

SECOND REGULAR SESSION

SENATE BILL NO. 848

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RUPP.

Read 1st time February 28, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

6018S.02I

AN ACT

To repeal sections 32.069, 34.055, 34.057, 160.281, 160.283, 161.421, 161.424, 287.160, 287.745, 335.233, 340.387, 348.125, 408.020, 408.040, 409.5-509, 409.6-604, 414.356, 414.570, 444.870, 447.539, 630.460, and 643.079, RSMo, and to enact in lieu thereof twenty-two new sections relating to interest rates.

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

Section A. Sections 32.069, 34.055, 34.057, 160.281, 160.283, 161.421, 161.424, 287.160, 287.745, 335.233, 340.387, 348.125, 408.020, 408.040, 409.5-509, 409.6-604, 414.356, 414.570, 444.870, 447.539, 630.460, and 643.079, RSMo, are repealed and twenty-two new sections enacted in lieu thereof, to be known as sections 32.069, 34.055, 34.057, 160.281, 160.283, 161.421, 161.424, 287.160, 287.745, 335.233, 340.387, 348.125, 408.020, 408.040, 409.5-509, 409.6-604, 414.356, 414.570, 444.870, 447.539, 630.460, and 643.079, to read as follows:

32.069. Notwithstanding any other provision of law to the contrary, interest shall be allowed and paid on any refund or overpayment at the rate determined by section [32.068] **32.065** only if the overpayment is not refunded within one hundred twenty days, or within ninety days in the case of taxes imposed by sections 143.011 and 143.041, from the latest of the following dates:

- (1) The last day prescribed for filing a tax return or refund claim, without regard to any extension of time granted;
- (2) The date the return, payment, or claim is filed; or
- (3) The date the taxpayer files for a credit or refund and provides accurate and complete documentation to support such claim.

34.055. 1. Except as otherwise provided in section 34.057, all invoices for supplies and services purchased by the state, duly approved and processed, shall

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

3 be subject to interest charges or late payment charges as provided in this section.

4 2. After the forty-fifth day following the later of the date of delivery of the
5 supplies and services or the date upon which the invoice is duly approved and
6 processed, interest retroactive to the thirtieth day shall be paid on any unpaid
7 balance, except balances for services provided by a gas corporation, electrical
8 corporation, water corporation, or sewer corporation which has received
9 authorization from the public service commission to impose late payment charges
10 on delinquent utility bills, upon application of the vendor thereof. The rate of
11 such interest shall be [three] **one** percentage [points] **point** above the [average
12 predominant prime rate quoted by commercial banks to large businesses, as
13 determined by the Board of Governors of the Federal Reserve System] **rate set**
14 **by section 32.065.**

15 3. The state shall be liable for late payment charges on any delinquent
16 bill for services purchased by the state from a gas corporation, electrical
17 corporation, water corporation, or sewer corporation which has received
18 authorization from the public service commission to impose late payment charges
19 on delinquent utility bills. The rate of such late payment charges shall be as
20 established for each such corporation by order of the public service commission,
21 but bills rendered to the state shall not be considered delinquent until thirty days
22 after rendition of the bill by the corporation.

23 4. Any such interest charges or late payment charges shall be paid from
24 appropriations which were made for the fiscal year in which the supplies or
25 services were delivered to the respective departments purchasing such supplies
26 or services. The commissioner of administration shall be responsible for the
27 timely implementation of this section and all officers, departments, institutions
28 and agencies of state government shall fully cooperate with the commissioner of
29 administration in the implementation of this section. No late payment penalty
30 shall be assessed against, nor payable by, the state unless pursuant to the
31 provisions of this section.

32 5. Notwithstanding any other provision of this section, recipients of funds
33 from the low-income energy assistance program shall be exempt from interest
34 charges imposed by such section for the duration of the recipient's participation
35 in the program.

34.057. 1. Unless contrary to any federal funding requirements or unless
2 funds from a state grant are not timely received by the contracting public
3 municipality but notwithstanding any other law to the contrary, all public works

4 contracts made and awarded by the appropriate officer, board or agency of the
5 state or of a political subdivision of the state or of any district therein, including
6 any municipality, county and any board referred to as the public owner, for
7 construction, reconstruction or alteration of any public works project, shall
8 provide for prompt payment by the public owner to the contractor and prompt
9 payment by the contractor to the subcontractor and material supplier in
10 accordance with the following:

11 (1) A public owner shall make progress payments to the contractor on at
12 least a monthly basis as the work progresses, or, on a lump sum basis according
13 to the terms of the lump sum contract. Except in the case of lump sum contracts,
14 payments shall be based upon estimates prepared at least monthly of work
15 performed and material delivered, as determined by the project architect or
16 engineer. Retainage withheld on public works projects shall not exceed five
17 percent of the value of the contract or subcontract unless the public owner and
18 the architect or engineer determine that a higher rate of retainage is required to
19 ensure performance of the contract. Retainage, however, shall not exceed ten
20 percent of the value of the contract or subcontract. Except as provided in
21 subsection 4 of this section, the public owner shall pay the contractor the amount
22 due, less a retainage not to exceed ten percent, within thirty days following the
23 latter of the following:

24 (a) The date of delivery of materials or construction services purchased;

25 (b) The date, as designated by the public owner, upon which the invoice
26 is duly delivered to the person or place designated by the public owner; or

27 (c) In those instances in which the contractor approves the public owner's
28 estimate, the date upon which such notice of approval is duly delivered to the
29 person or place designated by the public owner;

30 (2) Payments shall be considered received within the context of this
31 section when they are duly posted with the United States Postal Service or other
32 agreed upon delivery service or when they are hand-delivered to an authorized
33 person or place as agreed to by the contracting parties;

34 (3) If, in the discretion of the owner and the project architect or engineer
35 and the contractor, it is determined that a subcontractor's performance has been
36 completed and the subcontractor can be released prior to substantial completion
37 of the public works contract without risk to the public owner, the contractor shall
38 request such adjustment in retainage, if any, from the public owner as necessary
39 to enable the contractor to pay the subcontractor in full. The public owner may

40 reduce or eliminate retainage on any contract payment if, in the public owner's
41 opinion, the work is proceeding satisfactorily. If retainage is released and there
42 are any remaining minor items to be completed, an amount equal to two hundred
43 percent of the value of each item as determined by the public owner's duly
44 authorized representative shall be withheld until such item or items are
45 completed;

46 (4) The public owner shall pay the retainage, less any offsets or
47 deductions authorized in the contract or otherwise authorized by law, to the
48 contractor after substantial completion of the contract work and acceptance by the
49 public owner's authorized contract representative, or as may otherwise be
50 provided by the contract specifications for state highway, road or bridge projects
51 administered by the state highways and transportation commission. Such
52 payment shall be made within thirty days after acceptance, and the invoice and
53 all other appropriate documentation and certifications in complete and acceptable
54 form are provided, as may be required by the contract documents. If at that time
55 there are any remaining minor items to be completed, an amount equal to two
56 hundred percent of the value of each item as determined by the public owner's
57 representative shall be withheld until such items are completed;

58 (5) All estimates or invoices for supplies and services purchased, approved
59 and processed, or final payments, shall be paid promptly and shall be subject to
60 late payment charges provided in this section. Except as provided in subsection
61 4 of this section, if the contractor has not been paid within thirty days as set
62 forth in subdivision (1) of subsection 1 of this section, the contracting agency shall
63 pay the contractor, in addition to the payment due him, interest at the rate [of
64 one and one-half percent per month] **set by section 32.065** calculated from the
65 expiration of the thirty-day period until fully paid;

66 (6) When a contractor receives any payment, the contractor shall pay each
67 subcontractor and material supplier in proportion to the work completed by each
68 subcontractor and material supplier his application less any retention not to
69 exceed ten percent. If the contractor receives less than the full payment due
70 under the public construction contract, the contractor shall be obligated to
71 disburse on a pro rata basis those funds received, with the contractor,
72 subcontractors and material suppliers each receiving a prorated portion based on
73 the amount of payment. When, however, the public owner does not release the
74 full payment due under the contract because there are specific areas of work or
75 materials he is rejecting or because he has otherwise determined such areas are

