

# Journal of the Senate

FIRST REGULAR SESSION

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**FIFTY-EIGHTH DAY - WEDNESDAY, APRIL 26, 2023**

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The Senate met pursuant to adjournment.

President Kehoe in the Chair.

Senator Rowden offered the following prayer:

Father in Heaven, we thank You for the chance to serve in this hallowed chamber today. We thank You for the men and women who have gone before us, who have paved the way for our chance to serve the people of Missouri. Today, we ask for wisdom and guidance and direction as we do the work of the people of Missouri. We also pray that You would bless our families back home as they do tremendous work in our communities. We pray that You would bless our state and bless our first responders who serve so willingly in this state. We pray that You would give us a great day today. In Your Name. Amen.

The Pledge of Allegiance to the Flag was recited.

A quorum being established, the Senate proceeded with its business.

The Journal of the previous day was read and approved.

Senator Rowden assumed the Chair.

The following Senators were present during the day's proceedings:

Present—Senators

Arthur	Bean	Beck	Bernskoetter	Black	Brattin	Brown (16th Dist.)
Brown (26th Dist.)	Carter	Cierpiot	Coleman	Crawford	Eigel	Eslinger
Fitzwater	Gannon	Hoskins	Hough	Koenig	Luetkemeyer	May
Moon	Mosley	O'Laughlin	Razer	Rizzo	Roberts	Rowden
Schroer	Thompson Rehder	Trent	Washington	Williams—33		

Absent—Senators—None

Absent with leave—Senator McCreery—1

Vacancies—None

The Lieutenant Governor was present.

President Kehoe assumed the Chair.

## RESOLUTIONS

Senator Fitzwater offered Senate Resolution No. 393, regarding Curtis "Curt" Alvin Richards, Troy, which was adopted.

Senator Fitzwater offered Senate Resolution No. 394, regarding Carl Edwin Crawford, Wentzville, which was adopted.

Senator Fitzwater offered Senate Resolution No. 395, regarding Donald "Don" Edward Cwiklowski, Wentzville, which was adopted.

### MESSAGES FROM THE HOUSE

The following messages were received from the House of Representatives through its Chief Clerk:

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House refuses to adopt **SCS** for **HCS** for **HB 15**, and requests the Senate to recede from its position and failing to do so grant the House a conference thereon.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House refuses to adopt **SS** for **SCS** for **HCS** for **HB 2**, and requests the Senate to recede from its position and failing to do so grant the House a conference thereon.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House refuses to adopt **SCS** for **HCS** for **HB 3**, and requests the Senate to recede from its position and failing to do so grant the House a conference thereon.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House refuses to adopt **SCS** for **HCS** for **HB 4**, and requests the Senate to recede from its position and failing to do so grant the House a conference thereon.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House refuses to adopt **SS** for **SCS** for **HCS** for **HB 5**, and requests the Senate to recede from its position and failing to do so grant the House a conference thereon.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House refuses to adopt **SCS** for **HCS** for **HB 6**, and requests the Senate to recede from its position and failing to do so grant the House a conference thereon.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House refuses to adopt **SCS** for **HCS** for **HB 7**, and requests the Senate to recede from its position and failing to do so grant the House a conference thereon.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House refuses to adopt **SS** for **SCS** for **HCS** for **HB 8**, and requests the Senate to recede from its position and failing to do so grant the House a conference thereon.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House refuses to adopt **SCS** for **HCS** for **HB 9**, and requests the Senate to recede from its position and failing to do so grant the House a conference thereon.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House refuses to adopt **SCS** for **HCS** for **HB 10**, and requests the Senate to recede from its position and failing to do so grant the House a conference thereon.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House refuses to adopt **SCS** for **HCS** for **HB 11**, and requests the Senate to recede from its position and failing to do so grant the House a conference thereon.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House refuses to adopt **SS** for **SCS** for **HCS** for **HB 12**, and requests the Senate to recede from its position and failing to do so grant the House a conference thereon.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House refuses to adopt **SCS** for **HCS** for **HB 13**, and requests the Senate to recede from its position and failing to do so grant the House a conference thereon.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has taken up and passed **HCS** for **SCS** for **SB 187**, entitled:

An Act to repeal sections 30.753, 130.011, 130.021, 130.031, 130.036, 130.041, 361.020, 361.098, 361.160, 361.260, 361.262, 361.715, 364.030, 364.105, 365.030, 367.140, 407.640, 408.145, 408.500, 569.010, 569.100, 570.010, and 570.030, RSMo, and to enact in lieu thereof thirty-eight new sections relating to financial affairs, with penalty provisions.

With HA 1, HA 2, HA 3, HA 4, HA 5, HA 1 to HA 6, HA 6, as amended, HA 1 to HA 7, HA 2 to HA 7, HA 3 to HA 7, HA 7, as amended, and HA 8, adopted.

HOUSE AMENDMENT NO. 1

Amend House Committee Substitute for Senate Committee Substitute for Senate Bill No. 187, Page 46, Section 361.715, Line 14, by inserting after all of the said section and line the following:

“362.245. 1. The affairs and business of the corporation shall be managed by a board of directors, consisting of not less than five nor more than thirty-five stockholders who shall be elected annually; except, that trust companies in existence on October 13, 1967, may continue to divide the directors into

three classes of equal number, as near as may be, and to elect one class each year for three-year terms. Notwithstanding any provision of this chapter to the contrary, a director who is not a stockholder shall have all the rights, privileges, and duties of a director who is a stockholder.

2. Each director shall be a citizen of the United States, and **except for a private trust company as described under section 361.160**, at least a majority of the directors must be residents of this state at the time of their election and during their continuance in office; provided, however, that if a director actually resides within a radius of one hundred miles of the banking house of said bank or trust company, even though his or her residence be in another state adjoining and contiguous to the state of Missouri, he or she shall for the purposes of this section be considered as a resident of this state and in the event such director shall be a nonresident of the state of Missouri he or she shall upon his or her election as a director file with the president of the banking house or such other chief executive [office] **officer** as otherwise permitted by this chapter written consent to service of legal process upon him in his or her capacity as a director by service of the legal process upon the president as though the same were personally served upon the director in Missouri.

3. If at a time when not more than a majority of the directors are residents of this state, **except for a private trust company as described under section 361.160**, any director shall cease to be a resident of this state or adjoining state as [defined] **described** in subsection 2 of this section, he or she shall forthwith cease to be a director of the bank or trust company and his or her office shall be vacant.

4. No person shall be a director in any bank or trust company against whom such bank or trust company shall hold a judgment.

5. Cumulative voting shall only be permitted at any meeting of the members or stockholders in electing directors when it is provided for in the articles of incorporation or bylaws; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.

#### HOUSE AMENDMENT NO. 2

Amend House Committee Substitute for Senate Committee Substitute for Senate Bill No. 187, Page 49, Section 367.140, Line 26, by inserting after said section and line the following:

**“379.1850. 1. Sections 379.1850 to 379.1869 shall apply to insurers and insurance producers engaged in any transaction involving lender-placed insurance, as defined in section 379.1851.**

**2. All lender-placed insurance written in connection with mortgaged real property, including manufactured homes and modular units, as defined in section 700.010, is subject to the provisions of sections 379.1850 to 379.1869, except:**

**(1) Transactions involving extensions of credit primarily for business, commercial, or agricultural purposes;**

**(2) Insurance offered by the lender or servicer and elected by the mortgagor at the mortgagor’s option;**

**(3) Insurance purchased by a lender or servicer on real estate owned property;**

**(4) Insurance for which no specific charge is made to the mortgagor or the mortgagor’s account.**

**379.185 1. As used in sections 379.1850 to 379.1869, the following terms shall mean:**

(1) **“Affiliate”, a person who directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the person specified;**

(2) **“Individual lender-placed insurance”, coverage for individual real property evidenced by a certificate of coverage under a master lender-placed insurance policy or a lender-placed insurance policy for individual real property;**

(3) **“Insurance producer”, a person or entity, or its affiliates, required to be licensed under the laws of this state to sell, solicit, or negotiate insurance;**

(4) **“Insurer”, an insurance company, association, or exchange, or its affiliates, authorized to issue lender-placed insurance in this state;**

(5) **“Investor”, a person or entity, or its affiliates, holding a beneficial interest in loans secured by real property;**

(6) **“Lapse”, the moment in time in which a mortgagor has failed to secure or maintain valid or sufficient insurance upon mortgaged real property as required by a mortgage agreement;**

(7) **“Lender”, a person or entity, or its affiliates, making loans secured by an interest in real property;**

(8) **“Lender-placed insurance”, insurance obtained by a lender or servicer when a mortgagor does not maintain valid or sufficient insurance upon mortgaged real property as required by the terms of the mortgage agreement. Such term shall include insurance purchased unilaterally by the lender or servicer, who is the named insured, subsequent to the date of the credit transaction, providing coverage against loss, expense, or damage to collateralized property as a result of fire, theft, collision, or other risks of loss that would either impair a lender, servicer, or investor’s interest, or adversely affect the value of collateral covered by limited dual interest insurance. Such term is limited to insurance purchased according to the terms of a mortgage agreement as a result of the mortgagor’s failure to provide evidence of required insurance;**

(9) **“Loss ratio”, the ratio of incurred losses to earned premium;**

(10) **“Master lender-placed policy”, a group policy issued to a lender or servicer providing coverage for all loans in the lender or servicer’s loan portfolio as needed;**

(11) **“Mortgage agreement”, the written document that sets forth an obligation or liability of any kind secured by a lien on real property and due from, owing, or incurred by a mortgagor to a lender on account of a mortgage loan, including a security agreement, deed of trust, or any other document of similar effect, and any other documents incorporated by reference;**

(12) **“Mortgage loan”, a loan, advance, guarantee, or other extension of credit from a lender to a mortgagor;**

(13) **“Mortgage transaction”, a transaction by the terms of which the repayment of money loaned or payment of real property sold is to be made at a future date or dates;**

(14) **“Mortgagee”, the person who holds mortgaged real property as security for repayment of a mortgage agreement;**

(15) **“Mortgagor”, the person who is obligated on a mortgage loan pursuant to a mortgage agreement;**

(16) **“Person”, an individual or entity;**

(17) “Real estate owned property”, property owned or held by a lender or servicer following foreclosure under the related mortgage agreement or the acceptance of a deed in lieu of foreclosure;

(18) “Replacement cost value” or “RCV”, the estimated cost to replace covered property at the time of the loss or damage without deduction for depreciation. Replacement cost value is not market value, but it is instead the cost to replace covered property to its pre-loss condition, as best determined under section 379.1855;

(19) “Servicer”, a person or entity, or its affiliates, contractually obligated to service one or more mortgage loans for a lender or investor. Such term shall include entities involved in subservicing arrangements.

**379.1853. 1. Lender-placed insurance shall become effective no earlier than the date of lapse of insurance upon mortgaged real property subject to the terms of a mortgage agreement or any other state or federal law requiring the same.**

**2. Individual lender-placed insurance shall terminate on the earliest of the following dates:**

(1) The date insurance that is acceptable under the mortgage agreement becomes effective, subject to the mortgagor providing sufficient evidence of such acceptable insurance;

(2) The date the applicable real property no longer serves as collateral for a mortgage loan pursuant to a mortgage agreement;

(3) Such other date as specified by the individual policy or certificate of insurance;

(4) Such other date as specified by the lender or servicer; or

(5) The termination date of the policy.

**3. An insurance charge shall not be made to a mortgagor for lender-placed insurance for a term longer than the scheduled term of the lender-placed insurance, nor shall an insurance charge be made to the mortgagor for lender-placed insurance before the effective date of the lender-placed insurance.**

**379.1855. 1. Any lender-placed insurance coverage, and subsequent calculation of premium, should be based upon the replacement cost value of the property. Replacement cost value of the property shall be determined as follows:**

(1) The dwelling coverage amount set forth in the most recent evidence of insurance coverage provided by the mortgagee (“last known coverage amount” or “LKCA”), if known to the lender or servicer;

(2) The insurer shall inquire of the insured at least once as to the LKCA, and if it is not able to obtain the LKCA from the insured or in another manner, the replacement cost value may be determined as set forth in subdivision (3) or (4) of this subsection;

(3) If the LKCA is unknown and cannot be obtained from the insured or in another manner, the replacement cost of the property serving as collateral as calculated by the insurer, unless the use of replacement cost for this purpose is prohibited by other law;

(4) If the LKCA is unknown and cannot be obtained from the insured or in another manner, and the replacement cost is not available or its use is prohibited, the unpaid principal balance of the mortgage loan.

**2. In the event of a covered loss, any replacement cost coverage provided by an insurer in excess of the unpaid principal balance of the mortgage loan shall be paid to the mortgagor.**

**3. No insurer shall write lender-placed insurance for which the premium rate differs from that determined by the schedules of the insurer on file with the department of commerce and insurance as of the effective date of the policy.**

**379.1857. 1. No insurer or insurance producer shall issue lender-placed insurance on mortgaged property if the insurer or insurance producer, or an affiliate of the insurer or insurance producer, owns, performs the servicing for, or owns the servicing right to, the mortgaged property.**

**2. No insurer or insurance producer shall compensate a lender, insurer, investor, or servicer, including through the payment of commissions, for lender-placed insurance policies issued by the insurer.**

**3. No insurer or insurance producer shall share lender-placed insurance premium or risk with the lender, investor, or servicer that obtained the lender-placed insurance.**

**4. No insurer or insurance producer shall offer contingent commissions, profit sharing, or other payments dependent on profitability or loss ratios to any person affiliated with a servicer or the insurer in connection with lender-placed insurance.**

**5. No insurer shall provide free or below-cost outsourced services to lenders, investors, or servicers, and no insurer shall outsource its own functions to lenders, insurance producers, investors, or servicers on an above-cost basis.**

**6. No insurer or insurance producer shall make any payments, including, but not limited to, the payment of expenses to a lender, insurer, investor, or servicer, for the purpose of securing lender-placed insurance business or related outsourced services.**

**379.1859. Nothing in sections 379.1850 to 379.1869 shall be construed to allow an insurance producer or an insurer solely underwriting lender-placed insurance to circumvent the requirements set forth within those sections. Any part of any requirements, limitations, or exclusions provided in sections 379.1850 to 379.1869 shall apply in any part to any insurer or insurance producer involved in lender-placed insurance.**

**379.1861. Lender-placed insurance shall be set forth in an individual policy or certificate of insurance. A copy of the individual policy, certificate of insurance, or other evidence of insurance coverage shall be mailed, first class mailed, or delivered in person to the last known address of the mortgagor, or delivered in accordance with sections 432.200 to 432.295. In addition to any information otherwise required by law, the individual policy or certificate of insurance coverage shall include the following information:**

- (1) The address and identification of the insured property;**
- (2) The coverage amount, or amounts if multiple coverages are provided;**
- (3) The effective date of the coverage;**
- (4) The term of coverage;**
- (5) The premium charge for the coverage;**
- (6) Contact information for filing a claim; and**
- (7) A complete description of the coverage provided.**

**379.1863. 1. All policy forms and certificates of insurance to be delivered or issued for delivery in this state, and the schedules of premium rates pertaining thereto, shall be filed with the department of commerce and insurance.**

2. The department of commerce and insurance shall review the rates to determine whether the rates are excessive, inadequate, or unfairly discriminatory. This analysis shall include a determination as to whether expenses included by the insurer in the rate are appropriate.

3. All insurers shall re-file lender-placed insurance rates at least once every four years.

4. All insurers writing lender-placed insurance shall have separate rates for lender-placed insurance and voluntary insurance obtained by a mortgage servicer on real estate owned property.

5. Upon the introduction of a new lender-placed insurance program, the insurer shall reference its experience in existing programs in the associated filings. Nothing in sections 379.1850 to 379.1869 shall limit an insurer's discretion, as actuarially appropriate, to distinguish different terms, conditions, exclusions, eligibility criteria, or other unique or different characteristics. Moreover, an insurer may, where actuarially acceptable, rely upon models or, in the case of flood filings where applicable experience is not credible, on Federal Emergency Management Agency National Flood Insurance Program data.

6. (1) No later than April first of each year, each insurer with at least one hundred thousand dollars in direct written premium for lender-placed insurance in this state during the prior calendar year shall report to the department of commerce and insurance the following information for the prior calendar year:

- (a) Actual loss ratio;
- (b) Earned premium;
- (c) Any aggregate schedule rating debit or credit to earned premium;
- (d) Itemized expenses;
- (e) Paid losses;
- (f) Loss reserves, including case reserves and reserves for incurred but not reported losses.

(2) The report under subdivision (1) of this subsection shall be separately produced for each lender-placed program and presented on both an individual-jurisdiction and countrywide basis.

7. If an insurer experiences an annual loss ratio of less than thirty-five percent in any lender-placed program for two consecutive years, it shall submit a rate filing, either adjusting its rates or supporting their continuance, to the department of commerce and insurance no more than ninety days after the submission of the data required in subsection 6 of this section. This subsection shall not apply with regard to lender-placed flood insurance.

8. Except as otherwise specifically set forth in this section, rates and forms shall be filed as required under the insurance laws of this state.

379.1865. 1. (1)The director of the department of commerce and insurance shall have authority to enforce the provisions of sections 379.1850 to 379.1869 as specified in chapter 374.

(2) A final order of the director enforcing sections 379.1850 to 379.1869 shall be subject to judicial review in accordance with the provisions of chapter 536 in the circuit court of Cole County.

(3) No order of the director enforcing sections 379.1850 to 379.1869 or order of a court to enforce the same shall in any way relieve or absolve any person affected by such order from any liability under any other laws of this state.

2. Nothing in sections 379.1850 to 379.1869 shall be construed to create or imply a private cause of action for violations of sections 379.1850 to 379.1869.



**3. Nothing in sections 379.1850 to 379.1869 shall be construed to extinguish any mortgagor rights otherwise available under state, federal, or common law.**

**379.1867. An insurer that violates an order of the director while the order is in effect may, after notice and hearing and upon order of the director, be subject at the discretion of the director to either or both of the following:**

**(1) Payment of a monetary penalty of not more than one thousand dollars per violation, not to exceed an aggregate penalty of one hundred thousand dollars, unless the violation was committed flagrantly in a conscious disregard of sections 379.1850 to 379.1869, in which case the penalty shall not be more than twenty-five thousand dollars for each violation, not to exceed an aggregate penalty of two hundred fifty thousand dollars; or**

**(2) Suspension or revocation of the insurer's license.**

**379.1869. The department of commerce and insurance may promulgate rules as necessary for the implementation of sections 379.1850 to 379.1869. 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, 2023, shall be invalid and void.”; and**

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.

#### HOUSE AMENDMENT NO. 3

Amend House Committee Substitute for Senate Committee Substitute for Senate Bill No. 187, Page 58, Section 427.300, Line 214, by inserting after said section and line the following:

**“431.204. 1. A reasonable covenant in writing promising not to solicit, recruit, hire, induce, persuade, encourage, or otherwise interfere with, directly or indirectly, the employment of one or more employees or owners of a business entity shall be presumed to be enforceable and not a restraint of trade pursuant to subsection 1 of section 416.031 if it is between a business entity and the owner of the business entity and does not continue for more than two years following the end of the owner's business relationship with the business entity.**

**2. A reasonable covenant in writing promising not to solicit, induce, direct, or otherwise interfere with, directly or indirectly, a business entity's customers, including any reduction, termination, or transfer of any customer's business, in whole or in part, for the purposes of providing any product or any service that is competitive with those provided by the business entity shall be presumed to be enforceable and not a restraint of trade pursuant to subsection 1 of section 416.031 if the covenant is limited to customers with whom the owner dealt and if the covenant is between a business entity and an owner, so long as the covenant does not continue for more than five years following the end of the owner's business relationship with the business entity.**

**3. A provision in writing by which an owner promises to provide prior notice of the owner's intent to terminate, sell, or otherwise dispose of such owner's ownership interest in the business entity shall be presumed to be enforceable and not a restraint of trade pursuant to subsection 1 of section 416.031.**

**4. If a covenant is overbroad, overlong, or otherwise not reasonably necessary to protect the protectable business interests of the business entity seeking enforcement of the covenant, a court shall modify the covenant, enforce the covenant as modified, and grant only the relief reasonably necessary to protect such interests.**

**5. Nothing in this section is intended to create or to affect the validity or enforceability of covenants not to compete, other types of covenants, or nondisclosure or confidentiality agreements, except as expressly provided in this section.**

**6. Except as provided in subsection 3 of this section, nothing in this section shall be construed to limit an owner's ability to seek or accept employment with another business entity immediately upon, or at any time subsequent to, termination of the owner's business relationship with the business entity, whether such termination was voluntary or nonvoluntary.”; and**

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.

#### HOUSE AMENDMENT NO. 4

Amend House Committee Substitute for Senate Committee Substitute for Senate Bill No. 187, Page 50, Section 407.640, Line 24, by inserting after all of said section and line the following:

**“407.2020. For purposes of sections 407.2020 to 407.2090, the following terms mean:**

**(1) “Commercial transaction”, a transaction involving a motor vehicle in which the motor vehicle will primarily be used for business purposes rather than personal purposes;**

**(2) “Consumer”, an individual purchaser of a motor vehicle or a borrower under a finance agreement. The term “consumer” includes any borrower, as defined in section 407.2030, or contract holder, as defined in section 407.2060, as applicable;**

**(3) “Finance agreement”, a loan, retail installment sales contract, or lease for the purchase, refinancing, or lease of a motor vehicle;**

**(4) “Free-look period”, a period of time from the effective date of the motor vehicle financial protection product until the date the motor vehicle financial protection product may be cancelled without penalty, fees, or costs. This period of time shall not be shorter than thirty days;**

**(5) “Insurer”, an insurance company licensed, registered, or otherwise authorized to issue contractual liability insurance under the insurance laws of this state;**

**(6) “Motor vehicle”, any self-propelled or towed vehicle designed for personal or commercial use including, but not limited to, automobiles, trucks, motorcycles, recreational vehicles, all-terrain vehicles, snowmobiles, campers, boats, personal watercraft, and related trailers;**

(7) “Motor vehicle financial protection product”, an agreement that protects a consumer's financial interest in his or her current or future motor vehicle. The term “motor vehicle financial protection product” includes any debt waiver, as defined in section 407.2030, and any vehicle value protection agreement, as defined in section 407.2060;

(8) “Person”, an individual, company, association, organization, partnership, business trust, or corporation, and every form of legal entity.

407.2025. 1. Motor vehicle financial protection products may be offered, sold, or given to consumers in this state in compliance with sections 407.2020 to 407.2090.

2. Any amount charged or financed for a motor vehicle financial protection product shall be separately stated and shall not be considered a finance charge or interest.

3. Any extension of credit, terms of credit, or terms of the related motor vehicle sale or lease shall not be conditioned upon the consumer's payment for or financing of any charge for a motor vehicle financial protection product, except that motor vehicle financial protection products may be discounted or given at no charge in connection with the purchase of other non-credit-related goods or services.

407.2030. For purposes of sections 407.2030 to 407.2055, the following terms mean:

(1) “Administrator”, any person, other than an insurer or creditor, who performs administrative or operational functions for debt waiver programs;

(2) “Borrower”, a debtor or retail buyer or lessee under a finance agreement;

(3) “Creditor”:

(a) The lender in a loan or credit transaction;

(b) The lessor in a lease transaction;

(c) Any retail seller of motor vehicles;

(d) The seller in commercial retail installment transactions; or

(e) The assignee of any person described in paragraphs (a) to (d) of this subdivision to whom the credit obligation is payable;

(4) “Debt waiver”, any guaranteed asset protection waiver or excess wear and use waiver;

(5) “Excess wear and use waiver”, a contractual agreement in which a creditor agrees, with or without a separate charge, to cancel or waive all or part of amounts that may become due under a borrower's lease agreement as a result of excessive wear and use of a motor vehicle, which agreement shall be part of, or a separate addendum to, the lease agreement. Excess wear and use waivers may also cancel or waive amounts due for excess mileage;

(6) “Guaranteed asset protection waiver”, a contractual agreement in which a creditor agrees, with or without a separate charge, to cancel or waive all or part of amounts due on a borrower's finance agreement in the event of a total physical damage loss or unrecovered theft of the motor vehicle, which agreement shall be part of, or a separate addendum to, the finance agreement. A guaranteed asset protection waiver may also provide, with or without a separate charge, a benefit

that waives an amount, or provides a borrower with a credit, toward the purchase of a replacement motor vehicle.

**407.2035. 1. (1)** A retail seller of motor vehicles shall insure its debt waiver obligations under a contractual liability or other insurance policy issued by an insurer. A creditor, other than a retail seller, may insure its debt waiver obligations under a contractual liability policy or other such policy issued by an insurer. Any such insurance policy may be directly obtained by a creditor or retail seller or may be procured by an administrator to cover a creditor's or retail seller's obligations.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, retail sellers who are lessors on motor vehicles shall not be required to insure obligations related to debt waivers on such leased motor vehicles.

2. The debt waiver remains a part of the finance agreement upon the assignment, sale, or transfer of such finance agreement by the creditor.

3. Any creditor who offers a debt waiver shall report the sale of, and forward funds due to, the designated party or parties.

4. Funds received or held by a creditor or administrator and belonging to an insurer, creditor, or administrator shall be held by such creditor or administrator in a fiduciary capacity.

**407.2040. 1.** Contractual liability or other insurance policies insuring debt waivers shall state the obligation of the insurer to reimburse or pay to the creditor any sums the creditor is legally obligated to waive under a debt waiver.

2. Coverage under a contractual liability or other insurance policy insuring a debt waiver shall also cover any subsequent assignee upon the assignment, sale, or transfer of the finance agreement.

3. Coverage under a contractual liability or other insurance policy insuring a debt waiver shall remain in effect unless cancelled or terminated in compliance with applicable insurance laws of this state.

4. The cancellation or termination of a contractual liability or other insurance policy shall not reduce the insurer's responsibility for debt waivers issued by the creditor before the date of cancellation or termination and for which premium has been received by the insurer.

**407.2045.** Debt waivers shall disclose in writing and in clear, understandable language that is easy to read the following:

(1) The name and address of the initial creditor and the borrower at the time of sale, and the identity of any administrator if different from the creditor;

(2) The purchase price, if any, and the terms of the debt waiver including, but not limited to, the requirements for protection, conditions, or exclusions associated with the debt waiver;

(3) A statement that the borrower may cancel the debt waiver within a free-look period as specified in the debt waiver and, if so cancelled, shall be entitled to a full refund of the purchase price paid by the borrower, if any, so long as no benefits have been provided;

**(4) The procedure the borrower is required to follow, if any, to obtain debt waiver benefits under the terms and conditions of the debt waiver, including, if applicable, a telephone number or website and address where the borrower may apply for debt waiver benefits;**

**(5) The terms and conditions governing cancellation consistent with all applicable Missouri laws; and**

**(6) A statement that any extension of credit, terms of the credit, or terms of the related motor vehicle sale or lease shall not be conditioned upon the borrower's purchase of a debt waiver.**

**407.2050. 1. Debt waivers shall provide that if a borrower cancels a debt waiver within the free-look period, the borrower shall be entitled to a full refund of the amount the borrower paid, if any, so long as no benefits have been provided.**

**2. If, after the debt waiver has been in effect beyond the free-look period, the borrower cancels the debt waiver or there is an early termination of the finance agreement, the borrower may be entitled to a refund of the amount the borrower paid of the unearned portion of the purchase price, if any, less a cancellation fee up to seventy-five dollars, if no benefit has been or will be provided.**

**3. If the cancellation of a debt waiver occurs as a result of a default under the finance agreement, the repossession of the motor vehicle associated with the finance agreement, or any other termination of the finance agreement, any refund due may be paid directly to the creditor or administrator and applied as a reduction of the amount owed under the finance agreement unless the borrower can show that the finance agreement has been paid in full.**

**407.2055. 1. Debt waivers offered by state or federal banks or credit unions in compliance with applicable state or federal law shall be exempt from the provisions of sections 407.2020 to 407.2090.**

**2. The provisions of sections 407.2045 and 407.2080 shall not apply to debt waivers offered in connection with commercial transactions.**

**407.2060. For purposes of sections 407.2060 to 407.2075, the following terms mean:**

**(1) "Administrator", any person who is responsible for the administrative or operational functions of vehicle value protection agreements including, but not limited to, the adjudication of claims or benefit requests by contract holders;**

**(2) "Contract holder", a person who is the purchaser or holder of a vehicle value protection agreement;**

**(3) "Provider", a person who is obligated to provide a benefit under a vehicle value protection agreement. A provider may perform as an administrator or retain the services of a third-party administrator;**

**(4) "Vehicle value protection agreement", a contractual agreement that:**

**(a) Provides a benefit toward the reduction of some or all of the contract holder's current finance agreement deficiency balance or toward the purchase or lease of a replacement motor vehicle or motor vehicle services upon the occurrence of an adverse event to the motor vehicle including, but not limited to, loss, theft, damage, obsolescence, diminished value, or depreciation;**

**(b) Does not include debt waivers; and**

(c) May include agreements such as, but not limited to, trade-in-credit agreements, diminished value agreements, depreciation benefit agreements, or other similarly named agreements.

**407.2065. 1.** A provider may, but is not required to, use an administrator or other designee to be responsible for any and all of the administration of vehicle value protection agreements in compliance with the provisions of sections 407.2020 to 407.2090.

**2.** Vehicle value protection agreements shall not be sold unless the contract holder has been or will be provided access to a copy of the vehicle value protection agreement within a reasonable time.

**3.** In order to assure the faithful performance of the provider's obligations to its contract holders, each provider shall comply with subdivision (1) or (2) of this subsection, as follows:

(1) In order to satisfy the requirements of this subsection under this subdivision, the provider shall insure all its vehicle value protection agreements under an insurance policy that pays or reimburses in the event the provider fails to perform its obligations under the vehicle value protection agreement and that is issued by an insurer who is licensed, registered, or otherwise authorized to do business in this state and who:

(a) Maintains surplus as to policyholders and paid-in capital of at least fifteen million dollars; or

(b) Maintains:

a. Surplus as to policyholders and paid-in capital of less than fifteen million dollars but at least equal to ten million dollars; and

b. A ratio of net written premiums, wherever written, to surplus as to policyholders and paid-in capital of not greater than three to one; or

(2) In order to satisfy the requirements of this subsection under this subdivision, the provider shall:

(a) Maintain, or together with its parent company maintain, a net worth or stockholders' equity of one hundred million dollars; and

(b) Upon request, provide the attorney general with a copy of the provider's or the provider's parent company's most recent Form 10-K or Form 20-F filed with the Securities and Exchange Commission (SEC) within the last calendar year or, if the company does not file with the SEC, a copy of the company's audited financial statements, which show a net worth of the provider or its parent company of at least one hundred million dollars. If the provider's parent company's Form 10-K, Form 20-F, or financial statements are filed to meet the provider's financial security requirement, the parent company shall agree to guarantee the obligations of the provider relating to vehicle value protection agreements sold by the provider in this state.

**4.** Except for the requirements specified in subsection 3 of this section, no other financial security requirements shall be required for vehicle value protection agreement providers.

**407.2070.** Vehicle value protection agreements shall disclose in writing and in clear, understandable language that is easy to read the following:

**(1) The name and address of the provider, contract holder, and administrator, if any;**

**(2) The terms of the vehicle value protection agreement including, but not limited to, the purchase price to be paid by the contract holder, if any, the requirements for eligibility, the conditions of coverage, and any exclusions;**

**(3) A statement that the vehicle value protection agreement may be cancelled by the contract holder within a free-look period as specified in the vehicle value protection agreement and that in such event the contract holder shall be entitled to a full refund of the purchase price paid by the contract holder, if any, so long as no benefits have been provided;**

**(4) The procedure the contract holder shall follow, if any, to obtain a benefit under the terms and conditions of the vehicle value protection agreement, including, if applicable, a telephone number or website and address where the contract holder may apply for a benefit;**

**(5) A statement that indicates whether the vehicle value protection agreement may be cancelled after the free-look period and the conditions under which it may be cancelled, including the procedures for requesting any refund of the unearned purchase price paid by the contract holder;**

**(6) If the vehicle value protection agreement is cancellable after the free-look period, a statement that any refund of the unearned purchase price of the vehicle value protection agreement shall be calculated on a pro rata basis;**

**(7) A statement that any extension of credit, terms of the credit, or terms of the related motor vehicle sale or lease shall not be conditioned upon the purchase of the vehicle value protection agreement;**

**(8) The terms, restrictions, or conditions governing cancellation of the vehicle value protection agreement before the termination or expiration date of the vehicle value protection agreement by either the provider or the contract holder. The provider of the vehicle value protection agreement shall mail a written notice to the contract holder at the last known address of the contract holder contained in the records of the provider at least five days before cancellation by the provider. Prior notice shall not be required if the reason for cancellation is nonpayment of the provider fee, a material misrepresentation by the contract holder to the provider or administrator, or a substantial breach of duties by the contract holder relating to the covered product or its use. The notice shall state the effective date of the cancellation and the reason for the cancellation. If a vehicle value protection agreement is cancelled by the provider for a reason other than nonpayment of the provider fee, the provider shall refund to the contract holder one hundred percent of the unearned pro rata provider fee paid by the contract holder, if any. If coverage under the vehicle value protection agreement continues after a claim, any refund may deduct claims paid. A reasonable administrative fee may be charged by the provider up to seventy-five dollars; and**

**(9) A statement that the agreement is not an insurance contract.**

**407.2075. The provisions of sections 407.2070 and 407.2080 shall not apply to vehicle value protection agreements offered in connection with a commercial transaction.**

**407.2080.** The attorney general may take action that is necessary or appropriate to enforce the provisions of sections 407.2020 to 407.2090 and to protect motor vehicle financial protection product consumers in this state. After proper notice and opportunity for hearing, the attorney general may:

(1) Order the creditor, provider, administrator, or any other person not in compliance with the provisions of sections 407.2020 to 407.2090 to cease and desist from product-related operations that are in violation of the provisions of sections 407.2020 to 407.2090; and

(2) Impose a penalty of not more than five hundred dollars for each violation of the provisions of sections 407.2020 to 407.2090 and not more than ten thousand dollars in the aggregate for all violations of a similar nature. A violation shall be considered of a similar nature to another violation if the violation consists of the same or similar course of conduct, action, or practice, irrespective of the number of times the action, conduct, or practice that is determined to be a violation of the provisions of sections 407.2020 to 407.2090 occurred.

