

FIRST REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 179

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CUNNINGHAM.

Pre-filed December 14, 2018, and ordered printed.

Read 2nd time January 31, 2019, and referred to the Committee on Insurance and Banking.

Reported from the Committee February 14, 2019, with recommendation that the bill do pass and be placed on the Consent Calendar.

Taken up March 26, 2019. Read 3rd time and placed upon its final passage; bill passed.

ADRIANE D. CROUSE, Secretary.

1021S.01P

AN ACT

To repeal sections 361.140, 361.230, 361.250, 361.440, 361.520, 362.025, 362.030, 362.042, 362.060, 362.430, 362.440, 362.450, 362.600, 362.660, 369.019, 369.059, 369.074, 369.079, 369.089, and 369.678, RSMo, and to enact in lieu thereof nineteen new sections relating to filings by certain financial institutions with the division of finance.

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

Section A. Sections 361.140, 361.230, 361.250, 361.440, 361.520, 362.025, 2 362.030, 362.042, 362.060, 362.430, 362.440, 362.450, 362.600, 362.660, 369.019, 3 369.059, 369.074, 369.079, 369.089, and 369.678, RSMo, are repealed and 4 nineteen new sections enacted in lieu thereof, to be known as sections 361.230, 5 361.250, 361.440, 361.520, 362.025, 362.030, 362.042, 362.060, 362.430, 362.440, 6 362.450, 362.600, 362.660, 369.019, 369.059, 369.074, 369.079, 369.089, and 7 369.678, to read as follows:

361.230. 1. Upon receipt by the director of a written application for leave 2 to open a branch office from a corporation authorized by law to open branch 3 offices, he or she shall make such investigation as he or she may deem necessary 4 to ascertain whether the public convenience and advantage will be promoted by 5 the opening of the branch office and whether the corporation has the amount of 6 actually paid-in capital required by law.

7 2. If satisfied that the granting of the application is expedient and 8 desirable, he or she shall make a certificate [in duplicate] under his or her hand

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

9 and official seal authorizing the opening and occupation of the branch office and
10 specifying the date on or after which and the condition under which it may be
11 opened and the place where it shall be located[, and shall file one duplicate in the
12 public records of the division of finance and shall transmit the other to the
13 applicant].

14 3. If the director shall be satisfied that the opening of the branch office
15 is undesirable or inexpedient or that the corporation has not the requisite amount
16 of capital actually paid in, he or she shall refuse the application and notify the
17 corporation of his or her determination; provided, that this section shall not be
18 construed to empower the director to grant a certificate for any bank or trust
19 company organized under the laws of this state to maintain in this state any
20 branch bank or branch trust company.

361.250. For satisfactory cause to him shown, the director of finance may
2 grant extensions of time to corporations to which this chapter is applicable, as
3 follows:

4 (1) He or she may extend for not more than one year the time within
5 which any such corporation may commence business. Such extension shall only
6 be made by an order under his or her hand and official seal [which shall be
7 executed in duplicate and one copy thereof shall be filed in the public records of
8 the division of finance and the second shall be transmitted to such corporation].

9 (2) He or she may extend, for not exceeding twenty days, the time within
10 which any such corporation is required to make and file any report to the
11 director.

12 (3) In all other cases where, by any provision of this chapter, he or she is
13 given power to grant extensions of time, it shall be within his or her sound
14 discretion to grant such extension[, which shall be in writing, and a copy thereof
15 shall be filed in the office of the director].

361.440. After the director shall have taken possession of the property
2 and business of such corporation, he or she shall make [in duplicate] an inventory
3 of the assets of such corporation. When the director shall have decided that he
4 or she will not permit the corporation to resume business pursuant to the
5 provisions of section 361.370, he or she shall file one copy of such inventory in the
6 public records of the division of finance.

361.520. [1.] The director shall make [in duplicate] a complete list of all
2 claims duly presented, and shall specify therein the name of the claimant, the
3 nature of the claim, and the amount thereof.

4 [2. Within ten days after the last date fixed in said notice to creditors to
5 present and make proof of claims, the director shall file one copy of said list in
6 his or her office, and cause one copy to be filed in the public records of the
7 division of finance.]

362.025. The articles of agreement shall be signed and acknowledged by
2 the parties thereto[,] and [three copies thereof] shall be filed with the director of
3 finance. If the director finds the articles to be improperly drawn, he or she shall
4 immediately return them to the parties indicating the corrections to be made. [If
5 the director finds the articles to be in proper form, he or she shall return one copy
6 to the parties with an indication that they are approved as to form, and shall file
7 one copy in the public records of the division of finance which shall be a
8 permanent record.]

