Journal of the Senate

FIRST REGULAR SESSION

SEVENTY-SECOND DAY—WEDNESDAY, MAY 16, 2007

The Senate met pursuant to adjournment.

President Kinder in the Chair.

Reverend Carl Gauck offered the following prayer:

"The spirit of the Lord God is upon me, because the Lord has anointed me;.." (Isaiah 61:1)

O Lord, we are at the mid point of our final week and know that You will give us Your aid to strengthen us and cause us to stand for that which is upright and proper and what is needed to be said and done. So help us do our jobs knowing that our joy comes from serving You and knowing we have done our very best, upheld by Your righteous and omnipotent hand. In Your Holy Name we pray. 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.

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

Present—Senators

Barnitz	Bartle	Bray	Callahan
Champion	Clemens	Coleman	Crowell
Days	Engler	Gibbons	Goodman
Graham	Green	Griesheimer	Gross
Justus	Kennedy	Koster	Lager
Loudon	Mayer	McKenna	Nodler
Purgason	Ridgeway	Rupp	Scott
Shields	Shoemyer	Smith	Stouffer
Vogel	Wilson—34		

Absent—Senators—None

Absent with leave—Senators—None

Vacancies—None

The Lieutenant Governor was present.

RESOLUTIONS

Senator Lager offered Senate Resolution No. 1373, regarding Bette Williams, Oregon, which was adopted.

Senator Rupp offered Senate Resolution No. 1374, regarding Lauren Benney, Saint Peters, 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 has taken up and passed **SCS** for **SB 66**.

With House Amendment Nos. 1 and 2.

HOUSE AMENDMENT NO. 1

Amend Senate Committee Substitute for Senate Bill No. 66, Page 1, Line 6 of the title, by inserting after the word, "investments" the following words, "and examinations"; and

Further amend said bill, Page 58, Section 381.068, by removing all of said section from the bill and inserting in lieu thereof the following:

"**381.011. 1. Sections 381.011 to 381.412 shall be known and may be cited as the "Missouri Title Insurance Act".**

2. The purpose of sections 381.011 to 381.405 is to provide the state of Missouri with a comprehensive body of law for the effective regulation and supervision of title insurance business transacted within this state in response to the McCarran-Ferguson Act, Sections 1011-1015, Title 15, United States Code.

3. Except as otherwise expressly provided in this chapter and except where the context otherwise requires, all provisions of the laws of this state relating to insurance and insurance companies generally shall apply to title insurance, title insurers, and title agents.

381.015. 1. As used in sections 381.011 to 381.412, the term "title insurance commitment" or "commitment" means a preliminary report, commitment, or binder issued prior to the issuance of a title insurance policy containing the terms, conditions, exceptions, and other matters incorporated by reference under which the title insurer is willing to issue its title insurance policy. A title insurance commitment is not an abstract of title.

2. A title insurer, title agency, or title agent issuing a lender's title insurance policy in conjunction with a mortgage loan made simultaneously with the purchase of all or part of the real estate securing the loan, where no owner's title insurance policy has been requested, shall give written notice, on a form prescribed or approved by the director, to the purchaser-mortgagor at the time the commitment is prepared. The notice shall explain that a lender's title insurance policy is to be issued protecting the mortgage-lender, and that the policy does not provide title insurance protection to the purchaser-mortgagor as the owner of the property being purchased. The notice shall explain that the purchaser-mortgagor may obtain an owner's title insurance policy protecting the property owner, within sixty days of closing and at a specified cost or approximate cost, if the proposed coverages are or amount of insurance is not then known. A copy of the notice, signed by the purchaser-mortgagor, shall be retained in the relevant underwriting file at least fifteen years after the effective date of the policy.

3. A violation of any provision under this section is a level one violation under section 374.049, RSMo.

381.018. 1. The title insurer shall not allow the issuance of its commitments or policies by a title agency or title agent not affiliated with a title agency unless there is in force a written contract between the parties.

2. The title insurer shall maintain an inventory of all policy numbers allocated to each title agency or title agent not affiliated with a title agency.

3. The title insurer shall have on file proof that the title agency or title agent is licensed by this state at the time a written contract is entered into or before it becomes effective.

4. The title insurer shall establish the underwriting guidelines and, where applicable, limitations on title claims settlement authority to be incorporated into contracts with its title agencies and title agents not affiliated with a title agency.

5. If a title insurer terminates its contract

with a title agency licensed under this chapter, the insurer shall, within seven days of the termination, notify the director of the reasons for termination, including any information that is required to be reported under subsection 5 of section 375.022, RSMo.

6. A violation of any provision under this section is a level two violation under section 374.049, RSMo.

381.019. 1. A title insurer, title agency or title agent participating in a settlement or closing of a residential real estate transaction shall provide clear, conspicuous, and distinct disclosure of premiums and charges. The director shall adopt rules not in conflict with provisions of the federal Real Estate Settlement Procedures Act, as amended, under section 381.042 to implement disclosure of the following:

(1) Premium;

(2) Abstract or title search and examination fee and any other associated charges or fees; and

(3) Settlement, escrow, or closing fees.

2. A violation of any provision under this section is a level two violation under section 374.049, RSMo.

381.022. 1. As used in sections 381.011 to 381.412, the following terms mean:

(1) "Escrow", written instruments, money or other items deposited by one party with a depository, escrow agent, or escrowee for delivery to another party upon the performance of a specified condition or the happening of a certain event;

(2) "Qualified depository institution", an institution that is:

(a) Organized or, in the case of a United States branch or agency office of a foreign banking organization, licensed under the laws of the United States or any state and has been granted authority to operate with fiduciary powers;

(b) Regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies;

(c) Insured by the appropriate federal entity; and

(d) Qualified under any additional rules established by the director;

(3) "Security" or "security deposit", funds or other property received by the title insurer as collateral to secure an indemnitor's obligation under an indemnity agreement under which the insurer is granted a perfected security interest in the collateral in exchange for agreeing to provide coverage in a title insurance policy for a specific title exception to coverage.

2. A title insurer, title agency, or title agent not affiliated with a title agency may operate as an escrow, security, settlement, or closing agent, provided that all funds deposited with the title insurer, title agency, or title agent not affiliated with a title agency, pursuant to written instructions in connection with any escrow, settlement, closing, or security deposit shall be submitted for collection to or deposited in a separate fiduciary trust account or accounts in a qualified depository institution no later than the close of the second business day after receipt, in accordance with the following requirements:

(1) The funds regulated under this section shall be the property of the person or persons entitled to them under the provisions of the escrow, settlement, security deposit, or closing agreement and shall be segregated for each depository by escrow, settlement, security deposit, or closing in the records of the title insurer, title agency, or title agent not affiliated with a title agency, in a manner that permits the funds to be identified on an individual basis and

in accordance with the terms of the individual written instructions or agreements under which the funds were accepted; and

(2) The funds shall be applied only in accordance with the terms of the individual written instructions or agreements under which the funds were accepted.

3. It is unlawful for any person to:

(1) Commingle personal or any other moneys with escrow funds regulated under this section;

(2) Use such escrow funds to pay or indemnify against debts of the title insurance agent or of any other person;

(3) Use such escrow funds for any purpose other than to fulfill the terms of the individual written escrow instructions after the necessary conditions of the written escrow instructions have been met;

(4) Disburse any funds held in an escrow account unless the disbursement is made under a written instruction or agreement specifying under what conditions and to whom such funds may be disbursed or under an order of a court of competent jurisdiction; or

(5) Disburse any funds held in a security deposit account unless the disbursement is made under a written agreement specifying:

(a) What actions the indemnitor shall take to satisfy his or her obligation under the agreement;

(b) The duties of the title insurer, title agency, or title agent not affiliated with a title agency with respect to disposition of the funds held, including a requirement to maintain evidence of the disposition of the title exception before any balance may be paid over to the depositing party or his or her designee; and

(c) Any other provisions the director may require by rule or order.

4. Notwithstanding the provisions of subsection 3 of this section, any bank credits, bank services, interest, or similar consideration received on funds deposited in connection with any escrow, settlement, security deposit, or closing may be retained by the title insurer, title agency, or title agent not affiliated with a title agency as compensation for administration of the escrow or security deposit, unless the specific written instructions for the funds or a governing statute provides otherwise.

5. Notwithstanding the provisions of subsection 2 of this section, a title insurer, title agency, or title agent is not authorized to provide such services as an escrow, security, settlement, or closing agent in a residential real estate transaction unless as part of the same transaction the title insurer, title agency, or title agent issues a commitment, binder, or title insurance policy and closing protection letters have been issued protecting the buyer's and the seller's interests, or the title agency or agent has given written notice to the affected person in a title insurance commitment or on a form approved by rule promulgated by the director that the person's interest in the closing or settlement is not protected by the title insurer, title agency, or title agent.

6. It is unlawful for any title agency or agent to engage in the handling of an escrow, settlement or closing, of a residential real estate transaction unless the escrow handling, settlement or closing is conducted or performed in contemplation of and in conjunction with the issuance of a title insurance policy or a closing protection letter, or prior to the receipt of any funds, the title agency or agent clearly discloses to the seller, buyer or lender involved in such escrow, settlement or closing, that no title insurer is providing any protection for closing or settlement funds received by the title agency or agent.

7. A violation of any provision under this

section is a level three violation under section 374.049, RSMo.

381.023. 1. A title insurer shall, at least annually, conduct an onsite review of the underwriting, claims, and escrow practices of the title agency or agent with which it has a contract. If the title agency or agent does not maintain separate fiduciary trust accounts for each title insurer it represents, the title insurer shall verify that the funds held on its behalf are reasonably ascertainable from the books of account and records of the title agency or agent.

2. Each title insurer authorized to do business in Missouri shall adopt and utilize the following standards and procedures for the onsite review of title agencies and agents. Onsite review documentation, work papers, summaries, and reports shall be maintained by each title insurer for a period of at least four years and shall be made available to the director for examination upon request. A report shall be prepared by the title insurer at the completion of the onsite review setting forth the title insurer's findings. Onsite review findings shall include, but not be limited to, the following:

(1) A review of contracts between the title insurer and the title agency or agent;

(2) A confirmation that the title agency or agent has prepared an annual statement of financial condition of the title agency or agent, certified by the title insurance agent or designated agent of the title agency under oath or by affirmation as being a true and accurate representation of financial condition;

(3) A review of policies and practices related to conflicts of interest affiliated business arrangements, and regulatory compliance;

(4) Reconciliation of orders with commitments, title searches, title policies, and collection of premiums;

(5) A review of the agent's procedures for tracking issued commitments;

(6) A review of the practices to cancel commitments on transactions that do not close;

(7) A review of the procedures for follow-up after closing to track status of outstanding conditions required for timely issuance of policies;

(8) A review of the procedures for voiding policies;

(9) A review of the tracking of open escrow, security, settlement or closing files;

(10) A review of issued policy reports to the title insurer by the title agency or agent;

(11) A review of any files awaiting policy issuance that includes a determination of the average length of time between closing and the issuance of the title policy; and

(12) A review of a three-way reconciliation of bank balance, book balance and escrow trial balance for each individual escrow bank account.

3. If the title agency or agent is an agency or agent for two or more title insurers, the title insurers may cooperate in complying with the requirements of this section and shall be exempt from liability for sharing findings with other title insurers represented by the agency or agent.

4. The title insurer shall provide a copy of the report of each such review it performs to the director. The director shall promulgate rules setting forth the minimum threshold level at which a review would be required, the standards thereof and the form of report required.

5. A violation of any provision under this section is a level two violation under section 374.049, RSMo.

381.024. 1. It is unlawful for any title agency or title agent not affiliated with an

agency to unreasonably deny access or fail to cooperate with its underwriters in the title insurers' reviews of the agency's or agent's escrow, settlement, closing and security deposit accounts.

2. It is unlawful for any title agency or title agent not affiliated with an agency, appointed by two or more title insurers, to deny any of the title insurers access to the fiduciary trust accounts in connection with providing escrow or closing settlement services, and any or all of the supporting account information in order to ascertain the safety and security of the funds held by the title agency or title agent.

3. A violation of any provision under this section is a level two violation under section 374.049, RSMo.

381.025. 1. As used in this section, the term "county" or "counties" includes any city not within a county.

2. Nothing in sections 381.011 to 381.412 shall be construed as prohibiting the division of premiums and charges between or among a title insurer and its title agent or agency, two or more title insurers, one or more title insurers and one or more title agents or agencies, or two or more title agents or agencies, provided such division of premiums and charges does not constitute a violation of the Real Estate Settlement Procedures Act, 12 U.S.C. Section 2601, et. seq., as amended.

3. A violation of any provision under section 381.141 is a level three violation under section 374.049, RSMo.

4. If the director fails to initiate a proceeding to enforce section 381.141 within forty-five days following receipt of written notice of such violation, any title insurer, title agency, or title agent doing business in the same county may maintain an action for injunctive relief against a title insurer, title agency, or title agent violating any provision of this section. In any action under this subsection, the court may award to the successful party the court costs of the action together with reasonable attorney fees.

381.026. 1. The settlement agent shall present for recording all deeds and security instruments for real estate closings handled by it within five business days after completion of all conditions precedent thereto unless otherwise instructed by all of the parties to the transaction.

2. Nothing in this chapter shall be deemed to prohibit the recording of documents prior to the time funds are available for disbursement with respect to a transaction in which a title insurer, title agency, or title agent not affiliated with a title agency is the settlement agent, provided all parties to whom payment will become due upon such recording consent thereto in writing.

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

(1) "Affiliate", a specific person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified;

(2) "Affiliated business", any portion of a title insurance agency's business written in this state that was referred to it by a producer of title insurance business or by an associate of the producer, where the producer or associate, or both, have a financial interest in the title agency;

(3) "Associate", any:

(a) Business organized for profit in which a producer of title business is a director, officer, partner, employee, or an owner of a financial interest;

(b) Employee of a producer of title business;

(c) Franchisor or franchisee of a producer of title business;

(d) Spouse, parent, or child of a producer of title insurance business who is a natural person;

(e) Person, other than a natural person, that controls, is controlled by, or is under common control with, a producer of title business;

(f) Person with whom a producer of title insurance business or any associate of the producer has an agreement, arrangement, or understanding, or pursues a course of conduct, the purpose or effect of which is to provide financial benefits to that producer or associate for the referral of business;

(4) "Control", including the terms "controlling", "controlled by", and "under common control with", the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position or corporate office held by the person. Control shall be presumed to exist if a person, directly or indirectly, owns, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of another person. This presumption may be rebutted by showing that control does not exist in fact. The director may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect;

(5) "Referral", the directing or the exercising of any power or influence over the direction of title insurance business, whether or not the consent or approval of any other person is sought or obtained with respect to the referral.

2. Whenever the business to be written constitutes affiliated business, prior to commencing the transaction, the title insurer, title agency, or title agent shall ensure that its customer has been provided with disclosure of the existence of the affiliated business arrangement and a written estimate of the charge or range of charges generally made for the title services provided by the title insurer, title agency, or agent.

3. The director shall establish rules for use by all title agencies in the recording and reporting of the agency's owners and of the agency's ownership interests in other persons or businesses and of material transactions between the parties.

4. The director shall require each title insurer, agency, and agent to file on forms prescribed by the director reports setting forth the names and addresses of those persons, if any, that have a financial interest in the insurer, agency, or agent and who the insurer, agency, or agent knows or has reason to believe are producers of title insurance business or associates of producers, except the duty to report shall not include shareholders of record of any publicly traded insurer.

5. Nothing in this chapter shall be construed as prohibiting affiliated business arrangements in the provision of title insurance business so long as:

(1) The title insurer, title agency, title agent, or party making a referral constituting affiliated business, at or prior to the time of the referral, discloses the arrangement and, in connection with the referral, provides the person being referred with a written estimate of the charge or range of charges likely to be assessed and otherwise complies with the disclosure obligations of this section;

(2) The person being referred is not required to use a specified title insurer, agency, or agent; and

(3) The only thing of value that is received by the title insurer, agency, agent, or party making the referral, other than payments otherwise permitted, is a return on an ownership interest. For purposes of this subsection, the terms "required use" and "return on an ownership interest" shall have the meaning accorded to them under the Real Estate Settlement Procedures Act (RESPA), as amended.

6. A violation of any provision under this section is a level two violation under section 374.049, RSMo.

381.038. 1. For the purposes of this section, the term "direct operations" means that portion of a title insurer's operations which are attributable to business written by a bona fide employee.

2. Records relating to escrow and security deposits shall be preserved and retained by a title insurer engaged in direct operations, title agency, and title agent for as long as appropriate to the circumstances but, in no event less than seven years after the escrow or security deposit account has been closed.

3. A title agent and a title agency shall remit premiums to the title insurer under the term of its agency contract, but in no event later than within sixty days of receiving an invoice from the title insurer. A title insurer, title agency, or title agent shall promptly issue each title insurance policy within forty-five days after compliance with the requirements of the commitment for insurance, unless special circumstances as defined by rule delay the issuance.

4. This section shall not apply to a title insurer acting as coinsurer if one of the other coinsurers has complied with this section, and shall not apply to a reinsurer.

5. A violation of any provision under this section is a level two violation under section 374.049, RSMo.

381.042. 1. The director under the authority in section 374.045, RSMo, may issue rules, regulations, and orders necessary to carry out the provisions of this chapter.

2. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after January 1, 2008, shall be invalid and void.

381.045. 1. If the director determines that a person has engaged, is engaging, or has taken a substantial step toward engaging in an act, practice, omission or course of business constituting a violation in this chapter or a rule adopted or order issued pursuant thereto, or a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation in this chapter or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. The director may also suspend or revoke the license of a producer under section 375.141, RSMo, or the certificate of authority of any title insurer as authorized under section 374.047, RSMo, for any such willful violation.

2. If the director believes that a person has

engaged, is engaging, or has taken a substantial step toward engaging in an act, practice, omission or course of business constituting a violation in this chapter or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation in this chapter or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo.

3. Nothing contained in this section shall affect the right of the director to impose any other penalties provided for in the laws relating to the business of insurance.

4. Nothing contained in this chapter is intended to or shall in any other manner limit or restrict the rights of policyholders, claimants, and creditors.

381.048. 1. The director may bring an action against any title insurer, title agency, title agent, or any director, officer, agent, employee, trustee, or affiliate of a title insurer, title agency, or title agent in a court of competent jurisdiction to enjoin violations of the Real Estate Settlement Procedures Act, 12 U.S.C. Section 2607, as amended.

2. A violation of any provision under the federal Real Estate Settlement Procedures Act, as amended, is a level two violation under section 374.049, RSMo.

381.052. No person other than a domestic, foreign, or non-United States title insurer organized on the stock plan and duly licensed by the director shall transact title insurance business as an insurer in this state.

381.055. Subject to the exceptions and restrictions contained in this chapter, a title insurer shall have the power to:

(1) Do only title insurance business; and

(2) Reinsure title insurance policies.

381.058. 1. No insurer that transacts any class, type, or kind of business other than title insurance shall be eligible for the issuance or renewal of a license to transact the business of title insurance in this state nor shall title insurance be transacted, underwritten, or issued by any insurer transacting or licensed to transact any other class, type, or kind of business.

2. A title insurer shall not engage in the business of guaranteeing payment of the principal or the interest of bonds or mortgages.

3. (1) Notwithstanding subsection 1 of this section or anything else to the contrary in sections 381.011 to 381.405, a title insurer is expressly authorized to issue closing or settlement protection letters (and to collect a fee for such issuance) in all transactions where its title insurance policies are issued and where its issuing agent or agency is performing settlement services and shall do so in favor of and upon request by the applicable buyer, lender, or seller in such transaction. Such closing or settlement protection letter form shall be filed with the director under section 381.085 and shall conform to the terms of coverage and form of instrument as required by rule of the director and shall indemnify a buyer, lender, or seller solely against losses not to exceed the amount of the settlement funds only because of the following acts of the title insurer's named issuing title agency or title agent:

(a) Acts of theft of settlement funds or fraud with regard to settlement funds; and

(b) Failure to comply with written closing instructions by the proposed insured when agreed to by the title agency or title agent relating to title insurance coverage.

(2) The rate for issuance of a closing or settlement protection letter in a residential real estate transaction indemnifying a lessee or

purchaser of an interest in land, a borrower, or a lender secured by a mortgage, including any other security instrument, of an interest in land shall be filed as a rate with the director.

(3) The rate for issuance of a closing or settlement protection letter in a residential real estate transaction indemnifying a seller of an interest in land shall be filed as a separate rate with the director.

(4) Such filed rate shall not be excessive or inadequate. The entire rate for the closing or settlement protection letter shall be retained by the title insurer.

(5) Except as provided under this section or section 381.403, a title insurer shall not provide any other coverage which purports to indemnify against improper acts or omissions of a person with regard to escrow, settlement, or closing services.

381.062. Any title insurer authorized to do an insurance business in this state, shall establish and maintain a minimum paid-in capital of not less than four hundred thousand dollars and, in addition, surplus of at least four hundred thousand dollars. Beginning January 1, 2013, any title insurer authorized to do an insurance business in this state, shall establish and maintain a minimum paid-in capital of not less than eight hundred thousand dollars and, in addition, surplus of at least eight hundred thousand dollars.

381.065. 1. The net retained liability of a title insurer for a single risk in regard to real property located in this state, or in regard to a title insurance policy issued in this state and insuring personal property, whether assumed directly or as reinsurance, shall not exceed the aggregate of fifty percent of surplus as regards policyholders plus the statutory premium reserve less the company's investment in title plants, all as shown in the most recent annual statement of the insurer on file with the director.

2. For purposes of this chapter:

(1) A single risk shall be the insured amount of any title insurance policy, except that, where two or more title insurance policies are issued simultaneously covering different estates in the same property, a single risk shall be the sum of the insured amounts of all the title insurance policies; and

(2) A policy under which a claim payment reduces the amount of insurance under one or more other title insurance policies shall be included in computing the single risk sum only to the extent that its amount exceeds the aggregate amount of the policy or policies whose amount of insurance is reduced.

3. A title insurer may obtain reinsurance for all or any part of its liability under its title insurance policies or reinsurance agreements and may also reinsure title insurance policies issued by other title insurers on single risks located in this state or elsewhere. Reinsurance on policies issued on real property located in this state, or on policies issued in this state and insuring personal property, may be obtained from any title insurers licensed to transact title insurance business in this state, any other state, or the District of Columbia and which have a combined capital and surplus of at least one million six hundred thousand dollars.

4. The director may waive the limitation of this section for a particular risk upon application of the title insurer and for good cause shown.

381.068. In determining the financial condition of a title insurer doing business under this chapter, the general investment provisions of sections 379.080 to 379.082, RSMo, shall apply; except that, an investment in a title plant or plants in an amount equal to the actual cost shall be allowed as an admitted asset for title insurers. The aggregate amount of the

investment shall not exceed twenty percent of surplus to policyholders, as shown on the most recent annual statement of the title insurer on file with the director.

381.072. 1. In determining the financial condition of a title insurer doing business under this chapter, the general provisions of the laws regulating the business of insurance requiring the establishment of reserves sufficient to cover all known and unknown liabilities including allocated and unallocated loss adjustment expense, shall apply; except that, a title insurer shall establish and maintain:

(1) (a) A known claim reserve in an amount estimated to be sufficient to cover all unpaid losses, claims, and allocated loss adjustment expenses arising under title insurance policies for which the title insurer may be liable, and for which the insurer has discovered or received notice by or on behalf of the insured or escrow or security depositor;

(b) Upon receiving notice from or on behalf of the insured of a title defect in or lien or adverse claim against the title of the insured that may result in a loss or cause expense to be incurred in the proper disposition of the claim, the title insurer shall determine the amount to be added to the reserve, which amount shall reflect a careful estimate of the loss or loss expense likely to result by reason of the claim;

(c) Reserves required under this section may be revised from time to time and shall be redetermined at least once each year;

(2) A statutory or unearned premium reserve established and maintained as follows:

(a) A domestic title insurer shall establish and maintain an unearned premium reserve computed in accordance with this section, and all sums attributed to such reserve shall at all times and for all purposes be considered and constitute unearned portions of the original premiums. This reserve shall be reported as a liability of the title insurer in its financial statements;

(b) The unearned premium reserve shall be maintained by the title insurer for the protection of holders of title insurance policies. Except as provided in this section, assets equal in value to the reserve are not subject to distribution among creditors or stockholders of the title insurer until all claims of policyholders or claims under reinsurance contracts have been paid in full, and all liability on the policies or reinsurance contracts has been paid in full and discharged or lawfully reinsured;

(c) The unearned premium reserve shall consist of:

a. The amount of the unearned premium reserve on January 1, 2008;

b. A sum equal to fifteen cents for each one thousand dollars of net retained liability under each title insurance policy, excluding mortgagee's policies simultaneously issued with owner's policies or owner's leasehold policies of the same or greater amount, on a single risk written on properties located in this state and issued after January 1, 2008; and

c. Unearned premium for closing protection letters;

(d) Amounts placed in the unearned premium reserve in any year in accordance with paragraph (c) of this subdivision shall be deducted in determining the net profit of the title insurer for that year;

(e) A title insurer shall release from the unearned premium reserve a sum equal to ten percent of the amount added to the reserve during a calendar year on July first of each of the five years following the year in which the sum was added, and shall release from the unearned premium reserve a sum equal to three and one-third percent of the amount added to the reserve during that year on each succeeding July first until the entire amount for that year

has been released. The amount of the unearned premium reserve or similar unearned premium reserve maintained before January 1, 2008, shall be released in accordance with the law in effect immediately before January 1, 2008;

(f) a. Each domestic and foreign title insurer shall file annually with the audited financial report required under section 375.1032, RSMo, an actuarial certificate made by a member in good standing of the American Academy of Actuaries, or by an actuary permitted to make such certificate by the commissioner, superintendent or director of the department of insurance of the state of incorporation of a foreign title insurer;

b. The actuarial certification shall conform to the annual statement instructions for title insurers adopted by the National Association of Insurance Commissioners and shall include the actuary's professional opinion of the insurer's reserves as of the date of the annual statement. The reserves analyzed under this section shall include reserves for known claims, including adverse developments on known claims, and reserves for incurred but not reported claims;

(g) Each domestic and foreign title insurer shall establish a supplemental reserve in the amount by which the actuarially certified reserves exceed the total of the known claim reserve and statutory premium reserve as set forth in the title insurer's annual financial report, subject to this subdivision.

2. A foreign or alien title insurer licensed to transact title insurance business in this state shall maintain at least the same reserves on title insurance policies issued on properties located in this state as are required of domestic title insurers, unless the laws of the jurisdiction of domicile of the foreign or alien title insurer require a higher amount.

381.075. 1. Sections 375.570 to 375.750, RSMo, and sections 375.1150 to 375.1246, RSMo, shall apply to all title insurers subject to this chapter, except as otherwise provided in this section. In applying such sections, the court shall consider the unique aspects of title insurance and shall have broad authority to fashion relief that provides for the maximum protection of the title insurance policyholders.

2. Security and escrow funds held by or on behalf of the title insurer shall not become general assets and shall be administered as secured claims as defined in section 375.1152, RSMo.

3. Title insurance policies that are in force at the time an order of liquidation is entered shall not be canceled except upon a showing to the court of good cause by the liquidator. The determination of good cause shall be within the discretion of the court. In making this determination, the court shall consider the unique aspects of title insurance and all other relevant circumstances.

4. The court may set appropriate dates that potential claimants must file their claims with the liquidator. The court may set different dates for claims based upon the title insurance policy than for all other claims. In setting dates, the court shall consider the unique aspects of title insurance and all other relevant circumstances.

5. As of the date of the order of insolvency or liquidation, all premiums paid, due or to become due under policies of the title insurers, shall be fully earned. It shall be the obligation of title agencies, title agents, insureds, or representatives of the title insurer to pay fully earned premium to the liquidator or rehabilitator.

381.085. 1. As used in sections 381.011 to 381.412, the terms "search", "search of the public records", or "search of title", mean a search of those records established by the laws of this state for the purpose of imparting constructive notice of matters relating to real

property to purchasers for value and without knowledge.

2. A title insurer shall not deliver or issue for delivery or permit any of its authorized title agencies or title agents to deliver in this state, any standard form providing coverage, in connection with title insurance written, unless the standard form has been filed with the director thirty days prior to use.

3. Forms covered by this section shall include:

(1) Title insurance policies, including standard form endorsements;

(2) Title insurance commitments issued prior to the issuance of a title insurance policy; and

(3) Closing or settlement protection letters.

4. Any term or condition related to an insurance coverage provided by a title insurance policy or any exception to the coverage, except exceptions ascertained from, or affirmative coverages offered as a result of, a search and examination of records relating to a title or inspection or survey of a property to be insured, may only be included in the policy after the term, condition or exception has been filed with the director as herein provided.

5. The director shall review such form, term, condition, or exception within thirty days. If within this time the director believes the form, term, condition, or exception is not in compliance with the insurance laws of this state or does not contain such words, phraseology, conditions, and provisions which are specific, certain, and unambiguous and reasonably adequate to meet the needed requirements of those insured under such policies, the director may schedule a hearing to be held within sixty days and at such hearing receive evidence and suggestions of law on the matter.

6. If the director determines after a hearing that a form, term, condition, or exception shall be disapproved, the director shall issue an order disapproving the form, term, condition, or exception in a record and with findings of fact and conclusions of law in accordance with the provisions of chapter 536, RSMo. A final order may not be issued unless the director specifies the provisions of law that have not been complied with or the words, phraseology, conditions, or provisions which are not specific, certain and unambiguous and reasonably adequate to meet the needed requirement of those insured under such policies. A final order of disapproval is subject to judicial review under the provisions of chapter 536, RSMo. During the pending of any proceeding under this section, all such forms may be used, but this provision shall not deprive the director or department of any other enforcement power over such forms that may be otherwise provided by law.

7. The failure of the director to seek disapproval does not constitute an approval or endorsement of the form, term, condition, or exception by the director. It is unlawful to make any representation that the director has approved a form, term, condition, or exception filed under this section.

381.112. For purposes of the premium tax imposed by sections 148.320 and 148.340, RSMo, the premium income received by a title insurer shall mean the amount within the definition of "premium".

381.115. 1. It is unlawful for any person to transact the business of title insurance unless authorized as a title insurer, title agency or title agent;

2. It is unlawful for any person to transact business as:

(1) A title agency, unless the person is a licensed business entity insurance producer under subsection 2 of section 375.015, RSMo; or

(2) A title agent, unless the person is a licensed individual insurance producer under subsection 1 of section 375.015, RSMo, or is exempt from licensure under subsection 3 of this section.

3. A salaried employee of a title insurer, title agency, or title agent is exempt from licensure as a title agent if the employee does not materially perform or supervise others who perform any of the following:

(1) Sell, solicit, or negotiate a title insurance policy or closing protection letter;

(2) Calculate premiums for a title insurance policy or closing protection letter;

(3) Determine insurability;

(4) Establish, calculate, or negotiate title charges;

(5) Conduct title search or examinations;

(6) Execute title insurance policies, commitments, binders or endorsements; or

(7) Handle escrows, settlements, or closings.

4. It is unlawful for any title insurer to contract with any person to act in the capacity of a title agency or title agent with respect to risks located in this state unless the person is licensed as required in this section.

5. The director shall adopt rules, regulations, or requirements relating to licensing and practices of persons acting in the capacity of title agencies or agents. These persons may include title agencies, title agents and employees of title insurers, or title agencies. Such rules, regulations, or requirements shall, until at least January 1, 2010, permit either provisional licensure or waiver of licensure for employees newly performing functions described in subsection 3 of this section, while under the direct supervision of a licensed insurance producer during the first six months of such employee's initial employment. This subsection is not intended to require licensure of persons performing a clerical function under the direct supervision and direction of a licensed insurance producer.

6. Every title agency licensed in this state shall:

(1) Exclude or eliminate the word insurer, insurance company, or underwriter from its business name, unless the word agency is also included as part of the name; and

(2) Provide, in a timely fashion, each title insurer with which it places business, any information the title insurer requests in order to comply with reporting requirements of the director.

7. A title agency or title agent licensed in this state prior to the effective date of this chapter shall have ninety days after the effective date of this chapter to comply with the requirements of this section.

8. If the title insurer, title agency, or title agent delegates the title search to a third party, such as an abstract company, the insurer, agency, or agent must first obtain proof that the third party is operating in compliance with rules and regulations established by the director and the third party shall provide the insurer, agency, or agent with access to and the right to copy all accounts and records maintained by the third party with respect to business placed with the title insurer. Proof from the third party may consist of a signed statement indicating compliance, and shall be effective for a three-year period.

9. A violation of any provision under this section is a level three violation under section 374.049, RSMo.

381.118. 1. Each title agency shall designate an individual as a qualified principal, who as a condition of licensure, shall successfully pass an examination developed by the producer advisory board established by section 375.019,

RSMo, and approved by the director. Each title agent shall successfully pass an examination developed by the producer advisory board and approved by the director. Upon request by a title agency or agent and for good cause, the director, by order, may waive the requirements of this subsection. The examination requirement in this subsection shall be waived for all title agents and qualified principals who are licensed in this state as of January 1, 2008.

2. Each title agent licensed to sell title insurance in this state, unless exempt under subsection 8 of this section, shall successfully complete courses of study as required by this section. Any person licensed to act as a title agent shall, during each two years, attend courses or programs of instruction or attend seminars equivalent to a minimum of eight hours of instruction. The initial such two-year period shall begin January 1, 2008.

3. Subject to approval by the director, the courses or programs of instruction which shall be deemed to meet the director's standards for continuing educational requirements shall include, but not be limited to, the following:

(1) A real property law or title insurance-related course taught by an accredited college or university or qualified instructor who has taught a course of real property or title insurance law at such institution;

(2) A course or program of instruction or seminar approved by the director developed or sponsored by any authorized insurer, recognized agents' association, title insurance trade association, or approved private provider. A local agents' group may also be approved if the instructor receives no compensation for services;

(3) Courses approved for continuing legal education credit by the Missouri Bar.

4. A person teaching any approved course of instruction or lecturing at any approved seminar without compensation shall qualify for one and one-half times the number of classroom hours as would be granted to a person taking and successfully completing such course, seminar or program, but the credit may be credited no more than once a year.

5. Excess classroom hours accumulated during any two-year period may be carried forward to the two-year period immediately following the two-year period in which the course, program, or seminar was held.

6. For good cause shown, the director may grant an extension of time during which the educational requirements imposed by this section may be completed, but such extension of time shall not exceed the period of one calendar year. The director may grant an individual waiver of the mandatory continuing education requirement upon a showing by the licensee that it is not feasible for the licensee to satisfy the requirements prior to the renewal date. Waivers may be granted for reasons including, but not limited to:

(1) Serious physical injury or illness;

(2) Active duty in the armed services for an extended period of time;

(3) Residence outside the United States; or

(4) Licensee is at least seventy years of age and is currently licensed as a title agent.

7. Every person subject to the provisions of this section shall furnish in a form satisfactory to the director, written certification as to the courses, programs, or seminars of instruction taken and successfully completed by such person.

8. The provisions of this section shall not apply to those natural persons holding or applying for a license to act as a title agent in Missouri who reside in a state that has enacted and implemented a mandatory continuing education law or regulation pertaining to title

agents. However, those natural persons holding or applying for a Missouri agent license who reside in states which have no mandatory continuing education law or regulations shall be subject to all the provisions of this section to the same extent as resident Missouri title agents.

9. Rules necessary to implement and administer this section shall be promulgated by the director, including, but not limited to, rules regarding the following:

(1) The producer advisory board established by section 375.019, RSMo, shall be utilized by the director to assist the director in determining acceptable content of courses, programs and seminars to include classroom equivalency;

(2) Every applicant seeking approval by the director of a continuing education course under this section shall pay to the director a filing fee of fifty dollars per course, except that such total fee shall not exceed two hundred fifty dollars per year for any single applicant. Fees shall be waived for local agents' groups if the instructor receives no compensation for services. Such fee shall accompany any application form required by the director. Courses shall be approved for a period of no more than one year. Applicants holding courses intended to be offered for a longer period must reapply for approval.

10. All funds received under the provisions of this section shall be transmitted by the director to the department of revenue for deposit in the state treasury to the credit of the insurance dedicated fund. All expenditures required by this section shall be paid from funds appropriated from the insurance dedicated fund by the general assembly.

11. When a title agent pays his or her biennial renewal fee, such agent shall also furnish the written certification required by this section.

12. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created pursuant to the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after January 1, 2008, shall be invalid and void.

381.122. The director may during normal business hours examine, audit and inspect any and all books and records maintained by a title insurer, title agency, or title agent under this chapter.

381.161. 1. No producer or other person, except the person paying the premium for the title insurance, shall require, directly or indirectly, or through any trustee, director, officer, agent, employee, or affiliate, as a condition, agreement, or understanding to selling or furnishing any other person any loan, or extension thereof, credit, sale, property, contract, lease or service, that such other person shall place, any contract of title insurance of any kind through any particular title agent, agency, or title insurer. No title agent, agency, or title insurer shall knowingly participate in any such prohibited plan or transaction. No person shall fix a price charged for such thing or service, or discount from or rebate upon price, on the condition, agreement, or understanding that any title insurance is to be obtained through a particular agent, agency, or title insurer.

2. **[**Any person who violates the provisions of this section, or any title insurer, title agent, or agency who accepts an order for title insurance knowing that it is in violation of the provision of this section shall, in addition to any other action

which may be taken by the director, be subject to a fine in an amount equal to five times the premium for the title insurance.**] A violation of any provision under this section is a level three violation under section 374.049, RSMo.**

381.410. As used in this section and section 381.412, the following terms mean:

(1) "Cashier's check", a check, however labeled, drawn on the financial institution, which is signed only by an officer or employee of such institution, is a direct obligation of such institution, and is provided to a customer of such institution or acquired from such institution for remittance purposes;

(2) "Certified funds", United States currency, funds conveyed by a cashier's check, certified check, teller's check, as defined in Federal Reserve Regulations CC, or wire transfers, including written advice from a financial institution that collected funds have been credited to the settlement agent's account;

(3) "Director", the director of the department of insurance, financial and professional regulation, unless the settlement agent's primary regulator is the division of finance. When the settlement agent is regulated by such division, that division shall have jurisdiction over this section and section 381.412;

(4) "Financial institution":

(a) A person or entity doing business under the laws of this state or the United States relating to banks, trust companies, savings and loan associations, credit unions, commercial and consumer finance companies, industrial loan companies, insurance companies, small business investment corporations licensed under the Small Business Investment Act of 1958, 15 U.S.C. Section 661, et seq., as amended, or real estate investment trusts as defined in 26 U.S.C. Section 856, as amended, or institutions constituting the Farm Credit System under the Farm Credit Act of 1971, 12 U.S.C. Section 2000, et seq., as amended; or

(b) A mortgage loan company or mortgage banker doing business under the laws of this state or the United States which is subject to licensing, supervision, or auditing by the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, or the United States Veterans' Administration, or the Government National Mortgage Association, or the United States Department of Housing and Urban Development, or a successor of any of the foregoing agencies or entities, as an approved seller or servicer, if their principal place of business is in Missouri or a state which is contiguous to Missouri;

(5) "Settlement agent", a person, corporation, partnership, or other business organization which accepts funds and documents as fiduciary for the buyer, seller or lender for the purposes of closing a sale of an interest in real estate located within the state of Missouri, and is not a financial institution, or a member in good standing of the Missouri Bar, or a person licensed under chapter 339, RSMo.

381.412. 1. A settlement agent who accepts funds for closing a sale of an interest in real estate shall require a buyer, seller, or lender who is not a financial institution to convey such funds to the settlement agent as certified funds. A check shall be exempt from the provisions of this section if drawn on:

(1) An escrow account of a licensed real estate broker, as regulated and described in section 339.105, RSMo; or

(2) An escrow account of a title insurer or title insurance agency licensed to do business in Missouri; or

(3) An agency of the United States of America, the state of Missouri, or any county or municipality of the state of Missouri; or

(4) An account by a financial institution.

2. It is unlawful for any title insurer, title agency, or title agent, as defined in section 381.009, to make any payment, disbursement or withdrawal from an escrow account which it maintains as a depository of funds received from the public for the settlement of real estate transactions unless a corresponding deposit of funds was made to the escrow account for the benefit of the payee or payees:

(1) At least ten days prior to such payment, disbursement, or withdrawal; or

(2) Which consisted of certified funds; or

(3) Consisted of a check made exempt from this section by the provisions of subsection 1 of this section.

3. A violation of any provision of this section is a level two violation under section 374.049, RSMo."; and

Further amend said bill, Page 58, Section 409.950, by inserting after all of said section the following:

"Section B. The repeal and enactment of Sections 381.003 through 381.412 of Section A of this act is effective January 1, 2008.

[381.003. 1. Sections 381.003 to 381.125 shall be known and may be cited as the "Missouri Title Insurance Act".

2. Sections 381.009 to 381.048 shall apply to all persons engaged in the business of title insurance in this state. Sections 381.052 to 381.112 shall apply to all title insurers engaged in the business of title insurance in this state. Sections 381.115 to 381.125 shall apply to all title agencies engaged in the business of title insurance in this state.

3. Except as otherwise expressly provided in this chapter and except where the context otherwise requires, all provisions of the insurance code applying to insurance and insurance companies generally shall apply to title insurance, title insurers and title agents.**]**

[381.009. As used in this chapter, the following terms mean:

(1) "Abstract of title" or "abstract", a written history, synopsis or summary of the recorded instruments affecting the title to real property;

(2) "Affiliate", a specific person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified;

(3) "Affiliated business", any portion of a title insurance agency's business written in this state that was referred to it by a producer of title insurance business or by an associate of the producer, where the producer or associate, or both, have a financial interest in the title agency;

(4) "Associate", any:

(a) Business organized for profit in which a producer of title business is a director, officer, partner, employee or an owner of a financial interest;

(b) Employee of a producer of title business;

(c) Franchisor or franchisee of a producer of title business;

(d) Spouse, parent or child of a producer of title insurance business who is a natural person;

(e) Person, other than a natural person, that controls, is controlled by, or is under common control with, a producer of title business;

(f) Person with whom a producer of title insurance business or any associate of the producer has an agreement, arrangement or understanding, or pursues a course of

conduct, the purpose or effect of which is to provide financial benefits to that producer or associate for the referral of business;

(5) "Bona fide employee of the title insurer", an individual who devotes substantially all of his or her time to performing services on behalf of a title insurer and whose compensation for those services is in the form of salary or its equivalent paid by the title insurer;

(6) "Control", including the terms "controlling", "controlled by" and "under common control with", the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position or corporate office held by the person. Control shall be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote or holds proxies representing ten percent or more of the voting securities of another person. This presumption may be rebutted by showing that control does not exist in fact. The director may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect;

(7) "County" or "counties" includes any city not within a county;

(8) "Direct operations", that portion of a title insurer's operations which are attributable to business written by a bona fide employee;

(9) "Director", the director of the department of insurance, or the director's representatives;

(10) "Escrow", written instruments, money or other items deposited by one party with a depository, escrow agent or escrowee for delivery to another party upon the performance of a specified condition or the happening of a certain event;

(11) "Escrow, settlement or closing fee", the consideration for supervising or handling the actual execution, delivery or recording of transfer and lien documents and for disbursing funds;

(12) "Financial interest", a direct or indirect legal or beneficial interest, where the holder is or will be entitled to five percent or more of the net profits or net worth of the entity in which the interest is held;

(13) "Foreign title insurer", any title insurer incorporated or organized pursuant to the laws of any other state of the United States, the District of Columbia, or any other jurisdiction of the United States;

(14) "Geographically indexed or retrievable", a system of keeping recorded documents which includes as a component a method for discovery of the documents by:

(a) Searching an index arranged according to the description of the affected land; or

(b) An electronic search by description of the affected land;

(15) "Net retained liability", the total liability retained by a title insurer for a single risk, after taking into account any ceded liability and collateral, acceptable

to the director, and maintained by the insurer;

(16) "Non-United States title insurer", any title insurer incorporated or organized pursuant to the laws of any foreign nation or any province or territory;

(17) "Premium", the consideration paid by or on behalf of the insured for the issuance of a title insurance policy or any endorsement or special coverage. It does not include consideration paid for settlement or escrow services or noninsurance-related information services;

(18) "Producer", any person, including any officer, director or owner of five percent or more of the equity or capital of any person, engaged in this state in the trade, business, occupation or profession of:

(a) Buying or selling interests in real property;

(b) Making loans secured by interests in real property; or

(c) Acting as broker, agent, representative or attorney of a person who buys or sells any interest in real property or who lends or borrows money with the interest as security;

(19) "Qualified depository institution", an institution that is:

(a) Organized or, in the case of a United States branch or agency office of a foreign banking organization, licensed pursuant to the laws of the United States or any state and has been granted authority to operate with fiduciary powers;

(b) Regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies;

(c) Insured by the appropriate federal entity; and

(d) Qualified under any additional rules established by the director;

(20) "Referral", the directing or the exercising of any power or influence over the direction of title insurance business, whether or not the consent or approval of any other person is sought or obtained with respect to the referral;

(21) "Search", "search of the public records" or "search of title", a search of those records established by the laws of this state for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge;

(22) "Security" or "security deposit", funds or other property received by the title insurer as collateral to secure an indemnitor's obligation under an indemnity agreement pursuant to which the insurer is granted a perfected security interest in the collateral in exchange for agreeing to provide coverage in a title insurance policy for a specific title exception to coverage;

(23) "Subsidiary", an affiliate controlled by a person directly or indirectly through one or more intermediaries;

(24) "Title agency" means an authorized person who issues title insurance on behalf of a title insurer. An attorney licensed to practice law in this state who issues title insurance as a part of his or her law practice, but does not maintain or operate a title insurance business separate from such law practice is not a title agency;

(25) "Title agent" or "agent", an attorney licensed to practice law in this state who issues title insurance as part of his or her law practice, but who is not affiliated with or acting on behalf of a title agency, or an authorized person who, on behalf of a title agency or on behalf of a title agent not affiliated with a title agency, performs one or more of the following acts in conjunction with the issuance of a title insurance commitment or policy:

(a) Determines insurability, based upon a review of a search of title;

(b) Performs searches;

(c) Handles escrows, settlements or closings; or

(d) Solicits or negotiates title insurance business;

(26) "Title insurance business" or "business of title insurance":

(a) Issuing as insurer or offering to issue as insurer a title insurance policy;

(b) Transacting or proposing to transact by a title insurer any of the following activities when conducted or performed in contemplation of and in conjunction with the issuance of a title insurance policy:

a. Soliciting or negotiating the issuance of a title insurance policy;

b. Guaranteeing, warranting or otherwise insuring the correctness of title searches for all instruments affecting titles to real property, any interest in real property, cooperative units and proprietary leases and for all liens or charges affecting the same;

c. Handling of escrows, settlements or closings;

d. Executing title insurance policies;

e. Effecting contracts of reinsurance; or

f. Abstracting, searching or examining titles;

(c) Guaranteeing, warranting or insuring searches or examinations of title to real property or any interest in real property;

(d) Guaranteeing or warranting the status of title as to ownership of or liens on real property by any person other than the principals to the transaction;

(e) Promising to purchase or repurchase for consideration an indebtedness because of a title defect, whether or not involving a transfer of risk to a third person; or

(f) Promising to indemnify the holder of a mortgage or deed of trust against loss from the failure of the borrower to pay the mortgage or deed of trust when due if the property fails to yield sufficient proceeds upon foreclosure to satisfy the debt, when one or both of the following conditions exist:

a. The security has been impaired by the discovery of a previously unknown property interest in favor of one who is not liable for the payment of the mortgage or deed of trust; or

b. Perfection of the position of the mortgage or deed of trust which was assured to exist cannot be obtained, notwithstanding timely recordation with the recorder of deeds of the county in which the property is located; or

(g) Doing or proposing to do any business substantially equivalent to any of the activities listed in this subdivision in a manner designed to evade the provisions of this chapter;

(27) "Title insurance commitment" or "commitment", a preliminary report,

commitment or binder issued prior to the issuance of a title insurance policy containing the terms, conditions, exceptions and other matters incorporated by reference under which the title insurer is willing to issue its title insurance policy. A title insurance commitment is not an abstract of title;

(28) "Title insurance policy" or "policy", a contract insuring or indemnifying owners of, or other persons lawfully interested in, real property or any interest in real property, against loss or damage arising from any or all of the following conditions existing on or before the policy date and not excepted or excluded:

(a) Title to the estate or interest in land being otherwise than as stated in the policy;

(b) Defects in or liens or encumbrances on the insured title;

(c) Unmarketability of the insured title;

(d) Lack of legal right of access to the land;

(e) Invalidity or unenforceability of the lien of an insured mortgage;

(f) The priority of a lien or encumbrance over the lien of any insured mortgage;

(g) The lack of priority of the lien of an insured mortgage over a statutory lien for services, labor or material;

(h) The invalidity or unenforceability of an assignment of the insured mortgage; or

(i) Rights or claims relating to the use of or title to the land;

(29) "Title insurer" or "insurer", a company organized pursuant to laws of this state for the purpose of transacting the business of title insurance and any foreign or non-United States title insurer licensed in this state to transact the business of title insurance;

(30) "Title plant", a set of records encompassing at least the most recent forty-five years, consisting of documents, maps, surveys or entries affecting title to real property or any interest in or encumbrance on the property, which have been filed or recorded in the jurisdiction for which the title plant is established or maintained. The records in the title plant shall be geographically indexed or retrievable as to those records containing a legal description of affected land, and otherwise by name of affected person;

(31) "Underwrite", the authority to accept or reject risk on behalf of the title insurer.**]**

[381.011. 1. Sections 381.011 to 381.241 shall be known and may be cited as the "Missouri Title Insurance Act".

2. The purpose of sections 381.011 to 381.241 is to provide the state of Missouri with a comprehensive body of law for the effective regulation and supervision of title insurance business transacted within this state in response to the McCarran-Ferguson Act, Sections 1011-1015, Title 15, United States Code.**]**

[381.015. 1. When a title insurance commitment issued by a title insurer, title agency or title agent includes an offer to issue an owner's policy covering the resale of owner-occupied residential property, the commitment shall incorporate the following statement in bold type:

"Please read the exceptions and the terms shown or referred to herein carefully.

The exceptions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered."

2. A title insurer, title agency or title agent issuing a lender's title insurance policy in conjunction with a mortgage loan made simultaneously with the purchase of all or part of the real estate securing the loan, where no owner's title insurance policy has been requested, shall give written notice, on a form prescribed or approved by the director, to the purchaser-mortgagor at the time the commitment is prepared. The notice shall explain that a lender's title insurance policy is to be issued protecting the mortgage-lender, and that the policy does not provide title insurance protection to the purchaser-mortgagor as the owner of the property being purchased. The notice shall explain what a title policy insures against and what possible exposures exist for the purchaser- mortgagor that could be insured against through the purchase of an owner's policy. The notice shall also explain that the purchaser-mortgagor may obtain an owner's title insurance policy protecting the property owner at a specified cost or approximate cost, if the proposed coverages are or amount of insurance is not then known. A copy of the notice, signed by the purchaser-mortgagor, shall be retained in the relevant underwriting file at least fifteen years after the effective date of the policy.

3. Each violation of any provision of this section is a class C violation as that term is defined in section 381.045.**]**

[381.018. 1. The title insurer shall not allow the issuance of its commitments or policies by a title agency or title agent not affiliated with a title agency unless there is in force a written contract between the parties which sets forth the responsibilities of each party or, where both parties share responsibility for particular functions, specifies the division of responsibilities.

2. For each title agency or title agent not affiliated with a title agency under contract with the insurer, the title insurer shall have on file a statement of financial condition, of each title agency or title agent as of the end of the previous calendar or fiscal year setting forth an income statement of business done during the preceding year and a balance sheet showing the condition of its affairs as of the close of the prior year, certified by the agency or agent as being a true and accurate representation of the agency's or agent's financial condition. The statement shall be filed with the insurer no later than the date the agency's or agent's federal income tax return for the same year is filed. Attorneys actively engaged in the practice of law, in addition to that related to title insurance business, are exempt from the requirements of this subsection.

3. The title insurer shall conduct reviews of the underwriting, claims and escrow practices of its agencies and agents which shall include a review of the agency's or agent's policy blank inventory and processing operations. If any such title agency or title agent does not maintain separate bank or trust accounts for each title insurer it represents, the title insurer shall verify that the funds held on its behalf are reasonably ascertainable from the books of account and records of the title agency or title agent not affiliated

with a title agency. The title insurer shall conduct a review of each of its agencies and agents at least triennially commencing January first of the year first following January 1, 2001.

4. Within thirty days of executing or terminating a contract with a title agency or title agent not affiliated with a title agency, the insurer shall provide notification of the appointment or termination and the reason for termination to the director. Notices of appointment of a title agency or title agent shall be made on a form promulgated by the director.

5. The title insurer shall maintain an inventory of all policy numbers allocated to each title agency or title agent not affiliated with a title agency.

6. The title insurer shall have on file proof that the title agency or title agent is licensed by this state.

7. The title insurer shall establish the underwriting guidelines and, where applicable, limitations on title claims settlement authority to be incorporated into contracts with its title agencies and title agents not affiliated with a title agency.

8. Each violation of any provision of this section is a class B violation as that term is defined in section 381.045.**]**

[381.021. 1. Sections 381.011 to 381.241 shall apply to all persons engaged in the business of title insurance in this state.

2. Except as otherwise expressly provided in sections 381.011 to 381.241, and except where the context otherwise requires, all provisions of the insurance laws of this state applying to insurance and insurance companies generally shall apply to title insurance and title insurance companies. No law of this state enacted after September 28, 1987, that is inconsistent with the provisions of such sections shall be applicable to the business of title insurance unless such law specifically states that it is to be applicable to the business of title insurance.

3. Nothing in sections 381.011 to 381.241 shall be construed to authorize the practice of law by any person who is not duly admitted to practice law in this state nor shall it be construed to authorize the director to regulate the practice of law or the sale of real estate.**]**

[381.022. 1. A title insurer, title agency or title agent not affiliated with a title agency may operate as an escrow, security, settlement or closing agent, provided that:

(1) All funds deposited with the title insurer, title agency or title agent not affiliated with a title agency in connection with any escrow, settlement, closing or security deposit shall be submitted for collection to or deposited in a separate fiduciary trust account or accounts in a qualified depository institution no later than the close of the next business day after receipt, in accordance with the following requirements:

(a) The funds shall be the property of the person or persons entitled to them under the provisions of the escrow, settlement, security deposit or closing agreement and shall be segregated for each depository by escrow, settlement, security deposit or closing in the records of the title insurer, title agency or title agent not affiliated with a title agency, in a manner that permits the funds to be identified on an individual basis and in accordance with

the terms of the individual instructions or agreements under which the funds were accepted; and

(b) The funds shall be applied only in accordance with the terms of the individual instructions or agreements under which the funds were accepted;

(2) Funds held in an escrow account shall be disbursed only pursuant to a written instruction or agreement specifying under what conditions and to whom such funds may be disbursed or pursuant to an order of a court of competent jurisdiction;

(3) Funds held in a security deposit account shall be disbursed only pursuant to a written agreement specifying:

(a) What actions the indemnitor shall take to satisfy his or her obligation under the agreement;

(b) The duties of the title insurer, title agency or title agent not affiliated with a title agency with respect to disposition of the funds held, including a requirement to maintain evidence of the disposition of the title exception before any balance may be paid over to the depositing party or his or her designee; and

(c) Any other provisions the director may require;

(4) Any interest received on funds deposited in connection with any escrow, settlement, security deposit or closing may be retained by the title insurer, title agency or title agent not affiliated with a title agency as compensation for administration of the escrow or security deposit, unless the instructions for the funds or a governing statute provides otherwise;

(5) Each violation of this subsection is a class A violation as that term is defined in section 381.045.

2. The title agency or title agent not affiliated with an agency shall cooperate with its underwriters in the conduct by the underwriters of reviews of the agency's or agent's escrow, settlement, closing and security deposit accounts. The title insurer shall provide a copy of the report of each such review it performs to the director. The director may promulgate rules setting forth the minimum threshold level at which a review would be required, the standards thereof and the form of report required.

3. If the title agency or title agent not affiliated with an agency is appointed by two or more title insurers and maintains fiduciary trust accounts in connection with providing escrow or closing settlement services, the title agency or title agent shall allow each title insurer reasonable access to the accounts and any or all of the supporting account information in order to ascertain the safety and security of the funds held by the title agency or title agent.

4. (1) Nothing in this chapter shall be deemed to prohibit the recording of documents prior to the time funds are available for disbursement with respect to a transaction in which a title insurer, title agency or title agent not affiliated with a title agency is the settlement agent, provided all parties to whom payment will become due upon such recording consent thereto in writing.

(2) The settlement agent shall record all deeds and security instruments for real estate closings handled by it within three business days after completion of all conditions precedent thereto.

(3) Each violation of this subsection is a

class C violation as that term is defined in section 381.045.**]**

[381.025. 1. A title insurer, title agency, title agent or other person shall not give or receive, directly or indirectly, any consideration for the referral of title insurance business or escrow or other service provided by a title insurer, title agency or title agent. Each violation of this subsection is a class A violation as that term is defined in section 381.045.

