Office; thence N22°35'50"E, along the easterly line of said tract described in Book 406, page 897, 126.65 feet to the northeasterly corner thereof and said corner being a point on the southerly boundary of the aforesaid tract described by deed of record in Book 277, page 458; thence S79°38'25"E, along the southerly boundary of said tract described in Book 277, page 458, 40.46 feet; thence S74°16'57"E, along the southerly boundary of said tract described in Book 277, page 458, 268.96 feet to a point on the west line of a 50 foot wide street right-of-way known as Elm Street, as per plat of Ewings Addition to the Town of Osage City; thence S2°41'10"W, along the west line of said Elm Street right-of-way, 984.82 feet to a point on the north line of the original Section 21, Township 44 North, Range 10 West; thence N88°38'32"W, along the original Section Line, 17.96 feet to a point on the west line of the 60 foot wide street right-of-way known as Elm Street, as per plat of McCurnan's Addition to the Town of Osage City; thence S6°42'18"W, along the west line of said Elm Street right-of-way, 433.32 feet to a point on the northerly line of the 100 foot wide right-of-way of the Missouri Pacific Railroad; thence along the northerly line of said Missouri Pacific Railroad right-of-way, the following courses: N81°16'17"W, 418.36 feet; thence N82°10'01"W, 181.31 feet; thence Westerly, on a curve to the left, having a radius of 1970.53 feet, an arc distance of 1645.67 feet, (the chord of said curve being S72°08'01"W, 1598.26 feet); thence S46°43'48"W, 151.10 feet; thence S45°59'01"W, 342.92 feet to a point on the west line of the aforesaid U.S. Private Survey No. 2611, being the east line of the Northeast Fractional Quarter of Section 20, Township 44 North, Range 10 West; thence leaving the northerly line of said Missouri Pacific Railroad right-of-way, N0°16'00"E, along the west line of said U.S. Private Survey No. 2611, 1218.93 feet to the POINT OF BEGINNING.

Containing 125.44 Acres.

2. The commissioner of administration shall set the terms and conditions for the conveyance as the commissioner deems reasonable. Such terms and conditions may include, but not be limited to, the number of appraisals required, the time, place, and terms of the conveyance.

3. The attorney general shall approve as to form the instrument of conveyance.

SECTION 5. CONVEYANCE OF BOONVILLE CORRECTIONAL CENTER PROPERTY IN BOONVILLE. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, convey, remise, release and forever quitclaim all interest of the state of Missouri in property located at the Boonville Correctional Center in Boonville, Cooper County, Missouri, described as follows:

Tract A (properties lying north of Boonville & Rocheport Public Rd.): Unplatted and vacant land in the east half of the northeast quarter of Section 36, T49N, R17W, Cooper County, Missouri, being owned by the State of Missouri per Deed recorded in Book 23, Page 448, lying both east of and abutting and north of and abutting both the east and north lines of an 83.18 acre tract described by a Quit-Claim Deed recorded in Book 162, Page 208 and shown by Surveyor's Record Book 5, Page 219 of the Cooper County records. The west part of said 83.18 acre tract is further subdivided as Boonville Industrial Park by

Plat Book 5, Page 271. Said unplatted and vacant land being more particularly described as follows:

Beginning at the northwest corner of Lot 1, Boonville Industrial Park, shown by said subdivision plat and by said survey recorded in Surveyor's Record Book 5, Page 219 as being S5°-00'-00"E 82.03 feet and S82°-32'-47"W, along the north line of said section, 1954.21 feet from the northeast corner of said Section 36; thence, following the lines of said subdivision plat: N85°-00'-00"E 158.46 feet; S0°-40'-17"E 51.00 feet; S88°-08'-52"E 262.75 feet; N78°-30'-00"E 434.94 feet; N2°-23'-30"W 33.00 feet; N80°-19'-48"E 597.42 feet; S11°-09'-53"E 200.74 feet; S7°-55'-12"E 98.98 feet; S69°-32'-29"W 215.33 feet; S45°-25'-18"W 60.86 feet; S24°-51'-03"W 66.36 feet; S2°-44'-59"E 39.63 feet; S24°-03'-26"E 36.71 feet; S40°-40'-59"E 71.49 feet; S42°-13'-19"E 115.91 feet; S38°-36'-17"E 87.13 feet; S38°-24'-35"E 60.03 feet; S22°-01'-08"E 44.24 feet; and S2°-03'-35"w 30.00 feet to the southeast corner of Lot 4 of said subdivision plat; thence, leaving the lines of said subdivision plat and continuing along the lines of said survey, S2°-03'-35"E 20.23 feet; S6°-57'-21"E 50.93 feet; S14°-32'-44"E 74.40 feet; S25°-35'-35"E 170.00 feet; S4°-39'-14"E 28.04 feet; and N87°-04'-23"E 389.8 feet, more or less, to the east line of said Section 36; thence, leaving the lines of said survey, Northerly, along last said Section Line, 1276 feet, more or less, to the northeast corner of said Section; thence S84°-32'-47"W, along the north line of said Section, 1594.8 feet, more or less, to the east line of Tract 2 of the two tracts described by a Deed recorded in Book 350, Page 605; thence, following the lines of said Tract 2: S1°-38'-25"W 79 feet, more or less, to the southeast corner thereof; N85°-40'-40"W 201.21 feet; S1°-38'-40"W 10.25 feet; and S88°-10'-00"W 153 feet, more or less, to a line perpendicular to first said north line of said Lot 1; thence S5°-00'-00"E 25.33 feet to the point of beginning and containing 18.7 acres, more or less.

This tract is subject to easements and restrictions of record, including any dedicated right-of-way of Morgan Street as implied on said subdivision plat and indicated by an unrecorded survey of Tract 2 of the two tracts described by Deed recorded in Book 350, Page 605.

ALSO, unplatted and vacant land being that part of the northwest quarter of Section 31, T49N, R16W, Cooper County, Missouri, being owned by the State of Missouri per Deed recorded in Book 23, Page 448, lying south of the Missouri River, and lying both east of and abutting and north of and abutting both the easternmost and north lines of an 83.18 acre tract described by a Quit-Claim Deed recorded in Book 162, Page 208 and shown by a survey recorded in Surveyor's Record Book 5, Page 219, and lying north of the Boonville and Rocheport Public Road. EXCEPTING THEREFROM the Missouri Pacific Railroad right-of-way. Said unplatted and vacant land containing 92 acres, more or less, and including the west part of a 43.7702 acre tract shown by Surveyor's Record Book 7, Page 237, and a 24.552 acre tract shown by Surveyor's Record Book 7, Page 30.

ALSO, unplatted and vacant land being the northeast quarter of Section 31, T49N, R16W, Cooper County, Missouri, being owned by the State of Missouri per Deed recorded in Book 23, Page 448, lying south of the Missouri Pacific Railroad right-of-way and west of Cole's Branch, and lying north of the Boonville and Rocheport Public Road, and containing 63 acres, more or less, including the east part of a 43.7702 acre tract shown by Surveyor's Record Book 7, Page 237. Said Branch (aka Fort Field Branch) being the west line of an adjoining 43.45 acre tract described by a Warranty Deed recorded in Book 137, Page 23, and the northern part of said Cole's Branch being shown by a 20

foot offset line to the west from said Branch by Surveyor's Record Book 7, Page 237.

The three tracts of land comprising Tract A as previously described, all lying north of the Boonville and Rocheport Public Road in Sections 36-49-17 and 31-49-16, contain a total of 174 acres, more or less.

Tract B (properties lying south of Boonville & Rocheport Public Rd.): Unplatted and vacant land being the west part of the southwest quarter, and the west part of the northwest quarter lying south the Boonville and Rocheport Public Road, all in Section 31, T49N, R16W, Cooper County, Missouri, being owned by the State of Missouri per Deed recorded in Book 23, Page 448, and all lying west of and abutting the west line of a 188.75 acre tract described by a Deed of Personal Representative recorded in Book 159, Page 485. Said unplatted and vacant land containing 129 acres, more or less.

ALSO, unplatted and vacant land in the north half of the northeast quarter of Section 1, T48N, R17W, Cooper County, Missouri, being the south part of that tract described by a Quit-Claim Deed recorded in Book 162, Page 208 and Page 412, being shown as the south part of a 90.69 acre survey in Surveyor's Record Book 5, Page 222, lying both north of and abutting Tract 1, and east of and abutting Tract 2 of a two-tract survey shown by Surveyor's Record Book 5, Page 257, both of the Cooper County records. Said unplatted and vacant land containing 28 acres, more or less.

This tract is subject to easements and restrictions of record, including a north-south sanitary sewer with no known easement.

ALSO, unplatted and vacant land located in the southeast part of the southeast quarter of Section 36, T49N, R17W, Cooper County, Missouri, being the north part of the 90.69 acre tract described by a Quit-Claim Deed recorded in Book 162, Page 208 and Page 412; and lying east of and abutting the east boundary of Trout Dale Subdivision; and lying east of and abutting the east boundary of a tract described by a General Warranty Deed recorded in Book 399, Pages 179 to 181 and shown by an unrecorded plat of Warnhoff Subdivision by LS 1957, dated April, 2004; and lying east of and abutting a 0.25 acre tract described by a Warranty Deed recorded in Book 440, Page 31; and lying east of and abutting the east boundary of Boonville Memorial Gardens Cemetery as shown by Surveyor's Record Book 5, Page 242; Said unplatted and vacant land containing 61 acres, more or less.

This tract is subject to a stormwater drainage easement to the City of Boonville, 30 feet wide by 100 feet in length at the west side of the above described tract and recorded in Book 585, Page 442.

ALSO, unplatted and vacant land located in the north half of the southeast quarter, and in the south half of the northeast quarter of Section 36, T49N, R17W lying south of the Boonville and Rocheport Public Road, Cooper County, Missouri, being owned by the State of Missouri per Deed recorded in Book 23, Page 448, lying north of and abutting the 90.69 acre tract described by a Quit-Claim Deed recorded in Book 162, Page 208 and Page 412 and shown in Surveyor's Record Book 5, Page 222; and lying north of and abutting the north line of that tract described by a General Warranty Deed recorded in Book 242, Page 397; and lying east of and abutting the east line of that tract described by a Special Warranty Deed recorded in Book 150, Page 358, EXCEPTING THEREFROM, an 8.265 acre tract of land lying south of the Boonville and Rocheport Public Road and shown by an unrecorded survey by Corporate LS 27D displayed as an unrecorded "As Built" document of the National Guard Armory by Architect A-3088, dated December 3, 1990, and described as follows:

Beginning at the northeast corner of said 8.265 acre tract, being S30°-55'-25"W on a direct line, 2533.11 feet from the northeast corner of said Section 36; thence S4°-00'-10"E 604.05 feet; thence N83°-02'-10"W 599.07 feet to a line 50 feet east of and parallel with the southerly extension of Al Bersted Drive; thence N4°-00'-10"W 607.74 feet to the south right-of-way line of said Public Road; thence, following said south right-of-way line: S87°-31'-16"E 40.29 feet; S85°-01'-22"E 203.27 feet; and S80°-48'-54"E 356.73 feet to the point of beginning, said point of beginning being Westerly along the north line of said Section, 1450.73 feet, and S4°-00'-10"E, 2040.20 feet from said northeast section corner. EXCEPTING THEREFROM, a 6.0 acre tract of land in the southwest quarter of the northeast quarter, and in the northeast quarter of the southeast quarter of the northwest quarter of Section 36, T49N, R17W, Cooper County, Missouri, lying south of the Boonville and Rocheport Public Road, described as follows: Beginning on the south right-of-way line of the Boonville and Rocheport Public Road at a line 50 feet west of and parallel with the southerly extension of the centerline of Al Bersted Drive, being N87°-31'-16"W along said south right-of-way line, 100.64 feet from the northwest corner of an 8.265 acre tract of land lying south of the Boonville and Rocheport Public Road and shown by an unrecorded survey by Corporate LS 27D displayed as an unrecorded "As Built" document of the National Guard Armory by Architect A-3088, dated December 3, 1990, and being S43°-40'-00"W on a direct line, 2892.51 feet from the northeast corner of said Section 36; thence S4°-00'-10"E 400.00 feet; thence S85°-59'-50"W 549 feet, more or less, to the east line of a 14 acre tract being owned by the City of Boonville, Missouri per Special Warranty Deed recorded in Book 150, Page 358; thence, following the eastern lines of said tract: Northerly 249.6 feet, more or less; Westerly 145 feet; and Northerly 175 feet to the south right-of-way line of Locust Street having a total right-of-way of 80 feet; thence, leaving said eastern lines, Easterly, along said right-of-way line, 694 feet, more or less, to the point of beginning and containing 6.0 acres. Said point of beginning being Westerly along the north line of said Section, 2138.52 feet, and S4°-00'-10"E 1893.78 feet from said northeast section corner. Last said unplatted and vacant land containing 88 acres, more or less, not including any implied right-of-way of the Boonville and Rocheport Public Road as indicated by an 83.18 acre tract described by a Quit-Claim Deed recorded in Book 162, Page 208 and shown by Surveyor's Record Book 5, Page 219, by the west part of said 83.18 acre tract further subdivided as Boonville Industrial Park by Plat Book 5, Page 271, and by an unrecorded survey by Corporate LS 27D displayed as an unrecorded "As Built" document of the National Guard Armory by Architect A-3088, dated December 3, 1990.

This tract is subject to easements and restrictions of record, including a north-south sanitary sewer with no known easement.

The four tracts of land comprising Tract B as previously described, all lying south of the Boonville and Rocheport Public Road in Section 31-49-16, in Section 36-49-17, and in Section 1-48-17, contain a total of 306 acres, more or less.

Tract C (Warden's house and dairy operation property): A tract of land in the southwest quarter of the northeast quarter, and in the northeast quarter of the southeast quarter of the northwest quarter of Section 36, T49N, R17W, Cooper County, Missouri, being owned by the State of Missouri per Deed recorded in Book 23, Page 448, lying south of Locust Street, also known as the Boonville and Rocheport Public Road and described as follows: Beginning on the south right-of-way line of the Boonville and Rocheport Public Road at a line 50 feet west of and parallel with the southerly extension of the centerline of Al Bersted Drive,

being N87°-31'-16"W along said south right-of-way line, 100.64 feet from the northwest corner of an 8.265 acre tract of land lying south of the Boonville and Rocheport Public Road and shown by an unrecorded survey by Corporate LS 27D displayed as an unrecorded "As Built" document of the National Guard Armory by Architect A-3088, dated December 3, 1990, and being S43-40'-00"W on a direct line, 2892.51 feet from the northeast corner of said Section 36; thence S4°-00'-10"E 400.00 feet; thence S85°-59'-50"W 549 feet, more or less, to the east line of a 14 acre tract being owned by the City of Boonville, Missouri per Special Warranty Deed recorded in Book 150, Page 358; thence, following the eastern lines of said tract: Northerly 249.6 feet, more or less; Westerly 145 feet; and Northerly 175 feet to the south right-of-way line of Locust Street having a total right-of-way of 80 feet as indicated by a General Warranty Deed recorded in Book 158, Page 753 and stated by House Bill No. 1187 dated September 29, 1980; thence, leaving said eastern lines, Easterly, along said right-of-way line, 694 feet, more or less, to the point of beginning and containing 6.0 acres.

This tract is subject to easements and restrictions of record.

2. The commissioner of administration shall set the terms and conditions for the conveyance as the commissioner deems reasonable. Such terms and conditions may include, but not be limited to, the number of appraisals required, the time, place, and terms of the conveyance.

3. The attorney general shall approve as to form the instrument of conveyance.

SECTION 6. CONVEYANCE OF WESTERN RECEPTION AND DIAGNOSTIC CORRECTIONAL CENTER PROPERTY IN ST. JOSEPH. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, convey, remise, release and forever quitclaim all interest of the state of Missouri in property located at the Western Reception and Diagnostic Correctional Center in St. Joseph, Buchanan County, Missouri, described as follows:

Tract A

A Tract of land being part of the Northeast Quarter of Section 10 Township 57 North, Range 35 East, Buchanan County, Missouri, and being more particularly described as follows:

Commencing at the East Quarter corner of said Section 10 Township 57 North, Range 35 East; thence North 00°12'14" West along the East line of the Northeast Quarter of said Section 10 Township 57 North, Range 35 East a distance of 100 feet; thence South 89°50'54" East departing the East line of the Northeast Quarter of said Section 10 Township 57 North, Range 35 East a distance of 85.00 feet to the Point of Beginning said point being the intersection of the West right of way of 36th Street and the North right of way of Faraon Avenue as now established; thence North 89°50'54" West along the North right of way of Faraon Avenue a distance of 1,238.01 feet; thence North 00°12'14" West a distance of 540.82 feet; thence South 89°47'46" West departing the East back of curb of said South Drive a distance of 1,237.99 feet to a point on the West right of way of 36th Street; thence South 00°12'14" East along the West right of way of 36th Street a distance of 548.50 feet to the Point of Beginning. Containing 674,277.17 square feet or 15.48 acres more or less.

Tract B

A Tract of land being part of the Northeast Quarter of Section 10 Township 57 North, Range 35 East, Buchanan County, Missouri, and being more particularly described as follows:

Commencing at the Northeast Quarter of said Section 10 Township 57 North, Range 35 East; thence South 89°55'14" West along the North line of the

Northeast Quarter of said Section 10 Township 57 North, Range 35 East a distance of 2,214.69 feet; thence South 00°04'46" East departing the North line of the Northeast Quarter of said Section 10 Township 57 North, Range 35 East a distance of 30.00 feet to the intersection with the South right of way of Frederick Avenue as now established and the Northerly projection of the West edge of a concrete walk said point also being the Point of Beginning; thence South 00°42'14" East departing said the South right of way of said Frederick Avenue and along said Northerly projection of the West edge of a concrete walk a distance of 226.87 feet; thence South 88°00'04" West departing the West edge of said concrete walk a distance of 242.88 feet to the point of intersection with the East back of curb of Rush Road; thence along the East back of curb of said Rush Road the following courses and distances: North 02°18'47" West a distance of 221.77 feet to a point of curvature; thence Easterly along a curve to the left, having a radius of 12.89 feet, a central angle of 92°14'41", and a distance of 20.75 feet to a point of tangency with the South right of way of said Frederick Avenue; thence North 89°55'14" East along the south right of way of said Frederick Avenue a distance of 236.04 feet to the Point of Beginning. Containing 56,814.67 square feet or 1.30 acres more or less.

Tract C

A Tract of land being part of the Northeast Quarter of Section 10 Township 57 North, Range 35 East, Buchanan County, Missouri, and being more particularly described as follows:

Commencing at the Northeast Quarter of said Section 10 Township 57 North, Range 35 East; thence South 89°55'14" West along the North line of the Northeast Quarter of said Section 10 Township 57 North, Range 35 East a distance of 2,214.69 feet; thence South 00°04'46" East departing the North line of the Northeast Quarter of said Section 10 Township 57 North, Range 35 East a distance of 30.00 feet to the intersection with the South right of way of Frederick Avenue as now established and the Northerly projection of the West edge of a concrete walk; thence South 00°42'14" East departing said the South right of way of said Frederick Avenue and along said Northerly projection of the West edge of a concrete walk a distance of 226.87 feet to the Point of Beginning; thence continuing South 00°42'14" East along said West edge of a concrete walk a distance of 226.87 feet to the intersection with an existing wood plank fence; thence along said existing wood plank fence the following courses and distances: South 88°01'45" West a distance of 17.41 feet; thence South 00°20'43" East a distance of 120.24 feet; thence South 39°46'21" West a distance of 55.86 feet; thence North 89°54'15" West departing said existing wood plank fence a distance of 182.73 feet to the point of intersection with the East back of curb of Rush Road; thence North 02°18'47" West along the East back of curb of said Rush Road a distance of 202.60 feet; thence North 88°00'04" East departing the East back of curb of said Rush Road a distance of 242.88 feet to the Point of Beginning. Containing 45,953.77 square feet or 1.06 acres more or less.

2. The commissioner of administration shall set the terms and conditions for the conveyance as the commissioner deems reasonable. Such terms and conditions may include, but not be limited to, the number of appraisals required, the time, place, and terms of the conveyance.

3. The attorney general shall approve as to form the instrument of conveyance.

SECTION 7. CONVEYANCE OF CENTRAL MISSOURI CORRECTIONAL CENTER PROPERTY IN JEFFERSON CITY. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, convey, remise, release and forever quitclaim all interest of the state

of Missouri in property located at the Central Missouri Correctional Center in Jefferson City, Cole County, Missouri, described as follows:

TRACT 3-B

Part of the Southeast Quarter of Section 13, Township 45 North, Range 13 West, Cole County, Missouri, more particularly described as follows:

From the Center of said Section 13; thence S88°18'32"E, along the Quarter Section Line, 277.59 feet to a point on the southerly line of the 100 foot wide Missouri Pacific Railroad right-of-way; thence S49°23'55"E, along the southerly line of said Railroad Right-of-way, 191.44 feet to the center of an existing field road, being a corner on the eastern boundary of the property described by deed of record in Book 495, page 449, Cole County Recorder's Office and the POINT OF BEGINNING for this description; thence continuing along said Railroad Right-of-way line the following courses: S49°23'55"E, 197.17 feet; thence southeasterly, on a spiral curve to the left, a spiral distance of 152.0 feet, (the chord of said spiral being S50°09'13"E, 151.96 feet); thence Southeasterly, on a simple curve to the left, having a radius of 1959.86 feet, an arc distance of 873.11 feet, (the chord of said curve being S64°24'40"E, 865.91 feet); thence Southeasterly, on a spiral curve to the left, a spiral distance of 152.0 feet, (the chord of said spiral being S78°40'07"E, 151.96 feet); thence S79°25'25"E, 122.49 feet; thence leaving the aforesaid Railroad Right-of-way line, S21°45'37"W 1041.68 feet to a point on the northerly line of the Missouri State Highway 179 Right-of-way; thence along the northerly line of said Missouri State Highway 179 Right-of-way, the following courses: N63°57'55"W, 75.04 feet; thence Westerly, on a curve to the left, having a radius of 995.40 feet, an arc distance of 465.55 feet, (the chord of said curve being, N67°35'35"W, 461.31 feet) to a point in the center of an existing field road, being the southeasterly corner of the aforesaid property described in Book 495, page 449; thence leaving the Missouri State Highway 179 Right-of-way line, along the center of said field road and the easterly boundary of said property described in Book 495, page 449, the following courses; N13°21'56"E, 534.20 feet; thence northwesterly, on a curve to the left, having a radius of 130.00 feet, an arc distance of 143.08 feet, (the chord of said curve being N18°09'54"W, 135.97 feet); thence N49°41'43"W, 399.15 feet; thence N47°46'57"W, 326.12 feet; thence northwesterly, on a curve to the right, having a radius of 125.00 feet, an arc distance of 142.57 feet, (the chord of said curve being N15°06'27"W, 134.97 feet); thence N17°34'03"E, 80.68 feet; thence northeasterly, on a curve to the right, having a radius of 270.00 feet, an arc distance of 86.87 feet, (the chord of said curve being N26°47'07"E, 86.50 feet to the POINT OF BEGINNING. Containing 18.65 acres.

TRACT 3-D

Part of the Southeast Quarter of the Southeast Quarter of Section 13, Township 45 North, Range 13 West and part of the Southwest Quarter of Section 18 and part of the Northwest Quarter of Section 19, Township 45 North, Range 12 West, Cole County, Missouri, more particularly described as follows:

From the southeast corner of said Section 13; thence N1°29'15"E, along the Range Line, 60.50 feet to a point on the northerly line of the Missouri State Highway 179 Right-of-way and said point being S1°29'15"W along said Range Line, 401.95 feet from the northwest corner of Section 19, Township 45 North, Range 12 West and being the POINT OF BEGINNING for this description; thence N54°11'40"W, along said Highway 179 Right-of-way line, 654.19 feet; thence N45°56'50"E, 1716.89 feet to a point on the southerly line of the 100 foot wide Missouri Pacific Railroad Right-of-way; thence along said Railroad Right-of-way line the following courses: Southeasterly, on a simple curve to the right,

having a radius of 2814.79 feet, an arc distance of 295.34 feet, (the chord of said curve being S72°05'46"E, 295.20 feet); thence Southeasterly, on a spiral curve to the right, a spiral distance of 99.14 feet, (the chord of said spiral being S68°25'20"E, 99.13 feet); thence S68°05'25"E, 790.69 feet; thence leaving the aforesaid Railroad Right-of-way line, S35°48'20"W, 1995.06 feet to a point on the northerly line of the aforesaid Missouri State Highway 179 Right-of-way; thence N54°11'40"W, along said Highway 179 Right-of-way line, 792.66 feet to the POINT OF BEGINNING. Containing 54.51 acres.

2. The commissioner of administration shall set the terms and conditions for the conveyance as the commissioner deems reasonable. Such terms and conditions may include, but not be limited to, the number of appraisals required, the time, place, and terms of the conveyance.

3. The attorney general shall approve as to form the instrument of conveyance.

SECTION 8. CONVEYANCE OF FARMINGTON CORRECTIONAL CENTER PROPERTY IN FARMINGTON. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, convey, remise, release and forever quitclaim all interest of the state of Missouri in property located at the Farmington Correctional Center in Farmington, St. Francois County, Missouri, described as follows:

INGRESS AND EGRESS EASEMENT

A strip of land 30 feet wide across part of Lot 70 and 71 of United States Survey Number 2969, Township 35 North, Range 5 East, in the City of Farmington, St. Francois County, Missouri, said 30 foot strip lying 15.00 feet each side of and adjacent to the following described centerline:

From a stone marking the northwest corner of said Lot 70, also being the southwest corner of Crosswinds Plat 2 as per plat of record in Plat Book 15, page 163, St. Francois County Recorder's Office; thence S06°20'17"W, 216.36 feet; thence S57°50'37"E, 82.27 feet to the POINT OF BEGINNING for this centerline description; thence northeasterly, on a curve to the right having a radius of 246.00 feet, an arc length of 187.61 feet, (the chord of said curve being N61°05'42"E, 183.10 feet); thence N82°56'37"E, 29.02 feet; thence easterly, on a curve to the right having a radius of 350.00 feet, an arc length of 87.32 feet, (the chord of said curve being S89°54'34"E, 87.09 feet); thence S82°45'45"E, 257.95 feet; thence easterly, on a curve to the right having a radius of 400.00 feet, an arc length of 91.45 feet, (the chord of said curve being S76°12'46"E, 91.25 feet); thence S69°39'46"E, 36.75 feet; thence southeasterly, on a curve to the right having a radius of 250.00 feet, an arc length of 177.87 feet, (the chord of said curve being S49°16'50"E, 174.14 feet); thence S28°53'54"E, 29.12 feet; thence southerly, on a curve to the right having a radius of 150.00 feet, an arc length of 85.38 feet, (the chord of said curve being S12°35'32"E, 84.23 feet); thence S03°42'50"W, 143.95 feet; thence S82°45'45"E, 51.95 feet to the point of termination.

Except all that part of Lot 2 of Habitat for Humanity Subdivision, as per plat of record in Plat Book 16, page 473, St. Francois County Recorder's Office, St. Francois County, Missouri.

Except all that part of Perrine Road right-of-way.

TRACT 1

Part of Lot 70 of United States Survey Number 2969, Township 35 North, Range 5 East, in the City of Farmington, St. Francois, County, Missouri, more particularly described as follows:

BEGINNING at a stone marking the northwest corner of said Lot 70, also being the southwest corner of Crosswinds Plat 2 as per plat of record in Plat Book 15,

page 163, St. Francois County Recorder's Office; thence S82°45'45"E, along the northerly line of said Lot 70, also being the southerly boundary of said Crosswinds Plat 2, 775.91 feet to the northwest corner of Habitat for Humanity Subdivision, as per plat of record in Plat Book 16, page 473, St. Francois County Recorder's Office; thence S07°05'05"W, along the westerly boundary of said Habitat for Humanity Subdivision, 150.00 feet to the southwesterly corner thereof; thence S31°44'48"W, 10.73 feet; thence northwesterly on a curve to the left having a radius of 250.00 feet, an arc length of 49.78 feet (the chord of said curve being N63°57'29"W, 49.70 feet); thence N69°39'46"W, 36.75 feet; thence westerly on a curve to the left having a radius of 400.00 feet, an arc length of 91.45 feet (the chord of said curve being N76°12'46"W, 91.25 feet); thence N82°45'45"W, 257.95 feet; thence westerly on a curve to the left having a radius of 350.00 feet, an arc length of 87.32 feet (the chord of said curve being N89°54'34"W, 87.09 feet); thence S82°56'37"W, 29.02 feet; thence southwesterly on a curve to the left having a radius of 246.00 feet, an arc length of 187.61 feet (the chord of said curve being S61°05'42"W, 183.10 feet); thence N57°50'37"W, 82.27 feet; thence N06°20'17"E, 216.36 feet to the point of beginning. Containing 2.67 acres.

Subject to the northerly 15 feet of a 30 foot wide Ingress and Egress Easement.

TRACT 2

Part of Lot 70 of United States Survey Number 2969, Township 35 North, Range 5 East, in the City of Farmington, St. Francois, County, Missouri, more particularly described as follows:

From a stone marking the northwest corner of said Lot 70, also being the southwest corner of Crosswinds Plat 2 as per plat of record in Plat Book 15, page 163, St. Francois County Recorder's Office; thence S82°45'45"E, along the northerly line of said Lot 70, also being the southerly boundary of said Crosswinds Plat 2, 775.91 feet to the northwest corner of Habitat for Humanity Subdivision, as per plat of record in Plat Book 16, page 473, St. Francois County Recorder's Office; thence S07°05'05"W, along the westerly boundary of said Habitat for Humanity Subdivision, 150.00 feet to the southwesterly corner thereof, and the POINT OF BEGINNING for this description; thence S82°45'45"E, along the southerly boundary of said Habitat for Humanity Subdivision, 167.67 feet to the southeasterly corner thereof; thence S06°25'52"W, 321.27 feet; thence N82°45'45"W, 24.78 feet; thence N03°42'50"E, 128.92 feet; thence northerly, on a curve to the left having a radius of 150.00 feet, an arc length of 85.38 feet (the chord of said curve being N12°35'32"W, 84.23 feet); thence N28°53'54"W, 29.12 feet; thence northwesterly on a curve to the left having a radius of 250.00 feet, an arc length of 128.08 feet (the chord of said curve being N43°34'33"W, 126.69 feet); thence N31°44'48"E, 10.73 feet to the point of beginning. Containing 0.44 acres.

Subject to the northeasterly 15 feet of a 30 foot wide Ingress and Egress Easement.

TRACT 3

Part of Lot 70 of United States Survey Number 2969, Township 35 North, Range 5 East, in the City of Farmington, St. Francois, County, Missouri, more particularly described as follows:

From a stone marking the northwest corner of said Lot 70, also being the southwest corner of Crosswinds Plat 2 as per plat of record in Plat Book 15, page 163, St. Francois County Recorder's Office; thence S82°45'45"E, along the northerly line of said Lot 70, also being the southerly boundary of said Crosswinds Plat 2, 775.91 feet to the northwest corner of Habitat for Humanity

Subdivision, as per plat of record in Plat Book 16, page 473, St. Francois County Recorder's Office; thence S07°05'05"W, along the westerly boundary of said Habitat for Humanity Subdivision, 150.00 feet to the southwesterly corner thereof; thence S82°45'45"E, along the southerly boundary of said Habitat for Humanity Subdivision, 167.67 feet to the southeasterly corner thereof; thence S06°25'52"W, 321.27 feet; thence N82°45'45"W, 24.78 feet to the POINT OF BEGINNING for this description; thence N82°45'45"W, 160.55 feet; thence N17°45'13"W, 148.11 feet; thence N40°06'01"E, 190.20 feet; thence southeasterly, on a curve to the right having a radius of 250.00 feet, an arc length of 91.64 feet (the chord of said curve being S39°23'56"E, 91.12 feet); thence S28°53'54"E, 29.12 feet; thence southerly, on a curve to the right having a radius of 150.00 feet, an arc length of 85.38 feet (the chord of said curve being S12°35'32"E, 84.23 feet); thence S03°42'50"W, 128.92 feet to the point of beginning. Containing 1.03 acres.

Subject to the westerly 15 feet of a 30 foot wide Ingress and Egress Easement.

TRACT 4

Part of Lot 70 of United States Survey Number 2969, Township 35 North, Range 5 East, in the City of Farmington, St. Francois, County, Missouri, more particularly described as follows:

From a stone marking the northwest corner of said Lot 70, also being the southwest corner of Crosswinds Plat 2 as per plat of record in Plat Book 15, page 163, St. Francois County Recorder's Office; thence S82°45'45"E, along the northerly line of said Lot 70, also being the southerly boundary of said Crosswinds Plat 2, 775.91 feet to the northwest corner of Habitat for Humanity Subdivision, as per plat of record in Plat Book 16, page 473, St. Francois County Recorder's Office; thence S07°05'05"W, along the westerly boundary of said Habitat for Humanity Subdivision, 150.00 feet to the southwesterly corner thereof; thence S31°44'48"W, 10.73 feet to the POINT OF BEGINNING for this description; thence southeasterly, on a curve to the right having a radius of 250.00 feet, an arc length of 36.45 feet (the chord of said curve being S54°04'35"E, 36.42 feet); thence S40°06'01"W, 190.20 feet; thence N82°45'45"W, 100.00 feet; thence N19°19'50"E, 213.97 feet; thence easterly, on a curve to the right having a radius of 400.00 feet, an arc length of 44.27 feet (the chord of said curve being S72°50'00"E, 44.25 feet); thence S69°39'46"E, 36.75 feet; thence southeasterly, on a curve to the right having a radius of 250.00 feet, an arc length of 49.78 feet (the chord of said curve being S63°57'29"E, 49.70 feet) to the point of beginning. Containing 0.61 acres.

Subject to the southerly 15 feet of a 30 foot wide Ingress and Egress Easement.

TRACT 5

Part of Lot 70 of United States Survey Number 2969, Township 35 North, Range 5 East, in the City of Farmington, St. Francois, County, Missouri, more particularly described as follows:

From a stone marking the northwest corner of said Lot 70, also being the southwest corner of Crosswinds Plat 2 as per plat of record in Plat Book 15, page 163, St. Francois County Recorder's Office; thence S82°45'45"E, along the northerly line of said Lot 70, also being the southerly boundary of said Crosswinds Plat 2, 775.91 feet to the northwest corner of Habitat for Humanity Subdivision, as per plat of record in Plat Book 16, page 473, St. Francois County Recorder's Office; thence S07°05'05"W, along the westerly boundary of said Habitat for Humanity Subdivision, 150.00 feet to the southwesterly corner thereof; thence S31°44'48"W, 10.73 feet; thence westerly on a curve to the left having a radius of 250.00 feet, an arc length of 49.78 feet (the chord of said curve

being N63°57'29"W, 49.70 feet); thence N69°39'46"W, 36.75 feet; thence westerly on a curve to the left having a radius of 400.00 feet, an arc length of 44.27 feet (the chord of said curve being N72°50'00"W, 44.25 feet) to the POINT OF BEGINNING for this description; thence S19°19'50"W, 213.97 feet; thence N82°45'45"W, 128.00 feet; thence N07°14'15"E, 212.00 feet; thence S82°45'45"E, 125.75 feet; thence easterly on a curve to the right having a radius of 400.00 feet, an arc length of 47.18 feet (the chord of said curve being S79°23'00"E, 47.15 feet) to the point of beginning. Containing 0.73 acres.

Subject to the southerly 15 feet of a 30 foot wide Ingress and Egress Easement.

TRACT 6

Part of Lot 70 of United States Survey Number 2969, Township 35 North, Range 5 East, in the City of Farmington, St. Francois, County, Missouri, more particularly described as follows:

From a stone marking the northwest corner of said Lot 70, also being the southwest corner of Crosswinds Plat 2 as per plat of record in Plat Book 15, page 163, St. Francois County Recorder's Office; thence S82°45'45"E, along the northerly line of said Lot 70, also being the southerly boundary of said Crosswinds Plat 2, 775.91 feet to the northwest corner of Habitat for Humanity Subdivision, as per plat of record in Plat Book 16, page 473, St. Francois County Recorder's Office; thence S07°05'05"W, along the westerly boundary of said Habitat for Humanity Subdivision, 150.00 feet to the southwesterly corner thereof; thence S31°44'48"W, 10.73 feet; thence westerly on a curve to the left having a radius of 250.00 feet, an arc length of 49.78 feet (the chord of said curve being N63°57'29"W, 49.70 feet); thence N69°39'46"W, 36.75 feet; thence westerly on a curve to the left having a radius of 400.00 feet, an arc length of 91.45 feet (the chord of said curve being N76°12'46"W, 91.25 feet); thence N82°45'45"W, 125.75 feet to the POINT OF BEGINNING for this description; thence S07°14'15"W, 212.00 feet; thence N82°45'45"W, 125.00 feet; thence N05°17'10"W, 214.89 feet; thence easterly, on a curve to the right having a radius of 350.00 feet, an arc length of 39.49 feet (the chord of said curve being S85°59'40"E, 39.47 feet); thence N82°45'45"W, 132.20 feet to the point of beginning. Containing 0.72 acres.

Subject to the southerly 15 feet of a 30 foot wide Ingress and Egress Easement.

TRACT 7

Part of Lot 70 of United States Survey Number 2969, Township 35 North, Range 5 East, in the City of Farmington, St. Francois, County, Missouri, more particularly described as follows:

From a stone marking the northwest corner of said Lot 70, also being the southwest corner of Crosswinds Plat 2 as per plat of record in Plat Book 15, page 163, St. Francois County Recorder's Office; thence S82°45'45"E, along the northerly line of said Lot 70, also being the southerly boundary of said Crosswinds Plat 2, 775.91 feet to the northwest corner of Habitat for Humanity Subdivision, as per plat of record in Plat Book 16, page 473, St. Francois County Recorder's Office; thence S07°05'05"W, along the westerly boundary of said Habitat for Humanity Subdivision, 150.00 feet to the southwesterly corner thereof; thence S31°44'48"W, 10.73 feet; thence westerly on a curve to the left having a radius of 250.00 feet, an arc length of 49.78 feet, (the chord of said curve being N63°57'29"W, 49.70 feet); thence N69°39'46"W, 36.75 feet; thence westerly on a curve to the left having a radius of 400.00 feet, an arc length of 91.45 feet, (the chord of said curve being N76°12'46"W, 91.25 feet); thence N82°45'45"W, 257.95 feet; thence westerly, on a curve to the left having a radius of 350.00 feet, an arc length of 39.49 feet, (the chord of said curve being

N85°59'40"W, 39.47 feet) to the POINT OF BEGINNING for this description; thence S05°17'10"E, 214.89 feet; thence N82°45'45"W, 84.46 feet; thence N57°50'37"W, 204.13 feet; thence northeasterly, on a curve to the right having a radius of 246.00 feet, an arc length of 187.61 feet, (the chord of said curve being N61°05'42"E, 183.10 feet); thence N82°56'37"E, 29.02 feet; thence easterly, on a curve to the right having a radius of 350.00 feet, an arc length of 47.83 feet, (the chord of said curve being N86°51'30"E, 47.79 feet) to the point of beginning. Containing 0.80 acres.

Subject to the southerly 15 feet of a 30 foot wide Ingress and Egress Easement.

The property hereby authorized to be conveyed by the governor shall be verified by a survey. Such survey shall be authorized by the division of facilities, management, design and construction of the office of administration pursuant to this section.

2. The commissioner of administration shall set the terms and conditions for the conveyance as the commissioner deems reasonable. Such terms and conditions may include, but not be limited to, the number of appraisals required, the time, place, and terms of the conveyance.

3. The attorney general shall approve as to form the instrument of conveyance.

SECTION 9. CONVEYANCE OF STATE PROPERTY IN FARMINGTON. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, convey, remise, release and forever quitclaim all interest of the state of Missouri in property in Farmington, St. Francois County, Missouri, described as follows:

TRACT A

(Property north of cemetery and south of Doubet Road)

Part of Lots 85 and 94 of U.S. Survey 2969, Township 35 North, Range 5 East, St. Francois County, Missouri, more particularly described as follows:

From the southeast corner of said Lot 85; thence N82°17'32"W, along the southerly line of said Lot 85, 1134.20 feet; thence N8°01'10"E, 181.95 feet to the POINT OF BEGINNING for this description; thence N82°17'57"W, 537.96 feet to the easterly line of a 30 foot road; thence N7°08'47"E, 1166.91 feet; thence S81°30'19"E, 260.68 feet; thence N9°01'04"E, 206.03 feet to the northerly line of said Lot 94; thence S82°11'48"E, along the northerly line of said Lots 94 and 85, 291.47 feet; thence S8°01'10"W, 1368.72 feet to the point of beginning. Containing 16.00 acres.

EXCEPT all that part of right-of-way of DOUBET ROAD

TRACT B

Part of Lot 94 of U.S. Survey 2969, Township 35 North, Range 5 East, St. Francois County, Missouri, more particularly described as follows:

From the southeast corner of Lot 85 of said U.S. Survey 2969; thence N82°17'32"W, along the southerly line of said Lot 85, 1134.20 feet; thence N8°01'10"E, 181.95 feet; thence N82°17'57"W, 537.96 feet to the easterly line of a 30 foot road; thence N7°08'47"E, 320.10 feet to the POINT OF BEGINNING for this description; thence N81°42'19"W, 330.73 feet to the westerly line of a tract of land described by deed of record in Book 1164, page 627, St. Francois County Recorder's Office; thence N7°02'28"E, along the easterly line of said tract, 218.13 feet to the southwesterly corner of a tract of land described by deed of record in Book 834, page 413, St. Francois County Recorder's Office; thence S82°21'13"E, along the southerly line of said tract, described in Book 834, page 413, 331.08 feet to the southeasterly corner thereof also being the easterly line of a 30 foot wide roadway; thence S7°08'47"W, along the easterly line of said roadway, 221.87 feet to the point of beginning. Containing 1.67 acres.

EXCEPT a roadway 30 foot wide off the east side of the above described tract identified as Pullan Road in plats of record.

TRACT C

Part of Lot 94 of U.S. Survey 2969, Township 35 North, Range 5 East, St. Francois County, Missouri, more particularly described as follows:

From the southeast corner of Lot 85 of said U.S. Survey 2969; thence N82°17'32"W, along the southerly line of Lot 85 and the southerly line of Lot 94, 1669.38 feet to the POINT OF BEGINNING for this description; thence continuing N82°17'32"W, along the southerly line of said Lot 94, 329.75 feet to the southeasterly corner of a tract of land described by deed of record in Book 1164, page 627, St. Francois County Recorder's Office; thence N7°02'28"E, along the easterly line of said tract, 505.39 feet; thence S81°42'19"E, 330.73 feet to the easterly line of a 30 foot road; thence S7°08'47"W, along the easterly line of said road, 501.99 feet to the point of beginning. Containing 3.81 acres.

EXCEPT a roadway 30 foot wide off the east side of the above described tract identified as Pullan Road in plats of record.

The property hereby authorized to be conveyed by the governor shall be verified by a survey. Such survey shall be authorized by the division of facilities, management, design and construction of the office of administration pursuant to this section.

2. The commissioner of administration shall set the terms and conditions for the conveyance as the commissioner deems reasonable. Such terms and conditions may include, but not be limited to, the number of appraisals required, the time, place, and terms of the conveyance.

3. The attorney general shall approve as to form the instrument of conveyance.

SECTION 10. CONVEYANCE OF FULTON RECEPTION AND DIAGNOSTIC CORRECTIONAL CENTER PROPERTY IN FULTON. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, convey, remise, release and forever quitclaim all interest of the state of Missouri in property located at the Fulton Reception and Diagnostic Correctional Center in Fulton, Callaway County, Missouri, described as follows:

TRACT A

Part of the Southeast Quarter of Section 16, and part of the West Half of the Southwest Quarter of Section 15, Township 47 North, Range 9 West, Callaway County, Missouri, more particularly described as follows:

BEGINNING at the northwest corner of the Northwest Quarter of the Southwest Quarter of said Section 15; thence S89°41'24"E, along the northerly line of the Northwest Quarter of the Southwest Quarter of said Section 15, 275.73 feet; thence S43°20'20"W, 300.92 feet; thence S8°05'56"W, 304.60 feet; thence S17°41'13"W, 361.72 feet; thence S5°41'53"W, 119.01 feet; thence S19°13'46"E, 558.62 feet; thence N67°06'22"W, 312.53 feet; thence S70°06'18"W, 281.29 feet; thence S33°00'28"W, 139.44 feet to the northerly right-of-way line of Missouri State Route "O", as described in Book 154, page 119, Callaway County Recorder's Office; thence northwesterly along the northerly right-of-way line of Missouri State Route "O", as described in Book 154, page 119 on a curve to the left having a radius of 1462.79 feet, an arc distance of 30.60 feet (Ch=N57°45'00"W, 30.60 feet) to the southeasterly corner of the tract described in Book 315, page 600, Callaway County Recorder's Office; thence N1°36'43"E, along the easterly line of the tracts described in Book 315, page 600 and Book 352, page 299 and the northerly extension thereof, 1610.55 feet to the northerly line of the Northeast Quarter of the Southeast Quarter of said Section 16; thence S87°29'48"E, along the northerly line of the

Northeast Quarter of the Southeast Quarter of said Section 16, 520.88 feet to the point of beginning. Containing 18.91 acres.

TRACT B

Part of the Northeast Quarter of the Southwest Quarter of Section 15, Township 47 North, Range 9 West, Callaway County, Missouri, more particularly described as follows:

From the center of said Section 15; thence S0°57'07"W, along the Quarter Section Line, 156.02 feet to the POINT OF BEGINNING for this description thence S0°57'07"W, continuing along the Quarter Section Line, 1169.11 feet to the southeast corner of the Northeast Quarter of the Southwest Quarter of said Section 15; thence N89°33'02"W, along the Quarter Quarter Section Line, 699.01 feet; thence N37°22'48"E, 220.49 feet; thence N25°16'24"E, 146.24 feet; thence N14°35'08"E, 130.09 feet; thence N4°21'20"E, 212.38 feet; thence N16°35'17"E, 144.05 feet; thence N24°19'16"W, 124.59 feet; thence N61°06'31"E, 552.14 feet to the point of beginning. Containing 12.00 acres.

2. The commissioner of administration shall set the terms and conditions for the conveyance as the commissioner deems reasonable. Such terms and conditions may include, but not be limited to, the number of appraisals required, the time, place, and terms of the conveyance.

3. The attorney general shall approve as to form the instrument of conveyance.

SECTION 11. CONVEYANCE OF MARYVILLE TREATMENT CENTER PROPERTY IN MARYVILLE. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, convey, remise, release and forever quitclaim all interest of the state of Missouri in property located at the Maryville Treatment Center in Maryville, Nodaway County, Missouri, described as follows:

A Tract of land being part of the Southwest Quarter of Section 14, Township 64 North, Range 35 West, Nodaway County, Missouri, and being more particularly described as follows:

Commencing at the Southwest Corner of said Section 14; thence North 00°35'05" East along the West line of said Section 14 a distance of 963.40 feet to the Point of Beginning; thence continuing North 00°35'05" East along the West line of said Section 14 a distance of 364.65 feet to a point of intersection with the Westerly projection of the North line of a tract of land belonging to the State of Missouri; thence South 89°09'49" East along the North line of said tract of land belonging to the State of Missouri a distance of 800.28 feet; thence South 16° 24' 55" West departing the North line of said tract of land belonging to the State of Missouri a distance of 413.08 feet; thence North 75°25'01" West a distance of 74.74 feet; thence North 67°11'53" West a distance of 3.02 feet to a point of curvature; thence Northwesterly along a curve to the right, having a radius of 108.29 feet, a central angle of 40°49'11", and a distance of 77.15 feet to a point of tangency; thence North 26°22'41" West a distance of 51.08 feet to a point of curvature; thence Westerly along a curve to the left, having a radius of 91.52 feet, a central angle of 62°25'44", and a distance of 99.72 feet to a point of tangency; thence North 88°48'25" West a distance of 53.84 feet; thence South 88°43'03" West a distance of 48.53 feet to a point of curvature; thence Southwesterly along a curve to the left, having a radius of 103.12 feet, a central angle of 34°21'16", and a distance of 61.83 feet to a point of tangency; thence South 54°21'47" West a distance of 16.87 feet to a point of curvature; thence Westerly along a curve to the right, having a radius of 42.52 feet, a central angle of 48°35'05", and a distance of 36.06 feet to a point of tangency; thence North 77°03'09" West a distance of 26.26 feet to a point of curvature; thence Southerly along a curve to

the left, having a radius of 60.88 feet, a central angle of 73°32'23", and a distance of 78.14 feet to a point of tangency; thence South 29°24'28" West a distance of 47.92 feet to a point of curvature; thence Westerly along a curve to the right, having a radius of 47.68 feet, a central angle of 60°56'08", and a distance of 47.68 feet to a point on a non-tangent line; thence North 89°39'50" West a distance of 88.48 feet to the Point of Beginning. Containing 228,660.55 square feet or 5.25 acres more or less except that part in Katydid Road right of way.

2. The commissioner of administration shall set the terms and conditions for the conveyance as the commissioner deems reasonable. Such terms and conditions may include, but not be limited to, the number of appraisals required, the time, place, and terms of the conveyance.

3. The attorney general shall approve as to form the instrument of conveyance.

SECTION 12. CONVEYANCE OF EASTERN RECEPTION DIAGNOSTIC CORRECTIONAL CENTER PROPERTY IN BONNE TERRE. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, convey, remise, release and forever quitclaim all interest of the state of Missouri in property located at the Eastern Reception Diagnostic Correctional Center in Bonne Terre, St. Francois County, Missouri, described as follows:

A Tract of land being part of U.S. Survey 71, Township 37 North, Range 5 East, St. Francois County, Missouri, and being more particularly described as follows:

Commencing at the common corner of U.S. Surveys 71 and 72 on the South line of U.S. Survey 2047; thence North 82°40'13" West along the Northern line of a tract of land described by Special Warranty Deed dated July 18, 2000 in Book 1425, Page 1004, St. Francois County, Missouri a distance of 436.79 feet; thence South 44°13'58" West along the Northwesterly line of a tract of land described by aforementioned deed a distance of 1,989.23 feet; thence South 07°25'39" West along the Westerly line of a tract of land described by aforementioned deed a distance of 376.07 feet to the Point of Beginning; thence South 82°34'21" East a distance of 773.01 feet to a point 15 feet south and perpendicular from the southwest corner of existing fence for a sanitary sewer pump station; thence North 88°30'04" East along a line 15 foot parallel offset south with the south line of said existing fence for a sanitary sewer pump station a distance of 20.38 feet to a point not to encroach on a 400 foot parallel offset westerly from the westerly edge of an existing gravel perimeter drive hereinafter referred to as 400 foot buffer zone; thence South 01°56'19" East along said 400 foot buffer zone a distance of 255.11 feet; thence South 00°57'30" West along said 400 foot buffer zone, 215 feet westerly from the west corner of an existing parking lot a distance of 669.14 feet; thence North 83°26'49" West along a Southern course of a tract of land described by aforementioned deed a distance of 723.84 feet; thence North 06°31'26" East along a Western course of a tract of land described by aforementioned deed a distance of 447.39 feet; thence North 84°40'04" West along a Southern course of a tract of land described by aforementioned deed a distance of 179.37 feet; thence North 07°25'39" East along a Western course of a tract of land described by aforementioned deed a distance of 483.69 feet to the Point of Beginning. Containing 707,280.76 square feet or 16.24 acres more or less.

2. The commissioner of administration shall set the terms and conditions for the conveyance as the commissioner deems reasonable. Such terms and conditions may include, but not be limited to, the number of appraisals required, the time, place, and terms of the conveyance.

3. The attorney general shall approve as to form the instrument of conveyance.

SECTION 13. CONVEYANCE OF MISSOURI EASTERN CORRECTIONAL CENTER PROPERTY IN PACIFIC. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, convey, remise, release and forever quitclaim all interest of the state of Missouri in property located at the Missouri Eastern Correctional Center in Pacific, St. Louis County, Missouri, described as follows:

A Tract of land being part of Fraction Section 5, Township 43 North, Range 3 East, and United States Survey 148, St. Louis County, Missouri, and being more particularly described as follows:

Commencing at the Southerly most corner of the Eureka Fire Protection District Training Facility, a plat filed for record in Book 350, Page 811 on December 19, 2002 in St. Louis County, Missouri said point also being on the Westerly right of way of U.S. Highway 66 as shown on said Eureka Fire Protection District Training Facility plat; thence North 43°23'00" West along the Southwest line of said Eureka Fire Protection District Training Facility plat and it's Northwesterly projection thereof, said line also being the Northeast line of Allenton Acres, a plat filed for record in Book 47, Page 46 on April 14, 1950 in St. Louis County, Missouri a distance of 1,120.48 feet to the Point of Beginning, said point being at the angle point shown in the Northeast line of said Allenton Acres being marked by a Stone 30.11 feet South of the North corner of Tract No. 19 of said Allenton Acres; thence North 30°13'00" West along the Northeast line of said Allenton Acres a distance of 1,870.21 feet to the East corner of Tract No. 26 of said Allenton Acres; thence North 59°58'00" East along the Northeasterly projection of the Southeasterly line of said Tract No. 26 a distance of 245.64 feet to a point not to encroach on a 200 foot parallel offset Southwesterly from the top of the firing range berm extending Southeasterly to the intersection with the Southwesterly edge of a gravel drive which becomes asphalt, hereinafter referred to as 200 foot buffer zone; thence South 31°55'00" East along said 200 foot buffer zone a distance of 529.34 feet; thence South 26°22'23" East along said 200 foot buffer zone a distance of 826.89 feet; thence South 35°53'59" East along said 200 foot buffer zone a distance of 620.46 feet to a point on a 316.60 foot parallel offset Westerly from the Westerly line of said Eureka Fire Protection District Training Facility plat; thence South 38°15'40" West along said 316.60 foot parallel offset Westerly from the Westerly line of said Eureka Fire Protection District Training Facility plat a distance of 239.61 feet to a point on the Northeast line of said Allenton Acres; thence North 43°23'00" West along the Northeast line of said Allenton Acres a distance of 195.15 feet to the Point of Beginning. Containing 482,550.25 square feet or 11.08 acres more or less.

2. The commissioner of administration shall set the terms and conditions for the conveyance as the commissioner deems reasonable. Such terms and conditions may include, but not be limited to, the number of appraisals required, the time, place, and terms of the conveyance.

3. The attorney general shall approve as to form the instrument of conveyance.

SECTION 14. CONVEYANCE OF SOUTH CENTRAL CORRECTIONAL CENTER PROPERTY IN LICKING. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, convey, remise, release and forever quitclaim all interest of the state of Missouri in property located at the South Central Correctional Center in Licking, Texas County, Missouri, described as follows:

A Tract of land being part of Lot 1, Northwest 1/4 Section 1, Township 32 North, Range 9 West, Texas County, Missouri, and being more particularly described as follows:

Commencing at the Southwest corner of said Lot 1, of the Northwest 1/4, Section 1, Township 32 North, Range 9 West, said point also being the West Quarter corner of said Section 1, Township 32 North, Range 9 West being marked by a Stone; thence North 00°06'15" West along the West line of said Lot 1, of the Northwest Quarter Section 1, as described by Warranty Deed dated April 6, 1998 in Book 580, Page 88, Texas County, Missouri a distance of 467.02 feet to the Northwest corner of a 5 acre tract of land shown as Tract 1 on a survey by Elgin Surveying and Engineering Inc. dated March 25, 1999 said point also being Point of Beginning; thence continuing North 00°06'15" West along the West line of said Lot 1, of the Northwest Quarter Section 1 as described by aforementioned deed a distance of 882.20 feet to the Northwest corner of said Lot 1, said Northwest corner also being the Northwest corner of the Northwest Quarter of said Section 1; thence South 86°41'01" East along the North line of said Lot 1 as described by aforementioned deed a distance of 1,339.33 feet to the intersection with the Northerly prolongation of the West line of the Northeast Quarter of the Southwest Quarter of said Section 1; thence South 00°21'20" West along the Northerly prolongation of the West line of the Northeast Quarter of the Southwest Quarter of said Section 1; a distance of 1,340.40 feet to the Northwest corner of the Northeast Quarter of the Southwest Quarter of said Section 1; thence North 87°02'15" West along the South line of said Lot 1 as described by aforementioned deed a distance of 861.09 feet to the Southeast corner of said Tract 1; thence North 00°06'15" West along the east line of said Tract 1 a distance of 467.02 feet to the Northeast corner of said Tract 1; thence North 87°02'15" West along the North line of said Tract 1 a distance of 467.02 feet to the Point of Beginning. Containing 1,573,308.10 square feet or 36.12 acres more or less.

2. The commissioner of administration shall set the terms and conditions for the conveyance as the commissioner deems reasonable. Such terms and conditions may include, but not be limited to, the number of appraisals required, the time, place, and terms of the conveyance.

3. The attorney general shall approve as to form the instrument of conveyance.

SECTION 15. CONVEYANCE OF POTOSI CORRECTIONAL CENTER PROPERTY IN POTOSI. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, convey, remise, release and forever quitclaim all interest of the state of Missouri in property located at the Potosi Correctional Center in Potosi, Washington County, Missouri, described as follows:

A Tract of land being part of U.S. Survey 2134, and U.S. Survey 2115 Township 37 North, Range 3 East, Washington County, Missouri, and being more particularly described as follows:

Commencing at the Southwest corner of said U.S. Survey 2134; thence North 08°38'55" East along the West line of said U.S. Survey 2134 and the East line of said U.S. Survey 2115 a distance of 2,263.30 feet to the point of intersection with the North right of way of Missouri Route "O"; thence S 86°07'43" West along the North right of way of said Missouri Route "O" a distance of 552.50 feet to a point on the West line of a tract of land described by Missouri Special Warranty Deed dated August 29, 1996 also being the West line of a tract of land described by Deed of Trust and Security Agreement dated July 15 1992 recorded July 30 1992 in Deed of Trust Book 129 Page 668 in Washington County, Missouri; thence North 04°08'12" West along said West line a distance of 770.00 feet; thence North 85°51'18" East departing said West line a distance of 237.06 feet; thence South 56°00'35" East a distance of 529.53 feet to a point on the West

line of said U.S. Survey 2134 and the East line of said U.S. Survey 2115; thence South 04°08'12" East parallel with said West line of a tract of land described by Deed of Trust and Security Agreement dated July 15 1992 recorded July 30 1992 in Deed of Trust Book 129 Page 668 in Washington County, Missouri; a distance of 446.09 feet to the North right of way of said Missouri Route "O" ; thence South 86°07'43" West along the North right of way of said Missouri Route "O" a distance of 101.12 feet to the Point of Beginning. Containing 436,180.00 square feet or 10.01 acres more or less.

2. The commissioner of administration shall set the terms and conditions for the conveyance as the commissioner deems reasonable. Such terms and conditions may include, but not be limited to, the number of appraisals required, the time, place, and terms of the conveyance.

3. The attorney general shall approve as to form the instrument of conveyance.

SECTION 16. CONVEYANCE OF CHILLICOTHE CORRECTIONAL CENTER PROPERTY IN CHILLICOTHE. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, convey, remise, release and forever quitclaim all interest of the state of Missouri in property located at the Chillicothe Correctional Center in Chillicothe, Livingston County, Missouri, described as follows:

DEED DESCRIPTION PARENT TRACT:

The North One Hundred Forty-five and One-half (145 1/2) acres of the Northwest Quarter of Section Nineteen (19), Township Fifty-eight (58), Range Twenty-three (23).

SURVEY DESCRIPTION:

A tract of land lying in the Northwest Quarter of Section 19, Township 58 North, Range 23 West, of the fifth principal meridian, being more particularly described as follows:

Commencing at an iron pin marking the Northwest corner of said Section 19; thence along the West line of said Section 19, South 00 degrees 00 minutes 18 seconds East, a distance of 1467.18 feet to the Point of Beginning, thence South 89 degrees 57 minutes 41 seconds East, a distance of 30.00 feet to an iron rod; thence South 89 degrees 57 minutes 41 seconds East, a distance of 732.03 feet to an iron rod; thence South 63 degrees 50 minutes 21 seconds East, a distance of 332.19 feet to an iron rod; thence South 89 degrees 57 minutes 41 seconds East, a distance of 1827.07 feet to an iron rod on the East line of said Northwest Quarter; thence along said East line, South 00 degrees 14 minutes 09 seconds West, a distance of 601.50 to an iron rod; thence North 89 degrees 57 minutes 41 seconds West, a distance of 2884.72 feet to an iron rod on the West line of said Section 19; thence North 00 degrees 00 minutes 18 seconds West, a distance of 747.76 feet to the POINT OF BEGINNING, containing 42.9 acres.

2. The commissioner of administration shall set the terms and conditions for the conveyance as the commissioner deems reasonable. Such terms and conditions may include, but not be limited to, the number of appraisals required, the time, place, and terms of the conveyance.

3. The attorney general shall approve as to form the instrument of conveyance.

SECTION 17. CONVEYANCE OF TIPTON CORRECTIONAL CENTER PROPERTY IN TIPTON. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, convey, remise, release and forever quitclaim all interest of the state of Missouri in property located at the Tipton Correctional Center in Tipton, Moniteau County, Missouri, described as follows:

TRACT #1:

A tract of land lying in the Northwest Quarter of Section 15, Township 45 North, Range 17 West of the fifth principal meridian, Moniteau County, Missouri, being more particularly described as follows:

Beginning at a stone marking the Northeast corner of the Northwest Quarter of said Section 15; thence South 01 degrees 55 minutes 18 seconds West, a distance of 1629.74 feet to an iron pipe; thence North 89 degrees 49 minutes 26 seconds West, a distance of 1195.00 feet to a point on the Easterly right-of-way of State Route B from which an iron pipe bears South 89 degrees 49 minutes 26 seconds East, a distance of 0.80 feet; thence North 01 degrees 59 minutes 40 seconds East, a distance of 356.24 feet to an iron rod; thence along the arc of a tangent curve to the left, having a radius of 603.81 feet for a length of 148.79 feet (chord=N05°03'54"W-148.42') to an iron rod; thence North 90 degrees 00 minutes 00 seconds East, a distance of 411.23 feet to an iron rod; thence North 00 degrees 00 minutes 00 seconds East, a distance of 1016.42 feet to an iron rod; thence North 90 degrees 00 minutes 00 seconds East, a distance of 232.48 feet to an iron rod; thence North 45 degrees 00 minutes 00 seconds East, a distance of 158.22 feet to the North line of said Section 15; thence South 89 degrees 11 minutes 16 seconds East, a distance of 494.81 feet to the POINT OF BEGINNING, containing 34.4 acres.

TRACT #2:

A tract of land lying in the Southwest Quarter of the Southwest Quarter of Section 10 and the Northwest Quarter of Section 15, Township 45 North, Range 17 West of the fifth principal meridian, Moniteau County, Missouri, being more particularly described as follows:

Beginning at an iron pipe marking the Northwest corner of said Section 15; thence North 35 degrees 34 minutes 25 seconds East, a distance of 586.57 feet to an iron rod; thence South 02 degrees 01 minutes 15 seconds West, a distance of 2097.22 feet to an iron rod; thence North 89 degrees 45 minutes 08 seconds West, a distance of 317.27 feet to a point on the West line of said Section 15 from which an iron pipe bears South 89 degrees 45 minutes 08 seconds East, a distance of 32.46 feet; thence along said West line, North 01 degrees 46 minutes 13 seconds East, a distance of 195.48 feet (195.54' record) to a point from which an iron rod bears South 89 degrees 40 minutes 35 seconds East, a distance of 30.00 feet; thence South 89 degrees 40 minutes 35 seconds East, a distance of 240.65 feet (240.43' record) to an iron pipe; thence North 01 degrees 30 minutes 39 seconds East, a distance of 364.18 feet to an iron rod; thence North 88 degrees 21 minutes 01 seconds West, a distance of 238.93 feet to an iron pipe on the West line of said Section 15; thence North 01 degrees 46 minutes 13 seconds East, a distance of 1053.00 feet (1052.89' record) to the POINT OF BEGINNING, containing 11.7 acres.

2. The commissioner of administration shall set the terms and conditions for the conveyance as the commissioner deems reasonable. Such terms and conditions may include, but not be limited to, the number of appraisals required, the time, place, and terms of the conveyance.

3. The attorney general shall approve as to form the instrument of conveyance.

SECTION 18. CONVEYANCE OF WOMEN'S EASTERN RECEPTION AND DIAGNOSTIC CORRECTIONAL CENTER PROPERTY IN VANDALIA. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, convey, remise, release and forever quitclaim all interest of the state of Missouri in property located at the Women's Eastern Reception and Diagnostic Correctional Center in Vandalia, Audrain County, Missouri, described as follows:

TRACT #1

A tract of land lying in the Northeast Quarter of Section 5, Township 52 North, Range 5 West of the fifth principal meridian, Audrain County, Missouri being more particularly described as follows:

Beginning at an iron rod marking the Northwest corner of Section 4, Township 52 North, Range 5 West; thence along the East line of said Section 5, South 00 degrees 06 minutes 12 seconds West, a distance of 421.74 feet to an iron rod; thence South 45 degrees 06 minutes 12 seconds West, a distance of 203.01 feet to an iron rod; thence South 02 degrees 32 minutes 35 seconds West, a distance of 844.29 feet to an iron rod; thence South 59 degrees 14 minutes 50 seconds East, a distance of 208.64 feet to an iron rod on the North line of McPike Street; thence along the Northern line of McPike Street, South 59 degrees 58 minutes 55 seconds West, a distance of 683.55 feet to an iron rod; thence along the West line of the East 23 acres (lying North of McPike Street) of the Northeast Quarter of said Section 5, North 00 degrees 06 minutes 12 seconds East, a distance of 1873.87 feet to an iron rod on the North line of said Section 5; thence South 88 degrees 22 minutes 45 seconds East, a distance of 591.45 feet to the POINT OF BEGINNING, containing 19.4 acres.

TRACT #2

A tract of land lying in the Northwest Quarter of Section 4, Township 52 North, Range 5 West of the fifth principal meridian, Audrain County, Missouri being more particularly described as follows:

Commencing at an iron rod marking the Northwest corner of said Section 4; thence along the West line of said Section 4, South 00 degrees 06 minutes 12 seconds West, a distance of 1515.19 feet to an iron rod and the POINT OF BEGINNING; thence South 58 degrees 58 minutes 06 seconds East, a distance of 615.40 feet to an iron rod; thence South 71 degrees 06 minutes 15 seconds East, a distance of 439.54 feet to an iron rod; thence South 00 degrees 06 minutes 52 seconds West, a distance of 173.66 feet to an iron rod on the Northerly right-of-way of U.S. Highway 54; thence along said right-of-way, Southwesterly along the arc of a curve the right, having a radius of 1392.39 feet for a length of 331.89 feet (chord = S75°12'14"W - 331.10') to an iron rod at the Southeast corner of a tract conveyed to Giltner in Book 277 at Page 893; thence North 00 degrees 06 minutes 12 seconds East, a distance of 201.55 feet to an iron rod at the Northeast corner of said Giltner tract; thence along the North line of said Giltner tract and it's Westerly extension, North 89 degrees 53 minutes 48 seconds West, a distance of 624.00 feet to a point on the West line of said Section 4 at the Northwest corner of a tract conveyed to Casey's Marketing Company in Book 290 at Page 65; thence along the West line of said Section 4, North 00 degrees 06 minutes 12 seconds East, a distance of 515.13 feet to the POINT OF BEGINNING, containing 6.8 acres.

TRACT #3

A tract of land lying in the Northwest Quarter of Section 4, Township 52 North Range 5 West of the fifth principal meridian, Audrain County, Missouri being more particularly described as follows:

Commencing at the Northeast corner of the Northwest Quarter of said Section 4; thence North 88 degrees 12 minutes 50 seconds West, a distance of 420.39 feet to an iron rod and the POINT OF BEGINNING; thence South 00 degrees 20 minutes 10 seconds East, a distance of 660.82 feet to an iron rod at the Northwest corner of a tract conveyed to Davis in Book 212 at Page 104; thence along the West line of said Davis tract extended, South 00 degrees 20 minutes 10 seconds East, a distance of 658.74 feet to an iron rod at Southwest corner of a tract

conveyed to Heaston in Book 277 at Page 173 said point also being the Northerly right-of-way of U.S. Highway 54; thence along said right-of-way, South 59 degrees 58 minutes 21 seconds West, a distance of 23.02 feet to an iron rod at the Southeast corner of a tract conveyed to Warren County Concrete LLC in Book 296 at page 909; thence North 00 degrees 20 minutes 10 seconds West, a distance of 237.04 feet to an iron rod at the Northeast corner of said tract; thence along the North line of said tract, South 89 degrees 08 minutes 08 seconds West, a distance of 177.91 feet to an iron rod; thence North 00 degrees 20 minutes 10 seconds West, a distance of 1102.95 feet to an iron rod on the North line of said Section 4; thence South 88 degrees 12 minutes 50 seconds East, a distance of 198.04 feet to the POINT OF BEGINNING, containing 5.1 acres.

TRACT #4

A tract of land lying in the Northwest Quarter of Section 4, Township 52 North Range 5 West of the fifth principal meridian, Audrain County, Missouri being more particularly described as follows:

Commencing at the Northeast corner of the Northwest Quarter of said Section 4; thence North 88 degrees 12 minutes 50 seconds West, a distance of 213.15 feet to an iron rod and the POINT OF BEGINNING; thence South 00 degrees 20 minutes 10 seconds East, a distance of 660.84 feet to an iron rod at the Northeast corner of a tract conveyed to Davis in Book 212 at Page 104; thence North 88 degrees 12 minutes 43 seconds West, a distance of 207.25 feet to an iron rod at the Northwest corner of said Davis tract; thence North 00 degrees 20 minutes 10 seconds West, a distance of 660.82 feet to an iron rod on the North line of said Section 4; thence South 88 degrees 12 minutes 50 seconds East, a distance of 207.24 feet to the POINT OF BEGINNING, containing 3.1 acres.

2. The commissioner of administration shall set the terms and conditions for the conveyance as the commissioner deems reasonable. Such terms and conditions may include, but not be limited to, the number of appraisals required, the time, place, and terms of the conveyance.

3. The attorney general shall approve as to form the instrument of conveyance.

SECTION 19. CONVEYANCE OF MOBERLY CORRECTIONAL CENTER PROPERTY IN MOBERLY. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, convey, remise, release and forever quitclaim all interest of the state of Missouri in property located at the Moberly Correctional Center in Moberly, Randolph County, Missouri, described as follows:

TRACT #1

A tract of land lying in the South half of the Southwest Quarter of Section 24 of the fifth principal meridian, Randolph County, Missouri being more particularly described as follows:

Commencing at an iron rod marking the Southwest corner of said Section 24; thence South 88 degrees 25 minutes 02 seconds East, a distance of 37.74 feet to an iron rod on the Easterly right-of-way line of Route AA and the POINT OF BEGINNING; thence along said right-of-way the following courses and distances, North 01 degrees 01 minutes 31 Seconds East, a distance of 1255.56 feet to an iron rod; thence North 31 degrees 42 minutes 09 seconds East, a distance of 68.60 feet to an iron rod; thence North 01 degrees 01 minutes 31 seconds East, a distance of 23.23 feet to the North line of the South Half of the Southwest Quarter of said Section 24; thence along said North line, South 88 degrees 20 minutes 53 seconds East, a distance of 1484.22 feet to a cotton gin spike; thence South 06 degrees 00 minutes 00 seconds East, a distance of 961.29 feet to an iron rod; thence South 68 degrees 34 minutes 57 seconds West, a

distance of 981.65 feet to an iron rod; thence North 88 degrees 25 minutes 02 seconds West, a distance of 729.33 feet to an iron rod on the Easterly right-of-way line of Route AA and the POINT OF BEGINNING, containing 44.9 acres.

TRACT #2

A tract of land lying in the Southeast Quarter of the Northeast Quarter of Section 26, Township 53 North, Range 14 West of the fifth principal meridian, Randolph County, Missouri being more particularly described as follows:

Commencing at an iron rod marking the Southeast corner of said Northeast Quarter of said Section 26; thence along the South line of said Northeast Quarter, North 89 degrees 16 minutes 06 seconds West, a distance of 40.20 feet to an iron rod on the Westerly right-of-way of Route AA and the POINT OF BEGINNING; thence continuing North 89 degrees 16 minutes 06 seconds West, a distance of 895.00 feet to an iron rod; thence North 01 degrees 27 minutes 48 seconds East, a distance of 1170.00 feet to an iron rod; thence South 89 degrees 11 minutes 58 seconds East, a distance of 895.00 feet to an iron rod on the Westerly right-of-way of said Route AA; thence along said right-of-way, South 01 degrees 27 minutes 31 seconds West, a distance of 1135.35 feet to a right-of-way marker; thence South 01 degrees 37 minutes 31 seconds West, a distance of 33.57 feet to the POINT OF BEGINNING, containing 24.0 acres.

TRACT #3

A tract of land lying in the Southwest Quarter of the Northeast Quarter of Section 26, Township 53 North, Range 14 West of the fifth principal meridian, Randolph County, Missouri being more particularly described as follows:

Commencing at an iron rod marking the Southwest corner of the Northeast Quarter; thence along the West line of said Northeast Quarter, North 00 degrees 53 minutes 48 seconds East, a distance of 50.00 feet to an iron rod and the POINT OF BEGINNING; thence continuing North 00 degrees 53 minutes 48 seconds East, a distance of 630.43 feet to an iron rod at the centerline of an old railroad bed; thence along said centerline, North 60 degrees 58 minutes 53 seconds East, a distance of 1068.18 feet to an iron rod; thence South 01 degrees 27 minutes 48 seconds West, a distance of 1210.58 feet to an iron rod on the South line of said Northeast Quarter; thence North 89 degrees 16 minutes 06 seconds West, a distance of 250.85 feet to an iron rod; thence North 89 degrees 16 minutes 06 seconds West, a distance of 613.10 feet to an iron rod; thence North 00 degrees 53 minutes 48 seconds East, a distance of 50.00 feet to an iron rod; thence North 89 degrees 16 minutes 06 seconds West, a distance of 50.00 feet to the POINT OF BEGINNING, containing 19.9 acres.

2. The commissioner of administration shall set the terms and conditions for the conveyance as the commissioner deems reasonable. Such terms and conditions may include, but not be limited to, the number of appraisals required, the time, place, and terms of the conveyance.

3. The attorney general shall approve as to form the instrument of conveyance.

SECTION 20. CONVEYANCE OF ST. FRANCOIS COUNTY CORRECTIONAL FACILITY PROPERTY IN FARMINGTON TO ST. FRANCOIS COUNTY. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, convey, remise, release and forever quitclaim all interest of the state of Missouri in property located at the St. Francois County Correctional Facility in Farmington, St. Francois County, Missouri, to St. Francois County described as follows:

Part of Lot 85 of U.S. Survey 2969, Township 35 North, Range 5 East, St. Francois County, Missouri, more particularly described as follows:

From the southeast corner of said Lot 85; thence N82°17'32"W, along the southerly line of said Lot 85, 681.19 feet; thence N8°01'10"E, 1086.14 feet to an iron rod and the POINT OF BEGINNING for this description; thence N81°58'50"W, 453.00 feet to an iron rod; thence N8°01'10"E, 462.07 feet to the northerly line of said Lot 85; thence S81°11'48"E, along the northerly line of said Lot 85, 453.00 feet; thence S8°01'10"W, 463.78 feet to the point of beginning. Containing 4.81 acres.

EXCEPT all that part of right-of-way of DOUBET ROAD

Ingress & Egress Easement Description for above described property at Northwest Driveway

Part of Lot 85 and Lot 94 of U.S. Survey 2969, Township 35 North, Range 5 East, St. Francois County, Missouri, more particularly described as follows:

From the southeast corner of said Lot 85; thence N82°17'32"W, along the southerly line of said Lot 85, 681.19 feet; thence N8°01'10"E, 1086.14 feet to an iron rod; thence N81°58'50"W, 453.00 feet to an iron rod; thence N8°01'10"E, 382.07 feet to the POINT OF BEGINNING for this description; thence N4°24'17"W, 58.00 feet; thence N41°50'28"E, 36.00 feet to the northerly line of said Lot 94; thence S81°11'48"E, along the northerly line of said Lot 94 and said Lot 85, 40.00 feet; thence S8°01'10"W, 80.00 feet to the point of beginning.

EXCEPT all that part of right-of-way of DOUBET ROAD

The property hereby authorized to be conveyed by the governor shall be verified by a survey. Such survey shall be authorized by the division of facilities, management, design and construction of the office of administration pursuant to this section.

2. The commissioner of administration shall set the terms and conditions for the conveyance as the commissioner deems reasonable. Such terms and conditions may include, but not be limited to, the number of appraisals required, the time, place, and terms of the conveyance.

3. The attorney general shall approve as to form the instrument of conveyance.

SECTION 21. CONVEYANCE OF A PERMANENT SIDEWALK EASEMENT FOR ADRIANS ISLAND PROPERTY IN COLE COUNTY TO JEFFERSON CITY. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, and convey, a permanent sidewalk easement over, on and under property owned by the state of Missouri located at the Adrians Island in Cole County, Missouri to the City of Jefferson. The easement to be conveyed is more particularly described as follows:

From the southeasterly corner of Inlot 69 of said City of Jefferson, Missouri, being a point on the northerly line of West Main Street; thence N47°34'39"W, along the southerly line of said Inlot 69 and the northerly line of West Main Street, 81.24 feet to the most westerly corner of the aforesaid tract of land described in Book 222, page 635, Cole County Recorder's Office; thence N54°20'21"E, along the northwesterly boundary of said tract described in Book 222, page 635, 215.95 feet to the POINTOF BEGINNING for this description; thence continuing N54°20'21"E, along the northwesterly boundary of said tract described in Book 222, page 635, 57.98 feet; thence N74°18'22"E, 21.47 feet; thence Northeasterly, on a curve to the left, having a radius of 53.50 feet, an arc distance of 28.29 feet (the chord of said curve being N59°09'19"E, 27.97 feet); thence N44°00'17"E, 36.99 feet; thence N45°59'43"W, 3.09 feet to a point on the aforesaid northwesterly boundary of the property described in Book 222, page 635; thence N54°20'21"E, along the northwesterly boundary of said property described in Book 222, page 635, 6.68 feet to the most northerly corner thereof; thence S47°41'54"E, along the northeasterly boundary of said property described in Book 222, page 635, 28.93 feet; thence S68°15'20"W, 18.39 feet;

thence S44°00'17"W, 41.47 feet; thence S74°18'22"W, 85.87 feet; thence S61°46'15"W, 15.35 feet to the POINT OF BEGINNING

2. The commissioner of administration shall set the terms and conditions for the conveyance as the commissioner deems reasonable. Such terms and conditions may include, but not be limited to, the number of appraisals required, the time, place, and terms of the conveyance.

3. The attorney general shall approve as to form the instrument of conveyance.

SECTION 22. CONVEYANCE OF A PERMANENT LEVEE EASEMENT ON CHURCH FARM PROPERTY IN COLE COUNTY TO COLE JUNCTION LEVEE DISTRICT. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, and convey, a permanent levee easement over, on and under property owned by the state of Missouri located at the Church Farm in Cole County, Missouri to the Cole Junction Levee District. The easement to be conveyed is more particularly described as follows:

All that part of Grantors property that lies within a 200 foot wide strip of land as it crosses part of the Southeast Quarter of Section 18 in Township 45 North, Range 12 West, all in Cole County, Missouri, and said strip of land lies 100 feet each side of and adjacent to the following described centerline:

From the southeast corner of said Section 18, Township 45 North, Range 12 West; thence N2°45'29"E, along the Section Line, 716.03 feet to the centerline of an unrecorded 200 foot wide easement to The Cole Junction Levee District, dated May 3, 1995 and the POINT OF BEGINNING for this centerline description; thence N50°30'04"W, along the centerline of said unrecorded easement and along the center of the existing levee, 1043.02 feet; thence S68°35'49"W, 1091.24 feet; thence S74°30'43"W, 461.55 feet; thence S12°20'42"W, 480.39 feet to the centerline of the 100 foot wide Missouri Pacific Railroad right-of-way and the Point of Termination.

2. The commissioner of administration shall set the terms and conditions for the conveyance as the commissioner deems reasonable. Such terms and conditions may include, but not be limited to, the number of appraisals required, the time, place, and terms of the conveyance.

3. The attorney general shall approve as to form the instrument of conveyance.

SECTION 23. CONVEYANCE OF A PERMANENT PIPELINE EASEMENT ON MOBERLY CORRECTIONAL CENTER PROPERTY IN MOBERLY TO PANHANDLE EASTERN PIPELINE COMPANY. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, and convey, a permanent pipeline easement over, on and under property owned by the state of Missouri located at the Moberly Correctional Center in Randolph County, Missouri to the Panhandle Eastern Pipeline Company, LP a Delaware Limited Partnership. The easement to be conveyed is more particularly described as follows:

DESCRIPTION OF 8" MOBERLY PIPELINE - SECTION 25

A tract of land fifty (50) feet in width, being twenty five (25) feet Northerly and twenty five (25) feet Southerly of the following described line of survey. All located in the Northwest Quarter (NW 1/4) of Section 25, Township 53 North, Range 14 West, Randolph County, Missouri.

Commencing at the Northwest corner of said Section 25, a aluminum cap LS1803, thence South 09 degrees, 08 minutes, 08 seconds East, a distance of 363.27 feet to the Point of Beginning. Thence North 88 degrees 05 minutes 07 seconds West, a distance of 67.24 feet to the West line of said Section 25 and the Point of Terminus, from which the said Northwest corner of said Section 25, bears North 01 degrees 31 minutes, 52 seconds East, a distance of 356.54 feet. Said tract of land contains 4.08 linear rods, more or less.

DESCRIPTION OF 4" CONNECTION - SECTION 25 & 26

A tract of land fifty (50) feet in width, being twenty five (25) feet Northerly and twenty five (25) feet Southerly of the following described line of survey. All located in the Northeast Quarter (NE 1/4) of Section 26 and the Northwest Quarter (NW 1/4) of Section 25, Township 53 North, Range 14 West, Randolph County, Missouri.

Commencing at the Northeast corner of said Section 26, a aluminum cap LS1803, thence South 06 degrees 33 minutes 48 seconds West , a distance of 1710.22 feet to the Point of Beginning. Thence North 89 degrees 04 minutes 19 seconds East, a distance of 150.16 feet to a point on the East line of said Section 26, the West line of Section 25 and the center of 6 Mile Lane. Thence North 89 degrees 04 minutes 19 seconds East, a distance of 73.98 feet to the Point of Terminus from which the Northwest corner of said Section 25, bears North 00 degrees, 58 minutes 02 seconds West, a distance of 1695.62 feet. Said tract of land contains 9.10 linear rods in Section 26 and 4.48 linear rods in Section 25, more or less.

DESCRIPTION OF 8" MOBERLY PIPELINE - SECTION 26

A tract of land fifty (50) feet in width, being twenty five (25) feet Easterly and twenty five (25) feet Westerly of the following described line of survey. All located in the Northeast Quarter (NE 1/4) of Section 26, Township 53 North, Range 14 West, Randolph County, Missouri.

Commencing at the Northeast corner of said Section 26, a aluminum cap LS 1803, thence South 07 degrees 50 minutes 50 seconds West, a distance of 1363.00 feet to the Point of Beginning. Thence South 01 degrees 31 minutes 56 seconds West, a distance of 1323.75 feet to the Point of Terminus from which the said Northeast corner of said Section 26, bears North 04 degrees 44 minutes 13 seconds East, a distance of 2682.67 feet. Said tract of land contains 80.23 linear rods, more or less.

Additional temporary workspace shall be fifty (50) feet in width with additional fifty (50) feet at road crossings for construction, replacement and removal purposes.

2. The commissioner of administration shall set the terms and conditions for the conveyance as the commissioner deems reasonable. Such terms and conditions may include, but not be limited to, the number of appraisals required, the time, place, and terms of the conveyance.

3. The attorney general shall approve as to form the instrument of conveyance.

SECTION 24. CONVEYANCE OF SOUTH EAST MISSOURI MENTAL HEALTH CENTER PROPERTY IN FARMINGTON TO MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, convey, remise, release and forever quitclaim all interest of the state of Missouri in property located at the South East Missouri Mental Health Center located in Farmington, St. Francois County to Missouri Highways and Transportation Commission, described as follows:

A tract of land lying and being situated in part of Lots 76, 77, and 80 of F.W. Rohland Subdivision of United States Survey 2969, a Subdivision filed for record in Deed Book F at Page 441, Township 35 North, Range 5 East of the Fifth Principal Meridian, City of Farmington, County of St. Francois, State of Missouri being more particularly described as follows:

Commence at a found No. 5 rebar marking the Northwest corner of Lot 62 of said F.W. Rohland Subdivision; thence S36 deg. 46 min. 52 sec. W a distance of 1905.27 feet to a Point, 55.00 feet right of Route 221 centerline station 796+00.00,

said point being located on the existing Southerly MHTC (Missouri Highways and Transportation Commission) Boundary line of Route 221 and being the Point of Beginning; thence departing from said MHTC Boundary line; thence S 40 deg. 14 min. 38 sec. W a distance of 304.18 feet to a set Point, 185.00 feet right of Route 221 centerline station 793+25.00; thence S 33 deg. 16 min. 10 sec. W a distance of 224.72 feet to a set Point, 305.00 feet right of Route 221 centerline station 791+35.00; thence S 56 deg. 11 min. 56 sec. W a distance of 86.14 feet to a set Point, 318.99 feet right of Route 221 centerline station 790+50.00; thence N 12 deg. 19 min. 44 sec. E a distance of 225.83 feet to a found Steel MHTC Boundary Marker, 138.13 feet right of Route 221 centerline station 791+85.22; thence N 40 deg. 49 min. 53 sec. E a distance of 127.55 feet to a found Steel MHTC Boundary Marker, 84.80 feet right of Route 221 centerline station 793+01.09; thence N 59 deg. 51 min. 09 sec. E a distance of 300.39 feet to the Point of Beginning, containing 0.95 acres, more or less.

Also, all abutters' rights of direct access between the highway now known as State Rte. 67 and grantor's abutting land in part of Lots 76, 77, and 80 of F.W. Rohland Subdivision of United States Survey 2969, a Subdivision filed for record in Deed Book F at Page 441, Township 35 North, Range 5 East of the Fifth Principal Meridian, City of Farmington, County of St. Francois, State of Missouri.

Also, all abutters' rights of direct access between the exit ramp now known as Ramp 3 and grantor's abutting land in part of Lots 76, 77, and 80 of F.W. Rohland Subdivision of United States Survey 2969, a Subdivision filed for record in Deed Book F at Page 441, Township 35 North, Range 5 East of the Fifth Principal Meridian, City of Farmington, County of St. Francois, State of Missouri. Said Ramp 3 being an exit ramp connecting the northbound lane of the highway now known as State Rte 67 to the highway now designated State Rte. 221, formerly known as State Rte. W.

Also, all abutters' rights of direct access between the highway now designated State Rte. 221, formerly known as State Rte. W and grantor's abutting land in part of Lots 76, 77, and 80 of F.W. Rohland Subdivision of United States Survey 2969, a Subdivision filed for record in Deed Book F at Page 441, Township 35 North, Range 5 East of the Fifth Principal Meridian, City of Farmington, County of St. Francois, State of Missouri.

2. The commissioner of administration shall set the terms and conditions for the conveyance as the commissioner deems reasonable. Such terms and conditions may include, but not be limited to, the number of appraisals required, the time, place, and terms of the conveyance.

3. The attorney general shall approve as to form the instrument of conveyance.

SECTION 25. REAUTHORIZATION OF CONVEYANCE OF SOUTH EAST MISSOURI MENTAL HEALTH CENTER PROPERTY IN FARMINGTON. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, convey, remise, release and forever quitclaim all interest of the state of Missouri in property located at the South East Missouri Mental Health Center located in Farmington, St. Francois County, which was previously authorized by the 95th General Assembly, Second Regular Session in House Bill 2285 in 2010 but contained an error in the legal description and is now corrected and described as follows:

A tract of land situated in the city of Farmington, County of St. Francois and the State of Missouri, lying in part of Lots 76, 77 and 80 of F.W. Rohland Subdivision of United States Survey 2969, a Subdivision filed for record in Deed

Book F at Page 441 of the Land records of St. Francois County, Missouri, described as follows:

Commencing at a found No. 5 rebar marking the Northwest corner of Lot 62 of said F.W. Rohland Subdivision, thence South 36°46'10" West 1905.10' to a found right-of-way marker on the South right-of-way of Columbia Street (Missouri Highway 221) and the Northwest corner of the United States Army Reserve Center, the POINT OF BEGINNING of the tract herein described: thence along the West line of said Army Reserve Center South 24°38'52" East 498.03' to a found No. 5 rebar marking the Southwest corner of said Army Reserve Center; thence South 16°01'44" West 238.03' to a point; thence South 25°42'29" West 2024.68' to a point; thence North 81°56'11" West 30.03' to a point on the East right-of-way of U.S. Highway 67; thence along said East right-of-way of said Highway 67 North 03°47'30" East 36.31' to a point; thence continuing along said East right-of-way North 14°42'22" East 131.51' to a point; thence continuing along said East right-of-way North 03°26'38" West 201.66' to a found right-of-way marker; then continuing along said East right-of-way North 03°45'45" East 952.18' to a point; thence continuing along said East right-of-way North 12°19'49" East 961.53' to a found right-of-way marker on the East right-of-way of U.S. Highway 67 and the South right-of-way of Columbia Street (Missouri Highway 221); thence along said South right-of-way North 40°51'00" East 127.36' to a found right-of-way marker; thence continuing along said South right-of-North 59°52'29" East 300.57' to the point of beginning. Containing 23.96 acres, more or less. Being part of Deed Book 343 at Page 441 and excluding the following 0.95 acres more or less to be conveyed to the Missouri Highways and Transportation Commission and described as follows:

A tract of land lying and being situated in part of Lots 76, 77, and 80 of F.W. Rohland Subdivision of United States Survey 2969, a Subdivision filed for record in Deed Book F at Page 441, Township 35 North, Range 5 East of the Fifth Principal Meridian, City of Farmington, County of St. Francois, State of Missouri being more particularly described as follows:

Commence at a found No. 5 rebar marking the Northwest corner of Lot 62 of said F.W. Rohland Subdivision; thence S36 deg. 46 min. 52 sec. W a distance of 1905.27 feet to a Point, 55.00 feet right of Route 221 centerline station 796+00.00, said point being located on the existing Southerly MHTC (Missouri Highways and Transportation Commission) Boundary line of Route 221 and being the Point of Beginning; thence departing from said MHTC Boundary line; thence S 40 deg. 14 min. 38 sec. W a distance of 304.18 feet to a set Point, 185.00 feet right of Route 221 centerline station 793+25.00; thence S 33 deg. 16 min. 10 sec. W a distance of 224.72 feet to a set Point, 305.00 feet right of Route 221 centerline station 791+35.00; thence S 56 deg. 11 min. 56 sec. W a distance of 86.14 feet to a set Point, 318.99 feet right of Route 221 centerline station 790+50.00; thence N 12 deg. 19 min. 44 sec. E a distance of 225.83 feet to a found Steel MHTC Boundary Marker, 138.13 feet right of Route 221 centerline station 791+85.22; thence N 40 deg. 49 min. 53 sec. E a distance of 127.55 feet to a found Steel MHTC Boundary Marker, 84.80 feet right of Route 221 centerline station 793+01.09; thence N 59 deg. 51 min. 09 sec. E a distance of 300.39 feet to the Point of Beginning, containing 0.95 acres, more or less.

