

FIRST REGULAR SESSION

SENATE BILL NO. 476

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCOTT.

Read 1st time February 28, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

1750S.01I

AN ACT

To repeal sections ~~361.060, 361.070, 361.080, 361.262, 361.365, 362.042, 362.107, 362.170, 362.210, 362.213, 362.215, 362.217, 362.225, 362.300, 362.305, 362.310, 362.315, 362.520, and 362.600, RSMo,~~ and to enact in lieu thereof thirteen new sections relating to banks and banking, with penalty provisions.

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

Section A. Sections ~~361.060, 361.070, 361.080, 361.262, 361.365, 362.042, 362.107, 362.170, 362.210, 362.213, 362.215, 362.217, 362.225, 362.300, 362.305, 362.310, 362.315, 362.520, and 362.600, RSMo,~~ are repealed and thirteen new sections enacted in lieu thereof, to be known as sections ~~361.060, 361.070, 361.080, 361.262, 361.365, 362.042, 362.107, 362.170, 362.225, 362.310, 362.315, 362.520, and 362.600,~~ to read as follows:

361.060. 1. The director of finance, with the approval of the governor, shall appoint a deputy director of finance and such examiners, assistant examiners and other assistants as, subject to the approval of the governor, he shall deem necessary to properly discharge the duties of the division of finance.

2. The deputy director shall possess the qualifications required for the director of finance. [Appointments of examiners and assistant examiners shall be so made that, as near as may be, one-half of their number respectively shall be members of the political party polling the highest number of votes for governor at the last preceding general state election, and the remaining one-half shall be members of the political party polling the next highest number of votes for governor at the last preceding state election.]

3. All employees of the division of finance shall perform such duties as shall be required of them by the director of finance, shall devote all of their time to their official

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

duties, and shall hold their offices during and at the pleasure of the director of finance.

361.070. 1. The director of finance[, deputy director, other assistants and examiners, and all special agents and other employees shall each] **and all employees of the division of finance, which term shall, for purposes of this section and section 361.080, include special agents, shall**, before entering upon the discharge of [his] **their** duties, take [and subscribe] the oath of office [as] prescribed by the constitution, and, in addition, **take an oath** that [he] **they** will not reveal the conditions or affairs of any [bank, banker or trust company in this state or of any credit union or small loan business] **financial institution** or any facts pertaining to the same, that may come to [his] **their** knowledge by virtue of [his] **their** official [position] **positions**, unless required by law [so] to do **so** in the discharge of the duties of [his said] **their** [office] **offices** or [as a witness] **when testifying** in any **court** proceeding [in a court of justice]. **For purposes of this section and section 361.080, "financial institution" shall mean any entity subject to chartering, licensing, or regulation by the division of finance.**

2. The director of finance[, deputy, assistants and examiners] **and all employees of the division of finance** shall further execute to the state of Missouri good and sufficient bonds with corporate surety, to be approved by the governor and attorney general, conditioned that they will faithfully and impartially discharge the duties of their offices, and pay over to the persons entitled by law to receive it, all [moneys] **money** coming into their hands by virtue of their offices[; and any special agent or other employee shall give a bond, approved as aforesaid, as may be required]. The principal amount of bond applicable to each employee shall be determined by the state banking board. The bond, after approval by the governor and attorney general, [as above provided,] shall be filed with the secretary of state for safekeeping. The **bond** premiums [on the bond], not to exceed one percent on the amount thereof, shall be paid out of the state treasury in the same manner as other expenses of the division.

3. [No employee] **Neither the director of finance nor any employees** of the division **of finance** who [participates] **participate** in the examination of any bank or trust company, or who may be called upon to make any official decision or determination affecting the operation of any bank or trust company, other than the [two] banker members of the state banking board, shall be an officer, director, attorney, owner, or holder of stock in any bank or trust company or any bank holding company as that term is defined in section 362.910, RSMo, [or] **nor shall they** receive, directly or indirectly, any payment or gratuity from any such organization, [or] **nor** engage in the negotiation of loans for others with any state bank or trust company, [or] **nor** be indebted to any state bank or trust company.

4. **The director of finance, in connection with any examination or investigation of any person, company, or event, shall have the authority to compel the production of documents, in whatever form they may exist, and shall have the**

authority to compel the attendance of and administer oaths to any person having knowledge of any issue involved with the examination or investigation.

361.080. 1. [To ensure the integrity of the bank examination process, the director of finance, his deputies, clerks, stenographers, each examiner and every employee shall be bound, under oath, to keep secret all facts and information obtained in the course of all examinations, except so far as the public duty of such officer requires him to report upon or take special action regarding the affairs of any bank, trust company or small loan business, and except when he is called as a witness in any proceeding in a court of justice relating to such financial institution's safety and soundness or in any criminal proceeding.

2. In all other circumstances, facts and information obtained by the division of finance in the course of examinations or investigations of a bank or trust company shall be held in confidence and not disclosed absent a court's finding of compelling reasons for disclosure. Such finding shall demonstrate that the need for the information sought outweighs the public interest in free and open communications during the bank examination process. In no event shall a bank, trust company, or any director, officer, employee, or agent thereof be held liable for libel, slander or defamation of character for any good faith communications by such bank, trust company or any director, officer, employee, or agent thereof to the director of finance or his deputies, examiners, or employees. Provided, however, that nothing in this section shall prohibit the disclosure of examination or investigation reports and work papers to a bank or trust company when a dispute arises concerning the examination or investigation of such bank or trust company.