2. Any title insurer, title agency or title agent doing business in the same county as a title insurer, title agency or title agent who may be in violation of the prohibitions or limitations of this section shall have standing to seek injunctive relief against the violating title insurer, title agency or title agent in the event the department declines or fails to enforce this section within forty-five days following receipt of written notice of such violation. In any action pursuant to this subsection, the court may award to the successful party the court costs of the action together with reasonable attorney fees.**]**

[381.028. No title insurer, title agency or title agent shall participate in any transaction in which it knows that a producer or other person requires, directly or indirectly, or through any trustee, director, officer, agent, employee or affiliate, as a condition, agreement or understanding to selling or furnishing any other person a loan, or loan extension, credit, sale, property, contract, lease or service, that the other person shall place a title insurance policy of any kind with the title insurer or through a particular title agency or agent. Each violation of this section is a class A violation as that term is defined in section 381.045.**]**

[381.032. 1. No title insurer, may charge any rates regulated by the state after January 1, 2001, except in accordance with the premium rate schedule and manual filed with and approved by the director in accordance with applicable statutes and regulations governing rate filings. Premium rate schedules in effect prior to January 1, 2001, may be used until new rate schedules have been approved by the director. Title insurers shall file their premium rate schedules within thirty days after January 1, 2001. Each violation of this subsection is a class C violation as that term is defined in section 381.045. Nothing in this section shall prevent an agent not affiliated with an agency from charging for services that constitute the practice of law at the customary fee charged by such person for legal services. To the extent the premium fails to compensate the agent at such rate, the agent may render an additional bill for such services on behalf of the agent's law practice or law firm. The acceptance of any part of the premium by the law firm of said agent shall not be a violation of any provision of the Missouri title insurance act or the general insurance statutes, regulations or bulletins regarding payment of commissions to nonlicensed entities.

2. The director may establish rules, including rules providing statistical plans, for use by all title insurers, title agencies and title agents in the recording and reporting of revenue, loss and expense experience in such form and detail as is necessary to aid the director in the establishment of rates and fees.

3. The director may require that the information provided pursuant to this section be verified by oath of the

insurer's or agency's president or vice president or secretary or actuary, as applicable. The director may further require that the information required pursuant to this section be subject to an audit conducted at the expense of the title insurer or title agency by an independent certified public accountant. The director shall have the authority to establish a minimum threshold level at which an audit would be required.

4. Information filed with the director relating to the experience of a particular agency shall be kept confidential unless the director finds it in the public interest to disclose the information required of title insurers or title agencies pursuant to this section. Prior to any such disclosure of confidential information, the director shall provide notice and opportunity to be heard to the title insurers and title agencies who would be affected thereby.**]**

[381.035. No title insurance company, title agency or title agent shall willfully withhold information from, or knowingly give false or misleading information to the director, or to any title insurance rating organization, of which the title insurance company is a member or subscriber, which will affect the rates or fees chargeable pursuant to this chapter. Each violation of this section is a class A violation as that term is defined in section 381.045.**]**

[381.038. 1. Evidence of the examination of title and determination of insurability generated by a title insurer engaged in direct operations, title agency or title agent shall be preserved and maintained by such insurer, agency or agent for as long as appropriate to the circumstances but in no event less than fifteen years after the title insurance policy has been issued.

2. Records relating to escrow and security deposits shall be preserved and retained by a title insurer engaged in direct operations, title agency and title agent for as long as appropriate to the circumstances but in no event less than five years after the escrow or security deposit account has been closed.

3. This section shall not apply to a title insurer acting as coinsurer if one of the other coinsurers has complied with this section.

4. Each violation of any provision of this section is a class C violation as that term is defined in section 381.045.**]**

[381.041. 1. No person other than a domestic, foreign, or alien title insurer organized on the stock plan and duly licensed by the director shall transact title insurance business as an insurer in this state.

2. Each title insurer may engage in the title insurance business in this state if licensed to do so by the director and provide any other service related or incidental to the sale and transfer or financing of property.

3. A title insurer shall maintain a minimum paid-in capital of not less than four hundred thousand dollars and, in addition, paid-in initial surplus of at least four hundred thousand dollars.**]**

[381.042. 1. The director may issue rules, regulations and orders necessary to carry out the provisions of this chapter.

2. No rule or portion of a rule promulgated pursuant to the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.**]**

[381.045. 1. If the director determines that the title insurer or any other person has violated this chapter, or any regulation or order promulgated thereunder, after notice and opportunity to be heard, the director may order:

(1) For each violation a monetary penalty which shall take into account the harm the violation caused or could have caused or potential harm to the public and which shall not exceed:

(a) One thousand dollars per violation for a class A violation;

(b) Five hundred dollars per violation for a class B violation; and

(c) One hundred dollars per violation for a class C violation;

(2) Revocation or suspension of the title insurer's license; or

(3) Both monetary penalty and revocation or suspension.

2. Nothing contained in this section shall affect the right of the director to impose any other penalties provided for in the insurance code.

3. Nothing contained in this chapter is intended to or shall in any other manner limit or restrict the rights of policyholders, claimants and creditors.**]**

[381.048. The director may bring an action in a court of competent jurisdiction to enjoin violations of the Real Estate Settlement Procedures Act, 12 U.S.C. Section 2607, as amended.**]**

[381.051. 1. A title insurer, before issuing any title insurance policy covering property located in this state, shall deposit with the director of the department of insurance, hereinafter referred to as the director, a sum of four hundred thousand dollars, which shall be held for the security and protection of the holders or beneficiaries under its title insurance policies.

2. Assets deposited pursuant to this section may, with the approval of the director, be exchanged from time to time for other assets that qualify under subsection 3 of this section.

3. The depositing title insurer shall receive the income, interests, and dividends on any assets deposited. The deposit required under this section may be made in legal tender or in investments now or hereafter permitted to domestic life insurers with regard to their capital, reserve and surplus. For capital and reserve deposits, sums deposited pursuant to this section shall be valued at their market value.

4. A title insurer that has deposited assets pursuant to this section may, with the approval of the director, withdraw any part of the assets so deposited. If any such title insurer continues to engage in the business of title insurance, it shall not be permitted to withdraw assets that would reduce the amount of its deposits below the amount required by subsection 1 of this section.

5. In lieu of such a deposit maintained in this state, the director shall accept a certificate or certificates in proper form of the public officer or officers having general supervision of title insurers in its state of domicile to the effect that a deposit or total deposits, in an equal or greater amount, in classes of investment authorized in such state, are being maintained for like purposes in public custody or control pursuant to the laws of such state on behalf of the title insurer.

6. If sections 381.011 to 381.241 require a greater amount of capital and surplus or deposits than that required of a title insurer prior to September 28, 1987, such title insurer shall have three years after September 28, 1987, to comply with any such increased requirement.

7. The provisions of sections 375.950 to 375.990, RSMo, shall apply to the impairment of capital, liquidation, and rehabilitation of title insurers.**]**

[381.052. No person other than a domestic, foreign or non-United States title insurer organized on the stock plan and duly licensed by the director shall transact title insurance business as an insurer in this state.**]**

[381.055. Subject to the exceptions and restrictions contained in this chapter, a title insurer shall have the power to:

(1) Do only title insurance business;

(2) Reinsure title insurance policies; and

(3) Perform ancillary activities, unless prohibited by the director, including examining titles to real property and any interest in real property and procuring and furnishing related information and information about relevant personal property, when not in contemplation of, or in conjunction with, the issuance of a title insurance policy.**]**

[381.058. 1. No insurer that transacts any class, type or kind of business other than title insurance shall be eligible for the issuance or renewal of a license to transact the business of title insurance in this state nor shall title insurance be transacted, underwritten or issued by any insurer transacting or licensed to transact any other class, type or kind of business.

2. A title insurer shall not engage in the business of guaranteeing payment of the principal or the interest of bonds or mortgages.

3. (1) Notwithstanding subsection 1 of this section, and to the extent such coverage is lawful within this state, a title insurer is expressly authorized to issue closing or settlement protection to a proposed insured upon request if the title insurer issues a commitment, binder or title insurance policy. Such closing or settlement protection shall conform to the terms of coverage and form of instrument as required by the director and may indemnify a proposed insured solely against loss of settlement funds only because of the following acts of a title insurer's named title agency or title agent:

(a) Theft of settlement funds; and

(b) Failure to comply with written closing instructions by the proposed insured when agreed to by the title agency or title agent relating to title insurance coverage.

(2) The director may promulgate or approve a required charge for providing the coverage.

(3) A title insurer shall not provide any other coverage which purports to indemnify against improper acts or omissions of a person with regard to escrow, settlement, or closing services.**]**

[381.061. 1. The net retained liability of a title insurer for a single risk on property located in this state, whether assumed directly or as reinsurance, may not exceed fifty percent of the sum of its total surplus to policyholders and unearned premium reserve, less the admitted asset value assigned to title plants, as shown in the most recent

annual statement of the title insurer on file in the office of the director.

2. The director may waive the limitation of this section for a particular risk upon application of the title insurer and for good cause shown.**]**

[381.062. Before being licensed to do an insurance business in this state, a title insurer shall establish and maintain a minimum paid-in capital of not less than four hundred thousand dollars and, in addition, paid-in initial surplus of at least four hundred thousand dollars.**]**

[381.065. 1. The net retained liability of a title insurer for a single risk in regard to property located in this state, whether assumed directly or as reinsurance, shall not exceed the aggregate of fifty percent of surplus as regards policyholders plus the statutory premium reserve less the company's investment in title plants, all as shown in the most recent annual statement of the insurer on file with the director.

2. For purposes of this chapter:

(1) A single risk shall be the insured amount of any title insurance policy, except that, where two or more title insurance policies are issued simultaneously covering different estates in the same real property, a single risk shall be the sum of the insured amounts of all the title insurance policies; and

(2) A policy under which a claim payment reduces the amount of insurance under one or more other title insurance policies shall be included in computing the single risk sum only to the extent that its amount exceeds the aggregate amount of the policy or policies whose amount of insurance is reduced.

3. A title insurer may obtain reinsurance for all or any part of its liability under its title insurance policies or reinsurance agreements and may also reinsure title insurance policies issued by other title insurers on single risks located in this state or elsewhere. Reinsurance on policies issued on properties located in this state may be obtained from any title insurers licensed to transact title insurance business in this state, any other state, or the District of Columbia and which have a combined capital and surplus of at least eight hundred thousand dollars.

4. The director may waive the limitation of this section for a particular risk upon application of the title insurer and for good cause shown.**]**

[381.068. In determining the financial condition of a title insurer doing business pursuant to this chapter, the general investment provisions of sections 376.300 to 376.305, RSMo, shall apply; except that, an investment in a title plant or plants in an amount equal to the actual cost shall be allowed as an admitted asset for title insurers. The aggregate amount of the investment shall not exceed fifty percent of surplus to policyholders, as shown on the most recent annual statement of the title insurer on file with the director.**]**

[381.072. In determining the financial condition of a title insurer doing business pursuant to this chapter, the general provisions of the insurance code requiring the establishment of reserves sufficient to cover all known and unknown liabilities including allocated and unallocated loss adjustment expense, shall apply; except that, a title insurer shall establish and maintain:

(1) (a) A known claim reserve in an

amount estimated to be sufficient to cover all unpaid losses, claims and allocated loss adjustment expenses arising under title insurance policies for which the title insurer may be liable, and for which the insurer has discovered or received notice by or on behalf of the insured or escrow or security depositor;

(b) Upon receiving notice from or on behalf of the insured of a title defect in or lien or adverse claim against the title of the insured that may result in a loss or cause expense to be incurred in the proper disposition of the claim, the title insurer shall determine the amount to be added to the reserve, which amount shall reflect a careful estimate of the loss or loss expense likely to result by reason of the claim;

(c) Reserves required pursuant to this section may be revised from time to time and shall be redetermined at least once each year;

(2) A statutory or unearned premium reserve established and maintained as follows:

(a) A domestic title insurer shall establish and maintain an unearned premium reserve computed in accordance with this section, and all sums attributed to such reserve shall at all times and for all purposes be considered and constitute unearned portions of the original premiums. This reserve shall be reported as a liability of the title insurer in its financial statements;

(b) The unearned premium reserve shall be maintained by the title insurer for the protection of holders of title insurance policies. Except as provided in this section, assets equal in value to the reserve are not subject to distribution among creditors or stockholders of the title insurer until all claims of policyholders or claims under reinsurance contracts have been paid in full, and all liability on the policies or reinsurance contracts has been paid in full and discharged or lawfully reinsured;

(c) The unearned premium reserve shall consist of:

a. The amount of the unearned premium reserve on January 1, 2001; and

b. A sum equal to fifteen cents for each one thousand dollars of net retained liability under each title insurance policy, excluding mortgagee's policies simultaneously issued with owner's policies or owner's leasehold policies of the same or greater amount, on a single risk written on properties located in this state and issued after January 1, 2001;

(d) Amounts placed in the unearned premium reserve in any year in accordance with paragraph (c) of this subdivision shall be deducted in determining the net profit of the title insurer for that year;

(e) A title insurer shall release from the unearned premium reserve a sum equal to ten percent of the amount added to the reserve during a calendar year on July first of each of the five years following the year in which the sum was added, and shall release from the unearned premium reserve a sum equal to three and one-third percent of the amount added to the reserve during that year on each succeeding July first until the entire amount for that year has been released. The amount of the unearned premium reserve or similar unearned premium reserve maintained before January 1, 2001, shall be released in accordance

with the law in effect immediately before January 1, 2001;

(f) a. Each domestic and foreign title insurer shall file annually with the audited financial report required pursuant to section 375.1032, RSMo, an actuarial certificate made by a member in good standing of the American Academy of Actuaries, or by an actuary permitted to make such certificate by the commissioner, superintendent or director of the department of insurance of the state of incorporation of a foreign title insurer;

b. The actuarial certification shall conform to the annual statement instructions for title insurers adopted by the National Association of Insurance Commissioners and shall include the actuary's professional opinion of the insurer's reserves as of the date of the annual statement. The reserves analyzed pursuant to this section shall include reserves for known claims, including adverse developments on known claims, and reserves for incurred but not reported claims;

(g) a. Each domestic and foreign title insurer shall establish a supplemental reserve in the amount by which the actuarially certified reserves exceed the total of the known claim reserve and statutory premium reserve as set forth in the title insurer's annual financial report, subject to this subdivision;

b. The supplemental reserve required pursuant to this section shall be phased in as follows:

i. Twenty-five percent of the otherwise applicable supplemental reserve is required until December thirty-first of the year next following January 1, 2001;

ii. Fifty percent of the otherwise applicable supplemental reserve is required until December thirty-first of the second year following January 1, 2001;

iii. Seventy-five percent of the otherwise applicable supplemental reserve is required until December thirty-first of the third year following January 1, 2001;

iv. One hundred percent of the supplemental reserve is required after December thirty-first of the fourth year following January 1, 2001.**]**

[381.075. 1. Sections 375.570 to 375.750, RSMo, and sections 375.1150 to 375.1246, RSMo, shall apply to all title insurers subject to the title insurance act, except as otherwise provided in this section. In applying such sections, the court shall consider the unique aspects of title insurance and shall have broad authority to fashion relief that provides for the maximum protection of the title insurance policyholders.

2. Security and escrow funds held by or on behalf of the title insurer shall not become general assets and shall be administered as secured claims as defined in section 375.1152, RSMo.

3. Title insurance policies that are in force at the time an order of liquidation is entered shall not be canceled except upon a showing to the court of good cause by the liquidator. The determination of good cause shall be within the discretion of the court. In making this determination, the court shall consider the unique aspects of title insurance and all other relevant circumstances.

4. The court may set appropriate dates that potential claimants must file their claims with the liquidator. The court may set different dates for claims based upon

the title insurance policy than for all other claims. In setting dates, the court shall consider the unique aspects of title insurance and all other relevant circumstances.

5. As of the date of the order of insolvency or liquidation, all premiums paid, due or to become due under policies of the title insurers, shall be fully earned. It shall be the obligation of title agencies, title agents, insureds or representatives of the title insurer to pay fully earned premium to the liquidator or rehabilitator.**]**

[381.078. A title insurer shall only declare or distribute a dividend to shareholders with the prior written approval of the director, as would be permitted pursuant to subdivision (1) of subsection 1 of section 382.210, RSMo.**]**

[381.081. 1. A domestic title insurer shall establish and maintain an unearned premium reserve computed in accordance with this section, and all sums attributed to such reserve shall at all times and for all purposes be considered and constitute unearned portions of the original premiums. This reserve shall be reported as a liability of the title insurer in its financial statements.

2. The unearned premium reserve shall be maintained by the title insurer for the protection of holders of title insurance policies. Except as provided in this section, assets equal in value to the reserve are not subject to distribution among creditors or stockholders of the title insurer until all claims of policyholders or claims under reinsurance contracts have been paid in full, and all liability on the policies or reinsurance contracts has been paid in full and discharged or lawfully reinsured.

3. A foreign or alien title insurer licensed to transact title insurance business in this state shall maintain at least the same reserves on title insurance policies issued on properties located in this state as are required of domestic title insurers, unless the laws of the jurisdiction of domicile of the foreign or alien title insurer require a higher amount.

4. The unearned premium reserve shall consist of:

(1) The amount of the unearned premium reserve on September 28, 1987; and

(2) A sum equal to fifteen cents for each one thousand dollars of net retained liability under each title insurance policy, excluding mortgagee's policies simultaneously issued with owner's policies or owner's leasehold policies of the same or greater amount, on a single risk written on properties located in this state and issued after September 28, 1987.

5. Amounts placed in the unearned premium reserve in any year in accordance with subdivision (2) of subsection 4 of this section shall be deducted in determining the net profit of the title insurer for that year.

6. A title insurer shall release from the unearned premium reserve a sum equal to ten percent of the amount added to the reserve during a calendar year on July first of each of the five years following the year in which the sum was added, and shall release from the unearned premium reserve a sum equal to three and one-third percent of the amount added to the reserve during that year on each succeeding July first until the entire amount for that year has been released. The amount of the unearned premium

reserve or similar unearned premium reserve maintained before September 28, 1987, shall be released in accordance with the law in effect immediately before September 28, 1987.**]**

[381.085. 1. A title insurer or authorized rate service organization shall not deliver or issue for delivery or permit any of its authorized title agencies or title agents to deliver in this state, any form, in connection with title insurance written, unless it has been filed with the director and approved by the director or thirty days have elapsed and it has not been disapproved as misleading or violative of public policy. Each violation of this subsection is a class C violation as that term is defined in section 381.045.

2. Forms covered by this section shall include:

(1) Title insurance policies, including standard form endorsements; and

(2) Title insurance commitments issued prior to the issuance of a title insurance policy.

3. After notice and opportunity to be heard are given to the insurer or rate service organization which submitted a form for approval, the director may withdraw approval of the form on finding that the use of the form is contrary to the legal requirements applicable at the time of withdrawal. The effective date of withdrawal of approval shall not be less than ninety days after notice of withdrawal is given.

4. Any term or condition related to an insurance coverage provided by an approved title insurance policy or any exception to the coverage, except those ascertained from a search and examination of records relating to a title or inspection or survey of a property to be insured, may only be included in the policy after the term, condition or exception has been filed with the director and approved as herein provided.**]**

[381.088. 1. A title insurer may satisfy its obligation to file premium rates, rating manuals and forms as required by this chapter by becoming a member of, or a subscriber to, a rate service organization, organized and licensed pursuant to the provisions of this chapter, where the organization makes the filings, and by authorizing the director in writing to accept the filings on the insurer's behalf.

2. Nothing in this chapter shall be construed as requiring any title insurer, title agency or title agent to become a member of, or a subscriber to, any rate service organization. Nothing in this chapter shall be construed as prohibiting the filing of deviations from rate service organization filings by any member or subscriber.**]**

[381.091. 1. If a domestic title insurer becomes insolvent, is in the process of liquidation or dissolution, or is in the possession of the director:

(1) Such amount of the assets of such title insurer equal to the unearned premium reserve then remaining may be used by or with the written approval of the director to pay for reinsurance of the liability of such title insurer upon all outstanding title insurance policies or reinsurance agreements to the extent to which claims for losses by the holders thereof are not then pending. The balance of assets, if any, equal to the unearned premium reserve, may then be transferred to the general assets of the title insurer;

(2) The net assets of the unearned premium reserve shall be available to pay claims for losses sustained by holders of title insurance policies then pending or arising up to the time reinsurance is effected. If claims for losses exceed such other assets of the title insurer, such claims, when established, shall be paid pro rata out of the surplus assets attributable to the unearned premium reserve to the extent of such surplus, if any.

2. If reinsurance is not obtained, assets equal to the unearned premium reserve and assets constituting minimum capital, or so much as remains thereof after outstanding claims have been paid, shall constitute a trust fund to be held and invested by the director for twenty years, out of which claims of policyholders shall be paid as they arise. The balance, if any, of the trust fund shall, at the expiration of twenty years, revert to the general assets of the title insurer.**]**

[381.092. 1. Every title insurer that shall propose its own premium rates and every title insurance rating organization shall propose premium rates that are not excessive nor inadequate for the safety and soundness of any title insurer, which do not unfairly discriminate between risks in this state which involve essentially the same exposure to loss and expense elements, and which shall give due consideration to the following matters:

(1) The desirability for stability and responsiveness of rate structures;

(2) The necessity of assuring the financial solvency of title insurance companies in periods of economic depression;

(3) The necessity for paying dividends on the capital stock of title insurance companies sufficient to induce capital to be invested therein; and

(4) A reasonable level of profit for the insurer.

2. Every title insurer that shall propose its own rates and every title insurance rating organization may adopt basic classifications of policies or contracts of title insurance which shall be used as the basis for rates.**]**

[381.095. 1. If the director shall find in his review of rate filings that the filings provide for, result in, or produce rates that are not unreasonably high, and are not inadequate for the safeness and soundness of the insurer, and are not unfairly discriminatory between risks in this state involving essentially the same hazards and expense elements, the director shall approve such rates. Prior to such approval the director may conduct a public hearing with respect to a rate filing. An approval shall continue in effect until the director shall issue an order of disapproval pursuant to the requirements and procedure provided for in subsections 2 and 3 of this section.

2. Upon the review at any time by the director of a rate filing, the director shall, before issuing an order of disapproval, hold a hearing upon not less than ten days' written notice, specifying in reasonable detail the matters to be considered at such hearing, to every title insurer and title insurance rating organization which made such filing, and if, after such hearing, the director finds that such filing or a part thereof does not meet the requirements of this chapter, the director shall issue an order specifying in what respects the director finds that it so

fails, and stating when, within a reasonable period thereafter, such filing or a part thereof shall be deemed no longer effective. A title insurer or title insurance rating organization shall have the right at any time to withdraw a filing or a part thereof, subject to the provisions of section 381.102, in the case of deviation filing. Copies of the order shall be sent to every title insurer and title insurance rating organization affected. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

3. Any person or organization aggrieved with respect to any filing which is in effect may make written application to the director for a hearing thereon. The title insurance company or title insurance rating organization that made the filing shall not be authorized to proceed pursuant to this subsection. Such application shall specify in reasonable detail the grounds to be relied upon by the applicant. If the director shall find that the application is made in good faith, that the applicant would be so aggrieved if his or her grounds are established, and that such grounds otherwise justify holding such a hearing, the director shall, within thirty days after receipt of such application, hold a hearing upon not less than ten days' written notice to the applicant and to every title insurance company and title insurance rating organization which made such a filing. If, after such hearing, the director finds that the filing or a part thereof does not meet the requirements of this chapter, the director shall issue an order specifying in what respects the director finds that such filing or a part thereof fails to meet the requirements of this chapter, stating when within a reasonable period thereafter, such filing or a part thereof shall be deemed no longer effective. Copies of such order shall be sent to the applicant and to every such title insurer and title insurance rating organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.**]**

[381.098. 1. A corporation, an unincorporated association, a partnership or an individual, whether located within or outside this state, may make application to the director for license as a rating organization for title insurers, and shall file therewith:

(1) A copy of its constitution, its articles of agreement or association or its certificate of incorporation, and of its bylaws, rules and regulations governing the conduct of its business;

(2) A list of its members and subscribers;

(3) The name and address of a resident of this state upon whom notices or orders of the director or process affecting such rating organization may be served; and

(4) A statement of its qualifications as a title insurance rating organization.

2. If the director finds that the applicant is competent, trustworthy and otherwise qualified to act as a rating organization, and that its constitution, articles of agreement or association or certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business, conform to requirements of law, the director shall issue a license authorizing the applicant to act as a rating organization for title insurance. Licenses issued pursuant to this section shall remain in effect for three years

unless sooner suspended or revoked by the director or withdrawn by the licensee. The fee for such license shall be one thousand five hundred dollars. Licenses issued pursuant to this section may be suspended or revoked by the director, after hearing upon notice, in the event the rating organization ceases to meet the requirements of this subsection. Every rating organization shall notify the director promptly of every change in:

(1) Its constitution, its articles of agreement or association or its certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business;

(2) Its list of members and subscribers; and

(3) The name and address of the resident of this state designated by it upon whom notices or orders of the director or process affecting such rating organization may be served.

3. Subject to rules and regulations which have been approved by the director as reasonable, each title insurance rating organization shall permit any title insurance company not a member to be a subscriber to its rating services. Notices of proposed changes in such rules and regulations shall be given to subscribers. Each such rating organization shall furnish its rating services without discrimination to its members and subscribers. The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any such rating organization to admit a title insurance company as a subscriber, shall at the request of any subscriber or any such title insurance company, be reviewed by the director at a hearing held upon at least ten days' written notice to such rating organization and to such subscriber. If the director finds that such rule or regulation is unreasonable in its application to subscribers, the director shall order that such rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject an application of a title insurance company for subscribership within thirty days after it was made, the title insurance company may request a review by the director as if the application had been rejected. If the director finds that the title insurance company has been refused admittance to the title insurance rating organization as a subscriber without justification, the director shall order such rating organization to admit the title insurance company as a subscriber. If the director finds that the action of the title insurance rating organization was justified, the director shall make an order affirming its action.**]**

[381.101. 1. All title insurers licensed in this state shall establish and maintain reserves against unpaid losses and loss expenses.

2. Upon receiving notice from or on behalf of the insured of a title defect in or lien or adverse claim against the title of the insured that may result in a loss or cause expense to be incurred in the proper disposition of the claim, the title insurer shall determine the amount to be added to the reserve, which amount shall reflect a careful estimate of the loss or loss expense likely to result by reason of the claim.

3. Reserves required under this section may be revised from time to time and shall be redetermined at least once each year.**]**

[381.102. Every member of or subscriber

to a title insurance rating organization shall adhere to the filings made on its behalf by such organization, except that any title insurance company which is a member of or subscriber to such a rating organization may file with the director a uniform percentage of decrease or increase to be applied to any or all elements of the fees produced by the rating system so filed for a class of title insurance which is found by the director to be a proper rating unit for the application of such uniform decrease or increase, or to be applied to the rates for a particular area, or otherwise deviate from the rating plans, policy forms or other matters which are the subject of filings pursuant to this chapter. Such deviation filing shall specify the basis for the modification and shall be accompanied by the data or historical pattern upon which the applicant relies. A copy of the deviation filing and data shall be sent simultaneously to such rating organization. Deviation filings shall be subject to the provisions of section 381.095.**]**

[381.105. 1. Any member of or subscriber to a title insurance rating organization may appeal to the director from any action or decision of such rating organization in approving or rejecting any proposed change in or addition to the filings of such rating organization, and the director shall, after a hearing held upon not less than ten days' written notice to the appellant and to such rating organization, issue an order approving the action or decision of such rating organization or directing it to give further consideration to such proposal and to take action or make a decision upon it within thirty days. If such appeal is from the action or decision of the title insurance rating organization in rejecting a proposed addition to its filings, the director may, in the event the director finds that such action or decision was unreasonable, issue an order directing the rating organization to make an addition to its filings, on behalf of its members and subscribers, in a manner consistent with the director's findings, within a reasonable time after the issuance of such order. If the appeal is from the action of the title insurance rating organization with regard to a rate or a proposed change in or addition to its filings relating to the character and extent of coverage, the director shall approve the action of the rating organization or such modification thereof as shall have been suggested by the appellant if either be made in accordance with this chapter.

2. The failure of a title insurance rating organization to take action or make a decision within thirty days after submission to it of a proposal pursuant to this section shall constitute a rejection of such proposal within the meaning of this section. If such appeal is based upon the failure of the rating organization to make a filing on behalf of such member or subscriber which is based on a system of expense allocation which differs from the system of expense allocation included in a filing made by such rating organization, the director shall, if the director grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding such appeal, the director shall apply the standards set forth in section 381.032.**]**

[381.108. 1. The director shall promulgate reasonable rules and statistical plans, reasonably adapted to each of the rating systems on file with

the department, which may be modified from time to time, and which shall be used thereafter by each title insurer in the recording and reporting of the composition of its business, its loss and countrywide expense experience and those of its title insurance underwriters in order that the experience of all title insurers may be made available, at least annually, in such form and detail as may be necessary to aid him or her in determining whether rating systems comply with the standards set forth in this chapter. Such rules and plans may also provide for the recording of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of countrywide expense experience. In promulgating such rules and plans, the director shall give due consideration to the rating systems on file with the department, and in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states. Such rules and plans shall not place an unreasonable burden of expense on any title insurer. No title insurer shall be required to record or report its expense and loss experience on a classification basis that is inconsistent with the rating system filed by it, nor shall any title insurer be required to report the experience to any agency of which it is not a member or subscriber. The director may designate one or more rating organizations or other agencies to assist the director in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the director, to title insurers and rating organizations. The director shall give preference in such designation to entities organized by and functioning on behalf of title insurers operating in this state. If the director, in his or her judgment, determines that one or more of such organizations designated as statistical agents is unable or unwilling to perform its statistical functions according to reasonable requirements established from time to time by the director, he or she may, after consultation with such statistical agent and upon twenty days' notice to any affected companies, designate another person to act on the director's behalf in the gathering of statistical experience. The director shall in such case establish the fee to be paid to such designated person by the affected companies in order to pay the total cost of gathering and compiling such experience. Agencies designated by the director shall assist the director in making compilations of the reported data and such compilations shall be made available, subject to reasonable rules and regulations promulgated by the director, to insurers, rating organizations and any other interested parties.

2. Reasonable rules and plans may be promulgated by the director for the interchange of data necessary for the application of rating plans.

3. In order to further uniform administration of rate regulatory laws, the director and every title insurer and rating organization may exchange information and experience data with insurance supervisory officials, title insurers and rating organizations in other states, and may consult with them with respect to rate making and the application of rating systems.

4. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.**]**

[381.111. A title insurer may obtain reinsurance for all or any part of its liability under its title insurance policies or reinsurance agreements and may also reinsure title insurance policies issued by other title insurers on single risks located in this state or elsewhere. Reinsurance on policies issued on properties located in this state may be obtained from any title insurers licensed to transact title insurance business in this state, any other state, or the District of Columbia and which have a combined capital and surplus of at least eight hundred thousand dollars.**]**

[381.112. For purposes of the premium tax imposed by sections 148.320 and 148.340, RSMo, the premium income received by a title insurer shall mean the amount of premium actually remitted to the title insurer and shall exclude any amount of premium retained by the title agent within the definition of "premium" contained in section 381.009.**]**

[381.115. 1. A person shall not act in the capacity of a title agency or title agent and a title insurer may not contract with any person to act in the capacity of a title agency or title agent with respect to risks located in this state unless the person is a licensed title agency or title agent in this state.

2. An individual employed by a licensed title agency or title agent to whom the agency or agent delegates authority to act on that agency's or agent's behalf shall be either individually licensed or be named on the employing agent's license if such employee performs any of the functions defined in paragraph (a) of subdivision (25) of section 381.009. Each person named on the license shall possess all qualifications determined by the director to be appropriate. The director may adopt rules, regulations, and requirements relating to licensing and practices of persons acting in the capacity of title agencies or agents. These persons may include title agencies, title agents, employees of either, and persons acting on behalf of title agencies or title agents. This subsection is not intended to include persons performing clerical functions.

3. Every title agency licensed in this state shall:

(1) Exclude or eliminate the word insurer or underwriter from its business name, unless the word agency is also included as part of the name; and

(2) Provide, in a timely fashion, each title insurer with which it places business any information the title insurer requests in order to comply with reporting requirements of the director.

4. A title agency or title agent licensed in this state prior to the effective date of this chapter shall have ninety days after the effective date of this chapter to comply with the requirements of this section.

5. If the title agency or title agent delegates the title search to a third party, such as an abstract company, the agency or agent must first obtain proof that the third party is operating in compliance with rules and regulations established by the director and the third party shall provide the agency or agent and the insurer with access to and the right to copy all accounts and records maintained by the third party with respect to business

placed with the title insurer. Proof from the third party may consist of a signed statement indicating compliance, and shall be effective for a three-year period. Each violation of this subsection is a class C violation as that term is defined in section 381.045.**]**

[381.118. 1. Each title agent licensed to sell title insurance in this state, unless exempt pursuant to subsection 8 of this section, shall successfully complete courses of study as required by this section. Any person licensed to act as a title agent shall, during each two years, attend courses or programs of instruction or attend seminars equivalent to a minimum of eight hours of instruction. The initial such two-year period shall begin January first of the year next following the effective date of this chapter.

2. Subject to approval by the director, the courses or programs of instruction which shall be deemed to meet the director's standards for continuing educational requirements shall include, but not be limited to, the following:

(1) An insurance-related course taught by an accredited college or university or qualified instructor who has taught a course of insurance law at such institution;

(2) A course or program of instruction or seminar developed or sponsored by any authorized insurer, recognized agents' association or insurance trade association. A local agents' group may also be approved if the instructor receives no compensation for services;

(3) Courses approved for continuing legal education credit by the Missouri Bar.

3. A person teaching any approved course of instruction or lecturing at any approved seminar shall qualify for the same number of classroom hours as would be granted to a person taking and successfully completing such course, seminar or program.

4. Excess classroom hours accumulated during any two-year period may be carried forward to the two-year period immediately following the two- year period in which the course, program or seminar was held.

5. For good cause shown, the director may grant an extension of time during which the educational requirements imposed by this section may be completed, but such extension of time shall not exceed the period of one calendar year. The director may grant an individual waiver of the mandatory continuing education requirement upon a showing by the licensee that it is not feasible for the licensee to satisfy the requirements prior to the renewal date. Waivers may be granted for reasons including, but not limited to:

(1) Serious physical injury or illness;

(2) Active duty in the armed services for an extended period of time;

(3) Residence outside the United States; or

(4) Licensee is at least seventy years of age and is currently licensed as a title agent.

6. Every person subject to the provisions of this section shall furnish in a form satisfactory to the director, written certification as to the courses, programs, or seminars of instruction taken and successfully completed by such person. A filing fee shall be paid by the person furnishing the report as determined by

the director to be necessary to cover the administrative cost related to the handling of such certification reports, subject to the limitations imposed in subsection 9 of this section.

7. The provisions of this section shall not apply to those natural persons holding or applying for a license to act as a title agent in Missouri who reside in a state that has enacted and implemented a mandatory continuing education law or regulation pertaining to title agents. However, those natural persons holding or applying for a Missouri agent license who reside in states which have no mandatory continuing education law or regulations shall be subject to all the provisions of this section to the same extent as resident Missouri title agents.

8. Rules necessary to implement and administer this section shall be promulgated by the director of the department of insurance, including, but not limited to, rules regarding the following:

(1) The insurance advisory board established by section 375.019, RSMo, shall be utilized by the director to assist the director in determining acceptable content of courses, programs and seminars to include classroom equivalency;

(2) Every applicant seeking approval by the director of a continuing education course pursuant to this section shall pay to the director a filing fee of fifty dollars per course, except that such total fee shall not exceed two hundred fifty dollars per year for any single applicant. Fees shall be waived for local agents' groups if the instructor receives no compensation for services. Such fee shall accompany any application form required by the director. Courses shall be approved for a period of no more than one year. Applicants holding courses intended to be offered for a longer period must reapply for approval;

(3) The director has the authority to determine the amount of the filing fee to be paid by title agents at the time of license renewal, which shall be set at an amount to produce revenue which shall not substantially exceed the cost of administering this section, but in no event shall such fee exceed ten dollars per biennial report filed.

9. All funds received pursuant to the provisions of this section shall be transmitted by the director of the department of insurance to the department of revenue for deposit in the state treasury to the credit of the department of insurance dedicated fund. All expenditures necessitated by this section shall be paid from funds appropriated from the department of insurance dedicated fund by the legislature.

10. When a title agent pays his or her biennial renewal fee, such agent shall also furnish the written certification and filing fee required by this section.

11. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.**]**

[381.121. 1. The deposit required by section 381.051 and the capital, surplus and unearned premium reserve of domestic title insurers shall be held in either cash or investments now or hereafter permitted to domestic life insurers with regard to their capital,

reserve and surplus for reserve deposit.

2. A domestic title insurer may invest in title plants. For purposes of determining the financial condition of such title insurer, title plants will be treated as an asset valued at actual cost to the title insurer, not to exceed fifty percent of the surplus as to policyholders as shown on the most recent annual statement of the title insurer.

3. Any investment of a domestic title insurer acquired before September 28, 1987, and which under such sections, would be considered ineligible as an investment on that date, shall be disposed of within five years of September 28, 1987. The director, upon application and proof that forced sale of any such investment would be contrary to the best interests of the title insurer or its policyholders, may extend the period for disposal of the investment for a reasonable time.**]**

[381.122. The director may during normal business hours examine, audit and inspect any and all books and records maintained by a title agency pursuant to this chapter.**]**

[381.125. 1. Whenever the business to be written constitutes affiliated business, prior to commencing the transaction, the title agency or title agent shall ensure that its customer has been provided with disclosure of the existence of the affiliated business arrangement and a written estimate of the charge or range of charges generally made for the title services provided by the title agency or agent.

2. The director may establish rules for use by all title agencies in the recording and reporting of the agency's owners and of the agency's ownership interests in other persons or businesses and of material transactions between the parties.

3. The director may require each title agency to file on forms prescribed by the director reports setting forth the names and addresses of those persons, if any, that have a financial interest in the agency and who the agency knows or has reason to believe are producers of title insurance business or associates of producers.

4. Nothing in this chapter shall be construed as prohibiting affiliated business arrangements in the provision of title insurance business so long as:

(1) The title agency, title agent or party making a referral constituting affiliated business, at or prior to the time of the referral, discloses the arrangement and, in connection with the referral, provides the person being referred with a written estimate of the charge or range of charges likely to be assessed and otherwise complies with the disclosure obligations of this section;

(2) The person being referred is not required to use a specified title insurance agency, agent or insurer; and

(3) The only thing of value that is received by the title agency, title agent or party making the referral, other than payments otherwise permitted, is a return on an ownership interest.

For purposes of this subsection, the terms "required use" and "return on an ownership interest" shall have the meaning accorded to them under the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Section 2607, as amended and Regulation X, 24 CFR Section 3500, et seq.

5. Each violation of any provision of this section is a class C violation as that term is defined in section 381.045.**]**

[381.131. Any person who shall be appointed or who shall act as title insurance agent or agency for any title insurance company within this state, or who shall, as title insurance agent or agency, solicit applications, deliver policies and collect premiums thereon, or who shall receive or collect moneys from any source or on any account whatsoever, as agent or agency, for a title insurance company doing business in this state, shall be held responsible in a trust or fiduciary capacity to the company for any money so collected or received by him for such company.**]**

[381.151. Nothing in sections 381.011 to 381.241 shall be construed as prohibiting the division of premiums and charges between or among a title insurer and its title agent or agency, two or more title insurers, one or more title insurers and one or more title agents or agencies or two or more title agents or agencies, provided such division of premiums and charges does not constitute:

(1) An unlawful rebate or inducement under the provisions of sections 381.011 to 381.241; or

(2) Payment of a forwarding fee or finder's fee.**]**

[381.211. Every title insurer shall file with the director copies of the following forms it proposes to use in this state, including:

(1) Title insurance polices;

(2) Standard form endorsements; and

(3) Preliminary reports, commitments, binders, or any other reports issued prior to the issuance of a title insurance policy.**]**

[381.221. For purposes of the premium tax imposed by sections 148.320 and 148.340, RSMo, the premium income received by a title insurer shall be one hundred percent of the amounts paid by or on behalf of the insured as "premiums" within the definition of that term contained in sections 381.011 to 381.241.**]**

[381.231. In addition to any other powers granted under sections 381.011 to 381.241, the director may adopt rules or regulations to protect the interests of the public including, but not limited to, regulations governing sales practices, escrow, collection, settlement, closing procedures, policy coverage standards, rebates and inducements, controlled business, the approval of agency contracts, unfair trade practices and fraud, statistical plans for data collection, consumer education, any other consumer matters, the business of title insurance, or any regulations otherwise implementing or interpreting the provisions of sections 381.011 to 381.241. No rule or portion of a rule promulgated under the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.**]**

[381.241. 1. The director of insurance or his duly authorized representative may at any time and from time to time, inspect and examine the records, books and accounts of any title insurer, and may require such periodic and special reports from any title insurer, as may be reasonably necessary to enable the director to satisfy himself that such title insurer is complying with the requirements of sections 381.011 to

381.241. No person shall be authorized to inspect and examine the records, books and accounts of any title insurer unless such person has five years experience in the title insurance business. It shall be the duty of the director at least once every four years to make or cause to be made an examination of every title insurer. The reasonable expense of any examination shall be paid by the title insurer.

2. The purpose of such examination is to enable the director to ascertain whether there is compliance with the provisions of sections 381.011 to 381.241. If as a result of such examination the director has reason to believe that any rate, rating plan or rating system made or used by an insurer does not meet the standards and provisions of sections 381.011 to 381.241, applicable to it, the director may hold a public hearing. Within a reasonable period of time, which shall be not less than ten days before the date of such hearing, he shall mail written notice specifying the matters to be considered at such hearing to every person, insurer or organization believed by him not to be in compliance with the provisions of sections 381.011 to 381.241.

3. If the director, after such hearing, for good cause finds that such rate, rating plan or rating system does not meet the provisions of sections 381.011 to 381.241, he shall issue an order specifying in what respects any such rate, rating plan or rating system fails to meet such provisions, and stating when, within a reasonable period of time, the further use of such rate, rating plan or rating system by the title insurer which is the subject of the examination shall be prohibited. A copy of such order shall be sent to such title insurer.**]**

[381.410. As used in sections 381.410 and 381.412, the following terms mean:

(1) “Cashier's check”, a check, however labeled, drawn on the financial institution, which is signed only by an officer or employee of such institution, is a direct obligation of such institution, and is provided to a customer of such institution or acquired from such institution for remittance purposes;

(2) “Certified funds”, U.S. currency, funds conveyed by a cashier's check, certified check, teller's check, as defined in Federal Reserve Regulations CC, or wire transfers, including written advice from a financial institution that collected funds have been credited to the settlement agent's account;

(3) “Director”, the director of the department of insurance, unless the settlement agent's primary regulator is another division in the department of economic development. When the settlement agent is regulated by such division, that division shall have jurisdiction over sections 381.410 and 381.412;

(4) “Financial institution”:

(a) A person or entity doing business under the laws of this state or the United States relating to banks, trust companies, savings and loan associations, credit unions, commercial and consumer finance companies, industrial loan companies, insurance companies, small business investment corporations licensed pursuant to the Small Business Investment Act of 1958 (15 U.S.C. Section 661, et seq.), as amended, or real estate investment trusts as defined in 26 U.S.C. Section 856, as amended, or institutions constituting the Farm Credit

System pursuant to the Farm Credit Act of 1971 (12 U.S.C. Section 2000, et seq.), as amended, or any person which services loans secured by liens or mortgages on real property, which person may or may not maintain a servicing portfolio for such loans; or

(b) The following persons or entities if their principal place of business is in Missouri or a state which is contiguous to Missouri:

a. A mortgage loan company which is subject to licensing, supervision or auditing by the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, or the United States Veterans Administration, or the Government National Mortgage Association, or the United States Department of Housing and Urban Development, or a successor of any of the foregoing agencies or entities, as an approved seller or servicer; or

b. A person or entity acting as a mortgage loan company pursuant to court order;

(5) "Settlement agent", a person, corporation, partnership, or other business organization which accepts funds and documents as fiduciary for the buyer, seller or lender for the purposes of closing a sale of an interest in real estate located within the state of Missouri, and is not a financial institution, or a member in good standing of the Missouri Bar Association, or a person licensed under chapter 339, RSMo.**]**

[381.410. As used in this section and section 381.412, the following terms mean:

(1) "Cashier's check", a check, however labeled, drawn on the financial institution, which is signed only by an officer or employee of such institution, is a direct obligation of such institution, and is provided to a customer of such institution or acquired from such institution for remittance purposes;

(2) "Certified funds", United States currency, funds conveyed by a cashier's check, certified check, teller's check, as defined in Federal Reserve Regulations CC, or wire transfers, including written advice from a financial institution that collected funds have been credited to the settlement agent's account;

(3) "Director", the director of the department of insurance, unless the settlement agent's primary regulator is another division in the department of economic development. When the settlement agent is regulated by such division, that division shall have jurisdiction over this section and section 381.412;

(4) "Financial institution":

(a) A person or entity doing business pursuant to the laws of this state or the United States relating to banks, trust companies, savings and loan associations or credit unions; or

(b) The following persons or entities if their principal place of business is in Missouri or outside Missouri, but within the St. Louis or Kansas City standard metropolitan statistical area:

a. A mortgage loan company which is subject to licensing, supervision or auditing by the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, or the United States Veterans Administration, or the Government National Mortgage Association, or the

United States Department of Housing and Urban Development, or a successor of any of the foregoing agencies or entities, as an approved seller or servicer;

(5) "Settlement agent", a person, corporation, partnership, or other business organization which accepts funds and documents as fiduciary for the buyer, seller or lender for the purposes of closing a sale of an interest in real estate located within the state of Missouri, and is not a financial institution, or a member in good standing of the Missouri Bar , or a person licensed under chapter 339, RSMo.**]**

[381.412. 1. A settlement agent who accepts funds of more than ten thousand dollars, but less than two million dollars, for closing a sale of an interest in real estate shall require a buyer, seller or lender who is not a financial institution to convey such funds to the settlement agent as certified funds. The settlement agent shall record all security instruments for such real estate closing within three business days of such closing after receipt of such certified funds. A check:

(1) Drawn on an escrow account of a licensed real estate broker, as regulated and described in section 339.105, RSMo;

(2) Drawn on an escrow account of a title insurer or title insurance agency licensed to do business in Missouri;

(3) Drawn on an agency of the United States of America, the state of Missouri or any county or municipality of the state of Missouri; or

(4) Drawn on an account by a financial institution;

shall be exempt from the provisions of this section.

2. No title insurer, title insurance agency or title insurance agent, as defined in section 381.031, shall make any payment, disbursement or withdrawal in excess of ten thousand dollars from an escrow account which it maintains as a depository of funds received from the public for the settlement of real estate transactions unless a corresponding deposit of funds was made to the escrow account for the benefit of the payee or payees:

(1) At least ten days prior to such payment, disbursement or withdrawal;

(2) Which consisted of certified funds; or

(3) Consisted of a check made exempt from this section by the provisions of subsection 1 of this section.

3. If the director finds that a settlement agent, title insurer, title insurance agency or title insurance agent has violated any provisions of this section, the director may assess a fine of not more than two thousand dollars for each violation, plus the costs of the investigation. Each separate transaction where certified funds are required shall constitute a separate violation. In determining a fine, the director shall consider the extent to which the violation was a knowing and willful violation, the corrective action taken by the settlement agent to ensure that the violation will not be repeated, and the record of the settlement agent in complying with the provisions of this section.**]**

[381.412. 1. A settlement agent who accepts funds of more than ten thousand dollars for closing a sale of an interest in real estate shall require a buyer, seller or lender who is not a financial institution to convey such funds to the settlement agent

as certified funds. A check:

(1) Drawn on an escrow account of a licensed real estate broker, as regulated and described in section 339.105, RSMo;

(2) Drawn on an escrow account of a title insurer or title insurance agency licensed to do business in Missouri;

(3) Drawn on an agency of the United States of America, the state of Missouri or any county or municipality of the state of Missouri; or

(4) Drawn on an account by a financial institution;

shall be exempt from the provisions of this section.

2. No title insurer, title insurance agency or title insurance agent, as defined in section 381.009, shall make any payment, disbursement or withdrawal in excess of ten thousand dollars from an escrow account which it maintains as a depository of funds received from the public for the settlement of real estate transactions unless a corresponding deposit of funds was made to the escrow account for the benefit of the payee or payees:

(1) At least ten days prior to such payment, disbursement or withdrawal;

(2) Which consisted of certified funds; or

(3) Consisted of a check made exempt from this section by the provisions of subsection 1 of this section.

3. If the director finds that a settlement agent, title insurer, title insurance agency or title insurance agent has violated any provisions of this section, the director may assess a fine of not more than two thousand dollars for each violation, plus the costs of the investigation. Each separate transaction where certified funds are required shall constitute a separate violation. In determining a fine, the director shall consider the extent to which the violation was a knowing and willful violation, the corrective action taken by the settlement agent to ensure that the violation will not be repeated, and the record of the settlement agent in complying with the provisions of this section.**]**"; and

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

HOUSE AMENDMENT NO. 2

Amend Senate Committee Substitute for Senate Bill No. 66, Section A, Page 1, by inserting after all of said section the following:

"354.150. Every health services corporation subject to the provisions of sections 354.010 to 354.380 shall pay the following fees to the director **[**of insurance**]** for **the administration and** enforcement of the provisions of this chapter:

[Issuance of certificate of authority.....$150.00

Filing articles of amendment.....$ 20.00

Filing each annual statement $100.00

Filing articles of acceptance and issuing a certificate of acceptance.....$ 20.00

Filing any other statement or report .....$ 1.00

For a certified copy of any document or other paper filed in the office of the director, per page..... $ .35

For the certificate and for affixing the seal thereto..... $ 10.00

For filing statement and pertinent admission papers required of a foreign health services corporation..... $200.00

For copies of papers, records and documents filed in the office of the director, an amount not to exceed, at the director's discretion .....$ 1.00 per page

For each service of process upon the director, on behalf of the health services corporation..... $10.00**]**

(1) For filing the declaration required on organization of each domestic company, two hundred fifty dollars;

(2) For filing statement and certified copy of charter required of foreign companies, two hundred fifty dollars;

(3) For filing application to renew certificate of authority, along with all required annual reports, including the annual statement, actuarial statement, risk based capital report, report of valuation of policies or other obligations of assurance, and audited financial report of any company doing business in this state, one thousand five hundred dollars;

(4) For filing any paper, document, or report not filed under subdivision (1), (2), or (3) of this section but required to be filed in the office of the director, fifty dollars each;

(5) For affixing the seal of office of the director, ten dollars;

(6) For accepting each service of process upon the company, ten dollars.

354.180. 1. **[**(1) The director may issue cease and desist orders whenever it appears to him upon competent and substantial evidence that any person is acting in violation of any law, rule or regulation relating to corporations subject to the provisions of sections 354.010 to 354.380, or whenever the director has reason to believe that any health services corporation is in such financial condition that the assumption of additional obligations would be hazardous to its members or the general public. Before any cease and desist order shall be issued, a copy of the proposed order together with an order to show cause why such cease and desist order should not be issued shall be served either personally or by certified mail on any person named therein.

(2) (a) Upon issuing any order to show cause, the director shall notify the person named therein that the person is entitled to a public hearing before the director if a request for a hearing is made in writing to the director within fifteen days from the day of the service of the order to show cause why the cease and desist order should not be issued.

(b) The cease and desist order shall be issued fifteen days after the service of the order to show cause if no request for a public hearing is made as above provided.

(c) Upon receipt of a request for a hearing, the director shall set a time and place for the hearing which shall not be less than ten days or more than fifteen days from the receipt of the request or as otherwise agreed upon by the parties. Notice of the time and place shall be given by the director not less than five days before the hearing.

(d) At the hearing the person may be represented by counsel and shall be entitled to be advised of the nature and source of any adverse evidence procured by the director and shall be given the opportunity to submit any relevant written or oral evidence in his behalf to show cause why the cease and desist order should not be issued.

(e) At the hearing the director shall have such powers as are conferred upon him in section 354.190.

(f) At the conclusion of the hearing, or within ten days thereafter, the director shall issue the cease and desist order as proposed or as subsequently modified or notify the person or corporation subject to the provisions of sections 354.010 to 354.380 that no order shall be issued, provided that where the director finds that the corporation is in such financial condition that the

assumption of additional obligations would be hazardous to its members or the general public, he may order the corporation to cease and desist from making contracts for new members or for the provision of new benefits until the corporation's financial condition is no longer hazardous.

(g) The circuit court of Cole County shall have jurisdiction to review any cease and desist order of the director under the provisions of sections 536.100 to 536.150, RSMo; and, if any person against whom an order is issued fails to request judicial review, or if, after judicial review, the director's cease and desist order is upheld, the order shall become final.

2. (1) Any person willfully violating any provision of any cease and desist order of the director after it becomes final, while the same is in force, upon conviction thereof shall be guilty of a class A misdemeanor, punishable as provided by law.

(2) In addition to any other penalty provided, violation of any cease and desist order shall subject the violator to suspension or revocation of any certificate of authority or license as may be applicable under the laws of this state relating to corporations subject to the provisions of sections 354.010 to 354.380.

3. (1) When it appears to the director that there is a violation of the law, rule or regulation relating to corporations subject to the provisions of sections 354.010 to 354.380, and that the continuance of the acts or actions of any person as herein defined would produce injury to the public or to any other person in this state, or when it appears that a person is doing or threatening to do some act in violation of the laws of this state relating to corporations subject to the provisions of sections 354.010 to 354.380, the director may file a petition for injunction in the circuit court of Cole County, Missouri, in which he may ask for a temporary injunction or restraining order as well as a permanent injunction to restrain the act or threatened act. In the event the temporary injunction or restraining order or a permanent injunction is issued by the circuit court of Cole County, Missouri, no person against whom the temporary injunction or restraining order or permanent injunction is granted shall do or continue to do any of the acts or actions complained of in the petition for injunction, unless and until the temporary injunction or restraining order or permanent injunction is vacated, dismissed or otherwise terminated.

(2) Any writ of injunction issued under this law may be served and enforced as provided by law in injunctions issued in other cases, but the director of the insurance department shall not be required to give any bond as preliminary to or in the course of any proceedings to which he is a party as director.

4. The term "person" as used in this section shall include any individual, partnership, corporation, association or trust, or any other legal entity.**] If the director determines that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of sections 354.010 to 354.380 or a rule adopted or order issued pursuant thereto, or a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of sections 354.010 to 354.380 or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. A violation of these sections is a level two violation under section 374.049, RSMo, except for any violation of sections 354.320 and 354.350, which is a level three violation.**

2. If the director believes that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of sections 354.010 to 354.380 or a rule adopted or order issued pursuant thereto, or

that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of sections 354.010 to 354.380 or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo. A violation of these sections is a level two violation under section 374.049, RSMo, except for any violation of sections 354.320 and 354.350, which is a level three violation.

354.210. **[**1. Notwithstanding any other provisions of chapter 354,**] If** the director **[**may, after a hearing, order as a forfeiture to the state of Missouri a sum not to exceed one hundred dollars for each violation by any person or corporation willfully violating any provision of sections 354.010 to 354.380 for which no specific punishment is provided, or order of the director made in accordance with such sections. Such forfeiture may be recovered by a civil action brought by and in the name of the director of insurance. The civil action may be brought in the county which has venue of an action against the person or corporation under other provisions of law.

2. Nothing contained in this section shall be construed to prohibit the director and the corporation or its enrollment representative from agreeing to a voluntary forfeiture of the sum mentioned herein without civil proceedings being instituted. Any sum so agreed upon shall be paid into the school fund as provided by law for other fines and penalties**] has reason to believe that any health services corporation is in such financial condition that the assumption of additional obligations would be hazardous to its members or the general public, the director may issue orders or seek relief to protect the public under the provisions of section 354.180**.

354.350. 1. **[**When upon investigation the director finds that any**] It is unlawful for any** corporation subject to the provisions of sections 354.010 to 354.380 transacting business in this state **[**has conducted**] to:**

(1) Conduct its business fraudulently**[**, is not carrying**];**

(2) Fail to carry out its contracts in good faith**[**, or is**]; or**

(3) Habitually and as a matter of business practice **[**compelling**] compel** claimants under policies or liability judgment creditors of its members to either accept less than the amount due under the terms of the policy or resort to litigation against the corporation to secure payment of the amount due**[**, and that a proceeding in respect thereto would be in the interest of the public, he shall issue and serve upon the corporation a statement of the charges in that respect and a notice of a hearing thereon**]**.

2. **[**If after the hearing the director shall determine that the corporation subject to the provisions of sections 354.010 to 354.380 has fraudulently conducted its business as defined in this section, he shall order the corporation to cease and desist from the fraudulent practice and may suspend the corporation's certificate of authority for a period not to exceed thirty days and may in addition order a forfeiture to the state of Missouri of a sum not to exceed one thousand dollars, which forfeiture may be recovered by a civil action brought by and in the name of the director of insurance. The civil action may be brought in the circuit court of Cole County or, at the option of the director of insurance, in another county which has venue of an action against the corporation under other provisions of law**] If the director determines that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of this section or a rule adopted or order issued**

pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. Each practice in violation of this section is a level two violation under section 374.049, RSMo. Each act as a part of a practice does not constitute a separate violation under section 374.049, RSMo. The director **[**of insurance**]** may also suspend or revoke the license **or certificate of authority** of a corporation subject to the provisions of sections 354.010 to 354.380 or enrollment representative for any such willful violation.

3. If the director believes that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo. Each practice in violation of this section is a level two violation under section 374.049, RSMo. Each act as a part of a practice does not constitute a separate violation under section 374.049, RSMo.