**407.2085.** Notwithstanding the provisions of section 407.2090, all motor vehicle financial protection products issued before and on and after August 28, 2023, shall not be considered insurance.

**407.2090.** The provisions of sections 407.2020 to 407.2090 shall apply to all motor vehicle financial protection products that become effective after February 23, 2024."; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.

#### HOUSE AMENDMENT NO. 5

Amend House Committee Substitute for Senate Committee Substitute for Senate Bill No. 187, Page 58, Section 427.300, Line 214, by inserting after said section and line the following:

“475.040. If it appears to the court, acting on the petition of the guardian, the conservator, the respondent or of a ward over the age of fourteen, or on its own motion, at any time before the termination of the guardianship or conservatorship, that the proceeding was commenced in the wrong county, or that the domicile [or residence] of the ward or protectee has [been] changed to another county, or in case of conservatorship of the estate that it would be for the best interest of the ward or disabled person and his estate, the court may order the proceeding with all papers, files and a transcript of the proceedings transferred to the probate division of the circuit court of another county. The court to which the transfer is made shall take jurisdiction of the case, place the transcript of record and proceed to the final settlement of the case as if the appointment originally had been made by it.

475.275. 1. The conservator, at the time of filing any settlement with the court, shall exhibit all securities or investments held by him to an officer of the bank or other depository wherein the securities or investments are held for safekeeping or to an authorized representative of the corporation which is surety on his bond, or to the judge or clerk of a court of record in this state, or upon request of the conservator or other interested party, to any other reputable person designated by the court, who shall certify in writing that he has examined the securities or investments and identified them with those described in the account and shall note any omission or discrepancies. If the depository is the conservator,



the certifying officer shall not be the officer verifying the account. The conservator may exhibit the securities or investments to the judge of the court, who shall endorse on the account and copy thereof, a certificate that the securities or investments shown therein as held by the conservator were each in fact exhibited to him and that those exhibited to him were the same as those in the account and noting any omission or discrepancy. The certificate, and the certificate of an official of the bank in which are deposited any funds for which the conservator is accountable, showing the amount on deposit, shall be prepared and signed in duplicate and one of each shall be filed by the conservator with his account.

2. (1) As used in and pursuant to this section, a “pooled account” is an account within the meaning of this section and means any account maintained by a fiduciary for more than one principal and is established for the purpose of managing and investing and to manage and invest the funds of such principals. No fiduciary shall or may place funds into a pooled account unless the account meets the following criteria:

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

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

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

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

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

(2) The public administrator of any county [with a charter form of government and with more than six hundred thousand but less than seven hundred thousand inhabitants] serving as a conservator **or personal representative** and using and utilizing pooled accounts for the investing[, investment,] and management of [conservatorship] **estate** funds shall have any such accounts [audited] **examined** on at least an annual basis [and no less than one time per year] by an independent certified public accountant. [The audit provided shall review the records of the receipts and disbursements of each estate account. Upon completion of the investigation, the certified public accountant shall render a report to the judge of record in this state showing the receipts, disbursements, and account balances as to each estate and as well as the total assets on deposit in the pooled account on the last calendar day of each year.] **The examination shall:**

(a) **Compare the pooled account's year-end bank statement and obtain the reconciliation of the pooled account from the bank statement to the fiduciary's general ledger balance on the same day;**

(b) **Reconcile the total of individual accounts in the fiduciary's records to the reconciled pooled account's balance and note any difference;**

(c) **Confirm if collateral is pledged to secure amounts on deposit in the pooled account in excess of Federal Deposit Insurance Corporation coverage; and**

(d) **Confirm the account balance with the financial institution.**

**(3) A public administrator using and utilizing pooled accounts as provided by this section shall certify by affidavit that he or she has met the conditions for establishing a pooled account as set forth in subdivision (2) of this subsection.**

**(4) The county shall provide for the expense of [such audit] the report. If and where the public administrator has provided the judge with [the audit] the report pursuant to and required by this subsection and section, the public administrator shall not be required to obtain the written [certification] verification of an officer of a bank or other depository on any estate asset maintained within the pooled account as otherwise required in and under subsection 1 of this section.”; and**

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.

HOUSE AMENDMENT NO. 1 TO  
HOUSE AMENDMENT NO. 6

Amend House Amendment No. 6 to House Committee Substitute for Senate Committee Substitute for Senate Bill No. 187, Page 6, Line 35, by inserting after all of said section and line the following:

“Further amend said bill, Page 46, Section 361.715, Line 14, by inserting after all of said section and line the following:

**“361.749. 1. As used in this section, unless the context clearly indicates otherwise, the following terms mean:**

**(1) “Commissioner”, the commissioner of the division of finance;**

**(2) “Consumer”, any individual;**

**(3) “Consumer-directed wage access services”, the business of offering or providing earned wage access services directly to a consumer based on the consumer's representation and the provider's reasonable determination of the consumer's earned but unpaid income;**

**(4) “Division”, the Missouri division of finance within the department of commerce and insurance;**

**(5) “Earned but unpaid income”, salary, wages, compensation, or other income that a consumer or an employer has represented, and that a provider has reasonably determined, has been earned or has accrued to the benefit of the consumer in exchange for the consumer's provision of services to the employer or on behalf of the employer, including on an hourly, project-based, piecework, or other basis and including where the consumer is acting as an independent contractor of the employer, but has not, at the time of the payment of proceeds, been paid to the consumer by the employer;**

**(6) “Earned wage access services”, the business of providing consumer-directed wage access services, employer-integrated wage access services, or both;**

**(7) “Employer”:**

**(a) A person who employs a consumer; or**

(b) Any other person who is contractually obligated to pay a consumer earned but unpaid income in exchange for a consumer's provision of services to the employer or on behalf of the employer, including on an hourly, project-based, piecework, or other basis and including where the consumer is acting as an independent contractor with respect to the employer.

“Employer” does not include a customer of an employer or any other person whose obligation to make a payment of salary, wages, compensation, or other income to a consumer is not based on the provision of services by that consumer for or on behalf of such person;

(8) “Employer-integrated wage access services”, the business of delivering to consumers access to earned but unpaid income that is based on employment, income, and attendance data obtained directly or indirectly from an employer;

(9) “Fee”:

(a) A fee imposed by a provider for delivery or expedited delivery of proceeds to a consumer;

(b) A subscription or membership fee imposed by a provider for a bona fide group of services that includes earned wage access services; or

(c) An amount paid by an employer to a provider on a consumer's behalf, which entitles the consumer to receive proceeds at reduced or no cost to the consumer.

A voluntary tip, gratuity, or donation shall not be deemed a fee;

(10) “Outstanding proceeds”, a payment of proceeds to a consumer by a provider that has not yet been repaid to that provider;

(11) “Person”, a partnership, corporation, association, sole proprietorship, limited liability company, or nonprofit or governmental entity;

(12) “Proceeds”, a payment of funds to a consumer by a provider that is based on earned but unpaid income;

(13) “Provider”, a person who is in the business of offering and providing earned wage access services to consumers.

2. (1) No person shall engage in the business of earned wage access services in this state without first registering as an earned wage access services provider with the division.

(2) The annual registration fee shall be one thousand dollars payable to the division as of the first day of July of each year. The division may establish a biennial registration arrangement, but in no case shall the registration fee be payable for more than one year at a time.

(3) Registration shall be made on forms prepared by the commissioner and shall contain the following information:

(a) Name, business address, and telephone number of the earned wage access services provider;

(b) Name and business address of corporate officers and directors or principals or partners;

(c) A sworn statement by an appropriate officer, principal, or partner of the earned wage access services provider that:

a. The provider is financially capable of engaging in the business of earned wage access services; and

**b. If a corporation, that the corporation is authorized to transact business in this state.**

**If any material change occurs in the information contained in the registration form, a revised statement shall be submitted to the commissioner.**

**(4) A certificate of registration shall be issued by the commissioner within thirty calendar days after the date on which all registration materials have been received by the commissioner and shall not be assignable or transferable, except as approved by the commissioner.**

**(5) Each certificate of registration shall remain in full force and effect until surrendered, revoked, or suspended.**

**3. This section shall not apply to:**

**(1) A bank or savings and loan association whose deposits or accounts are eligible for insurance by the Federal Deposit Insurance Corporation, or a subsidiary of such a bank or savings and loan association;**

**(2) A credit union doing business in this state; or**

**(3) A person authorized to make loans or extensions of credit under the laws of this state or the United States, who is subject to regulation and supervision by this state or the United States.**

**4. Each provider shall:**

**(1) Develop and implement policies and procedures to respond to questions raised by consumers and address complaints from consumers in an expedient manner;**

**(2) Before entering into an agreement with a consumer for the provision of earned wage access services, provide a consumer with a written paper or electronic document, which can be included as part of the contract to provide earned wage access services and which meets all of the following requirements:**

**(a) Informs the consumer of his or her rights under the agreement; and**

**(b) Fully and clearly discloses all fees associated with the earned wage access services;**

**(3) Inform the consumer of the fact of any material changes to the terms and conditions of the earned wage access services before implementing those changes for that consumer;**

**(4) Provide proceeds to a consumer by any means mutually agreed upon by the consumer and provider;**

**(5) Comply with all local, state, and federal privacy and information security laws;**

**(6) In any case in which the provider will seek repayment of outstanding proceeds, fees, or other payments, including voluntary tips, gratuities, or other donations from a consumer's account at a depository institution and including via electronic funds transfer:**

**(a) Comply with applicable provisions of the federal Electronic Funds Transfer Act and its implementing regulations; and**

**(b) Reimburse the consumer for the full amount of any overdraft or nonsufficient funds fees imposed on a consumer by the consumer's depository institution that were caused by the provider attempting to seek payment of any outstanding proceeds, fees, voluntary tips, gratuities, or other**

donations on a date before, or in an incorrect amount from, the date or amount disclosed to the consumer.

The provisions of this subdivision shall not apply with respect to payments of outstanding proceeds, fees, tips, gratuities, or other donations incurred by a consumer through fraudulent or other means; and

(7) If a provider solicits, charges, or receives a tip, gratuity, or donation from a consumer:

(a) Clearly and conspicuously disclose to the consumer immediately prior to each transaction that a tip, gratuity, or donation amount may be zero and is voluntary;

(b) Clearly and conspicuously disclose in its service contract with the consumer and elsewhere that tips, gratuities, or donations are voluntary and that the offering of earned wage access services, including the amount of the proceeds a consumer is eligible to request and the frequency with which proceeds are provided to a consumer, is not contingent on whether the consumer pays any tip, gratuity, or donation or on the size of any tip, gratuity, or donation;

(c) Refrain from misleading or deceiving consumers about the voluntary nature of such tips, gratuities, or donations; and

(d) Refrain from making representations that tips or gratuities will benefit any specific, individual person.

5. A provider shall not:

(1) Share with an employer any fees, voluntary tips, gratuities, or other donations that were received from or charged to a consumer for earned wage access services;

(2) Charge interest for failure to repay outstanding proceeds, fees, voluntary tips, gratuities, or other donations;

(3) Report any information about the consumer regarding the inability of the provider to be repaid outstanding proceeds, fees, voluntary tips, gratuities, or other donations to a consumer credit reporting agency or a debt collector;

(4) Require a consumer's credit report or credit score to determine a consumer's eligibility for earned wage access services;

(5) Accept payment from a consumer of outstanding proceeds, fees, voluntary tips, gratuities, or other donations via credit card or charge card; or

(6) Compel or attempt to compel repayment by a consumer of outstanding proceeds, fees, voluntary tips, gratuities, or other donations through any of the following means:

(a) A suit against the consumer in a court of competent jurisdiction;

(b) Use of a third party to pursue collection from the consumer on the provider's behalf; or

(c) Sale of outstanding amounts to a third-party collector or debt buyer for collection from the consumer.

The provisions of this subdivision shall not apply to payments of outstanding proceeds, fees, tips, gratuities, or other donations incurred by a consumer through fraudulent or other means or

preclude a provider from pursuing an employer for breach of its contractual obligations to the provider.

**6. For purposes of the laws of this state:**

**(1) Earned wage access services offered and provided by a registered provider shall not be considered to be any of the following:**

**(a) A violation of or noncompliance with the laws governing the sale or assignment of or an order for earned but unpaid income;**

**(b) A loan or other form of credit, and the provider shall not be considered a creditor or a lender;**

**(c) Money transmission, and the provider shall not be considered a money transmitter;**

**(2) Fees, voluntary tips, gratuities, or other donations shall not be considered interest or finance charges.**

**7. The commissioner, or his or her duly authorized representative, may make such investigation as is deemed necessary and, to the extent necessary for this purpose, may examine the registrant or any other person having personal knowledge of the matters under investigation, and shall have the power to compel the production of all relevant books, records, accounts, and documents by registrants.**

**8. (1) An earned wage access services provider shall maintain records of its earned wage access services transactions and shall preserve its records for at least two years after the final date on which it provides proceeds to a consumer.**

**(2) Records required by this section may be maintained electronically.**

**9. The division may promulgate rules as may be necessary for the administration 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, 2023, shall be invalid and void.**

**10. (1) Any provider registered pursuant to this section who fails, refuses, or neglects to comply with the provisions of this section or commits any criminal act may have its registration suspended or revoked by the commissioner, after a hearing before the commissioner on an order of the commissioner to show cause why such order of suspension or revocation should not be entered specifying the grounds therefor, which shall be served on the registrant at least ten days prior to the hearing.**

**(2) Whenever it shall appear to the commissioner that any provider registered pursuant to this section is failing, refusing, or neglecting to make a good faith effort to comply with the provisions of this section, the commissioner may issue an order to cease and desist, which order may be**

enforceable by a civil penalty of not more than one thousand dollars per day for each day that the neglect, failure, or refusal shall continue. The penalty shall be assessed and collected by the commissioner. In determining the amount of the penalty, the commissioner shall take into account the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

11. All revenues collected by or paid to the commissioner pursuant to this section shall be forwarded immediately to the director of revenue, who shall deposit them in the division of finance fund.

12. Any earned wage access services provider knowingly and willfully violating the provisions of this section shall be guilty of a class A misdemeanor.

13. If there is a conflict between the provisions of this section and any other state statute, the provisions of this section shall control."; and"; and

Further amend said amendment, Page 8, Line 23, by inserting after all of said line the following:

“Further amend said bill, Page 58, Section 427.300, Line 214, by inserting after all of said section and line the following:

“436.550. Sections 436.550 to 436.572 shall be known and may be cited as the "Consumer Legal Funding Act”.

436.552. As used in sections 436.550 to 436.572, the following terms mean:

(1) “Advertise”, publishing or disseminating any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the internet, or similar communications media, including film strips, motion pictures, and videos, published, disseminated, circulated, or placed before the public, directly or indirectly, for the purpose of inducing a consumer to enter into a consumer legal funding contract;

(2) “Affiliate”, as defined in section 515.505;

(3) “Charges”, the amount of moneys to be paid to the consumer legal funding company by or on behalf of the consumer above the funded amount provided by or on behalf of the company to a consumer under sections 436.550 to 436.572. Charges include all administrative, origination, underwriting, or other fees, no matter how denominated;

(4) “Commissioner”, the commissioner of the division of finance within the department of commerce and insurance;

(5) “Consumer”, a natural person who has a legal claim and resides or is domiciled in Missouri;

(6) “Consumer legal funding company” or “company”, a person or entity that enters into a consumer legal funding contract with a consumer for an amount less than five hundred thousand dollars. The term shall not include:

- (a) An immediate family member of the consumer;
- (b) A bank, lender, financing entity, or other special purpose entity:
  - a. That provides financing to a consumer legal funding company; or
  - b. To which a consumer legal funding company grants a security interest or transfers any rights or interest in a consumer legal funding; or
- (c) An attorney or accountant who provides services to a consumer;
- (7) “Consumer legal funding contract”, a nonrecourse contractual transaction in which a consumer legal funding company purchases and a consumer assigns to the company a contingent right to receive an amount of the potential proceeds of a settlement, judgment, award, or verdict obtained in the consumer's legal claim, so long as all of the following apply:
  - (a) The consumer, at their sole discretion, shall use the funds to address personal needs or household expenses;
  - (b) The consumer shall not use the funds to pay for attorneys' fees, legal filings, legal marketing, legal document preparation or drafting, appeals, expert testimony, or other litigation-related expenses;
  - (8) “Division”, the division of finance within the department of commerce and insurance;
  - (9) “Funded amount”, the amount of moneys provided to or on behalf of the consumer in the consumer legal funding contract. "Funded amount" shall not include charges;
  - (10) “Funding date”, the date on which the funded amount is transferred to the consumer by the consumer legal funding company either by personal delivery, via wire, automated clearing house transfer, or other electronic means, or by insured, certified, or registered United States mail;
  - (11) “Immediate family member”, a parent; sibling; child by blood, adoption, or marriage; spouse; grandparent; or grandchild;
  - (12) “Legal claim”, a bona fide civil claim or cause of action;
  - (13) “Medical provider”, any person or business providing medical services of any kind to a consumer including, but not limited to, physicians, nurse practitioners, hospitals, physical therapists, chiropractors, or radiologists as well as any of their employees or contractors or any practice groups, partnerships, or incorporations of the same;
  - (14) “Resolution date”, the date the amount funded to the consumer, plus the agreed-upon charges, is delivered to the consumer legal funding company.

**436.554. 1. All consumer legal funding contracts shall meet the following requirements:**

- (1) The contract shall be completely filled in when presented to the consumer for signature;
- (2) The contract shall contain, in bold and boxed type, a right of rescission allowing the consumer to cancel the contract without penalty or further obligation if, within ten business days after the funding date, the consumer either:
  - (a) Returns the full amount of the disbursed funds to the consumer legal funding company by delivering the company's uncashed check to the company's office in person; or



**(b) Mails a notice of cancellation by insured, certified, or registered United States mail to the address specified in the contract and includes a return of the full amount of disbursed funds in such mailing in the form of the company's uncashed check or a registered or certified check or money order;**

**(3) The contract shall contain the initials of the consumer on each page; and**

**(4) The contract shall require the consumer to give nonrevocable written direction to the consumer's attorney requiring the attorney to notify the consumer legal funding company when the legal claim has been resolved. Once the consumer legal funding company confirms in writing the amount due under the contract, the consumer's attorney shall pay, from the proceeds of the resolution of the legal claim, the consumer legal funding company the amount due within ten business days.**

**2. The consumer legal funding company shall provide the consumer's attorney with a written notification of the consumer legal funding contract provided to the consumer within three business days of the funding date by way of postal mail, courier service, facsimile, or other means of proof of delivery method.**

**3. A consumer legal funding contract shall be entered into only if the contract involves an existing legal claim in which the consumer is represented by an attorney.**

**436.556. No consumer legal funding company shall:**

**(1) Pay or offer to pay commissions, referral fees, or other forms of consideration to any attorney, law firm, medical provider, chiropractor, or physical therapist or any of their employees for referring a consumer to the company;**

**(2) Accept any commissions, referral fees, rebates, or other forms of consideration from an attorney, law firm, medical provider, chiropractor, or physical therapist or any of their employees;**

**(3) Intentionally advertise materially false or misleading information regarding its products or services;**

**(4) Refer, in furtherance of an initial legal funding, a customer or potential customer to a specific attorney, law firm, medical provider, chiropractor, or physical therapist or any of their employees. However, the company may refer the customer to a local or state bar association referral service if a customer needs legal representation;**

**(5) Fail to promptly supply a copy of the executed contract to the consumer's attorney;**

**(6) Knowingly provide funding to a consumer who has previously assigned or sold a portion of the right to proceeds from the consumer's legal claim unless the consumer legal funding company pays or purchases the entire unsatisfied funded amount and contracted charges from the prior consumer legal funding company or the two companies agree to a lesser amount in writing. However, multiple companies may agree to contemporaneously provide funding to a consumer, provided that the consumer and the consumer's attorney consent to the arrangement in writing;**

(7) Receive any right to or make any decisions with respect to the conduct of the underlying legal claim or any settlement or resolution thereof. The right to make such decisions shall remain solely with the consumer and the attorney in the legal claim;

(8) Knowingly pay or offer to pay for court costs, filing fees, or attorney's fees either during or after the resolution of the legal claim by using funds from the consumer legal funding contract. The consumer legal funding contract shall include a provision advising the consumer that the funding shall not be used for such costs or fees; or

(9) Sell a consumer litigation funding contract in whole or in part to a third party. However, if the consumer legal funding company retains responsibility for collecting payment, administering, and otherwise enforcing the consumer legal funding contract, the provisions of this subdivision shall not apply to any of the following:

(a) An assignment to a wholly owned subsidiary of the consumer legal funding company;

(b) An assignment to an affiliate of the consumer legal funding company that is under common control;

(c) The granting of a security interest under Article 9 of the Uniform Commercial Code, or as otherwise permitted by law.

**436.558. 1.** The contracted amount to be paid to the consumer legal funding company shall be set as a predetermined amount based upon intervals of time from the funding date to the resolution date and shall not be determined as a percentage of the recovery from the legal claim.

**2.** No consumer legal funding contract shall be valid if its terms exceed a period of forty-eight months. No consumer legal funding contract shall be automatically renewed.

**436.560.** All consumer legal funding contracts shall contain the disclosures specified in this section, which shall constitute material terms of the contract. Unless otherwise specified, the disclosures shall be typed in at least twelve-point bold-type font and be placed clearly and conspicuously within the contract, as follows:

(1) On the front page under appropriate headings, language specifying:

(a) The funded amount to be paid to the consumer by the consumer legal funding company;

(b) An itemization of one-time charges;

(c) The total amount to be assigned by the consumer to the company, including the funded amount and all charges; and

(d) A payment schedule to include the funded amount and charges, listing all dates and the amount due at the end of each six-month period from the funding date until the date the maximum amount due to the company by the consumer to satisfy the amount due pursuant to the contract;

(2) Within the body of the contract, in accordance with the provisions under subdivision (2) of subsection 1 of section 436.554: "Consumer's Right to Cancellation: You may cancel this contract without penalty or further obligation within ten business days after the funding date if you either:

(a) Return the full amount of the disbursed funds to the consumer legal funding company by delivering the company's uncashed check to the company's office in person; or

(b) Mail a notice of cancellation by insured, certified, or registered United States mail to the company at the address specified in the contract and include a return of the full amount of disbursed funds in such mailing in the form of the company's uncashed check or a registered or certified check or money order.”;

(3) Within the body of the contract, a statement that the company has no influence over any aspect of the consumer's legal claim or any settlement or resolution of the consumer's legal claim and that all decisions related to the consumer's legal claim remain solely with the consumer and the consumer's attorney;

(4) Within the body of the contract, in all capital letters and in at least twelve-point bold-type font contained within a box: **“THE FUNDED AMOUNT AND AGREED-UPON CHARGES SHALL BE PAID ONLY FROM THE PROCEEDS OF YOUR LEGAL CLAIM AND SHALL BE PAID ONLY TO THE EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM YOUR LEGAL CLAIM. IF THERE IS NO RECOVERY OF ANY DAMAGES FROM YOUR LEGAL CLAIM OR IF THERE IS NOT ENOUGH MONEY TO PAY BACK THE CONSUMER LEGAL FUNDING COMPANY IN FULL, YOU WILL NOT BE OBLIGATED TO PAY THE CONSUMER LEGAL FUNDING COMPANY ANYTHING IN EXCESS OF YOUR RECOVERY UNLESS YOU HAVE VIOLATED THIS CONTRACT. YOU WILL NOT OWE (INSERT NAME OF THE CONSUMER LEGAL FUNDING COMPANY) ANYTHING IF THERE ARE NO PROCEEDS FROM YOUR LEGAL CLAIM UNLESS YOU OR YOUR ATTORNEY HAVE VIOLATED ANY MATERIAL TERM OF THIS CONTRACT OR UNLESS YOU HAVE COMMITTED FRAUD AGAINST THE CONSUMER LEGAL FUNDING COMPANY.”**; and

(5) Located immediately above the place on the contract where the consumer's signature is required, in twelve-point font: **"Do not sign this contract before you read it completely or if it contains any blank spaces. You are entitled to a completely filled-in copy of the contract. Before you sign this contract, you should obtain the advice of an attorney. Depending on the circumstances, you may want to consult a tax, public or private benefits planning, or financial professional. You acknowledge that your attorney in the legal claim has provided no tax, public or private benefit planning, or financial advice regarding this transaction.”**.

**436.562. 1.** Nothing in sections 436.550 to 436.572 shall be construed to restrict the exercise of powers or the performance of the duties of the state attorney general that he or she is authorized to exercise or perform by law.

**2.** If a court of competent jurisdiction determines that a consumer legal funding company has intentionally violated the provisions of sections 436.550 to 436.572 in a consumer legal funding contract, the consumer legal funding contract shall be voided.

**436.564. 1.** The contingent right to receive an amount of the potential proceeds of a legal claim is assignable.

**2.** Nothing contained in sections 436.550 to 436.572 shall be construed to cause any consumer legal funding contract conforming to sections 436.550 to 436.572 to be deemed a loan or to be subject

to any of the provisions governing loans. A consumer legal funding contract that complies with sections 436.550 to 436.572 is not subject to any other statutory or regulatory provisions governing loans or investment contracts. To the extent that sections 436.550 to 436.572 conflict with any other law, such sections shall supersede the other law for the purposes of regulating consumer legal funding in this state.

3. Only attorney's liens related to the legal claim, Medicare, or other statutory liens related to the legal claim shall take priority over claims to proceeds from the consumer legal funding company. All other liens and claims shall take priority by normal operation of law.

4. No consumer legal funding company shall report a consumer to a credit reporting agency if insufficient funds remain from the net proceeds to repay the company.

436.566. An attorney or law firm retained by the consumer in the legal claim shall not have a financial interest in the consumer legal funding company offering consumer legal funding to that consumer. Additionally, any practicing attorney who has referred the consumer to his or her retained attorney shall not have a financial interest in the consumer legal funding company offering consumer legal funding to that consumer.

436.568. No communication between the consumer's attorney in the legal claim and the consumer legal funding company necessary to ascertain the status of a legal claim or a legal claim's expected value shall be discoverable by a party with whom the claim is filed or against whom the claim is asserted. This section does not limit, waive, or abrogate the scope or nature of any statutory or common-law privilege, including the work-product doctrine and attorney-client privilege.

436.570. 1. A consumer legal funding company shall not engage in the business of consumer legal funding in this state unless it has first obtained a license from the division of finance.

2. A consumer legal funding company's initial or renewal license application shall be in writing, made under oath, and on a form provided by the commissioner.

3. Every consumer legal funding company, at the time of filing a license application, shall pay the sum of five hundred fifty dollars for the period ending the thirtieth day of June next following the date of payment; thereafter, a like fee shall be paid on or before June thirtieth of each year and shall be credited to the division of finance fund established under section 361.170.

4. A consumer legal funding license shall not be issued unless the division of finance, upon investigation, finds that the character and fitness of the applicant company, and of the officers and directors thereof, are such as to warrant belief that the business shall operate honestly and fairly within the purposes of sections 436.550 to 436.572.

5. Every applicant shall also, at the time of filing such application, file a bond satisfactory to the division of finance in an amount not to exceed fifty thousand dollars. The bond shall provide that the applicant shall faithfully conform to and abide by the provisions of sections 436.550 to 436.572, to all rules lawfully made by the commissioner under sections 436.550 to 436.572, and the bond shall act as a surety for any person or the state for any and all amount of moneys that may become due or owing from the applicant under and by virtue of sections 436.550 to 436.572, which shall include

the result of any action that occurred while the bond was in place for the applicable period of limitations under statute and so long as the bond is not exhausted by valid claims.

6. If an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond. Immediately upon any recovery on the bond, the licensee shall file a new bond.

7. To ensure the effective supervision and enforcement of sections 436.550 to 436.572, the commissioner may, under chapter 536:

(1) Deny, suspend, revoke, condition, or decline to renew a license for a violation of sections 436.550 to 436.572, rules issued under sections 436.550 to 436.572, or order or directive entered under sections 436.550 to 436.572;

(2) Deny, suspend, revoke, condition, or decline to renew a license if an applicant or licensee fails at any to time meet the requirements of sections 436.550 to 436.572, or withholds information or makes a material misstatement in an application for a license or renewal of a license;

(3) Order restitution against persons subject to sections 436.550 to 436.572 for violations of sections 436.550 to 436.572; and

(4) Order or direct such other affirmative action as the commissioner deems necessary.

8. Any letter issued by the commissioner and declaring grounds for denying or declining to grant or renew a license may be appealed to the circuit court of Cole County. All other matters presenting a contested case involving a licensee may be heard by the commissioner under chapter 536.

9. Notwithstanding the prior approval requirement of subsection 1 of this section, a consumer legal funding company that has applied with the division of finance between the effective date of sections 436.550 to 436.572, or when the division of finance has made applications available to the public, whichever is later, and six months thereafter may engage in consumer legal funding while the license application of the company or an affiliate of the company is awaiting approval by the division of finance and until such time as the applicant has pursued all appellate remedies and procedures for any denial of such application. All funding contracts in effect prior to the effective date of sections 436.550 to 436.572 are not subject to the terms of sections 436.550 to 436.572.

10. If it appears to the commissioner that any consumer legal funding company is failing, refusing, or neglecting to make a good faith effort to comply with the provisions of sections 436.550 to 436.572, or any laws or rules relating to consumer legal funding, the commissioner may issue an order to cease and desist, which may be enforceable by a civil penalty of not more than one thousand dollars per day for each day that the neglect, failure, or refusal continues. The penalty shall be assessed and collected by the commissioner. In determining the amount of the penalty, the commissioner shall take into account the appropriateness of the penalty with respect to the gravity of the violation, any history of previous violations, and any other matters justice may require.

11. If any consumer legal funding company fails, refuses, or neglects to comply with the provisions of sections 436.550 to 436.572, or of any laws or rules relating to consumer legal funding, its license may be suspended or revoked by order of the commissioner after a hearing before said commissioner on any order to show cause why such order of suspension or revocation should not be entered and that specifies the grounds therefor. Such an order shall be served on the particular

consumer legal funding company at least ten days prior to the hearing. Any order made and entered by the commissioner may be appealed to the circuit court of Cole County.

12. (1) The division shall conduct an examination of each consumer funding company at least once every twenty-four months and at such other times as the commissioner may determine.

(2) For any such investigation or examination, the commissioner and his or her representatives shall have free and immediate access to the place or places of business and the books and records, and shall have the authority to place under oath all persons whose testimony may be required relative to the affairs and business of the consumer legal funding company.

(3) The commissioner may also make such special investigations or examination as the commissioner deems necessary to determine whether any consumer legal funding company has violated any of the provisions of sections 436.550 to 436.572 or rules promulgated thereunder, and the commissioner may assess the reasonable costs of any investigation or examination incurred by the division to the company.

13. The division of finance shall have the authority to promulgate rules to carry out the provisions of sections 436.550 to 436.572. 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, 2023, shall be invalid and void.

436.572. A consumer legal funding contract is a fact subject to the usual rules of discovery.”; and”;

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.

#### HOUSE AMENDMENT NO. 6

Amend House Committee Substitute for Senate Committee Substitute for Senate Bill No. 187, Page 1, Section A, Line 8, by inserting after all of said section and line the following:

“**30.266. The state treasurer may keep in the custody of the state treasury an amount of gold and silver greater than or equal to one percent of all state funds. Nothing in this section shall require the state treasurer to invest any state funds in a manner inconsistent with Article IV, Section 15 of the Missouri Constitution.**”; and

Further amend said bill, Page 22, Section 130.041, Line 115, by inserting after all of said section and line the following:

“137.100. The following subjects are exempt from taxation for state, county or local purposes:

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

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

(3) Nonprofit cemeteries;

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

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

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

(7) Motor vehicles leased for a period of at least one year to this state or to any city, county, or political subdivision or to any religious, educational, or charitable organization which has obtained an exemption from the payment of federal income taxes, provided the motor vehicles are used exclusively for religious, educational, or charitable purposes;

(8) Real or personal property leased or otherwise transferred by an interstate compact agency created pursuant to sections 70.370 to 70.430 or sections 238.010 to 238.100 to another for which or whom such property is not exempt when immediately after the lease or transfer, the interstate compact agency enters into a leaseback or other agreement that directly or indirectly gives such interstate compact agency a right to use, control, and possess the property; provided, however, that in the event of a conveyance of such property, the interstate compact agency must retain an option to purchase the property at a future date or, within the limitations period for reverters, the property must revert back to the interstate compact agency. Property will no longer be exempt under this subdivision in the event of a conveyance as of the date, if any, when:

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

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

(c) There are no provisions for reverter of the property within the limitation period for reverters;

(9) All property, real and personal, belonging to veterans organizations. As used in this section, "veterans organization" means any organization of veterans with a congressional charter, that is incorporated in this state, and that is exempt from taxation under section 501(c)(19) of the Internal Revenue Code of 1986, as amended;

(10) Solar energy systems not held for resale; **and**

**(11) Virtual currencies. As used in this section, “virtual currency” means any type of digital representation of value that:**

**(a) Is used as a medium of exchange, unit of account, or store of value; and**

**(b) Is not recognized as legal tender by the United States government.**

143.121. 1. The Missouri adjusted gross income of a resident individual shall be the taxpayers federal adjusted gross income subject to the modifications in this section.