362.030. 1. When any bank or trust company has filed with the director
2 [proper copies of] its articles of agreement, paid all incorporation and other fees
3 in full, as required by law and provided the cash required by law, the director,
4 before the bank or trust company shall complete its incorporation, shall cause an
5 examination to be made to ascertain whether the requisite capital of the bank or
6 trust company has been subscribed in good faith and paid in actual cash and is
7 ready for use in the transaction of business of the proposed bank or trust
8 company, and whether the character, responsibility and general fitness of the
9 persons named in the articles of agreement and any bank holding company on
10 whose behalf they are acting are such as to command confidence and warrant
11 belief that the business of the proposed corporation will be conducted honestly
12 and efficiently in accordance with the intent and purpose of this chapter; and if
13 the convenience and needs of the community to be served justify and warrant the
14 opening of the bank or trust company therein, and if the probable volume of
15 business in such locality is sufficient to insure and maintain the solvency of the
16 new bank or trust company and the solvency of the then existing banks and trust
17 companies in the locality, without endangering the safety of any bank or trust
18 company in the locality as a place of deposit of public and private moneys.

19 2. The proponents shall be liable for all expenses incurred in making the
20 examination, including the wages and other necessary expenses of each examiner
21 making the examination; provided, however, that if the charter is granted, this
22 obligation may be assumed by the bank or trust company so chartered.

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

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

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

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

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

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

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

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

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

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

43 (2) Such amendment, upon adoption by that percentage vote of
44 shareholders required for that particular amendment, and on being set forth in
45 the certificate of amendment required by this chapter, may then be incorporated
46 into such restated articles of incorporation;

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

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

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

362.060. 1. The par value of the shares of the corporation may be changed
2 by the stockholders at either a special or annual meeting of the stockholders.

3 2. Notice of the proposed change shall be given as provided in section
4 362.044.

5 3. If the holders of a majority of the stock of the corporation at any
6 meeting shall vote in favor of a resolution authorizing a change in the par value
7 of its shares the resolution shall thereupon be adopted, and, upon the filing with
8 the director of the resolution, certified by the secretary of the corporation to be
9 a true and correct copy thereof adopted by the holders of a majority of the stock
10 of the corporation at a meeting duly called and held in accordance with the
11 provisions hereof, the change in par value of the shares shall thereupon become
12 effective.

13 [4. The director shall issue a certificate of filing and certify two of the

14 copies, and one of the certified copies shall be filed by the division of finance in
15 its public records and the certificate provided to the corporation.]

362.430. 1. Every foreign banking corporation before being licensed by
2 the finance director to transact in this state the business of buying, selling,
3 paying or collecting bills of exchange, or of issuing letters of credit or of receiving
4 money for transmission or transmitting the same by draft, check, cable or
5 otherwise, or of making sterling or other loans, or any part of such business, or
6 before maintaining in this state any agency for carrying on such business or any
7 part thereof, shall subscribe and acknowledge and submit to the finance director
8 at his office a separate application certificate [in duplicate] for each agency which
9 such foreign corporation proposes to establish in this state, which shall
10 specifically state:

- 11 (1) The name of such foreign banking corporation;
- 12 (2) The place where its business is to be transacted in this state, and the
13 name of the agent or agents through whom such business is to be transacted;
- 14 (3) The amount of its capital actually paid in cash and the amount
15 subscribed for and unpaid;
- 16 (4) The actual value of the assets of such corporation which must be at
17 least two hundred and fifty thousand dollars in excess of its liabilities and a
18 complete and detailed statement of its financial condition as of a date within sixty
19 days prior to the date of such application.

20 2. At the time such application certificate is submitted to the director,
21 such corporation shall also submit a duly exemplified copy of its charter and a
22 verified copy of its bylaws, or the equivalent thereof.

362.440. 1. Upon receipt by the director from any foreign corporation of
2 an application in proper form for leave to do business in this state under the
3 provisions of this chapter, he or she shall, by such investigation as he or she may
4 deem necessary, satisfy himself or herself whether the applicant may safely be
5 permitted to do business in this state.

6 2. If from such investigation he or she shall be satisfied that it is safe and
7 expedient to grant such application and it shall have been shown to his or her
8 satisfaction that such applicant may be authorized to engage in business in this
9 state pursuant to the provisions of this chapter and has complied with all the
10 requirements of this chapter, he or she shall issue a license under his or her hand
11 and official seal authorizing such applicant to carry on such business at the place
12 designated in the license and, if such license is for a limited time, specifying the

13 date upon which it shall expire.

14 3. [Such license shall be executed in triplicate and the director shall
15 transmit one copy to the applicant, file another in his or her own office and file
16 the third in the public records of the division of finance.