Also, all abutters' rights of direct access between the highway now known as State Rte. 67 and grantor's abutting land in part of Lots 76, 77, and 80 of F.W. Rohland Subdivision of United States Survey 2969, a Subdivision filed for record in Deed Book F at Page 441, Township 35 North, Range 5 East of the Fifth

Principal Meridian, City of Farmington, County of St. Francois, State of Missouri.

Also, all abutters' rights of direct access between the exit ramp now known as Ramp 3 and grantor's abutting land in part of Lots 76, 77, and 80 of F.W. Rohland Subdivision of United States Survey 2969, a Subdivision filed for record in Deed Book F at Page 441, Township 35 North, Range 5 East of the Fifth Principal Meridian, City of Farmington, County of St. Francois, State of Missouri. Said Ramp 3 being an exit ramp connecting the northbound lane of the highway now known as State Rte 67 to the highway now designated State Rte. 221, formerly known as State Rte. W.

Also, all abutters' rights of direct access between the highway now designated State Rte. 221, formerly known as State Rte. W and grantor's abutting land in part of Lots 76, 77, and 80 of F.W. Rohland Subdivision of United States Survey 2969, a Subdivision filed for record in Deed Book F at Page 441, Township 35 North, Range 5 East of the Fifth Principal Meridian, City of Farmington, County of St. Francois, State of Missouri.

2. The commissioner of administration shall set the terms and conditions for the conveyance as the commissioner deems reasonable. Such terms and conditions may include, but not be limited to, the number of appraisals required, the time, place, and terms of the conveyance.

3. The attorney general shall approve as to form the instrument of conveyance.

SECTION 26. CONVEYANCE OF NATIONAL GUARD PROPERTY IN CENTERTOWN. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, convey, remise, release and forever quitclaim all interest of the state of Missouri in property located at the National Guard site located in Centertown, Cole County, Missouri, described as follows:

Lots Nos. 2, 3 and 4, in Block No. 1, in Flessa's Addition to the town of Centertown, Missouri;

ALSO: Lots Nos. 1, 2, 3 and 4, in Block No. 4, in Flessa's Addition to the town of Centertown, Missouri;

ALSO: The northwest corner of the Northeast quarter of the Southwest quarter of Section 25, Township 45, Range 14, more particularly described as follows: Beginning at the northwest corner of the aforesaid forty; thence south 225 feet, to the south line of Locust Street in the town of Centertown, Missouri; thence east 310 feet; thence north 225 feet, to the north line of the aforesaid forty; thence west 310 feet, to the point of beginning.

ALSO: The southwest corner of the Southeast quarter of the Northwest quarter of Section 25, Township 45, Range 14, more particularly described as follows: Beginning at the southwest corner of the aforesaid forty; thence east 310 feet; thence north 339 feet; thence west 310 feet, to the west line of the aforesaid forty; thence south 339 feet, to the point of beginning.

All in Cole County, Missouri.

Subject to easements and restrictions of record, if any.

2. The commissioner of administration shall set the terms and conditions for the conveyance as the commissioner deems reasonable. Such terms and conditions may include, but not be limited to, the number of appraisals required, the time, place, and terms of the conveyance.

3. The attorney general shall approve as to form the instrument of conveyance.

SECTION 27. CONVEYANCE OF A PERMANENT DRAINAGE EASEMENT ON STATE SCHOOL FOR THE SEVERELY DISABLED PROPERTY IN JOPLIN. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, convey a permanent drainage easement

over, on and under property owned by the state of Missouri located at the Department of Mental Health Regional Office and the Department of Elementary and Secondary Education State School for the Severely Disabled located in Joplin, Jasper County Missouri, described as follows, to-wit:

A tract of land in the S.E. Quarter Of Section 31 Township 28 Range 32 West in the City of Joplin, Jasper County, Missouri, and being a part of the lands of the State of Missouri described in Book 1185 Page 2082 of the Jasper County Land Records;

Commencing at a 1/2" rebar survey monument with Anderson Engineering's survey cap found thereon; Said monument being on the Southern boundary line of College Skyline Addition, a Subdivision in the City of Joplin; Said monument also being 800.00' E. of the N.W. corner of the S.W. Quarter of the S.E. Quarter of said Section; Said monument also being the N.E. corner of the aforesaid lands of the State of Missouri described in Book 1185 Page 2082 of the Jasper County Land Records;

THENCE: Bearing N.8907'45"W. 326.74' along the Southern boundary line of College Skyline Addition to a point;

Said point being the POINT OF BEGINNING;

COURSE 1: Thence departing said Southern boundary line along a curve to the left as follows: arc length 76.25', arc radius 80.00', chord bearing S.24 56'55"E., chord distance 73.39' to a point;

COURSE 2: Thence Bearing S.52 15'09"E. 347.20' to a point;

COURSE 3: Thence along a curve to the right as follows: arc length 17.24', arc radius 120.00', chord bearing S.48°08'16"E., chord distance 17.22' to a point on the Western boundary line of the lands of Missouri Southern State University;

COURSE 4: Thence continuing along said Western boundary line of the lands of said University, bearing S.01°40'52"W. 93.52' to a point;

COURSE 5: Thence departing said Western boundary line, bearing N.37°37'59"W. 59.00' to a point;

COURSE 6: Thence along a curve to the left as follows: arc length 15.31', arc radius 60.00', chord bearing N.44°56'34"W., chord distance 15.27' to a point;

COURSE 7: Thence bearing N.52°15'09"W. 347.20' to a point;

COURSE 8: Thence along a curve to the right as follows: arc length 131.88', arc radius 140.00', chord bearing N.25°16'00"W., chord distance 127.06' to a point on the Southern boundary line of College Skyline Addition;

COURSE 9: Thence bearing S.89°07'45"E. 60.01' along said Southern boundary line to a point; Said point being the POINT OF BEGINNING;

Containing 0.4727 acres, more-or-less, or 20,593 square feet.

2. The commissioner of administration shall set the terms and conditions for the conveyance as the commissioner deems reasonable. Such terms and conditions may include, but not be limited to, the number of appraisals required, the time, place, and terms of the conveyance.

3. The attorney general shall approve as to form the instrument of conveyance.

SECTION B. EMERGENCY CLAUSE. — Because immediate action is necessary to generate revenue from the sale of state property, section A of this act are deemed necessary for the immediate preservation of the public health, welfare, peace, and safety, and are hereby declared

to be an emergency act within the meaning of the constitution, and section A of this act shall be in full force and effect upon its passage and approval.

Approved July 8, 2011

SB 97 [HCS#2 SB 97]

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

Conveys certain property owned by the state.

AN ACT to authorize the conveyance of real property owned by the state.

SECTION

1. Conveyance of state property in Farmington to the City of Farmington.
2. Conveyance of state property in Farmington to the Missouri Highways and Transportation Commission.
3. Conveyance of Southeast Missouri State University property in Cape Girardeau to the Cape Area Habitat for Humanity.
4. Conveyance of state property in Callaway County to the City of Fulton.

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

SECTION 1. CONVEYANCE OF STATE PROPERTY IN FARMINGTON TO THE CITY OF FARMINGTON. — 1. The governor is hereby authorized and empowered to give, sell, transfer, grant, bargain, convey, remise, release, and forever quitclaim all interest of the state of Missouri in real property located in the City of Farmington, St. Francois County, Missouri, to the City of Farmington, Missouri. The property to be conveyed is more particularly described as follows:

A tract of land lying and being situated in part of Lots 76, 77, and 80 of F.W. Rohland Subdivision of United States Survey 2969, a Subdivision filed for record in Deed Book F at Page 441, Township 35 North, Range 5 East of the Fifth Principal Meridian, City of Farmington, County of St. Francois, State of Missouri being more particularly described as follows:

Commence at a found No. 5 rebar marking the Northwest corner of Lot 62 of said F.W. Rohland Subdivision; thence S 36 deg. 46 min. 52 sec. W a distance of 1905.27 feet to a Point, 55.00 feet right of Route 221 centerline station 796+00.00, said point being located on the existing Southerly MHTC (Missouri Highways and Transportation Commission) Boundary line of Route 221 and being the Point of Beginning; From the Point of Beginning S 24 deg. 38 min. 52 sec. E, a distance of 498.03 feet; thence S 16 deg. 01 min. 44 sec. E, 238.03 feet; thence S 25 deg. 42 min. 49 sec. W, 2024.68 feet; thence N 81 deg. 56 min. 11 sec. W, 30.15 feet; thence N 03 deg. 45 min. 57 sec. E, 36.31 feet; thence N 14 deg. 32 min. 57 sec. E, 133.50 feet; thence N 03 deg. 21 min. 42 sec. W, 201.56 feet; thence N 03 deg. 45 min. 48 sec. E, 950.30 feet; thence N 12 deg. 19 min. 44 sec. E, 735.45 feet; thence N 56 deg. 11 min. 56 sec. E, 86.14 feet; thence N 33 deg. 16 min. 10 sec. E, 224.72 feet; thence N 40 deg. 14 min. 38 sec. E, 304.18 feet to the point of beginning and containing 23.01 acres more or less.

2. The commissioner of administration shall set the terms and conditions for the conveyance as the commissioner deems reasonable. Such terms and conditions may include, but not be limited to, the number of appraisals required, and the time, place, and terms of the conveyance.

3. The attorney general shall approve the form of the instrument of conveyance.

SECTION 2. CONVEYANCE OF STATE PROPERTY IN FARMINGTON TO THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION. — 1. The governor is hereby authorized and empowered to give, sell, transfer, grant, bargain, convey, remise, release, and forever quitclaim all interest of the state of Missouri in real property located in the City of Farmington, St. Francois County, Missouri, to the Missouri highways and transportation commission. The property to be conveyed is more particularly described as follows:

A tract of land lying and being situated in part of Lots 76, 77, and 80 of F.W. Rohland Subdivision of United States Survey 2969, a Subdivision filed for record in Deed Book F at Page 441, Township 35 North, Range 5 East of the Fifth Principal Meridian, City of Farmington, County of St. Francois, State of Missouri being more particularly described as follows:

Commence at a found No.5 rebar marking the Northwest Corner of Lot 62 of said F.W. Rohland Subdivision; thence S36 deg. 46 min. 52 sec. W a distance of 1905.27 feet to a Point, 55.00 feet right of Route 221 centerline station 796+00.00, said point being located on the existing Southerly MHTC (Missouri Highways and Transportation Commission) Boundary line of Route 221 and being the Point of Beginning; thence departing from said MHTC Boundary line; thence S 40 deg. 14 min. 38 sec. W a distance of 304.18 feet to a set Point, 185.00 feet right of Route 221 centerline station 793+25.00; thence S 33 deg. 16 min. 10 sec. W a distance of 224.72 feet to a set Point, 305.00 feet right of Route 221 centerline station 791+35.00; thence S 56 deg. 11 min. 56 sec. W a distance of 86.14 feet to a set Point, 318.99 feet right of Route 221 centerline station 790+50.00; thence N 12 deg. 19 min. 44 sec. E a distance of 225.83 feet to a found Steel MHTC Boundary Marker, 138.13 feet right of Route 221 centerline station 791+85.22; thence N 40 deg. 49 min. 53 sec. E a distance of 127.55 feet to a found Steel MHTC Boundary Marker, 84.80 feet right of Route 221 centerline station 793+01.09; thence N 59 deg. 51 min. 09 sec. E a distance of 300.39 feet to the Point of Beginning, containing 0.95 acres, more or less.

Also, all abutters' rights of direct access between the highway now known as State Rte. 67 and grantor's abutting land in part of Lots 76, 77, and 80 of F.W. Rohland Subdivision of United States Survey 2969, a Subdivision filed for record in Deed Book F at Page 441, Township 35 North, Range 5 East of the Fifth Principal Meridian, City of Farmington, County of St. Francois, State of Missouri.

Also, all abutters' rights of direct access between the exit ramp now known as Ramp 3 and grantor's abutting land in part of Lots 76, 77, and 80 of F.W. Rohland Subdivision of United States Survey 2969, a Subdivision filed for record in Deed Book F at Page 441, Township 35 North, Range 5 East of the Fifth Principal Meridian, City of Farmington, County of St. Francois, State of Missouri. Said Ramp 3 being an exit ramp connecting the northbound lane of the highway now known as State Rte 67 to the highway now designated State Rte. 221, formerly known as State Rte. W.

Also, all abutters' rights of direct access between the highway now designated State Rte. 221, formerly known as State Rte. W and grantor's abutting land in part of Lots 76, 77, and 80 of F.W. Rohland Subdivision of United States Survey 2969, a Subdivision filed for record in Deed Book F at Page 441, Township 35 North, Range 5 East of the Fifth Principal Meridian, City of Farmington, County of St. Francois, State of Missouri.

2. The commissioner of administration shall set the terms and conditions for the conveyance as the commissioner deems reasonable. Such terms and conditions may include, but not be limited to, the number of appraisals required, and the time, place, and

terms of the conveyance. Consideration for the conveyance shall be as negotiated by the parties.

3. The attorney general shall approve the form of the instrument of conveyance.

SECTION 3. CONVEYANCE OF SOUTHEAST MISSOURI STATE UNIVERSITY PROPERTY IN CAPE GIRARDEAU TO THE CAPE AREA HABITAT FOR HUMANITY. — 1. The board of regents of Southeast Missouri State University is hereby authorized and empowered to sell, transfer, grant, and convey all interest in fee simple absolute in property owned by Southeast Missouri State University in the City of Cape Girardeau to the Cape Area Habitat for Humanity. The property to be conveyed is located at 319 S. Ellis in the City of Cape Girardeau and is more particularly described as follows:

All of the North 50 feet of lot 70 in range H in the City of Cape Girardeau.

2. The parties shall negotiate and set the terms and conditions for the conveyance. Such terms and conditions may include, but are not limited to, the number of appraisals required, the time, place, and terms of the conveyance.

3. The attorney general shall approve the form of the instrument of conveyance.

SECTION 4. CONVEYANCE OF STATE PROPERTY IN CALLAWAY COUNTY TO THE CITY OF FULTON. — 1. The governor is hereby authorized and empowered to sell, transfer, grant, and convey all interest in fee simple absolute in property owned by the state in Callaway County to the City of Fulton. The property to be conveyed is more particularly described as follows:

Part of Section 16 in Township 47 North, Range 9 West, in the City of Fulton, Callaway County, Missouri, more particularly described as follows:

TRACT 1: Commencing at the northwest corner of the Northeast Quarter of the Southwest Quarter of said Section 16; thence S1°34'55"W, along the Quarter-Quarter Section Line, 1553.12 feet to the southerly right of way of Missouri State Route "O", as described in Book 154, Page 119, Callaway County Recorder's Office; thence S89°01'33"E, along the southerly right of way of said Missouri State Route "O", 525.24 feet; thence on a curve to the left having a radius of 1940.39 feet, an arc distance of 11.95 feet (Ch=S89°12'08"E, 11.95 feet) to the POINT OF BEGINNING for this description; thence continuing along the southerly right of way line of said Missouri State Route "O" the following courses and distances: on a curve to the left having a radius of 1940.39 feet, an arc distance of 388.23 feet (Ch=N84°53'22"E, 387.59 feet); thence N79°09'27"E, 245.94 feet; thence leaving the said Hwy. right of way S04°40'06"E, 77.57 feet; thence on a curve to the right having a radius of 72.00 feet, an arc distance of 61.43 feet (Ch=S19°46'31"W, 59.59 feet); thence on a curve to the left having a radius of 280 feet, an arc distance of 148.34 feet (Ch=S29°02'28"W, 146.62 feet); thence S13°51'49"W, 453.89 feet; thence on a curve to the left having a radius of 270 feet, an arc distance of 212.47 feet (Ch=S08°40'47"E, 207.03 feet); thence S20°19'55"W, 261.02 feet; thence N87°23'57"W, 418.88 feet; thence N02°23'59"E, 1052.77 feet to the point of beginning.

Containing 12.66

TRACT 2: Being a 60 feet wide public right of way, described as follows:

Commending at the Northeast corner of the above described tract; thence continuing N79°09'27"E, 47.86 feet; thence on a curve to the right having a radius of 686.52 feet, an arc distance of 12.48 feet (Ch=N79°40'39"E, 12.48 feet); thence leaving the said Hwy. right of way S04°40'06"E, 83.94 feet; thence on a curve to the right having a radius of 132.00 feet, an arc distance of 112.63 feet (Ch=S19°41'06"W, 108.87 feet); thence on a curve to the left having a radius of 220.00 feet, an arc distance of 116.56 feet (Ch=S29°05'42"W, 115.60 feet); thence

S13°51'49"E, 435.89 feet; thence on a curve to the left having a radius of 210.00 feet, an arc distance of 111.64 feet (Ch=S01°21'56"E, 110.33 feet); thence S20°19'55"W, 85.30 feet to a point; thence on a curve to the right having a radius of 270.00 feet, an arc distance of 212.47 feet (Ch=N08°40'47"W, 207.03 feet); thence N13°51'49"E, 453.89 feet; thence on a curve to the right having a radius of 280.00 feet, an arc distance of 148.34 feet (Ch=N29°02'28"E, 146.62 feet); thence on a curve to the left having a radius of 72.00 feet, an arc distance of 61.43 feet (Ch=N19°46'31"E, 59.59 feet); thence N04°40'06"W, 77.57 feet to the point of beginning.

Containing 1.26

2. The commissioner of administration shall set the terms and conditions for the conveyance as the commissioner deems reasonable. Such terms and conditions may include, but are not limited to, the number of appraisals required, the time, place, and terms of the conveyance.

3. The attorney general shall approve the form of the instrument of conveyance.

Approved July 8, 2011

SB 101 [SB 101]

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

Creates requirements for contractors who perform home exterior and roof work.

AN ACT to amend chapter 407, RSMo, by adding thereto one new section relating to home exterior contractors, with penalty provisions.

SECTION

A. Enacting clause.

407.725. Work and services for insured persons, contractors not to induce sales — cancellation of contracts, requirements, contractor duties — violations, penalty.

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

SECTION A. ENACTING CLAUSE. — Chapter 407, RSMo, is amended by adding thereto one new section, to be known as section 407.725, to read as follows:

407.725. WORK AND SERVICES FOR INSURED PERSONS, CONTRACTORS NOT TO INDUCE SALES — CANCELLATION OF CONTRACTS, REQUIREMENTS, CONTRACTOR DUTIES — VIOLATIONS, PENALTY. — 1. As used in this section, the following terms mean:

(1) "Residential contractor", a person or entity in the business of contracting or offering to contract with an owner or possessor of residential real estate to repair or replace roof systems or perform any other exterior repair, replacement, construction, or reconstruction work on residential real estate;

(2) "Residential real estate", a new or existing building constructed for habitation by one to four families, including detached garages;

(3) "Roof system", includes roof coverings, roof sheathing, roof weatherproofing, and insulation.

2. A residential contractor shall not advertise or promise to pay or rebate all or any portion of any insurance deductible as an inducement to the sale of goods or services. As used in this section, a promise to pay or rebate includes granting any allowance or offering

any discount against the fees to be charged or paying the insured or any person directly or indirectly associated with the property any form of compensation, gift, prize, bonus, coupon, credit, referral fee, or other item of monetary value for any reason.

3. A person who has entered into a written contract with a residential contractor to provide goods or services to be paid under a property and casualty insurance policy may cancel the contract prior to midnight on the fifth business day after the insured party has received written notice from the insurer that all or any part of the claim or contract is not a covered loss under the insurance policy. Cancellation shall be evidenced by the insured party giving written notice of cancellation to the residential contractor at the address stated in the contract. Notice of cancellation, if given by mail, shall be effective upon deposit into the United States mail, postage prepaid and properly addressed to the residential contractor. Notice of cancellation need not take a particular form and shall be sufficient if it indicates, by any form of written expression, the intention of the insured party not to be bound by the contract.

4. Before entering a contract referred to in subsection 3 of this section, the residential contractor shall:

(1) Furnish the insured party a statement in boldface type of a minimum size of ten points, in substantially the following form:

> **"You may cancel this contract at any time before midnight on the fifth business day after you have received written notification from your insurer that all or any part of the claim or contract is not a covered loss under the insurance policy. See attached notice of cancellation form for an explanation of this right."; and**

(2) Furnish each insured a fully completed form in duplicate, captioned "NOTICE OF CANCELLATION", which shall be attached to the contract but easily detachable, and which shall contain, in boldface type of a minimum size of ten points, the following statement:

"NOTICE OF CANCELLATION

If you are notified by your insurer that all or any part of the claim or contract is not a covered loss under the insurance policy, you may cancel the contract by mailing or delivering a signed and dated copy of this cancellation notice or any other written notice to (name of contractor) at (address of contractor's place of business) at any time prior to midnight on the fifth business day after you have received such notice from your insurer. If you cancel, any payments made by you under the contract, except for certain emergency work already performed by the contractor, will be returned to you within ten business days following receipt by the contractor of your cancellation notice.

I HEREBY CANCEL THIS TRANSACTION

_____

(date)

_____

(insured's signature)".

5. Within ten days after a contract referred to in subsection 3 of this section has been cancelled, the contractor shall tender to the owner or possessor of residential real estate any payments, partial payments, or deposits made and any note or other evidence of indebtedness. If, however, the contractor has performed any emergency services, acknowledged by the insured in writing to be necessary to prevent damage to the premises, the contractor shall be entitled to the reasonable value of such services. Any provision in a contract referred to in subsection 3 of this section that requires the payment of any fee for anything except emergency services shall not be enforceable against the owner or possessor of residential real estate who has cancelled a contract pursuant to this section.

6. A residential contractor shall not represent or negotiate, or offer or advertise to represent or negotiate, on behalf of an owner or possessor of residential real estate on any insurance claim in connection with the repair or replacement of roof systems, or the performance of any other exterior repair, replacement, construction, or reconstruction work.

7. Any violation of this section by a residential contractor shall be considered an unfair practice pursuant to the Missouri merchandising practices act as codified in this chapter.

Approved June 30, 2011

SB 108 [SCS SB 108]

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

Removes the expiration date for provisions of law concerning the installation of fire sprinklers in certain dwellings.

AN ACT to repeal section 67.281 as enacted by senate substitute no. 2 for senate committee substitute for house bill no. 103, ninety-fifth general assembly, first regular session, and section 67.281 as enacted by conference committee substitute for senate bill no. 513, ninety-fifth general assembly, first regular session, and to enact in lieu thereof one new section relating to the installation of fire sprinklers in certain dwellings.

SECTION

A. Enacting clause.

67.281. Installation of fire sprinklers to be offered to purchaser by builder of certain dwellings — purchaser may decline — expiration date.

67.281. Installation of fire sprinklers to be offered to purchaser by builder of certain dwellings — purchaser may decline — expiration date.

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

SECTION A. ENACTING CLAUSE. — Section 67.281 as enacted by senate substitute no. 2 for senate committee substitute for house bill no. 103, ninety-fifth general assembly, first regular session, and section 67.281 as enacted by conference committee substitute for senate bill no. 513, ninety-fifth general assembly, first regular session, is repealed and one new section enacted in lieu thereof, to be known as section 67.281, to read as follows:

67.281. INSTALLATION OF FIRE SPRINKLERS TO BE OFFERED TO PURCHASER BY BUILDER OF CERTAIN DWELLINGS — PURCHASER MAY DECLINE — EXPIRATION DATE. — 1. A builder of **[**single-family**] one- or two-family** dwellings or **[**residences or multi-unit dwellings of four or fewer units**] townhouses** shall offer to any purchaser on or before the time of entering into the purchase contract the option, at the purchaser's cost, to install or equip fire sprinklers in the dwelling**[**, residence,**]** or **[**unit**] townhouse**. Notwithstanding any other provision of law to the contrary, no purchaser of such a **[**single-family**] one- or two-family** dwelling**[**, residence,**]** or **[**multi-unit dwelling**] townhouse** shall be denied the right to choose or decline to install a fire sprinkler system in such dwelling or **[**residence**] townhouse** being purchased by any code, ordinance, rule, regulation, order, or resolution by any county or other political subdivision. Any county or other political subdivision shall provide in any such code, ordinance, rule, regulation, order, or resolution the mandatory option for purchasers to have the right to choose

and the requirement that builders offer to purchasers the option to purchase fire sprinklers in connection with the purchase of any **[**single family**] one- or two-family** dwelling**[**, residence,**]** or **[**multi-unit dwelling of four or fewer units**] townhouse**. The provisions of this section shall expire on December 31, **[**2011**] 2019**.

2. Any governing body of any political subdivision that adopts the 2009 International Residential Code for One- and Two-Family Dwellings or a subsequent edition of such code without mandated automatic fire sprinkler systems in Section R313 of such code shall retain the language in section R317 of the 2006 International Residential Code for two-family dwellings (R317.1) and townhouses (R317.2).

[67.281. INSTALLATION OF FIRE SPRINKLERS TO BE OFFERED TO PURCHASER BY BUILDER OF CERTAIN DWELLINGS — PURCHASER MAY DECLINE — EXPIRATION DATE. — On or before the date of entering into a purchase contract, any builder of single-family dwellings or residences or multifamily dwellings of four or fewer units shall offer to any purchaser the option to install or equip such dwellings or residences with a fire sprinkler system at the purchaser's cost. Notwithstanding any other provision of law to the contrary, no code, order, ordinance, rule, regulation, or resolution adopted by any political subdivision shall be construed to deny any purchaser of any such dwelling or residence the option to choose or decline the installation or equipping of such dwelling or residence with a fire sprinkler system. Any code, order, ordinance, rule, regulation, or resolution adopted by any political subdivision shall include a provision requiring each builder to provide each purchaser of any such dwelling or residence with the option of purchasing a fire sprinkler system for such dwelling or residence. This section shall expire on December 31, 2011.**]**

Approved April 29, 2011

SB 113 [SS SCS SBs 113 & 95]

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

Modifies the Puppy Mill Cruelty Prevention Act.

AN ACT to repeal sections 273.327 and 273.345, RSMo, and to enact in lieu thereof four new sections relating to the care of dogs, with penalty provisions.

SECTION

A. Enacting clause.
273.327. License annually required to operate animal boarding facilities, pet shops, pounds, dealers and commercial breeders — fees, exemption from fees for certain licensees.
273.345. Canine Cruelty Prevention Act — citation of law — purpose — required care — definitions — veterinary records — space requirements — severability clause.
273.347. Court action for enforcement, when — crime of canine cruelty, penalty.
1. Stacked cages without impervious barrier prohibited, penalty.

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

SECTION A. ENACTING CLAUSE. — Sections 273.327 and 273.345, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 273.327, 273.345, 273.347, and 1, to read as follows:

273.327. LICENSE ANNUALLY REQUIRED TO OPERATE ANIMAL BOARDING FACILITIES, PET SHOPS, POUNDS, DEALERS AND COMMERCIAL BREEDERS — FEES, EXEMPTION FROM FEES FOR CERTAIN LICENSEES. — No person shall operate an animal shelter, pound or dog pound, boarding kennel, commercial kennel, contract kennel, pet shop, or exhibition facility, other than a limited show or exhibit, or act as a dealer or commercial breeder, unless such person has obtained a license for such operations from the director. An applicant shall obtain a separate license for each separate physical facility subject to sections 273.325 to 273.357 which is operated by the applicant. Any person exempt from the licensing requirements of sections 273.325 to 273.357 may voluntarily apply for a license. Application for such license shall be made in the manner provided by the director. The license shall expire annually unless revoked. As provided by rules to be promulgated by the director, the license fee shall range from one hundred to **two thousand** five hundred dollars per year. **Each licensee subject to sections 273.325 to 273.357 shall pay an additional annual fee of twenty-five dollars to be used by the department of agriculture for the purpose of administering Operation Bark Alert or any successor program.** Pounds or dog pounds shall be exempt from payment of **[**such fee**]** **the fees under this section**. License fees shall be levied for each license issued or renewed on or after January 1, 1993.

273.345. CANINE CRUELTY PREVENTION ACT — CITATION OF LAW — PURPOSE — REQUIRED CARE — DEFINITIONS — VETERINARY RECORDS — SPACE REQUIREMENTS — SEVERABILITY CLAUSE. — 1. This section shall be known and may be cited as the "**[**Puppy Mill**]** **Canine** Cruelty Prevention Act."

2. The purpose of this act is to prohibit the cruel and inhumane treatment of dogs **[**in puppy mills**]** **bred in large operations** by requiring large-scale dog breeding operations to provide each dog under their care with basic food and water, adequate shelter from the elements, necessary veterinary care, adequate space to turn around and stretch his or her limbs, and regular exercise.

3. Notwithstanding any other provision of law, any person having custody or ownership of more than ten female covered dogs for the purpose of breeding those animals and selling any offspring for use as a pet shall provide each covered dog:

(1) Sufficient food and clean water;

(2) Necessary veterinary care;

(3) Sufficient housing, including protection from the elements;

(4) Sufficient space to turn and stretch freely, lie down, and fully extend his or her limbs;

(5) Regular exercise; and

(6) Adequate rest between breeding cycles.

4. **[**Notwithstanding any other provision of law, no person may have custody of more than fifty covered dogs for the purpose of breeding those animals and selling any offspring for use as a pet.

5.**]** For purposes of this section and notwithstanding the provisions of section 273.325, the following terms have the following meanings:

(1) "Adequate rest between breeding cycles" means, at minimum, ensuring that **female** dogs are not bred to produce more **[**than two**]** litters in any **[**eighteen-month**]** **given** period **than what is recommended by a licensed veterinarian as appropriate for the species, age, and health of the dog**;

(2) "Covered dog" means any individual of the species of the domestic dog, Canis lupus familiaris, or resultant hybrids, that is over the age of six months and has intact sexual organs;

(3) "Necessary veterinary care" means**[**, at minimum, examination at least once yearly**]** **at least two personal visual inspections annually** by a licensed veterinarian, **guidance from a licensed veterinarian on preventative care, an exercise plan that has been approved by a licensed veterinarian, normal and prudent attention to skin, coat, and nails,** prompt treatment of any illness or injury **[**by a licensed veterinarian**]**, and where needed, humane euthanasia by a licensed veterinarian using lawful techniques deemed acceptable by the

American Veterinary Medical Association**. If, during the course of a routine personal visual inspection, the licensed veterinarian detects signs of disease or injury, then a physical examination of any such afflicted dog shall be conducted by a licensed veterinarian**;

(4) "Person" means any individual, firm, partnership, joint venture, association, limited liability company, corporation, estate, trust, receiver, or syndicate;

(5) "Pet" means any **[**domesticated animal**] species of the domestic dog, Canis lupus familiaris, or resultant hybrids,** normally maintained in or near the household of the owner thereof;

(6) "Regular exercise" means **[**constant and unfettered access to an outdoor exercise area that is composed of a solid ground-level surface with adequate drainage, provides some protection against sun, wind, rain, and snow, and provides each dog at least twice the square footage of the indoor floor space provided to that dog**] the type and amount of exercise sufficient to comply with an exercise plan that has been approved by a licensed veterinarian, developed in accordance with regulations regarding exercise promulgated by the Missouri department of agriculture, and where such plan affords the dog maximum opportunity for outdoor exercise as weather permits**;

(7) "Retail pet store" means a person or retail establishment open to the public where dogs are bought, sold, exchanged, or offered for retail sale directly to the public to be kept as pets, but that does not engage in any breeding of dogs for the purpose of selling any offspring for use as a pet;

(8) "Sufficient food and clean water" means **[**access to appropriate nutritious food at least once a day sufficient to maintain good health, and continuous access to potable water that is not frozen and is free of debris, feces, algae, and other contaminants**]:**

(a) The provision, at suitable intervals of not more than twelve hours, unless the dietary requirements of the species requires a longer interval, of a quantity of wholesome foodstuff, suitable for the species and age, enough to maintain a reasonable level of nutrition in each animal. All foodstuffs shall be served in a safe receptacle, dish, or container; and

(b) The provision of a supply of potable water in a safe receptacle, dish, or container. Water shall be provided continuously or at intervals suitable to the species, with no interval to exceed eight hours;

(9) "Sufficient housing, including protection from the elements" means **[**constant and unfettered access to an indoor enclosure that has a solid floor, is not stacked or otherwise placed on top of or below another animal's enclosure, is cleaned of waste at least once a day while the dog is outside the enclosure, and does not fall below forty-five degrees Fahrenheit, or rise above eighty-five degrees Fahrenheit**] the continuous provision of a sanitary facility, the provision of a solid surface on which to lie in a recumbent position, protection from the extremes of weather conditions, proper ventilation, and appropriate space depending on the species of animal as required by regulations of the Missouri department of agriculture. No dog shall remain inside its enclosure while the enclosure is being cleaned. Dogs housed within the same enclosure shall be compatible, in accordance with regulations promulgated by the Missouri department of agriculture**;

(10) "Sufficient space to turn and stretch freely, lie down, and fully extend his or her limbs" means **[**having:

(a) Sufficient indoor space for each dog to turn in a complete circle without any impediment (including a tether);

(b) Enough indoor space for each dog to lie down and fully extend his or her limbs and stretch freely without touching the side of an enclosure or another dog;

(c) At least one foot of headroom above the head of the tallest dog in the enclosure; and

(d) At least twelve square feet of indoor floor space per each dog up to twenty-five inches long, at least twenty square feet of indoor floor space per each dog between twenty-five and thirty-five inches long, and at least thirty square feet of indoor floor space per each dog for dogs

thirty-five inches and longer (with the length of the dog measured from the tip of the nose to the base of the tail)**] appropriate space depending on the species of the animal, as specified in regulations by the Missouri department of agriculture, as revised**.

[6. A person is guilty of the crime of puppy mill cruelty when he or she knowingly violates any provision of this section. The crime of puppy mill cruelty is a class C misdemeanor, unless the defendant has previously pled guilty to or been found guilty of a violation of this section, in which case each such violation is a class A misdemeanor. Each violation of this section shall constitute a separate offense. If any violation of this section meets the definition of animal abuse in section 578.012, the defendant may be charged and penalized under that section instead.

7.**] 5. Any person subject to the provisions of this section shall maintain all veterinary records and sales records for the most recent previous two years. These records shall be made available to the state veterinarian, a state or local animal welfare official, or a law enforcement agent upon request.**

6. The provisions of this section are in addition to, and not in lieu of, any other state and federal laws protecting animal welfare. This section shall not be construed to limit any state law or regulation protecting the welfare of animals, nor shall anything in this section prevent a local governing body from adopting and enforcing its own animal welfare laws and regulations in addition to this section. This section shall not be construed to place any numerical limits on the number of dogs a person may own or control when such dogs are not used for breeding those animals and selling any offspring for use as a pet. This section shall not apply to a dog during examination, testing, operation, recuperation, or other individual treatment for veterinary purposes, during lawful scientific research, during transportation, during cleaning of a **[**dogs**] dog's** enclosure, during supervised outdoor exercise, or during any emergency that places a **[**dogs**] dog's** life in imminent danger. **[**This section shall not apply to any retail pet store, animal shelter as defined in section 273.325, hobby or show breeders who have custody of no more than ten female covered dogs for the purpose of breeding those dogs and selling any offspring for use as a pet, or dog trainer who does not breed and sell any dogs for use as a pet.**]** Nothing in this section shall be construed to limit hunting or the ability to breed, raise, **[**or**]** sell **[**hunting**], control, train, or possess** dogs **with the intention to use such dogs for hunting or other sporting purposes**.

[8.**] 7.** If any provision of this section, or the application thereof to any person or circumstances, is held invalid or unconstitutional, that invalidity or unconstitutionality shall not affect other provisions or applications of this section that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this section are severable.

[9.**] 8.** The provisions herewith shall become operative one year after passage of this act.

273.347. COURT ACTION FOR ENFORCEMENT, WHEN — CRIME OF CANINE CRUELTY, PENALTY. — 1. Whenever the state veterinarian or a state animal welfare official finds past violations of sections 273.325 to 273.357 have occurred and have not been corrected or addressed, including operating without a valid license under section 273.327, the director may request the attorney general or the county prosecuting attorney or circuit attorney to bring an action in circuit court in the county where the violations have occurred for a temporary restraining order, preliminary injunction, permanent injunction, or a remedial order enforceable in a circuit court to correct such violations and, in addition, the court may assess a civil penalty in an amount not to exceed one thousand dollars for each violation. Each violation shall constitute a separate offense.

2. A person commits the crime of canine cruelty if such person repeatedly violates sections 273.325 to 273.357 so as to pose a substantial risk to the health and welfare of animals in such person's custody, or knowingly violates an agreed-to remedial order involving the safety and welfare of animals under this section. The crime of canine cruelty is a class C misdemeanor, unless the person has previously pled guilty or nolo contendere

to or been found guilty of a violation of this subsection, in which case, each such violation is a class A misdemeanor.

3. The attorney general or the county prosecuting attorney or circuit attorney may bring an action under sections 273.325 to 273.357 in circuit court in the county where the crime has occurred for criminal punishment.

4. No action under this section shall prevent or preclude action taken under section 578.012 or under subsection 3 of section 273.329.

SECTION 1. STACKED CAGES WITHOUT IMPERVIOUS BARRIER PROHIBITED, PENALTY. — Any person required to have a license under sections 273.325 to 273.357 who houses animals in stacked cages without an impervious barrier between the levels of such cages, except when cleaning such cages, is guilty of a class A misdemeanor.

Approved April 27, 2011

SB 117 [CCS HCS#2 SCS SB 117]

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

Allows the imposition of a hospital district sales tax in lieu of a property tax to fund certain hospital districts.

AN ACT to repeal sections 67.1303, 67.1521, 94.900, 140.410, 140.660, 144.032, RSMo, and to enact in lieu thereof eight new sections relating to certain taxes imposed by political subdivisions, with an emergency clause for certain sections.

SECTION

A. Enacting clause.
67.1303. Sales tax authorized in certain cities and counties, rate — ballot, effective date — use of revenue, limitations — deposit of funds — economic development tax board required, membership, terms — board duties — annual report — repeal.
67.1521. Special assessments, petition, funds, how collected — added to annual real estate bill, Boone County.
94.585. Sales tax authorized (Excelsior Springs) — ballot language — deposit of revenue generated — repeal, procedure — board established, duties — limitation on refinancing.
94.900. Sales tax authorized (Blue Springs, Excelsior Springs, Harrisonville, Peculiar, St. Joseph) — proceeds to be used for public safety purposes — ballot language — collection of tax, procedure.
140.410. Execution and record of deed by purchaser — failure — assignment prohibited, when — recording fee required, when.
144.032. Cities or counties may impose sales tax on utilities — determination of domestic use.
205.205. Hospital district sales tax authorized (Iron and Madison counties) — approval by voters — fund created, use of moneys — repeal of tax, procedure.
1. Sales tax authorized (Columbia) — ballot language — deposit of revenue generated — fund created, purpose — refunds, when.
140.660. Tax commission to prescribe forms, interpret laws.
B. Emergency clause.

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

SECTION A. ENACTING CLAUSE. — Sections 67.1303, 67.1521, 94.900, 140.410, 140.660, and 144.032, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 67.1303, 67.1521, 94.585, 94.900, 140.410, 144.032, 205.205, and 1, to read as follows:

67.1303. SALES TAX AUTHORIZED IN CERTAIN CITIES AND COUNTIES, RATE — BALLOT, EFFECTIVE DATE — USE OF REVENUE, LIMITATIONS — DEPOSIT OF FUNDS — ECONOMIC DEVELOPMENT TAX BOARD REQUIRED, MEMBERSHIP, TERMS — BOARD DUTIES — ANNUAL REPORT — REPEAL. — 1. The governing body of any home rule city with more than one hundred fifty-one thousand five hundred but less than one hundred fifty-one thousand six hundred inhabitants, any home rule city with more than forty-five thousand five hundred but less than forty-five thousand nine hundred inhabitants and the governing body of any city within any county of the first classification with more than one hundred four thousand six hundred but less than one hundred four thousand seven hundred inhabitants and the governing body of any county of the third classification without a township form of government and with more than forty thousand eight hundred but less than forty thousand nine hundred inhabitants or any city within such county may impose, by order or ordinance, a sales tax on all retail sales made in the city or county which are subject to sales tax under chapter 144. In addition, the governing body of any county of the first classification with more than eighty-five thousand nine hundred but less than eighty-six thousand inhabitants or the governing body of any home rule city with more than seventy-three thousand but less than seventy-five thousand inhabitants may impose, by order or ordinance, a sales tax on all retail sales made in the city or county which are subject to sales tax under chapter 144. The tax authorized in this section shall not be more than one-half of one percent. The order or ordinance imposing the tax shall not become effective unless the governing body of the city or county submits to the voters of the city or county at a state general or primary election a proposal to authorize the governing body to impose a tax under this section. The tax authorized in this section shall be in addition to all other sales taxes imposed by law, and shall be stated separately from all other charges and taxes.

2. The ballot of submission for the tax authorized in this section shall be in substantially the following form:

Shall ..... (insert the name of the city or county) impose a sales tax at a rate of ..... (insert rate of percent) percent for economic development purposes?

[ ] YES [ ] NO

If a majority of the votes cast on the question by the qualified voters voting thereon are in favor of the question, then the tax shall become effective on the first day of the second calendar quarter following the calendar quarter in which the election was held. If a majority of the votes cast on the question by the qualified voters voting thereon are opposed to the question, then the tax shall not become effective unless and until the question is resubmitted under this section to the qualified voters and such question is approved by a majority of the qualified voters voting on the question, provided that no proposal shall be resubmitted to the voters sooner than twelve months from the date of the submission of the last proposal.

3. No revenue generated by the tax authorized in this section shall be used for any retail development project. At least twenty percent of the revenue generated by the tax authorized in this section shall be used solely for projects directly related to long-term economic development preparation, including, but not limited to, the following:

(1) Acquisition of land;

(2) Installation of infrastructure for industrial or business parks;

(3) Improvement of water and wastewater treatment capacity;

(4) Extension of streets;

(5) Providing matching dollars for state or federal grants;

(6) Marketing;

(7) **Construction and operation of job training and educational facilities;**

(8) Providing grants and low-interest loans to companies for job training, equipment acquisition, site development, and infrastructure. Not more than twenty-five percent of the revenue generated may be used annually for administrative purposes, including staff and facility costs.

4. All revenue generated by the tax shall be deposited in a special trust fund and shall be used solely for the designated purposes. If the tax is repealed, all funds remaining in the special trust fund shall continue to be used solely for the designated purposes. Any funds in the special trust fund which are not needed for current expenditures may be invested by the governing body in accordance with applicable laws relating to the investment of other city or county funds.

5. Any city or county imposing the tax authorized in this section shall establish an economic development tax board. The board shall consist of eleven members, to be appointed as follows:

(1) Two members shall be appointed by the school boards whose districts are included within any economic development plan or area funded by the sales tax authorized in this section. Such members shall be appointed in any manner agreed upon by the affected districts;

(2) One member shall be appointed, in any manner agreed upon by the affected districts, to represent all other districts levying ad valorem taxes within the area selected for an economic development project or area funded by the sales tax authorized in this section, excluding representatives of the governing body of the city or county;

(3) One member shall be appointed by the largest public school district in the city or county;

(4) In each city or county, five members shall be appointed by the chief elected officer of the city or county with the consent of the majority of the governing body of the city or county;

(5) In each city, two members shall be appointed by the governing body of the county in which the city is located. In each county, two members shall be appointed by the governing body of the county. At the option of the members appointed by a city or county the members who are appointed by the school boards and other taxing districts may serve on the board for a term to coincide with the length of time an economic development project, plan, or designation of an economic development area is considered for approval by the board, or for the definite terms as provided in this subsection. If the members representing school districts and other taxing districts are appointed for a term coinciding with the length of time an economic development project, plan, or area is approved, such term shall terminate upon final approval of the project, plan, or designation of the area by the governing body of the city or county. If any school district or other taxing jurisdiction fails to appoint members of the board within thirty days of receipt of written notice of a proposed economic development plan, economic development project, or designation of an economic development area, the remaining members may proceed to exercise the power of the board. Of the members first appointed by the city or county, three shall be designated to serve for terms of two years, three shall be designated to serve for a term of three years, and the remaining members shall be designated to serve for a term of four years from the date of such initial appointments. Thereafter, the members appointed by the city or county shall serve for a term of four years, except that all vacancies shall be filled for unexpired terms in the same manner as were the original appointments.

6. The board, subject to approval of the governing body of the city or county, shall develop economic development plans, economic development projects, or designations of an economic development area, and shall hold public hearings and provide notice of any such hearings. The board shall vote on all proposed economic development plans, economic development projects, or designations of an economic development area, and amendments thereto, within thirty days following completion of the hearing on any such plan, project, or designation, and shall make recommendations to the governing body within ninety days of the hearing concerning the adoption of or amendment to economic development plans, economic development projects, or designations of an economic development area.

7. The board shall report at least annually to the governing body of the city or county on the use of the funds provided under this section and on the progress of any plan, project, or designation adopted under this section.

8. The governing body of any city or county that has adopted the sales tax authorized in this section may submit the question of repeal of the tax to the voters on any date available for

elections for the city or county. The ballot of submission shall be in substantially the following form:

Shall ..... (insert the name of the city or county) repeal the sales tax imposed at a rate of ..... (insert rate of percent) percent for economic development purposes?

[ ] YES [ ] NO

If a majority of the votes cast on the proposal are in favor of repeal, that repeal shall become effective on December thirty-first of the calendar year in which such repeal was approved. If a majority of the votes cast on the question by the qualified voters voting thereon are opposed to the repeal, then the sales tax authorized in this section shall remain effective until the question is resubmitted under this section to the qualified voters of the city or county, and the repeal is approved by a majority of the qualified voters voting on the question.

9. Whenever the governing body of any city or county that has adopted the sales tax authorized in this section receives a petition, signed by ten percent of the registered voters of the city or county voting in the last gubernatorial election, calling for an election to repeal the sales tax imposed under this section, the governing body shall submit to the voters a proposal to repeal the tax. If a majority of the votes cast on the question by the qualified voters voting thereon are in favor of the repeal, that repeal shall become effective on December thirty-first of the calendar year in which such repeal was approved. If a majority of the votes cast on the question by the qualified voters voting thereon are opposed to the repeal, then the tax shall remain effective until the question is resubmitted under this section to the qualified voters and the repeal is approved by a majority of the qualified voters voting on the question.

67.1521. SPECIAL ASSESSMENTS, PETITION, FUNDS, HOW COLLECTED — ADDED TO ANNUAL REAL ESTATE BILL, BOONE COUNTY. — 1. A district may levy by resolution one or more special assessments against real property within its boundaries, upon receipt of and in accordance with a petition signed by:

(1) Owners of real property collectively owning more than fifty percent by assessed value of real property within the boundaries of the district; and

(2) More than fifty percent per capita of the owners of all real property within the boundaries of the district.

2. The special assessment petition shall be in substantially the following form:

The ..... (insert name of district) Community Improvement District ("District") shall be authorized to levy special assessments against real property benefited within the District for the purpose of providing revenue for ..... (insert general description of specific service and/or projects) in the district, such special assessments to be levied against each tract, lot or parcel of real property listed below within the district which receives special benefit as a result of such service and/or projects, the cost of which shall be allocated among this property by ..... (insert method of allocation, e.g., per square foot of property, per square foot on each square foot of improvement, or by abutting foot of property abutting streets, roads, highways, parks or other improvements, or any other reasonable method) in an amount not to exceed ..... dollars per (insert unit of measure). Such authorization to levy the special assessment shall expire on ..... (insert date). The tracts of land located in the district which will receive special benefit from this service and/or projects are: ..... (list of properties by common addresses and legal descriptions).

3. The method for allocating such special assessments set forth in the petition may be any reasonable method which results in imposing assessments upon real property benefited in relation to the benefit conferred upon each respective tract, lot or parcel of real property and the cost to provide such benefit.

4. By resolution of the board, the district may levy a special assessment rate lower than the rate ceiling set forth in the petition authorizing the special assessment and may increase such lowered special assessment rate to a level not exceeding the special assessment rate ceiling set forth in the petition without further approval of the real property owners; provided that a district

imposing a special assessment pursuant to this section may not repeal or amend such special assessment or lower the rate of such special assessment if such repeal, amendment or lower rate will impair the district's ability to pay any liabilities that it has incurred, money that it has borrowed or obligations that it has issued.

5. Each special assessment which is due and owing shall constitute a perpetual lien against each tract, lot or parcel of property from which it is derived. Such lien may be foreclosed in the same manner as any other special assessment lien as provided in section 88.861. **Notwithstanding the provisions of this subsection and section 67.1541 to the contrary, in any county of the first classification with more than one hundred thirty-five thousand four hundred but fewer than one hundred thirty-five thousand five hundred inhabitants, the county collector may, upon certification by the district for collection, add each special assessment to the annual real estate tax bill for the property and collect the assessment in the same manner the collector uses for real estate taxes. In said counties, each special assessment remaining unpaid on the first day of January annually is delinquent and enforcement of collection of the delinquent bill by the county collector shall be governed by the laws concerning delinquent and back taxes. The lien may be foreclosed in the same manner as a tax upon real property by land tax sale under chapter 140 or, if applicable to that county, chapter 141.**

6. A separate fund or account shall be created by the district for each special assessment levied and each fund or account shall be identifiable by a suitable title. The proceeds of such assessments shall be credited to such fund or account. Such fund or account shall be used solely to pay the costs incurred in undertaking the specified service or project.

7. Upon completion of the specified service or project or both, the balance remaining in the fund or account established for such specified service or project or both shall be returned or credited against the amount of the original assessment of each parcel of property pro rata based on the method of assessment of such special assessment.

8. Any funds in a fund or account created pursuant to this section which are not needed for current expenditures may be invested by the board in accordance with applicable laws relating to the investment of funds of the city in which the district is located.

9. The authority of the district to levy special assessments shall be independent of the limitations and authorities of the municipality in which it is located; specifically, the provisions of section 88.812 shall not apply to any district.

94.585. SALES TAX AUTHORIZED (EXCELSIOR SPRINGS) — BALLOT LANGUAGE — DEPOSIT OF REVENUE GENERATED — REPEAL, PROCEDURE — BOARD ESTABLISHED, DUTIES — LIMITATION ON REFINANCING. — 1. The governing body of any city of the third classification with more than ten thousand eight hundred but fewer than ten thousand nine hundred inhabitants and located in more than one county may impose, by order or ordinance, a sales tax on all retail sales made within the city which are subject to sales tax under chapter 144. The tax authorized in this section shall not exceed one percent, and shall be imposed solely for the purpose of funding the construction, maintenance, operation, and equipping of a community center and retiring any bonds issued for such purposes. The tax authorized in this section shall be in addition to all other sales taxes imposed by law, and shall be stated separately from all other charges and taxes.

2. No such order or ordinance adopted under this section shall become effective unless the governing body of the city submits to the voters residing within the city at a state general, primary, or special election a proposal to authorize the governing body of the city to impose a tax and issue bonds under this section. Such a proposal may include only the proposal to impose a sales tax or a proposal to issue bonds and to impose a sales tax to retire such bonds.

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

(1) If the proposal submitted involves only authorization to impose the tax authorized by this section, the following language:

Shall the municipality of ..... (municipality's name) impose a sales tax of ..... (insert amount) for a period of twenty-five years for the purpose of funding the construction, maintenance, operation, and equipping of a community center which may include the retirement of debt under previously authorized bonded indebtedness?

(2) If the proposal submitted involves authorization to issue bonds and repay such bonds with revenues from the tax authorized by this section, the following language:

Shall the municipality of ..... (municipality's name) issue bonds in the amount ..... of ..... (insert amount) for a period of twenty-five years to fund construction, maintenance, operation, and equipping of a community center and impose a sales tax of ..... (insert amount) to repay bonds?

If a majority of the votes cast on the question by the qualified voters voting thereon are in favor of the question, then the tax shall become effective on the first day of the second calendar quarter after the director of revenue receives notification of adoption of the local sales tax, except that any proposal submitted to issue bonds shall be approved by the constitutionally required percentage of the voters voting thereon to become effective. If a majority of the votes cast on the question by the qualified voters voting thereon are opposed to the question, then the tax shall not become effective unless and until the question is resubmitted under this section to the qualified voters and such question is approved by the requisite majority of the qualified voters voting on the question. In no event shall a proposal under this section be submitted to the voters sooner than twelve months from the date of the last proposal under this section.

4. Except as modified in this section, all provisions of sections 32.085 and 32.087 shall apply to the tax imposed under this section.

5. All revenue collected under this section by the director of the department of revenue on behalf of any city, except for one percent for the cost of collection which shall be deposited in the state's general revenue fund after payment of premiums for surety bonds as provided in section 32.087, shall be deposited in a special trust fund, which is hereby created and shall be known as the "City Community Center Sales Tax Trust Fund", and shall be used solely for the designated purposes. Moneys in the fund shall not be deemed to be state funds, and shall not be commingled with any funds of the state. The director may make refunds from the amounts in the fund and credited to the city for erroneous payments and overpayments made, and may redeem dishonored checks and drafts deposited to the credit of such city. Any funds in the special fund which are not needed for meeting current obligations under any bond issued under this section or for current expenditures shall be invested in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund.

6. The governing body of any city that has adopted the sales tax authorized in this section may submit the question of repeal of the tax to the voters on any date available for elections for the city. Except as provided in subsection 9 of this section, if a majority of the votes cast on the question by the qualified voters voting thereon are in favor of the repeal, that repeal shall become effective on December thirty-first of the calendar year in which such repeal was approved. If a majority of the votes cast on the question by the qualified voters voting thereon are opposed to the repeal, then the sales tax authorized in this section shall remain effective until the question is resubmitted under this section to the qualified voters and the repeal is approved by a majority of the qualified voters voting on the question.

7. Whenever the governing body of any city that has adopted the sales tax authorized in this section receives a petition, signed by a number of registered voters of the city equal to at least ten percent of the number of registered voters of the city voting in the last gubernatorial election, calling for an election to repeal the sales tax imposed under this

section, the governing body shall submit to the voters of the city a proposal to repeal the tax. Except as provided in subsection 9 of this section, if a majority of the votes cast on the question by the qualified voters voting thereon are in favor of the repeal, the repeal shall become effective on December thirty-first of the calendar year in which such repeal was approved. If a majority of the votes cast on the question by the qualified voters voting thereon are opposed to the repeal, then the sales tax authorized in this section shall remain effective until the question is resubmitted under this section to the qualified voters and the repeal is approved by a majority of the qualified voters voting on the question.

8. If the tax is repealed or terminated by any means, all funds remaining in the special trust fund shall continue to be used solely for the designated purposes, and the city shall notify the director of the department of revenue of the action at least ninety days before the effective date of the repeal and the director may order retention in the trust fund, for a period of one year, of two percent of the amount collected after receipt of such notice to cover possible refunds or overpayment of the tax and to redeem dishonored checks and drafts deposited to the credit of such accounts. After one year has elapsed after the effective date of abolition of the tax in such city, the director shall remit the balance in the account to the city and close the account of that city. The director shall notify each city of each instance of any amount refunded or any check redeemed from receipts due the city.

9. No sales tax imposed under this section shall be terminated until all of any bonds issued under this section have been retired.

10. The sales tax imposed under this section shall be imposed for a period of twenty-five years, and may be extended upon the approval of the voters of the city in the same manner in which the sales tax was adopted.

11. The city shall establish a board consisting of seven members, one of which shall be the mayor of the city, to administer the provisions of this section with such powers and duties which shall be delegated by the governing body of the city.

12. No bonds issued under this section shall be refinanced for a term longer than the number of years remaining on the original terms of the bonds being refinanced without the approval of the voters of the city. Any proposal to refinance such bonds submitted to the voters shall include the number of years the bonds will be refinanced and the number of years the sales tax will be extended to repay such refinanced bonds.

94.900. SALES TAX AUTHORIZED (BLUE SPRINGS, EXCELSIOR SPRINGS, HARRISONVILLE, PECULIAR, ST. JOSEPH) — PROCEEDS TO BE USED FOR PUBLIC SAFETY PURPOSES — BALLOT LANGUAGE — COLLECTION OF TAX, PROCEDURE. — 1. **(1)** The governing body of **the following cities may impose a tax as provided in this section:**

(a) Any city of the third classification with more than ten thousand eight hundred but less than ten thousand nine hundred inhabitants located at least partly within a county of the first classification with more than one hundred eighty-four thousand but less than one hundred eighty-eight thousand inhabitants**[**, or**];**

(b) Any city of the fourth classification with more than eight thousand nine hundred but fewer than nine thousand inhabitants**[**, or**];**

(c) Any city of the fourth classification with more than two thousand six hundred but fewer than two thousand seven hundred inhabitants and located in any county of the first classification with more than eighty-two thousand but fewer than eighty-two thousand one hundred inhabitants**[**, or**];**

(d) Any home rule city with more than forty-eight thousand but fewer than forty-nine thousand inhabitants**;**

(e) Any home rule city with more than seventy-three thousand but fewer than seventy-five thousand inhabitants.

(2) The governing body of any city listed in subdivision (1) of this subsection is hereby authorized to impose, by ordinance or order, a sales tax in the amount of up to one-half of one percent on all retail sales made in such city which are subject to taxation under the provisions of sections 144.010 to 144.525 for the purpose of improving the public safety for such city, including but not limited to expenditures on equipment, city employee salaries and benefits, and facilities for police, fire and emergency medical providers. The tax authorized by this section shall be in addition to any and all other sales taxes allowed by law, except that no ordinance or order imposing a sales tax pursuant to the provisions of this section shall be effective unless the governing body of the city submits to the voters of the city, at a county or state general, primary or special election, a proposal to authorize the governing body of the city to impose a tax.

2. If the proposal submitted involves only authorization to impose the tax authorized by this section, the ballot of submission shall contain, but need not be limited to, the following language:

Shall the city of ..... (city's name) impose a citywide sales tax of ..... (insert amount) for the purpose of improving the public safety of the city?

[ ] YES [ ] NO

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

If a majority of the votes cast on the proposal by the qualified voters voting thereon are in favor of the proposal submitted pursuant to this subsection, then the ordinance or order and any amendments thereto shall be in effect on the first day of the second calendar quarter after the director of revenue receives notification of adoption of the local sales tax. If a proposal receives less than the required majority, then the governing body of the city shall have no power to impose the sales tax herein authorized unless and until the governing body of the city shall again have submitted another proposal to authorize the governing body of the city to impose the sales tax authorized by this section and such proposal is approved by the required majority of the qualified voters voting thereon. However, in no event shall a proposal pursuant to this section be submitted to the voters sooner than twelve months from the date of the last proposal pursuant to this section.

3. All revenue received by a city from the tax authorized under the provisions of this section shall be deposited in a special trust fund and shall be used solely for improving the public safety for such city for so long as the tax shall remain in effect.

4. Once the tax authorized by this section is abolished or is terminated by any means, all funds remaining in the special trust fund shall be used solely for improving the public safety for the city. Any funds in such special trust fund which are not needed for current expenditures may be invested by the governing body in accordance with applicable laws relating to the investment of other city funds.

5. All sales taxes collected by the director of the department of revenue under this section on behalf of any city, less one percent for cost of collection which shall be deposited in the state's general revenue fund after payment of premiums for surety bonds as provided in section 32.087, shall be deposited in a special trust fund, which is hereby created, to be known as the "City Public Safety Sales Tax Trust Fund". The moneys in the trust fund shall not be deemed to be state funds and shall not be commingled with any funds of the state. The provisions of section 33.080 to the contrary notwithstanding, money in this fund shall not be transferred and placed to the credit of the general revenue fund. The director of the department of revenue shall keep accurate records of the amount of money in the trust and which was collected in each city imposing a sales tax pursuant to this section, and the records shall be open to the inspection of officers of the city and the public. Not later than the tenth day of each month the director of the department of revenue shall distribute all moneys deposited in the trust fund during the preceding month to the city which levied the tax; such funds shall be deposited with the city treasurer of each such city, and all expenditures of funds arising from the trust fund shall be by an appropriation act to be enacted by the governing body of each such city. Expenditures may be

made from the fund for any functions authorized in the ordinance or order adopted by the governing body submitting the tax to the voters.

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

7. Except as modified in this section, all provisions of sections 32.085 and 32.087 shall apply to the tax imposed pursuant to this section.

140.410. EXECUTION AND RECORD OF DEED BY PURCHASER — FAILURE — ASSIGNMENT PROHIBITED, WHEN — RECORDING FEE REQUIRED, WHEN. — In all cases where lands have been or may hereafter be sold for delinquent taxes, penalty, interest and costs due thereon, and a certificate of purchase has been or may hereafter be issued, it is hereby made the duty of such purchaser, his heirs or assigns, to cause **all subsequent taxes to be paid on the property purchased prior to the issuance of any collector's deed, and the purchaser shall further cause** a deed to be executed and placed on record in the proper county **all** within two years from the date of said sale; provided, that on failure of said purchaser, his heirs or assigns so to do, then and in that case the amount due such purchaser shall cease to be a lien on said lands so purchased as herein provided. **Upon the purchaser's forfeiture of all rights of the property acquired by the certificate of purchase issued, and including the nonpayment of all subsequent years' taxes as described in this section, it shall be the responsibility of the collector to record the cancellation of the certificate of purchase in the office of the recorder of deeds of the county.** Certificates of purchase cannot be assigned to nonresidents or delinquent taxpayers. **However,** any person purchasing property at a delinquent land tax sale **who meets the requirements of this section, prior to receiving a collector's deed,** shall pay to the collector the fee necessary for the recording of such **[**collector**] collector's** deed to be issued. It shall be the responsibility of the collector to record the deed before delivering such deed to the purchaser of the property.

144.032. CITIES OR COUNTIES MAY IMPOSE SALES TAX ON UTILITIES — DETERMINATION OF DOMESTIC USE. — The provisions of section 144.030 to the contrary notwithstanding, any city imposing a sales tax under the provisions of sections 94.500 to 94.570, or any county imposing a sales tax under the provisions of sections 66.600 to 66.635, or any county imposing a sales tax under the provisions of sections 67.500 to 67.729**, or any hospital district imposing a sales tax under the provisions of section 206.165,** may by ordinance impose a sales tax upon all sales of metered water services, electricity, electrical current and natural, artificial or propane gas, wood, coal, or home heating oil for domestic use only. Such tax shall be administered by the department of revenue and assessed by the retailer in the same manner as any other city **[**or**],** county**, or hospital district** sales tax. Domestic use shall be determined in the same manner as the determination of domestic use for exemption of such sales from the state sales tax under the provisions of section 144.030.

205.205. HOSPITAL DISTRICT SALES TAX AUTHORIZED (IRON AND MADISON COUNTIES) — APPROVAL BY VOTERS — FUND CREATED, USE OF MONEYS — REPEAL OF TAX,

PROCEDURE. — 1. The governing body of any hospital district established under sections 205.160 to 205.379 in any county of the third classification without a township form of government and with more than ten thousand six hundred but fewer than ten thousand seven hundred inhabitants or any county of the third classification without a township form of government and with more than eleven thousand seven hundred fifty but fewer than eleven thousand eight hundred fifty inhabitants may, by resolution, abolish the property tax authorized in such district under this chapter and impose a sales tax on all retail sales made within the district which are subject to sales tax under chapter 144 and all sales of metered water services, electricity, electrical current and natural, artificial or propane gas, wood, coal, or home heating oil for domestic use only as provided under section 144.032. The tax authorized in this section shall be not more than one percent, and shall be imposed solely for the purpose of funding the hospital district. The tax authorized in this section shall be in addition to all other sales taxes imposed by law, and shall be stated separately from all other charges and taxes.

2. No such resolution adopted under this section shall become effective unless the governing body of the hospital district submits to the voters residing within the district at a state general, primary, or special election a proposal to authorize the governing body of the district to impose a tax under this section. If a majority of the votes cast on the question by the qualified voters voting thereon are in favor of the question, then the tax shall become effective on the first day of the second calendar quarter after the director of revenue receives notification of adoption of the local sales tax. If a majority of the votes cast on the question by the qualified voters voting thereon are opposed to the question, then the tax shall not become effective unless and until the question is resubmitted under this section to the qualified voters and such question is approved by a majority of the qualified voters voting on the question.

3. All revenue collected under this section by the director of the department of revenue on behalf of the hospital district, except for one percent for the cost of collection which shall be deposited in the state's general revenue fund, shall be deposited in a special trust fund, which is hereby created and shall be known as the "Hospital District Sales Tax Fund", and shall be used solely for the designated purposes. Moneys in the fund shall not be deemed to be state funds, and shall not be commingled with any funds of the state. The director may make refunds from the amounts in the fund and credited to the district for erroneous payments and overpayments made, and may redeem dishonored checks and drafts deposited to the credit of such district. Any funds in the special fund which are not needed for current expenditures shall be invested in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund.

4. The governing body of any hospital district that has adopted the sales tax authorized in this section may submit the question of repeal of the tax to the voters on any date available for elections for the district. If a majority of the votes cast on the question by the qualified voters voting thereon are in favor of the repeal, that repeal shall become effective on December thirty-first of the calendar year in which such repeal was approved. If a majority of the votes cast on the question by the qualified voters voting thereon are opposed to the repeal, then the sales tax authorized in this section shall remain effective until the question is resubmitted under this section to the qualified voters and the repeal is approved by a majority of the qualified voters voting on the question.

5. Whenever the governing body of any hospital district that has adopted the sales tax authorized in this section receives a petition, signed by a number of registered voters of the district equal to at least ten percent of the number of registered voters of the district voting in the last gubernatorial election, calling for an election to repeal the sales tax imposed under this section, the governing body shall submit to the voters of the district a proposal to repeal the tax. If a majority of the votes cast on the question by the qualified

voters voting thereon are in favor of the repeal, the repeal shall become effective on December thirty-first of the calendar year in which such repeal was approved. If a majority of the votes cast on the question by the qualified voters voting thereon are opposed to the repeal, then the sales tax authorized in this section shall remain effective until the question is resubmitted under this section to the qualified voters and the repeal is approved by a majority of the qualified voters voting on the question.

6. If the tax is repealed or terminated by any means, all funds remaining in the special trust fund shall continue to be used solely for the designated purposes, and the hospital district shall notify the director of the department of revenue of the action at least ninety days before the effective date of the repeal and the director may order retention in the trust fund, for a period of one year, of two percent of the amount collected after receipt of such notice to cover possible refunds or overpayment of the tax and to redeem dishonored checks and drafts deposited to the credit of such accounts. After one year has elapsed after the effective date of abolition of the tax in such district, the director shall remit the balance in the account to the district and close the account of that district. The director shall notify each district of each instance of any amount refunded or any check redeemed from receipts due the district.

SECTION 1. SALES TAX AUTHORIZED (COLUMBIA) — BALLOT LANGUAGE — DEPOSIT OF REVENUE GENERATED — FUND CREATED, PURPOSE — REFUNDS, WHEN. — 1. The governing body of any home rule city with more than eighty-four thousand five hundred but fewer than eighty-four thousand six hundred inhabitants is hereby authorized to impose, by ordinance or order, a sales tax in the amount of up to one percent on all retail sales made in such city which are subject to taxation under the provisions of sections 144.010 to 144.525 for the purpose of capital improvements for public safety for such city, including but not limited to expenditures for new construction and equipment, repair and maintenance of buildings and equipment, and for financing such capital improvements for public safety. The tax authorized by this section shall be in addition to any and all other sales taxes allowed by law, except that no ordinance or order imposing a sales tax pursuant to the provisions of this section shall be effective unless the governing body of the city submits to the voters of the city, at a county or state general, primary or special election, a proposal to authorize the governing body of the city to impose a tax.

2. If the proposal submitted involves only authorization to impose the tax authorized by this section, the ballot of submission shall contain, but need not be limited to, the following language:

Shall the city of ..... (city's name) impose a citywide sales tax of ..... (insert amount) for the purpose of capital improvements for public safety of the city?

[ ] YES [ ] NO

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

If a majority of the votes cast on the proposal by the qualified voters voting thereon are in favor of the proposal submitted pursuant to this subsection, then the ordinance or order and any amendments thereto shall be in effect on the first day of the second calendar quarter after the director of revenue receives notification of adoption of the local sales tax. If a proposal receives less than the required majority, then the governing body of the city shall have no power to impose the sales tax herein authorized unless and until the governing body of the city shall again have submitted another proposal to authorize the governing body of the city to impose the sales tax authorized by this section and such proposal is approved by the required majority of the qualified voters voting thereon. However, in no event shall a proposal pursuant to this section be submitted to the voters sooner than twelve months from the date of the last proposal pursuant to this section.

3. All revenue received by a city from the tax authorized under the provisions of this section shall be deposited in a special trust fund and shall be used solely for capital improvements for public safety for such city for so long as the tax shall remain in effect.

4. Once the tax authorized by this section is abolished or is terminated by any means, all funds remaining in the special trust fund shall be used solely for capital improvements for public safety for the city. Any funds in such special trust fund which are not needed for current expenditures may be invested by the governing body in accordance with applicable laws relating to the investment of other city funds.

5. All sales taxes collected by the director of the department of revenue under this section on behalf of any city, less one percent for cost of collection which shall be deposited in the state's general revenue fund after payment of premiums for surety bonds as provided in section 32.087, shall be deposited in a special trust fund, which is hereby created, to be known as the "City Capital Improvements for Public Safety Sales Tax Trust Fund". The moneys in the trust fund shall not be deemed to be state funds and shall not be commingled with any funds of the state. The provisions of section 33.080 to the contrary notwithstanding, money in this fund shall not be transferred and placed to the credit of the general revenue fund. The director of the department of revenue shall keep accurate records of the amount of money in the trust and which was collected in each city imposing a sales tax pursuant to this section, and the records shall be open to the inspection of officers of the city and the public. Not later than the tenth day of each month the director of the department of revenue shall distribute all moneys deposited in the trust fund during the preceding month to the city which levied the tax; such funds shall be deposited with the city treasurer of each such city, and all expenditures of funds arising from the trust fund shall be by an appropriation act to be enacted by the governing body of each such city. Expenditures may be made from the fund for any functions authorized in the ordinance or order adopted by the governing body submitting the tax to the voters.

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

7. Except as modified in this section, all provisions of sections 32.085 and 32.087 shall apply to the tax imposed pursuant to this section.

[140.660. TAX COMMISSION TO PRESCRIBE FORMS, INTERPRET LAWS. — The state tax commission shall prescribe the forms of all certificates, blanks and books required under the provisions of this law and shall, with the advice of the attorney general, decide all questions that arise in reference to the true construction or interpretation of this law, or any part thereof, with reference to the powers and duties of county or township tax officers, and the decision shall have force and effect until modified or annulled by the judgment or decree of a court of competent jurisdiction.**]**

SECTION B. EMERGENCY CLAUSE. — Because of the need to adequately fund hospital districts in the state, the repeal and reenactment of section 144.032 and the enactment of section

205.205 of section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the repeal and reenactment of section 144.032 and the enactment of section 205.205 of section A of this act shall be in full force and effect upon its passage and approval.

Approved June 9, 2011

SB 132 [HCS SS SCS SB 132]

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

Modifies the law regarding motor vehicle extended service contracts.

AN ACT to repeal sections 375.916, 384.015, 384.017, 384.021, 384.043, 384.051, 384.057, 384.061, 385.200, 385.206, and 385.208, RSMo, and to enact in lieu thereof twenty-seven new sections relating to certain specialty lines insurance contracts, with penalty provisions, an emergency clause for certain sections, and an effective date for certain sections.

SECTION

A. Enacting clause.
44.114. Local licensing or registration ordinances, prohibition on imposition of restrictions or enforcement on insurer's claims handling operations, when.
375.916. Retaliatory tax, how assessed and paid, exceptions — workers' compensation paid losses, how treated.
379.1500. Definitions.
379.1505. Vendor license required — application, fee — termination date.
379.1510. Authorization to sell, vendor responsibilities — eligibility and underwriting standards — supervising business entity to be appointed, purpose — training requirements — collection of charges.
379.1515. Insurance producers act, applicability of.
379.1520. Sanctioning of license, when — penalties, when.
379.1525. Vendor investigation and examination requirements.
379.1530. Premiums, received by insurer, when — proof of purchase, insurer may require.
379.1535. Violations, director's authority.
379.1540. Supervising business entity, sanctioning of license, when.
379.1545. Insurers, permissible acts.
379.1550. Rulemaking authority — effective date.
384.015. Definitions.
384.017. Nonadmitted insurers, purchases from allowed, when.
384.021. Nonadmitted insurers, limitation on furnishing coverage — exempt commercial purchaser, licensee exemptions.
384.043. Licensing requirements for insurance producers, fee — examination, exception — renewal, when, violation, effect — national database, participation in.
384.051. Insured to file report on surplus lines insurance not obtained through a broker — contents, when due — tax imposed, procedure to collect tax.
384.057. Licensee to file annual statement, contents — report to director, contents.
384.061. Premium tax to be levied only on entire gross premium for nonadmitted or surplus lines insurance policies.
385.200. Definitions.
385.205. Delivery within commercially feasible time period — copy of contract to be delivered to consumer, when — violation, penalty.
385.206. Sale of contracts, prohibited acts — dealers not to be used as fronting companies — required contract contents — violations, penalty.
385.207. Business entity producer and individual producer licenses required — application requirements — issuance, renewal — rulemaking authority.
385.208. Deceptive practices.
385.209. Licensure sanctioning, when — notification by director, when — producer to notify director, when.
385.211. Register of business entity producers to be maintained — inspection of list — updating of registry, when.
B. Emergency clause.
C. Effective date.

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

SECTION A. ENACTING CLAUSE. — Sections 375.916, 384.015, 384.017, 384.021, 384.043, 384.051, 384.057, 384.061, 385.200, 385.206, and 385.208, RSMo, are repealed and twenty-seven new sections enacted in lieu thereof, to be known as sections 44.114, 375.916, 379.1500, 379.1505, 379.1510, 379.1515, 379.1520, 379.1525, 379.1530, 379.1535, 379.1540, 379.1545, 379.1550, 384.015, 384.017, 384.021, 384.043, 384.051, 384.057, 384.061, 385.200, 385.205, 385.206, 385.207, 385.208, 385.209, and 385.211, to read as follows:

44.114. LOCAL LICENSING OR REGISTRATION ORDINANCES, PROHIBITION ON IMPOSITION OF RESTRICTIONS OR ENFORCEMENT ON INSURER'S CLAIMS HANDLING OPERATIONS, WHEN. — Except as otherwise provided in this section, at the time of any emergency, catastrophe or other life or property threatening event which jeopardizes the ability of an insurer to address the financial needs of its insureds or the public, no political subdivision shall impose restrictions or enforce local licensing or registration ordinances with respect to such insurer's claims handling operations. As used in this section, the term "claims handling operations" includes but is not limited to the establishment of a base of operations by an insurer within the disaster area and the investigation and handling of claims by personnel authorized by any such insurer. Nothing herein shall prohibit a political subdivision from performing any safety inspection authorized by local ordinance of the premises of the insurer's base of operations within the disaster area.

375.916. RETALIATORY TAX, HOW ASSESSED AND PAID, EXCEPTIONS — WORKERS' COMPENSATION PAID LOSSES, HOW TREATED. — 1. When by the laws of any other state or foreign country any premium or income or other taxes, or any fees, fines, penalties, licenses, deposit requirements or other obligations, prohibitions or restrictions are imposed upon Missouri insurance companies or carriers doing business, or that might seek to do business, in the other state or country, which in the aggregate are in excess of the taxes, fees, fines, penalties, licenses, deposit requirements or other obligations, prohibitions or restrictions directly imposed upon insurance companies of the other state or foreign country under the statutes of this state, so long as the laws continue in force, the same obligations, prohibitions, and restrictions of whatever kind shall be imposed upon insurance companies or carriers of the other state or foreign country doing business in Missouri. Any tax, license or other obligation imposed by any city, county or other political subdivision of a state or foreign country on Missouri insurance companies or carriers shall be deemed to be imposed by the state or foreign country within the meaning of this section, and the director of the department of insurance, financial institutions and professional registration for the purpose of this section shall compute the burden of the tax, license or other obligations on an aggregate statewide or foreign-countrywide basis as an addition to the tax and other charges payable by similar Missouri insurance companies or carriers in the state or foreign country. The provisions of this section shall not apply to ad valorem taxes on real or personal property, personal income taxes or to assessments on or credits to insurers for the payment of claims of policyholders of insolvent insurers. **An insurance company claiming a state premium tax credit or deduction shall not be required to pay any additional retaliatory tax levied pursuant to this section as a result of claiming such credit or deduction.**

2. All licenses, fees, taxes, fines or penalties collectible under this section shall be paid to the director of revenue. The payment and assessment of retaliatory tax shall be made on an estimated quarterly basis in the same manner as premium insurance tax as provided in sections 148.310 to 148.461.

3. Effective January 1, 2012, notwithstanding any other provision of law to the contrary, operating assessments based upon workers compensation paid losses that are imposed upon an insurance company by the laws of its state or foreign country of domicile shall not be considered any premium or income or other taxes or any fees, fines, penalties,

licenses, deposit requirements or other obligations, prohibitions or restrictions, provided that with respect to the tax year in question the insurance company has its principal place of business within this state and receives more than three million dollars of direct insurance premiums on account of business done in this state.

379.1500. DEFINITIONS. — As used in sections 379.1500 to 379.1550, the following terms shall mean:

(1) "Director", the director of the department of insurance, financial institutions and professional registration;

(2) "Insurance company" or "insurer", any person, reciprocal exchange, interinsurer, or any other legal entity licensed and authorized by the director to write inland marine coverage;

(3) "Insurance producer" or "producer", a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance;

(4) "License", the same meaning as such term is defined in section 375.012;

(5) "Location", any physical location in this state or any website, call center site, or similar location directed to residents of this state;

(6) "Person", an individual or business entity;

(7) "Portable electronics", electronic devices that are portable in nature, their accessories, and services related to the use of the device. Portable electronics does not include telecommunication and cellular equipment used by a telecommunication company to provide telecommunication service to consumers;

(8) "Portable electronics insurance", an insurance policy issued by an insurer which may be offered on a month-to-month or other periodic basis as a group or master commercial inland marine policy issued to a vendor of portable electronics under which individual customers may elect to enroll for coverage for the repair or replacement of portable electronics which may cover portable electronics against any one or more of the following causes of loss: loss, theft, mechanical failure, malfunction, damage, or other applicable perils, but does not include:

(a) A service contract governed by sections 385.300 to 385.321;

(b) A policy of insurance covering a seller's or manufacturer's obligations under a warranty; or

(c) A homeowner's, renter's, private passenger automobile, commercial multiperil, similar policy, or endorsement to such policy that covers any portable electronics;

(9) "Portable electronics insurance license", a license to sell or solicit portable electronics insurance;

(10) "Portable electronics transaction", the sale or lease of portable electronics by a vendor to a customer or the sale of a service related to the use of portable electronics by a vendor to a customer;

(11) "Negotiate", the same meaning as such term is defined in section 375.012;

(12) "Sell", the same meaning as such term is defined in section 375.012;

(13) "Solicit", the same meaning as such term is defined in section 375.012;

(14) "Supervising business entity", the insurer or a licensed business entity producer designated by the insurer to supervise the actions of a vendor;

(15) "Vendor", a person in the business of engaging in portable electronics transactions directly or indirectly.

379.1505. VENDOR LICENSE REQUIRED — APPLICATION, FEE — TERMINATION DATE. — 1. No vendor shall sell or solicit portable electronics insurance coverage in this state unless such vendor has obtained a portable electronics insurance license.

2. A vendor applying for a portable electronics insurance license shall make application to the director on the prescribed form as required. On the prescribed form,

the vendor shall be required to provide the name for an employee or officer of the vendor that is designated by the vendor as the person responsible for the vendor's compliance with the requirements of this section and such designated responsible person shall not be required to hold an insurance producer license. Such license shall authorize an employee or authorized representative of a vendor to sell or offer coverage under a policy of portable electronics insurance to a customer at each location at which the vendor engages in a portable electronics transaction.

3. Any vendor licensed under sections 379.1500 to 379.1550 shall pay an initial license fee to the director in an amount prescribed by the director by rule, but not to exceed one thousand dollars, and shall pay a renewal fee in an amount prescribed by the director by rule, but not to exceed five hundred dollars. License fees shall be deposited in the insurance dedicated fund.

4. Notwithstanding any provision of sections 375.012 to 375.018, a portable electronics insurance license, if not renewed by the director by its expiration date, shall terminate on its expiration date and shall not after such date authorize its holder to sell or solicit any portable electronics insurance under sections 379.1500 to 379.1550.

379.1510. AUTHORIZATION TO SELL, VENDOR RESPONSIBILITIES — ELIGIBILITY AND UNDERWRITING STANDARDS — SUPERVISING BUSINESS ENTITY TO BE APPOINTED, PURPOSE — TRAINING REQUIREMENTS — COLLECTION OF CHARGES. — 1. A vendor shall have the obligation to ensure that every location that is authorized to sell, solicit, or negotiate portable electronics insurance to customers shall have specific brochures and actual policies or certificates of coverage available to prospective customers which:

(1) Disclose that portable electronics insurance may provide a duplication of coverage already provided by a customer's homeowner's, renter's, or other source of coverage, and that the portable electronics insurance coverage is primary over any other collateral coverage;

(2) State that the enrollment by the customer in a portable electronics insurance program is not required in order to purchase or lease portable electronics or services;

(3) Summarize the material terms of the insurance coverage, including:

(a) The identity of the insurer;

(b) The identity of the supervising business entity;

(c) The amount of any applicable deductible and how it is to be paid;

(d) Benefits of the coverage; and

(e) Key terms and conditions of coverage, such as whether portable electronics may be repaired or replaced with similar make and model reconditioned or nonoriginal manufacturer parts or equipment;

(4) Summarize the process for filing a claim, including any requirement to return portable electronics and the maximum fee applicable in the event the customer fails to comply with any equipment return requirements; and

(5) State that the customer may cancel enrollment for coverage under a portable electronics insurance policy at any time and receive a refund of any unearned premium on a pro rata basis.

2. Eligibility and underwriting standards for customers electing to enroll in coverage shall be established for each portable electronics insurance program. Each insurer shall maintain all eligibility and underwriting records for a period of five years. Portable electronics insurance issued under sections 379.1500 to 379.1550 shall be deemed primary coverage over any other collateral coverage.

3. Insurers offering portable electronics insurance coverage through vendors shall appoint a supervising business entity to supervise the administration of the program. The supervising business entity shall be responsible for the development of a training program for employees and authorized representatives of a vendor, and shall include basic

instruction about the portable electronics insurance offered to customers and the disclosures required under this section.

4. Insurers and applicable supervising business entities offering portable electronics insurance shall share all complaint, grievance, or inquiries regarding any conduct that is specific to a vendor and that may not comply with applicable state laws and regulations.

5. A supervising business entity shall maintain a registry of vendor locations which are authorized to sell or solicit portable electronics insurance coverage in this state. Upon request by the director and with ten days' notice to the supervising business entity, the registry shall be open to inspection and examination by the director during regular business hours of the supervising business entity.

6. Within thirty days of a supervising business entity terminating a vendor location's appointment to sell or solicit portable electronics insurance, the supervising business entity shall update the registry with the effective date of termination. If a supervising business entity has possession of information relating to any cause for discipline under section 375.141, the supervising business entity shall notify the director of such information in writing. The privileges and immunities applicable to insurers under section 375.022 shall apply to supervising business entities for any information reported under this subsection.

7. The supervising business entity shall not charge a fee for adding or removing a vendor location from the registry.

8. No employee or authorized representative of a vendor shall advertise, represent, or otherwise hold himself or herself out as an insurance producer, unless such employee or authorized representative is otherwise licensed as an insurance producer.

9. The training required in subsection 3 of this section shall be delivered to all employees and authorized representatives of the vendors who are directly engaged in the activity of selling portable electronics insurance in this state. The training may be provided in electronic form. However, if conducted in an electronic form, the supervising business entity shall implement a supplemental education program regarding the portable electronics insurance product that is conducted and overseen by licensed employees of the supervising business entity.

10. The charges for portable electronics insurance coverage may be billed and collected by the vendor. Any charge to the customer that is not included in the cost associated with the purchase or lease of portable electronics or related services shall be separately itemized on the customer's bill. If the portable electronics insurance is included in the purchase or lease of portable electronics or related services, the vendor shall clearly and conspicuously disclose to the customer that the portable electronics insurance coverage is included with the portable electronics or related services. Vendors billing and collecting such charges shall not be required to maintain such funds in a segregated account, provided that the insurer authorized the vendor to hold such funds in an alternative manner and remits such amounts to the supervising business entity within forty-five days of receipt. All funds received by a vendor from a customer for the sale of portable electronics insurance shall be considered funds held in trust by the vendor in a fiduciary capacity for the benefit of the insurer. Vendors shall maintain all records related to the purchase of portable electronics insurance for a period of three years from the date of purchase.

379.1515. INSURANCE PRODUCERS ACT, APPLICABILITY OF. — Persons licensed as vendors shall be subject to the provisions of sections 375.012 to 375.014, 375.018, 375.031, 375.046, 375.051, 375.052, 375.071, 375.106, 375.116, 375.141, and 375.144 of the insurance producers act.

379.1520. SANCTIONING OF LICENSE, WHEN — PENALTIES, WHEN. — 1. The director may suspend, revoke, refuse to issue, or refuse to issue any license or renew any license

required by the provisions of sections 379.1500 to 379.1550 for any reason listed in section 375.141 or for any one or more of the following causes:

(1) Use of any advertisement or solicitation that is false, misleading, or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed;

(2) Obtaining or attempting to obtain any fee, charge, tuition, or other compensation by fraud, deception, or misrepresentation;

(3) Violation of any professional trust or confidence.

2. The director may impose other penalties that the director deems necessary and reasonable to carry out the purposes of sections 379.1500 to 379.1550, including:

(1) Suspending the privilege of transacting portable electronics insurance under sections 379.1500 to 379.1550 at specific locations where violations have occurred; and

(2) Suspending or revoking the ability of individual employees or authorized representatives to act under the license.

379.1525. VENDOR INVESTIGATION AND EXAMINATION REQUIREMENTS. — Vendors shall be subject to the investigation and examination provisions of section 374.190.

379.1530. PREMIUMS, RECEIVED BY INSURER, WHEN — PROOF OF PURCHASE, INSURER MAY REQUIRE. — Premiums received by a vendor or supervising business entity shall be deemed received by the insurer. Insurers may require consumers to provide proof of purchase.

379.1535. VIOLATIONS, DIRECTOR'S AUTHORITY. — If the director determines that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice, or course of business constituting a violation of sections 379.1500 to 379.1550 or rule adopted or order issued thereunder, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of sections 379.1500 to 379.1550, or a rule adopted or order issued thereunder, the director may:

(1) Issue such administrative orders as authorized under section 374.046; or

(2) Maintain a civil action for relief authorized under section 374.048.

A violation of sections 379.1500 to 379.1550 or rule adopted or order issued thereunder is a level two violation under section 374.049.

379.1540. SUPERVISING BUSINESS ENTITY, SANCTIONING OF LICENSE, WHEN. — The license of a supervising business entity may be suspended, revoked, renewal refused, or an application refused if the director finds that a violation by a portable electronics insurance vendor was known or should have been known by the supervising business entity and the violation was neither reported to the director nor correction action taken. A violation of this section is a level three violation under section 374.049.