2. There shall be added to the taxpayers federal adjusted gross income:

(1) The amount of any federal income tax refund received for a prior year which resulted in a Missouri income tax benefit. The amount added pursuant to this subdivision shall not include any amount of a federal income tax refund attributable to a tax credit reducing a taxpayers federal tax liability pursuant to Public Law 116-136 or 116-260, enacted by the 116th United States Congress, for the tax year beginning on or after January 1, 2020, and ending on or before December 31, 2020, and deducted from Missouri adjusted gross income pursuant to section 143.171. The amount added under this subdivision shall also not include any amount of a federal income tax refund attributable to a tax credit reducing a taxpayers federal tax liability under any other federal law that provides direct economic impact payments to taxpayers to mitigate financial challenges related to the COVID-19 pandemic, and deducted from Missouri adjusted gross income under section 143.171;

(2) Interest on certain governmental obligations excluded from federal gross income by 26 U.S.C. Section 103 of the Internal Revenue Code, as amended. The previous sentence shall not apply to interest on obligations of the state of Missouri or any of its political subdivisions or authorities and shall not apply to the interest described in subdivision (1) of subsection 3 of this section. The amount added pursuant to this subdivision shall be reduced by the amounts applicable to such interest that would have been deductible in computing the taxable income of the taxpayer except only for the application of 26 U.S.C. Section 265 of the Internal Revenue Code, as amended. The reduction shall only be made if it is at least five hundred dollars;

(3) The amount of any deduction that is included in the computation of federal taxable income pursuant to 26 U.S.C. Section 168 of the Internal Revenue Code as amended by the Job Creation and Worker Assistance Act of 2002 to the extent the amount deducted relates to property purchased on or after July 1, 2002, but before July 1, 2003, and to the extent the amount deducted exceeds the amount that would have been deductible pursuant to 26 U.S.C. Section 168 of the Internal Revenue Code of 1986 as in effect on January 1, 2002;

(4) The amount of any deduction that is included in the computation of federal taxable income for net operating loss allowed by 26 U.S.C. Section 172 of the Internal Revenue Code of 1986, as amended, other



than the deduction allowed by 26 U.S.C. Section 172(b)(1)(G) and 26 U.S.C. Section 172(i) of the Internal Revenue Code of 1986, as amended, for a net operating loss the taxpayer claims in the tax year in which the net operating loss occurred or carries forward for a period of more than twenty years and carries backward for more than two years. Any amount of net operating loss taken against federal taxable income but disallowed for Missouri income tax purposes pursuant to this subdivision after June 18, 2002, may be carried forward and taken against any income on the Missouri income tax return for a period of not more than twenty years from the year of the initial loss; and

(5) For nonresident individuals in all taxable years ending on or after December 31, 2006, the amount of any property taxes paid to another state or a political subdivision of another state for which a deduction was allowed on such nonresidents federal return in the taxable year unless such state, political subdivision of a state, or the District of Columbia allows a subtraction from income for property taxes paid to this state for purposes of calculating income for the income tax for such state, political subdivision of a state, or the District of Columbia;

(6) For all tax years beginning on or after January 1, 2018, any interest expense paid or accrued in a previous taxable year, but allowed as a deduction under 26 U.S.C. Section 163, as amended, in the current taxable year by reason of the carryforward of disallowed business interest provisions of 26 U.S.C. Section 163(j), as amended. For the purposes of this subdivision, an interest expense is considered paid or accrued only in the first taxable year the deduction would have been allowable under 26 U.S.C. Section 163, as amended, if the limitation under 26 U.S.C. Section 163(j), as amended, did not exist.

3. There shall be subtracted from the taxpayers federal adjusted gross income the following amounts to the extent included in federal adjusted gross income:

(1) Interest received on deposits held at a federal reserve bank or interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission or instrumentality of the United States to the extent exempt from Missouri income taxes pursuant to the laws of the United States. The amount subtracted pursuant to this subdivision shall be reduced by any interest on indebtedness incurred to carry the described obligations or securities and by any expenses incurred in the production of interest or dividend income described in this subdivision. The reduction in the previous sentence shall only apply to the extent that such expenses including amortizable bond premiums are deducted in determining the taxpayers federal adjusted gross income or included in the taxpayers Missouri itemized deduction. The reduction shall only be made if the expenses total at least five hundred dollars;

(2) The portion of any gain, from the sale or other disposition of property having a higher adjusted basis to the taxpayer for Missouri income tax purposes than for federal income tax purposes on December 31, 1972, that does not exceed such difference in basis. If a gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to one-half of such portion of the gain;

(3) The amount necessary to prevent the taxation pursuant to this chapter of any annuity or other amount of income or gain which was properly included in income or gain and was taxed pursuant to the

laws of Missouri for a taxable year prior to January 1, 1973, to the taxpayer, or to a decedent by reason of whose death the taxpayer acquired the right to receive the income or gain, or to a trust or estate from which the taxpayer received the income or gain;

(4) Accumulation distributions received by a taxpayer as a beneficiary of a trust to the extent that the same are included in federal adjusted gross income;

(5) The amount of any state income tax refund for a prior year which was included in the federal adjusted gross income;

(6) The portion of capital gain specified in section 135.357 that would otherwise be included in federal adjusted gross income;

(7) The amount that would have been deducted in the computation of federal taxable income pursuant to 26 U.S.C. Section 168 of the Internal Revenue Code as in effect on January 1, 2002, to the extent that amount relates to property purchased on or after July 1, 2002, but before July 1, 2003, and to the extent that amount exceeds the amount actually deducted pursuant to 26 U.S.C. Section 168 of the Internal Revenue Code as amended by the Job Creation and Worker Assistance Act of 2002;

(8) For all tax years beginning on or after January 1, 2005, the amount of any income received for military service while the taxpayer serves in a combat zone which is included in federal adjusted gross income and not otherwise excluded therefrom. As used in this section, "combat zone" means any area which the President of the United States by Executive Order designates as an area in which Armed Forces of the United States are or have engaged in combat. Service is performed in a combat zone only if performed on or after the date designated by the President by Executive Order as the date of the commencing of combat activities in such zone, and on or before the date designated by the President by Executive Order as the date of the termination of combatant activities in such zone;

(9) For all tax years ending on or after July 1, 2002, with respect to qualified property that is sold or otherwise disposed of during a taxable year by a taxpayer and for which an additional modification was made under subdivision (3) of subsection 2 of this section, the amount by which additional modification made under subdivision (3) of subsection 2 of this section on qualified property has not been recovered through the additional subtractions provided in subdivision (7) of this subsection;

(10) For all tax years beginning on or after January 1, 2014, the amount of any income received as payment from any program which provides compensation to agricultural producers who have suffered a loss as the result of a disaster or emergency, including the:

(a) Livestock Forage Disaster Program;

(b) Livestock Indemnity Program;

(c) Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish;

- (d) Emergency Conservation Program;
- (e) Noninsured Crop Disaster Assistance Program;
- (f) Pasture, Rangeland, Forage Pilot Insurance Program;
- (g) Annual Forage Pilot Program;
- (h) Livestock Risk Protection Insurance Plan;
- (i) Livestock Gross Margin Insurance Plan;

(11) For all tax years beginning on or after January 1, 2018, any interest expense paid or accrued in the current taxable year, but not deducted as a result of the limitation imposed under 26 U.S.C. Section 163(j), as amended. For the purposes of this subdivision, an interest expense is considered paid or accrued only in the first taxable year the deduction would have been allowable under 26 U.S.C. Section 163, as amended, if the limitation under 26 U.S.C. Section 163(j), as amended, did not exist; [and]

(12) One hundred percent of any retirement benefits received by any taxpayer as a result of the taxpayers service in the Armed Forces of the United States, including reserve components and the National Guard of this state, as defined in 32 U.S.C. Sections 101(3) and 109, and any other military force organized under the laws of this state; **and**

**(13) For all tax years beginning on or after January 1, 2024, the portion of capital gain on the sale or exchange of gold and silver that are otherwise included in the taxpayer's federal adjusted gross income.**

4. There shall be added to or subtracted from the taxpayers federal adjusted gross income the taxpayers share of the Missouri fiduciary adjustment provided in section 143.351.

5. There shall be added to or subtracted from the taxpayer's federal adjusted gross income the modifications provided in section 143.411.

6. In addition to the modifications to a taxpayers federal adjusted gross income in this section, to calculate Missouri adjusted gross income there shall be subtracted from the taxpayers federal adjusted gross income any gain recognized pursuant to 26 U.S.C. Section 1033 of the Internal Revenue Code of 1986, as amended, arising from compulsory or involuntary conversion of property as a result of condemnation or the imminence thereof.

7. (1) As used in this subsection, "qualified health insurance premium" means the amount paid during the tax year by such taxpayer for any insurance policy primarily providing health care coverage for the taxpayer, the taxpayers spouse, or the taxpayers dependents.

(2) In addition to the subtractions in subsection 3 of this section, one hundred percent of the amount of qualified health insurance premiums shall be subtracted from the taxpayers federal adjusted gross

income to the extent the amount paid for such premiums is included in federal taxable income. The taxpayer shall provide the department of revenue with proof of the amount of qualified health insurance premiums paid.

8. (1) Beginning January 1, 2014, in addition to the subtractions provided in this section, one hundred percent of the cost incurred by a taxpayer for a home energy audit conducted by an entity certified by the department of natural resources under section 640.153 or the implementation of any energy efficiency recommendations made in such an audit shall be subtracted from the taxpayers federal adjusted gross income to the extent the amount paid for any such activity is included in federal taxable income. The taxpayer shall provide the department of revenue with a summary of any recommendations made in a qualified home energy audit, the name and certification number of the qualified home energy auditor who conducted the audit, and proof of the amount paid for any activities under this subsection for which a deduction is claimed. The taxpayer shall also provide a copy of the summary of any recommendations made in a qualified home energy audit to the department of natural resources.

(2) At no time shall a deduction claimed under this subsection by an individual taxpayer or taxpayers filing combined returns exceed one thousand dollars per year for individual taxpayers or cumulatively exceed two thousand dollars per year for taxpayers filing combined returns.

(3) Any deduction claimed under this subsection shall be claimed for the tax year in which the qualified home energy audit was conducted or in which the implementation of the energy efficiency recommendations occurred. If implementation of the energy efficiency recommendations occurred during more than one year, the deduction may be claimed in more than one year, subject to the limitations provided under subdivision (2) of this subsection.

(4) A deduction shall not be claimed for any otherwise eligible activity under this subsection if such activity qualified for and received any rebate or other incentive through a state-sponsored energy program or through an electric corporation, gas corporation, electric cooperative, or municipally owned utility.

9. The provisions of subsection 8 of this section shall expire on December 31, 2020.”; and

Further amend said bill, Page 50, Section 407.640, Line 24, by inserting after all of said section and line the following:

“408.010. [The silver coins of the United States are hereby declared a legal tender, at their par value, fixed by the laws of the United States , and shall be receivable in payment of all debts, public or private, hereafter contracted in the state of Missouri; provided, however, that no person shall have the right to pay, upon any one debt, dimes and half dimes to an amount exceeding ten dollars, or of twenty and twenty-five cent pieces exceeding twenty dollars ] **1. The state of Missouri shall accept gold and silver coinage as legal tender, at spot price plus market premium, for payment of any debt, tax, fee, or obligation owed. Costs incurred in the course of verification of the weight and purity of any gold or silver coinage during any such transaction shall be borne by the receiving entity.**

**2. No person or entity shall be required to use gold or silver coinage in the payment of any debt.**

**3. Nothing in this section shall prohibit the use of federal reserve notes in the payment of any debt.**

**4. Except as otherwise provided in section 513.607, under no circumstance shall the state of Missouri or any department, agency, political subdivision, or instrumentality thereof seize from any person any gold or silver that is owned by such person. Any person who has his or her gold or silver seized in violation of this section shall have a cause of action in a court of competent jurisdiction. Any successful cause of action shall result in an award of attorney's fees.**

**408.012. 1. The state of Missouri shall not require payment in the form of any digital currency.**

**2. For purposes of this section, "digital currency" means any currency or money that is primarily stored, managed, or transferred by electronic means."; and**

Further amend said bill, Page 52, Section 408.500, Line 62, by inserting after all of said section and line the following:

**"408.900. 1. For purposes of this section, the following terms shall mean:**

**(1) "Blockchain network", a group of computers working together to run a consensus mechanism to agree upon and verify data in a digital record;**

**(2) "Digital asset", any cryptocurrencies, natively electronic assets, including stable coins, nonfungible tokens, and other digital-only assets that confer economic, proprietary, or access rights or powers;**

**(3) "Digital asset mining", using electricity to power a computer for the purpose of securing a blockchain network;**

**(4) "Digital asset mining business", a group of computers working at a single site that consumes more than one megawatt of energy for the purpose of generating digital assets by securing a blockchain network;**

**(5) "Discriminatory rates", electricity rates substantially different from other industrial uses of electricity in similar geographic areas;**

**(6) "Home digital asset mining", mining digital assets in areas zoned for residential use;**

**(7) "Money transmitter", any person, as that term is defined in section 361.700, that is subject to sections 361.700 to 361.727;**

**(8) "Node", a computational device that contains a copy of a blockchain ledger.**

**2. (1) Any person may run a node or a series of nodes in Missouri for the purpose of home digital asset mining at the persons private residence.**

**(2) A person or entity may have a digital asset mining business in any area in this state that is zoned for industrial use.**

**(3) Any person engaged in home digital asset mining or digital asset mining business shall not be considered a money transmitter.**

**3. A political subdivision shall not:**

**(1) Limit the sound decibels generated from home digital asset mining other than limits set for sound pollution generally;**

**(2) Impose any requirement on a digital asset mining business that is not also a requirement for data centers in such political subdivision; or**

**(3) Rezone the area in which a digital asset mining business is located without complying with applicable state and local zoning laws or rezone any area with the intent or effect of discriminating against a digital asset mining business.**

**4. A digital asset mining business may appeal a change in zoning pursuant to any applicable state or local zoning laws.**

**5. The public service commission may set rates reflective of cost to serve, but shall not establish a rate schedule for digital asset mining that creates discriminatory rates for digital asset mining businesses.”; and**

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.

**HOUSE AMENDMENT NO. 1 TO  
HOUSE AMENDMENT NO. 7**

Amend House Amendment No. 7 to House Committee Substitute for Senate Committee Substitute for Senate Bill No. 187, Page 1, Line 1, by inserting after the number “187,” the following:

“Page 23, Section 170.281, Line 31, by inserting after all of said section and line the following:

“214.330. 1. (1) The endowed care trust fund required by sections 214.270 to 214.410 shall be permanently set aside in trust or in accordance with the provisions of subsection 2 of this section. The trustee of the endowed care trust shall be a state or federally chartered financial institution authorized to exercise trust powers in Missouri. The contact information for a trust officer or duly appointed representative of the trustee with knowledge and access to the trust fund accounting and trust fund records must be disclosed to the office or its duly authorized representative upon request.

(2) The trust fund records, including all trust fund accounting records, shall be maintained in the state of Missouri at all times or shall be electronically stored so that the records may be made available in the state of Missouri within fifteen business days of receipt of a written request. The operator of an endowed care cemetery shall maintain a current name and address of the trustee and the records custodian for the endowed care trust fund and shall supply such information to the office, or its representative, upon request.

(3) Missouri law shall control all endowed care trust funds and the Missouri courts shall have jurisdiction over endowed care trusts regardless of where records may be kept or various administrative tasks may be performed.

2. An endowed care trust fund shall be administered in accordance with Missouri law governing trusts, including but not limited to the applicable provisions of chapters 456 and 469, except as specifically provided in this subsection or where the provisions of sections 214.270 to 214.410 provide differently, provided that a cemetery operator shall not in any circumstances be authorized to restrict, enlarge, change, or modify the requirements of this section or the provisions of chapters 456 and 469 by agreement or otherwise.

(1) Income and principal of an endowed care trust fund shall be determined under the provisions of law applicable to trusts, except that the [provisions of section 469.405 shall not apply] **trustee shall have:**

**(a) No power of adjustment under section 469.405;**

**(b) No power of conversion either from an income trust to a unitrust or from a unitrust to an income trust under section 469.475;**

**(c) No power or discretion to determine or modify the unitrust rate, as established in the terms of the endowed care trust agreement; and**

**(d) No discretion to determine applicable value for purposes of computing the unitrust amount beyond that granted by law and exercised solely for reasons of administrative convenience and not to affect the size of distributions.**

**In determining applicable value under section 469.473, values over a three-year period if available, or the duration of the trust if shorter, shall be used.**

(2) No principal shall be distributed from an endowed care trust fund except to the extent that a unitrust [election is in effect with respect to such trust under the provisions of section 469.411] **amount is required by the terms of the endowed care trust fund agreement under subdivision (6) of this subsection.**

(3) No right to transfer jurisdiction from Missouri under section 456.1-108 shall exist for endowed care trusts.

(4) All endowed care trusts shall be irrevocable.

(5) No trustee shall have the power to terminate an endowed care trust fund under the provisions of section 456.4-414.

(6) A unitrust [election made in accordance with the provisions of chapter 469 shall be made by the cemetery operator in the terms of the endowed care trust fund agreement itself, not by the trustee] **definition of income under sections 469.471 to 469.487 shall be established by the cemetery operator in the terms of the endowed care trust fund agreement itself, not by the trustee, and shall not provide for a unitrust rate exceeding five percent per annum. The unitrust rate shall be changed only by amendment to the agreement as provided in this section.**

(7) No contract of insurance shall be deemed a suitable investment for an endowed care trust fund.

(8) The income from the endowed care fund may be distributed to the cemetery operator at least annually on a date designated by the cemetery operator **by record**, but no later than sixty days following the end of the [trust fund] **trust's fiscal** year. Any income not distributed within sixty days following the end of the trust's fiscal year shall be added to and held as part of the principal of the trust fund. **The cemetery operator may instruct by record the trustee to distribute less than all the income distributable for the year if the cemetery operator determines that the money is not needed.**

3. The cemetery operator shall have the duty and responsibility to apply the income distributed to provide care and maintenance only for that part of the cemetery designated as an endowed care section and not for any other purpose.

4. In addition to any other duty, obligation, or requirement imposed by sections 214.270 to 214.410 or the endowed care trust agreement, the trustee's duties shall be the maintenance of records related to the trust and the accounting for and investment of moneys deposited by the operator to the endowed care trust fund.

(1) For the purposes of sections 214.270 to 214.410, the trustee shall not be deemed responsible for the care, the maintenance, or the operation of the cemetery, or for any other matter relating to the cemetery, or the proper expenditure of funds distributed by the trustee to the cemetery operator, including, but not limited to, compliance with environmental laws and regulations.

(2) With respect to cemetery property maintained by endowed care funds, the cemetery operator shall be responsible for the performance of the care and maintenance of the cemetery property.

5. If the endowed care cemetery fund is not permanently set aside in a trust fund as required by subsection 1 of this section, then the funds shall be permanently set aside in an escrow account in the state of Missouri. Funds in an escrow account shall be placed in an endowed care trust fund under subsection 1 if the funds in the escrow account exceed three hundred fifty thousand dollars, unless otherwise approved by the division for good cause. The account shall be insured by the Federal Deposit Insurance Corporation or comparable deposit insurance and held in a state or federally chartered financial institution authorized to do business in Missouri and located in this state.

(1) The interest from the escrow account may be distributed to the cemetery operator at least in annual or semiannual installments, but not later than six months following the calendar year. Any interest not distributed within six months following the end of the calendar year shall be added to and held as part of the principal of the account.



(2) The cemetery operator shall have the duty and responsibility to apply the interest to provide care and maintenance only for that part of the cemetery in which burial space shall have been sold and with respect to which sales the escrow account shall have been established and not for any other purpose. The principal of such funds shall be kept intact. The cemetery operator's duties shall be the maintenance of records and the accounting for an investment of moneys deposited by the operator to the escrow account. For purposes of sections 214.270 to 214.410, the administrator of the office of endowed care cemeteries shall not be deemed to be responsible for the care, maintenance, or operation of the cemetery. With respect to cemetery property maintained by cemetery care funds, the cemetery operator shall be responsible for the performance of the care and maintenance of the cemetery property owned by the cemetery operator.

(3) The division may approve an escrow agent if the escrow agent demonstrates the knowledge, skill, and ability to handle escrow funds and financial transactions and is of good moral character.

6. The cemetery operator shall be accountable to the owners of burial space in the cemetery for compliance with sections 214.270 to 214.410.

7. Excluding funds held in an escrow account, all endowed care trust funds shall be administered in accordance with an endowed care trust fund agreement, which shall be submitted to the office by the cemetery operator for review and approval. The endowed care cemetery shall be notified in writing by the office of endowed care cemeteries regarding the approval or disapproval of the endowed care trust fund agreement and regarding any changes required to be made for compliance with sections 214.270 to 214.410 and the rules and regulations promulgated thereunder.

8. All endowed care cemeteries shall be under a continuing duty to file with the office of endowed care cemeteries and to submit for prior approval any and all changes, amendments, or revisions of the endowed care trust fund agreement at least thirty days before the effective date of such change, amendment, or revision.

9. If the endowed care trust fund agreement, or any changes, amendments, or revisions filed with the office, are not disapproved by the office within thirty days after submission by the cemetery operator, the endowed care trust fund agreement, or the related change, amendment, or revision, shall be deemed approved and may be used by the cemetery operator and the trustee. Notwithstanding any other provision of this section, the office may review and disapprove an endowed care trust fund agreement, or any submitted change, amendment, or revision, after the thirty days provided herein or at any other time if the agreement is not in compliance with sections 214.270 to 214.410 or the rules promulgated thereunder. Notice of disapproval by the office shall be in writing and delivered to the cemetery operator and the trustee within ten days of disapproval.

10. Funds in an endowed care trust fund or escrow account may be commingled with endowed care funds for other endowed care cemeteries, provided that the cemetery operator and the trustee shall maintain adequate accounting records of the disbursements, contributions, and income allocated for each cemetery.

11. By accepting the trusteeship of an endowed care trust or accepting funds as an escrow agent pursuant to sections 214.270 to 214.410, the trustee or escrow agent submits personally to the jurisdiction

of the courts of this state and the office of endowed care cemeteries regarding the administration of the trust or escrow account. A trustee or escrow agent shall consent in writing to the jurisdiction of the state of Missouri and the office in regards to the trusteeship or the operation of the escrow account and to the appointment of the office of secretary of state as its agent for service of process regarding any administrative or legal actions relating to the trust or the escrow account, if it has no designated agent for service of process located in this state. Such consent shall be filed with the office prior to accepting funds pursuant to sections 214.270 to 214.410 as trustee or as an escrow agent on a form provided by the office by rule.”; and

Further amend said bill.”; and

Further amend said amendment and page, Line 30, by inserting after all of said line the following:

“Further amend said bill, Page 58, Section 427.300, Line 214, by inserting after all of said section and line the following:

**“469.399. Sections 469.399 to 469.487 shall be known and may be cited as the “Missouri Uniform Fiduciary Income and Principal Act”.**

469.401. As used in sections [469.401] **469.399** to [469.467] **469.487**, the following terms mean:

(1) “Accounting period”, a calendar year unless [another twelve-month period is selected by] a fiduciary **selects another period of twelve calendar months or approximately twelve calendar months**. The term includes a [portion] **part** of a calendar year or [other twelve-month] **another** period [that] **of twelve calendar months or approximately twelve calendar months that** begins when an income interest begins or ends when an income interest ends;

(2) “Asset-backed security”, a security that is serviced primarily by the cash flows of a discrete pool of fixed or revolving receivables or other financial assets that by their terms convert into cash within a finite time. The term includes rights or other assets that ensure the servicing or timely distribution of proceeds to the holder of the asset-backed security. The term does not include an asset to which section 469.423, 469.437, or 469.447 applies;

(3) “Beneficiary”[,] includes:

(a) For a trust:

a. A current beneficiary, including a current income beneficiary and a beneficiary that may receive only principal;

b. A remainder beneficiary; and

c. Any other successor beneficiary;

(b) For an estate, an heir, legatee, and devisee [of a decedent’s estate, and an income beneficiary and a remainder beneficiary of a trust, including any type of entity that has a beneficial interest in either an estate or a trust]; **and**

(c) **For a life estate or term interest, a person that holds a life estate, term interest, or remainder or other interest following a life estate or term interest;**

(4) **“Court”, any court in this state having jurisdiction relating to a trust, estate, life estate, or other term interest described in subdivision (2) of subsection 1 of section 469.402;**

(5) **“Current income beneficiary”, a beneficiary to which a fiduciary may distribute net income, whether or not the fiduciary also may distribute principal to the beneficiary;**

(6) **“Distribution”, a payment or transfer by a fiduciary to a beneficiary in the beneficiary’s capacity as a beneficiary, made under the terms of the trust, without consideration other than the beneficiary’s right to receive the payment or transfer under the terms of the trust. “Distribute”, “distributed”, and “distributee” have corresponding meanings;**

(7) **“Estate”, a decedent’s estate. The term includes the property of the decedent as the estate is originally constituted and the property of the estate as it exists at any time during administration;**

[(3)] (8) **“Fiduciary”[,]** includes a trustee, trust protector determined under section 456.8-808, personal representative, [trustee, executor, administrator, successor personal representative, special administrator and any other person performing substantially the same function] **life tenant, holder of a term interest, and person acting under a delegation from a fiduciary. The term includes a person that holds property for a successor beneficiary whose interest may be affected by an allocation of receipts and expenditures between income and principal. If there are two or more co-fiduciaries, the term includes all co-fiduciaries acting under the terms of the trust and applicable law;**

[(4)] (9) **“Income”, money or other property [that] a fiduciary receives as current return from [a] principal [asset, including a portion]. The term includes a part of receipts from a sale, exchange, or liquidation of a principal asset, [as] to the extent provided in sections 469.423 to [469.449] 469.450;**

[(5) “Income beneficiary”, a person to whom net income of a trust is or may be payable;

(6) (10) **“Income interest”, the right of [an] a current income beneficiary to receive all or part of net income, whether the terms of the trust require [it] the net income to be distributed or authorize [it] the net income to be distributed in the [trustee’s] fiduciary’s discretion. The term includes the right of a current beneficiary to use property held by a fiduciary;**

(11) **“Independent person”, a person that is not:**

(a) **For a trust:**

a. **A qualified beneficiary as defined under section 456.1-103;**

b. **A settlor of the trust; or**

c. **An individual whose legal obligation to support a beneficiary may be satisfied by a distribution from the trust;**

(b) **For an estate, a beneficiary;**

**(c) A spouse, parent, brother, sister, or issue of an individual described in paragraph (a) or (b) of this subdivision;**

**(d) A corporation, partnership, limited liability company, or other entity in which persons described in paragraphs (a) to (c) of this subdivision, in the aggregate, have voting control; or**

**(e) An employee of a person described in paragraph (a), (b), (c), or (d) of this subdivision;**

[(7)] **(12) “Mandatory income interest”, the right of [an] a current income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute;**

[(8)] **(13) “Net income”, [if section 469.411 applies to the trust, the unitrust amount, or if section 469.411 does not apply to the trust,] the total [receipts allocated to income] allocations during an accounting period to income under the terms of a trust and sections 469.399 to 469.487 minus the disbursements [made from income during the same period, plus or minus transfers pursuant to sections 469.401 to 469.467 to or from income during the same period] during the period, other than distributions, allocated to income under the terms of the trust and sections 469.399 to 469.487. To the extent the trust is a unitrust under sections 469.471 to 469.487, “net income” means the unitrust amount determined thereunder. “Net income” includes an adjustment from principal to income under section 469.405. The term does not include an adjustment from income to principal under section 469.405;**

[(9)] **(14) “Person”, an individual, [corporation, business trust,] estate, trust, [partnership, limited liability company, association, joint venture] business or nonprofit entity, public corporation, government [,] or governmental subdivision, agency, or instrumentality, [public corporation] or [any] other legal [or commercial] entity;**

**(15) “Personal representative”, an executor, administrator, successor personal representative, special administrator, or person that performs substantially the same function with respect to an estate under the law governing the person’s status;**

[(10)] **(16) “Principal”, property held in trust for distribution to [a remainder], production of income for, or use by a current or successor beneficiary [when the trust terminates];**

[(11)] **“Qualified beneficiary”, a beneficiary defined in section 456.1-103;**

**(12) “Remainder beneficiary”, a person entitled to receive principal when an income interest ends;**

**(13)] (17) “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;**

**(18) “Settlor”, a person, including a testator, that creates or contributes property to a trust. If more than one person creates or contributes property to a trust, the term includes each person, to the extent of the trust property attributable to that person’s contribution, except to the extent another person has the power to revoke or withdraw that portion;**

**(19) “Special tax benefit”:**

**(a) Exclusion of a transfer to a trust from gifts described in 26 U.S.C. Section 2503(b), as amended, because of the qualification of an income interest in the trust as a present interest in property;**

**(b) Status as a qualified subchapter S trust described in 26 U.S.C. Section 1361(d)(3), as amended, at a time the trust holds stock of an S corporation described in 26 U.S.C. Section 1361(a)(1), as amended;**

**(c) An estate or gift tax marital deduction for a transfer to a trust under 26 U.S.C. Section 2056 or 2523, as amended, which depends or depended in whole or in part on the right of the settlor's spouse to receive the net income of the trust;**

**(d) Exemption in whole or in part of a trust from the federal generation-skipping transfer tax imposed by 26 U.S.C. Section 2601, as amended, because the trust was irrevocable on September 25, 1985, if there is any possibility that:**

**a. A taxable distribution, as defined in 26 U.S.C. Section 2612(b), as amended, could be made from the trust; or**

**b. A taxable termination, as defined in 26 U.S.C. Section 2612(a), as amended, could occur with respect to the trust; or**

**(e) An inclusion ratio, as defined in 26 U.S.C. Section 2642(a), as amended, of the trust which is less than one, if there is any possibility that:**

**a. A taxable distribution, as defined in 26 U.S.C. Section 2612(b), as amended, could be made from the trust; or**

**b. A taxable termination, as defined in 26 U.S.C. Section 2612(a), as amended, could occur with respect to the trust;**

**(20) "Successive interest", the interest of a successor beneficiary;**

**(21) "Successor beneficiary", a person entitled to receive income or principal or to use property when an income interest or other current interest ends;**

**(22) "Terms of a trust":**

**(a) Except as otherwise provided in paragraph (b) of this subdivision, the manifestation of the settlor's [or decedent's] intent regarding a trust's provisions as:**

**a. Expressed in [a manner which is] the trust instrument; or**

**b. Established by other evidence that would be admissible [as proof] in a judicial proceeding [, whether by written or spoken words or by conduct];**

**(b) The trust's provisions as established, determined, or amended by:**

**a. A trustee or trust director in accordance with applicable law;**

**b. Court order; or**

**c. A nonjudicial settlement agreement under section 456.1-111;**

**(c) For an estate, a will; or**

**(d) For a life estate or term interest, the corresponding manifestation of the rights of the beneficiaries;**

**(23) “Trust”:**

**(a) Includes:**

**a. An express trust, private or charitable, with additions to the trust, wherever and however created; and**

**b. A trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust; and**

**(b) Does not include:**

**a. A constructive trust;**

**b. A resulting trust, conservatorship, guardianship, multi-party account, custodial arrangement for a minor, business trust, voting trust, security arrangement, liquidation trust, or trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, retirement benefits, or employee benefits of any kind; or**

**c. An arrangement under which a person is a nominee, escrowee, or agent for another;**

**[(14)] (24) “Trustee”, a person, other than a personal representative, that owns or holds property for the benefit of a beneficiary. The term includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court;**

**[(15) “Unitrust amount”, net income as defined by section 469.411] (25) “Will”, any testamentary instrument recognized by applicable law that makes a legally effective disposition of an individual’s property, effective at the individual’s death. The term includes a codicil or other amendment to a testamentary instrument.**

469.402. [The provisions of sections 456.3-301 to 456.3-305 shall apply to sections 469.401 to 469.467 for all purposes.] **1. Except as otherwise provided in the terms of a trust or sections 469.399 to 469.487, sections 469.399 to 469.487 apply to:**

**(1) A trust or estate; and**

**(2) A life estate or other term interest in which the interest of one or more persons will be succeeded by the interest of one or more other persons.**

**2. Except as otherwise provided in the terms of a trust or sections 469.399 to 469.487, sections 469.399 to 469.487 apply when this state is the principal place of administration of a trust or estate**

**or the situs of property that is not held in a trust or estate and is subject to a life estate or other term interest described in subdivision (2) of subsection 1 of this section. By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration of a trust to this state, the trustee submits to the application of sections 469.399 to 469.487 to any matter within the scope of sections 469.399 to 469.487 involving the trust.**

469.403. 1. [In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of] **In making an allocation or determination or exercising discretion under** sections 469.413 to 469.421, a fiduciary **shall:**

(1) [Shall] **Act in good faith, based on what is fair and reasonable to all beneficiaries;**

(2) Administer a trust or estate [under] **impartially, except to the extent** the terms of the trust **manifest an intent that the fiduciary shall** or [the will] **may favor one or more beneficiaries;**

(3) **Administer the trust or estate in accordance with the terms of the trust**, even if there is a different provision in sections [469.401] **469.399** to [469.467] **469.487; and**

[ (2) May] (4) Administer [a] **the** trust or estate [by exercising] **in accordance with sections 469.399 to 469.487, except to the extent the terms of the trust provide otherwise or authorize the fiduciary to determine otherwise.**

**2. A fiduciary's allocation, determination, or exercise of discretion under sections 469.399 to 409.487 is presumed to be fair and reasonable to all beneficiaries. A fiduciary may exercise a discretionary power of administration given to the fiduciary by the terms of the trust [or the will, even if the] , and an exercise of the power that produces a result different from a result required or permitted by sections [469.401] 469.399 to [469.467;] 469.487 does not create an inference that the fiduciary abused the fiduciary's discretion.**

[(3) Shall administer a trust or estate pursuant] **3. A fiduciary shall:**

(1) **Add a receipt** to [sections 469.401 to 469.467 if] **principal, to the extent neither** the terms of the trust [or the will do not contain a different provision or do not give] **nor sections 469.399 to 469.487 allocate** the [fiduciary a discretionary power of administration] **receipt between income and principal;** and

[(4) Shall add a receipt or ] (2) **Charge** a disbursement to principal, to the extent [that the terms of the trust and sections 469.401 to 469.467 do not provide a rule for allocating the receipt or disbursement to or between principal and income.