76 not suitable for payment then those specific subcontractors or suppliers involved
77 shall not be paid for that portion of the work rejected or deemed not suitable for
78 payment and all other subcontractors and suppliers shall be paid in full;

79 (7) If the contractor, without reasonable cause, fails to make any payment
80 to his subcontractors and material suppliers within fifteen days after receipt of
81 payment under the public construction contract, the contractor shall pay to his
82 subcontractors and material suppliers, in addition to the payment due them,
83 interest in the amount of one and one-half percent per month, calculated from the
84 expiration of the fifteen-day period until fully paid. This subdivision shall also
85 apply to any payments made by subcontractors and material suppliers to their
86 subcontractors and material suppliers and to all payments made to lower tier
87 subcontractors and material suppliers throughout the contracting chain;

88 (8) The public owner shall make final payment of all moneys owed to the
89 contractor, less any offsets or deductions authorized in the contract or otherwise
90 authorized by law, within thirty days of the due date. Final payment shall be
91 considered due upon the earliest of the following events:

92 (a) Completion of the project and filing with the owner of all required
93 documentation and certifications, in complete and acceptable form, in accordance
94 with the terms and conditions of the contract;

95 (b) The project is certified by the architect or engineer authorized to make
96 such certification on behalf of the owner as having been completed, including the
97 filing of all documentation and certifications required by the contract, in complete
98 and acceptable form; or

99 (c) The project is certified by the contracting authority as having been
100 completed, including the filing of all documentation and certifications required
101 by the contract, in complete and acceptable form.

102 2. Nothing in this section shall prevent the contractor or subcontractor,
103 at the time of application or certification to the public owner or contractor, from
104 withholding such applications or certifications to the owner or contractor for
105 payment to the subcontractor or material supplier. Amounts intended to be
106 withheld shall not be included in such applications or certifications to the public
107 owner or contractor. Reasons for withholding such applications or certifications
108 shall include, but not be limited to, the following: unsatisfactory job progress;
109 defective construction work or material not remedied; disputed work; failure to
110 comply with other material provisions of the contract; third party claims filed or
111 reasonable evidence that a claim will be filed; failure of the subcontractor to make

112 timely payments for labor, equipment and materials; damage to a contractor or
113 another subcontractor or material supplier; reasonable evidence that the contract
114 can not be completed for the unpaid balance of the subcontract sum or a
115 reasonable amount for retention, not to exceed the initial percentage retained by
116 the owner.

117 3. Should the contractor determine, after application or certification has
118 been made and after payment has been received from the public owner, or after
119 payment has been received by a contractor based upon the public owner's
120 estimate of materials in place and work performed as provided by contract, that
121 all or a portion of the moneys needs to be withheld from a specific subcontractor
122 or material supplier for any of the reasons enumerated in this section, and such
123 moneys are withheld from such subcontractor or material supplier, then such
124 undistributed amounts shall be specifically identified in writing and deducted
125 from the next application or certification made to the public owner or from the
126 next estimate by the public owner of payment due the contractor, until a
127 resolution of the matter has been achieved. Disputes shall be resolved in
128 accordance with the terms of the contract documents. Upon such resolution the
129 amounts withheld by the contractor from the subcontractor or material supplier
130 shall be included in the next application or certification made to the public owner
131 or the next estimate by the public owner and shall be paid promptly in accordance
132 with the provisions of this section. This subsection shall also apply to
133 applications or certifications made by subcontractors or material suppliers to the
134 contractor and throughout the various tiers of the contracting chain.

135 4. The contracts which provide for payments to the contractor based upon
136 the public owner's estimate of materials in place and work performed rather than
137 applications or certifications submitted by the contractor, the public owner shall
138 pay the contractor within thirty days following the date upon which the estimate
139 is required by contract to be completed by the public owner, the amount due less
140 a retainage not to exceed five percent. All such estimates by the public owner
141 shall be paid promptly and shall be subject to late payment charges as provided
142 in this subsection. After the thirtieth day following the date upon which the
143 estimate is required by contract to be completed by the public owner, the
144 contracting agency shall pay the contractor, in addition to the payment due him,
145 interest at a rate [of one and one-half percent per month] **set by section 32.065**
146 calculated from the expiration of the thirty-day period until fully paid.

147 5. Nothing in this section shall prevent the owner from withholding

148 payment or final payment from the contractor, or a subcontractor or material
149 supplier. Reasons for withholding payment or final payment shall include, but
150 not be limited to, the following: liquidated damages; unsatisfactory job progress;
151 defective construction work or material not remedied; disputed work; failure to
152 comply with any material provision of the contract; third party claims filed or
153 reasonable evidence that a claim will be filed; failure to make timely payments
154 for labor, equipment or materials; damage to a contractor, subcontractor or
155 material supplier; reasonable evidence that a subcontractor or material supplier
156 cannot be fully compensated under its contract with the contractor for the unpaid
157 balance of the contract sum; or citation by the enforcing authority for acts of the
158 contractor or subcontractor which do not comply with any material provision of
159 the contract and which result in a violation of any federal, state or local law,
160 regulation or ordinance applicable to that project causing additional costs or
161 damages to the owner.

162 6. Notwithstanding any other provisions in this section to the contrary,
163 no late payment interest shall be due and owing for payments which are withheld
164 in good faith for reasonable cause pursuant to subsections 2 and 5 of this section.
165 If it is determined by a court of competent jurisdiction that a payment which was
166 withheld pursuant to subsections 2 and 5 of this section was not withheld in good
167 faith for reasonable cause, the court may impose interest at the rate [of one and
168 one-half percent per month] **set by section 32.065** calculated from the date of
169 the invoice and may, in its discretion, award reasonable attorney fees to the
170 prevailing party. In any civil action or part of a civil action brought pursuant to
171 this section, if a court determines after a hearing for such purpose that the cause
172 was initiated, or a defense was asserted, or a motion was filed, or any proceeding
173 therein was done frivolously and in bad faith, the court shall require the party
174 who initiated such cause, asserted such defense, filed such motion, or caused such
175 proceeding to be had to pay the other party named in such action the amount of
176 the costs attributable thereto and reasonable expenses incurred by such party,
177 including reasonable attorney fees.

160.281. If a student ceases his study prior to receiving a degree, any
2 scholarship received under the provisions of sections 160.276, 160.278, 160.281
3 and 160.283 shall be treated as a loan to the student and interest at the rate [of
4 nine and one-half percent] **set by section 32.065** per year shall be charged upon
5 the unpaid balance of the amount received from the date the student ceases his
6 study until the amount received is paid back to the state. In order to provide for

7 the servicing of such loans, the department of elementary and secondary
8 education may sell such loans to the higher education loan authority of the state
9 of Missouri created under sections 173.350 to 173.450.

160.283. Every student receiving scholarships under the provisions of
2 sections 160.276, 160.278, 160.281 and 160.283 shall teach in an elementary or
3 secondary public school in this state for a period of five years after receiving a
4 degree or the scholarship shall be treated as a loan to the student and interest
5 at the rate [of nine and one-half percent] **set by section 32.065** per year shall
6 be charged upon the unpaid balance of the amount received from the date the
7 student ceases to teach until the amount received is paid back to the state. In
8 order to provide for the servicing of such loans, the department of elementary and
9 secondary education may sell such loans to the higher education loan authority
10 of the state of Missouri created under sections 173.350 to 173.450. For each year
11 that the student teaches up to five years, one-fifth of the amount which was
12 received under sections 160.276, 160.278, 160.281 and 160.283 shall be applied
13 against the total amount received and shall not be subject to the repayment
14 requirement of this section.