379.1545. INSURERS, PERMISSIBLE ACTS. — Notwithstanding any other provision of law:

(1) An insurer may terminate or otherwise change the terms and conditions of a policy of portable electronics insurance only upon providing the policyholder and enrolled customers with at least thirty days' notice;

(2) If the insurer changes the terms and conditions of a policy of portable electronics insurance, the insurer shall provide the vendor and any policyholders with a revised policy or endorsement and each enrolled customer with a revised certificate, endorsement, updated brochure, or other evidence indicating a change in the terms and conditions has occurred and a summary of material changes;

(3) Notwithstanding subdivision (1) of this section, an insurer may terminate an enrolled customer's enrollment under a portable electronics insurance policy upon fifteen days' notice for discovery of fraud or material misrepresentation in obtaining coverage or in the presentation of a claim thereunder;

(4) Notwithstanding subdivision (1) of this section, an insurer may immediately terminate an enrolled customer's enrollment under a portable electronics insurance policy:

(a) For nonpayment of premium;

(b) If the enrolled customer ceases to have an active service with the vendor of portable electronics; or

(c) If an enrolled customer exhausts the aggregate limit of liability, if any, under the terms of the portable electronics insurance policy and the insurer sends notice of termination to the customer within thirty calendar days after exhaustion of the limit. However, if the notice is not timely sent, enrollment and coverage shall continue notwithstanding the aggregate limit of liability until the insurer sends notice of termination to the enrolled customer;

(5) Where a portable electronics insurance policy is terminated by a policyholder, the policyholder shall mail or deliver written notice to each enrolled customer advising the customer of the termination of the policy and the effective date of termination. The written notice shall be mailed or delivered to the customer at least thirty days prior to the termination;

(6) Whenever notice is required under this section, it shall be in writing and may be mailed or delivered to the vendor at the vendor's mailing address and to its affected enrolled customers' last known mailing addresses on file with the insurer. If notice is mailed, the insurer or vendor, as the case may be, shall maintain proof of mailing in a form authorized or accepted by the U.S. Postal Service or other commercial mail delivery service. Alternatively, an insurer or vendor policyholder may comply with any notice required by this section by providing electronic notice to a vendor or its affected enrolled customers, as the case may be, by electronic means. Additionally, if an insurer or vendor policyholder provides electronic notice to an affected enrolled customer and such delivery by electronic means is not available or is undeliverable, the insurer or vendor policyholder shall provide written notice to the enrolled customer by mail in accordance with this section. If notice is accomplished through electronic means, the insurer or vendor of portable electronics, as the case may be, shall maintain proof that the notice was sent.

379.1550. RULEMAKING AUTHORITY — EFFECTIVE DATE. — 1. The director may promulgate rules to implement the provisions of sections 379.1500 to 379.1550. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in sections 379.1500 to 379.1550 shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. Sections 379.1500 to 379.1550 and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 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, 2011, shall be invalid and void.

2. The provisions of sections 379.1500 to 379.1550 shall become effective January 1, 2012.

384.015. DEFINITIONS. — As used in sections 384.011 to 384.071**, the following terms shall mean**:

(1) "Admitted insurer" **[**means**],** an insurer licensed to do an insurance business in this state;

(2) "Capital" **[**means**],** funds paid in for stock or other evidence of ownership;

(3) "Director" **[**means**],** the director of the department of insurance, financial institutions and professional registration;

(4) "Eligible surplus lines insurer" **[**means**],** a nonadmitted insurer with which a surplus lines licensee may place surplus lines insurance;

(5) **"Exempt commercial purchaser", any person purchasing commercial insurance that, at the time of placement, meets the following requirements:**

(a) The person employs or retains a qualified risk manager to negotiate insurance coverage;

(b) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand dollars in the immediately preceding twelve months; and

(c) a. The person meets at least one of the following criteria:

i. The person possesses a net worth in excess of twenty million dollars, as such amount is adjusted under subparagraph b. of this paragraph;

ii. The person generates annual revenues in excess of fifty million dollars, as such amount is adjusted under subparagraph b. of this paragraph;

iii. The person employs more than five hundred full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than one thousand employees in the aggregate;

iv. The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least thirty million dollars, as such amount is adjusted under subparagraph b. of this paragraph; or

v. The person is a municipality with a population in excess of fifty thousand persons.

b. Effective on the fifth January first occurring after the date of the enactment of United States Public Law 111-203 and each fifth January first occurring thereafter, the amounts in items i, ii, and iv of subparagraph a. of this paragraph shall be adjusted to reflect the percentage change for such five-year period in the consumer price index for all urban consumers published by the United States Bureau of Labor Statistic of the Department of Labor;

(6) "Export" **[**means**],** to place surplus lines insurance with a nonadmitted insurer;

(7) "Home state":

(a) Except as provided in paragraph (b) of this subdivision, the term "home state" means, with respect to an insured:

a. The state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

b. If one hundred percent of the insured risk is located out of the state referred to in subparagraph a. of this paragraph, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated;

(b) If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term "home state" means the home state, as determined under paragraph (a) of this subdivision, of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract;

(c) The principal place of business is the state where the insured maintains its headquarters and where the insured's high-level officers direct, control and coordinate the business activities of the insured;

[(6)**] (8)** "Kind of insurance" **[**means**],** one of the types of insurance required to be reported in the annual statement which must be filed with the director by admitted insurers;

(9) "Nonadmitted insurance", any property and casualty insurance permitted to be placed directly or through a surplus lines licensee with a nonadmitted insurer eligible to accept such insurance;

[(7)**] (10)** "Nonadmitted insurer" **[**means**],** an insurer not licensed to do an insurance business in this state, including insurance exchanges authorized under the laws of other states;

[(8)**] (11)** "Producing broker" **[**means**],** the individual broker or agent dealing directly with the party seeking insurance;

(12) "Qualified risk manager", shall have the same meaning prescribed in the Nonadmitted and Reinsurance Reform Act of 2010 (15 U.S.C. Section 8206);

[(9)**] (13)** "Surplus" **[**means**],** funds over and above liabilities and capital of the company for the protection of policyholders;

[(10)**] (14)** "Surplus lines insurance" **[**means**],** any insurance of risks resident, located or to be performed in this state, permitted to be placed through a surplus lines licensee with a nonadmitted insurer eligible to accept such insurance, other than reinsurance, **[**wet marine and transportation insurance independently procured,**]** and life and health insurance and annuities;

[(11)**] (15)** "Surplus lines licensee" **[**means**],** a person licensed to place insurance on risks resident, located or to be performed in this state with nonadmitted insurers eligible to accept such insurance;

[(12)**] (16)** "Wet marine and transportation insurance" **[**means**]**:

(a) Insurance upon vessels, crafts, hulls and of interests therein or with relation thereto;

(b) Insurance of marine builder's risks, marine war risks and contracts of marine protection and indemnity insurance;

(c) Insurance of freights and disbursements pertaining to a subject of insurance coming within this section; and

(d) Insurance of personal property and interests therein, in the course of exportation from or importation into any country, or in the course of transportation coastwise or on inland waters, including transportation by land, water or air from point of origin to final destination, in connection with any and all risks or periods of navigation, transit or transportation, and while being prepared for and while awaiting shipment, and during any delays, transshipment, or reshipment incident thereto.

384.017. NONADMITTED INSURERS, PURCHASES FROM ALLOWED, WHEN. — Surplus lines insurance may be **[**procured through**] placed by** a surplus lines licensee **[**from nonadmitted insurers**]** if:

(1) Each insurer is an eligible surplus lines insurer;

(2) **Each insurer is authorized to write the type of insurance in its domiciliary jurisdiction;**

(3) The full amount or kind of insurance is not obtainable from admitted insurers who are actually transacting in this state the class of insurance required by the insured. Insurance shall be deemed "obtainable" within the meaning of this section if there is available a market with admitted insurers that can supply the insured's requirements both as to type of coverage and as to quality of service. "Type of coverage", as used in this section, refers to hazards covered and limits of coverage. "Quality of security and service", as used in this section, refers to the rating by a recognized financial service; and

[(3)**] (4)** All other requirements of sections 384.011 to 384.071 are met.

384.021. NONADMITTED INSURERS, LIMITATION ON FURNISHING COVERAGE — EXEMPT COMMERCIAL PURCHASER, LICENSEE EXEMPTIONS. — [No**] 1. A** surplus lines licensee shall **not** place **[**any**]** coverage with a nonadmitted insurer, unless**,** at the time of placement, **[**such nonadmitted insurer**] the surplus lines licensee has determined that the nonadmitted insurer**:

(1) **[**Has established satisfactory evidence of good repute and financial integrity;

(2) Qualified under one of the following paragraphs:

(a)**]** Has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction, which equals **[**this state's**] the greater of the** minimum capital and surplus requirements under the laws of this state **[**as defined in sections 379.010 and 379.080; or

(b) In the case of Lloyd's or other similar groups including incorporated and individual unincorporated underwriters, the incorporated members of which shall not be engaged in any

business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members, maintains a trust fund of not less than fifty million dollars as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group, and such trust shall likewise comply with the terms and conditions established in subdivision (1) of this section for alien insurers; and

(c) In the case of an "insurance exchange" created by the laws of individual states, maintain capital and surplus, or the substantial equivalent thereof, of not less than fifteen million dollars in the aggregate. For insurance exchanges which maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus, or the substantial equivalent thereof, of not less than one million five hundred thousand dollars. In the event the insurance exchange does not maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall meet the minimum capital and surplus requirements of paragraph (a) of this subdivision;

(3) Has caused to be provided to the director a copy of its current annual statement certified by such insurer, such statement to be provided no more than six months after the close of the period reported upon and which is either:

(a) Filed with and approved by the regulatory authority in the domicile of the nonadmitted insurer; or

(b) Certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's domicile; or

(c) In the case of an insurance exchange, the statement may be an aggregate combined statement of all underwriting syndicates operating during the period reported;

(4) In addition to meeting the requirements in subdivisions (1) to (3) of this section, an insurer shall be an eligible surplus lines insurer if it**] or fifteen million dollars, except that the requirements of this subdivision may be satisfied by an insurer's possessing less than the minimum capital and surplus upon an affirmative finding of acceptability by the director provided that the finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability and company record and reputation within the industry, and in no event shall the director make an affirmative finding of acceptability when the nonadmitted insurer's capital and surplus is less than four million five hundred thousand dollars; and**

(2) Appears on the most recent list of eligible surplus lines insurers published by the director from time to time but at least semiannually**[**. The director shall be required to place and maintain the name of any nonadmitted insurer which is eligible and which makes a request to be on the list of eligible surplus lines insurers**] or on the most recent quarterly listing of alien insurers maintained by the international insurers department of the National Association of Insurance Commissioners**.

2. Notwithstanding any other provision of this chapter or rules adopted to implement the provisions of this chapter, a surplus lines licensee seeking to procure or place nonadmitted insurance in Missouri for an exempt commercial purchaser shall not be required to satisfy any requirement to make a due diligence search to determine whether the full amount or type of insurance sought by such exempt commercial purchaser can be obtained from nonadmitted insurers if:

(1) The surplus lines licensee procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and

(2) The exempt commercial purchaser has subsequently requested in writing the surplus lines licensee to procure or place such insurance from a nonadmitted insurer.

384.043. LICENSING REQUIREMENTS FOR INSURANCE PRODUCERS, FEE — EXAMINATION, EXCEPTION — RENEWAL, WHEN, VIOLATION, EFFECT — NATIONAL DATABASE, PARTICIPATION IN. — 1. No insurance producer shall procure any contract of surplus lines insurance with any nonadmitted insurer, unless he possesses a current surplus lines insurance license issued by the director.

2. The director shall issue a surplus lines license to any qualified holder of a current resident or nonresident property and casualty insurance producer license but only when the licensee has:

(1) Remitted the one hundred dollar initial fee to the director;

(2) Submitted a completed license application on a form supplied by the director; and

(3) Passed a qualifying examination approved by the director, except that all holders of a license prior to July 1, 1987, shall be deemed to have passed such an examination.

3. Each surplus lines license shall be renewed for a term of two years on the biennial anniversary date of issuance and continue in effect until refused, revoked or suspended by the director in accordance with section 384.065; except that if the biennial renewal fee for the license is not paid on or before the anniversary date, the license terminates. The biennial renewal fee is one hundred dollars.

4. Beginning on or before July 1, 2012, the director shall participate in the national insurance producer database of the National Association of Insurance Commissioners, or any other equivalent uniform national database, for the licensure of surplus lines licensees and the renewal of such licenses.

5. Notwithstanding any other provision of this chapter, a person selling, soliciting, or negotiating nonadmitted insurance with respect to an insured shall be required to obtain or possess a current surplus lines insurance license issued by the director only if this state is such insured's home state.

384.051. INSURED TO FILE REPORT ON SURPLUS LINES INSURANCE NOT OBTAINED THROUGH A BROKER — CONTENTS, WHEN DUE — TAX IMPOSED, PROCEDURE TO COLLECT TAX. — 1. Every insured **[**in**]** **whose home state is** this state who procures or causes to be procured or continues or renews insurance in any surplus lines insurer, or any self-insurer **[**in**]** **whose home state is** this state who so procures or continues with, any surplus lines insurer, excess of loss, catastrophe or other insurance, **[**upon a subject of insurance resident, located or to be performed within this state,**]** other than insurance procured through a surplus lines broker pursuant to sections 384.011 to 384.071, shall before March second of the year next succeeding the year in which the insurance was so procured, continued or renewed, file a written report of the same with the director on forms prescribed by the director and furnished to such an insured upon request. The report shall show:

(1) The name and address of the insured or insureds;

(2) The name and address of the insurer or insurers;

(3) The subject of the insurance;

(4) A general description of the coverage;

(5) The amount of premium currently charged therefor;

(6) Such additional pertinent information as may be reasonably requested by the director.

2. **[**If any such insurance covers also a subject of insurance resident, located or to be performed outside this state, for the purposes of this section, a proper pro rata portion of the entire premium payable for all such insurance shall be allocated as to the subjects of insurance resident, located or to be performed in this state.

3. Any insurance in a surplus lines insurer procured through negotiations or an application in whole or in part occurring or made within or from within this state, or for which premiums in whole or in part are remitted directly or indirectly from within this state, shall be deemed to be insurance procured or continued or renewed in this state within the intent of subsection 1 of this section.

4.**]** For the general support of the government of this state there is levied upon the insured or self-insurer who procures insurance pursuant to **[**subsections 1 and 3**] subsection 1** of this section a tax at the rate of five percent of the **[**net**] gross** amount of the premium **[**in respect of risks located in this state**]**. Before April sixteenth of the year next succeeding the year in which the insurance was so procured, continued or renewed, the insured shall remit to the department of revenue the amount of the tax. The department of revenue shall notify the director of the sums collected from each insured or self-insurer.

384.057. LICENSEE TO FILE ANNUAL STATEMENT, CONTENTS — REPORT TO DIRECTOR, CONTENTS. — 1. Before March second of each year, each surplus lines broker shall report under oath to the director on forms prescribed by him or her a statement showing, with respect to the year ending the immediately preceding December thirty-first **for nonadmitted insurance where the home state of the insured is this state**:

(1) The gross amounts charged for surplus lines insurance **[**with respect to risks located within this state**]**, exclusive of sums collected for the payment of federal, state or local taxes;

(2) The amount of net premiums with respect to the insurance. For the purpose of this section, "net premiums" means the gross amount of charges for surplus lines insurance **[**with respect to risks located within this state**]**, exclusive of sums collected for the payment of federal, state and local taxes, less returned premiums.

2. No later than within forty-five days after the end of each calendar quarter ending March thirty-first, June thirtieth, September thirtieth, and December thirty-first each surplus lines broker shall report under oath to the director on forms prescribed by him or her a statement showing, with respect to each respective calendar quarter **for nonadmitted insurance where the home state of the insured is this state**:

(1) The gross amounts charged for surplus lines insurance **[**with respect to risks located within this state**]**, exclusive of sums collected for the payment of federal, state, or local taxes;

(2) The amount of net premiums with respect to the insurance. For the purpose of this section, "net premiums" means the gross amount of charges for surplus lines insurance **[**with respect to risks located within this state**]**, exclusive of sums collected for the payment of federal, state, and local taxes, less returned premiums.

384.061. PREMIUM TAX TO BE LEVIED ONLY ON ENTIRE GROSS PREMIUM FOR NONADMITTED OR SURPLUS LINES INSURANCE POLICIES. — 1. Notwithstanding any other provision of this chapter or regulation implementing a provision of this chapter, the five percent tax on net premiums imposed by sections 384.051 and 384.059 shall be levied **upon and** only upon **[**risks or portions of risks which are located within this state. If a surplus lines policy covers risks only partially located in this state, the tax payable shall be computed on the portions of the premium properly allocable to that portion of the risks located in this state and no Missouri tax shall be charged for that portion of risk which is located outside of the state of Missouri**] the entire gross premium for nonadmitted or surplus lines insurance policies for which the home state of the insured is Missouri.**

2. Notwithstanding any other provision of this chapter or regulation implementing a provision of this chapter:

(1) The placement of nonadmitted insurance shall be subject to the statutory and regulatory requirements of this chapter only if this state is the insured's home state; and

(2) A surplus lines broker is required to be licensed as a surplus lines licensee under the provisions of this chapter only if this state is the insured's home state.

385.200. DEFINITIONS. — As used in sections 385.200 to 385.220, the following terms mean:

(1) "Administrator", the person other than a provider who is responsible for the administration of the service contracts or the service contracts plan or for any filings required by sections 385.200 to 385.220;

(2) **"Business entity", any partnership, corporation, incorporated or unincorporated association, limited liability company, limited liability partnership, joint stock company, reciprocal, syndicate, or any similar entity;**

(3) "Consumer", a natural person who buys other than for purposes of resale any tangible personal property that is distributed in commerce and that is normally used for personal, family, or household purposes and not for business or research purposes;

[(3)**]** **(4)** "Dealers", any motor vehicle dealer or boat dealer licensed or required to be licensed under the provisions of sections 301.550 to 301.573;

[(4)**]** **(5)** "Director", the director of the department of insurance, financial institutions and professional registration;

[(5)**]** **(6)** "Maintenance agreement", a contract of limited duration that provides for scheduled maintenance only;

[(6)**]** **(7)** "Manufacturer", any of the following:

(a) A person who manufactures or produces the property and sells the property under the person's own name or label;

(b) A subsidiary of the person who manufacturers or produces the property;

(c) A person who owns one hundred percent of the entity that manufactures or produces the property;

(d) A person that does not manufacture or produce the property, but the property is sold under its trade name label;

(e) A person who manufactures or produces the property and the property is sold under the trade name or label of another person;

(f) A person who does not manufacture or produce the property but, under a written contract, licenses the use of its trade name or label to another person who sells the property under the licensor's trade name or label;

[(7)**]** **(8)** "Mechanical breakdown insurance", a policy, contract, or agreement issued by an authorized insurer who provides for the repair, replacement, or maintenance of a motor vehicle or indemnification for repair, replacement, or service, for the operational or structural failure of a motor vehicle due to a defect in materials or workmanship or to normal wear and tear;

[(8)**]** **(9)** "Motor vehicle extended service contract" or "service contract", a contract or agreement for a separately stated consideration and for a specific duration to perform the repair, replacement, or maintenance of a motor vehicle or indemnification for repair, replacement, or maintenance, for the operational or structural failure due to a defect in materials, workmanship, or normal wear and tear, with or without additional provision for incidental payment of indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service, but does not include mechanical breakdown insurance or maintenance agreements;

[(9)**]** **(10)** "Nonoriginal manufacturer's parts", replacement parts not made for or by the original manufacturer of the property, commonly referred to as after-market parts;

[(10)**]** **(11)** "Person", an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, reciprocal, syndicate, or any similar entity or combination of entities acting in concert;

[(11)**]** **(12)** "Premium", the consideration paid to an insurer for a reimbursement insurance policy;

[(12)**]** **(13) "Producer", any business entity or individual person selling, offering, negotiating, or soliciting a motor vehicle extended service contract and required to be licensed as a producer under subsection 1 of section 385.206;**

(14) "Provider", a person who is contractually obligated to the service contract holder under the terms of a motor vehicle extended service contract;

[(13)**]** **(15)** "Provider fee", the consideration paid for a motor vehicle extended service contract by a service contract holder;

[(14)**]** **(16)** "Reimbursement insurance policy", a policy of insurance issued to a provider and under which the insurer agrees, for the benefit of the motor vehicle extended service contract holders, to discharge all of the obligations and liabilities of the provider under the terms of the motor vehicle extended service contracts in the event of nonperformance by the provider. All obligations and liabilities include, but are not limited to, failure of the provider to perform under the motor vehicle extended service contract and the return of the unearned provider fee in the event of the provider's unwillingness or inability to reimburse the unearned provider fee in the event of termination of a motor vehicle extended service contract;

[(15)**]** **(17)** "Service contract holder" or "contract holder", a person who is the purchaser or holder of a motor vehicle extended service contract;

[(16)**]** **(18)** "Warranty", a warranty made solely by the manufacturer, importer, or seller of property or services without charge, that is not negotiated or separated from the sale of the product and is incidental to the sale of the product, that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or other remedial measures, such as repair or replacement of the property or repetition of services.

385.205. DELIVERY WITHIN COMMERCIALLY FEASIBLE TIME PERIOD — COPY OF CONTRACT TO BE DELIVERED TO CONSUMER, WHEN — VIOLATION, PENALTY. — 1. It is unlawful for any provider that has authorized a motor vehicle extended service contract with a consumer to fail to cause delivery to the consumer of a fully executed motor vehicle extended service contract within a commercially feasible time period, but no more than forty-five days from the date the consumer's initial payment is processed. It is the mailing, or actual delivery of the fully executed contract, whichever is earlier, that commences the free look period under subsection 14 of section 385.206.

2. It is unlawful for any provider, administrator, producer, or any other person who offers to a consumer a motor vehicle extended service contract, to fail, upon request, to cause delivery to the consumer of an unsigned copy of the written contract prior to the time the consumer's initial payment is processed. An offeror may comply with this provision by providing the consumer with the copy or by directing the consumer to a website containing an unsigned copy of the service contract.

3. A violation of this section is a level two violation under section 374.049.

385.206. SALE OF CONTRACTS, PROHIBITED ACTS — DEALERS NOT TO BE USED AS FRONTING COMPANIES — REQUIRED CONTRACT CONTENTS — VIOLATIONS, PENALTY. — 1. **[**No person shall directly**] It is unlawful for any person in or from this state to** sell, offer **[**for sale**]**, **negotiate,** or solicit **[**the sale of**]** a motor vehicle extended service contract **[**to**] with** a consumer, other than the following:

(1) A **motor vehicle** dealer **licensed under sections 301.550 to 301.573, along with its authorized employees offering the service contract in connection with the sale of either a motor vehicle or vehicle maintenance or repair services**;

(2) A manufacturer of motor vehicles, as defined in section 301.010**, along with its authorized employees**;

(3) A federally insured depository institution**, along with its authorized employees**;

(4) A lender licensed and defined under sections 367.100 to 367.215**, along with its authorized employees**; **[**or**]**

(5) **[**An administrator, provider, manufacturer, or person working in concert with an administrator, provider, or manufacturer marketing or selling a motor vehicle extended service contract demonstrating**] A provider registered with the director and having demonstrated** financial responsibility as **[**set forth**] required** in section 385.202**, along with its subsidiaries**

and affiliated entities, and authorized employees of the provider, subsidiary, or affiliated entity;

(6) A business entity producer or individual producer licensed under section 385.207;

(7) Authorized employees of an administrator under contract to effect coverage, collect provider fees, and settle claims on behalf of a registered provider, if the administrator is licensed as a business entity producer under section 385.207; or

(8) A vehicle owner transferring an existing motor vehicle extended service contract to a subsequent owner of the same vehicle.

2. No administrator or provider shall use a dealer as a fronting company, and no dealer shall act as a fronting company. For purposes of this subsection, "fronting company" means a dealer that authorizes a third-party administrator or provider to use its name or business to evade or circumvent the provisions of subsection 1 of this section.

3. Motor vehicle extended service contracts issued, sold, or offered **[**for sale**]** in this state shall be written in clear, understandable language, and the entire contract shall be printed or typed in easy-to-read type and conspicuously disclose the requirements in this section, as applicable.

4. Motor vehicle extended service contracts insured under a reimbursement insurance policy under subsection 3 of section 385.202 shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are guaranteed under a service contract reimbursement insurance policy. If the provider fails to pay or provide service on a claim within sixty days after proof of loss has been filed, the contract holder is entitled to make a claim directly against the insurance company." A claim against the provider also shall include a claim for return of the unearned provider fee. The motor vehicle extended service contract also shall state conspicuously the name and address of the insurer.

5. Motor vehicle extended service contracts not insured under a reimbursement insurance policy pursuant to subsection 3 of section 385.202 shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are backed only by the full faith and credit of the provider (issuer) and are not guaranteed under a service contract reimbursement insurance policy." A claim against the provider also shall include a claim for return of the unearned provider fee. The motor vehicle extended service contract also shall state conspicuously the name and address of the provider.

6. Motor vehicle extended service contracts shall identify any administrator, the provider obligated to perform the service under the contract, the motor vehicle extended service contract seller, and the service contract holder to the extent that the name and address of the service contract holder has been furnished by the service contract holder.

7. Motor vehicle extended service contracts shall state conspicuously the total purchase price and the terms under which the motor vehicle extended service contract is sold. The purchase price is not required to be preprinted on the motor vehicle extended service contract and may be negotiated at the time of sale with the service contract holder.

8. If prior approval of repair work is required, the motor vehicle extended service contracts shall state conspicuously the procedure for obtaining prior approval and for making a claim, including a toll-free telephone number for claim service and a procedure for obtaining emergency repairs performed outside of normal business hours.

9. Motor vehicle extended service contracts shall state conspicuously the existence of any deductible amount.

10. Motor vehicle extended service contracts shall specify the merchandise and services to be provided and any limitations, exceptions, and exclusions.

11. Motor vehicle extended service contracts shall state the conditions upon which the use of nonoriginal manufacturer's parts**[**,**] or parts of a like kind and quality** or substitute service**[**,**]** may be allowed. Conditions stated shall comply with applicable state and federal laws.

12. Motor vehicle extended service contracts shall state any terms, restrictions, or conditions governing the transferability of the motor vehicle extended service contract.

13. Motor vehicle extended service contracts shall state **[**the**]** **that subsequent to the required free look period specified in subsection 14 of this section, a service contract holder may cancel the contract at any time and the provider shall refund to the contract holder one hundred percent of the unearned pro rata provider fee, less any claims paid. A reasonable administrative fee may be surcharged by the provider in an amount not to exceed fifty dollars. All** terms, restrictions, or conditions governing termination of the service contract by the service contract holder **shall be stated**. The provider of the motor vehicle extended service contract shall mail a written notice to the contract holder within **[**fifteen**]** **forty-five** days of the date of termination. **The written notice required by this subsection may be included with any other correspondence required by this section.**

14. Motor vehicle extended service contracts shall **[**require**]** **contain a free look period that requires** every provider to permit the service contract holder to return the contract **to the provider** within at least twenty business days of **the** mailing date of the motor vehicle extended service contract or **[**within at least ten days if**]** **the contract date if** the service contract is **executed and** delivered at the time of sale or within a longer time period permitted under the contract. If no claim has been made under the contract **and the contract is returned**, the contract is void and the provider shall refund to the contract holder the full purchase price of the contract. A ten percent penalty **of the amount outstanding** per month shall be added to a refund that is not paid within **[**thirty**]** **forty-five** days of return of the contract to the provider. **If a claim has been made under the contract during the free look period and the contract is returned, the provider shall refund to the contract holder the full purchase price less any claims that have been paid.** The applicable free-look time periods on service contracts shall apply only to the original service contract purchaser.

15. Motor vehicle extended service contracts shall set forth all of the obligations and duties of the service contract holder, such as the duty to protect against any further damage and the requirement for certain service and maintenance.

16. Motor vehicle extended service contracts shall state clearly whether or not the service contract provides for or excludes consequential damages or preexisting conditions.

17. The contract requirements of subsections 3 to 16 of this section shall apply to motor vehicle extended service contracts made with consumers in this state. A violation of subsections 3 to 16 of this section is a level two violation under section 374.049.

18. A violation of subsection 1 or 2 of this section is a level three violation under section 374.049.

385.207. BUSINESS ENTITY PRODUCER AND INDIVIDUAL PRODUCER LICENSES REQUIRED — APPLICATION REQUIREMENTS — ISSUANCE, RENEWAL — RULEMAKING AUTHORITY. — 1. A business entity, prior to selling, offering, negotiating, or soliciting a motor vehicle extended service contract with a consumer under subdivision (6) or (7) of subsection 1 of section 385.206, shall apply for and obtain licensure with the director as a business entity producer in accordance with this section.

2. A business entity applying for a producer license under sections 385.200 to 385.220 shall make application to the director on an application made available by the director and shall pay an initial and renewal licensure fee in an amount to be determined by the director, but which shall not exceed one hundred dollars for a business entity. All applications shall include the name of the business entity, the business address or addresses of the business entity, the type of ownership of the business entity and information related to section 385.209 as required by the director. If a business entity is a partnership or unincorporated association, the application shall contain the name and address of every person or corporation having a financial interest in or owning any part of the business entity. If the business entity is a corporation, the application shall contain the names and addresses of all officers and directors of the corporation. If the business entity is a limited liability company, the application shall contain the names and addresses

of all members and officers of the limited liability company, and a list of all persons employed by the business entity and to whom it pays any salary or commission for the sale, solicitation, negotiation, or procurement of any motor vehicle extended service contract.

3. An individual, prior to selling, offering, negotiating, or soliciting a motor vehicle extended service contract with a consumer under subdivision (6) of subsection 1 of section 385.206, shall apply for and obtain licensure with the director as an individual producer in accordance with this section.

4. An individual applying for a producer license under section 385.200 to 385.220 shall make application to the director on an application made available by the director and shall pay an initial and renewal licensure fee in an amount to be determined by the director, but which shall not exceed twenty-five dollars for an individual producer. No examination of an applicant under this subsection shall be required.

5. Unless licensure is refused by the director under section 385.209, persons applying for license under this section shall be issued a producer license for a term of two years. A producer's license shall be renewed biennially upon application for renewal and payment of the fee. Such license shall continue in effect unless terminated under subsection 6 of this section, or refused, revoked, or suspended under section 385.209.

6. A producer license issued under this section, if not renewed by the director by its expiration date, shall terminate on its expiration date and shall not after that date authorize its holder under sections 385.200 to 385.220 to sell, offer, negotiate, or solicit motor vehicle extended service contracts.

7. In connection with a business entity's application as a producer and at renewal, the business entity shall provide a list to the director of all locations in this state at which it offers motor vehicle extended service contracts.

8. The director shall adopt rules under section 385.218 relating to licensing and practices of persons acting as a producer under this section.

385.208. DECEPTIVE PRACTICES. — 1. **[**A provider shall not**] It is unlawful for a provider, administrator, producer, or any other person selling, offering, negotiating, or soliciting a motor vehicle extended service contract to:**

(1) Use in its name the words insurance, casualty, guaranty, **warranty,** surety, mutual, or any other words descriptive of the insurance, casualty, guaranty, or surety business, nor shall such **[**provider**] person** use a name deceptively similar to the name or description of any insurance or surety corporation, or any other provider**[**. This section shall not apply to a company**], provided that this prohibition shall not apply to any provider or administrator** that was using any of the prohibited language in its name prior to **[**August 28, 2007. However, a company using the prohibited language in its name shall disclose**] January 1, 2011, and it discloses** conspicuously in its motor vehicle extended service contract the following statement: "This agreement is not an insurance contract."**;**

(2) Directly or indirectly, represent in any manner, whether by telemarketing, broadcast marketing, electronic media, written solicitation or any other advertisement, offer, or solicitation, a false, deceptive, or misleading statement with respect to:

(a) An affiliation with a motor vehicle manufacturer or dealer;

(b) Possession of information regarding a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty;

(c) The expiration of a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty;

(d) A requirement that such motor vehicle owner register for a new motor vehicle extended service contract with such provider in order to maintain coverage under the motor vehicle owner's current motor vehicle extended service contract or manufacturer's original equipment warranty; or

(e) Any term or provision of a motor vehicle extended service contract.
A violation of this subsection is a level three violation under section 374.049.

2. **[**A provider or its representative shall not in its motor vehicle extended service contracts or literature make, permit, or cause to be made any false or misleading statement, or deliberately omit any material statement that would be considered misleading if omitted, in connection with the sale, offer to sell or advertisement of a motor vehicle extended service contract**] It is unlawful for any person, in connection with the offer, sale, solicitation, or negotiation of a motor vehicle extended service contract, directly or indirectly to:**

(1) Employ any deception, device, scheme, or artifice to defraud;

(2) As to any material fact, make or use any misrepresentation, concealment, or suppression;

(3) Engage in any pattern or practice of making any false statement of material fact; or

(4) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person.
A violation of this subsection is a level three violation under section 374.049.

3. **Any person who knowingly employs, uses, or engages in any conduct in violation of subsection 2 of this section with the intent to defraud shall be guilty of a felony and, upon conviction, may be subject to imprisonment for a term not to exceed ten years. In addition to any fine or imprisonment imposed, a court may order restitution to the victim.**

4. A person, such as a bank, savings and loan association, lending institution, manufacturer or seller of any product, shall not require the purchase of a service contract as a condition of a loan or a condition for the sale of any property. **A violation of this subsection is a level one violation under section 374.049.**

385.209. LICENSURE SANCTIONING, WHEN — NOTIFICATION BY DIRECTOR, WHEN — PRODUCER TO NOTIFY DIRECTOR, WHEN. — 1. The director may suspend, revoke, refuse to issue, or refuse to renew a registration or license under sections 385.200 to 385.220 for any of the following causes, if the applicant or licensee or the applicant's or licensee's subsidiaries or affiliated entities acting on behalf of the applicant or licensee in connection with the applicant's or licensee's motor vehicle extended service contract program has:

(1) Filed an application for license in this state within the previous ten years, which, as of the effective date of the license, was incomplete in any material respect or contained incorrect, misleading, or untrue information;

(2) Violated any provision in sections 385.200 to 385.220, or violated any rule, subpoena, or order of the director;

(3) Obtained or attempted to obtain a license through material misrepresentation or fraud;

(4) Misappropriated or converted any moneys or properties received in the course of doing business;

(5) Been convicted of any felony;

(6) Used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere;

(7) Been found in violation of law by a court of competent jurisdiction in an action instituted by any officer of any state or the United States in any matter involving motor vehicle extended service contracts, financial services, investments, credit, insurance, banking, or finance;

(8) Had a producer license or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;

(9) Been refused a license or had a license revoked or suspended by a state or federal regulator of service contracts, financial services, investments, credit, insurance, banking, or finance;

(10) Signed the name of another to an application for license or to any document related to a motor vehicle extended service contract transaction without authorization;

(11) Unlawfully acted as a producer without a license;

(12) Failed to comply with an administrative or court order imposing a child support obligation;

(13) Failed to comply with any administrative or court order directing payment of state or federal income tax; or

(14) Has within the last fifteen years been declared insolvent by the director or a motor vehicle extended service contract regulator of another state or has been the subject of a bankruptcy petition.

2. In the event that the action by the director is not to renew or to deny an application for a license, the director shall notify the applicant or licensee in writing and advise the applicant or licensee of the reason for the denial or nonrenewal. Appeal of the nonrenewal or denial of the application for a license shall be made pursuant to the provisions of chapter 621. Notwithstanding section 621.120, the director shall retain discretion in refusing a license or renewal and such discretion shall not transfer to the administrative hearing commission.

3. The license of a business entity producer may be suspended, revoked, renewal refused, or an application may be refused if the director finds that a violation by an individual acting under the direction of the business entity was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the business entity and the violation was neither reported to the director nor corrective action taken.

4. The director may also revoke or suspend under subsection 1 of this section any license issued by the director where the licensee has failed to renew or has surrendered such license.

5. Every producer licensed under this section shall notify the director of any change of address, on forms prescribed by the director, within thirty days of the change. If the failure to notify the director of the change of address results in an inability to serve the producer with a complaint as provided by sections 621.045 to 621.198, then the director may immediately revoke the license of the producer until such time as service may be obtained.

6. A producer shall report to the director any license revocation or civil action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent order, or other relevant legal documents.

7. Within thirty days of the initial pretrial hearing date or arraignment, a producer shall report to the director any felony proceeding initiated by any state or the United States for any violation of law by the producer. The report shall include a copy of the indictment or information filed, the order resulting from the hearing and any other relevant legal documents.

385.211. REGISTER OF BUSINESS ENTITY PRODUCERS TO BE MAINTAINED — INSPECTION OF LIST — UPDATING OF REGISTRY, WHEN. — 1. A provider registered to issue motor vehicle extended service contracts in this state shall maintain a register of business entity producers who are authorized to sell, offer, negotiate, or solicit the sale of motor vehicle extended service contracts in this state, and shall make such list available for inspection upon request by the director. Within thirty days of a provider authorizing a producer to sell, offer, negotiate, or solicit motor vehicle extended service contracts, the

provider shall enter the name and license number of the producer in the company registry of producers.

2. Within thirty days of a provider terminating a business entity producer's appointment to sell, offer, negotiate, or solicit motor vehicle extended service contracts, the provider shall update the registry with the effective date of the termination. If a provider has possession of information relating to any cause for discipline under section 385.209, the provider shall notify the director of this information in writing. The privileges and immunities applicable to insurers under section 375.022 shall apply to providers for any information reported under this subsection.

SECTION B. EMERGENCY CLAUSE. — Because immediate action is necessary to ensure the continued application of Missouri law regulating and taxing surplus lines insurance in accordance with Public Law 111-203, the repeal and reenactment of sections 384.015, 384.017, 384.021, 384.043, 384.051, 384.057, and 384.061 of section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace, and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the repeal and reenactment of sections 384.015, 384.017, 384.021, 384.043, 384.051, 384.057, and 384.061 of section A of this act shall be in full force and effect upon its passage and approval.

SECTION C. EFFECTIVE DATE. — The repeal and reenactment of sections 385.200, 385.206, and 385.208, and the enactment of sections 385.205, 385.207, 385.209, and 385.211 of section A of this act shall become effective January 1, 2012.

Approved July 7, 2011

SB 135 [CCS HCS SS SB 135]

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

Modifies provisions pertaining to the storage and dispensing of motor fuel and extends the expiration date to August 28, 2017 for environmental laws relating to dry-cleaning facilities.

AN ACT to repeal sections 253.090, 260.262, 260.380, 260.475, 260.965, 306.109, 319.132, and 414.072, RSMo, and to enact in lieu thereof thirteen new sections relating to environmental protection, with penalty provisions and an emergency clause for certain sections.

SECTION

A. Enacting clause.
253.090. State park earnings fund created, how used.
260.262. Retailers of lead-acid batteries, duties — notice to purchaser, contents.
260.269. In-state private entity disposal permitted, when.
260.380. Duties of hazardous waste generators — fees to be collected, disposition — exemptions — expiration of fees.
260.475. Fees to be paid by hazardous waste generators — exceptions — deposit of moneys — violations, penalty — deposit — fee requirement, expiration.
260.965. Expiration date.
306.109. Alcoholic drinking devices and containers prohibited on rivers — violation, penalty.
319.130. Public hearings required, when — training program requirements — record keeping — rulemaking authority.
319.132. Board of trustees to assess surcharge on petroleum products per transport load, exceptions, deposit in fund, refund procedure — rate of surcharge — suspension of fees, when.

414.072. Measuring devices, certain fuels, inspection, when — expiration date, effect of — correction or removal, when — public policy regarding devices.
640.116. Exemption from rules, system exclusively serving charitable or benevolent organization, when.
640.905. Permit issuance after expiration of statutorily required time frame — engineering plans, specifications and designs — permit application or modification, statement required, use by department.
1. Motor fuel vapor recovery fees, department of natural resource to set — preemption of local enforcement.
B. Emergency clause.

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

SECTION A. ENACTING CLAUSE. — Sections 253.090, 260.262, 260.380, 260.475, 260.965, 306.109, 319.132, and 414.072, RSMo, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 253.090, 260.262, 260.269, 260.380, 260.475, 260.965, 306.109, 319.130, 319.132, 414.072, 640.116, 640.905, and 1, to read as follows:

253.090. STATE PARK EARNINGS FUND CREATED, HOW USED. — 1. All revenue derived from privileges, conveniences, contracts or otherwise, all moneys received by gifts, bequests or contributions or from county or municipal sources and all moneys received from the operation of concessions, projects or facilities and from resale items shall be paid into the state treasury to the credit of the "State Park Earnings Fund", which is hereby created. In the event any state park or any part thereof is taken under the power of eminent domain by the federal government the moneys paid for the taking shall be deposited in the state park earnings fund. The fund shall be used solely for the payment of the expenditures of the department of natural resources in the administration of this law, except that in any fiscal year the department may expend a sum not to exceed fifty percent of the preceding fiscal year's deposits to the state park earnings fund for the purpose of:

(1) Paying the principal and interest of revenue bonds issued;

(2) Providing an interest and sinking fund;

(3) Providing a reasonable reserve fund;

(4) Providing a reasonable fund for depreciation; and

(5) Paying for feasibility reports necessary for the issuing of revenue bonds.

2. **Notwithstanding the provisions of section 33.080 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.**

3. A good and sufficient bond conditioned upon the faithful performance of the contract and compliance with this law shall be required of all contractors.

[3.**] 4.** Any person who contracts pursuant to this section with the state shall keep true and accurate records of his or her receipts and disbursements arising out of the performance of the contract and shall permit the department of natural resources and the state auditor to audit such records.

[4. All moneys remaining in the state park revolving fund on July 1, 2000, shall be transferred to the state park earnings fund.**]**

260.262. RETAILERS OF LEAD-ACID BATTERIES, DUTIES — NOTICE TO PURCHASER, CONTENTS. — A person selling lead-acid batteries at retail or offering lead-acid batteries for retail sale in the state shall:

(1) Accept, at the point of transfer, in a quantity at least equal to the number of new lead-acid batteries purchased, used lead-acid batteries from customers, if offered by customers;

(2) Post written notice which must be at least four inches by six inches in size and must contain the universal recycling symbol and the following language:

(a) It is illegal to discard a motor vehicle battery or other lead-acid battery;

(b) Recycle your used batteries; and

(c) State law requires us to accept used motor vehicle batteries, or other lead-acid batteries for recycling, in exchange for new batteries purchased; and

(3) Manage used lead-acid batteries in a manner consistent with the requirements of the state hazardous waste law;

(4) Collect at the time of sale a fee of fifty cents for each lead-acid battery sold. Such fee shall be added to the total cost to the purchaser at retail after all applicable sales taxes on the battery have been computed. The fee imposed, less six percent of fees collected, which shall be retained by the seller as collection costs, shall be paid to the department of revenue in the form and manner required by the department and shall include the total number of batteries sold during the preceding month. The department of revenue shall promulgate rules and regulations necessary to administer the fee collection and enforcement. The terms "sold at retail" and "retail sales" do not include the sale of batteries to a person solely for the purpose of resale, if the subsequent retail sale in this state is to the ultimate consumer and is subject to the fee. However, this fee shall not be paid on batteries sold for use in agricultural operations upon written certification by the purchaser; and

(5) The department of revenue shall administer, collect, and enforce the fee authorized pursuant to this section pursuant to the same procedures used in the administration, collection, and enforcement of the general state sales and use tax imposed pursuant to chapter 144 except as provided in this section. The proceeds of the battery fee, less four percent of the proceeds, which shall be retained by the department of revenue as collection costs, shall be transferred by the department of revenue into the hazardous waste fund, created pursuant to section 260.391. The fee created in subdivision (4) and this subdivision shall be effective October 1, 2005. The provisions of subdivision (4) and this subdivision shall terminate **[**June 30, 2011**] December 31, 2013**.

260.269. IN-STATE PRIVATE ENTITY DISPOSAL PERMITTED, WHEN. — Notwithstanding any provision of law to the contrary, the state, including without limitation, any agency or political subdivision thereof, in possession of used tires, scrap tires, or tire shred may transfer possession and ownership of such tires or shred to any in-state private entity to be lawfully disposed of or recycled; provided, such tires or shred are not burned as a fuel except in a permitted facility; and further provided, such tires shall not be disposed of in a landfill; and still further provided, the cost incurred by the state, agency, or political subdivision transferring such tires or shred is less than the cost the state, agency, or political subdivision would have otherwise incurred had it disposed of such tires or shred. The private entity shall pay for the transportation of such used tires they receive.

260.380. DUTIES OF HAZARDOUS WASTE GENERATORS — FEES TO BE COLLECTED, DISPOSITION — EXEMPTIONS — EXPIRATION OF FEES. — 1. After six months from the effective date of the standards, rules and regulations adopted by the commission pursuant to section 260.370, hazardous waste generators located in Missouri shall:

(1) Promptly file and maintain with the department, on registration forms it provides for this purpose, information on hazardous waste generation and management as specified by rules and regulations. Hazardous waste generators shall pay a one hundred dollar registration fee upon initial registration, and a one hundred dollar registration renewal fee annually thereafter to maintain an active registration. Such fees shall be deposited in the hazardous waste fund created in section 260.391;

(2) Containerize and label all hazardous wastes as specified by standards, rules and regulations;

(3) Segregate all hazardous wastes from all nonhazardous wastes and from noncompatible wastes, materials and other potential hazards as specified by standards, rules and regulations;

(4) Provide safe storage and handling, including spill protection, as specified by standards, rules and regulations, for all hazardous wastes from the time of their generation to the time of their removal from the site of generation;

(5) Unless provided otherwise in the rules and regulations, utilize only a hazardous waste transporter holding a license pursuant to sections 260.350 to 260.430 for the removal of all hazardous wastes from the premises where they were generated;

(6) Unless provided otherwise in the rules and regulations, provide a separate manifest to the transporter for each load of hazardous waste transported from the premises where it was generated. The generator shall specify the destination of such load on the manifest. The manner in which the manifest shall be completed, signed and filed with the department shall be in accordance with rules and regulations;

(7) Utilize for treatment, resource recovery, disposal or storage of all hazardous wastes, only a hazardous waste facility authorized to operate pursuant to sections 260.350 to 260.430 or the federal Resource Conservation and Recovery Act, or a state hazardous waste management program authorized pursuant to the federal Resource Conservation and Recovery Act, or any facility exempted from the permit required pursuant to section 260.395;

(8) Collect and maintain such records, perform such monitoring or analyses, and submit such reports on any hazardous waste generated, its transportation and final disposition, as specified in sections 260.350 to 260.430 and rules and regulations adopted pursuant to sections 260.350 to 260.430;

(9) Make available to the department upon request samples of waste and all records relating to hazardous waste generation and management for inspection and copying and allow the department to make unhampered inspections at any reasonable time of hazardous waste generation and management facilities located on the generator's property and hazardous waste generation and management practices carried out on the generator's property;

(10) Pay annually, on or before January first of each year, effective January 1, 1982, a fee to the state of Missouri to be placed in the hazardous waste fund. The fee shall be five dollars per ton or portion thereof of hazardous waste registered with the department as specified in subdivision (1) of this subsection for the twelve-month period ending June thirtieth of the previous year. However, the fee shall not exceed fifty-two thousand dollars per generator site per year nor be less than one hundred fifty dollars per generator site per year;

(a) All moneys payable pursuant to the provisions of this subdivision shall be promptly transmitted to the department of revenue, which shall deposit the same in the state treasury to the credit of the hazardous waste fund created in section 260.391;

(b) The hazardous waste management commission shall establish and submit to the department of revenue procedures relating to the collection of the fees authorized by this subdivision. Such procedures shall include, but not be limited to, necessary records identifying the quantities of hazardous waste registered, the form and submission of reports to accompany the payment of fees, the time and manner of payment of fees, which shall not be more often than quarterly.

2. Missouri treatment, storage, or disposal facilities shall pay annually, on or before January first of each year, a fee to the department equal to two dollars per ton or portion thereof for all hazardous waste received from outside the state. This fee shall be based on the hazardous waste received for the twelve-month period ending June thirtieth of the previous year.

3. Exempted from the requirements of this section are individual householders and farmers who generate only small quantities of hazardous waste and any person the commission determines generates only small quantities of hazardous waste on an infrequent basis, except that:

(1) Householders, farmers and exempted persons shall manage all hazardous wastes they may generate in a manner so as not to adversely affect the health of humans, or pose a threat to the environment, or create a public nuisance; and

(2) The department may determine that a specific quantity of a specific hazardous waste requires special management. Upon such determination and after public notice by press release

or advertisement thereof, including instructions for handling and delivery, generators exempted pursuant to this subsection shall deliver, but without a manifest or the requirement to use a licensed hazardous waste transporter, such waste to:

(a) Any storage, treatment or disposal site authorized to operate pursuant to sections 260.350 to 260.430 or the federal Resource Conservation and Recovery Act, or a state hazardous waste management program authorized pursuant to the federal Resource Conservation and Recovery Act which the department designates for this purpose; or

(b) A collection station or vehicle which the department may arrange for and designate for this purpose.

4. Failure to pay the fee, or any portion thereof, prescribed in this section by the due date shall result in the imposition of a penalty equal to fifteen percent of the original fee. The fee prescribed in this section shall expire December 31, **[**2011**]** **2013**, except that the department shall levy and collect this fee for any hazardous waste generated prior to such date and reported to the department.

260.475. FEES TO BE PAID BY HAZARDOUS WASTE GENERATORS — EXCEPTIONS — DEPOSIT OF MONEYS — VIOLATIONS, PENALTY — DEPOSIT — FEE REQUIREMENT, EXPIRATION. — 1. Every hazardous waste generator located in Missouri shall pay, in addition to the fees imposed in section 260.380, a fee of twenty-five dollars per ton annually on all hazardous waste which is discharged, deposited, dumped or placed into or on the soil as a final action, and two dollars per ton on all other hazardous waste transported off site. No fee shall be imposed upon any hazardous waste generator who registers less than ten tons of hazardous waste annually pursuant to section 260.380, or upon:

(1) Hazardous waste which must be disposed of as provided by a remedial plan for an abandoned or uncontrolled hazardous waste site;

(2) Fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;

(3) Solid waste from the extraction, beneficiation and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore and smelter slag waste from the processing of materials into reclaimed metals;

(4) Cement kiln dust waste;

(5) Waste oil; or

(6) Hazardous waste that is:

(a) Reclaimed or reused for energy and materials;

(b) Transformed into new products which are not wastes;

(c) Destroyed or treated to render the hazardous waste nonhazardous; or

(d) Waste discharged to a publicly owned treatment works.

2. The fees imposed in this section shall be reported and paid to the department on an annual basis not later than the first of January. The payment shall be accompanied by a return in such form as the department may prescribe.

3. All moneys collected or received by the department pursuant to this section shall be transmitted to the department of revenue for deposit in the state treasury to the credit of the hazardous waste fund created pursuant to section 260.391. Following each annual reporting date, the state treasurer shall certify the amount deposited in the fund to the commission.

4. If any generator or transporter fails or refuses to pay the fees imposed by this section, or fails or refuses to furnish any information reasonably requested by the department relating to such fees, there shall be imposed, in addition to the fee determined to be owed, a penalty of fifteen percent of the fee shall be deposited in the hazardous waste fund.

5. If the fees or any portion of the fees imposed by this section are not paid by the date prescribed for such payment, there shall be imposed interest upon the unpaid amount at the rate of ten percent per annum from the date prescribed for its payment until payment is actually made, all of which shall be deposited in the hazardous waste fund.

6. The state treasurer is authorized to deposit all of the moneys in the hazardous waste fund in any of the qualified depositories of the state. All such deposits shall be secured in such a manner and shall be made upon such terms and conditions as are now or may hereafter be provided for by law relative to state deposits. Interest received on such deposits shall be credited to the hazardous waste fund.

7. This fee shall expire December 31, **[**2011**]** **2013**, except that the department shall levy and collect this fee for any hazardous waste generated prior to such date and reported to the department.

260.965. EXPIRATION DATE. — The provisions of sections 260.900 to 260.965 shall expire August 28, **[**2012**]** **2017**.

306.109. ALCOHOLIC DRINKING DEVICES AND CONTAINERS PROHIBITED ON RIVERS — VIOLATION, PENALTY. — 1. No person shall possess or use beer bongs or other drinking devices used to consume similar amounts of alcohol on the rivers of this state. As used in this section, the term "beer bong" includes any device that is intended and designed for the rapid consumption or intake of an alcoholic beverage, including but not limited to funnels, tubes, hoses, and modified containers with additional vents.

2. No person shall possess or use any large volume alcohol containers that hold more than four gallons of an alcoholic beverage on the rivers of this state.

3. **[**No person shall possess expanded polypropylene coolers on or within fifty feet of any river of this state, except in developed campgrounds, picnic areas, landings, roads and parking lots located within fifty feet of such rivers. This subsection shall not apply to high density bait containers used solely for such purpose.

4.**]** Any person who violates the provisions of this section is guilty of a class A misdemeanor.

[5.**]** **4.** The provisions of this section shall not apply to persons on the Mississippi River, Missouri River, or Osage River.

319.130. PUBLIC HEARINGS REQUIRED, WHEN — TRAINING PROGRAM REQUIREMENTS — RECORD KEEPING — RULEMAKING AUTHORITY. — **1. On or before April 1, 2012, the board of trustees of the petroleum storage tank insurance fund shall hold one or more public hearings to determine whether to create and fund an underground storage tank operator training program. The board shall consider at a minimum:**

(1) Input from the department of natural resources, the department of agriculture, the board's advisory committee, and affected portions of the private sector;

(2) Relevant deadlines, time frames, costs, and benefits, including federal funding consequences for the state's underground storage tank regulatory program if such a training program is not implemented;

(3) Training programs already in existence in other states;

(4) Training programs already being used by tank owners and operators; and

(5) Such other factors as the board deems necessary and prudent.

2. If after completing the requirements of subsection 1 of this section, the board decides by majority vote to create and fund an underground storage tank operator training program, the training program shall at a minimum:

(1) Satisfy the federal requirements for such a program;

(2) Be developed in collaboration with the department of natural resources, the department of agriculture, the board's advisory committee, and affected portions of the private sector;

(3) Be offered at no cost to those who are required to participate;

(4) Specify standards, reporting, and documentation requirements; and

(5) Be established by rule.

3. The board may contract with one or more third parties to carry out the requirements of this section.

4. At any time after the board creates and funds the underground storage tank operator training program under subsection 2 of this section, the board may, by rule, modify or eliminate the program.

5. Any records created or maintained by the board as part of the underground storage tank operator training program created herein shall be public records under chapter 610 and shall be made readily available to the department of natural resources.

6. Any rule or portion of a rule, as that term is defined in section 536.010, 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 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly under chapter 536 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, 2011, shall be invalid and void.

319.132. BOARD OF TRUSTEES TO ASSESS SURCHARGE ON PETROLEUM PRODUCTS PER TRANSPORT LOAD, EXCEPTIONS, DEPOSIT IN FUND, REFUND PROCEDURE — RATE OF SURCHARGE — SUSPENSION OF FEES, WHEN. — 1. The board shall assess a surcharge on all petroleum products within this state which are enumerated by section 414.032. Except as specified by this section, such surcharge shall be administered pursuant to the provisions of subsections 1 to **[**3**]** **5** of section 414.102 and subsections 1 and 2 of section 414.152. Such surcharge shall be imposed upon such petroleum products within this state and shall be assessed on each transport load, or the equivalent of an average transport load if moved by other means. All revenue generated by the assessment of such surcharges shall be deposited to the credit of the special trust fund known as the petroleum storage tank insurance fund.

2. Any person who claims to have paid the surcharge in error may file a claim for a refund with the board within three years of the payment. The claim shall be in writing and signed by the person or the person's legal representative. The board's decision on the claim shall be in writing and may be delivered to the person by first class mail. Any person aggrieved by the board's decision may seek judicial review by bringing an action against the board in the circuit court of Cole County pursuant to section 536.150 no later than sixty days following the date the board's decision was mailed. The department of revenue shall not be a party to such proceeding.

3. The board shall assess and annually reassess the financial soundness of the petroleum storage tank insurance fund.

4. (1) The board shall set, in a public meeting with an opportunity for public comment, the rate of the surcharge that is to be assessed on each such transport load or equivalent but such rate shall be no more than sixty dollars per transport load or an equivalent thereof. A transport load shall be deemed to be eight thousand gallons.

(2) The board may increase or decrease the surcharge, up to a maximum of sixty dollars, only after giving at least sixty days' notice of its intention to alter the surcharge; provided however, the board shall not increase the surcharge by more than fifteen dollars in any year. The board must coordinate its actions with the department of revenue to allow adequate time for implementation of the surcharge change.

(3) If the fund's cash balance on the first day of any month exceeds the sum of its liabilities, plus ten percent, the transport load fee shall automatically revert to twenty-five dollars per transport load on the first day of the second month following this event.

(4) Moneys generated by this surcharge shall not be used for any purposes other than those outlined in sections 319.129 through 319.133 and section 319.138. Nothing in this subdivision

shall limit the board's authority to contract with the department of natural resources pursuant to section 319.129 to carry out the purposes of the fund as determined by the board.

5. The board shall ensure that the fund retain a balance of at least twelve million dollars but not more than one hundred million dollars. If, at the end of any quarter, the fund balance is above one hundred million dollars, the treasurer shall notify the board thereof. The board shall suspend the collection of fees pursuant to this section beginning on the first day of the first quarter following the receipt of notice. If, at the end of any quarter, the fund balance is below twenty million dollars, the treasurer shall notify the board thereof. The board shall reinstate the collection of fees pursuant to this section beginning on the first day of the first quarter following the receipt of notice.

6. Railroad corporations as defined in section 388.010 and airline companies as defined in section 155.010 shall not be subject to the load fee described in this chapter nor permitted to participate in or make claims against the petroleum storage tank insurance fund created in section 319.129.

414.072. MEASURING DEVICES, CERTAIN FUELS, INSPECTION, WHEN — EXPIRATION DATE, EFFECT OF — CORRECTION OR REMOVAL, WHEN — PUBLIC POLICY REGARDING DEVICES. — 1. At least every six months, the director shall test and inspect the measuring devices used by any person selling an average of two hundred or more gallons of gasoline, gasoline-alcohol blends, diesel fuel, heating oil, kerosene, or aviation turbine fuel per month at either retail or wholesale in this state, except marine installations, which shall be tested and inspected at least once per year.

2. **The manufacturer's expiration date on motor fuel pump nozzles, hoses, and hose breakaway equipment shall not be the sole factor in requiring the repair or replacement of such devices and equipment nor in the issuance of any fine, penalty, or punishment by the state or any political subdivision. The manufacturer's expiration date on motor fuel pump nozzles, hoses, and hose breakaway equipment shall not impose any new or additional liability on the state, political subdivisions, motor fuel retailers, wholesalers, suppliers, and distributors, and the retailers and wholesalers of such devices and equipment.**

3. When the director finds that any measuring device does not correctly and accurately register and measure the monetary cost, if applicable, or the volume sold, he shall require the correction, removal, or discontinuance of the same.

[3.**]** **4.** Notwithstanding any other law or rule to the contrary, it has been and continues to be the public policy of this state to prohibit gasoline and diesel motor fuel in a retail sale transaction from being dispensed by any measuring device or equipment that is not approved by the department of agriculture or the National Type Evaluation Program (NTEP). **Any automatic volumetric correction device for measuring gasoline, gasoline-alcohol blends, diesel fuel, and diesel fuel-biodiesel blends sold at retail fueling facilities is prohibited by state rule or the automatic adoption or incorporation of national standards or rules unless the device is first specifically authorized and required by state statute.**

640.116. EXEMPTION FROM RULES, SYSTEM EXCLUSIVELY SERVING CHARITABLE OR BENEVOLENT ORGANIZATION, WHEN. — 1. Any water system that exclusively serves a charitable or benevolent organization, if the system does not regularly serve an average of one hundred persons or more at least sixty days out of the year and the system does not serve a school or day-care facility, shall be exempt from all rules relating to well construction except any rules established under sections 256.600 to 256.640 applying to multifamily wells, unless such wells or pump installations for such wells are determined to present a threat to groundwater or public health.

2. If the system incurs three or more total coliform maximum contaminant level violations in a twelve-month period or one acute maximum contaminant level violation,

the system owner shall either provide an alternate source of water, eliminate the source of contamination, or provide treatment that reliably achieves at least ninety-nine and ninety-nine one-hundredths percent treatment of viruses.

3. Notwithstanding this or any other provision of law to the contrary, no facility otherwise described in subsection 1 of this section shall be required to replace, change, upgrade, or otherwise be compelled to alter an existing well constructed prior to August 28, 2011, unless such well is determined to present a threat to groundwater or public health or contains the contaminant levels referred to in subsection 2 of this section.

640.905. PERMIT ISSUANCE AFTER EXPIRATION OF STATUTORILY REQUIRED TIME FRAME — ENGINEERING PLANS, SPECIFICATIONS AND DESIGNS — PERMIT APPLICATION OR MODIFICATION, STATEMENT REQUIRED, USE BY DEPARTMENT. — 1. If engineering plans, specifications, and designs prepared by a registered professional engineer are submitted to the department of natural resources as part of a permit application or permit modification, the permit application or permit modification shall include a statement that the plans, specifications, and designs were prepared in accordance with the applicable requirements and shall be sealed by the registered professional engineer in accordance with section 327.411, as applicable. The department shall use the complete, sealed engineering plans, specifications, and designs as submitted in addition to permit applications and other relevant information, documents, and materials in developing comments on the engineering submittals and in determining whether to issue or deny permits. The review of documents, plans, specifications, and designs sealed by a registered professional engineer for an applicant shall be conducted by a registered professional engineer or an engineering intern on behalf of the department.

2. The department shall designate supervisory registered professional engineers for permitting purposes under this chapter and chapters 260, 278, 319, 444, 643, and 644. Any permit applicant receiving written comments on an engineering submittal may request a determination from the department's supervisory registered professional engineer as to a final disposition of the department's comments regarding engineering submittals in determining a decision on the permit. The department's supervisory engineer shall inform the permit applicant of a preliminary decision within fifteen days after the permit applicant's request for a determination and shall make a final determination within thirty days of such request.

3. Nothing in this section shall be construed to require plans or other submittals to the department pursuant to an application to come under a general permit or an application for a site specific permit to be prepared by a registered professional engineer, unless otherwise required under state or federal law.

SECTION 1. MOTOR FUEL VAPOR RECOVERY FEES, DEPARTMENT OF NATURAL RESOURCE TO SET — PREEMPTION OF LOCAL ENFORCEMENT. — Notwithstanding any other law or rule to the contrary, only the department of natural resources shall set stage 1 and 2 motor fuel vapor recovery fees, including permit and construction fees, which shall be uniform across the state and which shall not be modified, expanded, or increased by political subdivisions or local enforcement agencies.

SECTION B. EMERGENCY CLAUSE. — Because immediate action is necessary to maintain regulatory oversight by the state of Missouri, the repeal and reenactment of sections 253.090, 260.262, 260.380, and 260.475, of section A of this act are deemed necessary for the immediate preservation of the public health, welfare, peace, and safety, and are hereby declared to be an emergency act within the meaning of the constitution, and the repeal and reenactment of sections 253.090, 260.262, 260.380, and 260.475 of section A of this act shall be in full force and effect upon its passage and approval.

Approved June 22, 2011

SB 161 [HCS SB 161]

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

Allows the Missouri Agricultural and Small Business Development Authority to provide loan guarantees for loans to agribusinesses.

AN ACT to repeal sections 273.327, 273.345, 348.400, 348.407, and 348.412, RSMo, and sections 273.327, 273.345, 273.347, and 1 as truly agreed to and finally passed by or as enacted by senate substitute for senate committee substitute for senate bills nos. 113 & 95, the ninety-sixth general assembly, first regular session, and to enact in lieu thereof seven new sections relating to agriculture, with penalty provisions and an emergency clause for certain sections.

SECTION

A. Enacting clause.
273.327. License annually required to operate animal boarding facilities, pet shops, pounds, dealers and commercial breeders — fees, exemption from fees for certain licensees.
273.345. Canine Cruelty Prevention Act — citation of law — purpose — required care — definitions — veterinary records — space requirements — severability clause.
273.347. Court action for enforcement, when — crime of canine cruelty, penalty.
348.400. Definitions.
348.407. Development and implementation of grants and loans — fee authority's powers — assistance to businesses — rules.
348.412. Use of loan proceeds — eligibility — rules.
1. Stacked cages without impervious barrier prohibited, penalty.
273.327. License annually required to operate animal boarding facilities, pet shops, pounds, dealers and commercial breeders — fees, exemption from fees for certain licensees.
273.345. Canine Cruelty Prevention Act — citation of law — purpose — required care — definitions — veterinary records — space requirements — severability clause.
273.347. Court action for enforcement, when — crime of canine cruelty, penalty.
1. Stacked cages without impervious barrier prohibited, penalty.
B. Emergency clause.

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

SECTION A. ENACTING CLAUSE. — Sections 273.327, 273.345, 348.400, 348.407, and 348.412, RSMo, and sections 273.327, 273.345, 273.347, and 1 as truly agreed to and finally passed by or as enacted by senate substitute for senate committee substitute for senate bills nos. 113 & 95, the ninety-sixth general assembly, first regular session, are repealed and seven new sections enacted in lieu thereof, to be known as sections 273.327, 273.345, 273.347, 348.400, 348.407, 348.412, and 1 to read as follows:

273.327. LICENSE ANNUALLY REQUIRED TO OPERATE ANIMAL BOARDING FACILITIES, PET SHOPS, POUNDS, DEALERS AND COMMERCIAL BREEDERS — FEES, EXEMPTION FROM FEES FOR CERTAIN LICENSEES. — No person shall operate an animal shelter, pound or dog pound, boarding kennel, commercial kennel, contract kennel, pet shop, or exhibition facility, other than a limited show or exhibit, or act as a dealer or commercial breeder, unless such person has obtained a license for such operations from the director. An applicant shall obtain a separate license for each separate physical facility subject to sections 273.325 to 273.357 which is operated by the applicant. Any person exempt from the licensing requirements of sections 273.325 to 273.357 may voluntarily apply for a license. Application for such license shall be

made in the manner provided by the director. The license shall expire annually unless revoked. As provided by rules to be promulgated by the director, the license fee shall range from one hundred to **two thousand** five hundred dollars per year. **Each licensee subject to sections 273.325 to 273.357 shall pay an additional annual fee of twenty-five dollars to be used by the department of agriculture for the purpose of administering Operation Bark Alert or any successor program.** Pounds or dog pounds shall be exempt from payment of **[**such fee**]** **the fees under this section**. License fees shall be levied for each license issued or renewed on or after January 1, 1993.

273.345. CANINE CRUELTY PREVENTION ACT — CITATION OF LAW — PURPOSE — REQUIRED CARE — DEFINITIONS — VETERINARY RECORDS — SPACE REQUIREMENTS — SEVERABILITY CLAUSE. — 1. This section shall be known and may be cited as the "**[**Puppy Mill**]** **Canine** Cruelty Prevention Act."

2. The purpose of this act is to prohibit the cruel and inhumane treatment of dogs **[**in puppy mills**]** **bred in large operations** by requiring large-scale dog breeding operations to provide each dog under their care with basic food and water, adequate shelter from the elements, necessary veterinary care, adequate space to turn around and stretch his or her limbs, and regular exercise.

3. Notwithstanding any other provision of law, any person having custody or ownership of more than ten female covered dogs for the purpose of breeding those animals and selling any offspring for use as a pet shall provide each covered dog:

(1) Sufficient food and clean water;

(2) Necessary veterinary care;

(3) Sufficient housing, including protection from the elements;

(4) Sufficient space to turn and stretch freely, lie down, and fully extend his or her limbs;

(5) Regular exercise; and

(6) Adequate rest between breeding cycles.

4. **[**Notwithstanding any other provision of law, no person may have custody of more than fifty covered dogs for the purpose of breeding those animals and selling any offspring for use as a pet.

5.**]** For purposes of this section and notwithstanding the provisions of section 273.325, the following terms have the following meanings:

(1) "Adequate rest between breeding cycles" means, at minimum, ensuring that **female** dogs are not bred to produce more **[**than two**]** litters in any **[**eighteen-month**]** **given** period **than what is recommended by a licensed veterinarian as appropriate for the species, age, and health of the dog**;

(2) "Covered dog" means any individual of the species of the domestic dog, Canis lupus familiaris, or resultant hybrids, that is over the age of six months and has intact sexual organs;

(3) "Necessary veterinary care" means, at minimum, examination at least once yearly by a licensed veterinarian, prompt treatment of any **serious** illness or injury by a licensed veterinarian, and where needed, humane euthanasia by a licensed veterinarian using lawful techniques deemed acceptable by the American Veterinary Medical Association;

(4) "Person" means any individual, firm, partnership, joint venture, association, limited liability company, corporation, estate, trust, receiver, or syndicate;

(5) "Pet" means any **[**domesticated animal**]** **species of the domestic dog, Canis lupus familiaris, or resultant hybrids,** normally maintained in or near the household of the owner thereof;

(6) "Regular exercise" means **[**constant and unfettered access to an outdoor exercise area that is composed of a solid ground-level surface with adequate drainage, provides some protection against sun, wind, rain, and snow, and provides each dog at least twice the square footage of the indoor floor space provided to that dog**]** **the type and amount of exercise sufficient to comply with an exercise plan that has been approved by a licensed veterinarian, developed in accordance with regulations regarding exercise promulgated**

by the Missouri department of agriculture, and where such plan affords the dog maximum opportunity for outdoor exercise as weather permits;

(7) "Retail pet store" means a person or retail establishment open to the public where dogs are bought, sold, exchanged, or offered for retail sale directly to the public to be kept as pets, but that does not engage in any breeding of dogs for the purpose of selling any offspring for use as a pet;

(8) "Sufficient food and clean water" means access to appropriate nutritious food at least **[**once**] twice** a day sufficient to maintain good health, and continuous access to potable water that is not frozen and is **generally** free of debris, feces, algae, and other contaminants;

(9) "Sufficient housing, including protection from the elements" means **[**constant and unfettered access to an indoor enclosure that has a solid floor, is not stacked or otherwise placed on top of or below another animal's enclosure, is cleaned of waste at least once a day while the dog is outside the enclosure, and does not fall below forty-five degrees Fahrenheit, or rise above eighty-five degrees Fahrenheit**] the continuous provision of a sanitary facility, the provision of a solid surface on which to lie in a recumbent position, protection from the extremes of weather conditions, proper ventilation, and appropriate space depending on the species of animal as required by regulations of the Missouri department of agriculture and in compliance with the provisions of subsection 7 of this section. No dog shall remain inside its enclosure while the enclosure is being cleaned. Dogs housed within the same enclosure shall be compatible, in accordance with regulations promulgated by the Missouri department of agriculture**;

(10) "Sufficient space to turn and stretch freely, lie down, and fully extend his or her limbs" means having:

(a) Sufficient indoor space **or shelter from the elements** for each dog to turn in a complete circle without any impediment (including a tether);

(b) Enough indoor space **or shelter from the elements** for each dog to lie down and fully extend his or her limbs and stretch freely without touching the side of an enclosure or another dog;

(c) **[**At least one foot of headroom above the head of the tallest dog in the enclosure; and

(d) At least twelve square feet of indoor floor space per each dog up to twenty-five inches long, at least twenty square feet of indoor floor space per each dog between twenty-five and thirty-five inches long, and at least thirty square feet of indoor floor space per each dog for dogs thirty-five inches and longer (with the length of the dog measured from the tip of the nose to the base of the tail)**] Appropriate space depending on the species of the animal, as specified in regulations by the Missouri department of agriculture, as revised, and in compliance with the provisions of subsection 7 of this section**.

[6. A person is guilty of the crime of puppy mill cruelty when he or she knowingly violates any provision of this section. The crime of puppy mill cruelty is a class C misdemeanor, unless the defendant has previously pled guilty to or been found guilty of a violation of this section, in which case each such violation is a class A misdemeanor. Each violation of this section shall constitute a separate offense. If any violation of this section meets the definition of animal abuse in section 578.012, the defendant may be charged and penalized under that section instead.

7.**] 5. Any person subject to the provisions of this section shall maintain all veterinary records and sales records for the most recent previous two years. These records shall be made available to the state veterinarian, a state or local animal welfare official, or a law enforcement agent upon request.**

6. The provisions of this section are in addition to, and not in lieu of, any other state and federal laws protecting animal welfare. This section shall not be construed to limit any state law or regulation protecting the welfare of animals, nor shall anything in this section prevent a local governing body from adopting and enforcing its own animal welfare laws and regulations in addition to this section. This section shall not be construed to place any numerical limits on the number of dogs a person may own or control when such dogs are not used for breeding those

animals and selling any offspring for use as a pet. This section shall not apply to a dog during examination, testing, operation, recuperation, or other individual treatment for veterinary purposes, during lawful scientific research, during transportation, during cleaning of a **[**dogs**]** **dog's** enclosure, during supervised outdoor exercise, or during any emergency that places a **[**dogs**]** **dog's** life in imminent danger. **[**This section shall not apply to any retail pet store, animal shelter as defined in section 273.325, hobby or show breeders who have custody of no more than ten female covered dogs for the purpose of breeding those dogs and selling any offspring for use as a pet, or dog trainer who does not breed and sell any dogs for use as a pet.**]** Nothing in this section shall be construed to limit hunting or the ability to breed, raise, **[**or**]** sell **[**hunting**]****, control, train, or possess** dogs **with the intention to use such dogs for hunting or other sporting purposes**.

7. Notwithstanding any law to the contrary, the following space requirements shall apply under this section:

(1) From January 1, 2012, through December 31, 2015, for any enclosure existing prior to April 15, 2011, the minimum allowable space shall:

(a) Be two times the space allowable under the department of agriculture's regulation that was in effect on April 15, 2011;

(b) Except as prescribed by rule, provide constant and unfettered access to an attached outdoor run; and

(c) Meet all other requirements set forth by rule of the Missouri department of agriculture;

(2) For any enclosure newly constructed after April 15, 2011, and for all enclosures as of January 1, 2016, the minimum allowable space shall:

(a) Be three times the space allowable under the department of agriculture's regulation that was in effect on April 15, 2011;

(b) Except as prescribed by rule, provide constant and unfettered access to an attached outdoor run; and

(c) Meet all other requirements set forth by rule of the Missouri department of agriculture;

(3) For any enclosure newly constructed after April 15, 2011, and for all enclosures as of January 1, 2016, wire strand flooring shall be prohibited and all enclosures shall meet the flooring standard set forth by rule of the Missouri department of agriculture.

8. If any provision of this section, or the application thereof to any person or circumstances, is held invalid or unconstitutional, that invalidity or unconstitutionality shall not affect other provisions or applications of this section that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this section are severable.

[9. The provisions herewith shall become operative one year after passage of this act.**]**

273.347. COURT ACTION FOR ENFORCEMENT, WHEN — CRIME OF CANINE CRUELTY, PENALTY. — 1. Whenever the state veterinarian or a state animal welfare official finds past violations of sections 273.325 to 273.357 have occurred and have not been corrected or addressed, including operating without a valid license under section 273.327, the director may request the attorney general or the county prosecuting attorney or circuit attorney to bring an action in circuit court in the county where the violations have occurred for a temporary restraining order, preliminary injunction, permanent injunction, or a remedial order enforceable in a circuit court to correct such violations and, in addition, the court may assess a civil penalty in an amount not to exceed one thousand dollars for each violation. Each violation shall constitute a separate offense.

2. A person commits the crime of canine cruelty if such person repeatedly violates sections 273.325 to 273.357 so as to pose a substantial risk to the health and welfare of animals in such person's custody, or knowingly violates an agreed-to remedial order

involving the safety and welfare of animals under this section. The crime of canine cruelty is a class C misdemeanor, unless the person has previously pled guilty or nolo contendere to or been found guilty of a violation of this subsection, in which case, each such violation is a class A misdemeanor.

3. The attorney general or the county prosecuting attorney or circuit attorney may bring an action under sections 273.325 to 273.357 in circuit court in the county where the crime has occurred for criminal punishment.

4. No action under this section shall prevent or preclude action taken under section 578.012 or under subsection 3 of section 273.329.

348.400. DEFINITIONS. — As used in sections 348.400 to 348.415, the following terms mean:

(1) "Agricultural business development loan", a loan for the acquisition, construction, improvement, or rehabilitation of agricultural property**, or for the expansion, acquisition, construction, improvement, or rehabilitation of a qualifying agribusiness**;

(2) "Agricultural product", an agricultural, horticultural, viticultural, or vegetable product, growing of grapes that will be processed into wine, bees, honey, fish or other aquacultural product, planting seed, livestock, a livestock product, a forestry product, poultry or a poultry product, either in its natural or processed state, that has been produced, processed, or otherwise had value added to it in this state;

(3) "Agricultural property", any land and easements and real and personal property, including, but not limited to, buildings, structures, improvements, and equipment which is used in Missouri by Missouri residents or Missouri-based businesses for the purpose of processing, manufacturing, marketing, exporting or adding value to an agricultural product. Agricultural property also includes any land and easements and real and personal property, including, but not limited to, buildings, structures, improvements, equipment and plant stock used for the growing of grapes which will be processed into wine;

(4) "Authority", the Missouri agricultural and small business development authority;

(5) "Eligible borrower", as defined in section 348.015;

(6) "Eligible lender", lender as defined in section 348.015;

(7) "Fund", the agricultural product utilization and business development loan guarantee fund or the agricultural product utilization grant fund;

(8) "Grant fund" the agricultural product utilization grant fund;

(9) "Program fund", the agricultural product utilization and business development loan program fund**;**

(10) "Qualifying agribusiness", any business whose primary customer base is producers of agricultural goods and products or any business whose function is the support of agricultural production or processing by providing goods and services used for producing or processing agricultural products.

348.407. DEVELOPMENT AND IMPLEMENTATION OF GRANTS AND LOANS — FEE AUTHORITY'S POWERS — ASSISTANCE TO BUSINESSES — RULES. — 1. The authority shall develop and implement agricultural products utilization grants as provided in this section.

2. The authority may reject any application for grants pursuant to this section.

3. The authority shall make grants, and may make loans or guaranteed loans from the grant fund to persons for the creation, development and operation, for up to three years from the time of application approval, of rural agricultural businesses whose projects add value to agricultural products and aid the economy of a rural community.

4. **The authority may make loan guarantees to qualified agribusinesses for agricultural business development loans for businesses that aid in the economy of a rural community and support production agriculture or add value to agricultural products by providing necessary products and services for production or processing.**

5. The authority may, upon the provision of a fee by the requesting person in an amount to be determined by the authority, provide for a feasibility study of the person's rural agricultural business concept.

[5.**]** **6.** Upon a determination by the authority that such concept is feasible and upon the provision of a fee by the requesting person, in an amount to be determined by the authority, the authority may then provide for a marketing study. Such marketing study shall be designed to determine whether such concept may be operated profitably.

[6.**]** **7.** Upon a determination by the authority that the concept may be operated profitably, the authority may provide for legal assistance to set up the business. Such legal assistance shall include, but not be limited to, providing advice and assistance on the form of business entity, the availability of tax credits and other assistance for which the business may qualify as well as helping the person apply for such assistance.

[7.**]** **8.** The authority may provide or facilitate loans or guaranteed loans for the business including, but not limited to, loans from the United States Department of Agriculture Rural Development Program, subject to availability. Such financial assistance may only be provided to feasible projects, and for an amount that is the least amount necessary to cause the project to occur, as determined by the authority. The authority may structure the financial assistance in a way that facilitates the project, but also provides for a compensatory return on investment or loan payment to the authority, based on the risk of the project.

[8.**]** **9.** The authority may provide for consulting services in the building of the physical facilities of the business.

[9.**]** **10.** The authority may provide for consulting services in the operation of the business.

[10.**]** **11.** The authority may provide for such services through employees of the state or by contracting with private entities.

[11.**]** **12.** The authority may consider the following in making the decision:

(1) The applicant's commitment to the project through the applicant's risk;

(2) Community involvement and support;

(3) The phase the project is in on an annual basis;

(4) The leaders and consultants chosen to direct the project;

(5) The amount needed for the project to achieve the bankable stage; and

(6) The projects planning for long-term success through feasibility studies, marketing plans and business plans.

[12.**]** **13.** The department of agriculture, the department of natural resources, the department of economic development and the University of Missouri may provide such assistance as is necessary for the implementation and operation of this section. The authority may consult with other state and federal agencies as is necessary.

[13.**]** **14.** The authority may charge fees for the provision of any service pursuant to this section.

[14.**]** **15.** The authority may adopt rules to implement the provisions of this section.

[15.**]** **16.** Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in sections 348.005 to 348.180 shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. All rulemaking authority delegated prior to August 28, 1999, is of no force and effect and repealed. Nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to August 28, 1999, if it fully complied with all applicable provisions of law. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

348.412. USE OF LOAN PROCEEDS — ELIGIBILITY — RULES. — 1. Eligible borrowers:

(1) Shall use the proceeds of the agricultural business development loan to acquire agricultural property **or for the expansion, acquisition, construction, improvement, or rehabilitation of a qualifying agribusiness**; and

(2) May not finance more than ninety percent of the anticipated cost of the project through the agricultural business development loan.

2. The project shall have opportunities to succeed in the development, expansion and operation of businesses involved in adding value to, marketing, exporting, processing, or manufacturing agricultural products that will benefit the state economically and socially through direct or indirect job creation or job retention.

3. The authority shall promulgate rules establishing eligibility pursuant to the provisions of sections 348.400 to 348.415, taking into consideration:

(1) The eligible borrower's ability to repay the agricultural business development loan;

(2) The general economic conditions of the area in which the agricultural property will be located;

(3) The prospect of success of the particular project for which the loan is sought; and

(4) Such other factors as the authority may establish.

4. The authority may promulgate rules to provide for:

(1) The requirement or nonrequirement of security or endorsement and the nature thereof;

(2) The manner and time or repayment of the principal and interest;

(3) The maximum rate of interest;

(4) The right of the eligible borrower to accelerate payments without penalty;

(5) The amount of the guaranty charge;

(6) The effective period of the guaranty;

(7) The percent of the agricultural business development loan, not to exceed fifty percent, covered by the guaranty;

(8) The assignability of agricultural business development loans by the eligible lender;

(9) Procedures in the event of default on an agricultural business development loan;

(10) The due diligence effort on the part of eligible lenders for collection of guaranteed loans;

(11) Collection assistance to be provided to eligible lenders; and

(12) The extension of the guaranty in consideration of duty in the armed forces, unemployment, natural disasters, or other hardships.

SECTION 1. STACKED CAGES WITHOUT IMPERVIOUS BARRIER PROHIBITED, PENALTY. — Any person required to have a license under sections 273.325 to 273.357 who houses animals in stacked cages without an impervious barrier between the levels of such cages, except when cleaning such cages, is guilty of a class A misdemeanor.

[273.327. LICENSE ANNUALLY REQUIRED TO OPERATE ANIMAL BOARDING FACILITIES, PET SHOPS, POUNDS, DEALERS AND COMMERCIAL BREEDERS — FEES, EXEMPTION FROM FEES FOR CERTAIN LICENSEES. — No person shall operate an animal shelter, pound or dog pound, boarding kennel, commercial kennel, contract kennel, pet shop, or exhibition facility, other than a limited show or exhibit, or act as a dealer or commercial breeder, unless such person has obtained a license for such operations from the director. An applicant shall obtain a separate license for each separate physical facility subject to sections 273.325 to 273.357 which is operated by the applicant. Any person exempt from the licensing requirements of sections 273.325 to 273.357 may voluntarily apply for a license. Application for such license shall be made in the manner provided by the director. The license shall expire annually unless revoked. As provided by rules to be promulgated by the director, the license fee shall range from one hundred to **two thousand** five hundred dollars per year. **Each**

licensee subject to sections 273.325 to 273.357 shall pay an additional annual fee of twenty-five dollars to be used by the department of agriculture for the purpose of administering Operation Bark Alert or any successor program. Pounds or dog pounds shall be exempt from payment of **[**such fee**]** **the fees under this section**. License fees shall be levied for each license issued or renewed on or after January 1, 1993.**]**

[273.345. CANINE CRUELTY PREVENTION ACT — CITATION OF LAW — PURPOSE — REQUIRED CARE — DEFINITIONS — VETERINARY RECORDS — SPACE REQUIREMENTS — SEVERABILITY CLAUSE. — 1. This section shall be known and may be cited as the "**[**Puppy Mill**]** **Canine** Cruelty Prevention Act."

2. The purpose of this act is to prohibit the cruel and inhumane treatment of dogs **[**in puppy mills**]** **bred in large operations** by requiring large-scale dog breeding operations to provide each dog under their care with basic food and water, adequate shelter from the elements, necessary veterinary care, adequate space to turn around and stretch his or her limbs, and regular exercise.

3. Notwithstanding any other provision of law, any person having custody or ownership of more than ten female covered dogs for the purpose of breeding those animals and selling any offspring for use as a pet shall provide each covered dog:

(1) Sufficient food and clean water;

(2) Necessary veterinary care;

(3) Sufficient housing, including protection from the elements;

(4) Sufficient space to turn and stretch freely, lie down, and fully extend his or her limbs;

(5) Regular exercise; and

(6) Adequate rest between breeding cycles.

4. **[**Notwithstanding any other provision of law, no person may have custody of more than fifty covered dogs for the purpose of breeding those animals and selling any offspring for use as a pet.

5.**]** For purposes of this section and notwithstanding the provisions of section 273.325, the following terms have the following meanings:

(1) "Adequate rest between breeding cycles" means, at minimum, ensuring that **female** dogs are not bred to produce more **[**than two**]** litters in any **[**eighteen-month**]** **given** period **than what is recommended by a licensed veterinarian as appropriate for the species, age, and health of the dog**;

(2) "Covered dog" means any individual of the species of the domestic dog, Canis lupus familiaris, or resultant hybrids, that is over the age of six months and has intact sexual organs;

(3) "Necessary veterinary care" means**[**, at minimum, examination at least once yearly**]** **at least two personal visual inspections annually** by a licensed veterinarian, **guidance from a licensed veterinarian on preventative care, an exercise plan that has been approved by a licensed veterinarian, normal and prudent attention to skin, coat, and nails,** prompt treatment of any illness or injury **[**by a licensed veterinarian**]**, and where needed, humane euthanasia by a licensed veterinarian using lawful techniques deemed acceptable by the American Veterinary Medical Association**. If, during the course of a routine personal visual inspection, the licensed veterinarian detects signs of disease or injury, then a physical examination of any such afflicted dog shall be conducted by a licensed veterinarian**;

(4) "Person" means any individual, firm, partnership, joint venture, association, limited liability company, corporation, estate, trust, receiver, or syndicate;

(5) "Pet" means any **[**domesticated animal**] species of the domestic dog, Canis lupus familiaris, or resultant hybrids,** normally maintained in or near the household of the owner thereof;

(6) "Regular exercise" means **[**constant and unfettered access to an outdoor exercise area that is composed of a solid ground-level surface with adequate drainage, provides some protection against sun, wind, rain, and snow, and provides each dog at least twice the square footage of the indoor floor space provided to that dog**] the type and amount of exercise sufficient to comply with an exercise plan that has been approved by a licensed veterinarian, developed in accordance with regulations regarding exercise promulgated by the Missouri department of agriculture, and where such plan affords the dog maximum opportunity for outdoor exercise as weather permits**;

(7) "Retail pet store" means a person or retail establishment open to the public where dogs are bought, sold, exchanged, or offered for retail sale directly to the public to be kept as pets, but that does not engage in any breeding of dogs for the purpose of selling any offspring for use as a pet;

(8) "Sufficient food and clean water" means **[**access to appropriate nutritious food at least once a day sufficient to maintain good health, and continuous access to potable water that is not frozen and is free of debris, feces, algae, and other contaminants**]:**

(a) The provision, at suitable intervals of not more than twelve hours, unless the dietary requirements of the species requires a longer interval, of a quantity of wholesome foodstuff, suitable for the species and age, enough to maintain a reasonable level of nutrition in each animal. All foodstuffs shall be served in a safe receptacle, dish, or container; and

(b) The provision of a supply of potable water in a safe receptacle, dish, or container. Water shall be provided continuously or at intervals suitable to the species, with no interval to exceed eight hours;

(9) "Sufficient housing, including protection from the elements" means **[**constant and unfettered access to an indoor enclosure that has a solid floor, is not stacked or otherwise placed on top of or below another animal's enclosure, is cleaned of waste at least once a day while the dog is outside the enclosure, and does not fall below forty-five degrees Fahrenheit, or rise above eighty-five degrees Fahrenheit**] the continuous provision of a sanitary facility, the provision of a solid surface on which to lie in a recumbent position, protection from the extremes of weather conditions, proper ventilation, and appropriate space depending on the species of animal as required by regulations of the Missouri department of agriculture. No dog shall remain inside its enclosure while the enclosure is being cleaned. Dogs housed within the same enclosure shall be compatible, in accordance with regulations promulgated by the Missouri department of agriculture**;

(10) "Sufficient space to turn and stretch freely, lie down, and fully extend his or her limbs" means **[**having:

(a) Sufficient indoor space for each dog to turn in a complete circle without any impediment (including a tether);

(b) Enough indoor space for each dog to lie down and fully extend his or her limbs and stretch freely without touching the side of an enclosure or another dog;

(c) At least one foot of headroom above the head of the tallest dog in the enclosure; and

(d) At least twelve square feet of indoor floor space per each dog up to twenty-five inches long, at least twenty square feet of indoor floor space per each dog between twenty-five and thirty-five inches long, and at least thirty square feet of indoor floor space per each dog for dogs thirty-five inches and longer (with the length of the dog measured from the tip of the nose to the base of the tail)**] appropriate space**

depending on the species of the animal, as specified in regulations by the Missouri department of agriculture, as revised.

[6. A person is guilty of the crime of puppy mill cruelty when he or she knowingly violates any provision of this section. The crime of puppy mill cruelty is a class C misdemeanor, unless the defendant has previously pled guilty to or been found guilty of a violation of this section, in which case each such violation is a class A misdemeanor. Each violation of this section shall constitute a separate offense. If any violation of this section meets the definition of animal abuse in section 578.012, the defendant may be charged and penalized under that section instead.