3. If any director of finance, deputy, clerk, stenographer or examiner shall disclose the name of any debtor of any bank, trust company or small loan business, or anything relative to the private accounts, affairs or transactions of the bank, trust company or small loan business, or shall disclose any facts obtained in the course of his or their examination of any bank, trust company or small loan business, except as herein provided, he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a forfeiture of his office and the payment of a fine of not more than one thousand dollars; provided, however, that the director of finance, his deputies, and each examiner may exchange information with the Federal Reserve Board, the federal reserve banks, or with examiners duly appointed by the Federal Reserve Board, or by the federal reserve banks, the Comptroller of Currency of the United States, or with examiners duly appointed by him, the Federal Deposit Insurance Corporation or the examiners duly appointed by it, or any other agency which regulates financial institutions under the laws of the federal government or of this state or any other state when the director of finance determines that the sharing of such information is necessary for the proper performance of the bank examination, supervisory or regulatory duties of such agencies and examiners, that such information will receive protection from disclosure comparable to that accorded by section 361.070 and this section,

and such agencies and examiners routinely share such information with the division of finance; and provided, further, that reports shall be made of the condition of the affairs of a bank or trust company ascertained from the examination to the officers and directors of the bank or trust company examined, and to the finance director, and to any holding company owning control of such bank or trust company if authorized by the board of directors of the bank or trust company.] **To ensure the integrity of the examination process, the director of finance and all employees of the division of finance shall be bound under oath to keep secret all facts and information obtained in the course of all examinations and investigations except:**

(1) When the director of finance determines that public duty requires reporting or taking special action;

(2) When called as a witness in a court proceeding relating to such financial institution's safety and soundness or in any criminal proceeding;

(3) When reporting on the condition of the financial institution to the officers and directors of the financial institution or to a holding company which owns the financial institution;

(4) When reporting findings to a complainant or a complainant's representative;

(5) When exchanging information with any agency which regulates financial institutions under federal law or the laws of any state when the director of finance determines that the sharing of information is necessary for the proper performance by the director of finance and the other agencies, that such information will remain confidential as though subject to section 361.070 and this section and that said agencies routinely share information with the division of finance;

(6) When authorized by the financial institution's board of directors to provide the information to anyone else; or

(7) When the director determines disclosure of nonpublic information may be appropriate or necessary subject to such conditions and limitations, including an agreement of confidentiality or protective order, as the director deems appropriate.

2. In all other circumstances, facts, and information obtained by the director of finance and the employees of the division of finance through examinations or investigations shall be held in confidence absent a court's finding of compelling reasons for disclosure. Such finding shall demonstrate that the need for the information sought outweighs the public interest in free and open communications during the examination or investigation process. In no event shall a financial institution, or any officer, director, or employee thereof, be charged with libel,

slander, or defamation for any good faith communications with the director of finance or any employees of the division of finance.

3. If the director or any employees of the division of finance disclose the name of any debtor of any financial institution or disclose any facts obtained in the course of any examination or investigation of any financial institution, except as herein provided, the disclosing party shall be deemed guilty of a misdemeanor and upon conviction shall be subject to forfeiture of office and the payment of a fine not to exceed one thousand dollars.

361.262. 1. Whenever it shall appear to the director, from any examination made by him or his examiners, that any director, officer, or any other person participating in the conduct of the affairs of a corporation subject to this chapter has committed any violation of law or regulation or of a cease and desist order, or has violated any condition imposed in writing by the director in connection with the grant of any application or other request by such corporation or any written agreement between such corporation and the director, or has engaged or participated in any unsafe or unsound practice in connection with the corporation, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty to the corporation, and the director determines that the corporation has suffered or will probably suffer financial loss or other damage or that the interests of its depositors could be prejudiced by reason of such violation or practice or breach of fiduciary duty, or that the director or officer or other person has received financial gain by reason of such violation or practice or breach of fiduciary duty, and such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director, officer or other person, or one which demonstrates a willful or continuing disregard for the safety or soundness of the corporation, the director may serve upon such director, officer, or other person, a written notice of his intention to remove him from office.

2. When it shall appear to the director from any examination made by him or his examiners that any director or officer of a corporation subject to this chapter, by conduct or practice with respect to another such corporation or any business institution which resulted in financial loss or other damage, has evidenced either his personal dishonesty or a willful or continuing disregard for its safety and soundness and, in addition, has evidenced his unfitness to continue as a director or officer and whenever it shall appear to the director that any other person participating in the conduct of the affairs of a corporation subject to this chapter, by conduct or practice with respect to such corporation or other corporation or other business institution which resulted in financial loss or other damage, has evidenced either his personal dishonesty or willful or continuing disregard for its safety and soundness and, in addition, has evidenced his unfitness to participate in the conduct of the affairs of such corporation, the director may serve upon such director, officer, or other person a written notice of intention to remove him from office or to prohibit his further participation in any

manner in the conduct of the affairs of the corporation **or from any other banking, savings, or trust institution supervised by the director.**

3. Whenever it shall appear to the director to be necessary for the protection of any corporation or its depositors, he may, by written notice to such effect served upon any director, officer, or other person referred to in subsection 1 or 2 of this section, suspend him from office or prohibit him from further participation in any manner in the conduct of the affairs of the corporation. Such suspension or prohibition shall become effective upon service of such notice and shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under subsection 1 or 2 of this section and until such time as the director shall dismiss the charges specified in such notice or, if an order of removal or prohibition is issued against the director or officer or other person, until the effective date of any such order. Copies of any such notice shall also be served upon the corporation of which he is a director or officer or in the conduct of whose affairs he has participated.

4. Except as provided in subsection 5 of this section, any person who, pursuant to an order issued under this section, has been removed or suspended from office in a corporation or prohibited from participating in the conduct of the affairs of a corporation may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in, the conduct of the affairs of any other corporation subject to the provisions of this chapter.

5. If, on or after the date an order is issued under this section which removes or suspends from office any person or prohibits such person from participating in the conduct of the affairs of a corporation, such party receives the written consent of the director, subsection 4 of this section shall, to the extent of such consent, cease to apply to such person with respect to the corporation described in the written consent and the director shall publicly disclose such consent. Any violation of subsection 4 of this section by any person who is subject to an order described in such subsection shall be treated as a violation of the order.