354.400. As used in sections 354.400 to **[**354.535**] 354.636**, the following terms shall mean:

(1) "Basic health care services", health care services which an enrolled population might reasonably require in order to be maintained in good health, including, as a minimum, emergency care, inpatient hospital and physician care, and outpatient medical services;

(2) "Community-based health maintenance organization", a health maintenance organization which:

(a) Is wholly owned and operated by hospitals, hospital systems, physicians, or other health care providers or a combination thereof who provide health care treatment services in the service area described in the application for a certificate of authority from the **[**department of insurance**] director**;

(b) Is operated to provide a means for such health care providers to market their services directly to consumers in the service area of the health maintenance organization;

(c) Is governed by a board of directors that exercises fiduciary responsibility over the operations of the health maintenance organization and of which a majority of the directors consist of equal numbers of the following:

a. Physicians licensed pursuant to chapter 334, RSMo;

b. Purchasers of health care services who live in the health maintenance organization's service area;

c. Enrollees of the health maintenance organization elected by the enrollees of such organization; and

d. Hospital executives, if a hospital is involved in the corporate ownership of the health maintenance organization;

(d) Provides for utilization review, as defined in section 374.500, RSMo, under the auspices of a physician medical director who practices medicine in the service area of the health maintenance organization, using review standards developed in consultation with physicians who treat the health maintenance organization's enrollees;

(e) Is actively involved in attempting to improve performance on indicators of health status in the community or communities in which the health maintenance organization is operating, including the health status of those not enrolled in the health maintenance organization;

(f) Is accountable to the public for the cost, quality and access of health care treatment services and for the effect such services have on the health of the community or communities in which the

health maintenance organization is operating on a whole;

(g) Establishes an advisory group or groups comprised of enrollees and representatives of community interests in the service area to make recommendations to the health maintenance organization regarding the policies and procedures of the health maintenance organization;

(h) Enrolls fewer than fifty thousand covered lives;

(3) "Covered benefit" or "benefit", a health care service to which an enrollee is entitled under the terms of a health benefit plan;

(4) "Director", the director of the department of insurance**, financial and professional regulation**;

(5) "Emergency medical condition", the sudden and, at the time, unexpected onset of a health condition that manifests itself by symptoms of sufficient severity that would lead a prudent lay person, possessing an average knowledge of health and medicine, to believe that immediate medical care is required, which may include, but shall not be limited to:

(a) Placing the person's health in significant jeopardy;

(b) Serious impairment to a bodily function;

(c) Serious dysfunction of any bodily organ or part;

(d) Inadequately controlled pain; or

(e) With respect to a pregnant woman who is having contractions:

a. That there is inadequate time to effect a safe transfer to another hospital before delivery; or

b. That transfer to another hospital may pose a threat to the health or safety of the woman or unborn child;

(6) "Emergency services", health care items and services furnished or required to screen and stabilize an emergency medical condition, which may include, but shall not be limited to, health care services that are provided in a licensed hospital's emergency facility by an appropriate provider;

(7) "Enrollee", a policyholder, subscriber, covered person or other individual participating in a health benefit plan;

(8) "Evidence of coverage", any certificate, agreement, or contract issued to an enrollee setting out the coverage to which the enrollee is entitled;

(9) "Health care services", any services included in the furnishing to any individual of medical or dental care or hospitalization, or incident to the furnishing of such care or hospitalization, as well as the furnishing to any person of any and all other services for the purpose of preventing, alleviating, curing, or healing human illness, injury, or physical disability;

(10) "Health maintenance organization", any person which undertakes to provide or arrange for basic and supplemental health care services to enrollees on a prepaid basis, or which meets the requirements of section 1301 of the United States Public Health Service Act;

(11) "Health maintenance organization plan", any arrangement whereby any person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services and at least part of such arrangement consists of providing and assuring the availability of basic health care services to enrollees, as distinguished from mere indemnification against the cost of such services, on a prepaid basis through insurance or otherwise, and as distinguished from the mere provision of service benefits under health service corporation programs;

(12) "Individual practice association", a partnership, corporation, association, or other legal entity which delivers or arranges for the delivery of health care services and which has entered into a services arrangement with persons who are licensed to practice medicine, osteopathy,

dentistry, chiropractic, pharmacy, podiatry, optometry, or any other health profession and a majority of whom are licensed to practice medicine or osteopathy. Such an arrangement shall provide:

(a) That such persons shall provide their professional services in accordance with a compensation arrangement established by the entity; and

(b) To the extent feasible for the sharing by such persons of medical and other records, equipment, and professional, technical, and administrative staff;

(13) "Medical group/staff model", a partnership, association, or other group:

(a) Which is composed of health professionals licensed to practice medicine or osteopathy and of such other licensed health professionals (including dentists, chiropractors, pharmacists, optometrists, and podiatrists) as are necessary for the provisions of health services for which the group is responsible;

(b) A majority of the members of which are licensed to practice medicine or osteopathy; and

(c) The members of which (i) as their principal professional activity over fifty percent individually and as a group responsibility engaged in the coordinated practice of their profession for a health maintenance organization; (ii) pool their income from practice as members of the group and distribute it among themselves according to a prearranged salary or drawing account or other plan, or are salaried employees of the health maintenance organization; (iii) share medical and other records and substantial portions of major equipment and of professional, technical, and administrative staff; (iv) establish an arrangement whereby an enrollee's enrollment status is not known to the member of the group who provides health services to the enrollee;

(14) "Person", any partnership, association, or corporation;

(15) "Provider", any physician, hospital, or other person which is licensed or otherwise authorized in this state to furnish health care services;

(16) "Uncovered expenditures", the costs of health care services that are covered by a health maintenance organization, but that are not guaranteed, insured, or assumed by a person or organization other than the health maintenance organization, or those costs which a provider has not agreed to forgive enrollees if the provider is not paid by the health maintenance organization.

354.435. 1. Every health maintenance organization shall annually, on or before March first, file a report, verified by at least two principal officers, with the director, covering its preceding calendar year.

2. Such report shall be on forms prescribed by the director and shall include:

(1) A financial statement of the organization, including its balance sheet for the preceding calendar year;

(2) Any material changes in the information submitted pursuant to subsection 3 of section 354.405;

(3) The number of persons enrolled during the year, the number of enrollees, as of the end of the year, and the number of enrollments terminated during the year;

(4) A statement setting forth the amount of uncovered and covered expenses that are payable and are more than ninety days past due for the period of August first through December thirty-first of the preceding year;

(5) Such other information relating to the performance of the organization as is necessary to enable the director to carry out his duties under sections 354.400 to **[**354.550**]** **354.636**.

354.444. 1. **[**Notwithstanding any other provisions of chapter 354,**]** **If** the director **[**may, after a hearing, order a forfeiture to the state of

Missouri a sum not to exceed one hundred dollars for each violation by any person knowingly violating any provision**] determines that a person has engaged, is engaged in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation** of sections 354.400 to 354.636 **[**for which no specific punishment is provided, or order a specific punishment in accordance with such sections. Such forfeiture may be recovered by a civil action brought by and in the name of the department of insurance. The civil action may be brought in the county which has venue for an action against the person or corporation**], or a rule adopted or order issued pursuant thereto or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of sections 354.400 to 354.636 or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. A violation of any of these sections is a level one violation under section 374.049, RSMo**.

2. **[**Nothing contained in this section shall be construed to prohibit the director and the corporation or its enrollment representative from agreeing to a voluntary forfeiture of the sum mentioned herein without civil proceedings being instituted. Any payment under this section shall be paid into the school fund as provided by article IX, section 7 of the Missouri Constitution for fines and penalties**] If the director believes that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of sections 354.400 to 354.636, or a rule adopted or order issued pursuant thereto or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of sections 354.400 to 354.636 or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo. A violation of any of these sections is a level one violation under section 374.049, RSMo**.

354.455. Unless otherwise provided in sections 354.400 to **[**354.550**] 354.636**, each health maintenance organization shall deposit with the director, or with any organization or trustee acceptable to him through which a custodial or controlled account is utilized, cash, securities, or any combination of these or other measures acceptable to him, in the amount set forth in section 354.410.

354.460. No health maintenance organization, or representative thereof, may cause or knowingly permit the use of advertising which is untrue or misleading, solicitation which is untrue or misleading, or any form of evidence of coverage which is deceptive. For purposes of sections 354.400 to **[**354.550**] 354.636**:

(1) A statement or item of information shall be deemed to be untrue if it does not conform to fact in any respect which is or may be significant to an enrollee of, or person considering enrollment with, a health maintenance organization;

(2) A statement or item of information shall be deemed to be misleading, whether or not it may be literally untrue, if, in the total context in which such statement is made or such item of information is communicated, such statement or item of information may be reasonably understood by a reasonable person, not possessing special knowledge regarding health care coverage, as indicating any benefit or advantage or the absence of any exclusion, limitation, or disadvantage of possible significance to an enrollee of, or person considering enrollment in, a health maintenance organization plan, if such benefit, advantage, or absence of limitation, exclusion, or disadvantage does not, in fact, exist;

(3) An evidence of coverage shall be deemed to be deceptive if the evidence of coverage, taken as a whole, is misleading.

354.464. No health maintenance organization, unless licensed as an insurer, may use in its name, contracts, or literature any of the words "insurance", "casualty", "surety", "mutual", or any other words descriptive of the insurance, casualty, or surety business or deceptively similar to the name or description of any insurance or surety corporation doing business in this state when such words are deceptive or misleading. No person, if not in possession of a valid certificate of authority issued pursuant to sections 354.400 to **[**354.550**]** **354.636**, may use the phrase "health maintenance organization" or "HMO" in the course of its operation.

354.475. 1. An insurance company licensed in this state, or a health services corporation authorized to do business in this state, may directly or through a subsidiary or affiliate, organize and operate a health maintenance organization under the provisions of sections 354.400 to **[**354.550**]** **354.636** so long as they comply with the provisions of section 354.410 as applicable thereto. Notwithstanding any other law to the contrary, any two or more such insurance companies, health services corporations, or subsidiaries or affiliates thereof, may jointly organize and operate a health maintenance organization.

2. Notwithstanding any other provision of law pertaining to insurance and health services corporations to the contrary, an insurer or a health services corporation may contract with a health maintenance organization to provide insurance or similar protection against the cost of care provided through health maintenance organizations and to provide coverage in the event of the failure of the health maintenance organization to meet its obligations. The enrollees of a health maintenance organization shall be deemed to constitute a permissible group under such laws. Among other things, under such contracts, the insurer or health services corporation may make benefit payments to health maintenance organizations for health care services rendered by providers.

354.485. The director may promulgate such reasonable rules and regulations in accordance with chapter 536, RSMo, as are necessary or proper to carry out the provisions of sections 354.400 to **[**354.550**]** **354.636**.

354.495. Every health maintenance organization subject to sections 354.400 to **[**354.550**]** **354.636** shall pay to the director the following fees:

[(1) Issuance or renewal of certificate of authority.....$ 150.00

(2) Filing of articles of amendment 1.00

(3) Filing each annual statement..... 100.00

(4) Filing articles of acceptance and issuing a certificate of acceptance 20.00

(5) Filing any other statement or report.....20.00

(6) For the certification of any document, and affixing the seal thereto 10.00

(7) For filing statement and pertinent admission papers required of a foreign health maintenance organization 200.00

(8) For each appointment of an agent by the health maintenance organization 5.00

(9) For copies of papers, records and documents filed in the office of the director, an amount not to exceed, at the director's discretion ..... 1.00 per page

(10) For each service of process upon the director, on behalf of the health maintenance organization ..... 10.00**]**

(1) For filing the declaration required on organization of each domestic company, two

hundred fifty dollars;

(2) For filing statement and certified copy of charter required of foreign companies, two hundred fifty dollars;

(3) For filing application to renew certificate of authority, along with all required annual reports, including the annual statement, actuarial statement, risk based capital report, report of valuation of policies or other obligations of assurance, and audited financial report of any company doing business in this state, one thousand five hundred dollars;

(4) For filing any paper, document, or report not filed under subdivision (1), (2), or (3) of this section but required to be filed in the office of the director, fifty dollars each;

(5) For affixing the seal of office of the director, ten dollars;

(6) For accepting each service of process upon the company, ten dollars.

354.500. 1. If the director shall for any reason have cause to believe that any violation of sections 354.400 to **[**354.550**]** **354.636** has occurred or is about to occur, the director may give notice to the health maintenance organization and to the representatives, or other persons who appear to be involved in such suspected violation, to arrange a conference with the alleged violators, or potential violators, or their authorized representatives, for the purpose of attempting to ascertain the facts relating to such suspected or potential violation, and, in the event it appears that any violation has occurred or is about to occur, to arrive at an adequate and effective means of correcting or preventing such violation. Proceedings under this subsection shall not be governed by any formal procedural requirements, and may be conducted in such manner as the director may deem appropriate under the circumstances.

2. **[**The director may issue an order directing a health maintenance organization, or a representative of a health maintenance organization, to cease and desist from engaging in any act or practice in violation of the provisions of sections 354.400 to 354.550. Within twenty days after service of the order to cease and desist, the respondent may request a hearing on the question of whether acts or practices in violation of sections 354.400 to 354.550 have occurred. Such hearing shall be conducted, and judicial review shall be available, as provided in chapter 536, RSMo.

3. In the case of noncompliance with a cease and desist order issued pursuant to subsection 2 of this section, the director may institute a proceeding to obtain injunctive or other appropriate relief, in the circuit court.**]**

354.510. **Unless otherwise provided,** all applications, filings, and reports required under sections 354.400 to **[**354.550**]** **354.636** shall be treated as public documents.

354.530. If any section, term, or provision of sections 354.400 to **[**354.550**]** **354.636** shall be adjudged invalid for any reason, such judgment shall not affect, impair, or invalidate any other section, term, or provision of sections 354.400 to **[**354.550**]** **354.636**, but the remaining sections, terms, and provisions shall be and remain in full force and effect.

354.540. A health maintenance organization approved and regulated under the laws of another bordering state may be admitted to do business in this state by satisfying the director that it is fully and legally organized under the laws of its state, and that it complies with all requirements for health maintenance organizations organized within Missouri. The director may waive or modify the provisions of sections 354.400 to **[**354.550**]** **354.636** if he determines that the same are not appropriate or necessary to a particular health maintenance organization of another state.

354.545. The provisions of sections 354.400 to **[**354.550**]** **354.636** shall not apply to any labor organization's health plan providing services established and maintained solely for its members

and their dependents, and facilities of not-for-profit corporations in existence on October 1, 1980, subject either to the provisions and regulations of section 302 of the Labor-Management Relations Act, 29 U.S.C. 186 or the Labor-Management Reporting and Disclosure Act, 29 U.S.C. 401-538.

354.550. The provisions of sections 354.400 to **[**354.550**]** **354.636** shall not apply to community health corporations as defined by Public Law 94-63 so long as such corporations limit their activities to those described in Public Law 94-63.

354.600. For purposes of sections 354.600 to 354.636 the following terms shall mean:

(1) **[**"Covered benefit" or "benefit", a health care service to which an enrollee is entitled under the terms of a health benefit plan;

(2) "Director", the director of the department of insurance;

(3) "Emergency medical condition", the sudden and, at the time, unexpected onset of a health condition that manifests itself by symptoms of sufficient severity that would lead a prudent lay person, possessing an average knowledge of medicine and health, to believe that immediate medical care is required, which may include, but shall not be limited to:

(a) Placing the person's health in significant jeopardy;

(b) Serious impairment to a bodily function;

(c) Serious dysfunction of any bodily organ or part;

(d) Inadequately controlled pain; or

(e) With respect to a pregnant woman who is having contractions:

a. That there is inadequate time to effect a safe transfer to another hospital before delivery; or

b. That transfer to another hospital may pose a threat to the health or safety of the woman or unborn child;

(4) "Emergency service", a health care item or service furnished or required to screen and stabilize an emergency medical condition, which may include, but shall not be limited to, health care services that are provided in a licensed hospital's emergency facility by an appropriate provider;

(5) "Enrollee", a policyholder, subscriber, covered person or other individual participating in a health benefit plan;

(6)**]** "Facility", an institution providing health care services or a health care setting, including but not limited to, hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing facilities, residential treatment centers, diagnostic, laboratory and imaging centers, and rehabilitation and other therapeutic health settings;

[(7)**]** **(2)** "Health benefit plan", a policy, contract, certificate or agreement entered into, offered or issued by a health carrier to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services;

[(8)**]** **(3)** "Health care professional", a physician or other health care practitioner licensed, accredited or certified by the state of Missouri to perform specified health services;

[(9)**]** **(4)** "Health care provider" or "provider", a health care professional or a facility;

[(10) "Health care service", a service for the diagnosis, prevention, treatment, cure or relief of a health condition, illness, injury or disease;

(11)**]** **(5)** "Health carrier", a health maintenance organization established pursuant to sections 354.400 to 354.636;

[(12)**]** **(6)** "Health indemnity plan", a health benefit plan that is not a managed care plan;

[(13)**]** **(7)** "Intermediary", a person authorized to negotiate and execute provider contracts with health carriers on behalf of health care providers or on behalf of a network;

[(14)**]** **(8)** "Managed care plan", a health benefit plan that either requires an enrollee to use, or creates incentives, including financial incentives, for an enrollee to use health care providers managed, owned, under contract with or employed by the health carrier;

[(15)**]** **(9)** "Network", the group of participating providers providing services to a managed care plan;

[(16)**]** **(10)** "Participating provider", a provider who, under a contract with the health carrier or with its contractor or subcontractor, has agreed to provide health care services to enrollees with an expectation of receiving payment, other than coinsurance, co-payments or deductibles, directly or indirectly from the health carrier;

[(17) "Person", an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing; and

(18)**]** **(11)** "Primary care professional" or "primary care provider", a participating health care professional designated by the health carrier to supervise, coordinate or provide initial care or continuing care to an enrollee, and who may be required by the health carrier to initiate a referral for specialty care and maintain supervision of health care services rendered to the enrollee.

354.722. 1. The director may suspend or revoke any certificate of authority issued to a prepaid dental plan corporation pursuant to sections 354.700 to 354.723 if he finds that any of the following conditions exist:

(1) The prepaid dental plan corporation is operating substantially in contravention of its basic organizational document or is not fulfilling its contracts;

(2) **[**The prepaid dental plan corporation issues a contract, contract certificate or amendment which has not been filed with the director and approved or deemed approved by the director;

(3)**]** The prepaid dental plan corporation is no longer financially responsible and may reasonably be expected to be unable to meet its contractual obligations to enrollees, or prospective enrollees;

[(4)**]** **(3)** The prepaid dental plan corporation, or any person on its behalf, has advertised or merchandised its prepaid dental benefits in an untrue, misrepresentative, misleading, deceptive or unfair manner;

[(5)**]** **(4)** The continued operation of the prepaid dental plan corporation would be hazardous to its enrollees; or

[(6)**]** **(5)** The prepaid dental plan corporation has failed to substantially comply with the provisions of sections 354.700 to 354.723 or any rules or regulations promulgated thereunder.

2. **[**When the director believes that grounds for the suspension or revocation of the corporation's certificate of authority exists, he shall notify the corporation in writing, stating the grounds and fixing a date and time for a hearing. At least twenty days' notice of such hearing shall be given. The hearing and any appeals therefrom shall be in accordance with chapter 536, RSMo.

3. The director may, in lieu of the suspension or revocation of the corporation's certification of authority, file suit in circuit court to seek a civil penalty in an amount not less than one hundred dollars nor more than one thousand dollars.

4.**]** **If the director determines that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of sections 354.700 to 354.723 or a rule adopted or order issued pursuant thereto or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of sections 354.700 to 354.723 or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. A violation of this**

section is a level two violation under section 374.049, RSMo. The director may also suspend or revoke the certificate of authority of a corporation for any such willful violation.

3. When the certificate of authority of a prepaid dental plan corporation is suspended, the prepaid dental plan corporation shall not, during the period of such suspension, enroll any additional enrollees except newborn children or other newly acquired dependent of existing enrollees and shall not engage in any advertising or solicitation whatsoever.

[5.**] 4.** When the certificate of authority of a prepaid dental plan corporation is revoked, such corporation shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of such corporation. It shall engage in no further advertising or solicitation whatsoever.

374.051. 1. Any applicant refused a license or the renewal of a license by order of the director under sections 374.755, 374.787, and 375.141, RSMo, may file a petition with the administrative hearing commission alleging that the director has refused the license. The administrative hearing commission shall conduct hearings and make findings of fact and conclusions of law in determining whether the applicant may be disqualified by statute. Notwithstanding section 621.120, RSMo, the director shall retain discretion in refusing a license or renewal and such discretion shall not transfer to the administrative hearing commission.

2. If a proceeding is instituted to revoke or suspend a license of any person under sections 374.755, 374.787, and 375.141, RSMo, the director shall refer the matter to the administrative hearing commission by directing the filing of a complaint. The administrative hearing commission shall conduct hearings and make findings of fact and conclusions of law in such cases. The director shall have the burden of proving cause for discipline. If cause is found, the administrative hearing commission shall submit its findings of fact and conclusions of law to the director, who may determine appropriate discipline.

3. Hearing procedures before the director or the administrative hearing commission and judicial review of the decisions and orders of the director and of the administrative hearing commission, and all other procedural matters under this chapter, shall be governed by the provisions of chapter 536, RSMo. Hearings before the administrative hearing commission shall also be governed by the provisions of chapter 621, RSMo.

374.055. 1. Except as otherwise provided, any interested person aggrieved by any order of the director under the laws of this state relating to insurance in this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo, or a rule adopted by the director, or by any refusal or failure of the director to make an order pursuant to any of said provisions, shall be entitled to a hearing before the director in accordance with the provisions of chapter 536, RSMo. A final order issued by the director is subject to judicial review in accordance with the provisions of chapter 536, RSMo. However, any findings of fact or conclusions of law in any order regarding the actual costs of the investigation or proceedings under section 374.046, or the classification of any violation under section 374.049, shall be subject to de novo review.

2. A rule adopted by the director is subject to judicial review in accordance with the provisions of chapter 536, RSMo.

3. Notwithstanding any other provision of law to the contrary, no person or entity shall impose an accident response service fee on or from an insurance company, the driver or

owner of a motor vehicle, or any other person. As used in this section, the term "accident response service fee" means a fee imposed for the response or investigation by a local law enforcement agency of a motor vehicle accident.

374.150. 1. All fees due the state under the provisions of the insurance laws of this state shall be paid to the director of revenue and deposited in the state treasury to the credit of the insurance **[**department**]** **dedicated** fund unless otherwise provided for in subsection 2 of this section.

2. There is hereby established in the state treasury a special fund to be known as the "**[**Department of**]** Insurance Dedicated Fund". The fund shall be subject to appropriation of the general assembly and shall be devoted solely to the payment of expenditures incurred by the department **[**of insurance**]** attributable to duties performed by the department **for the regulation of the business of insurance, regulation of health maintenance organizations and the operation of the division of consumer affairs** as required by law which are not paid for by another source of funds. Other provisions of law to the contrary notwithstanding, beginning on January 1, 1991, all fees charged under any provision of chapter 325, 354, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384 or 385, RSMo, due the state shall be paid into this fund. The state treasurer shall invest moneys in this fund in the same manner as other state funds and any interest or earnings on such moneys shall be credited to the **[**department of**]** insurance dedicated fund. The provisions of section 33.080, RSMo, notwithstanding, moneys in the fund shall not lapse, be transferred to or placed to the credit of the general revenue fund unless and then only to the extent to which the unencumbered balance at the close of the biennium year exceeds two times the total amount appropriated, paid, or transferred to the fund during such fiscal year.

[3. Notwithstanding the provisions of this section to the contrary, fifty-five percent of the balance in the department of insurance dedicated fund as of the effective date of this act or six million fifteen thousand eight hundred and fifty-five dollars, whichever is greater, shall be subject to an immediate one-time transfer to the state general revenue fund.**]**

374.160. 1. The expenses of examinations, valuations or proceedings against any company, and for dissolving or settling the affairs of companies are to be paid by the company, or as provided by law. The state shall not be responsible in any manner for the payment of any such expenses, or any charges connected therewith.

2. **At the request of the director, every domestic insurance company or health maintenance organization subject to an order of conservation, rehabilitation, or liquidation shall reimburse the insurance dedicated fund for administrative services rendered by state employees to the company. Reimbursement shall include that portion of the employee's salary, state benefits, and expenses that specifically relates to the services rendered on behalf of the company.**

3. All other expenses of the department of insurance**, financial institutions and professional registration** now or hereafter incurred and unpaid, or that may be hereafter incurred, including the salaries of the director and deputy director, shall be paid out of the state treasury in the manner provided by law.

[3.**]** **4.** The director shall assess the expenses of any examination against the company examined and shall order that the examination expenses be paid into the insurance examiners fund created by section 374.162. **[**The director shall also assess an additional amount equal to fifteen percent of the total expenses of examination, to be paid for the supervision and support of the examiners. The insurance examiner's sick leave fund created by sections 374.261 to 374.267 shall be combined with the insurance examiners fund.**]** **This assessment shall include the costs of compensation, including benefits, for the**

examiners, analysts, actuaries, and attorneys directly contributing to the examination of the company, any reasonable travel, lodging, and meal expenses related to an on-site examination, and other expenses related to the examination of the company, including an allocation for examiners' office space, supplies, and equipment, but not expenses associated with attending a course, seminar, or meeting, unless solely related to the examination of the company assessed. The director shall pay from the insurance examiners fund the compensation of insurance examiners **[**pursuant to section 374.115, any expenses to be paid from such sick leave fund under sections 374.261 to 374.267**]**, **analysts, actuaries, and attorneys, including standard benefits afforded to state employees, for performance of any such examination** and **other** expenses **[**incurred for supervision and support of the examiners**] covered in the assessment**. The general assembly shall annually provide appropriations sufficient to distribute all receipts into the insurance examiners fund. The provisions of section 33.080, RSMo, relating to the transfer of unexpended balances to the general revenue fund shall not apply to the insurance examiners fund.

[4.**] 5.** If any company shall refuse to pay the expenses of any examination, valuation or proceeding assessed by the director pursuant to this section, the company shall be liable for double the amount of such expenses and all costs of collection, including attorney's fees. The company shall not be entitled to a credit, pursuant to section 148.400, RSMo, for any fees, expenses or costs ordered pursuant to this subsection other than in the amount of the expenses originally assessed by the director. All amounts collected pursuant to this subsection shall be credited to the insurance examiners fund.

374.185. 1. The director may cooperate, coordinate, and consult with other members of the National Association of Insurance Commissioners, the commissioner of securities, state securities regulators, the division of finance, the division of credit unions, the attorney general, federal banking and securities regulators, the National Association of Securities Dealers (NASD), the United States Department of Justice, the Commodity Futures Trading Commission, and the Federal Trade Commission to effectuate greater uniformity in insurance and financial services regulation among state and federal governments, and self-regulatory organizations. The director may share records with any aforesaid entity, except that any record that is confidential, privileged, or otherwise protected from disclosure by law shall not be disclosed unless such entity agrees in writing prior to receiving such record to provide it the same protection. No waiver of any applicable privilege or claim of confidentiality regarding any record shall occur as the result of any disclosure.

2. In cooperating, coordinating, consulting, and sharing records and information under this section and in acting by rule, order, or waiver under the laws relating to insurance, the director shall, at the discretion of the director, take into consideration in carrying out the public interest the following general policies:

(1) Maximizing effectiveness of regulation for the protection of insurance consumers;

(2) Maximizing uniformity in regulatory standards; and

(3) Minimizing burdens on the business of insurance, without adversely affecting essentials of consumer protection.

3. The cooperation, coordination, consultation, and sharing of records and information authorized by this section includes:

(1) Establishing or employing one or more designees as a central electronic depository for licensing and rate and form filings with the director and for records required or allowed to be maintained;

(2) Encouraging insurance companies and producers to implement electronic filing through a central electronic depository;

(3) Developing and maintaining uniform forms;

(4) Conducting joint market conduct examinations and other investigations through collaboration and cooperation with other insurance regulators;

(5) Holding joint administrative hearings;

(6) Instituting and prosecuting joint civil or administrative enforcement proceedings;

(7) Sharing and exchanging personnel;

(8) Coordinating licensing under section 375.014, RSMo;

(9) Formulating rules, statements of policy, guidelines, forms, no action determinations, and bulletins; and

(10) Formulating common systems and procedures.

374.208. The director shall study and recommend to the General Assembly changes to avoid unnecessary duplication of market conduct activities and to implement uniform processes and procedures for market analysis and market conduct examinations which will more effectively utilize resources to protect insurance consumers. The study shall be completed and recommendations provided by January 1, 2008.

374.210. 1. **It is unlawful for,** any person **[**testifying falsely in reference to any matter material to the investigation, examination or inquiry shall be deemed guilty of perjury.**] in any investigation, examination, inquiry, or other proceeding under this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo, to:**

[2. Any person who shall refuse to give such director full and truthful information, and answer in writing to any inquiry or question made in writing by the director, in regard to the business of insurance carried on by such person, or to appear and testify under oath before the director in regard to the same, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or imprisonment not exceeding three months.

3. Any director, officer, manager, agent or employee of any insurance company, or any other person, who shall**]**

(1) Knowingly make or cause to be made a false statement upon oath or affirmation or in any record that is submitted to the director or used in any proceeding under this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo; or

(2) Make any false certificate or entry or memorandum upon any of the books or papers of any insurance company, or upon any statement or exhibit offered, filed or offered to be filed in the **[**insurance**]** department, or used in the course of any examination, inquiry**,** or investigation**[**, with intent to deceive the director or any person employed or appointed by him to make any examination, inquiry or investigation, shall, upon conviction, be punished by a fine not exceeding one thousand dollars, and by imprisonment not less than two months in the county or city jail, nor more than five years in the penitentiary**] under this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo.**

2. If a person does not appear or refuses to testify, file a statement, produce records, or otherwise does not obey a subpoena as required by the director, the director may apply to the circuit court of any county of the state or any city not within a county, or a court of another state to enforce compliance. The court may:

(1) Hold the person in contempt;

(2) Order the person to appear before the director;

(3) Order the person to testify about the matter under investigation or in question;

(4) Order the production of records;

(5) Grant injunctive relief;

(6) Impose a civil penalty of up to fifty thousand dollars for each violation; and

(7) Grant any other necessary or appropriate relief.

The director may also suspend, revoke or refuse any license or certificate of authority issued by the director to any person who does not appear or refuses to testify, file a statement, produce records, or does not obey a subpoena.

3. This section does not preclude a person from applying to the circuit court of any county of the state or any city not within a county for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.

4. A person is not excused from attending, testifying, filing a statement, producing a record or other evidence, or obeying a subpoena of the director under an action or proceeding instituted by the director on the grounds that the required testimony, statement, record, or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If the person refuses to testify, file a statement, or produce a record or other evidence on the basis of the individual's privilege against self-incrimination, the director may apply to the circuit court of any county of the state or any city not within a county to compel the testimony, the filing of the statement, the production of the record, or the giving of other evidence. The testimony, record, or other evidence compelled under such an order may not be used as evidence against the person in a criminal case, except in a prosecution for perjury or contempt or otherwise failing to comply with the order.

5. If the director determines that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of this section, or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046. A violation of subsection 1 of this section is a level four violation under section 374.049. The director may also suspend or revoke the license or certificate of authority of such person for any willful violation.

6. If the director believes that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048. A violation of subsection 1 of this section is a level four violation under section 374.049.

7. Any person who knowingly engages in any act, practice, omission, or course of business in violation of subsection 1 of this section is guilty of a class D felony. If the offender holds a license or certificate of authority under the insurance laws of this state, the court imposing sentence shall order the department to revoke such license or certificate of authority.

8. The director may refer such evidence as is available concerning violations of this section to the proper prosecuting attorney, who with or without a criminal reference, or the attorney

general under section 27.030, RSMo, may institute the appropriate criminal proceedings.

9. Nothing in this section shall limit the power of the state to punish any person for any conduct that constitutes a crime under any other state statute.

374.215. 1. If any insurance company **or other entity regulated by the director** doing business in this state fails to timely make and file any statutorily required report or statement, the department **[**of insurance**]** shall notify such company **or entity** of such failure by first class mail. Any company **or entity** notified by the department **[**of insurance**]** pursuant to this section shall **[**have**] file such report or statement within** fifteen days **[**to make and file such report. If such company fails to make and file such report within the fifteen days, it shall forfeit one hundred dollars for each day after the fifteen-day grace period expires.

2. Any insurance company doing business in this state which knowingly or intentionally files or which has filed on its behalf any materially false report or statement forfeits not more than one thousand dollars.

3. Any forfeiture required or permitted by this section shall be considered a civil penalty which the director of the department of insurance may order pursuant to the provisions of sections 374.040 and 374.280**] of receiving notification. After the expiration of such fifteen days, each day in which the company or entity fails to file such report or statement is a separate violation of this section**.

2. If the director determines that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046. A violation of this section is a level two violation under section 374.049. The director may also suspend or revoke the certificate of authority of such person for any willful violation.

3. If the director believes that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048. A violation of this section is a level two violation under section 374.049.

374.230. Every insurance company doing business in this state shall pay to the director of revenue the following fees:

(1) **[**For making valuations of policies or other obligations of assurance, one thousand dollars for all ordinary forms of policies, and the cost of computing special evaluation tables for policy forms requiring such shall be added;

(2)**]** For filing the declaration required on organization of each **domestic** company, **two hundred** fifty dollars;

[(3)**] (2)** For filing statement and certified copy of charter required of foreign companies, **two hundred** fifty dollars;

[(4)**] (3)** For filing **application to renew certificate of authority, along with all required annual reports, including the** annual statement**, actuarial statement, risk based capital report, report of valuation of policies or other obligations of assurance, and audited financial**

report annual statement of any company doing business in this state, **[**two hundred fifty**]** **one thousand five hundred** dollars;

[(5)**]** **(4)** For filing supplementary annual statement of any company doing business in this state, **[**ten**]** **fifty** dollars;

[(6)**]** **(5)** For filing any **[**other**]** paper**, document, or report not filed under subdivision (1), (2), or (3), but** required to be filed in the office of the director **[**of the department of insurance**]**, fifty dollars each;

[(7)**]** **(6)** For **[**each agent's**]** **a** copy of **[**his**]** **a** company's certificate of authority or **producer or agent** license, **[**two**]** **ten** dollars;

[(8) For copies of papers, records, and documents filed in the office of the director of the department of insurance, twenty cents per folio;

(9)**]** **(7)** For affixing the seal of office of the director **[**of the department of insurance**]**, ten dollars;

[(10)**]** **(8)** For accepting each service of process upon the company, ten dollars.

374.280. 1. **[**Notwithstanding any other provisions of chapters 374, 375, 376, 377, 378 and 379, RSMo,**]** The director may, after a hearing **under section 374.046**, order a **civil penalty or** forfeiture **payable** to the state of Missouri **[**a sum not to exceed one hundred dollars for each violation by any person, partnership or corporation knowingly violating any provision of chapters 374, 375, 376, 377, 378 and 379, RSMo, or order of the director of insurance made in accordance with those chapters**]** **authorized by section 374.049**, which **penalty or** forfeiture**, if unpaid within ten days,** may be recovered by a civil action brought by and in the name of the director **[**of insurance**]** **under section 374.048**. The civil action may be brought in the county which has venue of an action against the person, partnership or corporation under other provisions of law. The director **[**of insurance**]** may also suspend or revoke the license **[**of an insurer, agent, broker or agency**]** **or certificate of authority of such person** for any willful violation.

2. Nothing contained in this section shall be construed to prohibit the director and **[**the insurer, agent, broker or agency**]** **any person subject to an investigation, examination, or other proceeding** from agreeing to a voluntary forfeiture of the sum mentioned herein without civil proceedings being instituted. Any sum so agreed upon shall be paid into the school fund as provided by law for other fines and penalties.

374.285. Except as provided in section 375.141, RSMo, all records of disciplinary actions against an insurance **[**agent, broker, agency or**]** producer which resulted in a **[**voluntary**]** forfeiture **or other monetary relief** of two hundred dollars or less **and places no other legal duty upon the producer** shall be expunged after a period of five years from the date of the execution of the **[**voluntary forfeiture**]** **order or settlement agreement** by the director **[**of the department of insurance**]**.

374.512. 1. Whenever the director has reason to believe that a utilization review agent subject to sections 374.500 to 374.515 has been or is engaged in conduct which violates the provisions of sections 374.500 to 374.515, the director shall notify the utilization review agent of the alleged violation. The utilization review agent shall have thirty days from the date the notice is received to respond to the alleged violation.

2. If the director **[**believes**]** **determines** that the utilization review agent has **[**violated the provisions of sections 374.500 to 374.515, or is not satisfied that the alleged violation has been corrected, he shall conduct a hearing on the alleged violation, in accordance with chapter 536, RSMo**]** **engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of sections 374.500 to 374.515 or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is**

materially aiding an act, practice, omission, or course of business constituting a violation of sections 374.500 to 374.515 or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046. A violation of any of these sections is a level two violation under section 374.049. The director may also suspend or revoke the license or certificate of authority of such person for any willful violation.

3. **[**If, after such hearing, the director determines that the utilization review agent has engaged in violations of sections 374.500 to 374.515, he shall reduce his findings to writing and shall issue and cause to be served upon the utilization review agent a copy of such findings and an order requiring the utilization review agent to cease and desist from engaging in such violations. The director may also, at his discretion, order:

(1) Payment of a monetary penalty of not more than ten thousand dollars for a violation which occurred if the utilization review agent consciously disregarded sections 374.500 to 374.515 or which occurred with such frequency as to indicate a general business practice; or

(2) Suspension or revocation of the authority to do business in this state as a utilization review agent if the utilization review agent knew that it was in violation of sections 374.500 to 374.515**] If the director believes that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of sections 374.500 to 374.515 or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of sections 374.500 to 374.515 or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048. A violation of any of these sections is a level two violation under section 374.049**.

375.012. 1. **Sections 375.012 to 375.146 may be cited as the "Insurance Producers Act".**

2. As used in sections 375.012 to 375.158, the following words mean:

(1) "Business entity", a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity;

(2) "Director", the director of the department of insurance**, financial and professional regulation**;

(3) "Home state", the District of Columbia and any state or territory of the United States in which the insurance producer maintains his or her principal place of residence or principal place of business and is licensed to act as an insurance producer;

(4) "Insurance", any line of authority, including life, accident and health or sickness, property, casualty, variable life and variable annuity products, personal, credit and any other line of authority permitted by state law or regulation;

(5) "Insurance company" or "insurer", any person, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including health services corporations, health maintenance organizations, prepaid limited health care service plans, dental, optometric and other similar health service plans, unless their exclusion from this definition can be clearly ascertained from the context of the particular statutory section under consideration. Insurer shall also include all companies organized, incorporated or doing business pursuant to the provisions of chapters 375, 376, 377, 378, 379, 381 and 384, RSMo. Trusteed pension plans and profit- sharing plans qualified pursuant to the United States Internal Revenue Code as now or hereafter amended shall not be considered to be insurance companies or insurers within the definition of this section;

(6) "Insurance producer" or "producer", a person required to be licensed pursuant to the laws of this state to sell, solicit or negotiate insurance;

(7) "License", a document issued by the director authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself shall not create any authority, actual, apparent or inherent, in the holder to represent or commit an insurance company;

(8) "Limited line credit insurance", credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection (GAP) insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the director determines should be designated a form of limited line credit insurance;

(9) "Limited line credit insurance producer", a person who sells, solicits or negotiates one or more forms of limited line credit insurance coverage through a master, corporate, group or individual policy;

(10) "Limited lines insurance", insurance involved in credit transactions, insurance contracts issued primarily for covering the risk of travel or any other line of insurance that the director deems necessary to recognize for the purposes of complying with subsection 5 of section 375.017;

(11) "Limited lines producer", a person authorized by the director to sell, solicit or negotiate limited lines insurance;

(12) "Negotiate", the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers;

(13) "Person", an individual or any business entity;

(14) "Personal lines insurance", property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;

(15) "Sell", to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company;

(16) "Solicit", attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company;

(17) "Terminate", the cancellation of the relationship between an insurance producer and the insurer or the termination of the authority of the producer to transact the business of insurance;

(18) "Uniform business entity application", the current version of the National Association of Insurance Commissioners uniform business entity application for resident and nonresident business entities seeking an insurance producer license;

(19) "Uniform application", the current version of the National Association of Insurance Commissioners uniform application for resident and nonresident producer licensing.

[2.**]** **3.** All statutory references to "insurance agent" or "insurance broker" shall mean "insurance producer", as that term is defined pursuant to subsection 1 of this section.

375.020. 1. Beginning January 1, **[**1990**]** **2008**, each insurance producer, unless exempt pursuant to section 375.016, licensed to sell insurance in this state shall successfully complete courses of study as required by this section. Any person licensed to act as an insurance producer shall, during each two years, attend courses or programs of instruction or attend seminars equivalent to a minimum of **[**ten**]** **sixteen** hours of instruction **[**for a life or accident and health license or both a life and an accident and health license and a minimum ten hours of instruction for a property or casualty license or both a property and a casualty license. Sixteen

hours of training will suffice for those with a life, health, accident, property and casualty license**]**. Of the sixteen hours' training required **[**above**] in this subsection**, the hours need not be divided equally **among the lines of authority in which the producer has qualified**. The courses or programs **attended by the producer during each two-year period** shall include instruction on Missouri law**, products offered in any line of authority in which the producer is qualified, producers' duties and obligations to the department, and business ethics, including sales suitability**. Course credit shall be given to members of the general assembly as determined by the department.

2. Subject to approval by the director, the courses or programs of instruction which shall be deemed to meet the director's standards for continuing educational requirements shall include, but not be limited to, the following:

(1) American College Courses (CLU, ChFC);

(2) Life Underwriters Training Council (LUTC);

(3) Certified Insurance Counselor (CIC);

(4) Chartered Property and Casualty Underwriter (CPCU);

(5) Insurance Institute of America (IIA);

(6) **Any other professional financial designation approved by the director by rule;**

(7) An insurance-related course taught by an accredited college or university or qualified instructor who has taught a course of insurance law at such institution;

[(7)**] (8)** A course or program of instruction or seminar developed or sponsored by any authorized insurer, recognized producer association or insurance trade association. A local producer group may also be approved if the instructor receives no compensation for services.

3. A person teaching any approved course of instruction or lecturing at any approved seminar shall qualify for the same number of classroom hours as would be granted to a person taking and successfully completing such course, seminar or program.

4. Excess **[**classroom**]** hours accumulated during any two-year period may be carried forward to the two-year period immediately following the two-year period in which the course, program or seminar was held.

5. For good cause shown, the director may grant an extension of time during which the educational requirements imposed by this section may be completed, but such extension of time shall not exceed the period of one calendar year. The director may grant an individual waiver of the mandatory continuing education requirement upon a showing by the licensee that it is not feasible for the licensee to satisfy the requirements prior to the renewal date. Waivers may be granted for reasons including, but not limited to:

(1) Serious physical injury or illness;

(2) Active duty in the armed services for an extended period of time;

(3) Residence outside the United States; or

(4) The licensee is at least seventy years of age.

6. Every person subject to the provisions of this section shall furnish in a form satisfactory to the director, written certification as to the courses, programs or seminars of instruction taken and successfully completed by such person. Every provider of continuing education courses authorized in this state shall, within thirty working days of a licensed producer completing its approved course, provide certification to the director of the completion in a format prescribed by the director.

7. The provisions of this section shall not apply to those natural persons holding licenses for any kind or kinds of insurance for which an examination is not required by the law of this state,

nor shall they apply to any limited lines insurance producer license or restricted license as the director may exempt.

8. The provisions of this section shall not apply to a life insurance producer who is limited by the terms of a written agreement with the insurer to transact only specific life insurance policies having an initial face amount of five thousand dollars or less, or annuities having an initial face amount of ten thousand dollars or less, that are designated by the purchaser for the payment of funeral or burial expenses. The director may require the insurer entering into the written agreements with the insurance producers pursuant to this subsection to certify as to the representations of the insurance producers.

9. Rules and regulations necessary to implement and administer this section shall be promulgated by the director, including, but not limited to, rules and regulations regarding the following:

(1) Course content and hour credits: The insurance advisory board established by section 375.019 shall be utilized by the director to assist him in determining acceptable content of courses, programs and seminars to include classroom equivalency;

(2) Filing fees for course approval: Every applicant seeking approval by the director of a continuing education course under this section shall pay to the director a filing fee of fifty dollars per course. Fees shall be waived for state and local insurance producer groups. Such fee shall accompany any application form required by the director. Courses shall be approved for a period of no more than one year. Applicants holding courses intended to be offered for a longer period must reapply for approval. Courses approved by the director prior to August 28, 1993, for which continuous certification is sought should be resubmitted for approval sixty days before the anniversary date of the previous approval.

10. All funds received pursuant to the provisions of this section shall be transmitted by the director to the department of revenue for deposit in the state treasury to the credit of the **[**department of**]** insurance dedicated fund. All expenditures necessitated by this section shall be paid from funds appropriated from the **[**department of**]** insurance dedicated fund by the legislature.

375.143. In order to effectuate and aid in the interpretation of section 375.141, the director, under section 374.045, RSMo, may adopt rules and regulations codifying professional standards of producer competency and trustworthiness in the handling of applications, premium funds, conflicts of interest, record-keeping, supervision of others, and customer suitability.

375.145. 1. If the director determines that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of sections 375.012 to 375.144 or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of sections 375.012 to 375.144, or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. A violation of sections 375.012 to 375.142 is a level two violation under section 374.049, RSMo. A violation of section 375.144 is a level four violation under 374.049, RSMo.

2. If the director believes that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of this section or a rule

adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo. A violation of any of sections 375.012 to 375.142 is a level two violation under section 374.049, RSMo. A violation of section 375.144 is a level four violation under 374.049, RSMo.

375.152. 1. **[**If the director finds after a hearing conducted in accordance with chapter 536, RSMo, that any person has violated the provisions of sections 375.147 to 375.153, the director may order:

(1) For each separate violation, imposition of an administrative penalty in an amount of five hundred dollars. All moneys collected as a result of imposition of such penalties shall be transferred to the state treasurer for deposit to general revenue of the state;

(2) Revocation or suspension of the producer's license, provided that such action may be taken only after compliance with chapter 621, RSMo;

(3)**] If the director determines that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of sections 375.147 to 375.153 or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of sections 375.147 to 375.153 or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. A violation of any of these sections is a level two violation under section 374.049, RSMo.**

2. If the director believes that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of sections 375.147 to 375.153 or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of sections 375.147 to 375.153 or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo. A violation under any of these sections is a level two violation under section 374.049, RSMo. In addition to the relief available in this section, the director may also order the managing general agent to reimburse the insurer, the rehabilitator or liquidator of the insurer, for any losses incurred by the insurer caused by a violation of sections 375.147 to 375.153 committed by the managing general agent.

[2. The decision, determination or order of the director made pursuant to subsection 1 of this section shall be subject to judicial review pursuant to sections 536.100 to 536.140, RSMo.**]**

3. Nothing contained in this section shall affect the right of the director to impose any other penalties provided for in the insurance law.

4. Nothing contained in sections 375.147 to 375.153 is intended to or shall in any manner limit or restrict the rights of policyholders, claimants and creditors.

375.236. Other provisions of law notwithstanding, the director may suspend or revoke, after a hearing, the certificate of authority or license of any insurance company including a reciprocal or interinsurance exchange for the same reasons and upon the same grounds as set forth in section **[**375.560**] 374.047, RSMo**.

375.306. 1. It **[**shall not be lawful**] is unlawful** for any person to act within this state as agent**, producer,** or otherwise, in receiving or procuring applications for insurance, or in any manner to aid in transacting the business referred to in **[**sections 375.010 to 375.920**] this chapter** for any company or association doing business in this state, unless the company is possessed of the amount of capital and of actual paid-up capital, or of premium notes,

cash premiums or guarantee fund, of the kind, character and amounts required of companies organized under the provisions of **[**sections 375.010 to 375.920**] this chapter**.

2. The guarantee fund of companies other than those of this state shall be deposited with the proper officer of the state or country under the laws of which the company is organized, or with the director **[**of the insurance department of this state**]**, in the manner provided by section 379.050, RSMo, in regard to the making of such deposit by companies organized under **[**sections 375.010 to 375.920**] this chapter**.

3. Whenever any insurance company doing business in this state advertises its assets, either in any newspaper or periodical, or by any sign, circular, card, policy of insurance or certificate of renewal thereof, it shall, in the same connection, equally conspicuously advertise its liabilities, and the amount of its assets available for fire and life losses separately, the same to be determined in the manner required in making statement to the **[**insurance**]** department, and all advertisements purporting to show the amount of capital of the company shall show only the amount of capital actually paid up in cash.

4. **[**Any insurance company or agent thereof violating the provisions of this section shall be liable to a fine of not less than fifty dollars nor more than five hundred dollars**] If the director determines that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. A violation of this section is a level two violation under section 374.049, RSMo.**

5. If the director believes that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo. A violation of this section is a level two violation under section 374.049, RSMo.

375.310. **1. It is unlawful for** any **person,** association of individuals, **[**and**] or** any corporation **[**transacting**] to transact** in this state any insurance business**[**, without being**] unless the person, association, or corporation is duly** authorized by the director **[**of the insurance department of this state so to do, or after the authority so to do has been suspended, revoked, or has expired, shall be subject to suit by the director who may institute proceedings in the circuit court of the county or city in which said company was organized, or in which it has, or last had, its principal or chief office or place of business, or in the county of Cole, to enjoin said company from the further transaction of its business, either temporarily or perpetually, and for such other decrees and relief as the court shall deem advisable; or said association of individuals or corporation shall be liable to a penalty of two hundred and fifty dollars for each offense, which penalty may be recovered by ordinary civil action in the name of the state, and shall, when recovered, become part of the school fund, as by law provided for other fines and penalties; suit for said penalty may be brought by the attorney general, the director of the insurance department, or any county, circuit or prosecuting attorney, in either the city or county in which the policy was delivered, or in which the money was

paid to any agent of such association or corporation, or in which the receipt was delivered, or in any county or city in which an attorney for service or any agent of said association or corporation may be found; and if the plaintiff recover, an attorney fee to be allowed by the court for each cause of action upon which recovery is had shall be taxed as and added to the costs; service shall be made of process in any such action, either as in other civil actions or as provided in sections 375.010 to 375.920 for service on insurance companies**] under a certificate of authority or appropriate licensure, or is an insurance company exempt from certification under section 375.786.**

2. If the director determines that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. A violation of this section is a level four violation under section 374.049, RSMo.

3. If the director believes that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo. A violation of this section is a level four violation under section 374.049, RSMo.

4. Any person who knowingly engages in any act, practice, omission, or course of business in violation of this section is guilty of a class D felony.

5. The director may refer such evidence as is available concerning violations of this chapter to the proper prosecuting attorney, who with or without a criminal reference, or the attorney general under section 27.030, RSMo, may institute the appropriate criminal proceedings.

6. Nothing in this section shall limit the power of the state to punish any person for any conduct that constitutes a crime under any other state statute."; and

Further amend said bill, Section 375.345, Pages 4 through 9, by inserting after all of said section the following:

"375.445. 1. **[**When upon investigation the director finds that**] It is unlawful for** any **insurance** company transacting business **[**in**] under the laws of** this state **[**has conducted**] to:**

(1) Conduct its business fraudulently**[**, is not carrying**] ;**

(2) Fail to carry out its contracts in good faith**[**, or is**] ; or**

(3) Habitually and as a matter of business practice compelling claimants under policies or liability judgment creditors of the insured to either accept less than the amount due under the terms of the policy or resort to litigation against the company to secure payment of the amount due**[**, and that a proceeding in respect thereto would be in the interest of the public, he shall issue and serve upon the company a statement of the charges in that respect and a notice of a hearing thereon**]**.

2. **[**If after the hearing the director shall determine that the company has fraudulently conducted its business as defined in this section, he shall order the company to cease and desist from the fraudulent practice and may suspend the company's certificate of authority for a period not

to exceed thirty days and may in addition order a forfeiture to the state of Missouri of a sum not to exceed one thousand dollars, which forfeiture may be recovered by a civil action brought by and in the name of the director of insurance. The civil action may be brought in the circuit court of Cole County or, at the option of the director of insurance, in another county which has venue of an action against the person, partnership or corporation under other provisions of law**] If the director determines that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. Each practice in violation of this section is a level two violation under section 374.049, RSMo. Each act as a part of a practice does not constitute a separate violation under section 374.049, RSMo**. The director **[**of insurance**]** may also suspend or revoke the license **[**of an insurer or agent**] or certificate of authority of such person** for any **[**such**]** willful violation.

3. If the director believes that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo. Each practice violation of this section is a level two violation under section 374.049, RSMo. Each act as part of a practice does not constitute a separate violation under section 374.049, RSMo."; and

Further amend said bill, Section 375.534, Pages 10 and 11, by inserting after all of said section the following:

"375.720. **1.** Whenever, by chapter 375, or by any other law of this state, the director is authorized or required to take possession of any of the general assets of any insurer, **it is unlawful for** any person or company **[**who shall**] to** knowingly neglect or refuse to deliver to the director, on **[**his**]** order or demand **of the director**, any books, papers, evidences of title or debt, or any property belonging to any such insurer in its, his or their possession, or under his, its or their control**[**, shall be guilty of a class C felony**]**.

2. If the director determines that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. A violation of this section is a level three violation under section 374.049, RSMo. The director may also suspend or revoke the license or certificate of authority of such person for any willful violation.

3. If the director believes that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of this section or a rule

adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo. A violation of this section is a level three violation under section 374.049, RSMo.

4. Any person who knowingly engages in any act, practice, omission, or course of business in violation of this section is guilty of a class C felony. If the offender holds a license or certificate of authority under the insurance laws of this state, the court imposing sentence shall order the director to revoke such license.

5. The director may refer such evidence as is available concerning violations of this section to the proper prosecuting attorney, who with or without a criminal reference, or the attorney general under section 27.030, RSMo, may institute the appropriate criminal proceedings.

6. Nothing in this section shall limit the power of the state to punish any person for any conduct that constitutes a crime under any other state statute.

375.777. 1. The director shall:

(1) Notify the association of the existence of an insolvent insurer not later than three days after he receives notice of the determination of the insolvency;

(2) Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer; and

(3) Notify the agents of the insolvent insurer of the determination of insolvency and of the insureds' rights under sections 375.771 to 375.779. Such notification shall be by first class mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.

2. The director may**[**:

(1)**]** require each agent of the insolvent insurer to give prompt written notice, by first class mail, at the insured's last known address, to each insured of the insolvent insurer for whom he was agent of record, provided the agent has received the notification of subsection 1 of this section**[**; and

(2) Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of**] .**

3. It is unlawful for any member insurer **[**which fails**] to fail** to pay an assessment when due or **[**fails**] fail** to comply with the plan of operation. **[**As an alternative, the director may levy an administrative penalty on any member insurer which fails to pay an assessment when due. Such administrative penalty shall not exceed five percent of the unpaid assessment per month, except that no administrative penalty shall be less than one hundred dollars per month.

3. Any final action or order of the director under this section shall be subject to judicial review in the circuit court of Cole County**] Every day in which the member insurer fails to pay is a separate violation.**

4. If the director determines that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. A violation of this section is a level two violation under section 374.049, RSMo. The director may also suspend or revoke the license or certificate of authority of such person for any willful violation.

5. If the director believes that a person has engaged, is engaging in, or has taken a

substantial step toward engaging in an act, practice or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo. A violation of this section is a level two violation under section 374.049, RSMo.

375.780. **[**Every violation of**] 1. A person commits a crime if he or she willfully violates** any of the provisions of **[**sections 375.010 to 375.920**] this chapter. If** not otherwise specifically provided for **[**shall be deemed a misdemeanor, and shall subject the individual, association of individuals or corporation violating the same to a penalty of not less than fifty nor more than five hundred dollars for each offense; such penalty may be recovered and sued for against corporations or associations in the manner provided and by any of the officers designated in section 375.310, and against individuals by civil action, by information or by indictment, and an attorney's fee of twenty-five dollars shall be taxed as costs against the defendant, as in said section; all fines and penalties recovered under sections 375.010 to 375.920 shall be turned into the school fund, as provided by law for other fines and penalties**] , the crime is a class B misdemeanor**.

2. The director may refer such evidence as is available concerning violations of this section to the proper prosecuting attorney, who with or without a criminal reference, or the attorney general under section 27.030, RSMo, may institute the appropriate criminal proceedings.

3. Nothing in this section shall limit the power of the state to punish any person for any conduct that constitutes a crime under any other state statute.