7.**]** **5. Any person subject to the provisions of this section shall maintain all veterinary records and sales records for the most recent previous two years. These records shall be made available to the state veterinarian, a state or local animal welfare official, or a law enforcement agent upon request.**

6. The provisions of this section are in addition to, and not in lieu of, any other state and federal laws protecting animal welfare. This section shall not be construed to limit any state law or regulation protecting the welfare of animals, nor shall anything in this section prevent a local governing body from adopting and enforcing its own animal welfare laws and regulations in addition to this section. This section shall not be construed to place any numerical limits on the number of dogs a person may own or control when such dogs are not used for breeding those animals and selling any offspring for use as a pet. This section shall not apply to a dog during examination, testing, operation, recuperation, or other individual treatment for veterinary purposes, during lawful scientific research, during transportation, during cleaning of a **[**dogs**] dog's** enclosure, during supervised outdoor exercise, or during any emergency that places a **[**dogs**] dog's** life in imminent danger. **[**This section shall not apply to any retail pet store, animal shelter as defined in section 273.325, hobby or show breeders who have custody of no more than ten female covered dogs for the purpose of breeding those dogs and selling any offspring for use as a pet, or dog trainer who does not breed and sell any dogs for use as a pet.**]** Nothing in this section shall be construed to limit hunting or the ability to breed, raise, **[**or**]** sell **[**hunting**], control, train, or possess** dogs **with the intention to use such dogs for hunting or other sporting purposes**.

[8.**] 7.** If any provision of this section, or the application thereof to any person or circumstances, is held invalid or unconstitutional, that invalidity or unconstitutionality shall not affect other provisions or applications of this section that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this section are severable.

[9.**] 8.** The provisions herewith shall become operative one year after passage of this act.**]**

[273.347. COURT ACTION FOR ENFORCEMENT, WHEN — CRIME OF CANINE CRUELTY, PENALTY. — 1. Whenever the state veterinarian or a state animal welfare official finds past violations of sections 273.325 to 273.357 have occurred and have not been corrected or addressed, including operating without a valid license under section 273.327, the director may request the attorney general or the county prosecuting attorney or circuit attorney to bring an action in circuit court in the county where the violations have occurred for a temporary restraining order, preliminary injunction, permanent injunction, or a remedial order enforceable in a circuit court to correct such violations and, in addition, the court may assess a civil penalty in an amount not to exceed one thousand dollars for each violation. Each violation shall constitute a separate offense.

2. A person commits the crime of canine cruelty if such person repeatedly violates sections 273.325 to 273.357 so as to pose a substantial risk to the health and welfare of animals in such person's custody, or knowingly violates an agreed-to remedial order involving the safety and welfare of animals under this section. The crime of canine cruelty is a class C misdemeanor, unless the person has previously pled guilty or nolo contendere to or been found guilty of a violation of this subsection, in which case, each such violation is a class A misdemeanor.

3. The attorney general or the county prosecuting attorney or circuit attorney may bring an action under sections 273.325 to 273.357 in circuit court in the county where the crime has occurred for criminal punishment.

4. No action under this section shall prevent or preclude action taken under section 578.012 or under subsection 3 of section 273.329.]

[SECTION 1. STACKED CAGES WITHOUT IMPERVIOUS BARRIER PROHIBITED, PENALTY. — Any person required to have a license under sections 273.325 to 273.357 who houses animals in stacked cages without an impervious barrier between the levels of such cages, except when cleaning such cages, is guilty of a class A misdemeanor.]

SECTION B. EMERGENCY CLAUSE. — In order to improve the immediate health and welfare of dogs in this state and to provide sufficient time for businesses to comply with changes in the law, the repeal and reenactment of sections 273.327 and 273.345, the enactment of sections 273.347 and 1, and the repeal of sections 273.327, 273.345, 273.347, and 1 of section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the repeal and reenactment of sections 273.327 and 273.345, the enactment of sections 273.347 and 1, and the repeal of sections 273.327, 273.345, 273.347, and 1 of section A of this act shall be in full force and effect upon its passage and approval.

Approved April 27, 2011

SB 165 [SB 165]

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

Extends the sunset on the Basic Civil Legal Services Fund.

AN ACT to repeal section 477.650, RSMo, and to enact in lieu thereof one new section relating to the basic civil legal services fund.

SECTION

A. Enacting clause.
477.650. Basic civil legal services fund created, moneys to be used to increase funding for legal services to eligible low-income persons — allocation of moneys — record-keeping requirements — report to general assembly — expiration date.

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

SECTION A. ENACTING CLAUSE. — Section 477.650, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 477.650, to read as follows:

477.650. BASIC CIVIL LEGAL SERVICES FUND CREATED, MONEYS TO BE USED TO INCREASE FUNDING FOR LEGAL SERVICES TO ELIGIBLE LOW-INCOME PERSONS — ALLOCATION OF MONEYS — RECORD-KEEPING REQUIREMENTS — REPORT TO GENERAL ASSEMBLY — EXPIRATION DATE. — 1. There is hereby created in the state treasury the "Basic Civil Legal Services Fund", to be administered by, or under the direction of, the Missouri supreme court. All moneys collected under section 488.031 shall be credited to the fund. In addition to the court filing surcharges, funds from other public or private sources also may be deposited into the fund and all earnings of the fund shall be credited to the fund. The purpose of this section is to increase the funding available for basic civil legal services to eligible low-income persons as such persons are defined by the Federal Legal Services Corporation's Income Eligibility Guidelines.

2. Funds in the basic civil legal services fund shall be allocated annually and expended to provide legal representation to eligible low-income persons in the state in civil matters. Moneys, funds, or payments paid to the credit of the basic civil legal services fund shall, at least as often as annually, be distributed to the legal services organizations in this state which qualify for Federal Legal Services Corporation funding. The funds so distributed shall be used by legal services organizations in this state solely to provide legal services to eligible low-income persons as such persons are defined by the Federal Legal Services Corporation's Income Eligibility Guidelines. Fund money shall be subject to all restrictions imposed on such legal services organizations by law. Funds shall be allocated to the programs according to the funding formula employed by the Federal Legal Services Corporation for the distribution of funds to this state. Notwithstanding the provisions of section 33.080, any balance remaining in the basic civil legal services fund at the end of any year shall not be transferred to the state's general revenue fund. Moneys in the basic civil legal services fund shall not be used to pay any portion of a refund mandated by article X, section 15 of the Missouri Constitution. State legal services programs shall represent individuals to secure lawful state benefits, but shall not sue the state, its agencies, or its officials, with any state funds.

3. Contracts for services with state legal services programs shall provide eligible low-income Missouri citizens with equal access to the civil justice system, with a high priority on families and children, domestic violence, the elderly, and qualification for benefits under the Social Security Act. State legal services programs shall abide by all restrictions, requirements, and regulations of the Legal Services Corporation regarding their cases.

4. The Missouri supreme court, or a person or organization designated by the court, is the administrator and shall administer the fund in such manner as determined by the Missouri supreme court, including in accordance with any rules and policies adopted by the Missouri supreme court for such purpose. Moneys from the fund shall be used to pay for the collection of the fee and the implementation and administration of the fund.

5. Each recipient of funds from the basic civil legal services fund shall maintain appropriate records accounting for the receipt and expenditure of all funds distributed and received pursuant to this section. These records must be maintained for a period of five years from the close of the fiscal year in which such funds are distributed or received or until audited, whichever is sooner. All funds distributed or received pursuant to this section are subject to audit by the Missouri supreme court or the state auditor.

6. The Missouri supreme court, or a person or organization designated by the court, shall, by January thirty-first of each year, report to the general assembly on the moneys collected and disbursed pursuant to this section and section 488.031 by judicial circuit.

7. The provisions of this section shall expire on December 31, **[**2012**]** **2018**.

Approved July 8, 2011

SB 173 [CCS HCS SB 173]

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

Requires the Joint Committee on Missouri's Promise to develop long-term strategies and plans relating to developing a modern infrastructure and transportation system.

AN ACT to repeal sections 21.920, 227.107, 227.410, 238.202, 238.225, 238.235, 319.016, and 319.025, RSMo, and to enact in lieu thereof twelve new section relating to infrastructure.

SECTION

A. Enacting clause.
21.920. Committee established, members, terms, duties — report.
226.195. Missouri state transit assistance program — definitions, purpose, rulemaking authority.
227.107. Design-build project contracts permitted, limitations, exceptions — definitions — written procedures required — submission of detailed disadvantaged business enterprise participation plan — bid process — rulemaking authority — status report to general assembly — cost estimates to be published.
227.410. Rabbi Ernest I. Jacob Memorial Highway designated for portion of Highway 160 in Greene County.
227.424. Missouri State Highway Patrol Sergeant Joseph G. Schuengel Memorial Highway designated for portion of I-40/64 in St. Louis County.
227.430. SFC Wm. Brian Woods, Jr. Memorial Highway designated for portion of Highway 30 in Jefferson County.
238.202. Definitions.
238.225. Projects, submission of plans to commission, approval — submission to local transportation authority, when — exemption.
238.235. Sales tax, certain districts, exemptions from tax — election, ballot form — procedures for collection, distribution, use — repeal of tax — not considered economic activity tax.
249.425. Metropolitan sewer district, design-build contracts authorized, procedure — exemption.
319.016. Notification center participant, commission not required to be, when.
319.025. Excavator must give notice and obtain information, when, how — notice to notification center, when — clarification of markings, response — project plans provided, when — permit for highway excavation required.

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

SECTION A. ENACTING CLAUSE. — Sections 21.920, 227.107, 227.410, 238.202, 238.225, 238.235, 319.016, and 319.025, RSMo, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 21.920, 226.195, 227.107, 227.410, 227.424, 227.430, 238.202, 238.225, 238.235, 249.425, 319.016, and 319.025, to read as follows:

21.920. COMMITTEE ESTABLISHED, MEMBERS, TERMS, DUTIES — REPORT. — 1. There is established a joint committee of the general assembly to be known as the "Joint Committee on Missouri's Promise" to be composed of five members of the senate and five members of the house of representatives. The senate members of the joint committee shall be appointed by the president pro tem of the senate and the house members shall be appointed by the speaker of the house of representatives. The appointment of each member shall continue during the member's term of office as a member of the general assembly or until a successor has been appointed to fill the member's place when his or her term of office as a member of the general assembly has expired. No party shall be represented by more than three members from the house of representatives nor more than three members from the senate. A majority of the committee shall constitute a quorum, but the concurrence of a majority of the members shall be required for the determination of any matter within the committee's duties.

2. The committee shall be charged with the following:

(1) Examining issues that will be impacting the future of the state of Missouri and its citizens;

(2) Developing long-term strategies and plans for:

(a) Increasing the economic prosperity and opportunities for the citizens of this state;

(b) Improving the health status of our citizens;

(c) An education system that educates students who are capable of attending and being productive and successful citizens and designed to successfully prepare graduates for global competition; **[**and**]**

(d) **Investing in, and maintaining, a modern infrastructure and transportation system and identifying potential sources of revenue to sustain such efforts; and**

(e) Other areas that the committee determines are vital to improving the lives of the citizens of Missouri;

(3) Developing three-, five-, and ten-year plans for the general assembly to meet the long-term strategies outlined in subdivision (2) of this subsection;

(4) Implementing budget forecasting for the upcoming ten years in order to plan for the long-term financial soundness of the state; and

(5) Such other matters as the committee may deem necessary in order to determine the proper course of future legislative and budgetary action regarding these issues.

3. The committee may solicit input and information necessary to fulfill its obligations, including, but not limited to, soliciting input and information from any state department or agency the committee deems relevant, political subdivisions of this state, and the general public.

4. By January 1, 2011, and every year thereafter, the committee shall issue a report to the general assembly with any findings or recommendations of the committee with regard to its duties under subsection 2 of this section.

5. Members of the committee shall receive no compensation but may be reimbursed for reasonable and necessary expenses associated with the performance of their official duties.

226.195. MISSOURI STATE TRANSIT ASSISTANCE PROGRAM — DEFINITIONS, PURPOSE, RULEMAKING AUTHORITY. — 1. As used in this section, the following terms mean:

(1) "Commission", the Missouri highways and transportation commission;

(2) "Department", the Missouri department of transportation;

(3) "Public mass transportation service provider", a city, a city transit authority, a city utilities board, or an interstate transportation authority as such terms are defined in section 94.600, an intrastate transportation authority, or an agency receiving funding from either the federal transit administration urban or nonurban formula transit program.

2. There is hereby created the Missouri state transit assistance program. The purpose of this program is to provide state financial assistance to defray the operating and capital costs incurred by public mass transportation service providers.

3. Funds appropriated to the Missouri state transit assistance program shall be appropriated to the department and administered by the department on behalf of the commission. The distribution of funds to public mass transportation service providers shall be determined by evaluating factors including but not limited to the following:

(1) Population;

(2) Ridership;

(3) Cost and efficiency of the program;

(4) Availability of alternative transportation in the area;

(5) Local effort or tax support.

4. The commission 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, 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 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 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, 2011, shall be invalid and void.

227.107. DESIGN-BUILD PROJECT CONTRACTS PERMITTED, LIMITATIONS, EXCEPTIONS — DEFINITIONS — WRITTEN PROCEDURES REQUIRED — SUBMISSION OF DETAILED DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN — BID PROCESS — RULEMAKING AUTHORITY — STATUS REPORT TO GENERAL ASSEMBLY — COST ESTIMATES TO BE PUBLISHED. — 1. Notwithstanding any provision of section 227.100 to the contrary, as an alternative to the requirements and procedures specified by sections 227.040 to 227.100, the state highways and transportation commission is authorized to enter into highway design-build project contracts. The total number of highway design-build project contracts awarded by the commission in any state fiscal year shall not exceed two percent of the total number of all state highway system projects **awarded to contracts for construction from projects** listed in the commission's approved statewide transportation improvement project for that state fiscal year. Authority to enter into design-build projects granted by this section shall expire on July 1, **[**2012**]** **2018**, unless extended by statute.

2. Notwithstanding provisions of subsection 1 of this section to the contrary, the state highways and transportation commission is authorized to enter into additional design-build contracts for the design, construction, reconstruction, or improvement of Missouri Route 364 as contained in any county with a charter form of government and with more than two hundred fifty thousand but fewer than three hundred fifty thousand inhabitants and in any county with a charter form of government and with more than one million inhabitants, and the State Highway 169 and 96th Street intersection located within a home rule city with more than four hundred thousand inhabitants and located in more than one county. The state highways and transportation commission is authorized to enter into an additional design-build contract for the design, construction, reconstruction, or improvement of State Highway 92, contained in a county of the first classification with more than one hundred eighty-four thousand but fewer than one hundred eighty-eight thousand inhabitants, from its intersection with State Highway 169, east to its intersection with State Highway E. **The state highways and transportation commission is authorized to enter into an additional design-build contract for the design, construction, reconstruction, or improvement of US 40/61 I-64 Missouri River Bridge as contained in any county with a charter form of government and with more than one million inhabitants and any county with a charter form of government and with more than two hundred fifty thousand but fewer than three hundred fifty thousand inhabitants.** The authority to enter into a design-build highway project under this subsection shall not be subject to the time limitation expressed in subsection 1 of this section.

3. For the purpose of this section a "design-builder" is defined as an individual, corporation, partnership, joint venture or other entity, including combinations of such entities making a proposal to perform or performing a design-build highway project contract.

4. For the purpose of this section, "design-build highway project contract" is defined as the procurement of all materials and services necessary for the design, construction, reconstruction or improvement of a state highway project in a single contract with a design-builder capable of providing the necessary materials and services.

5. For the purpose of this section, "highway project" is defined as the design, construction, reconstruction or improvement of highways or bridges under contract with the state highways and transportation commission, which is funded by state, federal or local funds or any combination of such funds.

6. In using a design-build highway project contract, the commission shall establish a written procedure by rule for prequalifying design-builders before such design-builders will be allowed to make a proposal on the project.

7. In any design-build highway project contract, whether involving state or federal funds, the commission shall require that each person submitting a request for qualifications provide a

detailed disadvantaged business enterprise participation plan. The plan shall provide information describing the experience of the person in meeting disadvantaged business enterprise participation goals, how the person will meet the department of transportation's disadvantaged business enterprise participation goal and such other qualifications that the commission considers to be in the best interest of the state.

8. The commission is authorized to issue a request for proposals to a maximum of five design-builders prequalified in accordance with subsection 6 of this section.

9. The commission may require approval of any person performing subcontract work on the design-build highway project.

10. Notwithstanding the provisions of sections 107.170, and 227.100, to the contrary, the commission shall require the design-builder to provide to the commission directly such bid, performance and payment bonds, or such letters of credit, in such terms, durations, amounts, and on such forms as the commission may determine to be adequate for its protection and provided by a surety or sureties authorized to conduct surety business in the state of Missouri or a federally insured financial institution or institutions, satisfactory to the commission, including but not limited to:

(1) A bid or proposal bond, cash or a certified or cashier's check;

(2) A performance bond or bonds for the construction period specified in the design-build highway project contract equal to a reasonable estimate of the total cost of construction work under the terms of the design-build highway project contract. If the commission determines in writing supported by specific findings that the reasonable estimate of the total cost of construction work under the terms of the design-build highway project contract is expected to exceed two-hundred fifty million dollars and a performance bond or bonds in such amount is impractical, the commission shall set the performance bond or bonds at the largest amount reasonably available, but not less than two-hundred fifty million dollars, and may require additional security, including but not limited to letters of credit, for the balance of the estimate not covered by the performance bond or bonds;

(3) A payment bond or bonds that shall be enforceable under section 522.300 for the protection of persons supplying labor and material in carrying out the construction work provided for in the design-build highway project contract. The aggregate amount of the payment bond or bonds shall equal a reasonable estimate of the total amount payable for the cost of construction work under the terms of the design-build highway project contract unless the commission determines in writing supported by specific findings that a payment bond or bonds in such amount is impractical, in which case the commission shall establish the amount of the payment bond or bonds; except that the amount of the payment bond or bonds shall not be less than the aggregate amount of the performance bond or bonds and any additional security to such performance bond or bonds; and

(4) Upon award of the design-build highway project contract, the sum of the performance bond and any required additional security established under subdivisions (2) and (3) of this subsection shall be stated, and shall be a matter of public record.

11. The commission is authorized to prescribe the form of the contracts for the work.

12. The commission is empowered to make all final decisions concerning the performance of the work under the design-build highway project contract, including claims for additional time and compensation.

13. The provisions of sections 8.285 to 8.291 shall not apply to the procurement of architectural, engineering or land surveying services for the design-build highway project, except that any person providing architectural, engineering or land surveying services for the design-builder on the design-build highway project must be licensed in Missouri to provide such services.

14. The commission shall pay a reasonable stipend to prequalified responsive design-builders who submit a proposal, but are not awarded the design-build highway project.

15. The commission shall comply with the provisions of any act of congress or any regulations of any federal administrative agency which provides and authorizes the use of federal funds for highway projects using the design-build process.

16. The commission shall promulgate administrative rules to implement this section or to secure federal funds. Such rules shall be published for comment in the Missouri Register and shall include prequalification criteria, the make-up of the prequalification review team, specifications for the design criteria package, the method of advertising, receiving and evaluating proposals from design-builders, the criteria for awarding the design-build highway project based on the design criteria package and a separate proposal stating the cost of construction, and other methods, procedures and criteria necessary to administer this section.

17. The commission shall make a status report to the members of the general assembly and the governor following the award of the design-build project, as an individual component of the annual report submitted by the commission to the joint transportation oversight committee in accordance with the provisions of section 21.795. The annual report prior to advertisement of the design-build highway project contracts shall state the goals of the project in reducing costs and/or the time of completion for the project in comparison to the design-bid-build method of construction and objective measurements to be utilized in determining achievement of such goals. Subsequent annual reports shall include: the time estimated for design and construction of different phases or segments of the project and the actual time required to complete such work during the period; the amount of each progress payment to the design-builder during the period and the percentage and a description of the portion of the project completed regarding such payment; the number and a description of design change orders issued during the period and the cost of each such change order; upon substantial and final completion, the total cost of the design-build highway project with a breakdown of costs for design and construction; and such other measurements as specified by rule. The annual report immediately after final completion of the project shall state an assessment of the advantages and disadvantages of the design-build method of contracting for highway and bridge projects in comparison to the design-bid-build method of contracting and an assessment of whether the goals of the project in reducing costs and/or the time of completion of the project were met.

18. The commission shall give public notice of a request for qualifications in at least two public newspapers that are distributed wholly or in part in this state and at least one construction industry trade publication that is distributed nationally.

19. The commission shall publish its cost estimates of the design-build highway project award and the project completion date along with its public notice of a request for qualifications of the design-build project.

20. If the commission fails to receive at least two responsive submissions from design-builders considered qualified, submissions shall not be opened and it shall readvertise the project.

21. For any highway design-build project constructed under this section, the commission shall negotiate and reach agreements with affected railroads. Such agreements shall include clearance, safety, insurance, and indemnification provisions, but are not required to include provisions on right-of-way acquisitions.

227.410. RABBI ERNEST I. JACOB MEMORIAL HIGHWAY DESIGNATED FOR PORTION OF HIGHWAY 160 IN GREENE COUNTY. — [The portion of U.S. Highway 160 in Greene County from the intersection of Farm Road 142 to the intersection of West Sunshine Street shall be designated the "Rabbi Abraham Joshua Heschel Memorial Highway".**] The portion of U.S. Highway 160 in Greene County from the intersection of West Mount Vernon Street to one-half mile south of the intersection of West Sunshine Street shall be designated the "Rabbi Ernest I. Jacob Memorial Highway".** The department of transportation shall erect and maintain appropriate signs designating such highway, with the costs for such designation to be paid for by private donation.

227.424. MISSOURI STATE HIGHWAY PATROL SERGEANT JOSEPH G. SCHUENGEL MEMORIAL HIGHWAY DESIGNATED FOR PORTION OF I-40/64 IN ST. LOUIS COUNTY. — The portion of Interstate 40/64 in St. Louis County from the Boone's Crossing overpass at mile marker 17.0 west to the Spirit of St. Louis Airport overpass at mile marker 13.8 shall be designated as the "Missouri State Highway Patrol Sergeant Joseph G. Schuengel Memorial Highway". The department of transportation shall erect and maintain appropriate signs designating such highway, with the costs to be paid for by private donations.

227.430. SFC WM. BRIAN WOODS, JR. MEMORIAL HIGHWAY DESIGNATED FOR PORTION OF HIGHWAY 30 IN JEFFERSON COUNTY. — The portion of Missouri Highway 30 from State Route NN north three miles to one tenth of a mile southwest of old Missouri 30 in Jefferson County shall be designated the "SFC Wm. Brian Woods, Jr. Memorial Highway". The department of transportation shall erect and maintain appropriate signs designating such highway, with the cost to be paid for by private donations.

238.202. DEFINITIONS. — 1. As used in sections 238.200 to 238.275, the following terms mean:

(1) "Board", the board of directors of a district;

(2) "Commission", the Missouri highways and transportation commission;

(3) "District", a transportation development district organized under sections 238.200 to 238.275;

(4) "Local transportation authority", a county, city, town, village, county highway commission, special road district, interstate compact agency, or any local public authority or political subdivision having jurisdiction over any bridge, street, highway, dock, wharf, ferry, lake or river port, airport, railroad, light rail or other transit improvement or service;

(5) "Project" includes any bridge, street, road, highway, access road, interchange, intersection, signing, signalization, parking lot, bus stop, station, garage, terminal, hangar, shelter, rest area, dock, wharf, lake or river port, airport, railroad, light rail, or **[**other mass transit**]** **public mass transportation system** and any similar or related improvement or infrastructure. **In the case of a district located in a home rule city with more than four hundred thousand inhabitants and located in more than one county, whose district boundaries are contained solely within that portion of such a home rule city that is contained within a county with a charter form of government and with more than six hundred thousand but fewer than seven hundred thousand inhabitants, the term "project" shall also include the operation of a street car or other rail-based or fixed guideway public mass transportation system, and the revenue of such district may be used to pay for the design, construction, ownership and operation of such a street car or other rail-based or fixed guideway public mass transportation system, but not the operation of a bus system located within such district, by such district or such municipality, or by a local transportation authority having jurisdiction within such municipality;**

(6) "Public mass transportation system", a transportation system owned or operated by a governmental or quasi-governmental entity, employing motor buses, rails, or any other means of conveyance, by whatsoever type of power, operated for public use in the conveyance of persons, mainly providing local transportation service within a municipality or a single metropolitan statistical area.

2. For the purposes of sections 11(c), 16 and 22 of article X of the Constitution of Missouri, section 137.073, and as used in sections 238.200 to 238.275, the following terms shall have the meanings given:

(1) "Approval of the required majority" or "direct voter approval", a simple majority;

(2) "Qualified electors", "qualified voters" or "voters":

(a) Within a proposed or established district, except for a district proposed under subsection 1 of section 238.207, any persons residing therein who have registered to vote pursuant to chapter 115; or

(b) Within a district proposed or established under subsection 1 of section 238.207 which has no persons residing therein who have registered to vote pursuant to chapter 115, the owners of record of all real property located in the district, who shall receive one vote per acre, provided that if a registered voter subsequent to the creation of the district becomes a resident within the district and obtains ownership of property within the district, such registered voter must elect whether to vote as an owner of real property or as a registered voter, which election once made cannot thereafter be changed;

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

238.225. PROJECTS, SUBMISSION OF PLANS TO COMMISSION, APPROVAL — SUBMISSION TO LOCAL TRANSPORTATION AUTHORITY, WHEN — EXEMPTION. — 1. Before construction or funding of any project the district shall submit the proposed project to the commission for its prior approval. If the commission by minute finds that the project will improve or is a necessary or desirable extension of the state highways and transportation system, the commission may preliminarily approve the project subject to the district providing plans and specifications for the proposed project and making any revisions in the plans and specifications required by the commission and the district and commission entering into a mutually satisfactory agreement regarding development and future maintenance of the project. After such preliminary approval, the district may impose and collect such taxes and assessments as may be included in the commission's preliminary approval. After the commission approves the final construction plans and specifications, the district shall obtain prior commission approval of any modification of such plans or specifications.

2. If the proposed project is not intended to be merged into the state highways and transportation system under the commission's jurisdiction, the district shall also submit the proposed project and proposed plans and specifications to the local transportation authority that will become the owner of the project for its prior approval.

3. In those instances where a local transportation authority is required to approve a project and the commission determines that it has no direct interest in that project, the commission may decline to consider the project. Approval of the project shall then vest exclusively with the local transportation authority subject to the district making any revisions in the plans and specifications required by the local transportation authority and the district and the local transportation authority entering into a mutually satisfactory agreement regarding development and future maintenance of the project. After the local transportation authority approves the final construction plans and specifications, the district shall obtain prior approval of the local transportation authority before modifying such plans or specifications.

4. Notwithstanding any provision of this section to the contrary, this section shall not apply to any district whose project is a public mass transportation system.

238.235. SALES TAX, CERTAIN DISTRICTS, EXEMPTIONS FROM TAX — ELECTION, BALLOT FORM — PROCEDURES FOR COLLECTION, DISTRIBUTION, USE — REPEAL OF TAX — NOT CONSIDERED ECONOMIC ACTIVITY TAX. — 1. (1) Any transportation development district may by resolution impose a transportation development district sales tax on all retail sales made in such transportation development district which are subject to taxation pursuant to the provisions of sections 144.010 to 144.525, except such transportation development district sales tax shall not apply to the sale or use of motor vehicles, trailers, boats or outboard motors nor to all sales of electricity or electrical current, water and gas, natural or artificial, nor to sales of service to telephone subscribers, either local or long distance. Such transportation development district sales tax may be imposed for any transportation development purpose designated by the

transportation development district in its ballot of submission to its qualified voters, except that no resolution enacted pursuant to the authority granted by this section shall be effective unless:

(a) The board of directors of the transportation development district submits to the qualified voters of the transportation development district a proposal to authorize the board of directors of the transportation development district to impose or increase the levy of an existing tax pursuant to the provisions of this section; or

(b) The voters approved the question certified by the petition filed pursuant to subsection 5 of section 238.207.

(2) If the transportation district submits to the qualified voters of the transportation development district a proposal to authorize the board of directors of the transportation development district to impose or increase the levy of an existing tax pursuant to the provisions of paragraph (a) of subdivision (1) of this subsection, the ballot of submission shall contain, but need not be limited to, the following language:

Shall the transportation development district of ..... (transportation development district's name) impose a transportation development district-wide sales tax at the rate of ..... (insert amount) for a period of ..... (insert number) years from the date on which such tax is first imposed for the purpose of ..... (insert transportation development purpose)?

[ ] YES [ ] NO

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

If a majority of the votes cast on the proposal by the qualified voters voting thereon are in favor of the proposal, then the resolution and any amendments thereto shall be in effect. If a majority of the votes cast by the qualified voters voting are opposed to the proposal, then the board of directors of the transportation development district shall have no power to impose the sales tax authorized by this section unless and until the board of directors of the transportation development district shall again have submitted another proposal to authorize it to impose the sales tax pursuant to the provisions of this section and such proposal is approved by a majority of the qualified voters voting thereon.

(3) The sales tax authorized by this section shall become effective on the first day of the second calendar quarter after the department of revenue receives notification of the tax.

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

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

(6) All revenue received by a transportation development district from the tax authorized by this section which has been designated for a certain transportation development purpose shall be deposited in a special trust fund and shall be used solely for such designated purpose. Upon the expiration of the period of years approved by the qualified voters pursuant to subdivision (2) of this subsection or if the tax authorized by this section is repealed pursuant to subsection 6 of this section, all funds remaining in the special trust fund shall continue to be used solely for such designated transportation development purpose. Any funds in such special trust fund which are not needed for current expenditures may be invested by the board of directors in accordance with applicable laws relating to the investment of other transportation development district funds.

(7) The sales tax may be imposed in increments of one-eighth of one percent, up to a maximum of one percent on the receipts from the sale at retail of all tangible personal property

or taxable services at retail within the transportation development district adopting such tax, if such property and services are subject to taxation by the state of Missouri pursuant to the provisions of sections 144.010 to 144.525, except such transportation development district sales tax shall not apply to the sale or use of motor vehicles, trailers, boats or outboard motors nor to public utilities. Any transportation development district sales tax imposed pursuant to this section shall be imposed at a rate that shall be uniform throughout the district.

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

3. On and after the effective date of any tax imposed pursuant to this section, the director of revenue shall perform all functions incident to the administration, collection, enforcement, and operation of the tax, and the director of revenue shall collect, in addition to all other sales taxes imposed by law, the additional tax authorized pursuant to this section. The tax imposed pursuant to this section and the taxes imposed pursuant to all other laws of the state of Missouri shall be collected together and reported upon such forms and pursuant to such administrative rules and regulations as may be prescribed by the director of revenue.

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

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

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

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

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

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

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

6. (1) No transportation development district imposing a sales tax pursuant to this section may repeal or amend such sales tax unless such repeal or amendment will not impair the district's ability to repay any liabilities which it has incurred, money which it has borrowed or revenue bonds, notes or other obligations which it has issued or which have been issued by the commission or any local transportation authority to finance any project or projects.

(2) Whenever the board of directors of any transportation development district in which a transportation development sales tax has been imposed in the manner provided by this section receives a petition, signed by ten percent of the qualified voters calling for an election to repeal such transportation development sales tax, the board of directors shall, if such repeal will not impair the district's ability to repay any liabilities which it has incurred, money which it has borrowed or revenue bonds, notes or other obligations which it has issued or which have been issued by the commission or any local transportation authority to finance any project or projects, submit to the qualified voters of such transportation development district a proposal to repeal the transportation development sales tax imposed pursuant to the provisions of this section. If a majority of the votes cast on the proposal by the qualified voters voting thereon are in favor of the proposal to repeal the transportation development sales tax, then the resolution imposing the transportation development sales tax, along with any amendments thereto, is repealed. If a majority of the votes cast by the qualified voters voting thereon are opposed to the proposal to repeal the transportation development sales tax, then the ordinance or resolution imposing the transportation development sales tax, along with any amendments thereto, shall remain in effect.

7. Notwithstanding any provision of sections 99.800 to 99.865, and this section to the contrary, the sales tax imposed by a district whose project is a public mass transportation system shall not be considered economic activity taxes as such term is defined under sections 99.805 and 99.918 and shall not be subject to allocation under the provisions of subsection 3 of section 99.845, or subsection 4 of section 99.957.

249.425. METROPOLITAN SEWER DISTRICT, DESIGN-BUILD CONTRACTS AUTHORIZED, PROCEDURE — EXEMPTION. — 1. As used in this section, the following terms mean:

(1) "Design-build", a project for which the design and construction services are furnished under one contract;

(2) "Design-build contract", a contract between a sewer district and a design-build contractor to furnish the architecture, engineering, and related design services, and the labor, materials, and other construction services required for a specific construction project;

(3) "Design-build contractor", any individual, partnership, joint venture, corporation, or other legal entity that furnishes architecture or engineering services and construction services either directly or through subcontracts;

(4) "Design-build project", the design, construction, alteration, addition, remodeling, or improvement of any sewer district buildings or facilities under contract with a sewer district. Contracts for design-build projects that involve the construction, replacement or rehabilitation of a sewer district pump station or any other project that is located solely on sewer district property, such that in all cases, the project must exceed an expenditure of one million dollars. Design-build projects shall not include projects built on easements or rights-of-way dedicated to the sewer district involving open-cut sewer lines or rehabilitation of sewer district sewer lines;

(5) "Design criteria package", performance-oriented specifications for the design-build project sufficient to permit a design-build contractor to prepare a response to the sewer district's request for proposals for a design-build project, which may include preliminary designs for the project or portions thereof;

(6) "Sewer district", any metropolitan sewer district established under section 30(a), article VI, Constitution of Missouri.

2. (1) Notwithstanding any other provision of law to the contrary, any sewer district is authorized to enter into design-build contracts for design-build projects that exceed an expenditure of one million dollars.

(2) In using a design-build contract, the sewer district shall establish a written procedure by rule for prequalifying design-build contractors before such design-build contractors will be allowed to make a proposal on the project.

(3) The sewer district shall adopt procedures for:

(a) The prequalification review team;

(b) Specifications for the design criteria package;

(c) The method of advertising, receiving, and evaluating proposals from design-build contractors;

(d) The criteria for awarding the design-build contract based on the design criteria package and a separate proposal stating the cost of construction; and

(e) Other methods, procedures, and criteria necessary to administer this section.

(4) The sewer district is authorized to issue a request for proposals to a maximum of five design-build contractors who are prequalified in accordance with this section.

(5) The sewer district may require approval of any person performing subcontract work on the design-build project including, but not limited to, those furnishing design services, labor, materials or equipment.

3. (1) Before the prequalification process specified in this section, the sewer district shall publicly advertise, once a week for two consecutive weeks, in a newspaper of general circulation, qualified under chapter 493, located within the cities located in the sewer district, or if there be no such newspaper, in a qualified newspaper of general circulation in the county, or if there be no such newspaper, in a qualified newspaper of general circulation in an adjoining county, and may advertise in business, trade, or minority newspapers, for qualification submissions on said design-build project.

(2) If the sewer district fails to receive at least two responsive submissions from prequalified design-build contractors, submissions shall not be opened and the sewer shall readvertise the project.

(3) The sewer district shall have the right to reject any and all submissions and proposals.

(4) The proposals from prequalified design-build contractors shall be submitted sealed and in writing, to be opened publicly at the time and place of the sewer district's choosing. Technical proposals and qualifications submissions shall be submitted separately from any cost proposals. No cost proposal shall be opened until the technical proposals and qualifications submissions are first opened, evaluated, and ranked in accordance with the criteria identified by the sewer district in the request for proposals.

(5) The design-build contract shall be awarded to the design-build contractor whose proposal represents the best overall value to the sewer district in terms of quality, technical skill, schedule, and cost.

(6) No proposal shall be entertained by the sewer district that is not made in accordance with the request for proposals furnished by the sewer district.

4. (1) The payment bond requirements of section 107.170 shall apply to the design-build project. All persons furnishing design services shall be deemed to be covered by the payment bond the same as any person furnishing labor or materials; however, the performance bond for the design-build contractor does not need to cover the design services as long as the design-build contractor or its subcontractors providing design services carry professional liability insurance in an amount established by the sewer district in the request for proposals.

(2) Any person or firm providing architectural, engineering, or land surveying services for the design-build contractor on the design-build project shall be duly licensed or authorized in this state to provide such services as required by chapter 327.

5. (1) A sewer district planning a design-build project shall retain an architect or engineer, as appropriate to the project type, under sections 8.285 to 8.291, to assist with programming, site selection, master plan, the design criteria package, preparation of the request for proposals, prequalifying design-build contractors, evaluation of proposals, and preparation of forms necessary to award the design-build contract. The sewer district shall also retain that same architect or engineer or another to perform contract administration functions on behalf of the sewer district during the construction phase and after project completion. If the sewer district has an architect or engineer capable of fulfilling the functions described in this section, the sewer district is exempt from being required to retain another such professional.

(2) Any architect or engineer who is retained by a sewer district under this section shall be ineligible to act as the design-build contractor, or to participate as part of the design-build contractor's team as a subcontractor, joint venturer, partner, or otherwise for the same design-build project for which the architect or engineer was hired by the sewer district.

6. Under section 327.465, any design-build contractor that enters into a design-build contract for a sewer district is exempt from the requirement that such person or entity hold a certificate of registration or such corporation hold a certificate of authority if the architectural, engineering, or land surveying services to be performed under the contract are performed through subcontracts with properly licensed and authorized persons or entities, and not performed by the design-build contractor or its own employees.

319.016. NOTIFICATION CENTER PARTICIPANT, COMMISSION NOT REQUIRED TO BE, WHEN. — Notwithstanding any provision of sections 319.010 to 319.050 to the contrary, the state highways and transportation commission shall not be required to be a notification center participant after December 31, **[**2011**]** **2014**, but nothing in this section shall prohibit the commission from voluntarily choosing to be a notification center participant after that date.

319.025. EXCAVATOR MUST GIVE NOTICE AND OBTAIN INFORMATION, WHEN, HOW — NOTICE TO NOTIFICATION CENTER, WHEN — CLARIFICATION OF MARKINGS, RESPONSE — PROJECT PLANS PROVIDED, WHEN — PERMIT FOR HIGHWAY EXCAVATION REQUIRED. — 1. Except as provided in subsection 3 of section 319.030 and in section 319.050, a person shall not make or begin any excavation in any public street, road or alley, right-of-way dedicated to the public use or utility easement of record or within any private street or private property without first giving notice to the notification center and obtaining information concerning the possible location of any underground facilities which may be affected by said excavation from underground facility owners whose names appear on the current list of participants in the notification center and who were communicated to the excavator as notification center participants who would be informed of the excavation notice. Prior to January 1, 2003, a person shall not make or begin any excavation pursuant to this subsection without also making notice to owners or operators of underground facilities which do not participate in a notification center and whose name appears on the current list of the recorder of deeds in and for the county in which the excavation is to occur. Beginning January 1, 2003, notice to the notification center of proposed excavation shall be deemed notice to all owners and operators of underground facilities. The notice referred to in this section shall comply with the provisions of section 319.026. **[**As part of the process to request the locating of underground facilities and having them properly marked, the notification center shall ask excavators to identify whether or not the proposed excavation will be on a public right-of-way or easement dedicated to public use for vehicular traffic.**]**

2. An excavator's notice to owners and operators of underground facilities participating in the notification center pursuant to section 319.022 is ineffective for purposes of subsection 1 of this section unless given to such notification center. Prior to January 1, 2003, the notice required

by subsection 1 of this section shall be given directly to owners or operators of underground facilities who are not represented by a notification center.

3. Notification center participants shall be relieved of the responsibility to respond to a notice of intent to excavate received directly from the person intending to commence an excavation, except for requests for clarification of markings through on-site meetings as provided in subsection 1 of section 319.030 and requests for locations at the time of an emergency as provided by section 319.050.

4. If the owner or operator notifies the excavator that the area of excavation cannot be determined from the description provided by the excavator through the notice required by this section, the excavator shall provide clarification of the area of excavation by markings or by providing project plans to the owner or operator, or by meeting on the site of the excavation with representatives of the owner or operator as provided by subsection 1 of section 319.030.

5. Notwithstanding the provisions of this section to the contrary, a person shall not make or begin any excavation in any state highway, or on the right-of-way of any state highway, without first obtaining a permit from the state highways and transportation commission pursuant to section 227.240, provided however, the provisions of this subsection shall not apply to railroad right-of-way owned or operated by a railroad.

Approved July 7, 2011

SB 180 [SB 180]

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

Designates certain state recognized days, weeks, and months.

AN ACT to amend chapter 9, RSMo, by adding thereto two new sections relating to bicycling state holidays.

SECTION
A. Enacting clause.
9.164. Walk & bike to school month and day designated.
9.165. Missouri bicycle month and day designation

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 two new sections, to be known as sections 9.164 and 9.165, to read as follows:

9.164. WALK & BIKE TO SCHOOL MONTH AND DAY DESIGNATED. — The month of October shall be set apart as "Walk & Bike to School Month" and the first Wednesday of October shall be set apart as "Walk & Bike to School Day" in Missouri to improve the safety of students walking and bicycling to school, encourage more children to safely walk and bicycle to school, and promote the benefits of walking and cycling to school, including physical activity and better student health and physical fitness, improved academics, reduced congestion and pollution, and more livable communities.

9.165. MISSOURI BICYCLE MONTH AND DAY DESIGNATION — The month of May shall be set apart as "Missouri Bicycle Month", the third Friday of May shall be set apart as "Bike to Work Day", and the week of bike to work day shall be set apart as "Bike to Work Week" in Missouri to promote bicycling as a viable and environmentally sound

form of transportation and a source of healthful recreation, promote bicycle safety and encourage all users to safely share the road, promote Missouri as a great destination for bicycle tourism, and promote the benefits of bicycling for health, physical fitness, family togetherness, economic development, and creating a vibrant, healthy, and livable state.

Approved July 5, 2011

SB 187 [HCS SB 187]

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

Modifies the laws regarding nuisances and junkyards.

AN ACT to repeal sections 67.402, 226.720, and 537.296, RSMo, and to enact in lieu thereof three new sections relating to nuisance actions, with penalty provisions.

SECTION

A. Enacting clause.
67.402. Abatement of nuisance in certain counties (Andrew, Boone, Buchanan, Cass, Cole, Dade, Jasper, Jefferson, Livingston, Newton) — ordinance requirements.
226.720. Unscreened junkyards near state and county roads prohibited — penalty.
537.296. Private nuisance — definitions — exclusive compensatory damages for agricultural nuisances, subsequent actions, effect of — standing — action in excess of one million dollars, court or jury shall visit property — copy of final judgment to be filed.

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

SECTION A. ENACTING CLAUSE. — Sections 67.402, 226.720, and 537.296, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 67.402, 226.720, and 537.296, to read as follows:

67.402. ABATEMENT OF NUISANCE IN CERTAIN COUNTIES (ANDREW, BOONE, BUCHANAN, CASS, COLE, DADE, JASPER, JEFFERSON, LIVINGSTON, NEWTON) — ORDINANCE REQUIREMENTS. — 1. The governing body of **the following counties may enact nuisance abatement ordinances as provided in this section:**

(1) Any county of the first classification with more than one hundred thirty-five thousand four hundred but **[**less**] fewer** than one hundred thirty-five thousand five hundred inhabitants**[**,**];**

(2) Any county of the first classification with more than seventy-one thousand three hundred but **[**less**] fewer** than seventy-one thousand four hundred inhabitants**[**, and**];**

(3) Any county of the first classification without a charter form of government and with more than one hundred ninety-eight thousand but **[**less**] fewer** than one hundred ninety-nine thousand two hundred inhabitants**;**

(4) Any county of the first classification with more than eighty-five thousand nine hundred but fewer than eighty-six thousand inhabitants;

(5) Any county of the third classification without a township form of government and with more than sixteen thousand four hundred but fewer than sixteen thousand five hundred inhabitants;

(6) Any county of the third classification with a township form of government and with more than fourteen thousand five hundred but fewer than fourteen thousand six hundred inhabitants;

(7) Any county of the first classification with more than eighty-two thousand but fewer than eighty-two thousand one hundred inhabitants;

(8) Any county of the first classification with more than one hundred four thousand six hundred but fewer than one hundred four thousand seven hundred inhabitants;

(9) Any county of the third classification with a township form of government and with more than seven thousand nine hundred but fewer than eight thousand inhabitants; and

(10) Any county of the second classification with more than fifty-two thousand six hundred but fewer than fifty-two thousand seven hundred inhabitants.

2. The governing body of any county described in subsection 1 of this section may enact ordinances to provide for the abatement of a condition of any lot or land that has the presence of rubbish and trash, lumber, bricks, tin, steel, parts of derelict motorcycles, derelict cars, derelict trucks, derelict construction equipment, derelict appliances, broken furniture, or overgrown or noxious weeds in residential subdivisions or districts which may endanger public safety or which is unhealthy or unsafe and declared to be a public nuisance.

[2.**]** **3.** Any ordinance enacted pursuant to this section shall:

(1) Set forth those conditions which constitute a nuisance and which are detrimental to the health, safety, or welfare of the residents of the county;

(2) Provide for duties of inspectors with regard to those conditions which may be declared a nuisance, and shall provide for duties of the building commissioner or designated officer or officers to supervise all inspectors and to hold hearings regarding such property;

(3) Provide for service of adequate notice of the declaration of nuisance, which notice shall specify that the nuisance is to be abated, listing a reasonable time for commencement, and may provide that such notice be served either by personal service or by certified mail, return receipt requested, but if service cannot be had by either of these modes of service, then service may be had by publication. The ordinances shall further provide that the owner, occupant, lessee, mortgagee, agent, and all other persons having an interest in the property as shown by the land records of the recorder of deeds of the county wherein the property is located shall be made parties;

(4) Provide that upon failure to commence work of abating the nuisance within the time specified or upon failure to proceed continuously with the work without unnecessary delay, the building commissioner or designated officer or officers shall call and have a full and adequate hearing upon the matter before the county commission, giving the affected parties at least ten days' written notice of the hearing. Any party may be represented by counsel, and all parties shall have an opportunity to be heard. After the hearings, if evidence supports a finding that the property is a nuisance or detrimental to the health, safety, or welfare of the residents of the county, the county commission shall issue an order making specific findings of fact, based upon competent and substantial evidence, which shows the property to be a nuisance and detrimental to the health, safety, or welfare of the residents of the county and ordering the nuisance abated. If the evidence does not support a finding that the property is a nuisance or detrimental to the health, safety, or welfare of the residents of the county, no order shall be issued.

[3.**]** **4.** Any ordinance authorized by this section may provide that if the owner fails to begin abating the nuisance within a specific time which shall not be longer than seven days of receiving notice that the nuisance has been ordered removed, the building commissioner or designated officer shall cause the condition which constitutes the nuisance to be removed. If the building commissioner or designated officer causes such condition to be removed or abated, the cost of such removal shall be certified to the county clerk or officer in charge of finance who shall cause the certified cost to be included in a special tax bill or added to the annual real estate tax bill, at the county collector's option, for the property and the certified cost shall be collected by the county collector in the same manner and procedure for collecting real estate taxes. If the certified cost is not paid, the tax bill shall be considered delinquent, and the collection of the delinquent bill shall be governed by the laws governing delinquent and back taxes. The tax bill from the date of its issuance shall be deemed a personal debt against the owner and shall also be a lien on the property until paid.

5. Nothing in this section authorizes any county to enact nuisance abatement ordinances that provide for the abatement of any condition relating to agricultural structures or agricultural operations, including but not limited to the raising of livestock or row crops.

6. No county of the first, second, third, or fourth classification shall have the power to adopt any ordinance, resolution, or regulation under this section governing any railroad company regulated by the Federal Railroad Administration.

226.720. UNSCREENED JUNKYARDS NEAR STATE AND COUNTY ROADS PROHIBITED — PENALTY. — 1. No junkyard shall be established, maintained or operated within two hundred feet of any other state or county road in this state unless such junkyard is **fully** screened from the **state or county** road by a **permanent** tight board or other screen fence not less than ten feet high, or of sufficient height to **fully** screen the wrecked or disabled automobiles or junk kept therein from the view of persons using the **state or county** road on foot or in vehicles in the ordinary manner, except that nothing in this section shall apply to any junkyard located in any incorporated town, village or city. The provisions of sections 226.650 through 226.710 shall not apply to this section except the definitions appearing in section 226.660.

2. Any person, firm or corporation who establishes, conducts, owns, maintains or operates a junkyard without complying with the provisions of this section shall, **[**on**]** **upon their first** conviction, be guilty of a **class C** misdemeanor **and shall be ordered to either remove the junk from the property or build a fence as described in this section. Any person, firm, or corporation who establishes, conducts, owns, maintains, or operates a junkyard without complying with the provisions of this section shall, upon their second or subsequent violation, be guilty of a class A misdemeanor and shall be ordered to either remove the junk from the property or build a fence as described in this section**.

537.296. PRIVATE NUISANCE — DEFINITIONS — EXCLUSIVE COMPENSATORY DAMAGES FOR AGRICULTURAL NUISANCES, SUBSEQUENT ACTIONS, EFFECT OF — STANDING — ACTION IN EXCESS OF ONE MILLION DOLLARS, COURT OR JURY SHALL VISIT PROPERTY — COPY OF FINAL JUDGMENT TO BE FILED. — 1. As used in this section, the following terms mean:

(1) "Claimant", a person who asserts a claim of private nuisance;

(2) "Fair market value", the price that a buyer who is willing but not compelled to buy would pay and a seller who is willing but not compelled to sell would accept for property;

(3) "Fair rental value", the price a lessee who is willing but not compelled to lease would pay and a lessor who is willing but not compelled to lease would accept;

(4) "Ownership interest", holding legal or equitable title to property in fee or, in a life, or in a leasehold interest;

(5) "Possessory interest", lawfully possessing property but does not include mere occupancy;

(6) "Property", real property.

2. The exclusive compensatory damages that may be awarded to a claimant for a private nuisance where the alleged nuisance emanates from property primarily used for crop or animal production purposes shall be as follows:

(1) If the nuisance is a permanent nuisance, compensatory damages shall be measured by the reduction in the fair market value of the claimant's property caused by the nuisance, but not to exceed the fair market value of the property;

(2) If the nuisance is a temporary nuisance, compensatory damages shall be measured by the diminution in the fair rental value of the claimant's property caused by the nuisance;

(3) If the nuisance is shown by objective and documented medical evidence to have caused a medical condition to claimant, compensatory damages arising from that medical

condition may be awarded in addition to the exclusive damages permitted under subdivisions (1) and (2) of this subsection.

3. Concerning a private nuisance where the alleged nuisance emanates from property primarily used for crop or animal production purposes, if any claimant or claimant's successor with ownership interest brings any subsequent claim against the same defendant or defendant's successors for temporary nuisance related to a similar activity or use of the defendant's property, and such activity or use of property is deemed a nuisance, the activity or use of property at issue shall be considered a permanent nuisance and such claimant and claimant's successors shall be limited to and bound by the remedies available for a permanent nuisance.

4. If a defendant in a private nuisance case where the nuisance is alleged to emanate from property used for crop or animal production purposes demonstrates a good faith effort to abate a condition that is determined to constitute a nuisance, the nuisance shall be deemed to be not capable of abatement. Substantial compliance with a court order regarding such property shall constitute such a good faith effort as a matter of law.

5. Concerning a private nuisance where the alleged nuisance emanates from property primarily used for crop or animal production purposes, no person shall have standing to bring an action for private nuisance unless the person has an ownership interest in the property alleged to be affected by the nuisance.

6. Nothing in this section shall:

(1) Prohibit a person from recovering damages for annoyance, discomfort, sickness, or emotional distress; provided that such damages are awarded on the basis of other causes of action independent of a claim of nuisance; or

(2) Prohibit the recovery of any damages, direct, consequential, or otherwise, resulting from or relating to crop destruction, crop damage, contamination of the seed supply, or a diminution of crop value resulting from contamination of the seed or grain supply, herbicide drift, or other diminution of crop value.

7. If any party requests the court or jury visit the property alleged to be affected by the nuisance in an action for private nuisance where the amount in controversy exceeds one million dollars, the court or jury shall visit the property.

8. A copy of the final judgment in any action alleging a private nuisance shall be filed with the recorder of deeds in the county in which the final judgment was issued and shall operate as notice to any purchaser of the claimant's property that the property was related to a previous claim for nuisance.

Approved May 11, 2011

SB 213 [HCS SCS SB 213]

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

Modifies what information is required in a petition for guardianship for a minor or an incapacitated person and adopts the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

AN ACT to repeal sections 194.115, 475.060, and 475.061, RSMo, and to enact in lieu thereof twenty-seven new sections relating to guardianship, with a penalty provision.

SECTION

A. Enacting clause.
194.115. Autopsy — consent required — penalty for violation — availability of report, to whom.

475.060. Application for guardianship — petition for guardianship requirements — incapacitated persons, petition requirements.
475.061. Application for conservatorship — may combine with petition for guardian of person.
475.501. Short title.
475.502. Definitions.
475.503. International application of act.
475.504. Communication between courts.
475.505. Cooperation between courts.
475.506. Taking testimony in another state.
475.521. Definitions — significant connection factors.
475.522. Exclusive basis.
475.523. Jurisdiction.
475.524. Special jurisdiction.
475.525. Exclusive and continuing jurisdiction.
475.526. Appropriate forum.
475.527. Jurisdiction declined by reason of conduct.
475.528. Notice of proceeding.
475.529. Proceedings in more than one state.
475.531. Transfer of guardianship or conservatorship to another state.
475.532. Accepting guardianship or conservatorship transferred from another state.
475.541. Registration of guardianship orders.
475.542. Registration of protective orders.
475.543. Effect of registration.
475.544. State law applicability.
475.551. Uniformity of application and construction.
475.552. Relation to Electronic Signatures in Global and National Commerce Act.
475.555. Effective date.

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

SECTION A. ENACTING CLAUSE. — Sections 194.115, 475.060, and 475.061, RSMo, are repealed and twenty-seven new sections enacted in lieu thereof, to be known as sections 194.115, 475.060, 475.061, 475.501, 475.502, 475.503, 475.504, 475.505, 475.506, 475.521, 475.522, 475.523, 475.524, 475.525, 475.526, 475.527, 475.528, 475.529, 475.531, 475.532, 475.541, 475.542, 475.543, 475.544, 475.551, 475.552, and 475.555, to read as follows:

194.115. AUTOPSY — CONSENT REQUIRED — PENALTY FOR VIOLATION — AVAILABILITY OF REPORT, TO WHOM. — 1. Except when ordered or directed by a public officer, court of record or agency authorized by law to order an autopsy or postmortem examination, it is unlawful for any licensed physician and surgeon to perform an autopsy or postmortem examination upon the remains of any person without the consent of one of the following:

(1) The deceased, if in writing, and duly signed and acknowledged prior to his death; or

(2) A person designated by the deceased in a durable power of attorney that expressly refers to the giving of consent to an autopsy or postmortem examination; or

(3) The surviving spouse; or

(4) If the surviving spouse through injury, illness or mental capacity is incapable of giving his or her consent, or if the surviving spouse is unknown, or his or her address unknown or beyond the boundaries of the United States, or if he or she has been separated and living apart from the deceased, or if there is no surviving spouse, then any surviving child, parent, brother or sister, in the order named; or

(5) If no surviving child, parent, brother or sister can be contacted by telephone or telegraph, then any other relative, by blood or marriage; or

(6) If there are no relatives who assume the right to control the disposition of the remains, then any person, friend or friends who assume such responsibility.

2. **If an individual through injury, illness, or mental capacity is incapable of giving consent prior to his or her death as contemplated by subdivision (1) of subsection 1 of this section, then any child, parent, brother or sister of said individual may petition the court**

to order that an autopsy or postmortem examination shall be performed upon the remains of said individual following his or her passing.

3. If the surviving spouse, child, parent, brother or sister hereinabove mentioned is under the age of twenty-one years, but over the age of sixteen years, such minor shall be deemed of age for the purpose of granting the consent hereinabove required.

[3.**]** **4.** Any licensed physician and surgeon performing an autopsy or postmortem examination with the consent of any of the persons enumerated in subsection 1 of this section shall use his judgment as to the scope and extent to be performed, and shall be in no way liable for such action.

[4.**]** **5.** It is unlawful for any licensed physician, unless specifically authorized by law, to hold a postmortem examination on any unclaimed dead without the consent required by section 194.170.

[5.**]** **6.** Any person not a licensed physician performing an autopsy or any licensed physician performing an autopsy without the authorization herein required shall upon conviction be adjudged guilty of a misdemeanor, and subject to the penalty provided for in section 194.180.

[6.**]** **7.** If an autopsy is performed on a deceased patient and an autopsy report is prepared, such report shall be made available upon request to the personal representative or administrator of the estate of the deceased, the surviving spouse, any surviving child, parent, brother or sister of the deceased.

475.060. APPLICATION FOR GUARDIANSHIP — PETITION FOR GUARDIANSHIP REQUIREMENTS — INCAPACITATED PERSONS, PETITION REQUIREMENTS. — 1. Any person may file a petition for the appointment of himself **or herself** or some other qualified person as guardian of a minor **[**or guardian of an incapacitated person**]**. Such petition shall state:

(1) The name, age, domicile, actual place of residence and post office address of the minor **[**or incapacitated person**]** if known and if any of these facts is unknown, the efforts made to ascertain that fact;

(2) The estimated value of **[**his**]** **the minor's** real and personal property**, and the location and value of any real property owned by the minor outside of this state**;

(3) If the minor **[**or incapacitated person**]** has no domicile or place of residence in this state, the county in which the property or major part thereof of the minor **[**or incapacitated person**]** is located;

(4) The name and address of the parents of the minor **[**or incapacitated person**]** and whether they are living or dead;

(5) The name and address of the spouse, and the names, ages and addresses of all living children of the minor **[**or incapacitated person**]**;

(6) The name and address of the person having custody of the person of the minor **[**or incapacitated person**]**;

(7) The name and address of any guardian of the person or conservator of the estate of the minor **[**or incapacitated person**]** appointed in this or any other state;

(8) If appointment is sought for a natural person, other than the public administrator, the names and addresses of wards and disabled persons for whom such person is already guardian or conservator;

(9) **[**In the case of an incapacitated person, the fact that the person for whom guardianship is sought is unable by reason of some specified physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that the person lacks capacity to meet essential requirements for food, clothing, shelter, safety or other care such that serious physical injury, illness or disease is likely to occur**]** **The name and address of the trustees and the purpose of any trust of which the minor is a qualified beneficiary**;

(10) The reasons why the appointment of a guardian is sought;

(11) A petition for the appointment of a guardian of a minor may be filed for the sole and specific purpose of school registration or medical insurance coverage. Such a petition shall clearly set out this limited request and shall not be combined with a petition for conservatorship.

2. Any person may file a petition for the appointment of himself or herself or some other qualified person as guardian of an incapacitated person. Such petition shall state:

(1) If known, the name, age, domicile, actual place of residence, and post office address of the alleged incapacitated person, and for the period of three years before the filing of the petition, the most recent addresses, up to three, at which the alleged incapacitated person lived prior to the most recent address, and if any of these facts is unknown, the efforts made to ascertain that fact. In the case of a petition filed by a public official in his or her official capacity, the information required by this subdivision need only be supplied to the extent it is reasonably available to the petitioner;

(2) The estimated value of the alleged incapacitated person's real and personal property, and the location and value of any real property owned by the alleged incapacitated person outside of this state;

(3) If the alleged incapacitated person has no domicile or place of residence in this state, the county in which the property or major part thereof of the alleged incapacitated person is located;

(4) The name and address of the parents of the alleged incapacitated person and whether they are living or dead;

(5) The name and address of the spouse, the names, ages, and addresses of all living children of the alleged incapacitated person, the names and addresses of the alleged incapacitated person's closest known relatives, and the names and relationship, if known, of any adults living with the alleged incapacitated person; if no spouse, adult child, or parent is listed, the names and addresses of the siblings and children of deceased siblings of the alleged incapacitated person; the name and address of any agent appointed by the alleged incapacitated person in any durable power of attorney, and of the presently acting trustees of any trust of which the alleged incapacitated person is the grantor or is a qualified beneficiary or is or was the trustee or co-trustee and the purpose of the power of attorney or trust;

(6) The name and address of the person having custody of the person of the alleged incapacitated person;

(7) The name and address of any guardian of the person or conservator of the estate of the alleged incapacitated person appointed in this or any other state;

(8) If appointment is sought for a natural person, other than the public administrator, the names and addresses of wards and disabled persons for whom such person is already guardian or conservator;

(9) The fact that the person for whom guardianship is sought is unable by reason of some specified physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that the person lacks capacity to meet essential requirements for food, clothing, shelter, safety, or other care such that serious physical injury, illness, or disease is likely to occur;

(10) The reasons why the appointment of a guardian is sought.

475.061. APPLICATION FOR CONSERVATORSHIP — MAY COMBINE WITH PETITION FOR GUARDIAN OF PERSON. — 1. Any person may file a petition in the probate division of the circuit court of the county of proper venue for the appointment of himself or some other qualified person as conservator of the estate of a minor or disabled person. The petition shall contain the same allegations as are set forth in subdivisions (1), (8), and (10) **of subsection 2** of section 475.060 with respect to the appointment of a guardian for an incapacitated person and, in addition thereto, an allegation that the respondent is unable by reason of some specific physical or mental condition to receive and evaluate information or to communicate decisions to such an

extent that the respondent lacks ability to manage his financial resources or that the respondent is under the age of eighteen years.

2. A petition for appointment of a conservator or limited conservator of the estate may be combined with a petition for appointment of a guardian or limited guardian of the person. In such a combined petition allegations need not be repeated.

ARTICLE 1
GENERAL PROVISIONS

475.501. SHORT TITLE. — Sections 475.501 to 475.555 may be cited as the "Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act".

475.502. DEFINITIONS. — Notwithstanding the definitions in section 475.010, when used in sections 475.501 to 475.555, the following terms mean:

(1) "Adult", an individual who has attained eighteen years of age;

(2) "Conservator", a person appointed by the court to administer the property of an adult, including a person appointed under this chapter;

(3) "Guardian", a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under this chapter;

(4) "Guardianship order", an order appointing a guardian;

(5) "Guardianship proceeding", a proceeding in which an order for the appointment of a guardian is sought or has been issued;

(6) "Incapacitated person", an adult for whom a guardian has been appointed;

(7) "Party", the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding;

(8) "Person", except in the term "incapacitated person" or "protected person", an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

(9) "Protected person", an adult for whom a protective order has been issued;

(10) "Protective order", an order appointing a conservator or other order related to management of an adult's property;

(11) "Protective proceeding", a judicial proceeding in which a protective order is sought or has been issued;

(12) "Record", information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(13) "Respondent", an adult for whom a protective order or the appointment of a guardian is sought;

(14) "State", a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

475.503. INTERNATIONAL APPLICATION OF ACT. — A court of this state may treat a foreign country as if it were a state for the purpose of applying this article and articles 2, 3, and 5.

475.504. COMMUNICATION BETWEEN COURTS. — 1. A court of this state may communicate with a court in another state concerning a proceeding arising under sections 475.501 to 475.555. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection 2 of this section, the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

2. Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

475.505. COOPERATION BETWEEN COURTS. — 1. In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to:

(1) Hold an evidentiary hearing;

(2) Order a person in that state to produce evidence or give testimony pursuant to procedures of that state;

(3) Order that an evaluation or assessment be made of the respondent;

(4) Order any appropriate investigation of a person involved in a proceeding;

(5) Forward to the court of this state a certified copy of the transcript or other record of a hearing under subdivision (1) of subsection 1 of this section or any other proceeding, any evidence otherwise produced under subdivision (2) of subsection 1 of this section, and any evaluation or assessment prepared in compliance with an order under subdivisions (3) and (4) of subsection 1 of this section;

(6) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person;

(7) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 CFR 160.103, as amended.

2. If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection 1 of this section, a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

475.506. TAKING TESTIMONY IN ANOTHER STATE. — 1. In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

2. In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

3. Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.

ARTICLE 2
JURISDICTION

475.521. DEFINITIONS — SIGNIFICANT CONNECTION FACTORS. — 1. In this article, the following terms mean:

(1) "Emergency", a circumstance that likely will result in substantial harm to a respondent's health, safety, or welfare, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf;

(2) "Home state", the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before

the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition;

(3) "Significant-connection state", a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

2. In determining under section 475.523 and subsection 5 of section 475.531 whether a respondent has a significant connection with a particular state, the court shall consider:

(1) The location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;

(2) The length of time the respondent at any time was physically present in the state and the duration of any absence;

(3) The location of the respondent's property; and

(4) The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

475.522. EXCLUSIVE BASIS. — This article provides the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

475.523. JURISDICTION. — A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

(1) This state is the respondent's home state;

(2) On the date a petition is filed, this state is a significant-connection state and:

(a) The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or

(b) The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order:

a. A petition for an appointment or order is not filed in the respondent's home state;

b. An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

c. The court in this state concludes that it is an appropriate forum under the factors set forth in section 475.526;

(3) This state does not have jurisdiction under either subdivisions (1) or (2) of this section, the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or

(4) The requirements for special jurisdiction under section 475.524 are met.

475.524. SPECIAL JURISDICTION. — 1. A court of this state lacking jurisdiction under section 475.523 has special jurisdiction to do any of the following:

(1) Appoint a guardian in an emergency for a term not exceeding ninety days for a respondent who is physically present in this state;

(2) Issue a protective order with respect to real or tangible personal property located in this state;

(3) Appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to section 475.531.

2. If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

475.525. EXCLUSIVE AND CONTINUING JURISDICTION. — Except as otherwise provided in section 475.524, a court that has appointed a guardian or issued a protective order consistent with sections 475.501 to 475.555 has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

475.526. APPROPRIATE FORUM. — 1. A court of this state having jurisdiction under section 475.523 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

2. If a court of this state declines to exercise its jurisdiction under subsection 1 of this section, it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or protective order be promptly filed in another state.

3. In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

(1) Any expressed preference of the respondent;

(2) Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;

(3) The length of time the respondent was physically present in or was a legal resident of this or another state;

(4) The distance of the respondent from the court in each state;

(5) The financial circumstances of the respondent's estate;

(6) The nature and location of the evidence;

(7) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;

(8) The familiarity of the court of each state with the facts and issues in the proceeding; and

(9) If an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

475.527. JURISDICTION DECLINED BY REASON OF CONDUCT. — 1. If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

(1) Decline to exercise jurisdiction;

(2) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or

(3) Continue to exercise jurisdiction after considering:

(a) The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(b) Whether it is a more appropriate forum than the court of any other state under the factors set forth in subsection 3 of section 475.526; and

(c) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section 475.523.

2. If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than sections 475.501 to 475.555.

475.528. NOTICE OF PROCEEDING. — If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition shall be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice shall be given in the same manner as notice is required to be given in this state.

475.529. PROCEEDINGS IN MORE THAN ONE STATE. — Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state as provided in subdivision (1) or (2) of subsection 1 of section 475.524, if a petition for the appointment of a guardian or issuance of a protective order is filed in this and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the court in this state has jurisdiction under section 475.523, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to section 475.523 before the appointment or issuance of the order.

(2) If the court in this state does not have jurisdiction under section 475.523, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.

ARTICLE 3
TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

475.531. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO ANOTHER STATE. — 1. A guardian or conservator appointed in this state may petition the court to transfer the guardianship or conservatorship to another state.

2. Notice of a petition under subsection 1 of this section shall be given to those persons that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator.

3. On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection 1 of this section.

4. The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(1) The incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

(2) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and

(3) Plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

5. The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

(1) The protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors set forth in subsection 2 of section 475.521;

(2) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(3) Adequate arrangements will be made for management of the protected person's property.

6. The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

(1) A provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to section 475.532; and

(2) The documents required to terminate a guardianship or conservatorship in this state.

475.532. ACCEPTING GUARDIANSHIP OR CONSERVATORSHIP TRANSFERRED FROM ANOTHER STATE. — 1. To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to those in section 475.531, the guardian or conservator shall petition the court in this state to accept the guardianship or conservatorship. The petition shall include a certified copy of the other state's provisional order of transfer.

2. Notice of a petition under subsection 1 of this section shall be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice shall be given in the same manner as notice is required to be given in this state.

3. On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection 1 of this section.

4. The court shall issue an order provisionally granting a petition filed under subsection 1 of this section unless:

(1) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(2) The guardian or conservator is ineligible for appointment in this state.

5. The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to section 475.531 transferring the proceeding to this state.

6. Not later than ninety days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state.

7. In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

8. The denial by a court of this state of a petition to accept guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under this chapter if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

ARTICLE 4
REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

475.541. REGISTRATION OF GUARDIANSHIP ORDERS. — If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office.

475.542. REGISTRATION OF PROTECTIVE ORDERS. — If a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a court of this state, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

475.543. EFFECT OF REGISTRATION. — 1. Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

2. A court of this state may grant any relief available under sections 475.501 to 475.555 and other law of this state to enforce a registered order.

475.544. STATE LAW APPLICABILITY. — Except where inconsistent with sections 475.541, 475.542, and 475.543, the laws of this state relating to the registration and recognition of the acts of a foreign guardian, curator, or conservator contained in sections 475.335 to 475.340 shall be applicable.

ARTICLE 5
MISCELLANEOUS PROVISIONS

475.551. UNIFORMITY OF APPLICATION AND CONSTRUCTION. — In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

475.552. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. — Sections 475.501 to 475.555 modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

475.555. EFFECTIVE DATE. — 1. Sections 475.501 to 475.555 apply to guardianship and protective proceedings begun on or after August 28, 2011.

2. Articles 1, 3, 4, and sections 475.551 and 475.552 apply to proceedings begun before August 28, 2011, regardless of whether a guardianship or protective order has been issued.

Approved July 11, 2011

SB 226 [CCS HCS SS SB 226]

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

Modifies provisions relating to ambulance districts.

AN ACT to repeal sections 190.015, 190.035, 190.040, and 321.120, RSMo, and to enact in lieu thereof six new sections relating to emergency services.

SECTION

A. Enacting clause.
143.1016. Organ Donor Program fund, designation of refund permitted — director's duties — sunset provision.
190.015. Petition to form, contents — ambulance district boundaries (St. Louis County) — sales tax in lieu of property tax permitted, exception St. Louis County.
190.035. Notice of election, contents.
190.040. Form of ballot — effect of passage on tax rate — fund created — refunds, when.
190.056. Recall of directors, procedure.
321.120. Election before decree becomes conclusive — decree to determine number of directors — ballot form — successor directors, terms — may increase number of directors, exception — ballot, form — terms.

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

SECTION A. ENACTING CLAUSE. — Sections 190.015, 190.035, 190.040, and 321.120, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 143.1016, 190.015, 190.035, 190.040, 190.056, and 321.120, to read as follows:

143.1016. ORGAN DONOR PROGRAM FUND, DESIGNATION OF REFUND PERMITTED — DIRECTOR'S DUTIES — SUNSET PROVISION. — 1. For all tax years beginning on or after January 1, 2011, each individual or corporation entitled to a tax refund in an amount sufficient to make a designation under this section may designate that two dollars or any amount in excess of two dollars on a single return, and four dollars or any amount in excess of four dollars on a combined return, of the refund due be credited to the organ donor program fund established in section 194.297. The contribution designation authorized by this section shall be clearly and unambiguously printed on each income tax return form provided by this state. If any individual that is not entitled to a tax refund in an amount sufficient to make a designation under this section wishes to make a contribution to the organ donor program fund, such individual may, by separate check, draft, or other negotiable instrument, send in with the payment of taxes, or may send in

separately, clearly designated for the organ donor program fund, the amount the individual wishes to contribute. The department of revenue shall deposit such amount to the organ donor program fund as provided in subsection 2 of this section.

2. The director of revenue shall transfer at least monthly all contributions designated by individuals under this section, less an amount sufficient to cover the cost of collecting and handling by the department of revenue which shall not exceed five percent of the transferred contributions, to the state treasurer for deposit in the state treasury to the credit of the organ donor program fund. A contribution designated under this section shall only be transferred and deposited in the organ donor program fund after all other claims against the refund from which such contribution is to be made have been satisfied.

3. All moneys transferred to the fund shall be distributed as provided in this section and sections 194.297 and 194.299.

4. Under section 23.253 of the Missouri sunset act:

(1) The provisions of the new program authorized under this section shall automatically sunset on December thirty-first 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 on December thirty-first 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.

190.015. PETITION TO FORM, CONTENTS — AMBULANCE DISTRICT BOUNDARIES (ST. LOUIS COUNTY) — SALES TAX IN LIEU OF PROPERTY TAX PERMITTED, EXCEPTION ST. LOUIS COUNTY. — 1. Whenever the creation of an ambulance district is desired, a number of voters residing in the proposed district equal to ten percent of the vote cast for governor in the proposed district in the next preceding gubernatorial election may file with the county clerk in which the territory or the greater part thereof is situated a petition requesting the creation thereof. In case the proposed district is situated in two or more counties, the petition shall be filed in the office of the county clerk of the county in which the greater part of the area is situated, and the commissioners of the county commission of the county shall set the petition for public hearing. The petition shall set forth:

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

(2) The names of the municipalities located within the area;

(3) The name of the proposed district;

(4) The population of the district which shall not be less than two thousand inhabitants;

(5) The assessed valuation of the area, which shall not be less than ten million dollars; and

(6) A request that the question be submitted to the voters residing within the limits of the proposed ambulance district whether they will establish an ambulance district pursuant to the provisions of sections 190.001 to 190.090 to be known as "..... Ambulance District" for the purpose of establishing and maintaining an ambulance service.

2. In any county with a charter form of government and with more than one million inhabitants, fire protection districts created under chapter 321 may choose to create an ambulance district with boundaries congruent with each participating fire protection district's existing boundaries provided no ambulance district already exists in whole or part of any district being proposed and the dominant provider of ambulance services within the proposed district as of September 1, 2005, ceases to offer or provide ambulance services, and the board of each participating district, by a majority vote, approves the formation of such a district and participating fire protection districts are contiguous. Upon approval by the fire protection district boards, subsection 1 of this section shall be followed for formation of the ambulance district. Services provided by a district under this subsection shall only include emergency ambulance services as defined in section 321.225.

3. Except in any county with a charter form of government and with more than one million inhabitants, any ambulance district established under this chapter on or after August 28, 2011, may levy and impose a sales tax in lieu of a property tax to fund the district. The petition to create the ambulance district shall state whether the district will be funded by a property or a sales tax.

190.035. NOTICE OF ELECTION, CONTENTS. — Each notice shall state briefly the purpose of the election, setting forth the proposition to be voted upon and a description of the territory. The notice shall further state that any district upon its establishment shall have the powers, objects and purposes provided by sections 190.005 to 190.085, and shall have the power to levy a property tax not to exceed thirty cents on the one hundred dollars valuation**, or, in lieu of a property tax, to impose a sales tax in an amount not to exceed one-half of one percent on all retail sales made in such ambulance district which are subject to taxation pursuant to the provisions of sections 144.010 to 144.525**.

190.040. FORM OF BALLOT — EFFECT OF PASSAGE ON TAX RATE — FUND CREATED — REFUNDS, WHEN. — 1. For the organization of a district which shall levy a property tax, the question shall be submitted in substantially the following form:

Shall there be organized in the counties of ....., state of Missouri, an ambulance district for the establishment and operation of an ambulance service to be located within the boundaries of said proposed district and having the power to impose a property tax not to exceed the annual rate of thirty cents on the hundred dollars assessed valuation without voter approval, and such additional tax as may be approved hereafter by vote thereon, to be known as "..... Ambulance District" as prayed for by petition filed with the county clerk of ..... County, Missouri, on the ..... day of ....., 20....?

2. For the organization of a district which shall levy a sales tax, the question shall be submitted in substantially the following form:

Shall there be organized in the counties of ....., state of Missouri, an ambulance district for the establishment and operation of an ambulance service to be located within the boundaries of said district and having the power to impose a sales tax in an amount not to exceed one-half of one percent without voter approval, and such additional tax as may be approved hereafter by vote thereon, to be known as "..... Ambulance District" as prayed for by petition filed with the county clerk of ..... County, Missouri, on the ..... day of ....., 20....?

3. If a majority of the votes cast on the proposal by the qualified voters voting thereon are in favor of the proposal, then the sales tax authorized in this section shall be in effect and the governing body of the ambulance district shall lower the level of its tax rate by an amount which reduces property tax revenues by an amount equal to fifty percent of the amount of sales tax collected in the preceding year. If a majority of the votes cast by the qualified voters voting are opposed to the proposal, then the governing body of the ambulance district shall not impose the sales tax authorized in this section unless and until the governing body of such ambulance district resubmits a proposal to authorize the governing body of the ambulance district to impose the sales tax authorized by this section and such proposal is approved by a majority of the qualified voters voting thereon.

4. All revenue received by a district from the tax authorized pursuant to this section shall be deposited in a special trust fund, and be used solely for the purposes specified in the proposal submitted pursuant to this section for so long as the tax shall remain in effect.

5. All sales taxes collected by the director of revenue pursuant to this section, less one percent for cost of collection, which shall be deposited in the state's general revenue fund after payment of premiums for surety bonds as provided in section 32.087, shall be deposited in a special trust fund, which is hereby created, to be known as the "Ambulance

District Sales Tax Trust Fund". The moneys in the ambulance district sales tax trust fund shall not be deemed to be state funds and shall not be commingled with any funds of the state. The director of revenue shall keep accurate records of the amount of money in the trust and the amount collected in each district imposing a sales tax pursuant to this section, and the records shall be open to inspection by officers of the county and to the public. Not later than the tenth day of each month, the director of revenue shall distribute all moneys deposited in the trust fund during the preceding month to the governing body of the district which levied the tax. Such funds shall be deposited with the board treasurer of each such district.

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

7. Except as modified in this section, all provisions of sections 32.085 and 32.087 shall apply to the tax imposed pursuant to this section.

190.056. RECALL OF DIRECTORS, PROCEDURE. — 1. Each member of an ambulance district board of directors shall be subject to recall from office by the registered voters of the election district from which he or she was elected. Proceedings may be commenced for the recall of any such member by the filing of a notice of intention to circulate a recall petition under this section.

2. Proceedings may not be commenced against any member if, at the time of commencement, such member:

(1) Has not held office during his or her current term for a period of more than one hundred eighty days; or

(2) Has one hundred eighty days or less remaining in his or her term; or

(3) Has had a recall election determined in his or her favor within the current term of office.

3. The notice of intention to circulate a recall petition shall be served personally, or by certified mail, on the board member sought to be recalled. A copy thereof shall be filed, along with an affidavit of the time and manner of service, with the election authority, as defined in chapter 115. A separate notice shall be filed for each board member sought to be recalled and shall contain all of the following:

(1) The name of the board member sought to be recalled;

(2) A statement, not exceeding two hundred words in length, of the reasons for the proposed recall; and

(3) The names and business or residential addresses of at least one but not more than five proponents of the recall.

4. Within seven days after the filing of the notice of intention, the board member may file with the election authority a statement, not exceeding two hundred words in length, in answer to the statement of the proponents. If an answer is filed, the board member shall also serve a copy of it, personally or by certified mail, on one of the proponents named in the notice of intention. The statement and answer are intended solely to be used

for the information of the voters. No insufficiency in form or substance of such statements shall affect the validity of the election proceedings.

5. Before any signature may be affixed to a recall petition, the petition is required to bear all of the following:

(1) A request that an election be called to elect a successor to the board member;

(2) A copy of the notice of intention, including the statement of grounds for recall;

(3) The answer of the board member sought to be recalled, if any exists. If the board member has not answered, the petition shall so state; and

(4) A place for each signer to affix his or her signature, printed name and residential address, including any address in a city, town, village, or unincorporated community.

6. Each section of the petition, when submitted to the election authority, shall have attached to it an affidavit signed by the person circulating such section, setting forth all of the following:

(1) The printed name of the affiant;

(2) The residential address of the affiant;

(3) That the affiant circulated that section and saw the appended signatures be written;

(4) That according to the best information and belief of the affiant, each signature is the genuine signature of the person whose name it purports to be;

(5) That the affiant is a registered voter of the election district of the board member sought to be recalled; and

(6) The dates between which all the signatures to the petition were obtained.

7. A recall petition shall be filed with the election authority not more than one hundred eighty days after the filing of the notice of intention.

8. The number of qualified signatures required in order to recall a board member shall be equal in number to at least twenty-five percent of the number of voters who voted in the most recent gubernatorial election in such election district.

9. Within twenty days from the filing of the recall petition the election authority shall determine whether or not the petition was signed by the required number of qualified signatures. The election authority shall file with the petition a certificate showing the results of the examination. The election authority shall give the proponents a copy of the certificate upon their request.

10. If the election authority certifies the petition to be insufficient, it may be supplemented within ten days of the date of certification by filing additional petition sections containing all of the information required by this section. Within ten days after the supplemental copies are filed, the election authority shall file with them a certificate stating whether or not the petition as supplemented is sufficient.

11. If the certificate shows that the petition as supplemented is insufficient, no action shall be taken on it; however, the petition shall remain on file.

12. If the election authority finds the signatures on the petition, together with the supplementary petition sections, if any, to be sufficient, it shall submit its certificate as to the sufficiency of the petition to the ambulance district board of directors prior to its next meeting. The certificate shall contain:

(1) The name of the member whose recall is sought;

(2) The number of signatures required by law;

(3) The total number of signatures on the petition; and

(4) The number of valid signatures on the petition.

13. Following the ambulance district board's receipt of the certificate, the election authority shall order an election to be held on one of the election days specified in section 115.123. The election shall be held not less than forty-five days but not more than one hundred twenty days from the date the ambulance district board receives the petition.

Nominations for board membership openings under this section shall be made by filing a statement of candidacy with the election authority.

14. At any time prior to forty-two days before the election, the member sought to be recalled may offer his or her resignation. If his or her resignation is offered, the recall question shall be removed from the ballot and the office declared vacant. The member who resigned shall not fill the vacancy, which shall be filled as otherwise provided by law.

15. The provisions of chapter 115 governing the conduct of elections shall apply, where appropriate, to recall elections held under this section. The costs of the election shall be paid as provided in chapter 115.

321.120. ELECTION BEFORE DECREE BECOMES CONCLUSIVE — DECREE TO DETERMINE NUMBER OF DIRECTORS — BALLOT FORM — SUCCESSOR DIRECTORS, TERMS — MAY INCREASE NUMBER OF DIRECTORS, EXCEPTION — BALLOT, FORM — TERMS. — 1. The decree of incorporation shall not become final and conclusive until it has been submitted to an election of the voters residing within the boundaries described in such decree, and until it has been assented to by a majority vote of the voters of the district voting on the question. The decree shall also provide for the holding of the election to vote on the proposition of incorporating the district, and to select three or five persons to act as the first board of directors, and shall fix the date for holding the election.

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

Shall there be incorporated a fire protection district?

[ ] YES [ ] NO

3. The proposition of electing the first board of directors or the election of subsequent directors may be submitted on a separate ballot or on the same ballot which contains any other proposition of the fire protection district. The ballot to be used for the election of a director or directors shall be substantially in the following form:

OFFICIAL BALLOT

Instruction to voters:

Place a cross (X) mark in the square opposite the name of the candidate or candidates you favor. (Here state the number of directors to be elected and their term of office.)

ELECTION

(Here insert name of district.) Fire Protection District. (Here insert date of election.)

FOR BOARD OF DIRECTORS

..... [ ]

..... [ ]

..... [ ]

4. If a majority of the voters voting on the proposition or propositions voted in favor of the proposition to incorporate the district, then the court shall enter its further order declaring the decree of incorporation to be final and conclusive. In the event, however, that the court finds that a majority of the voters voting thereon voted against the proposition to incorporate the district, then the court shall enter its further order declaring the decree of incorporation to be void and of no effect. If the court enters an order declaring the decree of incorporation to be final and conclusive, it shall at the same time designate the first board of directors of the district who have been elected by the voters voting thereon. If a board of three members is elected, the person receiving the third highest number of votes shall hold office for a term of two years, the person receiving the second highest number of votes shall hold office for a term of four years, and the person receiving the highest number of votes shall hold office for a term of six years from the date of the election of the first board of directors and until their successors are duly elected and qualified. If a board of five members is elected, the person who received the highest number of votes shall hold office for a term of six years, the persons who received the second and third highest numbers of votes shall hold office for terms of four years and the persons who received the fourth and fifth highest numbers of votes shall hold office for terms of two years and until

their successors are duly elected and qualified. Thereafter, members of the board shall be elected to serve terms of six years and until their successors are duly elected and qualified**[**, provided however, in any county with a charter form of government and with more than two hundred fifty thousand but fewer than three hundred fifty thousand inhabitants, any successor elected and qualified in the year 2005 shall hold office for a term of six years and until his or her successor is duly elected and qualified and any successor elected and qualified in the year 2006 or 2007 shall hold office for a term of five years and until his or her successor is duly elected and qualified, and thereafter, members of the board shall be elected to serve terms of four years and until their successors are duly elected and qualified**]**. The court shall at the same time enter an order of record declaring the result of the election on the proposition, if any, to incur bonded indebtedness.

5. Notwithstanding the provisions of subsections 1 to 4 of this section to the contrary, upon a motion by the board of directors in districts where there are three-member boards, and upon approval by the voters in the district, the number of directors may be increased to five, except that in any county of the first classification with a population of more than nine hundred thousand inhabitants such increase in the number of directors shall apply only in the event of a consolidation of existing districts. The ballot to be used for the approval of the voters to increase the number of members on the board of directors of the fire protection district shall be substantially in the following form:

Shall the number of members of the board of directors of the ..... (Insert name of district) Fire Protection District be increased to five members?

[ ] YES [ ] NO

If a majority of the voters voting on the proposition vote in favor of the proposition then at the next election of board members after the voters vote to increase the number of directors, the voters shall select two persons to act in addition to the existing three directors as the board of directors. The court which entered the order declaring the decree of incorporation to be final shall designate the additional board of directors who have been elected by the voters voting thereon as follows: the one receiving the second highest number of votes to hold office for a term of four years, and the one receiving the highest number of votes to hold office for a term of six years from the date of the election of such additional board of directors and until their successors are duly elected and qualified. Thereafter, members of the board shall be elected to serve terms of six years and until their successors are duly elected and qualified**[**, provided however, in any county with a charter form of government and with more than two hundred fifty thousand but fewer than three hundred fifty thousand inhabitants, any successor elected and qualified in the year 2005 shall hold office for a term of six years and until his or her successor is duly elected and qualified and any successor elected and qualified in the year 2006 or 2007 shall hold office for a term of five years and until his or her successor is duly elected and qualified, and thereafter, members of the board shall be elected to serve terms of four years and until their successors are duly elected and qualified**]**.

6. Members of the board of directors in office on the date of an election pursuant to subsection 5 of this section to elect additional members to the board of directors shall serve the term to which they were elected or appointed and until their successors are elected and qualified.

Approved July 5, 2011

SB 237 [SB 237]

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

Requires that the September 1996 Supreme Court standards for representation by guardians ad litem be updated.

AN ACT to repeal section 484.350, RSMo, and to enact in lieu thereof one new section relating to standards for representation of children by guardians ad litem.

SECTION
A. Enacting clause.
484.350. Standards for representation to be updated and adopted statewide, when.

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

SECTION A. ENACTING CLAUSE. — Section 484.350, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 484.350, to read as follows:

484.350. STANDARDS FOR REPRESENTATION TO BE UPDATED AND ADOPTED STATEWIDE, WHEN. — Recognizing that Missouri children have a right to adequate and effective representation in child welfare cases, the September 17, 1996, Missouri supreme court standards for representation by guardians ad litem shall be **updated and** adopted statewide and each circuit shall devise a plan for implementation which takes into account the individual needs of their circuit as well as the negative impact that excessive caseloads have upon effectiveness of counsel. These plans shall be approved by the supreme court en banc and fully implemented by July 1, 2011.

Approved July 8, 2011

SB 238 [SS SB 238]

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

Creates a presumption that certain infectious diseases are duty-related for the purposes of firefighters' disability and death benefits.

AN ACT to repeal sections 87.005 and 87.006, RSMo, and to enact in lieu thereof two new sections relating to diseases presumed incurred in the line of duty by firefighters.

SECTION
A. Enacting clause.
87.005. Firemen, certain diseases presumed incurred in line of duty — conditions — infectious disease defined.
87.006. Firemen, certain diseases presumed incurred in line of duty — persons covered — disability from cancer, presumption suffered in line of duty, when — infectious disease defined.

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

SECTION A. ENACTING CLAUSE. — Sections 87.005 and 87.006, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 87.005 and 87.006, to read as follows:

87.005. FIREMEN, CERTAIN DISEASES PRESUMED INCURRED IN LINE OF DUTY — CONDITIONS — INFECTIOUS DISEASE DEFINED. — 1. Notwithstanding the provisions of any law to the contrary, after five years' service, any condition of impairment of health caused by any **infectious disease,** disease of the lungs or respiratory tract, hypertension, or disease of the heart resulting in total or partial disability or death to a uniformed member of a paid fire department, who successfully passed a physical examination within five years prior to the time a claim is made for such disability or death, which examination failed to reveal any evidence of such condition, shall be presumed to have been suffered in line of duty, unless the contrary be shown by competent evidence. **In order to receive the presumption that an infectious disease was contracted in the line of duty, the member shall submit to an annual physical examination, at which a blood test is administered.**

2. This section shall apply only to the provisions of chapter 87, RSMo 1959.

3. As used in this section, the term "infectious disease" means the human immunodeficiency virus, acquired immunodeficiency syndrome, tuberculosis, hepatitis A, hepatitis B, hepatitis C, hepatitis D, diphtheria, meningococcal meningitis, methicillin-resistant staphylococcus aureus, hemorrhagic fever, plague, rabies, and severe acute respiratory syndrome.