161.421. If a student ceases his study prior to receiving a degree, any
2 scholarship received under the provisions of sections 161.415 to 161.424 shall be
3 treated as a loan to the student and interest at the rate [of nine and one-half
4 percent] **set by section 32.065** per year shall be charged upon the unpaid
5 balance of the amount received from the date the student ceases his study until
6 the amount received is paid back to the state.

161.424. 1. Every student receiving scholarships under the provisions of
2 sections 161.415 to 161.424 shall teach in an elementary or secondary public
3 school in this state for a period of five years after receiving a degree or the
4 scholarship shall be treated as a loan to the student and interest at the rate [of
5 nine and one-half percent] **set by section 32.065** per year shall be charged upon
6 the unpaid balance of the amount received from the date the student ceases to
7 teach until the amount received is paid back to the state. For each year that the
8 student teaches up to five years, one-fifth of the amount which was received
9 under sections 161.415 to 161.424 shall be applied against the total amount
10 received and shall not be subject to the repayment requirement of this section.

11 2. The state board of education shall have the power to and shall defer
12 interest and principal payments under certain circumstances, which shall include,
13 but need not be limited to, the enrollment in a graduate program, service in any

14 branch of the armed forces of the United States, or teaching in areas of critical
15 need as defined by the state board.

287.160. 1. Except as provided in section 287.140, no compensation shall
2 be payable for the first three days or less of disability during which the employer
3 is open for the purpose of operating its business or enterprise unless the
4 disability shall last longer than fourteen days. If the disability lasts longer than
5 fourteen days, payment for the first three days shall be made retroactively to the
6 claimant.

7 2. Compensation shall be payable as the wages were paid prior to the
8 injury, but in any event at least once every two weeks. If an injured employee
9 claims benefits pursuant to this section, an employer may, if the employee agrees
10 in writing, pay directly to the employee any benefits due pursuant to section
11 287.170. The employer shall continue such payments until the insurer starts
12 making the payments or the claim is contested by any party. Where the claim is
13 found to be compensable the employer's workers' compensation insurer shall
14 indemnify the employer for any payments made pursuant to this subsection. If
15 the employee's claim is found to be fraudulent or noncompensable, after a
16 hearing, the employee shall reimburse the employer, or the insurer if the insurer
17 has indemnified the employer, for any benefits received either by a:

18 (1) Lump sum payment;

19 (2) Refund of the compensation equivalent of any accumulated sick or
20 disability leave;

21 (3) Payroll deduction; or

22 (4) Secured installment plan. If the employee is no longer employed by
23 such employer, the employer may garnish the employee's wages or execute upon
24 any property, except real estate, of the employee. Nothing in this subsection shall
25 be construed to require any employer to make payments directly to the employee.

26 3. Where weekly benefit payments that are not being contested by the
27 employer or his insurer are due, and if such weekly benefit payments are made
28 more than thirty days after becoming due, the weekly benefit payments that are
29 late shall be increased by [ten percent simple interest] **the rate of interest set**
30 **by section 32.065** per annum. Provided, however, that if such claim for weekly
31 compensation is contested by the employee, and the employer or his insurer have
32 not paid the disputed weekly benefit payments or lump sum within thirty days
33 of when the administrative law judge's order becomes final, or from the date of
34 a decision by the labor and industrial relations commission, or from the date of

35 the last judicial review, whichever is later, interest on such disputed weekly
36 benefit payments or lump sum so ordered, shall be increased by [ten percent
37 simple interest] **the rate of interest set by section 32.065** per annum
38 beginning thirty days from the date of such order. Provided, however, that if
39 such claims for weekly compensation are contested solely by the employer or
40 insurer, no interest shall be payable until after thirty days after the award of the
41 administrative law judge. The state of Missouri or any of its political
42 subdivisions, as an employer, is liable for any such interest assessed against it
43 for failure to promptly pay on any award issued against it under this chapter.

44 4. Compensation shall be payable in accordance with the rules given in
45 sections 287.170, 287.180, 287.190, 287.200, 287.240, and 287.250.

46 5. The employer shall not be entitled to credit for wages or such pay
47 benefits paid to the employee or his dependents on account of the injury or death
48 except as provided in section 287.270.

287.745. 1. If the tax imposed by sections 287.690, 287.710, and 287.715
2 are not paid when due, the taxpayer shall be required to pay, as part of such tax,
3 interest thereon at the rate of [one and one-half percent] **set by section 32.065**
4 per [month for each month or fraction thereof delinquent] **annum**. In the event
5 the state prevails in any dispute concerning an assessment of tax which has not
6 been paid by the taxpayer, interest shall be paid upon the amount found due to
7 the state at the rate [of one and one-half percent] **set by section 32.065** per
8 [month for each month or fraction thereof delinquent] **annum**.

9 2. In any legal contest concerning the amount of tax under sections
10 287.690, 287.710 and 287.715 for a calendar year, the quarterly installments for
11 the following year shall continue to be made based upon the amount assessed by
12 the director of revenue for the year in question. If after the end of any taxable
13 year, the amount of the actual tax due is less than the total amount of the
14 installments actually paid, the amount by which the amount paid exceeds the
15 amount due shall be credited against the tax for the following year and deducted
16 from the quarterly installment otherwise due on June first.

335.233. The department shall establish schedules for repayment of the
2 principal and interest on any financial assistance made under the provisions of
3 sections 335.212 to 335.242. Interest at the rate [of nine and one-half percent]
4 **set by section 32.065** per annum shall be charged on all financial assistance
5 made under the provisions of sections 335.212 to 335.242, but the interest and
6 principal of the total financial assistance granted to a qualified applicant at the

7 time of the successful completion of a nursing degree, diploma program or a
8 practical nursing program shall be forgiven through qualified employment.

340.387. 1. The department of agriculture may enter into a contract with
2 each qualified applicant receiving financial assistance under the provisions of
3 sections 340.381 to 340.396. Such contract shall specify terms and conditions of
4 loan forgiveness through qualified employment as well as terms and conditions
5 for repayment of the principal and interest.

6 2. The department shall establish schedules for repayment of the
7 principal and interest on any financial assistance made under the provisions of
8 sections 340.381 to 340.396. Interest at a rate set by [the department, with the
9 advice of the advisory panel created in section 340.341,] **section 32.065** shall be
10 charged from the time of the payment of financial assistance on all financial
11 assistance made under the provisions of sections 340.381 to 340.396, but the
12 interest and principal of the total financial assistance granted to a qualified
13 applicant at the time of the successful completion of a doctor of veterinary
14 medicine degree program shall be forgiven through qualified employment.

15 3. For each year of qualified employment that an individual contracts to
16 serve in an area of defined need, the department shall forgive up to twenty
17 thousand dollars and accrued interest thereon on behalf of the individual for
18 financial assistance provided under sections 340.381 to 340.396.

348.125. The notes and bonds shall be authorized by resolution of the
2 authority, shall bear such date or dates and shall mature at such time or times
3 as such resolution may provide; except, that no bond shall mature more than fifty
4 years from the date of its issue. The bonds may be issued as serial bonds payable
5 in annual installments or as term bonds, or as a combination thereof. The notes
6 and bonds shall bear interest at [such rate or rates] **the rate set by section**
7 **32.065**, be in such denominations, be in such form, either coupon or registered,
8 carry such registration privileges, be executed in such manner, be payable in such
9 medium of payment, at such place or places within or without the state, and be
10 subject to such terms of redemption as such resolution may provide. The notes
11 and bonds of the authority may be sold by the authority, at public or private sale,
12 at such price as the authority shall determine.

408.020. Creditors shall be allowed to receive interest at the rate [of nine
2 percent] **set by section 32.065** per annum, when no other rate is agreed upon,
3 for all moneys after they become due and payable, on written contracts, and on
4 accounts after they become due and demand of payment is made; for money

5 recovered for the use of another, and retained without the owner's knowledge of
6 the receipt, and for all other money due or to become due for the forbearance of
7 payment whereof an express promise to pay interest has been made.

