SECOND REGULAR SESSION

[P E R F E C T E D**]**

SENATE SUBSTITUTE FOR

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILLS NOS. 852 & 913

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR QUICK.

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TERRY L. SPIELER, Secretary.

S3601.04P

AN ACT

To repeal sections 30.270, 361.080, 362.044, 362.245, 362.250, 408.551, 408.653, 490.250 and 513.430, RSMo 1994, and sections 319.100, 319.131, 362.413, 408.140, 427.125 and 473.543, RSMo Supp. 1997, and to enact in lieu thereof twenty new sections relating to banking.

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

Section A. Sections 30.270, 361.080, 362.044, 362.245, 362.250, 408.551, 408.653, 490.250 and 513.430, RSMo 1994, and sections 319.100, 319.131, 362.413, 408.140, 427.125 and 473.543, RSMo Supp. 1997, are repealed and twenty new sections enacted in lieu thereof, to be known as sections 30.255, 30.270, 319.100, 319.131, 361.080, 362.044, 362.169, 362.245, 362.250, 362.413, 400.3-312, 408.140, 408.145, 408.551, 408.653, 427.125, 473.543, 490.250, 513.430 and 1, to read as follows:

30.255. Beginning July 1, 1999, the state treasurer shall, when making a new deposit of state funds, continuing an existing demand deposit of state funds, or renewing an existing time deposit of state funds beyond the expiration date of the deposit in any financial institution, review and consider the depository institutions' lending record, giving consideration to, among other factors, whether:

(1) The institution has been given by the appropriate federal regulatory agency a written evaluation of the institution's record of meeting the credit needs of its entire community, including low and moderate income neighborhoods, pursuant to the federal Community Reinvestment Act of 1977, as amended, 12 U.S.C. 2905; and

(2) The most recent evaluation of the institution includes a rating of "needs to improve record of meeting community credit needs" or "substantial noncompliance of meeting community credit needs", or categories substantially comparable if said federal law is amended.

30.270. 1. For the security of the moneys deposited by the state treasurer under the provisions of this chapter, the state treasurer shall, from time to time, submit a list of acceptable securities to be approved by the governor and state auditor if satisfactory to them, and the state treasurer shall require of the selected and approved banks or financial institutions as security for the safekeeping and payment of deposits, securities from the list provided for in this section, which list may include only securities of the following kind and character:

(1) Bonds or other obligations of the United States;

(2) Bonds or other obligations of the state of Missouri including revenue bonds issued by state agencies or by state authorities created by legislative enactment;

(3) Bonds of any city in this state having a population of not less than two thousand;

(4) Bonds of any county in this state;

(5) Approved registered bonds of any school district situated in this state;

(6) Approved registered bonds of any special road district in this state;

(7) State bonds of any state;

(8) Notes, bonds, debentures or other similar obligations issued by the federal land banks, federal intermediate credit banks, or banks for cooperatives or any other obligations issued pursuant to the provisions of an act of the Congress of the United States known as the Farm Credit Act of 1971, and acts amendatory thereto;

(9) Bonds of the federal home loan banks;

(10) Any bonds or other obligations guaranteed as to payment of principal and interest by the government of the United States or any agency or instrumentality thereof;

(11) Bonds of any political subdivision established under the provisions of section 30, article VI, of the Constitution of Missouri;

(12) Tax anticipation notes issued by any county of the first classification;

(13) A surety bond issued by an insurance company licensed under the laws of the state of Missouri whose claims-paying ability is rated in the highest category by at least one nationally recognized statistical rating agency. The face amount of such surety bond shall be at least equal to the portion of the deposit to be secured by the surety bond**;**

(14) An irrevocable standby letter of credit issued by a Federal Home Loan Bank possessing the highest rating issued by at least one nationally recognized statistical rating agency.

2. Securities deposited shall be in an amount valued at market equal at least to one hundred percent of the aggregate amount on time deposit as well as on demand deposit with the

particular financial institution less the amount, if any, which is insured either by the Federal Deposit Insurance Corporation or by the Federal Savings and Loan Insurance Corporation or by the National Credit Unions Share Insurance Fund.