361.365. The director may appoint the Federal Deposit Insurance Corporation as liquidating agent of any banking corporation insured thereby of which he has duly taken possession under any provision of this chapter, and the Federal Deposit Insurance Corporation as liquidating agent shall thereupon be vested with both legal and equitable title to all the assets, rights, claims and other real and personal property of the closed bank. The Federal Deposit Insurance Corporation as liquidating agent shall have power to perform all acts of the director in the liquidation of the closed bank. [The director shall petition the circuit court in the judicial district in which the principal office of such insured banking corporation is located for an order confirming the appointment of the Federal Deposit Insurance Corporation as liquidating agent of such bank.]

362.042. 1. Any bank or trust company may at any time restate its articles of agreement as theretofore amended, in the following manner:

(1) The directors may adopt a resolution setting forth the proposed restated articles of agreement and directing that they be submitted to a vote at a meeting of stockholders, which may be either an annual or a special meeting, except that the proposed restated articles of agreement need not be adopted by the directors and may be submitted directly to an annual or special meeting of stockholders.

(2) Notice shall be given as provided in section 362.044.

(3) At the meeting a vote of the stockholders entitled to vote thereon shall be taken on the proposed restated articles. The proposed restated articles shall be adopted upon receiving the affirmative vote of a majority of the outstanding shares entitled to vote.

(4) Upon such approval, restated articles of agreement shall be executed in duplicate by the bank or trust company by its president or a vice president and by its cashier or secretary or an assistant cashier or secretary, and verified by one of the officers signing the articles. The restated articles shall contain a statement that the restated articles correctly set forth without change the corresponding provisions of the articles of agreement as heretofore amended, and that the restated articles of agreement supersede the original articles of agreement and all amendments thereto.

(5) Duplicate originals of the restated articles of agreement shall be delivered to the director of finance. If the director finds that the restated articles conform to law, and that all required fees have been paid, he or she shall file the same, and one of such copies shall be retained by the director in the public records of the division of finance.

(6) The director thereupon shall issue a restated certificate of incorporation setting forth the name of the bank or trust company, the amount of its capital subscribed and paid up in full, the period of its existence, and the address and location in the city or town at which the corporation is authorized to conduct its business. A certified copy of the restated articles shall be attached to the restated certificate of incorporation and delivered to the bank or trust company.

(7) Upon the issuance of the restated certificate of incorporation by the director of finance, the restated articles shall supersede the original articles of agreement and all amendments thereto.

2. The articles of incorporation may be amended at the time of restatement of the articles of incorporation in the following manner:

(1) The procedure required by this chapter for effecting an amendment to the articles of incorporation may be carried out concurrently with the procedure for restatement so that the proposed amendment and the restated articles may be presented to the same meetings of directors and shareholders;

(2) Such amendment, upon adoption by that percentage vote of shareholders

required for that particular amendment, and on being set forth in the certificate of amendment required by this chapter, may then be incorporated into such restated articles of incorporation;

(3) Duplicate originals of the amended and restated articles of agreement shall be delivered to the director of finance. If the director finds that the amended and restated articles conform to law, and that all required fees have been paid, he or she shall file the same, and one of such copies shall be retained by the director in the public records of the division of finance.

(4) The director thereupon shall issue a restated certificate of incorporation setting forth the name of the bank or trust company, the amount of its capital subscribed and paid up in full, the period of its existence, and the address and location at which the corporation is authorized to conduct its business. A certified copy of the amended and restated articles shall be attached to the restated certificate of incorporation and delivered to the bank or trust company.

(5) Upon the issuance of the restated certificate of incorporation by the director of finance, the amended and restated articles shall supersede the original articles of agreement and all amendments thereto.

362.107. 1. Every bank and every trust company organized under Missouri law may, upon compliance with this section, establish, maintain and operate branches separate and apart from the location designated in its articles of agreement.

2. No bank or trust company may establish, maintain or operate any branch without having first obtained the approval of the director of finance; **provided that a drop box for deposit purposes shall not be considered a branch.**

3. All those services which a bank or trust company is authorized by law to provide may be provided at any of its branches.

4. Whenever any bank or trust company desires to establish, maintain and operate a branch, or to move a branch previously established to another location, it shall apply to the director of finance for such authority and provide the director of finance with such relevant information as he may reasonably request. In determining whether or not to approve the application, the director of finance shall consider:

(1) The convenience, needs and welfare of the people of the community and area to be served;

(2) The financial strength of the bank or trust company making application for the branch in relation to the cost of establishing, maintaining and operating the branch;

(3) Whether any other banks or trust companies will be seriously injured by the approval of the application for the branch; provided, however, any bank which purchases assets of a **closed** bank or a failed savings and loan association closed by its chartering authority, may establish, maintain and operate branches at all locations which were operated

by the closed bank or failed savings and loan association. For purposes of this section, the terms "closed bank" or "failed savings and loan association" shall include a bank or savings and loan association whose sale is arranged by the Federal Deposit Insurance Corporation[, Resolution Trust Corporation,] or similar [organization] **agency** in order to avoid failure.

5. The decision of the director of finance granting or denying any such application may be appealed in the same manner as decisions by him pursuant to section 362.040 may be appealed.

6. National banking associations located in Missouri shall have the same but no greater right under or by virtue of this section as banks and trust companies which are organized under Missouri law.

362.170. 1. As used in this section, the term "unimpaired capital" includes common and preferred stock, capital notes, the surplus fund, undivided profits and any reserves, not subject to known charges as shown on the next preceding published report of the bank or trust company to the director of finance or obtained by the director pursuant to subsection 3 of section 361.130, RSMo. For purposes of lending limitations, goodwill may comprise no more than ten percent of unimpaired capital.