408.040. 1. In all nontort actions, interest shall be allowed on all money
2 due upon any judgment or order of any court from the date judgment is entered
3 by the trial court until satisfaction be made by payment, accord or sale of
4 property; all such judgments and orders for money upon contracts bearing more
5 than nine percent interest shall bear the same interest borne by such contracts,
6 and all other judgments and orders for money shall bear nine percent per annum
7 until satisfaction made as aforesaid.

8 2. Notwithstanding the provisions of subsection 1 of this section, in tort
9 actions, interest shall be allowed on all money due upon any judgment or order
10 of any court from the date of judgment is entered by the trial court until full
11 satisfaction. All such judgments and orders for money shall bear a per annum
12 interest rate equal to the [intended Federal Funds Rate, as established by the
13 Federal Reserve Board, plus five percent,] **rate set by section 32.065** until full
14 satisfaction is made. The judgment shall state the applicable interest rate, which
15 shall not vary once entered. In tort actions, if a claimant has made a demand for
16 payment of a claim or an offer of settlement of a claim, to the party, parties or
17 their representatives, and to such party's liability insurer if known to the
18 claimant, and the amount of the judgment or order exceeds the demand for
19 payment or offer of settlement, then prejudgment interest shall be awarded,
20 calculated from a date ninety days after the demand or offer was received, as
21 shown by the certified mail return receipt, or from the date the demand or offer
22 was rejected without counter offer, whichever is earlier. In order to qualify as a
23 demand or offer pursuant to this section, such demand must:

24 (1) Be in writing and sent by certified mail return receipt requested; and

25 (2) Be accompanied by an affidavit of the claimant describing the nature
26 of the claim, the nature of any injuries claimed and a general computation of any
27 category of damages sought by the claimant with supporting documentation, if
28 any is reasonably available; and

29 (3) For wrongful death, personal injury, and bodily injury claims, be
30 accompanied by a list of the names and addresses of medical providers who have
31 provided treatment to the claimant or decedent for such injuries, copies of all
32 reasonably available medical bills, a list of employers if the claimant is seeking
33 damages for loss of wages or earning, and written authorizations sufficient to

34 allow the party, its representatives, and liability insurer if known to the claimant
35 to obtain records from all employers and medical care providers; and

36 (4) Reference this section and be left open for ninety days. Unless the
37 parties agree in writing to a longer period of time, if the claimant fails to file a
38 cause of action in circuit court prior to a date one hundred twenty days after the
39 demand or offer was received, then the court shall not award prejudgment
40 interest to the claimant. If the claimant is a minor or incompetent or deceased,
41 the affidavit may be signed by any person who reasonably appears to be qualified
42 to act as next friend or conservator or personal representative. If the claim is one
43 for wrongful death, the affidavit may be signed by any person qualified pursuant
44 to section 537.080 to make claim for the death. Nothing contained herein shall
45 limit the right of a claimant, in actions other than tort actions, to recover
46 prejudgment interest as otherwise provided by law or contract.

47 3. In tort actions, a judgment for prejudgment interest awarded pursuant
48 to this subsection should bear interest at a per annum interest rate equal to the
49 [intended Federal Funds Rate, as established by the Federal Reserve Board, plus
50 three percent] **rate set by section 32.065**. The judgment shall state the
51 applicable interest rate, which shall not vary once entered.

409.5-509. (a) Enforcement of civil liability under this section is subject
2 to the Securities Litigation Uniform Standards Act of 1998.

3 (b) A person is liable to the purchaser if the person sells a security in
4 violation of section 409.3-301 or, by means of an untrue statement of a material
5 fact or an omission to state a material fact necessary in order to make the
6 statement made, in light of the circumstances under which it is made, not
7 misleading, the purchaser not knowing the untruth or omission and the seller not
8 sustaining the burden of proof that the seller did not know and, in the exercise
9 of reasonable care, could not have known of the untruth or omission. An action
10 under this subsection is governed by the following:

11 (1) The purchaser may maintain an action to recover the consideration
12 paid for the security, less the amount of any income received on the security, and
13 interest at the rate [of eight percent] **set by section 32.065** per year from the
14 date of the purchase, costs, and reasonable attorneys' fees determined by the
15 court, upon the tender of the security, or for actual damages as provided in
16 paragraph (3).

17 (2) The tender referred to in paragraph (1) may be made any time before
18 entry of judgment. Tender requires only notice in a record of ownership of the

19 security and willingness to exchange the security for the amount specified. A
20 purchaser that no longer owns the security may recover actual damages as
21 provided in paragraph (3).

22 (3) Actual damages in an action arising under this subsection are the
23 amount that would be recoverable upon a tender less the value of the security
24 when the purchaser disposed of it, and interest at the rate [of eight percent] **set**
25 **by section 32.065** per year from the date of the purchase, costs, and reasonable
26 attorneys' fees determined by the court.

27 (c) A person is liable to the seller if the person buys a security by means
28 of an untrue statement of a material fact or omission to state a material fact
29 necessary in order to make the statement made, in light of the circumstances
30 under which it is made, not misleading, the seller not knowing of the untruth or
31 omission, and the purchaser not sustaining the burden of proof that the
32 purchaser did not know, and in the exercise of reasonable care, could not have
33 known of the untruth or omission. An action under this subsection is governed
34 by the following:

35 (1) The seller may maintain an action to recover the security, and any
36 income received on the security, costs, and reasonable attorneys' fees determined
37 by the court, upon the tender of the purchase price, or for actual damages as
38 provided in paragraph (3).

39 (2) The tender referred to in paragraph (1) may be made any time before
40 entry of judgment. Tender requires only notice in a record of the present ability
41 to pay the amount tendered and willingness to take delivery of the security for
42 the amount specified. If the purchaser no longer owns the security, the seller
43 may recover actual damages as provided in paragraph (3).

44 (3) Actual damages in an action arising under this subsection is the
45 difference between the price at which the security was sold and the value the
46 security would have had at the time of the sale in the absence of the purchaser's
47 conduct causing liability, and interest at the rate [of eight percent] **set by**
48 **section 32.065 plus one percent** per year from the date of the sale of the
49 security, costs, and reasonable attorneys' fees determined by the court.

50 (d) A person acting as a broker-dealer or agent that sells or buys a
51 security in violation of section 409.4-401(a), 409.4-402(a), or 409.5-506 is liable
52 to the customer. The customer, if a purchaser, may maintain an action for
53 recovery of actual damages as specified in subsections (b)(1) to (3), or, if a seller,
54 for a remedy as specified in subsections (c)(1) to (3).

55 (e) A person acting as an investment adviser or investment adviser
56 representative that provides investment advice for compensation in violation of
57 section 409.4-403(a), 409.4-404(a), or 409.5-506 is liable to the client. The client
58 may maintain an action to recover the consideration paid for the advice, interest
59 at the rate [of eight percent] **set by section 32.065** per year from the date of
60 payment, costs, and reasonable attorneys' fees determined by the court.

61 (f) A person that receives directly or indirectly any consideration for
62 providing investment advice to another person and that employs a device, scheme,
63 or artifice to defraud the other person or engages in an act, practice, or course of
64 business that operates or would operate as a fraud or deceit on the other person
65 is liable to the other person. An action under this subsection is governed by the
66 following:

67 (1) The person defrauded may maintain an action to recover the
68 consideration paid for the advice and the amount of any actual damages caused
69 by the fraudulent conduct, interest at the rate [of eight percent] **set by section**
70 **32.065 plus one percent** per year from the date of the fraudulent conduct,
71 costs, and reasonable attorneys' fees determined by the court, less the amount of
72 any income received as a result of the fraudulent conduct.

73 (2) This subsection does not apply to a broker-dealer or its agents if the
74 investment advice provided is solely incidental to transacting business as a
75 broker-dealer and no special compensation is received for the investment advice.

