

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 329
97TH GENERAL ASSEMBLY

Reported from the Committee on Financial and Governmental Organizations and Elections, April 25, 2013, with recommendation that the Senate Committee Substitute do pass.

1232S.03C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 361.160, 408.140, 408.590, 408.592, and 408.600, RSMo, and to enact in lieu thereof four new sections relating to financial institutions.

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

Section A. Sections 361.160, 408.140, 408.590, 408.592, and 408.600, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 361.160, 408.140, 408.590, and 408.600, to read as follows:

361.160. 1. The director of finance at least once each year, either personally or by a deputy or examiner appointed by the director, shall visit and examine every bank and trust company organized and doing business under the laws of this state, and every other corporation which is by law required to report to the director; except, for banks or trust companies receiving a Camel/MOECA 1 or Camel/MOECA 2 rating from the division of finance, the director of finance at least once each eighteen calendar months, **or for a private trust company at least once each thirty-six months**, either personally or by a deputy or examiner appointed by the director, shall visit and examine such bank or trust company, and the director of finance, at the director's discretion, may conduct the director's examination, or any part thereof, on the basis of information contained in examination reports of other states, the Federal Deposit Insurance Corporation or the Federal Reserve Board or in audits performed by certified public accountants. **For purposes of this subsection, a private trust company is one that does not engage in trust company business with the general public or otherwise hold itself out as a trustee or fiduciary for hire by advertising, solicitation, or other means and instead operates for the**

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

18 **primary benefit of a family, relative of same family, or single family**
19 **lineage, regardless of whether compensation is received or**
20 **anticipated.** The director shall be afforded prompt and free access to any
21 workpapers upon which a certified public accountant bases an audit. A certified
22 public accountant shall retain workpapers for a minimum of three years after the
23 date of issuance of the certified public accountant's report to the bank or trust
24 company. The director or the director's agent may concentrate the examinations
25 on institutions which the director believes have safety or soundness concerns.

26 2. The director, or the deputy or examiners designated by the director for
27 that purpose, shall have power to examine any such corporation whenever, in the
28 director's judgment, it may be deemed necessary or expedient, and shall have
29 power to examine every agency located in this state of any foreign banking
30 corporation and every branch in this state of any out-of-state bank, for the
31 purpose of ascertaining whether it has violated any law of this state, and for such
32 other purposes and as to such other matters as the director may prescribe.

33 3. The director and the director's deputy and examiners shall have power
34 to administer oaths to any person whose testimony may be required in such
35 examination or investigation of any such corporation or agency, and to compel the
36 appearance and attendance of any person for the purpose of any such examination
37 or investigation.

38 4. On every such examination inquiry shall be made as to the condition
39 and resources of such corporation, the mode of conducting and managing its
40 affairs, the actions of its directors or trustees, the investment of its funds, the
41 safety and prudence of its management, the security afforded to its creditors, and
42 whether the requirements of its charter and of law have been complied with in
43 the administration of its affairs, and as to such other matters as the director may
44 prescribe.

45 5. The director may also make such special investigations as the director
46 deems necessary to determine whether any individual or corporation has violated
47 any of the provisions of this law.

48 6. Such examination may be made and such inquiry instituted or
49 continued in the discretion of the director after the director has taken possession
50 of the property and business of any such corporation, until it shall resume
51 business or its affairs shall be finally liquidated in accordance with the provisions
52 of this chapter.

53 7. The result of each examination shall be certified by the director or the

54 examiner upon the records of the corporation examined and the result of all
55 examinations during the biennial period shall be embodied in the report to be
56 made by the director of the department of insurance, financial institutions and
57 professional registration to the legislature.

58 8. The director may contract with regulators in other states to provide for
59 the examination of Missouri branches of out-of-state banks and branches of banks
60 whose home state is Missouri. The agreements may provide for the payment by
61 the home state of the cost of examinations conducted by the host state at the
62 request of the home state regulators.