2. No bank or trust company subject to the provisions of this chapter shall:

(1) Directly or indirectly, lend to any individual, partnership, corporation, limited liability company or body politic, either by means of letters of credit, by acceptance of drafts, or by discount or purchase of notes, bills of exchange, or other obligations of the individual, partnership, corporation, limited liability company or body politic an amount or amounts in the aggregate which will exceed the greater of: (i) twenty-five percent of the unimpaired capital of the bank or trust company, provided such bank or trust company has a composite rating of 1 or 2 under the Capital, Assets, Management, Earnings, Liquidity and Sensitivity (CAMELS) rating system of the Federal Financial Institute Examination Counsel (FFIEC); (ii) fifteen percent of the unimpaired capital of the bank or trust company if located in a city having a population of one hundred thousand or over; twenty percent of the unimpaired capital of the bank or trust company if located in a city having a population of less than one hundred thousand and over seven thousand; and twenty-five percent of the unimpaired capital of the bank or trust company if located elsewhere in the state, with the following exceptions:

(a) The restrictions in this subdivision shall not apply to:

a. Bonds or other evidences of debt of the government of the United States or its territorial and insular possessions, or of the state of Missouri, or of any city, county, town, village, or political subdivision of this state;

b. Bonds or other evidences of debt, the issuance of which is authorized under the laws of the United States, and as to which the government of the United States has guaranteed or contracted to provide funds to pay both principal and interest;

c. Bonds or other evidences of debt of any state of the United States other than the state of Missouri, or of any county, city or school district of the foreign state, which county, city, or school district shall have a population of fifty thousand or more inhabitants, and which shall not have defaulted for more than one hundred twenty days in the payment of any of its general obligation bonds or other evidences of debt, either principal or interest, for a period of ten years prior to the time of purchase of the investment and provided that the bonds or other evidences of debt shall be a direct general obligation of the county, city, or school district;

d. Loans to the extent that they are insured or covered by guaranties or by commitments or agreements to take over or purchase made by any department, bureau, board, commission, or establishment of the United States or of the state of Missouri, including any corporation, wholly owned, directly or indirectly, by the United States or of the state of Missouri, pursuant to the authority of any act of Congress or the Missouri general assembly heretofore or hereafter adopted or amended or pursuant to the authority of any executive order of the President of the United States or the governor of Missouri heretofore or hereafter made or amended under the authority of any act of Congress heretofore or hereafter adopted or amended, and the part of the loan not so agreed to be purchased or discounted is within the restrictive provisions of this section;

e. Obligations to any bank or trust company in the form of notes of any person, copartnership, association, corporation or limited liability company, secured by not less than a like amount of direct obligations of the United States which will mature in not exceeding five years from the date the obligations to the bank are entered into;

f. Loans to the extent they are secured by a segregated deposit account in the lending bank if the lending bank has obtained a perfected security interest in such account;

g. Evidences of debt which are direct obligations of, or which are guaranteed by, the Government National Mortgage Association, the Federal National Mortgage Association, the Student Loan Marketing Association, the Federal Home Loan Banks, the Federal Farm Credit Bank or the Federal Home Loan Mortgage Corporation, or evidences of debt which are fully collateralized by direct obligations of, and which are issued by, the Government National Mortgage Association, the Federal National Mortgage Association, the Student Loan Marketing Association, a Federal Home Loan Bank, the Federal Farm Credit Bank or the Federal Home Loan Mortgage Corporation;

(b) The total liabilities to the bank or trust company of any individual, partnership, corporation or limited liability company may equal but not exceed thirty-five percent of the unimpaired capital of the bank or trust company; provided, that all of the total liabilities in excess of the legal loan limit of the bank or trust company as defined in this subdivision are upon paper based upon the collateral security of warehouse receipts covering agricultural products or the manufactured or processed derivatives of agricultural products in public

elevators and public warehouses subject to state supervision and regulation in this state or in any other state of the United States, under the following conditions: first, that the actual market value of the property held in store and covered by the receipt shall at all times exceed by at least fifteen percent the amount loaned upon it; and second, that the property covered by the receipts shall be insured to the full market value thereof against loss by fire and lightning, the insurance policies to be issued by corporations or individuals licensed to do business by the state in which the property is located, and when the insurance has been used to the limit that it can be secured, then in corporations or with individuals licensed to do an insurance business by the state or country of their incorporation or residence; and all policies covering property on which the loan is made shall have endorsed thereon, "loss, if any, payable to the holder of the warehouse receipts"; and provided further, that in arriving at the amount that may be loaned by any bank or trust company to any individual, partnership, corporation or limited liability company on elevator or warehouse receipts there shall be deducted from the thirty-five percent of its unimpaired capital the total of all other liabilities of the individual, partnership, corporation or limited liability company to the bank or trust company;

(c) In computing the total liabilities of any individual to a bank or trust company there shall be included all liabilities to the bank or trust company of any partnership of which the individual is a member, and any loans made for the individual's benefit or for the benefit of the partnership; of any partnership to a bank or trust company there shall be included all liabilities of and all loans made for the benefit of the partnership; of any corporation to a bank or trust company there shall be included all loans made for the benefit of the corporation and of any limited liability company to a bank or trust company there shall be included all loans made for the benefit of the limited liability company;

(d) The purchase or discount of drafts, or bills of exchange drawn in good faith against actually existing values, shall not be considered as money borrowed within the meaning of this section; and the purchase or discount of negotiable or nonnegotiable paper which carries the full recourse endorsements or guaranty or agreement to repurchase of the person, copartnership, association, corporation or limited liability company negotiating the same, shall not be considered as money borrowed by the endorser or guarantor or the repurchaser within the meaning of this section, provided that the files of the bank or trust company acquiring the paper contain the written certification by an officer designated for this purpose by its board of directors that the responsibility of the makers has been evaluated and the acquiring bank or trust company is relying primarily upon the makers thereof for the payment of the paper;

(e) For the purpose of this section, a loan guaranteed by an individual who does not receive the proceeds of the loan shall not be considered a loan to the guarantor;

(f) Investments in mortgage-related securities, as described in the Secondary

Mortgage Market Enhancement Act of 1984, P.L. 98-440, excluding those described in subparagraph g. of paragraph (a) of subdivision (1) of this subsection, shall be subject to the restrictions of this section, provided that a bank or trust company may invest up to two times its legal loan limit in any such securities that are rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization;

(2) Nor shall any of its directors, officers, agents, or employees, directly or indirectly purchase or be interested in the purchase of any certificate of deposit, pass book, promissory note, or other evidence of debt issued by it, for less than the principal amount of the debt, without interest, for which it was issued. Every bank or trust company or person violating the provisions of this subdivision shall forfeit to the state the face value of the note or other evidence of debt so purchased;