17 4.] Whenever any such license is issued for one year or less, the director
18 may, at the expiration thereof, renew such license for one year.

362.450. [1.] If at any time the director shall be satisfied that any foreign
2 corporation to which has been issued an authorization certificate or license is
3 violating any of the provisions of this chapter, or is conducting its business in an
4 unauthorized or unsafe manner, or is in an unsound or unsafe condition to
5 transact its business, or cannot with safety and expediency continue business, the
6 director may over his or her official signature and seal of office notify the holder
7 of such authorization certificate or license that the same is revoked.

8 [2. Such notice shall be executed in triplicate and the director shall
9 forthwith transmit one copy to the holder of such authorization certificate or
10 license, file another in his or her own office and file the third in the public
11 records of the division of finance.

12 3. The director may, in his or her discretion, publish a copy of such notice,
13 with such other facts as he or she may deem proper, for six successive days, in a
14 paper published at the City of Jefferson.]

362.600. 1. The term "out-of-state bank or trust company", as used in this
2 section, shall mean:

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

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

8 2. Except as provided in subsections 4 and 6 of this section, any
9 out-of-state bank or trust company may act in this state as trustee, executor,
10 administrator, guardian, or in any other like fiduciary capacity, without the
11 necessity of complying with any law of this state relating to the licensing of
12 foreign banking corporations by the director of finance or relating to the
13 qualifications of foreign corporations to do business in this state, and
14 notwithstanding any prohibition, limitation or restriction contained in any other
15 law of this state, provided only that:

16 (1) The out-of-state bank or trust company is authorized to act in this

17 fiduciary capacity or capacities in the state in which it is incorporated, or, if the
18 out-of-state bank or trust company be a national banking association, or a thrift
19 institution, it is authorized to act in this fiduciary capacity or capacities in the
20 state in which it has its principal place of business; and

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

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

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

44 3. Any out-of-state bank or trust company eligible to act in any fiduciary
45 capacity in this state pursuant to the provisions of this section may so act
46 whether or not a resident of this state be acting with it in this capacity, may use
47 its corporate name in connection with such activity in this state, and may be
48 appointed to act in this fiduciary capacity by any court having jurisdiction in the
49 premises, all notwithstanding any provision of law to the contrary. Nothing in
50 this section contained shall be construed to prohibit or make unlawful any
51 activity in this state by a bank or trust company which is not incorporated under
52 the laws of this state, or if a national bank or thrift institution then which does

53 not have its principal place of business in this state, which would be lawful in the
54 absence of this section.

55 4. Except as provided in subsection 6 of this section, prior to the time
56 when any out-of-state bank or trust company acts pursuant to the authority of
57 this section in any fiduciary capacity or capacities in this state, the out-of-state
58 bank or trust company shall file with the director of finance a written application
59 for a certificate of reciprocity and the director of finance shall issue the certificate
60 to the out-of-state bank or trust company. The application shall state the
61 information set forth in the following subdivisions (1) to (7), and the out-of-state
62 bank or trust company shall be subject to the following subdivisions (8) to (10):

63 (1) The correct corporate name of the out-of-state bank or trust company;

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

67 (3) The address of its principal business office;

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

70 (5) Whether the out-of-state bank or trust company intends to establish
71 a trust representative office, facility, branch, or other physical location in the
72 state of Missouri and the activities to be conducted at such office, facility, branch,
73 or location;

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

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

83 (8) Subject to subdivision (10) of this subsection unless the out-of-state
84 bank or trust company verifies to the director of the division of finance that it
85 satisfies capital requirements equal to the new charter requirement for a
86 Missouri trust company or that it maintains a bond for the faithful performance
87 of all its fiduciary activities equivalent to the Missouri capital requirements, the
88 director may require the applicant to submit a bond issued by a surety company

89 authorized to do business in the state of Missouri in the minimum amount of one
90 million dollars in a form or such greater amount acceptable to the director of the
91 division of finance. The surety bond shall secure the faithful performance of the
92 fiduciary obligations of the out-of-state bank or trust company in Missouri;

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

108 (10) Notwithstanding subdivision (8) of this subsection, to facilitate
109 interstate reciprocity under this section, the director may enter a memorandum
110 of understanding with the bank or trust company regulator of another jurisdiction
111 to accept the capital requirements of that jurisdiction in lieu of the Missouri
112 minimum capital or bond requirements set forth in subdivision (8) of this
113 subsection and establish such other terms to assure reciprocal interstate
114 treatment for Missouri chartered bank or trust companies in that jurisdiction.