3. The securities or book entry receipts shall be delivered to the state treasurer and receipted for by **[**him**] the state treasurer** and retained by **[**him**] the state treasurer** or by financial institutions that the governor, state auditor and treasurer agree upon. The state treasurer shall from time to time inspect the securities and book entry receipts and see that they are actually held by the state treasury or by the financial institutions selected as the state depositaries. The governor and the state auditor may inspect or request an accounting of the securities or book entry receipts, and if in any case, or at any time, the securities are not satisfactory security for deposits made as provided by law, they may require additional security to be given that is satisfactory to them.

4. Any securities deposited pursuant to this section may from time to time be withdrawn and other securities described in the list provided for in subsection 1 of this section may be substituted in lieu of the withdrawn securities with the consent of the treasurer; but a sufficient amount of securities to secure the deposits shall always be held by the treasury or in the selected depositaries.

5. If a financial institution of deposit fails to pay a deposit, or any part thereof, pursuant to the terms of its contract with the state treasurer, the state treasurer shall forthwith convert the securities into money and disburse the same according to law.

6. Any financial institution making deposits of bonds with the state treasurer **[**under**] pursuant to** the provisions of this chapter may cause the bonds to be endorsed or stamped as it deems proper, so as to show that they are deposited as collateral and are not transferable except upon the conditions of this chapter or upon the release by the state treasurer.

319.100. As used in sections 319.100 to 319.137, the following terms mean:

(1) "Aboveground storage tank", any one or a combination of tanks, including pipes connected thereto, used to contain an accumulation of petroleum and the volume of which, including the volume of the aboveground pipes connected thereto, is ninety percent or more above the surface of the ground, and is utilized for the sale of products regulated by chapter 414, RSMo. The term does not include those tanks described in paragraphs (a) to (k) of subdivision (16) of this section or aboveground storage tanks at petroleum pipeline terminals;

(2) "Board", the board of trustees of the petroleum storage tank insurance fund;

(3) "Conference, conciliation and persuasion", a process of verbal or written communications consisting of meetings, reports, correspondence or telephone conferences between authorized representatives of the department and the alleged violator. The process shall, at a minimum, consist of one offer to meet with the alleged violator tendered by the department. During any such meeting, the department and the alleged violator shall negotiate

in good faith to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance;

(4) "Department", the department of natural resources;

(5) "Fund", the petroleum storage tank insurance fund established pursuant to section 319.129;

(6) "Guarantor", any person, other than the owner or the operator, who provides evidence of financial responsibility;

(7) "Minor violation", a violation which possesses a small potential to harm the environment or human health or cause pollution, was not knowingly committed, and is not defined by the United States Environmental Protection Agency as other than minor;

(8) "Operator", any person in control of, or having responsibility for, the daily operation of the tank;

(9) "Owner", shall include any person who owned an underground storage tank immediately before the discontinuation of its use if not in use on August 28, 1989, or any person who owns an underground storage tank in use on or after August 28, 1989, and any person who owned an aboveground storage tank that was utilized for the sale of products regulated by chapter 414, RSMo, immediately before the discontinuation of its use if not in use on August 28, 1996, and any person who owns an aboveground storage tank utilized for the sale of products regulated by chapter 414, RSMo, in use on or after August 28, 1996. The term does not include any person who, without participating in the management of an **aboveground storage tank or** underground storage tank **or both types of tanks,** and otherwise not primarily engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect a security interest in or lien on the tank or the property where the tank is located;

(10) "Participating in management" does not include monitoring the operator's business, acquiring title in lieu of a foreclosure or other agreement in settlement of the operator's or property owner's debt;

(11) "Person", any individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, the state and its political subdivisions, or any interstate body. "Person" also includes any consortium, joint venture, commercial entity, and the government of the United States;

(12) "Petroleum" shall mean gasoline, kerosene, diesel, lubricants and fuel oil;