(3) Make any loan or discount on the security of the shares of its own capital stock, or be the purchaser or holder of these shares, unless the security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith, and stock so purchased or acquired shall be sold at public or private sale, or otherwise disposed of, within six months from the time of its purchase or acquisition unless the time is extended by the finance director. Any bank or trust company violating any of the provisions of this subdivision shall forfeit to the state the amount of the loan or purchase;

(4) Knowingly lend, directly or indirectly, any money or property for the purpose of enabling any person to pay for or hold shares of its stock, unless the loan is made upon security having an ascertained or market value of at least fifteen percent more than the amount of the loan. Any bank or trust company violating the provision of this subdivision shall forfeit to the state the amount of the loan;

(5) [No salaried officer of any bank or trust company shall use or borrow for himself or herself, directly or indirectly, any money or other property belonging to any bank or trust company of which the person is an officer, in excess of ten percent of the unimpaired capital of the bank or trust company, nor shall the total amount loaned to all salaried officers of any bank or trust company exceed twenty-five percent of the unimpaired capital of the bank or trust company. Where loans and a line of credit are made to salaried officers, the loans and line of credit shall first be approved by a majority of the board of directors or of the executive or discount committee, the approval to be in writing and the officer to whom the loans are made, not voting. The form of the approval shall be as follows:

We, the undersigned, constituting a majority of the of the
(bank or trust company), do hereby approve a loan of \$..... or a line of credit of \$....., or both, to, it appearing that the loan or line of credit, or both, is not more than 10 percent of the unimpaired capital of (bank or trust company); it further appearing that the loan (money actually advanced) will not make the aggregate of loans to salaried officers more than 25 percent of the unimpaired

capital of the bank or trust company.

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Dated this day of, 20.....

Provided, if the officer owns or controls a majority of the stock of any other corporation, a loan to that corporation shall be considered for the purpose of this subdivision as a loan to the officer.] **Loans or other extensions of credit to officers and directors shall be in accordance with Federal Reserve Board Regulation O (12 CFR 215.1, et seq.).** Every bank or trust company or officer thereof knowingly violating the provisions of this subdivision shall, for each offense, forfeit to the state the amount [lent] **of the loan or extension of credit;**

(6) Invest or keep invested in the stock of any private corporation, provided however, a bank or trust company may invest in equity stock in the Federal Home Loan Bank up to twice the limit described in subdivision (1) of this subsection and except as otherwise provided in this chapter.

3. Provided, that the provisions in this section shall not be so construed as in any way to interfere with the rules and regulations of any clearinghouse association in this state in reference to the daily balances; and provided, that this section shall not apply to balances due from any correspondent subject to draft.

4. Provided, that a trust company which does not accept demand deposits shall be permitted to make loans secured by a first mortgage or deed of trust on real estate to any individual, partnership, corporation or limited liability company, and to deal and invest in the interest-bearing obligations of any state, or any city, county, town, village, or political subdivision thereof, in an amount not to exceed its unimpaired capital, the loans on real estate not to exceed sixty-six and two-thirds percent of the appraised value of the real estate.

5. Any officer, director, agent, clerk, or employee of any bank or trust company who willfully and knowingly makes or concurs in making any loan, either directly or indirectly, to any individual, partnership, corporation or limited liability company or by means of letters of credit, by acceptance of drafts, or by discount or purchase of notes, bills of exchange or other obligation of any person, partnership, corporation or limited liability company, in excess of the amounts set out in this section, shall be deemed guilty of a class C felony.

6. A trust company in existence on October 15, 1967, or a trust company incorporated thereafter which does not accept demand deposits, may invest in but shall not invest or keep invested in the stock of any private corporation an amount in excess of fifteen percent of the capital and surplus fund of the trust company; provided, however, that this limitation shall not apply to the ownership of the capital stock of a safe deposit company as provided in

section 362.105; nor to the ownership by a trust company in existence on October 15, 1967, or its stockholders of a part or all of the capital stock of one bank organized under the laws of the United States or of this state, nor to the ownership of a part or all of the capital of one corporation organized under the laws of this state for the principal purpose of receiving savings deposits or issuing debentures or loaning money on real estate or dealing in or guaranteeing the payment of real estate securities, or investing in other securities in which trust companies may invest under this chapter; nor to the continued ownership of stocks lawfully acquired prior to January 1, 1915, and the prohibition for investments in this subsection shall not apply to investments otherwise provided by law other than subdivision (4) of subsection 3 of section 362.105.

7. Any bank or trust company to which the provisions of subsection 2 of this section apply may continue to make loans pursuant to the provisions of subsection 2 of this section for up to five years after the appropriate decennial census indicates that the population of the city in which such bank or trust company is located has exceeded the limits provided in subsection 2 of this section.

362.225. [1. Any bank or trust company may keep not more than fifty percent of the reserves on deposit provided for by sections 362.210, 362.215 and 362.217 invested in:

(1) Unencumbered obligations of the United States government or obligations which are fully guaranteed as to principal and interest by the United States government maturing in five years or less; or

(2) Unencumbered funds sold to approved depositories to the extent permitted by the Federal Deposit Insurance Corporation for insured institutions; or

(3) Securities of the type eligible for investment under subdivision (1) purchased from approved depositories under agreements to resell, to the extent permitted by the Federal Deposit Insurance Corporation for insured institutions.

2. All required reserves not so invested may be kept in a depository or depositories designated by it, and which, except as otherwise provided in said sections, shall be a bank, trust company or national banking association approved by the finance director.] **Missouri banks and depository trust companies shall maintain reserves against aggregate deposits as provided by the Federal Reserve Act and any amendments thereto or of regulations duly adopted and promulgated under the Federal Reserve Act for banks and trust companies of similar size and classification according to the requirements for the Federal Reserve District in which the bank or deposit trust company is located. Federal Reserve Banks located in this state are approved depositories for all banks and trust companies.**

362.310. Every bank and trust company shall create a fund to be known as a "surplus fund". This fund may be created or increased by contributions[,] **or** by transfers from undivided profits[, or from net earnings]. The fund up to forty percent of the capital of the

bank or trust company shall be used only for the payment of losses in excess of undivided profits; provided, that the excess of surplus over forty percent, upon the approval of the director of finance, may be capitalized as a stock dividend or may be transferred to undivided profits and used for cash dividends in the discretion of the board of directors.