115 5. A certificate of reciprocity issued to any out-of-state bank or trust
116 company shall remain in effect until the out-of-state bank or trust company shall
117 cease to be entitled under subsection 2 of this section to act in this state in the
118 fiduciary capacity or capacities covered by the certificate, and thereafter until
119 revoked by the director of finance. If at any time the out-of-state bank or trust
120 company shall cease to be entitled under subsection 2 of this section to act in this
121 state in the fiduciary capacity or capacities covered by the certificate, the director
122 of finance shall revoke the certificate and give written notice of the revocation to
123 the out-of-state bank or trust company. No revocation of any certificate of
124 reciprocity shall affect the right of the out-of-state bank or trust company to

125 continue to act in this state in a fiduciary capacity in estates or matters in which
126 it has theretofore begun to act in a fiduciary capacity pursuant to the certificate.

127 6. An out-of-state bank or trust company shall not establish or maintain
128 a trust representative office, facility, branch, or other physical location in this
129 state for the conduct of business as a fiduciary unless:

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

135 (2) The out-of-state bank or trust company is a bank, trust company or
136 national banking association in good standing that possesses fiduciary powers
137 from its chartering authority and is the surviving corporation to a merger or
138 consolidation with a national banking association located in Missouri or a
139 Missouri bank or trust company or is otherwise authorized by federal law to
140 establish a branch in Missouri. The provisions of this subdivision are enacted to
141 implement subsection 2 of this section and section 362.610, and the provisions of
142 Title 12, U.S.C. Section 36 of the National Bank Act and other applicable federal
143 law; or

144 (3) The out-of-state bank or trust company is a state-chartered bank,
145 savings and loan association, trust company, national banking association, or
146 thrift institution in good standing that possesses fiduciary powers and has
147 received a certificate of reciprocity, in which case it may open a trust
148 representative office, facility, branch, or other physical location in Missouri,
149 provided a bank, savings and loan association or trust company chartered under
150 the laws of Missouri and a national bank or thrift institution with its principal
151 location in Missouri, all with fiduciary powers, are permitted to open and operate
152 such a trust representative office, facility, branch, or other physical location
153 under the same or less restrictive conditions in the state in which the out-of-state
154 bank or trust company is organized or has its principal office.

155 7. An out-of-state bank or trust company, insofar as it acts in a fiduciary
156 capacity in this state pursuant to the provisions of this section, shall not be
157 deemed to be transacting business in this state, if the out-of-state bank or trust
158 company does not establish or maintain in this state a place of business, branch
159 office, or agency for the conduct in this state of business as a fiduciary.

160 8. Every out-of-state bank or trust company to which a certificate of

161 reciprocity shall have been issued shall be deemed to have appointed the director
162 of finance to be its true and lawful attorney upon whom may be served all legal
163 process in any action or proceeding against it relating to or growing out of any
164 trust, estate or matter in respect of which the out-of-state bank or trust company
165 acts in this state in any fiduciary capacity pursuant to the certificate of
166 reciprocity. Service of the process shall be made by delivering a copy of the
167 summons or other process, with a copy of the petition when service of the copy is
168 required by law, to the director of finance or to any person in his or her office
169 authorized by him to receive the service. The director of finance shall
170 immediately forward the process, together with the copy of the petition, if any,
171 to the out-of-state bank or trust company, by registered mail, addressed to it at
172 the address on file with the director, or if there be none on file then at its last
173 known address. The director of finance shall keep a permanent record in his or
174 her office showing for all such process served, the style of the action or
175 proceeding, the court in which it was brought, the name and title of the officer
176 serving the process, the day and hour of service, and the day of mailing by
177 registered mail to the out-of-state bank or trust company and the address to
178 which mailed. In case the process is issued by a court, the same may be directed
179 to and served by any officer authorized to serve process in the city or county
180 where the director of finance shall have his or her office, at least fifteen days
181 before the return thereof. If an out-of-state bank or trust company has
182 established a trust representative office, trust facility, branch, or other physical
183 location in the state of Missouri, that bank or trust company may also be served
184 legal process at any such location by service upon any officer, agent, or employee
185 at that location.

362.660. A copy of the agreement so executed and the certified and
2 verified copies of the proceedings of the respective boards of directors shall be
3 submitted [in duplicate] to the finance director for his approval, and he shall
4 have full power and authority to approve or disapprove the same; provided, that
5 in case the director shall disapprove the agreements so submitted, the banks and
6 trust companies which are parties thereto may submit another plan for a merger
7 or a consolidation under the provisions of this chapter.