375.786. 1. It **[**shall be**] is** unlawful for any insurance company to transact insurance business in this state, as set forth in subsection 2, without a certificate of authority from the director; provided, however, that this section shall not apply to:

(1) The lawful transaction of insurance as provided in chapter 384, RSMo;

(2) The lawful transaction of reinsurance by insurance companies;

(3) Transactions in this state involving a policy lawfully solicited, written and delivered outside of this state covering only subjects of insurance not resident, located or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy;

(4) Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses;

(5) Transactions in this state involving group life and group sickness and accident or blanket sickness and accident insurance or group annuities where the master policy of such groups was lawfully issued and delivered in and pursuant to the laws of a state in which the insurance company was authorized to do an insurance business, to a group organized for purposes other than the procurement of insurance, and where the policyholder is domiciled or otherwise has a bona fide situs;

(6) Transactions in this state involving any policy of insurance or annuity contract issued prior to August 13, 1972;

(7) Transactions in this state relative to a policy issued or to be issued outside this state involving insurance on vessels, craft or hulls, cargoes, marine builder's risk, marine protection and indemnity or other risk, including strikes and war risks commonly insured under ocean or wet marine forms of policy;

(8) Except as provided in chapter 384, RSMo, transactions in this state involving contracts of

insurance issued to one or more industrial insureds; provided that nothing herein shall relieve an industrial insured from taxation imposed upon independently procured insurance. An "industrial insured" is hereby defined as an insured:

(a) Which procures the insurance of any risk or risks other than life, health and annuity contracts by use of the services of a full-time employee acting as an insurance manager or buyer or the services of **[**a regularly and continuously retained qualified insurance consultant**] an insurance producer whose services are wholly compensated by such insured and not by the insurer**;

(b) Whose aggregate annual premiums for insurance excluding workers' compensation insurance premiums total at least **[**twenty-five**] one hundred** thousand dollars; and

(c) Which has at least twenty-five full-time employees;

(9) Transactions in this state involving life insurance, health insurance or annuities provided to educational or religious or charitable institutions organized and operated without profit to any private shareholder or individual for the benefit of such institutions and individuals engaged in the service of such institutions, provided that any company issuing such contracts under this paragraph shall:

(a) File a copy of any policy or contract issued to Missouri residents with the director;

(b) File a copy of its annual statement prepared pursuant to the laws of its state of domicile, as well as such other financial material as may be requested, with the director; and

(c) Provide, in such form as may be acceptable to the director, for the appointment of the director as its true and lawful attorney upon whom may be served all lawful process in any action or proceeding against such company arising out of any policy or contract it has issued to, or which is currently held by, a Missouri citizen, and process so served against such company shall have the same form and validity as if served upon the company;

(10) Transactions in this state involving accident, health, personal effects, liability or any other travel or auto-related products or coverages provided or sold by a rental company after January 1, 1994, to a renter in connection with and incidental to the rental of motor vehicles.

2. Any of the following acts in this state effected by mail or otherwise by or on behalf of an unauthorized insurance company is deemed to constitute the transaction of an insurance business in this state: (The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect. Unless otherwise indicated, the term "insurance company" as used in sections 375.786 to 375.790 includes all corporations, associations, partnerships and individuals engaged as principals in the business of insurance and also includes interinsurance exchanges and mutual benefit societies.)

(1) The making of or proposing to make an insurance contract;

(2) The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety;

(3) The taking or receiving of any application for insurance;

(4) The receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for any insurance or any part thereof;

(5) The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state;

(6) Directly or indirectly acting as an agent for or otherwise representing or aiding on behalf of another any person or insurance company in the

solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurance company in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state. The provisions of this subsection shall not operate to prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of such employer;

(7) The transaction of any kind of insurance business specifically recognized as transacting an insurance business within the meaning of the statutes relating to insurance;

(8) The transacting or proposing to transact any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the statutes.

3. (1) The failure of an insurance company transacting insurance business in this state to obtain a certificate of authority shall not impair the validity of any act or contract of such insurance company and shall not prevent such insurance company from defending any action at law or suit in equity in any court of this state, but no insurance company transacting insurance business in this state without a certificate of authority shall be permitted to maintain an action in any court of this state to enforce any right, claim or demand arising out of the transaction of such business until such insurance company shall have obtained a certificate of authority.

(2) In the event of failure of any such unauthorized insurance company to pay any claim or loss within the provisions of such insurance contract, any person who assisted or in any manner aided directly or indirectly in the procurement of such insurance contract shall be liable to the insured for the full amount of the claim or loss in the manner provided by the provisions of such insurance contract.

4. **If the director determines that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. A violation of this section is a level four violation under section 374.049, RSMo.**

5. If the director believes that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo. A violation of this section is a level four violation under section 374.049, RSMo.

6. Any person who transacts insurance business without a certificate of authority, as provided in this section, is guilty of a class C felony.

7. The director may refer such evidence as is available concerning violations of this chapter to the proper prosecuting attorney, who with or without a criminal reference, or the attorney general under section 27.030, RSMo, may institute the appropriate criminal proceedings.

8. Nothing in this section shall limit the power of the state to punish any person for any conduct that constitutes a crime in any other state statute.

375.881. **[**1.**]** The director may revoke or suspend the certificate of authority of a foreign insurance company **[**or may by order require the insurance company to pay to the people of the state of Missouri a penalty in a sum not exceeding five hundred dollars and upon failure of the insurance company to pay the penalty within twenty days after the mailing of the order, postage prepaid, certified, and addressed to the last known place of business of the insurance company, unless the order is stayed by an order of a court of competent jurisdiction, the director of insurance may revoke or suspend the license of the insurance company for any period of time**] under section 374.047, RSMo, or issue such administrative orders as appropriate under section 374.046, RSMo**, whenever he finds that the company

(1) Is insolvent;

(2) Fails to comply with the requirements for admission in respect to capital, the investment of its assets or the maintenance of deposits in this or other state or fails to maintain the surplus which similar domestic companies transacting the same kinds of business are required to maintain;

(3) Is in such a financial condition that its further transaction of business in this state would be hazardous to policyholders and creditors in this state and to the public;

(4) Has refused or neglected to pay a valid final judgment against the company within thirty days after the rendition of the judgment;

(5) Has refused to submit to the jurisdiction of a court of this state upon the grounds of diversity of citizenship in a cause of action arising out of business transacted, acts done, or contracts made in this state by the foreign insurance company;

(6) Has violated any law of this state or has in this state violated its charter or exceeded its corporate powers;

(7) Has refused to submit its books, papers, accounts, records, or affairs to the reasonable inspection or examination of the director, his actuaries, deputies or examiners;

(8) Has an officer who has refused upon reasonable demand to be examined under oath touching its affairs;

(9) Fails to file its annual statement within thirty days after the date when it is required by law to file the statement;

(10) Fails to file with the director a copy of an amendment to its charter or articles of association within thirty days after the effective date of the amendment;

(11) Fails to file with the director copies of the agreement and certificate of merger and the financial statements of the merged companies, if required, within thirty days after the effective date of the merger;

(12) Fails to pay any fees, taxes or charges prescribed by the laws of this state within thirty days after they are due and payable; provided, however, that in case of objection or legal contest the company shall not be required to pay the tax until thirty days after final disposition of the objection or legal contest;

(13) Fails to file any report for the purpose of enabling the director to compute the taxes to be paid by the company within thirty days after the date when it is required by law to file the report;

(14) Has had its corporate existence dissolved or its certificate of authority revoked in the state or country in which it was organized;

(15) Has had all its risks reinsured in their entirety in another company; or

(16) Has ceased to transact the business of insurance in this state for a period of one year.

[2. The director shall not revoke or suspend the certificate of authority of a foreign insurance

company until he has given the company at least twenty days' notice of the revocation or suspension and of the grounds therefor and has afforded the company an opportunity for a hearing.**]**

375.940. **[**1.**]** Whenever the director shall have reason to believe that any person or insurer has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice **in violation of sections 375.930 to 375.948**, and that a proceeding by **[**him**] the director** in respect thereto would be to the interest of the public, **[**he**] the director** shall issue and serve upon such person or insurer a statement of the charges **[**in that respect and a notice of hearing thereon to be held at a time and place fixed in the notice which shall not be less than twenty days after the date of service thereof.

2. At the time and place fixed for such hearing, such person or insurer shall have an opportunity to be heard to show cause why an order should not be made by the director requiring such person or insurer to cease and desist from the acts, methods or practices so complained of. Upon good cause shown, the director shall permit any person to intervene, appear and be heard at such hearing by counsel or in person. Nothing herein shall preclude the informal disposition of any case by stipulation, consent order, or default, or by agreed settlement where such settlement is in conformity with law.

3. Nothing contained in sections 375.930 to 375.948 shall require the observance at any such hearing of formal rules of pleading or evidence.

4. Upon such hearing, the director shall have power to examine and cross-examine witnesses, receive oral and documentary evidence, administer oaths, subpoena witnesses and compel their attendance, and require the production of books, papers, records, correspondence and all other written instruments or documents which he deems relevant to the inquiry. The director, upon any such hearing, shall cause to be made a record of all the evidence and all the proceedings had at such hearing. In case of a refusal of any person to comply with any subpoena issued hereunder or to testify with respect to any matter concerning which he may be lawfully interrogated, the circuit court of Cole County or the county where such party resides, or may be found, on application of the director, may issue an order requiring such person to comply with such subpoena and to testify; and any failure to obey any such order of the court may be punished by the court as a contempt thereof.

5. Statements of charges, notices, orders, and other processes of the director under sections 375.930 to 375.948 may be served by anyone duly authorized by the director either in the manner provided by law for service of process in civil actions, or by registering or certifying and mailing a copy thereof to the person affected by such statement, notice, order, or other process at his or its residence or principal office or place of business. The verified return by the person so serving such statement, notice, order or other process, setting forth the manner of such service, shall be proof of the same, and the return postcard receipt for such statement, notice, order or other process, registered and mailed as aforesaid, shall be proof of the service of the same**] under the procedures set forth in section 374.046, RSMo**.

375.942. 1. **[**If, after such hearing, the director determines that the person charged has engaged in an unfair method of competition or in an unfair or deceptive act or practice prohibited by section 375.934 or 375.937, he shall reduce his findings to writing and shall issue and cause to be served upon the person charged with the violation a copy of such findings and an order requiring such person to cease and desist from engaging in such method of competition, act or practice, and thereafter the director may, at his discretion, order one or more of the following:

(1) Payment of a monetary penalty of not more than one thousand dollars for each violation but not to exceed an aggregate penalty of one hundred thousand dollars in any twelve-month

period unless the violation was committed flagrantly and in conscious disregard of section 375.934 or 375.937, in which case the penalty shall be not more than twenty-five thousand dollars for each violation but not to exceed an aggregate penalty of two hundred fifty thousand dollars in any twelve-month period;

(2) Suspension or revocation of the insurer's license if such insurer knew or reasonably should have known it was in violation of section 375.934 or 375.937.

2. Until the expiration of the time allowed under section 375.944 for filing a petition for judicial review, if no such petition has been duly filed within such time or, if a petition for review has been filed within such time, then until the transcript of the record in the proceeding has been filed in the circuit court of Cole County, the director may at any time, upon such notice and in such manner as he shall deem proper, modify or set aside in whole or in part any order issued by him under this section.

3. After the expiration of the time allowed for filing such a petition for review, if no such petition has been duly filed within such time, the director may at any time, after notice and opportunity for hearing, reopen and alter, modify or set aside, in whole or in part, any order issued by him under this section, whenever in his opinion conditions of fact or of law have so changed as to require such action or if the public interest shall so require.

4. Nothing contained in sections 375.930 to 375.948 shall be construed to prohibit the director and the person from agreeing to a voluntary forfeiture with or without proceedings being instituted. Any sum so agreed upon shall be paid into the school fund as provided by law for other fines and penalties**] If the director determines that an insurer has engaged, is engaging, or has taken a substantial step toward engaging in an act, practice, or course of business constituting a violation of sections 375.930 to 375.948 or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding a practice constituting a violation of sections 375.930 to 375.948 or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. Each practice in violation of section 375.934 is a level two violation under section 374.049, RSMo. Each act as part of a trade practice does not constitute a separate violation under section 374.049, RSMo. The director may also suspend or revoke the license or certificate of authority of an insurer for any willful violation.**

2. If the director believes that an insurer has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of sections 375.930 to 375.948 or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business conduct constituting a violation of sections 375.930 to 375.948 or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo. Each practice in violation of section 375.934 is a level two violation under section 374.049, RSMo. Each act as part of a trade practice does not constitute a separate violation under section 374.049, RSMo.

375.946. **[** Any person who violates**] It is unlawful for any person to violate any provision of** a cease and desist order of the director under section 375.942**[**, while such order is in effect, may, after notice and hearing, and upon order of the director, be subject to either or both of the following:

(1) A monetary penalty of not more than twenty-five thousand dollars for each and every act or violation not to exceed an aggregate amount of two hundred fifty thousand dollars pursuant to any such hearing; or

(2) Suspension or revocation of such person's license or certificate of authority**]**. **The director may institute an action under sections 374.046 and 374.047, RSMo, as necessary to enforce any such order.**

375.994. 1. Department investigators shall have the power to serve subpoenas issued for the examination, investigation, and trial of all offenses determined by their investigations.

2. It is unlawful for any person to interfere, either by abetting or assisting such resistance or otherwise interfering, with department investigators in the duties imposed upon them by law or department rule.

3. Any moneys, or other property which is awarded to the department as costs of investigation, or as a fine, shall be credited to the **[**department of**]** insurance dedicated fund created by section 374.150, RSMo.

4. **If the director determines that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of section 375.991 or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of section 375.991 or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. A violation of any of these sections is a level two violation under section 374.049, RSMo. The director may also suspend or revoke the license or certificate of authority of such person for any willful violation.**

5. If the director believes that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of section 375.991 or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of section 375.991 or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo. A violation of any of these sections is a level two violation under section 374.049, RSMo.

6. Nothing in this section shall be construed as prohibiting the department of insurance from regulating unfair or fraudulent trade practices as provided for in sections 375.930 to 375.948.

[5. In the event**] 7. If** the director determines that a person regulated under this chapter has conducted its business fraudulently with respect to sections 375.991 to 375.994, or has as a matter of business practice abused its rights under said sections, such conduct shall **[**be considered**] constitute** either an unfair trade practice under the provisions of sections 375.930 to 375.948 or an unfair claims settlement practice under the provisions of sections 375.1000 to 375.1018. **[**The director shall have the power and authority, pursuant to the unfair trade practices act and the unfair claims settlement practices act to subject such persons to the monetary penalty or suspend or revoke such person's license or certificate of authority, under such acts.**]**

375.1010. 1. **[**Whenever the director shall have reason to believe that any insurer has been engaged or is engaging in this state in any improper claims practice, and that a proceeding by him in respect thereto would be to the interest of the public, he shall issue and serve upon such person or insurer a statement of the charges in that respect and a notice of hearing thereon to be held at a time and place fixed in the notice which shall not be less than twenty days after the date of service thereof.

2. At the time and place fixed for such hearing, such insurer shall have an opportunity to be heard to show cause why an order should not be made by the director requiring such insurer to

cease and desist from the acts, methods or practices so complained of. Upon good cause shown, the director shall permit any person to intervene, appear and be heard at such hearing by counsel or in person. Nothing in sections 375.1000 to 375.1018 shall preclude the informal disposition of any case by stipulation, consent order, or default, or by agreed settlement where such settlement is in conformity with law.

3. Nothing contained in sections 375.1000 to 375.1018 shall require the observance at any such hearing of formal rules of pleading or evidence.

4. Upon such hearing, the director may examine and cross-examine witnesses, receive oral and documentary evidence, administer oaths, subpoena witnesses and compel their attendance, and require the production of books, papers, records, correspondence and all other written instruments or documents which he deems relevant to the inquiry. The director, upon any such hearing, shall cause to be made a record of all the evidence and all the proceedings had at such hearing. In case of a refusal of any person to comply with any subpoena issued hereunder or to testify with respect to any matter concerning which he may be lawfully interrogated, the circuit court of Cole County or the county where such party resides, or may be found, on application of the director, may issue an order requiring such person to comply with such subpoena and to testify; and any failure to obey any such order of the court may be punished by the court as a contempt thereof.

5. Statements of charges, notices, orders, and other processes of the director under sections 375.1000 to 375.1018 may be served by anyone duly authorized by the director either in the manner provided by law for service of process in civil actions, or by registering or certifying and mailing a copy thereof to the person affected by such statement, notice, order, or other process at his or its residence or principal office or place of business. The verified return by the person so serving such statement, notice, order or other process, setting forth the manner of such service, shall be proof of the same, and the return postcard receipt for such statement, notice, order or other process, registered and mailed as aforesaid, shall be proof of the service of the same**] If the director determines that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of sections 375.1000 to 375.1018 or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of sections 375.1000 to 375.1018 or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. Each practice in violation of section 375.1005 is a level two violation under section 374.049, RSMo. Each act as part of a claims settlement practice does not constitute a separate violation under section 374.049, RSMo. The director may also suspend or revoke the license or certificate of authority of an insurer for any willful violation.**

2. If the director believes that an insurer has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of sections 375.1000 to 375.1018 or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of sections 375.1000 to 375.1018 or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo. Each practice in violation of section 375.1005 is a level two violation under section 374.049, RSMo. Each act as part of a claims settlement practice does not constitute a separate violation under section 374.049, RSMo.

375.1014. 1. **[**Any person, including any person who has been permitted to intervene, who is aggrieved by a final order or decision of the director shall be entitled to judicial review thereof.

2. The court shall make and enter upon the pleadings evidence and proceedings set forth in the transcript a degree modifying, affirming or reversing the order of the director, in whole or in part. To the extent that the order of the director is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the director. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the director, the court may order such additional evidence to be taken before the director and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may deem proper. The director may modify his findings of fact, or make new findings by reason of the additional evidence so taken, and he shall file such modified or new findings which are supported by evidence on the record and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

3. An order issued by the director under section 375.1012 shall become final:

(1) Upon the expiration of the time allowed for filing a petition for review if no such petition has been duly filed within such time; except that the director may thereafter modify or set aside his order to the extent provided in subsection 2 of section 375.1012; or

(2) Upon the final decision of the court if the court directs that the order of the director be affirmed or the petition for review dismissed.

4.**] A final order issued by the director under sections 375.1000 to 375.1018 is subject to judicial review in accordance with the provisions of chapter 536, RSMo, in the circuit court of Cole County.**

2. No order of the director under section 375.942 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.

375.1016. **[**Any person who violates**] It is unlawful for any person to violate any provision of** a cease and desist order of the director under section 375.1012, **[**while such order is in effect, may, after notice and hearing, and upon order of the director, be subject to either or both of the following:

(1) A monetary penalty of not more than twenty-five thousand dollars for each and every act or violation not to exceed an aggregate amount of two hundred fifty thousand dollars pursuant to any such hearing; or

(2) Suspension or revocation of such person's license or certificate of authority**] and the director may institute an action under sections 374.046 and 374.047, RSMo, as necessary to enforce any such order**."; and

Further amend said bill, Section 375.1075, Pages 11 and 12, by inserting after all of said section the following:

"375.1135. 1. **[**A reinsurance intermediary, insurer or reinsurer found by the director, after a hearing conducted in accordance with chapter 536, RSMo, to be in violation of any provisions of sections 375.1110 to 375.1140, shall:

(1) For each separate violation, pay a penalty in an amount not exceeding five thousand dollars;

(2) Be subject to revocation or suspension of its license; and

(3)**] If the director determines that a reinsurance intermediary, insurer, or reinsurer has engaged, is engaging in, or has taken a substantial step toward engaging in an act,**

practice or course of business constituting a violation of sections 375.1110 to 375.1140 or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of sections 375.1110 to 375.1140 or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. A violation of any of these sections is a level two violation under section 374.049, RSMo. The director may also suspend or revoke the license or certificate of authority of a reinsurance intermediary, insurer, or reinsurer for any willful violation.

2. If the director believes that a reinsurance intermediary, insurer, or reinsurer has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of sections 375.1110 to 375.1140 or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of sections 375.1110 to 375.1140 or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo. A violation of any of these sections is a level two violation under section 374.049, RSMo.

3. In addition to any other relief authorized by sections 374.046 and 374.047, RSMo, if a violation was committed by the reinsurance intermediary, such reinsurance intermediary shall make restitution to the insurer, reinsurer, rehabilitator or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to such violation.

[2. The decision, determination or order of the director pursuant to subsection 1 of this section shall be subject to judicial review pursuant to sections 536.100 to 536.140, RSMo.

3. Nothing contained in this section shall affect the right of the director to impose any other penalties provided by law.**]**

4. Nothing contained in sections 375.1110 to 375.1140 is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, creditors or other third parties or confer any rights to such persons.

375.1156. 1. Any officer, manager, director, trustee, owner, employee or agent of any insurer, or any other persons with authority over or in charge of any segment of the insurer's affairs, shall cooperate with the director or any receiver in any proceeding under sections 375.1150 to 375.1246 or any investigation preliminary to the proceeding. The term "person" as used in this section, shall include any person who exercises control directly or indirectly over activities of the insurer through any holding company or other affiliate of the insurer. "To cooperate" shall include, but shall not be limited to, the following:

(a) To reply promptly in writing to any inquiry from the director requesting such a reply; and

(b) To make available to the director any books, accounts, documents, or other records or information or property of or pertaining to the insurer and in its possession, custody or control.

2. **[**No person shall**] It is unlawful for any person included in subsection 1 of this section to** obstruct or interfere with the director in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto.

3. This section shall not be construed to abridge otherwise existing legal rights, including the right to resist a petition for liquidation or other delinquency proceedings, or other orders.

4. **[**Any person included within subsection 1 of this section who fails to cooperate with the director, or any person who knowingly obstructs or interferes with the director in the conduct of any

delinquency proceeding or any investigation preliminary or incidental thereto, or who knowingly violates any order the director issued validly under sections 375.1150 to 375.1246 shall be guilty of a class A misdemeanor, and, in addition thereto, after a hearing, shall be subject to the imposition by the director of an administrative penalty not to exceed ten thousand dollars for each occurrence or violation and shall be subject further to the revocation or suspension of any insurance licenses issued by the director. Moneys collected pursuant to the imposition of such administrative penalties shall be transferred to the state treasurer and deposited to the general revenue fund.

5.**]** In any proceeding under sections 375.1150 to 375.1246, the director and his deputies shall be responsible on their official bonds for the faithful performance of their duties. If the court deems it desirable for the protection of the assets, it may at any time require an additional bond from the director or his deputies, and such bonds shall be paid for out of the assets of the insurer as a cost of administration.

375.1160. 1. As used in this section:

(1) "Exceeded its powers" means one or more of the following conditions:

(a) The insurer has refused to permit examination of its books, papers, accounts, records or affairs by the director, his deputy, employees or duly commissioned examiners;

(b) A domestic insurer has unlawfully removed from this state or is unable to produce books, papers, accounts or records necessary for an examination of the insurer;

(c) The insurer has failed to promptly comply with the applicable financial reporting statutes or rules and requests relating thereto;

(d) The insurer has neglected or refused to observe an order of the director to make good, within the time prescribed by law, any prohibited deficiency in its capital, capital stock or surplus;

(e) The insurer is continuing to transact insurance or write business after its license has been revoked or suspended by the director;

(f) The insurer, by contract or otherwise, has unlawfully or has in violation of an order of the director or has without first having obtained written approval of the director if approval is required by law:

a. Totally reinsured its entire outstanding business, or

b. Merged or consolidated substantially its entire property or business with another insurer;

(g) The insurer engaged in any transaction in which it is not authorized to engage under the laws of this state;

(h) A domestic insurer has committed or engaged in, or is about to commit or engage in, any act, practice or transaction that would subject it to delinquency proceedings under sections 375.1150 to 375.1246; or

(i) The insurer refused to comply with a lawful order of the director;

(2) "Consent" means agreement to administrative supervision by the insurer.

2. (1) An insurer may be subject to administrative supervision by the director if upon examination or at any other time it appears in the director's discretion that:

(a) The insurer's condition renders the continuance of its business hazardous to the public or to its insureds;

(b) The insurer exceeded its powers granted under its certificate of authority and applicable law;

(c) The insurer has failed to comply with the laws of this state relating to insurance;

(d) The business of the insurer is being conducted fraudulently; or

(e) The insurer gives its consent.

(2) If the director determines that the conditions set forth in subdivision (1) of this subsection exist, the director shall:

(a) Notify in writing the insurer of his determination;

(b) Furnish to the insurer a written list of his requirements to rescind his determination; and

(c) Notify the insurer that it is under the supervision of the director and that the director is applying and effectuating the provisions of this section.

(3) The notice of supervision under this subsection and any order issued pursuant to this section shall be served upon the insurer in writing by registered mail. The notice of supervision shall state the conduct, condition or ground upon which the director bases his order.

(4) If placed under administrative supervision, the insurer shall have sixty days, or another period of time as designated by the director, to comply with the requirements of the director subject to the provisions of this section. In the event of such insurer's failure to comply with such time periods, the director may institute proceedings under section 375.1165 or 375.1175 to have a rehabilitator or liquidator appointed, or to extend the period of supervision.

(5) If it is determined that none of the conditions giving rise to the supervision exist, the director shall release the insurer from supervision.

3. (1) Except as set forth in this subsection, all proceedings, hearings, notices, orders, correspondence, reports, records and other information in the possession of the director or the department **[**of insurance**]** relating to the supervision of any insurer are confidential except as provided by this section.

(2) Personnel of the department **[**of insurance**]** shall have access to these proceedings, hearings, notices, orders, correspondence, reports, records or information as permitted by the director.

(3) The director may open the proceedings or hearings or disclose the notices, orders, correspondence, reports, records or information to a department, agency or instrumentality of this or another state or the United States if the director determines that the disclosure is necessary or proper for the enforcement of the laws of this or another state of the United States.

(4) The director may open the proceedings or hearings or make public the notices, orders, correspondence, reports, records or other information if the director deems that it is in the best interest of the public or in the best interest of the insurer, its insureds, creditors or the general public.

(5) This subsection does not apply to hearings, notices, correspondence, reports, records or other information obtained upon the appointment of a receiver for the insurer by a court of competent jurisdiction.

4. During the period of supervision, the director or his designated appointee shall serve as the administrative supervisor. The director may provide that the insurer shall not do any of the following things during the period of supervision, without the prior approval of the director or the appointed supervisor:

(1) Dispose of, convey or encumber any of its assets or its business in force;

(2) Withdraw any of its bank accounts;

(3) Lend any of its funds;

(4) Invest any of its funds;

(5) Transfer any of its property;

(6) Incur any debt, obligation or liability;

(7) Merge or consolidate with another company;

(8) Approve new premiums or renew any policies;

(9) Enter into any new reinsurance contract or treaty;

(10) Terminate, surrender, forfeit, convert or lapse any insurance policy, certificate or contract, except for nonpayment of premiums due;

(11) Write any new or renewal business;

(12) Release, pay or refund premium deposits, accrued cash or loan values, unearned premiums, or other reserves on any insurance policy, certificate or contract;

(13) Make any material change in management; or

(14) Increase salaries and benefits of officers or directors or the preferential payment of bonuses, dividends or other payments deemed preferential.

5. Any insurer subject to a supervision order under this section may seek review pursuant to section 536.150, RSMo, of that order within thirty days of the entry of the order of supervision. Such a request for a hearing shall not stay the effect of the order.

6. During the period of supervision the insurer may contest an action taken or proposed to be taken by the administrative supervisor specifying the manner in which the action being complained of would not result in improving the condition of the insurer. An insurer may request review pursuant to section 536.150, RSMo, of written denial of the insurer's request to reconsider pursuant to this subsection.

7. If any person has violated any supervision order issued under this section which as to him was still in effect, the director may **[**impose an administrative penalty in an amount not to exceed ten thousand dollars for each violation. Moneys collected pursuant to the imposition of such penalties shall be transferred to the state treasurer and deposited to the general revenue fund.

8. The director or administrative supervisor may apply for, and any court of general jurisdiction may grant, such restraining orders, preliminary and permanent injunctions, and other orders as may be deemed necessary and proper to enforce a supervision order.

9.**] initiate an action under section 375.1161.**

8. In the event that any person, subject to the provisions of sections 375.1150 to 375.1246, including those persons described in subsection 1 of section 375.1156, shall knowingly violate any valid order of the director issued under the provisions of this section and, as a result of such violation, the net worth of the insurer shall be reduced or the insurer shall suffer loss it would not otherwise have suffered, said person shall become personally liable to the insurer for the amount of any such reduction or loss. The director or administrative supervisor is authorized **under subsection 1 of section 375.1161** to bring an action on behalf of the insurer in any court of competent jurisdiction to recover the amount of reduction or loss together with any costs.

[10.**] 9.** Nothing contained in sections 375.1150 to 375.1246 shall preclude the director from initiating judicial proceedings to place an insurer in conservation, rehabilitation or liquidation proceedings or other delinquency proceedings, however designated under the laws of this state, regardless of whether the director has previously initiated administrative supervision proceedings under this section against the insurer.

[11.**] 10.** The director may adopt reasonable rules necessary for the implementation of this section.

[12.**] 11.** Notwithstanding any other provision of law, the director may meet with an administrative supervisor appointed under this section and with the attorney or other representative of the administrative supervisor, without the presence of any other person, at the time of any proceeding or during the pendency of any proceeding held under authority of this section to carry out his duties under this section or for the administrative supervisor to carry out his duties under this section.

[13.**] 12.** There shall be no liability on the part of, and no cause of action of any nature shall arise

against, the director or the department of insurance or its employees or agents for any action taken by them in the performance of their powers and duties under this section.

375.1161. 1. If the director determines that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of sections 375.1150 to 375.1246 or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of sections 375.1150 to 375.1246 or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. A violation of any of these sections is a level four violation under section 374.049, RSMo. The director may also suspend or revoke the license or certificate of authority of such person for any willful violation.

2. If the director believes that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of sections 375.1150 to 375.1246 or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of sections 375.1150 to 375.1246 or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo. A violation of any of these sections is a level four violation under section 374.049, RSMo.

375.1204. 1. **[**An agent, broker,**] A producer,** premium finance company, or any other person, other than the insured, responsible for the payment of a premium, shall be obligated to pay any unpaid earned premium due the insurer at the time of the declaration of insolvency as shown on the records of the insurer. The liquidator shall also have the right to recover from such person any part of an unearned premium that represents commission of such person. Credits or setoffs or both shall not be allowed to **[**an agent, broker,**] a producer** or premium finance company for any amounts advanced to the insurer by the **[**agent, broker,**] producer** or premium finance company on behalf of, but in the absence of a payment by the insured. An insured shall be obligated to pay any unpaid earned premium due the insurer at the time of the declaration of insolvency, as shown on the records of the insurer.

2. **[**Upon satisfactory evidence of a violation of this section, the director may pursue either one or both of the following courses of action:

(1) Suspend or revoke or refuse to renew any licenses issued by the department of insurance to such offending party or parties;

(2) Impose an administrative penalty of not more than one thousand dollars for each and every act in violation of this section by said party or parties. All amounts collected as a result of imposition of such administrative penalties shall be paid to the state treasurer for deposit to the general revenue fund.

3. Before the director shall take any action as set forth in subsection 2 of this section, he shall give written notice to the person, company, association or exchange accused of violating the law, stating specifically the nature of the alleged violation and fixing a time and place, at least ten days thereafter, when a hearing on the matter shall be held. After such hearing, or upon failure of the accused to appear at such hearing, the director, if he shall find such violation, shall impose such of the penalties under subsection 2 of this section as he deems advisable.

4. When the director shall take any action provided by subsection 2 of this section, the party aggrieved may appeal said action to the court within thirty days of the director's decision**] If the**

director determines that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. A violation of this section is a level one violation under section 374.049, RSMo. The director may also suspend, revoke, or refuse to renew any license issued by the director to any offending person for any willful violation.

3. If the director believes that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo. A violation of this section is a level one violation under section 374.049, RSMo.

375.1306. 1. An employer shall not use any genetic information or genetic test results, as those terms are defined in subdivisions (3) and (4) of section 375.1300, of an employee or prospective employee to distinguish between, discriminate against, or restrict any right or benefit otherwise due or available to such employee or prospective employee. The requirements of this section shall not prohibit:

(1) Underwriting in connection with individual or group life, disability income or long-term care insurance;

(2) Any action required or permissible by law or regulation;

(3) Action taken with the written permission of an employee or prospective employee or such person's authorized representative; or

(4) The use of genetic information when such information is directly related to a person's ability to perform assigned job responsibilities.

2. **[**Any person who violates the provisions of this section shall be fined not more than five hundred dollars for each violation of this section**]** **If the director determines that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. A violation of any of these sections is a level two violation under section 374.049, RSMo.**

3. If the director believes that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo. A violation of any of these sections is a level two violation under section 374.049, RSMo.

375.1309. 1. Any person who, in the ordinary course of business, practice of a profession or rendering of a service, creates, stores, receives or

furnishes genetic information, as such term is defined in subdivision (3) of section 375.1300, shall hold such information as confidential medical records and shall not disclose such genetic information except pursuant to written authorization of the person to whom such information pertains or to that person's authorized representative. The requirements of this section shall not apply to:

(1) Statistical data compiled without reference to the identity of an individual;

(2) Health research conducted in accordance with the provisions of the federal common rule protecting the rights and welfare of research participants (45 CFR 46 and 21 CFR 50 and 56), or to health research using medical archives or databases in which the identity of individuals is protected from disclosure by coding or encryption, or by removing all identities;

(3) The release of such information pursuant to legal or regulatory process; or

(4) The release of such information for body identification.

2. **[**Any person who violates the provisions of this section shall be fined not more than five hundred dollars**] If the director determines that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. A violation of any of these sections is a level two violation under section 374.049, RSMo.**

3. If the director believes that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo. A violation of any of these sections is a level two violation under section 374.049, RSMo.”; and

Further amend said bill, Section 376.307, Pages 54 through 56, by inserting after all of said section the following:

“376.309. 1. As used in this section, “separate account” means an account established by an insurance company, into which any amounts paid to or held by such company under applicable contracts are credited and the assets of which, subject to the provisions of this section, may be invested in such investments as shall be authorized by a resolution adopted by such company's board of directors. The income, if any, and gains and losses, realized or unrealized, on such account shall be credited to or charged against the amounts allocated to such account without regard to other income, gains or losses of the company. If and to the extent so provided under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the company may conduct.

2. Any domestic life insurance company may, after adoption of a resolution by its board of directors, establish one or more separate accounts, and may allocate to such account or accounts any amounts paid to or held by it which are to be applied under the terms of an individual or group contract to provide benefits payable in fixed or in variable dollar amounts or in both.

3. To the extent it deems necessary to comply with any applicable federal or state act, the

company may, with respect to any separate account or any portion thereof, provide for the benefit of persons having beneficial interests therein special voting and other rights and special procedures for the conduct of the business and affairs of such separate account or portion thereof, including, without limitation, special rights and procedures relating to investment policy, investment advisory services, selection of public accountants, and selection of a committee, the members of which need not be otherwise affiliated with the company, to manage the business and affairs of such separate account or portion thereof; and the corporate charter of such company shall be deemed amended to authorize the company to do so. The provisions of this section shall not affect existing laws pertaining to the voting rights of such company's policyholders.

4. The amounts allocated to any separate account and the accumulations thereon may be invested and reinvested without regard to any requirements or limitations prescribed by the laws of this state governing the investments of life insurance companies, and the investments in such separate account or accounts shall not be taken into account in applying the investment limitations, including but not limited to quantitative restrictions, otherwise applicable to the investments of the company, except that to the extent that the company's reserve liability with regard to benefits guaranteed as to principal amount and duration, and funds guaranteed as to principal amount or stated rate of interest, is maintained in any separate account, a portion of the assets of such separate account at least equal to such reserve liability shall be, except as the director **[**of insurance**]** might otherwise approve, invested in accordance with the laws of this state governing the general investment account of any company. As used herein, the expression "general investment account" shall mean all of the funds, assets and investments of the company which are not allocated in a separate account. The provisions of section 376.170 relating to deposits for registered policies shall not be applicable to funds and investments allocated to separate accounts. No investment in the separate account or in the general investment account of a life insurance company shall be transferred by sale, exchange, substitution or otherwise from one account to another unless, in case of a transfer into a separate account, the transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made or unless the transfer, whether into or from a separate account, is made by a transfer of cash, or by a transfer of other assets having a readily determinable market value, provided that such transfer of other assets is approved by the director **[**of insurance**]** and is for assets of equivalent value. Such transfer shall be deemed approved to the extent the assets of a separate account so transferred have been paid to or are being held by the company in connection with a pension, retirement or profit-sharing plan subject to the provisions of the Internal Revenue Code, as amended, and the Employee Retirement Income Security Act of 1974, as amended. The director **[**of insurance**]** may withdraw such deemed approval by providing written notice to the company that its financial condition or past practices require such withdrawal. The director **[**of insurance**]** may approve other transfers among such accounts if the director concludes that such transfers would be equitable.

5. Unless otherwise approved by the director **[**of insurance**]**, assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to such separate account; provided, that the portion of the assets of such separate account at least equal to the company's reserve liability with regard to the guaranteed benefits and funds referred to in subsection 4 of this section, if any, shall be valued in accordance with the rules otherwise applicable to the company's assets.

6. The director **[**of insurance**]** shall have the sole and exclusive authority to regulate the issuance and **authority to regulate the** sale of contracts under which amounts are to be allocated to one or more separate accounts as provided herein, and to issue such reasonable rules, regulations and licensing requirements as **[**he**] the director** shall deem necessary to carry out the purposes and provisions of this section; and **[**such contracts,**]** the companies **[**which**] that** issue **[**them and the agents or other persons who sell them**] such contracts** shall not be subject to **[**sections 409.101 to 409.419, RSMo, or amendments thereto, nor to the jurisdiction of the**] registration with the** commissioner of securities**. The director may, subject to the provisions of section 374.185, RSMo, consult and cooperate with the commissioner of securities in investigations arising from the offer and sale of contracts regulated under this section and may request assistance from the commissioner of securities in any proceeding arising from the offer and sale of any such contracts**.

7. No domestic life insurance company, and no other life insurance company admitted to transact business in this state, shall be authorized to deliver within this state any contract under which amounts are to be allocated to one or more separate accounts as provided herein until said company has satisfied the director **[**of insurance**]** that its condition or methods of operation in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders in this state. In determining the qualifications of a company requesting authority to deliver such contracts within this state, the director **[**of insurance**]** shall consider, among other things:

(1) The history and financial condition of the company;

(2) The character, responsibility and general fitness of the officers and directors of the company; and

(3) In the case of a company other than a domestic company, whether the statutes and regulations of the jurisdiction of its incorporation provide a degree of protection to policyholders and the public which is substantially equal to that provided by this section and the rules and regulations issued thereunder.

8. An authorized life insurance company, whether domestic, foreign or alien, which issues contracts under which amounts are to be allocated to one or more separate accounts as provided herein, and which is a subsidiary of or affiliated through common management or ownership with another life insurance company authorized to do business in this state, may be deemed to have met the provisions of subsection 7 of this section if either it or the parent or affiliated company meets the requirements thereof.

9. If the contract provides for payment of benefits in variable amounts, it shall contain a statement of the essential features of the procedure to be followed by the company in determining the dollar amount of such variable benefits. Any such contract, including a group contract, and any certificate issued thereunder, shall state that such dollar amount may decrease or increase and shall contain on its first page a statement that the benefits thereunder are on a variable basis.

10. Except as otherwise provided in this section, all pertinent provisions of the insurance laws of this state shall apply to separate accounts and contracts relating thereto.

376.620. **[**In all suits upon policies of insurance on life hereafter issued by any company doing business in this state, to a citizen of this state, it shall be no defense that the insured committed suicide, unless it shall be shown to the satisfaction of the court or jury trying the cause, that the insured contemplated suicide at the time he made his application for the policy, and any stipulation in the policy to the contrary shall be void.**] 1. Any life insurance or certificate issued or delivered in this state, may exclude or restrict liability of death as the result of suicide**

in the event the insured, while sane or insane, dies as a result of suicide within one year from the date of the issue of the policy or certificate. Any such exclusion or restriction shall be clearly stated in the policy or certificate.

2. Any life insurance policy or certificate which contains any exclusion or restriction under subsection 1 of this section shall also provide that in the event the insured dies as a result of suicide within one year from the date of issue of the policy that the insurer shall promptly refund all premiums paid for coverage on such insured.

376.889. **[**In addition to any other applicable penalties, the director may require issuers violating any provision of sections 376.850 to 376.890 or regulations promulgated pursuant to sections 376.850 to 376.890 to cease marketing any Medicare supplement policy or certificate in this state which is related directly or indirectly to a violation, or may require such issuer to take such actions as are necessary to comply with the provisions of sections 376.850 to 376.890, or both**]** **1. If the director determines that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of sections 376.850 to 376.890 or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of sections 376.850 to 376.890 or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. A violation of any of these sections is a level two violation under section 374.049, RSMo.**

2. If the director believes that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of sections 376.850 to 376.890 or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of sections 376.850 to 376.890 or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo. A violation of any of these sections is a level two violation under section 374.049, RSMo.”; and

Further amend said bill, Section 376.1012, Pages 56 and 57, by inserting after all of said section the following:

“376.1094. 1. The **director shall suspend or revoke the** certificate of authority of an administrator **[**shall be suspended or revoked**]** if the director finds that the administrator:

(1) Is in an unsound financial condition;

(2) Is using such methods or practices in the conduct of its business so as to render its further transaction of business in this state hazardous or injurious to insured persons or the public; or

(3) Has failed to satisfy any judgment rendered against it in this state within sixty days after the judgment has become final.

2. The director may, in his discretion, suspend or revoke the certificate of authority of an administrator if the director finds that the administrator or any of its officers, directors or any individual responsible for the conduct of its affairs as described in subdivision (3) of subsection 2 of section 376.1092:

(1) Has violated any lawful rule or order of the director or any provision of the insurance laws of this state;

(2) Has refused to be examined or to produce its accounts, records and files for examination, or if any of its officers has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to such examination, when required by the director;

(3) Has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, caused covered individuals to accept less than the amount due them or caused covered individuals to employ attorneys or bring suit against the administrator to secure full payment or settlement of such claims;

(4) Is affiliated with or under the same general management or interlocking directorate or ownership as another administrator or insurer which unlawfully transacts business in this state without having a certificate of authority;

(5) At any time fails to meet any qualification for which issuance of the certificate could have been refused had such failure then existed and been known to the department;

(6) Has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony without regard to whether adjudication was withheld;

(7) Is not competent, trustworthy, financially responsible or of good personal and business reputation, has had an insurance or administrator license denied for cause by any state or been subject to any form of administrative, civil or criminal action by any federal or state agency or court resulting in some form of discipline or sanction; or

(8) Is under suspension or revocation in another state.

3. The director may, in his discretion and without advance notice or hearing thereon, immediately suspend the certificate of any administrator if the director finds that one or more of the following circumstances exist:

(1) The administrator is insolvent or impaired;

(2) A proceeding for receivership, conservatorship, rehabilitation, or other delinquency proceeding regarding the administrator has been commenced in any state;

(3) The financial condition or business practices of the administrator otherwise poses an imminent threat to the public health, safety or welfare of the residents of this state.

4. **[**If the director finds that one or more grounds exist for the suspension or revocation of a certificate of authority issued under sections 376.1075 to 376.1095, the director may, in lieu of such suspension or revocation, bring a civil action against the administrator in a court of competent jurisdiction. The court may impose a fine upon the administrator of not more than fifty thousand dollars, such fine to be payable to the Missouri state school fund**] If the director determines that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of sections 376.1075 to 376.1095 or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of sections 376.1075 to 376.1095 or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. A violation of any of these sections is a level three violation under section 374.049, RSMo.**

5. If the director believes that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of sections 376.1075 to 376.1095 or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of sections 376.1075 to 376.1095 or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo. A violation of any of these sections is a level three violation under section 374.049, RSMo.

376.1500. As used IN sections 376.1500 to

376.1532, the following words or phrases mean:

(1) "Director", the director of the department of insurance, financial institutions and professional registration;

(2) "Discount card", a card or any other purchasing mechanism or device, which is not insurance, that purports to offer discounts or access to discounts in health-related purchases from health care providers;

(3) "Discount medical plan", a business arrangement or contract in which a person, in exchange for fees, dues, charges, or other consideration, provides access for plan members to providers of medical services and the right to receive medical services from those providers at a discount. The term does not include any product regulated as an insurance product, group health service product or membership in a health maintenance organization in this state or discounts provided by an insurer, group health service, or health maintenance organizations where those discounts are provided at no cost to the insured or member and are offered due to coverage with a licensed insurer, group health service, or health maintenance organization. The term does not include an arrangement where the discounts or prices are sold, rented or otherwise provided to another licensed carrier or to a self-insured or self-funded employer sponsored plan or Taft-Hartley trust;

(4) "Discount medical plan organization", means a person or an entity that, in exchange for fees, dues, charges or other consideration, provides access for plan members to providers of medical services and the right to receive medical services from those providers at a discount. It is the person or organization that contracts with providers, provider networks or other discount medical plan organizations to offer access to medical services at a discount and determines the charge to plan members;

(5) "Health care provider", any person or entity licensed by this state to provide health care services including, but not limited to physicians, hospitals, home health agencies, pharmacies, and dentists;

(6) "Health care provider network", an entity which directly contracts with physicians and hospitals and has contractual rights to negotiate on behalf of those health care providers with a discount medical plan organization to provide medical services to members of the discount medical plan organization;

(7) "Marketer", a person or entity who markets, promotes, sells or distributes a discount medical plan, including a private label entity that places its name on and markets or distributes a discount medical plan but does not operate a discount medical plan;

(8) "Medical services", any care, service or treatment of illness or dysfunction of, or injury to, the human body including, but not limited to, physician care, inpatient care, hospital surgical services, emergency services, ambulance services, dental care services, vision care services, mental health services, substance abuse services, chiropractic services, podiatric care services, laboratory services, and medical equipment and supplies. The term does not include pharmaceutical supplies or prescriptions;

(9) "Member", any person who pays fees, dues, charges, or other consideration for the right to receive the purported benefits of a discount medical plan; and

(10) "Person", an individual, corporation, business trust, estate, trust, partnership, association, joint venture, limited liability company, or any other government or commercial entity.

376.1502. 1. It is unlawful to transact business in this state as a discount medical plan

organization, unless the organization is a corporation, limited liability corporation, partnership, limited liability partnership or other legal entity organized under the laws of this state or, if a foreign entity, authorized to transact business in this state, and is registered as a discount medical plan organization with the director or duly authorized by the director as an insurance company, licensed health maintenance organization, licensed group health service organization, or licensed third party administrator.

2. An individual person, employee, or agent of a registered entity described in subsection 1 of this section may also transact business in this state on behalf of such entity.

376.1504. 1. To register as a discount medical plan organization, an applicant shall:

(1) File with the director an application on a form approved and adopted by the director; and

(2) Pay to the director an application fee of two hundred fifty dollars.

2. A registration is valid for a one-year term and expires one year following the registration date unless it is renewed as provided in this section.

3. Before it expires, a registrant may renew the registration for an additional one-year term if the registrant:

(1) Otherwise is qualified to receive a registration;

(2) Files with the director a renewal application on a form approved and adopted by the director; and

(3) Pays a renewal fee of two hundred fifty dollars.

4. All amounts collected as registration or renewal fees shall be deposited into the insurance dedicated fund.

5. Nothing in this subsection shall require a provider who provides discounts to his or her own patients to obtain and maintain a registration as a discount medical plan organization.

376.1506. 1. If the director has a reason to believe that the discount medical plan organization is not complying with the requirements of sections 376.1500 to 376.1532, the director may examine or investigate the business and affairs of any discount medical plan organization under the authority of sections 374.190 and 374.202 to 374.207, RSMo. The director may require any discount medical plan organization or applicant to produce any records, books, files, advertising and solicitation materials, or other information and may take statements under oath to determine whether the discount medical plan organization or applicant is in violation of the law. Reasonable expenses incurred in conducting any examination shall be paid by the discount medical plan organization under sections 374.202 to 374.207, RSMo.

2. Failure by the discount medical plan organization to pay the expenses incurred under this subsection shall be grounds for denial or revocation of the discount medical plan organization's registration.

376.1508. 1. A discount medical plan organization may charge a reasonable one-time processing fee and a periodic charge as long as the fee is disclosed to the applicant.

2. If the member cancels the membership within the first thirty days after receipt of the discount card and other membership materials, the member shall receive a reimbursement of all periodic charges paid. The return of all periodic charges shall be made within thirty days of the date of the cancellation. If all of the periodic charges have not been paid within thirty days, interest shall be assessed and paid on the proceeds at a rate of the treasury bill rate of the preceding calendar year, plus two percentage

points.

3. The right of cancellation shall be set out in the written membership materials on the first page, in ten-point type or larger.

4. If a discount medical plan organization cancels a membership for any reason other than nonpayment of charges by the member, the discount medical plan organization shall make a pro rata reimbursement of all periodic charges to the member.

376.1510. A discount medical plan organization shall not:

(1) Use in its advertisements, marketing material, brochures, and discount cards the terms "health plan", "coverage", "copay", "copayments", "preexisting conditions", "guaranteed issue", "premium", "PPO", "preferred provider organization", or other terms in a manner that could reasonably mislead a person to believe that the discount medical plan is health insurance;

(2) Except for hospital services, have restrictions on free access to plan providers including waiting periods and notification periods;

(3) Pay providers any fees for medical services;

(4) Collect or accept money from a member for payment to a provider for specific medical services furnished or to be furnished to the member, unless the organization is licensed by the director to act as an administrator; or

(5) Except as otherwise provided in sections 376.1500 to 376.1532, as a disclaimer of any relationship between discount medical plan benefits and insurance, or as a description of an insurance product connected with a discount medical plan, use in its advertisements, marketing material, brochures, and discount cards the term "insurance".

376.1512. 1. The following disclosures, to be printed in bold and in not less than twelve-point type, shall be made in writing to any prospective member and shall appear on the first content page of any advertisements, marketing materials or brochures relating to a discount medical plan:

(1) The plan is not insurance;

(2) The plan provides discounts with certain health care providers for medical services;

(3) The plan does not make payments directly to the providers of medical services;

(4) The plan member is obligated to pay for all health care services but will receive a discount from those health care providers who have contracted with the discount plan organization; and

(5) The name and the location of the registered discount medical plan organization, including the current telephone number of the registered discount medical plan organization or other entity responsible for customer service for the plan, if different from the registered discount medical plan organization.

2. If the discount medical plan is sold, marketed, or solicited by telephone, the disclosures required by this section shall be made orally and provided in the initial written materials that describe the benefits under the discount medical plan provided to the prospective or new member.

3. Each discount card or any other plan identifier issued to a plan member shall state in bold and prominent type on the front face of the card that "THIS IS NOT INSURANCE".

376.1514. 1. All providers offering medical services to members under a discount medical plan shall provide such services pursuant to a written agreement. The agreement may be entered into directly by the health care provider or by a health care provider network to which

the provider belongs if the provider network has contracts with the health care provider that allow the provider network to contract on behalf of the health care provider.

2. A health care provider agreement shall provide the following:

(1) A description of the services and products to be provided at a discount;

(2) The amount or amounts of the discounts or, alternatively, a fee schedule which reflects the health care provider's discounted rates; and

(3) A provision that the health care provider will not charge members more than the discounted rates.

3. A health care provider agreement with a health care provider network shall require that the health care provider network have written agreements with its health care providers that:

(1) Contain the terms described in this subsection;

(2) Authorize the health care provider network to contract with the discount medical plan organization on behalf of the provider; and

(3) Require the network to maintain an up-to-date list of its contracted health care providers and to provide that list on a quarterly basis to the discount medical plan organization.

4. A health care provider agreement between a discount medical plan organization and an entity that contracts with a health care provider network shall require that the entity, in its contract with the health care provider network, require the health care provider network to have written agreements with its providers that comply with subsection 3 of this section.

5. The discount medical plan organization shall maintain a copy of each active health care provider agreement into which it has entered.

376.1516. 1. Each benefit under the discount medical plan shall be included in the written membership materials between the discount medical plan organization and the member. The written membership materials shall also include a statement notifying the members of their right to cancel under section 376.1508, and such materials shall also list all of the disclosures required by section 376.1512.

2. Upon request by the Director, any forms used by a discount medical plan organization, including written membership materials, shall be submitted to the Director.

376.1518. 1. Each discount medical plan organization registered pursuant to sections sections 376.1500 to 376.1532, shall at all times maintain a net worth of at least one hundred fifty thousand dollars.

2. The director may not allow a registration unless the discount medical plan organization has a net worth of at least one hundred fifty thousand dollars.

376.1520. Each discount medical plan organization required to be registered pursuant to this section shall provide the director at least thirty days' advance notice of any change in the discount medical plan organization's name, address, principal business address, or mailing address.

376.1522. Each discount medical plan organization shall maintain a current list of the names and addresses of the providers with which it has contracted on a web site page, the address of which shall be prominently displayed on all its advertisements, marketing materials, brochures, and discount cards. This section applies to those providers with whom the discount medical plan organization has contracted directly, as well as those who are members of a provider network with which the discount medical plan organization has contracted.

376.1524. 1. All advertisements, marketing

materials, brochures and discount cards used by marketers shall be approved in writing for such use by the discount medical plan organization.

2. The discount medical plan organization shall have an executed written agreement with a marketer prior to the marketer's marketing, promoting, selling, or distributing the discount medical plan.

376.1528. The director under the provisions of section 374.045, RSMo, may promulgate rules to administer and interpret the provisions of sections 376.1500 to 376.1532.

376.1530. 1. The director may deny a registration to an applicant or refuse to renew, suspend, or revoke the registration of a registrant if the applicant or registrant, or an officer, director, or employee of the applicant or registrant:

(1) Makes a material misstatement or misrepresentation in an application for registration;

(2) Fraudulently or deceptively obtains or attempts to obtain a registration for the applicant or registrant or for another;

(3) Has advertised, merchandised or attempted to merchandise its services in such a manner as to misrepresent its services or capacity for service or has engaged in deceptive, misleading or unfair practices with respect to advertising or merchandising;

(4) In connection with the advertisement, offer, sale or administration of a health care discount program, makes any untrue statement of material fact, conceals any material fact, uses any deception or commits fraud or engages in any dishonest activity;

(5) Is not fulfilling its obligations as a discount medical plan organization;

(6) Does not have the minimum net worth as required by sections 376.1500 to 376.1532; or

(7) Violates any provision of sections 376.1500 to 376.1532, or any law or regulation of this state relating to insurance or the provision of medical care.

2. If the director has cause to believe that grounds for the suspension or revocation of a registration exist, the director shall notify the discount medical plan organization in writing, specifically stating the grounds for suspension or revocation, and shall provide opportunity for a hearing on the matter before the director.

3. When the registration of a discount medical plan organization is surrendered or revoked, such organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs transacted under the registration. The organization may not engage in any further advertising, solicitation, collecting of fees, or renewal of contracts.

376.1532. 1. If the director determines that a person has engaged, is engaging, or has taken a substantial step toward engaging in a violation of sections 376.1500 to 376.1532, or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of sections 376.1500 to 376.1532 or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. A violation of sections 376.1500 to 376.1532 is a level two violation under section 374.049, RSMo. The director of insurance may also suspend or revoke the license or certificate of authority of such person for any willful violation.

2. If the director believes that a person has engaged, is engaging, or has taken a substantial step toward engaging in a violation of sections 376.1500 to 376.1532 or a rule adopted or order issued pursuant thereto, or that a person has

materially aided or is materially aiding an act, practice, omission or course of business constituting a violation of sections 376.1500 to 376.1532 or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo. A violation of sections 376.1500 to 376.1532 is a level two violation under section 374.049, RSMo."; and

Further amend said bill, Section 377.200, Pages 57 and 58, by inserting after all of said section the following:

"379.361. 1. **[**The director may, if he finds that any insurer or filing organization has violated any provision of section 379.017 and sections 379.316 to 379.361, impose a penalty of not more than five hundred dollars for each violation, but if he finds the violation to be willful, he may impose a penalty of not more than five thousand dollars for each violation. These penalties may be in addition to any other penalty provided by law.

2. The director may suspend the license of any rating organization or insurer which fails to comply with an order of the director within the time limited by such order, or any extension thereof which the director may grant. The director shall not suspend the license of any rating organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or if an appeal has been taken, until the order has been affirmed. The director may determine when a suspension of license shall become effective and it shall remain in effect for the period fixed by him, unless he modifies or rescinds such suspension or until the order upon which such suspension is based is modified, rescinded or reversed.

3. No penalty shall be imposed or no license shall be suspended or revoked except upon a written order of the director, stating his findings, made after a hearing held upon not less than ten days' written notice to such person or organization specifying the alleged violation**] If the director determines that any insurer or filing organization has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of section 379.017 and sections 379.316 to 379.361 or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of section 379.017 and sections 379.316 to 379.361 or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. A violation of any of these sections is a level two violation under section 374.049, RSMo. The practice of using a rate not in effect under section 379.321, if caused by a single act or omission by the insurer or filing organization, is a level two violation under section 374.049, RSMo. Each act as part of a rating violation does not constitute a separate violation under section 374.049, RSMo. The director may also suspend or revoke the license or certificate of authority of an insurer or filing company for any willful violation.**

2. If the director believes that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of section 379.017 and sections 379.316 to 379.361 or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of section 379.017 and sections 379.316 to 379.361 or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo. A violation of any of these sections is a level two violation under section 374.049, RSMo. The practice of using a rate not in effect under section 379.321, if caused by a single act or omission by the insurer or filing organization, is a level two violation

under section 374.049, RSMo. Each act as part of a rating violation does not constitute a separate violation under section 374.049, RSMo.

379.510. **[**Any person or organization who willfully violates a final order of the director under sections 379.420 to 379.510 shall be deemed guilty of a misdemeanor and shall upon conviction thereof be punished by a fine not to exceed five hundred dollars for such violation**] 1. If the director determines that any person has violated a final order of the director under sections 379.420 to 379.510, the director may issue such administrative orders as authorized under section 374.046, RSMo. A violation of any of these sections is a level two violation under section 374.049, RSMo.**

2. If the director believes that a person has violated a final order of the director under sections 379.420 to 379.510, the director may maintain a civil action for relief authorized under section 374.048, RSMo. A violation of any of these sections is a level two violation under section 374.049, RSMo.

379.790. **1. It is unlawful for** any attorney **[**who shall**] to** exchange any contracts of indemnity of the kind and character specified in sections 379.650 to 379.790, or directly or indirectly solicit or negotiate any applications for same without first complying with the foregoing provisions**[**, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than one hundred dollars nor more than one thousand dollars; provided**] .** However, **[**that**]** the director **[**of insurance**]** may, in his discretion and on such terms as he may prescribe, issue a permit for organization purposes, the permit to continue in force or be canceled at the pleasure of the director **[**of insurance**]**.