362.315. 1. **To determine the amount of net income or loss for the dividend period, every bank or trust company shall account for all items of income and expense in accordance with regulatory instructions for completing reports of condition and income.** When the net [earnings] **income or loss** of a bank or trust company [have] **has** been determined at the close of a dividend period [as provided in sections 362.300 and 362.305], if its surplus fund does not equal forty percent of the capital of the bank or trust company, one-tenth of such net [earnings] **income** shall be credited to the surplus fund or so much thereof, less than one-tenth, as will make the fund equal forty percent of the capital; provided, that until the capital and surplus fund of any bank or trust company now existing, the capital of which is not equal to the requirements of section 362.050, equals forty percent more than the minimum of capital for a bank or trust company in its location, one-tenth of its net [earnings] **income** at the close of each dividend period shall be credited to the surplus fund.

2. [The balance of the net earnings, or the entire amount thereof if the fund equals the forty percent, may be credited to the profit and loss account of the bank or trust company; or, if its expenses and losses for the dividend period exceed its gross earnings, the excess shall be charged to its profit and loss account.

3.] The credit balance of the [account shall constitute the] undivided profits **account** at the close of the dividend period[, and shall] **may** be available for dividends. The directors of any bank or trust company may from time to time declare such dividends as they shall judge expedient from the undivided profits.

[4.] 3. No bank or trust company shall declare, credit or pay any dividend to its stockholders until it shall have made good any existing impairment of its capital, and all officers or directors of the bank or trust company who shall assent to declaring and paying a dividend while the capital stock is so impaired shall be jointly and severally liable to the creditors of the bank or trust company to the amount of the dividend for any loss resulting from the payment of the dividend.

362.520. 1. Any bank or trust company organized under the laws of the state of Missouri or any national bank doing business in Missouri may remain closed on any Sunday or public holiday, as defined in section 9.010, RSMo, and, in addition, on any day of the week fixed at least fifteen days in advance by the adoption of a resolution to such effect by a majority vote of the board of directors thereof, and notice thereof posted in the bank or trust company for the same time.

2. Any bank or trust company may be closed or remain closed whenever in the

judgment of the directors, the president or other officer in charge, the lives or safety of the institution's employees or the institution itself would be endangered or placed in jeopardy by an emergency arising from fire, flood, storm, snow, power failure, shortage of fuel, robbery, riot or threat of riot, or similar emergency. The bank or trust company so closed shall notify the director of finance of its action and the reasons therefor within twelve hours thereafter and such bank or trust company shall reopen within twenty-four hours after such closing unless permission shall be granted by the director of finance to remain closed for a longer period of time. On all closings under this section a full report in writing shall be furnished the director of finance.

3. Any day on which a bank or trust company organized under the laws of the state of Missouri or national bank doing business in Missouri pursuant to this section, remains closed, shall, with respect to the bank or trust company or national bank, be deemed a holiday for the purposes of chapter 400, RSMo, and amendments thereto, and the bank or trust company or national bank shall not be required to permit access to its safe-deposit vaults while it is so closed.

4. Where a contract by its terms requires the payment of money or the performance of a condition on any such day by or at such bank or trust company or national bank the payment may be made or condition performed on the next business day succeeding the day when the bank, trust company or national bank shall so remain or be closed, with the same force and effect as if made or performed in accordance with the terms of the contract.

5. A branch of any bank or trust company may be closed as provided in subsection 2 of this section, whether or not the main banking house is so closed, but the day shall not be a bank holiday as provided in subsections 3 and 4 of this section unless the main banking house is closed.

6. A branch office of any bank or trust company organized under the laws of the state of Missouri may be temporarily closed for any reasonable period of time for repairs, remodeling, or other purposes decided upon by the board of directors provided that notice of the board's resolution concerning such is both posted in the lobby and on the entrances of the affected location and supplied to the director of finance at least thirty days prior to the temporary closing.

362.600. 1. The term "[foreign corporation] **out-of-state bank or trust company**", as used in this section, shall mean:

(1) Any bank or [other corporation] **trust company** now or hereafter organized under the laws of any state of the United States other than Missouri; and

(2) Any national banking association **or any thrift institution under the jurisdiction of the office of thrift supervision** having its principal place of business in any state of the United States other than Missouri.

2. Except as provided in subsection 5 of this section, any [foreign corporation] **out-of-**

state bank or trust company may act in this state as trustee, executor, administrator, guardian, or in any other like fiduciary capacity, without the necessity of complying with any law of this state relating to the licensing of foreign banking corporations by the director of finance or relating to the qualifications of foreign corporations to do business in this state, and notwithstanding any prohibition, limitation or restriction contained in any other law of this state, provided only that:

(1) The [foreign corporation] **out-of-state bank or trust company** is authorized to act in this fiduciary capacity or capacities in the state in which it is incorporated, or, if the [foreign corporation] **out-of-state bank or trust company** be a national banking association, **or a thrift institution, it is authorized to act in this fiduciary capacity or capacities in the state** in which it has its principal place of business; and

(2) Any bank or other corporation organized under the laws of this state or a national banking association **or thrift institution** having its principal place of business in this state may act in these fiduciary capacities in that state without further showing or qualification, other than that it is authorized to act in these fiduciary capacities in this state, **compliance with minimum capital, bonding, or securities pledge requirements applicable to all banks and trust companies doing business in that state**, and compliance with any law of that state concerning service of process:

(a) Which may require the appointment of an official or other person for the receipt of process; or

(b) Which contains provisions to the effect that any bank [or other corporation,] **or trust company** which is not incorporated under the laws of that state, or if a national bank **or thrift institution** then which does not have its principal place of business in that state, acting in that state in a fiduciary capacity pursuant to provisions of law making it eligible to do so, shall be deemed to have appointed an official of that state to be its true and lawful attorney upon whom may be served all legal process in any action or proceeding against it relating to or growing out of any trust, estate or matter in respect of which the [corporation] **entity** has acted or is acting in that state in this fiduciary capacity, and that the acceptance of or engagement in that state in any acts in this fiduciary capacity shall [be signification of] **deemed** its agreement that the process against it, which is so served, shall be of the same legal force and validity as though served upon it personally, or which contains any substantially similar provisions.