76 (g) The following persons are liable jointly and severally with and to the
77 same extent as persons liable under subsections (b) to (f):

78 (1) A person that directly or indirectly controls a person liable under
79 subsections (b) to (f), unless the controlling person sustains the burden of proof
80 that the person did not know, and in the exercise of reasonable care could not
81 have known, of the existence of conduct by reason of which the liability is alleged
82 to exist;

83 (2) An individual who is a managing partner, executive officer, or director
84 of a person liable under subsections (b) to (f), including an individual having a
85 similar status or performing similar functions, unless the individual sustains the
86 burden of proof that the individual did not know and, in the exercise of
87 reasonable care could not have known, of the existence of conduct by reason of
88 which the liability is alleged to exist;

89 (3) An individual who is an employee of or associated with a person liable
90 under subsections (b) to (f) and who materially aids the conduct giving rise to the

91 liability, unless the individual sustains the burden of proof that the individual
92 did not know and, in the exercise of reasonable care could not have known, of the
93 existence of conduct by reason of which the liability is alleged to exist; and

94 (4) A person that is a broker-dealer, agent, investment adviser, or
95 investment adviser representative that materially aids the conduct giving rise to
96 the liability under subsections (b) to (f), unless the person sustains the burden of
97 proof that the person did not know and, in the exercise of reasonable care could
98 not have known, of the existence of conduct by reason of which liability is alleged
99 to exist.

100 (h) A person liable under this section has a right of contribution as in
101 cases of contract against any other person liable under this section for the same
102 conduct.

103 (i) A cause of action under this section survives the death of an individual
104 who might have been a plaintiff or defendant.

105 (j) A person may not obtain relief:

106 (1) Under subsection (b) for violation of section 409.3-301, or under
107 subsection (d) or (e), unless the action is instituted within one year after the
108 violation occurred; or

109 (2) Under subsection (b), other than for violation of section 409.3-301, or
110 under subsection (c) or (f), unless the action is instituted within the earlier of two
111 years after discovery of the facts constituting the violation or five years after the
112 violation.

113 (k) A person that has made, or has engaged in the performance of, a
114 contract in violation of this act or a rule adopted or order issued under this act,
115 or that has acquired a purported right under the contract with knowledge of
116 conduct by reason of which its making or performance was in violation of this act,
117 may not base an action on the contract.

118 (l) A condition, stipulation, or provision binding a person purchasing or
119 selling a security or receiving investment advice to waive compliance with this act
120 or a rule adopted or order issued under this act is void.

121 (m) The rights and remedies provided by this act are in addition to any
122 other rights or remedies that may exist, but this act does not create a cause of
123 action not specified in this section or section 409.4-411(e).

409.6-604. (a) If the commissioner determines that a person has engaged,
2 is engaging, or is about to engage in an act, practice, or course of business
3 constituting a violation of this act or a rule adopted or order issued under this act

4 or that a person has materially aided, is materially aiding, or is about to
5 materially aid an act, practice, or course of business constituting a violation of
6 this act or a rule adopted or order issued under this act, the commissioner may:

7 (1) Issue an order directing the person to cease and desist from engaging
8 in the act, practice, or course of business or to take other action necessary or
9 appropriate to comply with this act;

10 (2) Issue an order denying, suspending, revoking, or conditioning the
11 exemptions for a broker-dealer under section 409.4-401(b)(1)(D) or (F) or an
12 investment adviser under section 409.4-403(b)(1)(C); or

13 (3) Issue an order under section 409.2-204.

14 (b) An order under subsection (a) is effective on the date of issuance. Upon
15 issuance of the order, the commissioner shall promptly serve each person subject
16 to the order with a copy of the order and a notice that the order has been
17 entered. The order must include a statement whether the commissioner will seek
18 a civil penalty or costs of the investigation, a statement of the reasons for the
19 order, and notice that, within fifteen days after receipt of a request in a record
20 from the person, the matter will be scheduled for a hearing. If a person subject
21 to the order does not request a hearing and none is ordered by the commissioner
22 within thirty days after the date of service of the order, the order becomes final
23 as to that person by operation of law. If a hearing is requested or ordered, the
24 commissioner, after notice of and opportunity for hearing to each person subject
25 to the order, may modify or vacate the order or extend it until final
26 determination.

27 (c) If a hearing is requested or ordered pursuant to subsection (b), a
28 hearing before the commissioner must be provided. A final order may not be
29 issued unless the commissioner makes findings of fact and conclusions of law in
30 a record in accordance with the provisions of chapter 536 and procedural rules
31 promulgated by the commissioner. The final order may make final, vacate, or
32 modify the order issued under subsection (a).

33 (d) In a final order under subsection (c), the commissioner may:

34 (1) Impose a civil penalty up to one thousand dollars for a single violation
35 or up to ten thousand dollars for more than one violation;

36 (2) Order a person subject to the order to pay restitution for any loss,
37 including the amount of any actual damages that may have been caused by the
38 conduct and interest at the rate [of eight percent] **set by section 32.065 plus**
39 **one percent** per year from the date of the violation causing the loss or disgorge

40 any profits arising from the violation;

41 (3) In addition to any civil penalty otherwise provided by law, impose an
42 additional civil penalty not to exceed five thousand dollars for each such violation
43 if the commissioner finds that a person subject to the order has violated any
44 provision of this act and that such violation was committed against an elderly or
45 disabled person. For purposes of this section, the following terms mean:

46 (A) "Disabled person", a person with a physical or mental impairment that
47 substantially limits one or more of the major life activities of such individual, a
48 record of such impairment, or being regarded as having such an impairment;

49 (B) "Elderly person", a person sixty years of age or older.

50 (e) In a final order, the commissioner may charge the actual cost of an
51 investigation or proceeding for a violation of this act or a rule adopted or order
52 issued under this act. These funds may be paid into the investor education and
53 protection fund.

54 (f) If a petition for judicial review of a final order is not filed in accordance
55 with section 409.6-609, the commissioner may file a certified copy of the final
56 order with the clerk of a court of competent jurisdiction. The order so filed has
57 the same effect as a judgment of the court and may be recorded, enforced, or
58 satisfied in the same manner as a judgment of the court.

59 (g) If a person does not comply with an order under this section, the
60 commissioner may petition a court of competent jurisdiction to enforce the
61 order. The court may not require the commissioner to post a bond in an action
62 or proceeding under this section. If the court finds, after service and opportunity
63 for hearing, that the person was not in compliance with the order, the court may
64 adjudge the person in civil contempt of the order. The court may impose a
65 further civil penalty against the person for contempt in an amount not less than
66 five thousand dollars but not greater than one hundred thousand dollars for each
67 violation and may grant any other relief the court determines is just and proper
68 in the circumstances.

69 (h) The commissioner is authorized to issue administrative consent orders
70 in the settlement of any proceeding in the public interest under this act.

414.356. 1. Using the fund created in section 414.359, the division shall
2 provide loans of:

3 (1) A maximum of two thousand dollars for the incremental cost of
4 purchasing a new vehicle capable of operating on an alternative fuel;

5 (2) A maximum of two thousand dollars for the conversion of a new or

6 existing vehicle designed to operate on gasoline to enable such vehicle to operate
7 on an alternative fuel; and

8 (3) A maximum of one hundred thousand dollars for the construction of
9 a fueling station capable of dispensing an alternative fuel.

10 2. No political subdivision shall receive in aggregate more than one
11 hundred thousand dollars in loans for the purchase or conversion of alternative
12 fuel vehicles in any one year.

13 3. No political subdivision shall receive in aggregate more than one
14 hundred thousand dollars in loans for the construction of fueling stations in any
15 one year.

16 4. The division shall establish the interest rate **at the rate set by**
17 **section 32.065** and **establish** terms of repayment for each loan agreement
18 established pursuant to sections 414.350 to 414.359. In establishing the
19 repayment schedule, the division shall consider the projected savings to the
20 political subdivision resulting from use of an alternative fuel, but such repayment
21 schedule shall be for a maximum repayment period of four years and shall include
22 provisions for payments to be made on a monthly basis.