2. In exercising the power to adjust pursuant to section 469.405 or a discretionary power of administration regarding a matter within the scope of sections 469.401 to 469.467, whether granted by the terms of a trust, a will, or sections 469.401 to 469.467, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intent that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with sections 469.401 to 469.467 is presumed to be fair

and reasonable to all of the beneficiaries] **neither the terms of the trust nor sections 469.399 to 469.487 allocate the disbursement between income and principal.**

**4. A fiduciary may exercise the power to adjust under section 469.405, convert an income trust to a unitrust under subdivision (1) of subsection 1 of section 469.475, change the percentage or method used to calculate a unitrust amount under subdivision (2) of subsection 1 of section 469.475, or convert a unitrust to an income trust under subdivision (3) of subsection 1 of section 469.475, if the fiduciary determines the exercise of the power will assist the fiduciary to administer the trust or estate impartially.**

**5. Factors the fiduciary shall consider in making the determination under subsection 4 of this section include:**

- (1) The terms of the trust;**
- (2) The nature, distribution standards, and expected duration of the trust;**
- (3) The effect of the allocation rules, including specific adjustments between income and principal, under sections 407.413 to 407.461;**
- (4) The desirability of liquidity and regularity of income;**
- (5) The desirability of the preservation and appreciation of principal;**
- (6) The extent to which an asset is used or may be used by a beneficiary;**
- (7) The increase or decrease in the value of principal assets, reasonably determined by the fiduciary;**
- (8) Whether and to what extent the terms of the trust give the fiduciary power to accumulate income or invade principal or prohibit the fiduciary from accumulating income or invading principal;**
- (9) The extent to which the fiduciary has accumulated income or invaded principal in preceding accounting periods;**
- (10) The effect of current and reasonably expected economic conditions; and**
- (11) The reasonably expected tax consequences of the exercise of the power.**

**469.404. 1. In this section, “fiduciary decision” means:**

- (1) A fiduciary’s allocation between income and principal or other determination regarding income and principal required or authorized by the terms of the trust or sections 469.399 to 469.487;**
- (2) The fiduciary’s exercise or nonexercise of a discretionary power regarding income and principal granted by the terms of the trust or sections 469.399 to 469.487, including the power to adjust under section 469.405, convert an income trust to a unitrust under subdivision (1) of subsection 1 of section 469.475, change the percentage or method used to calculate a unitrust amount**



**under subdivision (2) of subsection 1 of section 469.475, or convert a unitrust to an income trust under subdivision (3) of subsection 1 section 469.475; or**

**(3) The fiduciary's implementation of a decision described in subdivision (1) or (2) of this subsection.**

**2. The court shall not order a fiduciary to change a fiduciary decision unless the court determines that the fiduciary decision was an abuse of the fiduciary's discretion.**

**3. If the court determines that a fiduciary decision was an abuse of the fiduciary's discretion, the court may order a remedy authorized by law, including under section 456.10-1001. To place the beneficiaries in the positions the beneficiaries would have occupied if there had not been an abuse of the fiduciary's discretion, the court may order:**

**(1) The fiduciary to exercise or refrain from exercising the power to adjust under section 469.405;**

**(2) The fiduciary to exercise or refrain from exercising the power to convert an income trust to a unitrust under subdivision (1) of subsection 1 of section 469.475, change the percentage or method used to calculate a unitrust amount under subdivision (2) of subsection 1 of section 469.475, or convert a unitrust to an income trust under subdivision (3) of subsection 1 of section 469.475;**

**(3) The fiduciary to distribute an amount to a beneficiary;**

**(4) A beneficiary to return some or all of a distribution; or**

**(5) The fiduciary to withhold an amount from one or more future distributions to a beneficiary.**

**4. On petition by a fiduciary for instruction, the court may determine whether a proposed fiduciary decision will result in an abuse of the fiduciary's discretion. If the petition describes the proposed decision, contains sufficient information to inform the beneficiary of the reasons for making the proposed decision and the facts on which the fiduciary relies, and explains how the beneficiary will be affected by the proposed decision, a beneficiary that opposes the proposed decision has the burden to establish that it will result in an abuse of the fiduciary's discretion.**

**469.405. 1. [A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or shall be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying subsection 1 of section 469.403, that the trustee is unable to comply with subsection 2 of section 469.403.] Except as otherwise provided in the terms of a trust or this section, a fiduciary, in a record, without court approval, may adjust between income and principal if the fiduciary determines the exercise of the power to adjust will assist the fiduciary to administer the trust or estate impartially.**

**2. This section does not create a duty to exercise or consider the power to adjust under subsection 1 of this section or to inform a beneficiary about the applicability of this section.**

**3. A fiduciary that in good faith exercises or fails to exercise the power to adjust under subsection 1 of this section is not liable to a person affected by the exercise or failure to exercise.**

[2.] **4.** In deciding whether and to what extent to exercise the power [conferred by] **to adjust under subsection 1** [of this section, a trustee] , **a fiduciary** shall consider all factors **the fiduciary considers** relevant [to the trust and its beneficiaries], including [the following] **relevant** factors [to the extent relevant:] **in subsection 5 of section 469.403 and the application of sections 469.423, 469.435, and 469.445.**

(1) The nature, purpose and expected duration of the trust;

(2) The intent of the settlor;

(3) The identity and circumstances of the beneficiaries;

(4) The needs for liquidity, regularity of income, and preservation and appreciation of capital;

(5) The assets held in the trust, including the extent to which such assets consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property, and the extent to which such assets are used by a beneficiary, and whether such assets were purchased by the trustee or received from the settlor;

(6) The net amount allocated to income pursuant to sections 469.401 to 469.467, other than this section, and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(7) Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income, or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(8) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

(9) The anticipated tax consequences of an adjustment.

**3.] 5.** A [trustee may] **fiduciary shall not exercise the power under subsection 1 of this section to make an adjustment or under section 469.435 to make a determination that an allocation is insubstantial if:**

(1) [That diminishes the income interest in a trust which requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

(2) That reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(3) That changes] **The adjustment or determination would reduce the amount payable to a [beneficiary] current income beneficiary from a trust that qualifies for a special tax benefit, except**

**to the extent the adjustment is made to provide for a reasonable apportionment of the total return of the trust between the current income beneficiary and successor beneficiaries;**

**(2) The adjustment or determination would change the amount payable to a beneficiary, as a fixed annuity or a fixed fraction of the value of the trust assets, under the terms of the trust;**

[(4) From any] **(3) The adjustment or determination would reduce an amount that is permanently set aside for a charitable [purposes] purpose under [a will or] the terms of [a] the trust [to the extent that the existence of the power to adjust would change the character of the amount] , unless both income and principal are set aside for [federal income, gift or estate tax purposes] the charitable purpose;**

[(5) If ] **(4) Possessing or exercising the power [to make an adjustment causes an individual] would cause a person to be treated as the owner of all or part of the trust for [income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment] federal income tax purposes;**

[(6) If ] **(5) Possessing or exercising the power [to make an adjustment causes] would cause all or part of the value of the trust assets to be included [for estate tax purposes] in the gross estate of an individual [who has] for federal estate tax purposes;**

**(6) Possessing or exercising the power [to remove or appoint a trustee, or both,] would cause an individual to be treated as making a gift for federal gift tax purposes;**

**(7) The fiduciary is not an independent person;**

**(8) The trust is irrevocable and [the assets would not be included in the estate of the individual if the trustee did not possess] provides for income to be paid to the settlor and possessing or exercising the power [to make an adjustment] would cause the adjusted principal or income to be considered an available resource or available income under a public-benefit program; or**

[(7) If the trustee is a beneficiary of the trust; or

(8) If the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly]

**(9) The trust is a unitrust under sections 469.471 to 469.487.**

[4.] **6.** If [subdivision (5), (6), (7) or (8) of] subsection [3] **5** of this section applies to a [trustee and there is more than one trustee, a cotrustee to whom the provision does] **fiduciary:**

**(1) A co-fiduciary to which subdivisions (4) to (7) of subsection 5 of this section do not apply may [make] exercise the [adjustment] power to adjust unless the exercise of the power by the remaining [trustee or trustees] co-fiduciary or co-fiduciaries is not permitted by the terms of the trust or law other than sections 469.399 to 469.487; and**

**(2) If there is no co-fiduciary to which subdivisions (4) to (7) of subsection 5 of this section do not apply, the fiduciary may appoint a co-fiduciary to which subdivisions (4) to (7) of subsection 5 of this section do not apply, which may be a special fiduciary with limited powers, and the appointed co-fiduciary may exercise the power to adjust under subsection 1 of this section, unless the**

**appointment of a co-fiduciary or the exercise of the power by a co-fiduciary is not permitted by the terms of the trust or law other than under sections 469.399 to 469.487.**

[5.] **7.** A [trustee] **fiduciary** may release [the entire power conferred by subsection 1 of this section, or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will] **or delegate to a co-fiduciary the power to adjust under subsection 1 of this section if the fiduciary determines that the fiduciary's possession or exercise of the power will or may:**

(1) Cause a result described in subdivisions (1) to (6) or subdivision (8) of subsection [3] **5** of this section [,]; or [if the trustee determines that possessing or exercising the power will or may]

(2) Deprive the trust of a tax benefit or impose a tax burden not described in **subdivisions (1) to (6)** of subsection [3] **5** of this section.

**8. A fiduciary's release or delegation to a co-fiduciary under subsection 7 of this section of the power to adjust under subsection 1 of this section:**

(1) **Shall be in a record;**

(2) **Applies to the entire power, unless the release or delegation provides a limitation, which may be a limitation to the power to adjust:**

(a) **From income to principal;**

(b) **From principal to income;**

(c) **For specified property; or**

(d) **In specified circumstances;**

(3) **For a delegation, may be modified by a re-delegation under this subsection by the co-fiduciary to which the delegation is made; and**

(4) **Subject to subdivision (3) of this subsection, is [may be] permanent [or for] unless the release or delegation provides a specified period, including a period measured by the life of an individual or the lives of more than one individual.**

[6.] **9.** Terms of a trust that **deny or limit** the power [of a trustee] to [make an adjustment] **adjust** between **income and** principal [and income] do not affect the application of this section unless [it is clear from] the terms of the trust [that the terms are intended to] **expressly deny** [the trustee] **or limit** the power [of adjustment conferred by] **to adjust under** subsection 1 of this section.

**10. The exercise of the power to adjust under subsection 1 of this section in any accounting period may apply to the current period, the immediately preceding period, and one or more subsequent periods.**

**11. A description of the exercise of the power to adjust under subsection 1 of this section shall be:**

**(1) Included in a report, if any, sent to beneficiaries under subsection 3 of section 456.8-813; or**

**(2) Communicated at least annually to the qualified beneficiaries defined under section 456.1-103 other than all beneficiaries that receive or are entitled to receive income from the trust or would be entitled to receive a distribution of principal if the trust were terminated at the time the notice is sent, assuming no power of appointment is exercised.**

469.413. [After a decedent dies, in the case] **1. This section applies when:**

**(1) The death of an individual results in the creation of an estate[, or after] or trust; or**

**(2) An income interest in a trust [ends, the following rules apply:] terminates, whether the trust continues or is distributed.**

[(1)] **2.** A fiduciary of an estate or [of a terminating] **trust with an income interest that terminates** shall determine, **under subsection 7 of this section and sections 469.417 to 469.462**, the amount of net income and net principal receipts received from property specifically given to a beneficiary [pursuant to the rules in sections 469.417 to 469.461 which apply to trustees and the rules in subdivision (5) of this section]. The fiduciary shall distribute the net income and net principal receipts to the beneficiary [who] **that is to receive the specific property[;].**

[(2)] **3.** A fiduciary shall determine the [remaining] **income and net income** of [a decedent's] **an estate or [a terminating] income interest [pursuant to the rules in] in a trust that terminates, other than the amount of net income determined under subsection 2 of this section, under sections 469.417 to [469.461 which apply to trustees] 469.462** and by:

[(a)] **(1)** Including in net income all income from property used **or sold** to discharge liabilities;

[(b)] **(2)** Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on [death] **estate and inheritance taxes and other taxes imposed because of the decedent's death**, but the fiduciary may pay [those] **the** expenses from income of property passing to a trust for which the fiduciary claims [an] **a federal estate tax marital or charitable deduction only to the extent [that]:**

**(a)** The payment of [those] **the** expenses from income will not cause the reduction or loss of the deduction; [and] **or**

**(b) The fiduciary makes an adjustment under subsection 2 of section 469.462; and**

[(c)] **(3)** Paying from principal [all] other disbursements made or incurred in connection with the settlement of [a decedent's] **the estate or the winding up of [a terminating] an income interest[,] that terminates**, including:

**(a) To the extent authorized by the decedent's will, the terms of the trust, or applicable law, debts, funeral expenses, disposition of remains, family allowances, [and death taxes] estate and inheritance taxes, and other taxes imposed because of the decedent's death; and**

(b) Related penalties that are apportioned, **by the decedent's will, the terms of the trust, or applicable law**, to the estate or [terminating] income interest [by the will, the terms of the trust, or applicable law;] **that terminates**.

[(3) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust, or in the absence of any such provisions, the provisions of section 473.633, from net income determined pursuant to subdivision (2) of this section or from principal to the extent that net income is insufficient.] **4. If a decedent's will, the terms of a trust, or applicable law provides for the payment of interest or the equivalent of interest to a beneficiary that receives a pecuniary amount outright, the fiduciary shall make the payment from net income determined under subsection 3 of this section or from principal to the extent net income is insufficient.**

**5.** If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends **because of an income beneficiary's death**, and no **payment of interest** or [other amount] **the equivalent of interest** is provided for by the terms of the trust or applicable law, the fiduciary shall [distribute] **pay** the interest or [other amount] **the equivalent of interest** to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will[;].

[(4)] **6.** A fiduciary shall distribute [the] net income remaining after [distributions] **payments** required by [subdivision (3)] **subsections 4 and 5** of this section in the manner described in section 469.415 to all other beneficiaries, including a beneficiary [who] **that** receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust[;].

[(5)] **7.** A fiduciary [may] **shall** not reduce principal or income receipts from property described in [subdivision (1)] **subsection 2** of this section because of a payment described in sections 469.451 and 469.453 to the extent [that] the **decedent's will**, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent [that] the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property [are] **shall be** determined by including [all of] the amounts the fiduciary receives or pays [with respect to] **regarding** the property, whether [those amounts] **the amount** accrued or became due before, on, or after the date of [a linedecedent's] **the decedent's** death or an income interest's terminating event, and [by] making a reasonable provision for [amounts that the fiduciary believes] **an amount** the estate or [terminating] income interest may become obligated to pay after the property is distributed.

469.415. 1. [Each] **Except to the extent sections 469.471 to 469.487 apply for a beneficiary that is a trust, each beneficiary** described in subdivision [(4)] (6) of section 469.413 is entitled to receive a [portion] **share** of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to [whom] **which** this section applies, each beneficiary, including [one who] **a beneficiary that** does not receive part of the distribution, is entitled, as of each distribution date, to **a share of** the net income the fiduciary [has] received after the [date of] **decedent's death [or] , an income interest's other**

terminating event, or [earlier] **the preceding** distribution [date but has not distributed as of the current distribution date] **by the fiduciary**.

2. In determining a beneficiary's share of net income **under subsection 1 of this section**, the following rules apply:

(1) The beneficiary is entitled to receive a [portion] **share** of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date[, including assets that later may be sold to meet principal obligations];

(2) The beneficiary's fractional interest [in the undistributed principal assets shall] **under subdivision (1) shall** be calculated [without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust;

(3) The beneficiary's fractional interest in the undistributed principal assets shall be calculated] :

(a) On the [basis of the] aggregate value of [those] **the** assets as of the distribution date without reducing the value by any unpaid principal obligation; **and**

(b) **Without regard to:**

**a. Property specifically given to a beneficiary under the decedent's will or the terms of the trust; and**

**b. Property required to pay pecuniary amounts not in trust; and**

[4] (3) The distribution date [for purposes of this section] **under subdivision (1) of this subsection** may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which **the** assets are [actually] distributed.

3. [If] **To the extent** a fiduciary does not distribute **under this section** all [of] the collected but undistributed net income to each [person] **beneficiary** as of a distribution date, the fiduciary shall maintain [appropriate] records showing the interest of each beneficiary in [that] **the** net income.

4. **If this section applies to income from an asset**, a fiduciary may apply the rules in this section[, to the extent that the fiduciary considers it appropriate,] to net gain or loss realized **from the disposition of the asset** after the [date of death or] **decedent's death, an income interest's** terminating event, or [earlier] **the preceding** distribution [date from the disposition of a principal asset if this section applies to the income from the asset] **by the fiduciary**.

469.417. 1. An income beneficiary is entitled to net income **in accordance with the terms of the trust** from the date [on which the] **an** income interest begins. [An] **The** income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to [a trust or successive income interest] :

(1) **The trust for the current income beneficiary; or**

(2) **A successive interest for a successor beneficiary.**

2. An asset becomes subject to a trust **under subdivision (1) of subsection 1 of this section:**

(1) [On the date it is transferred to the trust in the case of] **For** an asset that is transferred to [a] **the** trust during the [transferor's] **settlor's** life, **on the date the asset is transferred;**

(2) [On the date of a testator's death in the case of] **For** an asset that becomes subject to [a] **the** trust [by reason] **because** of a [will] **decedent's** death, **on the date of the decedent's death**, even if there is an intervening period of administration of the [testator's] **decedent's** estate; or

(3) [On the date of an individual's death in the case of] **For** an asset that is transferred to a fiduciary by a third party because of [the individual's] **a decedent's** death, **on the date of the decedent's death.**

3. An asset becomes subject to a successive [income] interest **under subdivision (2) of subsection 1 of this section** on the day after the preceding income interest ends, as determined [pursuant to] **under** subsection 4 of this section, even if there is an intervening period of administration to wind up the preceding income interest.

4. An income interest ends on the day before an income beneficiary dies or another terminating event occurs[,] or on the last day of a period during which there is no beneficiary to [whom] **which** a [trustee] **fiduciary** may **or shall** distribute income.

469.419. 1. A [trustee] **fiduciary** shall allocate an income receipt or disbursement, other than [one] **a receipt** to which [subdivision (1)] **subsection 2** of section 469.413 applies, to principal if its due date occurs before [a decedent dies in the case of] **the date on which:**

(1) **For** an estate, **the decedent died;** or [before]

(2) **For a trust or successive interest**, an income interest begins [in the case of a trust or successive income interest].

2. [A trustee shall allocate an income receipt or disbursement to income if its] **If the** due date **of a periodic income receipt or disbursement** occurs on or after the date on which a decedent [dies] **died** or an income interest [begins and it is a periodic due date. An income] **began, a fiduciary shall allocate the** receipt or disbursement **to income.**

**3. If an income receipt or disbursement is not periodic or has no due date, a fiduciary** shall [be treated] **treat the receipt or disbursement under this section** as accruing from day to day [if its due date is not periodic or it has no due date]. The **fiduciary shall allocate to principal the** portion of the receipt or disbursement accruing before the date on which a decedent [dies] **died** or an income interest [begins shall be allocated to principal] **began, and to income** the balance [shall be allocated to income].

[3.] **4. A receipt or disbursement is periodic under subsections 2 and 3 of this section if:**

(1) **The receipt or disbursement shall be paid at regular intervals under an obligation to make payments; or**

(2) **The payer customarily makes payments at regular intervals.**



5. An item of income or [an] obligation is due **under this section** on the date [a payment] **the payer** is required **to make a payment**. If a payment date is not stated, there is no due date [for the purposes of sections 469.401 to 469.467].

6. Distributions to shareholders or other owners from an entity to which section 469.423 applies are [deemed to be] due:

(1) On the date fixed by **or on behalf of** the entity for determining [who is] **the persons** entitled to receive the distribution [or,];

(2) If no date is fixed, on the [declaration] date [for] **of the decision by or on behalf of the entity to make** the distribution[. A due date is periodic for receipts or disbursements that shall be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals]; **or**

(3) **If no date is fixed and the fiduciary does not know the date of the decision by or on behalf of the entity to make the distribution, on the date the fiduciary learns of the decision.**

469.421. 1. [For purposes of] **In** this section, [the phrase] “undistributed income” means net income received **on or** before the date on which an income interest ends. The [phrase] **term** does not include an item of income or expense that is due or accrued[,] or net income that has been added or is required to be added to principal under the terms of the trust.

2. **Except as otherwise provided in subsection 3 of this section**, when a mandatory income interest **of a beneficiary** ends, the [trustee] **fiduciary** shall pay [to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end,] the beneficiary’s share of the undistributed income that is not disposed of under the terms of the trust [unless the] **to the beneficiary or, if the beneficiary does not survive the date the interest ends, to the beneficiary’s estate.**

3. **If a beneficiary has an unqualified power to [revoke] withdraw more than five percent of the value of a trust immediately before [the] an income interest ends[. In the latter case,]:**

(1) **The fiduciary shall allocate to principal** the undistributed income from the portion of the trust that may be [revoked shall be added to principal] **withdrawn; and**

(2) **Subsection 2 of this section applies only to the balance of the undistributed income.**

[3.] 4. When a [trustee’s] **fiduciary’s** obligation to pay a fixed annuity or a fixed fraction of the value of [the trust’s] assets ends, the [trustee] **fiduciary** shall prorate the final payment [if and to the extent] **as** required [by applicable law to accomplish a purpose of the trust or its settlor relating] to **preserve an income tax, gift tax, estate tax, or other tax [requirements] benefit.**

469.423. 1. [For purposes of] **In** this section[, the term]:

(1) **“Capital distribution” means an entity distribution of money that is a:**

(a) **Return of capital; or**

**(b) Distribution in total or partial liquidation of the entity;****(2) “Entity”:**

**(a) Means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization [in which a trustee has an interest, other than a trust or estate to which section 469.425 applies, a business or activity to which section 469.427 applies, or an asset-backed security to which section 469.449 applies.] or arrangement in which a fiduciary owns or holds an interest, whether or not the entity is a taxpayer for federal income tax purposes; and**

**(b) Does not include:**

**a. A trust or estate to which section 469.425 applies;**

**b. A business or other activity to which section 469.427 applies that is not conducted by an entity described in paragraph (a) of this subdivision;**

**c. An asset-backed security; or**

**d. An instrument or arrangement to which section 469.450 applies;**

**(3) “Entity distribution” means a payment or transfer by an entity made to a person in the person’s capacity as an owner or holder of an interest in the entity.**

**2. In this section, an attribute or action of an entity includes an attribute or action of any other entity in which the entity owns or holds an interest, including an interest owned or held indirectly through another entity.**

**[2.] 3. Except as otherwise provided in [this section] subdivisions (2) to (4) of subsection 4 of this section, a [trustee] fiduciary shall allocate to income:**

**(1) Money received [from] in an entity[.**

**3. A trustee shall allocate the following receipts from an entity to principal:**

**(1) Property other than money;**

**(2) Money received in one distribution or a series of related distributions in exchange for part or all of a trust’s interest in the entity;**

**(3) Money received in total or partial liquidation of the entity; and**

**(4) Money received from an entity that is] distribution; and**

**(2) Tangible personal property of nominal value received from the entity.**

**4. A fiduciary shall allocate to principal:**

**(1) Property received in an entity distribution that is not:**

**(a) Money; or**

**(b) Tangible personal property of nominal value;**

**(2) Money received in an entity distribution in an exchange for part or all of the fiduciary's interest in the entity, to the extent the entity distribution reduces the fiduciary's interest in the entity relative to the interests of other persons that own or hold interests in the entity;**

**(3) Money received in an entity distribution that the fiduciary determines or estimates is a capital distribution; and**

**(4) Money received in an entity distribution from an entity that is:**

**(a) A regulated investment company or [a] real estate investment trust if the money [distributed] received is a capital gain dividend for federal income tax purposes[.**

4. Money is received in partial liquidation:

(1) To the extent that the entity, at or near the time of a distribution, indicates that such money is a distribution in partial liquidation; or

(2) If]; or

**(b) Treated for federal income tax purposes comparably to the treatment described in paragraph (a) of this subdivision.**

**5. A fiduciary may determine or estimate that money received in an entity distribution is a capital distribution:**

**(1) By relying, without inquiry or investigation, on a characterization of the entity distribution provided by or on behalf of the entity unless the fiduciary:**

**(a) Determines, on the basis of information known to the fiduciary, that the characterization is or may be incorrect; or**

**(b) Owns or holds more than fifty percent of the voting interest in the entity;**

**(2) By determining or estimating, on the basis of information known to the fiduciary or provided to the fiduciary by or on behalf of the entity, that the total amount of money and property received by the fiduciary in [a] the entity distribution or a series of related entity distributions is or will be greater than twenty percent of the [entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.**

5. Money is not received in partial liquidation, nor may it be taken into account pursuant to subdivision (2) of subsection 4 of this section, to the extent that such money does not exceed the amount of income tax that a trustee or beneficiary shall pay on taxable income of the entity that distributes the money.

6. A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person

or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.] **fair market value of the fiduciary's interest in the entity; or**

**(3) If neither subdivision (1) nor (2) of this subsection applies, by considering the factors in subsection 6 of this section and the information known to the fiduciary or provided to the fiduciary by or on behalf of the entity.**

**6. In making a determination or estimate under subdivision (3) of subsection 5 of this section, a fiduciary may consider:**

**(1) A characterization of an entity distribution provided by or on behalf of the entity;**

**(2) The amount of money or property received in:**

**(a) The entity distribution; or**

**(b) What the fiduciary determines is or will be a series of related entity distributions;**

**(3) The amount described in subdivision (2) of this subsection compared to the amount the fiduciary determines or estimates is, during the current or preceding accounting periods:**

**(a) The entity's operating income;**

**(b) The proceeds of the entity's sale or other disposition of:**

**a. All or part of the business or other activity conducted by the entity;**

**b. One or more business assets that are not sold to customers in the ordinary course of the business or other activity conducted by the entity; or**

**c. One or more assets other than business assets, unless the entity's primary activity is to invest in assets to realize gain on the disposition of all or some of the assets;**

**(c) If the entity's primary activity is to invest in assets to realize gain on the disposition of all or some of the assets, the gain realized on the disposition;**

**(d) The entity's regular, periodic entity distributions;**

**(e) The amount of money the entity has accumulated;**

**(f) The amount of money the entity has borrowed;**

**(g) The amount of money the entity has received from the sources described in sections 469.433, 469.439, 469.441, and 469.443; and**

**(h) The amount of money the entity has received from a source not otherwise described in this paragraph; and**

**(4) Any other factor the fiduciary determines is relevant.**

**7. If, after applying subsections 3 to 6 of this section, a fiduciary determines that a part of an entity distribution is a capital distribution but is in doubt about the amount of the entity distribution that is a capital distribution, the fiduciary shall allocate to principal the amount of the entity distribution that is in doubt.**

**8. If a fiduciary receives additional information about the application of this section to an entity distribution before the fiduciary has paid part of the entity distribution to a beneficiary, the fiduciary may consider the additional information before making the payment to the beneficiary and may change a decision to make the payment to the beneficiary.**

**9. If a fiduciary receives additional information about the application of this section to an entity distribution after the fiduciary has paid part of the entity distribution to a beneficiary, the fiduciary is not required to change or recover the payment to the beneficiary but may consider that information in determining whether to exercise the power to adjust under section 469.405.**

469.425. A [trustee] **fiduciary** shall allocate to income an amount received as a distribution of income, **including a unitrust distribution under sections 469.471 to 469.487**, from a trust or [an] estate in which the [trust] **fiduciary** has an interest, other than [a] **an interest the fiduciary purchased [interest] in a trust that is an investment entity**, and shall allocate to principal an amount received as a distribution of principal from [such a] **the trust or estate**. If a [trustee] **fiduciary** purchases, **or receives from a settlor**, an interest in a trust that is an investment entity, [or a decedent or donor transfers an interest in such a trust to a trustee,] section 469.423 [or], 469.449 [shall apply], **or 469.450 applies** to a receipt from the trust.

469.427. 1. [If a trustee who conducts] **This section applies to** a business or other activity **conducted by a fiduciary if the fiduciary** determines that it is in the [best interest] **interests** of [all] the beneficiaries to account separately for the business or **other** activity instead of:

(1) Accounting for [it] **the business or other activity** as part of the [trust's] **fiduciary's** general accounting records[.]; **or**

(2) **Conducting** the [trustee] **business or other activity through an entity described in paragraph (a) of subdivision (2) of subsection 1 of section 469.423.**

**2. A fiduciary** may [maintain separate accounting records] **account separately under this section** for [its] **the transactions of a business or other activity**, whether or not [its] assets **of the business or other activity** are segregated from other [trust] assets **held by the fiduciary.**

[2.] **3. A [trustee who] fiduciary that** accounts separately **under this section** for a business or other activity:

(1) May determine:

(a) The extent to which **the net cash receipts [shall] of the business or other activity shall** be retained for:

a. Working capital[.];

b. The acquisition or replacement of fixed assets[.]; and

c. Other reasonably foreseeable needs of the business or **other** activity[.]; and

(b) The extent to which the remaining net cash receipts are accounted for as principal or income in the [trust's] **fiduciary's** general accounting records[. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee] **for the trust;**

(2) **May make a determination under subdivision (1) of this subsection separately and differently from the fiduciary's decisions concerning distributions of income or principal; and**

(3) Shall account for the net amount received **from the sale of an asset of the business or other activity, other than a sale in the ordinary course of the business or other activity**, as principal in the [trust's] **fiduciary's** general accounting records **for the trust**, to the extent the [trustee] **fiduciary** determines that the **net** amount received is no longer required in the conduct of the business **or other activity**.

[3.] **4.** Activities for which a [trustee may maintain separate accounting records] **fiduciary may account separately under this section** include:

(1) Retail, manufacturing, service, and other traditional business activities;

(2) Farming;

(3) Raising and selling livestock and other animals;

(4) [Management of] **Managing** rental properties;

(5) [Extraction of] **Extracting** minerals, **water**, and other natural resources;

(6) **Growing and cutting** timber [operations]; [and]

(7) [Activities] **An activity** to which section 469.447, **469.449**, or **469.450** applies[.]; **and**

**(8) Any other business conducted by the fiduciary.**

469.429. A [trustee] **fiduciary** shall allocate to principal:

(1) To the extent not allocated to income [pursuant to] **under** sections [469.401] **469.399** to [469.467] **469.487**, [assets] **an asset** received from [a transferor]:

(a) **An individual** during the [transferor's] **individual's** lifetime[, a decedent's];

(b) **An estate**[.];

(c) A trust [with a terminating] **on termination of an** income interest[.]; or

(d) A payer under a contract naming the [trust or its trustee] **fiduciary** as beneficiary;

(2) **Except as otherwise provided in sections 469.423 to 469.450**, money or other property received from the sale, exchange, liquidation, or change in form of a principal asset[, including realized profit, subject to sections 469.423 to 469.467];

(3) [Amounts] **An amount** recovered from a third [parties] **party** to reimburse the [trust] **fiduciary** because of [disbursements] **a disbursement** described in [subdivision (7) of] subsection 1 of section 469.453 or for [other reasons] **another reason** to the extent not based on [the] loss of income;

(4) Proceeds of property taken by eminent domain, [but a separate award made] **except that proceeds awarded** for [the] loss of income [with respect to] **in** an accounting period [during which] **are income if** a current income beneficiary had a mandatory income interest [is income] **during the period**;

(5) Net income received in an accounting period during which there is no beneficiary to [whom] **which** a [trustee] **fiduciary** may or shall distribute income; and

(6) Other receipts as provided in sections 469.435 to [469.449] **469.450**.

469.431. To the extent [that a trustee accounts] **a fiduciary does not account** for [receipts from] **the management of** rental property [pursuant to this section] **as a business under section 469.427**, the [trustee] **fiduciary** shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods[, shall be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.]:

(1) **Shall be added to principal and held subject to the terms of the lease, except as otherwise provided by law other than sections 469.399 to 469.487; and**

(2) **Is not allocated to income or available for distribution to a beneficiary until the fiduciary's contractual obligations have been satisfied with respect to that amount.**

469.432. 1. **This section does not apply to an obligation to which section 469.437, 469.439, 469.441, 469.443, 469.447, 469.449, or 469.450 applies.**

**2. A fiduciary shall allocate to income, without provision for amortization of premium**, an amount received as interest[, whether determined at a fixed, variable or floating rate,] on an obligation to pay money to the [trustee] **fiduciary**, including an amount received as consideration for prepaying principal[, shall be allocated to income without any provision for amortization of premium].

[2.] **3. A [trustee] fiduciary shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the [trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust shall be allocated to income] fiduciary. A fiduciary shall allocate to income the increment in value of a bond or other obligation for the payment of money bearing no stated interest but payable or**

**redeemable, at maturity or another future time, in an amount that exceeds the amount in consideration of which it was issued.**

[3.This section does not apply to an obligation to which section 469.437, 469.439, 469.441, 469.443, 469.447 or 469.449 applies.]

