

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 106

101ST GENERAL ASSEMBLY

1062S.02C

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal sections 361.097, 362.044, 362.247, 362.250, and 369.049, RSMo, and to enact in lieu thereof seven new sections relating to financial institutions.

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

Section A. Sections 361.097, 362.044, 362.247, 362.250,
2 and 369.049, RSMo, are repealed and seven new sections enacted
3 in lieu thereof, to be known as sections 361.097, 362.044,
4 362.247, 362.250, 362.765, 369.049, and 369.705, to read as
5 follows:

361.097. 1. The state banking and savings and loan
2 board shall consist of five members who shall be appointed
3 by the governor, the senate concurring. No person shall be
4 eligible for appointment unless he or she is a resident of
5 this state. One member shall be an attorney at law and a
6 member of the Missouri Bar in good standing. **[Two] Three**
7 members shall each have had at least five years of active
8 bank **or association** management experience in **institutions**
9 **chartered under chapters 362 or 369 in** this state. **[One**
10 member shall have had at least five years of active
11 management experience in this state of one or more
12 associations as defined in chapter 369.] One member shall
13 be an individual who is not involved in the administration
14 of a financial institution. Not more than three members of
15 the board shall be members of the same political party.

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

16 2. The term of office of each member of the state
17 banking and savings and loan board shall be six years. The
18 board shall select its own chairman and secretary. The
19 members of the state banking and savings and loan board
20 shall hold office for the respective terms for which they
21 are appointed and until their successors shall qualify.
22 Vacancies on such board shall be filled by appointment for
23 the unexpired term in the same manner as in the case of an
24 original appointment.

 362.044. 1. Stockholders' meetings may be held at
2 such place, within this state, as may be prescribed in the
3 bylaws. In the absence of any such provisions, all meetings
4 shall be held at the principal banking house of the bank or
5 trust company. **Stockholders' meetings may be conducted**
6 **electronically if electronic meetings are authorized in the**
7 **bylaws.**

8 2. An annual meeting of stockholders for the election
9 of directors shall be held on a day which each bank or trust
10 company shall fix by its bylaws; and if no day be so
11 provided, then on the second Monday of January.

12 3. Special meetings of the stockholders may be called
13 by the directors or upon the written request of the owners
14 of a majority of the stock.

15 4. [Notice of annual or special stockholders' meetings
16 shall state the place, day and hour of the meeting, and
17 shall be published at least ten days prior to the meeting
18 and once a week after the first publication with the last
19 publication being not more than seven days before the day
20 fixed for such meeting, in some daily or weekly newspaper
21 printed and published in the city or town in which the bank
22 or trust company is located, and if there be none, then in
23 some newspaper printed and published in the county in which

24 the bank or trust company is located, and if there be none,
25 then in some newspaper printed and published in an adjoining
26 county.] A written or printed copy of the notice shall be
27 delivered personally [or mailed] **by mail or electronically**
28 to each stockholder at least ten but not more than fifty
29 days prior to the day fixed for the meeting, and shall
30 state, in addition to the place, day and hour, the purpose
31 of any special meeting or an annual meeting at which the
32 stockholders will consider a change in the par value of the
33 corporation stock, the issuance of preferred shares, a
34 change in the number of directors, an increase or reduction
35 of the capital stock of the bank or trust company, a change
36 in the length of the corporate life, an extension or change
37 of its business, a change in its articles to avail itself of
38 the privileges and provisions of this chapter, or any other
39 change in its articles in any way not inconsistent with the
40 provisions of this chapter. Any stockholder may waive
41 notice by causing to be delivered to the secretary during,
42 prior to or after the meeting a written, signed waiver of
43 notice, or by attending such meeting except where a
44 stockholder attends a meeting for the express purpose of
45 objecting to the transaction of any business because the
46 meeting is not lawfully called or convened.

47 5. Unless otherwise provided in the articles of
48 incorporation, a majority of the outstanding shares entitled
49 to vote at any meeting represented in person or by proxy
50 shall constitute a quorum at a meeting of stockholders;
51 provided, that in no event shall a quorum consist of less
52 than a majority of the outstanding shares entitled to vote,
53 but less than a quorum shall have the right successively to
54 adjourn the meeting to a specified date no longer than
55 ninety days after the adjournment, and no notice need be

56 given of the adjournment to shareholders not present at the
57 meeting. Every decision of a majority of the quorum shall
58 be valid as a corporate act of the bank or trust company
59 unless a larger vote is required by this chapter.

60 6. (1) The stockholders of the bank or trust company
61 may approve business by proxy and cancel any stockholders'
62 meeting, provided:

63 (a) The stockholders are sent notice of such
64 stockholders' meeting and a proxy referred to in this
65 section;

66 (b) Within such proxy the stockholders are given the
67 opportunity to approve or disapprove the cancellation of
68 such stockholders' meeting;

69 (c) At least eighty percent of such bank or trust
70 company's stock is voted by proxy; and

71 (d) All stockholders voting by proxy vote to cancel
72 such stockholders' meeting.