3. Any [foreign corporation] **out-of-state bank or trust company** eligible to act in any fiduciary capacity in this state pursuant to the provisions of this section may so act whether or not a resident of this state be acting with it in this capacity, may use its corporate name in connection with such activity in this state, and may be appointed to act in this fiduciary capacity by any court having jurisdiction in the premises, all notwithstanding any provision of law to the contrary. Nothing in this section contained shall

be construed to prohibit or make unlawful any activity in this state by a bank or [other corporation] **trust company** which is not incorporated under the laws of this state, or if a national bank **or thrift institution** then which does not have its principal place of business in this state, which would be lawful in the absence of this section.

[3.] 4. Except as provided in subsection [5] 6 of this section, prior to the time when any [foreign corporation] **out-of-state bank or trust company** acts pursuant to the authority of this section in any fiduciary capacity or capacities in this state, the [foreign corporation] **out-of-state bank or trust company** shall file with the director of finance a written application for a certificate of reciprocity and the director of finance shall issue the certificate to the [foreign corporation] **out-of-state bank or trust company**. The application shall state:

(1) The correct corporate name of the [foreign corporation] **out-of-state bank or trust company**;

(2) The name of the state under the laws of which it is incorporated, or if the [foreign corporation] **out-of-state bank or trust company** is a national banking association **or thrift institution** shall state that fact;

(3) The address of its principal business office;

(4) In what fiduciary capacity or capacities it desires to act, in the state of Missouri;

(5) That it is authorized to act in a similar fiduciary capacity or capacities in the state in which it is incorporated, or, if it is a national banking association, in which it has its principal place of business;

(6) That the application shall constitute the irrevocable appointment of the director of finance of Missouri as its true and lawful attorney to receive service of all legal process in any action or proceeding against it relating to or growing out of any trust, estate or matter in respect of which the [foreign corporation] **out-of-state bank or trust company** may act in this state in the fiduciary capacity pursuant to the certificate of reciprocity applied for;

(7) [Unless the applicant is subject to the jurisdiction of the Office of Thrift Supervision, that the applicant has provided with the application a fiduciary bond in the amount of one million dollars for the benefit of the director of the division of finance in a format approved by the director of the division of finance.] **Unless the out-of-state bank or trust company verifies to the director of the division of finance that it satisfies capital requirements equal to the new charter requirement for a Missouri trust company or that it maintains a bond for the faithful performance of all its fiduciary activities equivalent to the Missouri capital requirements, the director may require the applicant to submit a bond issued by a surety company authorized to do business in the state of Missouri in the minimum amount of one million dollars in a form or such greater amount acceptable to the director of the division of finance. The surety bond shall secure the faithful performance of the fiduciary**

obligations of the out-of-state bank or trust company in Missouri.

The application shall be verified by an officer of the [foreign corporation] **out-of-state bank or trust company**, and there shall be filed with it such certificates of public officials and copies of documents certified by public officials as may be necessary to show that the [foreign corporation] **out-of-state bank or trust company** is authorized to act in a fiduciary capacity or capacities similar to those in which it desires to act in the state of Missouri, in the state in which it is incorporated, or, if it is a national banking association in which it has its principal place of business. The director of finance shall, thereupon, if the [foreign corporation] **out-of-state bank or trust company** is one which may act in the fiduciary capacity or capacities as provided in subsection 2 of this section, issue to the [corporation] **entity** a certificate of reciprocity, retaining a duplicate thereof together with the application and accompanying documents in his or her office. The certificate of reciprocity shall recite and certify that the [foreign corporation] **out-of-state bank or trust company** is eligible to act in this state pursuant to this section and shall recite the fiduciary capacity or capacities in which the [foreign corporation] **out-of-state bank or trust company** is eligible so to act.

[4.] **5.** A certificate of reciprocity issued to any [foreign corporation] **out-of-state bank or trust company** shall remain in effect until the [foreign corporation] **out-of-state bank or trust company** shall cease to be entitled under subsection 2 of this section to act in this state in the fiduciary capacity or capacities covered by the certificate, and thereafter until revoked by the director of finance. If at any time the [foreign corporation] **out-of-state bank or trust company** shall cease to be entitled under subsection 2 of this section to act in this state in the fiduciary capacity or capacities covered by the certificate, the director of finance shall revoke the certificate and give written notice of the revocation to the [foreign corporation] **out-of-state bank or trust company**. No revocation of any certificate of reciprocity shall affect the right of the [foreign corporation] **out-of-state bank or trust company** to continue to act in this state in a fiduciary capacity in estates or matters in which it has theretofore begun to act in a fiduciary capacity pursuant to the certificate.