469.433. 1. **This section does not apply to a contract to which section 469.437 applies.**

2. Except as otherwise provided in subsection [2] **3** of this section, a [trustee] **fiduciary** shall allocate to principal the proceeds of a life insurance policy or other contract [in which the trust or its trustee is named] **received by the fiduciary** as beneficiary, including a contract that insures [the trust or its trustee] against [loss for] damage to, destruction of, or loss of title to [a trust] **an** asset. The [trustee] **fiduciary** shall allocate dividends on an insurance policy to income [if] **to the extent** premiums on the policy are paid from income[,] and to principal [if] **to the extent** premiums **on the policy** are paid from principal.

[2.] **3.** A [trustee] **fiduciary** shall allocate to income proceeds of a contract that insures the [trustee] **fiduciary** against loss of:

- (1) Occupancy or other use by [an income beneficiary, loss of] **a current income[,] beneficiary;**
- (2) **Income;** or[,]
- (3) Subject to section 469.427, [loss of] profits from a business.

[3.This section does not apply to a contract to which section 469.437 applies.]

469.435. 1. If a [trustee] **fiduciary** determines that an allocation between **income and** principal [and income] required by section 469.437, 469.439, 469.441, 469.443 or 469.449 is insubstantial, the [trustee] **fiduciary** may allocate the entire amount to principal, unless [one of the circumstances described in] subsection [3] **5** of section 469.405 applies to the allocation. [This power]

2. **A fiduciary** may [be exercised by a cotrustee in the circumstances described in subsection 4 of section 469.405 and may be released for the reasons and in the manner described in subsection 5 of section 469.405.] **presume** an allocation is [presumed to be] insubstantial **under subsection 1 of this section** if:

(1) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than ten percent; [or] **and**

(2) [The value of] The asset producing the receipt [for which the allocation would] **to be** [made is] **allocated has a fair market value** less than ten percent of the total **fair market** value of the [trust's] assets **owned or held by the fiduciary** at the beginning of the accounting period.

**3. The power to make a determination under subsection 1 of this section may be:**

- (1) **Exercised by a co-fiduciary in the manner described in subsection 6 of section 469.405; or**
- (2) **Released or delegated for a reason described in subsection 7 of section 469.405 and in the manner described in subsection 8 of section 469.405.**



469.437. 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.] **“Internal income of a separate fund”, the amount determined under subsection 2 of this section;**

(2) **“Marital trust”, a trust:**

(a) **Of which the settlor’s surviving spouse is the only current income beneficiary and is entitled to a distribution of all the current net income of the trust; and**

(b) **That qualifies for a marital deduction with respect to the settlor’s estate under 26 U.S.C. Section 2056, as amended, because:**

a. **An election to qualify for a marital deduction under 26 U.S.C. Section 2056(b)(7), as amended, has been made; or**

b. **The trust qualifies for a marital deduction under 26 U.S.C. Section 2056(b)(5), as amended;**

(3) **“Payment”, an amount a fiduciary may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future amounts the fiduciary may receive. The term includes an amount received in money or property from the payer’s general assets or from a separate fund created by the payer;**

(4) **“Separate fund” includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock bonus, or stock ownership plan.**

**2. For each accounting period, the following rules apply to a separate fund:**

(1) **The fiduciary shall determine the internal income of the separate fund as if the separate fund was a trust subject to sections 469.399 to 469.487;**

(2) **If the fiduciary cannot determine the internal income of the separate fund under subdivision (1) of this subsection, the internal income of the separate fund is deemed to equal three percent of the value of the separate fund, according to the most recent statement of value preceding the beginning of the accounting period; and**

**(3) If the fiduciary cannot determine the value of the separate fund under subdivision (2) of this subsection, the value of the separate fund is deemed to equal the present value of the expected future payments, as determined under 26 U.S.C. Section 7520, as amended, for the month preceding the beginning of the accounting period for which the computation is made.**

**3. A fiduciary shall allocate a payment received from a separate fund during an accounting period to income, to the extent of the internal income of the separate fund during the period, and the balance to principal.**

**4. The fiduciary of a marital trust shall:**

**(1) Withdraw from a separate fund the amount the current income beneficiary of the trust requests the fiduciary to withdraw, not greater than the amount by which the internal income of the separate fund during the accounting period exceeds the amount the fiduciary otherwise receives from the separate fund during the period;**

**(2) Transfer from principal to income the amount the current income beneficiary requests the fiduciary to transfer, not greater than the amount by which the internal income of the separate fund during the period exceeds the amount the fiduciary receives from the separate fund during the period after the application of subdivision (1) of this subsection; and**

**(3) Distribute to the current income beneficiary as income:**

**(a) The amount of the internal income of the separate fund received or withdrawn during the period; and**

**(b) The amount transferred from principal to income under subdivision (2) of this subsection.**

**5. For a trust, other than a marital trust, of which one or more current income beneficiaries are entitled to a distribution of all the current net income, the fiduciary shall transfer from principal to income the amount by which the internal income of a separate fund during the accounting period exceeds the amount the fiduciary receives from the separate fund during the period.**

469.439. 1. [As used] In this section, [the phrase] “liquidating asset” means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a [period of] limited [duration] **time**. The [phrase] **term** includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. [The phrase]

**2. This section** does not [include a payment] **apply to a receipt** subject to section **469.423**, 469.437, [resources subject to section] 469.441, [timber subject to section] 469.443, [an activity subject to section] 469.447, [an asset subject to section] 469.449, **469.450**, or [any asset for which the trustee establishes a reserve for depreciation pursuant to section] 469.455.

[2.] **3. A [trustee] fiduciary shall allocate:**

**(1) To income [ten percent of the receipts from]:**

(a) **A receipt produced by a liquidating asset [and the balance], to the extent the receipt does not exceed three percent of the value of the asset; or**

(b) **If the fiduciary cannot determine the value of the asset, ten percent of the receipt; and**

(2) **To principal, the balance of the receipt.**

469.441. 1. To the extent [that a trustee accounts for receipts] **a fiduciary does not account for a receipt** from an interest in minerals, **water**, or other natural resources [pursuant to this section] **as a business under section 469.427**, the [trustee] **fiduciary** shall allocate [them as follows] **the receipt**:

(1) [If] **To income, to the extent** received:

(a) As [nominal] delay rental or [nominal] annual rent on a lease[, a receipt shall be allocated to income];

(b) **As a factor for interest or the equivalent of interest under an agreement creating a production payment; or**

(c) **On account of an interest in renewable water;**

(2) **To principal**, if received from a production payment, [a receipt shall be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance shall be allocated to principal;] **to the extent paragraph (b) of subdivision (1) of this subsection does not apply; or**

(3) [If an amount received] **Between income and principal equitably, to the extent received:**

(a) **On account of an interest in nonrenewable water;**

(b) As a royalty, shut-in-well payment, take-or-pay payment, **or** bonus [or delay rental is more than nominal, ninety percent shall be allocated to principal and the balance to income]; **or**

[(4) If an amount is received] (c) From a working interest or any other interest not provided for in subdivision (1)[,] **or** (2) [or (3)] of this subsection[, ninety percent of the net amount received shall be allocated to principal and the balance to income] **or paragraph (a) or (b) of this subdivision.**

2. [An amount received on account of] **This section applies to** an interest [in water that is renewable shall be allocated to income. If the water is not renewable, ninety percent of the amount shall be allocated to principal and the balance to income.

3. Sections 469.401 to 469.467 apply] **owned or held by a fiduciary** whether or not a [decedent or donor] **settlor** was extracting minerals, water, or other natural resources before the **fiduciary owned or held the** interest [became subject to the trust].

**3. An allocation of a receipt under subdivision (3) of subsection 1 of this section is presumed to be equitable if the amount allocated to principal is equal to the amount allowed by 26 U.S.C., as amended, as a deduction for depletion of the interest.**

4. If a [trust] **fiduciary** owns **or holds** an interest in minerals, water, or other natural resources [on] **before** August 28, [2001] **2023**, the [trustee] **fiduciary** may allocate receipts from the interest as provided in [sections 469.401 to 469.467] **this section** or in the manner used by the [trustee] **fiduciary** before August 28, [2001] **2023**. If the [trust] **fiduciary** acquires an interest in minerals, water, or other natural resources **on or** after August 28, [2001] **2023**, the [trustee] **fiduciary** shall allocate receipts from the interest as provided in [sections 469.401 to 469.467] **this section**.

469.443. 1. To the extent [that a trustee accounts] **a fiduciary does not account** for receipts from the sale of timber and related products [pursuant to this section] **as a business under section 469.427**, the [trustee] **fiduciary** shall allocate the net receipts:

(1) To income, to the extent [that] the amount of timber [removed] **cut** from the land does not exceed the rate of growth of the timber [during the accounting periods in which a beneficiary has a mandatory income interest];

(2) To principal, to the extent [that] the amount of timber [removed] **cut** from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(3) [To or] Between income and principal if the net receipts are from the lease of [timberland] **land used for growing and cutting timber** or from a contract to cut timber from land [owned by a trust], by determining the amount of timber [removed] **cut** from the land under the lease or contract and applying the rules in subdivisions (1) and (2) of this subsection; or

(4) To principal, to the extent [that] advance payments, bonuses, and other payments are not allocated [pursuant to either] **under** subdivision (1), (2), or (3) of this subsection.

2. In determining net receipts to be allocated [pursuant to] **under** subsection 1 of this section, a [trustee] **fiduciary** shall deduct and transfer to principal a reasonable amount for depletion.

3. [Sections 469.401 to 469.467 apply] **This section applies to land owned or held by a fiduciary** whether or not a [decedent or transferor] **settlor** was [harvesting] **cutting** timber from the **land before the fiduciary owned or held the** property [before it became subject to the trust].

4. If a [trust] **fiduciary** owns **or holds** an interest in [timberland on] **land used for growing and cutting timber before** August 28, [2001] **2023**, the [trustee] **fiduciary** may allocate net receipts from the sale of timber and related products as provided in [sections 469.401 to 469.467] **this section** or in the manner used by the [trustee] **fiduciary** before August 28, [2001] **2023**. If the [trust] **fiduciary** acquires an interest in [timberland] **land used for growing and cutting timber on or** after August 28, [2001] **2023**, the [trustee] **fiduciary** shall allocate net receipts from the sale of timber and related products as provided in [sections 469.401 to 469.467] **this section**.

469.445. 1. If a **trust received property for which a gift or estate tax** marital deduction [is allowed for all or part of a trust whose] **was allowed and the settlor's spouse holds a mandatory income interest in the trust, the spouse may require the trustee, to the extent the trust** assets [consist substantially of property that does] **otherwise do** not provide the spouse with sufficient income from or use of the trust assets[, and if the amounts that the trustee transfers from principal to income pursuant to section 469.405

and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital] **to qualify for the** deduction, [the spouse may require the trustee] to:

- (1) Make property productive of income[.];
- (2) Convert property **to property productive of income** within a reasonable time[.]; or
- (3) Exercise the power [conferred by subsection 1 of] **to adjust under** section 469.405.

2. The trustee may decide which action or combination of actions **in subsection 1 of this section** to take.

[2.In cases not governed by subsection 1 of this section, proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period. ]

469.447. 1. [As used] In this section, [the term] “derivative” means a contract [or financial], instrument, **other arrangement**, or a combination of contracts [and financial], instruments, **or other arrangements, the value, rights, and obligations of** which [gives a trust the right or obligation to participate in some or all changes in the price of a] **are, in whole or in part, dependent on or derived from an underlying** tangible or intangible asset [or group of assets, or changes in a rate, an index of prices or], **group of tangible or intangible assets, index, or occurrence of an event. The term includes stocks, fixed income securities, and financial instruments and arrangements based on indices, commodities, interest rates, [or other market indicator for an asset or a group of assets] weather-related events, and credit default events.**

2. To the extent [that a trustee] **a fiduciary** does not account [pursuant to section 469.427 for transactions] **for a transaction** in derivatives[, the trustee] **as a business under section 469.427, the fiduciary** shall allocate [to principal] **ten percent of** receipts from **the transaction** and **ten percent of** disbursements made in connection with [those transactions] **the transaction to income and the balance to principal.**

3. **Subsection 4 of this section applies if:**

(1) A [trustee] **fiduciary:**

(a) Grants an option to buy property from [the] **a trust**, whether or not the trust owns the property when the option is granted[.];

(b) Grants an option that permits another person to sell property to the trust[.]; or

(c) Acquires an option to buy property for the trust or an option to sell an asset owned by the trust[.]; and

(2) The [trustee] **fiduciary** or other owner of the asset is required to deliver the asset if the option is exercised[.].

**4. If this subsection applies, the fiduciary shall allocate ten percent to income and the balance to principal of the following amounts:**

(1) An amount received for granting the option [shall be allocated to principal.];

(2) An amount paid to acquire the option [shall be paid from principal. A]; **and**

(3) Gain or loss realized [upon] **on** the exercise [of an option, including an option granted to a settlor], **exchange, settlement, offset, closing, or expiration** of the [trust for services rendered, shall be allocated to principal] **option**.

469.449. 1. [As used in this section, the phrase “asset-backed security” means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The phrase includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The phrase does not include an asset to which section 469.423 or 469.437 applies.

2. If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee] **Except as otherwise provided in subsection 2 of this section, a fiduciary** shall allocate to income [the portion of] **a receipt from or related to an asset-backed security, to the extent** the [payment which the] payer identifies **the payment** as being from interest or other current return, and [shall allocate] **to principal** the balance of the [payment to principal] **receipt**.

[3.] **2.** If a [trust] **fiduciary** receives one or more payments in exchange for **part or all of** the [trust’s entire] **fiduciary’s** interest in an asset-backed security [in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the ], **including a liquidation or redemption** of the [trust’s] **fiduciary’s** interest in the security [over more than one accounting period,] the [trustee] **fiduciary** shall allocate [ten] **to income ten percent of receipts from** the [payment to income] **transaction** and [the balance to principal] **ten percent of disbursements made in connection with the transaction, and to principal the balance of the receipts and disbursements**.

**469.450. A fiduciary shall allocate receipts from or related to a financial instrument or arrangement not otherwise addressed by sections 469.399 to 469.487. The allocation shall be consistent with sections 469.447 and 469.449.**

469.451. [A trustee shall make the following disbursements from income to the extent that they are not disbursements to which paragraph (b) or (c) of] **Subject to section 469.456, and except as otherwise provided in subdivision (2) or (3) of subsection 3** of section 469.413 [applies], **a fiduciary shall disburse from income:**

(1) One-half of:

(a) The regular compensation of the [trustee] **fiduciary** and [of] any person providing investment advisory [or], custodial, **or other** services to the [trustee] **fiduciary, to the extent income is sufficient; and**

[(2) One-half of all expenses] **(b) An expense** for [accountings] **an accounting**, judicial [proceedings] **or nonjudicial proceeding**, or other [matters] **matter** that [involve] **involves** both [the] income and [remainder] **successive interests, to the extent income is sufficient;**

[(3) All of the other] **(2) The balance of the disbursements described in subdivision (1) of this section, to the extent a fiduciary that is an independent person determines that making those disbursements from income would be in the interests of the beneficiaries;**

**(3) Another** ordinary [expenses] **expense** incurred in connection with [the] administration, management, or preservation of [trust] property and [the] distribution of income, including interest, **an** ordinary [repairs] **repair**, regularly recurring [taxes] **tax** assessed against principal, and [expenses] **an expense** of [a] **an accounting, judicial or nonjudicial** proceeding, or other matter that [concerns] **involves** primarily [the] **an** income interest, **to the extent income is sufficient;** and

(4) [Recurring premiums] **A premium** on insurance covering [the] loss of a principal asset or [the loss of] income from or use of the asset.

469.453.1. [A trustee shall make the following disbursements] **Subject to section 469.457, and except as otherwise provided in subdivision (2) of subsection 3 of section 469.413, a fiduciary shall disburse** from principal:

(1) The [remaining one-half] **balance** of the disbursements described in [subdivisions (1) and (2)] **subsections 1 and 3 of section 469.451, after application of subsection 2** of section 469.451;

(2) [All of] The [trustee's] **fiduciary's** compensation calculated on principal as a fee for acceptance, distribution, or termination[, and disbursements made to prepare property for sale];

(3) [Payments] **A payment of an expense to prepare for or execute a sale or other disposition of property;**

(4) **A payment** on the principal of a trust debt;

[(4) Expenses of a] **(5) A payment of an expense of an accounting, judicial or nonjudicial** proceeding, or other matter that [concerns] **involves** primarily [an interest in] principal, **including a proceeding to construe the terms of the trust or protect property;**

[(5) Premiums paid on a policy of] **(6) A payment of a premium for insurance, including title** insurance, not described in subdivision (4) of section 469.451 of which the [trust] **fiduciary** is the owner and beneficiary;

[(6)] **(7) A payment of an estate[, or inheritance [and other transfer taxes] tax or other tax imposed because of the death of a decedent,** including penalties, apportioned to the trust; and

[(7) Extraordinary expenses incurred in connection with the management and preservation of trust property;

(8) Expenses for a capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments; and



(9) Disbursements] **(8) A payment:**

**(a)** Related to environmental matters, including:

**a.** Reclamation[.];

**b.** Assessing environmental conditions[.];

**c.** Remedying and removing environmental contamination[.];

**d.** Monitoring remedial activities and the release of substances[.];

**e.** Preventing future releases of substances[.];

**f.** Collecting amounts from persons liable or potentially liable for the costs of [those] activities[.]  
**described in subparagraphs a. to e. of this paragraph;**

**g.** Penalties imposed under environmental laws or regulations [and];

**h.** Other [payments made] **actions** to comply with [those] **environmental** laws or regulations[.];

**i.** Statutory or common law claims by third parties[.]; and

**j.** Defending claims based on environmental matters[.]; **and**

**(b) For a premium for insurance for matters described in paragraph (a) of this subdivision.**

2. If a principal asset is encumbered with an obligation that requires income from [that] **the** asset to be paid directly to [the] **a** creditor, the [trustee] **fiduciary** shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

469.455. 1. [As used] In this section, [the term] “depreciation” means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a [fixed] **tangible** asset having a useful life of more than one year.

2. A [trustee] **fiduciary** may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but [may] **shall** not transfer any amount for depreciation:

(1) Of [that portion] **the part** of real property used or available for use by a beneficiary as a residence [or];

(2) Of tangible personal property held or made available for the personal use or enjoyment of a beneficiary; **or**

[ (2) During the administration of a decedent’s estate; or ]

(3) [Pursuant to] **Under** this section [if the trustee is accounting pursuant to section 469.427], **to the extent the fiduciary accounts:**

**(a) Under section 469.439 for the asset; or**

**(b) Under section 469.427 for the business or other activity in which the asset is used.**

3. An amount transferred to principal **under this section** need not be **separately** held [as a separate fund].

**469.456. 1. If a fiduciary makes or expects to make an income disbursement described in subsection 2 of this section, the fiduciary may transfer an appropriate amount from principal to income in one or more accounting periods to reimburse income.**

**2. To the extent the fiduciary has not been and does not expect to be reimbursed by a third party, income disbursements to which subsection 1 of this section applies include:**

**(1) An amount chargeable to principal but paid from income because principal is illiquid;**

**(2) A disbursement made to prepare property for sale, including improvements and commissions; and**

**(3) A disbursement described in subsection 1 of section 469.453.**

**3. If an asset whose ownership gives rise to an income disbursement becomes subject to a successive interest after an income interest ends, the fiduciary may continue to make transfers under subsection 1 of this section.**

469.457. 1. If a [trustee] **fiduciary** makes or expects to make a principal disbursement described in **subsection 2 of this section**, the [trustee] **fiduciary** may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or [to] provide a reserve for future principal disbursements.

**2. To the extent a fiduciary has not been and does not expect to be reimbursed by a third party, principal disbursements to which subsection 1 of this section applies include [the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party]:**

**(1) An amount chargeable to income but paid from principal because [it] **income** is [unusually large, including extraordinary repairs] **not sufficient**;**

**(2) [Disbursements] **The cost of an improvement to principal, whether a change to an existing asset or the construction of a new asset, including a special assessment**;**

**(3) **A disbursement** made to prepare property for rental, including tenant allowances, leasehold improvements, and [broker's] commissions;**

**[(3)] (4) **A periodic [payments] payment** on an obligation secured by a principal asset, to the extent [that] the amount transferred from income to principal for depreciation is less than the periodic [payments] **payment**; and**

**[(4) Disbursements] (5) **A disbursement** described in [subdivision (7) of] subsection 1 of section 469.453.**

**3. If [the] **an** asset whose ownership gives rise to [the disbursements] **a principal disbursement** becomes subject to a successive [income] interest after an income interest ends, [a trustee] **the fiduciary****

may continue to [transfer amounts from income to principal as provided in] **make transfers under** subsection 1 of this section.

469.459. 1. A tax required to be paid by a [trustee] **fiduciary that is** based on receipts allocated to income shall be paid from income.

2. A tax required to be paid by a [trustee] **fiduciary that is** 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. **Subject to subsection 4 of this section and sections 469.456, 469.457, and 469.462**, a tax required to be paid by a [trustee] **fiduciary** on [the trust's] a share of an entity's taxable income **in an accounting period** shall be paid from:

(1) [From] **Income and principal proportionately** to the [extent that] **allocation between income and principal of** receipts from the entity [are allocated to income] **in the period**; and

(2) [From] Principal to the extent [that] **the tax exceeds the** receipts from the entity [are allocated only to principal] **in the period**.

4. After applying subsections 1 to 3 of this section, [the trustee] a **fiduciary** shall adjust income or principal receipts, to the extent [that] the [trust's] taxes **the fiduciary pays** are reduced because [the trust receives] **of** a deduction for a payment made to a beneficiary.

**469.462. 1. A fiduciary may make an adjustment between income and principal to offset the shifting of economic interests or tax benefits between current income beneficiaries and successor beneficiaries that arises from:**

(1) **An election or decision the fiduciary makes regarding a tax matter, other than a decision to claim an income tax deduction to which subsection 2 of this section applies;**

(2) **An income tax or other tax imposed on the fiduciary or a beneficiary as a result of a transaction involving the fiduciary or a distribution by the fiduciary; or**

(3) **Ownership by the fiduciary of an interest in an entity, a part of whose taxable income, whether or not distributed, is includable in the taxable income of the fiduciary or a beneficiary.**

**2. If the amount of an estate tax marital or charitable deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes and, as a result, estate taxes paid from principal are increased and income taxes paid by the fiduciary or a beneficiary are decreased, the fiduciary shall charge each beneficiary that benefits from the decrease in income tax to reimburse the principal from which the increase in estate tax is paid. The total reimbursement shall equal the increase in the estate tax, to the extent the principal used to pay the increase would have qualified for a marital or charitable deduction but for the payment. The share of the reimbursement for each fiduciary or beneficiary whose income taxes are reduced shall be the same as its share of the total decrease in income tax.**

**3. A fiduciary that charges a beneficiary under subsection 2 of this section may offset the charge by obtaining payment from the beneficiary, withholding an amount from future distributions to the beneficiary, or adopting another method or combination of methods.**

469.463. In applying and construing sections [469.401] **469.399** to [469.467] **469.487**, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**469.464. Sections 469.399 to 469.487 modify, limit, or supersede the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but do not modify, limit, or supersede 15 U.S.C. Section 7001(c) or authorize electronic delivery of any of the notices described in 15 U.S.C. Section 7003(b).**

469.465. If any provision of sections [469.401] **469.399** to [469.467] **469.487** or [the] **its** application [of these sections] to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of sections [469.401] **469.399** to [469.467] **469.487** which can be given effect without the invalid provision or application **and to this end, the provisions of sections 469.399 to 469.487 are severable.**

469.467. Sections [469.401] **469.399** to [469.467] **469.487** apply to [every] a trust or [decedent's] estate existing **or created** on or after August 28, [2001] **2023**, except as otherwise expressly provided in the [will or] terms of the trust or [in] sections [469.401] **469.399** to [469.467] **469.487.**

**469.471. As used in sections 469.471 to 469.487, the following terms mean:**

(1) **“Applicable value”, the amount of the net fair market value of a trust taken into account under section 469.483;**

(2) **“Express unitrust”, a trust for which, under the terms of the trust without regard to sections 469.471 to 469.487, income or net income shall or may be calculated as a unitrust amount;**

(3) **“Income trust”, a trust that is not a unitrust;**

(4) **“Net fair market value of a trust”, the fair market value of the assets of the trust, less the noncontingent liabilities of the trust;**

(5) **“Unitrust”, a trust for which net income is a unitrust amount. The term includes an express unitrust;**

(6) **“Unitrust amount”, an amount computed by multiplying a determined value of a trust by a determined percentage. For a unitrust administered under a unitrust policy, the term means the applicable value multiplied by the unitrust rate;**

(7) **“Unitrust policy”, a policy described in sections 469.479 to 469.487 and adopted under section 469.475;**

(8) **“Unitrust rate”, the rate used to compute the unitrust amount for a unitrust administered under a unitrust policy.**

**469.473. 1. Except as otherwise provided in subsection 2 of this section, sections 469.471 to 469.487 apply to:**

**(1) An income trust, unless the terms of the trust expressly prohibit use of sections 469.471 to 469.487 by a specific reference to these sections or an explicit expression of intent that net income not be calculated as a unitrust amount; and**

**(2) An express unitrust, except to the extent the terms of the trust explicitly:**

**(a) Prohibit use of sections 469.471 to 469.487 by a specific reference to such sections;**

**(b) Prohibit conversion to an income trust; or**

**(c) Limit changes to the method of calculating the unitrust amount.**

**2. Sections 469.471 to 469.487 do not apply to a trust described in 26 U.S.C. Section 170(f)(2)(B), 642(c)(5), 664(d), 2702(a)(3)(A)(ii) or (iii), or 2702(b), as amended.**

**3. An income trust to which sections 469.471 to 469.487 apply under subdivision (1) of subsection 1 of this section may be converted to a unitrust under sections 469.471 to 469.487 regardless of the terms of the trust concerning distributions. Conversion to a unitrust under sections 469.471 to 469.487 does not affect other terms of the trust concerning distributions of income or principal.**

**4. Sections 469.471 to 469.487 apply to an estate only to the extent a trust is a beneficiary of the estate. To the extent of the trust's interest in the estate, the estate may be administered as a unitrust, the administration of the estate as a unitrust may be discontinued, or the percentage or method used to calculate the unitrust amount may be changed, in the same manner as for a trust under sections 469.471 to 469.487.**

**5. Sections 469.471 to 469.487 do not create a duty to take or consider action under sections 469.471 to 469.487 or to inform a beneficiary about the applicability of sections 469.471 to 469.487.**

**6. A fiduciary that in good faith takes or fails to take an action under sections 469.471 to 469.487 is not liable to a person affected by the action or inaction.**

**469.475. 1. A fiduciary, without court approval, by complying with subsections 2 and 6 of this section, may:**

**(1) Convert an income trust to a unitrust if the fiduciary adopts in a record a unitrust policy for the trust providing:**

**(a) That in administering the trust the net income of the trust will be a unitrust amount rather than net income determined without regard to sections 469.471 to 469.487; and**

**(b) The percentage and method used to calculate the unitrust amount;**

**(2) Change the percentage or method used to calculate a unitrust amount for a unitrust if the fiduciary adopts in a record a unitrust policy or an amendment or replacement of a unitrust policy providing changes in the percentage or method used to calculate the unitrust amount; or**

**(3) Convert a unitrust to an income trust if the fiduciary adopts in a record a determination that, in administering the trust, the net income of the trust will be net income determined without regard to sections 469.471 to 469.487 rather than a unitrust amount.**

**2. A fiduciary may take an action under subsection 1 of this section if:**

**(1) The fiduciary determines that the action will assist the fiduciary to administer a trust impartially;**

**(2) The fiduciary sends a notice in a record, in the manner required by section 469.477, describing and proposing to take the action;**

**(3) The fiduciary sends a copy of the notice under subdivision (2) of this subsection to each settlor of the trust that is:**

**(a) If an individual, living; or**

**(b) If not an individual, in existence;**

**(4) At least one member of each class of the qualified beneficiaries described under section 456.1-103 receiving the notice under subdivision (2) of this subsection is:**

**(a) If an individual, legally competent;**

**(b) If not an individual, in existence; or**

**(c) Represented in the manner provided in subsection 2 of section 469.477; and**

**(5) The fiduciary does not receive, by the date specified in the notice under subdivision (5) of subsection 4 of section 469.477, an objection in a record to the action proposed under subdivision (2) of this subsection from a person to which the notice under subdivision (2) of this subsection is sent.**

**3. If a fiduciary receives, not later than the date stated in the notice under subdivision (5) of subsection 4 of section 469.477, an objection in a record described in subdivision (4) of subsection 4 of section 469.477 to a proposed action, the fiduciary or a beneficiary may request the court to have the proposed action taken as proposed, taken with modifications, or prevented. A person described in subsection 1 of section 469.477 may oppose the proposed action in the proceeding under this subsection, whether or not the person:**

**(1) Consented under subsection 3 of section 469.477; or**

**(2) Objected under subdivision (4) of subsection 4 of section 469.477.**

**4. If, after sending a notice under subdivision (2) of subsection 2 of this section, a fiduciary decides not to take the action proposed in the notice, the fiduciary shall notify in a record each person described in subsection 1 of section 469.477 of the decision not to take the action and the reasons for the decision.**

**5. If a beneficiary requests in a record that a fiduciary take an action described in subsection 1 of this section and the fiduciary declines to act or does not act within ninety days after receiving the request, the beneficiary may request the court to direct the fiduciary to take the action requested.**

**6. In deciding whether and how to take an action authorized by subsection 1 of this section, or whether and how to respond to a request by a beneficiary under subsection 5 of this section, a fiduciary shall consider all factors relevant to the trust and the beneficiaries, including relevant factors in subsection 5 of section 469.403.**

**7. A fiduciary may release or delegate the power to convert an income trust to a unitrust under subdivision (1) of subsection 1 of this section, change the percentage or method used to calculate a unitrust amount under subdivision (2) of subsection 1 of this section, or convert a unitrust to an income trust under subdivision (3) of subsection 1 of this section, for a reason described in subsection 7 of section 469.405 and in the manner described in subsection 8 of section 469.405.**

**469.477. 1. A notice required by subdivision (3) of subsection 2 of section 469.475 shall be sent in a manner authorized under section 456.1-109 to:**

**(1) The qualified beneficiaries defined under section 456.1-103;**

**(2) Each person acting as trust protector under section 456.8-808; and**

**(3) Each person that is granted a power over the trust by the terms of the trust, to the extent the power is exercisable when the person is not then serving as a trustee:**

**(a) Including a:**

**a. Power over the investment, management, or distribution of trust property or other matters of trust administration; and**

**b. Power to appoint or remove a trustee or person described in this paragraph; and**

**(b) Excluding a:**

**a. Power of appointment;**

**b. Power of a beneficiary over the trust, to the extent the exercise or nonexercise of the power affects the beneficial interest of the beneficiary or another beneficiary represented by the beneficiary under sections 456.3-301 to 456.3-305 with respect to the exercise or nonexercise of the power; and**

**c. Power over the trust if the terms of the trust provide that the power is held in a nonfiduciary capacity and the power shall be held in a nonfiduciary capacity to achieve a tax objective under 26 U.S.C., as amended.**

**2. The representation provisions of sections 456.3-301 to 456.3-305 apply to notice under this section.**

**3. A person may consent in a record at any time to action proposed under subdivision (2) of subsection 2 of section 469.475. A notice required by subdivision (2) of subsection 2 of section 469.475 need not be sent to a person that consents under this subsection.**

**4. A notice required by subdivision (2) of subsection 2 of section 469.475 shall include:**

**(1) The action proposed under subdivision (2) of subsection 2 of section 469.475;**

**(2) For a conversion of an income trust to a unitrust, a copy of the unitrust policy adopted under subdivision (1) of subsection 1 of section 469.475;**

**(3) For a change in the percentage or method used to calculate the unitrust amount, a copy of the unitrust policy or amendment or replacement of the unitrust policy adopted under subdivision (2) of subsection 1 of section 469.475;**

**(4) A statement that the person to which the notice is sent may object to the proposed action by stating in a record the basis for the objection and sending or delivering the record to the fiduciary;**

**(5) The date by which an objection under subdivision (4) shall be received by the fiduciary, which shall be at least thirty days after the date the notice is sent;**

**(6) The date on which the action is proposed to be taken and the date on which the action is proposed to take effect;**

**(7) The name and contact information of the fiduciary; and**

**(8) The name and contact information of a person that may be contacted for additional information.**

**469.479. 1. In administering a unitrust under sections 469.471 to 469.487, a fiduciary shall follow a unitrust policy adopted under subdivision (1) or (2) of subsection 1 of section 469.475 or amended or replaced under subdivision (2) of section 1 of section 469.475.**

**2. A unitrust policy shall provide:**

**(1) The unitrust rate or the method for determining the unitrust rate under section 469.481;**

**(2) The method for determining the applicable value under section 469.483; and**

**(3) The rules described in sections 469.481 to 469.487 that apply in the administration of the unitrust, whether the rules are:**

**(a) Mandatory, as provided in subsection 1 of section 469.483 and subsection 1 of section 469.485; or**

**(b) Optional, as provided in section 469.481, subsection 2 of section 469.483, subsection 2 of section 469.485, and subsection 1 of section 469.487, to the extent the fiduciary elects to adopt such rules.**



**469.481. 1. Except as otherwise provided in subdivision (1) of subsection 2 of section 469.487, a unitrust rate may be:**