408.140. 1. No further or other charge or amount whatsoever shall be
2 directly or indirectly charged, contracted for or received for interest, service
3 charges or other fees as an incident to any such extension of credit except as
4 provided and regulated by sections 367.100 to 367.200 and except:

5 (1) On loans for thirty days or longer which are other than "open-end
6 credit" as such term is defined in the federal Consumer Credit Protection Act and
7 regulations thereunder, a fee, not to exceed **[five] ten** percent of the principal
8 amount loaned not to exceed seventy-five dollars may be charged by the lender;
9 however, no such fee shall be permitted on any extension, refinance, restructure
10 or renewal of any such loan, unless any investigation is made on the application
11 to extend, refinance, restructure or renew the loan;

12 (2) The lawful fees actually and necessarily paid out by the lender to any
13 public officer for filing, recording, or releasing in any public office any instrument
14 securing the loan, which fees may be collected when the loan is made or at any
15 time thereafter; however, premiums for insurance in lieu of perfecting a security
16 interest required by the lender may be charged if the premium does not exceed
17 the fees which would otherwise be payable;

18 (3) If the contract so provides, a charge for late payment on each
19 installment or minimum payment in default for a period of not less than fifteen
20 days in an amount not to exceed five percent of each installment due or the
21 minimum payment due or fifteen dollars, whichever is greater, not to exceed fifty
22 dollars. If the contract so provides, a charge for late payment on each twenty-five
23 dollars or less installment in default for a period of not less than fifteen days
24 shall not exceed five dollars;

25 (4) If the contract so provides, a charge for late payment for a single
26 payment note in default for a period of not less than fifteen days in an amount
27 not to exceed five percent of the payment due; provided that, the late charge for

28 a single payment note shall not exceed fifty dollars;

29 (5) Charges or premiums for insurance written in connection with any
30 loan against loss of or damage to property or against liability arising out of
31 ownership or use of property as provided in section 367.170; however,
32 notwithstanding any other provision of law, with the consent of the borrower,
33 such insurance may cover property all or part of which is pledged as security for
34 the loan, and charges or premiums for insurance providing life, health, accident,
35 or involuntary unemployment coverage;

36 (6) Reasonable towing costs and expenses of retaking, holding, preparing
37 for sale, and selling any personal property in accordance with section 400.9;

38 (7) Charges assessed by any institution for processing a refused
39 instrument plus a handling fee of not more than twenty-five dollars;

40 (8) If the contract or promissory note, signed by the borrower, provides for
41 attorney fees, and if it is necessary to bring suit, such attorney fees may not
42 exceed fifteen percent of the amount due and payable under such contract or
43 promissory note, together with any court costs assessed. The attorney fees shall
44 only be applicable where the contract or promissory note is referred for collection
45 to an attorney, and is not handled by a salaried employee of the holder of the
46 contract;

47 (9) Provided the debtor agrees in writing, the lender may collect a fee in
48 advance for allowing the debtor to defer up to three monthly loan payments, so
49 long as the fee is no more than the lesser of fifty dollars or ten percent of the loan
50 payments deferred, no extensions are made until the first loan payment is
51 collected and no more than one deferral in a twelve-month period is agreed to and
52 collected on any one loan; this subdivision applies to nonprecomputed loans only
53 and does not affect any other subdivision;

54 (10) If the open-end credit contract is tied to a transaction account in a
55 depository institution, such account is in the institution's assets and such
56 contract provides for loans of thirty-one days or longer which are "open-end
57 credit", as such term is defined in the federal Consumer Credit Protection Act and
58 regulations thereunder, the creditor may charge a credit advance fee of **up to the**
59 **lesser of [twenty-five] seventy-five** dollars or **[five] ten** percent of the credit
60 advanced from time to time from the line of credit; such credit advance fee may
61 be added to the open-end credit outstanding along with any interest, and shall
62 not be considered the unlawful compounding of interest as that term is defined
63 in section 408.120;

64 (11) A deficiency waiver addendum, guaranteed asset protection, or a
65 similar product purchased as part of a loan transaction with collateral and at the
66 borrower's consent, provided the cost of the product is disclosed in the loan
67 contract, is reasonable, and the requirements of section 408.380 are met.