87.006. FIREMEN, CERTAIN DISEASES PRESUMED INCURRED IN LINE OF DUTY — PERSONS COVERED — DISABILITY FROM CANCER, PRESUMPTION SUFFERED IN LINE OF DUTY, WHEN — INFECTIOUS DISEASE DEFINED. — 1. Notwithstanding the provisions of any law to the contrary, and only for the purpose of computing retirement benefits provided by an established retirement plan, after five years' service, any condition of impairment of health caused by any **infectious disease,** disease of the lungs or respiratory tract, hypotension, hypertension, or disease of the heart resulting in total or partial disability or death to a uniformed member of a paid fire department, who successfully passed a physical examination within five years prior to the time a claim is made for such disability or death, which examination failed to reveal any evidence of such condition, shall be presumed to have been suffered in the line of duty, unless the contrary be shown by competent evidence. **In order to receive the presumption that an infectious disease was contracted in the line of duty, the member shall submit to an annual physical examination, at which a blood test is administered.**

2. Any condition of cancer affecting the skin or the central nervous, lymphatic, digestive, hematological, urinary, skeletal, oral, breast, testicular, genitourinary, liver or prostate systems, as well as any condition of cancer which may result from exposure to heat or radiation or to a known or suspected carcinogen as determined by the International Agency for Research on Cancer, which results in the total or partial disability or death to a uniformed member of a paid fire department who successfully passed a physical examination within five years prior to the time a claim is made for disability or death, which examination failed to reveal any evidence of such condition, shall be presumed to have been suffered in the line of duty unless the contrary be shown by competent evidence and it can be proven to a reasonable degree of medical certainty that the condition did not result nor was contributed to by the voluntary use of tobacco.

3. This section shall apply to paid members of all fire departments of all counties, cities, towns, fire districts, and other governmental units.

4. As used in this section, the term "infectious disease" means the human immunodeficiency virus, acquired immunodeficiency syndrome, tuberculosis, hepatitis A, hepatitis B, hepatitis C, hepatitis D, diphtheria, meningococcal meningitis, methicillin-resistant staphylococcus aureus, hemorrhagic fever, plague, rabies, and severe acute respiratory syndrome.

Approved July 7, 2011

SB 250 [CCS#2 HCS SB 250]

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

Requires sexual assault offenders to complete certain programs prior to being eligible for parole or conditional release.

AN ACT to repeal sections 566.147 and 589.040, RSMo, and to enact in lieu thereof two new sections relating to requirements for persons convicted of sexual assault offenses, with penalty provisions.

SECTION
A. Enacting clause.
566.147. Certain offenders not to reside within one thousand feet of a school or child-care facility.
589.040. Duties of department of corrections — certain inmates to participate in programs.

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

SECTION A. ENACTING CLAUSE. — Sections 566.147 and 589.040, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 566.147 and 589.040, to read as follows:

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:

(1) Violating any of the provisions of this chapter or the provisions of subsection 2 of section 568.020, incest; section 568.045, endangering the welfare of a child in the first degree; subsection 2 of section 568.080, use of a child in a sexual performance; section 568.090, promoting a sexual performance by a child; section 573.023, sexual exploitation of a minor; section 573.025, promoting child pornography in the first degree; section 573.035, promoting child pornography in the second degree; section 573.037, possession of child pornography, or section 573.040, furnishing pornographic material to minors; or

(2) Any offense in any other state or foreign country, or under federal, tribal, or military jurisdiction which, if committed in this state, would be a violation listed in this section;

shall not reside within one thousand feet of any public school as defined in section 160.011, **[**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, which**]** **that is licensed under chapter 210, or any childcare facility as defined in section 210.201 that is exempt from state licensure but subject to state regulation under section 210.252 and holds itself out to be a childcare facility, where the school or facility** is in existence at the time 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.

589.040. DUTIES OF DEPARTMENT OF CORRECTIONS — CERTAIN INMATES TO PARTICIPATE IN PROGRAMS. — 1. The director of the department of corrections shall develop a program of treatment, education and rehabilitation for all imprisoned offenders who are serving sentences for sexual assault offenses. When developing such programs, the ultimate goal shall be the prevention of future sexual assaults by the participants in such programs, and the director shall utilize those concepts, services, programs, projects, facilities and other resources designed to achieve this goal.

2. All persons imprisoned by the department of corrections for sexual assault offenses shall be required to successfully complete the programs developed pursuant to subsection 1 of this section **prior to being eligible for parole or conditional release**.

Approved July 14, 2011

SB 284 [CCS HCS SB 284]

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

Modifies the disciplinary authority of the Board of Pharmacy and defines the term legend drug for the purpose of certain pharmacy statutes.

AN ACT to repeal sections 144.030, 338.055, and 338.330, RSMo, and to enact in lieu thereof three new sections relating to pharmacy, with an emergency clause for a certain section.

SECTION

A. Enacting clause.
144.030. Exemptions from state and local sales and use taxes.
338.055. Denial, revocation or suspension of license, grounds for — expedited procedure — additional discipline authorized, when.
338.330. Definitions.
B. Emergency clause.

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

SECTION A. ENACTING CLAUSE. — Sections 144.030, 338.055, and 338.330, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 144.030, 338.055, and 338.330, to read as follows:

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

2. There are also specifically exempted from the provisions of the local sales tax law as defined in section 32.085, section 238.235, and sections 144.010 to 144.525 and 144.600 to

144.761 and from the computation of the tax levied, assessed or payable pursuant to the local sales tax law as defined in section 32.085, section 238.235, and sections 144.010 to 144.525 and 144.600 to 144.745:

(1) Motor fuel or special fuel subject to an excise tax of this state, unless all or part of such excise tax is refunded pursuant to section 142.824; or upon the sale at retail of fuel to be consumed in manufacturing or creating gas, power, steam, electrical current or in furnishing water to be sold ultimately at retail; or feed for livestock or poultry; or grain to be converted into foodstuffs which are to be sold ultimately in processed form at retail; or seed, limestone or fertilizer which is to be used for seeding, liming or fertilizing crops which when harvested will be sold at retail or will be fed to livestock or poultry to be sold ultimately in processed form at retail; economic poisons registered pursuant to the provisions of the Missouri pesticide registration law (sections 281.220 to 281.310) which are to be used in connection with the growth or production of crops, fruit trees or orchards applied before, during, or after planting, the crop of which when harvested will be sold at retail or will be converted into foodstuffs which are to be sold ultimately in processed form at retail;

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

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

(4) Replacement machinery, equipment, and parts and the materials and supplies solely required for the installation or construction of such replacement machinery, equipment, and parts, used directly in manufacturing, mining, fabricating or producing a product which is intended to be sold ultimately for final use or consumption; and machinery and equipment, and the materials and supplies required solely for the operation, installation or construction of such machinery and equipment, purchased and used to establish new, or to replace or expand existing, material recovery processing plants in this state. For the purposes of this subdivision, a "material recovery processing plant" means a facility that has as its primary purpose the recovery of materials into a useable product or a different form which is used in producing a new product and shall include a facility or equipment which are used exclusively for the collection of recovered materials for delivery to a material recovery processing plant but shall not include motor vehicles used on highways. For purposes of this section, the terms motor vehicle and highway shall have the same meaning pursuant to section 301.010. Material recovery is not the reuse of materials within a manufacturing process or the use of a product previously recovered. The material recovery processing plant shall qualify under the provisions of this section regardless of ownership of the material being recovered;

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

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

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

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

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

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

(11) Railroad rolling stock for use in transporting persons or property in interstate commerce and motor vehicles licensed for a gross weight of twenty-four thousand pounds or more or trailers used by common carriers, as defined in section 390.020, in the transportation of persons or property;

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

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

(14) Machinery, equipment, appliances and devices purchased or leased and used solely for the purpose of preventing, abating or monitoring air pollution, and materials and supplies solely required for the installation, construction or reconstruction of such machinery, equipment, appliances and devices;

(15) Machinery, equipment, appliances and devices purchased or leased and used solely for the purpose of preventing, abating or monitoring water pollution, and materials and supplies solely required for the installation, construction or reconstruction of such machinery, equipment, appliances and devices;

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

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

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

electronic alternative and augmentative communication devices, and items used solely to modify motor vehicles to permit the use of such motor vehicles by individuals with disabilities or sales of over-the-counter or nonprescription drugs to individuals with disabilities**, and drugs required by the Food and Drug Administration to meet the over-the-counter drug product labeling requirements in 21 CFR 201.66, or its successor, as prescribed by a health care practitioner licensed to prescribe**;

(19) All sales made by or to religious and charitable organizations and institutions in their religious, charitable or educational functions and activities and all sales made by or to all elementary and secondary schools operated at public expense in their educational functions and activities;

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

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

(22) All sales made to any private not-for-profit elementary or secondary school, all sales of feed additives, medications or vaccines administered to livestock or poultry in the production of food or fiber, all sales of pesticides used in the production of crops, livestock or poultry for food or fiber, all sales of bedding used in the production of livestock or poultry for food or fiber, all sales of propane or natural gas, electricity or diesel fuel used exclusively for drying agricultural crops, natural gas used in the primary manufacture or processing of fuel ethanol as defined in section 142.028, natural gas, propane, and electricity used by an eligible new generation cooperative or an eligible new generation processing entity as defined in section 348.432, and all sales of farm machinery and equipment, other than airplanes, motor vehicles and trailers. As used in this subdivision, the term "feed additives" means tangible personal property which, when mixed with feed for livestock or poultry, is to be used in the feeding of livestock or poultry. As used in this subdivision, the term "pesticides" includes adjuvants such as crop oils, surfactants, wetting agents and other assorted pesticide carriers used to improve or enhance the effect of a pesticide and the foam used to mark the application of pesticides and herbicides for the production of crops, livestock or poultry. As used in this subdivision, the term "farm machinery and equipment" means new or used farm tractors and such other new or used farm machinery and equipment and repair or replacement parts thereon, and supplies and lubricants used exclusively, solely, and directly for producing crops, raising and feeding livestock, fish, poultry, pheasants, chukar, quail, or for producing milk for ultimate sale at retail, including field drain tile, and one-half of each purchaser's purchase of diesel fuel therefor which is:

(a) Used exclusively for agricultural purposes;

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

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

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

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

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

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

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

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

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

(27) All sales made to an interstate compact agency created pursuant to sections 70.370 to 70.441 or sections 238.010 to 238.100 in the exercise of the functions and activities of such agency as provided pursuant to the compact;

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

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

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

(31) Electrical energy or gas, whether natural, artificial or propane, water, or other utilities which are ultimately consumed in connection with the manufacturing of cellular glass products or in any material recovery processing plant as defined in subdivision (4) of this subsection;

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

(33) Tangible personal property and utilities purchased for use or consumption directly or exclusively in the research and development of agricultural/biotechnology and plant genomics products and prescription pharmaceuticals consumed by humans or animals;

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

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

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

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

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

(37) All sales or other transfers of tangible personal property to a lessor who leases the property under a lease of one year or longer executed or in effect at the time of the sale or other transfer to an interstate compact agency created pursuant to sections 70.370 to 70.441 or sections 238.010 to 238.100;

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

(39) All purchases by a sports complex authority created under section 64.920, and all sales of utilities by such authority at the authority's cost that are consumed in connection with the operation of a sports complex leased to a professional sports team;

(40) Beginning January 1, 2009, but not after January 1, 2015, materials, replacement parts, and equipment purchased for use directly upon, and for the modification, replacement, repair, and maintenance of aircraft, aircraft power plants, and aircraft accessories;

(41) Sales of sporting clays, wobble, skeet, and trap targets to any shooting range or similar places of business for use in the normal course of business and money received by a shooting range or similar places of business from patrons and held by a shooting range or similar place of business for redistribution to patrons at the conclusion of a shooting event.

338.055. DENIAL, REVOCATION OR SUSPENSION OF LICENSE, GROUNDS FOR — EXPEDITED PROCEDURE — ADDITIONAL DISCIPLINE AUTHORIZED, WHEN. — 1. The board may refuse to issue any certificate of registration or authority, permit or license required pursuant to this chapter for one or any combination of causes stated in subsection 2 of this section **or if the designated pharmacist-in-charge, manager-in-charge, or any officer, owner, manager, or controlling shareholder of the applicant has committed any act or practice in subsection 2 of this section**. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

(1) Use of any controlled substance, as defined in chapter 195, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated 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;

(3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of registration or authority, permit or license issued pursuant to this chapter or in obtaining permission to take any examination given or required pursuant to this chapter;

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(5) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

(7) Impersonation of any person holding a certificate of registration or authority, permit or license or allowing any person to use his or her certificate of registration or authority, permit, license, or diploma from any school;

(8) Denial of licensure to an applicant or disciplinary action against an applicant or the holder of a license or other right to practice any profession regulated by this chapter granted by another state, territory, federal agency, or country whether or not voluntarily agreed to by the licensee or applicant, including, but not limited to, surrender of the license upon grounds for which denial or discipline is authorized in this state;

(9) A person is finally adjudged incapacitated by a court of competent jurisdiction;

(10) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by this chapter who is not registered and currently eligible to practice under this chapter;

(11) Issuance of a certificate of registration or authority, permit or license based upon a material mistake of fact;

(12) Failure to display a valid certificate or license if so required by this chapter or any rule promulgated hereunder;

(13) Violation of any professional trust or confidence;

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

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government;

(16) The intentional act of substituting or otherwise changing the content, formula or brand of any drug prescribed by written or oral prescription without prior written or oral approval from the prescriber for the respective change in each prescription; provided, however, that nothing contained herein shall prohibit a pharmacist from substituting or changing the brand of any drug as provided under section 338.056, and any such substituting or changing of the brand of any drug as provided for in section 338.056 shall not be deemed unprofessional or dishonorable conduct unless a violation of section 338.056 occurs;

(17) Personal use or consumption of any controlled substance unless it is prescribed, dispensed, or administered by a health care provider who is authorized by law to do so.

3. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2 **of this section**, for disciplinary action are met, the board may, singly or in combination, censure or place the person named in the complaint on probation on such terms and conditions as the board deems appropriate for a period not to exceed five years, or may suspend, for a period not to exceed three years, or revoke the license, certificate, or permit. The board may impose additional discipline on a licensee, registrant, or permittee found to have violated any disciplinary terms previously imposed under this section or by agreement. The additional discipline may include, singly or in combination, censure, placing the licensee, registrant, or permittee named in the complaint on additional probation on such terms and conditions as the board deems appropriate, which additional probation shall not exceed five years, or suspension for a period not to exceed three years, or revocation of the license, certificate, or permit.

4. If the board concludes that a licensee or registrant has committed an act or is engaging in a course of conduct which would be grounds for disciplinary action which constitutes a clear and present danger to the public health and safety, the board may file a complaint before the administrative hearing commission requesting an expedited hearing and specifying the activities which give rise to the danger and the nature of the proposed restriction or suspension of the licensee's or registrant's license. Within fifteen days after service of the complaint on the licensee or registrant, the administrative hearing commission shall conduct a preliminary hearing to determine whether the alleged activities of the licensee or registrant appear to constitute a clear and present danger to the public health and safety which justify that the licensee's or registrant's license or registration be immediately restricted or suspended. The burden of proving that the actions of a licensee or registrant constitute a clear and present danger to the public health and safety shall be upon the state board of pharmacy. The administrative hearing commission shall issue its decision immediately after the hearing and shall either grant to the board the authority to suspend or restrict the license or dismiss the action.

5. If the administrative hearing commission grants temporary authority to the board to restrict or suspend the licensee's or registrant's license, such temporary authority of the board shall become final authority if there is no request by the licensee or registrant for a full hearing within thirty days of the preliminary hearing. The administrative hearing commission shall, if requested

by the licensee or registrant named in the complaint, set a date to hold a full hearing under the provisions of chapter 621 regarding the activities alleged in the initial complaint filed by the board.

6. If the administrative hearing commission dismisses the action filed by the board pursuant to subsection 4 of this section, such dismissal shall not bar the board from initiating a subsequent action on the same grounds.

338.330. DEFINITIONS. — As used in sections 338.300 to 338.370, the following terms mean:

(1) **"Legend drug", any drug or biological product;**

(a) Subject to section 503(b) of the Federal Food, Drug and Cosmetic Act, including finished dosage forms and active ingredients subject to section 503(b); or

(b) Required under federal law to be labeled with one of the following statements prior to being dispensed or delivered:

a. "Caution: Federal law prohibits dispensing without prescription";

b. "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian";

c. "Rx Only"; or

(c) Required by an applicable federal or state law or regulation to be dispensed by prescription only or that is restricted to use by practitioners only; and

(d) The term "drug", "prescription drug", or "legend drug" shall not include:

a. An investigational new drug, as defined by 21 CFR 312.3(b), that is being utilized for the purposes of conducting a clinical investigation of that drug or product that is governed by, and being conducted pursuant to, 21 CFR 312, et. seq.;

b. Any drug product being utilized for the purposes of conducting a clinical investigation that is governed by, and being conducted pursuant to, 21 CFR 312, et. seq.; or

c. Any drug product being utilized for the purposes of conducting a clinical investigation that is governed or approved by an institutional review board subject to 21 CFR Part 56 or 45 CFR Part 46;

(2) "Out-of-state wholesale drug distributor", a wholesale drug distributor with no physical facilities located in the state;

[(2)**]** **(3)** "Pharmacy distributor", any licensed pharmacy, as defined in section 338.210, engaged in the delivery or distribution of legend drugs to any other licensed pharmacy where such delivery or distribution constitutes at least five percent of the total gross sales of such pharmacy;

[(3)**]** **(4)** "Wholesale drug distributor", anyone engaged in the delivery or distribution of legend drugs from any location and who is involved in the actual, constructive or attempted transfer of a drug or drug-related device in this state, other than to the ultimate consumer. This shall include, but not be limited to, drug wholesalers, repackagers and manufacturers which are engaged in the delivery or distribution of drugs in this state, with facilities located in this state or in any other state or jurisdiction. A wholesale drug distributor shall not include any common carrier or individual hired solely to transport legend drugs. Any locations where drugs are delivered on a consignment basis, as defined by the board, shall be exempt from licensure as a drug distributor, and those standards of practice required of a drug distributor but shall be open for inspection by board of pharmacy representatives as provided for in section 338.360.

SECTION B. EMERGENCY CLAUSE. — Because immediate action is necessary to ensure the continuance of clinical trials in this state, the repeal and reenactment of section 338.330 of section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace, and safety, and is hereby declared to be an emergency act within the meaning of

the constitution, and the repeal and reenactment of section 338.330 of section A of this act shall be in full force and effect upon its passage and approval.

Approved July 11, 2011

SB 306 [SS SB 306]

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

Modifies laws relating to the administration of credit unions.

AN ACT to repeal sections 370.100, 370.157, 370.310, 370.320, 370.353, and 370.359, RSMo, and to enact in lieu thereof thirteen new sections relating to credit unions, with penalty provisions.

SECTION

A. Enacting clause.
370.100. Division director — powers — qualifications — examiners and assistants.
370.101. Oath required, when — conflict of interest, when — administrative subpoena powers.
370.102. Confidentiality oath required, exceptions — confidentiality of information.
370.157. Director may remove officers, procedure.
370.161. Notice of intention to remove, contents, procedure.
370.162. Appeal to circuit court, when.
370.163. Suspension of director or officer permitted, when, procedure.
370.164. Suspension, effect on board of directors, procedure.
370.165. Effective date of notice of suspension.
370.310. Limitations on loans — installment loans — repayment — loans to directors and committee members, report required.
370.320. Reserve fund required.
370.353. Submission of plan to meeting of members or shareholders — notice.
370.359. Conversion from state to federal or federal to state credit union, procedure.

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

SECTION A. ENACTING CLAUSE. — Sections 370.100, 370.157, 370.310, 370.320, 370.353, and 370.359, RSMo, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 370.100, 370.101, 370.102, 370.157, 370.161, 370.162, 370.163, 370.164, 370.165, 370.310, 370.320, 370.353, and 370.359, to read as follows:

370.100. DIVISION DIRECTOR — POWERS — QUALIFICATIONS — EXAMINERS AND ASSISTANTS. — 1. There is created within the state **[**division of finance, a supervisor of credit unions**] department of insurance, financial institutions and professional registration, a director of the division of credit unions** who shall have exclusive supervision of all credit unions operating under the laws of this state and may make necessary rules and regulations to carry out the provisions of this chapter.

2. The **[**supervisor**] director** of credit unions shall be appointed by the **[**commissioner of finance**] governor with the advice and consent of the senate** to serve at his **or her** pleasure.

3. The **[**supervisor**] director** of credit unions shall maintain his **or her** office at Jefferson City, Missouri, and shall devote all of his **or her** time to the duties of his **or her** office.

4. No person shall be eligible to be appointed to the office unless he **or she** has had at least three years actual practical experience with credit union operation or unless he **or she** has served for the same period of time in the agency having charge of credit union operation in this or some other state of the United States, or in the national credit union administration.

5. The **[**supervisor of credit unions, with the approval of the commissioner of finance,**]** **director** may appoint a deputy **[**supervisor**]** **director** of credit unions and such examiners, assistant examiners and other employees and assistants as he **or she** shall deem necessary to properly discharge his **or her** duties as **[**supervisor of credit unions**]** **director**.

6. The actual and necessary traveling and other divisional or office expenses of the **[**supervisor of credit unions**]** **director**, the deputy **[**supervisor**]** **director**, and other assistants and employees shall be paid out of the state treasury as provided by law.

7. The examiners and any person appointed as deputy **[**supervisor**]** **director** shall possess the qualifications required for the **[**supervisor of credit unions, except that any person who was, prior to the date of the enactment of this law, employed by the state division of finance and whose duties were, at the time of the enactment of this law, principally concerned with credit unions and had been so concerned for not less than one year shall be eligible to serve as deputy supervisor or examiner. Appointment of examiners and assistant examiners shall be so made that, as near as may be, one-half of their number, respectively, shall be members of the political party polling the highest number of votes for governor at the last preceding state election, the remaining one-half shall be members of the political party polling the next highest number of votes for governor at the last preceding state election**]** **director**.

8. All persons appointed by the **[**supervisor of credit unions**]** **director** as authorized herein shall perform the duties required of them by the **[**supervisor of credit unions**]** **director**, and shall devote all of their time to their official duties.

370.101. OATH REQUIRED, WHEN — CONFLICT OF INTEREST, WHEN — ADMINISTRATIVE SUBPOENA POWERS. — 1. The director of the division of credit unions and all employees of the division of credit unions, which term shall, for purposes of this section, include special agents, shall, before entering upon the discharge of their duties, take an oath that they will not reveal the conditions or affairs of any credit union or any facts pertaining to the same, that may come to their knowledge by virtue of their official positions, unless required by law to do so in the discharge of the duties of their offices or when testifying in any court proceeding. For purposes of this section, "credit union" shall mean any entity subject to chartering, licensing, or regulation by the division of credit unions.

2. Neither the director of the division of credit unions nor any employees of the division of credit unions who participate in the examination of any credit union, or who may be called upon to make any official decision or determination affecting the operation of any credit union, other than the members of the credit union commission, shall be an officer or director of any credit union the division of credit unions regulates, nor shall they receive, directly or indirectly, any payment or gratuity from any such organization, nor engage in the negotiation of loans for others with any state-chartered credit union, nor shall be indebted to any state-chartered credit union.

3. The director of the division of credit unions, in connection with any examination or investigation of any person, company, or event, shall have the authority to compel the production of documents, in whatever form they may exist, and shall have the authority to compel the attendance of and administer oaths to any person having knowledge of any issue involved with the examination or investigation. The director may seek judicial enforcement of an administrative subpoena by application to the appropriate court. An administrative subpoena shall be subject to the same defenses or subject to a protective order or conditions as provided and deemed appropriate by the court in accordance with the Missouri supreme court rules.

370.102. CONFIDENTIALITY OATH REQUIRED, EXCEPTIONS — CONFIDENTIALITY OF INFORMATION. — 1. To ensure the integrity of the examination process, the director of the division of credit unions and all employees of the division of credit unions, and its special

agents, shall be bound under oath to keep secret all facts and information obtained in the course of all examinations and investigations except:

(1) To the extent that the public duty of the director requires the director to report information to another government official or agency or take administrative or judicial enforcement action regarding the affairs of a state-chartered credit union;

(2) When called as a witness in a court proceeding relating to such state-chartered credit union's safety and soundness or in any criminal proceeding;

(3) When reporting on the condition of the state-chartered credit union to the officers and directors of the state-chartered credit union;

(4) When reporting findings to a complainant, provided the disclosure is limited to such complainant's account information;

(5) When exchanging information with any agency which regulates financial institutions under federal law or the laws of any state when the director of the division of credit unions determines that the sharing of information is necessary for the proper performance by the director of the division of credit unions and the other agencies, that such information will remain confidential as though subject to section 370.101 and this section and that said agencies routinely share information with the division of credit unions;

(6) When authorized by the state-chartered credit union's board of directors to provide the information to anyone else; or

(7) When disclosure is necessary or required, the director may set conditions and limitations, including an agreement of confidentiality or a judicial or administrative protective order.

2. In all other circumstances, facts and information obtained by the director of the division of credit unions and the employees and special agents of the division of credit unions through examinations or investigations shall be held in confidence absent a court's finding of compelling reasons for disclosure. Such finding shall demonstrate that the need for the information sought outweighs the public interest in free and open communications during the examination or investigation process. To assure a meaningful hearing, any state-chartered credit union that is not already a party to the judicial proceeding and whose information is the subject of a records request or subpoena shall be joined or notified and permitted to intervene in the hearing and to participate regarding the production request or subpoena. In no event shall a state-chartered credit union, or any officer, director, or employee thereof, be charged with libel, slander, or defamation for any good faith communications with the director of the division of credit unions or any employees of the division of credit unions.

370.157. DIRECTOR MAY REMOVE OFFICERS, PROCEDURE. — 1. **[**The director may remove any or all the officers, committee members and directors and either appoint successors or call a meeting of the members to hold elections, notice of the meeting to be given as provided in this section for special meetings of the members for reorganization.

2. Unless removed by the director, the officers, committee members and directors shall continue in their respective offices until their successors are elected and qualify**] Whenever it shall appear to the director, from any examination made by him or her or her or his examiners, that any director, officer, or any other person participating in the conduct of the affairs of a credit union subject to this chapter has committed any violation of law or regulation or of a cease and desist order, or has violated any condition imposed in writing by the director or any written agreement between such credit union and the director, or has engaged or participated in any unsafe or unsound practice in connection with the credit union, or has committed or engaged in any act, omission, or practice which constitutes a breach of his or her fiduciary duty to the credit union, and the director determines that the credit union has suffered or will probably suffer financial loss or other**

damage or that the interests of its members could be prejudiced by reason of such violation or practice or breach of fiduciary duty, or that the director or officer or other person has received financial gain by reason of such violation or practice or breach of fiduciary duty, and such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director, officer or other person, or one which demonstrates a willful or continuing disregard for the safety or soundness of the credit union, the director may serve upon such director, officer, or other person a written notice of his or her intention to remove such person from office.

2. When it shall appear to the director from any examination made by him or her or his or her examiners that any director, officer, or any other person participating in the conduct of the affairs of a credit union subject to this chapter, by conduct or practice with respect to another such credit union or any business institution which resulted in financial loss or other damage, has evidenced either his or her personal dishonesty or a willful or continuing disregard for its safety and soundness and, in addition, has evidenced his or her unfitness to continue as a director or officer and whenever it shall appear to the director that any other person participating in the conduct of the affairs of a credit union subject to this chapter, by conduct or practice with respect to such credit union or other corporation or other business institution which resulted in financial loss or other damage, has evidenced either his or her personal dishonesty or willful or continuing disregard for its safety and soundness and, in addition, has evidenced his or her unfitness to participate in the conduct of the affairs of such credit union, the director may serve upon such director, officer, or other person a written notice of intention to remove him or her from office or to prohibit his or her further participation in any manner in the conduct of the affairs of this credit union or from any other credit union supervised by the director.

3. Whenever it shall appear to the director to be necessary for the protection of any credit union or its members, he or she may, by written notice to such effect served upon any director, officer, or other person referred to in subsection 1 or 2 of this section, suspend him or her from office or prohibit him or her from further participation in any manner in the conduct of the affairs of the credit union. Such suspension or prohibition shall become effective upon service of such notice and shall remain in effect pending the completion of the administrative proceedings under the notice served under subsection 1 or 2 of this section and until such time as the director shall dismiss the charges specified in such notice or, if an order of removal or prohibition is issued against the director or officer or other person, until the effective date of any such order. Copies of any such notice shall also be served upon the credit union of which he or she is a director or officer or in the conduct of whose affairs he or she has participated.

4. Except as provided in subsection 5 of this section, any person who, pursuant to an order issued under this section, has been removed or suspended from office in a credit union or prohibited from participating in the conduct of the affairs of a credit union may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in, the conduct of the affairs of any other credit union subject to the provisions of this chapter.

5. If, on or after the date an order is issued under this section which removes or suspends from office any person or prohibits such person from participating in the conduct of the affairs of a credit union, such party receives the written consent of the director, subsection 4 of this section shall, to the extent of such consent, cease to apply to such person with respect to the credit union described in the written consent and the director shall publicly disclose such consent. Any violation of subsection 4 of this section by any person who is subject to an order described in subsection 4 of this section shall be treated as a violation of the order.

370.161. NOTICE OF INTENTION TO REMOVE, CONTENTS, PROCEDURE. — A notice of intention to remove a director, officer, or other person from office or to prohibit his or her participation in the conduct of the affairs of a credit union shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Unless such director, officer, or other person shall appear at the hearing in person, or by a duly authorized representative, he or she shall be deemed to have consented to the issuance of an order of such removal or prohibition. In the event of such consent or if upon the record made at any such hearing the director shall find that any of the grounds specified in such notice have been established, the director may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the credit union, as he or she may deem appropriate. Any such order shall become effective at the expiration of thirty days after service upon such credit union and the director, officer, or other person concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the director or a reviewing court.

370.162. APPEAL TO CIRCUIT COURT, WHEN. — Within ten days after any director, officer, or other person has been suspended from office, prohibited from participation in the conduct of the affairs of a credit union, or both, under subsection 3 of section 370.157, such director, officer, or other person may apply to the circuit court of the county in which the credit union is located or the circuit court of Cole County, for a stay of such suspension or prohibition pending the completion of the administrative proceedings under the notice served upon such director, officer, or other person under subsection 1 or 2 of section 370.157, and such court shall have jurisdiction to stay such suspension or prohibition.

370.163. SUSPENSION OF DIRECTOR OR OFFICER PERMITTED, WHEN, PROCEDURE. — Whenever a director or officer of a credit union, or other person participating in the conduct of the affairs of such credit union, is charged in any information or complaint authorized by a prosecuting attorney or a United States attorney, or in any indictment, with the commission of or participation in a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under state or federal law, the director may, if continued service or participation by the individual may pose a threat to the interests of the credit union's members or may threaten to impair the confidence in the credit union, by written notice served upon such director, officer, or other person, suspend him or her from office or prohibit him or her from further participation in any manner in the conduct of the affairs of the credit union. A copy of such notice shall also be served upon the credit union. Such suspension or prohibition shall remain in effect until such information, indictment or complaint is finally disposed of or until terminated by the director. In the event that a judgment of conviction with respect to such crime is entered against such director, officer, or other person, and at such time as such judgment is not subject to further appellate review, the director may, if continued service or participation by the individual may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in the credit union, initiate action to remove such officer as described in subsection 1 of section 370.157.

370.164. SUSPENSION, EFFECT ON BOARD OF DIRECTORS, PROCEDURE. — If at any time because of the suspension of one or more directors under sections 370.157 or 370.161 to 370.165 there shall be on the board of directors of a credit union less than a quorum of directors not so suspended, all powers or functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended,

until such time as there shall be a quorum of the board of directors. In the event all of the directors of a corporation are suspended under sections 370.157 or 370.161 to 370.165, the director shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the credit union and their respective successors take office.

370.165. EFFECTIVE DATE OF NOTICE OF SUSPENSION. — A notice of suspension or order of removal issued under this chapter shall become effective immediately but any director, officer, or other person concerned may, within thirty days of service of any notice of suspension or order of removal, request, in writing, an opportunity to appear before the director to show that the continued service to or participation in the conduct of the affairs of the credit union by such individual does not, or is not likely to, pose a threat to the interests of the credit union's depositors or threaten to impair public confidence in the credit union.

370.310. LIMITATIONS ON LOANS — INSTALLMENT LOANS — REPAYMENT — LOANS TO DIRECTORS AND COMMITTEE MEMBERS, REPORT REQUIRED. — 1. A credit union may lend to its members, as herein provided, for such purposes and upon such security as the bylaws provide and the credit committee or credit manager shall approve, provided that no secured or unsecured loan shall be made in excess of two thousand dollars, except that if ten percent of the assets of the credit union exceeds two thousand dollars then the maximum amount of a loan by the credit union shall be ten percent of its assets, and unsecured loans to any one member shall not exceed the limitations found in current written policies of the board of directors.

2. A member who needs funds with which to purchase necessary supplies for growing crops may receive a loan in installments instead of one sum.

3. A borrower may repay the whole or any part of his loan on any day on which the office of the credit union is open for the transaction of business.

4. All loans to directors, credit and supervisory committee members of the credit union shall comply with all the requirements in this chapter and the credit union bylaws with respect to loans to other members and may not be on terms more favorable than those of loans extended to other member-borrowers **[**except that such loans, other than those secured by mortgages on primary and secondary borrower-occupied residences, negotiable securities, licensed motor vehicles, or shares shall not exceed twenty-five thousand dollars for each official**]** and such loans shall also be reported at the next regularly scheduled meeting of the board of directors; and further, all such loans shall be reported to the director of the division of credit unions annually.

370.320. RESERVE FUND REQUIRED. — **[**1. All entrance fees, transfer fees and charges shall, after the payment of the organization expenses, be known as reserve income, and shall be added to the reserve fund of the credit union.

2. At the end of each accounting period the gross income shall be determined. From this amount there shall be set apart to the reserve fund amounts in accord with the following schedule:

(1) A credit union in operation for more than four years and having assets of five hundred thousand dollars or more shall set aside:

(a) Ten percent of gross income until the reserve equals four percent of the outstanding loans to members; and thereafter

(b) Five percent of gross income until the reserve equals six percent of outstanding loans to members; or

(2) A credit union in operation less than four years or having assets of less than five hundred thousand dollars shall set aside:

(a) Ten percent of gross income until the reserve equals seven and one-half percent of outstanding loans to members; and thereafter

(b) Five percent of gross income until the reserve equals ten percent of outstanding loans to members.

3. As used in this section, "outstanding loans to members" does not include loans to other credit unions, loans fully secured by a member's shares, loans made under Title I of the National Housing Act, or loans made under a federal or state student loan program or another similar loan program where the loan is guaranteed by an agency of the federal or state government.

4. The board of directors may increase or, where such fund equals or exceeds the total reserve required in subsection 2 of this section, decrease the proportion of gross income to be set aside as the reserve fund, and may transfer part or all of the undivided earnings to the reserve fund.

5. The board of directors may establish additional reserves. In addition, a special reserve for delinquent loans shall be established when required by regulation of the director of the division of credit unions**] All credit unions shall establish and maintain reserves sufficient to qualify for and maintain federal share insurance and meet any requirements concerning minimum reserves established by the director of the credit unions by regulation**.

370.353. SUBMISSION OF PLAN TO MEETING OF MEMBERS OR SHAREHOLDERS — NOTICE. — 1. The board of directors of the merging credit union or credit unions, upon approving the plan of merger or consolidation, shall direct, by a resolution, that the plan be submitted at a meeting of the members or shareholders, which may be either an annual or special meeting. Notice of the meeting shall be **[**given as provided in the bylaws of each credit union affected, or by letter addressed to the last known address, as reflected on the books of the credit union, to each member or shareholder thereof**] mailed or delivered to each member not more than thirty days and not less than fourteen days prior to the meeting. All members shall be given the opportunity to vote on the plan of merger or consolidation at a meeting or by written or electronic ballot received no later than the date and time announced for the meeting. All members should be provided the opportunity to vote, without being required to attend the meeting where the proposition is voted on**. The notice, whether the meeting is an annual or special meeting, shall state the place, day, hour, and purpose of the meeting, and a copy or summary of the plan of merger or plan of consolidation shall be included in or enclosed with the notice. The board of directors of the surviving credit union named in any such plan of merger need not submit the merger plan to its members but shall, instead, ratify such merger plan according to the procedure stated in section 370.351.

2. In the case of a consolidation, the board of directors of each credit union party to such plan of consolidation must submit the plan of consolidation to its members according to the procedure described in subsection 1 of this section.

3. The director may waive any membership meeting required under subsections 1 and 2 of this section upon the request of the board of directors of any of the merging or consolidating credit unions if the credit union seeking the waiver is in financial difficulty, if its field of membership is being lost or substantially reduced, or if it has only limited potential of growth.

370.359. CONVERSION FROM STATE TO FEDERAL OR FEDERAL TO STATE CREDIT UNION, PROCEDURE. — 1. A credit union holding a certificate of organization under the laws of this state may be converted into a federal credit union under the laws of the United States by complying with the following requirements:

(1) The proposition for the conversion shall first be approved, and a date set for a vote thereon by the members, either at a meeting to be held on the date or by **[**written**]** ballot to be **[**filed**] cast** on or before the date, by a majority of the directors of the state credit union. Written notice of the proposition and of the date set for the vote shall then be delivered in person to each

member, or mailed **or delivered** to each member at the address for the member appearing on the records of the credit union, not more than thirty nor less than **[**seven**] fourteen** days prior to the date. Approval of the proposition for conversion shall be by the affirmative vote of a majority of the members**[**, in person or in writing**] who vote by written or electronic ballot. All members should be provided the opportunity to vote, without being required to attend the meeting where the proposition is voted on**.

(2) A statement of the results of the vote, verified by the affidavits of the president or vice president and the secretary, shall be filed with the director of the division of credit unions and the secretary of state within ten days after the vote is taken.

(3) Promptly after the vote is taken and in no event later than ninety days thereafter, if the proposition for conversion was approved by the vote, the credit union shall take such action as may be necessary under the United States law to make it a federal credit union, and within ten days after receipt of the federal credit union charter there shall be filed with the secretary of state and the director of the division of credit unions, a copy of the charter thus issued. Upon filing, the credit union shall cease to be a state credit union.

(4) Upon ceasing to be a state credit union, the credit union shall no longer be subject to any of the provisions of this chapter. The successor federal credit union shall be vested with all of the assets and shall continue responsible for all the obligations of the state credit union to the same extent as though the conversion had not taken place.

2. A federal credit union, organized under the laws of the United States, may be converted into a state credit union by:

(1) Complying with all federal requirements requisite to enabling it to convert to a state credit union;

(2) Filing with the director of the division of credit unions proof of the compliance, satisfactory to him; and

(3) Filing with the director of the division of credit unions a certificate of organization as required by this chapter.

3. When the director of the division of credit unions has been satisfied that all of these requirements, and all other requirements of this chapter, have been complied with, he shall approve the organization certificate, a copy of which shall be filed with the secretary of state. Upon approval, the federal credit union shall become a state credit union as of the date it ceases to be a federal credit union. The state credit union shall be vested with all of the assets and shall continue responsible for all of the obligations of the federal credit union to the same extent as though the conversion had not taken place.

Approved July 5, 2011

SB 320 [SS#2 SCS SB 320]

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

Modifies provisions relating to domestic violence.

AN ACT to repeal sections 43.545, 211.031, 452.375, 455.010, 455.020, 455.027, 455.035, 455.038, 455.040, 455.050, 455.060, 455.085, 455.200, 455.501, 455.505, 455.513, 455.516, 455.520, 455.523, 455.538, 455.540, 455.543, 527.290, 565.074, 589.683, 595.100, and 595.220, RSMo, and to enact in lieu thereof twenty-seven new sections relating to domestic violence, with penalty provisions.

SECTION

A. Enacting clause.
43.545. Highway patrol to include incidents of domestic violence in the Crime in Missouri.
211.031. Juvenile court to have exclusive jurisdiction, when — exceptions — home schooling, attendance violations, how treated.
452.375. Custody — definitions — factors determining custody — prohibited, when — public policy of state — custody options plan, when required — findings required, when — exchange of information and right to certain records, failure to disclose — fees, costs assessed, when — joint custody not to preclude child support — support, how determined — domestic violence or abuse, specific findings.
455.010. Definitions.
455.020. Relief may be sought — order of protection effective, where.
455.027. No filing fee, court cost, or bond shall be required.
455.035. Protection orders — ex parte.
455.038. Ex parte orders, notification — circuit clerks to provide information on.
455.040. Hearings, when — duration of orders, renewal, requirements — copies of orders to be given, validity — duties of law enforcement agency — information entered in MULES.
455.050. Full or ex parte order of protection, abuse or stalking, contents — relief available.
455.060. Modification of orders, when — termination, when — appeal — custody of children, may not be changed, when.
455.085. Arrest for violation of order — penalties — good faith immunity for law enforcement officials.
455.200. Definitions.
455.505. Relief may be sought for child for domestic violence or child being stalked — order of protection effective, where.
455.513. Ex parte orders, issued when, effective when — for good cause shown, defined — investigation by division of family services, when — report due when, available to whom — transfer to juvenile court, when.
455.516. Hearings, when, procedure, standard of proof — duration of orders — videotaped testimony permitted — renewal of orders, when — service of respondent, failure to serve not to affect validity of order — notice to law enforcement agencies — service of process.
455.520. Temporary relief available — ex parte orders.
455.523. Full order of protection — relief available.
455.538. Law enforcement agencies response to violation of order — arrest for violation, penalties — custody to be returned to rightful party, when.
455.543. Homicides or suicides, determination of domestic violence, factors to be considered — reports made to highway patrol, forms, due when.
455.549. Court-appointed batterer intervention, credentialing process, rulemaking authority.
455.800. Juvenile court records, confidentiality, when.
527.290. Notice of change to be given, when and how — not required, when.
565.074. Domestic assault, third degree — penalty.
589.683. Inapplicability of Missouri sunset act.
595.100. Funding, administration.
595.220. Forensic examinations, department of public safety to pay medical providers, when — minor may consent to examination, when — attorney general to develop forms — collection kits — definitions — rulemaking authority.
455.501. Definitions.
455.540. Definitions.

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

SECTION A. ENACTING CLAUSE. — Sections 43.545, 211.031, 452.375, 455.010, 455.020, 455.027, 455.035, 455.038, 455.040, 455.050, 455.060, 455.085, 455.200, 455.501, 455.505, 455.513, 455.516, 455.520, 455.523, 455.538, 455.540, 455.543, 527.290, 565.074, 589.683, 595.100, and 595.220, RSMo, are repealed and twenty-seven new sections enacted in lieu thereof, to be known as sections 43.545, 211.031, 452.375, 455.010, 455.020, 455.027, 455.035, 455.038, 455.040, 455.050, 455.060, 455.085, 455.200, 455.505, 455.513, 455.516, 455.520, 455.523, 455.538, 455.543, 455.549, 455.800, 527.290, 565.074, 589.683, 595.100, and 595.220, to read as follows:

43.545. HIGHWAY PATROL TO INCLUDE INCIDENTS OF DOMESTIC VIOLENCE IN THE CRIME IN MISSOURI. — The state highway patrol shall include in its voluntary system of reporting for compilation in the **[**"Missouri Crime Index"**] "Crime in Missouri"** all reported incidents of domestic violence **as defined in section 455.010**, whether or not an arrest is made.

All incidents shall be reported on forms provided by the highway patrol and in a manner prescribed by the patrol. **[**For purposes of this section only, "domestic violence" shall be defined as any dispute arising between spouses, former spouses, persons related by blood or marriage, individuals who are presently residing together or have resided together in the past and persons who have a child in common regardless of whether they have been married or have resided together at any time.**]**

211.031. JUVENILE COURT TO HAVE EXCLUSIVE JURISDICTION, WHEN — EXCEPTIONS — HOME SCHOOLING, ATTENDANCE VIOLATIONS, HOW TREATED. — 1. Except as otherwise provided in this chapter, the juvenile court or the family court in circuits that have a family court as provided in sections 487.010 to 487.190 shall have exclusive original jurisdiction in proceedings:

(1) Involving any child or person seventeen years of age who may be a resident of or found within the county and who is alleged to be in need of care and treatment because:

(a) The parents, or other persons legally responsible for the care and support of the child or person seventeen years of age, neglect or refuse to provide proper support, education which is required by law, medical, surgical or other care necessary for his or her well-being; except that reliance by a parent, guardian or custodian upon remedial treatment other than medical or surgical treatment for a child or person seventeen years of age shall not be construed as neglect when the treatment is recognized or permitted pursuant to the laws of this state;

(b) The child or person seventeen years of age is otherwise without proper care, custody or support; or

(c) The child or person seventeen years of age was living in a room, building or other structure at the time such dwelling was found by a court of competent jurisdiction to be a public nuisance pursuant to section 195.130;

(d) The child or person seventeen years of age is a child in need of mental health services and the parent, guardian or custodian is unable to afford or access appropriate mental health treatment or care for the child;

(2) Involving any child who may be a resident of or found within the county and who is alleged to be in need of care and treatment because:

(a) The child while subject to compulsory school attendance is repeatedly and without justification absent from school; or

(b) The child disobeys the reasonable and lawful directions of his or her parents or other custodian and is beyond their control; or

(c) The child is habitually absent from his or her home without sufficient cause, permission, or justification; or

(d) The behavior or associations of the child are otherwise injurious to his or her welfare or to the welfare of others; or

(e) The child is charged with an offense not classified as criminal, or with an offense applicable only to children; except that, the juvenile court shall not have jurisdiction over any child fifteen and one-half years of age who is alleged to have violated a state or municipal traffic ordinance or regulation, the violation of which does not constitute a felony, or any child who is alleged to have violated a state or municipal ordinance or regulation prohibiting possession or use of any tobacco product;

(3) Involving any child who is alleged to have violated a state law or municipal ordinance, or any person who is alleged to have violated a state law or municipal ordinance prior to attaining the age of seventeen years, in which cases jurisdiction may be taken by the court of the circuit in which the child or person resides or may be found or in which the violation is alleged to have occurred; except that, the juvenile court shall not have jurisdiction over any child fifteen and one-half years of age who is alleged to have violated a state or municipal traffic ordinance or regulation, the violation of which does not constitute a felony, and except that the juvenile court shall have concurrent jurisdiction with the municipal court over any child who is alleged

to have violated a municipal curfew ordinance, and except that the juvenile court shall have concurrent jurisdiction with the circuit court on any child who is alleged to have violated a state or municipal ordinance or regulation prohibiting possession or use of any tobacco product;

(4) For the adoption of a person;

(5) For the commitment of a child or person seventeen years of age to the guardianship of the department of social services as provided by law**; and**

(6) Involving an order of protection pursuant to chapter 455 when the respondent is less than seventeen years of age.

2. Transfer of a matter, proceeding, jurisdiction or supervision for a child or person seventeen years of age who resides in a county of this state shall be made as follows:

(1) Prior to the filing of a petition and upon request of any party or at the discretion of the juvenile officer, the matter in the interest of a child or person seventeen years of age may be transferred by the juvenile officer, with the prior consent of the juvenile officer of the receiving court, to the county of the child's residence or the residence of the person seventeen years of age for future action;

(2) Upon the motion of any party or on its own motion prior to final disposition on the pending matter, the court in which a proceeding is commenced may transfer the proceeding of a child or person seventeen years of age to the court located in the county of the child's residence or the residence of the person seventeen years of age, or the county in which the offense pursuant to subdivision (3) of subsection 1 of this section is alleged to have occurred for further action;

(3) Upon motion of any party or on its own motion, the court in which jurisdiction has been taken pursuant to subsection 1 of this section may at any time thereafter transfer jurisdiction of a child or person seventeen years of age to the court located in the county of the child's residence or the residence of the person seventeen years of age for further action with the prior consent of the receiving court;

(4) Upon motion of any party or upon its own motion at any time following a judgment of disposition or treatment pursuant to section 211.181, the court having jurisdiction of the cause may place the child or person seventeen years of age under the supervision of another juvenile court within or without the state pursuant to section 210.570 with the consent of the receiving court;

(5) Upon motion of any child or person seventeen years of age or his or her parent, the court having jurisdiction shall grant one change of judge pursuant to Missouri Supreme Court Rules;

(6) Upon the transfer of any matter, proceeding, jurisdiction or supervision of a child or person seventeen years of age, certified copies of all legal and social documents and records pertaining to the case on file with the clerk of the transferring juvenile court shall accompany the transfer.

3. In any proceeding involving any child or person seventeen years of age taken into custody in a county other than the county of the child's residence or the residence of a person seventeen years of age, the juvenile court of the county of the child's residence or the residence of a person seventeen years of age shall be notified of such taking into custody within seventy-two hours.

4. When an investigation by a juvenile officer pursuant to this section reveals that the only basis for action involves an alleged violation of section 167.031 involving a child who alleges to be home schooled, the juvenile officer shall contact a parent or parents of such child to verify that the child is being home schooled and not in violation of section 167.031 before making a report of such a violation. Any report of a violation of section 167.031 made by a juvenile officer regarding a child who is being home schooled shall be made to the prosecuting attorney of the county where the child legally resides.

452.375. CUSTODY — DEFINITIONS — FACTORS DETERMINING CUSTODY — PROHIBITED, WHEN — PUBLIC POLICY OF STATE — CUSTODY OPTIONS PLAN, WHEN

REQUIRED — FINDINGS REQUIRED, WHEN — EXCHANGE OF INFORMATION AND RIGHT TO CERTAIN RECORDS, FAILURE TO DISCLOSE — FEES, COSTS ASSESSED, WHEN — JOINT CUSTODY NOT TO PRECLUDE CHILD SUPPORT — SUPPORT, HOW DETERMINED — DOMESTIC VIOLENCE OR ABUSE, SPECIFIC FINDINGS. — 1. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Custody" means joint legal custody, sole legal custody, joint physical custody or sole physical custody or any combination thereof;

(2) "Joint legal custody" means that the parents share the decision-making rights, responsibilities, and authority relating to the health, education and welfare of the child, and, unless allocated, apportioned, or decreed, the parents shall confer with one another in the exercise of decision-making rights, responsibilities, and authority;

(3) "Joint physical custody" means an order awarding each of the parents significant, but not necessarily equal, periods of time during which a child resides with or is under the care and supervision of each of the parents. Joint physical custody shall be shared by the parents in such a way as to assure the child of frequent, continuing and meaningful contact with both parents;

(4) "Third-party custody" means a third party designated as a legal and physical custodian pursuant to subdivision (5) of subsection 5 of this section.

2. The court shall determine custody in accordance with the best interests of the child. The court shall consider all relevant factors including:

(1) The wishes of the child's parents as to custody and the proposed parenting plan submitted by both parties;

(2) The needs of the child for a frequent, continuing and meaningful relationship with both parents and the ability and willingness of parents to actively perform their functions as mother and father for the needs of the child;

(3) The interaction and interrelationship of the child with parents, siblings, and any other person who may significantly affect the child's best interests;

(4) Which parent is more likely to allow the child frequent, continuing and meaningful contact with the other parent;

(5) The child's adjustment to the child's home, school, and community;

(6) The mental and physical health of all individuals involved, including any history of abuse of any individuals involved. If the court finds that a pattern of domestic violence **as defined in section 455.010** has occurred, and, if the court also finds that awarding custody to the abusive parent is in the best interest of the child, then the court shall enter written findings of fact and conclusions of law. Custody and visitation rights shall be ordered in a manner that best protects the child and any other child or children for whom the parent has custodial or visitation rights, and the parent or other family or household member who is the victim of domestic violence from any further harm;

(7) The intention of either parent to relocate the principal residence of the child; and

(8) The wishes of a child as to the child's custodian. The fact that a parent sends his or her child or children to a home school, as defined in section 167.031, shall not be the sole factor that a court considers in determining custody of such child or children.

3. (1) In any court proceedings relating to custody of a child, the court shall not award custody or unsupervised visitation of a child to a parent if such parent or any person residing with such parent has been found guilty of, or pled guilty to, any of the following offenses when a child was the victim:

(a) A felony violation of section 566.030, 566.032, 566.040, 566.060, 566.062, 566.064, 566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111, 566.151, 566.203, 566.206, 566.209, 566.212, or 566.215;

(b) A violation of section 568.020;

(c) A violation of subdivision (2) of subsection 1 of section 568.060;

(d) A violation of section 568.065;

(e) A violation of section 568.080;

(f) A violation of section 568.090; or

(g) A violation of section 568.175.

(2) For all other violations of offenses in chapters 566 and 568 not specifically listed in subdivision (1) of this subsection or for a violation of an offense committed in another state when a child is the victim that would be a violation of chapter 566 or 568 if committed in Missouri, the court may exercise its discretion in awarding custody or visitation of a child to a parent if such parent or any person residing with such parent has been found guilty of, or pled guilty to, any such offense.

4. The general assembly finds and declares that it is the public policy of this state that frequent, continuing and meaningful contact with both parents after the parents have separated or dissolved their marriage is in the best interest of the child, except for cases where the court specifically finds that such contact is not in the best interest of the child, and that it is the public policy of this state to encourage parents to participate in decisions affecting the health, education and welfare of their children, and to resolve disputes involving their children amicably through alternative dispute resolution. In order to effectuate these policies, the court shall determine the custody arrangement which will best assure both parents participate in such decisions and have frequent, continuing and meaningful contact with their children so long as it is in the best interests of the child.

5. Prior to awarding the appropriate custody arrangement in the best interest of the child, the court shall consider each of the following as follows:

(1) Joint physical and joint legal custody to both parents, which shall not be denied solely for the reason that one parent opposes a joint physical and joint legal custody award. The residence of one of the parents shall be designated as the address of the child for mailing and educational purposes;

(2) Joint physical custody with one party granted sole legal custody. The residence of one of the parents shall be designated as the address of the child for mailing and educational purposes;

(3) Joint legal custody with one party granted sole physical custody;

(4) Sole custody to either parent; or

(5) Third-party custody or visitation:

(a) When the court finds that each parent is unfit, unsuitable, or unable to be a custodian, or the welfare of the child requires, and it is in the best interests of the child, then custody, temporary custody or visitation may be awarded to any other person or persons deemed by the court to be suitable and able to provide an adequate and stable environment for the child. Before the court awards custody, temporary custody or visitation to a third person under this subdivision, the court shall make that person a party to the action;

(b) Under the provisions of this subsection, any person may petition the court to intervene as a party in interest at any time as provided by supreme court rule.

6. If the parties have not agreed to a custodial arrangement, or the court determines such arrangement is not in the best interest of the child, the court shall include a written finding in the judgment or order based on the public policy in subsection 4 of this section and each of the factors listed in subdivisions (1) to (8) of subsection 2 of this section detailing the specific relevant factors that made a particular arrangement in the best interest of the child. If a proposed custodial arrangement is rejected by the court, the court shall include a written finding in the judgment or order detailing the specific relevant factors resulting in the rejection of such arrangement.

7. Upon a finding by the court that either parent has refused to exchange information with the other parent, which shall include but not be limited to information concerning the health, education and welfare of the child, the court shall order the parent to comply immediately and to pay the prevailing party a sum equal to the prevailing party's cost associated with obtaining the requested information, which shall include but not be limited to reasonable attorney's fees and court costs.

8. As between the parents of a child, no preference may be given to either parent in the awarding of custody because of that parent's age, sex, or financial status, nor because of the age or sex of the child.

9. Any judgment providing for custody shall include a specific written parenting plan setting forth the terms of such parenting plan arrangements specified in subsection 7 of section 452.310. Such plan may be a parenting plan submitted by the parties pursuant to section 452.310 or, in the absence thereof, a plan determined by the court, but in all cases, the custody plan approved and ordered by the court shall be in the court's discretion and shall be in the best interest of the child.

10. Unless a parent has been denied custody rights pursuant to this section or visitation rights under section 452.400, both parents shall have access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records. If the parent without custody has been granted restricted or supervised visitation because the court has found that the parent with custody or any child has been the victim of domestic violence, as defined in section **[**455.200**] 455.010**, by the parent without custody, the court may order that the reports and records made available pursuant to this subsection not include the address of the parent with custody or the child. Unless a parent has been denied custody rights pursuant to this section or visitation rights under section 452.400, any judgment of dissolution or other applicable court order shall specifically allow both parents access to such records and reports.

11. Except as otherwise precluded by state or federal law, if any individual, professional, public or private institution or organization denies access or fails to provide or disclose any and all records and information, including, but not limited to, past and present dental, medical and school records pertaining to a minor child, to either parent upon the written request of such parent, the court shall, upon its finding that the individual, professional, public or private institution or organization denied such request without good cause, order that party to comply immediately with such request and to pay to the prevailing party all costs incurred, including, but not limited to, attorney's fees and court costs associated with obtaining the requested information.

12. An award of joint custody does not preclude an award of child support pursuant to section 452.340 and applicable supreme court rules. The court shall consider the factors contained in section 452.340 and applicable supreme court rules in determining an amount reasonable or necessary for the support of the child.

13. If the court finds that domestic violence or abuse, as defined in **[**sections**] section** 455.010 **[**and 455.501,**]** has occurred, the court shall make specific findings of fact to show that the custody or visitation arrangement ordered by the court best protects the child and the parent or other family or household member who is the victim of domestic violence **[**or abuse**]**, as defined in **[**sections**] section** 455.010 **[**and 455.501**]**, and any other children for whom such parent has custodial or visitation rights from any further harm.

455.010. DEFINITIONS. — As used in **[**sections 455.010 to 455.085**] this chapter**, unless the context clearly indicates otherwise, the following terms shall mean:

(1) "Abuse" includes but is not limited to the occurrence of any of the following acts, attempts or threats against a person who may be protected pursuant to **[**sections 455.010 to 455.085**] this chapter, except abuse shall not include abuse inflicted on a child by accidental means by an adult household member or discipline of a child, including spanking, in a reasonable manner**:

(a) "Assault", purposely or knowingly placing or attempting to place another in fear of physical harm;

(b) "Battery", purposely or knowingly causing physical harm to another with or without a deadly weapon;

(c) "Coercion", compelling another by force or threat of force to engage in conduct from which the latter has a right to abstain or to abstain from conduct in which the person has a right to engage;

(d) "Harassment", engaging in a purposeful or knowing course of conduct involving more than one incident that alarms or causes distress to **[**another**]** **an** adult **or child** and serves no legitimate purpose. The course of conduct must be such as would cause a reasonable adult **or child** to suffer substantial emotional distress and must actually cause substantial emotional distress to the petitioner **or child**. Such conduct might include, but is not limited to:

a. Following another about in a public place or places;

b. Peering in the window or lingering outside the residence of another; but does not include constitutionally protected activity;

(e) "Sexual assault", causing or attempting to cause another to engage involuntarily in any sexual act by force, threat of force, or duress;

(f) "Unlawful imprisonment", holding, confining, detaining or abducting another person against that person's will;

(2) "Adult", any person seventeen years of age or older or otherwise emancipated;

(3) **"Child", any person under seventeen years of age unless otherwise emancipated;**

(4) "Court", the circuit or associate circuit judge or a family court commissioner;

(5) "Domestic violence", abuse or stalking, as both terms are defined in this section;

[(4)**] (6)** "Ex parte order of protection", an order of protection issued by the court before the respondent has received notice of the petition or an opportunity to be heard on it;

[(5)**] (7)** "Family" or "household member", spouses, former spouses, **[**adults**] any person** related by blood or marriage, **[**adults**] persons** who are presently residing together or have resided together in the past, **[**an adult**] any person** who is or has been in a continuing social relationship of a romantic or intimate nature with the victim, and **[**adults who have**] anyone who has** a child in common regardless of whether they have been married or have resided together at any time;

[(6)**] (8)** "Full order of protection", an order of protection issued after a hearing on the record where the respondent has received notice of the proceedings and has had an opportunity to be heard;

[(7)**] (9)** "Order of protection", either an ex parte order of protection or a full order of protection;

[(8)**] (10) "Pending", exists or for which a hearing date has been set;**

(11) "Petitioner", a family or household member **[**or an adult**] who has been a victim of domestic violence, or any person** who has been the victim of stalking, **or a person filing on behalf of a child pursuant to section 455.503** who has filed a verified petition pursuant to the provisions of section 455.020 **or section 455.505**;

[(9)**] (12)** "Respondent", the family or household member **alleged to have committed an act of domestic violence,** or **[**adult**] person** alleged to have committed an act of stalking, against whom a verified petition has been filed **or a person served on behalf of a child pursuant to section 455.503**;

[(10)**] (13)** "Stalking" is when **[**an adult**] any person** purposely and repeatedly engages in an unwanted course of conduct that causes alarm to another person when it is reasonable in that person's situation to have been alarmed by the conduct. As used in this subdivision:

(a) "Alarm" means to cause fear of danger of physical harm;

(b) "Course of conduct" means a pattern of conduct composed of repeated acts over a period of time, however short, that serves no legitimate purpose. Such conduct may include, but is not limited to, following the other person or unwanted communication or unwanted contact; and

(c) "Repeated" means two or more incidents evidencing a continuity of purpose.

455.020. RELIEF MAY BE SOUGHT — ORDER OF PROTECTION EFFECTIVE, WHERE. — 1. Any adult who has been subject to **[**abuse**] domestic violence** by a present or former **[**adult**]** family or household member, or who has been the victim of stalking, may seek relief under

sections 455.010 to 455.085 by filing a verified petition alleging such **[**abuse**]** **domestic violence** or stalking by the respondent.

2. An adult's right to relief under sections 455.010 to 455.085 shall not be affected by his leaving the residence or household to avoid **[**abuse**]** **domestic violence**.

3. Any protection order issued pursuant to sections 455.010 to 455.085 shall be effective throughout the state in all cities and counties.

455.027. NO FILING FEE, COURT COST, OR BOND SHALL BE REQUIRED. — No filing fees, court costs, or bond shall be assessed to the petitioner in an action commenced pursuant to sections 455.010 to **[**455.085**]** **455.090**.

455.035. PROTECTION ORDERS — EX PARTE. — 1. Upon the filing of a verified petition pursuant to sections 455.010 to 455.085 and for good cause shown in the petition, the court may immediately issue an ex parte order of protection. An immediate and present danger of abuse to the petitioner shall constitute good cause for purposes of this section. An ex parte order of protection entered by the court shall take effect when entered and shall remain in effect until there is valid service of process and a hearing is held on the motion.

2. Failure to serve an ex parte order of protection on the respondent shall not affect the validity or enforceability of such order. **If the respondent is less than seventeen years of age, unless otherwise emancipated, service of process shall be made upon a parent or guardian of the respondent, or upon a guardian ad litem appointed by the court.**

3. If an ex parte order is entered and the allegations in the petition would give rise to jurisdiction under section 211.031 because the respondent is less than seventeen years of age, the court shall transfer the case to juvenile court for a hearing on a full order of protection. The court shall appoint a guardian ad litem for any such respondent not represented by a parent or guardian.

455.038. EX PARTE ORDERS, NOTIFICATION — CIRCUIT CLERKS TO PROVIDE INFORMATION ON. — Every circuit clerk shall be responsible for providing information to individuals petitioning for ex parte orders of protection regarding notification of service of these orders of protection. Such notification to the petitioner is required if the petitioner has registered a telephone number with the victim notification system, established under subsection 3 of section 650.310. The petitioner shall be informed of his or her option to receive notification of service of an ex parte order of protection on the respondent by the circuit clerk and shall be provided information on how to receive notification of service of ex parte orders of protection. The local law enforcement agency or any other government agency responsible for serving ex parte orders of protection shall **enter service information into the Missouri uniform law enforcement system or future secure electronic databases that are intended for law enforcement use within twenty-four hours after the ex parte order is served on the respondent or shall** notify the circuit clerk when no more service attempts are planned by that agency. The provisions of this section shall only apply to those circuit clerks able to access a statewide victim notification system designed to provide notification of service of orders of protection.

455.040. HEARINGS, WHEN — DURATION OF ORDERS, RENEWAL, REQUIREMENTS — COPIES OF ORDERS TO BE GIVEN, VALIDITY — DUTIES OF LAW ENFORCEMENT AGENCY — INFORMATION ENTERED IN MULES. — 1. Not later than fifteen days after the filing of a petition pursuant to sections 455.010 to 455.085 a hearing shall be held unless the court deems, for good cause shown, that a continuance should be granted. At the hearing, if the petitioner has proved the allegation of abuse or stalking by a preponderance of the evidence, the court shall issue a full order of protection for a period of time the court deems appropriate, except that the protective order shall be valid for at least one hundred eighty days and not more than one year. Upon motion by the petitioner, and after a hearing by the court, the full order of protection may

be renewed for a period of time the court deems appropriate, except that the protective order shall be valid for at least one hundred eighty days and not more than one year from the expiration date of the originally issued full order of protection. **The court may, upon finding that it is in the best interest of the parties, include a provision that any full order of protection for one year shall automatically renew unless the respondent requests a hearing by thirty days prior to the expiration of the order.** If for good cause a hearing cannot be held on the motion to renew **or the objection to an automatic renewal of** the full order of protection prior to the expiration date of the originally issued full order of protection, an ex parte order of protection may be issued until a hearing is held on the motion. **When an automatic renewal is not authorized,** upon motion by the petitioner, and after a hearing by the court, the second full order of protection may be renewed for an additional period of time the court deems appropriate, except that the protective order shall be valid for at least one hundred eighty days and not more than one year. For purposes of this subsection, a finding by the court of a subsequent act of abuse is not required for a renewal order of protection.

2. The court shall cause a copy of the petition and notice of the date set for the hearing on such petition and any ex parte order of protection to be served upon the respondent as provided by law or by any sheriff or police officer at least three days prior to such hearing. Such notice shall be served at the earliest time, and service of such notice shall take priority over service in other actions, except those of a similar emergency nature. The court shall cause a copy of any full order of protection to be served upon or mailed by certified mail to the respondent at the respondent's last known address. Failure to serve or mail a copy of the full order of protection to the respondent shall not affect the validity or enforceability of a full order of protection.

3. A copy of any order of protection granted pursuant to sections 455.010 to 455.085 shall be issued to the petitioner and to the local law enforcement agency in the jurisdiction where the petitioner resides. The clerk shall also issue a copy of any order of protection to the local law enforcement agency responsible for maintaining the Missouri uniform law enforcement system or any other comparable law enforcement system the same day the order is granted. The law enforcement agency responsible for maintaining MULES shall **[**enter information contained in the order**],** for purposes of verification**,** within twenty-four hours from the time the order is granted**, enter information contained in the order including but not limited to any orders regarding child custody or visitation and all specifics as to times and dates of custody or visitation that are provided in the order**. A notice of expiration or of termination of any order of protection **or any change in child custody or visitation within that order** shall be issued to the local law enforcement agency and to the law enforcement agency responsible for maintaining MULES or any other comparable law enforcement system. The law enforcement agency responsible for maintaining the applicable law enforcement system shall enter such information in the system **within twenty-four hours of receipt of information evidencing such expiration or termination**. The information contained in an order of protection may be entered in the Missouri uniform law enforcement system or comparable law enforcement system using a direct automated data transfer from the court automated system to the law enforcement system.

4. The court shall cause a copy of any objection filed by the respondent and notice of the date set for the hearing on such objection to an automatic renewal of a full order of protection for a period of one year to be personally served upon the petitioner by personal process server as provided by law or by a sheriff or police officer at least three days prior to such hearing. Such service of process shall be served at the earliest time and shall take priority over service in other actions except those of a similar emergency nature.

455.050. FULL OR EX PARTE ORDER OF PROTECTION, ABUSE OR STALKING, CONTENTS — RELIEF AVAILABLE. — 1. Any full or ex parte order of protection granted pursuant to sections 455.010 to 455.085 shall be to protect the petitioner from **[**abuse or stalking**] domestic**

violence and may include **such terms as the court reasonably deems necessary to ensure the petitioner's safety, including but not limited to**:

(1) Temporarily enjoining the respondent from abusing, threatening to abuse, molesting, stalking or disturbing the peace of the petitioner;

(2) Temporarily enjoining the respondent from entering the premises of the dwelling unit of the petitioner when the dwelling unit is:

(a) Jointly owned, leased or rented or jointly occupied by both parties; or

(b) Owned, leased, rented or occupied by petitioner individually; or

(c) Jointly owned, leased, rented or occupied by petitioner and a person other than respondent; provided, however, no spouse shall be denied relief pursuant to this section by reason of the absence of a property interest in the dwelling unit; or

(d) Jointly occupied by the petitioner and a person other than respondent; provided that the respondent has no property interest in the dwelling unit; or

(3) Temporarily enjoining the respondent from communicating with the petitioner in any manner or through any medium.

2. Mutual orders of protection are prohibited unless both parties have properly filed written petitions and proper service has been made in accordance with sections 455.010 to 455.085.

3. When the court has, after a hearing for any full order of protection, issued an order of protection, it may, in addition:

(1) Award custody of any minor child born to or adopted by the parties when the court has jurisdiction over such child and no prior order regarding custody is pending or has been made, and the best interests of the child require such order be issued;

(2) Establish a visitation schedule that is in the best interests of the child;

(3) Award child support in accordance with supreme court rule 88.01 and chapter 452;

(4) Award maintenance to petitioner when petitioner and respondent are lawfully married in accordance with chapter 452;

(5) Order respondent to make or to continue to make rent or mortgage payments on a residence occupied by the petitioner if the respondent is found to have a duty to support the petitioner or other dependent household members;

(6) Order the respondent to pay the petitioner's rent at a residence other than the one previously shared by the parties if the respondent is found to have a duty to support the petitioner and the petitioner requests alternative housing;

(7) Order that the petitioner be given temporary possession of specified personal property, such as automobiles, checkbooks, keys, and other personal effects;

(8) Prohibit the respondent from transferring, encumbering, or otherwise disposing of specified property mutually owned or leased by the parties;

(9) Order the respondent to participate in a court-approved counseling program designed to help batterers stop violent behavior or to participate in a substance abuse treatment program;

(10) Order the respondent to pay a reasonable fee for housing and other services that have been provided or that are being provided to the petitioner by a shelter for victims of domestic violence;

(11) Order the respondent to pay court costs;

(12) Order the respondent to pay the cost of medical treatment and services that have been provided or that are being provided to the petitioner as a result of injuries sustained to the petitioner by an act of domestic violence committed by the respondent.

4. A verified petition seeking orders for maintenance, support, custody, visitation, payment of rent, payment of monetary compensation, possession of personal property, prohibiting the transfer, encumbrance, or disposal of property, or payment for services of a shelter for victims of domestic violence, shall contain allegations relating to those orders and shall pray for the orders desired.

5. In making an award of custody, the court shall consider all relevant factors including the presumption that the best interests of the child will be served by placing the child in the custody

and care of the nonabusive parent, unless there is evidence that both parents have engaged in abusive behavior, in which case the court shall not consider this presumption but may appoint a guardian ad litem or a court-appointed special advocate to represent the children in accordance with chapter 452 and shall consider all other factors in accordance with chapter 452.

6. The court shall grant to the noncustodial parent rights to visitation with any minor child born to or adopted by the parties, unless the court finds, after hearing, that visitation would endanger the child's physical health, impair the child's emotional development or would otherwise conflict with the best interests of the child, or that no visitation can be arranged which would sufficiently protect the custodial parent from further abuse. The court may appoint a guardian ad litem or court-appointed special advocate to represent the minor child in accordance with chapter 452 whenever the custodial parent alleges that visitation with the noncustodial parent will damage the minor child.

7. The court shall make an order requiring the noncustodial party to pay an amount reasonable and necessary for the support of any child to whom the party owes a duty of support when no prior order of support is outstanding and after all relevant factors have been considered, in accordance with Missouri supreme court rule 88.01 and chapter 452.

8. The court may grant a maintenance order to a party for a period of time, not to exceed one hundred eighty days. Any maintenance ordered by the court shall be in accordance with chapter 452.

455.060. MODIFICATION OF ORDERS, WHEN — TERMINATION, WHEN — APPEAL — CUSTODY OF CHILDREN, MAY NOT BE CHANGED, WHEN. — 1. After notice and hearing, the court may modify an order of protection at any time, upon subsequent motion filed by the guardian ad litem, the court-appointed special advocate or by either party together with an affidavit showing a change in circumstances sufficient to warrant the modification. All full orders of protection shall be final orders and appealable and shall be for a fixed period of time as provided in section 455.040.

2. Any order for child support, custody, temporary custody, visitation or maintenance entered under sections 455.010 to 455.085 shall terminate prior to the time fixed in the order upon the issuance of a subsequent order pursuant to chapter 452 or any other Missouri statute.

3. No order entered pursuant to sections 455.010 to 455.085 shall be res judicata to any subsequent proceeding, including, but not limited to, any action brought under chapter 452, RSMo, 1978 as amended.

4. All provisions of an order of protection shall terminate upon entry of a decree of dissolution of marriage or legal separation except as to those provisions which require the respondent to participate in a court-approved counseling program or enjoin the respondent from abusing, molesting, stalking or disturbing the peace of the petitioner and which enjoin the respondent from entering the premises of the dwelling unit of the petitioner as described in the order of protection when the petitioner continues to reside in that dwelling unit unless the respondent is awarded possession of the dwelling unit pursuant to a decree of dissolution of marriage or legal separation.

5. Any order of protection or order for child support, custody, temporary custody, visitation or maintenance entered under sections 455.010 to 455.085 shall terminate upon the **[**filing of**]** **order of the court granting** a motion to terminate the order of protection by the petitioner**[**; except that, in cases where the order grants custody of a minor child to the respondent, the order shall terminate only upon consent of both parties or upon the respondent's failure to object within ten days of receiving the petitioner's notice of the filing of the motion to dismiss. If the respondent timely objects to the dismissal,**]**. The court shall set the motion to dismiss for hearing and both parties shall have an opportunity to be heard. **Prior to terminating any order of protection, the court may examine the circumstances of the motion to dismiss and may inquire of the petitioner or others in order to assist the court in determining if dismissal is voluntary.**

6. The order of protection may not change the custody of children when an action for dissolution of marriage has been filed or the custody has previously been awarded by a court of competent jurisdiction.

455.085. ARREST FOR VIOLATION OF ORDER — PENALTIES — GOOD FAITH IMMUNITY FOR LAW ENFORCEMENT OFFICIALS. — 1. When a law enforcement officer has probable cause to believe a party has committed a violation of law amounting to abuse or assault, as defined in section 455.010, against a family or household member, the officer may arrest the offending party whether or not the violation occurred in the presence of the arresting officer. When the officer declines to make arrest pursuant to this subsection, the officer shall make a written report of the incident completely describing the offending party, giving the victim's name, time, address, reason why no arrest was made and any other pertinent information. Any law enforcement officer subsequently called to the same address within a twelve-hour period, who shall find probable cause to believe the same offender has again committed a violation as stated in this subsection against the same or any other family or household member, shall arrest the offending party for this subsequent offense. The primary report of nonarrest in the preceding twelve-hour period may be considered as evidence of the defendant's intent in the violation for which arrest occurred. The refusal of the victim to sign an official complaint against the violator shall not prevent an arrest under this subsection.

2. When a law enforcement officer has probable cause to believe that a party, against whom a protective order has been entered and who has notice of such order entered, has committed an act of abuse in violation of such order, the officer shall arrest the offending party-respondent whether or not the violation occurred in the presence of the arresting officer. Refusal of the victim to sign an official complaint against the violator shall not prevent an arrest under this subsection.

3. When an officer makes an arrest he is not required to arrest two parties involved in an assault when both parties claim to have been assaulted. The arresting officer shall attempt to identify and shall arrest the party he believes is the primary physical aggressor. The term "primary physical aggressor" is defined as the most significant, rather than the first, aggressor. The law enforcement officer shall consider any or all of the following in determining the primary physical aggressor:

(1) The intent of the law to protect victims of domestic violence from continuing abuse;

(2) The comparative extent of injuries inflicted or serious threats creating fear of physical injury;

(3) The history of domestic violence between the persons involved. No law enforcement officer investigating an incident of family violence shall threaten the arrest of all parties for the purpose of discouraging requests or law enforcement intervention by any party. Where complaints are received from two or more opposing parties, the officer shall evaluate each complaint separately to determine whether he should seek a warrant for an arrest.

4. In an arrest in which a law enforcement officer acted in good faith reliance on this section, the arresting and assisting law enforcement officers and their employing entities and superiors shall be immune from liability in any civil action alleging false arrest, false imprisonment or malicious prosecution.

5. When a person against whom an order of protection has been entered fails to surrender custody of minor children to the person to whom custody was awarded in an order of protection, the law enforcement officer shall arrest the respondent, and shall turn the minor children over to the care and custody of the party to whom such care and custody was awarded.

6. The same procedures, including those designed to protect constitutional rights, shall be applied to the respondent as those applied to any individual detained in police custody.

7. A violation of the terms and conditions, with regard to abuse, stalking, child custody, communication initiated by the respondent or entrance upon the premises of the petitioner's dwelling unit **or place of employment or school, or being within a certain distance of the**

petitioner or a child of the petitioner, of an ex parte order of protection of which the respondent has notice, shall be a class A misdemeanor unless the respondent has previously pleaded guilty to or has been found guilty **in any division of the circuit court** of violating an ex parte order of protection or a full order of protection within five years of the date of the subsequent violation, in which case the subsequent violation shall be a class D felony. Evidence of prior pleas of guilty or findings of guilt shall be heard by the court out of the presence of the jury prior to submission of the case to the jury. If the court finds the existence of such prior pleas of guilty or finding of guilt beyond a reasonable doubt, the court shall decide the extent or duration of sentence or other disposition and shall not instruct the jury as to the range of punishment or allow the jury to assess and declare the punishment as a part of its verdict.

8. A violation of the terms and conditions, with regard to abuse, stalking, child custody, communication initiated by the respondent or entrance upon the premises of the petitioner's dwelling unit **or place of employment or school, or being within a certain distance of the petitioner or a child of the petitioner**, of a full order of protection shall be a class A misdemeanor, unless the respondent has previously pleaded guilty to or has been found guilty **in any division of the circuit court** of violating an ex parte order of protection or a full order of protection within five years of the date of the subsequent violation, in which case the subsequent violation shall be a class D felony. Evidence of prior pleas of guilty or findings of guilt shall be heard by the court out of the presence of the jury prior to submission of the case to the jury. If the court finds the existence of such prior plea of guilty or finding of guilt beyond a reasonable doubt, the court shall decide the extent or duration of the sentence or other disposition and shall not instruct the jury as to the range of punishment or allow the jury to assess and declare the punishment as a part of its verdict. For the purposes of this subsection, in addition to the notice provided by actual service of the order, a party is deemed to have notice of an order of protection if the law enforcement officer responding to a call of a reported incident of abuse or violation of an order of protection presented a copy of the order of protection to the respondent.

9. Good faith attempts to effect a reconciliation of a marriage shall not be deemed tampering with a witness or victim tampering under section 575.270.

10. Nothing in this section shall be interpreted as creating a private cause of action for damages to enforce the provisions set forth herein.

455.200. DEFINITIONS. — As used in sections 455.200 to 455.230, unless the context clearly requires otherwise, the following words and phrases mean:

(1) "Designated authority", the board, commission, agency, or other body designated under the provisions of section **[**455.210**]** **488.445** as the authority to administer the allocation and distribution of funds to shelters;

(2) **[**"Domestic violence", attempting to cause or causing bodily injury to a family or household member, or placing a family or household member by threat of force in fear of imminent physical harm;

(3) "Family or household member", a spouse, a former spouse, person living with another person whether or not as spouses, parent, or other adult person related by consanguinity or affinity, who is residing or has resided with the person committing the domestic violence and dependents of such persons;

(4)**]** "Shelter for victims of domestic violence" or "shelter", a facility established for the purpose of providing temporary residential service or facilities to family or household members who are victims of domestic violence.

455.505. RELIEF MAY BE SOUGHT FOR CHILD FOR DOMESTIC VIOLENCE OR CHILD BEING STALKED — ORDER OF PROTECTION EFFECTIVE, WHERE. — 1. An order of protection for a child who has been subject to **[**abuse**]** **domestic violence** by a present or former adult household member or person stalking the child may be sought under sections 455.500 to

455.538 by the filing of a verified petition alleging such **[**abuse**]** **domestic violence** by the respondent.

2. A child's right to relief under sections 455.500 to 455.538 shall not be affected by his leaving the residence or household to avoid **[**abuse**]** **domestic violence**.

3. Any protection order issued pursuant to sections 455.500 to 455.538 shall be effective throughout the state in all cities and counties.

455.513. EX PARTE ORDERS, ISSUED WHEN, EFFECTIVE WHEN — FOR GOOD CAUSE SHOWN, DEFINED — INVESTIGATION BY DIVISION OF FAMILY SERVICES, WHEN — REPORT DUE WHEN, AVAILABLE TO WHOM — TRANSFER TO JUVENILE COURT, WHEN. — 1. Upon the filing of a verified petition under sections 455.500 to 455.538, for good cause shown in the petition, and upon finding that no prior order regarding custody is pending or has been made **or that the respondent is less than seventeen years of age**, the court may immediately issue an ex parte order of protection. An immediate and present danger of abuse to a child shall constitute good cause for purposes of this section. An ex parte order of protection entered by the court shall be in effect until the time of the hearing.

2. Upon the entry of the ex parte order of protection, the court shall enter its order appointing a guardian ad litem or court-appointed special advocate to represent the child victim.

3. If the allegations in the petition would give rise to jurisdiction under section 211.031, the court may direct the **children's** division **[**of family services**]** to conduct an investigation and to provide appropriate services. The division shall submit a written investigative report to the court and to the juvenile officer within thirty days of being ordered to do so. The report shall be made available to the parties and the guardian ad litem or court-appointed special advocate.

4. If an ex parte order is entered and the allegations in the petition would give rise to jurisdiction under section 211.031 because the respondent is less than seventeen years of age, the court shall transfer the case to juvenile court for a hearing on a full order of protection. Service of process shall be made pursuant to section 455.035.

455.516. HEARINGS, WHEN, PROCEDURE, STANDARD OF PROOF — DURATION OF ORDERS — VIDEOTAPED TESTIMONY PERMITTED — RENEWAL OF ORDERS, WHEN — SERVICE OF RESPONDENT, FAILURE TO SERVE NOT TO AFFECT VALIDITY OF ORDER — NOTICE TO LAW ENFORCEMENT AGENCIES — SERVICE OF PROCESS. — 1. Not later than fifteen days after the filing of a petition under sections 455.500 to 455.538, a hearing shall be held unless the court deems, for good cause shown, that a continuance should be granted. At the hearing, which may be an open or a closed hearing at the discretion of the court, whichever is in the best interest of the child, if the petitioner has proved the allegation of **[**abuse of**]** **domestic violence against** a child by a preponderance of the evidence, the court may issue a full order of protection for at least one hundred eighty days and not more than one year. The court may allow as evidence any in camera videotape made of the testimony of the child pursuant to section 491.699. The provisions of section 491.075 relating to admissibility of statements of a child under the age of **[**twelve**]** **fourteen** shall apply to any hearing under the provisions of sections 455.500 to 455.538. Upon motion by either party, the guardian ad litem or the court-appointed special advocate, and after a hearing by the court, the full order of protection may be renewed for a period of time the court deems appropriate, except that the protective order shall be valid for at least one hundred eighty days and not more than one year from the expiration date of the originally issued full order of protection. **The court may, upon finding that it is in the best interest of the child, include a provision that any full order of protection for one year shall automatically renew unless the respondent requests a hearing by thirty days prior to the expiration of the order.** If for good cause a hearing cannot be held on the motion to renew **or to terminate the automatic renewal of** the full order of protection prior to the expiration date of the originally issued full order of protection, an ex parte order of protection may be issued until a hearing is held on the motion. **When an automatic renewal is not**

authorized, upon motion by either party, the guardian ad litem or the court appointed special advocate, and after a hearing by the court, the second full order of protection may be renewed for an additional period of time the court deems appropriate, except that the protective order shall be valid for at least one hundred eighty days and not more than one year from the expiration date of the second full order of protection. If for good cause a hearing cannot be held on the motion to renew the second full order of protection prior to the expiration date of the second order, an ex parte order of protection may be issued until a hearing is held on the motion. For purposes of this subsection, a finding by the court of a subsequent act of abuse is not required for a renewal order of protection.

2. The court shall cause a copy of the petition and notice of the date set for the hearing on such petition and any ex parte order of protection to be personally served upon the respondent by personal process server as provided by law or by any sheriff or police officer at least three days prior to such hearing. Such shall be served at the earliest time, and service of such shall take priority over service in other actions, except those of a similar emergency nature. The court shall cause a copy of any full order of protection to be served upon or mailed by certified mail to the respondent at the respondent's last known address. Failure to serve or mail a copy of the full order of protection to the respondent shall not affect the validity or enforceability of a full order of protection.

3. A copy of any order of protection granted under sections 455.500 to 455.538 shall be issued to the petitioner and to the local law enforcement agency in the jurisdiction where the petitioner resides. The clerk shall also issue a copy of any order of protection to the local law enforcement agency responsible for maintaining the Missouri uniform law enforcement system (MULES) or any other comparable law enforcement system the same day the order is granted. The law enforcement agency responsible for maintaining MULES shall enter information contained in the order for purposes of verification within twenty-four hours from the time the order is granted. A notice of expiration or of termination of any order of protection shall be issued to such local law enforcement agency and to the law enforcement agency responsible for maintaining MULES or any other comparable law enforcement system. The law enforcement agency responsible for maintaining the applicable law enforcement system shall enter such information in the system. The information contained in an order of protection may be entered in the Missouri uniform law enforcement system or comparable law enforcement system using a direct automated data transfer from the court automated system to the law enforcement system.

4. A copy of the petition and notice of the date set for the hearing on such petition and any order of protection granted pursuant to sections 455.500 to 455.538 shall be issued to the juvenile office in the jurisdiction where the petitioner resides. A notice of expiration or of termination of any order of protection shall be issued to such juvenile office.

5. The court shall cause a copy of any objection filed by the respondent and notice of the date set for the hearing on such objection to an automatic renewal of a full order of protection for a period of one year to be personally served upon the petitioner by a personal process server as provided by law or by a sheriff or police officer at least three days prior to such hearing. Such service of process shall be served at the earliest time and shall take priority over service in other actions except those of a similar emergency nature.

455.520. TEMPORARY RELIEF AVAILABLE — EX PARTE ORDERS. — 1. Any ex parte order of protection granted under sections 455.500 to 455.538 shall be to protect the victim from **[**abuse**]** **domestic violence** and may include **such terms as the court reasonably deems necessary to ensure the petitioner's safety, including but not limited to**:

(1) Restraining the respondent from abusing, threatening to abuse, molesting or disturbing the peace of the victim;

(2) Restraining the respondent from entering the family home of the victim except as specifically authorized by the court;

(3) Restraining the respondent from **[**having any contact**]** **communicating** with the victim **in any manner or through any medium**, except as specifically authorized by the court;

(4) A temporary order of custody of minor children.

2. No ex parte order of protection excluding the respondent from the family home shall be issued unless the court finds that:

(1) The order is in the best interests of the child or children remaining in the home;

(2) The verified allegations of **[**abuse**]** **domestic violence** present a substantial risk to the child or children unless the respondent is excluded; **and**

(3) A remaining adult family or household member is able to care adequately for the child or children in the absence of the excluded party**[**; and

(4) A commitment has been obtained from the local division of family services office to provide appropriate social services to the family or household members during the period of time which an order of protection is in effect**]**.

455.523. FULL ORDER OF PROTECTION — RELIEF AVAILABLE. — 1. Any full order of protection granted under sections 455.500 to 455.538 shall be to protect the victim from **[**abuse**]** **domestic violence** and may include **such terms as the court reasonably deems necessary to ensure the petitioner's safety, including but not limited to**:

(1) Temporarily enjoining the respondent from abusing, threatening to abuse, molesting or disturbing the peace of the victim;

(2) Temporarily enjoining the respondent from entering the family home of the victim, except as specifically authorized by the court;

(3) Temporarily enjoining the respondent from **[**having any contact**]** **communicating** with the victim **in any manner or through any medium**, except as specifically authorized by the court.

2. When the court has, after hearing for any full order of protection, issued an order of protection, it may, in addition:

(1) Award custody of any minor child born to or adopted by the parties when the court has jurisdiction over such child and no prior order regarding custody is pending or has been made, and the best interests of the child require such order be issued;

(2) Award visitation;

(3) Award child support in accordance with supreme court rule 88.01 and chapter 452;

(4) Award maintenance to petitioner when petitioner and respondent are lawfully married in accordance with chapter 452;

(5) Order respondent to make or to continue to make rent or mortgage payments on a residence occupied by the victim if the respondent is found to have a duty to support the victim or other dependent household members;

(6) Order the respondent to participate in a court-approved counseling program designed to help child abusers stop violent behavior or to treat substance abuse;

(7) Order the respondent to pay, to the extent that he or she is able, the costs of his or her treatment, together with the treatment costs incurred by the victim;

(8) Order the respondent to pay a reasonable fee for housing and other services that have been provided or that are being provided to the victim by a shelter for victims of domestic violence.

455.538. LAW ENFORCEMENT AGENCIES RESPONSE TO VIOLATION OF ORDER — ARREST FOR VIOLATION, PENALTIES — CUSTODY TO BE RETURNED TO RIGHTFUL PARTY, WHEN. — 1. When a law enforcement officer has probable cause to believe that a party, against whom a protective order for a child has been entered, has committed an act of abuse in violation of that order, he shall have the authority to arrest the respondent whether or not the violation occurred in the presence of the arresting officer.

2. When a person, against whom an order of protection for a child has been entered, fails to surrender custody of minor children to the person to whom custody was awarded in an order of protection, the law enforcement officer shall arrest the respondent, and shall turn the minor children over to the care and custody of the party to whom such care and custody was awarded.

3. The same procedures, including those designed to protect constitutional rights, shall be applied to the respondent as those applied to any individual detained in police custody.