**(1) A fixed unitrust rate; or**

**(2) A unitrust rate that is determined for each period using:**

**(a) A market index or other published data; or**

**(b) A mathematical blend of market indices or other published data over a stated number of preceding periods.**

**2. Except as otherwise provided in subdivision (1) of subsection 2 of section 469.487, a unitrust policy may provide:**

**(1) A limit on how high the unitrust rate determined under subdivision (2) of subsection 1 of this section may rise;**

**(2) A limit on how low the unitrust rate determined under subdivision (2) of subsection 1 of this section may fall;**

**(3) A limit on how much the unitrust rate determined under subdivision (2) of subsection 1 of this section may increase over the unitrust rate for the preceding period or a mathematical blend of unitrust rates over a stated number of preceding periods;**

**(4) A limit on how much the unitrust rate determined under subdivision (2) of subsection 1 of this section may decrease below the unitrust rate for the preceding period or a mathematical blend of unitrust rates over a stated number of preceding periods; or**

**(5) A mathematical blend of any of the unitrust rates determined under subdivision (2) of subsection 1 of this section and subdivisions (1) to (4) of this subsection.**

**469.483. 1. A unitrust policy shall provide the method for determining the fair market value of an asset for the purpose of determining the unitrust amount, including:**

**(1) The frequency of valuing the asset, which need not require a valuation in every period; and**

**(2) The date for valuing the asset in each period in which the asset is valued.**

**2. Except as otherwise provided in subdivision (2) of subsection 2 of section 469.487, a unitrust policy may provide methods for determining the amount of the net fair market value of the trust to take into account in determining the applicable value, including:**

**(1) Obtaining an appraisal of an asset for which fair market value is not readily available;**

**(2) Exclusion of specific assets or groups or types of assets;**

**(3) Other exceptions or modifications of the treatment of specific assets or groups or types of assets;**

**(4) Identification and treatment of cash or property held for distribution;**

**(5) Use of:**

**(a) An average of fair market values over a stated number of preceding periods; or**

**(b) Another mathematical blend of fair market values over a stated number of preceding periods;**

**(6) A limit on how much the applicable value of all assets, groups of assets, or individual assets may increase over:**

**(a) The corresponding applicable value for the preceding period; or**

**(b) A mathematical blend of applicable values over a stated number of preceding periods;**

**(7) A limit on how much the applicable value of all assets, groups of assets, or individual assets may decrease below:**

**(a) The corresponding applicable value for the preceding period; or**

**(b) A mathematical blend of applicable values over a stated number of preceding periods;**

**(8) The treatment of accrued income and other features of an asset that affect value; and**

**(9) Determining the liabilities of the trust, including treatment of liabilities to conform with the treatment of assets under subdivisions (1) to (8) of this subsection.**

**469.485. 1. A unitrust policy shall provide the period used under sections 469.481 and 469.483. Except as otherwise provided in subdivision (3) of subsection 2 of section 469.481, the period may be:**

**(1) A calendar year;**

**(2) A twelve-month period other than a calendar year;**

**(3) A calendar quarter;**

**(4) A three-month period other than a calendar quarter; or**

**(5) Another period.**

**2. Except as otherwise provided in subsection 2 of section 469.487, a unitrust policy may provide standards for:**

**(1) Using fewer preceding periods under paragraph (b) of subdivision (2) of subsection 1 of section 469.481 or subdivision (3) or (4) of subsection 2 of section 469.481 if:**

**(a) The trust was not in existence in a preceding period; or**

**(b) Market indices or other published data are not available for a preceding period;**

**(2) Using fewer preceding periods under paragraph (a) or (b) of subdivision (5) of subsection 2 of section 469.483, paragraph (b) of subdivision (6) of subsection 2 of section 469.483, or paragraph (b) of subdivision (7) of subsection 2 of section 469.483 if:**

**(a) The trust was not in existence in a preceding period; or**

**(b) Fair market values are not available for a preceding period; and**

**(3) Prorating the unitrust amount on a daily basis for a part of a period in which the trust or the administration of the trust as a unitrust or the interest of any beneficiary commences or terminates.**

**469.487. 1. A unitrust policy may:**

**(1) Provide methods and standards for:**

**(a) Determining the timing of distributions;**

**(b) Making distributions in cash or in kind or partly in cash and partly in kind; or**

**(c) Correcting an underpayment or overpayment to a beneficiary based on the unitrust amount if there is an error in calculating the unitrust amount;**

**(2) Specify sources and the order of sources, including categories of income for federal income tax purposes, from which distributions of a unitrust amount are paid; or**

**(3) Provide other standards and rules the fiduciary determines serve the interests of the beneficiaries.**

**2. If a trust qualifies for a special tax benefit or a fiduciary is not an independent person:**

**(1) The unitrust rate established under section 469.481 shall not be less than three percent or more than five percent;**

**(2) The only provisions of section 469.483 that apply are subsection 1 of section 469.483; subdivisions (1), (4), and (9) of subsection 2 of section 469.483; and paragraph (a) of subdivision (5) of subsection 2 of section 469.483;**

**(3) The only period that may be used under section 469.485 is a calendar year under subdivision (1) of subsection 1 of section 469.485; and**

**(4) The only other provisions of section 469.485 that apply are paragraph (a) of subdivision (2) of subsection 2 of section 469.485 and subdivision (3) of subsection 2 of section 469.485.”; and**

Further amend said bill, Page 65, Section 570.030, Line 90, by inserting after said section and line the following:

“[469.409. 1. Any claim for breach of a trustee’s duty to impartially administer a trust related, directly or indirectly, to an adjustment made by a fiduciary to the allocation between principal and income pursuant to subsection 1 of section 469.405 or any allocation made by the fiduciary pursuant to any authority or

discretion specified in subsection 1 of section 469.403, unless previously barred by adjudication, consent or other limitation, shall be barred as provided in this section.

(1) Any such claim brought by a qualified beneficiary is barred if not asserted in a judicial proceeding commenced within two years after the trustee has sent a report to that qualified beneficiary that adequately discloses the facts constituting the claim.

(2) Any such claim brought by a beneficiary (other than a qualified beneficiary) with any interest whatsoever in the trust, no matter how remote or contingent, or whether or not the beneficiary is ascertainable or has the capacity to contract, is barred if not asserted in a judicial proceeding commenced within two years after the first to occur of:

(a) The date the trustee sent a report to all qualified beneficiaries that adequately discloses the facts constituting the claim; or

(b) The date the trustee sent a report to a person that represents the beneficiary under the provisions of subdivision (2) of subsection 2 of this section.

2. For purposes of this section the following rules shall apply:

(1) A report adequately discloses the facts constituting a claim if it provides sufficient information so that the beneficiary should know of the claim or reasonably should have inquired into its existence;

(2) Section 469.402 shall apply in determining whether a beneficiary (including a qualified beneficiary) has received notice for purposes of this section;

(3) The determination of the identity of all qualified beneficiaries shall be made on the date the report is deemed to have been sent; and

(4) This section does not preclude an action to recover for fraud or misrepresentation related to the report.]

[469.411. 1. (1) If the provisions of this section apply to a trust, the unitrust amount 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.

(2) The unitrust amount for the current accounting year computed pursuant to 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 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 accounting year.

(3) For purposes of this section, the net fair market values of the assets held in the trust on the first business day of a prior 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 accounting year pursuant to subdivision (1) of this subsection, as if the distribution, payment or receipt had occurred on the first day of the prior accounting year.

(4) In the case of a short accounting period, the trustee shall prorate the unitrust amount on a daily basis.

(5) In the case where the net fair market value of an asset held in the trust has been incorrectly determined 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 accounting year", the accounting period of the trust for which the unitrust amount is being determined.

3. In determining the average net fair market value of the assets held in the trust, 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 the assets held in the trust pursuant to 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.

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.]

[469.461. 1. A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from:

(1) Elections and decisions, other than those described in subsection 2 of this section, that the fiduciary makes from time to time regarding tax matters;

(2) An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

(3) The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust or a beneficiary.

2. If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust or beneficiary are decreased, each estate, trust or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement shall equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust or beneficiary whose income taxes are reduced shall be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.]"; and"; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.

HOUSE AMENDMENT NO. 2 TO  
HOUSE AMENDMENT NO. 7

Amend House Amendment No. 7 to House Committee Substitute for Senate Committee Substitute for Senate Bill No. 187, Page 1, Line 1, by inserting after the number "187," the following:

“Page 7, Section 130.011, Line 166, by deleting the words “[~~(4)~~] **(5)**” and inserting in lieu thereof the word “(4)”; and

Further amend said bill and section, Page 8, Line 224, by deleting the words “[~~(4)~~] **(5)**” and inserting in lieu thereof the word “(4)”; and

Further amend said bill, Section 130.021, Page 12, Lines 92-94, by deleting all of said lines and inserting in lieu thereof the following:

“(4) [The names, mailing addresses and titles of its officers, if any;

(5) ] The name and mailing address of any connected organizations with which the committee is affiliated;

**(5) The names, mailing addresses and titles of its officer, if any;”**; and

Further amend said bill,”; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.

HOUSE AMENDMENT NO. 3 TO  
HOUSE AMENDMENT NO. 7

Amend House Amendment No. 7 to House Committee Substitute for Senate Committee Substitute for Senate Bill No. 187, Page 1, Line 4, by deleting all of said line and inserting in lieu thereof the following:

**“361.900. Sections 361.900 to 361.1035 shall be known and may be cited as the “Money Transmission Modernization Act of 2023”.**

**361.903. Sections 361.900 to 361.1035 are designed to replace existing state money transmission laws currently codified in law and to:**

**(1) Ensure states may coordinate in all areas of regulation, licensing, and supervision to eliminate unnecessary regulatory burden and more effectively utilize regulator resources;**

**(2) Protect the public from financial crime;**

**(3) Standardize the types of activities that are subject to licensing or otherwise exempt from licensing; and**

**(4) Modernize safety and soundness requirements to ensure customer funds are protected in an environment that supports innovative and competitive business practices.**

**361.906. For purposes of sections 361.900 to 361.1035, the following terms shall mean:**

**(1) “Acting in concert”, persons knowingly acting together with a common goal of jointly acquiring control of a licensee, regardless of whether under an express agreement;**



(2) “Authorized delegate”, a person that a licensee designates to engage in money transmission on behalf of the licensee;

(3) “Average daily money transmission liability”, the amount of the licensee’s outstanding money transmission obligations in this state at the end of each day in a given period of time, added together, and divided by the total number of days in the given period of time. For purposes of calculating average daily money transmission liability under sections 361.900 to 361.1035 for any licensee required to do so, the given period of time shall be the quarters ending March thirty-first, June thirtieth, September thirtieth, and December thirty-first;

(4) “Bank Secrecy Act”, the Bank Secrecy Act, 31 U.S.C. Section 5311 et seq., and its implementing regulations, as amended and recodified from time to time;

(5) “Closed loop stored value”, stored value that is redeemable by the issuer only for goods or services provided by the issuer or its affiliate or franchisees of the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value;

(6) “Commissioner”, the commissioner of the Missouri division of finance;

(7) “Control”:

(a) The power to vote, directly or indirectly, at least twenty-five percent of the outstanding voting shares or voting interests of a licensee or person in control of a licensee;

(b) The power to elect or appoint a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a person in control of a licensee; or

(c) The power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee.

A person is presumed to exercise a controlling influence if the person holds the power to vote, directly or indirectly, at least ten percent of the outstanding voting shares or voting interests of a licensee or person in control of a licensee. A person presumed to exercise a controlling influence as defined under this subdivision can rebut the presumption of control if the person is a passive investor. For purposes of determining the percentage of a person controlled by any other person, the person’s interest shall be aggregated with the interest of any other immediate family member, including the person’s spouse, parents, children, siblings, mothers- and fathers-in-law, sons- and daughters-in-law, brothers- and sisters-in-law, and any other person who shares such person’s home;

(8) “Eligible rating”, a credit rating of any of the three highest rating categories provided by an eligible rating service. Each category may include rating category modifiers such as “plus” or “minus” for Standard and Poor’s or the equivalent for any other eligible rating service;

**(9) “Eligible rating service”, any nationally recognized statistical rating organization (NRSRO) as defined by the United States Securities and Exchange Commission and any other organization designated by rule or order;**

**(10) “Federally insured depository financial institution”, a bank, credit union, savings and loan association, trust company, savings association, savings bank, industrial bank, or industrial loan company organized under the laws of the United States or any state of the United States if such bank, credit union, savings and loan association, trust company, savings association, savings bank, industrial bank, or industrial loan company has federally insured deposits;**

**(11) “In this state”, at a physical location within this state for a transaction requested in person. For a transaction requested electronically or by phone, the provider of money transmission may determine if the person requesting the transaction is in this state by relying on other information provided by the person regarding the location of the individual’s residential address or a business entity’s principal place of business or other physical address location, and any records associated with the person that the provider of money transmission may have that indicate such location including, but not limited to, an address associated with an account;**

**(12) “Individual”, a natural person;**

**(13) “Key individual”, any individual ultimately responsible for establishing or directing policies and procedures of the licensee, such as an executive officer, manager, director, or trustee;**

**(14) “Licensee”, a person licensed under sections 361.900 to 361.1035;**

**(15) “Material litigation”, litigation that, according to United States generally accepted accounting principles, is significant to a person’s financial health and would be required to be disclosed in the person’s annual audited financial statements, report to shareholders, or similar records;**

**(16) “Monetary value”, a medium of exchange, regardless of whether redeemable in money;**

**(17) “Money”, a medium of exchange that is authorized or adopted by the United States or a foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments;**

**(18) “Money transmission”, any of the following:**

**(a) Selling or issuing payment instruments to a person located in this state;**

**(b) Selling or issuing stored value to a person located in this state; or**

**(c) Receiving money for transmission from a person located in this state.**

**The term includes payroll processing services. The term does not include the provision solely of online or telecommunications services or network access;**

**(19) “Multistate licensing process”, any agreement entered into by and among state regulators relating to coordinated processing of applications for money transmission licenses, applications for the acquisition of control of a licensee, control determinations, or notice and information requirements for a change of key individuals;**

**(20) “NMLS”, the Nationwide Multistate Licensing System and Registry developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators and owned and operated by the State Regulatory Registry LLC or any successor or affiliated entity for the licensing and registration of persons in financial services industries;**

**(21) “Outstanding money transmission obligations”:**

**(a) Any payment instrument or stored value issued or sold by the licensee to a person located in the United States or reported as sold by an authorized delegate of the licensee to a person that is located in the United States that has not yet been paid or refunded by or for the licensee or escheated in accordance with applicable abandoned property laws; or**

**(b) Any money received for transmission by the licensee or an authorized delegate in the United States from a person located in the United States that has not been received by the payee or refunded to the sender, or escheated in accordance with applicable abandoned property laws.**

**For purposes of this subdivision, “in the United States” shall include, to the extent applicable, a person in any state, territory, or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; or a U.S. military installation that is located in a foreign country;**

**(22) “Passive investor”, a person that:**

**(a) Does not have the power to elect a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a person in control of a licensee;**

**(b) Is not employed by and does not have any managerial duties of the licensee or person in control of a licensee;**

**(c) Does not have the power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee; and**

**(d) Either:**

**a. Attests to paragraphs (a), (b), and (c) of this subdivision, in a form and in a medium prescribed by the commissioner; or**

**b. Commits to the passivity characteristics of paragraphs (a), (b), and (c) of this subdivision in a written document;**

**(23) “Payment instrument”, a written or electronic check, draft, money order, traveler’s check, or other written or electronic instrument for the transmission or payment of money or monetary value, regardless of whether negotiable. The term does not include stored value or any instrument that:**

**(a) Is redeemable by the issuer only for goods or services provided by the issuer or its affiliate or franchisees of the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value; or**

**(b) Is not sold to the public but issued and distributed as part of a loyalty, rewards, or promotional program;**

**(24) “Payroll processing services”, receiving money for transmission under a contract with a person to deliver wages or salaries, make payment of payroll taxes to state and federal agencies, make payments relating to employee benefit plans, or make distributions of other authorized deductions from wages or salaries. The term does not include an employer performing payroll processing services on its own behalf or on behalf of its affiliate or a professional employer organization subject to regulation under sections 285.700 to 285.750;**

**(25) “Person”, any individual, general partnership, limited partnership, limited liability company, corporation, trust, association, joint stock corporation, or other corporate entity identified by the commissioner;**

**(26) “Receiving money for transmission” or “money received for transmission”, receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means;**

**(27) “Stored value”, monetary value representing a claim against the issuer evidenced by an electronic or digital record and that is intended and accepted for use as a means of redemption for money or monetary value or payment for goods or services. The term includes, but is not limited to, “prepaid access” as defined under 31 C.F.R. Section 1010.100, as amended or recodified from time to time. Notwithstanding the provisions of this subdivision, the term does not include a payment instrument or closed loop stored value, or stored value not sold to the public but issued and distributed as part of a loyalty, rewards, or promotional program;**

**(28) “Tangible net worth”, the aggregate assets of a licensee excluding all intangible assets, less liabilities, as determined in accordance with United States generally accepted accounting principles.**

**361.909. Sections 361.900 to 361.1035 shall not apply to:**

**(1) An operator of a payment system to the extent that it provides processing, clearing, or settlement services between or among persons exempted under this section or licensees in connection with wire transfers, credit card transactions, debit card transactions, stored value transactions, automated clearing house transfers, or similar funds transfers;**

**(2) A person appointed as an agent of a payee to collect and process a payment from a payer to the payee for goods or services, other than money transmission itself, provided to the payer by the payee, provided that:**

**(a) There exists a written agreement between the payee and the agent directing the agent to collect and process payments from a payer on the payee's behalf;**

**(b) The payee holds the agent out to the public as accepting payments for goods or services on the payee's behalf; and**

**(c) Payment for the goods and services is treated as received by the payee upon receipt by the agent so that the payer's obligation is extinguished and there is no risk of loss to the payer if the agent fails to remit the funds to the payee;**

**(3) A person that acts as an intermediary by processing payments between an entity that has directly incurred an outstanding money transmission obligation to a sender and the sender's designated recipient, provided that the entity:**

**(a) Is properly licensed or exempt from licensing requirements under sections 361.900 to 361.1035;**

**(b) Provides a receipt, electronic record, or other written confirmation to the sender identifying the entity as the provider of money transmission in the transaction; and**

**(c) Bears sole responsibility to satisfy the outstanding money transmission obligation to the sender, including the obligation to make the sender whole in connection with any failure to transmit the funds to the sender's designated recipient;**

**(4) The United States or a department, agency, or instrumentality thereof, or its agent;**

**(5) Money transmission by the United States Postal Service or by an agent of the United States Postal Service;**

**(6) A state, county, city, or any other governmental agency or governmental subdivision or instrumentality of a state, or its agent;**

**(7) A federally insured depository financial institution, bank holding company, office of an international banking corporation, foreign bank that establishes a federal branch under the International Bank Act, 12 U.S.C. Section 3102, as amended or recodified from time to time, corporation organized under the Bank Service Corporation Act, 12 U.S.C. Sections 1861-1867, as**

amended or recodified from time to time, or corporation organized under the Edge Act, 12 U.S.C. Sections 611-633, as amended or recodified from time to time, under the laws of a state or the United States;

(8) Electronic funds transfer of governmental benefits for a federal, state, county, or governmental agency by a contractor on behalf of the United States or a department, agency, or instrumentality thereof, or on behalf of a state or governmental subdivision, agency, or instrumentality thereof;

(9) A board of trade designated as a contract market under the federal Commodity Exchange Act, 7 U.S.C. Sections 1-25, as amended or recodified from time to time, or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as or for such a board;

(10) A registered futures commission merchant under the federal commodities laws to the extent of its operation as such a merchant;

(11) A person registered as a securities broker-dealer under federal or state securities laws to the extent of its operation as such a broker-dealer;

(12) An individual employed by a licensee, authorized delegate, or any person exempted from the licensing requirements under sections 361.900 to 361.1035 if acting within the scope of employment and under the supervision of the licensee, authorized delegate, or exempted person as an employee and not as an independent contractor; and

(13) A person expressly appointed as a third party service provider to or agent of an entity exempt under subdivision (7) of this subsection solely to the extent that:

(a) Such service provider or agent is engaging in money transmission on behalf of and under a written agreement with the exempt entity that sets forth the specific functions that the service provider or agent is to perform; and

(b) The exempt entity assumes all risk of loss and all legal responsibility for satisfying the outstanding money transmission obligations owed to purchasers and holders of the outstanding money transmission obligations upon receipt of the purchaser's or holder's money or monetary value by the service provider or agent.

**361.912.** The commissioner may require that any person claiming to be exempt from licensing under section 361.909 provide information and documentation to the commissioner demonstrating that the person qualifies for any claimed exemption.

**361.915. 1.** In order to carry out the purposes of sections 361.900 to 361.1035, the commissioner may, subject to the provisions of subsections 1 and 2 of section 361.918:

**(1) Enter into agreements or relationships with other government officials or federal and state regulatory agencies and regulatory associations in order to improve efficiencies and reduce regulatory burden by standardizing methods or procedures, and sharing resources, records, or related information obtained under sections 361.900 to 361.1035;**

**(2) Use, hire, contract, or employ analytical systems, methods, or software to examine or investigate any person subject to sections 361.900 to 361.1035;**

**(3) Accept, from other state or federal government agencies or officials, licensing, examination, or investigation reports made by such other state or federal government agencies or officials; and**

**(4) Accept audit reports made by an independent certified public accountant or other qualified third-party auditor for an applicant or licensee and incorporate the audit report in any report of examination or investigation.**

**2. The commissioner shall have the broad administrative authority to:**

**(1) Administer, interpret, and enforce sections 361.900 to 361.1035 and promulgate rules or regulations implementing sections 361.900 to 361.1035; and**

**(2) To recover the cost of administering and enforcing sections 361.900 to 361.1035 by imposing and collecting proportionate and equitable fees and costs associated with applications, examinations, investigations, and other actions required to achieve the purpose of sections 361.900 to 361.1035.**

**3. The commissioner shall promulgate all necessary rules and regulations for the administration of sections 361.900 to 361.1035. 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, 2023, shall be invalid and void.**

**361.918. 1. Except as otherwise provided in subsection 2 of this section, all information or reports obtained by the commissioner from an applicant, licensee, or authorized delegate and all information contained in or related to an examination, investigation, operating report, or condition report prepared by, on behalf of, or for the use of the commissioner, or financial statements, balance sheets, or authorized delegate information, are confidential and are not subject to disclosure under chapter 610.**

**2. The commissioner may disclose information not otherwise subject to disclosure under subsection 1 of this section to representatives of state or federal agencies who shall confirm in writing that they will maintain the confidentiality of the information.**

**3. This section does not prohibit the commissioner from disclosing to the public a list of all licensees or the aggregated financial or transactional data concerning those licensees.**

**361.921. 1. The commissioner may conduct an examination or investigation of a licensee or authorized delegate or otherwise take independent action authorized by sections 361.900 to 361.1035 or by a rule adopted or order issued under sections 361.900 to 361.1035 as reasonably necessary or appropriate to administer and enforce sections 361.900 to 361.1035, regulations implementing sections 361.900 to 361.1035, and other applicable law, including the Bank Secrecy Act and the USA PATRIOT Act. The commissioner may:**

**(1) Conduct an examination either onsite or offsite as the commissioner may reasonably require;**

**(2) Conduct an examination in conjunction with an examination conducted by representatives of other state agencies or agencies of another state or of the federal government;**

**(3) Accept the examination report of another state agency or an agency of another state or of the federal government, or a report prepared by an independent accounting firm, which on being accepted is considered for all purposes as an official report of the commissioner; and**

**(4) Summon and examine under oath a key individual or employee of a licensee or authorized delegate and require the person to produce records regarding any matter related to the condition and business of the licensee or authorized delegate.**

**2. A licensee or authorized delegate shall provide, and the commissioner shall have full and complete access to, all records the commissioner may reasonably require to conduct a complete examination. The records shall be provided at the location and in the format specified by the commissioner. The commissioner may utilize multistate record production standards and examination procedures when such standards will reasonably achieve the requirements of this subsection.**

**3. Unless otherwise directed by the commissioner, a licensee shall pay all costs reasonably incurred in connection with an examination of the licensee or the licensee's authorized delegates.**

**361.924. 1. To efficiently and effectively administer and enforce sections 361.900 to 361.1035 and to minimize regulatory burden, the commissioner is authorized to participate in multistate supervisory processes established between states or coordinated through the Conference of State Bank Supervisors, Money Transmitter Regulators Association, and affiliates and successors thereof for all licensees that hold licenses in this state and other states. As a participant in multistate supervision, the commissioner may:**



**(1) Cooperate, coordinate, and share information with other state and federal regulators in accordance with section 361.918;**

**(2) Enter into written cooperation, coordination, or information-sharing contracts or agreements with organizations the membership of which is made up of state or federal governmental agencies; and**

**(3) Cooperate, coordinate, and share information with organizations the membership of which is made up of state or federal governmental agencies, provided that the organizations agree in writing to maintain the confidentiality and security of the shared information in accordance with this section.**

**2. The commissioner shall not waive and nothing in this section constitutes a waiver of the commissioner's authority to conduct an examination or investigation or otherwise take independent action authorized by sections 361.900 to 361.1035 or a rule adopted or order issued under sections 361.900 to 361.1035 to enforce compliance with applicable state or federal law.**

**3. A joint examination or investigation, or acceptance of an examination or investigation report, does not waive an examination assessment provided for in sections 361.900 to 361.1035.**

**361.927. 1. In the event state money transmission jurisdiction is conditioned on a federal law, any inconsistencies between a provision of sections 361.900 to 361.1035 and the federal law governing money transmission shall be governed by the applicable federal law to the extent of the inconsistency.**

**2. In the event of any inconsistencies between sections 361.900 to 361.1035 and a federal law that governs under subsection 1 of this section, the commissioner may provide interpretive guidance that:**

**(1) Identifies the inconsistency; and**

**(2) Identifies the appropriate means of compliance with federal law.**

**361.930. 1. A person shall not engage in the business of money transmission or advertise, solicit, or hold itself out as providing money transmission unless the person is licensed under sections 361.900 to 361.1035.**

**2. Subsection 1 of this section shall not apply to:**

**(1) A person that is an authorized delegate of a person licensed under sections 361.900 to 361.1035 acting within the scope of authority conferred by a written contract with the licensee; or**

**(2) A person that is exempt under section 361.909 and does not engage in money transmission outside the scope of such exemption.**

**3. A license issued under section 361.942 shall not be transferable or assignable.**

**361.933. 1. To establish consistent licensing between this state and other states, the commissioner is authorized to:**

**(1) Implement those licensing provisions of sections 361.900 to 361.1035 in a manner that is consistent with other states that have adopted the money transmission modernizations act or multistate licensing processes; and**

**(2) Participate in nationwide protocols for licensing cooperation and coordination among state regulators, provided that such protocols are consistent with sections 361.900 to 361.1035.**

**2. In order to fulfill the purposes of sections 361.900 to 361.1035, the commissioner is authorized to establish relationships or contracts with NMLS, other entities designated by NMLS, or other third parties to enable the commissioner to:**

**(1) Collect and maintain records;**

**(2) Coordinate multistate licensing processes and supervision processes;**

**(3) Process fees; and**

**(4) Facilitate communication between this state and licensees or other persons subject to sections 361.900 to 361.1035.**

**3. The commissioner is authorized to utilize NMLS for all aspects of licensing in accordance with sections 361.900 to 361.1035 including, but not limited to, license applications, applications for acquisitions of control, surety bonds, reporting, criminal history background checks, credit checks, fee processing, and examinations.**

**4. The commissioner is authorized to utilize NMLS forms, processes, and functionalities in accordance with sections 361.900 to 361.1035.**

**5. (1) The commissioner is authorized to establish and adopt, by rule or regulation, requirements for participation by applicants and licensees in NMLS upon the division of finance's determination that each requirement is consistent with law, public interest, and the purposes of this section.**

**(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, 2023, shall be invalid and void.**

**361.936. 1. Applicants for a license shall apply in a form and in a medium as prescribed by the commissioner. Each such form shall contain content as set forth by rule, regulation, instruction, or procedure of the commissioner and may be changed or updated by the commissioner in accordance with applicable law in order to carry out the purposes of sections 361.900 to 361.1035 and maintain consistency with licensing standards and practices. The application shall state or contain, as applicable:**

**(1) The legal name and residential and business addresses of the applicant and any fictitious or trade name used by the applicant in conducting its business;**

**(2) Whether the applicant has been convicted of or pled guilty or nolo contendere to a felony involving an act of fraud, dishonesty, or a breach of trust or money laundering;**

**(3) A description of any money transmission previously provided by the applicant and the money transmission that the applicant seeks to provide in this state;**

**(4) A list of the applicant's proposed authorized delegates and the locations in this state where the applicant and its authorized delegates propose to engage in money transmission;**

**(5) A list of other states in which the applicant is licensed to engage in money transmission and any license revocations, suspensions, or other disciplinary action taken against the applicant in another state;**

**(6) Information concerning any bankruptcy or receivership proceedings affecting the licensee or a person in control of a licensee;**

**(7) A sample form of contract for authorized delegates, if applicable;**

**(8) A sample form of payment instrument or stored value, as applicable;**

**(9) The name and address of any federally insured depository financial institution through which the applicant plans to conduct money transmission;**

**(10) A list of any material litigation in which the applicant has been involved in the ten-year period next preceding the submission of the application; and**

**(11) Any other information the commissioner reasonably requires with respect to the applicant.**

**2. If an applicant is a corporation, limited liability company, partnership, or other legal entity, the applicant shall also provide:**

**(1) The date of the applicant's incorporation or formation and state or country of incorporation or formation;**

**(2) If applicable, a certificate of good standing from the state or country in which the applicant is incorporated or formed;**

**(3) A brief description of the structure or organization of the applicant, including any parents or subsidiaries of the applicant, and whether any parents or subsidiaries are publicly traded;**

**(4) The legal name, any fictitious or trade name, all business and residential addresses, and the employment, as applicable, in the ten-year period next preceding the submission of the application of each key individual and person in control of the applicant;**

**(5) Whether the applicant has been convicted of or pled guilty or nolo contendere to a felony involving an act of fraud, dishonesty, or a breach of trust or money laundering;**

**(6) A copy of audited financial statements of the applicant for the most recent fiscal year and for the two-year period next preceding the submission of the application or, if determined to be acceptable to the commissioner, certified unaudited financial statements for the most recent fiscal year or other period acceptable to the commissioner;**

**(7) A certified copy of unaudited financial statements of the applicant for the most recent fiscal quarter;**

**(8) If the applicant is a publicly traded corporation, a copy of the most recent report filed with the United States Securities and Exchange Commission under Section 13 of the federal Securities Exchange Act of 1934, 15 U.S.C. Section 78m, as amended or recodified from time to time;**

**(9) If the applicant is a wholly owned subsidiary of:**

**(a) A corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed under Section 13 of the U.S. Securities Exchange Act of 1934, 15 U.S.C. Section 78m, as amended or recodified from time to time; or**

**(b) A corporation publicly traded outside the United States, a copy of similar documentation filed with the regulator of the parent corporation's domicile outside the United States;**

**(10) The name and address of the applicant's registered agent in this state;**

**(11) A list of any material litigation in which the applicant has been involved in the ten-year period next preceding the submission of the application; and**

**(12) Any other information the commissioner reasonably requires with respect to the applicant.**

**3. A nonrefundable application fee and license fee, as determined by the commissioner, shall accompany an application for a license under this section.**

**4. The commissioner may waive one or more requirements of subsections 1 and 2 of this section or permit an applicant to submit other information in lieu of the required information.**

**361.939. 1. Any individual in control of a licensee or applicant, any individual that seeks to acquire control of a licensee, and each key individual shall furnish to the commissioner through NMLS the following:**

**(1) The individual's fingerprints for submission to the Federal Bureau of Investigation and the commissioner for purposes of a national criminal history background check unless the person currently resides outside of the United States and has resided outside of the United States for the last ten years; and**

**(2) Personal history and experience in a form and in a medium prescribed by the commissioner, to obtain the following:**

**(a) An independent credit report from a consumer reporting agency unless the individual does not have a Social Security number, in which case, this requirement shall be waived;**

**(b) Whether the individual has been convicted of or pled guilty or nolo contendere to a felony involving an act of fraud, dishonesty, or a breach of trust or money laundering; and**

**(c) Information related to any regulatory or administrative action and any civil litigation involving claims of fraud, misrepresentation, conversion, mismanagement of funds, breach of fiduciary duty, or breach of contract.**

**2. If the individual has resided outside of the United States at any time in the last ten years, the individual shall also provide an investigative background report prepared by an independent search firm that meets the following requirements:**

**(1) At a minimum, the search firm shall:**

**(a) Demonstrate that it has sufficient knowledge and resources and employs accepted and reasonable methodologies to conduct the research of the background report; and**

**(b) Not be affiliated with or have an interest with the individual it is researching; and**

**(2) At a minimum, the investigative background report shall be written in the English language and shall contain the following:**

**(a) If available in the individual's current jurisdiction of residency, a comprehensive credit report, or any equivalent information obtained or generated by the independent search firm to accomplish such report, including a search of the court data in the countries, provinces, states, cities, towns, and contiguous areas where the individual resided and worked;**

**(b) Criminal records information for the past ten years including, but not limited to, felonies, misdemeanors, or similar convictions for violations of law in the countries, provinces, states, cities, towns, and contiguous areas where the individual resided and worked;**

**(c) Employment history;**

**(d) Media history, including an electronic search of national and local publications, wire services, and business applications; and**

**(e) Financial services-related regulatory history including but not limited to, money transmission, securities, banking, insurance, and mortgage-related industries.**