2. If the director determines that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. A violation of this section is a level one violation under section 374.049, RSMo.

3. If the director believes that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo. A violation of this section is a level one violation under section 374.049, RSMo.

380.391. **[**No**] 1. It is unlawful for any** officer, director, member, agent or employee of any company operating under the provisions of sections 380.201 to **[**380.591 shall,**] 380.611 to** directly or indirectly, use or employ, or permit others to use or employ, any of the money, funds or securities of the company for private profit or gain**[**, and any such use shall be deemed a felony, punishable, upon conviction, by imprisonment by the department of corrections and human resources for not less than two years nor more than five years for each offense**]**.

2. Any person who willfully engages in any act, practice, omission, or course of business in violation of this section is guilty of a class D felony.

3. The director may refer such evidence as is available concerning violations of this section to the proper prosecuting attorney, who with or without a criminal reference, or the attorney

general under section 27.030, RSMo, may institute the appropriate criminal proceedings.

4. Nothing in this section shall limit the power of the state to punish any person for any conduct that constitutes a crime in any other state statute.

380.571. 1. **[**The director may issue cease and desist orders whenever it appears to him upon competent and substantial evidence that any company operating under the provisions of sections 380.201 to 380.591 is acting in violation of those laws or any other applicable laws or any rule or regulation promulgated by the director pursuant thereto. Before any cease and desist order shall be issued, a copy of the proposed order together with an order to show cause why such cease and desist order should not be issued shall be served either personally or by certified mail on the company named therein.

2. Upon issuing any order to show cause, the director shall notify the company named therein that it is entitled to a public hearing before the director if a request for a hearing is made in writing to the director within fifteen days from the day of the service of the order to show cause why the cease and desist order should not be issued. The cease and desist order shall be issued fifteen days after the service of the order to show cause if no request for a public hearing is made as above provided.

3. Upon receipt of a request for a hearing, the director shall set a time and place for the hearing which shall not be less than ten days or more than fifteen days from the receipt of the request or as otherwise agreed upon by the parties. Notice of the time and place shall be given by the director not less than five days before the hearing.

4. At the hearing the company may be represented by counsel and shall be entitled to be advised of the nature and source of any adverse evidence procured by the director, and shall be given the opportunity to submit any relevant written or oral evidence in its behalf to show cause why the cease and desist order should not be issued.

5. At the hearing the director shall have such powers as are conferred upon him by the provisions of section 374.190, RSMo.

6. At the conclusion of the hearing, or within ten days thereafter, the director shall issue the cease and desist order as proposed or as subsequently modified, or notify the company that no order will be issued.

7. The circuit court of Cole County shall have jurisdiction to review any cease and desist order of the director under the provisions of sections 536.100 to 536.150, RSMo; and, if any company against whom an order is issued fails to request judicial review, or if, after judicial review, the director's cease and desist order is upheld, the order shall become final.

8. If any company willfully violates any provision of any cease and desist order of the director after it becomes final, it may be penalized by the director by a fine of not more than one thousand dollars.

9. The director of insurance may in addition to a monetary fine, suspend or revoke the certificate of authority of any company violating a cease and desist order**] If the director determines that any person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of sections 380.201 to 380.611 or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of sections 380.201 to 380.611 or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. A violation of any of these sections is a level two violation under section 374.049, RSMo, except a violation of**

section 380.391 is a level four violation under section 374.049, RSMo. The director may also suspend or revoke the certificate of authority of such person for any willful violation.

2. If the director believes that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of sections 380.201 to 380.611 or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of sections 380.201 to 380.611 or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo. A violation of any of these sections is a level two violation under section 374.049, RSMo, except a violation of section 380.391 is a level four violation under section 374.049, RSMo."; and

Further amend said bill, Section 381.068, Page 58, by inserting after all of said section the following:

"384.054. Any tax imposed by sections 384.011 to 384.071 which is delinquent in payment shall be subject to a penalty of **one percent of the tax per diem up to** ten percent of the tax. Any delinquent tax shall bear interest at the rate determined under section 32.065, RSMo, from the time such tax is due.

384.071. 1. **If the director determines that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of sections 384.011 to 384.071 or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of sections 384.011 to 384.071 or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. A violation of any of these sections is a level three violation under section 374.049, RSMo.**

2. If the director believes that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of sections 384.011 to 384.071 or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of sections 384.011 to 384.071 or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo. A violation of any of these sections is a level three violation under section 374.049, RSMo.

3. Any surplus lines licensee who in this state represents or aids a nonadmitted insurer in violation of the provisions of sections 384.011 to 384.071 may be found guilty of a **class B** misdemeanor and subject to a fine not in excess of one thousand dollars.

[2. In addition to any other penalty provided for herein or otherwise provided by law, including any suspension, revocation or refusal to renew a license, any person, firm, association or corporation violating any provision of sections 384.011 to 384.071 shall be liable to a penalty not exceeding one thousand dollars for the first offense, and not exceeding two thousand dollars for each succeeding offense.

3.**] 4.** The above penalties are not exclusive remedies. **[**Penalties may also be assessed under sections 375.930 to 375.948, RSMo.**]**"; and

Further amend said bill, Section 409.950, Page 58, by inserting after all of said section the following:

"**[**374.261. As used in sections 374.261 to 374.269, the following words mean:

(1) "Director", the director of the

department of insurance;

(2) "Examiners", nonsalaried employees of the department of insurance conducting an examination pursuant to section 374.190;

(3) "Sick leave", those days of leave taken during the conduct of an examination during which an examiner is prevented from conducting an examination due to illness or injury.**]**

[374.263. There is hereby created in the state treasury a fund to be known as the "Insurance Examiner's Sick Leave Fund", hereinafter referred to as the "fund". The fund shall be used to pay the daily wages of department of insurance examiners who are temporarily unable to continue an examination of an insurance company or companies pursuant to section 374.190, because of illness or injury suffered or sustained by the examiner during the course of the examination which the examiner is conducting.**]**

[374.265. 1. There shall be an amount assessed against those domestic insurers which are subject to premium tax and are engaged in the business of insurance within this state, which amount shall be no less than one hundred and fifty nor greater than five hundred dollars.

2. The initial assessment shall be made within one month of September 28, 1981, in the total amount of thirty-six thousand dollars. Thereafter, assessments shall be made annually, or as needed whenever the balance in the fund becomes less than ten thousand dollars. The amount of such subsequent assessments shall be that amount necessary to return the balance in the fund to thirty-six thousand dollars.**]**

[374.267. 1. The director of the department of insurance, his agents or appointees shall be empowered to make assessments pursuant to section 374.265, and to administer the fund.

2. The director, his agents or appointees shall compensate an examiner out of the fund only after the examiner has satisfied the director, his agents or appointees that:

(1) The examiner was employed by the department of insurance to conduct an examination of an insurance company or companies pursuant to section 374.190 at the time of the illness or injury for which daily wages are claimed; and

(2) The examiner was prevented from conducting the examination due to illness or injury.

3. The amount paid by the director, his agents or appointees to an examiner from the fund shall not exceed the amount of the examiner's daily wages times the number of days during which the examiner was prevented from conducting an examination as result of illness or injury, but in no event shall any examiner be paid for more than one and one-fourth days times the number of months for which he has been employed by the department of insurance as an examiner, nor shall an examiner be paid for or receive credit for sick leave after August 13, 1988, for or on the basis of any month, months or portion thereof before August 13, 1988.**]**"; 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.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the

House refuses to adopt Senate Substitute for House Bill 744, as amended, and request the Senate recede from its position and failing to do so grant the House a conference thereon and allow the conferees to exceed the differences in Sections 388.700 through 388.742 as truly agreed to and finally passed in Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill 327, as amended, and conferees be bound to the House position in Senate Substitute for House Bill 744, as amended, with respect to the enforcement of seat belt laws being primary.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the Speaker has reappointed the following conference committee to act with a like committee from the Senate on **HCS** for **SCS** for **SB 64**, as amended. Representatives: Wallace, Cunningham (86), Muschany, Aull and Lampe.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has taken up and adopted the Conference Committee Report on **HCS** for **SCS** for **SBs 62** and **41**, as amended, and has taken up and passed **CCS** for **HCS** for **SCS** for **SBs 62** and **41**.

Bill ordered enrolled.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has granted the Senate further conference on **HCS** for **SCS** for **SB 308**, as amended.

PRIVILEGED MOTIONS

Senator Stouffer moved that the Senate refuse to recede from its position on **SS** for **HB 744**, as amended, and grant the House a conference thereon, and further that the conferees are allowed to exceed the differences in Sections 388.700 through 388.742 as truly agreed and finally passed in **SS** for **SCS** for **HCS** for **HB 327**, as amended.

At the request of Senator Stouffer, the above motion was withdrawn.

Senator Koster assumed the Chair.

Senator Stouffer moved that the Senate refuse to recede from its position on **SS** for **HB 744**, as amended, and grant the House a conference thereon, which motion prevailed.

CONFERENCE COMMITTEE APPOINTMENTS

President Pro Tem Gibbons appointed the following conference committee to act with a like committee from the House on **SS** for **HB 744**, as amended: Senators Stouffer, Rupp, Engler, Days and McKenna.

President Pro Tem Gibbons reappointed the following conference committee to act with a like committee from the House on **HCS** for **SCS** for **SB 308**, as amended: Senators Crowell, Ridgeway, Shields, Kennedy and Wilson.

HOUSE BILLS ON THIRD READING

HB 801, with **SCS**, entitled:

An Act to repeal section 392.410, RSMo, and to enact in lieu thereof one new section relating to telecommunications.

Was called from the Informal Calendar and taken up by Senator Engler.

SCS for **HB 801**, entitled:

SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 801

An Act to repeal sections 392.410, 407.1095, 407.1098, 407.1101, 407.1104, and 407.1107, RSMo, and to enact in lieu thereof nine new sections relating to telecommunications.

Was taken up.

Senator Engler moved that **SCS** for **HB 801** be adopted.

Senator Griesheimer offered **SA 1**:

SENATE AMENDMENT NO. 1

Amend Senate Committee Substitute for House Bill No. 801, Page 3, Section 392.410, Line 78, by inserting at the end of said line the following: "**The commission shall also include in such study the potential economic impact of interconnected voice over Internet protocol service as defined by the Federal Communications Commission in Section 9.3 of Title 47 of the Code of Federal Regulations. The commission shall not regulate or otherwise exercise jurisdiction over such service without specific authorization from the general assembly until at least one hundred thirty-six days after the next immediate due date of this report. Any decision of the public service commission inconsistent with this section is hereby preempted and rendered invalid.**".

Senator Griesheimer moved that the above amendment be adopted.

Senator Griesheimer offered **SA 1** to **SA 1**, which was read:

SENATE AMENDMENT NO. 1 TO
SENATE AMENDMENT NO. 1

Amend Senate Amendment No. 1 to Senate Committee Substitute for House Bill No. 801, Page 1, Lines 9-10, by striking all of said lines and inserting in lieu thereof the following: "**assembly until after July 1, 2008. Any decision of the**".

Senator Griesheimer moved that the above amendment be adopted.

At the request of Senator Griesheimer, **SA 1** to **SA 1** and **SA 1** were withdrawn.

Senator Engler moved that **SCS** for **HB 801** be adopted, which motion prevailed.

On motion of Senator Engler, **SCS** for **HB 801** was read the 3rd time and passed by the following vote:

YEAS—Senators

Barnitz	Bartle	Bray	Callahan
Champion	Clemens	Coleman	Crowell
Days	Engler	Gibbons	Goodman
Graham	Green	Griesheimer	Gross
Justus	Kennedy	Koster	Lager
Loudon	Mayer	McKenna	Nodler
Purgason	Ridgeway	Rupp	Scott
Shields	Shoemyer	Smith	Stouffer
Vogel	Wilson—34		

NAYS—Senators—None

Absent—Senators—None

Absent with leave—Senators—None

Vacancies—None

The President declared the bill passed.

On motion of Senator Engler, title to the bill was agreed to.

Senator Engler moved that the vote by which the bill passed be reconsidered.

Senator Shields moved that motion lay on the table, which motion prevailed.

HB 215, with **SCS**, entitled:

An Act to repeal sections 167.031, 211.021, 211.033, 211.034, 211.041, 211.061, 211.071, 211.081, 211.091, 211.101, 211.161, and 211.181, RSMo, and to enact in lieu thereof twelve new sections relating to juvenile courts, with penalty provisions.

Was called from the Informal Calendar and taken up by Senator Goodman.

SCS for **HB 215**, entitled:

SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 215

An Act to repeal sections 167.031, 211.021, 211.033, 211.034, 211.041, 211.061, 211.071, 211.091, 211.101, and 211.161, RSMo, and to enact in lieu thereof nine new sections relating to juvenile courts, with penalty provisions.

Was taken up.

President Kinder assumed the Chair.

Senator Goodman moved that **SCS** for **HB 215** be adopted.

Senator Lager offered **SA 1**, which was read:

SENATE AMENDMENT NO. 1

Amend Senate Committee Substitute for House Bill No. 215, Page 11, Section 211.161, Line 19, by inserting immediately after said line the following:

"**Section 1. The office of the state courts administrator shall conduct a study and report to the general assembly by June 30, 2008, on the impact of changing the definition of "child", as used in section 211.021, RSMo, to include any person over seventeen years but not yet eighteen years of age unless such person has committed a status offense as defined in subdivision (2) of subsection 1 of section 211.031, RSMo. The report shall contain information regarding the impact on caseloads of juvenile officers, including the average increase in caseload per juvenile officer for each judicial circuit, and the number of children affected by the change in definition.**"; and

Further amend the title and enacting clause accordingly.

Senator Lager moved that the above amendment be adopted.

Senator Lager offered **SA 1** to **SA 1**, which was read:

SENATE AMENDMENT NO. 1 TO
SENATE AMENDMENT NO. 1

Amend Senate Amendment No. 1 to Senate Committee Substitute for House Bill No. 215, Page 1, Lines 7-8, by striking "unless such person has" and inserting in lieu thereof the following: "**alleged to have**".

Senator Lager moved that the above amendment be adopted, which motion prevailed.

SA 1, as amended, was again taken up.

Senator Lager moved that the above amendment be adopted, which motion prevailed.

Senator Goodman moved that **SCS** for **HB 215**, as amended, be adopted, which motion prevailed.

On motion of Senator Goodman, **SCS** for **HB 215**, as amended, was read the 3rd time and passed by the following vote:

YEAS—Senators

Barnitz	Bartle	Bray	Callahan
Champion	Clemens	Coleman	Crowell
Days	Engler	Goodman	Graham
Green	Griesheimer	Gross	Justus
Kennedy	Koster	Lager	Loudon
Mayer	McKenna	Nodler	Rupp
Scott	Shields	Shoemyer	Smith
Stouffer	Vogel	Wilson—31	

NAYS—Senators—None

Absent—Senators

Gibbons	Purgason	Ridgeway—3

Absent with leave—Senators—None

Vacancies—None

The President declared the bill passed.

On motion of Senator Goodman, title to the bill was agreed to.

Senator Goodman moved that the vote by which the bill passed be reconsidered.

Senator Shields moved that motion lay on the table, which motion prevailed.

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 Speaker has appointed the following conference committee to act with a like committee from the

Senate on **SS** for **SCS** for **HCS** for **HB 780**, as amended. Representatives: Wasson, Bearden, Parson, Page and Quinn (9).

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the Speaker has appointed the following conference committee to act with a like committee from the Senate on **HCS** for **SCS** for **SB 308**, as amended. Representatives: Wasson, Parson, Tilley, Page and McClanahan.

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 497**, entitled:

An Act to repeal sections 50.327, 52.290, 52.312, 52.315, 52.317, 58.500, 58.510, 94.660, 110.130, 110.140, 110.150, 141.150, 141.640, and 473.743, RSMo, and to enact in lieu thereof thirteen new sections relating to county officials, with penalty provisions.

In which the concurrence of the Senate is respectfully requested.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has taken up and passed **SCS** for **SB 418**.

Bill ordered enrolled.

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 **SS** for **SB 112**, entitled:

An Act to repeal sections 160.900, 160.905, 160.910, 160.915, 160.920, 160.925, 160.930, 162.700, and 376.1218, RSMo, and to enact in lieu thereof eleven new sections relating to special education, with an expiration date for a certain section.

With House Amendment Nos. 1, 2 and 3.

HOUSE AMENDMENT NO. 1

Amend House Committee Substitute for Senate Substitute for Senate Bill No. 112, Page 7, Section 160.933, Line 23, by inserting after all of said line the following:

"162.675. As used in sections 162.670 to 162.995, unless the context clearly indicates otherwise, the following terms mean:

(1) **"Children with disabilities" or "handicapped children", children under the age of twenty-one years who have not completed an approved high school program and who, because of mental, physical, emotional or learning problems, require special educational services;**

(2) "Gifted children", children who exhibit precocious development of mental capacity and learning potential as determined by competent professional evaluation to the extent that continued educational growth and stimulation could best be served by an academic environment beyond that offered through a standard grade level curriculum;

[(2) "Handicapped children", children under the age of twenty-one years who have not completed an approved high school program and who, because of mental, physical, emotional or learning problems, require special educational services;**]**

(3) "Severely handicapped children", handicapped children under the age of twenty-one years who meet the eligibility criteria for state schools for severely handicapped children, identified in state regulations that implement the Individuals with Disabilities Education Act;

(4) "Special educational services", programs designed to meet the needs of **children with disabilities or** handicapped or severely handicapped children and which include, but are not limited to, the provision of diagnostic and evaluation services, student and parent counseling,

itinerant, homebound and referral assistance, organized instructional and therapeutic programs, transportation, and corrective and supporting services." ; 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 Substitute for Senate Bill No. 112, Page 6, Section 160.930, Lines 1 to 12, by deleting all of said Lines from the bill; and

Further amend said bill, Page 11, Section 376.1218, Line 71, by inserting after all of said line the following:

"**[**160.930. Pursuant to section 23.253, RSMo, of the Missouri sunset act:

(1) The provisions of the program authorized under sections 160.900 to 160.925, section 162.700, RSMo, and section 376.1218, RSMo, shall automatically sunset two years after August 28, 2005, unless reauthorized by an act of the general assembly; and

(2) If such program is reauthorized, the program authorized under sections 160.900 to 160.925, section 162.700, RSMo, and section 376.1218, RSMo, shall automatically sunset twelve years after the effective date of the reauthorization of sections 160.900 to 160.925, section 162.700, RSMo, and section 376.1218, RSMo; and

(3) Sections 160.900 to 160.925, section 162.700, RSMo, and section 376.1218, RSMo, shall terminate on September first of the calendar year immediately following the calendar year in which the program authorized under sections 160.900 to 160.925, section 162.700, RSMo, and section 376.1218, RSMo, is sunset.**]**" ; 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 Substitute for Senate Bill No. 112, Section 160.933, Page 7, by inserting after all of said section the following:

"162.431. 1. When it is necessary to change the boundary lines between seven-director school districts, in each district affected, ten percent of the voters by number of those voting for school board members in the last annual school election in each district may petition the district boards of education in the districts affected, regardless of county lines, for a change in boundaries. The question shall be submitted at the next **[**general municipal**]** election**, as the term "election" is defined in section 115.123, RSMo**.

2. The voters shall decide the question by a majority vote of those who vote upon the question. If assent to the change is given by each of the various districts voting, each voting separately, the boundaries are changed from that date.

3. If one of the districts votes against the change and the other votes for the change, the matter may be appealed to the state board of education, in writing, within fifteen days of the submission of the question by either one of the districts affected, or in the above event by a majority of the signers of the petition requesting a vote on the proposal. At the first meeting of the state board following the appeal, a board of arbitration composed of three members, none of whom shall be a resident of any district affected, shall be appointed. In determining whether it is necessary to change the boundary line between seven-director districts, the board of arbitration shall base its decision upon the following:

(1) The presence of school-aged children in the affected area;

(2) The presence of actual educational harm to school-aged children, either due to a significant difference in the time involved in transporting students or educational deficiencies in the district

which would have its boundary adversely affected; and

(3) The presence of an educational necessity, not of a commercial benefit to landowners or to the district benefitting for the proposed boundary adjustment**.**

4. If the potential receiving district obtained a score consistent with the criteria for classification of the district as "accredited" on its most recent annual performance report and the potential sending district obtained a score consistent with the criteria for classification of the district as "unaccredited" on its most recent annual performance report, the board shall approve the proposed boundary change for the educational well-being of the children enrolled in the potential sending district.

[4.**] 5.** Within twenty days after notification of appointment, the board of arbitration shall meet and consider the necessity for the proposed changes and shall decide whether the boundaries shall be changed as requested in the petition or be left unchanged, which decision shall be final. The decision by the board of arbitration shall be rendered not more than thirty days after the matter is referred to the board. The chairman of the board of arbitration shall transmit the decision to the secretary of each district affected who shall enter the same upon the records of his district and the boundaries shall thereafter be in accordance with the decision of the board of arbitration. The members of the board of arbitration shall be allowed a fee of fifty dollars each, to be paid at the time the appeal is made by the district taking the appeal or by the petitioners should they institute the appeal.

[5.**] 6.** If the board of arbitration decides that the boundaries shall be left unchanged, no new petition for the same, or substantially the same, boundary change between the same districts shall be filed until after the expiration of two years from the date of the municipal election at which the question was submitted to the voters of the districts."; 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.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has taken up and passed **SB 162**.

Bill ordered enrolled.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House refuses to recede from its position on **HCS** for **SS** for **SCS** for **SB 429**, as amended and grants the Senate a conference thereon.

CONFERENCE COMMITTEE APPOINTMENTS

President Pro Tem Gibbons appointed the following conference committee to act with a like committee from the House on **HCS** for **SS** for **SCS** for **SB 429**, as amended: Senators Gibbons, Goodman, Bartle, Justus and Callahan.

On motion of Senator Shields, the Senate recessed until 2:15 p.m.

RECESS

The time of recess having expired, the Senate was called to order by President Kinder.

REPORTS OF STANDING COMMITTEES

Senator Shields, Chairman of the Committee on Rules, Joint Rules, Resolutions and Ethics, submitted the following report:

Mr. President: Your Committee on Rules, Joint Rules, Resolutions and Ethics, to which was referred **SR 1360**, begs leave to report that it has considered the same and recommends that the resolution do pass.

Senator Goodman, Chairman of the Committee on Governmental Accountability and Fiscal Oversight, submitted the following report:

Mr. President: Your Committee on Governmental Accountability and Fiscal Oversight, to which was referred **HCS** for **HB 364**, begs leave to report that it has considered the same and recommends that the bill do pass.

HOUSE BILLS ON THIRD READING

HCS for **HB 364**, entitled:

An Act to repeal section 143.121, RSMo, and to enact in lieu thereof one new section relating to Missouri adjusted gross income calculations.

Was taken up by Senator Purgason.

Senator Purgason offered **SS** for **HCS** for **HB 364**, entitled:

SENATE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 364

An Act to repeal sections 103.085, 143.121, 376.426, 376.776, 376.960, 376.961, 376.964, 376.966, 376.986, 376.989, 379.930, 379.936, 379.938, 379.940, 379.942, 379.943, 379.944, and 379.952, RSMo, and to enact in lieu thereof twenty-eight new sections relating to health insurance, with an effective date for certain sections.

Senator Purgason moved that **SS** for **HCS** for **HB 364** be adopted.

Senator Loudon raised the point of order that **SS** for **HCS** for **HB 364** is out of order as it goes beyond the scope of the bill.

The point of order was referred to the President Pro Tem who ruled it not well taken.

Senator Loudon offered **SA 1**:

SENATE AMENDMENT NO. 1

Amend Senate Substitute for House Committee Substitute for House Bill No. 364, Page 11, Section 143.121, Line 8 of said page, by inserting immediately after said line the following:

"**324.1230. 1. As used in sections 324.1230 to 324.1245, the following terms shall mean:**

(1) "Antepartum", before birth;

(2) "Board", the board of direct-entry midwives;

(3) "Client", a person who retains the services of a direct-entry midwife;

(4) "Direct-entry midwife", any person who is certified by the North American Registry of Midwives (NARM) as a certified professional midwife (CPM) and provides for compensation those skills relevant to the care of women and infants in the antepartum, intrapartum, and postpartum period;

(5) "Division", the division of professional registration;

(6) "Intrapartum", during birth;

(7) "Postpartum", after birth.

2. There is hereby created and established within the division of professional registration a "Board of Direct-Entry Midwives".

3. No later than December 31, 2007, the governor shall appoint members to the board with the advice and consent of the senate. The board shall consist of five members each of whom is a United States citizen and who has been a resident of this state for at least one year immediately preceding their appointment. Of these five members, one member shall be a physician licensed under chapter 334, RSMo, who has provided out-of-hospital birth services, one member shall be a public member, three members shall be licensed direct-entry midwives who attend births in homes or other out-of-hospital settings, provided that the first midwife members appointed need not be licensed at the time of appointment if they are actively working toward licensure under the provisions of sections 324.1230 to 324.1245.

4. The initial appointments to the board shall be one member for a term of one year, one member for a term of two years, one member for a term of three years, one member for a term of four years and one member for a term of five years. After the initial terms, each member shall serve a five-year term. No member of the board shall serve more than two consecutive five-year terms. The organization of the board shall be established by members of the board. Upon the death, resignation, or removal from office of any member of the board, the appointment to fill the vacancy shall be for the unexpired portion of the term so vacated and shall be made within sixty days after the vacancy occurs.

5. The public member shall not be a member of any profession regulated by chapter 334 or 335, RSMo, or under sections 324.1230 to 324.1245, or the spouse of such person. The public member is subject to the provisions of section 620.132, RSMo.

6. The board may sue and be sued in its own name and its members need not be named parties. Members of the board shall not be personally liable, either jointly or severally, for any act or acts committed in the performance of their official duties as board members. No board member shall be personally liable for any court costs which accrue in any action by or against the board.

7. Notwithstanding any other provision of law to the contrary, any appointed member of the board shall receive as compensation an amount established by the director of the division of professional registration not to exceed fifty dollars per day for board business plus actual and necessary expenses. The director of the division of professional registration shall establish by rule the guidelines for payment.

8. The board shall employ administrative and clerical personnel necessary to enforce the provisions of sections 324.1230 to 324.1245.

9. The board shall hold an annual meeting at which time it shall elect from its membership a chairman and secretary. The board may hold such additional meetings as may be required in the performance of its duties, provided that notice of every meeting shall be given to each member at least ten days prior to the date of the meeting. A quorum of the board shall consist of a majority of its members.

10. No licensing activity or other statutory requirements shall become effective until expenditures or personnel are specifically appropriated for the purpose of conducting the business as required to administer the provisions of sections 324.1230 to 324.1245 and the initial rules filed have become effective.

324.1233. 1. The board shall issue licenses to applicants who:

(1) Present evidence of current certification by the North American Registry of Midwives (NARM) as a certified professional midwife (CPM);

(2) Present evidence of current certification in basic life support (BLS) for healthcare providers, and either infant cardiopulmonary resuscitation (CPR) or neonatal resuscitation;

(3) Pay a licensure fee set by the board; and

(4) Comply with the written disclosure requirement under subsection 1 of section 324.1239.

2. The board shall renew licenses to applicants who:

(1) Present evidence of attendance at a minimum of ten hours per year of continuing education in midwifery or related fields;

(2) Present evidence of attendance at a minimum of three hours per year of peer review;

(3) Present evidence of current certification

in basic life support (BLS) for healthcare providers, and either infant cardiopulmonary resuscitation (CPR) or neonatal resuscitation; and

(4) Pay a renewal fee set by the board.

3. Any license issued under sections 324.1230 to 324.1245 shall expire three years after the date of its issuance. The board may refuse to issue or renew any certificate of registration or authority, permit, or license required pursuant to this chapter for one or any combination of causes stated in subsection 4 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of the applicant's right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo. As an alternative to a refusal to issue or renew any certificate, registration, or authority, the board may, at its discretion, issue a license which is subject to probation, restriction, or limitation to an applicant for licensure for any one or any combination of causes stated in subsection 4 of this section. The board's order of probation, limitation, or restriction shall contain a statement of the discipline imposed, the basis therefor, the date such action shall become effective, and a statement that the applicant has thirty days to request in writing a hearing before the administrative hearing commission. If the board issues a probationary, limited, or restricted license to an applicant for licensure, either party may file a written petition with the administrative hearing commission within thirty days of the effective date of the probationary, limited, or restricted license seeking review of the board's determination. If no written request for a hearing is received by the administrative hearing commission within the thirty-day period, the right to seek review of the board's decision shall be considered as waived.

4. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit, or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit, or license for any one or any combination of the following causes:

(1) Violates any provision of sections 324.1230 to 324.1245 or the rules adopted thereafter;

(2) Engages in conduct detrimental to the health or safety of either the mother or infant, or both, as determined by the board; or

(3) Has an unpaid judgment resulting from providing direct-entry midwifery services.

5. After the filing of such complaint before the administrative hearing commission, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 4 of this section, for disciplinary action are met, the board may, singly or in combination, warn, censure, or place the person named in the complaint on probation on such terms and conditions as the board deems appropriate for a period not to exceed ten years, or may suspend the person's license, certificate, or permit for a period not to exceed three years, or restrict or limit the person's license, certificate, or permit for an indefinite period of time, or revoke the person's license, certificate, or permit, or administer a public or private reprimand, or deny the person's application for a license, or permanently withhold issuance of a license or require the person to submit to the care, counseling, or treatment of physicians designated by the board at the expense of the individual to be examined, or require the person to attend such continuing educational courses and pass such examinations as the board may

direct.

6. The division may promulgate rules necessary to implement the administration of the licensure system established under sections 324.1230 to 324.1245. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2007, shall be invalid and void.

324.1236. 1. There is hereby established in the treasury a fund to be known as the "Board of Direct-Entry Midwives Fund". All fees of any kind and character authorized to be charged by the board shall be collected by the director of the division of professional registration and shall be transmitted to the department of revenue for deposit in the state treasury for credit to this fund, to be disbursed only in payment of expenses of maintaining the board and for the enforcement of the provisions of law concerning professions regulated by the board; and no other money shall be paid out of the state treasury for carrying out these provisions. Warrants shall be issued on the state treasurer for payment out of said fund.

2. The state treasurer shall be custodian of the fund. In accordance with sections 30.170 and 30.180, RSMo, the state treasurer may approve disbursements. Upon appropriation, money in the fund shall be used solely for the administration of sections 324.1230 to 324.1245. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund.

324.1239. 1. Every licensed direct-entry midwife shall present a written disclosure statement to each client, which shall include but not be limited to, the following:

(1) A description of direct-entry midwifery education and related training;

(2) Licensure as a direct-entry midwife, including the effective dates of the licensure;

(3) The benefits and risks associated with childbirth in the setting selected by the client;

(4) A statement concerning the licensed direct-entry midwife's malpractice or liability insurance coverage; and

(5) A plan, specific to the client, for transfer to medical care, if needed.

2. Notwithstanding any other provision of the law, a licensed direct-entry midwife providing a service of direct-entry midwifery shall not be deemed to be engaged in the practice of medicine, nursing, nurse-midwifery, or any other medical or healing practice.

3. Nothing in sections 324.1230 to 324.1245 shall be construed to apply to a person who provides information and support in preparation for labor and delivery and assists in the delivery of an infant if that person does not do the following:

(1) Advertise as a midwife or as a provider of midwife services;

(2) Assist, as primary attendant, in more than six births a year;

(3) Accept any form of compensation for

midwife services; and

(4) Use any words, letters, signs, or figures to indicate that the person is a midwife.

4. A person who is a member of a recognized religious sect or division, as defined in 26 U.S.C. 1402(g), by reason of which they are conscientiously opposed to acceptance of benefits of any public or private insurance which makes payments in the event of death, disability, old age, or retirement or makes payments toward the cost of, or provides services for, medical bills, including benefits of any insurance system established under the Federal Social Security Act, 42 U.S.C. 301 to 42 U.S.C. 1397jj, shall not be subject to the provisions of sections 324.1230 to 324.1245.

5. A person shall not be subject to the licensure provisions of section 324.1233 if said person:

(1) Is a resident of this state;

(2) Is at least twenty-one years of age;

(3) Has passed the North American Registry of Midwives Skills Assessment;

(4) Has provided a service of midwifery for at least twenty of the last thirty years before August 28, 2007;

(5) Presents evidence of current certification in basic life support (BLS) for healthcare providers, and either infant cardiopulmonary resuscitation (CPR) or neonatal resuscitation;

(6) Presents a written disclosure statement to each client as provided under subsection 1 of this section, except such person shall disclose evidence of the licensure exemption from the board required under subdivision (7) of this subsection; and

(7) Has requested and received an exemption from the Board of Direct-Entry Midwives.

6. No person other than the licensed direct-entry midwife who provided care to the client shall be liable for the direct-entry midwife's negligent or willful and wanton acts or omissions. Except as otherwise provided by law, no other licensed physician, licensed doctor of osteopathy, certified nurse midwife, licensed nurse, hospital, emergency medical technicians licensed under chapter 190, RSMo, or agents thereof, shall be exempt from liability for their own subsequent and independent negligent, grossly negligent, or willful and wanton acts or omissions.

7. The provisions of sections 324.1230 to 324.1245 shall be remedial and curative in nature.

8. Nothing in sections 324.1230 to 324.1245 shall be construed to prohibit the attendance at birth of the mother's choice of family, friends, or other uncompensated labor support attendants.

324.1242. No licensed direct-entry midwife shall be permitted to:

(1) Prescribe drugs or medications;

(2) Perform medical inductions or cesarean sections during the delivery of an infant;

(3) Use forceps during the delivery of an infant; or

(4) Perform vacuum delivery of an infant.

324.1245. Any person who violates the provisions of sections 324.1230 to 324.1245, or any rule or order made under sections 324.1230 to 324.1245 is guilty of a class A misdemeanor.

334.010. 1. It shall be unlawful for any person not now a registered physician within the meaning of the law to practice medicine or surgery in any of its departments, to engage in the practice of medicine across state lines or to profess to cure and attempt to treat the sick and others afflicted with bodily or mental infirmities, **[**or engage in the practice of midwifery in this state,**]** except as

herein provided.

2. For the purposes of this chapter, the "practice of medicine across state lines" shall mean:

(1) The rendering of a written or otherwise documented medical opinion concerning the diagnosis or treatment of a patient within this state by a physician located outside this state as a result of transmission of individual patient data by electronic or other means from within this state to such physician or physician's agent; or

(2) The rendering of treatment to a patient within this state by a physician located outside this state as a result of transmission of individual patient data by electronic or other means from within this state to such physician or physician's agent.

3. A physician located outside of this state shall not be required to obtain a license when:

(1) In consultation with a physician licensed to practice medicine in this state; and

(2) The physician licensed in this state retains ultimate authority and responsibility for the diagnosis or diagnoses and treatment in the care of the patient located within this state; or

(3) Evaluating a patient or rendering an oral, written or otherwise documented medical opinion, or when providing testimony or records for the purpose of any civil or criminal action before any judicial or administrative proceeding of this state or other forum in this state; or

(4) Participating in a utilization review pursuant to section 376.1350, RSMo.

334.120. 1. There is hereby created and established a board to be known as "The State Board of Registration for the Healing Arts" for the purpose of registering, licensing and supervising all physicians and surgeons**[**, and midwives**]** in this state. The board shall consist of nine members, including one voting public member, to be appointed by the governor by and with the advice and consent of the senate, five of whom shall be graduates of professional schools approved and accredited as reputable by the American Medical Association or the Liaison Committee on Medical Education and two of whom shall be graduates of professional schools approved and accredited as reputable by the American Osteopathic Association, and all of whom, except the public member, shall be duly licensed and registered as physicians and surgeons pursuant to the laws of this state. Each member must be a citizen of the United States and must have been a resident of this state for a period of at least one year next preceding his or her appointment and shall have been actively engaged in the lawful and ethical practice of the profession of physician and surgeon for at least five years next preceding his or her appointment. Not more than four members shall be affiliated with the same political party. All members shall be appointed for a term of four years. Each member of the board shall receive as compensation an amount set by the board not to exceed fifty dollars for each day devoted to the affairs of the board, and shall be entitled to reimbursement of his or her expenses necessarily incurred in the discharge of his or her official duties. The president of the Missouri State Medical Association, for all medical physician appointments, or the president of the Missouri Association of Osteopathic Physicians and Surgeons, for all osteopathic physician appointments, in office at the time shall, at least ninety days prior to the expiration of the term of the respective board member, other than the public member, or as soon as feasible after the appropriate vacancy on the board otherwise occurs, submit to the director of the division of professional registration a list of five physicians and surgeons qualified and willing to fill the vacancy in question, with the request and recommendation that the governor appoint one of the five persons so listed, and with the list so submitted, the president of the Missouri State Medical Association or the Missouri Association

of Osteopathic Physicians and Surgeons, as appropriate, shall include in his or her letter of transmittal a description of the method by which the names were chosen by that association.

2. The public member shall be at the time of his or her appointment a citizen of the United States; a resident of this state for a period of one year and a registered voter; a person who is not and never was a member of any profession licensed or regulated pursuant to this chapter or the spouse of such person; and a person who does not have and never has had a material, financial interest in either the providing of the professional services regulated by this chapter, or an activity or organization directly related to any profession licensed or regulated pursuant to this chapter. All members, including public members, shall be chosen from lists submitted by the director of the division of professional registration. The duties of the public member shall not include the determination of the technical requirements to be met for licensure or whether any person meets such technical requirements or of the technical competence or technical judgment of a licensee or a candidate for licensure."; and

Further amend said bill, Page 93, Section 379.952, Line 17 of said page, by inserting after all of said line the following:

"**[**334.260. On August 29, 1959, all persons licensed under the provisions of chapter 334, RSMo 1949, as midwives shall be deemed to be licensed as midwives under this chapter and subject to all the provisions of this chapter.**]**"; and

Further amend the title and enacting clause accordingly.

Senator Loudon moved that the above amendment be adopted.

Senator Engler raised the point of order that **SA 1** is out of order as it goes beyond the scope of the original bill.

Senator Scott assumed the Chair.

Senator Gross assumed the Chair.

The point of order was referred to the President Pro Tem who ruled it well taken.

Senator Green offered **SA 2**:

SENATE AMENDMENT NO. 2

Amend Senate Substitute for House Committee Substitute for House Bill No. 364, Page 11, Section 143.121, Line 8 of said page, by inserting immediately after said line the following:

"195.070. 1. A physician, podiatrist, dentist, or a registered optometrist certified to administer pharmaceutical agents as provided in section 336.220, RSMo, in good faith and in the course of his or her professional practice only, may prescribe, administer, and dispense controlled substances or he or she may cause the same to be administered or dispensed by an individual as authorized by statute.

2. **An advanced practice registered nurse, as defined in section 335.016, RSMo, who holds a certificate of controlled substance prescriptive authority from the board of nursing pursuant to section 335.019, RSMo, and who is delegated the authority to prescribe controlled substances under a controlled substance collaborative practice agreement pursuant to section 334.104, RSMo, may prescribe any controlled substances listed in Schedule V of section 195.017, RSMo. However, no such certified advanced practice registered nurse shall ever, under any circumstances, prescribe controlled substance for his or her own self or family.**

3. A veterinarian, in good faith and in the course of his professional practice only, and not for use by a human being, may prescribe, administer, and dispense controlled substances and he may cause them to be administered by an assistant or orderly under his direction and supervision.

[3.**]** **4.** A practitioner shall not accept any portion of a controlled substance unused by a

patient, for any reason, if such practitioner did not originally dispense the drug.

[4.**]** **5.** An individual practitioner may not prescribe or dispense a controlled substance for such practitioner's personal use except in a medical emergency.

195.100. 1. It shall be unlawful to distribute any controlled substance in a commercial container unless such container bears a label containing an identifying symbol for such substance in accordance with federal laws.

2. It shall be unlawful for any manufacturer of any controlled substance to distribute such substance unless the labeling thereof conforms to the requirements of federal law and contains the identifying symbol required in subsection 1 of this section.

3. The label of a controlled substance in Schedule II, III or IV shall, when dispensed to or for a patient, contain a clear, concise warning that it is a criminal offense to transfer such narcotic or dangerous drug to any person other than the patient.

4. Whenever a manufacturer sells or dispenses a controlled substance and whenever a wholesaler sells or dispenses a controlled substance in a package prepared by him, he shall securely affix to each package in which that drug is contained, a label showing in legible English the name and address of the vendor and the quantity, kind, and form of controlled substance contained therein. No person except a pharmacist for the purpose of filling a prescription under sections 195.005 to 195.425, shall alter, deface, or remove any label so affixed.

5. Whenever a pharmacist or practitioner sells or dispenses any controlled substance on a prescription issued by a physician, dentist, podiatrist **[**or**]** veterinarian, **or advanced practice registered nurse,** he shall affix to the container in which such drug is sold or dispensed, a label showing his own name and address of the pharmacy or practitioner for whom he is lawfully acting; the name of the patient or, if the patient is an animal, the name of the owner of the animal and the species of the animal; the name of the physician, dentist, podiatrist **[**or**],** veterinarian**, or advanced practice registered nurse** by whom the prescription was written; **the name of the collaborating physician if the prescription is written by an advanced practice registered nurse,** and such directions as may be stated on the prescription. No person shall alter, deface, or remove any label so affixed.

334.104. 1. A physician may enter into collaborative practice arrangements with registered professional nurses. Collaborative practice arrangements shall be in the form of written agreements, jointly agreed-upon protocols, or standing orders for the delivery of health care services. Collaborative practice arrangements, which shall be in writing, may delegate to a registered professional nurse the authority to administer or dispense drugs and provide treatment as long as the delivery of such health care services is within the scope of practice of the registered professional nurse and is consistent with that nurse's skill, training and competence.

2. Collaborative practice arrangements, which shall be in writing, may delegate to a registered professional nurse the authority to administer, dispense or prescribe drugs and provide treatment if the registered professional nurse is an advanced practice nurse as defined in subdivision (2) of section 335.016, RSMo. Such collaborative practice arrangements shall be in the form of written agreements, jointly agreed-upon protocols or standing orders for the delivery of health care services.

3. **Controlled substance collaborative practice arrangements may delegate to an advanced practice registered nurse, as defined in section 335.016, RSMo, the authority to administer, dispense, or prescribe controlled substances listed in Schedule V of section**

195.017, RSMo. Such controlled substance collaborative practice agreements shall be in writing and shall also set forth provisions for the type of collaboration between the advanced practice registered nurse and the collaborating physician.

4. The state board of registration for the healing arts pursuant to section 334.125 and the board of nursing pursuant to section 335.036, RSMo, may jointly promulgate rules regulating the use of collaborative practice arrangements **and controlled substance collaborative practice arrangements**. Such rules shall be limited to specifying geographic areas to be covered, the methods of treatment that may be covered by collaborative practice arrangements and the requirements for review of services provided pursuant to collaborative practice arrangements **including collaborative practice arrangements delegating the authority to prescribe controlled substances**. Any rules relating to dispensing or distribution of medications or devices by prescription or prescription drug orders under this section shall be subject to the approval of the state board of pharmacy. In order to take effect, such rules shall be approved by a majority vote of a quorum of each board. Neither the state board of registration for the healing arts nor the board of nursing may separately promulgate rules relating to collaborative practice arrangements. Such jointly promulgated rules shall be consistent with guidelines for federally funded clinics. The rulemaking authority granted in this subsection shall not extend to collaborative practice arrangements of hospital employees providing inpatient care within hospitals as defined pursuant to chapter 197, RSMo.

[4.**]** **5.** The state board of registration for the healing arts shall not deny, revoke, suspend or otherwise take disciplinary action against a physician for health care services delegated to a registered professional nurse provided the provisions of this section and the rules promulgated thereunder are satisfied. Upon the written request of a physician subject to a disciplinary action imposed as a result of an agreement between a physician and a registered professional nurse or registered physician assistant, whether written or not, prior to August 28, 1993, all records of such disciplinary licensure action and all records pertaining to the filing, investigation or review of an alleged violation of this chapter incurred as a result of such an agreement shall be removed from the records of the state board of registration for the healing arts and the division of professional registration and shall not be disclosed to any public or private entity seeking such information from the board or the division. The state board of registration for the healing arts shall take action to correct reports of alleged violations and disciplinary actions as described in this section which have been submitted to the National Practitioner Data Bank. In subsequent applications or representations relating to his medical practice, a physician completing forms or documents shall not be required to report any actions of the state board of registration for the healing arts for which the records are subject to removal under this section.

[5.**]** **6.** Within thirty days of any change and on each renewal, the state board of registration for the healing arts shall require every physician to identify whether the physician is engaged in any collaborative practice agreement**, including collaborative practice arrangements delegating the authority to prescribe controlled substances,** or physician assistant agreement and also report to the board the name of each licensed professional with whom the physician has entered into such agreement. The board may make this information available to the public. The board shall track the reported information and may routinely conduct random reviews of such agreements to ensure that agreements are carried out for compliance under this chapter.

[6.**]** **7.** Notwithstanding anything to the contrary in this section, a registered nurse who has graduated from a school of nurse anesthesia

accredited by the Council on Accreditation of Educational Programs of Nurse Anesthesia or its predecessor and has been certified or is eligible for certification as a nurse anesthetist by the Council on Certification of Nurse Anesthetists shall be permitted to provide anesthesia services without a collaborative practice arrangement provided that he or she is under the supervision of an anesthesiologist or other physician, dentist, or podiatrist who is immediately available if needed.

335.016. As used in this chapter, unless the context clearly requires otherwise, the following words and terms mean:

(1) "Accredited", the official authorization or status granted by an agency for a program through a voluntary process;

(2) "Advanced practice **registered** nurse", a nurse who has **[**had**]** education beyond the basic nursing education and is certified by a nationally recognized professional organization as **[**having a nursing specialty, or who meets criteria for advanced practice nurses established by the board of nursing. The board of nursing may promulgate rules specifying which professional nursing organization certifications are to be recognized as advanced practice nurses, and may set standards for education, training and experience required for those without such specialty certification to become advanced practice nurses.**] an advanced registered nurse practitioner, certified nurse midwife, certified registered nurse anesthetist, or a certified clinical nurse specialist. The board shall have the authority to approve any nationally recognized professional organization for the purposes of this section.** Advanced practice nurses and only such individuals may use the title "Advanced Practice Registered Nurse" and the abbreviation "APRN";

(3) **"Advanced registered nurse practitioner", a registered nurse who is currently certified as a nurse practitioner by a nationally recognized certifying body approved by the board of nursing;**

(4) "Approval", official recognition of nursing education programs which meet standards established by the board of nursing;

[(4)**] (5)** "Board" or "state board", the state board of nursing;

(6) "Certified clinical nurse specialist", a registered nurse who is currently certified as a clinical nurse specialist by a nationally recognized certifying board approved by the board of nursing;

(7) "Certified nurse midwife", a registered nurse who is currently certified as a nurse midwife by the American College of Nurse Midwives, or other nationally recognized certifying body approved by the board of nursing;

(8) "Certified registered nurse anesthetist", a registered nurse who is currently certified as a nurse anesthetist by the Council on Certification of Nurse Anesthetists, the Council on Recertification of Nurse Anesthetists, or other nationally recognized certifying body approved by the board of nursing;

[(5)**] (9)** "Executive director", a qualified individual employed by the board as executive secretary or otherwise to administer the provisions of this chapter under the board's direction. Such person employed as executive director shall not be a member of the board;

[(6)**] (10)** "Inactive nurse", as defined by rule pursuant to section 335.061;

[(7) A**] (11)** "Licensed practical nurse" or "practical nurse", a person licensed pursuant to the provisions of this chapter to engage in the practice of practical nursing;

[(8)**] (12)** "Licensure", the issuing of a license to practice professional or practical nursing to candidates who have met the specified requirements and the recording of the names of those persons as holders of a license to practice professional or practical nursing;

[(9)**] (13)** "Practical nursing", the performance for compensation of selected acts for the promotion of health and in the care of persons who are ill, injured, or experiencing alterations in normal health processes. Such performance requires substantial specialized skill, judgment and knowledge. All such nursing care shall be given under the direction of a person licensed by a state regulatory board to prescribe medications and treatments or under the direction of a registered professional nurse. For the purposes of this chapter, the term "direction" shall mean guidance or supervision provided by a person licensed by a state regulatory board to prescribe medications and treatments or a registered professional nurse, including, but not limited to, oral, written, or otherwise communicated orders or directives for patient care. When practical nursing care is delivered pursuant to the direction of a person licensed by a state regulatory board to prescribe medications and treatments or under the direction of a registered professional nurse, such care may be delivered by a licensed practical nurse without direct physical oversight;

[(10)**] (14)** "Professional nursing", the performance for compensation of any act which requires substantial specialized education, judgment and skill based on knowledge and application of principles derived from the biological, physical, social and nursing sciences, including, but not limited to:

(a) Responsibility for the teaching of health care and the prevention of illness to the patient and his or her family;

(b) Assessment, nursing diagnosis, nursing care, and counsel of persons who are ill, injured or experiencing alterations in normal health processes;

(c) The administration of medications and treatments as prescribed by a person licensed by a state regulatory board to prescribe medications and treatments;

(d) The coordination and assistance in the delivery of a plan of health care with all members of a health team;

(e) The teaching and supervision of other persons in the performance of any of the foregoing;

[(11) A**] (15)** "Registered professional nurse" or "registered nurse", a person licensed pursuant to the provisions of this chapter to engage in the practice of professional nursing.

335.019. The board of nursing may grant a certificate of controlled substance prescriptive authority to an advanced practice nurse who:

(1) Submits proof of successful completion of an advanced pharmacology course that shall include preceptorial experience in the prescription of drugs, medicines and therapeutic devices; and

(2) Provides documentation of a minimum of three hundred clock hours preceptorial experience in the prescription of drugs, medicines, and therapeutic devices with a qualified preceptor; and

(3) Has a controlled substance prescribing authority delegated in the collaborative practice agreement pursuant to section 334.104, RSMo, with a physician who has an unrestricted federal Drug Enforcement Administration registration number and who is actively engaged in a practice comparable in scope, specialty, or expertise to that of the advanced practice registered nurse."; and

Further amend the title and enacting clause accordingly.

Senator Green moved that the above amendment be adopted.

Senator Goodman raised the point of order that **SA 2** is out of order as it goes beyond the scope, title and content of the bill.

The point of order was referred to the President Pro Tem who ruled it well taken.

Senator Green offered **SA 3**, which was read:

SENATE AMENDMENT NO. 3

Amend House Committee Substitute for House Bill No. 364, Page 3, Section 143.121, Line 72, by striking "and"; and further amend line 78 by inserting immediately after "subsection" the following: "**; and**

(j) The amount of any qualified higher education expenses determined under section 143.1014"; and

Further amend said bill, page 4, section 143.121, line 96, by inserting after all of said line the following:

"**143.1014. 1. This section shall be known and may be cited as the "Higher Education Expenses Deduction".**

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

(1) "Department", the department of revenue;

(2) "Director", the director of the department of revenue;

(3) "Higher education institution", an institution that meets the standards for accreditation as determined by either the North Central Association of Colleges and Secondary Schools or by other accrediting bodies recognized by the United States Department of Education or by utilizing accreditation standards applicable to non-degree granting institutions as established by the coordinating board for higher education.

(4) "Tax liability", the tax due under chapter 143, other than taxes withheld under sections 143.191 to 143.265; and

(5) "Taxpayer", any student filing income tax returns or a taxpayer who claims a student as a dependent.

3. If any taxpayer with a federal adjusted gross income of less than two hundred thousand dollars incurs tuition or fee expenses for enrollment of at least half time at a higher education institution, such taxpayer shall subtract from such taxpayer's federal adjusted gross income an amount equal to one hundred percent of such costs the taxpayer paid during the taxable year.

4. The department may promulgate such rules or regulations as are necessary to administer the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2007, shall be invalid and void.

5. The provisions of this section shall apply to all tax years beginning on or after January 1, 2008."; and

Further amend the title and enacting clause accordingly.

Senator Green moved that the above amendment be adopted.

Senator Goodman raised the point of order that **SA 3** is out of order as it goes beyond the scope of the underlying bill.

The point of order was referred to the President Pro Tem who ruled it well taken.

Senator Loudon offered **SA 4**:

SENATE AMENDMENT NO. 4

Amend Senate Substitute for House

Committee Substitute for House Bill No. 364, Page 1, In the Title, Line 5, of the title, by inserting after "RSMo," the following: "and sections 143.782, 143.790, and 313.321, as Truly Agreed to and Finally Passed by Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 818 by the first regular session of the ninety-fourth general assembly"; and

Further amend said bill and page, Section A, Line 4 of said page, by inserting after "RSMo," the following: "and sections 143.782, 143.790, and 313.321, as Truly Agreed to and Finally Passed by Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 818 by the first regular session of the ninety-fourth general assembly"; and

Further amend said bill, Page 93, Section 379.952, Line 17 of said page, by inserting after all of said line the following:

"**[**143.782. As used in sections 143.782 to 143.788, unless the context clearly requires otherwise, the following terms shall mean and include:

(1) "Court", the supreme court, court of appeals, or any circuit court of the state;

(2) "Debt", any sum due and legally owed to any state agency which has accrued through contract, subrogation, tort, or operation of law regardless of whether there is an outstanding judgment for that sum, court costs as defined in section 488.010, RSMo, fines and fees owed, or any support obligation which is being enforced by the division of family services on behalf of a person who is receiving support enforcement services pursuant to section 454.425, RSMo**, or any claim for unpaid health care services which is being enforced by the department of health and senior services on behalf of a hospital or healthcare provider under section 143.790**;

(3) "Debtor", any individual, sole proprietorship, partnership, corporation or other legal entity owing a debt;

(4) "Department", the department of revenue of the state of Missouri;

(5) "Refund", the Missouri income tax refund which the department determines to be due any taxpayer pursuant to the provisions of this chapter. The amount of a refund shall not include any senior citizens property tax credit provided by sections 135.010 to 135.035, RSMo, unless such refund is being offset for a delinquency or debt relating to individual income tax or a property tax credit; and

(6) "State agency", any department, division, board, commission, office, or other agency of the state of Missouri, including public community college district.**]**

[143.790. 1. Any hospital or healthcare provider who has provided health care services to an individual who was not covered by a health insurance policy or was not eligible to receive benefits under the state's medical assistance program of needy persons, Title XIX, P.L. 89-97, 1965 amendments to the federal Social Security Act, 42 U.S.C. Section 301, et seq., under chapter 208, RSMo, and the health insurance for uninsured children under sections 208.631 to 208.657, RSMo, at the time such health care services were administered, and such person has failed to pay for such services for a period greater than ninety days, may submit a claim to the

director of the department of health and senior services for the unpaid health care services. The director of the department of health and senior services shall review such claim. If the claim appears meritorious on its face, the claim for the unpaid medical services shall constitute a debt of the department of health and senior services for purposes of sections 143.782 to 143.788, and the director may certify the debt to the department of revenue in order to set off the debtor's income tax refund. Once the debt has been certified, the director of the department of health and senior services shall submit the debt to the department of revenue under the set off procedure established under section 143.783.

2. At the time of certification, the director of the department of health and senior services shall supply any information necessary to identify each debtor whose refund is sought to be set off pursuant to section 143.784 and certify the amount of the debt or debts owed by each such debtor.

3. If a debtor identified by the director of the department of health and senior services is determined by the department of revenue to be entitled to a refund, the department of revenue shall notify the department of health and senior services that a refund has been set off on behalf of the department of health and senior services for purposes of this section and shall certify the amount of such setoff, which shall not exceed the amount of the claimed debt certified. When the refund owed exceeds the claimed debt, the department shall send the excess amount to the debtor within a reasonable time after such excess is determined.

4. The department of revenue shall notify the debtor by certified mail the taxpayer whose refund is sought to be set off that such setoff will be made. The notice shall contain the provisions contained in subsection 3 of section 143.794, including the opportunity for a hearing to contest the setoff provided therein, and shall otherwise substantially comply with the provisions of subsection 3 of section 143.784.

5. Once a debt has been setoff and finally determined under the applicable provisions of sections 143.782 to 143.788, and the department of health and senior services has received the funds transferred from the department of revenue, the department of health and senior services shall settle with each hospital or healthcare provider for the amounts that the department of revenue setoff for such party. At the time of each settlement, each hospital or healthcare provider shall be charged for administration expenses which shall not exceed twenty percent of the collected amount.

6. Lottery prize payouts made under section 313.321, RSMo, shall also be subject to the set off procedures established in this section and any rules and regulations promulgated thereto.

7. The director of the department of revenue shall have priority to offset any delinquent tax owed to the state of Missouri. Any remaining refund shall be offset to pay a state agency debt or to meet a child support obligation that

is enforced by the division of family services on behalf of a person who is receiving support enforcement services under section 454.425, RSMo.

8. The director of the department of revenue and the director of the department of health and senior services shall promulgate rules and regulations necessary to administer the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2007, shall be invalid and void.]

[313.321. 1. The money received by the Missouri state lottery commission from the sale of Missouri lottery tickets and from all other sources shall be deposited in the "State Lottery Fund", which is hereby created in the state treasury. At least forty-five percent, in the aggregate, of the money received from the sale of Missouri lottery tickets shall be appropriated to the Missouri state lottery commission and shall be used to fund prizes to lottery players. Amounts in the state lottery fund may be appropriated to the Missouri state lottery commission for administration, advertising, promotion, and retailer compensation. The general assembly shall appropriate remaining moneys not previously allocated from the state lottery fund by transferring such moneys to the general revenue fund. The lottery commission shall make monthly transfers of moneys not previously allocated from the state lottery fund to the general revenue fund as provided by appropriation.