4. (1) Violation of the terms and conditions of an ex parte **or full** order of protection with regard to abuse, child custody, **communication initiated by the respondent,** or entrance upon the premises of the victim's dwelling unit **or place of employment or school, or being within a certain distance of the petitioner or a child of the petitioner**, of which the respondent has notice, shall be a class A misdemeanor**[**. Violation of the terms and conditions of a full order of protection for a child regarding abuse, child custody, or entrance upon the premises of the petitioner's dwelling unit, shall be a class A misdemeanor**], unless the respondent has previously pleaded guilty to or has been found guilty in any division of the circuit court of violating an ex parte order of protection or a full order of protection within five years of the date of the subsequent violation, in which case the subsequent violation shall be a class D felony. Evidence of a prior plea of guilty or finding of guilt shall be heard by the court out of the presence of the jury prior to submission of the case to the jury. If the court finds the existence of a prior plea of guilty or finding of guilt beyond a reasonable doubt, the court shall decide the extent or duration of sentence or other disposition and shall not instruct the jury as to the range of punishment or allow the jury to assess and declare the punishment as a part of its verdict**.

(2) For purposes of this subsection, in addition to the notice provided by actual service of the order, a party is deemed to have notice of an order of protection for a child if the law enforcement officer responding to a call of a reported incident of abuse or violation of an order of protection for a child presents a copy of the order of protection to the respondent.

5. The fact that an act by a respondent is a violation of a valid order of protection for a child shall not preclude prosecution of the respondent for other crimes arising out of the incident in which the protection order is alleged to have been violated.

455.543. HOMICIDES OR SUICIDES, DETERMINATION OF DOMESTIC VIOLENCE, FACTORS TO BE CONSIDERED — REPORTS MADE TO HIGHWAY PATROL, FORMS, DUE WHEN. — 1. In any incident investigated by a law enforcement agency involving a homicide or suicide, the law enforcement agency shall make a determination as to whether the homicide or suicide is related to domestic violence**[**, as defined in section 455.200**]**.

2. In making such determination, the local law enforcement agency may consider a number of factors including, but not limited to, the following:

(1) If the relationship between the perpetrator and the victim is or was that of a family or household member**[**, as defined in section 455.010**]**;

(2) Whether the victim or perpetrator had previously filed for an order of protection;

(3) Whether any of the subjects involved in the incident had previously been investigated for incidents of domestic violence; and

(4) Any other evidence regarding the homicide or suicide that assists the agency in making its determination.

3. After making a determination as to whether the homicide or suicide is related to domestic violence, the law enforcement agency shall forward the information required within fifteen days to the Missouri state highway patrol on a form or format approved by the patrol. The required information shall include the gender and age of the victim, the type of incident investigated, the disposition of the incident and the relationship of the victim to the perpetrator. The state highway patrol shall develop a form for this purpose which shall be distributed by the department of public safety to all law enforcement agencies by October 1, 2000. Completed forms shall be forwarded to the highway patrol without undue delay as required by section 43.500; except that

all such reports shall be forwarded no later than seven days after an incident is determined or identified as a homicide or suicide involving domestic violence.

455.549. COURT-APPOINTED BATTERER INTERVENTION, CREDENTIALING PROCESS, RULEMAKING AUTHORITY. — 1. The division of probation and parole within the department of corrections shall promulgate rules to establish standards and to adopt a credentialing process for any court-appointed batterer intervention program.

2. Any rule or portion of a rule, as that term is defined in section 536.010 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, and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, 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, 2011, shall be invalid and void.

455.800. JUVENILE COURT RECORDS, CONFIDENTIALITY, WHEN. — In all proceedings pursuant to subsection 3 of section 455.035 or subsection 4 of section 455.513, the records of the juvenile court shall be kept confidential and may be open to inspection without a court order only to:

(1) The juvenile officer;

(2) The officials at the child's school, law enforcement officials, prosecuting attorneys, or any person or agency having or proposed to provide care, custody, or control or to provide treatment of the child; and

(3) A parent or guardian of or court appointed guardian ad litem for the child.

527.290. NOTICE OF CHANGE TO BE GIVEN, WHEN AND HOW — NOT REQUIRED, WHEN. — 1. Public notice of such a change of name shall be given at least three times in a newspaper published in the county where such person is residing, within twenty days after the order of court is made, and if no newspaper is published in his or any adjacent county, then such notice shall be given in a newspaper published in the city of St. Louis, or at the seat of government.

2. Public notice of such name change through publication as required in subsection 1 of this section shall not be required if the petitioner is:

(1) The victim of a crime, the underlying factual basis of which is found by the court on the record to include an act of domestic violence, as defined in section **[**455.200**]** **455.010**;

(2) The victim of child abuse, as defined in section 210.110; or

(3) The victim of abuse by a family or household member, as defined in section 455.010.

565.074. DOMESTIC ASSAULT, THIRD DEGREE — PENALTY. — 1. A person commits the crime of domestic assault in the third degree if the act involves a family or household member or an adult who is or has been in a continuing social relationship of a romantic or intimate nature with the actor, as defined in section 455.010 and:

(1) The person attempts to cause or recklessly causes physical injury to such family or household member; or

(2) With criminal negligence the person causes physical injury to such family or household member by means of a deadly weapon or dangerous instrument; or

(3) The person purposely places such family or household member in apprehension of immediate physical injury by any means; or

(4) The person recklessly engages in conduct which creates a grave risk of death or serious physical injury to such family or household member; or

(5) The person knowingly causes physical contact with such family or household member knowing the other person will regard the contact as offensive; or

(6) The person knowingly attempts to cause or causes the isolation of such family or household member by unreasonably and substantially restricting or limiting such family or household member's access to other persons, telecommunication devices or transportation for the purpose of isolation.

2. Except as provided in subsection 3 of this section, domestic assault in the third degree is a class A misdemeanor.

3. A person who has pleaded guilty to or been found guilty of the crime of domestic assault in the third degree more than two times against any family or household member as defined in section 455.010**, or of any offense committed in violation of any county or municipal ordinance in any state, any state law, any federal law, or any military law which, if committed in this state, would be a violation of this section,** is guilty of a class D felony for the third or any subsequent commission of the crime of domestic assault. The offenses described in this subsection may be against the same family or household member or against different family or household members.

589.683. INAPPLICABILITY OF MISSOURI SUNSET ACT. — [Pursuant to section 23.253 of the Missouri sunset act:

(1) Any new program authorized under sections 589.660 to 589.681 shall automatically sunset six years after August 28, 2007, unless reauthorized by an act of the general assembly; and

(2) If such program is reauthorized, the program authorized under sections 589.660 to 589.681 shall automatically sunset twelve years after the effective date of the reauthorization of sections 589.660 to 589.681; and

(3) Sections 589.660 to 589.681 shall terminate on September first of the calendar year immediately following the calendar year in which a program authorized under sections 589.660 to 589.681 is sunset.**] Section 23.253 of the Missouri sunset act shall not apply to any program established pursuant to sections 589.660 to 589.681.**

595.100. FUNDING, ADMINISTRATION. — 1. There is hereby established in the state treasury the "Services to Victims Fund" which shall consist of money collected pursuant to section 595.045. The fund shall be administered by the department of public safety. Upon appropriation, money in the fund shall be used solely for the administration of sections 595.050, 595.055 and 595.105**, except that public or private agencies, as defined by section 595.050, shall use no more than ten percent of any funds received for administrative purposes**.

2. Notwithstanding the provisions of section 33.080, any balance remaining in the fund at the end of an appropriation period shall not be transferred to general revenue, but shall remain in the fund.

595.220. FORENSIC EXAMINATIONS, DEPARTMENT OF PUBLIC SAFETY TO PAY MEDICAL PROVIDERS, WHEN — MINOR MAY CONSENT TO EXAMINATION, WHEN — ATTORNEY GENERAL TO DEVELOP FORMS — COLLECTION KITS — DEFINITIONS — RULEMAKING AUTHORITY. — 1. The department of public safety shall make payments to appropriate medical providers, out of appropriations made for that purpose, to cover the reasonable charges of the forensic examination of persons who may be a victim of a sexual offense if:

(1) The victim or the victim's guardian consents in writing to the examination; and

(2) The report of the examination is made on a form approved by the attorney general with the advice of the department of public safety. **The department shall establish maximum reimbursement rates for charges submitted under this section, which shall reflect the reasonable cost of providing the forensic exam.**

2. A minor may consent to examination under this section. Such consent is not subject to disaffirmance because of minority, and consent of parent or guardian of the minor is not required

for such examination. The appropriate medical provider making the examination shall give written notice to the parent or guardian of a minor that such an examination has taken place.

3. The attorney general, with the advice of the department of public safety, shall develop the forms and procedures for gathering evidence during the forensic examination under the provisions of this section. The department of health and senior services shall develop a checklist, protocols, and procedures for appropriate medical providers to refer to while providing medical treatment to victims of a sexual offense, including those specific to victims who are minors.

4. Evidentiary collection kits shall be developed and made available, subject to appropriation, to appropriate medical providers by the highway patrol or its designees and eligible crime laboratories. Such kits shall be distributed with the forms and procedures for gathering evidence during forensic examinations of victims of a sexual offense to appropriate medical providers upon request of the provider, in the amount requested, and at no charge to the medical provider. All appropriate medical providers shall, with the written consent of the victim, perform a forensic examination using the evidentiary collection kit, or other collection procedures developed for victims who are minors, and forms and procedures for gathering evidence following the checklist for any person presenting as a victim of a sexual offense.

5. In reviewing claims submitted under this section, the department shall first determine if the claim was submitted within ninety days of the examination. If the claim is submitted within ninety days, the department shall, at a minimum, use the following criteria in reviewing the claim: examination charges submitted shall be itemized and fall within the definition of forensic examination as defined in subdivision (3) of subsection 7 of this section.

6. All appropriate medical provider charges for eligible forensic examinations shall be billed to and paid by the department of public safety. No appropriate medical provider conducting forensic examinations and providing medical treatment to victims of sexual offenses shall charge the victim for the forensic examination. For appropriate medical provider charges related to the medical treatment of victims of sexual offenses, if the victim is an eligible claimant under the crime victims' compensation fund, the victim shall seek compensation under sections 595.010 to 595.075.

7. For purposes of this section, the following terms mean:

(1) "Appropriate medical provider", any licensed nurse, physician, or physician assistant, and any institution employing licensed nurses, physicians, or physician assistants, provided that such licensed professionals are the only persons at such institution to perform tasks under the provisions of this section;

(2) "Evidentiary collection kit", a kit used during a forensic examination that includes materials necessary for appropriate medical providers to gather evidence in accordance with the forms and procedures developed by the attorney general for forensic examinations;

(3) "Forensic examination", an examination performed by an appropriate medical provider on a victim of an alleged sexual offense to gather evidence for the evidentiary collection kit or using other collection procedures developed for victims who are minors;

(4) "Medical treatment", the treatment of all injuries and health concerns resulting directly from a patient's sexual assault or victimization.

8. The department shall have authority to promulgate rules and regulations necessary to implement the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, 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 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 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, 2009, shall be invalid and void.

[455.501. DEFINITIONS. — As used in sections 455.500 to 455.538, the following terms mean:

(1) "Abuse", any physical injury, sexual abuse, or emotional abuse inflicted on a child other than by accidental means by an adult household member, or stalking of a child. Discipline including spanking, administered in a reasonable manner shall not be construed to be abuse;

(2) "Adult household member", any person eighteen years of age or older or an emancipated child who resides with the child in the same dwelling unit;

(3) "Child", any person under eighteen years of age;

(4) "Court", the circuit or associate circuit judge or a family court commissioner;

(5) "Ex parte order of protection", an order of protection issued by the court before the respondent has received notice of the petition or an opportunity to be heard on it;

(6) "Full order of protection", an order of protection issued after a hearing on the record where the respondent has received notice of the proceedings and has had an opportunity to be heard;

(7) "Order of protection", either an ex parte order of protection or a full order of protection;

(8) "Petitioner", a person authorized to file a verified petition under the provisions of sections 455.503 and 455.505;

(9) "Respondent", the adult household member, emancipated child or person stalking the child against whom a verified petition has been filed;

(10) "Stalking", when an adult purposely and repeatedly engages in an unwanted course of conduct with regard to a child that causes another adult to believe that a child would suffer alarm by the conduct. As used in this subdivision:

(a) "Course of conduct" means a pattern of conduct composed of repeated acts over a period of time, however short, that serves no legitimate purpose. Such conduct may include, but is not limited to, following the other person or unwanted communication or contact;

(b) "Repeated" means two or more incidents evidencing a continuity of purpose; and

(c) "Alarm" means to cause fear of danger of physical harm;

(11) "Victim", a child who is alleged to have been abused by an adult household member.**]**

[455.540. DEFINITIONS. — As used in sections 455.540 to 455.547, the following terms shall mean:

(1) "Adult", any person eighteen years of age or older;

(2) "Domestic violence", as provided in section 455.200.**]**

Approved July 12, 2011

SB 325 [HCS SB 325]

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

Requires boards, commissions, committees, councils, or offices to notify a licensee's employer of a change in the licensee's license status.

AN ACT to repeal sections 333.041, 333.042, 333.051, 333.061, 333.091, 333.151, 333.171, 335.036, 335.200, 335.203, 335.206, 335.209, 338.010, 338.140, 338.150, 338.210, 338.220, 338.240, 338.315, 338.330, 339.190, 429.015, 436.405, 436.412, 436.445, 436.450, 436.455, 436.456, and 516.098, RSMo, and to enact in lieu thereof thirty new sections relating to professional registration, with penalty provisions and an emergency clause for a certain section.

SECTION

A. Enacting clause.
324.014. License status, change in to be reported to current employer by licensing body.
332.425. Instructor in accredited school, issuance of teaching license, when.
333.041. Qualifications of applicants — examinations — licenses — board may waive requirements in certain cases.
333.042. Application and examination fees for funeral directors, apprenticeship requirements — examination content for applicants — apprenticeship duties — appearance before board — limited license only for cremation — exemptions from apprenticeship.
333.051. Recognition of persons licensed in other states — fees.
333.061. No funeral establishment to be operated by unlicensed person — license requirements, application procedure — license may be suspended or revoked or not renewed.
333.091. License to be displayed.
333.151. Board members — qualifications — terms — vacancies.
333.171. Board meetings — notice — seal.
335.036. Duties of board — fees set, how — fund, source, use, funds transferred from, when — rulemaking.
335.099. Licensed practical nurse, additional authorized acts.
335.200. Nurse education incentive grants — definitions.
335.203. Nursing education incentive program established — grants authorized, limit, eligibility — administration — rulemaking authority.
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516.098. Surveys of land error or omissions — action must be brought when.
335.206. Nurse training incentive fund — grants — amounts.
335.209. Administrative rules — procedure.
B. Emergency clause.

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

SECTION A. ENACTING CLAUSE. — Sections 333.041, 333.042, 333.051, 333.061, 333.091, 333.151, 333.171, 335.036, 335.200, 335.203, 335.206, 335.209, 338.010, 338.140, 338.150, 338.210, 338.220, 338.240, 338.315, 338.330, 339.190, 429.015, 436.405, 436.412, 436.445, 436.450, 436.455, 436.456, and 516.098, RSMo, are repealed and thirty new sections enacted in lieu thereof, to be known as sections 324.014, 332.425, 333.041, 333.042, 333.051, 333.061, 333.091, 333.151, 333.171, 335.036, 335.099, 335.200, 335.203, 338.010, 338.140,

338.150, 338.210, 338.220, 338.240, 338.315, 338.330, 339.190, 429.015, 436.405, 436.412, 436.445, 436.450, 436.455, 436.456, and 516.098, to read as follows:

324.014. LICENSE STATUS, CHANGE IN TO BE REPORTED TO CURRENT EMPLOYER BY LICENSING BODY. — Any board, commission, committee, council, or office within the division of professional registration shall notify any known current employer of a change in a licensee's license and discipline status. An employer may provide a list of current licensed employees and make a request in writing to the board, commission, committee, council, or office within the division of professional registration responsible for the licensee's license, to be notified upon a change in the licensing status of any such licensed employee. Nothing in this section shall be construed as requiring the board, commission, committee, council, or office within the division of professional registration to determine the current employer of any person whose license is sanctioned.

332.425. INSTRUCTOR IN ACCREDITED SCHOOL, ISSUANCE OF TEACHING LICENSE, WHEN. — 1. The dental board may issue a limited teaching license to a dentist employed as an instructor in an accredited dental school in Missouri. The holder of a limited teaching license shall be authorized to practice dentistry, in accordance with section 332.071, only within the confines of the accredited dental school programs. A limited teaching license shall be renewed every two years and shall be subject to the same renewal requirements contained in section 332.181. A limited teaching license shall be subject to discipline in accordance with section 332.321 and shall be automatically cancelled and nullified if the holder ceases to be employed as an instructor in the accredited dental school.

2. To qualify for a limited teaching license, an applicant shall:

(1) Be a graduate of and hold a degree from a dental school. An applicant shall not be required to be a graduate of an accredited dental school as defined in section 332.011;

(2) Have passed the National Board Examination in accordance with criteria established by the sponsoring body;

(3) Have passed a state or regional entry level competency examination approved by the Missouri dental board for licensure within the previous five years;

(4) Have passed a written jurisprudence examination given by the board on the Missouri dental laws and rules with a grade of at least eighty percent;

(5) Hold current certification in the American Heart Association's Basic Life Support (BLS), Advanced Cardiac Life Support (ACLS), or certification equivalent to BLS or ACLS;

(6) Submit to the board a completed application for licensure on forms provided by the board and the applicable license fee; and

(7) Submit to the board evidence of successful passage of an examination approved by the board of spoken and written proficiency in the English language.

333.041. QUALIFICATIONS OF APPLICANTS — EXAMINATIONS — LICENSES — BOARD MAY WAIVE REQUIREMENTS IN CERTAIN CASES. — 1. Each applicant for a license to practice funeral directing shall furnish evidence to establish to the satisfaction of the board that he or she is:

(1) At least eighteen years of age, and possesses a high school diploma**, a general equivalency diploma,** or equivalent thereof**, as determined, at its discretion, by the board**; **and**

(2) **[**Either a citizen or a bona fide resident of the state of Missouri or entitled to a license pursuant to section 333.051, or a resident in a county contiguous and adjacent to the state of Missouri who is employed by a funeral establishment located within the state of Missouri, to practice funeral directing upon the grant of a license to do so; and

(3)**]** A person of good moral character.

2. Every person desiring to enter the profession of embalming dead human bodies within the state of Missouri and who is enrolled in **[**an**] a program** accredited **[**institution of mortuary science education**] by the American Board of Funeral Service Education, any successor organization, or other accrediting entity as approved by the board,** shall register with the board as a practicum student upon the form provided by the board. After such registration, a student may assist, under the direct supervision of Missouri licensed embalmers and funeral directors, in Missouri licensed funeral establishments, while serving his or her practicum **[**for the accredited institution of mortuary science education**]**. The form for registration as a practicum student shall be accompanied by a fee in an amount established by the board.

3. Each applicant for a license to practice embalming shall furnish evidence to establish to the satisfaction of the board that he or she:

(1) Is at least eighteen years of age, and possesses a high school diploma**, a general equivalency diploma,** or equivalent thereof**, as determined, at its discretion, by the board**;

(2) **[**Is either a citizen or bona fide resident of the state of Missouri or entitled to a license pursuant to section 333.051, or a resident in a county contiguous and adjacent to the state of Missouri who is employed by a funeral establishment located within the state of Missouri, to practice embalming upon the grant of a license to do so;

(3)**]** Is a person of good moral character;

[(4)**] (3)** Has **[**graduated from an institute of mortuary science education**] completed a funeral service education program** accredited by the American Board of Funeral Service Education, **[**or**]** any successor organization **[**recognized by the United States Department of Education, for funeral service education**], or other accrediting entity as approved by the board**. If an applicant does not **[**appear for the final examination before the board**] complete all requirements for licensure** within five years from the date of his or her **[**graduation from**] completion of** an accredited **[**institution of mortuary science education**] program**, his or her registration as **[**a student**] an apprentice** embalmer shall be automatically canceled**. The applicant shall be required to file a new application and pay applicable fees. No previous apprenticeship shall be considered for the new application**;

[(5)**] (4)** Upon due examination administered by the board, is possessed of a knowledge of the subjects of embalming, anatomy, pathology, bacteriology, mortuary administration, chemistry, restorative art, together with statutes, rules and regulations governing the care, custody, shelter and disposition of dead human bodies and the transportation thereof or has passed the national board examination of the Conference of Funeral Service Examining Boards. If any applicant fails to pass the state examination, he or she may retake the examination at the next regular examination meeting. The applicant shall notify the board office of his or her desire to retake the examination at least thirty days prior to the date of the examination. Each time the examination is retaken, the applicant shall pay a new examination fee in an amount established by the board;

[(6)**] (5)** Has been employed full time in funeral service in a licensed funeral establishment and has personally embalmed at least twenty-five dead human bodies under the personal supervision of an embalmer who holds a current and valid Missouri embalmer's license or an embalmer who holds a current and valid embalmer's license in a state with which the Missouri board has entered into a reciprocity agreement during an apprenticeship of not less than twelve consecutive months. "Personal supervision" means that the licensed embalmer shall be physically present during the entire embalming process in the first six months of the apprenticeship period and physically present at the beginning of the embalming process and available for consultation and personal inspection within a period of not more than one hour in the remaining six months of the apprenticeship period. All transcripts and other records filed with the board shall become a part of the board files.

4. If the applicant does not **[**appear for oral examination**] complete the application process** within the five years after his or her **[**graduation from an accredited institution of mortuary

science education**]** **completion of an approved program**, then he or she must file a new application and no fees paid previously shall apply toward the license fee.

5. Examinations required by this section and section 333.042 shall be held at least twice a year at times and places fixed by the board. The board shall by rule and regulation prescribe the standard for successful completion of the examinations.

6. Upon establishment of his or her qualifications as specified by this section or section 333.042, the board shall issue to the applicant a license to practice funeral directing or embalming, as the case may require, and shall register the applicant as a duly licensed funeral director or a duly licensed embalmer. Any person having the qualifications required by this section and section 333.042 may be granted both a license to practice funeral directing and to practice embalming.

7. The board shall, upon request, waive any requirement of this chapter and issue a temporary funeral director's license, valid for six months, to the surviving spouse or next of kin or the personal representative of a licensed funeral director, or to the spouse, next of kin, employee or conservator of a licensed funeral director disabled because of sickness, mental incapacity or injury.

333.042. APPLICATION AND EXAMINATION FEES FOR FUNERAL DIRECTORS, APPRENTICESHIP REQUIREMENTS — EXAMINATION CONTENT FOR APPLICANTS — APPRENTICESHIP DUTIES — APPEARANCE BEFORE BOARD — LIMITED LICENSE ONLY FOR CREMATION — EXEMPTIONS FROM APPRENTICESHIP. — 1. Every person desiring to enter the profession of funeral directing in this state shall make application with the state board of embalmers and funeral directors and pay the current application and examination fees. **Except as otherwise provided in section 41.950,** applicants not entitled to a license pursuant to section 333.051 shall serve an apprenticeship for at least twelve **consecutive** months in a funeral establishment licensed for the care and preparation for burial and transportation of the human dead in this state or in another state which has established standards for admission to practice funeral directing equal to, or more stringent than, the requirements for admission to practice funeral directing in this state. The applicant shall devote at least fifteen hours per week to his or her duties as an apprentice under the supervision of a Missouri licensed funeral director. Such applicant shall submit proof to the board, on forms provided by the board, that the applicant has arranged and conducted ten funeral services during the applicant's apprenticeship under the supervision of a Missouri licensed funeral director. Upon completion of the apprenticeship, the applicant shall appear before the board to be tested on the applicant's legal and practical knowledge of funeral directing, funeral home licensing, preneed funeral contracts and the care, custody, shelter, disposition and transportation of dead human bodies. Upon acceptance of the application and fees by the board, an applicant shall have twenty-four months to successfully complete the requirements for licensure found in this section or the application for licensure shall be canceled.

2. If a person applies for a limited license to work only in a funeral establishment which is licensed only for cremation, including transportation of dead human bodies to and from the funeral establishment, he or she shall make application, pay the current application and examination fee and successfully complete the Missouri law examination. He or she shall be exempt from the twelve-month apprenticeship **required by subsection 1 of this section** and the practical examination before the board. If a person has a limited license issued pursuant to this subsection, he or she may obtain a full funeral director's license if he or she fulfills the apprenticeship and successfully completes the funeral director practical examination.

3. If an individual is a Missouri licensed embalmer or has **[**graduated from an institute of mortuary science education**]** **completed a program** accredited by the American Board of Funeral Service Education **[**or**],** any successor organization **[**recognized by the United States Department of Education for funeral service education**]**, **or other accrediting entity as approved by the board** or has successfully completed a course of study in funeral directing

offered by **[**a college**]** **an institution** accredited by a recognized national, regional or state accrediting body and approved by the state board of embalmers and funeral directors, and desires to enter the profession of funeral directing in this state, the individual shall comply with all the requirements for licensure as a funeral director pursuant to subsection 1 of section 333.041 and subsection 1 of this section; however, the individual is exempt from the twelve-month apprenticeship required by subsection 1 of this section.

333.051. RECOGNITION OF PERSONS LICENSED IN OTHER STATES — FEES. — 1. Any **[**nonresident**]** individual holding a valid, unrevoked and unexpired license as a funeral director or embalmer in the state of his **or her** residence may be granted a license to practice funeral directing or embalming in this state on application to the board and on providing the board with such evidence as to his **or her** qualifications as is required by the board. **[**No license shall be granted to a nonresident applicant except one who resides in a county contiguous and adjacent to the state of Missouri and who is regularly engaged in the practice of funeral directing or embalming, as defined by this chapter, at funeral establishments within this state or in an establishment located in a county contiguous and adjacent to the state of Missouri, unless the law of the state of the applicant's residence authorizes the granting of licenses to practice funeral directing in such state to persons licensed as funeral directors under the law of the state of Missouri.**]**

2. Any individual holding a valid, unrevoked and unexpired license as an embalmer or funeral director in another state having requirements substantially similar to those existing in this state **[**who is or intends to become a resident of this state**]** may apply for a license to practice in this state by filing with the board a certified statement from the examining board of the state or territory in which the applicant holds his **or her** license showing the grade rating upon which **[**his**]** **the** license was granted, together with a recommendation, and the board shall grant the applicant a license upon his **or her** successful completion of an examination over Missouri laws as required in section 333.041 or section 333.042 if the board finds that the applicant's qualifications meet the requirements for funeral directors or embalmers in this state at the time the applicant was originally licensed in the other state.

3. A person holding a valid, unrevoked and unexpired license to practice funeral directing or embalming in another state or territory with requirements less than those of this state may, after five consecutive years of active experience as a licensed funeral director or embalmer in that state, apply for a license to practice in this state after passing a test to prove his **or her** proficiency, including but not limited to a knowledge of the laws and regulations of this state as to funeral directing and embalming.

333.061. NO FUNERAL ESTABLISHMENT TO BE OPERATED BY UNLICENSED PERSON — LICENSE REQUIREMENTS, APPLICATION PROCEDURE — LICENSE MAY BE SUSPENDED OR REVOKED OR NOT RENEWED. — 1. No funeral establishment shall be operated in this state unless the owner or operator thereof has a license issued by the board.

2. A license for the operation of a funeral establishment shall be issued by the board, if the board finds:

(1) That the establishment is under the general management and the supervision of a duly licensed funeral director;

(2) That all embalming performed therein is performed by or under the direct supervision of a duly licensed embalmer;

(3) That any place in the funeral establishment where embalming is conducted contains a preparation room with a sanitary floor, walls and ceiling, and adequate sanitary drainage and disposal facilities including running water, and complies with the sanitary standard prescribed by the department of health and senior services for the prevention of the spread of contagious, infectious or communicable diseases;

(4) Each funeral establishment shall have **[**available in the preparation or embalming room**]** a register book or log which shall be available at all times **[**in full view**]** for the board's inspector and **[**the name of each body embalmed, place, if other than at the establishment, the date and time that the embalming took place, the name and signature of the embalmer and the embalmer's license number shall be noted in the book**]** **that shall contain:**

(a) The name of each body that has been in the establishment;

(b) The date the body arrived at the establishment;

(c) If applicable, the place of embalming, if known; and

(d) If the body was embalmed at the establishment, the date and time that the embalming took place, and the name, signature, and license number of the embalmer; and

(5) The establishment complies with all applicable state, county or municipal zoning ordinances and regulations.

3. The board shall grant or deny each application for a license pursuant to this section within thirty days after it is filed. The applicant may request in writing up to two thirty-day extensions of the application, provided the request for an extension is received by the board prior to the expiration of the thirty-day application or extension period.

4. Licenses shall be issued pursuant to this section upon application and the payment of a funeral establishment fee and shall be renewed at the end of the licensing period on the establishment's renewal date.

5. The board may refuse to renew or may suspend or revoke any license issued pursuant to this section if it finds, after hearing, that the funeral establishment does not meet any of the requirements set forth in this section as conditions for the issuance of a license, or for the violation by the owner of the funeral establishment of any of the provisions of section 333.121. No new license shall be issued to the owner of a funeral establishment or to any corporation controlled by such owner for three years after the revocation of the license of the owner or of a corporation controlled by the owner. Before any action is taken pursuant to this subsection the procedure for notice and hearing as prescribed by section 333.121 shall be followed.

333.091. LICENSE TO BE DISPLAYED. — [Each establishment, funeral director or embalmer receiving a license under this chapter shall have recorded in the office of the local registrar of vital statistics of the registration district in which the licensee practices.**]** All licenses or registrations, or duplicates thereof, issued pursuant to this chapter shall be displayed at each place of business.

333.151. BOARD MEMBERS — QUALIFICATIONS — TERMS — VACANCIES. — 1. The state board of embalmers and funeral directors shall consist of **[**ten**]** **six** members, including one voting public member appointed by the governor with the advice and consent of the senate. Each member, other than the public member, appointed shall possess either a license to practice embalming or a license to practice funeral directing in this state or both said licenses and shall have been actively engaged in the practice of embalming or funeral directing for a period of five years next before his or her appointment. Each member shall be a United States citizen, a resident of this state for a period of at least one year, a qualified voter of this state and shall be of good moral character. Not more than **[**five**]** **three** members of the board shall be of the same political party. The nonpublic members shall be appointed by the governor, with the advice and consent of the senate**[**, one from each of the state's congressional districts be of good moral character and submit an audited financial statement of their funeral establishment by an independent auditor for the previous five years. This audited financial statement must include all at-need and preneed business**]**. **A majority of the members shall constitute a quorum. Members shall be appointed to represent diversity in gender, race, ethnicity, and the various geographic regions of the state.**

2. Each member of the board shall serve for a term of five years. Any vacancy on the board shall be filled by the governor and the person appointed to fill the vacancy shall possess

the qualifications required by this chapter and shall serve until the end of the unexpired term of his or her predecessor, if any.

3. The public member shall be at the time of his or her appointment a person who is not and never was a member of any profession licensed or regulated pursuant to this chapter or the spouse of such person; and a person who does not have and never has had a material, financial interest in either the providing of the professional services regulated by this chapter, or an activity or organization directly related to any profession licensed or regulated pursuant to this chapter. All members, including public members, shall be chosen from lists submitted by the director of the division of professional registration. The duties of the public member shall not include the determination of the technical requirements to be met for licensure or whether any person meets such technical requirements or of the technical competence or technical judgment of a licensee or a candidate for licensure.

333.171. BOARD MEETINGS — NOTICE — SEAL. — The board shall hold at least two regular meetings each year for the purpose of administering examinations at times and places fixed by the board. Other meetings shall be held at the times fixed by regulations of the board or on the call of the chairman of the board. Notice of the time and place of each regular or special meeting shall be mailed by the executive secretary to each member of the board at least five days before the date of the meeting. **[**At all meetings of the board three members constitute a quorum.**]** The board may adopt and use a common seal.

335.036. DUTIES OF BOARD — FEES SET, HOW — FUND, SOURCE, USE, FUNDS TRANSFERRED FROM, WHEN — RULEMAKING. — 1. The board shall:

(1) Elect for a one-year term a president and a secretary, who shall also be treasurer, and the board may appoint, employ and fix the compensation of a legal counsel and such board personnel as defined in subdivision (4) of subsection 10 of section 324.001 as are necessary to administer the provisions of sections 335.011 to 335.096;

(2) Adopt and revise such rules and regulations as may be necessary to enable it to carry into effect the provisions of sections 335.011 to 335.096;

(3) Prescribe minimum standards for educational programs preparing persons for licensure pursuant to the provisions of sections 335.011 to 335.096;

(4) Provide for surveys of such programs every five years and in addition at such times as it may deem necessary;

(5) Designate as "approved" such programs as meet the requirements of sections 335.011 to 335.096 and the rules and regulations enacted pursuant to such sections; and the board shall annually publish a list of such programs;

(6) Deny or withdraw approval from educational programs for failure to meet prescribed minimum standards;

(7) Examine, license, and cause to be renewed the licenses of duly qualified applicants;

(8) Cause the prosecution of all persons violating provisions of sections 335.011 to 335.096, and may incur such necessary expenses therefor;

(9) Keep a record of all the proceedings; and make an annual report to the governor and to the director of the department of insurance, financial institutions and professional registration;

(10) Establish an impaired nurse program.

2. The board shall set the amount of the fees which this chapter authorizes and requires by rules and regulations. The fees shall be set at a level to produce revenue which shall not substantially exceed the cost and expense of administering this chapter.

3. All fees received by the board pursuant to the provisions of sections 335.011 to 335.096 shall be deposited in the state treasury and be placed to the credit of the state board of nursing fund. All administrative costs and expenses of the board shall be paid from appropriations made for those purposes. **The board is authorized to provide funding for the nursing education incentive program established in sections 335.200 to 335.203.**

4. The provisions of section 33.080 to the contrary notwithstanding, money in this fund shall not be transferred and placed to the credit of general revenue until the amount in the fund at the end of the biennium exceeds two times the amount of the appropriation from the board's funds for the preceding fiscal year or, if the board requires by rule, permit renewal less frequently than yearly, then three times the appropriation from the board's funds for the preceding fiscal year. The amount, if any, in the fund which shall lapse is that amount in the fund which exceeds the appropriate multiple of the appropriations from the board's funds for the preceding fiscal year.

5. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this chapter shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. All rulemaking authority delegated prior to August 28, 1999, is of no force and effect and repealed. Nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to August 28, 1999, if it fully complied with all applicable provisions of law. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

335.099. LICENSED PRACTICAL NURSE, ADDITIONAL AUTHORIZED ACTS. — Any licensed practical nurse, as defined in section 335.016:

(1) Who is an approved instructor for the level 1 medication aid program shall be qualified to teach the insulin administration course under chapter 198;

(2) Shall be qualified to perform diabetic nail care and monthly onsite reviews of basic personal care recipients, as required by the department of social services, of a resident of a residential care facility or assisted living facility, as defined in chapter 198;

(3) Shall be qualified to perform dietary oversight, as required by the department of health and senior services, of a resident of a residential care facility or assisted living facility, as defined in chapter 198.

335.200. NURSE EDUCATION INCENTIVE GRANTS — DEFINITIONS. — As used in sections 335.200 to **[**335.209**] 335.203**, the following terms mean:

(1) "Board", the **[**Missouri coordinating board for higher education**] state board of nursing**;

(2) **"Department", the Missouri department of higher education;**

(3) "Eligible **[**nursing program**] institution of higher education**", **a Missouri institution of higher education accredited by the higher learning commission of the north central association which offers** a nursing education program **[**accredited under this chapter**]**;

[(3) "Fund", the nurse training incentive fund, established in section 335.203;**]**

(4) "**[**Incentive**]** Grant", a grant awarded to **[**a nurse education program**] an eligible institution of higher education** under the guidelines set forth in sections **335.200 to** 335.203 **[**to 335.209;

(5) "Nontraditional student", a person admitted to an eligible nursing program that is older than twenty-two years of age at the time he is admitted to the nursing program;

(6) "Nurse", a person holding a license as a registered nurse, pursuant to this chapter; and

(7) "Professional nursing education program", a program of education accredited by the state board of nursing, pursuant to this chapter, designed to prepare persons for licensure as registered professional nurses with an enrollment of no less than sixty-five percent of the enrollment approved by the state board of nursing**]**.

335.203. NURSING EDUCATION INCENTIVE PROGRAM ESTABLISHED — GRANTS AUTHORIZED, LIMIT, ELIGIBILITY — ADMINISTRATION — RULEMAKING AUTHORITY. — **[**The "Nurse Training Incentive Fund" is hereby established in the state treasury. The fund shall

be administered by the coordinating board for higher education. The board shall base its appropriation request on enrollment, graduation and licensure figures for the previous year. The board may accept funds from private, federal and other sources for the purposes of sections 335.200 to 335.209. All appropriations, private donations, and other funds provided to the board for the implementation of sections 335.200 to 335.209 shall be placed in the nurse training incentive fund. Notwithstanding the provisions of section 33.080 to the contrary, funds in the nurse training incentive fund shall not revert to the general revenue fund. Interest accruing to the fund shall be part of the fund. Grants provided pursuant to section 335.206 shall be made within the amounts appropriated therefor.**] 1. There is hereby established the "Nursing Education Incentive Program" within the department of higher education.**

2. Subject to appropriation, grants shall be awarded through the nursing education incentive program to eligible institutions of higher education based on criteria jointly determined by the board and the department. Grant award amounts shall not exceed one hundred fifty thousand dollars. No campus shall receive more than one grant per year.

3. To be considered for a grant, an eligible institution of higher education shall offer a program of nursing that meets the predetermined category and area of need as established by the board and the department under subsection 4 of this section.

4. The board and the department shall determine categories and areas of need for designating grants to eligible institutions of higher education. In establishing categories and areas of need, the board and department may consider criteria including, but not limited to:

(1) Data generated from licensure renewal data and the department of health and senior services; and

(2) National nursing statistical data and trends that have identified nursing shortages.

5. The department shall be the administrative agency responsible for implementation of the program established under sections 335.200 to 335.203, and shall promulgate reasonable rules for the exercise of its functions and the effectuation of the purposes of sections 335.200 to 335.203. The department shall, by rule, prescribe the form, time, and method of filing applications and shall supervise the processing of such applications.

6. Any rule or portion of a rule, as that term is defined in section 536.010, 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 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 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, 2011, shall be invalid and void.

338.010. PRACTICE OF PHARMACY DEFINED — AUXILIARY PERSONNEL — WRITTEN PROTOCOL REQUIRED, WHEN — NONPRESCRIPTION DRUGS — RULEMAKING AUTHORITY — THERAPEUTIC PLAN REQUIREMENTS — VETERINARIAN DEFINED. — 1. The "practice of pharmacy" means the interpretation, implementation, and evaluation of medical prescription orders, including **any legend drugs under 21 U.S.C. Section 353;** receipt, transmission, or handling of such orders or facilitating the dispensing of such orders; the designing, initiating, implementing, and monitoring of a medication therapeutic plan as defined by the prescription order so long as the prescription order is specific to each patient for care by a pharmacist; the compounding, dispensing, labeling, and administration of drugs and devices pursuant to medical prescription orders and administration of viral influenza, pneumonia, shingles and meningitis vaccines by written protocol authorized by a physician for persons twelve years of age or older as authorized by rule or the administration of pneumonia, shingles, and meningitis vaccines by written protocol authorized by a physician for a specific patient as authorized by rule; the participation in drug selection according to state law and participation in drug utilization reviews;

the proper and safe storage of drugs and devices and the maintenance of proper records thereof; consultation with patients and other health care practitioners**, and veterinarians and their clients about legend drugs,** about the safe and effective use of drugs and devices; and the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management and control of a pharmacy. No person shall engage in the practice of pharmacy unless he is licensed under the provisions of this chapter. This chapter shall not be construed to prohibit the use of auxiliary personnel under the direct supervision of a pharmacist from assisting the pharmacist in any of his **or her** duties. This assistance in no way is intended to relieve the pharmacist from his **or her** responsibilities for compliance with this chapter and he **or she** will be responsible for the actions of the auxiliary personnel acting in his **or her** assistance. This chapter shall also not be construed to prohibit or interfere with any legally registered practitioner of medicine, dentistry, **or** podiatry, or veterinary medicine **only for use in animals**, or the practice of optometry in accordance with and as provided in sections 195.070 and 336.220 in the compounding**, administering, prescribing,** or dispensing of his **or her** own prescriptions.

2. Any pharmacist who accepts a prescription order for a medication therapeutic plan shall have a written protocol from the physician who refers the patient for medication therapy services. The written protocol and the prescription order for a medication therapeutic plan shall come from the physician only, and shall not come from a nurse engaged in a collaborative practice arrangement under section 334.104, or from a physician assistant engaged in a supervision agreement under section 334.735.

3. Nothing in this section shall be construed as to prevent any person, firm or corporation from owning a pharmacy regulated by sections 338.210 to 338.315, provided that a licensed pharmacist is in charge of such pharmacy.

4. Nothing in this section shall be construed to apply to or interfere with the sale of nonprescription drugs and the ordinary household remedies and such drugs or medicines as are normally sold by those engaged in the sale of general merchandise.

5. No health carrier as defined in chapter 376 shall require any physician with which they contract to enter into a written protocol with a pharmacist for medication therapeutic services.

6. This section shall not be construed to allow a pharmacist to diagnose or independently prescribe pharmaceuticals.

7. The state board of registration for the healing arts, under section 334.125, and the state board of pharmacy, under section 338.140, shall jointly promulgate rules regulating the use of protocols for prescription orders for medication therapy services and administration of viral influenza vaccines. Such rules shall require protocols to include provisions allowing for timely communication between the pharmacist and the referring physician, and any other patient protection provisions deemed appropriate by both boards. In order to take effect, such rules shall be approved by a majority vote of a quorum of each board. Neither board shall separately promulgate rules regulating the use of protocols for prescription orders for medication therapy services and administration of viral influenza vaccines. Any rule or portion of a rule, as that term is defined in section 536.010, 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 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 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, 2007, shall be invalid and void.

8. The state board of pharmacy may grant a certificate of medication therapeutic plan authority to a licensed pharmacist who submits proof of successful completion of a board-approved course of academic clinical study beyond a bachelor of science in pharmacy, including but not limited to clinical assessment skills, from a nationally accredited college or university, or

a certification of equivalence issued by a nationally recognized professional organization and approved by the board of pharmacy.

9. Any pharmacist who has received a certificate of medication therapeutic plan authority may engage in the designing, initiating, implementing, and monitoring of a medication therapeutic plan as defined by a prescription order from a physician that is specific to each patient for care by a pharmacist.

10. Nothing in this section shall be construed to allow a pharmacist to make a therapeutic substitution of a pharmaceutical prescribed by a physician unless authorized by the written protocol or the physician's prescription order.

11. "Veterinarian", "doctor of veterinary medicine", "practitioner of veterinary medicine", "DVM", "VMD", "BVSe", "BVMS", "BSe (Vet Science)", "VMB", "MRCVS", or an equivalent title means a person who has received a doctor's degree in veterinary medicine from an accredited school of veterinary medicine or holds an Educational Commission for Foreign Veterinary Graduates (EDFVG) certificate issued by the American Veterinary Medical Association (AVMA).

338.140. BOARD OF PHARMACY, POWERS, DUTIES — ADVISORY COMMITTEE, APPOINTMENT, DUTIES — LETTERS OF REPRIMAND, CENSURE OR WARNING. — 1. The board of pharmacy shall have a common seal, and shall have power to adopt such rules and bylaws not inconsistent with law as may be necessary for the regulation of its proceedings and for the discharge of the duties imposed pursuant to sections 338.010 to 338.198, and shall have power to employ an attorney to conduct prosecutions or to assist in the conduct of prosecutions pursuant to sections 338.010 to 338.198.

2. The board shall keep a record of its proceedings.

3. The board of pharmacy shall make annually to the governor and, upon written request, to persons licensed pursuant to the provisions of this chapter a written report of its proceedings.

4. The board of pharmacy shall appoint an advisory committee composed of **[**five**]** **six** members, one of whom shall be a representative of pharmacy but who shall not be a member of the pharmacy board, three of whom shall be representatives of wholesale drug distributors as defined in section 338.330, **[**and**]** one of whom shall be a representative of drug manufacturers**, and one of whom shall be a licensed veterinarian recommended to the board of pharmacy by the board of veterinary medicine**. The committee shall review and make recommendations to the board on the merit of all rules and regulations dealing with pharmacy distributors, wholesale drug distributors **[**and**],** drug manufacturers**, and veterinary legend drugs** which are proposed by the board.

5. A majority of the board shall constitute a quorum for the transaction of business.

6. Notwithstanding any other provisions of law to the contrary, the board may issue letters of reprimand, censure or warning to any holder of a license or registration required pursuant to this chapter for any violations that could result in disciplinary action as defined in section 338.055.

338.150. INSPECTIONS BY AUTHORIZED REPRESENTATIVES OF BOARD, WHERE. — Any person authorized by the board of pharmacy is hereby given the right of entry and inspection upon all open premises purporting or appearing to be drug or chemical stores, apothecary shops, pharmacies or places of business for exposing for sale, or the dispensing or selling of drugs, pharmaceuticals, medicines, chemicals or poisons or for the compounding of physicians' **or veterinarians'** prescriptions.

338.210. PHARMACY DEFINED — PRACTICE OF PHARMACY TO BE CONDUCTED AT PHARMACY LOCATION — RULEMAKING AUTHORITY. — 1. Pharmacy refers to any location where the practice of pharmacy occurs or such activities are offered or provided by a pharmacist

or another acting under the supervision and authority of a pharmacist, including every premises or other place:

(1) Where the practice of pharmacy is offered or conducted;

(2) Where drugs, chemicals, medicines, **any legend drugs under 21 U.S.C. Section 353,** prescriptions, or poisons are compounded, prepared, dispensed or sold or offered for sale at retail;

(3) Where the words "pharmacist", "apothecary", "drugstore", "drugs", and any other symbols, words or phrases of similar meaning or understanding are used in any form to advertise retail products or services;

(4) Where patient records or other information is maintained for the purpose of engaging or offering to engage in the practice of pharmacy or to comply with any relevant laws regulating the acquisition, possession, handling, transfer, sale or destruction of drugs, chemicals, medicines, prescriptions or poisons.

2. All activity or conduct involving the practice of pharmacy as it relates to an identifiable prescription or drug order shall occur at the pharmacy location where such identifiable prescription or drug order is first presented by the patient or the patient's authorized agent for preparation or dispensing, unless otherwise expressly authorized by the board.

3. The requirements set forth in subsection 2 of this section shall not be construed to bar the complete transfer of an identifiable prescription or drug order pursuant to a verbal request by or the written consent of the patient or the patient's authorized agent.

4. The board is hereby authorized to enact rules waiving the requirements of subsection 2 of this section and establishing such terms and conditions as it deems necessary, whereby any activities related to the preparation, dispensing or recording of an identifiable prescription or drug order may be shared between separately licensed facilities.

5. If a violation of this chapter or other relevant law occurs in connection with or adjunct to the preparation or dispensing of a prescription or drug order, any permit holder or pharmacist-in-charge at any facility participating in the preparation, dispensing, or distribution of a prescription or drug order may be deemed liable for such violation.

6. Nothing in this section shall be construed to supersede the provisions of section 197.100.

338.220. OPERATION OF PHARMACY WITHOUT PERMIT OR LICENSE UNLAWFUL — APPLICATION FOR PERMIT, CLASSIFICATIONS, FEE — DURATION OF PERMIT. — 1. It shall be unlawful for any person, copartnership, association, corporation or any other business entity to open, establish, operate, or maintain any pharmacy as defined by statute without first obtaining a permit or license to do so from the Missouri board of pharmacy. A permit shall not be required for an individual licensed pharmacist to perform nondispensing activities outside of a pharmacy, as provided by the rules of the board. A permit shall not be required for an individual licensed pharmacist to administer drugs, vaccines, and biologicals by protocol, as permitted by law, outside of a pharmacy. The following classes of pharmacy permits or licenses are hereby established:

(1) Class A: Community/ambulatory;
(2) Class B: Hospital outpatient pharmacy;
(3) Class C: Long-term care;
(4) Class D: Nonsterile compounding;
(5) Class E: Radio pharmaceutical;
(6) Class F: Renal dialysis;
(7) Class G: Medical gas;
(8) Class H: Sterile product compounding;
(9) Class I: Consultant services;
(10) Class J: Shared service;
(11) Class K: Internet;
(12) Class L: Veterinary.

2. Application for such permit or license shall be made upon a form furnished to the applicant; shall contain a statement that it is made under oath or affirmation and that its representations are true and correct to the best knowledge and belief of the person signing same, subject to the penalties of making a false affidavit or declaration; and shall be accompanied by a permit or license fee. The permit or license issued shall be renewable upon payment of a renewal fee. Separate applications shall be made and separate permits or licenses required for each pharmacy opened, established, operated, or maintained by the same owner.

3. All permits, licenses or renewal fees collected pursuant to the provisions of sections 338.210 to 338.370 shall be deposited in the state treasury to the credit of the Missouri board of pharmacy fund, to be used by the Missouri board of pharmacy in the enforcement of the provisions of sections 338.210 to 338.370, when appropriated for that purpose by the general assembly.

4. Class L: veterinary permit shall not be construed to prohibit or interfere with any legally registered practitioner of veterinary medicine in the compounding**, administering, prescribing,** or dispensing of their own prescriptions**, or medicine, drug, or pharmaceutical product to be used for animals**.

5. **[**Notwithstanding any other law to the contrary**] Except for any legend drugs under 21 U.S.C. Section 353**, the provisions of this section shall not apply to the sale, dispensing, or filling of a pharmaceutical product or drug used for treating animals.

338.240. EVIDENCE REQUIRED FOR ISSUANCE OF PERMIT — VETERINARY PERMIT PHARMACY, DESIGNATION OF SUPERVISING REGISTERED PHARMACIST, WHEN. — 1. Upon evidence satisfactory to the said Missouri board of pharmacy:

(1) That the pharmacy for which a permit, or renewal thereof, is sought, will be conducted in full compliance with sections 338.210 to 338.300, with existing laws, and with the rules and regulations as established hereunder by said board;

(2) That the equipment and facilities of such pharmacy are such that it can be operated in a manner not to endanger the public health or safety;

(3) That such pharmacy is equipped with proper pharmaceutical and sanitary appliances and kept in a clean, sanitary and orderly manner;

(4) That the management of said pharmacy is under the supervision of either a registered pharmacist, or an owner or employee of the owner, who has at his **or her** place of business a registered pharmacist employed for the purpose of compounding physician's **or veterinarian's** prescriptions in the event any such prescriptions are compounded or sold;

(5) That said pharmacy is operated in compliance with the rules and regulations legally prescribed with respect thereto by the Missouri board of pharmacy, a permit or renewal thereof shall be issued to such persons as the said board of pharmacy shall deem qualified to conduct such pharmacy.

2. In lieu of a registered pharmacist as required by subdivision (4) of subsection 1 of this section, a pharmacy permit holder that only holds a class L veterinary permit and no other pharmacy permit, may designate a supervising registered pharmacist who shall be responsible for reviewing the activities and records of the class L pharmacy permit holder as established by the board by rule. The supervising registered pharmacist shall not be required to be physically present on site during the business operations of a class L pharmacy permit holder identified in subdivision (5) of subsection 1 of this section when noncontrolled legend drugs under 21 U.S.C. Section 353 are being dispensed for use in animals, but shall be specifically present on site when any noncontrolled drugs for use in animals are being compounded.

338.315. RECEIPT OF DRUGS FROM UNLICENSED DISTRIBUTOR OR PHARMACY, UNLAWFUL — PENALTY. — It shall be unlawful for any pharmacist, pharmacy owner or person employed by a pharmacy to knowingly purchase or receive any legend drugs **under 21 U.S.C.**

Section 353 from other than a licensed or registered drug distributor or licensed pharmacy. Any person who violates the provisions of this section shall, upon conviction, be adjudged guilty of a class A misdemeanor. Any subsequent conviction shall constitute a class D felony.

338.330. DEFINITIONS. — As used in sections 338.300 to 338.370, the following terms mean:

(1) "Out-of-state wholesale drug distributor", a wholesale drug distributor with no physical facilities located in the state;

(2) "Pharmacy distributor", any licensed pharmacy, as defined in section 338.210, engaged in the delivery or distribution of legend drugs to any other licensed pharmacy where such delivery or distribution constitutes at least five percent of the total gross sales of such pharmacy;

(3) **"Legend drug":**

(a) Any drug or biological product:

a. Subject to Section 503(b) of the Federal Food, Drug and Cosmetic Act, including finished dosage forms and active ingredients subject to such section;

b. Required under federal law to be labeled with one of the following statements prior to being dispensed or delivered:

(i) "Caution: Federal law prohibits dispensing without prescription";

(ii) "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(iii) "Rx only";

c. Required by any applicable federal or state law or regulation to be dispensed by prescription only or that is restricted to use or dispensed by practitioners only;

(b) The term "drug", "prescription drug", or "legend drug" shall not include:

a. An investigational new drug, as defined in 21 CFR 312.3(b), that is being utilized for the purposes of conducting a clinical trial or investigation of such drug or product that is governed by and being conducted under 21 CFR 312, et seq.;

b. Any drug product being utilized for the purposes of conducting a clinical trial or investigation that is governed by and being conducted under 21 CFR 312, et seq.;

c. Any drug product being utilized for the purposes of conducting a clinical trial or investigation that is governed or approved by an institutional review board subject to 21 CFR Part 56 or 45 CFR Part 46;

(4) "Wholesale drug distributor", anyone engaged in the delivery or distribution of legend drugs from any location and who is involved in the actual, constructive or attempted transfer of a drug or drug-related device in this state, other than to the ultimate consumer. This shall include, but not be limited to, drug wholesalers, repackagers and manufacturers which are engaged in the delivery or distribution of drugs in this state, with facilities located in this state or in any other state or jurisdiction. A wholesale drug distributor shall not include any common carrier or individual hired solely to transport legend drugs. Any locations where drugs are delivered on a consignment basis, as defined by the board, shall be exempt from licensure as a drug distributor, and those standards of practice required of a drug distributor but shall be open for inspection by board of pharmacy representatives as provided for in section 338.360.

339.190. REAL ESTATE LICENSEE, IMMUNITY FROM LIABILITY, WHEN. — 1. A real estate licensee shall be immune from liability for statements made by engineers, land surveyors, geologists, environmental hazard experts, wood-destroying inspection and control experts, termite inspectors, mortgage brokers, home inspectors, or other home inspection experts unless:

(1) The statement was made by a person employed by the licensee or the broker with whom the licensee is associated;

(2) The person making the statement was selected by and engaged by the licensee**. For purposes of this section, the ordering of a report or inspection alone shall not constitute selecting or engaging a person**; or

(3) The licensee knew prior to closing that the statement was false or the licensee acted in reckless disregard as to whether the statement was true or false.

2. A real estate licensee shall not be the subject of any action and no action shall be instituted against a real estate licensee for any information contained in a seller's disclosure for residential, commercial, industrial, farm, or vacant real estate furnished to a buyer, unless the real estate licensee is a signatory to such or the licensee knew prior to closing that the statement was false or the licensee acted in reckless disregard as to whether the statement was true or false.

3. A real estate licensee acting as a courier of documents referenced in this section shall not be considered to be making the statements contained in such documents.

429.015. LIEN AUTHORIZED FOR ARCHITECTURAL, PROFESSIONAL ENGINEERING, LAND SURVEY, OR LANDSCAPE ARCHITECTURE — EXTENT OF LIEN — PRIORITY — DEFENSES. — 1. Every registered architect or corporation registered to practice architecture, every registered professional engineer or corporation registered to practice professional engineering, every registered landscape architect or corporation registered to practice landscape architecture, and every registered land surveyor or corporation registered to practice land surveying, who does any landscape architectural, architectural, engineering or land surveying work upon or performs any landscape architectural, architectural, engineering or land surveying service directly connected with the erection or repair of any building or other improvement upon land under or by virtue of any contract with the owner or lessee thereof, or such owner's or lessee's agent, trustee, contractor or subcontractor, or without a contract if ordered by a city, town, village or county having a charter form of government to abate the conditions that caused a structure on that property to be deemed a dangerous building under local ordinances pursuant to section 67.410, upon complying with the provisions of this chapter, shall have for such person's landscape architectural, architectural, engineering or land surveying work or service so done or performed, a lien upon the building or other improvements and upon the land belonging to the owner or lessee on which the building or improvements are situated, to the extent of **[**one acre**] three acres**. If the building or other improvement is upon any lot of land in any town, city or village, then the lien shall be upon such building or other improvements, and the lot or land upon which the building or other improvements are situated, to secure the payment for the landscape architectural, architectural, engineering or land surveying work or service so done or performed. For purposes of this section, a corporation engaged in the practice of architecture, engineering, landscape architecture, or land surveying, shall be deemed to be registered if the corporation itself is registered under the laws of this state to practice architecture, engineering or land surveying.

2. Every mechanic or other person who shall do or perform any work or labor upon or furnish any material or machinery for the digging of a well to obtain water under or by virtue of any contract with the owner or lessee thereof, or such owner's or lessee's agent, trustee, contractor or subcontractor, upon complying with the provisions of sections 429.010 to 429.340 shall have for such person's work or labor done, or materials or machinery furnished, a lien upon the land belonging to such owner or lessee on which the same are situated, to the extent of **[**one acre**] three acres**, to secure the payment of such work or labor done, or materials or machinery furnished as aforesaid.

3. Every mechanic or other person who shall do or perform any work or labor upon, or furnish any material, fixtures, engine, boiler or machinery, for the purpose of demolishing or razing a building or structure under or by virtue of any contract with the owner or lessee thereof, or such owner's or lessee's agent, trustee, contractor or subcontractor, or without a contract if ordered by a city, town, village or county having a charter form of government to abate the conditions that caused a structure on that property to be deemed a dangerous building under local ordinances pursuant to section 67.410, upon complying with the provisions of sections 429.010 to 429.340, shall have for such person's work or labor done, or materials, fixtures, engine, boiler or machinery furnished, a lien upon the land belonging to such owner or lessee on which the same are situated, to the extent of **[**one acre**] three acres**. If the building or buildings to be

demolished or razed are upon any lot of land in any town, city or village, then the lien shall be upon the lot or lots or land upon which the building or other improvements are situated, to secure the payment for the labor and materials performed.

4. The provisions of sections 429.030 to 429.060 and sections 429.080 to 429.430 applicable to liens of mechanics and other persons shall apply to and govern the procedure with respect to the liens provided for in subsections 1, 2 and 3 of this section.

5. Any design professional or corporation authorized to have lien rights under subsection 1 of this section shall have a lien upon the building or other improvement and upon the land, whether or not actual construction of the planned work or improvement has commenced if:

(1) The owner or lessee thereof, or such owner's or lessee's agent or trustee, contracted for such professional services directly with the design professional or corporation asserting the lien; and

(2) The owner or lessee is the owner or lessee of such real property either at the time the contract is made or at the time the lien is filed.

6. Priority between a design professional or corporation lien claimant and any other mechanic's lien claimant shall be determined pursuant to the provisions of section 429.260 on a pro rata basis.

7. In any civil action, the owner or lessee may assert defenses which include that the actual construction of the planned work or improvement has not been performed in compliance with the professional services contract, is impracticable or is economically infeasible.

8. The agreement is in writing.

436.405. DEFINITIONS. — 1. As used in sections 436.400 to 436.520, unless the context otherwise requires, the following terms shall mean:

(1) "Beneficiary", the individual who is to be the subject of the disposition or who will receive funeral services, facilities, or merchandise described in a preneed contract;

(2) **"Board", the board of embalmers and funeral directors;**

(3) "Guaranteed contract", a preneed contract in which the seller promises, assures, or guarantees to the purchaser that all or any portion of the costs for the disposition, services, facilities, or merchandise identified in a preneed contract will be no greater than the amount designated in the contract upon the preneed beneficiary's death or that such costs will be otherwise limited or restricted;

[(3)**] (4)** "Insurance-funded preneed contract", a preneed contract which is designated to be funded by payments or proceeds from an insurance policy or **[**single premium**] a deferred** annuity contract **that is not classified as a variable annuity and has death benefit proceeds that are never less than the sum of premiums paid**;

[(4)**] (5)** "Joint account-funded preneed contract", a preneed contract which designates that payments for the preneed contract made by or on behalf of the purchaser will be deposited and maintained in a joint account in the names of the purchaser and seller, as provided in this chapter;

[(5)**] (6)** "Market value", a fair market value:

(a) As to cash, the amount thereof;

(b) As to a security as of any date, the price for the security as of that date obtained from a generally recognized source, or to the extent no generally recognized source exists, the price to sell the security in an orderly transaction between unrelated market participants at the measurement date; and

(c) As to any other asset, the price to sell the asset in an orderly transaction between unrelated market participants at the measurement date consistent with statements of financial accounting standards;

[(6)**] (7)** "Nonguaranteed contract", a preneed contract in which the seller does not promise, assure, or guarantee that all or any portion of the costs for the disposition, facilities, service, or merchandise identified in a preneed contract will be limited to the amount designated

in the contract upon the preneed beneficiary's death or that such costs will be otherwise limited or restricted;

[(7)**] (8)** "Preneed contract", any contract or other arrangement which provides for the final disposition in Missouri of a dead human body, funeral or burial services or facilities, or funeral merchandise, where such disposition, services, facilities, or merchandise are not immediately required. Such contracts include, but are not limited to, agreements providing for a membership fee or any other fee for the purpose of furnishing final disposition, funeral or burial services or facilities, or funeral merchandise at a discount or at a future date;

[(8)**] (9)** "Preneed trust", a trust to receive deposits of, administer, and disburse payments received under preneed contracts, together with income thereon;

[(9)**] (10)** "Purchaser", the person who is obligated to pay under a preneed contract;

[(10)**] (11)** "Trustee", the trustee of a preneed trust, including successor trustees;

[(11)**] (12)** "Trust-funded preneed contract", a preneed contract which provides that payments for the preneed contract shall be deposited and maintained in trust.

2. All terms defined in chapter 333 shall be deemed to have the same meaning when used in sections 436.400 to 436.520.

436.412. VIOLATIONS, DISCIPLINARY ACTIONS AUTHORIZED — GOVERNING LAW FOR CONTRACTS. — Each preneed contract made before August 28, 2009, and all payments and disbursements under such contract shall continue to be governed by this chapter as the chapter existed at the time the contract was made. Any licensee or registrant of the board may be disciplined for violation of any provision of sections 436.005 to 436.071 within the applicable statute of limitations. **[**In addition, the provisions of section 436.031, as it existed on August 27, 2009, shall continue to govern disbursements to the seller from the trust and payment of trust expenses.**]** Joint accounts in existence as of August 27, 2009, shall continue to be governed by the provisions of section 436.053, as that section existed on August 27, 2009.

436.445. TRUSTEE NOT TO MAKE DECISIONS, WHEN. — A trustee of any preneed trust, including trusts established before August 28, 2009, shall not after August 28, 2009, make any decisions to invest any trust fund with:

(1) The spouse of the trustee;

(2) The descendants, siblings, parents, or spouses of a seller or an officer, manager, director or employee of a seller, provider, or preneed agent;

(3) Agents**, other than authorized external investment advisors as authorized by section 436.440,** or attorneys of a trustee, seller, or provider; or

(4) A corporation or other person or enterprise in which the trustee, seller, or provider owns a controlling interest or has an interest that might affect the trustee's judgment.

436.450. INSURANCE-FUNDED PRENEED CONTRACT REQUIREMENTS. — 1. An insurance-funded preneed contract shall comply with sections 436.400 to 436.520 and the specific requirements of this section.

2. A seller, provider, or any preneed agent shall not receive or collect from the purchaser of an insurance-funded preneed contract any amount in excess of what is required to pay the premiums on the insurance policy as assessed or required by the insurer as premium payments for the insurance policy except for any amount required or authorized by this chapter or by rule. A seller shall not receive or collect any administrative or other fee from the purchaser for or in connection with an insurance-funded preneed contract, other than those fees or amounts assessed by the insurer. As of August 29, 2009, no preneed seller, provider, or agent shall use any existing preneed contract as collateral or security pledged for a loan or take preneed funds of any existing preneed contract as a loan for any purpose other than as authorized by this chapter.

3. Payments collected by or on behalf of a seller for an insurance-funded preneed contract shall be promptly remitted to the insurer or the insurer's designee as required by the insurer;

provided that payments shall not be retained or held by the seller or preneed agent for more than thirty days from the date of receipt.

4. It is unlawful for a seller, provider, or preneed agent to procure or accept a loan against any insurance contract used to fund a preneed contract.

5. Laws regulating insurance shall not apply to preneed contracts, but shall apply to any insurance or **[**single premium**]** annuity sold with a preneed contract; provided, however, the provisions of **[**this act**] sections 436.400 to 436.520** shall not apply to **[**single premium**]** annuities or insurance polices regulated by chapters 374, 375, and 376 used to fund preneed funeral agreements, contracts, or programs.

6. This section shall apply to all preneed contracts including those entered into before August 28, 2009.

7. For any insurance-funded preneed contract sold after August 28, 2009, the following shall apply:

(1) The purchaser or beneficiary shall be the owner of the insurance policy purchased to fund a preneed contract; and

(2) An insurance-funded preneed contract shall be valid and enforceable only if the seller or provider is named as the beneficiary or assignee of the life insurance policy funding the contract.

8. If the proceeds of the life insurance policy exceed the actual cost of the goods and services provided pursuant to the nonguaranteed preneed contract, any overage shall be paid to the estate of the beneficiary, or, if the beneficiary received public assistance, to the state of Missouri.

436.455. JOINT ACCOUNT-FUNDED PRENEED CONTRACT REQUIREMENTS. — 1. A joint account-funded preneed contract shall comply with sections 436.400 to 436.520 and the specific requirements of this section.

2. In lieu of a trust-funded or insurance-funded preneed contract, the seller and the purchaser may agree in writing that all funds paid by the purchaser or beneficiary for the preneed contract shall be deposited with a financial institution chartered and regulated by the federal or state government authorized to do business in Missouri in an account in the joint names and under the joint control of the seller and purchaser, beneficiary or party holding power of attorney over the beneficiary's estate**, or in an account titled in the beneficiary's name and payable on the beneficiary's death to the seller**. There shall be a separate joint account established for each preneed contract sold or arranged under this section. Funds shall only be withdrawn or paid from the account upon the signatures of both the seller and the purchaser or under a pay-on-death designation or as required to pay reasonable expenses of administering the account.

3. All consideration paid by the purchaser under a joint account-funded contract shall be deposited into a joint account as authorized by this section within ten days of receipt of payment by the seller.

4. The financial institution shall hold, invest, and reinvest funds deposited under this section in other accounts offered to depositors by the financial institutions as provided in the written agreement of the purchaser and the seller, provided the financial institution shall not invest or reinvest any funds deposited under this section in term life insurance or any investment that does not reasonably have the potential to gain income or increase in value.

5. Income generated by preneed funds deposited under this section shall be used to pay the reasonable expenses of administering the account as charged by the financial institution and the balance of the income shall be distributed or reinvested upon fulfillment of the contract, cancellation or transfer pursuant to the provisions of this chapter.

6. Within fifteen days after a provider **[**and a witness certify to the financial institution in writing**] delivers a copy of a certificate of performance to the seller, signed by the provider and the person authorized to make arrangements on behalf of the beneficiary, certifying** that the provider has furnished the final disposition, funeral, and burial services and facilities, and

merchandise as required by the preneed contract, or has provided alternative funeral benefits for the beneficiary under special arrangements made with the purchaser, the **[**financial institution shall distribute the deposited funds to the seller if the certification has been approved by the purchaser**]** **seller shall take whatever steps are required by the financial institution to secure payment of the funds from the financial institution**. The seller shall pay the provider within ten days of receipt of funds.

7. Any seller, provider, or preneed agent shall not procure or accept a loan against any investment, or asset of, or belonging to a joint account. As of August 28, 2009, it shall be prohibited to use any existing preneed contract as collateral or security pledged for a loan, or take preneed funds of any existing preneed contract as a loan or for any purpose other than as authorized by this chapter.

436.456. CANCELLATION OF CONTRACT, WHEN, PROCEDURE. — At any time before final disposition, or before the funeral or burial services, facilities, or merchandise described in a preneed contract are furnished, the purchaser may cancel the contract, if designated as revocable, without cause. In order to cancel the contract the purchaser shall:

(1) In the case of a joint account-funded preneed contract, deliver written notice of the cancellation to the seller **[**and the financial institution**]**. Within fifteen days of receipt of notice of the cancellation, the **[**financial institution shall distribute all deposited funds to the purchaser**]** **seller shall take whatever steps may be required by the financial institution to obtain the funds from the financial institution. Upon receipt of the funds from the financial institution, the seller shall distribute the principal to the purchaser**. Interest shall be distributed as provided in the agreement with the seller and purchaser;

(2) In the case of an insurance-funded preneed contract, deliver written notice of the cancellation to the seller. Within fifteen days of receipt of notice of the cancellation, the seller shall notify the purchaser that the cancellation of the contract shall not cancel any life insurance funding the contract and that insurance cancellation is required to be made in writing to the insurer;

(3) In the case of a trust-funded preneed contract, deliver written notice of the cancellation to the seller and trustee. Within fifteen days of receipt of notice of the cancellation, the trustee shall distribute one hundred percent of the trust property including any percentage of the total payments received on the trust-funded contract that have been withdrawn from the account under subsection 4 of section 436.430 but excluding the income, to the purchaser of the contract;

(4) In the case of a guaranteed installment payment contract where the beneficiary dies before all installments have been paid, the purchaser shall pay the seller the amount remaining due under the contract in order to receive the goods and services set out in the contract, otherwise the purchaser or their estate will receive full credit for all payments the purchaser has made towards the cost of the beneficiary's funeral at the provider current prices.

516.098. SURVEYS OF LAND ERROR OR OMISSIONS — ACTION MUST BE BROUGHT WHEN. — **[**1.**]** Except where fraud is involved, no action to recover damages for an error or omission in the survey of land, nor any action for contribution or indemnity for damages sustained on account of an error or omission may be brought against any person performing the survey more than **[**five years after the discovery of the error or omission**]** **ten years from the completion of the survey**.

[2. This section shall become effective January 1, 1990.**]**

[335.206. NURSE TRAINING INCENTIVE FUND — GRANTS — AMOUNTS. — 1. The nurse training incentive fund shall, upon appropriation, be used to provide incentive grants to eligible nursing programs which increase enrollment. Grants shall not be awarded to classes begun on or after July 1, 1996.

2. Grants shall be awarded to eligible nursing programs which increase enrollment pursuant to subsection 3 of this section. Eligible programs receiving grants provided under sections 335.200 to 335.209 shall monitor the enrollment of nontraditional students in their program and shall annually report to the board the number of nontraditional students enrolled therein. It shall be the intent of sections 335.200 to 335.209 to encourage the enrollment and graduation of nontraditional students in nursing education programs.

3. Incentive grants shall be awarded to professional nurse education programs, as follows:

(1) A grant of eight thousand dollars for each entering class of ten students by which the program increases its enrollment over the number of entering students admitted in the fall of 1989; and

(2) A grant of four hundred dollars for each student from each entering class cited in subdivision (1) of this section by which the program increases its number of graduates over the number of students graduated in the preceding year; or

(3) Beginning with the first graduating class of the classes which enter and are enrolled after August 28, 1990, a grant of four hundred dollars for each student by which the program increases its number of graduates over the number of graduates of the preceding year, if the program is not otherwise qualified to receive the grant provided pursuant to subdivision (1) of this section.**]**

[335.209. ADMINISTRATIVE RULES — PROCEDURE. — No rule or portion of a rule promulgated under the authority of sections 335.200 to 335.209 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024.**]**

SECTION B. EMERGENCY CLAUSE. — Because immediate action is necessary to ensure the continuance of clinical trials in this state, the repeal and reenactment of section 338.330 of section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace, and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the repeal and reenactment of section 338.330 of section A of this act shall be in full force and effect upon its passage and approval.

Approved July 7, 2011

SB 351 [HCS SS SCS SB 351]

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

Modifies provisions relating to adoption records.

AN ACT to repeal section 453.121, RSMo, and to enact in lieu thereof one new section relating to adoption records.

SECTION

A. Enacting clause.

453.121. Adoption records, disclosure procedure — registry of biological parents and adopted adults.

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

SECTION A. ENACTING CLAUSE. — Section 453.121, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 453.121, to read as follows:

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

(1) "Adopted adult", any adopted person who is eighteen years of age or over;

(2) "Adopted child", any adopted person who is less than eighteen years of age;

(3) "Adult sibling", any brother or sister of the whole or half blood who is eighteen years of age or over;

(4) **"Biological parent", the natural and biological mother or father of the adopted child;**

(5) "Identifying information", information which includes the name, date of birth, place of birth and last known address of the biological parent;

(6) "Lineal descendant", a legal descendant of a person as defined in section 472.010;

[(5)**] (7)** "Nonidentifying information", information concerning the physical description, nationality, religious background and medical history of the biological parent or sibling.

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

3. Nonidentifying information, if known, concerning undisclosed biological parents or siblings shall be furnished by the child-placing agency or the juvenile court to the adoptive parents, legal guardians **[**or**],** adopted adult **or the adopted adult's lineal descendants if the adopted adult is deceased,** upon written request therefor.

4. An adopted adult**, or the adopted adult's lineal descendants if the adopted adult is deceased,** may make a written request to the circuit court having original jurisdiction of such adoption to secure and disclose information identifying the adopted adult's biological parents. If the biological parents have consented to the release of identifying information under subsection **[**11**] 9** of this section, the court shall disclose such identifying information to the adopted adult **or the adopted adult's lineal descendants if the adopted adult is deceased**. If the biological parents have not consented to the release of identifying information under subsection **[**11**] 9** of this section, the court shall, within ten days of receipt of the request, notify in writing **[**the adoptive parents of such petitioner and**]** the child-placing agency or juvenile court personnel having access to the information requested of the request by the adopted adult **or the adopted adult's lineal descendants**.

5. Within three months after receiving notice of the request of the adopted adult, **[**the child-placing agency or juvenile court personnel shall notify the adoptive parents, if such adoptive parents are living and shall not make any attempt to notify the biological parents without prior written consent of such adoptive parents for adoptions instituted or completed prior to August 13, 1986, but may proceed if there is proof that the adoptive parents are deceased or incapacitated, as such term is defined in chapter 475. If the adoptive parents are living but are unwilling to give such written consent, the child-placing agency or the juvenile court personnel shall make a written report to the court stating that they were unable to notify the biological parent. If the adoptive parents are deceased or give written consent**] or the adopted adult's lineal descendants**, the child-placing agency or the juvenile court personnel shall make reasonable efforts to notify the biological parents of the request of the adopted adult **or the adopted adult's lineal descendants**. The child-placing agency or juvenile court personnel may charge actual costs to the adopted adult **or the adopted adult's lineal descendants** for the cost of making such search. All communications under this subsection are confidential. For purposes of this subsection, "notify" means a personal and confidential contact with the biological parent of the adopted adult, which initial contact shall **[**not be made by mail and shall**]** be made by an employee of the child-placing agency which processed the adoption, juvenile court personnel or some other licensed child-placing agency designated by the child-placing agency or juvenile court. Nothing in this section shall be construed to permit the disclosure of communications privileged pursuant to section 491.060. At the end of three months, the child-placing agency or

juvenile court personnel shall file a report with the court stating that each biological parent that was located was given the following information:

(1) The nature of the identifying information to which the agency has access;

(2) The nature of any nonidentifying information requested;

(3) The date of the request of the adopted adult **or the adopted adult's lineal descendants**;

(4) The right of the biological parent to file an affidavit with the court stating that the identifying information should be disclosed;

(5) The effect of a failure of the biological parent to file an affidavit stating that the identifying information should be disclosed.

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

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

(1) Is unknown;

(2) Is known but cannot be found and notified pursuant to section 5 of this act;

(3) Is deceased; or

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

8. **[**If the biological parent is deceased but previously had filed an affidavit with the court stating that identifying information shall be disclosed, the information shall be forwarded to and released by the court to the adopted adult. If the biological parent is deceased and, at any time prior to his death, the biological parent did not file an affidavit with the court stating that the identifying information shall be disclosed, the adopted adult may petition the court for an order releasing the identifying information. The court shall grant the petition upon a finding that disclosure of the information is necessary for health-related purposes.

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

[10.**] 9.** The central office of the children's division within the department of social services shall maintain a registry by which biological parents, adult siblings, and adoptive adults may indicate their desire to be contacted by each other. The division may request such identification for the registry as a party may possess to assure positive identifications. At the time of registry, a biological parent or adult sibling may consent in writing to the release of identifying information to an adopted adult. If such a consent has not been executed and the division believes that a match has occurred on the registry between biological parents or adult siblings

and an adopted adult, an employee of the division shall make the confidential contact provided in subsection 5 of this section with the biological parents or adult siblings and with the adopted adult. If the division believes that a match has occurred on the registry between one biological parent or adult sibling and an adopted adult, an employee of the division shall make the confidential contact provided by subsection 5 of this section with the biological parent or adult sibling. The division shall then attempt to make such confidential contact with the other biological parent, and shall proceed thereafter to make such confidential contact with the adopted adult only if the division determines that the other biological parent meets one of the conditions specified in subsection 7 of this section. The biological parent, adult sibling, or adopted adult may refuse to go forward with any further contact between the parties when contacted by the division.

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

Approved July 5, 2011

SB 356 [CCS#2 HCS SCS SB 356]

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

Modifies provisions pertaining to grain dealers and grain warehouses.

AN ACT to repeal sections 21.801, 144.010, 144.020, 144.030, 144.070, 263.190, 263.200, 263.205, 263.220, 263.230, 263.232, 263.240, 263.241, 263.450, 268.121, 275.360, 276.401, 276.416, 276.421, 276.436, 276.441, 276.446, and 411.280, RSMo, and to enact in lieu thereof eighteen new sections relating to agriculture, with penalty provisions and an emergency clause for a certain section.

SECTION

A. Enacting clause.
21.801. Committee created, members, meetings — report, content — subcommittee created — expiration.
143.1014. Puppy protection trust fund, refund donation to — fund created, use of moneys — director's duties — sunset provision.
144.010. Definitions.
144.020. Rate of tax — tickets, notice of sales tax — lease or rental of personal property exempt from tax, when.
144.030. Exemptions from state and local sales and use taxes.
144.070. Purchase or lease of motor vehicles, trailers, boats and outboard motors, tax on — option granted lessor — application to act as leasing company.
262.815. Citation of law, purpose — trust created, objectives — advisory board created, members, duties, terms — fund created — rulemaking authority.
263.190. Owners to control noxious weeds — notice procedure — penalty — sale of noxious weeds prohibited.
263.200. County commission duties to control noxious weeds, official immunity, landowner duty of care — special tax for cost, collection — provisions applicable to certain political subdivisions.
263.220. Duty of prosecuting attorney.
263.240. Penalty for violation.
268.121. Recorded brand list a public record, furnished to general public at cost.
275.360. Refund of fees, request for.
276.401. Title, and scope of the law — definitions.
276.421. Financial statement to accompany application, how prepared — false statement, penalty — minimum net worth and assets required.
276.436. Amount of bond — director to establish by rule — formula — minimum and maximum — additional bond because of low net worth or other circumstances — failure to maintain, effect.
276.441. Dealer may request use of minimum bond, procedure.
411.280. Warehouseman's net worth, requirements — deficiency, how corrected.

263.205. Multiflora rose a noxious weed, exceptions — counties may establish programs and funds to control noxious weeds.
263.230. Control of spread of bindweed, by whom.
263.232. Eradication and control of the spread of teasel, kudzu vine, and spotted knapweed.
263.241. Plant, purple loosestrife (Lythrum salicaria) declared a noxious weed — distribution for control experiments only, permit required, violations, penalty.
263.450. Noxious weed, defined — designation of noxious weed by director of department of agriculture.
276.416. Application to list dollar amounts of grain purchased or to be purchased.
276.446. Small dealers may have lower minimum bond.
B. Emergency clause.

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

SECTION A. ENACTING CLAUSE. — Sections 21.801, 144.010, 144.020, 144.030, 144.070, 263.190, 263.200, 263.205, 263.220, 263.230, 263.232, 263.240, 263.241, 263.450, 268.121, 275.360, 276.401, 276.416, 276.421, 276.436, 276.441, 276.446, and 411.280, RSMo, are repealed and eighteen new sections enacted in lieu thereof, to be known as sections 21.801, 143.1014, 144.010, 144.020, 144.030, 144.070, 262.815, 263.190, 263.200, 263.220, 263.240, 268.121, 275.360, 276.401, 276.421, 276.436, 276.441, and 411.280, to read as follows:

21.801. COMMITTEE CREATED, MEMBERS, MEETINGS — REPORT, CONTENT — SUBCOMMITTEE CREATED — EXPIRATION. — 1. There is hereby established a joint committee of the general assembly, which shall be known as the "Joint Committee on Urban **[**Farming" for the period between the second regular session of the ninety-fifth general assembly and first regular session of the ninety-sixth general assembly**]** **Agriculture"**.

2. The joint committee shall be composed of ten members. Five members shall be from the senate, with three members appointed by the president pro tem of the senate and two members appointed by the minority leader of the senate. Five members shall be from the house of representatives, with three members appointed by the speaker of the house of representatives and two members appointed by the minority leader of the house of representatives. All members of the Missouri general assembly not appointed in this subsection may be nonvoting, ex officio members of the joint committee. A majority of the appointed members of the joint committee shall constitute a quorum.

3. The joint committee shall meet within thirty days after it becomes effective and organize by selecting a chairperson and a vice chairperson, one of whom shall be a member of the senate and the other a member of the house of representatives. The joint committee may meet at locations other than Jefferson City when the committee deems it necessary.

4. The committee shall prepare a final report together with its recommendations for any legislative action deemed necessary for submission to the speaker of the house of representatives, president pro tem of the senate, and the governor by December 31, **[**2010**]** **2012**. The report shall study and make recommendations regarding the impact of urban farm cooperatives, vertical farming, and sustainable living communities in this state and shall examine the following:

(1) Trends in urban farming, including vertical farming, urban farm cooperatives, and sustainable living communities;

(2) Existing services, resources, and capacity for such urban farming;

(3) The impact on communities and populations affected; and

(4) Any needed state legislation, policies, or regulations.

5. The committee shall hold a minimum of one meeting at three urban regions in the state of Missouri to seek public input. The committee may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the committee considers advisable to carry out the provisions of this section.

6. The joint committee may solicit input and information necessary to fulfill its obligations from the general public, any state department, state agency, political subdivision of this state, or anyone else it deems advisable.

7. (1) The joint committee shall establish a subcommittee to be known as the "Urban Farming Advisory Subcommittee" to study, analyze, and provide background information, recommendations, and findings in preparation of each of the public hearings called by the joint committee. The subcommittee may also review draft recommendations of the joint committee, if requested. The subcommittee will meet as often as necessary to fulfill the requirements and time frames set by the joint committee.

(2) The subcommittee shall consist of twelve members, as follows:

(a) Four members shall include the directors of the following departments, or their designees:

a. Agriculture, who shall serve as chair of the subcommittee;

b. Economic development;

c. Health and senior services; and

d. Natural resources; and

(b) The chair shall select eight additional members, subject to approval by a majority of the joint committee, who shall have experience in or represent organizations associated with at least one of the following areas:

a. Sustainable energy;

b. Farm policy;

c. Urban botanical gardening;

d. Sustainable agriculture;

e. Urban farming or community gardening;

f. Vertical farming;

g. Agriculture policy or advocacy; and

h. Urban development.

8. Members of the committee and subcommittee shall serve without compensation but may be reimbursed for necessary expenses pertaining to the duties of the committee.

9. The staffs of senate research, the joint committee on legislative research, and house research may provide such legal, research, clerical, technical, and bill drafting services as the joint committee may require in the performance of its duties.

10. Any actual and necessary expenses of the joint committee, its members, and any staff assigned to the joint committee incurred by the joint committee shall be paid by the joint contingent fund.

11. **[**This**]** **The** provisions of this section shall expire on January 1, **[**2011**]** **2013**.

143.1014. PUPPY PROTECTION TRUST FUND, REFUND DONATION TO — FUND CREATED, USE OF MONEYS — DIRECTOR'S DUTIES — SUNSET PROVISION. — 1. For all taxable years beginning on or after January 1, 2011, each individual or corporation entitled to a tax refund in an amount sufficient to make a designation under this section may designate that one dollar or any amount in excess of one dollar on a single return, and two dollars or any amount in excess of two dollars on a combined return, of the refund due be credited to the puppy protection trust fund. If any individual or corporation that is not entitled to a tax refund in an amount sufficient to make a designation under this section wishes to make a contribution to the 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 the individual or corporation wishes to contribute. Such amounts shall be clearly designated for the fund.

2. There is hereby created in the state treasury the "Puppy Protection Trust Fund", which shall consist of money collected under this section. The state treasurer shall be custodian of the fund. In accordance with sections 30.170 and 30.180, the state treasurer may approve disbursements. The fund shall be a dedicated fund and, upon appropriation, money in the fund shall be used solely for the state department of agriculture's administration of section 273.345. Notwithstanding the provisions of section

33.080 to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund. All moneys credited to the trust fund shall be considered nonstate funds under section 15, article IV, Constitution of Missouri. The treasurer shall distribute all moneys deposited in the fund at times the treasurer deems appropriate to the department of agriculture.

3. The director of revenue shall deposit at least monthly all contributions designated by individuals under this section to the state treasurer for deposit to the fund. The director of revenue shall deposit at least monthly all contributions designated by the corporations under this section, less an amount sufficient to cover the costs of collection and handling by the department of revenue, to the state treasury for deposit to the fund. A contribution designated under this section shall only be deposited in the fund after all other claims against the refund from which such contribution is to be made have been satisfied.

4. Under section 23.253 of the Missouri sunset act:

(1) The provisions of the new program authorized under this section shall automatically sunset on December thirty-first 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 on December thirty-first 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.

144.010. DEFINITIONS. — 1. The following words, terms, and phrases when used in sections 144.010 to 144.525 have the meanings ascribed to them in this section, except when the context indicates a different meaning:

(1) "Admission" includes seats and tables, reserved or otherwise, and other similar accommodations and charges made therefor and amount paid for admission, exclusive of any admission tax imposed by the federal government or by sections 144.010 to 144.525;

(2) "Business" includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either direct or indirect, and the classification of which business is of such character as to be subject to the terms of sections 144.010 to 144.525. The isolated or occasional sale of tangible personal property, service, substance, or thing, by a person not engaged in such business, does not constitute engaging in business within the meaning of sections 144.010 to 144.525 unless the total amount of the gross receipts from such sales, exclusive of receipts from the sale of tangible personal property by persons which property is sold in the course of the partial or complete liquidation of a household, farm or nonbusiness enterprise, exceeds three thousand dollars in any calendar year. The provisions of this subdivision shall not be construed to make any sale of property which is exempt from sales tax or use tax on June 1, 1977, subject to that tax thereafter;

(3) **"Captive wildlife", includes but is not limited to exotic partridges, gray partridge, northern bobwhite quail, ring-necked pheasant, captive waterfowl, captive white-tailed deer, captive elk, and captive furbearers held under permit issued by the Missouri department of conservation for hunting purposes. The provisions of this subdivision shall not apply to sales tax on a harvested animal;**

(4) "Gross receipts", except as provided in section 144.012, means the total amount of the sale price of the sales at retail including any services other than charges incident to the extension of credit that are a part of such sales made by the businesses herein referred to, capable of being valued in money, whether received in money or otherwise; except that, the term "gross receipts" shall not include the sale price of property returned by customers when the full sale price thereof

is refunded either in cash or by credit. In determining any tax due under sections 144.010 to 144.525 on the gross receipts, charges incident to the extension of credit shall be specifically exempted. For the purposes of sections 144.010 to 144.525 the total amount of the sale price above mentioned shall be deemed to be the amount received. It shall also include the lease or rental consideration where the right to continuous possession or use of any article of tangible personal property is granted under a lease or contract and such transfer of possession would be taxable if outright sale were made and, in such cases, the same shall be taxable as if outright sale were made and considered as a sale of such article, and the tax shall be computed and paid by the lessee upon the rentals paid;

[(4)**] (5)** "Livestock", cattle, calves, sheep, swine, ratite birds, including but not limited to, ostrich and emu, aquatic products as defined in section 277.024, llamas, alpaca, buffalo, elk documented as obtained from a legal source and not from the wild, goats, horses, other equine, or rabbits raised in confinement for human consumption;

[(5)**] (6)** "Motor vehicle leasing company" shall be a company obtaining a permit from the director of revenue to operate as a motor vehicle leasing company. Not all persons renting or leasing trailers or motor vehicles need to obtain such a permit; however, no person failing to obtain such a permit may avail itself of the optional tax provisions of subsection 5 of section 144.070, as hereinafter provided;

[(6)**] (7)** "Person" includes any individual, firm, copartnership, joint adventure, association, corporation, municipal or private, and whether organized for profit or not, state, county, political subdivision, state department, commission, board, bureau or agency, except the state transportation department, estate, trust, business trust, receiver or trustee appointed by the state or federal court, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular number;

[(7)**] (8)** "Purchaser" means a person who purchases tangible personal property or to whom are rendered services, receipts from which are taxable under sections 144.010 to 144.525;

[(8)**] (9)** "Research or experimentation activities" are the development of an experimental or pilot model, plant process, formula, invention or similar property, and the improvement of existing property of such type. Research or experimentation activities do not include activities such as ordinary testing or inspection of materials or products for quality control, efficiency surveys, advertising promotions or research in connection with literary, historical or similar projects;

[(9)**] (10)** "Sale" or "sales" includes installment and credit sales, and the exchange of properties as well as the sale thereof for money, every closed transaction constituting a sale, and means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for valuable consideration and the rendering, furnishing or selling for a valuable consideration any of the substances, things and services herein designated and defined as taxable under the terms of sections 144.010 to 144.525;

[(10)**] (11)** "Sale at retail" means any transfer made by any person engaged in business as defined herein of the ownership of, or title to, tangible personal property to the purchaser, for use or consumption and not for resale in any form as tangible personal property, for a valuable consideration; except that, for the purposes of sections 144.010 to 144.525 and the tax imposed thereby: (i) purchases of tangible personal property made by duly licensed physicians, dentists, optometrists and veterinarians and used in the practice of their professions shall be deemed to be purchases for use or consumption and not for resale; and (ii) the selling of computer printouts, computer output or microfilm or microfiche and computer-assisted photo compositions to a purchaser to enable the purchaser to obtain for his or her own use the desired information contained in such computer printouts, computer output on microfilm or microfiche and computer-assisted photo compositions shall be considered as the sale of a service and not as the sale of tangible personal property. Where necessary to conform to the context of sections 144.010 to 144.525 and the tax imposed thereby, the term "sale at retail" shall be construed to embrace:

(a) Sales of admission tickets, cash admissions, charges and fees to or in places of amusement, entertainment and recreation, games and athletic events;

(b) Sales of electricity, electrical current, water and gas, natural or artificial, to domestic, commercial or industrial consumers;

(c) Sales of local and long distance telecommunications service to telecommunications subscribers and to others through equipment of telecommunications subscribers for the transmission of messages and conversations, and the sale, rental or leasing of all equipment or services pertaining or incidental thereto;

(d) Sales of service for transmission of messages by telegraph companies;

(e) Sales or charges for all rooms, meals and drinks furnished at any hotel, motel, tavern, inn, restaurant, eating house, drugstore, dining car, tourist camp, tourist cabin, or other place in which rooms, meals or drinks are regularly served to the public;

(f) Sales of tickets by every person operating a railroad, sleeping car, dining car, express car, boat, airplane, and such buses and trucks as are licensed by the division of motor carrier and railroad safety of the department of economic development of Missouri, engaged in the transportation of persons for hire;

[(11)**]** **(12)** "Seller" means a person selling or furnishing tangible personal property or rendering services, on the receipts from which a tax is imposed pursuant to section 144.020;

[(12)**]** **(13)** The noun "tax" means either the tax payable by the purchaser of a commodity or service subject to tax, or the aggregate amount of taxes due from the vendor of such commodities or services during the period for which he or she is required to report his or her collections, as the context may require;

[(13)**]** **(14)** "Telecommunications service", for the purpose of this chapter, the transmission of information by wire, radio, optical cable, coaxial cable, electronic impulses, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. Telecommunications service does not include the following if such services are separately stated on the customer's bill or on records of the seller maintained in the ordinary course of business:

(a) Access to the internet, access to interactive computer services or electronic publishing services, except the amount paid for the telecommunications service used to provide such access;

(b) Answering services and one-way paging services;

(c) Private mobile radio services which are not two-way commercial mobile radio services such as wireless telephone, personal communications services or enhanced specialized mobile radio services as defined pursuant to federal law; or

(d) Cable or satellite television or music services; and

[(14)**]** **(15)** "Product which is intended to be sold ultimately for final use or consumption" means tangible personal property, or any service that is subject to state or local sales or use taxes, or any tax that is substantially equivalent thereto, in this state or any other state.