[5.] **6.** A [foreign corporation] **out-of-state bank or trust company** shall not establish or maintain in this state a place of business, branch office or agency for the conduct in this state of business as a fiduciary unless:

(1) The [foreign corporation] **out-of-state bank or trust company** is under the control of a Missouri bank or a Missouri bank holding company, as these terms are defined in section 362.925, and the [foreign corporation] **out-of-state bank or trust company** has complied with the requirements relating to the qualifications of [foreign corporations] **out-of-state bank or trust company** to do business in this state;

(2) The [foreign corporation] **out-of-state bank or trust company** is a bank, trust company or national banking association in good standing that possesses fiduciary powers

from its chartering authority and is the surviving corporation to a merger or consolidation with a national banking association located in Missouri or a Missouri bank or trust company. The provisions of this subdivision are enacted to implement subsection 2 of this section and section 362.610, and the provisions of Title 12, U.S.C. 36(f)(2) of the National Bank Act; or

(3) The [foreign corporation] **out-of-state bank or trust company** is a state-chartered bank, savings and loan association, trust company [or], national banking association, **or thrift institution** in good standing that possesses fiduciary powers and has received a certificate of reciprocity, in which case it may only open a trust representative office in Missouri which is not otherwise a branch of such [foreign corporation] **out-of-state bank or trust company**, provided a bank, savings and loan association or trust company chartered under the laws of Missouri and a national bank **or thrift institution** with its principal location in Missouri, all with fiduciary powers, are permitted to open and operate a trust representative office under the same or less restrictive conditions in the state in which the [foreign corporation] **out-of-state bank or trust company** is organized or has its principal office.

[6.] 7. [A foreign corporation] **An out-of-state bank or trust company**, insofar as it acts in a fiduciary capacity in this state pursuant to the provisions of this section, shall not be deemed to be transacting business in this state, if the [foreign corporation] **out-of-state bank or trust company** does not establish or maintain in this state a place of business, branch office, or agency for the conduct in this state of business as a fiduciary.

[7.] 8. Every [foreign corporation] **out-of-state bank or trust company** to which a certificate of reciprocity shall have been issued shall be deemed to have appointed the director of finance to be its true and lawful attorney upon whom may be served all legal process in any action or proceeding against it relating to or growing out of any trust, estate or matter in respect of which the [foreign corporation] **out-of-state bank or trust company** acts in this state in any fiduciary capacity pursuant to the certificate of reciprocity. Service of the process shall be made by delivering a copy of the summons or other process, with a copy of the petition when service of the copy is required by law, [together with a remittance of one dollar (to be taxed as costs in the action or proceeding),] to the director of finance or to any person in his or her office authorized by him to receive the service. The director of finance shall immediately forward the process, together with the copy of the petition, if any, to the [foreign corporation] **out-of-state bank or trust company**, by registered mail, addressed to it at the address on file with the director, or if there be none on file then at its last known address. The director of finance shall keep a permanent record in his or her office showing for all process served, the style of the action or proceeding, the court in which it was brought, the name and title of the officer serving the process, the day and hour of service, and the day of mailing by registered mail to the [foreign corporation] **out-of-state bank or**

trust company and the address to which mailed. In case the process is issued by [an associate circuit judge] **a court**, the same may be directed to and served by any officer authorized to serve process in the city or county where the director of finance shall have his or her office, at least fifteen days before the return thereof.

[362.210. 1. Every bank and trust company shall maintain total reserves against its aggregate demand deposits as follows:

(1) Eighteen percent of the deposits, if the bank or trust company is located in a city having a population of two hundred thousand or over;

(2) Fifteen percent of the deposits, if the bank or trust company is located in a city having a population of twenty-five thousand or over and less than two hundred thousand;

(3) Fifteen percent of the deposits, if the bank or trust company is located elsewhere in the state.

2. If any bank or trust company shall have become a member of any reserve bank, it may maintain as reserves on deposit with the federal reserve bank such portion of its total reserves as shall be required or permitted of members of the federal reserve bank.]

[362.213. Notwithstanding anything to the contrary contained in section 362.210, or any other law of this state, no bank or trust company will be required to maintain any percentage of reserves against its aggregate demand deposits which is greater than the percentage required by the Federal Reserve Act and any amendments thereto or of regulations duly adopted and promulgated thereunder for banks or trust companies of similar size and classification, and provided further that the percentage of reserves required of banks or trust companies not members of the Federal Reserve System shall at no time exceed the limits set by section 362.210.]

[362.215. In addition to reserves against demand deposits every bank and trust company shall maintain reserves against its aggregate time deposits of at least three percent of the time deposits, which shall be maintained as reserves on hand as provided in section 362.210.]

[362.217. Any bank or trust company becoming a member of a federal reserve bank and while it continues as such member, shall be required to maintain only such reserves as are required by the Federal Reserve Act and any amendments thereto.]

[362.300. To determine the amount of gross earnings of a bank or trust company for any dividend period, the following items may be included:

(1) All earnings actually received during the period, less interest accrued and unpaid included in the last previous calculation of earnings;

(2) Interest accrued and unpaid upon debts owing to it secured by collateral as authorized by this chapter upon which debts no default of more than one year exists and upon corporate stocks, bonds or other interest-bearing obligations owned by it upon which no default exists;

(3) The sums added to the cost of securities purchased for less than par as a result of amortization, provided the market value of such securities is at least equal to their present cost as determined by amortization;

(4) Any profits actually received during the period from the sale of securities, real estate or other property owned by it;

(5) Sums recovered on items previously charged off, and any amounts allowed by the director on account of assets previously disallowed and charged off; provided, the director shall have approved, and only to the extent of his approval, any increase in the book value of an office building owned by it, which building or a portion thereof is used by it as a place of business.]

[362.305. 1. To determine the amount of net earnings for the dividend period, the following items shall be deducted from gross earnings:

(1) All expenses paid or incurred, both ordinary and extraordinary, in the transaction of its business, the collection of its debts and the management of its affairs, properly belonging to the period under consideration for the calculation of net earnings for dividend purposes, and not previously deducted for these purposes;

(2) Interest paid, or accrued and unpaid, upon debts owing by it, and properly belonging to the period under consideration for the calculation of net earnings for dividend purposes, and not previously deducted for these purposes;

(3) The amounts deducted through amortization from the cost of corporate stocks, bonds or other interest-bearing obligations purchased above par in order to bring them to par at maturity;

(4) All losses sustained by it. In the computation of the losses all debts owing it shall be included upon which no interest shall have been paid for more than two years or on which a judgment has been recovered which shall have remained unsatisfied for two years; provided, that the director, in either case, may extend the time beyond the period of two years; and such other assets as shall have been disallowed by the director or by its board of directors.

2. The balance thus obtained shall constitute the net earnings of such bank or trust company for such period.]

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