2. The commission may also purchase and hold title to any securities issued by the United States government or its agencies and instrumentalities thereof that mature within the term of the prize for funding multi-year payout prizes.

3. The "Missouri State Lottery Imprest Prize Fund" is hereby created. This fund is to be established by the state treasurer and funded by warrants drawn by the office of administration from the state lottery fund in amounts specified by the commission. The commission may write checks and disburse moneys from this fund for the payment of lottery prizes only and for no other purpose. All expenditures shall be made in accordance with rules and regulations established by the office of administration. Prize payments may also be made from the state lottery fund. Prize payouts made pursuant to this section shall be subject to the provisions of section 143.781, RSMo; and prize payouts made pursuant to this section shall be subject to set off for delinquent child support payments as assessed by a court of competent jurisdiction or pursuant to section 454.410, RSMo. **Prize payouts made under this section shall be subject to set off for unpaid healthcare services provided by hospitals and healthcare**

providers under the procedure established in section 143.790, RSMo.

4. Funds of the state lottery commission not currently needed for prize money, administration costs, commissions and promotion costs shall be invested by the state treasurer in interest-bearing investments in accordance with the investment powers of the state treasurer contained in chapter 30, RSMo. All interest earned by funds in the state lottery fund shall accrue to the credit of that fund.

5. No state or local sales tax shall be imposed upon the sale of lottery tickets or shares of the state lottery or on any prize awarded by the state lottery. No state income tax or local earnings tax shall be imposed upon any lottery game prizes which accumulate to an amount of less than six hundred dollars during a prize winner's tax year. The state of Missouri shall withhold for state income tax purposes from a lottery game prize or periodic payment of six hundred dollars or more an amount equal to four percent of the prize.

6. The director of revenue is authorized to enter into agreements with the lottery commission, in conjunction with the various state agencies pursuant to sections 143.782 to 143.788, RSMo, in an effort to satisfy outstanding debts to the state from the lottery winning of any person entitled to receive lottery payments which are subject to federal withholding. **The director of revenue is also authorized to enter into agreements with the lottery commission in conjunction with the department of health and senior services pursuant to section 143.790, RSMo, in an effort to satisfy outstanding debts owed to hospitals and healthcare providers for unpaid healthcare services of any person entitled to receive lottery payments which are subject to federal withholding.**

7. In addition to the restrictions provided in section 313.260, no person, firm, or corporation whose primary source of income is derived from the sale or rental of sexually oriented publications or sexually oriented materials or property shall be licensed as a lottery game retailer and any lottery game retailer license held by any such person, firm, or corporation shall be revoked.**]**"; and

Further amend the title and enacting clause accordingly.

Senator Loudon moved that the above amendment be adopted, which motion failed.

Senator Purgason moved that **SS** for **HCS** for **HB 364** be adopted, which motion prevailed.

Senator Purgason moved that **SS** for **HCS** for **HB 364** be read the 3rd time and passed and was recognized to close.

President Pro Tem Gibbons referred **SS** for **HCS** for **HB 364** to the Committee on Governmental Accountability and Fiscal Oversight.

HB 46, introduced by Representatives Viebrock and Stevenson, entitled:

An Act to repeal section 578.018, RSMo, and to enact in lieu thereof one new section relating to impoundment of animals.

Was called from the Informal Calendar and taken up by Senator Stouffer.

At the request of Senator Stouffer, **HB 46** was placed on the Informal Calendar.

President Pro Tem Gibbons assumed the Chair.

SIGNING OF BILLS

The President Pro Tem announced that all other business would be suspended and **SCS** for **HB 41**, having passed both branches of the General Assembly, would be read at length by the Secretary, and if no objections be made, the bill would be signed by the President Pro Tem to the end that it may become law. No objections being made, the bill was so read by the Secretary and signed by the President Pro Tem.

Senator Gross assumed the Chair.

CONCURRENT RESOLUTIONS

Senator Ridgeway moved that **HCR 11** be taken up for adoption, which motion prevailed.

On motion of Senator Ridgeway, **HCR 11** was adopted by the following vote:

YEAS—Senators

Barnitz	Bartle	Callahan	Champion
Clemens	Coleman	Crowell	Days
Engler	Gibbons	Goodman	Graham
Green	Griesheimer	Gross	Justus
Kennedy	Koster	Lager	Loudon
Mayer	McKenna	Nodler	Purgason
Ridgeway	Rupp	Shields	Shoemyer
Smith	Stouffer	Vogel	Wilson—32

NAYS—Senators—None

Absent—Senators

Bray	Scott—2	

Absent with leave—Senators—None

Vacancies—None

Senator Koster moved that **HCR 30** be taken up for adoption, which motion prevailed.

On motion of Senator Koster, **HCR 30** was adopted by the following vote:

YEAS—Senators

Barnitz	Bartle	Bray	Callahan
Champion	Clemens	Coleman	Crowell
Days	Engler	Gibbons	Goodman
Graham	Green	Griesheimer	Gross
Justus	Kennedy	Koster	Lager
Loudon	Mayer	McKenna	Nodler
Purgason	Ridgeway	Rupp	Shields
Shoemyer	Smith	Stouffer	Vogel
Wilson—33			

NAYS—Senators—None

Absent—Senator Scott—1

Absent with leave—Senators—None

Vacancies—None

PRIVILEGED MOTIONS

Senator Rupp moved that **SCS** for **SB 66**, with **HA 1** and **HA 2**, be taken up for 3rd reading and final passage, which motion prevailed.

HA 1 was taken up.

Senator Rupp moved that the above amendment be adopted, which motion prevailed by the following vote:

YEAS—Senators

Barnitz	Bartle	Bray	Callahan
Clemens	Coleman	Crowell	Days
Engler	Goodman	Graham	Green
Griesheimer	Gross	Justus	Kennedy
Lager	Loudon	Mayer	McKenna
Nodler	Ridgeway	Rupp	Shields
Shoemyer	Smith	Stouffer	Vogel
Wilson—29			

NAYS—Senators

Purgason	Scott—2	

Absent—Senators

Champion	Gibbons	Koster—3

Absent with leave—Senators—None

Vacancies—None

HA 2 was taken up.

Senator Rupp moved that the above amendment be adopted, which motion prevailed by the following vote:

YEAS—Senators

Barnitz	Bartle	Bray	Callahan
Clemens	Coleman	Crowell	Days
Engler	Gibbons	Goodman	Graham
Green	Griesheimer	Gross	Justus
Kennedy	Koster	Lager	Loudon
Mayer	McKenna	Nodler	Ridgeway
Rupp	Scott	Shields	Shoemyer
Smith	Stouffer	Vogel	Wilson—32

NAYS—Senator Purgason—1

Absent—Senator Champion—1

Absent with leave—Senators—None

Vacancies—None

On motion of Senator Rupp, **SCS** for **SB 66**, as amended by **HA 1** and **HA 2**, was read the 3rd time and passed by the following vote:

YEAS—Senators

Barnitz	Bartle	Bray	Callahan
Champion	Clemens	Coleman	Crowell
Days	Engler	Gibbons	Goodman
Graham	Green	Griesheimer	Gross
Justus	Kennedy	Koster	Lager
Loudon	Mayer	McKenna	Nodler
Ridgeway	Rupp	Scott	Shields
Shoemyer	Smith	Stouffer	Vogel
Wilson—33			

NAYS—Senator Purgason—1

Absent—Senators—None

Absent with leave—Senators—None

Vacancies—None

The President declared the bill passed.

On motion of Senator Rupp, title to the bill was agreed to.

Senator Rupp moved that the vote by which the bill passed be reconsidered.

Senator Shields moved that motion lay on the table, which motion prevailed.

Bill ordered enrolled.

CONCURRENT RESOLUTIONS

Senator Gibbons moved that **HCR 16** be taken up for adoption, which motion prevailed.

On motion of Senator Gibbons, **HCR 16** was adopted by the following vote:

YEAS—Senators

Barnitz	Bartle	Bray	Callahan
Champion	Clemens	Coleman	Crowell
Days	Engler	Gibbons	Goodman
Graham	Green	Griesheimer	Gross
Justus	Kennedy	Koster	Lager
Loudon	Mayer	McKenna	Nodler
Purgason	Ridgeway	Rupp	Scott
Shields	Shoemyer	Smith	Stouffer
Vogel	Wilson—34		

NAYS—Senators—None

Absent—Senators—None

Absent with leave—Senators—None

Vacancies—None

CONFERENCE COMMITTEE REPORTS

Senator Goodman, on behalf of the conference committee appointed to act with a like committee from the House on **HCS** for **SCS** for **SB 64**, as amended, moved that the following conference committee report be taken up, which motion prevailed.

CONFERENCE COMMITTEE REPORT NO. 3 ON HOUSE COMMITTEE SUBSTITUTE FOR SENATE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 64

The Conference Committee appointed on House Committee Substitute for Senate Committee Substitute for Senate Bill No. 64, with House Amendment No. 3, House Amendment No. 1 to House Substitute Amendment No. 1 for House Amendment No. 4, House Substitute Amendment No. 1 to House Amendment No. 4 as amended, and House Substitute Amendment No. 1 for House

Amendment No. 5, begs leave to report that we, after free and fair discussion of the differences, have agreed to recommend and do recommend to the respective bodies as follows:

1. That the House recede from its position on House Committee Substitute for Senate Committee Substitute for Senate Bill No. 64, as amended;

2. That the Senate recede from its position on Senate Committee Substitute for Senate Bill No. 64;

3. That the attached Conference Committee Substitute No. 3 for House Committee Substitute for Senate Committee Substitute for Senate Bill No. 64, be Third Read and Finally Passed.

FOR THE SENATE:	FOR THE HOUSE:
/s/ Jack A.L. Goodman	/s/ Maynard Wallace
/s/ Charlie Shields	/s/ Jane Cunningham
/s/ Robert Mayer	/s/ Scott Muschany
/s/ Jeff Smith	/s/ Joe Aull
/s/ Yvonne S. Wilson	/s/ Sara Lampe

Senator Goodman moved that the above conference committee report no. 3 be adopted, which motion prevailed by the following vote:

YEAS—Senators

Barnitz	Bartle	Bray	Callahan
Champion	Clemens	Coleman	Crowell
Days	Engler	Gibbons	Goodman
Graham	Green	Griesheimer	Gross
Justus	Kennedy	Koster	Lager
Loudon	Mayer	McKenna	Nodler
Purgason	Rupp	Scott	Shields
Shoemyer	Smith	Stouffer	Vogel
Wilson—33			

NAYS—Senator Ridgeway—1

Absent—Senators—None

Absent with leave—Senators—None

Vacancies—None

On motion of Senator Goodman, **CCS No. 3** for **HCS** for **SCS** for **SB 64**, entitled:

CONFERENCE COMMITTEE SUBSTITUTE NO. 3
FOR HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 64

An Act to repeal sections 160.041, 167.121, 171.031, and 171.033, RSMo, and to enact in lieu thereof five new sections relating to education.

Was read the 3rd time and passed by the following vote:

YEAS—Senators

Barnitz	Bartle	Bray	Callahan
Champion	Clemens	Coleman	Crowell
Days	Engler	Gibbons	Goodman
Graham	Green	Griesheimer	Gross
Justus	Kennedy	Koster	Lager
Loudon	Mayer	McKenna	Nodler
Purgason	Ridgeway	Rupp	Scott
Shields	Shoemyer	Smith	Stouffer
Vogel	Wilson—34		

NAYS—Senators—None

Absent—Senators—None

Absent with leave—Senators—None

Vacancies—None

The President declared the bill passed.

On motion of Senator Goodman, title to the bill was agreed to.

Senator Goodman moved that the vote by which the bill passed be reconsidered.

Senator Shields moved that motion lay on the table, which motion prevailed.

PRIVILEGED MOTIONS

Senator Rupp moved that **SS** for **SB 112**, with **HCS** as amended, be taken up for 3rd reading and final passage, which motion prevailed.

HCS for **SS** for **SB 112**, as amended, entitled:

HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE BILL NO. 112

An Act to repeal sections 160.900, 160.905,

160.910, 160.915, 160.920, 160.925, 160.930, 162.700, and 376.1218, RSMo, and to enact in lieu thereof eleven new sections relating to special education, with an expiration date for a certain section.

Was taken up.

Senator Rupp moved that **HCS** for **SS** for **SB 112**, as amended, be adopted.

Senator Griesheimer assumed the Chair.

Senator Wilson raised the point of order that **HA 3**, as adopted to the **HCS**, violates the single subject rule and goes beyond the scope of the bill.

The point of order was referred to the President Pro Tem who ruled it not well taken.

Senator Wilson moved that the Senate refuse to concur in **HCS** for **SS** for **SB 112**, as amended, and request the House to recede from its position or, failing to do so, grant the Senate a conference thereon, which motion failed.

Senator Rupp moved that **HCS** for **SS** for **SB 112**, as amended, be adopted, which motion prevailed by the following vote:

YEAS—Senators

Barnitz	Bartle	Bray	Callahan
Champion	Clemens	Coleman	Crowell
Days	Engler	Gibbons	Goodman
Graham	Green	Griesheimer	Gross
Justus	Kennedy	Koster	Lager
Loudon	Mayer	McKenna	Nodler
Purgason	Ridgeway	Rupp	Scott
Shields	Shoemyer	Smith	Stouffer
Vogel—33			

NAYS—Senator Wilson—1

Absent—Senators—None

Absent with leave—Senators—None

Vacancies—None

On motion of Senator Rupp, **HCS** for **SS** for **SB 112**, as amended, was read the 3rd time and passed by the following vote:

YEAS—Senators

Barnitz	Bartle	Bray	Callahan
Champion	Clemens	Coleman	Crowell
Days	Engler	Gibbons	Goodman
Graham	Green	Griesheimer	Gross
Justus	Kennedy	Koster	Lager
Loudon	Mayer	McKenna	Nodler
Purgason	Ridgeway	Rupp	Scott
Shields	Shoemyer	Smith	Stouffer
Vogel—33			

NAYS—Senator Wilson—1

Absent—Senators—None

Absent with leave—Senators—None

Vacancies—None

The President declared the bill passed.

On motion of Senator Rupp, title to the bill was agreed to.

Senator Rupp moved that the vote by which the bill passed be reconsidered.

Senator Shields moved that motion lay on the table, which motion prevailed.

Bill ordered enrolled.

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 Speaker has appointed the following conference committee to act with a like committee from the Senate on **HCS** for **SS** for **SCS** for **SB 429**, as amended. Representatives: Stream, Bruns, Cox, Roorda and Nasheed.

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 **SB 582**, entitled:

An Act to repeal sections 52.290, 52.312, 52.315, 52.317, 52.361, 52.370, 55.140, 55.190, 67.1003, 67.1360, 67.1451, 67.1461, 67.1545, 67.2500, 67.2505, 67.2510, 71.011, 71.012,

89.010, 89.400, 94.660, 135.010, 135.030, 137.106, 139.031, 139.140, 139.150, 139.210, 139.220, 140.050, 140.070, 140.080, 140.160, 140.230, 140.250, 140.260, 140.290, 140.310, 140.340, 140.405, 140.420, 140.730, 141.150, 141.440, 141.500, 141.540, 141.640, 143.431, 144.030, 144.070, 144.440, 144.517, 144.518, 165.071, and 320.093, RSMo, and section 67.2505 as enacted by conference committee substitute for senate substitute for senate committee substitute for house committee substitute for house bill nos. 795, 972, 1128 & 1161 merged with house substitute for senate committee substitute for senate bill no. 1155, ninety-second general assembly, second regular session, and section 67.2505, as enacted by senate substitute for senate committee substitute for house committee substitute for house bill no. 833 merged with house committee substitute for senate substitute for senate bill no. 732, ninety-second general assembly, second regular session and to enact in lieu thereof fifty-nine new sections relating to taxation.

With House Amendments Nos. 1, 2, 3, House Amendment No. 1 to House Amendment No. 4, House Amendment No. 4, as amended, House Amendment No. 5, House Amendment No. 1 to House Amendment No. 6, House Amendment No. 6, as amended, House Amendment Nos. 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16.

HOUSE AMENDMENT NO. 1

Amend House Committee Substitute for Senate Bill No. 582, Page 1, In the Title, Line 8, by inserting after "RSMo," the following: "and sections 99.820 and 99.825 as truly agreed to and finally passed in senate substitute for senate committee substitute for house committee substitute for house bill no. 327, ninety-fourth general assembly, first regular session,"; and

Further amend said bill, Page 2, Section A, Line 6, by inserting after "RSMo," the following: "and sections 99.820 and 99.825 as truly agreed to and finally passed in senate substitute for senate committee substitute for house committee substitute for house bill no. 327, ninety-fourth general assembly, first regular session,"; and

Further amend said bill, Page 29, Section 94.660, Line 65, by inserting after all of said line the following:

"99.820. 1. A municipality may:

(1) By ordinance introduced in the governing body of the municipality within fourteen to ninety days from the completion of the hearing required in section 99.825, approve redevelopment plans and redevelopment projects, and designate redevelopment project areas pursuant to the notice and hearing requirements of sections 99.800 to 99.865. No redevelopment project shall be approved unless a redevelopment plan has been approved and a redevelopment area has been designated prior to or concurrently with the approval of such redevelopment project and the area selected for the redevelopment project shall include only those parcels of real property and improvements thereon directly and substantially benefited by the proposed redevelopment project improvements;

(2) Make and enter into all contracts necessary or incidental to the implementation and furtherance of its redevelopment plan or project;

(3) Pursuant to a redevelopment plan, subject to any constitutional limitations, acquire by purchase, donation, lease or, as part of a redevelopment project, eminent domain, own, convey, lease, mortgage, or dispose of, land and other property, real or personal, or rights or interests therein, and grant or acquire licenses, easements and options with respect thereto, all in the manner and at such price the municipality or the commission determines is reasonably necessary to achieve the objectives of the redevelopment plan. No conveyance, lease, mortgage, disposition of land or other property, acquired by the municipality, or agreement relating to the development of the property shall be made except

upon the adoption of an ordinance by the governing body of the municipality. Each municipality or its commission shall establish written procedures relating to bids and proposals for implementation of the redevelopment projects. Furthermore, no conveyance, lease, mortgage, or other disposition of land or agreement relating to the development of property shall be made without making public disclosure of the terms of the disposition and all bids and proposals made in response to the municipality's request. Such procedures for obtaining such bids and proposals shall provide reasonable opportunity for any person to submit alternative proposals or bids;

(4) Within a redevelopment area, clear any area by demolition or removal of existing buildings and structures;

(5) Within a redevelopment area, renovate, rehabilitate, or construct any structure or building;

(6) Install, repair, construct, reconstruct, or relocate streets, utilities, and site improvements essential to the preparation of the redevelopment area for use in accordance with a redevelopment plan;

(7) Within a redevelopment area, fix, charge, and collect fees, rents, and other charges for the use of any building or property owned or leased by it or any part thereof, or facility therein;

(8) Accept grants, guarantees, and donations of property, labor, or other things of value from a public or private source for use within a redevelopment area;

(9) Acquire and construct public facilities within a redevelopment area;

(10) Incur redevelopment costs and issue obligations;

(11) Make payment in lieu of taxes, or a portion thereof, to taxing districts;

(12) Disburse surplus funds from the special allocation fund to taxing districts as follows:

(a) Such surplus payments in lieu of taxes shall be distributed to taxing districts within the redevelopment area which impose ad valorem taxes on a basis that is proportional to the current collections of revenue which each taxing district receives from real property in the redevelopment area;

(b) Surplus economic activity taxes shall be distributed to taxing districts in the redevelopment area which impose economic activity taxes, on a basis that is proportional to the amount of such economic activity taxes the taxing district would have received from the redevelopment area had tax increment financing not been adopted;

(c) Surplus revenues, other than payments in lieu of taxes and economic activity taxes, deposited in the special allocation fund, shall be distributed on a basis that is proportional to the total receipt of such other revenues in such account in the year prior to disbursement;

(13) If any member of the governing body of the municipality, a member of a commission established pursuant to subsection 2 of this section, or an employee or consultant of the municipality, involved in the planning and preparation of a redevelopment plan, or redevelopment project for a redevelopment area or proposed redevelopment area, owns or controls an interest, direct or indirect, in any property included in any redevelopment area, or proposed redevelopment area, which property is designated to be acquired or improved pursuant to a redevelopment project, he or she shall disclose the same in writing to the clerk of the municipality, and shall also so disclose the dates, terms, and conditions of any disposition of any such interest, which disclosures shall be acknowledged by the governing body of the municipality and entered upon the minutes books of the governing body of the municipality. If an individual holds such an interest, then that individual shall refrain from any further official involvement in regard to such redevelopment plan, redevelopment project or redevelopment area, from

voting on any matter pertaining to such redevelopment plan, redevelopment project or redevelopment area, or communicating with other members concerning any matter pertaining to that redevelopment plan, redevelopment project or redevelopment area. Furthermore, no such member or employee shall acquire any interest, direct or indirect, in any property in a redevelopment area or proposed redevelopment area after either (a) such individual obtains knowledge of such plan or project, or (b) first public notice of such plan, project or area pursuant to section 99.830, whichever first occurs;

(14) Charge as a redevelopment cost the reasonable costs incurred by its clerk or other official in administering the redevelopment project. The charge for the clerk's or other official's costs shall be determined by the municipality based on a recommendation from the commission, created pursuant to this section.

2. Prior to adoption of an ordinance approving the designation of a redevelopment area or approving a redevelopment plan or redevelopment project, the municipality shall create a commission of nine persons if the municipality is a county or a city not within a county and not a first class county with a charter form of government with a population in excess of nine hundred thousand, and eleven persons if the municipality is not a county and not in a first class county with a charter form of government having a population of more than nine hundred thousand, and twelve persons if the municipality is located in or is a first class county with a charter form of government having a population of more than nine hundred thousand, to be appointed as follows:

(1) In all municipalities two members shall be appointed by the school boards whose districts are included within the redevelopment plan or redevelopment area. Such members shall be appointed in any manner agreed upon by the affected districts;

(2) In all municipalities one member shall be appointed, in any manner agreed upon by the affected districts, to represent all other districts levying ad valorem taxes within the area selected for a redevelopment project or the redevelopment area, excluding representatives of the governing body of the municipality;

(3) In all municipalities six members shall be appointed by the chief elected officer of the municipality, with the consent of the majority of the governing body of the municipality;

(4) In all municipalities which are not counties and not in a first class county with a charter form of government having a population in excess of nine hundred thousand, two members shall be appointed by the county of such municipality in the same manner as members are appointed in subdivision (3) of this subsection;

(5) In a municipality which is a county with a charter form of government having a population in excess of nine hundred thousand, three members shall be appointed by the cities in the county which have tax increment financing districts in a manner in which the cities shall agree;

(6) In a municipality which is located in the first class county with a charter form of government having a population in excess of nine hundred thousand, three members shall be appointed by the county of such municipality in the same manner as members are appointed in subdivision (3) of this subsection;

(7) **Effective January 1, 2008, in a municipality which is in a county under the authority of the East-West Gateway Council of Governments, except any municipality in any county of the first classification with more than ninety-three thousand eight hundred but fewer than ninety-three thousand nine hundred inhabitants, the municipality shall create a commission in the same manner as the commission for any county with a charter form of government and with more than one million inhabitants, such commission shall have twelve**

members with two such members appointed by the school boards whose districts are included in the county in a manner in which such school boards agree, with one such member to represent all other districts levying ad valorem taxes in a manner in which all such districts agree, six such members appointed either by the county executive or county commissioner, and three such members appointed by the cities in the county which have tax increment financing districts in a manner in which the cities shall agree;

(8) Effective January 1, 2008, when any city, town, or village under the authority of the East-West Gateway Council of Governments desires to implement a tax increment financing project, such city, town, or village shall first obtain the permission of the county tax increment financing commission created in this subsection within which the city, town, or village is located. In the event such commission votes in opposition to the redevelopment project, such redevelopment project shall not be approved unless at least two-thirds of the governing body of the city, town, or village votes to approve such project;

(9) At the option of the members appointed by the municipality, the members who are appointed by the school boards and other taxing districts may serve on the commission for a term to coincide with the length of time a redevelopment project, redevelopment plan or designation of a redevelopment area is considered for approval by the commission, or for a definite term pursuant to this subdivision. If the members representing school districts and other taxing districts are appointed for a term coinciding with the length of time a redevelopment project, plan or area is approved, such term shall terminate upon final approval of the project, plan or designation of the area by the governing body of the municipality. Thereafter the commission shall consist of the six members appointed by the municipality, except that members representing school boards and other taxing districts shall be appointed as provided in this section prior to any amendments to any redevelopment plans, redevelopment projects or designation of a redevelopment area. If any school district or other taxing jurisdiction fails to appoint members of the commission within thirty days of receipt of written notice of a proposed redevelopment plan, redevelopment project or designation of a redevelopment area, the remaining members may proceed to exercise the power of the commission. Of the members first appointed by the municipality, two shall be designated to serve for terms of two years, two shall be designated to serve for a term of three years and two shall be designated to serve for a term of four years from the date of such initial appointments. Thereafter, the members appointed by the municipality shall serve for a term of four years, except that all vacancies shall be filled for unexpired terms in the same manner as were the original appointments.

3. The commission, subject to approval of the governing body of the municipality, may exercise the powers enumerated in sections 99.800 to 99.865, except final approval of plans, projects and designation of redevelopment areas. The commission shall hold public hearings and provide notice pursuant to sections 99.825 and 99.830. The commission shall vote on all proposed redevelopment plans, redevelopment projects and designations of redevelopment areas, and amendments thereto, within thirty days following completion of the hearing on any such plan, project or designation and shall make recommendations to the governing body within ninety days of the hearing referred to in section 99.825 concerning the adoption of or amendment to redevelopment plans and redevelopment projects and the designation of redevelopment areas. The requirements of subsection 2 of this section and this subsection shall not apply to redevelopment projects upon which the required hearings have been duly held prior to August 31, 1991.

99.825. 1. Prior to the adoption of an ordinance proposing the designation of a

redevelopment area, or approving a redevelopment plan or redevelopment project, the commission shall fix a time and place for a public hearing and notify each taxing district located wholly or partially within the boundaries of the proposed redevelopment area, plan or project. At the public hearing any interested person or affected taxing district may file with the commission written objections to, or comments on, and may be heard orally in respect to, any issues embodied in the notice. The commission shall hear and consider all protests, objections, comments and other evidence presented at the hearing. The hearing may be continued to another date without further notice other than a motion to be entered upon the minutes fixing the time and place of the subsequent hearing. Prior to the conclusion of the hearing, changes may be made in the redevelopment plan, redevelopment project, or redevelopment area, provided that each affected taxing district is given written notice of such changes at least seven days prior to the conclusion of the hearing. After the public hearing but prior to the adoption of an ordinance approving a redevelopment plan or redevelopment project, or designating a redevelopment area, changes may be made to the redevelopment plan, redevelopment projects or redevelopment areas without a further hearing, if such changes do not enlarge the exterior boundaries of the redevelopment area or areas, and do not substantially affect the general land uses established in the redevelopment plan or substantially change the nature of the redevelopment projects, provided that notice of such changes shall be given by mail to each affected taxing district and by publication in a newspaper of general circulation in the area of the proposed redevelopment not less than ten days prior to the adoption of the changes by ordinance. After the adoption of an ordinance approving a redevelopment plan or redevelopment project, or designating a redevelopment area, no ordinance shall be adopted altering the exterior boundaries, affecting the general land uses established pursuant to the redevelopment plan or changing the nature of the redevelopment project without complying with the procedures provided in this section pertaining to the initial approval of a redevelopment plan or redevelopment project and designation of a redevelopment area. Hearings with regard to a redevelopment project, redevelopment area, or redevelopment plan may be held simultaneously.

2. **Effective January 1, 2008, if, after concluding the hearing required under this section, the commission makes a recommendation under section 99.820 in opposition to a proposed redevelopment plan, redevelopment project, or designation of a redevelopment area, or any amendments thereto, a municipality desiring to approve such project, plan, designation, or amendments shall do so only upon a two-thirds majority vote of the governing body of such municipality.**

3. Tax incremental financing projects within an economic development area shall apply to and fund only the following infrastructure projects: highways, roads, streets, bridges, sewers, traffic control systems and devices, water distribution and supply systems, curbing, sidewalks and any other similar public improvements, but in no case shall it include buildings."; and

Further amend said bill, Page 78, Section 1, Line 4, by inserting after all of said line the following:

"**[**99.820. 1. A municipality may:

(1) By ordinance introduced in the governing body of the municipality within fourteen to ninety days from the completion of the hearing required in section 99.825, approve redevelopment plans and redevelopment projects, and designate redevelopment project areas pursuant to the notice and hearing requirements of sections 99.800 to 99.865. No redevelopment project shall

be approved unless a redevelopment plan has been approved and a redevelopment area has been designated prior to or concurrently with the approval of such redevelopment project and the area selected for the redevelopment project shall include only those parcels of real property and improvements thereon directly and substantially benefited by the proposed redevelopment project improvements;

(2) Make and enter into all contracts necessary or incidental to the implementation and furtherance of its redevelopment plan or project;

(3) Pursuant to a redevelopment plan, subject to any constitutional limitations, acquire by purchase, donation, lease or, as part of a redevelopment project, eminent domain, own, convey, lease, mortgage, or dispose of, land and other property, real or personal, or rights or interests therein, and grant or acquire licenses, easements and options with respect thereto, all in the manner and at such price the municipality or the commission determines is reasonably necessary to achieve the objectives of the redevelopment plan. No conveyance, lease, mortgage, disposition of land or other property, acquired by the municipality, or agreement relating to the development of the property shall be made except upon the adoption of an ordinance by the governing body of the municipality. Each municipality or its commission shall establish written procedures relating to bids and proposals for implementation of the redevelopment projects. Furthermore, no conveyance, lease, mortgage, or other disposition of land or agreement relating to the development of property shall be made without making public disclosure of the terms of the disposition and all bids and proposals made in response to the municipality's request. Such procedures for obtaining such bids and proposals shall provide reasonable opportunity for any person to submit alternative proposals or bids;

(4) Within a redevelopment area, clear any area by demolition or removal of existing buildings and structures;

(5) Within a redevelopment area, renovate, rehabilitate, or construct any structure or building;

(6) Install, repair, construct, reconstruct, or relocate streets, utilities, and site improvements essential to the preparation of the redevelopment area for use in accordance with a redevelopment plan;

(7) Within a redevelopment area, fix, charge, and collect fees, rents, and other charges for the use of any building or property owned or leased by it or any part thereof, or facility therein;

(8) Accept grants, guarantees, and donations of property, labor, or other things of value from a public or private source for use within a redevelopment area;

(9) Acquire and construct public facilities within a redevelopment area;

(10) Incur redevelopment costs and issue obligations;

(11) Make payment in lieu of taxes, or a portion thereof, to taxing districts;

(12) Disburse surplus funds from the special allocation fund to taxing districts as follows:

(a) Such surplus payments in lieu of taxes shall be distributed to taxing

districts within the redevelopment area which impose ad valorem taxes on a basis that is proportional to the current collections of revenue which each taxing district receives from real property in the redevelopment area;

(b) Surplus economic activity taxes shall be distributed to taxing districts in the redevelopment area which impose economic activity taxes, on a basis that is proportional to the amount of such economic activity taxes the taxing district would have received from the redevelopment area had tax increment financing not been adopted;

(c) Surplus revenues, other than payments in lieu of taxes and economic activity taxes, deposited in the special allocation fund, shall be distributed on a basis that is proportional to the total receipt of such other revenues in such account in the year prior to disbursement;

(13) If any member of the governing body of the municipality, a member of a commission established pursuant to subsection 2 of this section, or an employee or consultant of the municipality, involved in the planning and preparation of a redevelopment plan, or redevelopment project for a redevelopment area or proposed redevelopment area, owns or controls an interest, direct or indirect, in any property included in any redevelopment area, or proposed redevelopment area, which property is designated to be acquired or improved pursuant to a redevelopment project, he or she shall disclose the same in writing to the clerk of the municipality, and shall also so disclose the dates, terms, and conditions of any disposition of any such interest, which disclosures shall be acknowledged by the governing body of the municipality and entered upon the minutes books of the governing body of the municipality. If an individual holds such an interest, then that individual shall refrain from any further official involvement in regard to such redevelopment plan, redevelopment project or redevelopment area, from voting on any matter pertaining to such redevelopment plan, redevelopment project or redevelopment area, or communicating with other members concerning any matter pertaining to that redevelopment plan, redevelopment project or redevelopment area. Furthermore, no such member or employee shall acquire any interest, direct or indirect, in any property in a redevelopment area or proposed redevelopment area after either (a) such individual obtains knowledge of such plan or project, or (b) first public notice of such plan, project or area pursuant to section 99.830, whichever first occurs;

(14) Charge as a redevelopment cost the reasonable costs incurred by its clerk or other official in administering the redevelopment project. The charge for the clerk's or other official's costs shall be determined by the municipality based on a recommendation from the commission, created pursuant to this section.

2. Prior to adoption of an ordinance approving the designation of a redevelopment area or approving a redevelopment plan or redevelopment project, the municipality shall create a commission of nine persons if the municipality is a county or a city not within a county and not a first class county with a charter form of government with a population in excess of nine hundred thousand, and eleven

persons if the municipality is not a county and not in a first class county with a charter form of government having a population of more than nine hundred thousand, and twelve persons if the municipality is located in or is a first class county with a charter form of government having a population of more than nine hundred thousand, to be appointed as follows:

(1) In all municipalities two members shall be appointed by the school boards whose districts are included within the redevelopment plan or redevelopment area. Such members shall be appointed in any manner agreed upon by the affected districts;

(2) In all municipalities one member shall be appointed, in any manner agreed upon by the affected districts, to represent all other districts levying ad valorem taxes within the area selected for a redevelopment project or the redevelopment area, excluding representatives of the governing body of the municipality;

(3) In all municipalities six members shall be appointed by the chief elected officer of the municipality, with the consent of the majority of the governing body of the municipality;

(4) In all municipalities which are not counties and not in a first class county with a charter form of government having a population in excess of nine hundred thousand, two members shall be appointed by the county of such municipality in the same manner as members are appointed in subdivision (3) of this subsection;

(5) In a municipality which is a county with a charter form of government having a population in excess of nine hundred thousand, three members shall be appointed by the cities in the county which have tax increment financing districts in a manner in which the cities shall agree;

(6) In a municipality which is located in the first class county with a charter form of government having a population in excess of nine hundred thousand, three members shall be appointed by the county of such municipality in the same manner as members are appointed in subdivision (3) of this subsection;

(7) **In a municipality which is in a county under the authority of the East-West Gateway Council of Governments, except any municipality in any county of the first classification with more than ninety-three thousand eight hundred but fewer than ninety-three thousand nine hundred inhabitants, the municipality shall create a commission in the same manner as the commission for a first class county with a charter form of government having a population of more than nine hundred thousand, such commission shall have twelve members with two such members appointed by the school boards whose districts are included in the county in a manner in which such school boards agree, with one such member to represent all other districts levying ad valorem taxes in a manner in which all such districts agree, three such members appointed either by the county executive or county commissioner, and six such members appointed by the cities in the county which have tax increment financing districts in a manner in which the cities shall agree;**

(8) When any city, town, or village under the authority of the East-West Gateway Council of Governments desires to implement a tax increment financing project, such city, town, or village shall first obtain the permission of the county tax increment financing commission created in this subsection within which the city, town, or village is located;

(9) At the option of the members appointed by the municipality, the members who are appointed by the school boards and other taxing districts may serve on the commission for a term to coincide with the length of time a redevelopment project, redevelopment plan or designation of a redevelopment area is considered for approval by the commission, or for a definite term pursuant to this subdivision. If the members representing school districts and other taxing districts are appointed for a term coinciding with the length of time a redevelopment project, plan or area is approved, such term shall terminate upon final approval of the project, plan or designation of the area by the governing body of the municipality. Thereafter the commission shall consist of the six members appointed by the municipality, except that members representing school boards and other taxing districts shall be appointed as provided in this section prior to any amendments to any redevelopment plans, redevelopment projects or designation of a redevelopment area. If any school district or other taxing jurisdiction fails to appoint members of the commission within thirty days of receipt of written notice of a proposed redevelopment plan, redevelopment project or designation of a redevelopment area, the remaining members may proceed to exercise the power of the commission. Of the members first appointed by the municipality, two shall be designated to serve for terms of two years, two shall be designated to serve for a term of three years and two shall be designated to serve for a term of four years from the date of such initial appointments. Thereafter, the members appointed by the municipality shall serve for a term of four years, except that all vacancies shall be filled for unexpired terms in the same manner as were the original appointments.

3. The commission, subject to approval of the governing body of the municipality, may exercise the powers enumerated in sections 99.800 to 99.865, except final approval of plans, projects and designation of redevelopment areas. The commission shall hold public hearings and provide notice pursuant to sections 99.825 and 99.830. The commission shall vote on all proposed redevelopment plans, redevelopment projects and designations of redevelopment areas, and amendments thereto, within thirty days following completion of the hearing on any such plan, project or designation and shall make recommendations to the governing body within ninety days of the hearing referred to in section 99.825 concerning the adoption of or amendment to redevelopment plans and redevelopment projects and the designation of redevelopment areas. The requirements of subsection 2 of this section and this subsection shall not apply to redevelopment projects upon which the required hearings have been duly held prior to August 31, 1991.**]**

[99.825. 1. Prior to the adoption of an

ordinance proposing the designation of a redevelopment area, or approving a redevelopment plan or redevelopment project, the commission shall fix a time and place for a public hearing and notify each taxing district located wholly or partially within the boundaries of the proposed redevelopment area, plan or project. At the public hearing any interested person or affected taxing district may file with the commission written objections to, or comments on, and may be heard orally in respect to, any issues embodied in the notice. The commission shall hear and consider all protests, objections, comments and other evidence presented at the hearing. The hearing may be continued to another date without further notice other than a motion to be entered upon the minutes fixing the time and place of the subsequent hearing. Prior to the conclusion of the hearing, changes may be made in the redevelopment plan, redevelopment project, or redevelopment area, provided that each affected taxing district is given written notice of such changes at least seven days prior to the conclusion of the hearing. After the public hearing but prior to the adoption of an ordinance approving a redevelopment plan or redevelopment project, or designating a redevelopment area, changes may be made to the redevelopment plan, redevelopment projects or redevelopment areas without a further hearing, if such changes do not enlarge the exterior boundaries of the redevelopment area or areas, and do not substantially affect the general land uses established in the redevelopment plan or substantially change the nature of the redevelopment projects, provided that notice of such changes shall be given by mail to each affected taxing district and by publication in a newspaper of general circulation in the area of the proposed redevelopment not less than ten days prior to the adoption of the changes by ordinance. After the adoption of an ordinance approving a redevelopment plan or redevelopment project, or designating a redevelopment area, no ordinance shall be adopted altering the exterior boundaries, affecting the general land uses established pursuant to the redevelopment plan or changing the nature of the redevelopment project without complying with the procedures provided in this section pertaining to the initial approval of a redevelopment plan or redevelopment project and designation of a redevelopment area. Hearings with regard to a redevelopment project, redevelopment area, or redevelopment plan may be held simultaneously.

2. **If, after concluding the hearing required under this section, the commission makes a recommendation under section 99.820 in opposition to a proposed redevelopment plan, redevelopment project, or designation of a redevelopment area, or any amendments thereto, a municipality desiring to approve such project, plan, designation, or amendments shall do so only upon a two-thirds majority vote of the governing body of such municipality.**

3. Tax incremental financing projects within an economic development area shall apply to and fund only the following infrastructure projects: highways, roads, streets, bridges, sewers, traffic control systems and devices, water distribution and supply systems, curbing, sidewalks and any other similar public improvements, but in no case shall it

include buildings.**]**"; and

Further amend said title, enacting clause and intersectional references accordingly.

HOUSE AMENDMENT NO. 2

Amend House Committee Substitute for Senate Bill No. 582, Section 67.1360, Page 8, Lines 92 and 93, by deleting all of said lines and inserting in lieu thereof the following:

"**attendance for school year 2006 between one thousand nine hundred and two thousand;**"; and

Further amend said bill, Section 135.010, Pages 29 to 31, by deleting all of said section; and

Further amend said bill, Section 135.030, Page 32, Lines 9 to 15, by deleting all of said lines and inserting in lieu thereof the following: "**shall be the sum of twenty-seven thousand five hundred dollars.**"; and

Further amend said bill, section, and page, Lines 28 to 33, by deleting all of said lines and inserting in lieu thereof the following: "**fourteen thousand three hundred dollars.**"; and

Further amend said bill, Section 137.106, Pages 36 to 43, by removing all of said section from the bill; and

Further amend said bill, Section 144.055, Page 71, Line 8, by inserting after the word, "RSMo" the following: "**, and such transaction is certified for sales tax exemption by the department of economic development**"; and

Further amend said bill, Section 320.093, Page 77, Line 40, by deleting the number, "**2011**" and inserting in lieu thereof the number, "**2010**"; 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 Bill No. 582, Section 135.090, Page 34, Line 38, by inserting after all of said section, the following:

"135.327. 1. As used in this section, the following terms shall mean:

(1) "CASA", an entity which receives funding from the court-appointed special advocate fund established under section 476.777, RSMo**, including an association based in this state, affiliated with a national association, organized to provide support to entities receiving funding from the court appointed special advocate fund**;

(2) "Child advocacy centers", the regional child assessment centers listed in subsection 2 of section 210.001, RSMo;

(3) "Contribution", amount of donation to qualified agency;

(4) "Crisis care **center**", **entities contracted with this state which provide** temporary care for children whose age ranges from birth through seventeen years of age whose parents or guardian are experiencing an unexpected and unstable or serious condition that requires immediate action resulting in short term care, usually three to five continuous, uninterrupted days, for children who may be at risk for child abuse, neglect, or in an emergency situation;

(5) "Department", the department of revenue;

(6) "Director", the director of the department of revenue;

(7) "Qualified agency", CASA, child advocacy centers, or a crisis care center;

(8) "Tax liability", the tax due under chapter 143, RSMo, other than taxes withheld under sections 143.191 to 143.265, RSMo.

2. Any person residing in this state who legally adopts a special needs child on or after January 1, 1988, and before January 1, 2000, shall be eligible to receive a tax credit of up to ten thousand dollars for nonrecurring adoption expenses for each child adopted that may be

applied to taxes due under chapter 143, RSMo. Any business entity providing funds to an employee to enable that employee to legally adopt a special needs child shall be eligible to receive a tax credit of up to ten thousand dollars for nonrecurring adoption expenses for each child adopted that may be applied to taxes due under such business entity's state tax liability, except that only one ten thousand dollar credit is available for each special needs child that is adopted.

3. Any person residing in this state who proceeds in good faith with the adoption of a special needs child on or after January 1, 2000, shall be eligible to receive a tax credit of up to ten thousand dollars for nonrecurring adoption expenses for each child that may be applied to taxes due under chapter 143, RSMo; provided, however, that beginning on or after July 1, 2004, two million dollars of the tax credits allowed shall be allocated for the adoption of special needs children who are residents or wards of residents of this state at the time the adoption is initiated. Any business entity providing funds to an employee to enable that employee to proceed in good faith with the adoption of a special needs child shall be eligible to receive a tax credit of up to ten thousand dollars for nonrecurring adoption expenses for each child that may be applied to taxes due under such business entity's state tax liability, except that only one ten thousand dollar credit is available for each special needs child that is adopted.

4. Individuals and business entities may claim a tax credit for their total nonrecurring adoption expenses in each year that the expenses are incurred. A claim for fifty percent of the credit shall be allowed when the child is placed in the home. A claim for the remaining fifty percent shall be allowed when the adoption is final. The total of these tax credits shall not exceed the maximum limit of ten thousand dollars per child. The cumulative amount of tax credits which may be claimed by taxpayers claiming the credit for nonrecurring adoption expenses in any one fiscal year prior to July 1, 2004, shall not exceed two million dollars. The cumulative amount of tax credits that may be claimed by taxpayers claiming the credit for nonrecurring adoption expenses shall not be **[**less**]** **more** than four million dollars but may be increased by appropriation in any **[**one**]** fiscal year beginning on or after July 1, 2004; provided, however, that by December thirty-first following each July, if less than two million dollars in credits have been issued for adoption of special needs children who are not residents or wards of residents of this state at the time the adoption is initiated, the remaining amount of the cap shall be available for the adoption of special needs children who are residents or wards of residents of this state at the time the adoption is initiated. For all fiscal years beginning on or after July 1, 2006, applications to claim the adoption tax credit for special needs children who are residents or wards of residents of this state at the time the adoption is initiated shall be filed between July first and April fifteenth of each fiscal year. For all fiscal years beginning on or after July 1, 2006, applications to claim the adoption tax credit for special needs children who are not residents or wards of residents of this state at the time the adoption is initiated shall be filed between July first and December thirty-first of each fiscal year.

5. Notwithstanding any provision of law to the contrary, any individual or business entity may assign, transfer or sell tax credits allowed in this section. Any sale of tax credits claimed pursuant to this section shall be at a discount rate of seventy-five percent or greater of the amount sold.

6. The director of revenue shall establish a procedure by which, for each fiscal year, the cumulative amount of tax credits authorized in this section is equally apportioned among all taxpayers within the two categories specified in subsection 3 of this section claiming the credit in that fiscal year. To the maximum extent possible, the director of revenue shall establish the procedure described in this subsection in such a manner as to ensure that taxpayers within each category can claim all the tax credits possible up to the cumulative

amount of tax credits available for the fiscal year.

7. For all tax years beginning on or after January 1, 2006, a tax credit may be claimed in an amount equal to up to fifty percent of a verified contribution to a qualified agency and shall be named the children in crisis tax credit. The minimum amount of any tax credit issued shall not be less than fifty dollars and shall be applied to taxes due under chapter 143, RSMo, excluding sections 143.191 to 143.265, RSMo. A contribution verification shall be issued to the taxpayer by the agency receiving the contribution. Such contribution verification shall include the taxpayer's name, Social Security number, amount of tax credit, amount of contribution, the name and address of the agency receiving the credit, and the date the contribution was made. The tax credit provided under this subsection shall be initially filed **[**in**]** **for** the year in which the verified contribution is made.

8. The cumulative amount of the tax credits redeemed shall not exceed the unclaimed portion of the resident adoption category allocation as described in this section. The director of revenue shall determine the unclaimed portion available. The amount available shall be equally divided among the **[**agencies meeting the definition of qualified agency**]** **three qualified agencies: CASA, child advocacy centers, or crisis care centers** to be used towards tax credits issued. In the event tax credits claimed under one agency do not total the allocated amount for that agency, the unused portion for that agency will be made available to the remaining agencies **[**as needed**]** **equally**. In the event the total amount of tax credits claimed **for any one agency** exceeds the amount available **for that agency**, the amount redeemed shall and will be apportioned equally to all eligible taxpayers claiming the credit **under that agency**. After all children in crisis tax credits have been claimed, any remaining unclaimed portion of the reserved allocation for adoptions of special needs children who are residents or wards of residents of this state shall then be made available for adoption tax credit claims of special needs children who are not residents or wards of residents of this state at the time the adoption is initiated.

9. Prior to December thirty-first of each year, the entities listed under the definition of qualified agency shall apply to the department of social services in order to verify their qualified agency status. Upon a determination that the agency is eligible to be a qualified agency, the department of social services shall provide a letter of eligibility to such agency. No later than February first of each year, the department of social services shall provide a list of qualified agencies to the department of revenue. All tax credit applications to claim the children in crisis tax credit shall be filed between July first and April fifteenth of each fiscal year. A taxpayer shall apply for the children in crisis tax credit by attaching a copy of the contribution verification provided by a qualified agency to such taxpayer's income tax return.

10. The tax credits provided under this section shall be subject to the provisions of section 135.333.

11. (1) In the event a credit denial, due to lack of available funds, causes a balance-due notice to be generated by the department of revenue, or any other redeeming agency, the taxpayer will not be held liable for any penalty or interest, provided the balance is paid, or approved payment arrangements have been made, within sixty days from the notice of denial.

(2) In the event the balance is not paid within sixty days from the notice of denial, the remaining balance shall be due and payable under the provisions of chapter 143, RSMo.

12. The director shall calculate the level of appropriation necessary to issue all tax credits for nonresident special needs adoptions applied for under this section and provide such calculation to the speaker of the house of representatives, the president pro tempore of the senate, and the director of the division of budget and planning in

the office of administration by January thirty-first of each year.

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

14. Pursuant to section 23.253, RSMo, of the Missouri sunset act:

(1) The provisions of the new program authorized under subsections 7 to 12 of this section shall automatically sunset six years after August 28, 2006, unless reauthorized by an act of the general assembly; and

(2) If such program is reauthorized, the program authorized under this section shall automatically sunset twelve years after the effective date of the reauthorization of this section; and

(3) This section shall terminate on September first of the calendar year immediately following the calendar year in which the program authorized under this section is sunset."; and

Further amend said bill, Section 135.610, Page 36, Line 66, by inserting after all of said section, the following:

"135.1150. 1. This section shall be known and may be cited as the "Residential Treatment Agency Tax Credit Act".

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

(1) "Certificate", a tax credit certificate issued under this section;

(2) "Department", the Missouri department of social services;

(3) "Eligible **[**monetary**]** donation", donations received from a taxpayer by an agency that are used solely to provide direct care services to children who are residents of this state. **Eligible donations may include cash, publicly traded stocks and bonds, and real estate that will be valued and documented according to rules promulgated by the department of social services.** For purposes of this section, "direct care services" include but are not limited to increasing the quality of care and service for children through improved employee compensation and training;

(4) "Qualified residential treatment agency" or "agency", a residential care facility that is licensed under section 210.484, RSMo, accredited by the Council on Accreditation (COA), the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), or the Commission on Accreditation of Rehabilitation Facilities (CARF), and is under contract with the Missouri department of social services to provide treatment services for children who are residents or wards of residents of this state, and that receives eligible **[**monetary**]** donations. Any agency that operates more than one facility or at more than one location shall be eligible for the tax credit under this section only for any eligible **[**monetary donations**] donation** made to facilities or locations of the agency which are licensed and accredited;

(5) "Taxpayer", any of the following individuals or entities who make **an** eligible **[**monetary donations**] donation** to an agency:

(a) A person, firm, partner in a firm, corporation, or a shareholder in an S corporation doing business in the state of Missouri and subject to the state income tax imposed in chapter 143,

RSMo;

(b) A corporation subject to the annual corporation franchise tax imposed in chapter 147, RSMo;

(c) An insurance company paying an annual tax on its gross premium receipts in this state;

(d) Any other financial institution paying taxes to the state of Missouri or any political subdivision of this state under chapter 148, RSMo;

(e) An individual subject to the state income tax imposed in chapter 143, RSMo.

3. For all taxable years beginning on or after January 1, 2007, any taxpayer shall be allowed a credit against the taxes otherwise due under chapter 147, 148, or 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo, in an amount equal to fifty percent of the amount of an eligible **[**monetary**]** donation, subject to the restrictions in this section. The amount of the tax credit claimed shall not exceed the amount of the taxpayer's state income tax liability in the tax year for which the credit is claimed. Any amount of credit that the taxpayer is prohibited by this section from claiming in a tax year shall not be refundable, but may be carried forward to any of the taxpayer's four subsequent taxable years.

4. To claim the credit authorized in this section, an agency may submit to the department an application for the tax credit authorized by this section on behalf of taxpayers. The department shall verify that the agency has submitted the following items accurately and completely:

(1) A valid application in the form and format required by the department;

(2) A statement attesting to the eligible **[**monetary**]** donation received, which shall include the name and taxpayer identification number of the individual making the eligible **[**monetary**]** donation, the amount of the eligible **[**monetary**]** donation, and the date the eligible **[**monetary**]** donation was received by the agency; and

(3) Payment from the agency equal to the value of the tax credit for which application is made.

If the agency applying for the tax credit meets all criteria required by this subsection, the department shall issue a certificate in the appropriate amount.

5. An agency may apply for tax credits in an aggregate amount that does not exceed forty percent of the payments made by the department to the agency in the preceding twelve months.

6. Tax credits issued under this section may be assigned, transferred, sold, or otherwise conveyed, and the new owner of the tax credit shall have the same rights in the credit as the taxpayer. Whenever a certificate is assigned, transferred, sold, or otherwise conveyed, a notarized endorsement shall be filed with the department specifying the name and address of the new owner of the tax credit or the value of the credit.

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

8. Under section 23.253, RSMo, of the Missouri sunset act:

(1) The provisions of the new program authorized under this section shall automatically sunset six years after August 28, 2006, unless reauthorized by an act of the general assembly; and

(2) If such program is reauthorized, the program authorized under this section shall automatically sunset twelve years after the effective date of the reauthorization of this section; and

(3) This section shall terminate on September first of the calendar year immediately following the calendar year in which the program authorized under this section is sunset.

Section B. Because immediate action is necessary to ensure the appropriate allocation of the tax credits under the children in crisis tax credit program, the repeal and reenactment of section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the repeal and reenactment of section A of this act shall be in full force and effect upon its passage and approval."; and

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

HOUSE AMENDMENT NO. 1 TO
HOUSE AMENDMENT NO. 4

Amend House Amendment No. 4 to House Committee Substitute for Senate Bill No. 582, Page 20, Line 21, by inserting after the word, "**facility.]**" the following:

"Section B. The repeal of sections 143.006, 144.054, 144.605, 147.010 and the repeal and reenactment of section 620.1878 of section A of this act shall not become effective unless the truly agreed and finally passed Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill 327, Ninety-fourth General Assembly, First Regular Session is approved by the Governor and delivered to the Secretary of State."; 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 Bill No. 582, Page 1, in the Title, Line 8, by inserting after "RSMo" the following: "and sections 143.006, 144.054, 144.605, 147.010, and 620.1878 as truly agreed and finally passed in Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill 327, Ninety-fourth General Assembly, First Regular Session,"; and

Further amend said bill, Section A, Page 2, Line 6 by inserting after "RSMo" the following: "and sections 143.006, 144.054, 144.605, 147.010, and 620.1878 as truly agreed and finally passed in Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill 327, Ninety-fourth General Assembly, First Regular Session,"; and

Further amend said bill, Section 320.093, Page 78, Line 51 by inserting after all of said line the following:

"**[**620.1878. For the purposes of sections 620.1875 to 620.1890, the following terms shall mean:

(1) **"Approval", a document submitted by the department to the qualified company that states the benefits that may be provided by this program;**

(2) "Average wage", the new payroll divided by the number of new jobs;

[(2)**] (3)** "Commencement of operations", the starting date for the qualified company's first new employee, which must be no later than twelve months from the date of the **[**proposal**] approval**;

[(3)**] (4)** "County average wage", the average wages in each county as determined by the department for the most recently completed full calendar year. However, if the computed county average wage is above the statewide average wage, the statewide average wage shall be deemed the county average wage for such county **for the**

purpose of determining eligibility. The department shall publish the county average wage for each county at least annually**. Notwithstanding the provisions of this subdivision to the contrary, for any qualified company that in conjunction with their project is relocating employees from a Missouri county with a higher county average wage, the company shall obtain the endorsement of the governing body of the community from which jobs are being relocated or the county average wage for their project shall be the county average wage for the county from which the employees are being relocated**;

[(4)**] (5)** "Department", the Missouri department of economic development;

[(5)**] (6)** "Director", the director of the department of economic development;

[(6)**] (7)** "Employee", a person employed by a qualified company **on a full-time basis, who receives an annual salary equal to or less than the average salary for the county in which the employee is employed or deemed to be employed**;

[(7) "Full-time equivalent employees", employees of the qualified company converted to reflect an equivalent of the number of full-time, year-round employees. The method for converting part-time and seasonal employees into an equivalent number of full-time, year-round employees shall be published in a rule promulgated by the department as authorized in section 620.1884;**]**

(8) "Full-time**[**, year-round**]** employee", an employee of the **qualified** company that **[**works**] is scheduled to work** an average of at least thirty-five hours per week for a twelve-month period, and one for which the qualified company offers health insurance and pays at least fifty percent of such insurance premiums;

(9) "High-impact project", a qualified company that, within two years from commencement of operations, creates one hundred or more new jobs;

(10) "Local incentives", the present value of the dollar amount of direct benefit received by a qualified company for a project facility from one or more local political subdivisions, but shall not include loans or other funds provided to the qualified company that must be repaid by the qualified company to the political subdivision;

(11) "NAICS", the 1997 edition of the North American Industry Classification System as prepared by the Executive Office of the President, Office of Management and Budget. Any NAICS sector, subsector, industry group or industry identified in this section shall include its corresponding classification in subsequent federal industry classification systems;

(12) "New direct local revenue", the present value of the dollar amount of direct net new tax revenues of the local political subdivisions likely to be produced by the project over a ten-year period as calculated by the department**, excluding local earnings tax,** and net new utility revenues, provided the local incentives include a discount or other direct incentives from utilities owned or operated by the political subdivision;

(13) "New investment", the purchase or leasing of new tangible assets to be placed in operation at the project facility, which will be directly related to the new jobs;

(14) "New job", the number of full-time**[**, year-round**]** employees located at the project facility that exceeds the project facility base employment less any decrease in the number of full-time **[**equivalent**]** employees at related facilities below the related facility base employment**. No job that was created prior to the date of the notice of intent shall be deemed a new job**;

(15) "New payroll", **[**the amount of wages paid by a qualified company to employees in new jobs**] the amount of taxable wages of full-time employees, excluding owners, located at the**

project facility that exceeds the project facility base payroll. If full-time employment at related facilities is below the related facility base employment, any decrease in payroll for full-time employees at the related facilities below that related facility base payroll shall also be subtracted to determine new payroll;

(16) "Notice of intent", a form developed by the department, completed by the qualified company and submitted to the department which states the qualified company's intent to hire new jobs and request benefits under this program;

(17) "Percent of local incentives", the amount of local incentives divided by the amount of new direct local revenue;

(18) "Program", the Missouri quality jobs program provided in sections 620.1875 to 620.1890;

(19) "Project facility", the building used by a qualified company at which the new jobs and new investment will be located. A project facility may include separate buildings that are located within one mile of each other such that their purpose and operations are interrelated;

(20) "Project facility base employment", **the greater of the number of full-time employees located at the project facility on the date the notice of intent or** for the twelve-month period prior to the date of the **[**proposal**]** **notice of intent**, the average number of full-time **[**equivalent**]** employees located at the project facility. In the event the project facility has not been in operation for a full twelve-month period, **[**project facility base employment is**]** the average number of full-time **[**equivalent**]** employees for the number of months the project facility has been in operation prior to the date of the **[**proposal**]** **notice of intent**;

(21) **"Project facility base payroll", the total amount of taxable wages paid by the qualified company to full-time employees of the qualified company located at the project facility in the twelve months prior to the notice of intent, not including the payroll of the owners of the qualified company unless the qualified company is participating in an employee stock ownership plan. For purposes of calculating the benefits under this program, the amount of base payroll shall increase each year based on an appropriate measure, as determined by the department;**

(22) "Project period", the time period that the benefits are provided to a qualified company;

[(22) "Proposal", a document submitted by the department to the qualified company that states the benefits that may be provided by this program. The effective date of such proposal cannot be prior to the commencement of operations. The proposal shall not offer benefits regarding any jobs created prior to its effective date unless the proposal is for a job retention project;**]**

(23) "Qualified company", a firm, partnership, joint venture, association, private or public corporation whether organized for profit or not, or headquarters of such entity registered to do business in Missouri that is the owner or operator of a project facility**, offers health insurance to all full-time employees of all facilities located in this state, and pays at least fifty percent of such insurance premiums**. For the purposes of sections 620.1875 to 620.1890, the term "qualified company" shall not include:

(a) Gambling establishments (NAICS industry group 7132);

(b) Retail trade establishments (NAICS sectors 44 and 45);

(c) Food and drinking places (NAICS subsector 722);

(d) **[**Utilities regulated by the Missouri public service commission**]** **Public utilities (NAICS 221 including water and sewer services);**

(e) Any company that is delinquent in the payment of any nonprotested taxes or any other amounts due the state or federal government or any

other political subdivision of this state; **[**or**]**

(f) Any company that has filed for or has publicly announced its intention to file for bankruptcy protection;

(g) Educational services (NAIC sector 61);

(h) Religious organizations (NAIC industry group 8131); or

(i) Public administration (NAIC sector 92).