**361.942. 1. If an application for an original license under sections 361.900 to 361.1035 appears to include all the items and addresses and all of the matters that are required, the application is complete and the commissioner shall promptly notify the applicant in a record of the date on which the application is determined to be complete, and:**

**(1) The commissioner shall approve or deny the application within one hundred twenty days after the completion date; or**

**(2) If the application is not approved or denied within one hundred twenty days after the completion date:**

**(a) The application is approved; and**

**(b) The license takes effect as of the first business day after expiration of the one hundred twenty-day period.**

**The commissioner may for good cause extend the application period.**

**2. A determination by the commissioner that an application is complete and is accepted for processing means only that the application, on its face, appears to include all of the items, including the Criminal Background Check response from the Federal Bureau of Investigation, and address all of the matters that are required, and is not an assessment of the substance of the application or of the sufficiency of the information provided.**

**3. If an application is filed and considered complete under this section, the commissioner shall investigate the applicant's financial condition and responsibility, financial and business experience, character, and general fitness. The commissioner may conduct an onsite investigation of the applicant, the reasonable cost of which the applicant shall pay. The commissioner shall issue a license to an applicant under this section if the commissioner finds that all of the following conditions have been fulfilled:**

**(1) The applicant has complied with the provisions of sections 361.929 and 361.936; and**

**(2) The financial condition and responsibility, financial and business experience, competence, character, and general fitness of the applicant; and the competence, experience, character, and general fitness of the key individuals and persons in control of the applicant indicate that it is in the interest of the public to permit the applicant to engage in money transmission.**

**4. If an applicant avails itself or is otherwise subject to a multistate licensing process:**

**(1) The commissioner shall be authorized to accept the investigation results of a lead investigative state for the purpose of subsection 3 of this section if the lead investigative state has sufficient staffing, expertise, and minimum standards; or**

**(2) If this state is a lead investigative state, the commissioner shall be authorized to investigate the applicant under subsection 3 of this section and the time frames established by agreement through the multistate licensing process, provided however, that in no case shall such time frame be noncompliant with the application period in subdivision (1) of subsection 1 of this section.**

**5. The commissioner shall issue a formal written notice of the denial of a license application within thirty days of the decision to deny the application. The commissioner shall set forth in the notice of denial the specific reasons for the denial of the application. An applicant whose application is denied by the commissioner under this subsection may appeal within thirty days after receipt of the written notice of the denial under chapter 536.**

**6. The initial license term shall begin on the day the application is approved. The license shall expire on December thirty-first of the year in which the license term began unless the initial license date is between November first and December thirty-first, in which instance the initial license term shall run through December thirty-first of the following year.**

**361.945. 1. A license under sections 361.900 to 361.1035 shall be renewed annually. An annual renewal fee to be determined by the commissioner shall be paid no more than sixty days before the license expiration. The renewal term shall be for a period of one year and shall begin on January first of each year after the initial license term and shall expire on December thirty-first of the year the renewal term begins.**

**2. A licensee shall submit a renewal report with the renewal fee, in a form and in a medium prescribed by the commissioner. The renewal report shall state or contain a description of each material change in information submitted by the licensee in its original license application that has not been reported to the commissioner.**

**3. The commissioner for good cause may grant an extension of the renewal date.**

**4. The commissioner shall be authorized to utilize NMLS to process license renewals provided that such functionality is consistent with this section.**

**361.948. 1. If a licensee does not continue to meet the qualifications or satisfy the requirements that apply to an applicant for a new money transmission license, the commissioner may suspend or revoke the licensee's license in accordance with the procedures established under sections 361.900 to 361.1035 or other applicable state law for such suspension or revocation.**

**2. An applicant for a money transmission license shall demonstrate that it meets or will meet, and a money transmission licensee shall at all times meet, the requirements in sections 361.999, 361.1002, and 361.1005.**

**361.951. 1. Any person, or group of persons acting in concert, seeking to acquire control of a licensee shall obtain the written approval of the commissioner prior to acquiring control. An individual is not deemed to acquire control of a licensee and is not subject to the acquisition of control provisions when that individual becomes a key individual in the ordinary course of business.**

**2. A person, or group of persons acting in concert, seeking to acquire control of a licensee shall, in cooperation with the licensee:**

**(1) Submit an application in a form and in a medium prescribed by the commissioner; and**

**(2) Submit a nonrefundable fee to be determined by the commissioner with the request for approval.**

**3. Upon request, the commissioner may permit a licensee or a person, or group of persons acting in concert, to submit some or all information required by the commissioner under subdivision (1) of subsection 2 of this section without using NMLS.**

**4. The application required under subdivision (1) of subsection 2 of this section shall include information required under section 361.939 for any new key individuals that have not previously completed the requirements of section 361.939 for a licensee.**

**5. When an application for acquisition of control under this section appears to include all the items and address all of the matters that are required, the application shall be considered complete. The commissioner shall promptly notify the applicant in a record of the date on which the application was determined to be complete, and:**

**(1) The commissioner shall approve or deny the application within sixty days after the completion date; or**

**(2) If the application is not approved or denied within sixty days after the completion date:**

**(a) The application is approved; and**

**(b) The person, or group of persons acting in concert, are not prohibited from acquiring control; and**

**(3) The commissioner may for good cause extend the application period.**

**6. A determination by the commissioner that an application is complete and is accepted for processing means only that the application, on its face, appears to include all of the items and**



address all of the matters that are required, and is not an assessment of the substance of the application or of the sufficiency of the information provided.

7. If an application is filed and considered complete under subsection 5 of this section, the commissioner shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the person, or group of persons acting in concert, seeking to acquire control. The commissioner shall approve an acquisition of control under this section if the commissioner finds that all of the following conditions have been fulfilled:

(1) The requirements of subsections 2 and 4 of this section have been met, as applicable; and

(2) The financial condition and responsibility, financial and business experience, competence, character, and general fitness of the person, or group of persons acting in concert, seeking to acquire control and the competence, experience, character, and general fitness of the key individuals and persons that would be in control of the licensee after the acquisition of control indicate that it is in the interest of the public to permit the person, or group of persons acting in concert, to control the licensee.

8. If an applicant avails itself or is otherwise subject to a multistate licensing process:

(1) The commissioner is authorized to accept the investigation results of a lead investigative state for the purpose of subsection 7 of this section if the lead investigative state has sufficient staffing, expertise, and minimum standards; or

(2) If this state is a lead investigative state, the commissioner is authorized to investigate the applicant under subsection 7 of this section and the time frames established by agreement through the multistate licensing process.

9. The commissioner shall issue a formal written notice of the denial of an application to acquire control within thirty days of the decision to deny the application. The commissioner shall set forth in the notice of denial the specific reasons for the denial of the application. An applicant whose application is denied by the commissioner under this subsection may appeal within thirty days after receipt of the written notice of the denial under chapter 536.

10. The requirements of subsections 1 and 2 of this section shall not apply to any of the following:

(1) A person that acts as a proxy for the sole purpose of voting at a designated meeting of the shareholders or holders of voting shares or voting interests of a licensee or a person in control of a licensee;

(2) A person that acquires control of a licensee by devise or descent;

**(3) A person that acquires control of a licensee as a personal representative, custodian, guardian, conservator, or trustee, or as an officer appointed by a court of competent jurisdiction or by operation of law;**

**(4) A person that is exempt under subsection 7 of section 361.909;**

**(5) A person that the commissioner determines is not subject to subsection 1 of this section based on the public interest;**

**(6) A public offering of securities of a licensee or a person in control of a licensee; or**

**(7) An internal reorganization of a person in control of the licensee where the ultimate person in control of the licensee remains the same.**

**11. Persons in subdivisions (2), (3), (4), (6), and (7) of subsection 10 of this section in cooperation with the licensee shall notify the commissioner within fifteen days after the acquisition of control.**

**12. (1) The requirements of subsections 1 and 2 of this section shall not apply to a person that has complied with and received approval to engage in money transmission under sections 361.900 to 361.1035 or was identified as a person in control in a prior application filed with and approved by the commissioner or by another state under a multistate licensing process, provided that:**

**(a) The person has not had a license revoked or suspended or controlled a licensee that has had a license revoked or suspended while the person was in control of the licensee in the previous five years;**

**(b) If the person is a licensee, the person is well managed and has received at least a satisfactory rating for compliance at its most recent examination by another state if such rating was given;**

**(c) The licensee to be acquired is projected to meet the requirements of sections 361.999, 361.1002, and 361.1005 after the acquisition of control is completed, and if the person acquiring control is a licensee, that licensee is also projected to meet the requirements of sections 361.999, 361.1002, and 361.1005 after the acquisition of control is completed;**

**(d) The licensee to be acquired will not implement any material changes to its business plan as a result of the acquisition of control, and if the person acquiring control is a licensee, that licensee also will not implement any material changes to its business plan as a result of the acquisition of control; and**

**(e) The person provides notice of the acquisition in cooperation with the licensee and attests to paragraphs (a) to (d) of this subdivision in a form and in a medium prescribed by the commissioner.**

**(2) If the notice is not disapproved within thirty days after the date on which the notice was determined to be complete, the notice is deemed approved.**

**13. Before filing an application for approval to acquire control of a licensee, a person may request in writing a determination from the commissioner as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the commissioner determines that the person would not be a person in control of a licensee, the proposed person and transaction is not subject to the requirements of subsections 1 and 2 of this subsection.**

**14. If a multistate licensing process includes a determination under subsection 13 of this section and an applicant avails itself or is otherwise subject to the multistate licensing process:**

**(1) The commissioner is authorized to accept the control determination of a lead investigative state with sufficient staffing, expertise, and minimum standards for the purpose of subsection 13 of this section; or**

**(2) If this state is a lead investigative state, the commissioner is authorized to investigate the applicant under subsection 13 of this section and the time frames established by agreement through the multistate licensing process.**

**361.954. 1. A licensee adding or replacing any key individual shall:**

**(1) Provide notice in a manner prescribed by the commissioner within fifteen days after the effective date of the key individual's appointment; and**

**(2) Provide information as required by section 361.939 within forty-five days of the effective date.**

**2. Within ninety days of the date on which the notice provided under subsection 1 of this section was determined to be complete, the commissioner may issue a notice of disapproval of a key individual if the competence, experience, character, or integrity of the individual would not be in the best interests of the public or the customers of the licensee to permit the individual to be a key individual of such licensee.**

**3. A notice of disapproval shall contain a statement of the basis for disapproval and shall be sent to the licensee and the disapproved individual. A licensee may appeal a notice of disapproval under chapter 536 within thirty days after receipt of such notice of disapproval.**

**4. If the notice provided under subsection 1 of this section is not disapproved within ninety days after the date on which the notice was determined to be complete, the key individual is deemed approved.**

**5. If a multistate licensing process includes a key individual notice review and disapproval process under this section and the licensee avails itself or is otherwise subject to the multistate licensing process:**

**(1) The commissioner is authorized to accept the determination of another state if the investigating state has sufficient staffing, expertise, and minimum standards for the purpose of this section; or**

**(2) If this state is a lead investigative state, the commissioner is authorized to investigate the applicant under subsection 2 of this section and the time frames established by agreement through the multistate licensing process.**

**361.957. 1. Each licensee shall submit a report of condition within forty days of the end of the calendar quarter or within any extended time as the commissioner may prescribe.**

**2. The report of condition shall include:**

**(1) Financial information at the licensee level;**

**(2) Nationwide and state-specific money transmission transaction information in every jurisdiction in the United States where the licensee is licensed to engage in money transmission;**

**(3) Permissible investments report;**

**(4) Transaction destination country reporting for money received for transmission, if applicable; and**

**(5) Any other information the commissioner reasonably requires with respect to the licensee. The commissioner is authorized to utilize NMLS for the submission of the report required by subsection 1 of this section and is authorized to update as necessary the requirements of this section to carry out the purposes of sections 361.900 to 361.1035 and maintain consistency with NMLS reporting.**

**3. The information required under subdivision (4) of subsection 2 of this section shall be included only in a report of condition submitted within forty-five days of the end of the fourth calendar quarter.**

**361.960. 1. Each licensee shall, within ninety days after the end of each fiscal year or within any extended time as the commissioner may prescribe, file with the commissioner:**

**(1) An audited financial statement of the licensee for the fiscal year prepared in accordance with United States generally accepted accounting principles; and**

**(2) Any other information as the commissioner may reasonably require.**

**2. The audited financial statement shall be prepared by an independent certified public accountant or independent public accountant who is satisfactory to the commissioner.**

**3. The audited financial statements shall include or be accompanied by a certificate of opinion of the independent certified public accountant or independent public accountant that is satisfactory**

**in form and content to the commissioner. If the certificate or opinion is qualified, the commissioner may order the licensee to take any action as the commissioner may find necessary to enable the independent certified public accountant or independent public accountant to remove the qualification.**

**361.963. 1. Each licensee shall submit a report of authorized delegates within forty-five days of the end of the calendar quarter. The commissioner is authorized to utilize NMLS for the submission of the report required under this section, provided that such functionality is consistent with the requirements of this section.**

**2. The authorized delegate report shall include, at a minimum, each authorized delegate's:**

**(1) Company legal name;**

**(2) Taxpayer employer identification number;**

**(3) Principal provider identifier;**

**(4) Physical address, if any;**

**(5) Mailing address;**

**(6) Any business conducted in other states;**

**(7) Any fictitious or trade name;**

**(8) Contact person name, phone number, and email;**

**(9) Start date as licensee's authorized delegate;**

**(10) End date acting as licensee's authorized delegate, if applicable; and**

**(11) Any other information the commissioner reasonably requires with respect to the authorized delegate.**

**361.966. 1. A licensee shall file a report with the commissioner within one business day after the licensee has reason to know of the occurrence of any of the following events:**

**(1) The filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. Section 101-110, as amended or recodified from time to time, for bankruptcy or reorganization;**

**(2) The filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors; or**

**(3) The commencement of a proceeding to revoke or suspend its license in a state or country in which the licensee engages in business or is licensed.**

**2. A licensee shall notify the commissioner within three business days after the licensee has reason to know that:**

**(1) The licensee, or a key individual or person in control of the licensee, has been convicted of or pled guilty or nolo contendere to a felony involving an act of fraud, dishonesty, or a breach of trust or money laundering; or**

**(2) An authorized delegate has been convicted of or pled guilty or nolo contendere to a felony involving an act of fraud, dishonesty, or a breach of trust or money laundering.**

**361.969. A licensee and an authorized delegate shall file all reports required by federal currency reporting, record keeping, and suspicious activity reporting requirements as set forth in the Bank Secrecy Act and other federal and state laws pertaining to money laundering. The timely filing of a complete and accurate report required under this section with the appropriate federal agency is deemed compliant with the requirements of this section.**

**361.972. 1. A licensee shall maintain the following records for determining its compliance with sections 361.900 to 361.1035 for at least three years:**

**(1) A record of each outstanding money transmission obligation sold;**

**(2) A general ledger posted at least monthly containing all asset, liability, capital, income, and expense accounts;**

**(3) Bank statements and bank reconciliation records;**

**(4) Records of outstanding money transmission obligations;**

**(5) Records of each outstanding money transmission obligation paid within the three-year period;**

**(6) A list of the last known names and addresses of all of the licensee's authorized delegates; and**

**(7) Any other records the commissioner reasonably requires by rule.**

**2. The items specified in subsection 1 of this section may be maintained in any form of record.**

**3. Records specified in subsection 1 of this section may be maintained outside this state if the records are made accessible to the commissioner on seven business-days' notice that is sent in a record.**

**4. All records maintained by the licensee as required in subsections 1 to 3 of this section are open to inspection by the commissioner under subsection 1 of section 361.921.**

**361.975. 1. As used in this section, “remit” means to make direct payments of money to a licensee or its representative authorized to receive money or to deposit money in a bank in an account specified by the licensee.**

**2. Before a licensee is authorized to conduct business through an authorized delegate, or allows a person to act as the licensee’s authorized delegate, the licensee shall:**

**(1) Adopt, and update as necessary, written policies and procedures reasonably designed to ensure that the licensee’s authorized delegates comply with applicable state and federal law;**

**(2) Enter into a written contract that complies with subsection 4 of this section; and**

**(3) Conduct a reasonable risk-based background investigation sufficient for the licensee to determine whether the authorized delegate has complied and will likely comply with applicable state and federal law.**

**3. An authorized delegate shall operate in full compliance with sections 361.900 to 361.1035.**

**4. The written contract required under subsection 2 of this section shall be signed by the licensee and the authorized delegate and, at a minimum, shall:**

**(1) Appoint the person signing the contract as the licensee’s authorized delegate with the authority to conduct money transmission on behalf of the licensee;**

**(2) Set forth the nature and scope of the relationship between the licensee and the authorized delegate and the respective rights and responsibilities of the parties;**

**(3) Require the authorized delegate to agree to fully comply with all applicable state and federal laws, rules, and regulations pertaining to money transmission, including sections 361.900 to 361.1035 and regulations implementing sections 361.900 to 361.1035, relevant provisions of the Bank Secrecy Act, and the USA PATRIOT Act;**

**(4) Require the authorized delegate to remit and handle money and monetary value in accordance with the terms of the contract between the licensee and the authorized delegate;**

**(5) Impose a trust on money and monetary value net of fees received for money transmission for the benefit of the licensee;**

**(6) Require the authorized delegate to prepare and maintain records as required by sections 361.900 to 361.1035 or regulations implementing sections 361.900 to 361.1035, or as reasonably requested by the commissioner;**

**(7) Acknowledge that the authorized delegate consents to examination or investigation by the commissioner;**

**(8) State that the licensee is subject to regulation by the commissioner and that, as part of that regulation, the commissioner may suspend or revoke an authorized delegate designation or require the licensee to terminate an authorized delegate designation; and**

**(9) Acknowledge receipt of the written policies and procedures required under subdivision (1) of subsection 1 of this section.**

**5. If the licensee's license is suspended, revoked, surrendered, or expired, the licensee shall, within five business days, provide documentation to the commissioner that the licensee has notified all applicable authorized delegates of the licensee whose names are in a record filed with the commissioner of the suspension, revocation, surrender, or expiration of a license. Upon suspension, revocation, surrender, or expiration of a license, applicable authorized delegates shall immediately cease to provide money transmission as an authorized delegate of the licensee.**

**6. An authorized delegate of a licensee holds in trust for the benefit of the licensee all money net of fees received from money transmission. If any authorized delegate commingles any funds received from money transmission with any other funds or property owned or controlled by the authorized delegate, all commingled funds and other property shall be considered held in trust in favor of the licensee in an amount equal to the amount of money net of fees received from money transmission.**

**7. An authorized delegate shall not use a subdelegate to conduct money transmission on behalf of a licensee.**

**361.978. A person shall not engage in the business of money transmission on behalf of a person not licensed under sections 361.900 to 361.1035 or not exempt under sections 361.909 and 361.912. A person that engages in such activity provides money transmission to the same extent as if the person were a licensee and shall be jointly and severally liable with the unlicensed or nonexempt person.**

**361.981. 1. The circuit court in an action brought by a licensee shall have jurisdiction to grant appropriate equitable or legal relief, including without limitation prohibiting the authorized delegate from directly or indirectly acting as an authorized delegate for any licensee in this state and the payment of restitution, damages, or other monetary relief, if the circuit court finds that an authorized delegate failed to remit money in accordance with the written contract required by subsection 2 of section 361.1275 or as otherwise directed by the licensee or required by law.**

**2. If the circuit court issues an order prohibiting a person from acting as an authorized delegate for any licensee under subsection 1 of this section, the licensee that brought the action shall report the order to the commissioner within thirty days and shall report the order through NMLS within ninety days.**



**3. An authorized delegate who holds money in trust for the benefit of a licensee and knowingly fails to remit more than one thousand dollars of such money is guilty of a class E felony.**

**4. An authorized delegate who holds money in trust for the benefit of a licensee and knowingly fails to remit no more than one thousand dollars of such money is guilty of a class A misdemeanor.**

**361.984. 1. Every licensee shall forward all money received for transmission in accordance with the terms of the agreement between the licensee and the sender unless the licensee has a reasonable belief or a reasonable basis to believe that the sender may be a victim of fraud or that a crime or violation of law, rule, or regulation has occurred, is occurring, or may occur.**

**2. If a licensee fails to forward money received for transmission in accordance with this section, the licensee shall respond to inquiries by the sender with the reason for the failure unless providing a response would violate a state or federal law, rule, or regulation.**

**361.987. 1. This section shall not apply to:**

**(1) Money received for transmission subject to the federal Remittance Rule, 12 C.F.R. Part 1005, Subpart B, as amended or recodified from time to time; or**

**(2) Money received for transmission under a written agreement between the licensee and payee to process payments for goods or services provided by the payee.**

**2. Every licensee shall refund to the sender within ten days of receipt of the sender's written request for a refund any and all money received for transmission unless any of the following occurs:**

**(1) The money has been forwarded within ten days of the date on which the money was received for transmission;**

**(2) Instructions have been given committing an equivalent amount of money to the person designated by the sender within ten days of the date on which the money was received for transmission;**

**(3) The agreement between the licensee and the sender instructs the licensee to forward the money at a time that is beyond ten days of the date on which the money was received for transmission. If funds have not yet been forwarded in accordance with the terms of the agreement between the licensee and the sender, the licensee shall issue a refund in accordance with the other provisions of this section;**

**(4) The refund is requested for a transaction that the licensee has not completed based on a reasonable belief or a reasonable basis to believe that a crime or violation of law, rule, or regulation has occurred, is occurring, or may occur; or**

**(5) The refund request does not enable the licensee to:**

**(a) Identify the sender's name and address or telephone number; or**

**(b) Identify the particular transaction to be refunded in the event the sender has multiple transactions outstanding.**

**361.990. 1. This section shall not apply to:**

**(1) Money received for transmission subject to the federal Remittance Rule, 12 C.F.R. Part 1005, Subpart B, as amended or recodified from time to time;**

**(2) Money received for transmission that is not primarily for personal, family, or household purposes;**

**(3) Money received for transmission under a written agreement between the licensee and payee to process payments for goods or services provided by the payee; or**

**(4) Payroll processing services.**

**2. For purposes of this section, "receipt" means a paper receipt, electronic record, or other written confirmation. For a transaction conducted in person, the receipt may be provided electronically if the sender requests or agrees to receive an electronic receipt. For a transaction conducted electronically or by phone, a receipt may be provided electronically. All electronic receipts shall be provided in a retainable form.**

**3. (1) Every licensee or its authorized delegate shall provide the sender a receipt for money received for transmission. The receipt shall contain the following information, as applicable:**

**(a) The name of the sender;**

**(b) The name of the designated recipient;**

**(c) The date of the transaction;**

**(d) The unique transaction or identification number;**

**(e) The name of the licensee, NMLS unique identifier, the licensee's business address, and the licensee's customer service telephone number;**

**(f) The amount of the transaction in United States dollars;**

**(g) Any fee charged by the licensee to the sender for the transaction; and**

**(h) Any taxes collected by the licensee from the sender for the transaction.**

**(2) The receipt required by this section shall be in English and in the language principally used by the licensee or authorized delegate to advertise, solicit, or negotiate, either orally or in writing, for a transaction conducted in person, electronically, or by phone, if other than English.**

**361.996. 1. A licensee that provides payroll processing services shall:**

**(1) Issue reports to clients detailing client payroll obligations in advance of the payroll funds being deducted from an account; and**

**(2) Make available worker paystubs or an equivalent statement to workers.**

**2. Subsection 1 of this section shall not apply to a licensee providing payroll processing services if the licensee's client designates the intended recipients to the licensee and is responsible for providing the disclosures required by subdivision (2) of subsection 1 of this section.**

**361.999. 1. A licensee under sections 361.900 to 361.1035 shall maintain at all times a tangible net worth of the greater of one hundred thousand dollars or three percent of total assets for the first one hundred million dollars, two percent of additional assets for one hundred million dollars to one billion dollars, and one-half of one percent of additional assets for over one billion dollars.**

**2. Tangible net worth shall be demonstrated at initial application by the applicant's most recent audited or unaudited financial statements under subdivision (6) of subsection 2 of section 361.936.**

**361.1002. 1. An applicant for a money transmission license shall provide, and a licensee at all times shall maintain, security consisting of a surety bond in a form satisfactory to the commissioner.**

**2. The amount of the required security shall be:**

**(1) The greater of one hundred thousand dollars or an amount equal to one hundred percent of the licensee's average daily money transmission liability in this state calculated for the most recently completed three-month period, up to a maximum of five hundred thousand dollars; or**

**(2) In the event that the licensee's tangible net worth exceeds ten percent of the total assets, a surety bond of one hundred thousand dollars.**

**3. A licensee that maintains a bond in the maximum amount provided for in subsection 2 of this section shall not be required to calculate its average daily money transmission liability in this state for purposes of this section.**

**361.1005. 1. A licensee shall maintain at all times permissible investments that have a market value computed in accordance with United States generally accepted accounting principles of not less than the aggregate amount of all of its outstanding money transmission obligations.**

**2. Except for permissible investments enumerated in subsection 1 of section 361.1008, the commissioner, with respect to any licensee, may by rule limit the extent to which a specific investment maintained by a licensee within a class of permissible investments may be considered a permissible investment if the specific investment represents undue risk to customers not reflected in the market value of investments.**

**3. Permissible investments, even if commingled with other assets of the licensee, are held in trust for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations in the event of insolvency, the filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. Section 101-110, as amended or recodified from time to time, for bankruptcy or reorganization, the filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or in the event of an action by a creditor against the licensee who is not a beneficiary of the statutory trust. No permissible investments impressed with a trust under this subsection shall be subject to attachment, levy of execution, or sequestration by order of any court, except for a beneficiary of the statutory trust.**

**4. Upon the establishment of a statutory trust in accordance with subsection 3 of this section or when any funds are drawn on a letter of credit under subdivision (4) of subsection 1 of section 361.1008, the commissioner shall notify the applicable regulator of each state in which the licensee is licensed to engage in money transmission, if any, of the establishment of the trust or the funds drawn on the letter of credit, as applicable. Notice shall be deemed satisfied if performed under a multistate agreement or through NMLS. Funds drawn on a letter of credit, and any other permissible investments held in trust for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations, are deemed held in trust for the benefit of such purchasers and holders on a pro rata and equitable basis in accordance with statutes under which permissible investments are required to be held in this state, and other states, as applicable. Any statutory trust established under this subsection shall be terminated upon extinguishment of all of the licensee's outstanding money transmission obligations.**

**5. The commissioner by rule or by order may allow other types of investments that the commissioner determines are of sufficient liquidity and quality to be a permissible investment. The commissioner is authorized to participate in efforts with other state regulators to determine that other types of investments are of sufficient liquidity and quality to be a permissible investment.**

**361.1008. 1. The following investments are permissible under section 361.1005:**

**(1) Cash, including demand deposits, savings deposits, and funds in such accounts held for the benefit of the licensee's customers in a federally insured depository financial institution, and cash equivalents, including automated clearing house items in transit to the licensee and automated clearing house items or international wires in transit to a payee, cash in transit via armored car, cash in smart safes, cash in licensee-owned locations, debit card or credit card-funded transmission receivables owed by any bank, or money market mutual funds rated AAA by Standard & Poor's, or the equivalent from any eligible rating service;**

**(2) Certificates of deposit or senior debt obligations of an insured depository institution, as defined under the Federal Deposit Insurance Act, 12 U.S.C. Section 1813, as amended or recodified**

from time to time, or as defined under the federal Credit Union Act, 12 U.S.C. Section 1781, as amended or recodified from time to time;

(3) An obligation of the United States or a commission, agency, or instrumentality thereof; an obligation that is guaranteed fully as to principal and interest by the United States; or an obligation of a state or a governmental subdivision, agency, or instrumentality thereof;

(4) One hundred percent of the surety bond provided for under section 361.1002 that exceeds the average daily money transmission liability in this state; and

(5) The full drawable amount of an irrevocable standby letter of credit for which the stated beneficiary is the commissioner that stipulates that the beneficiary need draw only a sight draft under the letter of credit and present it to obtain funds up to the letter of credit amount within seven days of presentation of the items required by paragraph (d) of this subdivision. The letter of credit shall:

(a) Be issued by a federally insured depository financial institution, a foreign bank that is authorized under federal law to maintain a federal agency or federal branch office in a state or states, or a foreign bank that is authorized under state law to maintain a branch in a state that:

a. Bears an eligible rating or whose parent company bears an eligible rating; and

b. Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks, credit unions, and trust companies;

(b) Be irrevocable, unconditional, and indicate that it is not subject to any condition or qualifications outside of the letter of credit;

(c) Not contain references to any other agreements, documents or entities, or otherwise provide for any security interest in the licensee; and

(d) Contain an issue date and expiration date, and expressly provide for automatic extension, without a written amendment, for an additional period of one year from the present or each future expiration date unless the issuer of the letter of credit notifies the commissioner in writing by certified or registered mail or courier mail or other receipted means, at least sixty days prior to any expiration date, that the irrevocable letter of credit will not be extended.