369.019. 1. Any five or more individuals, hereinafter referred to as
2 incorporators, who are residents of this state may form an association to promote
3 thrift and home financing. Any such association may be a mutual association or
4 a capital stock association and shall have all the rights, powers, and privileges

5 set out in sections 369.010 to 369.369, and shall be subject to all the restrictions,
6 liabilities, and required approvals as provided in sections 369.010 to 369.369.

7 2. The incorporators shall file a petition for a certificate of incorporation,
8 in such form as may be required, with the director of the division of finance. The
9 petition shall be signed by the incorporators and shall be acknowledged before an
10 officer competent to take acknowledgments of deeds. [Two copies of the proposed
11 articles of incorporation, two copies of the proposed bylaws and the] **An**
12 incorporation fee of five cents per one hundred dollars of the capital of a mutual
13 association or of the authorized capital stock of a capital stock association shall
14 accompany each petition.

15 3. The petition shall set forth:

16 (1) The names and addresses of the incorporators, the initial stockholders,
17 if any, and the directors, with a statement of their character, experience, and
18 general fitness to engage in the savings and loan business;

19 (2) An itemized statement of the estimated receipts and expenditures of
20 the proposed association for the first year or such longer period as the director
21 of the division of finance in the director's discretion may require; and

22 (3) A showing that there is a necessity for the proposed association in the
23 area to be served by it.

24 4. The articles of incorporation shall set forth:

25 (1) The name of the proposed association;

26 (2) The address at which such association is to be located;

27 (3) If a mutual association, the amount of the initial account subscriptions
28 to be paid in before commencing business, or, if a stock association, the amount
29 to be paid in for its capital stock, which shall not be less than the amounts stated
30 in section 369.034;

31 (4) The duration of its existence which shall be perpetual;

32 (5) The purposes of the proposed association;

33 (6) The number of directors which shall be not more than fifteen nor less
34 than five;

35 (7) The names of the incorporators to be its directors until the first annual
36 meeting; and

37 (8) Any other provisions, not inconsistent with law, which the
38 incorporators may choose to insert.

39 5. The incorporators shall submit with their petition such additional
40 statements, exhibits, maps and other data as the director of the division of

41 finance may require, all of which shall be sufficiently detailed and comprehensive
42 to enable the director of the division of finance to pass upon the petition as to the
43 criteria set out in section 369.024.

369.059. Subject to the approval of the director of the division of finance,
2 every association may amend its articles of incorporation upon the adoption of a
3 resolution covering each amendment by the affirmative votes of a majority of the
4 members of a mutual association or a majority of the stockholders of a capital
5 stock association who are present in person or by proxy at any annual or special
6 meeting of the members or stockholders. Each proposed amendment shall be filed
7 with the director of the division of finance not less than thirty days prior to the
8 date of such meeting. If the director of the division of finance finds that the
9 proposed amendment is in conformity with the law, the director shall approve the
10 amendment not less than fifteen days prior to the members' meeting. The
11 resolution or resolutions, certified by the president and secretary of the
12 association under its corporate seal as one instrument[, together with a fee of five
13 dollars payable to the director of revenue,] shall be filed with the director of the
14 division of finance [in quadruplicate], who shall file [three copies thereof] **the**
15 **documents** with the secretary of state [and forward the fee to the director of
16 revenue] **with all required fees**, whereupon the secretary of state shall issue
17 [in duplicate] and return to the association a certificate as to such amendment
18 or amendments.

369.074. At a meeting of the members of a mutual association or of the
2 stockholders of a capital stock association, any federal association may convert
3 itself into an association under sections 369.010 to 369.369 upon a vote of the
4 majority of the votes of the members or of the stockholders cast in person or by
5 proxy at such meeting. Copies of the minutes of the proceedings of the meeting
6 of the members, verified by the affidavit of the secretary of the federal
7 association, shall be filed in the office of the director of the division of finance and
8 mailed to the Office of Thrift Supervision or any successor thereto within ten days
9 after the meeting and shall be presumptive evidence of the holding and action of
10 the meeting. At the meeting the members or stockholders also shall elect the
11 persons to serve as directors of the association after conversion takes place. The
12 persons so designated as directors shall execute [two copies of] **the** articles of
13 incorporation in form as required by sections 369.010 to 369.369, together with
14 [two copies of] **the** proposed bylaws, and deliver them to the director of the
15 division of finance. If the director of the division of finance finds the articles of

16 incorporation in proper form, the director shall endorse thereon the statement,
17 "This association is a conversion from a federal association.", and forward [both
18 copies of] the articles of incorporation to the secretary of state who, thereupon,
19 shall issue a certificate of incorporation. The director of the division of finance,
20 by regulation, may provide for the procedure to be followed in carrying out the
21 conversion of a federal association into an association under sections 369.010 to
22 369.369. All the provisions regarding property and other rights contained in
23 section 369.069 shall apply in reverse manner to the conversion of a federal
24 association into an association subject to sections 369.010 to 369.369. The
25 association may continue to operate all branch offices and agencies. Neither the
26 rights of creditors nor any liens upon the property of the federal association shall
27 be impaired by the conversion.