23 5. Any political subdivision that receives a loan pursuant to sections
24 414.350 to 414.359 shall:

25 (1) Remit payments on the repayment schedule established by the
26 division;

27 (2) Agree to use the alternative fuel for which vehicles purchased with the
28 aid of such loans were designed;

29 (3) Provide reasonable data requested by the division on the use and
30 performance of vehicles purchased with the aid of such loans;

31 (4) Allow for reasonable inspections by the division of vehicles purchased
32 and fueling stations constructed with the aid of such loans; and

33 (5) Make fueling stations constructed with the aid of such loans available
34 for use at reasonable cost by the vehicle fleets of other political subdivisions and,
35 with consideration of the capacity of such fueling stations, by the general public.

414.570. 1. The council shall set the initial assessment at no greater than
2 one-tenth of one cent per gallon. Thereafter, annual assessments shall be
3 sufficient to cover the costs of the plans and programs developed by the council
4 and approved by the director. The assessment shall not be greater than one-half
5 cent per gallon of odorized propane. The assessment may not be raised by more
6 than one-tenth of one cent per gallon annually.

7 2. The owner of propane immediately prior to odorization in this state or
8 the owner at the time of import into this state of odorized propane shall be
9 responsible for the payment of the assessment on the volume of propane at the
10 time of import or odorization, whichever is later. Assessments shall be remitted
11 to the council on a monthly basis by the twenty-fifth of the month following the
12 month of collection. Nonodorized propane shall not be subject to assessment until
13 odorized.

14 3. The director may by regulation, with the concurrence of the council,
15 establish an alternative means for the council to collect the assessment if another
16 means is found to be more efficient and effective. The director may by regulation
17 establish a late payment charge and rate of interest, **that is equal to the rate**
18 **set by section 32.065 plus one percent**, to be imposed on any person who fails
19 to remit to the council any amount due under sections 414.500 to 414.590.

20 4. Pending disbursement pursuant to a program, plan or project, the
21 council may invest funds collected through assessments and any other funds
22 received by the council only in obligations of the United States or any agency
23 thereof, in general obligations of any state or any political subdivision thereof, in
24 any interest-bearing account or certificate of deposit of a bank that is a member
25 of the Federal Reserve System, or in obligations fully guaranteed as to principal
26 and interest by the United States.

27 5. The National Propane Education and Research Council, in conjunction
28 with the United States Secretary of Energy may, by regulation, establish a
29 program coordinating the operation of its council with the council established in
30 section 414.530. This may include an assessment rebate, if adopted, of an amount
31 up to twenty-five percent of the National Propane Education and Research
32 Council assessment collected on Missouri distributed odorized propane as
33 presented and described in section nine of the federal Propane Education and
34 Research Act of 1992. Should the National Propane Education and Research
35 Council, as part of the federal Propane Education and Research Act of 1992,
36 establish such an assessment rebate on fees collected by such council, then all
37 funds from such federal assessment rebate shall be the property of the Missouri
38 council as established by section 414.530, and the use of such funds shall be
39 determined by the Missouri council for the purposes as intended and presented
40 in sections 414.500 to 414.590.

444.870. 1. Any permittee who violates any permit condition or any
2 provision of the reclamation plan or who violates any provision of this law or

3 rules and regulations may be assessed an administrative penalty by the
4 commission, except that if such violation leads to the issuance of a cessation order
5 under section 444.885 the penalty shall be assessed. Such penalty shall not
6 exceed five thousand dollars for each violation. Each day of continuing violation
7 may be deemed a separate violation for purposes of penalty assessments. In
8 determining the amount of the penalty, consideration shall be given to the
9 permittee's history of previous violations at the particular surface coal mining
10 operation; the seriousness of the violation, including any irreparable harm to the
11 environment and any hazard to the health or safety of the public; whether the
12 permittee was negligent; and the demonstrated good faith of the permittee
13 charged in attempting to achieve rapid compliance after notification of the
14 violation.

15 2. An administrative penalty shall be assessed by the commission only
16 after the person charged has been given an opportunity for a public
17 hearing. When such a public hearing has been held, the commission shall make
18 findings of fact and conclusions of law, and shall issue a written decision as to the
19 occurrence of the violation and the amount of the penalty which is warranted,
20 incorporating, when appropriate, an order therein requiring that the penalty be
21 paid. When appropriate, the commission shall consolidate such hearings with
22 other proceedings under section 444.885. Any hearing under this section shall
23 be of record and shall be a contested case. The chairman may designate one
24 commission member as hearing officer, or may appoint a member in good
25 standing of the Missouri bar as hearing officer to hold the hearing and make
26 recommendations to the commission, but the commission shall make the final
27 decision therein and any member participating in the decision shall review the
28 record before making decision. Where the person charged with such a violation
29 fails to avail himself of the opportunity for a public hearing, an administrative
30 penalty shall be assessed and ordered paid only after the commission has
31 determined that a violation did occur and the amount of the penalty which is
32 warranted.

33 3. When the director believes that a violation has occurred he may, or if
34 a cessation order has resulted he shall, file with the commission and serve the
35 operator by registered mail a notice charging a violation has occurred and setting
36 forth the proposed amount of said penalty. The operator, if he wishes to contest
37 either the amount of the penalty or the fact of the violation, may within thirty
38 days of receipt of the notice request a hearing before the commission. The

39 operator shall, with such request, file with the commission a penalty bond in the
40 amount of the proposed penalty, in a form prescribed by the commission, with
41 security attached in the form of a certificate of deposit, conditioned upon
42 forfeiture upon a final nonappealable decision. If through administrative or
43 judicial review, it is determined that no violation occurred, or that the amount of
44 the penalty should be reduced, the commission shall within thirty days of such
45 determination release said bond and remit the appropriate amount to the person,
46 with interest at the rate [of six percent, or at the prevailing United States
47 Department of the Treasury rate, whichever is greater] **set by section**
48 **32.065**. Failure to file the bond with the request for hearing shall result in a
49 waiver of all legal rights to contest the violation or the amount of the penalty.

50 4. Administrative penalties, plus interest at the rate [of six percent, or at
51 the prevailing United States Department of the Treasury rate, whichever is
52 greater] **set by section 32.065 plus one percent**, plus attorney's fees, may be
53 recovered in a civil action brought by the attorney general at the request of the
54 commission in the county where the violation occurred or in Cole County.

55 5. Any person who willfully and knowingly violates a condition of a permit
56 or fails or refuses to comply with any order issued under section 444.885 or
57 section 444.900, or any order incorporated in a final decision issued by the
58 commission, except an order incorporated in a decision issued under subsection
59 2 of this section shall, upon conviction, be punished by a fine of not more than ten
60 thousand dollars, or by imprisonment for not more than one year, or both.

61 6. Whenever a corporate permittee violates a condition of a permit or fails
62 or refuses to comply with any order issued under section 444.885, or any order
63 incorporated in a final decision issued by the commission, except an order
64 incorporated in a decision issued under subsection 2 of this section, any director,
65 officer, or agent of such corporation who willfully and knowingly authorized,
66 ordered, or carried out such violation, failure, or refusal shall be subject to the
67 same administrative penalties, fines and imprisonment that may be imposed upon
68 a person under subsections 1 and 5 of this section.

69 7. Whoever knowingly makes any false statement, representation, or
70 certification, or knowingly fails to make any statement, representation, or
71 certification in any application, record, report, plan, or other document filed or
72 required to be maintained shall, upon conviction, be punished by a fine of not
73 more than ten thousand dollars, or by imprisonment for not more than one year,
74 or both.