(13) "Petroleum storage tank", an aboveground storage tank or an underground storage tank used to contain an accumulation of petroleum. The term does not include those tanks described in paragraphs (a) to (k) of subdivision (16) of this section;

(14) "Regulated substance" includes:

(a) Any substance defined in section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (P.L. 96-510), as amended, but not including any

substance regulated as a hazardous waste under subtitle C of the federal Resource Conservation and Recovery Act of 1976 (P.L. 94-580), as amended; and

(b) Petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure, sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute, respectively; and

(c) Any substance adopted by rule in accordance with federal laws referenced by section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (P.L. 96-510);

(15) "Release" includes, but is not limited to, any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a petroleum storage tank into ground water, surface water, or subsurface soils;

(16) "Underground storage tank", any one or combination of tanks, including pipes connected thereto, used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected thereto, is ten percent or more beneath the surface of the ground. The department shall adopt, delete or modify exemptions established in this subdivision to any modifications, additions or deletions made by the Environmental Protection Agency. Exemptions from this definition and regulations promulgated under the provisions of sections 319.100 to 319.137 include:

(a) Farm or residential tank of eleven hundred gallons or less used for storing motor fuel for noncommercial purposes;

(b) Tanks used for storing heating oil for consumptive use on the premises where stored;

(c) Septic tanks;

(d) Pipeline facilities, including gathering lines, regulated under:

a. The federal Natural Gas Pipeline Safety Act of 1968 (P.L. 90-481), as amended; or

b. The federal Hazardous Liquid Pipeline Act of 1979 (P.L. 96-129), as amended;

(e) Pipeline facilities regulated under state laws comparable to the provisions of law referred to in paragraph (d) of this subdivision;

(f) Surface impoundments, pits, ponds, or lagoons;

(g) Storm water or wastewater collection systems;

(h) Flow-through process tanks;

(i) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; and

(j) Storage tanks situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor; and

(k) Transformers, circuit breakers or other electrical equipment.

319.131. 1. Any owner or operator of one or more petroleum storage tanks may elect to

participate in the petroleum storage tank insurance fund to partially meet the financial responsibility requirements of sections 319.100 to 319.137. Current or former refinery sites or petroleum pipeline terminals are not eligible for participation in the fund.

2. The board shall establish an advisory committee which shall be composed of insurers and owners and operators of petroleum storage tanks. The advisory committee established pursuant to this subsection shall report to the board. The committee shall monitor the fund and recommend statutory and administrative changes as may be necessary to assure efficient operation of the fund. The committee, in consultation with the board and the department of insurance, shall annually report to the general assembly on the availability and affordability of the private insurance market as a viable method of meeting the financial responsibilities required by state and federal law in lieu of the petroleum storage tank insurance fund.

3. (1) Except as otherwise provided by this section, any person seeking to participate in the insurance fund shall submit an application to the board of trustees and shall certify that the petroleum tanks meet or exceed and are in compliance with all technical standards established by the United States Environmental Protection Agency, rules established by the Missouri department of natural resources and the Missouri department of agriculture. The applicant shall submit proof that he has a reasonable assurance of the tank's integrity. Proof of tank integrity may include but not be limited to any one of the following: tank tightness test, electronic leak detection, monitoring wells, daily inventory reconciliation, vapor test or any other test that may be approved by the director of the department of natural resources or the director of the department of agriculture. The applicant shall submit evidence that he can meet all applicable financial responsibility requirements of this section.

(2) A creditor, specifically a person who, without participating in and not otherwise primarily engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily for the purpose of, or in connection with, securing payment or performance of a loan or to protect a security interest in or lien on the tank or the property where the tank is located, or serves as trustee or fiduciary upon transfer or receipt of the property, may be a successor in interest to a debtor under this section, provided that the creditor gives notice of the interest to the insurance fund by certified mail, return receipt requested. Part of said notice shall include a copy of the lien, including but not limited to a security agreement or a deed of trust as appropriate to the property. The term "successor in interest" under this section means a creditor to the debtor who had qualified real property in the insurance fund prior to the transfer of title to the creditor, and the term is limited to access to the insurance fund. The creditor may cure any of the debtor's defaults in payments required by the insurance fund, provided the specific real property originally qualified under this section. The creditor, or the creditor's subsidiary or affiliate, who forecloses or otherwise obtains legal title to such specific real property held as collateral for loans, guarantees or other credit, and which includes the debtor's **aboveground storage tanks or**