369.079. 1. A mutual association may merge with another association or
2 federal mutual association in the manner provided in subsections 1 to 8 of this
3 section. The board of directors of each association shall, by resolution adopted
4 by a majority vote of the members of each board, approve a plan of merger setting
5 forth:

6 (1) The names of the associations proposing to merge, and the name of the
7 association into which they propose to merge, which is herein designated as "the
8 surviving association";

9 (2) The terms and conditions of the proposed merger and the mode of
10 carrying it into effect;

11 (3) The manner and basis of converting the accounts of each merging
12 association into accounts of the surviving association;

13 (4) A statement of any changes in the articles of incorporation of the
14 surviving association to be effected by the merger;

15 (5) A statement of the contracts pertaining to the employment, or the
16 retention as consultant, of officers and directors of the merged association; and

17 (6) Such other provisions with respect to the proposed merger as are
18 deemed necessary or desirable by the boards of directors.

19 2. Any two or more domestic mutual associations or one or more domestic
20 mutual associations and one or more federal associations may consolidate into a
21 new domestic association in the following manner: The board of directors of each
22 association shall, by resolution adopted by the majority vote of the members of
23 each board, approve a plan of consolidation setting forth:

24 (1) The names of the associations proposing to consolidate, and the name

25 of the new association into which they propose to consolidate, which is herein
26 designated as "the new association";

27 (2) The terms and conditions of the proposed consolidation and the mode
28 of carrying it into effect;

29 (3) The manner and basis of converting the accounts of each association
30 into accounts of the new association;

31 (4) With respect to the new association, all of the statements required to
32 be set forth in articles of incorporation for associations organized under sections
33 369.010 to 369.369;

34 (5) Such other provisions with respect to the proposed consolidation as are
35 deemed necessary or desirable by the boards of directors.

36 3. The plan of merger or the plan of consolidation is subject to approval
37 by the director of the division of finance as equitable to the members or account
38 holders of the associations and as not impairing the usefulness and success of
39 other properly conducted associations in the community. The board of directors
40 of each association, upon approving the plan of merger or plan of consolidation,
41 and upon receiving the approval of the director of the division of finance, shall,
42 by resolution, unless the approval waives such requirement, direct that the plan
43 be submitted to a vote at a meeting of members, which may be either an annual
44 or a special meeting. The notice of such meeting, whether the meeting be an
45 annual or special meeting, shall state the place, day, hour and purpose of the
46 meeting, and where a copy of the plan of merger or plan of consolidation may be
47 examined.

48 4. At each such meeting a vote of the members entitled to vote in person
49 or by proxy shall be taken on the proposed plan of merger or consolidation. The
50 plan of merger or consolidation shall be approved upon receiving the affirmative
51 vote of a majority of the members present in person or by proxy, of each of the
52 associations.

53 5. Upon such approval, articles of merger or articles of consolidation shall
54 be executed in duplicate by each association by its president or a vice president,
55 and verified by such person, and the corporate seal of each association shall be
56 affixed thereto, attested by its secretary or an assistant secretary, and shall set
57 forth:

58 (1) The plan of merger or the plan of consolidation;

59 (2) As to each association, the number of votes present at the meeting in
60 person or by proxy;

61 (3) As to each association, the number of votes for and against such plan,
62 respectively.

63 6. Duplicate originals of the articles of merger or articles of consolidation
64 shall be delivered to the director of the division of finance. If the director of the
65 division of finance finds that the articles conform to law, the director shall
66 endorse the director's approval thereon and deliver them to the secretary of state
67 who shall, when all required taxes or fees have been paid, file the same, keeping
68 one copy as a permanent record, and issue a certificate of merger or a certificate
69 of consolidation and a certified copy of such certificate, to which the director shall
70 affix the other copy of the articles.

71 7. Upon the issuance of the certificate of merger or the certificate of
72 consolidation by the secretary of state, the merger or consolidation shall be
73 effected.

74 8. The certificate of merger and certified copy thereof, with a copy of the
75 articles of merger affixed thereto by the secretary of state, or the certificate of
76 consolidation and certified copy thereof, with a copy of the articles of
77 consolidation affixed thereto by the secretary of state, shall be delivered to the
78 surviving association or new association, as the case may be.