68 2. Other provisions of law to the contrary notwithstanding, an open-end
69 credit contract under which a credit card is issued by a company, financial
70 institution, savings and loan or other credit issuing company whose credit card
71 operations are located in Missouri may charge an annual fee, provided that no
72 finance charge shall be assessed on new purchases other than cash advances if
73 such purchases are paid for within twenty-five days of the date of the periodic
74 statement therefor.

75 3. Notwithstanding any other provision of law to the contrary, in addition
76 to charges allowed pursuant to section 408.100, an open-end credit contract
77 provided by a company, financial institution, savings and loan or other credit
78 issuing company which is regulated pursuant to this chapter may charge an
79 annual fee not to exceed fifty dollars.

408.590. 1. [Each division director shall cause each state financial
2 institution which he supervises, licenses or charters and which has an office
3 within a county or a city, such county or city having a population in excess of two
4 hundred fifty thousand, to be examined periodically during which examination
5 the following shall be determined:

6 (1) The number and total dollar amount of residential real estate loans
7 originated, purchased, or foreclosed by the financial institution after January 1,
8 1980, in each of the following categories:

9 (a) Loans secured by residential real estate located outside the state of
10 Missouri other than in counties contiguous to the state of Missouri;

11 (b) Loans secured by residential real estate located in the state of
12 Missouri or in the counties of other states which counties are contiguous to the
13 border of the state of Missouri, which number and dollar amount shall be further
14 reported by the county in which the property is located;

15 (2) The number of residential real estate loan applications denied by the
16 institution in which the real estate which was to secure the loan is situated in a
17 county or city with a population in excess of two hundred and fifty thousand by
18 such county or city;

19 (3) By a method to be determined by each division director, such facts as
20 will enable the division director to conclude whether or not the institution has

21 engaged or is engaged in any practice in violation of sections 408.570 to 408.600.

22 2. Each division director may issue such regulations as are necessary to
23 require the maintenance of records from which the conclusions required by this
24 section can be determined.

25 3. Each division director shall report annually to the governor and the
26 director of the department his findings made in accordance with the provisions
27 of this section and which shall include information reported under the provisions
28 of the Federal Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.), which
29 findings shall be made as to the total industry he regulates, and by each county
30 or city with a population in excess of two hundred fifty thousand. This report
31 shall be maintained by the division as a public document for a period of five
32 years.

33 4. The annual reports of the division directors shall state the method or
34 methods used by the division director to reach his conclusions both in
35 examination and analysis; and shall contain such facts as he deems necessary to
36 support those conclusions, including but not limited to:

37 (1) The information required to be obtained by the provisions of subsection
38 1 of this section;

39 **(2)] As to the state financial institutions under the supervision**
40 **of the respective divisions, each division director shall report annually**
41 **to the governor and the director of the department, with regard to each**
42 **county or city with a population in excess of two hundred fifty**
43 **thousand the following:**

44 **(1)** The number and type of violations of sections 408.570 to 408.600
45 which are found to have occurred, a statement of the action or actions taken to
46 enforce the provisions of said sections, and the names of the financial institutions
47 which have been found upon a hearing to have violated the provisions of said
48 sections[.

49 **(3)]; and**

50 **(2)** The number and nature of all complaints received by the department
51 or division regarding alleged violations of any provision of sections 408.570 to
52 408.600 and the action taken on each complaint by the division.

53 **2. This report shall be maintained by each division as a public**
54 **document for a period of five years.**

408.600. 1. Each division director shall enforce the provisions of sections
2 408.570 to 408.600. With respect to state financial institutions which he

3 supervises, licenses or charters, each division director shall utilize the powers
4 granted him under the general statutory authority by which he regulates,
5 supervises, licenses, or charters such institutions, as well as the powers granted
6 him by sections 408.570 to 408.600. The director of the division of finance shall
7 enforce the provisions of sections 408.570 to 408.600 as they pertain to state
8 financial institutions not supervised, licensed or chartered by a division director,
9 and shall in that enforcement have such powers as are granted in said
10 sections. The enforcement powers granted by subsections 2 through 5 of this
11 section shall be utilized by the director of the division of finance concerning
12 national banks, by the director of [savings and loan supervision] **the division**
13 **of finance** concerning federal savings and loan associations, and by the director
14 of credit unions concerning federal credit unions.