75 8. Any operator who fails to correct a violation for which a citation has
76 been issued under subsection 1 of section 444.885 within the period permitted for
77 its correction (which period shall not end until the entry of a final order by the
78 commission, in the case of any review proceedings under section 444.895 initiated
79 by the operator wherein the commission orders, after an expedited hearing, the
80 suspension of the abatement requirements of the citation after determining that
81 the operator will suffer irreparable loss or damage from the application of those
82 requirements, or until the entry of an order of the court, in the case of any review
83 proceedings under section 444.900 initiated by the operator wherein the court
84 orders the suspension of the abatement requirements of the citation) shall be
85 assessed an administrative penalty by the commission of not less than seven
86 hundred fifty dollars, nor more than five thousand dollars for each day during
87 which such failure or violation continues.

 447.539. 1. Every person holding funds or other property, tangible or
2 intangible, presumed abandoned pursuant to sections 447.500 to 447.595 shall
3 report to the treasurer with respect to the abandoned property as provided in this
4 section.

5 2. The report shall be verified by the person filing the report and shall
6 include:

7 (1) The name, if known, and last known address, if any, of each person
8 appearing from the records of the holder to be the owner of any property of the
9 value of fifty dollars or more presumed abandoned pursuant to sections 447.500
10 to 447.595;

11 (2) The nature and identifying number, if any, or description of the
12 property and the amount appearing from the records to be due, except that items
13 of value under fifty dollars each may be reported in aggregate;

14 (3) The date when the property became payable, demandable, or
15 returnable, and the date of the last transaction with the owner with respect to the
16 property; and

17 (4) Other information under the control of the holder which the treasurer
18 prescribes by rule as necessary for the administration of sections 447.500 to
19 447.595; however, the treasurer shall not request a history of fees and charges on
20 the property in question for information prior to the cutoff date for
21 reporting. Should the case be referred to the attorney general for legal action, the
22 attorney general may examine records that are retained under the authority
23 applicable to the entity's record retention law.

24 3. If the person holding property presumed abandoned is a successor to
25 other persons who previously held the property for the owner, or if the holder has
26 changed his or her name while holding the property, the person shall file with his
27 or her report all prior known names and addresses of each holder of the property.

28 4. Except for the year ending June 30, 1984, the report shall be filed
29 before November first of each year as of June thirtieth next preceding, but the
30 report of life insurance corporations shall be filed before May first of each year
31 as of December thirty-first next preceding. The report for the year ending June
32 30, 1984, may be combined with the report for the year ending June 30, 1985, and
33 may be included in the report due on November 1, 1985. The treasurer may
34 extend the reporting deadline for periods of thirty days upon written request by
35 any person required to file a report.

36 5. If the holder of property presumed abandoned pursuant to sections
37 447.500 to 447.595 knows the whereabouts of the owner, if the owner's claim has
38 not been barred by the statute of limitations, and the property involved is valued
39 at fifty dollars or more, the holder shall, before filing the annual report,
40 communicate with the owner and take necessary steps to prevent abandonment
41 from being presumed. The holder shall exercise such reasonable and necessary
42 diligence as is consistent with good business practice to ascertain the
43 whereabouts of such owner of property valued at fifty dollars or more within one
44 year prior to reporting the property to the state treasurer.

45 6. Verification, if made by a partnership, shall be executed by a partner;
46 if made by an unincorporated association or corporation, by an officer.

47 7. If the treasurer determines that the person holding property presumed
48 abandoned failed to exercise such reasonable and necessary diligence as is
49 consistent with good business practice to ascertain the whereabouts of a property
50 owner, the treasurer may impose a penalty on such holder of up to twenty percent
51 of the value of the property returned to the owner by the treasurer.

52 8. Any amount (including any penalty) assessed against a holder of
53 property presumed abandoned by the treasurer pursuant to sections 447.500 to
54 447.595 shall be due and payable to the treasurer thirty days after the holder has
55 received written notice of such assessment, unless the holder has filed a written
56 request for reconsideration by the treasurer. Any amount assessed against a
57 holder upon reconsideration by the treasurer shall be deemed the final decision
58 of the treasurer and shall be due and payable thirty days after the holder has
59 received written notice of such final decision. Any assessment that remains

60 unpaid forty-five days after the holder has received written notice of the final
61 decision by the treasurer shall accrue interest at the rate [of one and one-half
62 percent per month] **set by section 32.065 plus one percent**, which interest
63 shall be added to and included in the amount due and payable to the
64 treasurer. The treasurer may, for good cause, waive in part, or in whole, any
65 penalty (including interest) assessed against the holder pursuant to sections
66 447.500 to 447.595. The treasurer is authorized to take the appropriate legal
67 action necessary to collect any unpaid assessment pursuant to sections 447.500
68 to 447.595. Any penalty imposed and collected by the treasurer pursuant to the
69 provisions of sections 447.500 to 447.595 shall be deposited in the state general
70 revenue fund.

71 9. The holder shall retain such records necessary to verify the relationship
72 of the owner to the holder for a period of not less than five years subsequent to
73 reporting the property to the treasurer.

74 10. If a holder has failed to retain records sufficient to allow the treasurer
75 to determine the holder's compliance with sections 447.500 to 447.595, the
76 treasurer shall use estimation techniques, in accordance with generally accepted
77 accounting principles to determine the amount of abandoned property that is
78 reportable for and limited to the most current reportable abandonment period. In
79 cases where multiple states have examined a holder, the treasurer may use
80 reasonable estimation techniques in accordance with generally accepted
81 accounting principles to determine the holder's compliance with sections 447.500
82 to 447.595, for all reportable periods that were subject to the examination. The
83 amount determined by such methods shall be used as the amount of property
84 presumed abandoned in the holder's report of such property to the treasurer. The
85 holder may contest the estimation techniques used by the treasurer in an appeal
86 de novo to a circuit court of competent jurisdiction.

630.460. 1. For the purposes of this section, the term "overpayment"
2 means any payment by the department to a vendor providing care, treatment,
3 habilitation or rehabilitation services to clients under contract with the
4 department, which is:

5 (1) In excess of the contracted rate less payments by the client or on his
6 behalf as required to be made by the standard means test contained in
7 department rules;

8 (2) In payment of services not provided;

9 (3) In payment for any service not authorized in the contract with the

10 department; or

11 (4) In payment for services provided contrary to the provisions of the
12 contract with the department.

13 2. The department shall notify the vendor in writing by certified mail,
14 return receipt requested, of the amount of the overpayment, the basis for such
15 overpayment and request reimbursement. Within thirty days of receipt of the
16 notice of overpayment, a provider may request a review of the overpayment and
17 reimbursement request by the department director or his designee. Such review
18 shall be conducted in person if requested by the provider. The department
19 director or his designee shall review the overpayment within fifteen days of the
20 request for review.

21 3. If any overpayment is not fully repaid within forty-five days of the date
22 of notice of overpayment, the department shall assess interest on the unpaid
23 balance. Interest shall be charged on any unpaid balance beginning from the
24 date of notice of overpayment and shall accrue at a rate not to exceed the annual
25 rate established pursuant to the provisions of section 32.065, plus **[three] one**
26 **percentage [points] point.**

27 4. The department and the vendor shall have forty-five days from receipt
28 of the notice of the overpayment to negotiate a repayment plan to recover the
29 amount of the overpayment as finally determined plus accrued interest at the
30 rate established in subsection 3 of this section over a period determined by the
31 department, but not to exceed twelve months from the date of final disposition of
32 any overpayment review authorized by this section. The department shall
33 determine the method of repayment which may include direct payment by the
34 vendor, deduction from future amounts due to the vendor from the department,
35 or both.

36 5. If any overpayment plus accrued interest not subject to a repayment
37 plan pursuant to subsection 4 of this section is not fully repaid within six months
38 of the date of notice of overpayment, the department may certify the amount due
39 to the office of the attorney general, or take other appropriate collection actions.
40 If any portion of an overpayment plus accrued interest which is subject to a
41 repayment plan pursuant to subsection 4 of this section, but which is not repaid
42 pursuant to the terms of the plan, the department may certify all or a portion of
43 the overpayment plus accrued interest due to the office of the attorney general,
44 or take other appropriate collection actions.