79 9. A capital stock association or federal capital stock association may
80 merge with another association by compliance with the provisions and
81 requirements of sections 351.410 to 351.458, subject to receipt of the approval of
82 the director of the division of finance of the plan of merger prior to submission of
83 such plan of merger to a vote of the stockholders of the respective
84 associations. The criteria for approval may be established by the director of the
85 division of finance by regulation who may waive the vote of the stockholders of
86 any association in supervisory cases.

87 10. A mutual association may merge with a capital stock association or
88 a federal capital stock association and a capital stock association may merge with
89 a mutual association or a federal mutual association. If the surviving association
90 is a mutual association, the merger procedures shall be in compliance with the
91 provisions and requirements of subsections 1 to 8 of this section. If the surviving
92 association is a capital stock association, the merger procedures shall be in
93 compliance with the provisions and requirements of sections 351.410 to
94 351.458. Both classifications of merger are subject to the approval of the director
95 of the division of finance of the plan of merger. The criteria, schedule and
96 procedures for approval shall be established by the director of the division of

97 finance who may waive the vote of the members or stockholders of any association
98 in supervisory cases.

99 11. In connection with a merger or consolidation under this chapter, an
100 association may charter an interim association to facilitate a corporate
101 reorganization. A reorganizing association proposing to organize such an interim
102 association must file a petition for certificate of incorporation of an interim
103 association with the director of the division of finance for approval.

104 (1) The director of the division of finance may exempt an interim
105 association from the sections of this chapter attendant to the chartering of an
106 association which would unduly restrain the reorganizing association from timely
107 consummation of the proposed reorganization.

108 (2) If the petition is approved, the director of the division of finance shall
109 certify the director's approval of the petition in writing to the secretary of state
110 along with the incorporation fee and [two copies of] the articles of
111 incorporation. The secretary of state shall thereupon issue the certificate of
112 incorporation.

113 (3) Criteria for approval, organization and operation of an interim
114 association may be established by the director of the division of finance by
115 regulation.

369.089. 1. Any association may, at any meeting of the members of a
2 mutual association or stockholders of a capital stock association, determine to
3 liquidate and dissolve in accordance with the provisions of this section upon a
4 two-thirds majority vote of all votes cast in person or by proxy. The notice of the
5 meeting shall state that dissolution will be considered at the meeting.

6 2. Upon such vote, [five copies of] a certificate of liquidation, which shall
7 state the vote cast in favor of liquidation, shall be signed by the president or vice
8 president and attested by the secretary or assistant secretary and acknowledged
9 before an officer competent to take acknowledgments of deeds. [Five copies of]
10 The certificate shall be filed with the director of the division of finance, who shall
11 examine the association, and, if the director finds that according to its financial
12 records it is not in an impaired condition, shall so note, together with the
13 director's approval of the liquidation[, upon all the copies of the certificate of
14 liquidation. The director of the division of finance shall place a copy in the
15 permanent files of the director's office, file a copy with the secretary of state, and
16 return the remaining copies to the parties filing the same].

17 3. Upon such approval, the association shall cease to carry on business

18 but nevertheless shall continue as a corporate entity for the sole purpose of
19 paying, satisfying, and discharging existing liabilities and obligations, collecting
20 and distributing assets, and doing all other acts required to adjust, wind up and
21 liquidate its business and affairs. If at any time following the approval of the
22 liquidation the director of the division of finance finds that the liquidation is not
23 in the public interest or is being carried out for an improper purpose, the director
24 may take possession of the property, business and assets of the association in
25 which event all the provisions of sections 369.339, 369.344, and 369.349 shall
26 apply.

27 4. The board of directors shall act as trustees for liquidation as provided
28 in this section. The board of directors shall proceed as quickly as may be
29 practicable to wind up the affairs of the association and, to the extent necessary
30 or expedient to that end, shall exercise all the powers of the dissolved association
31 and, without prejudice to the generality of such authority, may fill vacancies,
32 elect officers, carry out the contracts, make new contracts, borrow money,
33 mortgage or pledge the property, sell its assets at public or private sale, or
34 compromise claims in favor of or against the association, apply assets to the
35 discharge of liabilities, after paying or adequately providing for the payment of
36 other liabilities distribute the remaining property to the members of a mutual
37 association and to the stockholders of a capital stock association, and perform all
38 acts necessary or expedient to the winding up of the association. The expense
39 fund, if any, shall be paid as provided in section 369.039. All deeds or other
40 instruments shall be in the name of the association and executed by the president
41 or a vice president and the secretary or an assistant secretary.