2. For purposes of the taxes imposed under sections 144.010 to 144.525, and any other provisions of law pertaining to sales or use taxes which incorporate the provisions of sections 144.010 to 144.525 by reference, the term "manufactured homes" shall have the same meaning given it in section 700.010.

3. Sections 144.010 to 144.525 may be known and quoted as the "Sales Tax Law".

144.020. RATE OF TAX — TICKETS, NOTICE OF SALES TAX — LEASE OR RENTAL OF PERSONAL PROPERTY EXEMPT FROM TAX, WHEN. — 1. A tax is hereby levied and imposed upon all sellers for the privilege of engaging in the business of selling tangible personal property or rendering taxable service at retail in this state. The rate of tax shall be as follows:

(1) Upon every retail sale in this state of tangible personal property, including but not limited to motor vehicles, trailers, motorcycles, mopeds, motortricycles, boats and outboard motors, a tax equivalent to four percent of the purchase price paid or charged, or in case such sale involves the exchange of property, a tax equivalent to four percent of the consideration paid

or charged, including the fair market value of the property exchanged at the time and place of the exchange, except as otherwise provided in section 144.025;

(2) A tax equivalent to four percent of the amount paid for admission and seating accommodations, or fees paid to, or in any place of amusement, entertainment or recreation, games and athletic events;

(3) A tax equivalent to four percent of the basic rate paid or charged on all sales of electricity or electrical current, water and gas, natural or artificial, to domestic, commercial or industrial consumers;

(4) A tax equivalent to four percent on the basic rate paid or charged on all sales of local and long distance telecommunications service to telecommunications subscribers and to others through equipment of telecommunications subscribers for the transmission of messages and conversations and upon the sale, rental or leasing of all equipment or services pertaining or incidental thereto; except that, the payment made by telecommunications subscribers or others, pursuant to section 144.060, and any amounts paid for access to the internet or interactive computer services shall not be considered as amounts paid for telecommunications services;

(5) A tax equivalent to four percent of the basic rate paid or charged for all sales of services for transmission of messages of telegraph companies;

(6) A tax equivalent to four percent on the amount of sales or charges for all rooms, meals and drinks furnished at any hotel, motel, tavern, inn, restaurant, eating house, drugstore, dining car, tourist cabin, tourist camp or other place in which rooms, meals or drinks are regularly served to the public;

(7) A tax equivalent to four percent of the amount paid or charged for intrastate tickets by every person operating a railroad, sleeping car, dining car, express car, boat, airplane and such buses and trucks as are licensed by the division of motor carrier and railroad safety of the department of economic development of Missouri, engaged in the transportation of persons for hire;

(8) A tax equivalent to four percent of the amount paid or charged for rental or lease of tangible personal property, provided that if the lessor or renter of any tangible personal property had previously purchased the property under the conditions of "sale at retail" **[**as defined in subdivision (8) of section 144.010**]** or leased or rented the property and the tax was paid at the time of purchase, lease or rental, the lessor, sublessor, renter or subrenter shall not apply or collect the tax on the subsequent lease, sublease, rental or subrental receipts from that property. The purchase, rental or lease of motor vehicles, trailers, motorcycles, mopeds, motortricycles, boats, and outboard motors shall be taxed and the tax paid as provided in this section and section 144.070. In no event shall the rental or lease of boats and outboard motors be considered a sale, charge, or fee to, for or in places of amusement, entertainment or recreation nor shall any such rental or lease be subject to any tax imposed to, for, or in such places of amusement, entertainment or recreation. Rental and leased boats or outboard motors shall be taxed under the provisions of the sales tax laws as provided under such laws for motor vehicles and trailers. Tangible personal property which is exempt from the sales or use tax under section 144.030 upon a sale thereof is likewise exempt from the sales or use tax upon the lease or rental thereof.

2. All tickets sold which are sold under the provisions of sections 144.010 to 144.525 which are subject to the sales tax shall have printed, stamped or otherwise endorsed thereon, the words "This ticket is subject to a sales tax.".

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

America, and such retail sales of tangible personal property which the general assembly of the state of Missouri is prohibited from taxing or further taxing by the constitution of this state.

2. There are also specifically exempted from the provisions of the local sales tax law as defined in section 32.085, section 238.235, and sections 144.010 to 144.525 and 144.600 to 144.761 and from the computation of the tax levied, assessed or payable pursuant to the local sales tax law as defined in section 32.085, section 238.235, and sections 144.010 to 144.525 and 144.600 to 144.745:

(1) Motor fuel or special fuel subject to an excise tax of this state, unless all or part of such excise tax is refunded pursuant to section 142.824; or upon the sale at retail of fuel to be consumed in manufacturing or creating gas, power, steam, electrical current or in furnishing water to be sold ultimately at retail; or feed for livestock or poultry; or grain to be converted into foodstuffs which are to be sold ultimately in processed form at retail; or seed, limestone or fertilizer which is to be used for seeding, liming or fertilizing crops which when harvested will be sold at retail or will be fed to livestock or poultry to be sold ultimately in processed form at retail; economic poisons registered pursuant to the provisions of the Missouri pesticide registration law (sections 281.220 to 281.310) which are to be used in connection with the growth or production of crops, fruit trees or orchards applied before, during, or after planting, the crop of which when harvested will be sold at retail or will be converted into foodstuffs which are to be sold ultimately in processed form at retail;

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

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

(4) Replacement machinery, equipment, and parts and the materials and supplies solely required for the installation or construction of such replacement machinery, equipment, and parts, used directly in manufacturing, mining, fabricating or producing a product which is intended to be sold ultimately for final use or consumption; and machinery and equipment, and the materials and supplies required solely for the operation, installation or construction of such machinery and equipment, purchased and used to establish new, or to replace or expand existing, material recovery processing plants in this state. For the purposes of this subdivision, a "material recovery processing plant" means a facility that has as its primary purpose the recovery of materials into a useable product or a different form which is used in producing a new product and shall include a facility or equipment which are used exclusively for the collection of recovered materials for delivery to a material recovery processing plant but shall not include motor vehicles used on highways. For purposes of this section, the terms motor vehicle and highway shall have the same meaning pursuant to section 301.010. Material recovery is not the reuse of materials within a manufacturing process or the use of a product previously recovered. The material recovery processing plant shall qualify under the provisions of this section regardless of ownership of the material being recovered;

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

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

(7) Animals or poultry used for breeding or feeding purposes**, or captive wildlife**;

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

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

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

(11) Railroad rolling stock for use in transporting persons or property in interstate commerce and motor vehicles licensed for a gross weight of twenty-four thousand pounds or more or trailers used by common carriers, as defined in section 390.020, in the transportation of persons or property;

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

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

(14) Machinery, equipment, appliances and devices purchased or leased and used solely for the purpose of preventing, abating or monitoring air pollution, and materials and supplies solely required for the installation, construction or reconstruction of such machinery, equipment, appliances and devices;

(15) Machinery, equipment, appliances and devices purchased or leased and used solely for the purpose of preventing, abating or monitoring water pollution, and materials and supplies solely required for the installation, construction or reconstruction of such machinery, equipment, appliances and devices;

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

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

(18) All sales of insulin and prosthetic or orthopedic devices as defined on January 1, 1980, by the federal Medicare program pursuant to Title XVIII of the Social Security Act of 1965, including the items specified in Section 1862(a)(12) of that act, and also specifically including hearing aids and hearing aid supplies and all sales of drugs which may be legally dispensed by a licensed pharmacist only upon a lawful prescription of a practitioner licensed to administer those items, including samples and materials used to manufacture samples which may be dispensed by a practitioner authorized to dispense such samples and all sales of medical oxygen, home respiratory equipment and accessories, hospital beds and accessories and ambulatory aids,

all sales of manual and powered wheelchairs, stairway lifts, Braille writers, electronic Braille equipment and, if purchased by or on behalf of a person with one or more physical or mental disabilities to enable them to function more independently, all sales of scooters, reading machines, electronic print enlargers and magnifiers, electronic alternative and augmentative communication devices, and items used solely to modify motor vehicles to permit the use of such motor vehicles by individuals with disabilities or sales of over-the-counter or nonprescription drugs to individuals with disabilities;

(19) All sales made by or to religious and charitable organizations and institutions in their religious, charitable or educational functions and activities and all sales made by or to all elementary and secondary schools operated at public expense in their educational functions and activities;

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

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

(22) All sales made to any private not-for-profit elementary or secondary school, all sales of feed additives, medications or vaccines administered to livestock or poultry in the production of food or fiber, all sales of pesticides used in the production of crops, livestock or poultry for food or fiber, all sales of bedding used in the production of livestock or poultry for food or fiber, all sales of propane or natural gas, electricity or diesel fuel used exclusively for drying agricultural crops, natural gas used in the primary manufacture or processing of fuel ethanol as defined in section 142.028, natural gas, propane, and electricity used by an eligible new generation cooperative or an eligible new generation processing entity as defined in section 348.432, and all sales of farm machinery and equipment, other than airplanes, motor vehicles and trailers**, and any freight charges on any exempt item**. As used in this subdivision, the term "feed additives" means tangible personal property which, when mixed with feed for livestock or poultry, is to be used in the feeding of livestock or poultry. As used in this subdivision, the term "pesticides" includes adjuvants such as crop oils, surfactants, wetting agents and other assorted pesticide carriers used to improve or enhance the effect of a pesticide and the foam used to mark the application of pesticides and herbicides for the production of crops, livestock or poultry. As used in this subdivision, the term "farm machinery and equipment" means new or used farm tractors and such other new or used farm machinery and equipment and repair or replacement parts thereon **and any accessories for and upgrades to such farm machinery and equipment, rotary mowers used exclusively for agricultural purposes**, and supplies and lubricants used exclusively, solely, and directly for producing crops, raising and feeding livestock, fish, poultry, pheasants, chukar, quail, or for producing milk for ultimate sale at retail, including field drain tile, and one-half of each purchaser's purchase of diesel fuel therefor which is:

(a) Used exclusively for agricultural purposes;

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

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

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

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

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

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

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

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

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

(27) All sales made to an interstate compact agency created pursuant to sections 70.370 to 70.441 or sections 238.010 to 238.100 in the exercise of the functions and activities of such agency as provided pursuant to the compact;

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

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

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

(31) Electrical energy or gas, whether natural, artificial or propane, water, or other utilities which are ultimately consumed in connection with the manufacturing of cellular glass products or in any material recovery processing plant as defined in subdivision (4) of this subsection;

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

(33) Tangible personal property and utilities purchased for use or consumption directly or exclusively in the research and development of agricultural/biotechnology and plant genomics products and prescription pharmaceuticals consumed by humans or animals;

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

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

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

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

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

(37) All sales or other transfers of tangible personal property to a lessor who leases the property under a lease of one year or longer executed or in effect at the time of the sale or other transfer to an interstate compact agency created pursuant to sections 70.370 to 70.441 or sections 238.010 to 238.100;

(38) Sales of tickets to any collegiate athletic championship event that is held in a facility owned or operated by a governmental authority or commission, a quasi-governmental agency, a state university or college or by the state or any political subdivision thereof, including a municipality, and that is played on a neutral site and may reasonably be played at a site located

outside the state of Missouri. For purposes of this subdivision, "neutral site" means any site that is not located on the campus of a conference member institution participating in the event;

(39) All purchases by a sports complex authority created under section 64.920, and all sales of utilities by such authority at the authority's cost that are consumed in connection with the operation of a sports complex leased to a professional sports team;

(40) Beginning January 1, 2009, but not after January 1, 2015, materials, replacement parts, and equipment purchased for use directly upon, and for the modification, replacement, repair, and maintenance of aircraft, aircraft power plants, and aircraft accessories;

(41) Sales of sporting clays, wobble, skeet, and trap targets to any shooting range or similar places of business for use in the normal course of business and money received by a shooting range or similar places of business from patrons and held by a shooting range or similar place of business for redistribution to patrons at the conclusion of a shooting event.

144.070. PURCHASE OR LEASE OF MOTOR VEHICLES, TRAILERS, BOATS AND OUTBOARD MOTORS, TAX ON — OPTION GRANTED LESSOR — APPLICATION TO ACT AS LEASING COMPANY. — 1. At the time the owner of any new or used motor vehicle, trailer, boat, or outboard motor which was acquired in a transaction subject to sales tax under the Missouri sales tax law makes application to the director of revenue for an official certificate of title and the registration of the motor vehicle, trailer, boat, or outboard motor as otherwise provided by law, the owner shall present to the director of revenue evidence satisfactory to the director of revenue showing the purchase price exclusive of any charge incident to the extension of credit paid by or charged to the applicant in the acquisition of the motor vehicle, trailer, boat, or outboard motor, or that no sales tax was incurred in its acquisition, and if sales tax was incurred in its acquisition, the applicant shall pay or cause to be paid to the director of revenue the sales tax provided by the Missouri sales tax law in addition to the registration fees now or hereafter required according to law, and the director of revenue shall not issue a certificate of title for any new or used motor vehicle, trailer, boat, or outboard motor subject to sales tax as provided in the Missouri sales tax law until the tax levied for the sale of the same under sections 144.010 to 144.510 has been paid as provided in this section or is registered under the provisions of subsection 5 of this section.

2. As used in subsection 1 of this section, the term "purchase price" shall mean the total amount of the contract price agreed upon between the seller and the applicant in the acquisition of the motor vehicle, trailer, boat, or outboard motor, regardless of the medium of payment therefor.

3. In the event that the purchase price is unknown or undisclosed, or that the evidence thereof is not satisfactory to the director of revenue, the same shall be fixed by appraisement by the director.

4. The director of the department of revenue shall endorse upon the official certificate of title issued by the director upon such application an entry showing that such sales tax has been paid or that the motor vehicle, trailer, boat, or outboard motor represented by such certificate is exempt from sales tax and state the ground for such exemption.

5. Any person, company, or corporation engaged in the business of renting or leasing motor vehicles, trailers, boats, or outboard motors, which are to be used exclusively for rental or lease purposes, and not for resale, may apply to the director of revenue for authority to operate as a leasing company. Any company approved by the director of revenue may pay the tax due on any motor vehicle, trailer, boat, or outboard motor as required in section 144.020 at the time of registration thereof or in lieu thereof may pay a sales tax as provided in sections 144.010, 144.020, 144.070 and 144.440. A sales tax shall be charged to and paid by a leasing company which does not exercise the option of paying in accordance with section 144.020, on the amount charged for each rental or lease agreement while the motor vehicle, trailer, boat, or outboard motor is domiciled in this state. Any motor vehicle, trailer, boat, or outboard motor which is

leased as the result of a contract executed in this state shall be presumed to be domiciled in this state.

6. Any corporation may have one or more of its divisions separately apply to the director of revenue for authorization to operate as a leasing company, provided that the corporation:

(1) Has filed a written consent with the director authorizing any of its divisions to apply for such authority;

(2) Is authorized to do business in Missouri;

(3) Has agreed to treat any sale of a motor vehicle, trailer, boat, or outboard motor from one of its divisions to another of its divisions as a sale at retail **[**within the meaning of subdivision (9) of subsection 1 of section 144.010**]**;

(4) Has registered under the fictitious name provisions of sections 417.200 to 417.230 each of its divisions doing business in Missouri as a leasing company; and

(5) Operates each of its divisions on a basis separate from each of its other divisions. However, when the transfer of a motor vehicle, trailer, boat or outboard motor occurs within a corporation which holds a license to operate as a motor vehicle or boat dealer pursuant to sections 301.550 to 301.573 the provisions in subdivision (3) of this subsection shall not apply.

7. If the owner of any motor vehicle, trailer, boat, or outboard motor desires to charge and collect sales tax as provided in this section, the owner shall make application to the director of revenue for a permit to operate as a motor vehicle, trailer, boat, or outboard motor leasing company. The director of revenue shall promulgate rules and regulations determining the qualifications of such a company, and the method of collection and reporting of sales tax charged and collected. Such regulations shall apply only to owners of motor vehicles, trailers, boats, or outboard motors, electing to qualify as motor vehicle, trailer, boat, or outboard motor leasing companies under the provisions of subsection 5 of this section, and no motor vehicle renting or leasing, trailer renting or leasing, or boat or outboard motor renting or leasing company can come under sections 144.010, 144.020, 144.070 and 144.440 unless all motor vehicles, trailers, boats, and outboard motors held for renting and leasing are included.

8. Beginning July 1, 2010, any motor vehicle dealer licensed under section 301.560 engaged in the business of selling motor vehicles or trailers may apply to the director of revenue for authority to collect and remit the sales tax required under this section on all motor vehicles sold by the motor vehicle dealer. A motor vehicle dealer receiving authority to collect and remit the tax is subject to all provisions under sections 144.010 to 144.525. Any motor vehicle dealer authorized to collect and remit sales taxes on motor vehicles under this subsection shall be entitled to deduct and retain an amount equal to two percent of the motor vehicle sales tax pursuant to section 144.140. Any amount of the tax collected under this subsection that is retained by a motor vehicle dealer pursuant to section 144.140 shall not constitute state revenue. In no event shall revenues from the general revenue fund or any other state fund be utilized to compensate motor vehicle dealers for their role in collecting and remitting sales taxes on motor vehicles. In the event this subsection or any portion thereof is held to violate article IV, section 30(b) of the Missouri Constitution, no motor vehicle dealer shall be authorized to collect and remit sales taxes on motor vehicles under this section. No motor vehicle dealer shall seek compensation from the state of Missouri or its agencies if a court of competent jurisdiction declares that the retention of two percent of the motor vehicle sales tax is unconstitutional and orders the return of such revenues.

262.815. CITATION OF LAW, PURPOSE — TRUST CREATED, OBJECTIVES — ADVISORY BOARD CREATED, MEMBERS, DUTIES, TERMS — FUND CREATED — RULEMAKING AUTHORITY. — 1. This section shall be known and may be cited as the "Missouri Farmland Trust Act". The purpose of this section is to allow individuals and entities to donate, gift, or otherwise convey farmland to the state department of agriculture for the purpose of preserving the land as farmland and to further provide beginning farmers with an opportunity to farm by allowing long-term low and variable cost leases, thereby

making it affordable for the next generation of farmers to continue to produce food, fiber, and fuel.

2. There is hereby created the "Missouri Farmland Trust" which shall be implemented in a manner to accomplish the following objectives:

(1) Protect and preserve Missouri's farmland;

(2) Link new generations of prospective farmers with present farmers; and

(3) Promote best practices in environmental, livestock, and land stewardship.

3. (1) There is hereby created within the department of agriculture the "Missouri Farmland Trust Advisory Board" which shall be comprised of five members appointed by the director of the department of agriculture. Members shall serve without compensation but, subject to appropriations, may be reimbursed for actual and necessary expenses.

(2) The board shall make recommendations to the director on the appropriate uses of farmland in the trust, criteria to be used to select applicants for the program, and review and make recommendations regarding applications to lease farmland in the trust.

(3) Members shall serve five-year terms, with each term beginning July first and ending June thirtieth; except that, of the members initially appointed two shall be appointed for a term of three years, two shall be appointed for a term of four years, and one shall be appointed for a term of five years. Each member shall serve until his or her successor is appointed. Any vacancies occurring prior to the expiration of a term shall be filled by appointment for the remainder of such term. No member shall serve more than two consecutive terms.

4. The department of agriculture is authorized to accept or acquire by purchase, lease, donation, or agreement any agricultural lands, easements, real and personal property, or rights in lands, easements, or real and personal property, including but not limited to buildings, structures, improvements, equipment, or facilities subject to preservation and improvement. Such lands shall be properties of the Missouri farmland trust for purposes of this section and shall be governed by the provisions of this section and rules promulgated thereunder.

5. (1) There is hereby created in the state treasury the "Missouri Farmland Trust Fund", which shall consist of all gifts, bequests, donations, transfers, and moneys appropriated by the general assembly under this section. The state treasurer shall be custodian of the fund. In accordance with sections 30.170 and 30.180, the state treasurer may approve disbursements. Upon appropriation, money in the fund shall be used for the administration of this section and may be used to make payments to counties for the value of land as payment in lieu of real and personal property taxes for privately owned land acquired after the effective date of this section in such amounts as determined by the department; except that, the amount determined shall not be less than the real property tax paid at the time of acquisition. The department of agriculture may require applicants who are awarded leases to pay the property taxes owed under this section for such property.

(2) Notwithstanding the provisions of section 33.080 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.

(3) The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund.

6. The department of agriculture is authorized to accept all moneys, appropriations, gifts, bequests, donations, or other contributions of moneys or other real or personal property to be expended or used for any of the purposes of this section. The department may improve, maintain, operate, and regulate any such lands, easements, or real or personal property to promote agriculture and the general welfare using moneys in the

fund. Property acquired by the department under this section shall be used for agricultural purposes. The director shall establish by rule guidelines for leasing farmland to the trust to beginning farmers for a period not to exceed twenty years. All property acquired by the department under this section shall be farmed and maintained using the best environmental, conservation, and stewardship practices as outlined by the department. The department may charge an administrative fee for lease application processing under this section.

7. The department, in consultation with the Missouri farmland advisory board, shall promulgate rules to implement the provisions of this section, including but not limited to requirements for lessees, selection process for granting leases, and the terms of the lease, including requirements for applicants, renewal process, requirements for the maintenance of real and personal property by the lessee, and conditions for the termination of leases.

8. Any person or entity donating land to or leasing land from the department shall forever release the state of Missouri, the Missouri department of agriculture, the department's director, officers, employees, volunteers, agents, contractors, servants, heirs, successors, assigns, persons, firms, corporations, representatives, and other entities who are or who will be acting in concert or privity with or on behalf of the state from any and all actions, claims, or demands that he or she, family members, heirs, successors, assigns, agents, servants, employees, distributees, guardians, next-of-kin, spouse, and legal representatives now have or may have in the future for any injury, death, property damage related to:

(1) Participation in such activities;

(2) The negligence, intentional acts, or other acts, whether directly connected to such activities or not, and however caused; and

(3) The condition of the premises where such activities occur.

9. Any rule or portion of a rule, as that term is defined in section 536.010, 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 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 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, 2011, shall be invalid and void.

263.190. OWNERS TO CONTROL NOXIOUS WEEDS — NOTICE PROCEDURE — PENALTY — SALE OF NOXIOUS WEEDS PROHIBITED. — 1. **[**The plants musk thistle (Carduus nutans L.), Scotch thistle (Onoprodum acanthium L.) and Canada thistle (Cirsium arvense) are hereby designated as noxious weeds. All owners of land shall control all such plants growing upon their land**] As used in sections 263.190 to 263.474, "noxious weed" means any weed designated as noxious by rules promulgated by the director of the department of agriculture. The department shall maintain a list of such noxious weeds and shall make such list available to the public. The department of agriculture shall promulgate rules necessary to implement the provisions of this subsection. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this subsection shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This subsection and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 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, 2011, shall be invalid and void**.

2. It shall be the duty of every owner of lands in this state**, including but not limited to any person, association of persons, corporation, partnership, state highways and**

transportation commission, state department, state agency, county commission, township board, school board, drainage board, governing body of an incorporated city, railroad company or other transportation company and such company's authorized agent, and any person supervising state-owned lands to control all **[**Canada, musk, or Scotch thistles**] noxious weeds** growing thereon so often in each and every year as shall be sufficient to prevent **[**said thistles**] such noxious weeds** from going to seed. If any owner of such land shall knowingly allow any **[**Canada, musk, or Scotch thistles**] noxious weeds** to grow thereon, such owner shall forfeit and pay the sum of one hundred dollars to the county commission for every such offense, and such sum forfeited plus court costs may be recovered by civil action instituted by the prosecuting attorney in the name of the county commission before any associate circuit judge of the county in which the offense is committed. All sums recovered by virtue of this section shall be paid to the use of the county control fund.

3. Before initiating any civil action under this section, the prosecuting attorney of the county in which the land, or the greater part thereof, is located shall notify the owner of the land of the requirements of this law, by certified mail, return receipt requested, from a list supplied by the officer who prepares the tax list, and shall allow the owner of the land fifteen days from acknowledgment date of return receipt, or date of refusal of acceptance, as the case may be, to **initiate** control **of** all such plants growing upon **[**his**] the owner's** land. Failure of the owner to **initiate** control **of** such plants within the fifteen-day period shall be prima facie evidence of the owner's knowledge that **[**he**] the owner** is in violation of this law, and each fifteen days the violation continues after the initial fifteen-day period shall, for the purpose of forfeiture and penalty herein, be considered a separate offense.

4. All sales of noxious weed species are prohibited.

263.200. COUNTY COMMISSION DUTIES TO CONTROL NOXIOUS WEEDS, OFFICIAL IMMUNITY, LANDOWNER DUTY OF CARE — SPECIAL TAX FOR COST, COLLECTION — PROVISIONS APPLICABLE TO CERTAIN POLITICAL SUBDIVISIONS. — 1. In addition to the remedies provided in section 263.190, when **[**Canada, musk, or Scotch thistles**] noxious weeds** are discovered growing on any lands in the county, it shall be the duty of the county commission to control such **[**thistles**] noxious weeds** so as to prevent the seed from ripening, and for that purpose the county commission, or its agents, servants, or employees shall have authority to enter on such lands without being liable to an action of trespass therefor, and shall have such official immunity as exists at common law for any misfeasance or damages occurring in connection with the attempt to control **[**Canada, musk, or Scotch thistles**] noxious weeds**. Notwithstanding any provision of law to the contrary, the county shall be liable for any misfeasance or actual damages caused by its agents, servants, or employees in connection with the attempt to control **[**Canada, musk, or Scotch thistles**] noxious weeds**. The landowner shall owe no duty of care to such persons, except that which the landowner owes to trespassers. The county commission shall keep an accurate account of the expenses incurred in controlling the **[**thistles**] noxious weeds**, and shall verify such statement under seal of the county commission, and transmit the same to the officer whose duty it is or may be to extend state and county taxes on tax books or bills against real estate; and such officer shall extend the aggregate expenses so charged against each tract of land as a special tax, which shall then become a lien on the lands, and be collected as state and county taxes are collected by law and paid to the county commission and credited to the county control fund.

2. Before proceeding to control **[**Canada, musk, or Scotch thistles**] noxious weeds** as provided in this section, the county commission of the county in which the land, or the greater part thereof, is located shall notify the owner of the land of the requirements of this law, by certified mail, return receipt requested, from a list supplied by the officer who prepares the tax list, and shall allow the owner of the land fifteen days from acknowledgment date of return receipt, or date of refusal of acceptance of delivery, as the case may be, to control all such **[**plants**] noxious weeds** growing upon **[**his**] the owner's** land.

3. Any land or properties that are owned solely by a political subdivision in a city not within a county shall be subject to all provisions of sections 263.190, 263.200, and 263.240.

263.220. DUTY OF PROSECUTING ATTORNEY. — It shall be the duty of the prosecuting attorney of the county to prosecute all actions brought under **[**sections 263.190 to 263.240**]** **section 263.190**.

263.240. PENALTY FOR VIOLATION. — Any person who shall violate any of the provisions of **[**sections 263.210 to 263.240 shall, upon conviction, be**]** **section 263.190 is, upon conviction,** guilty of a misdemeanor.

268.121. RECORDED BRAND LIST A PUBLIC RECORD, FURNISHED TO GENERAL PUBLIC AT COST. — It shall be the duty of the director from time to time to **[**cause to be published in book form**]** **create** a list of all brands on record at **[**the time of the publication**]** **that time and make such list available to the public on a publicly-accessible website**. The **[**lists may be supplemented**]** **list shall be updated** from time to time. The **[**publication**]** **list** shall contain a facsimile of all brands recorded and the owner's name and post-office address. The records shall be arranged in convenient form for reference. **[**It shall be the duty of the director to send one copy of the brand book and supplements to the county recorder of deeds of each county and to each licensed livestock market and slaughter plant in the state. The books and supplements shall be furnished without cost to the livestock market or slaughter plant or to the county and shall be kept as a matter of public record.**]** The **[**books and supplements**]** **list** may be sold to the general public at the cost of **its** printing and mailing **[**each book**]**.

275.360. REFUND OF FEES, REQUEST FOR. — Any producer or grower may, by the use of forms provided by the director, have the fee paid and all future fees paid or collected from him pursuant to sections 275.300 to 275.370 refunded to him, provided such request for refund is in the office of the director within sixty days following the payment of such fee. Apples **and rice** will be exempt from this provision.

276.401. TITLE, AND SCOPE OF THE LAW — DEFINITIONS. — 1. Sections 276.401 to 276.582 shall be known as the "Missouri Grain Dealer Law".

2. The provisions of the Missouri grain dealer law shall apply to grain purchases where title to the grain transfers from the seller to the buyer within the state of Missouri.

3. Unless otherwise specified by contractual agreement, title shall be deemed to pass to the buyer as follows:

(1) On freight on board (FOB) origin or freight on board (FOB) basing point contracts, title transfers at time and place of shipment;

(2) On delivered contracts, when and where constructively placed, or otherwise made available at buyer's original destination;

(3) On contracts involving in-store commodities, at the storing warehouse and at the time of contracting or transfer, and/or mailing of documents, if required, by certified mail, unless and to the extent warehouse tariff, warehouse receipt and/or storage contract assumes the risk of loss and/or damage.

4. As used in sections 276.401 to 276.582, unless the context otherwise requires, the following terms mean:

(1) "Auditor", a person appointed under sections 276.401 to 276.582 by the director to assist in the administration of sections 276.401 to 276.582, and whose duties include making inspections, audits and investigations authorized under sections 276.401 to 276.582;

(2) "Authorized agent", any person who has the legal authority to act on behalf of, or for the benefit of, another person;

(3) "Buyer", any person who buys or contracts to buy grain;

(4) "Certified public accountant", any person licensed as such under chapter 326;

(5) "Claimant", any person who requests payment for grain sold by him to a dealer, but who does not receive payment because the purchasing dealer fails or refuses to make payment;

(6) "Credit sales contracts", a conditional grain sales contract wherein payment and/or pricing of the grain is deferred to a later date. Credit sales contracts include, but are not limited to, all contracts meeting the definition of deferred payment contracts, and/or delayed price contracts;

(7) "Current assets", resources that are reasonably expected to be realized in cash, sold, or consumed (prepaid items) within one year of the balance sheet date;

(8) "Current liabilities", obligations reasonably expected to be liquidated within one year and the liquidation of which is expected to require the use of existing resources, properly classified as current assets, or the creation of additional liabilities. Current liabilities include obligations that, by their terms, are payable on demand unless the creditor has waived, in writing, the right to demand payment within one year of the balance sheet date;

(9) "Deferred payment agreement", a conditional grain sales transaction establishing an agreed upon price for the grain and delaying payment to an agreed upon later date or time period. Ownership of the grain, and the right to sell it, transfers from seller to buyer so long as the conditions specified in section 276.461 and section 411.325 are met;

(10) "Deferred pricing agreement", a conditional grain sales transaction wherein no price has been established on the grain, the seller retains the right to price the grain later at a mutually agreed upon method of price determination. Deferred pricing agreements include, but are not limited to, contracts commonly known as no price established contracts, price later contracts, and basis contracts on which the purchase price is not established at or before delivery of the grain. Ownership of the grain, and the right to sell it, transfers from seller to buyer so long as the conditions specified in section 276.461 and section 411.325 are met;

(11) "Delivery date" shall mean the date upon which the seller transfers physical possession, or the right of physical possession, of the last unit of grain in any given transaction;

(12) "Department", the Missouri department of agriculture;

(13) "Designated representative", an employee or official of the department designated by the director to assist in the administration of sections 276.401 to 276.582;

(14) "Director", the director of the Missouri department of agriculture or his designated representative;

(15) "Generally accepted accounting principles", the conventions, rules and procedures necessary to define accepted accounting practice, which include broad guidelines of general application as well as detailed practices and procedures generally accepted by the accounting profession, and which have substantial authoritative support from the American Institute of Certified Public Accountants;

(16) "Grain", all grains for which the United States Department of Agriculture has established standards under the United States Grain Standards Act, Sections 71 to 87, Title 7, United States Code, and any other agricultural commodity or seed prescribed by the director by regulation;

(17) "Grain dealer" or "dealer", any person engaged in the business of, or as a part of his business participates in, buying grain where title to the grain transfers from the seller to the buyer within the state of Missouri. "Grain dealer" or "dealer" shall not be construed to mean or include:

(a) Any person or entity who is a member of a recognized board of trade or futures exchange and whose trading in grain is limited solely to trading with other members of a recognized board of trade or futures exchange; provided, that grain purchases from a licensed warehouseman, farmer/producer or any other individual or entity in a manner other than through the purchase of a grain futures contract on a recognized board of trade or futures exchange shall be subject to sections 276.401 to 276.582. Exempted herein are all futures transactions;

(b) A producer or feeder of grain for livestock or poultry buying grain for his own farming or feeding purposes who purchases grain exclusively from licensed grain dealers or whose total grain purchases from producers during his or her fiscal year do not exceed **[**one hundred thousand dollars**] fifty thousand bushels**;

(c) Any person or entity whose grain purchases in the state of Missouri are made exclusively from licensed grain dealers;

(d) A manufacturer or processor of registered or unregistered feed whose total grain purchases from producers during his or her fiscal year does not exceed one hundred thousand dollars and who pays for all grain purchases from producers at the time of physical transfer of the grain from the seller or his or her agent to the buyer or his or her agent and whose resale of such grain is solely in the form of manufactured or processed feed or feed by-products or whole feed grains to be used by the purchaser thereof as feed;

(18) "Grain transport vehicle", a truck, tractor-trailer unit, wagon, pup, or any other vehicle or trailer used by a dealer, whether owned or leased by him, to transport grain which he has purchased; except that, bulk or bagged feed delivery trucks which are used principally for the purpose of hauling feed and any trucks for which the licensed gross weight does not exceed twenty-four thousand pounds shall not be construed to be a grain transport vehicle;

(19) "Insolvent" or "insolvency", (a) an excess of liabilities over assets or (b) the inability of a person to meet his financial obligations as they come due, or both (a) and (b);

(20) "Interested person", any person having a contractual or other financial interest in grain sold to a dealer, licensed, or required to be licensed;

(21) "Location", any site other than the principal office where the grain dealer engages in the business of purchasing grain;

(22) "Minimum price contract", a conditional grain sales transaction establishing an agreed upon minimum price where the seller may participate in subsequent price gain, if any. Ownership of the grain, and the right to sell it, transfers from the seller to the buyer so long as the conditions specified in section 276.461 and section 411.325 are met;

(23) "Person", any individual, partnership, corporation, cooperative, society, association, trustee, receiver, public body, political subdivision or any other legal or commercial entity of any kind whatsoever, and any member, officer or employee thereof;

(24) "Producer", any owner, tenant or operator of land who has an interest in and receives all or any part of the proceeds from the sale of grain or livestock produced thereon;

(25) "Purchase", to buy or contract to buy grain;

(26) "Sale", the passing of title from the seller to the buyer in consideration of the payment or promise of payment of a certain price in money, or its equivalent;

(27) "Value", any consideration sufficient to support a simple contract.

276.421. FINANCIAL STATEMENT TO ACCOMPANY APPLICATION, HOW PREPARED — FALSE STATEMENT, PENALTY — MINIMUM NET WORTH AND ASSETS REQUIRED. — 1. All applications shall be accompanied by a true and accurate financial statement of the applicant, prepared within six months of the date of application, setting forth all the assets, liabilities and net worth of the applicant. **In the event that the applicant has been engaged in business as a grain dealer for at least one year, the financial statement shall set forth the aggregate dollar amount paid for grain purchased in Missouri and those states with whom Missouri has entered into contracts or agreements as authorized by section 276.566 during the last completed fiscal period of the applicant. In the event the applicant has been engaged in business for less than one year or has not previously engaged in business as a grain dealer, the financial statement shall set forth the estimated aggregate dollar amount to be paid for grain purchased in Missouri and those states with whom Missouri has entered into contracts or agreements as authorized by section 276.566 during the applicant's initial fiscal period.** All applications shall also be accompanied by a true and accurate statement of income and expenses for the applicant's most recently completed fiscal year. The financial

statements required by this chapter shall be prepared in conformity with generally accepted accounting principles; except that, the director may promulgate rules allowing for the valuation of assets by competent appraisal.

2. The financial statement required by subsection 1 of this section shall be audited or reviewed by a certified public accountant. The financial statement may not be audited or reviewed by the applicant, or an employee of the applicant, if an individual, or, if the applicant is a corporation or partnership, by an officer, shareholder, partner, or a direct employee of the applicant.

3. The director may require any additional information or verification with respect to the financial resources of the applicant as he deems necessary for the effective administration of this chapter. The director may promulgate rules setting forth minimum standards of acceptance for the various types of financial statements filed in accordance with the provisions of this chapter. The director may promulgate rules requiring a statement of retained earnings, a statement of changes in financial position, and notes and disclosures to the financial statements for all licensed grain dealers or all grain dealers required to be licensed. The additional information or verification referred to herein may include, but is not limited to, requiring that the financial statement information be reviewed or audited in accordance with standards established by the American Institute of Certified Public Accountants.

4. All grain dealers shall provide the director with a copy of all financial statements and updates to financial statements utilized to secure the bonds required by sections 276.401 to 276.582.

5. All financial statements submitted to the director for the purposes of this chapter shall be accompanied by a certification by the applicant or the chief executive officer of the applicant, subject to the penalty provision set forth in subsection 4 of section 276.536, that to the best of his knowledge and belief the financial statement accurately reflects the financial condition of the applicant for the fiscal period covered in the statement.

6. Any person who knowingly prepares or assists in the preparation of an inaccurate or false financial statement which is submitted to the director for the purposes of this chapter, or who during the course of providing bookkeeping services or in reviewing or auditing a financial statement which is submitted to the director for the purposes of this chapter, becomes aware of false information in the financial statement and does not disclose in notes accompanying the financial statements that such false information exists, or does not disassociate himself from the financial statements prior to submission, is guilty of a class C felony. Additionally, such persons are liable for any damages incurred by sellers of grain selling to a grain dealer who is licensed or allowed to maintain his license based upon inaccuracies or falsifications contained in the financial statement.

7. **[**Except as set forth in section 276.511 which mandates higher requirements for class I grain dealers,**]** Any licensed grain dealer or applicant for a grain dealer's license **[**who purchases less than four hundred thousand dollars worth of grain, during the dealer's last completed fiscal year, in the state of Missouri and those states with whom Missouri has entered into contracts or agreements as authorized by section 276.566 must**] shall** maintain a minimum net worth equal to **[**the greater of ten thousand dollars or**]** five percent of **[**such**] annual** grain purchases**[**. If grain purchases during the dealer's last completed fiscal year are four hundred thousand dollars or more, the dealer must maintain a net worth equal to the greater of twenty thousand dollars or one percent of grain purchases**] as set forth in the financial statements required by this chapter**. If the dealer or applicant is deficient in meeting this net worth requirement, he must post additional bond as required in section 276.436.

8. Any licensed grain dealer or applicant for a grain dealer's license shall have and maintain current assets at least equal to one hundred percent of current liabilities. The financial statement required by this chapter shall set forth positive working capital in the form of a current ratio of the total adjusted current assets to the total adjusted current liabilities of at least one to one.

(1) The director may allow applicants to offset negative working capital by increasing the grain dealer surety bond required by section 276.426 up to the total amount of negative working capital at the discretion of the director.

(2) Adjusted current assets shall be calculated by deducting from the stated current assets shown on the financial statement submitted by the applicant any current asset resulting from notes receivable from related persons, accounts receivable from related persons, stock subscriptions receivable, and any other related person receivables.

(3) A disallowed current asset shall be netted against any related liability and the net result, if an asset, shall be subtracted from the current assets.

276.436. AMOUNT OF BOND — DIRECTOR TO ESTABLISH BY RULE — FORMULA — MINIMUM AND MAXIMUM — ADDITIONAL BOND BECAUSE OF LOW NET WORTH OR OTHER CIRCUMSTANCES — FAILURE TO MAINTAIN, EFFECT. — 1. The total amount of the surety bond required of a dealer licensed pursuant to sections 276.401 to 276.582 shall be established by the director by rule, but in no event shall such bond be less than **[**twenty**] fifty** thousand dollars nor more than **[**three**] six** hundred thousand dollars, except as authorized by other provisions of sections 276.401 to 276.582.

2. The formula for determining the amount of bond shall be established by the director by rule and shall be computed at a rate of no less than the principal amount to the nearest one thousand dollars, equal to **[**not less than one percent and not more than five**] two** percent of the aggregate dollar amount paid by the dealer for grain purchased in the state of Missouri and those states with whom Missouri has entered into contracts or agreements as authorized by section 276.566 during the dealer's last completed fiscal year, or, in the case of a dealer who has been engaged in business as a grain dealer for less than one year or who has not previously engaged in such business, **[**not less than one percent and not more than five**] two** percent of the estimated aggregate dollar amount to be paid by the dealer for grain purchased in the state of Missouri and those states with whom Missouri has entered into contracts or agreements as authorized by section 276.566 during the applicant's initial fiscal year.

3. Any licensed grain dealer or applicant who has, at any time, a net worth less than the amount required by subsection 7 of section 276.421, shall be required to obtain a surety bond in the amount of one thousand dollars for each one thousand dollars or fraction thereof of the net worth deficiency. Failure to post such additional bond is grounds for refusal to license or the suspension or revocation of a license issued under sections 276.401 to 276.582. This additional bond can be in addition to or greater than or both in addition to and greater than the maximum bond as set by this section.

4. The director may, when the question arises as to a grain dealer's ability to pay for grain purchased, require a grain dealer to post an additional bond in a dollar amount deemed appropriate by the director. Such additional bond can be in addition to or greater than or both in addition to and greater than the maximum bond as set by this section. The director must furnish to the dealer, by certified mail, a written statement of the reasons for requesting additional bond and the reasons for questioning the dealer's ability to pay. Failure to post such additional bond is a ground for modification, suspension or revocation by the director of a license issued under sections 276.401 to 276.582. The determination of insufficiency of a bond and of the amount of the additional bond shall be based upon evidence presented to the director that a dealer:

(1) Is or may be unable to meet his dollar or grain obligations as they become due;

(2) Has acted or is acting in a way which might lead to the impairment of his capital;

(3) As a result of his activity, inactivity, or purchasing and pricing practices and procedures, including, but not limited to, the dealer's deferred pricing or deferred payment practices and procedures, is or may be unable to honor his grain purchase obligations arising out of his dealer business. The amount of the additional bond required under this subsection shall not exceed the amount of the dealer's current loss position. Current loss position shall be the sum of the dealer's

current liabilities less current assets or the amount by which he is currently unable to meet the grain purchase obligations arising out of his dealer business.

5. One bond, cumulative as to minimum requirements, may be given where a dealer has multiple licenses; except however, that in computing the amount of the single bond the grain dealer may add together the total purchases of grain of all locations to be covered thereby and use the aggregate total purchases for the fiscal year for the purpose of computing bond. However, this single cumulative bond must be at least equal to **[**twenty**] fifty** thousand dollars per dealer license issued up to the **[**three**] six** hundred thousand dollar maximum bond amount specified in subsection 1 of this section. When a grain dealer elects to provide a single bond for a number of licensed locations, the total assets of all the licensed locations shall be subject to liabilities of each individual licensed location.

6. Failure of a grain dealer to provide and file a bond and financial statement and to keep such bond in force shall be grounds for the suspension or revocation, by the director, of a license issued under sections 276.401 to 276.582.

7. A dealer shall be required to post additional surety bond when he surpasses the estimated aggregate dollar amount to be paid for grain purchased as set forth in subsection 2 of this section. Such additional bond shall be determined by the director so as to effectively protect sellers of grain dealing with such dealer.

276.441. DEALER MAY REQUEST USE OF MINIMUM BOND, PROCEDURE. — 1. Any grain dealer who is of the opinion that his net worth is sufficient to guarantee payment for grain purchased by him may make a formal, written request to the director that he be relieved of the obligation of filing a bond in excess of the minimum bond of **[**twenty**] fifty** thousand dollars. Such request shall be accompanied by a financial statement of the applicant, prepared within four months of the date of such request and accompanied by such additional information concerning the applicant and his finances as the director may require which may include the request for submission of a financial statement audited by a public accountant.

2. If such financial statement discloses a net worth equal to at least five times the amount of the bond otherwise required by sections 276.401 to 276.582, and the director is otherwise satisfied as to the financial ability and resources of the applicant, the director may waive that portion of the required bond in excess of **[**twenty**] fifty** thousand dollars for each license issued.

411.280. WAREHOUSEMAN'S NET WORTH, REQUIREMENTS — DEFICIENCY, HOW CORRECTED. — Every warehouseman licensed under the provisions of this chapter shall have and maintain a net worth equal to the greater of ten thousand dollars or the amount which results from multiplying the storage capacity of the warehouse by **[**fifteen**] twenty-five** cents per bushel. Capital stock, for the purpose of determining the net worth, shall not be considered a liability. Any deficiency in required net worth above the ten thousand dollar minimum requirement may be met by supplying additional bond in an amount equal to one thousand dollars for each one thousand dollars or fraction thereof of deficiency.

[263.205. MULTIFLORA ROSE A NOXIOUS WEED, EXCEPTIONS — COUNTIES MAY ESTABLISH PROGRAMS AND FUNDS TO CONTROL NOXIOUS WEEDS. — 1. The plant multiflora rose (rosa multiflora) is hereby declared to be a noxious weed; except, notwithstanding any other provision of this section, multiflora rose (rosa multiflora) shall not be considered a noxious weed when cultivated for or used as understock for cultivated roses.

2. The governing body of any county of this state may opt to establish a "County Noxious Weed Fund" for the purpose of making grants on a cost share basis for the control of any noxious weed, as the plant may be designated under this section.

3. Any county opting to establish a county noxious weed fund, shall establish a noxious weed control program. No resident or owner of land of any county shall be

required to participate in a county noxious weed control program; however, any resident or landowner making application for cost share grants under this section shall participate in said program.

4. For the purpose of administering the county noxious weed fund, the county governing body shall have sole discretion of awarding cost share grants under this section.

5. For the purpose of funding the county noxious weed fund, the county governing body may appropriate county funds, and/or solicit municipality, state agency, state general revenue, and federal agency funds. All such funds shall be deposited in the county noxious weed fund to be expended for the sole purpose of controlling noxious weeds so designated under this section.

6. Any county opting to establish a county noxious weed control program under this section may make rules and regulations governing said program, and any county opting to establish a county noxious weed fund under this section shall establish a cost share ratio on an annual basis beginning with the creation of the fund.**]**

[263.230. CONTROL OF SPREAD OF BINDWEED, BY WHOM. — It shall be the duty of any person or persons, association of persons, corporations, partnerships, the state highways and transportation commission, the county commissions, the township boards, school boards, drainage boards, the governing bodies of incorporated cities, railroad companies and other transportation companies or their authorized agents and those supervising state-owned lands to control the spread of and to eradicate by methods approved by the state department of agriculture field bindweed (convolvulus arvensis) hereby designated as a noxious and dangerous weed to agriculture.**]**

[263.232. ERADICATION AND CONTROL OF THE SPREAD OF TEASEL, KUDZU VINE, AND SPOTTED KNAPWEED. — It shall be the duty of any person or persons, association of persons, corporations, partnerships, the state highways and transportation commission, any state department, any state agency, the county commissions, the township boards, school boards, drainage boards, the governing bodies of incorporated cities, railroad companies and other transportation companies or their authorized agents and those supervising state-owned lands:

(1) To control and eradicate the spread of cut-leaved teasel (Dipsacus laciniatus) and common teasel (Dipsacus fullonum), which are hereby designated as noxious and dangerous weeds to agriculture, by methods in compliance with the manufacturer's label instructions when chemical herbicides are used for such purposes;

(2) To control the spread of kudzu vine (Pueraria lobata), which is hereby designated as a noxious and dangerous weed to agriculture, by methods in compliance and conformity with the manufacturer's label instructions when chemical herbicides are used for such purposes; and

(3) To control the spread of spotted knapweed (Centaurea stoebe ssp. micranthos, including all subspecies), which is hereby designated as a noxious and dangerous weed to agriculture, by methods in compliance and conformity with the manufacturer's label instructions when chemical herbicides are used for such purposes.**]**

[263.241. PLANT, PURPLE LOOSESTRIFE (LYTHRUM SALICARIA) DECLARED A NOXIOUS WEED — DISTRIBUTION FOR CONTROL EXPERIMENTS ONLY, PERMIT REQUIRED, VIOLATIONS, PENALTY. — The plant, purple loosestrife (Lythrum salicaria), and any hybrids thereof, is hereby designated a noxious weed. No person shall buy, sell, offer for sale, distribute or plant seeds, plants or parts of plants of purple loosestrife without a permit issued by the Missouri department of conservation. Such permits shall be issued only for experiments to control and eliminate nuisance weeds.

Any person who violates the provisions of this section shall be guilty of a class A misdemeanor.**]**

[263.450. NOXIOUS WEED, DEFINED — DESIGNATION OF NOXIOUS WEED BY DIRECTOR OF DEPARTMENT OF AGRICULTURE. — As used in sections 263.450 to 263.474, the term "noxious weed" includes bindweed (Convolvulus arvensis), Johnson grass (Sorghum halepense), multiflora rose (Rosa multiflora) except when cultivated for or used as understock for cultivated roses, Canada thistle (Cirsium arvense), musk thistle (Carduus nutans L.), Scotch thistle (Onoprodum acanthium L.), purple loosestrife (Lythrum salicaria), and any other weed designated as noxious by rules and regulations promulgated by the director of the department of agriculture.**]**

[276.416. APPLICATION TO LIST DOLLAR AMOUNTS OF GRAIN PURCHASED OR TO BE PURCHASED. — In the event that the applicant has been engaged in business as a grain dealer for at least one year, the application shall set forth the aggregate dollar amount paid for grain purchased in Missouri and those states with whom Missouri has entered into contracts or agreements as authorized by section 276.566 during the last completed fiscal period of the applicant. In the event the applicant has been engaged in business for less than one year or has not previously engaged in business as a grain dealer, the application shall set forth the estimated aggregate dollar amount to be paid for grain purchased in Missouri and those states with whom Missouri has entered into contracts or agreements as authorized by section 276.566 during the applicant's initial fiscal period.**]**

[276.446. SMALL DEALERS MAY HAVE LOWER MINIMUM BOND. — Any grain dealer whose total purchases of grain within Missouri and those states with whom Missouri has entered into contracts or agreements as authorized by section 276.566 during any fiscal year, do not exceed an aggregate dollar amount of four hundred thousand dollars may satisfy the bonding requirements of sections 276.401 to 276.581 by filing with the director a bond at the rate of one thousand dollars for each twenty thousand dollars or fraction thereof of the dollar amount to be purchased, with a minimum bond of ten thousand dollars required.**]**

SECTION B. EMERGENCY CLAUSE. — Because immediate action is necessary to have continuity in the study of urban farming issues, the repeal and reenactment of section 21.801 of section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace, and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the repeal and reenactment of section 21.801 of section A of this act shall be in full force and effect upon its passage and approval.

Approved July 11, 2011

SB 366 [HCS SCS SB 366]

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

Creates Missouri cooperative associations.

AN ACT to repeal section 351.658, RSMo, and to enact in lieu thereof eighty-one new sections relating to the Missouri cooperative associations act, with penalty provisions.

SECTION

A. Enacting clause.
351.408. Conversion to corporation, certificate of conversion required, procedure, effect of conversion.
351.409. Conversion of corporation to another business entity, procedure — certificate of conversion required — effect of conversion — inapplicability to nonprofit organizations.
351.658. Fees for corporate filings with secretary of state.
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Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 351.658, RSMo, is repealed and eighty-one new sections enacted in lieu thereof, to be known as sections 351.408, 351.409, 351.658, 351.1000, 351.1003, 351.1006, 351.1009, 351.1012, 351.1015, 351.1018, 351.1021, 351.1024, 351.1027, 351.1030, 351.1033, 351.1036, 351.1039, 351.1042, 351.1045, 351.1048, 351.1051, 351.1054, 351.1057, 351.1060, 351.1063, 351.1066, 351.1069, 351.1072, 351.1075, 351.1078, 351.1081, 351.1084, 351.1087, 351.1090, 351.1093, 351.1096, 351.1099, 351.1102, 351.1105, 351.1108, 351.1111, 351.1114, 351.1117, 351.1120, 351.1123, 351.1126, 351.1129, 351.1132, 351.1135, 351.1138, 351.1141, 351.1144, 351.1147, 351.1150, 351.1153, 351.1156, 351.1159, 351.1162, 351.1165, 351.1168, 351.1171, 351.1174, 351.1177, 351.1180, 351.1183, 351.1186, 351.1189, 351.1192, 351.1195, 351.1198, 351.1201, 351.1204, 351.1207, 351.1210, 351.1213, 351.1216, 351.1219, 351.1222, 351.1225, 351.1227 and 351.1228, to read as follows:

351.408. CONVERSION TO CORPORATION, CERTIFICATE OF CONVERSION REQUIRED, PROCEDURE, EFFECT OF CONVERSION. — 1. As used in this section, the term "other entity" means a limited liability company, statutory trust, business trust or association, real estate investment trust, common-law trust or any other unincorporated business including a partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), or a foreign corporation.

2. Any other entity may convert to a corporation of this state by complying with subsection 8 of this section and filing in the office of the secretary of state:

(1) A certificate of conversion to corporation that has been executed in accordance with subsection 9 of this section and filed in accordance with section 351.046; and

(2) Articles of incorporation that have been executed, acknowledged and filed in accordance with section 351.046.

3. The certificate of conversion to corporation shall state:

(1) The date on which and jurisdiction where the other entity was first created, incorporated, formed or otherwise came into being and, if it has changed, its jurisdiction immediately prior to its conversion to a domestic corporation;

(2) The name of the other entity immediately prior to the filing of the certificate of conversion to corporation; and

(3) The name of the corporation as set forth in its articles of incorporation filed in accordance with subsection 2 of this section.

4. Upon the effective time of the certificate of conversion to corporation and the articles of incorporation, the other entity shall be converted to a corporation of this state and the corporation shall thereafter be subject to all of the provisions of this title, except that notwithstanding section 351.075, the existence of the corporation shall be deemed to have commenced on the date the other entity commenced its existence in the jurisdiction in which the other entity was first created, formed, incorporated or otherwise came into being.

5. The conversion of any other entity to a corporation of this state shall not be deemed to affect any obligations or liabilities of the other entity incurred prior to its conversion to a corporation of this state or the personal liability of any person incurred prior to such conversion.

6. When another entity has been converted to a corporation of this state under this section, the corporation of this state shall, for all purposes of the laws of the state of Missouri, be deemed to be the same entity as the converting other entity. When any conversion shall have become effective under this section, for all purposes of the laws of the state of Missouri, all of the rights, privileges and powers of the other entity that has converted, and all property, real, personal and mixed, and all debts due to such other entity, as well as all other things and causes of action belonging to such other entity, shall remain vested in the domestic corporation to which such other entity has converted and shall be the property of such domestic corporation and the title to any real property vested by deed or otherwise in such other entity shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such other entity shall be preserved unimpaired, and all debts, liabilities and duties of the other entity that has converted shall remain attached to the corporation of this state to which such other entity has converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as a corporation of this state. The rights, privileges, powers and interests in property of the other entity, as well as the debts, liabilities and duties of the other entity, shall not be deemed, as a consequence of the conversion, to have been transferred to the domestic corporation to which such other entity has converted for any purpose of the laws of the state of Missouri.

7. Unless otherwise agreed for all purposes of the laws of the state of Missouri or as required under applicable non-Missouri law, the converting other entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of such other entity and shall constitute a continuation of the existence of the converting other entity in the form of a corporation of this state.

8. Prior to filing a certificate of conversion to corporation with the office of the secretary of state, the conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity and the conduct of its business or by applicable law, as appropriate, and articles of incorporation shall be approved by the same authorization required to approve the conversion.

9. The certificate of conversion to corporation shall be signed by any person who is authorized to sign the certificate of conversion to corporation on behalf of the other entity.

10. In connection with a conversion hereunder, rights or securities of, or interests in, the other entity which is to be converted to a corporation of this state may be exchanged for or converted into cash, property, or shares of stock, rights or securities of such corporation of this state or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, or shares of stock, rights or securities of or interests in another domestic corporation or other entity or may be cancelled.

351.409. CONVERSION OF CORPORATION TO ANOTHER BUSINESS ENTITY, PROCEDURE — CERTIFICATE OF CONVERSION REQUIRED — EFFECT OF CONVERSION — INAPPLICABILITY TO NONPROFIT ORGANIZATIONS. — 1. A corporation of this state may, upon the authorization of such conversion in accordance with this section, convert to a limited liability company, statutory trust, business trust or association, real estate investment trust, common law trust or any other unincorporated business including a partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)) or a foreign corporation.

2. The board of directors of the corporation which desires to convert under this section shall adopt a resolution approving such conversion, specifying the type of entity into which the corporation shall be converted and recommending the approval of such conversion by the shareholders of the corporation. Such resolution shall be submitted to the shareholders of the corporation at an annual or special meeting. Due notice of the time, and purpose of the meeting shall be mailed to each holder of stock, whether voting or nonvoting, of the corporation at the address of the shareholder as it appears on the records of the corporation, at least twenty days prior to the date of the meeting. At the meeting, the resolution shall be considered and a vote taken for its adoption or rejection. If all outstanding shares of stock of the corporation, whether voting or nonvoting, shall be voted for the adoption of the resolution, the conversion shall be authorized.

3. If a corporation shall convert in accordance with this section to another entity organized, formed or created under the laws of this state or of a jurisdiction other than the state of Missouri, the corporation shall file with the secretary of state a certificate of conversion executed in accordance with section 351.046, which certifies:

(1) The name of the corporation, and if it has been changed, the name under which it was originally incorporated;

(2) The date of filing of its original articles of incorporation with the secretary of state;

(3) The name and jurisdiction of the entity to which the corporation shall be converted;

(4) That the conversion has been approved in accordance with the provisions of this section;

(5) The agreement of the corporation that it may be served with process in the state of Missouri in any action, suit or proceeding for enforcement of any obligation of the corporation arising while it was a corporation of this state, and that it irrevocably appoints the secretary of state as its agent to accept service of process in any such action, suit or proceeding; and

(6) The address to which a copy of the process referred to in subdivision (5) of this subsection shall be mailed to it by the secretary of state. Process may be served upon the secretary of state in accordance with subdivision (5) of this subsection by means of electronic transmission but only as prescribed by the secretary of state. The secretary of state is authorized to issue such rules and regulations with respect to such service as the secretary of state deems necessary or appropriate. In the event of such service upon the secretary of state in accordance with subdivision (5) of this subsection, the secretary of state shall forthwith notify such corporation that has converted out of the state of Missouri by letter, directed to such corporation that has converted out of the state of Missouri at the address so specified, unless such corporation shall have designated in writing to the secretary of state a different address for such purpose, in which case it shall be mailed to the last address designated. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served on the secretary of state under this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other

papers in duplicate, to notify the secretary of state that service is being effected under this subsection and to pay the secretary of state the sum of fifty dollars for the use of the state, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The secretary of state shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served, the fact that service has been effected under this subsection, the return date thereof, and the day and hour service was made. The secretary of state shall not be required to retain such information longer than five years from receipt of the service of process.

4. Upon the filing in the office of the secretary of state of a certificate of conversion in accordance with subsection 3 of this section or upon the future effective date or time of the certificate of conversion and payment to the secretary of state of all fees prescribed under this chapter, the secretary of state shall certify that the corporation has filed all documents and paid all fees required by this chapter, and thereupon the corporation shall cease to exist as a corporation of this state at the time the certificate of conversion becomes effective in accordance with section 351.075. Such certificate of the secretary of state shall be prima facie evidence of the conversion by such corporation.

5. The conversion of a corporation in accordance with this section and the resulting cessation of its existence as a corporation of this state pursuant to a certificate of conversion shall not be deemed to affect any obligations or liabilities of the corporation incurred prior to such conversion or the personal liability of any person incurred prior to such conversion, nor shall it be deemed to affect the choice of law applicable to the corporation with respect to matters arising prior to such conversion.

6. Unless otherwise provided in a resolution of conversion adopted in accordance with this section, the converting corporation shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not constitute a dissolution of such corporation.

7. In connection with a conversion of a domestic corporation to another entity under this section, shares of stock, of the corporation of this state which is to be converted may be exchanged for or converted into cash, property, rights or securities of, or interests in, the entity to which the corporation of this state is being converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, shares of stock, rights or securities of, or interests in, another domestic corporation or other entity or may be cancelled.

8. When a corporation has been converted to another entity or business form under this section, the other entity or business form shall, for all purposes of the laws of the state of Missouri, be deemed to be the same entity as the corporation. When any conversion shall have become effective under this section, for all purposes of the laws of the state of Missouri, all of the rights, privileges and powers of the corporation that has converted, and all property, real, personal and mixed, and all debts due to such corporation, as well as all other things and causes of action belonging to such corporation, shall remain vested in the other entity or business form to which such corporation has converted and shall be the property of such other entity or business form, and the title to any real property vested by deed or otherwise in such corporation shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such corporation shall be preserved unimpaired, and all debts, liabilities and duties of the corporation that has converted shall remain attached to the other entity or business form to which such corporation has converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as such other entity or business form. The rights, privileges, powers and interest in property of the corporation that has converted, as well as the debts, liabilities and duties of such corporation, shall not be deemed, as a consequence of the conversion,

to have been transferred to the other entity or business form to which such corporation has converted for any purpose of the laws of the state of Missouri.

9. No vote of shareholders of a corporation shall be necessary to authorize a conversion if no shares of the stock of such corporation shall have been issued prior to the adoption by the board of directors of the resolution approving the conversion.

10. Nothing in this section shall be deemed to authorize the conversion of a nonprofit corporation into another entity.

351.658. FEES FOR CORPORATE FILINGS WITH SECRETARY OF STATE. — Except as otherwise provided in this chapter, the secretary of state shall charge and collect for:

(1) Filing application for reservation of a corporate name, twenty dollars;

(2) Filing amendment to articles of incorporation or certificate of authority and issuing a certificate of amendment or amended certificate of authority, twenty dollars;

(3) Filing articles of merger or consolidation, twenty-five dollars plus five dollars for each merging or consolidating Missouri corporation or foreign corporation authorized to do business in Missouri over two in number;

(4) Filing articles of dissolution, twenty dollars; filing articles of liquidation, twenty dollars;

(5) Filing of revocation of articles of dissolution, twenty dollars;

(6) Filing of restated articles of incorporation, twenty dollars;

(7) Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars;

(8) Filing statement of change of address of registered office or change of registered agent, or both, five dollars;

(9) Filing resignation of registered agent, five dollars;

(10) Certified copy of corporate record, in a written format fifty cents per page plus five dollars for certification, or in an electronic format five dollars for certification and copies;

(11) Furnishing certificate of corporate existence, five dollars;

(12) Furnishing certificate — others, twenty dollars;

(13) Filing evidence of merger by a foreign corporation, twenty dollars plus one dollar for each additional foreign corporation authorized to do business in Missouri over two;

(14) Filing evidence of dissolution by a foreign corporation, twenty dollars**;**

(15) Filing certificate of conversion to a corporation under section 351.408, fifty-three dollars;

(16) Filing certificate of conversion from a corporation under section 351.409, fifty dollars.

351.1000. CITATION OF LAW. — Sections 351.1000 to 351.1228 shall be known and may be cited as the "Missouri Cooperative Associations Act". Any cooperative formed under sections 351.1000 to 351.1228 shall not be subject to the provisions regarding cooperative associations found under sections 357.010 to 357.190, and cooperative associations formed under sections 357.010 to 357.190 shall not be subject to the provisions hereunder.

351.1003. DEFINITIONS — As used in sections 351.1000 to 351.1228, the following words shall mean:

(1) "Alternative ballot", an alternative method of voting by a member, and may include voting by electronic, telephonic, internet, or other means that reasonably allow members the opportunity to vote;

(2) "Articles", the articles of association of a cooperative as originally filed with the secretary of state and as may be subsequently amended from time to time by the cooperative in accordance with sections 351.1000 to 351.1228;

(3) "Board", the board of directors of a cooperative;

(4) "Business entity", a corporation, limited liability company, limited partnership, limited liability partnership, or other legal entity, association, or body vested with the power or function of a legal entity, whether domestic or foreign;

(5) "Bylaws", the bylaws of a cooperative as originally adopted and as may be subsequently amended from time to time in accordance with sections 351.1000 to 351.1228;

(6) "Cooperative" and "domestic cooperative", an organization chartered under sections 351.1000 to 351.1228;

(7) "Domestic business entity", a business entity organized under the laws of this state;

(8) "Financial rights", only that share of profits and losses of the cooperative and the distributions thereof to which a member is entitled, and does not include a member's governance rights;

(9) "Foreign business entity", a business entity formed under the laws of any jurisdiction other than the state of Missouri;

(10) "Foreign cooperative", a cooperative association formed under the laws of any jurisdiction other than this state, but does not include a foreign business entity which is not organized as a cooperative association, but otherwise operates on a cooperative basis;

(11) "Governance rights", those rights of a member to govern the operations of a cooperative as described in, and subject to, any restrictions as set forth in the bylaws or articles of the cooperative, including but not limited to a member's right to vote based on the membership interests of such member;

(12) "Member", any person which has been granted membership in a cooperative under the terms of the bylaws of the cooperative including patron and nonpatron members;

(13) "Membership interest", a member's interest in a cooperative, including but not limited to a member's financial rights, a member's governance rights, and a member's rights to assign such governance and financial rights. "Membership interest" includes patron membership interests and nonpatron membership interests;

(14) "Members' meeting", a regular or special meeting of the members;

(15) "Missouri for profit corporation", a corporation governed by chapter 351;

(16) "Missouri limited liability company", a limited liability company governed by chapter 347;

(17) "Missouri not-for-profit corporation", a corporation governed by chapter 355;

(18) "Nonpatron", a person which does not conduct patronage with the cooperative;

(19) "Nonpatron member", a member which is a nonpatron;

(20) "Nonpatron membership interest", a membership interest that does not require the holder to conduct patronage for or with the cooperative in order to receive distributions or other financial rights with respect to such membership interest;

(21) "Patron", a person which conducts patronage with the cooperative;

(22) "Patron member", a member which is a patron;

(23) "Patron membership interest", a membership interest which requires the holder to conduct patronage for or with the cooperative in order to receive distributions or other financial rights with respect to such membership interest;

(24) "Patronage", business, transactions, or services done by, for, through or with the cooperative, as determined by the board;

(25) "Person", a natural person or an entity and includes, without limitation, a foreign or domestic corporation whether not-for-profit or for profit, a partnership, a limited liability company, an unincorporated society or association, two or more persons having a joint or common interest, or any other business entity;

(26) "Record date", the date fixed by the board for determination of the owners of membership interests entitled to notice of and entitled to vote at a members' meeting as described in subsection 5 of section 351.1117;

(27) "Secretary of state", the secretary of state of the state of Missouri;

(28) "State", the state of Missouri.

351.1006. FORMATION AND ORGANIZATION AUTHORIZED. — A cooperative may be formed and organized under sections 351.1000 to 351.1228 and may conduct or promote any lawful business or purpose for the mutual welfare of its members within or without this state, which may include:

(1) Providing, directly or indirectly, products, supplies, advertising, and marketing programs, or other services to such cooperative's members, and acting as the cooperative members' agent in the negotiation for and procurement of such products, supplies, programs, or services;

(2) Marketing, processing, or otherwise changing the form or marketability of products, supplies, programs, or services, either directly or indirectly; manufacturing and further processing of such products, supplies, programs, or services; other purposes that are necessary or convenient to facilitate the production, distribution or marketing of products, supplies, programs, or services by patron members and others; and other purposes that are related to the business of the cooperative;

(3) Any other lawful purpose that aids, assists, or is beneficial to the cooperative; and

(4) Any other lawful purpose.

351.1009. AUTHORIZED OFFICER OR DIRECTOR REQUIRED, WHEN — BYLAWS AND BOARD — ORGANIZATIONAL MEETING. — 1. A cooperative may be organized by one or more persons. If any organizer shall be a business entity, then such organizer shall be represented by an authorized officer or director of such business entity who shall execute any documents on the organizer's behalf. The organizer or organizers forming the cooperative need not be members of the cooperative.

2. If the persons constituting the first board are not named in the articles, then the organizer or organizers, by majority vote at a meeting or by unanimous written consent, shall have the power to adopt the bylaws and name the persons to serve as the first directors of the board.

3. As soon as convenient after the first board has been named, an organizational meeting of the board shall be held within or without this state at the call of a majority of the directors for the purposes of electing officers, adopting bylaws if not previously adopted by the organizers, and performing any other acts to finalize the cooperative's organization and transact any other business as may come before the board at a meeting.

351.1012. NAME OF COOPERATIVE, REQUIREMENTS. — 1. The name of each cooperative shall include the words "Cooperative", "Association", "Cooperative Association", "Co-op", or "C.A." and, except to the extent a cooperative transacts business under a fictitious name registered in this state to the cooperative, shall be the name under which the cooperative transacts business in this state. The name shall not contain any word or phrase which indicates or implies that the cooperative is any governmental agency.

2. The name of a cooperative shall distinguish the cooperative upon the records in the office of the secretary of state from the name of a domestic business entity or a foreign business entity which is authorized or registered to do business in this state, or a name the right to which is, at the time of organization, reserved or as otherwise provided for by law.

351.1015. ARTICLES, CONTENTS, FILING REQUIREMENTS — FORMATION, WHEN — TRANSACTION OF BUSINESS, WHEN. — 1. (1) The articles shall include:

(a) The name of the cooperative;

(b) The purpose of the cooperative, which may be or may include the transaction of any lawful business for which a cooperative may be organized under sections 351.1000 to 351.1228;

(c) The name and physical business or residence address of each organizer;

(d) The effective date of the articles if other than the date of filing, provided that such effective date can be no longer than ninety days after the date of filing;

(e) The address, including street and number, of the cooperative's registered office, which address may not be a post office box, and the name of the cooperative's registered agent at such address; and

(f) The period of duration for the cooperative, if not perpetual.

(2) The articles may contain any other lawful provision.

(3) The articles shall be signed by the organizers.

2. The articles shall be filed with the secretary of state. The fee for filing the articles with the secretary of state is one hundred dollars.

3. A cooperative shall be formed when the articles, and appropriate filing fee, are filed with and stamped "Filed" by the secretary of state. In the case of all articles which are accepted and stamped "Filed" by the secretary of state, it shall be presumed that:

(1) All conditions precedent that are required to be performed by the organizer or organizers have been so performed;

(2) The organization of the cooperative has been chartered by the state as a separate legal entity; and

(3) The secretary of state shall issue a certificate of organization to the cooperative.

4. A cooperative shall not transact business prior to formation. A cooperative shall not transact business in this state as an entity under sections 351.1000 to 351.1228 until the articles have been stamped "Filed" by the secretary of state, whether on the date of filing or at a later effective date as specified in the articles.

351.1018. AMENDMENT OF ARTICLES, PROCEDURE. — 1. Unless otherwise set forth in the articles or bylaws, the articles may be amended as follows:

(1) The board, by majority vote, shall pass a resolution stating the text of the proposed amendment, a copy of which shall be forwarded by mail or otherwise distributed with a regular or special members' meeting notice to each member. The notice shall designate the time and place of the members' meeting at which the proposed amendment is to be considered and voted on by the members;

(2) At a meeting where a quorum of the members is registered as being present or represented by alternative ballot, the proposed amendment shall be adopted:

(a) If approved by a majority of the votes cast; or

(b) For a cooperative with articles or bylaws requiring more than majority approval or other conditions for approval, the amendment is approved by a proportion of the votes cast or a number of total members as required by the articles or bylaws and the conditions for approval as set forth in the articles or bylaws, if any, have been satisfied.

2. (1) Upon approval of an amendment under subsection 1 of this section, articles of amendment shall then be prepared stating:

(a) The name of the cooperative;

(b) The effective date of the amendment, if the effective date is not the date of filing with the secretary of state;

(c) The text of the amendment; and

(d) A statement that the amendment has been duly authorized in accordance with the cooperative's articles and bylaws and sections 351.1000 to 351.1228.

(2) The articles of amendment shall be signed by an authorized officer of the cooperative or a member of the board.

3. The articles of amendment shall be filed with the secretary of state with a filing fee of twenty dollars, and provided such articles of amendment shall meet the requirements found in this section, shall be effective as of the date of filing, unless a later date is specified therein. Upon acceptance and filing by the secretary of state, the secretary of state shall stamp the articles of amendment as "Filed" and shall cause the issuance of a certificate of amendment, which shall then be forwarded to the party filing the articles of amendment and held and filed by the secretary of state with the records of the cooperative.

351.1021. REVOCATION OF ERRONEOUS FILING AND CURATIVE DOCUMENTS, FEE. — Upon notification that a filing by a cooperative has been made in error and receipt of a court order directing him or her to do so, the secretary of state shall revoke the erroneous filing and authorize a curative document to be filed. A filing fee of five dollars shall be charged for any such revocation and subsequent curative filing.

351.1024. DATE OF EXISTENCE — PERPETUAL DURATION, EXCEPTION. — 1. The existence of a cooperative shall commence when the articles are filed with the secretary of state, unless a later date is specified in the articles.

2. A cooperative shall have a perpetual duration unless the cooperative otherwise provides for a limited period of duration in the articles.

351.1027. OFFICE AND AGENT REQUIREMENTS — CHANGE OF OFFICE OR AGENT, PROCEDURE — RESIGNATION OF AGENT, PROCEDURE — APPOINTMENT OF AGENT BY SECRETARY OF STATE, WHEN. — 1. Each cooperative shall have and shall continuously maintain in this state:

(1) A registered office that may be, but need not be, the same as its place of business in this state, the mailing address of which shall not be a post office box; and

(2) A registered agent for service of any process, notice, or demand required or permitted by law to be served upon the cooperative, which may be either an individual resident in this state whose business office is identical with the registered office, or a domestic business entity or a foreign business entity authorized to transact business in this state having an office identical with the registered office.

2. A cooperative may from time to time change its registered office or registered agent, or both, upon filing in the office of the secretary of state, a statement setting forth:

(1) The name of the cooperative;

(2) The address, including street and number, of its then registered office;

(3) If the address of its registered office is to be changed, the address, including street and number, to which the registered office is to be changed, which address shall not be a post office box;

(4) The name of its then registered agent;

(5) If its registered agent is to be changed, the name of its successor registered agent, and the successor registered agent's written consent to the appointment either on the statement or attached thereto;

(6) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and

(7) That the change was authorized by the board in accordance with sections 351.1000 to 351.1228, the articles, or the bylaws.

3. The statement shall be signed by an officer or director and delivered to the secretary of state. If the secretary of state finds that the statement conforms to the provisions of this section, the secretary of state shall stamp the statement as "Filed", a

copy of which shall be forwarded to the party filing the statement, and upon filing the change of address of the registered office or the appointment of a new registered agent or both, as the case may be, the statement shall be effective.

4. A cooperative shall change its registered agent if the office of its registered agent shall become vacant for any reason, if its registered agent becomes disqualified or incapable of acting, or if the cooperative revokes the appointment of its registered agent.

5. Any registered agent of a cooperative may resign as agent upon filing with the secretary of state a statement of resignation, on a form approved by the secretary of state, setting forth:

(1) The name of the cooperative;

(2) The address, including street and number, of the cooperative's then registered office;

(3) The name of such registered agent; and

(4) A representation that such registered agent has given written notice of such agent's resignation to an officer of the cooperative at the cooperative's last known business address.

The appointment of the agent shall terminate upon the first to occur of:

(a) The expiration of thirty days after receipt of notice by the secretary of state; or

(b) The appointment of a new registered agent by the cooperative as evidenced by the cooperative's filing of a statement as set forth in subsections 2, 3, and 4 of this section.

6. In the event that a cooperative shall fail to appoint or maintain a registered agent in this state or in the event the registered agent cannot be located in the exercise of due diligence, then the secretary of state shall be automatically appointed as an agent of the cooperative upon whom any process, notice, or demand required or permitted by law to be served upon the cooperative may be served. Service on the secretary of state of any process, notice, or demand against a cooperative shall be made by delivering to and leaving with the secretary of state, a copy of such process, notice, or demand. In the event that any process, notice, or demand is served on the secretary of state, the secretary of state shall immediately cause a copy thereof to be forwarded by registered mail to the address for any organizer as set forth in the articles. The secretary of state shall keep copies of any process, notice, or demand served upon the secretary of state under this section for a period of five years. Nothing contained in this section shall limit or affect the right to serve any process, notice, or demand, which is required or permitted by law to be served upon a cooperative, in any other manner now or hereafter permitted by law.

351.1030. BYLAW REQUIREMENTS, ADOPTION, AMENDMENT — EMERGENCY BYLAWS PERMITTED. — 1. A cooperative shall have bylaws governing the cooperative's business affairs and structure; the qualifications, classification, rights, and obligations of its members; and the classifications, allocations, and distributions of membership interests, which are not otherwise provided in the articles or by sections 351.1000 to 351.1228.

2. (1) To the extent not stated in the articles, the bylaws shall state:

(a) The purpose of the cooperative;

(b) The capital structure of the cooperative, including a statement of the classes and relative rights, preferences, and restrictions granted to or imposed upon each class of membership interests, including the governance rights and financial rights afforded to each class of membership interests, and the cooperative's authority to issue membership interests, which may be determined by the board;

(c) The taxation structure of the cooperative, including a statement of the taxation classification of the cooperative as decided by the board. A cooperative may elect to be taxed as a corporation or as a partnership under sections 351.1000 to 351.1228;

(d) A provision designating the governance rights of each class of membership interests, including which membership interests have voting power and any limitations or

restrictions on the voting power, which shall be in accordance with the provisions of sections 351.1000 to 351.1228;

(e) A statement that patron membership interests with voting power shall be restricted to one vote for each member regardless of the amount of patronage transacted with or for such member or the amount of patron membership interests held by a member in the affairs of the cooperative, or a statement describing such different allocation of voting power to the extent permitted under sections 351.1000 to 351.1228;

(f) A statement that membership interests held by a member are transferable only with the approval of the board or as provided in the bylaws;

(g) A statement as to how profits and losses will be allocated and cash will be distributed among the members;

(h) A statement that the records of the cooperative shall include patron membership interests and, if authorized, nonpatron membership interests, which may be further described in the bylaws.

(2) The bylaws may contain any provision relating to the management or regulation of the affairs of the cooperative that is not inconsistent with sections 351.1000 to 351.1228 or the articles, and which may include the following:

(a) The number of directors and the qualifications, manner of election, powers, duties, and compensation, if any, of directors;

(b) The qualifications of members and any limitations on their number;

(c) The manner of admission, withdrawal, suspension, and expulsion of members;

(d) Generally, the governance rights, financial rights, assignability of governance rights and financial rights, and other rights, privileges, and obligations of members and their membership interests;

(e) Authorization to permit a manager, which may be a person that is not otherwise related to the cooperative, to provide outside management services to the cooperative; and

(f) Any other provisions required by the articles to be in the bylaws.

3. Bylaws shall be adopted before the acceptance of any contributions to the cooperative by any member, except in the case of a conversion of a foreign business entity or domestic business entity to a cooperative, in which case the bylaws shall be adopted as soon as is practical following the filing of the articles.

4. The board may amend the bylaws at any time and without further approval by the members to add, change, or delete a provision or multiple provisions, unless:

(1) Sections 351.1000 to 351.1228, the articles, or the bylaws otherwise reserve the power exclusively to the members; or

(2) A particular bylaw expressly prohibits the board from doing so and provided the members shall receive a notice and summary of the amendments or the actual amendments to the bylaws as adopted by the board.

5. The bylaws may be amended, including, but not limited to, the addition, deletion, or restatement of any bylaw or bylaws, by the members at a regular or special members' meeting if:

(1) The notice of the regular or special members' meeting contains a statement that the proposed amended bylaws will be voted upon at the meeting and copies of such proposed amended bylaws are included with the notice, or copies are available upon request from the cooperative and a summary statement of the proposed amended bylaw or bylaws are included with the notice;

(2) A quorum is registered at the members' meeting as being present or represented by mail or alternative ballot if the mail or alternative ballot is authorized by the board; and

(3) The proposed amended bylaw or bylaws are approved by a majority vote cast at the meeting, except that if a cooperative's articles or bylaws require more than majority approval or other conditions for approval, the proposed amended bylaw or bylaws shall

only be approved by a proportion of the vote cast or a number of the total members as required by the articles or bylaws and any other such conditions for approval which are contained in the articles or bylaws have been satisfied.

6. (1) Unless otherwise provided in the articles or bylaws, the board may adopt emergency bylaws, at any time, to be effective only in the event of an emergency as provided in subdivision (4) of this subsection. The emergency bylaws, which are subject to amendment or repeal by the members, may include all provisions necessary for managing the cooperative during the emergency, including:

(a) Procedures for calling a meeting of the board;

(b) Quorum requirements for the meeting; and

(c) Designation of additional or substitute directors.

(2) All provisions of the regular bylaws consistent with the emergency bylaws shall remain in effect during the emergency. The emergency bylaws shall not be effective after the emergency ends.

(3) Action taken in good faith in accordance with the emergency bylaws:

(a) Binds the cooperative; and

(b) Shall not be the basis for imposition of liability on any director, officer, employee, or agent of the cooperative on the grounds that the action was not an authorized action of the cooperative.

(4) An emergency exists for the purposes of this section, if a quorum of the directors cannot readily be obtained because of some catastrophic event.

351.1033. RECORD-KEEPING REQUIREMENTS — EXAMINATION OF RECORDS, WHEN. — 1. (1) A cooperative shall keep as permanent records, minutes of all meetings of its members and of the board, a record of all actions taken by the members or the board without a meeting, and a record of all waivers of notices of meetings of the members and of the board.

(2) A cooperative shall maintain appropriate accounting records.

(3) A cooperative shall keep a copy of each of the following records at its principal office:

(a) Its current articles and other governing instruments, and all amendments thereto or restatements thereof;

(b) Its current bylaws or other similar instruments, and all amendments thereto or restatements thereof;

(c) A record of the names and last known addresses of its current and past members in a form that allows preparation of an alphabetical list of members with each member's address;

(d) A list of the names and last known business addresses of its current board members and officers;

(e) All interim financial statements prepared for periods ending during the last fiscal year, and all year-end financial statements, if any, prepared for the previous four fiscal years; and

(f) Copies of all tax returns filed by the cooperative for the previous four tax years.

(4) Except as otherwise limited by sections 351.1000 to 351.1228, the board shall have discretion to determine what records are appropriate for the purposes of the cooperative, the length of time records are to be retained, and policies relating to the confidentiality, disclosure, inspection, and copying of the records of the cooperative.

(5) A cooperative shall maintain its records in written form or in another form, which may be electronic or otherwise paperless, so long as such form is capable of conversion into written form within a reasonable time.

2. Each member shall, at proper times and upon three days' prior written notice, have access to the books and records of the cooperative as identified in subdivisions (1) to

(4) of subsection 1 of this section, to examine same, under such regulations and conditions as set forth in the bylaws or as otherwise set forth by the board. In all events, a member's demand to examine the books and records of the cooperative shall be in good faith and for a proper cooperative purpose, and in no event shall a member have the right to inspect or copy, if otherwise allowed, for any person other than the member, any records relating to the amount of any equity capital in the cooperative held by any person; any financial information or patronage history, including but not limited to, amounts of patronage done by or for a member or the amounts of patronage dividends received by such member; any accounts receivable or other amounts due to the cooperative from any person; any personnel or employment records related to the cooperative; any records subject to confidentiality agreements with third parties or under court order; any records deemed confidential under any federal, state, or municipal law, regulation, or ruling, including but not limited to, personal health information as defined under federal law; or any trade secret.

351.1036. ADDITIONAL POWERS — ACT AS AGENT OF MEMBERS, WHEN — CONTRACTUAL AUTHORITY — PROPERTY RIGHTS — FINANCIAL RIGHTS — EMPLOYEE BENEFITS PERMITTED. — 1. In addition to other powers, a cooperative as an agent or otherwise:

(1) May perform every act necessary or proper to conduct of the cooperative's business or accomplish the purposes of the cooperative;

(2) Has all other rights, powers, or privileges granted by the laws of this state to any business entity, except those that are inconsistent with the express provisions of sections 351.1000 to 351.1228; and

(3) Has the powers given in this section.

2. The cooperative may act as the agent of its members, either collectively or individually, in the negotiation for and procurement of all goods, services, and programs which may be provided to the members by or through the cooperative, provided, however, that unless the cooperative has affirmatively accepted responsibility, the cooperative shall have no liability for its members' failure, whether collective or individual, to perform or pay for such goods, services or programs.

3. A cooperative may enter into or become a party to a contract or agreement for the cooperative or for or on behalf of the members or patrons, including but not limited to, contracts related to prices for and types of products, goods, or services to be supplied or sold to the members, goods manufactured and sold by the members through the cooperative, the management of the cooperative by a third party manager, and any other contract deemed by the board to be in the best interests of the cooperative or the members, or between the cooperative and its members.

4. (1) A cooperative may purchase and hold, lease, mortgage, encumber, sell, exchange, and convey as a legal entity, property of any kind including but not limited to real property, personal property, intellectual property, real estate, buildings, equipment, products, patents, and copyrights as the business of the cooperative may require, including the sale or other disposition of assets required by the business of the cooperative as determined by the board.

(2) A cooperative may take, receive, and hold real and personal property, including the principal and interest of money or other funds and rights in a contract, for any purpose not inconsistent with the purposes of the cooperative as set forth in its articles or bylaws, or as otherwise determined by the board.

5. A cooperative may own, lease, construct, and develop buildings or other structures or facilities on the property owned or leased by the cooperative or on a right-of-way legally acquired by the cooperative.

6. A cooperative may issue bonds, debentures, or other evidence of indebtedness and may borrow money, may secure any of its obligations by mortgage of or creation of a security interest in or other encumbrances or assignment of all or any of its property, or income, and may issue guarantees for any legal purpose.

7. A cooperative may make advances to its members or patrons on products or services delivered by the members or patrons to the cooperative.

8. A cooperative may accept donations or deposits of money, real property, or personal property from other cooperatives or associations from which it is constituted, and from members.

9. A cooperative may loan money to and borrow money from members, cooperatives, or associations from which it is constituted with security that it considers sufficient. A cooperative may invest and reinvest its funds.

10. A cooperative may pay pensions, retirement allowances, and compensation for past services to and for the benefit of and establish, maintain, continue, and carry out, wholly or partially at the expense of the cooperative, employee or incentive benefit plans, trusts, and provisions to or for the benefit of any or all of its and its related organizations' officers, managers, directors, employees, and agents; and in the case of a related organization that is a cooperative, members who provide services or goods to that cooperative, and any of their families, dependents, and beneficiaries. It may indemnify and purchase and maintain insurance for and on behalf of a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.