Notwithstanding any provision of this section to the contrary, the headquarters or administrative offices of an otherwise excluded business may qualify for benefits if the offices serve a multistate territory. In the event a national, state, or regional headquarters operation is not the predominant activity of a project facility, the new jobs and investment of such headquarters operation is considered eligible for benefits under this section if the other requirements are satisfied;

(24) "Related company" means:

(a) A corporation, partnership, trust, or association controlled by the qualified company;

(b) An individual, corporation, partnership, trust, or association in control of the qualified company; or

(c) Corporations, partnerships, trusts or associations controlled by an individual, corporation, partnership, trust or association in control of the qualified company. As used in this subdivision, **[**"**]**control of a corporation**[**"**]** shall mean ownership, directly or indirectly, of stock possessing at least fifty percent of the total combined voting power of all classes of stock entitled to vote, **[**"**]**control of a partnership or association**[**"**]** shall mean ownership of at least fifty percent of the capital or profits interest in such partnership or association, **[**"**]**control of a trust**[**"**]** shall mean ownership, directly or indirectly, of at least fifty percent of the beneficial interest in the principal or income of such trust, and ownership shall be determined as provided in Section 318 of the Internal Revenue Code of 1986, as amended;

(25) "Related facility", a facility operated by the qualified company or a related company located in this state that is directly related to the operations of the project facility;

(26) "Related facility base employment", **the greater of the number of full-time employees located at all related facilities on the date of the notice of intent or** for the twelve-month period prior to the date of the **[**proposal**] notice of intent**, the average number of full-time **[**equivalent**]** employees located at all related facilities of the qualified company or a related company located in this state;

(27) **"Related facility base payroll", the total amount of taxable wages paid by the qualified company to full-time employees of the qualified company located at a related facility in the twelve months prior to the filing of the notice of intent, not including the payroll of the owners of the qualified company unless the qualified company is participating in an employee stock ownership plan. For purposes of calculating the benefits under this program, the amount of related facility base payroll shall increase each year based on an appropriate measure, as determined by the department;**

(28) "Rural area", a county in Missouri with a population less than seventy-five thousand or that does not contain an individual city with a population greater than fifty thousand according to the most recent federal decennial census;

[(28)**] (29)** "Small and expanding business project", a qualified company that within two years of the date of the **[**proposal**] approval** creates a minimum of twenty new jobs if the project facility is located in a rural area or a minimum of forty new jobs if the project facility is not located in a rural area and creates fewer than one hundred new jobs regardless of the location of the project facility;

[(29)**] (30)** "Tax credits", tax credits issued by the department to offset the state income taxes imposed by **[**chapter**] chapters** 143 **and 148**, RSMo, or which may be sold or refunded as provided for in this program;

[(30)**] (31)** "Technology business project", a qualified company that within two years of the date of the **[**proposal**] approval** creates a minimum of ten new jobs **[**with at least seventy-five percent of the new jobs directly**]** involved in the operations of a technology company as determined by a regulation promulgated by the department under the provisions of section 620.1884 **[**and**] or** classified by NAICS codes**; or which researches, develops, or manufactures power system technology for: aerospace; space; defense; hybrid vehicles; or implantable or wearable medical devices**;

[(31)**] (32)** "Withholding tax", the state tax imposed by sections 143.191 to 143.265, RSMo. **For purposes of this program, the withholding tax shall be computed using a schedule as determined by the department based on average wages.]**

620.1878. For the purposes of sections 620.1875 to 620.1890, the following terms shall mean:

(1) **"Approval", a document submitted by the department to the qualified company that states the benefits that may be provided by this program;**

(2) "Average wage", the new payroll divided by the number of new jobs;

[(2)**] (3)** "Commencement of operations", the starting date for the qualified company's first new employee, which must be no later than twelve months from the date of the **[**proposal**] approval**;

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

[(4)**] (5)** "Department", the Missouri department of economic development;

[(5)**] (6)** "Director", the director of the department of economic development;

[(6)**] (7)** "Employee", a person employed by a qualified company**;**

[(7) "Full-time equivalent employees", employees of the qualified company converted to reflect an equivalent of the number of full-time, year-round employees. The method for converting part-time and seasonal employees into an equivalent number of full-time, year-round employees shall be published in a rule promulgated by the department as authorized in section 620.1884;**]**

(8) "Full-time**[**, year-round**]** employee", an employee of the **qualified** company that **[**works**] is scheduled to work** an average of at least thirty-five hours per week for a twelve-month period, and one for which the qualified company offers health insurance and pays at least fifty percent of such insurance premiums;

(9) "High-impact project", a qualified company that, within two years from commencement of operations, creates one hundred or more new jobs;

(10) "Local incentives", the present value of

the dollar amount of direct benefit received by a qualified company for a project facility from one or more local political subdivisions, but shall not include loans or other funds provided to the qualified company that must be repaid by the qualified company to the political subdivision;

(11) "NAICS", the 1997 edition of the North American Industry Classification System as prepared by the Executive Office of the President, Office of Management and Budget. Any NAICS sector, subsector, industry group or industry identified in this section shall include its corresponding classification in subsequent federal industry classification systems;

(12) "New direct local revenue", the present value of the dollar amount of direct net new tax revenues of the local political subdivisions likely to be produced by the project over a ten-year period as calculated by the department**, excluding local earnings tax,** and net new utility revenues, provided the local incentives include a discount or other direct incentives from utilities owned or operated by the political subdivision;

(13) "New investment", the purchase or leasing of new tangible assets to be placed in operation at the project facility, which will be directly related to the new jobs;

(14) "New job", the number of full-time**[**, year-round**]** employees located at the project facility that exceeds the project facility base employment less any decrease in the number of full-time **[**equivalent**]** employees at related facilities below the related facility base employment**. No job that was created prior to the date of the notice of intent shall be deemed a new job**;

(15) "New payroll", **[**the amount of wages paid by a qualified company to employees in new jobs**] the amount of taxable wages of full-time employees, excluding owners, located at the project facility that exceeds the project facility base payroll. If full-time employment at related facilities is below the related facility base employment, any decrease in payroll for full-time employees at the related facilities below that related facility base payroll shall also be subtracted to determine new payroll**;

(16) "Notice of intent", a form developed by the department, completed by the qualified company and submitted to the department which states the qualified company's intent to hire new jobs and request benefits under this program;

(17) "Percent of local incentives", the amount of local incentives divided by the amount of new direct local revenue;

(18) "Program", the Missouri quality jobs program provided in sections 620.1875 to 620.1890;

(19) "Project facility", the building used by a qualified company at which the new jobs and new investment will be located. A project facility may include separate buildings that are located within one mile of each other such that their purpose and operations are interrelated;

(20) "Project facility base employment", **the greater of the number of full-time employees located at the project facility on the date the notice of intent or** for the twelve-month period prior to the date of the **[**proposal**] notice of intent**, the average number of full-time **[**equivalent**]** employees located at the project facility. In the event the project facility has not been in operation for a full twelve-month period, **[**project facility base employment is**]** the average number of full-time **[**equivalent**]** employees for the number of months the project facility has been in operation prior to the date of the **[**proposal**] notice of intent**;

(21) **"Project facility base payroll", the total amount of taxable wages paid by the qualified company to full-time employees of the qualified company located at the project facility in the twelve months prior to the notice of intent, not including the payroll of the owners of the qualified company unless the qualified company**

is participating in an employee stock ownership plan. For purposes of calculating the benefits under this program, the amount of base payroll shall increase each year based on an appropriate measure, as determined by the department;

(22) "Project period", the time period that the benefits are provided to a qualified company;

[(22) "Proposal", a document submitted by the department to the qualified company that states the benefits that may be provided by this program. The effective date of such proposal cannot be prior to the commencement of operations. The proposal shall not offer benefits regarding any jobs created prior to its effective date unless the proposal is for a job retention project;**]**

(23) "Qualified company", a firm, partnership, joint venture, association, private or public corporation whether organized for profit or not, or headquarters of such entity registered to do business in Missouri that is the owner or operator of a project facility**, offers health insurance to all full-time employees of all facilities located in this state, and pays at least fifty percent of such insurance premiums**. For the purposes of sections 620.1875 to 620.1890, the term "qualified company" shall not include:

(a) Gambling establishments (NAICS industry group 7132);

(b) Retail trade establishments (NAICS sectors 44 and 45);

(c) Food and drinking places (NAICS subsector 722);

(d) **[**Utilities regulated by the Missouri public service commission**] Public utilities (NAICS 221 including water and sewer services);**

(e) Any company that is delinquent in the payment of any nonprotested taxes or any other amounts due the state or federal government or any other political subdivision of this state; **[**or**]**

(f) Any company that has filed for or has publicly announced its intention to file for bankruptcy protection;

(g) Educational services (NAIC sector 61);

(h) Religious organizations (NAIC industry group 8131); or

(i) Public administration (NAIC sector 92).

Notwithstanding any provision of this section to the contrary, the headquarters or administrative offices of an otherwise excluded business may qualify for benefits if the offices serve a multistate territory. In the event a national, state, or regional headquarters operation is not the predominant activity of a project facility, the new jobs and investment of such headquarters operation is considered eligible for benefits under this section if the other requirements are satisfied;

(24) "Related company" means:

(a) A corporation, partnership, trust, or association controlled by the qualified company;

(b) An individual, corporation, partnership, trust, or association in control of the qualified company; or

(c) Corporations, partnerships, trusts or associations controlled by an individual, corporation, partnership, trust or association in control of the qualified company. As used in this subdivision, **[**"**]**control of a corporation**[**"**]** shall mean ownership, directly or indirectly, of stock possessing at least fifty percent of the total combined voting power of all classes of stock entitled to vote, **[**"**]**control of a partnership or association**[**"**]** shall mean ownership of at least fifty percent of the capital or profits interest in such partnership or association, **[**"**]**control of a trust**[**"**]** shall mean ownership, directly or indirectly, of at least fifty percent of the beneficial interest in the principal or income of such trust, and ownership shall be determined as provided in Section 318 of the Internal Revenue Code of 1986, as amended;

(25) "Related facility", a facility operated by the qualified company or a related company located in this state that is directly related to the operations of the project facility;

(26) "Related facility base employment", **the greater of the number of full-time employees located at all related facilities on the date of the notice of intent or** for the twelve-month period prior to the date of the **[**proposal**] notice of intent**, the average number of full-time **[**equivalent**]** employees located at all related facilities of the qualified company or a related company located in this state;

(27) **"Related facility base payroll", the total amount of taxable wages paid by the qualified company to full-time employees of the qualified company located at a related facility in the twelve months prior to the filing of the notice of intent, not including the payroll of the owners of the qualified company unless the qualified company is participating in an employee stock ownership plan. For purposes of calculating the benefits under this program, the amount of related facility base payroll shall increase each year based on an appropriate measure, as determined by the department;**

(28) "Rural area", a county in Missouri with a population less than seventy-five thousand or that does not contain an individual city with a population greater than fifty thousand according to the most recent federal decennial census;

[(28)**] (29)** "Small and expanding business project", a qualified company that within two years of the date of the **[**proposal**] approval** creates a minimum of twenty new jobs if the project facility is located in a rural area or a minimum of forty new jobs if the project facility is not located in a rural area and creates fewer than one hundred new jobs regardless of the location of the project facility;

[(29)**] (30)** "Tax credits", tax credits issued by the department to offset the state income taxes imposed by **[**chapter**] chapters** 143 **and 148**, RSMo, or which may be sold or refunded as provided for in this program;

[(30)**] (31)** "Technology business project", a qualified company that within two years of the date of the **[**proposal**] approval** creates a minimum of ten new jobs **[**with at least seventy-five percent of the new jobs directly**]** involved in the operations of a technology company as determined by a regulation promulgated by the department under the provisions of section 620.1884 **[**and**] or** classified by NAICS codes**; or which researches, develops, or manufactures power system technology for: aerospace; space; defense; hybrid vehicles; or implantable or wearable medical devices**;

[(31)**] (32)** "Withholding tax", the state tax imposed by sections 143.191 to 143.265, RSMo. **For purposes of this program, the withholding tax shall be computed using a schedule as determined by the department based on average wages.**"; and

Further amend said bill, Section 1, Page 78, Line 4 by inserting after all of said line the following:

"**[143.006. Notwithstanding any other provision of this chapter to the contrary, whether a corporation or an individual has substantial nexus with this state for income tax purposes is determined without regard to whether the corporation or individual:**

(1) Is a related taxpayer within the meaning of the definition found in subdivision (9) of section 135.100, RSMo, in regard to either a distribution facility in this state or a data storage facility in this state;

(2) Utilizes such distribution facility;

(3) Utilizes property at such distribution facility that is used at, or distributed from, that facility; or

(4) Sells property shipped or distributed

from such distribution facility.]"; and

Further amend said bill, Section 144.517, Page 78, Line 73 by inserting after all of said line the following:

"**[144.054. 1. As used in this section, the following terms mean:**

(1) "Processing", any mode of treatment, act, or series of acts performed upon materials to transform or reduce them to a different state or thing, including treatment necessary to maintain or preserve such processing by the producer at the production facility;

(2) "Recovered materials", those materials which have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not they require subsequent separation and processing.

2. In addition to all other exemptions granted under this chapter, there is hereby specifically exempted from the provisions of sections 144.010 to 144.525 and 144.600 to 144.761, and section 238.235, RSMo, and the local sales tax law as defined in section 32.085, RSMo, and from the computation of the tax levied, assessed, or payable under sections 144.010 to 144.525 and 144.600 to 144.761, and section 238.235, RSMo, and the local sales tax law as defined in section 32.085, RSMo, electrical energy and gas, whether natural, artificial, or propane, water, coal, and other utilities, chemicals, machinery, equipment, and materials used or consumed in the manufacturing, processing, compounding, mining, or producing of any product, or used or consumed in the processing of recovered materials, or used in research and development related to manufacturing, processing, compounding, mining, or producing any product.]

[144.605. The following words and phrases as used in sections 144.600 to 144.745 mean and include:

(1) "Calendar quarter", the period of three consecutive calendar months ending on March thirty-first, June thirtieth, September thirtieth or December thirty-first;

(2) "Engages in business activities within this state" includes:

(a) **[**Purposefully or systematically exploiting the market provided by this state by any media-assisted, media-facilitated, or media-solicited means, including, but not limited to, direct mail advertising, distribution of catalogs, computer-assisted shopping, telephone, television, radio, or other electronic media, or magazine or newspaper advertisements, or other media; or

(b) Being owned or controlled by the same interests which own or control any seller engaged in the same or similar line of business in this state; or

(c)**]** Maintaining or having a franchisee or licensee operating under the seller's trade name in this state if the franchisee or licensee is required to collect sales tax pursuant to sections 144.010 to 144.525; or

[(d)**] (b)** Soliciting sales or taking orders by sales agents or traveling representatives **in this state;**

(c) Notwithstanding any other provision of this chapter to the contrary, whether a person engages in business activities within this state and whether the person has substantial nexus with this state shall be determined without regard to whether the person is a related taxpayer within the meaning of the definition found in subdivision (9) of section 135.100, RSMo, in regard to either a distribution facility in this state or a data storage facility in this state, or:

a. Utilizes such distribution facility;

b. Utilizes property at such distribution facility that is used at, or distributed from, that facility; or

c. Sells property shipped or distributed from such distribution facility;

(3) "Maintains a place of business in this state" includes **directly** maintaining, occupying, or using**[**, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called,**]** an office, **[**place of distribution, sales or sample room or place,**]** warehouse or storage place, or other place of business **in this state**;

(4) "Person", any individual, firm, copartnership, joint venture, association, corporation, municipal or private, and whether organized for profit or not, state, county, political subdivision, state department, commission, board, bureau or agency, except the state transportation department, estate, trust, business trust, receiver or trustee appointed by the state or federal court, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular number;

(5) "Purchase", the acquisition of the ownership of, or title to, tangible personal property, through a sale, as defined herein, for the purpose of storage, use or consumption in this state;

(6) "Purchaser", any person who is the recipient for a valuable consideration of any sale of tangible personal property acquired for use, storage or consumption in this state;

(7) "Sale", any transfer, barter or exchange of the title or ownership of tangible personal property, or the right to use, store or consume the same, for a consideration paid or to be paid, and any transaction whether called leases, rentals, bailments, loans, conditional sales or otherwise, and notwithstanding that the title or possession of the property or both is retained for security. For the purpose of this law the place of delivery of the property to the purchaser, user, storer or consumer is deemed to be the place of sale, whether the delivery be by the vendor or by common carriers, private contractors, mails, express, agents, salesmen, solicitors, hawkers, representatives, consignors, peddlers, canvassers or otherwise;

(8) "Sales price", the consideration including the charges for services, except charges incident to the extension of credit, paid or given, or contracted to be paid or given, by the purchaser to the vendor for the tangible personal property, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and any amount for which credit is given to the purchaser by the vendor, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service cost, losses or any other expenses whatsoever, except that cash discounts allowed and taken on sales shall not be included and "sales price" shall not include the amount charged for property returned by customers upon rescission of the contract of sales when the entire amount charged therefor is refunded either in cash or credit or the amount charged for labor or services rendered in installing or applying the property sold, the use, storage or consumption of which is taxable pursuant to sections 144.600 to 144.745. In determining the amount of tax due pursuant to sections 144.600 to 144.745, any charge incident to the extension of credit shall be specifically exempted;

(9) "Selling agent", every person acting as a representative of a principal, when such principal is not registered with the director of revenue of the state of Missouri for the collection of the taxes imposed pursuant to sections 144.010 to 144.525 or sections 144.600 to 144.745 and who receives compensation by reason of the sale of tangible personal property of the principal, if such property is to be stored, used, or consumed in this state;

(10) "Storage", any keeping or retention in this state of tangible personal property purchased from a vendor, except property for sale or property that is temporarily kept or retained in this state for subsequent use outside the state;

(11) "Tangible personal property", all items subject to the Missouri sales tax as provided in subdivisions (1) and (3) of section 144.020;

(12) "Taxpayer", any person remitting the tax or who should remit the tax levied by sections 144.600 to 144.745;

(13) "Use", the exercise of any right or power over tangible personal property incident to the ownership or control of that property, except that it does not include the temporary storage of property in this state for subsequent use outside the state, or the sale of the property in the regular course of business;

(14) "Vendor", every person engaged in making sales of tangible personal property by mail order, by advertising, by agent or peddling tangible personal property, soliciting or taking orders for sales of tangible personal property, for storage, use or consumption in this state, all salesmen, solicitors, hawkers, representatives, consignees, peddlers or canvassers, as agents of the dealers, distributors, consignors, supervisors, principals or employers under whom they operate or from whom they obtain the tangible personal property sold by them, and every person who maintains a place of business in this state, maintains a stock of goods in this state, or engages in business activities within this state and every person who engages in this state in the business of acting as a selling agent for persons not otherwise vendors as defined in this subdivision. Irrespective of whether they are making sales on their own behalf or on behalf of the dealers, distributors, consignors, supervisors, principals or employers, they must be regarded as vendors and the dealers, distributors, consignors, supervisors, principals or employers must be regarded as vendors for the purposes of sections 144.600 to 144.745. A person shall not be considered a vendor for the purposes of sections 144.600 to 144.745 if all of the following apply:

(a) The person's total gross receipts did not exceed five hundred thousand dollars in this state, or twelve and one-half million dollars in the entire United States, in the immediately preceding calendar year;

(b) The person maintains no place of business in this state; and

(c) The person has no selling agents in this state.**]**

[147.010. 1. For the transitional year defined in subsection 4 of this section and each taxable year beginning on or after January 1, 1980, but before January 1, 2000, every corporation organized pursuant to or subject to chapter 351, RSMo, or pursuant to any other law of this state shall, in addition to all other fees and taxes now required or paid, pay an annual franchise tax to the state of Missouri equal to one-twentieth of one percent of the par value of its outstanding shares and surplus if its outstanding shares and surplus exceed two hundred thousand dollars, or if the outstanding shares of such corporation or any part thereof consist of shares without par value, then, in that event, for the purpose contained in this section, such shares shall be considered as having a value of five dollars per share unless the actual value of such shares exceeds five dollars per share, in which case the tax shall be levied and collected on the actual value and the surplus if the actual value and the surplus exceed two hundred thousand dollars. If such corporation employs a part of its outstanding shares in business in another state or country, then such corporation shall pay an annual franchise tax equal to one-twentieth of one percent of its outstanding shares and surplus employed in this state if its outstanding shares and surplus employed in this state **exceed** two hundred thousand dollars, and for the purposes of sections 147.010 to 147.120, such corporation shall be deemed to have employed in this state that proportion of its entire outstanding shares and surplus that its property and assets employed in this state bears to all its property and assets wherever located. A foreign corporation engaged in business in this state, whether pursuant to a certificate of authority issued pursuant to chapter

351, RSMo, or not, shall be subject to this section. Any corporation whose outstanding shares and surplus as calculated in this subsection does not exceed two hundred thousand dollars shall state that fact on the annual report form prescribed by the secretary of state. For all taxable years beginning on or after January 1, 2000, the annual franchise tax shall be equal to one-thirtieth of one percent of the corporation's outstanding shares and surplus if the outstanding shares and surplus exceed one million dollars. Any corporation whose outstanding shares and surplus do not exceed one million dollars shall state that fact on the annual report form prescribed by the director of revenue.

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

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

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

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

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

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

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

9. Notwithstanding any other provision of this chapter to the contrary, whether a corporation has substantial nexus with this state for franchise tax purposes is determined without regard to whether the corporation:

(1) Is a related taxpayer within the meaning of the definition found in subdivision (9) of section 135.100, RSMo, in regard to either a distribution facility in this state or a data storage facility in this state;

(2) Utilizes such distribution facility;

(3) Utilizes property at such distribution facility that is used at, or distributed from, that facility; or

(4) Sells property shipped or distributed from such distribution facility.]"; 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 Bill No. 582, Page 36, Section 135.610, Line 66, by inserting after all of said Line the following:

"**135.636. 1. This section shall be known and may be cited as the "Motherhood/Fatherhood Stay-at-Home Tax Credit".**

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

(1) "Eligible child", any natural, adopted, or stepchild of a stay-at-home parent if such eligible child is between the ages of newborn to twenty-four months;

(2) "Stay-at-home parent", any married parent of an eligible child if such stay-at-home parent was gainfully employed before the birth or adoption of the eligible child or marriage to a person with an eligible child, who is no longer gainfully employed as a result of the decision to stay at home to provide care for the eligible child, and whose annual salary while the stay-at-home parent was gainfully employed was one hundred thousand dollars or less. "Stay-at-home parent" shall not include any recipient of any public assistance;

(3) "Tax credit", a credit against the tax otherwise due under chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo;

(4) "Taxpayer", any stay-at-home parent or such parent's spouse whose filing status is married filing combined who is subject to the tax imposed in chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo.

3. For all taxable years beginning on or after January 1, 2007, a taxpayer shall be allowed a tax credit for providing care for an eligible child. The tax credit amount shall be equal to twenty-five percent of the stay-at-home parent's annual salary in the year before the stay-at-home parent terminated gainful employment to become a stay-at-home parent. If the amount of the tax credit issued exceeds the amount of the taxpayer's state tax liability for the tax year for which the credit is claimed, the difference shall not be refundable but may be carried forward to any of the taxpayer's three subsequent taxable years. No tax credit granted under this section shall be transferred, sold, or assigned. The cumulative amount of tax credits which may be issued under this section in any one fiscal year shall not exceed two million dollars.

4. The director of the department of revenue shall establish a procedure by which, from the beginning of the fiscal year until some point in time later in the fiscal year to be determined by the director, the cumulative

amount of tax credits are equally apportioned among all taxpayers allowed a tax credit under this section. The director may establish more than one period of time and reapportion more than once during each fiscal year. To the maximum extent possible, the director shall establish the procedure described in this subsection in such a manner as to ensure that taxpayers can claim all the tax credits possible up to the cumulative amount of tax credits available for the fiscal year.

5. Each stay-at-home parent claiming a tax credit under this section shall file an affidavit verifying that such parent is a stay-at-home parent, and shall provide a copy of the most recent W-2 form received before becoming a stay-at-home parent to verify the tax credit amount claimed.

6. The department of revenue may promulgate rules to implement the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2007, shall be invalid and void.

7. Under section 23.253, RSMo, of the Missouri Sunset Act:

(1) The provisions of the new program authorized under this section shall automatically sunset on December thirty-first six years after the effective date of this section unless reauthorized by an act of the general assembly; and

(2) If such program is reauthorized, the program authorized under this section shall automatically sunset on December thirty-first twelve years after the effective date of the reauthorization of this section; and

(3) This section shall terminate on September first of the calendar year immediately following the calendar year in which the program authorized under this section is sunset."; 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 Bill No. 582, Page 4, Section 143.121.3 (j), Line 5, by inserting after "public" the following:

"or private"; 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 Bill No. 582, Section 141.640, Page 60, Line 9, by inserting after all of said section, the following:

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

2. There shall be added to the taxpayer's federal adjusted gross income:

(a) The amount of any federal income tax refund received for a prior year which resulted in a Missouri income tax benefit;

(b) Interest on certain governmental

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

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

(d) The amount of any deduction that is included in the computation of federal taxable income for net operating loss allowed by Section 172 of the Internal Revenue Code of 1986, as amended, other than the deduction allowed by Section 172(b)(1)(G) and Section 172(i) of the Internal Revenue Code of 1986, as amended, for a net operating loss the taxpayer claims in the tax year in which the net operating loss occurred or carries forward for a period of more than twenty years and carries backward for more than two years. Any amount of net operating loss taken against federal taxable income but disallowed for Missouri income tax purposes pursuant to this paragraph 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.

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

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

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

(c) The amount necessary to prevent the taxation pursuant to this chapter of any annuity or other amount of income or gain which was properly included in income or gain and was taxed pursuant to the laws of Missouri for a taxable year prior to January 1, 1973, to the taxpayer, or to a decedent by reason of whose death the taxpayer acquired the right to receive the income or gain, or to a trust or estate from which the taxpayer received the income or gain;

(d) Accumulation distributions received by a taxpayer as a beneficiary of a trust to the extent

that the same are included in federal adjusted gross income;

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

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

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

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

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

(j) For all tax years beginning on or after January 1, 2007, the amount of any tuition the taxpayer pays for a student who has completed high school to attend any public institution of postsecondary education, including a university, college, vocational and technical school, and other postsecondary institutions, located within this state.

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

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

6. In addition to the modifications to a taxpayer's federal adjusted gross income in this section, to calculate Missouri adjusted gross income there shall be subtracted from the taxpayer's federal adjusted gross income any gain recognized pursuant to Section 1033 of the Internal Revenue Code of 1986, as amended, arising from compulsory or involuntary conversion of property as a result of condemnation or the imminence thereof."; 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 Bill No. 582, Sections 135.010 and 135.030, Pages 29 to 33, by deleting all of said sections and inserting in lieu thereof the following:

"135.010. As used in sections 135.010 to 135.030 the following words and terms mean:

(1) "Claimant", a person or persons claiming a credit under sections 135.010 to 135.030. If the

persons are eligible to file a joint federal income tax return and reside at the same address at any time during the taxable year, then the credit may only be allowed if claimed on a combined Missouri income tax return or a combined claim return reporting their combined incomes and property taxes. A claimant shall not be allowed a property tax credit unless the claimant or spouse has attained the age of sixty-five on or before the last day of the calendar year and the claimant or spouse was a resident of Missouri for the entire year, or the claimant or spouse is a veteran of any branch of the armed forces of the United States or this state who became one hundred percent disabled as a result of such service, or the claimant or spouse is disabled as defined in subdivision (2) of this section, and such claimant or spouse provides proof of such disability in such form and manner, and at such times, as the director of revenue may require, or if the claimant has reached the age of sixty on or before the last day of the calendar year and such claimant received surviving spouse Social Security benefits during the calendar year and the claimant provides proof, as required by the director of revenue, that the claimant received surviving spouse Social Security benefits during the calendar year for which the credit will be claimed. A claimant shall not be allowed a property tax credit if the claimant filed a valid claim for a credit under section 137.106, RSMo, in the year following the year for which the property tax credit is claimed. The residency requirement shall be deemed to have been fulfilled for the purpose of determining the eligibility of a surviving spouse for a property tax credit if a person of the age of sixty-five years or older who would have otherwise met the requirements for a property tax credit dies before the last day of the calendar year. The residency requirement shall also be deemed to have been fulfilled for the purpose of determining the eligibility of a claimant who would have otherwise met the requirements for a property tax credit but who dies before the last day of the calendar year;

(2) "Disabled", the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months. A claimant shall not be required to be gainfully employed prior to such disability to qualify for a property tax credit;

(3) "Gross rent", amount paid by a claimant to a landlord for the rental, at arm's length, of a homestead during the calendar year, exclusive of charges for health and personal care services and food furnished as part of the rental agreement, whether or not expressly set out in the rental agreement. If the director of revenue determines that the landlord and tenant have not dealt at arm's length, and that the gross rent is excessive, then **[**he**] the director** shall determine the gross rent based upon a reasonable amount of rent. Gross rent shall be deemed to be paid only if actually paid prior to the date a return is filed. The director of revenue may prescribe regulations requiring a return of information by a landlord receiving rent, certifying for a calendar year the amount of gross rent received from a tenant claiming a property tax credit and shall, by regulation, provide a method for certification by the claimant of the amount of gross rent paid for any calendar year for which a claim is made. The regulations authorized by this subdivision may require a landlord or a tenant or both to provide data relating to health and personal care services and to food. Neither a landlord nor a tenant may be required to provide data relating to utilities, furniture, home furnishings or appliances;

(4) "Homestead", the dwelling in Missouri owned or rented by the claimant and not to exceed five acres of land surrounding it as is reasonably necessary for use of the dwelling as a home. It may consist of part of a multidwelling or multipurpose building and part of the land upon which it is built. "Owned" includes a vendee in possession under a land contract and one or more tenants by the entireties, joint tenants, or tenants in common and includes a claimant actually in possession if he was

the immediate former owner of record, if a lineal descendant is presently the owner of record, and if the claimant actually pays all taxes upon the property. It may include a mobile home;

(5) "Income", Missouri adjusted gross income as defined in section 143.121, RSMo, less **[**two**]** **four** thousand dollars as an exemption for the claimant's spouse residing at the same address, and increased, where necessary, to reflect the following:

(a) Social Security, railroad retirement, and veterans payments and benefits unless the claimant is a one hundred percent service-connected, disabled veteran or a spouse of a one hundred percent service-connected, disabled veteran. The one hundred percent service-connected disabled veteran shall not be required to list veterans payments and benefits;

(b) The total amount of all other public and private pensions and annuities;

(c) Public relief, public assistance, and unemployment benefits received in cash, other than benefits received under this chapter;

(d) No deduction being allowed for losses not incurred in a trade or business;

(e) Interest on the obligations of the United States, any state, or any of their subdivisions and instrumentalities;

(6) "Property taxes accrued", property taxes paid, exclusive of special assessments, penalties, interest, and charges for service levied on a claimant's homestead in any calendar year. Property taxes shall qualify for the credit only if actually paid prior to the date a return is filed. The director of revenue shall require a tax receipt or other proof of property tax payment. If a homestead is owned only partially by claimant, then "property taxes accrued" is that part of property taxes levied on the homestead which was actually paid by the claimant. For purposes of this subdivision, property taxes are "levied" when the tax roll is delivered to the director of revenue for collection. If a claimant owns a homestead part of the preceding calendar year and rents it or a different homestead for part of the same year, "property taxes accrued" means only taxes levied on the homestead both owned and occupied by the claimant, multiplied by the percentage of twelve months that such property was owned and occupied as the homestead of the claimant during the year. When a claimant owns and occupies two or more different homesteads in the same calendar year, property taxes accrued shall be the sum of taxes allocable to those several properties occupied by the claimant as a homestead for the year. If a homestead is an integral part of a larger unit such as a farm, or multipurpose or multidwelling building, property taxes accrued shall be that percentage of the total property taxes accrued as the value of the homestead is of the total value. For purposes of this subdivision "unit" refers to the parcel of property covered by a single tax statement of which the homestead is a part;

(7) "Rent constituting property taxes accrued", twenty percent of the gross rent paid by a claimant and spouse in the calendar year.

135.030. 1. As used in this section:

(1) **[**The term "maximum upper limit" shall, in the calendar year 1989, be the sum of thirteen thousand five hundred dollars. For each calendar year through December 31, 1992, the maximum upper limit shall be increased by five hundred dollars per year. For calendar years after December 31, 1992, and prior to calendar year 1998, the maximum upper limit shall be the sum used on December 31, 1992.**]** For each calendar year after December 31, 1997, **and before calendar year 2007,** the **term "**maximum upper limit**"** shall be the sum of twenty-five thousand dollars**. For the calendar year beginning on January 1, 2007, the maximum upper limit shall be the sum of thirty thousand dollars, and for all subsequent calendar years such limit shall be increased in one- hundred-dollar increments on the first day of January in each year by the same percentage**

of increase in the Consumer Price Index for All Urban Consumers, as published by the Bureau of Labor Statistics of the United States Department of Labor, or its successor index;

(2) **[**The term "minimum base" shall, in the calendar year 1989, be the sum of five thousand dollars. For each succeeding calendar year through December 31, 1992, the minimum base shall be increased, in one hundred-dollar increments, by the same percentage as the increase in the general price level as measured by the Consumer Price Index for All Urban Consumers for the United States, or its successor index, as defined and officially recorded by the United States Department of Labor, or its successor agency, or five percent, whichever is greater. The increase in the index shall be that as first published by the Department of Labor for the calendar year immediately preceding the year in which the minimum base is calculated. For calendar years after December 31, 1992, and prior to calendar year 1998, the minimum base shall be the sum used on December 31, 1992.**]** For each calendar year after December 31, 1997, **and before calendar year 2007,** the **term "**minimum base**"** shall be the sum of thirteen thousand dollars. **For the calendar year beginning on January 1, 2007, the minimum base shall be the sum of eighteen thousand dollars, and for all subsequent calendar years such base shall be increased in one-hundred-dollar increments on the first day of January in each year by the same percentage of increase in the Consumer Price Index for All Urban Consumers, as published by the Bureau of Labor Statistics of the United States Department of Labor, or its successor index.**

2. When calculating the **maximum upper limit and the** minimum base for purposes of this section, whenever the increase in the Consumer Price Index used in the calculation would result in a figure which is greater than one one-hundred-dollar increment but less than another one-hundred-dollar increment, the director of revenue shall always round that figure off to the next higher one-hundred-dollar increment when determining the table of credits under this section.

3. If the income on a return is equal to or less than the maximum upper limit for the calendar year for which the return is filed, the property tax credit shall be determined from a table of credits based upon the amount by which the total property tax described in section 135.025 exceeds the percent of income in the following list:

If the income on the return is:	The percent is:
Not over the minimum base	0 percent with credit not to exceed actual property tax or rent equivalent paid up to $750
Over the minimum base but not over the maximum upper limit	**[**1/16**]** **1/32** percent accumulative per $300 from 0 percent to 4 percent.

The director of revenue shall prescribe a table based upon the preceding sentences. The property tax shall be in increments of twenty-five dollars and the income in increments of three hundred dollars. The credit shall be the amount rounded to the nearest whole dollar computed on the basis of the property tax and income at the midpoints of each increment. As used in this subsection, the term "accumulative" means an increase by continuous or repeated application of the percent to the income increment at each three hundred dollar level.

4. Notwithstanding **[**the provision of**]** subsection 4 of section 32.057, RSMo, the department of revenue or any duly authorized employee or agent shall determine whether any taxpayer filing a report or return with the department of revenue who has not applied for the credit allowed pursuant to section 135.020 may

qualify for the credit, and shall notify any qualified claimant of **[**his or her**]** **the claimant's** potential eligibility, where the department determines such potential eligibility exists."; and

Further amend said bill, Section 135.610, Page 36, Line 66, by inserting after all of said line, the following:

"**135.634. 1. As used in this section, the following terms mean:**

(1) "Tax credit", a credit against the tax otherwise due under chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo;

(2) "Taxpayer", any individual subject to the tax imposed in chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo, and who is eligible for the federal earned income credit.

2. For all taxable years beginning on or after January 1, 2007, a taxpayer shall be allowed a tax credit for income earned by the taxpayer. The tax credit amount shall be equal to twenty percent of the amount of any federal earned income credit claimed by the taxpayer in the tax year for which the tax credit is claimed. The amount of the tax credit issued shall not exceed the amount of the taxpayer's state tax liability for the tax year for which the credit is claimed. No amount of credit that the taxpayer is prohibited by this section from claiming in a tax year shall be refundable, nor shall any tax credit granted under this section be transferred, sold, or assigned.

3. The department of revenue may promulgate rules to implement the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2007, shall be invalid and void.

4. Under section 23.253, RSMo, of the Missouri Sunset Act:

(1) The provisions of the new program authorized under this section shall automatically sunset on December thirty-first six years after the effective date of this section unless reauthorized by an act of the general assembly; and

(2) If such program is reauthorized, the program authorized under this section shall automatically sunset on December thirty-first twelve years after the effective date of the reauthorization of this section; and

(3) This section shall terminate on September first of the calendar year immediately following the calendar year in which the program authorized under this section is sunset."; and

Further amend said bill, Section 141.640, Page 60, Line 9, by inserting after all of said section, the following:

"143.126. 1. As used in this section, "taxpayer" means any resident individual who is sixty-five years of age or older and whose Missouri adjusted gross income is either:

(1) Forty thousand dollars or less if the taxpayer's filing status is single, head of household, or married filing separately; or

(2) Fifty thousand dollars or less if the taxpayer's filing status is married filing combined.

2. For all taxable years beginning on or

after January 1, 2007, any taxpayer shall be allowed to subtract from the taxpayer's Missouri adjusted gross income to determine Missouri taxable income an amount equal to the amount of any Social Security benefits or Social Security disability benefits received by the taxpayer and that are included in federal adjusted gross income under Section 86 of the Internal Revenue Code of 1986, as amended.

3. The director of the department of revenue may promulgate rules to implement the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2007, shall be invalid and void.

4. Under section 23.253, RSMo, of the Missouri sunset act:

(1) The provisions of the new program authorized under this section shall automatically sunset six years after the effective date of this section unless reauthorized by an act of the general assembly; and

(2) If such program is reauthorized, the program authorized under this section shall automatically sunset twelve years after the effective date of the reauthorization of this section; and

(3) This section shall terminate on December thirty-first of the calendar year immediately following the calendar year in which the program authorized under this section is sunset."; 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 Bill No. 582, Section137.106, Page 43, Line 259 by inserting after all of said section and line the following:

"137.115. 1. All other laws to the contrary notwithstanding, the assessor or the assessor's deputies in all counties of this state including the city of St. Louis shall annually make a list of all real and tangible personal property taxable in the assessor's city, county, town or district. Except as otherwise provided in subsection 3 of this section and section 137.078, the assessor shall annually assess all personal property at thirty-three and one-third percent of its true value in money as of January first of each calendar year. The assessor shall annually assess all real property, including any new construction and improvements to real property, and possessory interests in real property at the percent of its true value in money set in subsection 5 of this section. The assessor shall annually assess all real property in the following manner: new assessed values shall be determined as of January first of each odd-numbered year and shall be entered in the assessor's books; those same assessed values shall apply in the following even-numbered year, except for new construction and property improvements which shall be valued as though they had been completed as of January first of the preceding odd-numbered year. The assessor may call at the office, place of doing business, or residence of each person required by this chapter to list property, and require the person to make a correct statement of all taxable tangible personal property owned by the person or under his or her care, charge or management, taxable in the county. On or before January first of each even-numbered year, the assessor shall prepare and

submit a two-year assessment maintenance plan to the county governing body and the state tax commission for their respective approval or modification. The county governing body shall approve and forward such plan or its alternative to the plan to the state tax commission by February first. If the county governing body fails to forward the plan or its alternative to the plan to the state tax commission by February first, the assessor's plan shall be considered approved by the county governing body. If the state tax commission fails to approve a plan and if the state tax commission and the assessor and the governing body of the county involved are unable to resolve the differences, in order to receive state cost-share funds outlined in section 137.750, the county or the assessor shall petition the administrative hearing commission, by May first, to decide all matters in dispute regarding the assessment maintenance plan. Upon agreement of the parties, the matter may be stayed while the parties proceed with mediation or arbitration upon terms agreed to by the parties. The final decision of the administrative hearing commission shall be subject to judicial review in the circuit court of the county involved. In the event a valuation of subclass (1) real property within any county with a charter form of government, or within a city not within a county, is made by a computer, computer-assisted method or a computer program, the burden of proof, supported by clear, convincing and cogent evidence to sustain such valuation, shall be on the assessor at any hearing or appeal. In any such county, unless the assessor proves otherwise, there shall be a presumption that the assessment was made by a computer, computer-assisted method or a computer program. Such evidence shall include, but shall not be limited to, the following:

(1) The findings of the assessor based on an appraisal of the property by generally accepted appraisal techniques; and

(2) The purchase prices from sales of at least three comparable properties and the address or location thereof. As used in this paragraph, the word "comparable" means that:

(a) Such sale was closed at a date relevant to the property valuation; and

(b) Such properties are not more than one mile from the site of the disputed property, except where no similar properties exist within one mile of the disputed property, the nearest comparable property shall be used. Such property shall be within five hundred square feet in size of the disputed property, and resemble the disputed property in age, floor plan, number of rooms, and other relevant characteristics.

2. Assessors in each county of this state and the city of St. Louis may send personal property assessment forms through the mail.

3. The following items of personal property shall each constitute separate subclasses of tangible personal property and shall be assessed and valued for the purposes of taxation at the following **[**percents**]** **percentages** of their true value in money:

(1) Grain and other agricultural crops in an unmanufactured condition, one-half of one percent;

(2) Livestock, twelve percent;

(3) Farm machinery, twelve percent;

(4) Motor vehicles which are eligible for registration as and are registered as historic motor vehicles pursuant to section 301.131, RSMo, and aircraft which are at least twenty-five years old and which are used solely for noncommercial purposes and are operated less than fifty hours per year or aircraft that are home built from a kit, five percent;

(5) Poultry, twelve percent; and

(6) Tools and equipment used for pollution control and tools and equipment used in retooling for the purpose of introducing new product lines or used for making improvements to existing products by any company which is located in a state enterprise zone and which is identified by any standard industrial classification number cited in

subdivision (6) of section 135.200, RSMo, twenty-five percent.

4. The person listing the property shall enter a true and correct statement of the property, in a printed blank prepared for that purpose. The statement, after being filled out, shall be signed and either affirmed or sworn to as provided in section 137.155. The list shall then be delivered to the assessor.

5. All subclasses of real property, as such subclasses are established in section 4(b) of article X of the Missouri Constitution and defined in section 137.016, shall be assessed at the following percentages of true value:

(1) For real property in subclass (1), nineteen percent;

(2) For real property in subclass (2), twelve percent; and

(3) For real property in subclass (3), thirty-two percent.

6. Manufactured homes, as defined in section 700.010, RSMo, which are actually used as dwelling units shall be assessed at the same percentage of true value as residential real property for the purpose of taxation. The percentage of assessment of true value for such manufactured homes shall be the same as for residential real property. If the county collector cannot identify or find the manufactured home when attempting to attach the manufactured home for payment of taxes owed by the manufactured home owner, the county collector may request the county commission to have the manufactured home removed from the tax books, and such request shall be granted within thirty days after the request is made; however, the removal from the tax books does not remove the tax lien on the manufactured home if it is later identified or found. A manufactured home located in a manufactured home rental park, rental community or on real estate not owned by the manufactured home owner shall be considered personal property. A manufactured home located on real estate owned by the manufactured home owner may be considered real property.

7. Each manufactured home assessed shall be considered a parcel for the purpose of reimbursement pursuant to section 137.750, unless the manufactured home has been converted to real property in compliance with section 700.111, RSMo, and assessed as a realty improvement to the existing real estate parcel.

8. Any amount of tax due and owing based on the assessment of a manufactured home shall be included on the personal property tax statement of the manufactured home owner unless the manufactured home has been converted to real property in compliance with section 700.111, RSMo, in which case the amount of tax due and owing on the assessment of the manufactured home as a realty improvement to the existing real estate parcel shall be included on the real property tax statement of the real estate owner.

9. The assessor of each county and each city not within a county shall use the trade-in value published in the October issue of the National Automobile Dealers' Association Official Used Car Guide, or its successor publication, as the recommended guide of information for determining the true value of motor vehicles described in such publication. In the absence of a listing for a particular motor vehicle in such publication, the assessor shall use such information or publications which in the assessor's judgment will fairly estimate the true value in money of the motor vehicle.

10. Before the assessor may increase the assessed valuation of any parcel of subclass (1) real property by more than fifteen percent since the last assessment, excluding increases due to new construction or improvements, the assessor shall conduct a physical inspection of such property.

11. If a physical inspection is required, pursuant to subsection 10 of this section, the assessor shall notify the property owner of that fact

in writing and shall provide the owner clear written notice of the owner's rights relating to the physical inspection. If a physical inspection is required, the property owner may request that an interior inspection be performed during the physical inspection. The owner shall have no less than thirty days to notify the assessor of a request for an interior physical inspection.

12. A physical inspection, as required by subsection 10 of this section, shall include, but not be limited to, an on-site personal observation and review of all exterior portions of the land and any buildings and improvements to which the inspector has or may reasonably and lawfully gain external access, and shall include an observation and review of the interior of any buildings or improvements on the property upon the timely request of the owner pursuant to subsection 11 of this section. Mere observation of the property via a "drive-by inspection" or the like shall not be considered sufficient to constitute a physical inspection as required by this section.

13. The provisions of subsections 11 and 12 of this section shall only apply in any county with a charter form of government with more than one million inhabitants.

14. A county or city collector may accept credit cards as proper form of payment of outstanding property tax or license due. No county or city collector may charge surcharge for payment by credit card which exceeds the fee or surcharge charged by the credit card bank, processor, or issuer for its service. A county or city collector may accept payment by electronic transfers of funds in payment of any tax or license and charge the person making such payment a fee equal to the fee charged the county by the bank, processor, or issuer of such electronic payment.

15. **[**The provisions of this section and sections 137.073, 138.060 and 138.100, RSMo, as enacted by house bill no. 1150 of the ninety-first general assembly, second regular session, shall become effective January 1, 2003, for any taxing jurisdiction within a county with a charter form of government with greater than one million inhabitants, and the provisions of this section and sections 137.073, 138.060 and 138.100, RSMo, as enacted by house bill no. 1150 of the ninety-first general assembly, second regular session, shall become effective October 1, 2004, for all taxing jurisdictions in this state.**]** Any county or city not within a county in this state may, by an affirmative vote of the governing body of such county, opt out of the provisions of this section and sections 137.073, 138.060, and 138.100, RSMo, as enacted by house bill no. 1150 of the ninety-first general assembly, second regular session and section 137.073 as modified by this act, for the next year of the general reassessment, prior to January first of any year. No county or city not within a county shall exercise this opt-out provision after implementing the provisions of this section and sections 137.073, 138.060, and 138.100, RSMo, as enacted by house bill no. 1150 of the ninety-first general assembly, second regular session and section 137.073 as modified by this act, in a year of general reassessment. For the purposes of applying the provisions of this subsection, a political subdivision contained within two or more counties where at least one of such counties has opted out and at least one of such counties has not opted out shall calculate a single tax rate as in effect prior to the enactment of house bill no. 1150 of the ninety-first general assembly, second regular session. A governing body of a city not within a county or a county that has opted out under the provisions of this subsection may choose to implement the provisions of this section and sections 137.073, 138.060, and 138.100, RSMo, as enacted by house bill no. 1150 of the ninety-first general assembly, second regular session, and section 137.073 as modified by this act, for the next year of general reassessment, by an affirmative vote of the governing body prior to December thirty-first of any year.

16. The governing body of any city of the third classification located in any county that

has exercised its authority to opt out under subsection 15 of this section may levy separate and differing tax rates for real and personal property only if such city bills and collects its own property taxes or satisfies the entire cost of the billing and collection of such separate and differing tax rates. Such separate and differing rates shall not exceed such city's tax rate ceiling."; and

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

HOUSE AMENDMENT NO. 9

Amend House Committee Substitute for Senate Bill No. 582, Page 60, Section 141.640, Line 9 by inserting after all of said section the following:

"143.161. 1. For all taxable years beginning after December 31, 1997, a resident may deduct one thousand two hundred dollars for each dependent for whom such resident is entitled to a dependency exemption deduction for federal income tax purposes. In the case of a dependent who has attained sixty-five years of age on or before the last day of the taxable year, if such dependent resides in the taxpayer's home or the dependent's own home or if such dependent does not receive Medicaid or state funding while residing in a facility licensed pursuant to chapter 198, RSMo, the taxpayer may deduct an additional one thousand dollars.

2. For all taxable years beginning before January 1, 1999, a resident who qualifies as an unmarried head of household or as a surviving spouse for federal income tax purposes may deduct an additional eight hundred dollars. For all taxable years beginning on or after January 1, 1999, a resident who qualifies as an unmarried head of household or as a surviving spouse for federal income tax purposes may deduct an additional one thousand four hundred dollars.

3. For all taxable years beginning on or after January 1, 2008, for each birth for which a certificate of birth resulting in stillbirth has been issued under section 193.165, RSMo, a taxpayer may claim the exemption under subsection 1 of this section only in the taxable year in which the stillbirth occurred, if the child otherwise would have been a member of the taxpayer's household."; and

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

HOUSE AMENDMENT NO. 10

Amend House Committee Substitute for Senate Bill No. 582, 144.030, Page 71, Line 288, by inserting immediately after said line the following:

"**144.051. 1. As used in this section, "machinery and equipment" means new or used farm tractors and such other new or used machinery and equipment and repair or replacement parts thereon, and supplies and lubricants used exclusively, solely, and directly for the planting, harvesting, processing, or transporting of a forestry product, and the purchase of motor fuel, as defined in section 142.800, RSMo, therefor which is:**

(1) Used exclusively for forestry purposes;

(2) Used on land owned or leased for the purpose of planting, harvesting, processing, or transporting forestry products; and

(3) Used directly in planting, harvesting, processing, or transporting forestry products.

2. Notwithstanding any other provision of law to the contrary, for purposes of department of revenue administrative interpretation, all machinery and equipment used solely for the planting, harvesting, processing, or transporting of a forestry product shall be considered farm machinery, and shall be exempt from state and local sales and use tax, as provided for other farm machinery in section

144.030."; and

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

HOUSE AMENDMENT NO. 11

Amend House Committee Substitute for Senate Bill No. 582, Section 144.030, Page 71, Line 288, by striking all of said line and inserting in lieu thereof the following:

"**(41) For all tax years beginning on or after January 1, 2008 and ending on or before December 31, 2013 all sales of steel posts and wire used for fencing for agriculture purposes.**"; and

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

HOUSE AMENDMENT NO. 12

Amend House Committee Substitute for Senate Bill No. 582, Section 143.431, Page 63, Line 93, by inserting after all of said section, the following:

"144.020. 1. A tax is hereby levied and imposed upon all sellers for the privilege of engaging in the business of selling tangible personal property or rendering taxable service at retail in this state. The rate of tax shall be as follows:

(1) Upon every retail sale in this state of tangible personal property, including but not limited to motor vehicles, trailers, motorcycles, mopeds, motortricycles, boats and outboard motors, a tax equivalent to four percent of the purchase price paid or charged, or in case such sale involves the exchange of property, a tax equivalent to four percent of the consideration paid or charged, including the fair market value of the property exchanged at the time and place of the exchange, except as otherwise provided in section 144.025;

(2) A tax equivalent to four percent of the amount paid for admission and seating accommodations, or fees paid to, or in any place of amusement, entertainment or recreation, games and athletic events;

(3) A tax equivalent to four percent of the basic rate paid or charged on all sales of electricity or electrical current, water and gas, natural or artificial, to domestic, commercial or industrial consumers;

(4) A tax equivalent to four percent on the basic rate paid or charged on all sales of local and long distance telecommunications service to telecommunications subscribers and to others through equipment of telecommunications subscribers for the transmission of messages and conversations and upon the sale, rental or leasing of all equipment or services pertaining or incidental thereto; except that, the payment made by telecommunications subscribers or others, pursuant to section 144.060, and any amounts paid for access to the Internet or interactive computer services shall not be considered as amounts paid for telecommunications services;

(5) A tax equivalent to four percent of the basic rate paid or charged for all sales of services for transmission of messages of telegraph companies;

(6) A tax equivalent to four percent on the amount of sales or charges for all rooms, meals and drinks furnished at any hotel, motel, tavern, inn, restaurant, eating house, drugstore, dining car, tourist cabin, tourist camp or other place in which rooms, meals or drinks are regularly served to the public;

(7) A tax equivalent to four percent of the amount paid or charged for intrastate tickets by every person operating a railroad, sleeping car, dining car, express car, boat, airplane and such buses and trucks as are licensed by the division of motor carrier and railroad safety of the department of economic development of Missouri, engaged in

the transportation of persons for hire;

(8) A tax equivalent to four percent of the amount paid or charged for rental or lease of tangible personal property, provided that if the lessor or renter of any tangible personal property had previously purchased the property under the conditions of "sale at retail" **[**as defined in subdivision (8) of section 144.010**]** or leased or rented the property and the tax was paid at the time of purchase, lease or rental, the lessor, sublessor, renter or subrenter shall not apply or collect the tax on the subsequent lease, sublease, rental or subrental receipts from that property. The purchase, rental or lease of motor vehicles, trailers, motorcycles, mopeds, motortricycles, boats, and outboard motors shall be taxed and the tax paid as provided in this section and section 144.070. In no event shall the rental or lease of boats and outboard motors be considered a sale, charge, or fee to, for or in places of amusement, entertainment or recreation nor shall any such rental or lease be subject to any tax imposed to, for, or in such places of amusement, entertainment or recreation. Rental and leased boats or outboard motors shall be taxed under the provisions of the sales tax laws as provided under such laws for motor vehicles and trailers. Tangible personal property which is exempt from the sales or use tax under section 144.030 upon a sale thereof is likewise exempt from the sales or use tax upon the lease or rental thereof**;**

(9) A tax equivalent to four percent of the amount paid for admission and seating accommodations, or fees paid to or in any place of recreation for admission and seating or as part of a contest or competition, with the exception of dues or fees paid to any health spa as defined in section 407.325, RSMo, solely for: membership; league participation; weight, nutritional, massage, or cardiological training between one or more licensed or certified trainers and one or more persons receiving such paid services, including such services and any activity, exercise, training, or therapy referred or prescribed by a physician or that is covered by health insurance.