73 (2) No business shall be voted on by proxy other than
74 that expressly set out and clearly explained by the proxy
75 material. If such stockholders' meeting is cancelled by
76 proxy, notice of such cancellation shall be sent to all
77 stockholders at least five days prior to the date originally
78 set for such stockholders' meeting. The corporate secretary
79 shall reflect all proxy votes by subject and in
80 chronological order in the board of directors' minute book.
81 The notice for such stockholders' meeting shall state the
82 effective date of any of the following: new directors'
83 election, change in corporate structure and any other change
84 requiring stockholder approval.

85 7. The voting shareholder or shareholders of the bank
86 or trust company may transact all business required at an

87 annual or special stockholders' meeting by unanimous written
88 consent.

362.247. 1. A majority of the full board of directors
2 shall constitute a quorum for the transaction of business
3 unless another number is required by the articles of
4 agreement, the bylaws or by law. The act of a majority of
5 the directors present at a meeting at which a quorum is
6 present shall be the act of the board of directors unless
7 the act of a greater number is required by the articles of
8 agreement, the bylaws or by law.

9 2. When the board of directors meets by telephonic
10 conference call or video conferencing, the bank or trust
11 company may include in a quorum directors who are not
12 physically present but are allowed to vote, provided the
13 bank and directors meet the applicable requirements of this
14 section as follows:

15 (1) The bank or trust company has a composite rating
16 of 1 or 2 under the CAMELS (Capital, Assets, Management,
17 Earnings, Liquidity, and Sensitivity) rating system of the
18 Federal Financial Institution Examination Counsel (FFIEC);
19 and

20 (2) The bank or trust company's board meeting will not
21 be attended by representatives of the bank or trust
22 company's state or federal bank regulator.

23 3. Any director who is not physically present within
24 the common area for the meeting and wishes to be counted
25 toward a quorum for such meeting shall [sign an affidavit
26 under penalty of perjury] **confirm** that such director:

27 (1) Received formal notice of the board meeting for
28 which he or she is attending or waived such notice as
29 otherwise provided by law;

30 (2) Received the board meeting information required
31 for each board of director's meeting as provided by section
32 362.275; and

33 (3) Was alone when participating in such board meeting
34 or was in the physical presence of no one not a director of
35 such bank or trust company, and was able to clearly hear
36 such board meeting discussion from its beginning to end.

37 **4. The confirmation of directors participating in the**
38 **board meeting telephonically or by video conferencing shall**
39 **be recorded by the secretary in the minutes at the meeting.**

40 [4.] 5. Notwithstanding the provisions of subsections
41 2 and 3 of this section to the contrary, the director of the
42 division of finance may promulgate alternative or additional
43 regulations, reasonable in scope, to provide for the
44 integrity of the board of directors' operations when
45 directors who are not physically present and counted toward
46 such board's quorum, provided the regulations balance the
47 integrity of such board's operation with the bank or trust
48 company's interest in minimizing the cost of compliance with
49 such regulation.

50 [5.] 6. The sole remedy when the bank, trust company
51 or director fails to follow the procedures for directors who
52 are not physically present and counted toward the board's
53 quorum as provided in this section shall be limited to such
54 action as the division of finance may bring under its
55 enforcement authority as provided in chapter 361.

362.250. 1. Every person elected director of a bank
2 or trust company shall, within thirty days after election,
3 qualify himself as director by filing with the officers of
4 the bank or trust company an oath that he will, so far as
5 the duty devolves on him, diligently and honestly administer
6 the affairs of the bank or trust company, and will not

7 knowingly violate, or willingly permit to be violated, any
8 of the provisions of law applicable to the bank or trust
9 company.

10 2. The oath shall be subscribed by the director making
11 it, and certified by an officer authorized by law to
12 administer oaths, and the fact of the oath having been made
13 and filed with the officers of the bank or trust company
14 shall be noted on the records of the acts of the directors.

15 3. The oath, subscribed by the director making it, and
16 certified by the officer before whom it is taken, shall be
17 [immediately transmitted to the director of finance and
18 shall be filed and preserved in his office] **retained with**
19 **the official records of the board of directors.**

20 4. Failure to comply with this provision within the
21 time specified shall work a forfeiture of the position;
22 provided, however, that the director of finance may, for
23 cause deemed sufficient by him, extend the time; and when
24 any vacancy occurs by this failure the board of directors
25 shall, at the next regular meeting thereafter, enter the
26 fact of the vacancy upon their records and promptly proceed
27 to elect some competent person to fill the vacancy for the
28 unexpired term.

362.765. 1. As used in this section, the following
2 **terms mean:**

3 (1) "Nonbank", an entity that is not a bank, trust
4 company, savings and loan association, or savings bank;

5 (2) "Nonbank affiliate", shall include one or more non-
6 bank business entities of which a bank holding company holds
7 control as defined in section 362.910;

8 (3) "Nonbank subsidiary", shall include one or more
9 non-bank business entities of which the bank or trust
10 company holds control as defined in section 362.910.