11. A cooperative may provide, directly or indirectly, insurance of any kind, including but not limited to disability insurance, health insurance, casualty insurance, unemployment insurance, life insurance, and other insurance to or for the benefit of any or all of its employees, officers, directors, members, managers, or their respective directors, officers, employees, and agents. The cooperative may own directly or indirectly, insurance of any kind, including but not limited to disability insurance, health insurance, casualty insurance, unemployment insurance, life insurance, and other insurance on any or all of its employees, officers, directors, members, managers, or their respective directors, officers, employees, and agents.

12. (1) A cooperative may purchase, acquire, hold, or dispose of the ownership interests of another business entity or form or otherwise organize subsidiary or affiliated business entities, and assume all rights, interests, privileges, responsibilities, and obligations arising out of all such ownership interests.

(2) The cooperative may form special purpose business entities to secure and hold assets of the cooperative.

(3) A cooperative may purchase, own, and hold ownership interests, including stock and other equity interests, memberships, interests in nonstock capital, and evidences of indebtedness of any business entity.

351.1039. EMERGENCY POWERS AND PROCEDURES — 1. In anticipation of or during an emergency as provided in subsection 4 of this section, the board may:

(1) Modify lines of succession to accommodate for the incapacity of any director, officer, employee, or agent; and

(2) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

2. During an emergency as provided in subsection 4 of this section, unless the emergency bylaws provide otherwise:

(1) Notice of a meeting of the board need be given only to those directors to whom it is practicable to reach and may be given in any practicable manner, including by publication, radio, email, or other form of communication; and

(2) One or more officers of the cooperative present at a meeting of the board may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

3. Cooperative action taken in good faith during an emergency under this section to further the ordinary business affairs of the cooperative:

(1) Binds the cooperative; and

(2) Shall not be the basis for the imposition of liability on any director, officer, employee, or agent of the cooperative on the grounds that the action was not an authorized cooperative action.

4. An emergency exists for purposes of this section if a quorum of the directors cannot readily be obtained because of a catastrophic event.

351.1042. GOVERNANCE BY BOARD REQUIRED — BOARD ACTION, REQUIREMENTS — THIRD-PARTY AGREEMENTS PERMITTED, WHEN. — 1. A cooperative shall be governed by its board, which shall take all action for and on behalf of the cooperative, except those actions reserved or granted to a manager of the cooperative as set forth under sections 351.1000 to 351.1228 or reserved for or granted to the members under said sections, the articles, or bylaws.

2. Board action shall be by the affirmative vote of a majority of the directors voting at a duly called meeting where a quorum of directors is present, unless otherwise allowed under sections 351.1000 to 351.1228 or unless a greater majority is required by the articles or bylaws. A director individually or collectively with other directors shall not have authority to act for or on behalf of the cooperative unless authorized by the board.

3. Except as otherwise set forth in the articles or the bylaws, a director may advocate the interests of members or member groups to the board, but the fiduciary duty of each director is to represent the best interests of the cooperative and all members collectively.

4. Except as otherwise set forth in the articles or the bylaws, the board shall have the power to enter into, on behalf of the cooperative, an agreement with a third party whereby such third party may supply management services to the cooperative at the board's instruction, and upon the terms and conditions deemed satisfactory to the board.

351.1045. MINIMUM NUMBER OF DIRECTORS — DIVISION INTO CLASSES PERMITTED. — Except as otherwise set forth in the articles or bylaws, the board shall not have less than five directors, except that a cooperative with fifty or fewer members may have three or more directors as prescribed in the articles or bylaws. The directors of any cooperative organized under sections 351.1000 to 351.1228 may, by the articles or by the bylaws, be divided into such number of classes as set forth in the articles or bylaws. If the board shall be divided into classes, then the term of office of those of the initial first class shall expire at the first annual meeting of the members held after such classification becomes effective; of the second class, one year thereafter; of the third class, two years thereafter, and so on for each initial class; and at each annual election held after such classification becomes effective, directors shall be chosen for a full term, as the case may be, to succeed those whose terms expire, which terms shall, unless otherwise set forth in the articles or bylaws, be of a duration equal to the number of classes.

351.1048. BOARD ELECTION, PROCEDURE — VOTING BY MAIL, PROCEDURE. — 1. The organizers shall elect the first board to serve in accordance with subsection 2 of section 351.1009 until directors are elected by members. Until election by members, the first board shall appoint directors to fill any vacancies which may occur during such initial period.

2. (1) Directors shall be elected for the term at the time and in the manner provided in the articles, bylaws, or as otherwise set forth in sections 351.1000 to 351.1228.

(2) Except as otherwise set forth in the articles or bylaws, the directors need not be members, however, a majority of the directors shall be elected exclusively by the members holding patron membership interests.

(3) Each director of a cooperative not electing to be taxed as a partnership under sections 351.1000 to 351.1228 shall have one vote on each matter brought before the board. Unless otherwise set forth in the articles or bylaws, the voting authority of the directors may be allocated according to allocation units or equity classifications of the cooperative provided:

(a) That each allocation unit or equity classification shall have only one vote; and

(b) That at least one-half of the voting power on general matters of the cooperative shall be allocated to the directors elected by members holding patron membership interests.

(4) A director holds office for the term the director was elected and until a successor is elected and has qualified, or until the earlier death, resignation, removal, or disqualification of the director.

(5) The expiration of a director's term with or without election of a qualified successor shall not make the prior or subsequent acts of the director or the board void or voidable.

(6) Subject to any limitation in the articles or bylaws, the board may set the compensation of directors.

(7) Directors may be divided into or designated and elected by class or other distinction as provided in the articles or bylaws.

(8) A director may resign by giving written notice to the chair of the board or the board. The resignation is effective without acceptance when the notice is given to the chair of the board or the board unless a later effective time is specified in the notice.

(9) Unless otherwise set forth in the articles or bylaws, a director's position as such is personal to that director, and no director shall be entitled to execute any of such director's duties, including attending or voting at a directors' meeting by or through another person, entity or by proxy.

3. Except for directors elected at a special members' meeting to fill a vacancy, directors shall be elected at the regular members' meeting for the terms of office prescribed in the bylaws, which may be done by written consent in accordance with sections 351.1000 to 351.1228.

4. Unless otherwise set forth in the articles or bylaws, for a cooperative delineated by districts or other units, members may nominate and elect directors on a district or unit basis at a district meeting.

5. The following shall apply to voting by mail or alternative ballot:

(1) A member shall not vote for a director other than by being present at a members' meeting or by mail ballot or alternative ballot as authorized by the board;

(2) The ballot shall be in a form prescribed by the board; and

(3) If the ballot of the member is received by the cooperative on or before the date of the regular members' meeting or as otherwise prescribed for alternative ballots, the ballot shall be accepted and counted as the vote of the absent member.

6. Unless otherwise provided by the bylaws, if a member is not a natural person then the member may appoint or elect one or more natural persons to be eligible for election as a director.

351.1051. VACANCY, HOW FILLED. — 1. Unless otherwise provided in the articles or bylaws, if a director position which is elected by patron members becomes vacant or a new director position is created for a director that was or is to be elected by patron members, the board, in consultation with the directors elected by patron members, shall appoint a new director to fill the director's position until the next regular or special

members' meeting at which a successor is elected. If there are no directors elected by patron members on the board at the time of the vacancy, a special members' meeting shall be called to fill the patron member director vacancy.

2. Unless otherwise provided in the articles or bylaws, if the vacating director was not elected by the patron members or a new director position is created, but which position is not subject to subsection 1 of this section, then the board shall appoint a director to fill the vacant position by majority vote of the remaining or then serving directors even though less than a quorum. At the next regular or special members' meeting, the members shall elect a director to replace the interim appointed director and fill the unexpired term of the vacant director's position.

351.1054. REMOVAL OF DIRECTOR, PROCEDURE. — 1. The provisions of this section apply unless modified by the articles or bylaws.

2. Any director of the cooperative may be removed by the action of the majority of the entire board if the director to be removed shall, at the time of removal, fail to meet the qualifications stated in the articles or bylaws for election as a director or shall be in breach of any agreement between such director and the cooperative, which includes, for board members which are also patrons, a breach of the cooperative agreement by such patron board member. Any director of the cooperative may be removed, with or without cause, by the unanimous vote of the remaining directors on the board. Notice of the proposed removal shall be given to all directors prior to any action thereon.

3. Subject to subsection 4 of this section, any one or all of the directors may be removed at any time, with or without cause, by the affirmative vote of the holders of a majority of the voting power of membership interests entitled to vote at an election of directors, provided that if a director has been elected solely by the patron members, by members based on districts or units, or the holders of a class or series of membership interests as stated in the articles or bylaws, then that director may be removed only by the affirmative vote of the holders of a majority of the voting power of the patron members for a director elected by the patron members, all membership interests in such district or unit if such director was originally elected by districts or units, or of all membership interests of that class or series entitled to vote at the election of that director.

4. Where the directors of a cooperative are divided into classes in accordance with section 351.1045, the members of a cooperative may remove a director for cause by the vote of a majority of all members eligible to vote on the election of such director.

5. Unless otherwise provided in the bylaws, new directors may be elected at a meeting at which directors are removed.

351.1057. MEETINGS, CONFERENCES. — 1. Meetings of the board may be held from time to time as provided in the articles or bylaws at any place within or without this state as the board may select or by any means described in subsection 2 of this section. If the board fails to select a place for a meeting, the meeting shall be held at the principal executive office of the cooperative, unless the articles or bylaws provide otherwise.

2. A conference among directors by any means of communication through which the directors may simultaneously hear each other during the conference constitutes a meeting of the board, if the same notice is given of the conference as would be required by subsection 3 of this section for a meeting, and if the number of directors participating in the conference would be sufficient to constitute a quorum at a meeting. Participation in a meeting by electronic means of communication constitutes presence in person at the meeting.

3. Unless the articles or bylaws provide for a different time period, a director may call a meeting of the board by giving at least ten days' prior written notice or, in the case of organizational meetings at least three days' prior written notice, to all directors of the date,

time, and place of the meeting. Notice to the board members of any meeting may be given in such forms as set forth in section 351.1216. The notice need not state the purpose of the meeting unless sections 351.1000 to 351.1228, the articles, or the bylaws require it.

4. If the day or date, time, and place of a meeting of the board have been provided in the articles or bylaws, or announced at a previous meeting of the board, no further notice is required to be given to the members of the board. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment occurs.

5. A director may waive notice of a meeting of the board. A waiver of notice by a director entitled to receive notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a director at a meeting is a waiver of notice of that meeting, except where the director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and such director does not participate in the meeting after the objection is made.

6. If the articles or bylaws so provide, a director may give advance written consent or opposition to a proposal to be acted on at a meeting of the board. If the director is not present at the meeting, consent or opposition to a proposal shall not constitute presence for purposes of determining the existence of a quorum, but consent or opposition shall be counted as the vote of a director present at the meeting in favor of or against the proposal and shall be entered in the minutes or other record of action at the meeting, if the proposal acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the director has consented or objected.

351.1060. QUORUM REQUIREMENTS. — A majority, or a larger or smaller portion or number as provided in the articles or bylaws which in no event shall be less than one-third, of the directors currently holding office is a quorum for the transaction of business at a meeting of the board. In the absence of a quorum, a majority of the directors present may adjourn a meeting from time to time until a quorum is present. If a quorum is present when a duly called or held meeting is convened, the directors present may continue to transact business until adjournment even though the withdrawal of a number of directors originally present leaves less than the proportion of number otherwise required for a quorum.

351.1063. MAJORITY VOTE REQUIRED, WHEN. — The board shall take action by the affirmative vote of the majority of directors present at a duly held meeting at which a quorum is present, unless otherwise provided in sections 351.1000 to 351.1228, the articles, or bylaws.

351.1066. WRITTEN ACTION PERMITTED, WHEN, PROCEDURE. — 1. If the articles or bylaws so provide, any action, other than an action requiring member approval, may be taken by written action signed by the number of directors which would be required to take the same action at a meeting of the board under section 351.1063. If the articles or bylaws do not otherwise provide, then an action required or permitted to be taken at a meeting of the board may be taken by written action if signed by at least a majority of all of the directors.

2. The written action is effective when signed by the required number of directors, unless a different effective time is provided in the written action.

3. When written action is permitted to be taken by less than all directors, all directors shall be notified within a reasonable amount of time of its text and effective date. Failure to provide the notice shall not invalidate the written action. A director who does not sign or consent to the written action has no liability for the action or actions taken by the written action.

351.1069. COMMITTEES, PROCEDURE FOR MEETINGS, MINUTES — COMMITTEE MEMBERS CONSIDERED DIRECTORS. — 1. Unless otherwise set forth in the articles or bylaws:

(1) Committees may be established under a resolution approved by the affirmative vote of a majority of the board. All committees so formed are subject at all times to the direction and control of the board, and may only act with respect to such issues and to the extent authorized by the board. The board may create a litigation committee consisting of one or more independent directors or other independent persons to consider legal rights or remedies of the cooperative, and whether such rights or remedies should be pursued. The committee shall not be subject to the direction or control of the board. Unless otherwise set forth in the articles or bylaws, committee members need not be directors of the cooperative;

(2) The procedures for meetings of the board apply to committees and members of committees to the same extent as sections 351.1057 to 351.1066 apply to the board and individual directors;

(3) Minutes, if any, of committee meetings, other than the litigation committee shall be made available upon request to members of the committee, and to any director who requests such minutes, but only to the extent that such director's request relates to his or her position as a director and the director's intended use of the committee minutes is to further the cooperative's purposes.

2. The establishment of, delegation of authority to, and action by a committee shall not alone constitute compliance by a director with the standard of conduct set forth in section 351.1072.

3. Committee members are considered to be directors for purposes of sections 351.1072, 351.1075, and 351.1081, except that independent members of a committee which are not directors or employees of the cooperative are not subject to subsection 4 of section 351.1072.

351.1072. DISCHARGE OF DUTIES, DIRECTORS. — 1. A director shall discharge the duties of the position of director in good faith, in a manner the director reasonably believes to be in the best interests of the cooperative, and with the care that an ordinary, prudent person in a like position would exercise under similar circumstances. A person who so performs such person's duties is not liable by reason of being or having been a director of the cooperative.

2. (1) A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, relating to cooperative matters in each case prepared or presented by one or more of the following:

(a) One or more officers or employees of the cooperative who the director reasonably believes to be reliable and competent in the matters presented;

(b) Counsel, public accountants, or other persons as to matters that the director reasonably believes are within the person's professional or expert competence; or

(c) A committee of the board upon which the director does not serve, duly established by the board, as to matters within its designated authority, if the director reasonably believes the committee to merit confidence.

(2) A director is not relieved of liability for acts based on such director's reliance on information under subdivision (1) of this subsection where such director has knowledge that makes such reliance unwarranted.

3. A director who is present at a meeting of the board when an action is approved by the directors in accordance with section 351.1063 is presumed to have assented to the action approved, unless the director:

(1) Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after

the objection, in which case the director is not considered to be present at the meeting for any purpose of sections 351.1000 to 351.1228;

(2) Votes against the action at the meeting; or

(3) Is prohibited by a conflict of interest from voting on the action.

4. A director's first duty of loyalty is to the cooperative. A director is under a duty to share all of such director's knowledge and opportunities that arise with respect to or are related to the business of the cooperative first to the cooperative, and if the cooperative shall choose not to act on such information or opportunity, then, unless otherwise directed by the cooperative, such director may exploit such information or opportunity for such director's own gain.

351.1075. CONTRACTS AND TRANSACTIONS, NOT VOIDABLE FOR MATERIAL FINANCIAL INTEREST OF DIRECTOR, WHEN. — 1. (1) A contract or other transaction between a cooperative and one or more of its directors, or a cooperative and a business entity where one or more of the cooperative's directors is a director, manager, officer, or legal representative of such business entity or where a director has a material financial interest, is not void or voidable because the director or directors or the other business entity is a party thereto or because the director or directors are present at the meeting of the members or the board or a committee at which the contract or transaction is authorized, approved, or ratified, if:

(a) The contract or transaction was, and the person asserting the validity of the contract or transaction sustains the burden of establishing that the contract or transaction was, fair and reasonable as to the cooperative at the time it was authorized, approved, or ratified and:

a. The material facts as to the contract or transaction and as to the director's or directors' interest are disclosed or known to the members; or

b. The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board or committee, as the case may be, but the interested director or directors are not counted in determining the presence of a quorum and shall not vote; or

(b) The contract or transaction is a distribution, contract, or transaction that is made available on the same terms to all members or patron members as part of the cooperative's business; or

(c) The contract or transaction is for services provided to the cooperative which services were deemed necessary by the board, or a committee, or the chief executive officer, or the president and the contract to provide such services is no less favorable to the cooperative than such an agreement would be with a person who is not a member of the board negotiated at arm's length at a cost not more than the reasonable fair market value for the same services charged by other providers.

(2) A resolution fixing the compensation of a director as a director, officer, employee, or agent of the cooperative is not void or voidable or considered to be a contract or other transaction between the cooperative and one or more of its directors for purposes of this section even though the director receiving the compensation fixed by the resolution is present and voting at the meeting of the board or a committee at which the resolution is authorized, approved, or ratified or even though other directors voting upon the resolution are also receiving compensation from the cooperative.

(3) If a committee is appointed to authorize, ratify, or approve a contract or transaction under this section, the members of the committee shall not have a conflict of interest with respect to such contract or transaction and shall be charged with representing the best interests of the cooperative.

2. For purposes of this section, a director has a material financial interest in each contract or transaction in which the director or the spouse, parents, children and spouses of children, brothers and sisters and spouses of brothers and sisters, and the brothers and sisters of the spouse of the director or any combination of them have a material financial interest. For purposes of this section, a contract or other transaction between a cooperative and the spouse, parents, children and spouses of children, brothers and sisters and spouses of brothers and sisters, and the brothers and sisters of the spouse of a director or any combination of them, is considered to be a transaction between the cooperative and the director.

351.1078. PERSONAL LIABILITY OF DIRECTORS, LIMITATIONS. — 1. A director's personal liability to the cooperative or members for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles or bylaws except as provided in subsection 2 of this section.

2. The articles or bylaws shall not eliminate or limit the liability of a director:

(1) For a breach of the director's duty of loyalty to the cooperative or its members;

(2) For acts or omissions that are not in good faith and involve intentional misconduct by the director;

(3) For illegal distributions;

(4) For a transaction from which the director derived an improper personal benefit; or

(5) For an act or omission occurring before the date when the provision in the articles or bylaws eliminating or limiting liability becomes effective.

351.1081. DEFINITIONS — INDEMNIFICATION OF FORMER OFFICIALS, WHEN — LIABILITY INSURANCE PERMITTED, WHEN. — 1. The definitions in this subsection apply to this section.

2. (1) "Cooperative" includes a domestic or foreign cooperative that was the predecessor of the cooperative referred to in this section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) "Official capacity" means:

(a) With respect to a director, the position of director in a cooperative;

(b) With respect to a person other than a director, the elective or appointive office or position held by the person, member of a committee of the board, the employment relationship undertaken by an employee of the cooperative, or the scope of the services provided by members who provide services to the cooperative; and

(c) With respect to a director, chief executive officer, member, or employee of the cooperative who, while a member, director, chief executive officer, or employee of the cooperative, is or was serving at the request of the cooperative or whose duties in that position involve or involved service as a director, manager, officer, member, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a director, manager, officer, member, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.

(3) "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the cooperative.

3. (1) Subject to the provisions of subsection 5 of this section, a cooperative may indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney fees and

disbursements incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the person:

(a) Has not been indemnified, or if indemnified, then not fully indemnified by another organization or employee benefit plan for the same judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney fees and disbursements incurred by the person in connection with the proceeding with respect to the same acts or omissions;

(b) Acted in good faith;

(c) Received no improper personal benefit and the person has not committed an act for which liability cannot be eliminated or limited under subsection 2 of section 351.1078;

(d) In the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and

a. In the case of acts or omissions occurring in the official capacity described in paragraphs (a) and (b) of subdivision (2) of subsection 1 of this section, reasonably believed that the conduct was in the best interests of the cooperative, or in the case of acts or omissions occurring in the official capacity described in paragraph (c) of subdivision (2) of subsection 1 of this section, reasonably believed that the conduct was not opposed to the best interests of the cooperative. If the person's acts or omissions complained of in the proceeding relate to conduct as a director, officer, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the cooperative if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan; or

b. Was not at the time of the acts or omissions complained of in the proceeding, a director, chief executive officer, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the cooperative.

(2) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent does not, of itself, establish that the person did not meet the criteria set forth in this section.

4. Subject to the provisions of subsection 5 of this section, if a person is made or threatened to be made a party to a proceeding, such person shall be entitled, upon written request to the board, to payment or reimbursement by the cooperative of reasonable expenses, including attorney fees and disbursements incurred by the person in advance of the final disposition of the proceeding, provided that:

(1) Upon receipt by the cooperative of a written affirmation by the person of a good faith belief that the criteria for indemnification set forth in subsection 3 of this section has been satisfied, such person makes a written undertaking, in a form acceptable to the cooperative, to repay all amounts paid or reimbursed by the cooperative, if it is ultimately determined that the criteria for indemnification have not been satisfied, which written undertaking is an unlimited general obligation of the person making it, but need not be secured and may be accepted without reference to financial ability to make payment; and

(2) Those making the determination determine that the facts then known would not preclude indemnification under subsection 3 of this section.

5. The articles or bylaws may prohibit indemnification or advances of expenses otherwise required by this section or may impose conditions on indemnification or advances of expenses in addition to the conditions contained in subsections 3 and 4 of this section, including, without limitation, monetary limits on indemnification or advances of expenses if the conditions apply equally to all persons or to all persons within a given class. A prohibition or limit on indemnification or advances of expenses shall not apply to or affect the right of a person to indemnification or advances of expenses with respect to any acts or omissions of the person occurring before the effective date of a provision in the

articles or the date of adoption of a provision in the bylaws establishing the prohibition or limit on indemnification or advances of expenses.

6. This section shall not require or limit the ability of a cooperative to reimburse expenses, including attorney fees and disbursements, incurred by a person in connection with an appearance as a witness in a proceeding at a time when the person has not been made or threatened to be made a party to a proceeding.

7. Unless otherwise set forth in the articles or bylaws, all determinations whether indemnification of a person is required because the criteria set forth in subsection 4 of this section has been satisfied and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 3 of this section shall be made:

(1) By a majority of the board at a meeting where a quorum is present, provided that the directors who are, at the time, parties to the proceeding are not counted for determining either a majority or the presence of a quorum;

(2) If a quorum of the board under subdivision (1) of this subsection cannot be obtained, then by a majority of a committee of the board consisting solely of two or more directors who are not, at the time, parties to the proceeding, but who are duly designated to make such a determination by a majority of the board, which majority includes directors who are, at the time, parties to the proceeding;

(3) If a determination is not made under subdivisions (1) or (2) of this subsection, then by legal counsel selected either by a majority of the board in the manner set forth in subdivision (1) of this subsection, provided a quorum can be obtained, or by a committee by vote in the manner set forth in subdivision (2) of this subsection, provided a committee can be established by a majority of the board, including directors who are parties to the proceeding; or

(4) If a determination is not made under subdivisions (1) to (3) of this subsection inclusive, then by the affirmative vote of the members, but the membership interests held by parties to the proceeding shall not be counted in determining the presence of a quorum, and are not considered to be present and entitled to vote on the determination.

8. A cooperative may purchase and maintain insurance on behalf of a person in that person's official capacity against any liability asserted against and incurred by the person in or arising from that person's official capacity, whether or not the cooperative would have been required to indemnify the person against the liability under the provisions of this section.

9. Nothing in this section shall be construed to limit the power of the cooperative to indemnify persons other than a director, chief executive officer, member, employee, or member of a committee of the board by contract or otherwise.

351.1084. ELECTION OF OFFICERS — CHIEF EXECUTIVE OFFICER PERMITTED. — 1. Unless otherwise set forth in the articles or bylaws:

(1) The board may elect a chair and one or more vice chairs of the board to hold and lead meetings of the board; and

(2) The board shall elect or appoint a president and secretary to serve as officers of the cooperative;

(3) The officers, other than the chief executive officer, president and secretary shall not have the authority to bind the cooperative except as authorized by the board.

2. The board may elect additional officers as the articles or bylaws authorize or require.

3. The offices of president and secretary may be combined, and the same person may serve in both capacities.

4. The board may employ a chief executive officer to manage the day-to-day affairs and business of the cooperative, and if a chief executive officer is employed, the chief

executive officer shall have the authority to implement the functions, duties, and obligations of the cooperative except as restricted by the board or as delegated to a manager. The chief executive officer shall not exercise authority reserved to the board, a manager, the members, the articles, or the bylaws. Nothing contained herein shall limit the cooperative's right to have co-chief executive officers.

351.1087. MEMBERSHIP OF COOPERATIVES, REQUIREMENTS — MEMBERSHIP INTERESTS, AUTHORIZATION AND ISSUANCE. — 1. A cooperative shall have one or more members.

2. (1) A cooperative may, but is not obligated to, group members and patron members in districts, units, or on another basis if and as authorized in its articles or bylaws.

(2) The board may, but is not obligated to, implement the use of districts or units, including setting the time and place and prescribing the rules of conduct for holding meetings by districts or units to elect delegates to members' meetings.

3. A membership interest is personal property. A member has no interest in specific property of the cooperative. All property of the cooperative is property of the cooperative itself.

4. The authorized amounts and divisions of patron membership interests and, if authorized, nonpatron membership interests, to be issued by the cooperative may be increased, decreased, established, or altered, in accordance with the bylaws, articles, and sections 351.1000 to 351.1228.

5. Authorized membership interests may be issued on terms and conditions prescribed in the articles, bylaws, or if not authorized in the articles or bylaws, as determined by the board. A membership interest may not be issued until the subscription price of the membership interest has been paid in money or property provided that the value of any property to be contributed shall be approved and agreed to by the board.

6. Unless otherwise set forth in the articles or bylaws, the patron membership interests collectively shall have not less than fifty percent of the cooperative's financial rights.

7. Except as otherwise set forth in the articles or bylaws, all the patron membership interests of a cooperative shall:

(1) Be of one class, without series, unless the articles or bylaws establish or authorize the board to establish more than one class or one or more series within classes;

(2) Be ordinary patron membership interests, be entitled to vote as provided in sections 351.1000 to 351.1228, and have equal rights and preferences in all matters not otherwise provided for by the board and to the extent that the articles or bylaws have fixed the relative rights and preferences of different classes and series; and

(3) Share profits and losses and be entitled to distributions as provided in sections 351.1000 to 351.1228.

8. The cooperative may solicit and issue nonpatron membership interests on terms and conditions determined by the board, and as otherwise set forth in the articles or bylaws.

9. Except as otherwise set forth in the bylaws, a member is not, merely on account of that status, personally liable for the acts, debts, liabilities, or obligations of a cooperative, and as such, a member's membership interest is nonassessable. A member is liable to the cooperative for any unpaid subscription for the membership interest, unpaid membership fees, or a debt for which the member has separately contracted with the cooperative, provided that no third party shall be a beneficiary of this obligation or be entitled to enforce this obligation.

351.1090. DIVISION OF MEMBERSHIP INTERESTS, CLASSES OR SERIES. — 1. Without limiting the authority granted in this section, and unless otherwise stated in the articles or

bylaws, a cooperative may divide the membership interests into different classes or series, which may:

(1) Be subject to the right of the cooperative to redeem any of such membership interests at a price fixed by the articles, bylaws, or by resolution of the board;

(2) Entitle the members to cumulative, partially cumulative, or noncumulative distributions;

(3) Have preference over any class or series of membership interests for the payment of distributions of any or all kinds;

(4) Be convertible into membership interests of any other class or any series of the same or another class; or

(5) Have full, partial, or no voting rights, except as otherwise provided in sections 351.1000 to 351.1228.

2. The cooperative, through its articles or bylaws, may create different classes or series of membership interests and may fix the relative rights and preferences of such classes or series, or subject to any restrictions in the articles or bylaws, the board may establish different classes or series of membership interests by a duly adopted resolution which sets forth the designation of such classes or series, and fixes the relative rights and preferences of such classes or series. Any of the rights and preferences of a class or series of membership interests established in the articles, bylaws, or by resolution of the board:

(1) May be made dependent upon facts ascertainable outside the articles or bylaws or outside the resolution or resolutions establishing the class or series, if the manner in which the facts operate upon the rights and preferences of the class or series is clearly and expressly set forth in the articles or bylaws or in the resolution or resolutions establishing the class or series; and

(2) May include by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the cooperative in connection with the establishment of the class or series if the cooperative retains at its principal executive office, a copy of the agreements, contracts, or other arrangements or the portions thereof which are included by reference.

351.1093. CERTIFIED AND UNCERTIFIED MEMBERSHIP INTERESTS, REQUIREMENTS. — 1. The membership interests of a cooperative shall be either certificated or uncertificated as set forth in the articles or bylaws or as determined by the board. Each holder of a certificated membership interest or interests are entitled to a certificate of membership interest to be issued by the cooperative in accordance with this section.

2. Certificates of membership shall be signed by at least one officer of the cooperative as authorized in the articles, bylaws, or by resolution of the board or, in the absence of such an authorization, by the chief executive officer, president, secretary, or chairman of the board.

3. If a person signs a certificate while such person is an authorized signatory under subsection 2 of this section, the certificate may be issued by the cooperative, even if such person has ceased to have that capacity before the certificate is actually issued, with the same effect as if the person had that capacity at the date of its issue.

4. If issued, a certificate representing a membership interest or interests of a cooperative shall contain on its face:

(1) The name of the cooperative;

(2) A statement that the cooperative is organized under the laws of this state and sections 351.1000 to 351.1228;

(3) The name of the person to whom the certificate is issued;

(4) The number and class of membership interests, and the designation of the series, if any, that the certificate represents;

(5) A statement that the membership interests in the cooperative are subject to the articles and bylaws of the cooperative; and

(6) Restrictions on transfer, if any, including approval of the board, first rights of purchase by the cooperative, and other restrictions on transfer, which may be stated by reference to the back of the certificate where such restrictions may be listed or to another document.

5. A certificate signed as provided in subsection 2 of this section is prima facie evidence of the ownership of the membership interests referred to in the certificate.

6. Unless uncertificated membership interests are prohibited by the articles or bylaws, a resolution approved by the board may provide that some or all of any or all classes and series of its membership interests will be uncertificated membership interests. The resolution shall not apply to membership interests represented by a certificate until the certificate is surrendered to the cooperative. Within a reasonable time after the issuance or transfer of uncertificated membership interests to a member, the cooperative shall send such member the information required by this section to be stated on certificates. Except as otherwise expressly provided by the articles, bylaws, or sections 351.1000 to 351.1228, the rights and obligations of the holders of certificated and uncertificated membership interests of the same class and series shall be identical.

351.1096. ISSUANCE OF NEW CERTIFICATES OF MEMBERSHIP FOR DESTROYED, LOST, OR STOLEN CERTIFICATES. — 1. A new certificate of membership interest may be issued under section 351.1093 in the place of one that is alleged to have been lost, stolen, or destroyed, upon the filing of an affidavit of lost, stolen, or destroyed certificate by the member with the secretary of the cooperative.

2. The issuance of a new certificate under this section shall not constitute an overissue of the membership interests it represents, and upon any such issue, the replaced certificate shall without further action become null and void.

351.1099. ANNUAL MEETING REQUIREMENTS. — 1. The regular members' meeting shall be held annually at a time determined by the board, unless otherwise provided for in the bylaws.

2. The regular members' meeting shall be held at the principal place of business of the cooperative or at another location as determined by the bylaws or the board.

3. The officers shall submit reports to the members at the regular members' meeting covering the business of the cooperative for the previous fiscal year, including the financial condition of the cooperative as of the close of the previous fiscal year.

4. Unless otherwise set forth in sections 351.1000 to 351.1228, the articles, or the bylaws, all directors shall be elected at the regular members' meeting for the terms of office prescribed in the bylaws, except for directors elected at district or unit meetings.

5. (1) The cooperative shall give notice of regular members' meetings in accordance with section 351.1216 at least two weeks before the date of the meeting or mailed at least fifteen days before the date of the meeting.

(2) The notice shall contain a summary of any amendments to, or restatements of, any bylaw or bylaws adopted by the board since the last annual members' meeting.

6. A member may waive notice of a members' meeting. A waiver of notice by a member entitled to receive notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a member at a members' meeting is a waiver of notice of that meeting, except where the member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

351.1102. SPECIAL MEMBERS' MEETINGS, WHEN, REQUIREMENTS. — 1. Except as otherwise set forth in the bylaws, special members' meetings may be called by:

(1) One or more of the members of the board; or

(2) The written petition, submitted to the chairman of the board, of at least twenty percent of the patron members or, if authorized, twenty percent of the nonpatron members, twenty percent of all members, or members representing twenty percent of the membership interests collectively.

2. The cooperative shall give notice of a special members' meeting in accordance with section 351.1216 and shall state the time, place, and purpose of the special members' meeting. A special members' meeting notice shall be issued within ten days after the date of the presentation of a members' petition and the special members' meeting shall be held within thirty days after the date of the presentation of the members' petition.

3. A member may waive notice of a special members' meeting. A waiver of notice by a member entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a member at a meeting is a waiver of notice of that meeting, except where the member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

351.1105. QUORUM, HOW CONSTITUTED. — 1. Unless otherwise set forth in the articles or bylaws, the quorum for a members' meeting to transact business shall be ten percent of the total number of members of the cooperative. The total number of members required for a quorum may be more, but in no case less, than ten percent, as set forth in the articles or bylaws.

2. In determining whether a quorum is present with respect to a particular question submitted to a vote of the members for which voting by mail or alternative ballot has previously been authorized, members present in person or represented by mail vote or the alternative ballot method shall be counted. The presence of a quorum shall be verified by the chairman of the board or the secretary of the cooperative and shall be reported in the minutes of the meeting.

3. An action by the members shall not be valid or legal in the absence of a quorum at the meeting at which the action was taken.

351.1108. MEETINGS, REMOTE COMMUNICATION PERMITTED, REQUIREMENTS. — 1. To the extent authorized in the articles or the bylaws or as determined by the board, a regular or special members' meeting may be held by any combination of means of remote communication through which the members may participate in the meeting if notice of the meeting was given in accordance with the bylaws and sections 351.1000 to 351.1228 and if the membership interests held by the members so participating in the meeting would be sufficient to constitute a quorum at a meeting. Participation by a member by means of remote communication constitutes presence at the meeting in person or by proxy if all the other requirements of sections 351.1000 to 351.1228 for the meeting are met.

2. In any members' meeting held where one or more members participates in such meeting by means of remote communication under subsection 1 of this section:

(1) The cooperative shall implement reasonable measures to verify that each person deemed present and entitled to vote at the meeting by means of remote communication is a member; and

(2) The cooperative shall implement reasonable measures to provide each member participating by means of remote communication with a reasonable opportunity to participate in the meeting, including an opportunity to:

(a) Read or hear the proceedings of the meeting substantially concurrently with those proceedings;

(b) If allowed by the procedures governing the meeting, have the member's remarks heard or read by other participants in the meeting substantially concurrently with the making of those remarks; and

(c) If otherwise entitled, vote on matters submitted to the members.

3. Waiver of notice by a member of a meeting by means of authenticated electronic communication may be given in the manner provided for the regular or special members' meeting. Participation in a meeting by means of remote communication described in subsection 1 of this section is a waiver of notice of that meeting, except where the member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

351.1111. MAJORITY VOTE OF MEMBERS REQUIRED, WHEN. — 1. Unless otherwise required by sections 351.1000 to 351.1228, the articles, or bylaws, the members shall take action by the affirmative vote of the members of a majority of the voting power of the membership interests present and entitled to vote on that item of business at a duly called members' meeting where a quorum is present.

2. Unless otherwise required in the articles or bylaws, in any case where a class or series of membership interests is entitled to vote on a particular matter of the cooperative as a class or series by sections 351.1000 to 351.1228, the articles, bylaws, or by the terms of such membership interests, then such matter shall also receive, in addition to the affirmative vote required in subsection 1 of this section, the affirmative vote of a majority of the voting power of the membership interests of such class or series at a duly called meeting where a quorum of such class or series is present.

3. (1) The articles or bylaws may provide for a greater quorum or voting requirement for members or voting groups than is provided for by sections 351.1000 to 351.1228.

(2) An amendment to the articles or bylaws that adds, changes, or deletes a greater quorum or voting requirement shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect.

351.1114. WRITTEN ACTION PERMITTED, WHEN, REQUIREMENTS. — 1. If the articles or bylaws so provide, any action may be taken by written action signed, or consented to by authenticated electronic communication, by the members who own voting power equal to the voting power required to take the same action at a members' meeting at which a quorum of members were present. If the articles or bylaws do not so provide, an action required or permitted to be taken at a members' meeting may be taken by written action signed, or consented to by authenticated electronic communication by all of the members.

2. The written action shall be effective when signed or consented to by authenticated electronic communication by the required number of members unless a different effective time is provided in the written action.

3. When written action is permitted to be taken by less than all members, all members shall be notified within a reasonable time of its text and effective date. Unless otherwise provided in the bylaws, a member who does not sign or consent to the written action has no liability for the action or actions taken by the written action.

351.1117. PATRON MEMBERS, VOTING RIGHTS AND REQUIREMENTS. — 1. A patron member of a cooperative is entitled to one vote on an issue to be voted upon by patron members, except that if authorized in the articles or bylaws, a patron member may be entitled to additional votes based on patronage criteria as described in section 351.1120.

On any matter of the cooperative, an affirmative vote of all patron members entitled to vote on such matter, unless a greater or lesser amount is required by sections 351.1000 to 351.1228, the bylaws, or the articles, shall be binding on all patron members. A nonpatron member has the voting rights in accordance with his or her nonpatron membership interest as granted in the articles or bylaws, subject to the provisions of sections 351.1000 to 351.1228.

2. Unless otherwise set forth in the articles or bylaws, a member's vote at a members' meeting shall be in person, by mail, if a mail vote is authorized by the board, by alternative ballot if authorized by the board, or by proxy as set forth in subsection 3 of this section.

3. Unless otherwise set forth in the articles or bylaws:

(1) All proxies shall be in writing and executed by the member issuing such proxy, or such member's attorney in fact. Such proxy shall be filed with the chairman of the board before or at the time of a meeting in order to be effective at that meeting. No proxy shall be valid after eleven months from the date of its execution unless otherwise provided in the proxy. No appointment is irrevocable unless the appointment is coupled with an interest in the membership interests of the cooperative;

(2) A copy, facsimile, or other reproduction of the original written proxy may be substituted or used in lieu of the original written proxy for any purpose for which the original written proxy could be used, if the copy, facsimile, or other reproduction is a complete and legible reproduction of the entire original written proxy;

(3) An appointment of a proxy for membership interests owned jointly by two or more members is valid if signed by any one of those members, unless the cooperative receives from any one of those members written notice either denying the authority of that person to appoint a proxy or appointing a different proxy, in which case the proxy will be deemed invalid. If the cooperative shall receive conflicting proxies signed by the different owners of the membership interests, then all proxies submitted for such membership interests will be deemed invalid;

(4) An appointment may be terminated at will unless the appointment is coupled with an interest, in which case it shall not be terminated except in accordance with the terms of an agreement, if any, between the parties to the appointment. Termination may be made by filing written notice of the termination of the appointment with the cooperative or by filing a new written appointment of a proxy with the cooperative. Termination in either manner revokes all prior proxy appointments and is effective when filed with the cooperative.

4. (1) A cooperative may provide in the articles or bylaws that units, districts, or other type of classification authorized under sections 351.1000 to 351.1228 of members are entitled to be represented at members' meetings by delegates chosen by the members of such unit, district, or other classification. The delegates may vote on matters at the members' meeting in the same manner as a member. The delegates may only exercise the voting rights on a basis and with the number of votes as prescribed in the articles or bylaws.

(2) If the approval of a certain portion of the members is required for adoption of amendments, a dissolution, a merger, a consolidation, or a sale of assets, the votes of delegates shall be counted as votes by the members represented by the delegate.

5. The board may fix a record date not more than sixty days, or a shorter time period as provided in the articles or bylaws, before the date of a members' meeting as the date for the determination of the owners of membership interests entitled to notice of and entitled to vote at a meeting. When a record date is so fixed, only members on that date are entitled to notice of and permitted to vote at that members' meeting.

6. The articles or bylaws may give or prescribe the manner of giving a creditor, security holder, or other nonmember, other than a vote by proxy under subsection 3 of this section or as otherwise allowed under section 351.1123, governance rights in the

cooperative. If not otherwise provided in the articles or bylaws or by sections 351.1000 to 351.1228, creditors, security holders, or other nonmembers shall not have any governance rights in the cooperative.

7. Membership interests owned by two or more persons may be voted by any one of such persons unless the cooperative receives written notice from any one of such persons denying the authority of the other person or persons to vote those membership interests, in which case any vote of such membership interests shall be deemed invalid. Jointly owned membership interests shall have one vote, regardless of the number of owners, unless otherwise provided under subsection 1 of this section, the articles, or the bylaws. If the cooperative receives conflicting votes for the same membership interests, then all votes cast by such membership interests will be deemed invalid.

8. Except as provided in subsection 7 of this section, an owner of a nonpatron membership interest or a patron membership interest with more than one vote may vote any portion of the membership interest in any way the member chooses, provided that such member is entitled to vote on the particular matter at issue. If a member votes without designating the proportion voted in a particular way, the member is considered to have voted all of the membership interest in that way.

9. Any ballot, vote, authorization, or consent submitted by electronic communication under sections 351.1000 to 351.1228 may be revoked by the member submitting a written revocation including another ballot, vote, authorization, or consent so long as the revocation is received by a director or an officer of the cooperative which has been designated, under the bylaws or by resolution of the board, to receive such revocation at or before the meeting or before an action without a meeting is effective. A ballot, vote, authorization, or consent submitted by a member who attends a members' meeting shall automatically and without further action revoke such member's previous electronic ballot, vote, authorization, or consent, if any.

351.1120. ADDITIONAL VOTE FOR PATRON MEMBER, WHEN. — 1. A cooperative, by its articles or bylaws, may authorize patron members to have an additional vote for:

(1) A stipulated amount of business transacted between the patron member and cooperative;

(2) Where the patron member is another cooperative, a stipulated number of patron members of such member;

(3) A certain stipulated amount of equity allocated to or held by a patron member in the cooperative;

(4) A combination of methods in subdivisions (1) to (3) of this subsection.

2. A cooperative that is organized into units or districts of patron members may, by the articles or bylaws, authorize the delegates elected by its patron members to have an additional vote for:

(1) A stipulated amount of business transacted between the patron members in the units or districts and the cooperative;

(2) A certain stipulated amount of equity allocated to or held by the patron members of the units or districts of the cooperative; or

(3) A combination of methods in subdivisions (1) and (2) of this subsection.

351.1123. MEMBERSHIP INTERESTS OWNED OR CONTROLLED BY ANOTHER BUSINESS, PERSON, OR TRUST. — Unless otherwise set forth in the articles or bylaws:

(1) Membership interests of a cooperative owned by another business entity as of the record date may be voted by the chair, chief executive officer, or an officer of that organization authorized to vote the membership interest by such business entity;

(2) Subject to section 351.1126, membership interests held in the name of a member, but under the control of another person as such member's personal representative,

administrator, executor, guardian, conservator, or similar position may be voted by such person, either in person or by proxy, in the place of the member upon the filing of notice to the cooperative;

(3) Subject to section 351.1126, membership interests in the name of a trustee in bankruptcy or a receiver as of the record date are not eligible to vote and may not be voted by such trustee or receiver;

(4) The grant of a security interest in a membership interest does not entitle the holders of the security interest to vote.

351.1126. COOPERATIVE INTERESTS IN OTHER BUSINESS ENTITY, REPRESENTATIVE AT BUSINESS MEETING OF OTHER ENTITY PERMITTED. — A cooperative that holds ownership interests of another business entity may, by direction of the board, elect or appoint a person to represent the cooperative at a meeting of the business entity. The representative shall have authority to represent the cooperative and may cast the cooperative's vote at the business entity's meeting.

351.1129. PROPERTY RIGHTS OF COOPERATIVE. — 1. A cooperative may, by resolution of the board and without first obtaining member approval, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board considers expedient:

(1) Sell, lease, transfer, or otherwise dispose of its property and assets in the usual and regular course of its business;

(2) Sell, lease, transfer, or otherwise dispose of a portion but not all or substantially all of its property and assets not in the usual and regular course of its business;

(3) Sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets not in the usual and regular course of its business if:

(a) The cooperative has given written notice to the members of the impending or potential disposition prior to the disposition; and

(b) The board has determined that failure to proceed with the disposition would be adverse to the interests of the members and the cooperative;

(4) Grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business;

(5) Transfer any or all of its property to a business entity, all the ownership interests of which are owned by the cooperative; or

(6) For purposes of debt financing, transfer any or all of its property to a special purpose entity owned or controlled by the cooperative for an asset securitization.

2. Except as otherwise provided in the bylaws or in subdivision (3) of subsection 1 of this section, the board may sell, lease, transfer, or otherwise dispose of all or substantially all of the cooperative's property and assets, including its good will, not in the usual and regular course of its business, upon those terms and conditions and for those considerations which may be money, securities, or other instruments for the payment of money or other property when such action is approved by the members at a regular or special members' meeting in accordance with section 351.1111. Written notice of the meeting shall be given to the members and shall state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the cooperative.

3. The transferee shall be liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by law.

351.1132. TRANSFER OF MEMBERSHIP AND FINANCIAL RIGHTS, RESTRICTIONS — DEATH OF MEMBER, EFFECT OF. — 1. A restriction on the transfer of membership interests

of a cooperative may be imposed in the articles, bylaws, by a resolution adopted by the members, or by an agreement among or other written action by a number of members or holders of other membership interests or among them and the cooperative. A restriction is not binding with respect to membership interests issued prior to the adoption of the restriction, unless the holders of those membership interests are parties to the agreement or voted in favor of the restriction.

2. The articles or bylaws may, but shall not be required to, provide that the cooperative or the patron members, individually or collectively, have the first right of purchasing the membership interests of any membership interests, or class thereof, offered for sale upon the terms and conditions as set forth in the articles or bylaws. A repurchase of the membership interests by the cooperative shall render such membership interests null and void.

3. Except as provided in subsection 4 of this section or as otherwise provided in the articles or bylaws, a member's financial rights are transferable in whole or in part. Such an assignment does not dissolve the cooperative and does not entitle or empower the assignee to become a member, to exercise any governance rights, to receive any notices from the cooperative, or to cause dissolution of the cooperative.

4. A restriction on the assignment of financial rights may be imposed in the articles or bylaws, by a resolution adopted by the board, by a resolution adopted by the members, by an agreement among or other written action by the members, or by an agreement among or other written action by the members and the cooperative. A restriction is not binding with respect to financial rights reflected in the required records before the adoption of the restriction, unless the owners of those financial rights are parties to the agreement or voted in favor of the restriction. Once a restriction is imposed under this subsection, such restriction cannot be amended or removed by the members unless by an affirmative two-thirds majority vote of the members at an annual or special members' meeting.

5. On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge a member's or an assignee's financial rights with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of a member's financial rights under this section. Sections 351.1000 to 351.1228 shall not deprive any member or assignee of financial rights of the benefit of any exemption laws applicable to the membership interest. This section shall be the sole and exclusive remedy of a judgment creditor with respect to the judgment debtor's membership interest.

6. Subject to section 351.1123 and except as otherwise set forth in the bylaws, if a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, or an order for relief under the bankruptcy code is entered with respect to the member, the member's executor, administrator, guardian, conservator, trustee, or other legal representative may exercise all of the member's rights for the purpose of settling the estate or administering the member's property. Subject to section 351.1123, if a member is a business entity, trust, or other entity and is dissolved, terminated, or placed by a court in receivership or bankruptcy, the powers of that member may be exercised by its legal representative or successor. The cooperative shall have the first right to repurchase the membership interest of such deceased, incompetent, or bankrupt member from such member's executor, administrator, guardian, conservator, trustee, or other legal representative, upon such terms and as set forth in the bylaws, and shall have the first right to repurchase the membership interest of such dissolved, terminated, or bankrupt business entity, trust, or other business entity.

351.1135. CONTRIBUTIONS ACCEPTED, WHEN, REQUIREMENTS. — 1. Subject to any restrictions in sections 351.1000 to 351.1228, the articles, or bylaws regarding patron and

nonpatron membership interests, and only when authorized by the board, a cooperative may accept contributions which may be patron or nonpatron membership contributions under this section, make contribution agreements under section 351.1138, and make contribution rights agreements under section 351.1141.

2. Except as otherwise set forth in the bylaws, a person may make a contribution to a cooperative:

(1) By paying money or transferring the ownership of an interest in property to the cooperative or rendering services to or for the benefit of the cooperative; or

(2) Through a written obligation signed by the person to pay money or transfer ownership of an interest in property to the cooperative or to perform services to or for the benefit of the cooperative.

3. No purported contribution shall be treated or considered as a contribution, unless:

(1) The board accepts the contribution on behalf of the cooperative and in that acceptance describes the contribution, including terms of future performance, if any, and agrees to and states the value being accorded to the contribution; and

(2) The fact of contribution and the contribution's accorded value are both reflected in the required records of the cooperative.

4. The determination of the board as to the amount or fair value or the fairness to the cooperative of the contribution accepted or to be accepted by the cooperative or the terms of payment or performance, including under a contribution agreement under section 351.1138, and a contribution rights agreement under section 351.1141, are presumed to be proper if they are made in good faith and on the basis of accounting methods, or a fair valuation or other method, reasonable in the circumstances.

351.1138. CONTRIBUTION AGREEMENTS, REQUIREMENTS. — 1. A contribution agreement, whether made before or after the formation of the cooperative, is not enforceable against the would-be contributor unless it is in writing and signed by the would-be contributor.

2. Unless otherwise provided in the contribution agreement, or unless all of the would-be contributors and, if in existence, the cooperative, consent to a shorter or longer period in the contribution agreement, a contribution agreement is irrevocable for a period of six months.

3. A contribution agreement, whether made before or after the formation of a cooperative, shall be paid or performed in full at the time or times, or in the installments, if any, specified in the contribution agreement. In the absence of a provision in the contribution agreement specifying the time at which the contribution is to be paid or performed, the contribution shall be paid or performed at the time or times determined by the board.

4. (1) Unless otherwise provided in the contribution agreement, in the event of default in the payment or performance of an installment or call when due, the cooperative may proceed to collect the amount due in the same manner as a debt due the cooperative. If a would-be contributor does not make a required contribution of property or services, the cooperative shall require the would-be contributor to contribute cash equal to that portion of the value, as determined in section 351.1135, of the contribution that has not been made.

(2) If the amount due under a contribution agreement remains unpaid for a period of twenty days after written notice of demand for payment has been given to the delinquent would-be contributor, the cooperative may:

(a) Terminate the contribution agreement and automatically revoke and cancel any membership interest issued to the would-be contributor under the contribution agreement, and retain any portion of the contribution previously paid by the would-be contributor; or

(b) Pursue any other remedy available to the cooperative at law or equity.

5. Unless otherwise provided in the articles or bylaws, a would-be contributor's rights under a contribution agreement may not be assigned, in whole or in part, to another person unless such assignment is approved by a majority of the board or unanimously by the members, either of which may be by written consent, and upon such terms as set forth in the bylaws.

351.1141. CONTRIBUTION RIGHTS AGREEMENTS. — 1. Subject to any restrictions in the articles or bylaws, a cooperative may enter into contribution rights agreements under the terms, provisions, and conditions fixed by the board.

2. Any contribution rights agreement shall be in writing and the writing shall state in full, summarize, or include by reference all of the agreement's terms, provisions, and conditions of the rights to make contributions.

3. Unless otherwise provided in the articles or bylaws, a would-be contributor's rights under a contribution rights agreement shall not be assigned, in whole or in part, to a person who was not a member at the time of the assignment, unless all the members approve the assignment by unanimous written consent.

351.1144. PROFITS AND LOSSES, ALLOCATION OF, REQUIREMENTS. — 1. Unless otherwise set forth in the articles or bylaws, the board shall prescribe the allocation of profits and losses between patron membership interests collectively and any other membership interests, which profits and losses may be allocated between patron membership interests collectively and other membership interests on the basis of the value of patronage by the patron membership interests collectively and other membership interests, or as otherwise determined by the board. Unless otherwise stated in the articles or bylaws, the allocation of profits to the patron membership interests collectively shall not be less than fifty percent of the total profits in any fiscal year. In no event shall the allocation of profits to the patron membership interests collectively be less than fifteen percent of the total profits in any fiscal year.

2. Unless otherwise set forth in the bylaws, the board shall prescribe the distribution of cash or other assets of the cooperative among the membership interests of the cooperative. If not otherwise provided in the bylaws, distribution shall be made to the patron membership interests collectively and other members on the basis of the number of membership interests issued to such member in relation to the total amount of membership interests then issued and outstanding. Unless otherwise set forth in the articles or bylaws, the distributions to patron membership interests collectively shall not be less than fifty percent of the total distributions in any fiscal year. In no event shall the distributions to patron membership interests collectively be less than fifteen percent of the total distributions in any year.

351.1147. NET INCOME, SET ASIDE PERMITTED, WHEN — ANNUAL DISTRIBUTION REQUIRED — REFUND CREDITS. — 1. A cooperative may set aside a portion of net income allocated to the patron membership interests as the board determines advisable to create or maintain a capital reserve.

2. Except as otherwise set forth in the bylaws, in addition to a capital reserve, the board may, for patron membership interests:

(1) Set aside an amount, to be determined by the board, of the annual net income of the cooperative for promoting and encouraging the cooperative;

(2) Set aside and retain that portion of the annual net income as determined by the board to be necessary to meet the upcoming and ongoing capital needs of the cooperative; and

(3) Establish and accumulate reserves for advancement of the cooperative's business purposes.

3. Net income allocated to patron members in excess of dividends on equity and additions to reserves shall be distributed to patron members on the basis of patronage. A cooperative may, but is not obligated to, establish pooling arrangements, allocation units, or both, as determined by the board, whether the units are functional, divisional, departmental, geographic, or otherwise and may account for and distribute net income to patrons on the basis of such allocation units or pooling arrangements. A cooperative, as determined by the board, may offset the net loss of an allocation unit, pooling arrangement, or both, against the net income of other allocation units or pooling arrangements, and may set off any amounts owed to the cooperative by a member from amounts otherwise distributable to a member.

4. Unless otherwise set forth in the bylaws, distribution of net income shall be made at least annually. The board shall present to the members at their annual meeting a report covering the operations of the cooperative during the preceding fiscal year.

5. A cooperative may distribute net income to patron members in cash, capital credits, allocated patronage equities, revolving fund certificates, scrip or its own or other securities as determined by the board.

6. The cooperative, through its bylaws or through a separate agreement by and between the member and the cooperative, may obligate the member to accept the method of taxation of the member's distribution as determined by the board, regardless of the form of such distribution.

7. The cooperative may provide in the bylaws that nonmember patrons are allowed to participate in the distribution of net income payable to patron members on equal or unequal terms with patron members.

8. Except as otherwise set forth in the bylaws, if a nonmember patron with patronage credits is not qualified or eligible for membership, a refund due may be credited to the nonpatron's individual account. The board may issue a certificate of interest to reflect the credited amount.

351.1150. UNCLAIMED PROPERTY, HOW TREATED. — 1. A cooperative may, in lieu of paying or delivering to the state the unclaimed property specified in its report of unclaimed property filed under section 447.539:

(1) Distribute the unclaimed property to a business entity or organization that is exempt from taxation; or

(2) Retain the unclaimed property as operational reserve funds.

2. The right of an owner to unclaimed property held by a cooperative is extinguished when the property is disbursed by the cooperative to a tax exempt organization or retained by the cooperative as set forth in subsection 1 of this section if:

(1) A reasonable effort to distribute the property to the member has been made by the cooperative; and

(2) (a) Notice that the payment is available has been mailed to the last known address of the person shown by the records to be entitled to the property; or

(b) If the member's address is unknown, notice is published in an official publication of the cooperative; and

(3) The cooperative has received no response from the member within the two-year period following the date such notice was mailed or published as the case may be.

351.1153. MERGER AND CONSOLIDATION — DEFINITIONS — PROCEDURE, EFFECT OF. — 1. As used in this section and sections 351.1156 and 351.1159, the following words shall mean:

(1) "Consolidated entity", that entity, or those entities, which are being consolidated into the new entity as described in the plan of consolidation;

(2) "Merging entity", that entity, or those entities, which are merging into the surviving entity as described in the plan of merger;

(3) "New entity", that entity created due to a consolidation of entities as described in the plan of consolidation;

(4) "Ownership interest", shares, membership interests which shall include patron and nonpatron membership interests in the case of a cooperative, or other instances of ownership, whether certificated or uncertificated, in a business entity;

(5) "Surviving entity", that entity into which all other merging entities shall merge as described in the plan of merger.

2. (1) Unless otherwise prohibited by Missouri statute or the statutes of a foreign jurisdiction, cooperatives organized under the laws of this state may merge or consolidate with each other, one or more domestic business entity, one or more foreign business entity, or any combination thereof, by complying with:

(a) The provisions of this section;

(b) The provisions of the law of the state of domicile of the surviving or new entity; and

(c) The provisions of the law of the state of domicile of all merging entities.

(2) Mergers or consolidations involving domestic business entities shall be subject to the revised statutes of Missouri governing such domestic business entity.

(3) This subsection shall not authorize a foreign business entity to act in any way in violation of the law governing the foreign business entity.

3. To initiate a merger or consolidation under subsection 2 of this section, a written plan of merger or consolidation shall be prepared by the board or by a committee selected by the board to prepare a plan. The plan shall state:

(1) The names and states of domicile of the cooperatives, domestic business entities, or foreign business entities in a consolidation, or the names and state of domicile of each merging entity;

(2) The name and state of domicile of the surviving or new entity;

(3) The manner and basis of converting ownership interests of the constituent domestic cooperatives in a consolidation, or the merging entities in a merger into membership or ownership interests in the surviving or new entity;

(4) The terms of the merger or consolidation;

(5) Provided the surviving entity shall be a cooperative subject to sections 351.1000 to 351.1228, the election by the cooperative of either a corporate or partnership tax structure under federal income tax law;

(6) The proposed effect of the consolidation or merger on the ownership interests of the members which shall include patron and nonpatron members in the case of a cooperative, shareholders, or owners of the new or surviving entity, as the case may be; and

(7) For a consolidation, the plan shall contain the articles of the entity or organizational documents to be filed with the state in which the new entity is organized, including any filings in Missouri.

4. The board shall mail or otherwise transmit or deliver notice of the merger or consolidation to each member in the same manner as notice of a regular or special members' meeting is given. The notice shall contain the full text of the plan, and the time and place of the meeting at which the plan will be considered.

5. (1) A plan of merger or consolidation shall be adopted by a cooperative as provided in this subsection.

(2) A plan of merger or consolidation shall be adopted if:

(a) A quorum of the members eligible to vote is registered as being present or represented by mail vote or alternative ballot at the members' meeting; and

(b) The plan is approved by the patron members, or if otherwise provided in the articles or bylaws, is approved by a majority of the votes cast in each class of votes cast, or for a cooperative with articles or bylaws requiring more than a majority of the votes cast or other conditions for approval, the plan is approved by a proportion of the votes cast or a number of total members as required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied.

(3) After the plan has been adopted, articles of merger or articles of consolidation stating that the plan was adopted according to this subsection shall be signed by an authorized representative of each of the merging or consolidated entities, and an authorized representative of the new or surviving entity. A copy of the plan shall be attached to such articles of merger or consolidation.

(4) The articles of merger or consolidation shall be filed in the office of the secretary of state.

(5) For a merger, the articles of the surviving cooperative subject to sections 351.1000 to 351.1228 are deemed amended to the extent provided in the articles of merger.

(6) Unless a later date is provided in the plan, the merger or consolidation is effective when the articles of merger or consolidation are filed in the office of the secretary of state or the appropriate office of another jurisdiction.

(7) In the case of a merger, the secretary of state shall issue a certificate of merger following the filing of the articles of merger by the secretary of state.

(8) In the case of a consolidation, the secretary of state shall issue a certificate of organization following the filing of the articles of consolidation by the secretary of state.

6. (1) After the effective date:

(a) In the case of a merger, the merging entity or entities and the surviving entity shall become a single entity, and the separate existence of each merging entity that is a party to the plan of merger shall cease;

(b) In the case of a consolidation, the new entity shall be formed and the separate existence of each consolidated domestic or foreign business entity that is a party to the plan of consolidation shall cease.

(2) The surviving or new entity possesses all of the rights and property of each of the merging or consolidated entities and is responsible for all their obligations. The title to property of the merging or consolidated entity or entities is vested in the surviving or new entity without reversion or impairment of the title caused by the merger or consolidation.

(3) If it shall be the case that a domestic or foreign business entity not organized as a cooperative association but operating on a cooperative basis under the provisions of subchapter T of the Internal Revenue Code of 1986, as amended, shall merge into a cooperative under sections 351.1000 to 351.1228, then the bylaws and other cooperative agreements related to such entity shall be allowed to govern without further amendment and the surviving entity may continue to operate in the same manner as the merging entity so long as such operations, bylaws, or other cooperative agreements do not directly violate sections 351.1000 to 351.1228.

351.1156. SUBSIDIARIES, MERGER WITH PARENT, WHEN, PROCEDURE — CERTIFICATE OF MERGER REQUIRED. — 1. A parent cooperative owning at least ninety percent of the outstanding ownership interests in a subsidiary business entity, whether directly or indirectly through related organizations, may merge the subsidiary business entity into itself or into any other subsidiary of which at least ninety percent of the outstanding ownership interests is owned by the parent cooperative, whether directly or indirectly through related organizations, without a vote of the members of itself or any subsidiary business entity or may merge itself, or itself and one or more of the subsidiary business entities, into one of the subsidiary business entities under this section. A resolution

approved by the affirmative vote of a majority of the directors of the parent cooperative present shall set forth a plan of merger that contains:

(1) The name and states of domicile of the subsidiary business entity or entities, the name of the parent, and the name of the surviving entity;

(2) The manner and basis of converting the ownership interests of the subsidiary business entity or business entities or parent into ownership interests of the parent, subsidiary, or other business entity or, in the whole or in part, into money or other property;

(3) If the parent is a merging entity, a provision for the pro rata issuance of ownership interests of the surviving entity to the holders of membership interests of the parent on surrender of any certificates for shares of the parent;

(4) If the surviving entity is a subsidiary, a statement of any amendments to the articles of incorporation, organization or association, as the case may be, of the surviving entity that will be part of the merger;

(5) If the parent is the surviving entity, it may change its cooperative name, without a vote of its members, by the inclusion of a provision to that effect in the resolution of merger setting forth the plan of merger that is approved by the affirmative vote of a majority of the directors of the parent. Upon the effective date of the merger, the name of the parent shall be changed; and

(6) If the parent is a merging entity, the resolution is not effective unless it is also approved by the affirmative vote of the holders of two-thirds of the voting power of all membership interests of the parent entitled to vote at a regular or special members' meeting if the parent is a cooperative, or in accordance with the laws under which it is organized if the parent is another domestic business entity or a foreign business entity or cooperative.

2. Notice of the action, including a copy of the plan of merger, shall be given to each member, other than the parent and any subsidiary of each subsidiary that is a constituent cooperative in the merger before, or within ten days after, the effective date of the merger.

3. Articles of merger shall be prepared that contain:

(1) The name and states of domicile of each merging entity and the name and states of domicile of the surviving entity;

(2) The plan of merger; and

(3) A statement that the plan of merger has been approved by the parent under this section.

4. The articles of merger shall be signed on behalf of the parent and filed with the secretary of state.

5. The secretary of state shall issue a certificate of merger to the surviving entity or its legal representative.

351.1159. ABANDONMENT OF PLAN OF MERGER, PROCEDURE. — 1. After a plan of merger has been approved by the members entitled to vote on the approval of the plan and before the effective date of the plan, the plan may be abandoned by the same vote that approved the plan.

2. A plan of merger may be abandoned before the effective date of the plan by a resolution of the board of any surviving entity or merging entity, subject to the contract rights of any other person under the plan. If a plan of merger is with a foreign business entity, the plan of merger may be abandoned before the effective date of the plan by a resolution of the foreign business entity adopted according to the laws of the state under which the foreign business entity is organized, subject to the contract rights of any other person under the plan. If the plan of merger is with a domestic business entity, the plan of merger may be abandoned by the domestic business entity in accordance with the

provisions of the revised statutes of Missouri, subject to the contractual rights of any other person under the plan.

3. If articles of merger have been filed with the secretary of state, but have not yet become effective, the constituent organizations, or any one of them, shall file with the secretary of state articles of abandonment that contain:

(1) The names of the constituent organizations;

(2) The provisions of this section under which the plan is abandoned and the text of the resolution abandoning the plan.

351.1162. DISSOLUTION, AFFIRMATIVE VOTE REQUIRED. — A cooperative may be dissolved by the affirmative vote of two-thirds of the members or by order of the court.

351.1165. NOTICE OF DISSOLUTION. — Before a cooperative begins dissolution, a notice of intent to dissolve shall be filed with the secretary of state. The notice shall contain:

(1) The name of the cooperative;

(2) The date and place of the members' meeting at which the resolution was approved; and

(3) A statement that the requisite vote of the members approved the proposed dissolution.

351.1168. DISSOLUTION, INTERESTS IN PROPERTY MAY BE CONVEYED, WHEN. — 1. After the notice of intent to dissolve has been filed with the secretary of state, the board, or the officers acting under the direction of the board shall proceed as soon as possible:

(1) To collect or make provision for the collection of all debts due or owing to the cooperative, including unpaid subscriptions for shares; and

(2) To pay or make provision for the payment of all debts, obligations, and liabilities of the cooperative according to their priorities.

2. After the notice of intent to dissolve has been filed with the secretary of state, the board may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of the dissolving cooperative without a vote of the members.

3. Tangible and intangible property, including money, remaining after the discharge of the debts, obligations, and liabilities of the cooperative shall be distributed to the members and former members as provided in the articles or bylaws, which may be on the basis of such member's patronage with the cooperative, unless otherwise provided by law. If previously authorized by the members, the tangible and intangible property of the cooperative may be liquidated and disposed of at the discretion of the board.

351.1171. REVOCATION OF DISSOLUTION PROCEEDINGS, WHEN — MEMBERS' MEETING PERMITTED — EFFECTIVE DATE OF REVOCATION — 1. Dissolution proceedings may be revoked before the articles of dissolution are filed with the secretary of state.

2. The board may call a members' meeting to consider the advisability of revoking the dissolution proceedings. The question of the proposed revocation shall be submitted to the members at the members' meeting called to consider the revocation. The dissolution proceedings are revoked if the proposed revocation is approved at the members' meeting by a majority of the members of the cooperative or for a cooperative with articles or bylaws requiring a greater number of members, the number of members required by the articles or bylaws.

3. Revocation of dissolution proceedings is effective when a notice of revocation is filed with the secretary of state. After the notice is filed, the cooperative may resume business.

351.1174. CREDITOR CLAIMS BARRED, WHEN. — The claim of a creditor or claimant against a dissolving cooperative is barred if the claim has not been enforced by initiating legal, administrative, or arbitration proceedings concerning the claim by two years after the date the notice of intent to dissolve is filed with the secretary of state.

351.1177. ARTICLES OF DISSOLUTION, PROCEDURE. — 1. Articles of dissolution of a cooperative shall be filed with the secretary of state after payment of the claims of all known creditors and claimants has been made or provided for and the remaining property has been distributed by the board. The articles of dissolution shall state:

(1) That all debts, obligations, and liabilities of the cooperative have been paid or discharged or adequate provisions have been made for them or time periods allowing claims have run and other claims are not outstanding;

(2) That the remaining property, assets, and claims of the cooperative have been distributed among the members or under a liquidation authorized by the members; and

(3) That legal, administrative, or arbitration proceedings by or against the cooperative are not pending or adequate provision has been made for the satisfaction of a judgment, order, or decree that may be entered against the cooperative in a pending proceeding.

2. The cooperative is dissolved when the articles of dissolution have been filed with the secretary of state.

3. The secretary of state shall issue to the dissolved cooperative or its legal representative, a certificate of dissolution that contains:

(1) The name of the dissolved cooperative;

(2) The date the articles of dissolution were filed with the secretary of state; and

(3) A statement that the cooperative is dissolved.

351.1180. COURT SUPERVISION OF DISSOLUTION, WHEN. — After a notice of intent to dissolve has been filed with the secretary of state and before a certificate of dissolution has been issued, the cooperative or, for good cause shown, a member or creditor may apply to a court within the county where the registered address is located to have the dissolution conducted or continued under the supervision of the court.

351.1183. EQUITABLE RELIEF AND LIQUIDATION OF ASSETS, WHEN. — 1. A court may grant equitable relief that it deems just and reasonable in the circumstances or may dissolve a cooperative and liquidate its assets and business:

(1) In a supervised voluntary dissolution that is applied for by the cooperative;

(2) In an action by a majority of the members when it is established that:

(a) The directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the cooperative's affairs and the members are unable to break the deadlock;

(b) The board or those in control of the cooperative have breached their fiduciary duties to the members;

(c) The members are so divided in voting power that, for a period that includes the time when two consecutive regular members' meetings were held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors;

(d) The cooperative assets are being misapplied or wasted; or

(e) The period of duration as provided in the articles has expired and has not been extended as provided in sections 351.1000 to 351.1228; and

(3) In an action by a creditor when:

(a) The cooperative has admitted in writing that the claim of the creditor against the cooperative is due and owing and it is established that the cooperative is unable to pay its debts in the ordinary course of business; or

(b) In an action by the attorney general to dissolve the cooperative in accordance with sections 351.1000 to 351.1228 when it is established that a decree of dissolution is appropriate.

2. In determining whether to order equitable relief or dissolution, the court shall take into consideration the financial condition of the cooperative but shall not refuse to order equitable relief or dissolution solely on the grounds that the cooperative has accumulated operating net income or current operating net income.

3. In deciding whether to order dissolution of the cooperative, the court shall consider whether lesser relief suggested by one or more parties, such as a form of equitable relief or a partial liquidation, would be adequate to permanently relieve the circumstances established under subdivision (2) of subsection 1 of this section. Lesser relief may be ordered if it would be appropriate under the facts and circumstances of the case.

4. If the court finds that a party to a proceeding brought under this section has acted arbitrarily, or otherwise not in good faith, the court may in its discretion award reasonable expenses including attorney fees and disbursements to any of the other parties.

5. Proceedings under this section shall be brought in a court within the county where the registered address of the cooperative is located.

6. It is not necessary to make members parties to the action or proceeding unless relief is sought against them personally.

351.1186. COURT AUTHORITY IN DISSOLUTION PROCEEDINGS — RECEIVER MAY BE APPOINTED — DISTRIBUTION OF ASSETS. — 1. In dissolution proceedings before a hearing can be completed, the court may:

(1) Issue injunctions;

(2) Appoint receivers with all powers and duties that the court directs;

(3) Take actions required to preserve the cooperative's assets wherever located; and

(4) Carry on the business of the cooperative.

2. After a hearing is completed, upon notice to parties to the proceedings and to other parties in interest designated by the court, the court may appoint a receiver to collect the cooperative's assets including amounts owing to the cooperative by subscribers on account of an unpaid portion of the consideration for the issuance of shares. A receiver has authority, subject to the order of the court, to continue the business of the cooperative and to sell, lease, transfer, or otherwise dispose of the property and assets of the cooperative either at public or private sale.

3. The assets of the cooperative or the proceeds resulting from a sale, lease, transfer, or other disposition shall be applied in the following order of priority:

(1) The costs and expense of the proceedings, including attorney fees and disbursements;

(2) Debts, taxes, and assessments due the United States, this state, and other states in that order;

(3) Claims duly proved and allowed to employees under the provisions of the workers' compensation act except that claims under this clause may not be allowed if the cooperative carried workers' compensation insurance, as provided by law, at the time the injury was sustained;

(4) Claims, including the value of all compensation paid in a medium other than money, proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any; and

(5) Other claims proved and allowed.

4. After payment of the expenses of receivership and claims of creditors are proved, the remaining assets, if any, may be distributed to the members or distributed under an approved liquidation plan.

351.1189. RECEIVERS, REQUIREMENTS. — 1. A receiver shall be a natural person or a domestic business entity or a foreign business entity authorized to transact business in this state. A receiver shall give a bond as directed by the court with the sureties required by the court.

2. A receiver may sue and defend in all courts as receiver of the cooperative. The court appointing the receiver has exclusive jurisdiction over the cooperative and its property.

351.1192. INVOLUNTARY DISSOLUTION, WHEN. — 1. A cooperative may be dissolved involuntarily by a decree of a court in this state in an action filed by the attorney general if it is established that:

(1) The articles and certificate of organization were procured through fraud;

(2) The cooperative was organized for a purpose not permitted by sections 351.1000 to 351.1228 or prohibited by state law;

(3) The cooperative has flagrantly violated a provision of sections 351.1000 to 351.1228, has violated a provision of sections 351.1000 to 351.1228 more than once, or has violated more than one provision of sections 351.1000 to 351.1228; or

(4) The cooperative has acted, or failed to act, in a manner that constitutes surrender or abandonment of the cooperative's privileges, or enterprise.

2. An action may not be commenced under subsection 1 of this section until forty-five days after notice to the cooperative by the attorney general of the reason for the filing of the action. If the reason for filing the action is an act that the cooperative has committed, or failed to commit, and the act or omission may be corrected by an amendment of the articles or bylaws or by performance of or abstention from the act, the attorney general shall give the cooperative thirty additional days to make the correction before filing the action. If the cooperative makes the correction within such thirty-day period, the attorney general shall not file the action.

351.1195. CREDITOR CLAIMS TO BE FILED UNDER OATH, WHEN, COURT PROCEDURE. — 1. In proceedings to dissolve a cooperative, the court may require all creditors and claimants of the cooperative to file their claims under oath with the court administrator or with the receiver in a form prescribed by the court.

2. If the court requires the filing of claims, the court shall:

(1) Set a date, by order, at least one hundred twenty days after the date the order is filed as the last day for the filing of claims; and

(2) Prescribe the notice of the fixed date that shall be given to creditors and claimants.

3. Before the fixed date, the court may extend the time for filing claims. Creditors and claimants failing to file claims on or before the fixed date may be barred, by order of court, from claiming an interest in or receiving payment out of the property or assets of the cooperative.

351.1198. DISCONTINUANCE OF INVOLUNTARY DISSOLUTION. — The involuntary or supervised voluntary dissolution of a cooperative may be discontinued at any time during the dissolution proceedings if it is established that cause for dissolution does not exist. The court shall dismiss the proceedings and direct the receiver, if any, to redeliver to the cooperative its remaining property and assets.

351.1201. COURT ORDER OF DISSOLUTION, WHEN. — 1. In an involuntary or supervised voluntary dissolution, after the costs and expenses of the proceedings and all debts, obligations, and liabilities of the cooperative have been paid or discharged and the remaining property and assets have been distributed to its members or if its property and assets are not sufficient to satisfy and discharge the costs, expenses, debts, obligations, and

liabilities, when all the property and assets have been applied so far as they will go to their payment according to their priorities, the court shall enter an order dissolving the cooperative.

2. When the order dissolving the cooperative has been entered, the cooperative shall be dissolved.

351.1204. CERTIFIED COPY OF DISSOLUTION TO BE FILED. — After the court enters an order dissolving a cooperative, the court administrator shall cause a certified copy of the dissolution order to be filed with the secretary of state. The secretary of state shall not charge a fee for filing the dissolution order.

351.1207. CREDITOR CLAIMS AFTER DISSOLUTION FOREVER BARRED. — 1. A person who is or becomes a creditor or claimant before, during, or following the conclusion of dissolution proceedings who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding during the pendency of the dissolution proceeding or has not initiated a legal, administrative, or arbitration proceeding before the commencement of the dissolution proceedings, all those claiming through or under the creditor or claimant are forever barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in this section.

2. Debts, obligations, and liabilities incurred during dissolution proceedings shall be paid or provided for by the cooperative before the distribution of assets to a member. A person to whom this kind of debt, obligation, or liability is owed but is not paid may pursue any remedy against the offenders, directors, or members of the cooperative before the expiration of the applicable statute of limitations. This subsection shall not apply to dissolution under the supervision or order of a court.

351.1210. CLAIMS AGAINST DISSOLVED COOPERATIVE, FORMER OFFICERS, DIRECTORS, AND MEMBERS MAY DEFEND. — After a cooperative has been dissolved, any of its former officers, directors, or members may assert or defend, in the name of the cooperative, a claim by or against the cooperative.

351.1213. FOREIGN COOPERATIVES, CONFLICT OF LAWS — CERTIFICATE OF AUTHORITY REQUIRED, OTHER REQUIREMENTS. — 1. (1) Subject to the constitution of this state, the laws of the jurisdiction under which a foreign cooperative is organized govern its organization and internal affairs and the liability of its members. A foreign cooperative shall not be denied a certificate of authority to transact business in this state by reason of any difference between those laws and the laws of this state.

(2) A foreign cooperative holding a valid certificate of authority in this state has no greater rights or privileges than a domestic cooperative. The certificate of authority does not authorize the foreign cooperative to exercise any of its powers or purposes that a domestic cooperative is forbidden by law to exercise in this state.

(3) A foreign cooperative may apply for a certificate of authority under any name that would be available to a cooperative, whether or not the name is the name under which it is authorized in its jurisdiction of organization.

(4) Nothing contained herein shall be interpreted to require a foreign business entity which is not formed as a cooperative association under the laws of any foreign jurisdiction but is otherwise operating on a cooperative basis to comply with the provisions of sections 351.1000 to 351.1228, including but not limited to obtaining a certificate of authority as set forth in subsection 2 of this section. Such an entity shall, however, remain obligated to comply with the revised statutes of Missouri, as applicable to such entity.

2. (1) Before transacting business in this state, a foreign cooperative shall obtain a certificate of authority from the secretary of state. An applicant for the certificate shall

submit to the secretary of state an application for registration as a foreign cooperative, signed by an authorized person and setting forth:

(a) The name of the foreign cooperative and, if different, the name under which it proposes to register and transact business in this state;

(b) The jurisdiction of its organization or formation, and the date of such organization or formation;

(c) The name and business address, which may not be a post office box, of the proposed registered agent in this state, which agent shall be an individual resident of this state, a domestic business entity, or a foreign cooperative having a place of business in, and authorized to do business in, this state;

(d) The address of the registered office required to be maintained in the jurisdiction of its organization by the laws of that jurisdiction or, if not so required, of the principal place of business of the foreign cooperative;

(e) The date the foreign cooperative expires in the jurisdiction of its organization; and

(f) A statement that the secretary of state is appointed as the agent of the foreign cooperative for service of process if the foreign cooperative fails to maintain a registered agent in this state or if the agent cannot be found or served with the exercise of reasonable diligence.

(2) The application shall be accompanied by a filing fee of one hundred dollars.

(3) The application shall also be accompanied by a certificate of good standing or certificate of existence issued by the secretary of state of the foreign cooperative's state of domicile, which certificate shall be dated within sixty days of the date of filing.

(4) If the secretary of state finds that an application for a certificate of authority conforms to law and all fees have been paid, the secretary of state shall:

(a) File the original application; and

(b) Return a copy of the original application to the person who filed it with a certificate of authority issued by the secretary of state.

(5) A certificate of authority issued under this section is effective from the date the application is filed with the secretary of state accompanied by the payment of the requisite fees.

(6) If any statement in the application for a certificate of authority by a foreign cooperative was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign cooperative shall promptly file with the secretary of state:

(a) In the case of a change in its name, a termination, or a merger, a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign cooperative is organized; and

(b) A fee for the document, which is the same as the fee for filing an amendment.

3. A foreign cooperative authorized to transact business in this state shall:

(1) Appoint and continuously maintain a registered agent in the same manner as provided in section 351.1027; or

(2) File a report upon any change in the name or business address of its registered agent in the same manner as provided in section 351.1027.

4. (1) A foreign cooperative authorized to transact business in this state may cancel its registration by filing articles of cancellation with the secretary of state, which articles of cancellation shall set forth:

(a) The name of the foreign cooperative and the state or country under the laws of which it is organized;

(b) That the foreign cooperative is not transacting business in this state;

(c) That the foreign cooperative surrenders its authority to transact business in this state;

(d) That the foreign cooperative revokes the authority of its registered agent in this state to accept service of process and consents to that service of process in any action, suit, or proceeding based upon any cause of action arising in this state out of the transaction of the foreign cooperative in this state;

(e) A post office address to which a person may mail a copy of any process against the foreign cooperative; and

(f) That the authority of the secretary of state to accept service of process in this state for any cause of action arising out of the transactions of the foreign cooperative in this state remains in full force and effect.

(2) The filing with the secretary of state of a certificate of termination or a certificate of merger if the foreign cooperative is not the surviving organization from the proper officer of the state or country under the laws of which the foreign cooperative is organized constitutes a valid application of withdrawal and the authority of the foreign cooperative to transact business in this state shall cease upon the filing of the certificate.

(3) The certificate of authority of a foreign cooperative to transact business in this state may be revoked by the secretary of state upon the occurrence of any of the following events:

(a) The foreign cooperative has failed to appoint and maintain a registered agent as required by sections 351.1000 to 351.1228, file a report upon any change in the name or business address of the registered agent, or file in the office of the secretary of state any amendment to its application for a certificate of authority as specified in subdivision (6) of subsection 2 of this section; or

(b) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by the foreign cooperative under sections 351.1000 to 351.1228.

(4) No certificate of authority of a foreign cooperative shall be revoked by the secretary of state unless:

(a) The secretary of state has given the foreign cooperative not less than sixty days' notice by mail addressed to its registered office in this state or, if the foreign cooperative fails to appoint and maintain a registered agent in this state, addressed to the office address in the jurisdiction of organization; and

(b) During the sixty-day period, the foreign cooperative has failed to file the report of change regarding the registered agent, to file any amendment, or to correct the misrepresentation.

(5) Sixty days after the mailing of the notice without the foreign cooperative taking the action set forth in paragraph (b) of subdivision (4) of this subsection, the authority of the foreign cooperative to transact business in this state shall cease. The secretary of state shall issue a certificate of revocation and shall mail the certificate to the address of the registered agent in this state or if there is none, then to the principal place of business or the registered office required to be maintained in the jurisdiction of organization of the foreign cooperative.

5. (1) A foreign cooperative transacting business in this state shall not maintain any action, suit, or proceeding in any court of this state until it possesses a certificate of authority.

(2) The failure of a foreign cooperative to obtain a certificate of authority does not impair the validity of any contract or act of the foreign cooperative or prevent the foreign cooperative from defending any action, suit, or proceeding in any court of this state.

(3) A foreign cooperative, by transacting business in this state without a certificate of authority, appoints the secretary of state as its agent upon whom any notice, process, or demand may be served.

(4) A foreign cooperative that transacts business in this state without a valid certificate of authority is liable to the state for the years or parts of years during which it

transacted business in this state without the certificate in any amount equal to all fees that would have been imposed by sections 351.1000 to 351.1228 upon the foreign cooperative had it duly obtained the certificate, filed all reports required by sections 351.1000 to 351.1228, and paid all penalties imposed by sections 351.1000 to 351.1228. The attorney general shall bring proceedings to recover all amounts due this state under the provisions of this section.

(5) A foreign cooperative that transacts business in this state without a valid certificate of authority shall be subject to a civil penalty, payable to the state, not to exceed five thousand dollars. Each director or in the absence of directors, each member or agent who authorizes, directs, or participates in the transaction of business in this state on behalf of a foreign cooperative that does not have a certificate shall be subject to a civil penalty, payable to the state, not to exceed one thousand dollars.

(6) The civil penalties set forth in subdivision (5) of this subsection may be recovered in an action brought in this state by the attorney general. Upon a finding by the court that a foreign cooperative or any of its members, directors, or agents have transacted business in this state in violation of sections 351.1000 to 351.1228, the court shall issue, in addition to the imposition of a civil penalty, an injunction restraining the further transaction of the business of the foreign cooperative and the further exercise of the foreign cooperative's rights and privileges in this state. The foreign cooperative shall be enjoined from transacting business in this state until all civil penalties plus any interest and court costs that the court may assess have been paid and until the foreign cooperative has otherwise complied with the provisions of sections 351.1000 to 351.1228.

(7) A member of a foreign cooperative shall not be liable for the debts and obligations of the foreign cooperative solely by reason of foreign cooperative's having transacted business in this state without a valid certificate of authority.

6. (1) The following activities of a foreign cooperative, among others, shall not constitute transacting business within the meaning of this section:

(a) Maintaining or defending any action or suit or any administrative arbitration proceeding, or settling any proceeding, claim, or dispute;

(b) Holding meetings of its members or carrying on any other activities concerning its internal affairs;

(c) Maintaining bank accounts;

(d) Having members that are residents of this state or such members having retail locations in this state;

(e) Selling through independent contractors;

(f) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) Selling or transferring title to property in this state to any person; or

(j) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like manner.

(2) For purposes of this section, any foreign cooperative that owns income-producing real or tangible personal property in this state, other than property exempted under subdivision (1) of this subsection, shall be considered to be transacting business in this state.

(3) The list of activities in subdivision (1) of this subsection shall not be exhaustive. This subsection shall not apply in determining the contracts or activities that may subject

a foreign cooperative to service of process or taxation in this state or to regulation under any other law of this state.

7. The secretary of state, the attorney general, or both, may bring an action to restrain a foreign cooperative from transacting business in this state in violation of sections 351.1000 to 351.1228 or other laws of this state.

8. Service of process on a foreign cooperative shall be as provided under Missouri law.

351.1216. NOTICE DEEMED GIVEN, WHEN — ELECTRONIC COMMUNICATIONS, CONSENT GIVEN, WHEN. — 1. Any notice to members given by the cooperative under any provision of sections 351.1000 to 351.1228, the articles, or the bylaws may be given in any of the following forms, and such notice is deemed given:

(1) If by facsimile communication, when directed to a telephone number at which the member has consented to receive notice;

(2) If by electronic mail, when directed to an electronic mail address at which the member has consented to receive notice;

(3) If by a posting on an electronic network on which the member has consented to receive notice, together with separate notice to the member of the specific posting, upon the later of:

(a) The posting; and

(b) The giving of the separate notice;

(4) If by any other form of electronic communication by which the member has consented to receive notice, when directed to the member;

(5) If by United States mail, then when placed in the mail and directed to the address shown as the last known address of the member in the records of the cooperative; and

(6) If by overnight courier service, then when delivered to the courier service and directed to the address shown as the last known address of the member in the records of the cooperative.

2. For any notice which is required to be given to a director under sections 351.1000 to 351.1228, such notice may be given in any method as set forth in subsection 1 of this section upon such director consenting to such director's receipt of notice in such manner.

3. For a member that is a business entity, notice mailed or delivered by an alternative method under subsection 1 of this section shall be to an officer of the entity.

4. An affidavit of the secretary, other authorized officer, or authorized agent of the cooperative that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.

5. Consent by a member to notice given by electronic communication may be given in writing or by authenticated electronic communication. The cooperative shall be entitled to rely on any consent so given until revoked by the member provided that no revocation affects the validity of any notice given before receipt by the cooperative of revocation of the consent.

6. Unless otherwise stated herein, all notices shall be deemed effective when given.

7. Failure of a member to receive a special or regular members' meeting notice shall not invalidate an action taken by the members at a members' meeting.

351.1219. COOPERATIVE NOT DEEMED A FRANCHISE. — A cooperative formed under and operating in compliance with sections 351.1000 to 351.1228 shall not be deemed or construed to be a franchise under the laws of the state of Missouri.

351.1222. RECORDS AND SIGNATURES — DEFINITIONS — LEGAL EFFECT OF. — 1. As used in this section, the following terms mean:

(1) "Electronic", relating to technology, having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(2) "Electronic record", a record created, generated, sent, communicated, received, or stored by electronic means;

(3) "Electronic signature", an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record;

(4) "Record", information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(5) "Signed", the signature of a person that has been written on a document, and with respect to a document required by sections 351.1000 to 351.1228 to be filed with the secretary of state, a document that has been signed by a person authorized to do so by sections 351.1000 to 351.1228, the articles, or bylaws, or by a resolution approved by the board or the members. A signature on a document may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile, or electronically, or in any other manner reproduced on the document.

2. For purposes of sections 351.1000 to 351.1228:

(1) A record or signature shall not be denied legal effect or enforceability solely because it is in electronic form;

(2) A contract shall not be denied legal effect or enforceability solely because an electronic record was used in its formation;

(3) If a provision requires a record to be in writing, an electronic record satisfies the requirement; and

(4) If a provision requires a signature, an electronic signature satisfies the requirement.

351.1225. AMENDMENTS AND REPEAL OF ACT, STATE RESERVES RIGHT OF. — The state reserves the right to amend or repeal the provisions of sections 351.1000 to 351.1228 by law. A cooperative organized or governed by sections 351.1000 to 351.1228 is subject to this reserved right.

351.1227. ADDITIONAL POWERS OF SECRETARY OF STATE — RULEMAKING AUTHORITY. — The secretary of state shall have further power and authority as is reasonably necessary to enable the secretary of state to administer this chapter efficiently and to perform the duties therein imposed upon the secretary of state. Any rule or portion of a rule, as that term is defined in section 536.010, 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 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly under chapter 536 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, 2011, shall be invalid and void.

351.1228. FILING FEES, DETERMINED BY SECRETARY OF STATE. — Unless otherwise provided, the filing fee for documents filed under sections 351.1000 to 351.1228 shall be determined by the secretary of state.

Approved July 11, 2011