2. All tickets sold which are sold under the provisions of sections 144.010 to 144.525 which are subject to the sales tax shall have printed, stamped or otherwise endorsed thereon, the words "This ticket is subject to a sales tax.".**"**; and

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

HOUSE AMENDMENT NO. 13

Amend House Committee Substitute for Senate Bill No. 582, Page 78, Section 320.093, Line 51, by inserting after all of said line the following:

"393.715. 1. The general powers of a commission to the extent provided in section 393.710 to be exercised for the benefit of its contracting members shall include the power to:

(1) Plan, develop, acquire, construct, reconstruct, operate, manage, dispose of, participate in, maintain, repair, extend or improve one or more projects, either exclusively or jointly or by participation with electric cooperative associations, municipally owned or public utilities or acquire any interest in or any rights to capacity of a project, within or outside the state, and act as an agent, or designate one or more other persons participating in a project to act as its agent, in connection with the planning, acquisition, construction, operation, maintenance, repair, extension or improvement of such project;

(2) Acquire, sell, distribute and process fuels necessary to the production of electric power and energy; provided, however, the commission shall not have the power or authority to erect, own, use or maintain a transmission line which is parallel or generally parallel to another transmission line in place within a distance of two miles, which serves the same general area sought to be served by the commission unless the public service commission finds that it is not feasible to utilize the

transmission line which is in place;

(3) Acquire by purchase or lease, construct, install, and operate reservoirs, pipelines, wells, check dams, pumping stations, water purification plants, and other facilities for the production, wholesale distribution, and utilization of water and to own and hold such real and personal property as may be necessary to carry out the purposes of its organization; provided, however, that a commission shall not sell or distribute water, at retail or wholesale, within the certificated area of a water corporation which is subject to the jurisdiction of the public service commission unless the sale or distribution of water is within the boundaries of a public water supply district or municipality which is a contracting municipality in the commission and the commission has obtained the approval of the public service commission prior to commencing such said sale or distribution of water;

(4) Acquire by purchase or lease, construct, install, and operate lagoons, pipelines, wells, pumping stations, sewage treatment plants and other facilities for the treatment and transportation of sewage and to own and hold such real and personal property as may be necessary to carry out the purposes of its organization;

(5) Enter into operating, franchises, exchange, interchange, pooling, wheeling, transmission and other similar agreements with any person;

(6) Make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the commission;

(7) Employ agents and employees;

(8) Contract with any person, within or outside the state, for the construction of any project or for any interest therein or any right to capacity thereof, without advertising for bids, preparing final plans and specifications in advance of construction, or securing performance and payment of bonds, except to the extent and on such terms as its board of directors or executive committee shall determine. Any contract entered into pursuant to this subdivision shall contain a provision that the requirements of sections 290.210 to 290.340, RSMo, shall apply;

(9) Purchase, sell, exchange, transmit, treat, dispose or distribute water, sewage, gas, heat or electric power and energy, or any by-product resulting therefrom, within and outside the state, in such amounts as it shall determine to be necessary and appropriate to make the most effective use of its powers and to meet its responsibilities, and to enter into agreements with any person with respect to such purchase, sale, exchange, treatment, disposal or transmission, on such terms and for such period of time as its board of directors or executive committee shall determine. A commission may not sell or distribute water, gas, heat or power and energy, or sell sewage service at retail to ultimate customers outside the boundary limits of its contracting municipalities except pursuant to subsection 2 or 3 of this section;

(10) Acquire, own, hold, use, lease, as lessor or lessee, sell or otherwise dispose of, mortgage, pledge, or grant a security interest in any real or personal property, commodity or service or interest therein;

(11) Exercise the powers of eminent domain for public use as provided in chapter 523, RSMo, except that the power of eminent domain shall not be exercised against any electric cooperative association, municipally owned or public utility;

(12) Incur debts, liabilities or obligations including the issuance of bonds pursuant to the authority granted in section 27 of article VI of the Missouri Constitution;

(13) Sue and be sued in its own name;

(14) Have and use a corporate seal;

(15) Fix, maintain and revise fees, rates, rents and charges for functions, services, facilities or commodities provided by the commission**. The powers enumerated in this subdivision shall constitute the power to tax for purposes of**

article 10, section 15 of the Missouri Constitution;

(16) Make, and from time to time, amend and repeal, bylaws, rules and regulations not inconsistent with this section to carry into effect the powers and purposes of the commission;

(17) Notwithstanding the provisions of any other law, invest any funds held in reserve or sinking funds, or any funds not required for immediate disbursement, including the proceeds from the sale of any bonds, in such obligations, securities and other investments as the commission deems proper;

(18) Join organizations, membership in which is deemed by the board of directors or its executive committee to be beneficial to accomplishment of the commission's purposes;

(19) Exercise any other powers which are deemed necessary and convenient by the commission to effectuate the purposes of the commission; and

(20) Do and perform any acts and things authorized by this section under, through or by means of an agent or by contracts with any person.

2. When a municipality purchases a privately owned water utility and a commission is created pursuant to sections 393.700 to 393.770, the commission may continue to serve those locations previously receiving water from the private utility even though the location receives such service outside the geographical area of the municipalities forming the commission. New water service may be provided in such areas if the site to receive such service is located within one-fourth of a mile from a site serviced by the privately owned water utility.

3. When a commission created by any of the contracting entities listed in subdivision (4) of section 393.705 becomes a successor to any nonprofit water corporation, nonprofit sewer corporation or other nonprofit agency or entity organized to provide water or sewer service, the commission may continue to serve, as well as provide new service to, those locations and areas previously receiving water or sewer service from such nonprofit entity, regardless of whether or not such location receives such service outside the geographical service area of the contracting entities forming such commission; provided that such locations and areas previously receiving water and sewer service from such nonprofit entity are not located within:

(1) Any county of the first classification with a population of more than six hundred thousand and less than nine hundred thousand;

(2) The boundaries of any sewer district established pursuant to article VI, section 30(a) of the Missouri Constitution; or

(3) The certificated area of a water or sewer corporation that is subject to the jurisdiction of the public service commission.

393.720. Any commission established by joint contract under sections 393.700 to 393.770 shall constitute a body public and corporate of the state, exercising public powers for the benefit of its contracting members and in order to carry out the public purposes and the public functions of its contracting members. It shall have the duties, privileges, immunities, rights, liabilities and disabilities of its contracting members and as a public body politic and corporate**, including the power to tax,** but shall not have **any additional** taxing power separate from that of its members nor shall it have the benefit of the doctrine of sovereign immunity.

393.740. 1. All bonds issued pursuant to sections 393.700 to 393.770 and all income or interest thereon shall be exempt from all state taxes, except estate and transfer taxes.

2. All property, real and tangible personal, except for properties acquired exclusively for water supply districts **and water supply commissions**, acquired by the bonds issued pursuant to sections 393.700 and 393.770 or otherwise acquired by a commission shall be

subject to taxation for state, county, and municipal and other local purposes only to the same extent as if such property was owned directly by each contracting or participating municipality in such proportion or manner as specified by contract among all contracting or participating municipalities party to a project or if not specified in proportion to the percentage of each municipality's interest or participation in the facility or property."; and

Further amend said title, enacting clause and intersectional references accordingly.

HOUSE AMENDMENT NO. 14

Amend House Committee Substitute for Senate Bill No. 582, Section 135.090, Page 34, Line 38, by inserting after all of said section, the following:

"135.096. 1. In order to promote personal financial responsibility for long-term health care in this state, for all taxable years beginning after December 31, 1999, **but ending on or before December 31, 2006,** a resident individual may deduct from such individual's Missouri taxable income an amount equal to fifty percent of all nonreimbursed amounts paid by such individual for qualified long-term care insurance premiums to the extent such amounts are not included **in** the individual's itemized deductions. **For all taxable years beginning on or after January 1, 2007, a resident individual may deduct from such individual's Missouri taxable income an amount equal to one hundred percent of all nonreimbursed amounts paid by such individual for qualified long-term care insurance premiums to the extent such amounts are not included in the individual's itemized deductions.** A married individual filing a Missouri income tax return separately from his or her spouse shall be allowed to make a deduction pursuant to this section in an amount equal to the proportion of such individual's payment of all qualified long-term care insurance premiums. The director of the department of revenue shall place a line on all Missouri individual income tax returns for the deduction created by this section.

2. For purposes of this section, "qualified long-term care insurance" means any policy which meets or exceeds the provisions of sections 376.1100 to 376.1118, RSMo, and the rules and regulations promulgated pursuant to such sections for long-term care insurance."; and

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

HOUSE AMENDMENT NO. 15

Amend House Committee Substitute for Senate Bill No. 582, Page 34, Section 135.090, Line 38, by inserting after all of said line the following:

"135.600. 1. As used in this section, the following terms shall mean:

(1) "Contribution", a donation of cash, stock, bonds or other marketable securities, or real property;

(2) "Maternity home", a residential facility located in this state established for the purpose of providing housing and assistance to pregnant women who are carrying their pregnancies to term, and which is exempt from income taxation under the United States Internal Revenue Code;

(3) "State tax liability", in the case of a business taxpayer, any liability incurred by such taxpayer pursuant to the provisions of chapter 143, RSMo, chapter 147, RSMo, chapter 148, RSMo, and chapter 153, RSMo, exclusive of the provisions relating to the withholding of tax as provided for in sections 143.191 to 143.265, RSMo, and related provisions, and in the case of an individual taxpayer, any liability incurred by such taxpayer pursuant to the provisions of chapter 143, RSMo;

(4) "Taxpayer", a person, firm, a partner in a firm, corporation or a shareholder in an S corporation doing business in the state of Missouri

and subject to the state income tax imposed by the provisions of chapter 143, RSMo, **including any charitable organization which is exempt from federal income tax and whose Missouri unrelated business taxable income, if any, would be subject to the state income tax imposed under chapter 143, RSMo,** or a corporation subject to the annual corporation franchise tax imposed by the provisions of chapter 147, RSMo, or an insurance company paying an annual tax on its gross premium receipts in this state, or other financial institution paying taxes to the state of Missouri or any political subdivision of this state pursuant to the provisions of chapter 148, RSMo, or an express company which pays an annual tax on its gross receipts in this state pursuant to chapter 153, RSMo, or an individual subject to the state income tax imposed by the provisions of chapter 143, RSMo.

2. A taxpayer shall be allowed to claim a tax credit against the taxpayer's state tax liability, in an amount equal to fifty percent of the amount such taxpayer contributed to a maternity home.

3. The amount of the tax credit claimed shall not exceed the amount of the taxpayer's state tax liability for the taxable year that the credit is claimed, and such taxpayer shall not be allowed to claim a tax credit in excess of fifty thousand dollars per taxable year. However, any tax credit that cannot be claimed in the taxable year the contribution was made may be carried over to the next four succeeding taxable years until the full credit has been claimed.

4. Except for any excess credit which is carried over pursuant to subsection 3 of this section, a taxpayer shall not be allowed to claim a tax credit unless the total amount of such taxpayer's contribution or contributions to a maternity home or homes in such taxpayer's taxable year has a value of at least one hundred dollars.

5. The director of the department of social services shall determine, at least annually, which facilities in this state may be classified as maternity homes. The director of the department of social services may require of a facility seeking to be classified as a maternity home whatever information is reasonably necessary to make such a determination. The director of the department of social services shall classify a facility as a maternity home if such facility meets the definition set forth in subsection 1 of this section.

6. The director of the department of social services shall establish a procedure by which a taxpayer can determine if a facility has been classified as a maternity home, and by which such taxpayer can then contribute to such maternity home and claim a tax credit. Maternity homes shall be permitted to decline a contribution from a taxpayer. The cumulative amount of tax credits which may be claimed by all the taxpayers contributing to maternity homes in any one fiscal year shall not exceed **[** two**] three** million dollars.

7. The director of the department of social services shall establish a procedure by which, from the beginning of the fiscal year until some point in time later in the fiscal year to be determined by the director of the department of social services, the cumulative amount of tax credits are equally apportioned among all facilities classified as maternity homes. If a maternity home fails to use all, or some percentage to be determined by the director of the department of social services, of its apportioned tax credits during this predetermined period of time, the director of the department of social services may reapportion these unused tax credits to those maternity homes that have used all, or some percentage to be determined by the director of the department of social services, of their apportioned tax credits during this predetermined period of time. The director of the department of social services may establish more than one period of time and reapportion more than once during each fiscal year. To the maximum extent possible, the director of the department of social services shall establish the procedure described in this subsection in such a manner as to

ensure that taxpayers can claim all the tax credits possible up to the cumulative amount of tax credits available for the fiscal year.

8. This section shall become effective January 1, 2000, and shall apply to all tax years after December 31, 1999.

9. Notwithstanding any other law to the contrary, any tax credits granted under this section may be assigned, transferred, sold, or otherwise conveyed without consent or approval."; and

Further amend the title and enacting clause accordingly.

HOUSE AMENDMENT NO. 16

Amend House Committee Substitute for Senate Bill No. 582, Section 144.030, Page 63, Line 14 by inserting after the words "motor fuel or" the following: "**, biofuels,**"; and

Further amend said bill, Section 165.071, Page 76, Line 18 by inserting after all of said section and line the following:

"313.057. 1. It is unlawful for any person, either as an owner, lessee or employee, to operate, carry on, conduct or maintain any form of manufacturing, selling, leasing or distribution of any bingo equipment or supplies without having first procured and maintained a Missouri bingo equipment and supplies manufacturer or supplier license.

2. The commission shall submit two sets of fingerprints for each key person, as defined in commission rules and regulations, of an entity or organization seeking issuance or renewal of a Missouri bingo equipment and supplies manufacturer or supplier license, for the purpose of checking the person's prior criminal history when the commission determines a nationwide check is warranted. The fingerprint cards and any required fees shall be sent to the Missouri state highway patrol's criminal records division. The first set of fingerprints shall be used for searching the state repository of criminal history information. The second set of fingerprints shall be forwarded to the Federal Bureau of Investigation, Identification Division, for the searching of the federal criminal history files. The patrol shall notify the commission of any criminal history information or lack of criminal history information discovered on the individual. Notwithstanding the provisions of section 610.120, RSMo, all records related to any criminal history information discovered shall be accessible and available to the commission.

3. The holder of a state bingo license may, within two years of cessation of conducting bingo or upon specific approval by the commission, dispose of by sale in a manner approved by the commission, any or all of his bingo equipment and supplies, without a supplier's license. In case of foreclosure of a lien by a bank or other person holding a security interest for which bingo equipment is security in whole or in part for the lien, the commission may authorize the disposition of the bingo equipment without requiring a supplier's license.

4. Any person whom the commission determines to be a suitable person to receive a license pursuant to the provisions of this section may be issued a manufacturer's or supplier's license. The commission may require suppliers to post a bond with the commission in an amount and in the manner prescribed by the commission. The burden of proving his qualification to receive or hold a license pursuant to this section is at all times on the applicant or licensee.

5. The commission shall charge and collect from each applicant for a supplier's license a one-time application fee set by the commission, not to exceed five thousand dollars. The commission shall charge and collect an annual renewal fee for each supplier licensee not to exceed one thousand dollars.

6. The commission shall charge and collect from each applicant for a manufacturer's license a one-time application fee set by the commission,

not to exceed one thousand dollars. The commission shall charge and collect an annual renewal fee for each manufacturer licensee not to exceed five hundred dollars.

7. The commission shall charge and collect from each applicant for a hall provider's license a one-time application fee set by the commission, not to exceed seven hundred fifty dollars. The commission shall charge and collect an annual renewal fee for each hall provider licensee not to exceed five hundred dollars.

8. All licenses issued pursuant to this section shall be issued for the calendar year and shall expire on December thirty-first of each year. Regardless of the date of application or issuance of the license, the fee to be charged and collected pursuant to this section shall be the full annual fee.

9. All license fees collected pursuant to this section shall be paid over immediately to the state treasurer to be deposited to the credit of the gaming commission bingo fund.

10. All licensees pursuant to this section shall maintain for a period of not less than three years full and complete records of all business carried on in this state and shall make same available for inspection to any duly authorized representative of the commission. If a supplier does not receive payment in full from an organization within thirty days of the delivery of bingo supplies, the supplier shall notify the commission in writing, or in a manner specified by the commission in its rules and regulations, of the delinquency. Upon receipt of the notice of delinquency, the commission shall notify all suppliers that until further notice from the commission, all sales of bingo supplies to the delinquent organizations shall be on a cash-only basis. Upon receipt of the notice from the commission, no supplier may extend credit to the delinquent organization until such time as the commission approves credit sales. If a manufacturer does not receive payment in full from a supplier within ninety days of the delivery of bingo supplies, the manufacturer shall notify the commission in writing, or in a manner specified by the commission in its rules and regulations, of the delinquency. Upon receipt of the notice of delinquency, the commission shall notify all manufacturers that until further notice from the commission, all sales of bingo supplies to the delinquent supplier shall be on a cash-only basis. Upon receipt of the notice from the commission, no manufacturer may extend credit to the delinquent supplier until such time as the commission approves credit sales.

11. **[**Until January 1, 1995, all suppliers shall pay a tax on all pull-tab cards distributed by them in the amount of ten dollars per box when sold by any organization licensed to conduct bingo pursuant to the provisions of sections 313.005 to 313.080. No box sold shall contain more than twenty-four hundred pull-tab cards. Beginning January 1, 1995, a tax is hereby imposed in the amount of two percent of the gross receipts of the retail sales value charged for each pull-tab card sold in Missouri to be paid by the supplier. The taxes, less two percent of the total amount paid which may be retained by the supplier, if timely filed and paid, shall be paid on a monthly basis to the commission by each supplier of pull-tabs and shall be due on the last day of each month following the month in which the pull-tabs were sold. The taxes shall be deposited in the state treasury, credited to the bingo proceeds for education fund.**]** All pull-tab cards sold by suppliers in this state shall bear on the face thereof the amount for which such pull-tab cards will be sold, and the license number of the supplier shall be printed on the inventory statement commonly called the flare, enclosed in each unit container. Each unit container shall contain cards printed in such a manner as to ensure that at least sixty percent of the gross revenues generated by the ultimate sale of such cards shall be returned to the final purchasers of such cards. **[**Any supplier who fails to pay the tax imposed pursuant to this subsection shall have his license issued pursuant to this section revoked and shall be guilty of a class A

misdemeanor.**]**"; and

Further amend said bill, Section 144.517, Page 78, Line 13 by inserting after all of said line and section the following:

"**[**313.055. 1. Until January 1, 1995, a tax is hereby imposed on each organization conducting the game of bingo which awards to winners of bingo games prizes or merchandise having an aggregate retail value of more than five thousand dollars annually and more than one hundred dollars in any single day. The tax shall be in an amount equal to two and one-half percent of the total gross receipts realized from each game of bingo conducted, shall be paid on a monthly basis to the commission, by each person or licensee conducting a game or games of bingo and shall be due on the fifteenth day of the month following the month in which each bingo game was conducted. Beginning January 1, 1995, the tax shall be in the amount of two-tenths of one cent upon each bingo card and progressive bingo game card sold in Missouri to be paid by the supplier. The taxes, less two percent of the total amount paid which may be retained by the supplier, shall be paid on a monthly basis to the commission, by each supplier of bingo supplies and shall be due on the last day of the month following the month in which the bingo card was sold, with the date of sale being the date on the invoice evidencing the sale, along with such reports as may be required by the commission. The taxes shall be deposited in the state treasury, credited to the bingo proceeds for education fund.

2. All taxes not paid to the commission by the person or licensee required to remit the same on the date when the same becomes due and payable to the commission under the provisions of sections 313.005 to 313.085 shall bear interest at the rate to be set by the commission not to exceed two percent per calendar month, or fraction thereof, from and after such date until paid. In addition, the commission may impose a penalty not to exceed three times the amount of taxes due for failure to submit the reports required by this section and pay the taxes due.**]**"; 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.

CONFERENCE COMMITTEE REPORTS

Senator Engler, on behalf of the conference committee appointed to act with a like committee from the House on **HCS** for **SCS** for **SB 156**, as amended, moved that the following conference committee report be taken up, which motion prevailed.

CONFERENCE COMMITTEE REPORT ON HOUSE COMMITTEE SUBSTITUTE FOR SENATE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 156

The Conference Committee appointed on House Committee Substitute for Senate Committee Substitute for Senate Bill No. 156, with House Amendment No. 1 to House Amendment No. 1, House Amendment No. 1, as amended, House Amendment Nos. 2, 3, and 6, House Amendment No. 1 to House Amendment No. 7, House Amendment No. 7, as amended, and House Amendment No. 9, begs leave to report that we, after free and fair discussion of the differences, have agreed to recommend and do recommend to the respective bodies as follows:

1. That the House recede from its position on House Committee Substitute for Senate Committee Substitute for Senate Bill No. 156, as amended;

2. That the Senate recede from its position on Senate Committee Substitute for Senate Bill No. 156;

3. That the attached Conference Committee Substitute for House Committee Substitute for Senate Committee Substitute for Senate Bill No. 156, be Third Read and Finally Passed.

FOR THE SENATE:	FOR THE HOUSE:
/s/ Kevin Engler	/s/ John Quinn
/s/ Chuck Purgason	/s/ Michael Dethrow
/s/ Robert Mayer	/s/ Steve Hobbs
/s/ Frank A. Barnitz	/s/ Rebecca McClanahan
/s/ Wes Shoemyer	/s/ Terry L. Witte

Senator Goodman assumed the Chair.

Senator Engler moved that the above conference committee report be adopted.

At the request of Senator Engler, the above motion was withdrawn.

PRIVILEGED MOTIONS

Senator Scott moved that **SCS** for **SB 497**, with **HCS**, be taken up for 3rd reading and final passage, which motion prevailed.

HCS for **SCS** for **SB 497**, entitled:

HOUSE COMMITTEE SUBSTITUTE FOR SENATE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 497

An Act to repeal sections 50.327, 52.290, 52.312, 52.315, 52.317, 58.500, 58.510, 94.660, 110.130,110.140, 110.150, 141.150, 141.640, and 473.743, RSMo, and to enact in lieu thereof thirteen new sections relating to county officials, with penalty provisions.

Was taken up.

Senator Scott moved that **HCS** for **SCS** for **SB 497** be adopted, which motion prevailed by the following vote:

YEAS—Senators

Barnitz	Bartle	Bray	Callahan
Champion	Clemens	Coleman	Crowell
Days	Engler	Gibbons	Goodman
Graham	Green	Griesheimer	Gross
Justus	Kennedy	Koster	Lager
Loudon	Mayer	McKenna	Nodler
Purgason	Ridgeway	Rupp	Scott
Shields	Shoemyer	Smith	Stouffer
Vogel	Wilson—34		

NAYS—Senators—None

Absent—Senators—None

Absent with leave—Senators—None

Vacancies—None

On motion of Senator Scott, **HCS** for **SCS** for **SB 497** was read the 3rd time and passed by the following vote:

YEAS—Senators

Barnitz	Bartle	Bray	Callahan
Champion	Clemens	Coleman	Crowell
Days	Engler	Gibbons	Goodman
Graham	Green	Griesheimer	Gross
Justus	Kennedy	Koster	Lager
Loudon	Mayer	McKenna	Nodler
Purgason	Ridgeway	Rupp	Scott
Shields	Shoemyer	Smith	Stouffer
Vogel	Wilson—34		

NAYS—Senators—None

Absent—Senators—None

Absent with leave—Senators—None

Vacancies—None

The President declared the bill passed.

On motion of Senator Scott, title to the bill was agreed to.

Senator Scott moved that the vote by which the bill passed be reconsidered.

Senator Shields moved that motion lay on the table, which motion prevailed.

Bill ordered enrolled.

Senator Shoemyer moved that the Senate refuse to concur in **HCS** for **SB 582**, as amended, and request the House to recede from its position or, failing to do so, grant the Senate a conference

thereon, which motion prevailed.

Senator Scott assumed the Chair.

HOUSE BILLS ON THIRD READING

HCS for **HB 431**, with **SCS**, entitled:

An Act to repeal sections 347.137, 351.015, and 351.459, RSMo, and to enact in lieu thereof four new sections relating to business organizations.

Was called from the Informal Calendar and taken up by Senator Goodman.

SCS for **HCS** for **HB 431**, entitled:

SENATE COMMITTEE SUBSTITUTE FOR HOUSE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 431

An Act to repeal sections 347.137, 351.015, and 351.459, RSMo, and to enact in lieu thereof three new sections relating to business organizations.

Was taken up.

Senator Goodman moved that **SCS** for **HCS** for **HB 431** be adopted, which motion prevailed.

On motion of Senator Goodman, **SCS** for **HCS** for **HB 431** was read the 3rd time and passed by the following vote:

YEAS—Senators

Barnitz	Bartle	Bray	Callahan
Champion	Clemens	Coleman	Crowell
Days	Engler	Gibbons	Goodman
Graham	Green	Griesheimer	Gross
Justus	Kennedy	Koster	Lager
Loudon	Mayer	McKenna	Nodler
Purgason	Ridgeway	Rupp	Scott
Shields	Shoemyer	Smith	Stouffer
Vogel	Wilson—34		

NAYS—Senators—None

Absent—Senators—None

Absent with leave—Senators—None

Vacancies—None

The President declared the bill passed.

On motion of Senator Goodman, title to the bill was agreed to.

Senator Goodman moved that the vote by which the bill passed be reconsidered.

Senator Shields moved that motion lay on the table, which motion prevailed.

Senator Crowell assumed the Chair.

MESSAGES FROM THE HOUSE

The following message was 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 has taken up and passed **HCS No. 2** for **SCS** for **SB 313**, entitled:

An Act to repeal sections 700.010, 700.045, 700.056, 700.065, 700.070, 700.090, 700.100, 700.115, 700.450, 700.455, 700.460, 700.465, 700.470 and 700.650, RSMo, and to enact in lieu thereof fourteen new sections relating to consumer protection, with penalty provisions.

With House Amendment No. 1, House Amendment No. 1 to House Amendment No. 2 and House Amendment No. 2, as amended.

HOUSE AMENDMENT NO. 1

Amend House Committee Substitute No. 2 for Senate Committee Substitute for Senate Bill No. 313, Page 1, In the Title, Line 3, by inserting after "RSMo," the following: "and sections 388.700, 388.703, 388.706, 388.709, 388.712, 388.715, 388.718, 388.721, 388.724, 388.727, 388.730, 388.733, 388.736, 388.739, 388.742, and 388.745 as truly agreed and finally passed in Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 327, Ninety-fourth General Assembly, First Regular Session,"; and

Further amend said bill, Page 1, Section A,

Line 2, by inserting after "RSMo," the following: "and sections 388.700, 388.703, 388.706, 388.709, 388.712, 388.715, 388.718, 388.721, 388.724, 388.727, 388.730, 388.733, 388.736, 388.739, 388.742, and 388.745 as truly agreed and finally passed in Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 327, Ninety-fourth General Assembly, First Regular Session,"; and

Further amend said bill, Page 9, Section 1, Line 15, by inserting after all of said line the following:

"**[388.700. Sections 388.700 to 388.745 shall be known as "The Regional Railroad Authorities Act." As used in sections 388.700 to 388.745, unless the context clearly requires otherwise, the following words and terms shall mean:**

(1) "Authority", "railroad authority", or "regional railroad authority", a regional railroad authority organized and operated as a political subdivision under sections 388.700 to 388.745;

(2) "Common carrier", a railroad engaged in transportation for hire;

(3) "Commissioners", the commissioners of the regional railroad authority;

(4) "Project", any railroad facilities proposed to be acquired, constructed, improved, or refinanced by an authority, including any real or personal property, structures, machinery, equipment, and appurtenances determined by the authority to be useful or convenient for railroad operations and handling passengers or freight;

(5) "Railroad", any form of nonhighway ground transportation that runs on rails or electromagnetic guideways. The term "railroad" shall also have the meaning associated to it in 49 U.S.C. Section 20102, as amended;

(6) "Railroad properties and facilities", any real or personal property or interest in such property which is owned, leased or otherwise controlled by a railroad or other person, including an authority, and which are used or are useful in rail transportation service, including:

(a) Track, roadbed and related structures, including rail, ties, ballast, other track materials, grading, tunnels, bridges, tressels, culverts, elevated structures, stations, office buildings used for operating purposes only, repair shops, engine houses and public improvements used or usable for rail service operation;

(b) Communication and power transmission systems for use by railroads;

(c) Signals, including signals and interlockers;

(d) Terminal or yard facilities and services to express company and railroads and their shippers, including ferries, tugs, car floats and related shoreside facilities designed for the transportation of equipment by water;

(e) Shop or repair facilities or any other property used or capable of being used in rail freight transportation services or in connection with such services or for originating, terminating, improving and expediting the movement of equipment or goods;

(6) "Real property", lands,

structures, improvements thereof, and water and riparian rights, and any and all interests and estates therein, legal or equitable, including but not limited to easements, rights-of-way, uses, leases, and licenses.]

[388.703. The purpose of an authority established and operated under sections 388.700 to 388.745 is to provide for the preservation, improvement, and the continuation of rail service for agriculture, industry, or passenger traffic and to provide for the preservation of railroad right-of-way for transportation uses, when determined to be practicable and necessary for the public welfare. The acquisition of real property under sections 388.700 to 388.745; the planning, acquisition, establishment, construction, improvement, maintenance, equipment, operation, regulation, and protection of authority facilities; and the exercise of powers granted to authorities and other public agencies to be severally or jointly exercised are public and governmental functions, exercised for public purpose, and matters of public necessity. All real property and other property acquired and used by or on behalf of an authority or other public agency, as provided in sections 388.700 to 388.745, shall be used for public and governmental purposes and as a matter of public necessity.]

[388.706. 1. Every municipality or county within this state is authorized to form a regional railroad authority under the provisions of this section.

2. A regional railroad authority may be organized by resolution or joint resolution adopted by the governing body or bodies of one or more counties. The governing body or bodies of a municipality or municipalities within a county or counties may request by resolution that the county or counties organize a railroad authority. If the county or counties do not organize an authority within ninety days of receipt of the request, the municipality or municipalities may organize an authority by resolution or joint resolution. A resolution organizing an authority shall state:

(1) That the authority is organized under the provisions of sections 388.700 to 388.745 as a political subdivision of Missouri;

(2) The proposed name of the authority, including the words "regional railroad authority";

(3) The county, counties, municipality or municipalities adopting the organization resolution;

(4) The number of commissioners of the authority, not less than five; the number to be appointed by the governing body of each county or municipality; and the names and addresses of the board of commissioners;

(5) The city and county in which the registered office of the authority is to be situated;

(6) That neither the state of Missouri, the municipality or municipalities, nor any other political subdivision is liable for obligations of the authority; and

(7) Any other provision for regulating the business of the authority determined by the governing body or

bodies adopting the resolution.]

[388.709. Before final adoption of an organization resolution, the governing body of each county or municipality named in it shall provide for a public hearing upon notice published in a newspaper of general circulation in the county or municipality. The notice of a hearing by the governing body of a county shall be mailed to the governing body of each municipality in the county, except municipalities participating in the organization, at least thirty days before the hearing. The hearing may be adjourned from time to time, to a time and place publicly announced at the hearing, or to a time and place fixed by notice published in a newspaper of general circulation in the county or municipality at least ten days before the adjourned session. Joint hearing sessions may be held by the governing bodies of all counties or municipalities named, at any convenient public place within any of the counties or municipalities. The resolution may be amended by the governing body or bodies at or after any hearing session at which the amended resolution is proposed and made available to interested citizens. It shall not become effective until adopted in identical form by the governing bodies of all counties or municipalities named in the resolution.]

[388.712. Upon the appointment and qualification of the commissioners first appointed to a regional railroad authority under section 388.715, the commissioners shall submit to the secretary of state a certified copy of each resolution adopted pursuant to section 388.706. A copy of the organization resolution, certified by the recording officer of each municipality or county adopting it, shall be filed with the secretary of state, who shall issue a certificate of incorporation if the resolution conforms to the requirements of this section, stating in the certificate the name of the authority and the date of its incorporation, which shall be the date of acceptance for filing. The certificate of incorporation shall be conclusive evidence of the valid organization and existence of the authority.]

[388.715. 1. All powers granted to an authority shall be exercised by its board of commissioners. Commissioners shall be appointed and vacancies in their office shall be filled by the governing body of each county or municipality named in the organization resolution, in accordance with the provisions of that resolution. The term of each commissioner shall be one year, or the remainder of the one year term for which a vacancy is filled, and until a successor is appointed. Commissioners shall receive no compensation for services but shall be reimbursed for necessary expenses incurred in the performance of their duties.

2. The board of commissioners shall by resolution establish the time and place or places of its regular meetings and the method and notice required for calling special meetings, all of which shall be open to the public. A majority of the commissioners being present at a meeting, any action may be taken by resolution or motion adopted by recorded vote of a majority

of those present, unless a larger majority is required by bylaws adopted by the board.

3. The board of commissioners shall appoint a chair, vice-chair, secretary, and treasurer from its members, each to serve for a term of one year and until a successor is appointed. The offices of secretary and treasurer may be combined, and deputies or assistants may be appointed for either office or the combined office, from members of the board or otherwise. The powers and duties of each office shall be determined by the board, which shall require and pay for a surety bond for each officer handling funds. The board shall provide for the keeping of a full and accurate record of all proceedings and of resolutions, regulations, and orders issued or adopted. The state auditor shall annually audit the books of said regional railroad authority.]

[388.718. An authority may exercise all the powers necessary or desirable to implement the powers specifically granted in sections 388.700 to 388.745, and in exercising the powers is deemed to be performing an essential governmental as a political subdivision of the state. Without limiting the generality of the foregoing, the authority may:

(1) Sue and be sued, have a seal, and have perpetual succession;

(2) Execute contracts and other instruments and take other action as may be necessary to carry out the purposes of sections 388.700 to 388.745;

(3) Receive and disburse federal, state, and other funds, public or private, made available by grant, loan, contribution, tax levy, or other source to accomplish the purposes of sections 388.700 to 388.745. Federal money accepted under this section shall be accepted and spent by the authority upon terms and conditions prescribed by the United States and consistent with state law. All state money accepted under this section shall be accepted and spent by the authority upon terms and conditions prescribed by the state.

(4) Sell, lease, or otherwise dispose of real or personal property acquired under sections 388.700 to 388.745. The disposal must be in accordance with the laws of this state governing the disposition of other public property.]

[388.721. 1. The authority may plan, establish, acquire, develop, construct, purchase, enlarge, extend, improve, maintain, equip, operate, regulate, and protect railroads, railroad properties and railroad facilities within its boundaries, including but not limited to terminal buildings, roadways, crossings, bridges, causeways, tunnels, equipment, and rolling stock.

2. The authority may apply to any public agency for permits, consents, authorizations, and approvals required for any project and take all actions necessary to comply with their conditions.]

[388.724. The authority may exercise the power of eminent domain under chapter 523, RSMo, except that it shall have no power of eminent domain with respect to property owned by another authority or

political subdivision of Missouri or any other state, or with respect to property owned or used by a railroad corporation unless the federal Surface Transportation Board or a successor agency, if any, or another authority with power to make the finding, has found that the public convenience and necessity permit discontinuance of rail service on the property. All property taken for the exercise of the powers granted herein is declared to be taken for a public governmental purpose and as a matter of public necessity.]

[388.727. The state of Missouri and any political subdivision or municipal corporation thereof may in its discretion, with or without consideration, transfer or cause to be transferred to any regional railroad authority or may place in its possession or control, by lease or other contract or agreement, either for a limited period or in fee, any property within a regional railroad authority district or any property wherever situated. Nothing in this section, however, shall in any way impair, alter or change any obligations, contractual or otherwise, heretofore entered into by said entities.]

[388.730. The authority may establish charges and rentals for the use, sale, and availability of its property and service and may hold, use, dispose of, invest, and reinvest the income, revenues, and funds derived therefrom. Subject to any agreement with bondholders, it may invest money not required for immediate use, including bond proceeds, in the securities it shall deem prudent, notwithstanding the provisions of any other law relating to the investment of public funds.]

[388.733. The authority shall be subject to tort liability to the extent provided in chapter 537, RSMo, and may procure insurance against the liability, and may indemnify and purchase and maintain insurance on behalf of any of its commissioners, officers, employees, or agents. It may also procure insurance against loss of or damage to property in the amounts, by reason of the risks, and from the insurers as it deems prudent.]

[388.736. The state may make grants to a regional railroad authority, as appropriated by the general assembly, to be allocated by the department of transportation to regional railroad authorities. The authority may accept, contract for, and receive and disburse federal, state, and other funds or property, public or private, made available by grant, loan, or lease, to be used in the exercise of any of its powers, and may comply with the terms and conditions of the grant or loan.]

[388.739. 1. Every regional railroad authority, organized under the provisions of sections 388.700 to 388.745, may from time to time issue its negotiable revenue bonds or notes in such principal amounts as, in its opinion, shall be necessary to provide sufficient funds for achieving its purposes, including the construction, establishment, acquisition, improvement, maintenance, protection and regulation of railroads and railroad facilities, that may be necessary to carry out the provisions of sections 388.700 to 388.745.

2. The state shall not be liable on

any notes or bonds of any regional railroad authority. Any such notes or bonds shall not be a debt of the state and shall contain on the faces thereof a statement to such effect.

3. No commissioner of any regional railroad authority or any authorized person executing authority notes or bonds shall be liable personally on said notes or bonds or shall be subject to any personal liability or accountability by reason of the issuance thereof.

4. No authority shall be required to pay any taxes or any assessments whatsoever to this state or to any political subdivisions, municipality or other governmental agency of this state. The notes and bonds of every authority and the income therefrom shall, at all times, be exempt from any taxes and any assessments, except for death and gift taxes and taxes on transfers.

5. Every authority shall have the powers and be governed by the procedures now or hereafter conferred upon or applicable to the environmental improvement authority, chapter 260, RSMo, relating to the manner of issuance of revenue bonds and notes, and the port authority shall exercise all such powers and adhere to all such procedures insofar as they are consistent with the necessary and proper undertaking of its purposes.]

[388.742. The authority may enter into contracts including leases with any person, firm, or corporation, for terms the authority may determine:

(1) Providing for the operation of any facilities on behalf of the authority, at the rate of compensation as may be determined;

(2) Leasing a rail line for operation by the lessee or any facility or space therein for other commercial purposes, at rentals as may be determined, but no person may be authorized to operate a rail line other than as a common carrier;

(3) Granting the privilege, for compensation as the authority shall determine, of supplying goods, commodities, services, or facilities along rail lines or in or upon other property; and

(4) Making available services furnished by the authority or its agents, at charges, rentals, or fees which shall be reasonable and uniform for the same class of privilege or service.]

[388.745. If, at any time, the governing body of any city or county that organized a regional railroad authority, votes, by majority, to dissolve a regional railroad authority, it shall be dissolved effective the date of the approval of dissolution by the highways and transportation commission of the state. In the event of dissolution of a regional railroad authority, all funds and other assets shall be distributed among the cities and counties, who were members, on a pro rata basis.]"; and

Further amend said title, enacting clause and intersectional references accordingly.

HOUSE AMENDMENT NO. 1 TO
HOUSE AMENDMENT NO. 2

Amend House Amendment No. 2 to House Committee Substitute No. 2 for Senate Committee Substitute for Senate Bill No. 313, Page 1, Line 15, by inserting after the word, "**office.]**" the

following:

"Section B. The repeal of section 1 of section A of this act shall not become effective unless the truly agreed and finally passed Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill 327, Ninety-fourth General Assembly, First Regular Session is approved by the Governor and delivered to the Secretary of State."; and

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

HOUSE AMENDMENT NO. 2

Amend House Committee Substitute No. 2 for Senate Committee Substitute for Senate Bill No. 313, Line 3 of the Title by inserting after "RSMO," the following:""and section 1 as truly agreed and finally passed in Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 327, Ninety-fourth General Assembly, First Regular Session,"; and

Further amend said bill, Page 1, Section A, Line 2, by inserting after "RSMO," the following: "and section 1 as truly agreed and finally passed in Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 327, Ninety-fourth General Assembly, First Regular Session,"; and

Further amend said bill, Page 12, Section 700.470, Line 11 by inserting after said line the following:

[Section 1. "No person, firm, limited liability company, or corporation shall purchase more than twenty tickets at one time, except that any ticket issuer may allow the purchaser of any amount of tickets through a group sales office.]; 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.

PRIVILEGED MOTIONS

Senator Scott moved that the Senate refuse to concur in **HCS No. 2** for **SCS** for **SB 313**, as amended, and request the House to recede from its position or, failing to do so, grant the Senate a conference thereon, which motion prevailed.

HOUSE BILLS ON THIRD READING

HCS for **HB 583**, with **SCS**, entitled:

An Act to amend chapter 455, RSMo, by adding thereto one new section relating to orders of protection.

Was called from the Informal Calendar and taken up by Senator Gibbons.

SCS for **HCS** for **HB 583**, entitled:

SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 583

An Act to amend chapter 455, RSMo, by adding thereto one new section relating to orders of protection.

Was taken up.

Senator Gibbons moved that **SCS** for **HCS** for **HB 583** be adopted.

Senator Gibbons offered **SS** for **SCS** for **HCS** for **HB 583**, entitled:

SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 583

An Act to repeal sections 191.225, 431.056, 565.072, 595.030, 595.036, 595.209, RSMo, and to enact in lieu thereof twenty new sections relating to crime victims, with penalty provisions.

Senator Gibbons moved that **SS** for **SCS** for **HCS** for **HB 583** be adopted.

Senator Loudon offered **SA 1**:

SENATE AMENDMENT NO. 1

Amend Senate Substitute for Senate

Committee Substitute for House Committee Substitute for House Bill No. 583, Page 9, Section 455.038, Line 25, by inserting immediately after said line the following:

"**537.047. 1. Any person who, while a child or minor as defined by section 573.010, RSMo, was a victim of a violation of sections 573.023, 573.025, 573.035, or 573.037, RSMo, and who suffers physical or psychological injury or illness as a result of such violation, shall be entitled to bring a civil action to recover the actual damages sustained as a result of the violation, and shall also be entitled to recover the costs of the civil action and reasonable fees for attorneys and expert witnesses. A psychological injury or illness as described under this section need not be accompanied by physical injury or illness.**

2. Any action described under this section shall be commenced within ten years of the plaintiff attaining the age of twenty-one, or within three years of the date the plaintiff discovers that the injury or illness was caused by the violation of an offense enumerated in subsection one of this section, whichever later occurs.

3. A cause of action under this section may arise only if the violation that caused the injury occurs on or after August 28, 2007."; and

Further amend the title and enacting clause accordingly.

Senator Loudon moved that the above amendment be adopted, which motion prevailed.

Senator Gibbons moved that **SS** for **SCS** for **HCS** for **HB 583**, as amended, be adopted, which motion prevailed.

Senator Gibbons moved that **SS** for **SCS** for **HCS** for **HB 583**, as amended, be read the 3rd time and passed and was recognized to close.

President Pro Tem Gibbons referred **SS** for **SCS** for **HCS** for **HB 583**, as amended, to the Committee on Governmental Accountability and Fiscal Oversight.

Senator Engler moved that **HCS** for **HB 820**, with **SA 2** and **SSA 1** for **SA 2** (pending), be called from the Informal Calendar and again taken up for 3rd reading and final passage, which motion prevailed.

SSA 1 for **SA 2** was again taken up.

At the request of Senator Justus, the above substitute amendment was withdrawn.

SA 2 was again taken up.

At the request of Senator Bray, the above amendment was withdrawn.

Senator Engler offered **SS** for **HCS** for **HB 820**, entitled:

SENATE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 820

An Act to repeal section 546.720, RSMo, and to enact in lieu thereof one new section relating to administration of the death penalty, with penalty provisions.

Senator Engler moved that **SS** for **HCS** for **HB 820** be adopted, which motion prevailed.

On motion of Senator Engler, **SS** for **HCS** for **HB 820** was read the 3rd time and passed by the following vote:

YEAS—Senators

Barnitz	Bartle	Callahan	Champion
Clemens	Crowell	Engler	Gibbons
Goodman	Graham	Green	Griesheimer
Gross	Koster	Lager	Loudon
Mayer	McKenna	Nodler	Purgason
Ridgeway	Rupp	Scott	Shields
Shoemyer	Stouffer	Vogel—27	

NAYS—Senators

Bray	Coleman	Days	Justus
Kennedy	Smith	Wilson—7	

Absent—Senators—None

Absent with leave—Senators—None

Vacancies—None

The President declared the bill passed.

On motion of Senator Engler, title to the bill was agreed to.

Senator Engler moved that the vote by which the bill passed be reconsidered.

Senator Shields moved that motion lay on the table, which motion prevailed.

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 has taken up and adopted the Conference Committee Report on **HB 574**, as amended and has taken up and passed **CCS** for **HB 574**.

Emergency clause adopted.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has taken up and adopted the Conference Committee Report on **HCS** for **SCS** for **SB 82**, as amended and has taken up and passed **CCS** for **HCS** for **SCS** for **SB 82**.

Bill ordered enrolled.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has taken up and adopted the Conference Committee Report on **HCS** for **SB 30**, as amended and has taken up and passed **CCS** for **HCS** for **SB 30**.

Emergency clause defeated.

Bill ordered enrolled.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has taken up and adopted the Conference Committee Report on **HCS** for **SB 81**, as amended and has taken up and passed **CCS** for **HCS** for **SB 81**.

Emergency clause defeated.

Bill ordered enrolled.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has taken up and adopted the Conference Committee Report on **HCS** for **SB 25**, as amended and has taken up and passed **CCS** for **HCS** for **SB 25**.

Bill ordered enrolled.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has taken up and adopted the Conference Committee Report on **HCS** for **SB 84**, as amended and has taken up and passed **CCS** for **HCS** for **SB 84**.

Bill ordered enrolled.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House refuses to recede from its position on **HCS No. 2** for **SCS** for **SB 313**, as amended and grants the Senate a conference thereon.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House refuses to recede from its position on **HCS** for **SB 582**, as amended and grants the Senate a conference thereon.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the

House refuses to recede from its position on **HCS** for **SS** for **SCS** for **SB 22**, as amended and grants the Senate a conference thereon.

CONFERENCE COMMITTEE APPOINTMENTS

President Pro Tem Gibbons appointed the following conference committee to act with a like committee from the House on **HCS** for **SS** for **SCS** for **SB 22**, as amended: Senators Griesheimer, Engler, Goodman, Callahan and McKenna.

President Pro Tem Gibbons appointed the following conference committee to act with a like committee from the House on **HCS No. 2** for **SCS** for **SB 313**, as amended: Senators Scott, Lager, Engler, Green and Callahan.

President Pro Tem Gibbons appointed the following conference committee to act with a like committee from the House on **HCS** for **SB 582**, as amended: Senators Shoemyer, Griesheimer, Nodler, Vogel and Callahan.

President Pro Tem Gibbons appointed the following revised conference committee to act with a like committee from the House on **HCS No. 2** for **SCS** for **SB 313**, as amended: Senators Scott, Lager, Engler, Kennedy and McKenna.

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 Speaker has appointed the following conference committee to act with a like committee from the Senate on **HCS No. 2** for **SCS** for **SB 313**, as amended. Representatives: Sutherland, Wasson and Cooper (120).

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the Speaker has appointed the following conference committee to act with a like committee from the Senate on **HCS** for **SS** for **SCS** for **SB 22**, as amended. Representatives: Schneider, Denison, Pratt, Villa and Young.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the Speaker has appointed the following conference committee to act with a like committee from the Senate on **HCS** for **SB 582**, as amended. Representatives: Sutherland, Stevenson, Cooper (120), Storch and Zweifel.

RESOLUTIONS

Senator Mayer offered Senate Resolution No. 1375, regarding Samuel Oesterreicher, Doniphan, which was adopted.

Senator Mayer offered Senate Resolution No. 1376, regarding Kevin Rigby, Poplar Bluff, which was adopted.

Senator Bartle offered Senate Resolution No. 1377, regarding Travis Wyatt McCluskey, Grain Valley, which was adopted.

Senator Engler offered Senate Resolution No. 1378, regarding KTJJ Radio, Farmington, which was adopted.

Senator Engler offered Senate Resolution No. 1379, regarding KREI Radio, Farmington, which was adopted.

Senator Scott offered Senate Resolution No. 1380, regarding the Fiftieth Wedding Anniversary of Dr. and Mrs. Noel Wayne Scott, which was adopted.

Senator Crowell offered Senate Resolution No. 1381, regarding the Sixty-fifth Wedding Anniversary of Mr. and Mrs. Arthur H. Bender, Cape Girardeau, which was adopted.

Senator Crowell offered Senate Resolution No. 1382, regarding the Sixty-fifth Wedding Anniversary of Mr. and Mrs. Lory Stahly, Cape Girardeau, which was adopted.

Senator Crowell offered Senate Resolution

No. 1383, regarding Mandi Wood, Oran, which was adopted.

Senator Crowell offered Senate Resolution No. 1384, regarding Chase Seyer, Oran, which was adopted.

Senator Crowell offered Senate Resolution No. 1385, regarding Lauren Akins, Cape Girardeau, which was adopted.

Senator Goodman offered Senate Resolution No. 1386, regarding Andrew Roberts, Columbia, which was adopted.

Senator Stouffer offered Senate Resolution No. 1387, regarding Erin T. Mauk, North Liberty, Indiana, which was adopted.

Senator Crowell offered Senate Resolution No. 1388, regarding Rebecca Burchett, which was adopted.

Senator Crowell offered Senate Resolution No. 1389, regarding Emily Rogers, which was adopted.

Senator Scott offered Senate Resolution No. 1390, regarding the One Hundred Fortieth Anniversary of Barren Creek Cemetery, Polk County, which was adopted.

Senator Stouffer offered Senate Resolution No. 1391, regarding Scott Summers, which was adopted.

Senator Stouffer offered Senate Resolution No. 1392, regarding Kimberly Busch, which was adopted.

Senator Stouffer offered Senate Resolution No. 1393, regarding Vickie Brown, which was adopted.

INTRODUCTIONS OF GUESTS

Senator Stouffer introduced to the Senate, Janet Wunderlich and her daughter, Alex, Jefferson City.

On motion of Senator Shields, the Senate adjourned under the rules.

SENATE CALENDAR

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SEVENTY-THIRD DAY–THURSDAY, MAY 17, 2007

———

FORMAL CALENDAR

SENATE BILLS FOR PERFECTION

1. SB 571-Mayer, with SCS
2. SB 652-Coleman and Gibbons, with SCS
3. SB 699-Lager, with SCS
4. SB 11-Coleman, with SCS
5. SB 536-Lager, with SCS
6. SB 552-Bartle
7. SB 484-Stouffer, with SCS
8. SBs 348, 626 & 461-Koster, et al, with SCS
9. SJR 15-Green
10. SB 629-Smith, with SCS
11. SB 122-Bray and Days, with SCS
12. SB 491-Ridgeway

INFORMAL CALENDAR

THIRD READING OF SENATE BILLS

SS for SB 303-Loudon
SS#4 for SCS for SB 430-Shields
SS for SB 570-Clemens

SENATE BILLS FOR PERFECTION

SB 2-Gibbons, with SCS
SB 17-Shields, with SCS
SB 20-Griesheimer, with SCS
SB 27-Bartle and Koster
SB 53-Koster and Engler, with SCS
SB 101-Mayer
SB 131-Rupp
SB 153-Engler, et al, with SCS
SB 155-Engler, with SCS & SS for SCS (pending)
SB 160-Rupp, with SCS
SB 168-Mayer and Crowell, with SCS, SS for SCS & SA 1 (pending)
SB 169-Rupp, with SCS, SS for SCS & SA 3 (pending)
SB 205-Stouffer and Gibbons, with SCS
SB 212-Goodman
SB 213-McKenna
SB 242-Nodler, with SCS
SB 250-Ridgeway and Vogel
SB 252-Ridgeway and McKenna
SB 254-Nodler, et al, with SCS
SBs 260 & 71-Koster, et al, with SCS
SB 274-Shields
SB 282-Griesheimer, with SCS & SS for SCS (pending)
SB 287-Crowell and Vogel, with SS (pending)
SB 292-Mayer
SB 297-Loudon, with SCS
SB 300-Bartle
SB 341-Goodman, with SCS
SB 363-Bartle
SB 364-Koster, with SCS, SS for SCS, SA 1 & SSA 1 for SA 1 (pending)
SBs 370, 375 & 432-Scott and Koster, with SCS & SA 5 (pending)
SBs 372 & 366-Justus and Koster, with SCS
SB 385-Gibbons, with SCS
SB 388-Mayer, with SCS
SB 400-Crowell, et al
SB 444-Goodman
SB 453-Scott, with SCS
SB 458-Gibbons
SB 476-Crowell
SB 480-Ridgeway, et al, with SCS
SB 492-Crowell
SB 499-Engler and Clemens, with SCS
SB 511-Scott, with SCS
SB 521-Lager, et al, with SCS
SB 523-Scott, with SCS
SB 531-Gibbons, with SCS
SB 534-Nodler
SB 537-Lager
SB 542-Scott, with SCS
SBs 555 & 38-Gibbons, with SCS
SB 563-Lager, with SCS & SS for SCS (pending)
SB 572-Vogel
SB 586-Crowell, with SCS
SB 592-Scott, with SCS
SB 599-Engler, with SCS
SB 627-Ridgeway
SB 635-Loudon, with SCS
SB 644-Griesheimer
SBs 660, 553, 557, 167, 258, 114 & 378-Mayer, with SCS
SB 698-Ridgeway, et al, with SCS

HOUSE BILLS ON THIRD READING

HCS for HB 39, with SCS (Koster)
HB 42-Portwood, with SCS (Koster)
HB 46-Viebrock and Stevenson (Stouffer)
HB 69-Day, with SCS (Barnitz)
HB 70-Day, et al (Rupp)
HCS for HB 74 (Scott)
HCS for HB 98 (Scott)
HB 125-Franz, with SCS (Shoemyer)
HCS for HB 135, with SCS (Koster)
HB 155-Dusenberg, et al (Ridgeway)
HCS for HB 165, with SCS (Griesheimer)
HCS for HB 184 (Rupp)
HB 213-Cunningham (86), et al, with SCS (Rupp)
HCS for HB 227 (Mayer)
HCS for HB 245 (Stouffer)
SS for HB 265-Cunningham (86) (Rupp)
HB 267-Jones (117) and Cunningham (86), with SA 5 (pending) (Rupp)
HB 269-Nolte, et al (Ridgeway)
HCS for HB 329, with SCS (Scott)
HCS for HB 338, with SCS (Engler)
HCS for HB 346 (Clemens)
SS for HCS for HB 364 (Purgason) (In Fiscal Oversight)
HB 454-Jetton, et al (Mayer)
HCS for HB 457, with SCS (Griesheimer)
HB 462-Munzlinger, et al (Purgason)
HCS for HB 469, with SCS (Crowell)
HB 482-Walton, et al (Goodman)
HB 489-Baker (123), et al, with SCS (Shields)
HB 526-Pratt (Loudon)
HB 527-Cooper (120) (Scott)
HCS for HB 551, with SCS & SS for SCS (pending) (Koster)
SS for SCS for HCS for HB 583 (Gibbons) (In Fiscal Oversight)
HB 596-St. Onge, with SCS (Stouffer)
HCS for HBs 619 & 118, with SCS (Griesheimer)
HCS for HB 620, with SCS (Ridgeway)
HB 647-Young, et al (Clemens)
HCS for HBs 654 & 938 (Crowell)
HB 686-Smith (150) and Tilley (Stouffer)
HCS for HB 741 (Koster)
HCS for HB 774 (Crowell)
HCS for HB 827, with SCS (Justus)
HCS for HB 845 (Crowell)
HB 875-Franz, with SCS (Crowell)
HCS for HB 894, with SCS & SS for SCS (pending) (Days)
HCS for HB 914 (Scott), with SS & SA 5 (pending)
HB 1014-Wright, et al, with SCS (Mayer)
HCS for HB 1055, with SCA 1 (Scott)
HCS for HJR 1, with SCS (Rupp)
HJR 7-Nieves, et al, with SCS (pending) (Engler)
HJR 19-Bearden, et al (Ridgeway)

CONSENT CALENDAR

Senate Bills

Reported 2/8

SB 211-Goodman

Reported 2/15

SB 8-Kennedy

Reported 3/8

SB 185-Green

SENATE BILLS WITH HOUSE AMENDMENTS

SCS for SB 384-Coleman and Gibbons, with HCS, as amended

SB 666-Scott, with HCS, as amended

BILLS IN CONFERENCE AND BILLS CARRYING REQUEST MESSAGES

In Conference

SS for SCS for SB 22-Griesheimer, with HCS, as amended
SCS for SB 64-Goodman and Koster, with HCS, as amended (Senate adopted CCR#3 and passed CCS#3)
SCS for SB 86-Champion, with HCS, as amended
SCS for SB 156-Engler, with HCS, as amended
SCS for SB 308-Crowell, et al, with HCS, as amended (Further conference granted)
SCS for SB 313-Scott, with HCS#2, as amended
SB 406-Crowell, with HCS#2, as amended (Senate adopted CCR#2 and passed CCS#2)
SB 416-Goodman, with HCS (Senate adopted CCR and passed CCS)
SS for SCS for SB 429-Gibbons, with HCS, as amended
SS for SCS for SB 577-Shields, with HCS, as amended
SB 582-Shoemyer, with HCS, as amended
HCS for HB 159, with SCS (Engler)
HB 255-Bruns, with SS for SCS, as amended (Vogel)
HB 488-Wasson, with SA 1 (Stouffer) (House adopted CCR and passed CCS)
HB 574-St. Onge, with SA 1 & SA 3 (Stouffer) (House adopted CCR and passed CCS)
HB 665-Ervin, et al, with SS, as amended (Ridgeway)
HB 744-St. Onge, with SS, as amended (Stouffer)
HCS for HB 780, with SS for SCS, as amended (Scott)

RESOLUTIONS

Reported from Committee

HCR 15-Threlkeld, et al, with SCS (Shields)
SCR 10-Koster and Shields
HCR 25-Yates, et al (Bartle)
HCR 8-Loehner, et al (Barnitz)
SCR 9-Crowell
SCR 20-Crowell
HCR 24-Wilson (130), et al (Mayer)
HCR 17-Fisher, et al
SR 1360-Justus