11 2. Upon approval by the director of finance, a bank or
12 trust company chartered under this chapter may merge with
13 one or more of its nonbank subsidiaries or nonbank
14 affiliates pursuant to an agreement of merger, and provided
15 that the bank or trust company is the surviving institution.

16 3. The agreement of merger shall be presented to and
17 acted upon by the director of finance within thirty days of
18 the submission of the agreement to the director. In
19 determining whether to approve or deny the merger, the
20 director shall consider the purpose of the transaction, its
21 impact on the safety and soundness of the bank or trust
22 company, and any effect on the bank or trust company's
23 customers. The director of finance may deny the merger if
24 it would have a negative effect in any such respect.

25 4. The decision of the director of finance granting or
26 denying any such merger may be appealed in the same manner
27 as decisions by the director pursuant to section 362.040 may
28 be appealed. Should the state banking and savings and loan
29 board decision result in the approval of the agreement of
30 merger, the board may impose such conditions and terms upon
31 the merger as the board deems appropriate.

32 5. Should the agreement of merger be approved, the
33 director of finance shall provide a certification for the
34 effective date of the merger to the bank or trust company
35 which the bank or trust company may present to the secretary
36 of state or other applicable state business office to
37 demonstrate the completion of the merger.

38 6. A merger authorized under this section shall not
39 have the effect of enabling a bank or trust company to
40 exercise any right, power, privilege, or benefit that the
41 bank or trust company could not lawfully exercise
42 immediately prior to such merger.

369.049. 1. The name of every association [shall] **may** include either the words "Savings Association", or "Savings and Loan Association", except for associations domiciled in Missouri at the time sections 369.010 to 369.369 become law that use in their name "Building and Loan Association" or "Loan and Building Association". No name shall be used which is likely to mislead the public as to the character or purpose of the association or which indicates it is authorized to perform an act or conduct any business which is forbidden to it by law. [The name of the association shall not include the words, "National", "Federal", "United States", "Insured", "Guaranteed", "Government", or "Official".] The name of the association shall not be the same as nor deceptively similar to that of any other corporation authorized to transact business in this state, except in the case of an association formed by the reincorporation, reorganization, or consolidation of other associations, or upon the sale of the property or business of an association.

2. Notwithstanding the provisions of sections 362.421 and 362.425, any association may amend its charter to change its name or in the case of a new charter, may adopt a name, which includes the words "Savings Bank", in lieu of the words "Savings and Loan Association" or "Savings Association". For purposes of this chapter, the term "association" shall include savings banks. The procedure for adopting the name "savings bank" shall be as provided in section 369.059.

3. No person, firm, or corporation, either domestic or foreign, unless authorized to do business in this state under the provisions of sections 369.010 to 369.369 shall do business under any name or title which indicates or

33 reasonably implies that the business is the character or
34 kind of business carried on or transacted by an association
35 or which is likely to lead any person to believe that the
36 business is that of an association. Upon application by the
37 director of the division of finance or any association, a
38 court of competent jurisdiction may issue an injunction to
39 restrain any such entity from violating or continuing to
40 violate any of the foregoing provisions of this subsection.

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

3 (1) "Nonbank", an entity that is not a bank, trust
4 company, savings and loan association or savings bank;

5 (2) "Nonbank affiliate", shall include one or more
6 business entities of which a bank holding company or bank
7 savings and loan holding company holds control as defined in
8 section 362.910;

9 (3) "Nonbank subsidiary", shall include one or more
10 business entities of which the savings and loan association
11 or savings bank holds control as defined in section 362.910.

12 2. Upon approval by the director of finance, a savings
13 and loan institution or savings bank chartered under this
14 chapter may merge with one or more of its nonbank
15 subsidiaries or nonbank affiliates pursuant to an agreement
16 of merger, and provided that the savings and loan
17 institution or savings bank is the surviving institution.

18 3. The agreement of merger shall be presented to and
19 acted upon by the director of finance within thirty days of
20 the submission of the agreement to the director. In
21 determining whether to approve or deny the merger, the
22 director shall consider the purpose of the transaction, its
23 impact on the safety and soundness of the savings and loan
24 institution or savings bank, and any effect on the savings

25 and loan institution or savings bank customers. The
26 director of finance may deny the merger if it would have a
27 negative effect in any such respect.

28 4. The decision of the director of finance granting or
29 denying any such merger may be appealed in the same manner
30 as decisions by the director pursuant to section 362.040 may
31 be appealed. Should the state banking and savings and loan
32 board decision result in the approval of the agreement of
33 merger, the board may impose such conditions and terms upon
34 the merger as the board deems appropriate.

35 5. Should the agreement of merger be approved, the
36 director of finance shall provide a certification for the
37 effective date of the merger to the savings and loan
38 institution or savings bank which the savings and loan
39 institution or savings bank may present to the secretary of
40 state or other applicable state business office to
41 demonstrate the completion of the merger.

42 6. A merger authorized under this section shall not
43 have the effect of enabling a savings and loan institution
44 or savings bank to exercise any right, power, privilege, or
45 benefit that the bank or trust company could not lawfully
46 exercise immediately prior to such merger.

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