15 2. Any person who alleges to have been aggrieved as a result of a violation
16 of section 408.575 or 408.580 may file a complaint with the appropriate division
17 director. Within ninety days of the receipt of such complaint, the division
18 director shall determine whether there is any reason to believe that a violation
19 of section 408.575 or 408.580 has occurred. If the division director determines
20 that there is such reason, then he shall undertake to resolve the complaint by
21 negotiation or he shall conduct a hearing in accordance with the provisions of
22 subsection 3 of this section, except that the hearing shall be held in the locality
23 where the alleged violation occurred.

24 3. If the division director[, on the basis of an examination, an
25 investigation of a complaint which has not been resolved by negotiation, a report
26 required to be filed by section 408.592, or any public document or information,]
27 has reason to believe that a violation of section 408.575 or 408.580 has occurred
28 or does exist, the division director shall conduct a hearing in accordance with
29 chapter 536. If the evidence establishes a violation of any provision of section
30 408.575 or 408.580, the division director may issue a cease and desist order
31 stating specifically the unlawful practice to be discontinued, which order shall be
32 served personally, or by certified mail. The decision of the division director shall
33 be appealable directly to the circuit court pursuant to chapter 536.

34 4. If, after an order of the division director has become final, the director
35 believes a violation of any provision of the order has occurred, he may seek an
36 injunction to prohibit such violations in any court of competent jurisdiction. For
37 each violation of such injunction, the court may assess a fine which may be
38 recovered with costs by the state in any court of competent jurisdiction in an

39 action to be prosecuted by the attorney general.

40 5. The remedies provided by this section shall not be interpreted as
41 exclusive remedies but shall be in addition to remedies otherwise available to the
42 director or to any individual damaged by a violation of sections 408.570 to
43 408.600.

2 [408.592. 1. Each state financial institution which is not
3 supervised, licensed or chartered by a division director, which
4 operates or has a place of business within a county having a
5 population in excess of two hundred fifty thousand or a city not
6 within a county and which originated an aggregate of five hundred
7 thousand dollars or more in residential real estate loans in
8 Missouri during the last calendar year shall, on or before a date of
9 ninety days after the end of the fiscal year of the institution, file
10 with the director of the division of finance an annual statement for
11 each such county or city showing separately the number and total
12 dollar amount of residential real estate loans both within and
13 outside of that county or city which were:

14 (1) Originated by that institution during the preceding
15 fiscal year;

16 (2) Purchased by that institution during the preceding fiscal
17 year; and

18 (3) Foreclosed by that institution during the preceding
19 fiscal year.

20 2. The information required to be filed under subsection 1
21 of this section shall be further itemized in order to clearly and
22 conspicuously disclose the following:

23 (1) The number and dollar amount of each item by census
24 tracts for residential real estate loans on property located within
25 that county or city;

26 (2) The number and dollar amount of each item for all
27 residential real estate loans on property located outside that county
28 or city.

29 3. The information required to be filed under subdivisions
30 (1) and (2) of subsection 1 shall also be itemized in order to clearly
31 and conspicuously disclose the following:

(1) The number and dollar amount of loans made for the

32 purchase of residential real estate which are insured under Title
33 II of the National Housing Act or under Title V of the Housing Act
34 of 1949 or which are guaranteed under Chapter 37 of Title 38,
35 United States Code;

36 (2) The number and dollar amount of loans made for the
37 purchase of residential real estate, including loans insured under
38 federal housing insurance programs;

39 (3) The number and dollar amount of loans made for the
40 repair, rehabilitation or remodeling of residential real estate.

41 4. Each statement filed under the provisions of this section
42 shall be filed on forms approved or furnished by the director of the
43 division of finance and shall be verified by two officers of the
44 institution. Wherever possible, the director of the division of
45 finance shall make the forms consistent with the disclosure forms
46 required under the Federal Home Mortgage Disclosure Act of 1975
47 (12 U.S.C. 2801 et seq.).

48 5. The director of the division of finance shall maintain the
49 statements filed under the provisions of this section for a period of
50 not less than five years and shall make the statements available to
51 the public for inspection during regular business hours and for
52 copying at a cost not to exceed the actual cost to the division.]

✓

Copy