643.079. 1. Any air contaminant source required to obtain a permit

2 issued under sections 643.010 to 643.355 shall pay annually beginning April 1,
3 1993, a fee as provided herein. For the first year the fee shall be twenty-five
4 dollars per ton of each regulated air contaminant emitted. Thereafter, the fee
5 shall be set every three years by the commission by rule and shall be at least
6 twenty-five dollars per ton of regulated air contaminant emitted but not more
7 than forty dollars per ton of regulated air contaminant emitted in the previous
8 calendar year. If necessary, the commission may make annual adjustments to the
9 fee by rule. The fee shall be set at an amount consistent with the need to fund
10 the reasonable cost of administering sections 643.010 to 643.355, taking into
11 account other moneys received pursuant to sections 643.010 to 643.355. For the
12 purpose of determining the amount of air contaminant emissions on which the
13 fees authorized under this section are assessed, a facility shall be considered one
14 source under the definition of subsection 2 of section 643.078, except that a
15 facility with multiple operating permits shall pay the emission fees authorized
16 under this section separately for air contaminants emitted under each individual
17 permit.

18 2. A source which produces charcoal from wood shall pay an annual
19 emission fee under this subsection in lieu of the fee established in subsection 1
20 of this section. The fee shall be based upon a maximum fee of twenty-five dollars
21 per ton and applied upon each ton of regulated air contaminant emitted for the
22 first four thousand tons of each contaminant emitted in the amount established
23 by the commission pursuant to subsection 1 of this section, reduced according to
24 the following schedule:

25 (1) For fees payable under this subsection in the years 1993 and 1994, the
26 fee shall be reduced by one hundred percent;

27 (2) For fees payable under this subsection in the years 1995, 1996 and
28 1997, the fee shall be reduced by eighty percent;

29 (3) For fees payable under this subsection in the years 1998, 1999 and
30 2000, the fee shall be reduced by sixty percent.

31 3. The fees imposed in subsection 2 of this section shall not be imposed
32 or collected after the year 2000 unless the general assembly reimposes the fee.

33 4. Each air contaminant source with a permit issued under sections
34 643.010 to 643.355 shall pay the fee for the first four thousand tons of each
35 regulated air contaminant emitted each year but no air contaminant source shall
36 pay fees on total emissions of regulated air contaminants in excess of twelve
37 thousand tons in any calendar year. A permitted air contaminant source which

38 emitted less than one ton of all regulated pollutants shall pay a fee equal to the
39 amount per ton set by the commission. An air contaminant source which pays
40 emission fees to a holder of a certificate of authority issued pursuant to section
41 643.140 may deduct such fees from any amount due under this section. The fees
42 imposed in this section shall not be applied to carbon oxide emissions. The fees
43 imposed in subsection 1 and this subsection shall not be applied to sulfur dioxide
44 emissions from any Phase I affected unit subject to the requirements of Title IV,
45 Section 404, of the federal Clean Air Act, as amended, 42 U.S.C. 7651, et seq., any
46 sooner than January 1, 2000. The fees imposed on emissions from Phase I
47 affected units shall be consistent with and shall not exceed the provisions of the
48 federal Clean Air Act, as amended, and the regulations promulgated
49 thereunder. Any such fee on emissions from any Phase I affected unit shall be
50 reduced by the amount of the service fee paid by that Phase I affected unit
51 pursuant to subsection 8 of this section in that year. Any fees that may be
52 imposed on Phase I sources shall follow the procedures set forth in subsection 1
53 and this subsection and shall not be applied retroactively.

54 5. Moneys collected under this section shall be transmitted to the director
55 of revenue for deposit in appropriate subaccounts of the natural resources
56 protection fund created in section 640.220. A subaccount shall be maintained for
57 fees paid by air contaminant sources which are required to be permitted under
58 Title V of the federal Clean Air Act, as amended, 42 U.S.C. Section 7661, et seq.,
59 and used, upon appropriation, to fund activities by the department to implement
60 the operating permits program authorized by Title V of the federal Clean Air Act,
61 as amended. Another subaccount shall be maintained for fees paid by air
62 contaminant sources which are not required to be permitted under Title V of the
63 federal Clean Air Act as amended, and used, upon appropriation, to fund other
64 air pollution control program activities. Another subaccount shall be maintained
65 for service fees paid under subsection 8 of this section by Phase I affected units
66 which are subject to the requirements of Title IV, Section 404, of the federal
67 Clean Air Act Amendments of 1990, as amended, 42 U.S.C. 7651, and used, upon
68 appropriation, to fund air pollution control program activities. The provisions of
69 section 33.080 to the contrary notwithstanding, moneys in the fund shall not
70 revert to general revenue at the end of each biennium. Interest earned by
71 moneys in the subaccounts shall be retained in the subaccounts. The per-ton fees
72 established under subsection 1 of this section may be adjusted annually,
73 consistent with the need to fund the reasonable costs of the program, but shall

74 not be less than twenty-five dollars per ton of regulated air contaminant nor more
75 than forty dollars per ton of regulated air contaminant. The first adjustment
76 shall apply to moneys payable on April 1, 1994, and shall be based upon the
77 general price level for the twelve-month period ending on August thirty-first of
78 the previous calendar year.

79 6. The department may initiate a civil action in circuit court against any
80 air contaminant source which has not remitted the appropriate fees within thirty
81 days. In any judgment against the source, the department shall be awarded
82 interest at a rate [determined pursuant to] **set by** section [408.030] **32.065 plus**
83 **one percent** and reasonable attorney's fees. In any judgment against the
84 department, the source shall be awarded reasonable attorney's fees.

85 7. The department shall not suspend or revoke a permit for an air
86 contaminant source solely because the source has not submitted the fees pursuant
87 to this section.

88 8. Any Phase I affected unit which is subject to the requirements of Title
89 IV, Section 404, of the federal Clean Air Act, as amended, 42 U.S.C. 7651, shall
90 pay annually beginning April 1, 1993, and terminating December 31, 1999, a
91 service fee for the previous calendar year as provided herein. For the first year,
92 the service fee shall be twenty-five thousand dollars for each Phase I affected
93 generating unit to help fund the administration of sections 643.010 to
94 643.355. Thereafter, the service fee shall be annually set by the commission by
95 rule, following public hearing, based on an annual allocation prepared by the
96 department showing the details of all costs and expenses upon which such fees
97 are based consistent with the department's reasonable needs to administer and
98 implement sections 643.010 to 643.355 and to fulfill its responsibilities with
99 respect to Phase I affected units, but such service fee shall not exceed twenty-five
100 thousand dollars per generating unit. Any such Phase I affected unit which is
101 located on one or more contiguous tracts of land with any Phase II generating
102 unit that pays fees under subsection 1 or subsection 2 of this section shall be
103 exempt from paying service fees under this subsection. A "contiguous tract of
104 land" shall be defined to mean adjacent land, excluding public roads, highways
105 and railroads, which is under the control of or owned by the permit holder and
106 operated as a single enterprise.

107 9. The department of natural resources shall determine the fees due
108 pursuant to this section by the state of Missouri and its departments, agencies
109 and institutions, including two- and four-year institutions of higher

110 education. The director of the department of natural resources shall forward the
111 various totals due to the joint committee on capital improvements and the
112 directors of the individual departments, agencies and institutions. The
113 departments, as part of the budget process, shall annually request by specific line
114 item appropriation funds to pay said fees and capital funding for projects
115 determined to significantly improve air quality. If the general assembly fails to
116 appropriate funds for emissions fees as specifically requested, the departments,
117 agencies and institutions shall pay said fees from other sources of revenue or
118 funds available. The state of Missouri and its departments, agencies and
119 institutions may receive assistance from the small business technical assistance
120 program established pursuant to section 643.173.

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