42 5. The association, during the liquidation of the assets of the association
43 by the board of directors, shall continue to be subject to the supervision of the
44 director of the division of finance, and the board of directors shall report the
45 progress of the liquidation to the director of the division of finance from time to
46 time as the director may require.

47 6. (1) Any money due to but unclaimed by any person shall be deposited
48 with the state treasurer as provided in sections 447.500 to 447.585.

49 (2) Upon the completion of the liquidation, the board of directors shall file
50 with the director of the division of finance a final report and accounting of the
51 liquidation. The approval of the report by the director of the division of finance
52 shall operate as a complete and final discharge of the board of directors and each
53 member thereof in connection with the liquidation of the association. No

54 liquidation or any action of the board of directors in connection therewith shall
55 impair any contract right between the association and any borrower or other
56 person or persons or the vested rights of any member of the association. Upon
57 approval of the report and accounting, the director of the division of finance shall
58 issue to the secretary of state, in triplicate, certification that the association has
59 been liquidated and dissolved, its indebtedness paid, and the net proceeds derived
60 from liquidation distributed to its members or stockholders. The secretary of
61 state shall issue a certificate of dissolution and the corporate existence of the
62 association thereupon shall end.

63 7. Any association may with the written approval of the director of the
64 division of finance transfer, sell, or exchange in bulk and not in the regular and
65 usual course of its business all or substantially all of its assets, including its
66 name and goodwill, to any other association or bank and accept as consideration
67 therefor cash and accounts, or either of them, of the purchasing association or
68 bank upon such terms as may be determined by the vote of a majority of the
69 boards of the purchasing association or bank and of the selling association, and
70 by the affirmative vote of two-thirds of the votes cast by the members or
71 stockholders of the selling association present in person or by proxy at any
72 meeting. The notice of the meeting shall state that such action is to be
73 considered at the meeting. The action of the members shall include a resolution
74 to liquidate, and liquidation shall proceed as provided in this section. If the
75 name is sold, the purchasing association or bank shall have the exclusive right
76 to the use of or to change to such name for a period of five years. The provisions
77 of sections 369.010 to 369.369 concerning investments by associations do not
78 apply to a transaction under this section. For purposes of this section, the term
79 "bank" includes any bank or trust company subject to the provisions of chapter
80 362, the deposits of which are insured by the Federal Deposit Insurance
81 Corporation or any successor thereto.

 369.678. The articles of agreement shall be signed and acknowledged by
2 the parties to the articles of agreement, and [three copies of the articles] shall be
3 filed with the director. If the director finds the articles to be improperly drawn,
4 the director shall immediately return the articles to the parties indicating the
5 corrections to be made. If the director finds the articles to be in proper form, the
6 director shall [return two copies to the parties with an indication that the articles
7 are approved as to form, and the parties shall immediately have one copy of the
8 articles recorded in the office of the recorder of deeds in the county or city in

9 which the savings bank is to be located and return the recorder's certificate of
10 recording to the director] **approve the submittal.**

[361.140. 1. The director of finance shall prepare the
2 following information to be included in the report of the director of
3 the department of insurance, financial institutions and professional
4 registration:

5 (1) A summary of the state and condition of every
6 corporation required to report to him or her and from which reports
7 have been received or obtained pursuant to subsection 3 of section
8 361.130 during the preceding two years, at the several dates to
9 which such reports refer, with an abstract of the whole amount of
10 capital reported by them, the whole amount of their debts and
11 liabilities and the total amount of their resources, specifying in the
12 case of banks and trust companies the amount of lawful money
13 held by them at the time of their several reports, and such other
14 information in relation to such corporations as, in his or her
15 judgment, may be useful;

16 (2) A statement of all corporations authorized by him or her
17 to do business during the previous biennium with their names and
18 locations and the dates on which their respective certificates of
19 incorporation were issued, particularly designating such as have
20 commenced business during the biennium;

21 (3) A statement of the corporations whose business has
22 been closed either voluntarily or involuntarily, during the
23 biennium, with the amount of their resources and of their deposits
24 and other liabilities as last reported by them and the amount of
25 unclaimed and unpaid deposits, dividends and interest held by him
26 or her on account of each;

27 (4) A statement of the amount of interest earned upon all
28 unclaimed deposits, dividends and interest held by him or her
29 pursuant to the requirements of this chapter;

30 (5) Any amendments to this chapter, which, in his or her
31 judgment, may be desirable;

32 (6) The names and compensation of the deputies, clerks,
33 examiners, special agents and other employees employed by him or
34 her, and the whole amount of the receipts and expenditures of the

35 division during each of the last two preceding fiscal years.

36 2. All such reports shall be printed at the expense of the
37 state and paid for as other public printing.]

✓

Unofficial

Bill

Copy