2. In the event of any notice of expiration or nonextension of a letter of credit issued under paragraph (d) of subdivision (4) of subsection 1 of this section, the licensee shall be required to demonstrate to the satisfaction of the commissioner, fifteen days prior to expiration, that the licensee maintains and will maintain permissible investments in accordance with subsection 1 of section 361.1005 upon the expiration of the letter of credit. If the licensee is not able to do so, the commissioner may draw on the letter of credit in an amount up to the amount necessary to meet the licensee's requirements to maintain permissible investments in accordance with subsection 1 of

**section 361.1005. Any such draw shall be offset against the licensee's outstanding money transmission obligations. The drawn funds shall be held in trust by the commissioner or the commissioner's designated agent, to the extent authorized by law, as agent for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations.**

**3. The letter of credit shall provide that the issuer of the letter of credit will honor, at sight, a presentation made by the beneficiary to the issuer of the following documents on or prior to the expiration date of the letter of credit:**

**(1) The original letter of credit, including any amendments; and**

**(2) A written statement from the beneficiary stating that any of the following events have occurred:**

**(a) The filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. Section 101-110, as amended or recodified from time to time, for bankruptcy or reorganization;**

**(b) The filing of a petition by or against the licensee for receivership, or the commencement of any other judicial or administrative proceeding for its dissolution or reorganization;**

**(c) The seizure of assets of a licensee by the commissioner under an emergency order issued in accordance with applicable law, on the basis of an action, violation, or condition that has caused or is likely to cause the insolvency of the licensee; or**

**(d) The beneficiary has received notice of expiration or nonextension of a letter of credit and the licensee failed to demonstrate to the satisfaction of the beneficiary that the licensee will maintain permissible investments in accordance with subsection 1 of section 361.1005 upon the expiration or nonextension of the letter of credit.**

**4. The commissioner may designate an agent to serve on the commissioner's behalf as beneficiary to a letter of credit so long as the agent and letter of credit meet requirements established by the commissioner. The commissioner's agent may serve as agent for multiple licensing authorities for a single irrevocable letter of credit if the proceeds of the drawable amount for the purposes of this subsection are assigned to the commissioner.**

**5. The commissioner is authorized to participate in multistate processes designed to facilitate the issuance and administration of letters of credit including, but not limited to, services provided by the NMLS, State Regulatory Registry LLC, or other third parties.**

**6. Unless permitted by the commissioner by rule or by order to exceed the limit as set forth herein, the following investments are permissible under section 361.1005 to the extent specified:**

**(1) Receivables that are payable to a licensee from its authorized delegates in the ordinary course of business that are less than seven days old, up to fifty percent of the aggregate value of the licensee's total permissible investments. Of the receivables permissible under this subdivision, receivables that are payable to a licensee from a single authorized delegate in the ordinary course of business shall not exceed ten percent of the aggregate value of the licensee's total permissible investments;**

**(2) The following investments, up to twenty percent per category and combined up to fifty percent of the aggregate value of the licensee's total permissible investments:**

**(a) A short-term investment bearing an eligible rating. For purposes of this paragraph, "short-term" means up to six months;**

**(b) Commercial paper bearing an eligible rating;**

**(c) A bill, note, bond, or debenture bearing an eligible rating;**

**(d) United States triparty repurchase agreements collateralized at one hundred percent or more with United States government or agency securities, municipal bonds, or other securities bearing an eligible rating;**

**(e) Money market mutual funds rated less than "AAA" and equal to or higher than "A-" by Standard & Poor's, or the equivalent from any other eligible rating service; and**

**(f) A mutual fund or other investment fund composed solely and exclusively of one or more permissible investments listed in subdivisions (1) to (3) of subsection 1 of this section; and**

**(3) Cash, including demand deposits, savings deposits, and funds in such accounts held for the benefit of the licensee's customers, at foreign depository institutions to ten percent of the aggregate value of the licensee's total permissible investments if the licensee has received a satisfactory rating in its most recent examination and the foreign depository institution:**

**(a) Has an eligible rating;**

**(b) Is registered under the Foreign Account Tax Compliance Act;**

**(c) Is not located in any country subject to sanctions from the Office of Foreign Asset Control; and**

**(d) Is not located in a high risk or noncooperative jurisdiction as designated by the Financial Action Task Force.**

**361.1011. 1. The commissioner may suspend or revoke a license or order a licensee to revoke the designation of an authorized delegate if:**

**(1) The licensee violates sections 361.900 to 361.1035 or a rule adopted or an order issued under sections 361.900 to 361.1035;**

**(2) The licensee does not cooperate with an examination or investigation by the commissioner;**

**(3) The licensee engages in fraud, intentional misrepresentation, or gross negligence;**

**(4) An authorized delegate is convicted of or enters a plea of guilty or nolo contendere to a felony involving an act of fraud, dishonesty, or a breach of trust or money laundering or violates a rule adopted or an order issued under sections 361.900 to 361.1035 as a result of the licensee's willful misconduct or willful blindness;**

**(5) The competence, experience, character, or general fitness of the licensee, authorized delegate, person in control of a licensee, key individual, or responsible person of the authorized delegate indicates that it is not in the public interest to permit the person to provide money transmission;**

**(6) The licensee engages in an unsafe or unsound practice;**

**(7) The licensee is insolvent, suspends payment of its obligations, or makes a general assignment for the benefit of its creditors; or**

**(8) The licensee does not remove an authorized delegate after the commissioner issues and serves upon the licensee a final order including a finding that the authorized delegate has violated sections 361.900 to 361.1035.**

**2. In determining whether a licensee is engaging in an unsafe or unsound practice, the commissioner may consider the size and condition of the licensee's money transmission, the magnitude of the loss, the gravity of the violation of sections 361.900 to 361.1035, and the previous conduct of the person involved.**

**361.1014. 1. The commissioner may issue an order suspending or revoking the designation of an authorized delegate, if the commissioner finds that:**

**(1) The authorized delegate violated sections 361.900 to 361.1035 or a rule adopted or an order issued under sections 361.900 to 361.1035;**

**(2) The authorized delegate did not cooperate with an examination or investigation by the commissioner;**

**(3) The authorized delegate engaged in fraud, intentional misrepresentation, or gross negligence;**

**(4) The authorized delegate has been convicted of or pled guilty or nolo contendere to a felony involving an act of fraud, dishonesty, or a breach of trust or money laundering;**



**(5) The competence, experience, character, or general fitness of the authorized delegate or a person in control of the authorized delegate indicates that it is not in the public interest to permit the authorized delegate to provide money transmission; or**

**(6) The authorized delegate is engaging in an unsafe or unsound practice.**

**2. In determining whether an authorized delegate is engaging in an unsafe or unsound practice, the commissioner may consider the size and condition of the authorized delegate's provision of money transmission, the magnitude of the loss, the gravity of the violation of sections 361.900 to 361.1035 or a rule adopted or order issued under sections 361.900 to 361.1035, and the previous conduct of the authorized delegate.**

**3. An authorized delegate may apply for relief from a suspension or revocation of designation as an authorized delegate according to procedures prescribed by the commissioner.**

**361.1017. 1. If the commissioner determines that a violation of sections 361.900 to 361.1035 or of a rule adopted or an order issued under sections 361.900 to 361.1035 by a licensee or authorized delegate is likely to cause immediate and irreparable harm to the licensee, its customers, or the public as a result of the violation, or cause insolvency or significant dissipation of assets of the licensee, the commissioner may issue an order requiring the licensee or authorized delegate to cease and desist from the violation. The order becomes effective upon service to the licensee or authorized delegate.**

**2. The commissioner may issue an order against a licensee to cease and desist from providing money transmission through an authorized delegate that is the subject of a separate order by the commissioner.**

**3. An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding under chapter 536.**

**4. A licensee or an authorized delegate that is served with an order to cease and desist may petition the circuit court with jurisdiction for a judicial order setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of an administrative proceeding under chapter 536.**

**5. An order to cease and desist expires unless the commissioner commences an administrative proceeding under chapter 536 within ten days after it is issued.**

**361.1020. The commissioner may enter into a consent order at any time with a person to resolve a matter arising under sections 361.900 to 361.1035 or a rule adopted or order issued under sections 361.900 to 361.1035. A consent order shall be signed by the person to whom it is issued or by the person's authorized representative and shall indicate agreement with the terms contained in the order. A consent order may provide that it does not constitute an admission by a person that sections**

**361.900 to 361.1035 or a rule adopted or an order issued under sections 361.900 to 361.1035 has been violated.**

**361.1023. 1. A person that intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained under sections 361.900 to 361.1035 or that intentionally makes a false entry or omits a material entry in such a record is guilty of a class E felony.**

**2. A person that knowingly engages in an activity for which a license is required under sections 361.900 to 361.1035 without being licensed under sections 361.900 to 361.1035 and who receives more than five hundred dollars in compensation within a thirty-day period for this activity is guilty of a class E felony.**

**3. A person that knowingly engages in an activity for which a license is required under sections 361.900 to 361.1035 without being licensed under sections 361.900 to 361.1035 and who receives no more than five hundred dollars in compensation within a thirty-day period for this activity is guilty of a class A misdemeanor.**

**361.1026. The commissioner may assess a civil penalty against a person that violates sections 361.900 to 361.1035 or a rule adopted or an order issued under sections 361.900 to 361.1035 in an amount not to exceed one thousand dollars per day for each day the violation is outstanding, plus this state's costs and expenses for the investigation and prosecution of the matter, including reasonable attorney's fees.**

**361.1029. 1. If the commissioner has reason to believe that a person has violated or is violating section 361.930, the commissioner may issue an order to show cause why an order to cease and desist shall not be issued requiring that the person cease and desist from the violation of section 361.930.**

**2. In an emergency, the commissioner may petition the circuit court with jurisdiction for the issuance of a temporary restraining order under the rules of civil procedure.**

**3. An order to cease and desist becomes effective upon service to the person.**

**4. An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding under chapter 536.**

**5. A person that is served with an order to cease and desist for violating section 361.930 may petition the circuit court with jurisdiction for a judicial order setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of an administrative proceeding under chapter 536.**

**6. An order to cease and desist expires unless the commissioner commences an administrative proceeding within ten days after it is issued.**

**361.1032. In applying and construing sections 361.900 to 361.1035, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.**

**361.1035. 1. A person licensed in this state to engage in the business of money transmission shall not be subject to the provisions of sections 361.900 to 361.1035 to the extent that they conflict with current law or establish new requirements not imposed under current law, until such time as the licensee renews the licensee's current license.**

**2. Notwithstanding subsection 1 of this section, a licensee shall only be required to amend its authorized delegate contracts for contracts entered into or amended after the effective date or the completion of any transition period contemplated under subsection 1 of this section. Nothing herein shall be construed as limiting an authorized delegate's obligations to operate in full compliance with sections 361.900 to 361.1035 as required by subsection 3 of section 361.975.**

**362.034. 1. Any entity that operates as a facility licensed or certified under Article XIV of"; and**

Further amend said amendment, Page 1, Lines 30, by inserting after all of said line the following:

"Further amend said bill, Page 65, Section 570.030, Line 90, by inserting after all of said section and line the following:

"[361.700. 1. Sections 361.700 to 361.727 shall be known and may be cited as the "Sale of Checks Law".

2. For the purposes of sections 361.700 to 361.727, the following terms mean:

(1) "Check", any instrument for the transmission or payment of money and shall also include any electronic means of transmitting or paying money;

(2) "Director", the director of the division of finance;

(3) "Licensee", any person duly licensed by the director pursuant to sections 361.700 to 361.727;

(4) "Person", any individual, partnership, association, trust or corporation.]

[361.705. 1. No person shall issue checks in this state for a consideration without first obtaining a license from the director; provided, however, that sections 361.700 to 361.727 shall not apply to the receipt of money by an incorporated telegraph company at any office or agency of such company for immediate transmission by telegraph nor to any bank, trust company, savings and loan association, credit union, or agency of the United States government.

2. Any person who violates any of the provisions of sections 361.700 to 361.727 or attempts to sell or issue checks without having first obtained a license from the director shall be deemed guilty of a class A misdemeanor.]

[361.707. 1. Each application for a license pursuant to sections 361.700 to 361.727 shall be in writing and under oath to the director in such form as he may prescribe. The application shall state the full name and business address of:

- (1) The proprietor, if the applicant is an individual;
- (2) Every member, if the applicant is a partnership or association;
- (3) The corporation and each officer and director thereof, if the applicant is a corporation.

2. Each application for a license shall be accompanied by an investigation fee of three hundred dollars. If the license is granted the investigation fee shall be applied to the license fee for the first year. No investigation fee shall be refunded.]

[361.711. Each application for a license shall be accompanied by a corporate surety bond in the principal sum of one hundred thousand dollars. The bond shall be in form satisfactory to the director and shall be issued by a bonding company or insurance company authorized to do business in this state, to secure the faithful performance of the obligations of the applicant and the agents and subagents of the applicant with respect to the receipt, transmission, and payment of money in connection with the sale or issuance of checks and also to pay the costs incurred by the division to remedy any breach of the obligations of the applicant subject to the bond or to pay examination costs of the division owed and not paid by the applicant. Upon license renewal, the required amount of bond shall be as follows:

(1) For all licensees selling payment instruments or stored value cards, five times the high outstanding balance from the previous year with a minimum of one hundred thousand dollars and a maximum of one million dollars;

(2) For all licensees receiving money for transmission, five times the greatest amount transmitted in a single day during the previous year with a minimum of one hundred thousand dollars and a maximum of one million dollars.

If in the opinion of the director the bond shall at any time appear to be inadequate, insecure, exhausted, or otherwise doubtful, additional bond in form and with surety satisfactory to the director shall be filed within fifteen days after notice of the requirement is given to the licensee by the director. An applicant or licensee may, in lieu of filing any bond required under this section, provide the director with an irrevocable letter of credit, as defined in section 400.5-103, issued by any state or federal financial institution. Whenever in the director's judgment it is necessary or expedient, the director may perform a special examination of any person licensed under sections 361.700 to 361.727 with all authority under section 361.160 as though the licensee were a bank. The cost of such examination shall be paid by the licensee.]

[361.715. 1. Upon the filing of the application, the filing of a certified audit, the payment of the investigation fee and the approval by the director of the necessary bond, the director shall cause, investigate, and determine whether the character, responsibility, and general fitness of the principals of the applicant or any affiliates are such as to

command confidence and warrant belief that the business of the applicant will be conducted honestly and efficiently and that the applicant is in compliance with all other applicable state and federal laws. If satisfied, the director shall issue to the applicant a license pursuant to the provisions of sections 361.700 to 361.727. In processing a renewal license, the director shall require the same information and follow the same procedures described in this subsection.

2. Each licensee shall pay to the director before the issuance of the license, and annually thereafter on or before April fifteenth of each year, a license fee of three hundred dollars.

3. The director may assess a reasonable charge, not to exceed three hundred dollars, for any application to amend and reissue an existing license.]

[361.718. Every licensee shall at all times have on demand deposit in a federally insured depository institution or in the form of cash on hand or in the hands of his agents or in readily marketable securities an amount equal to all outstanding unpaid checks sold by him or his agents in Missouri, in addition to the amount of his bond. Upon demand by the director, licensees must immediately provide proof of such funds or securities. The director may make such demand as often as reasonably necessary and shall make such demand to each licensee, without prior notice, at least twice each license year.]

[361.720. Each licensee may conduct business at one or more locations within this state and by means of employees, agents, subagents or representatives as such licensee may designate. No license under sections 361.700 to 361.727 shall be required of any such employee, agent, subagent or representative who sells checks in behalf of a licensee. Each such agent, subagent or representative shall upon demand transfer and deliver to the licensee the proceeds of the sale of licensee's checks less the fees, if any, due such agent, subagent or representative.]

[361.723. Each licensee shall file with the director annually on or before April fifteenth of each year a statement listing the locations of the offices of the licensee and the names and locations of the agents or subagents authorized by the licensee to engage in the sale of checks of which the licensee is the issuer.]

[361.725. The director may at any time suspend or revoke a license, for any reason he might refuse to grant a license, for failure to pay an annual fee or for a violation of any provision of sections 361.700 to 361.727. No license shall be denied, revoked or suspended except on ten days' notice to the applicant or licensee. Upon receipt of such notice the applicant or licensee may, within five days of such receipt, make written demand for a hearing. The director shall thereafter hear and determine the matter in accordance with the provisions of chapter 536.]

[361.727. The director shall issue regulations necessary to carry out the intent and purposes of sections 361.700 to 361.727, pursuant to the provisions of section 361.105 and chapter 536.]"; and"; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.

## HOUSE AMENDMENT NO. 7

Amend House Committee Substitute for Senate Committee Substitute for Senate Bill No. 187, Page 46, Section 361.715, Line 14, by inserting after all of said section and line the following:

**“362.034. 1. Any entity that operates as a facility licensed or certified under Article XIV of the Constitution of Missouri may request in writing that a state or local licensing authority or agency, including, but not limited to, the department of health and senior services or department of revenue, share the entity’s application, license, or other regulatory and financial information with a banking institution. A state or local licensing authority or agency may also share such information with the banking institution’s state and federal supervisory agencies.**

**2. In order to ensure the state or local licensing authority or agency is properly maintaining the confidentiality of individualized data, information, or records, an entity shall include in the written request a waiver giving authorization for the transfer of the individualized data, information, or records and waiving any confidentiality or privilege that applies to that individualized data, information, or records.**

**3. This section shall only apply to the disclosure of information by a state or local licensing authority or agency reasonably necessary to facilitate the provision of financial services by a banking institution to the entity making a request pursuant to this section.**

**4. The recipient of any information pursuant to this section shall treat such information as confidential and use it only for the purposes described in this section.**

**5. Nothing in this section shall be construed to authorize the disclosure of confidential or privileged information, nor waive an entity’s rights to assert confidentiality or privilege, except as reasonably necessary to facilitate the provision of financial services for the entity making the request.**

**6. An entity that has provided a waiver pursuant to this section may withdraw the waiver with thirty days’ notice in writing.**

**7. Nothing in this section shall be construed to modify the requirements of chapter 610.**

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

**(1) “Banking institution”, the same meaning as in Article IV, Section 15 of the Missouri Constitution;**

**(2) “Entity”, the same meaning as in Article XIV of the Missouri Constitution.”; and**

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.

HOUSE AMENDMENT NO. 8

Amend House Committee Substitute for Senate Committee Substitute for Senate Bill No. 187, Page 49, Section 367.140, Line 26, by inserting after all of said section and line the following:

**“376.411. 1. For purposes of this section, the following terms mean:**

**(1) “Clinician-administered drug”, any legend drug, as defined in section 338.330, that is administered by a health care provider who is authorized to administer the drug;**

**(2) “Health carrier”, the same meaning given to the term in section 376.1350;**

**(3) “Participating provider”, the same meaning given to the term in section 376.1350;**

**(4) “Pharmacy benefits manager”, the same meaning given to the term in section 376.388.**

**2. A health carrier, a pharmacy benefits manager, or an agent or affiliate of such health carrier or pharmacy benefits manager shall not:**

**(1) Impose any penalty, impediment, differentiation, or limitation on a participating provider for providing medically necessary clinician-administered drugs regardless of whether the participating provider obtains such drugs from a provider that is in the network including, but not limited to, refusing to approve or pay or reimbursing less than the contracted payment amount;**

**(2) Impose any penalty, impediment, differentiation, or limitation on a covered person who is administered medically necessary clinician-administered drugs regardless of whether the participating provider obtains such drugs from a provider that is in the network including, but not limited to, limiting coverage or benefits; requiring an additional fee, higher co-payment, or higher coinsurance amount; or interfering with a patient’s ability to obtain a clinician-administered drug from the patient’s provider or pharmacy of choice by any means including, but not limited to, inducing, steering, or offering financial or other incentives; or**

**(3) Impose any penalty, impediment, differentiation, or limitation on any pharmacy, including any class B hospital pharmacy as defined in section 338.220, that is dispensing medically necessary clinician-administered drugs regardless of whether the participating provider obtains such drugs from a provider that is in the network including, but not limited to, requiring a pharmacy to dispense such drugs to a patient with the intention that the patient will transport the medication to a health care provider for administration.**

**3. The provisions of this section shall not apply if the clinician-administered drug is not otherwise covered by the health carrier or pharmacy benefits manager.**

**376.414. 1. For purposes of this section, the following terms mean:**

**(1) “340B drug”, a drug that is:**

**(a) A covered outpatient drug as defined in Section 340B of the Public Health Service Act, 42 U.S.C. Section 256b, enacted by Section 602 of the Veterans Health Care Act of 1992, Pub. L. 102-585; and**

**(b) Purchased under an agreement entered into under 42 U.S.C. Section 256b;**

**(2) “Covered entity”, the same meaning given to the term in Section 340B(a) (4) of the Public Health Service Act, 42 U.S.C. Section 256b(a) (4);**

**(3) “Health carrier”, the same meaning given to the term in section 376.1350;**

**(4) “Pharmacy”, an entity licensed under chapter 338;**

**(5) “Pharmacy benefits manager”, the same meaning given to the term in section 376.388;**

**2. A health carrier, a pharmacy benefits manager, or an agent or affiliate of such health carrier**

or pharmacy benefits manager, not including a pharmaceutical manufacturer, shall not discriminate against a covered entity or a pharmacy including, but not limited to, by doing any of the following:

(1) Reimbursing a covered entity or pharmacy for a quantity of a 340B drug in an amount less than it would pay to any other similarly situated pharmacy that is not a covered entity or a pharmacy for such quantity of such drug on the basis that the entity or pharmacy is a covered entity or pharmacy or that the entity or pharmacy dispenses 340B drugs;

(2) Imposing any terms or conditions on covered entities or pharmacies that differ from such terms or conditions applied to other similarly situated pharmacies or entities that are not covered entities on the basis that the entity or pharmacy is a covered entity or pharmacy or that the entity or pharmacy dispenses 340B drugs including, but not limited to, terms or conditions with respect to any of the following:

(a) Fees, chargebacks, clawbacks, adjustments, or other assessments;

(b) Professional dispensing fees;

(c) Restrictions or requirements regarding participation in standard or preferred pharmacy networks;

(d) Requirements relating to the frequency or scope of audits or to inventory management systems using generally accepted accounting principles; and

(e) Any other restrictions, conditions, practices, or policies that, as specified by the director of the department of commerce and insurance, interfere with the ability of a covered entity to maximize the value of discounts provided under 42 U.S.C. Section 256b;

(3) Interfering with an individual's choice to receive a 340B drug from a covered entity or pharmacy, whether in person or via direct delivery, mail, or other form of shipment, by any means including, but not limited to, modifying a patient's payment limitations or cost-sharing obligations on the basis of participation, in whole or in part, in the 340B drug pricing program;

(4) Discriminating in reimbursement to a covered entity or pharmacy based on the determination or indication a drug is a 340B drug;

(5) Requiring a covered entity or pharmacy to identify, either directly or through a third party, a 340B drug sooner than forty-five days after the point of sale of the 340B drug;

(6) Refusing to contract with a covered entity or pharmacy for reasons other than those that apply equally to entities that are not covered entities or similarly situated pharmacies, or on the basis that:

(a) The entity is a covered entity; or

(b) The entity or pharmacy is described in any of subparagraphs (A) to (O) of 42 U.S.C. Section 235b(a) (4);

(7) Denying the covered entity the ability to purchase drugs at 340B program pricing by substituting a rebate discount;

(8) Refusing to cover drugs purchased under the 340B drug pricing program; or

(9) Requiring a covered entity or pharmacy to reverse, resubmit, or clarify a 340B-drug pricing claim after the initial adjudication unless these actions are in the normal course of pharmacy business and not related to 340B drug pricing, except as required by federal law.



3. The director of the department of commerce and insurance shall impose a civil penalty on any health carrier, pharmacy benefits manager, or agent or affiliate of such health carrier or pharmacy benefits manager that violates the requirements of this section. Such penalty shall not exceed five thousand dollars per violation per day.

4. The director of the department of commerce and insurance 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, 2023, shall be invalid and void.”; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.

In which the concurrence of the Senate is respectfully requested.

**REPORTS OF STANDING COMMITTEES**

Senator Thompson Rehder, Chair of the Committee on Fiscal Oversight, submitted the following reports:

Mr. President: Your Committee on Fiscal Oversight, to which was referred **SS** for **SB 265**, **HCS** for **HB 655**, with **SCS**, **HCS** for **HB 268**, **HB 447**, **HB 415**, with **SCS**, **HCS** for **HB 417**, with **SCS**, begs leave to report that it has considered the same and recommends that the bills do pass.

**THIRD READING OF SENATE BILLS**

**SS** for **SB 265**, introduced by Senator Bean, entitled:

**SENATE SUBSTITUTE FOR  
SENATE BILL NO. 265**

An Act to repeal section 600.042, RSMo, and to enact in lieu thereof four new sections relating to funds established within the state treasury.

Was taken up.

On motion of Senator Bean, **SS** for **SB 265** was read the 3rd time and passed by the following vote:

YEAS—Senators

Arthur	Bean	Beck	Bernskoetter	Black	Brattin	Brown (16th Dist.)
Brown (26th Dist.)	Carter	Cierpiot	Coleman	Crawford	Eigel	Eslinger
Fitzwater	Gannon	Hoskins	Hough	Koenig	Luetkemeyer	May
Mosley	O’Laughlin	Razer	Rizzo	Roberts	Rowden	Schroer
Thompson Rehder	Trent	Washington	Williams—32			

NAYS—Senator Moon—1

Absent—Senators—None

Absent with leave—Senator McCreery—1

Vacancies—None

The President declared the bill passed.

On motion of Senator Bean, title to the bill was agreed to.

Senator Bean moved that the vote by which the bill passed be reconsidered.

Senator O'Laughlin moved that motion lay on the table, which motion prevailed.

### **HOUSE BILLS ON THIRD READING**

Senator Crawford moved that **HCS** for **HJR 43**, with **SS**, **SA 1**, **SSA 1** for **SA 1**, and **SA 1** to **SSA 1** for **SA 1** be called from the Informal Calendar and again taken up for 3rd reading and final passage, which motion prevailed.

At the request of Senator Crawford, **SS** for **HCS** for **HJR 43** was withdrawn, rendering **SA 1**, **SSA 1** for **SA 1**, and **SA 1** to **SSA 1** for **SA 1** moot.

Senator Crawford offered **SS No. 2** for **HCS** for **HJR 43**, entitled:

#### **SENATE SUBSTITUTE NO. 2 FOR HOUSE COMMITTEE SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 43**

Joint Resolution submitting to the qualified voters of Missouri, an amendment repealing sections 50 and 51 of article III of the Constitution of Missouri, and adopting four new sections in lieu thereof relating to procedures for ballot measures submitted to the voters.

Senator Crawford moved that **SS No. 2** for **HCS** for **HJR 43** be adopted.

Senator May offered **SA 1**:

#### **SENATE AMENDMENT NO. 1**

Amend Senate Substitute No. 2 for House Committee Substitute for House Joint Resolution No. 43, Page 5, Section B, Line 15, by inserting after all of said line the following:

**“Section C. Section A of this resolution shall take effect at the end of thirty days after the election at which the resolution is approved by either a majority of the votes cast thereon statewide by legal voters and also a majority of votes cast thereon in each of more than half of the congressional districts by legal voters, or at least four-sevenths of the votes cast thereon statewide.”.**

Senator May moved that the above amendment be adopted.

Senator Fitzwater assumed the Chair.

President Kehoe assumed the Chair.

Senator Bean assumed the Chair.

Senator Eslinger assumed the Chair.

Senator Bean assumed the Chair.

Senator Coleman assumed the Chair.

Senator Bean assumed the Chair.

Senator Hough assumed the Chair.

Senator Black assumed the Chair.

Senator Carter assumed the Chair.

Senator Bean assumed the Chair.

At the request of Senator Crawford, **HCS** for **HJR 43**, with **SS No. 2**, and **SA 1** (pending), was placed on the Informal Calendar.

Senator Rowden assumed the Chair.

### **COMMUNICATIONS**

Senator McCreery submitted the following:

April 26, 2023

Kristina Martin  
Secretary of the Senate  
201 West Capitol Ave  
Jefferson City, MO 65101

Kristina,

Due to the recent breaking of my ankle, I request that I temporarily be excused from adhering to Rule 76 under the Senate rules so that I am able to be recognized from my chair on the Senate floor. I also request that I am able to wear non-dress shoes. Please let me know if there are any questions or if anything further is needed from my office.

Thank you,



Tracy McCreery

### **INTRODUCTION OF GUESTS**

Senator Carter introduced to the Senate, Chase, Mike, Sherri, Darell, and Joy Tash, Joplin; and Chase was made an honorary page.

Senator Cierpiot introduced to the Senate, Nia Walker; and her family, Nicole, Troy, and Troy Jr. Walker, Lee Summit.

Senator Brattin introduced to the Senate, his wife, Athena Brattin; their children, Garrett Gordon and Hannah Brattin, Harrisonville; and Garrett and Hannah were made honorary pages.

Senator Williams introduced to the Senate, Faith Byrum, Jefferson City.

Senator May introduced to the Senate, Kelsea Myers; Audrey Atkins; and Jackson Winters.

Senator Trent introduced to the Senate, Judge Chuck Replogle, his wife, Tiffany, their children, Lauren and Emily Replogle, Marshfield; and MSU student, Bradley Cooper, Willard.

Senator Mosley introduced to the Senate, University of Missouri student, Olivia Harmon.

Senator Bean introduced to the Senate, the Advance High School Hornets class 1 Volleyball champions, coaches, Erin Hoffman; and Dana Wynn Below, team, Addison Carlton; Kaylee Cline; Meg Garner; Alexis Hoffman; Abigail Kennedy; Kyndall Hitt; Emma Eilers; Ava Bowling; Claire Dunning; Shellie Elledge; Brogan Mae Wright-Hawkins; Bailey Massa; Josie Bailey; and Rainey Garland.

Senator Bernskoetter introduced to the Senate, MOST Policy Initiative staff, Executive Director Dr. Brittany Whitley; Energy, Agriculture, and Environment Fellow, Dr Tomotaroh Granzier-Zakajima; Health and Mental Health Fellow, Dr. Ramon Martinez; and Human Services and Public Safety Fellow, Dr. Sarah Anderson.

On motion of Senator Bean, the Senate adjourned under the rules.

## SENATE CALENDAR

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FIFTY-NINTH DAY—THURSDAY, APRIL 27, 2023

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## FORMAL CALENDAR

### HOUSE BILLS ON SECOND READING

HCS for HB 188  
 HB 542-Haden  
 HCS for HBs 1082 & 1094  
 HB 437-Banderman  
 HCS for HB 1214 (Gannon)  
 HB 836-Griffith  
 HS for HB 1117  
 HCS for HB 303  
 HB 716-Kelly (141)

HCS for HB 1023  
 HB 1034-McMullen  
 HCS for HB 1038  
 HCS for HB 777  
 HCS for HB 1109  
 HCS for HB 669  
 HB 817-Morse  
 HB 929-West

THIRD READING OF SENATE BILLS

SS for SCS for SB 8-Eigel  
(In Fiscal Oversight)

SS#2 for SCS for SB 88-Brown (26)  
(In Fiscal Oversight)

SENATE BILLS FOR PERFECTION

1. SB 335-Crawford
2. SB 46-Gannon, with SCS
3. SB 206-Eslinger
4. SB 349-Trent, with SCS
5. SB 229-Coleman, with SCS
6. SBs 332, 334, 541 & 144-Brattin, with SCS
7. SB 161-Coleman, with SCS
8. SB 166-Carter
9. SB 381-Thompson Rehder
10. SB 77-Black
11. SB 342-Trent
12. SB 374-Cierpiot, with SCS
13. SB 455-Roberts, with SCS
14. SB 440-Washington
15. SJR 46-Black
16. SB 185-Bernskoetter, with SCS
17. SB 7-Rowden, with SCS
18. SB 366-Crawford, with SCS

19. SB 337-Crawford
20. SB 367-Luetkemeyer
21. SJR 37-Cierpiot
22. SB 274-Trent
23. SB 412-Brown (26)
24. SJR 30-Brown (26), with SCS
25. SB 348-Trent
26. SB 519-Hoskins, with SCS
27. SB 319-Eigel, with SCS
28. SB 534-Black
29. SB 343-Razer
30. SB 160-Schroer and Coleman
31. SB 375-Cierpiot
32. SB 313-Mosley
33. SB 17-Arthur
34. SB 26-Brown (16)
35. SB 428-Carter
36. SJR 28-Carter

HOUSE BILLS ON THIRD READING

1. HCS for HB 301, with SCS  
(Luetkemeyer) (In Fiscal Oversight)
2. HCS for HB 253 (Koenig)  
(In Fiscal Oversight)
3. HB 827-Christofanelli (Koenig)  
(In Fiscal Oversight)
4. HCS for HBs 133 & 583, with SCS  
(Hoskins) (In Fiscal Oversight)
5. HCS for HB 268 (Hoskins)
6. HCS for HB 655, with SCS (Crawford)
7. HCS for HB 417, with SCS (Eslinger)
8. HB 447-Davidson (Thompson Rehder)
9. HCS for HBs 640 & 729, with SCS  
(Luetkemeyer) (In Fiscal Oversight)

10. HB 131-Griffith (Bernskoetter)
11. HCS for HB 909 (Brattin)
12. HB 202-Francis (Bean)
13. HCS for HB 467 (Crawford)
14. HB 644-Francis (Bean)
15. HCS for HB 154, with SCS (Koenig)  
(In Fiscal Oversight)
16. HB 283-Kelly (141), with SCS (Arthur)
17. HCS for HB 454 (Coleman)
18. HB 677-Copeland, with SCS (Brown (16))
19. HB 1010-Christofanelli (Trent)
20. HB 70-Dinkins (Brattin)
21. HB 415-O'Donnell, with SCS (Hough)

22. HCS for HBs 702, 53, 213, 216, 306 & 359  
(Schroer) (In Fiscal Oversight)

23. HCS for HB 668, with SCS  
(In Fiscal Oversight)

## INFORMAL CALENDAR

### SENATE BILLS FOR PERFECTION

SB 5-Koenig, with SCS  
 SB 11-Crawford, with SCS, SS for SCS, SA 2  
 & SA 1 to SA 2 (pending)  
 SB 15-Cierpiot, with SS (pending)  
 SB 21-Bernskoetter, with SCS (pending)  
 SB 30-Luetkemeyer, with SS & SA 12  
 (pending)  
 SB 38-Williams, with SCS & SS for SCS  
 (pending)  
 SB 44-Brattin  
 SBs 73 & 162-Trent, with SCS, SS for SCS &  
 SA 2 (pending)  
 SB 74-Trent, with SCS, SS for SCS & SA 1  
 (pending)  
 SB 79-Schroer, with SCS  
 SB 81-Coleman, with SCS  
 SB 85-Carter, with SCS, SS for SCS & SA 1  
 (pending)  
 SBs 93 & 135-Hoskins, with SCS & SS for SCS  
 (pending)  
 SB 95-Koenig, with SS & SA 2 (pending)  
 SB 105-Cierpiot, with SS & SA 2 (pending)  
 SB 110-Bernskoetter  
 SB 112-Hough  
 SB 117-Luetkemeyer, with SS, SA 1 & SA 1 to  
 SA 1 (pending)

SB 136-Eslinger  
 SB 140-Bean, with SCS  
 SB 151-Fitzwater, with SA 2 (pending)  
 SB 152-Trent  
 SB 168-Brown (26), with SCS & SS for SCS  
 (pending)  
 SB 180-Crawford  
 SB 184-Arthur, with SCS & SA 1 (pending)  
 SB 209-Bean, with SCS  
 SB 214-Beck, with SS & SA 2 (pending)  
 SB 228-Coleman, with SCS & SS for SCS  
 (pending)  
 SB 234-Brown (26)  
 SB 256-Brattin, with SCS  
 SB 304-Eigel, with SS & SA 5 (pending)  
 SB 317-Eigel, with SCS, SS#2 for SCS &  
 SA 1 (pending)  
 SB 355-Brown (16), with SCS  
 SB 360-Koenig, with SCS  
 SB 400-Schroer, with SS (pending)  
 SB 413-Hoskins, with SCS, SS for SCS, SA 3  
 & SA 2 to SA 3 (pending)  
 SJR 12-Cierpiot  
 SJR 14-Brown (16), with SS (pending)

### HOUSE BILLS ON THIRD READING

HCS for HB 184, with SCS, SS for SCS &  
 SA 1 (pending) (Brown (26))  
 SS for HB 402-Henderson (Gannon)  
 (In Fiscal Oversight)  
 HB 730-C. Brown (Trent)

HCS for HBs 802, 807 & 886, with SCS, SA 1  
 & point of order (pending) (Thompson  
 Rehder)  
 HCS for HJR 43, with SS#2 & SA 1 (pending)  
 (Crawford)

SENATE BILLS WITH HOUSE AMENDMENTS

SS for SCS for SB 127-Thompson Rehder and Carter, with HA 1, HA 2, HA 1 to HA 3, HA 3 as amended, HA 4, HA 1 to HA 5, HA 2 to HA 5 & HA 5 as amended

SCS for SB 187-Brown (16), with HCS, as amended

BILLS IN CONFERENCE AND BILLS  
CARRYING REQUEST MESSAGES

Requests to Recede or Grant Conference

HCS for HB 2, with SS for SCS (Hough)  
(House requests Senate recede or  
grant conference)

HCS for HB 3, with SCS (Hough) (House  
requests Senate recede or grant conference)

HCS for HB 4, with SCS (Hough) (House  
requests Senate recede or grant conference)

HCS for HB 5, with SS for SCS (Hough)  
(House requests Senate recede or  
grant conference)

HCS for HB 6, with SCS (Hough) (House  
requests Senate recede or grant conference)

HCS for HB 7, with SCS (Hough) (House  
requests Senate recede or grant conference)

HCS for HB 8, with SS for SCS (Hough)  
(House requests Senate recede or grant  
conference)

HCS for HB 9, with SCS (Hough) (House  
requests Senate recede or grant conference)

HCS for HB 10, with SCS (Hough) (House  
requests Senate recede or grant conference)

HCS for HB 11, with SCS (Hough) (House  
requests Senate recede or grant conference)

HCS for HB 12, with SS for SCS (Hough)  
(House requests Senate recede or  
grant conference)

HCS for HB 13, with SCS (Hough) (House  
requests Senate recede or grant conference)

HCS for HB 15, with SCS (Hough) (House  
requests Senate recede or grant conference)

RESOLUTIONS

SR 22-Roberts

SR 390-Beck

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