underground storage tanks, **or both such tanks** must provide notice to the fund of any transfer of creditor to subsidiary or affiliate. Liability under sections 319.100 to 319.137 shall be confined to such creditor or such creditor's subsidiary or affiliate. A creditor must apply for a transfer of coverage and must present evidence indicating, a lien, contractual right, or operation of law permitting such transfer, and may utilize the creditor's affiliate or subsidiary to hold legal title to the specific real property taken in satisfaction of debts. Creditors may be listed as insured or additional insured on the insurance fund, and not merely as mortgagees, and may assign or otherwise transfer the debtor's rights in the insurance fund to the creditor's affiliate or subsidiary, notwithstanding any limitations in the insurance fund on assignments or transfer of the debtor's rights.

(3) Any person participating in the fund shall annually submit an amount established pursuant to subsection 1 of section 319.133 which shall be deposited to the credit of the petroleum storage tank insurance fund.

4. The owner or operator making a claim pursuant to this section and sections 319.129 and 319.133 shall be liable for the first ten thousand dollars of the cost of cleanup associated with a release from a petroleum storage tank without reimbursement from the fund. The petroleum storage tank insurance fund shall assume all costs, except as provided in subsection 5 of this section, which are greater than ten thousand dollars but less than one million dollars per occurrence or two million dollars aggregate per year. The liability of the petroleum storage tank insurance fund is not the liability of the state of Missouri. The provisions of sections 319.100 to 319.137 shall not be construed to broaden the liability of the state of Missouri beyond the provisions of sections 537.600 to 537.610, RSMo, nor to abolish or waive any defense which might otherwise be available to the state or to any person. The presence of existing contamination at a site where a person is seeking insurance in accordance with this section shall not affect that person's ability to participate in this program, provided the person meets all other requirements of this section. Any person who qualifies under sections 319.100 to 319.137 and who has requested approval of a project for remediation from the fund, which request has not yet been decided upon shall annually be sent a status report including an estimate of when the project may expect to be funded and other pertinent information regarding the request.

5. The fund shall provide coverage for third-party claims involving property damage or bodily injury caused by leaking petroleum storage tanks whose owner or operator is participating in the fund. Coverage for third-party bodily injury shall not exceed one million dollars per occurrence. Coverage for third-party property damage shall not exceed one million dollars per occurrence. The fund shall not compensate an owner or operator for repair of damages to property beyond that required to contain and clean up a release of a regulated substance or compensate an owner or operator or any third party for loss or damage to other property owned or belonging to the owner or operator, or for any loss or damage of an intangible nature, including, but not limited

to, loss or interruption of business, pain and suffering of any person, lost income, mental distress, loss of use of any benefit, or punitive damages.

6. The fund shall, within limits specified in this section, assume costs of third-party claims and cleanup of contamination caused by releases from petroleum storage tanks. The attorney general shall, upon request, bring an action against such owner or operator to recover any costs or expenses owed to the fund plus reasonable attorney's fees.

7. Nothing contained in sections 319.100 to 319.137 shall be construed to abrogate or limit any right, remedy, causes of action, or claim by any person sustaining personal injury or property damage as a result of any release from any type of petroleum storage tank, nor shall anything contained in sections 319.100 to 319.137 be construed to abrogate or limit any liability of any person in any way responsible for any release from a petroleum storage tank or any damages for personal injury or property damages caused by such a release.

8. The fund shall provide moneys for cleanup of contamination caused by releases from petroleum storage tanks, the owner or operator of which is participating in the fund or the owner or operator of which has made application for participation in the fund by December 31, 1997, regardless of when such release occurred, provided that those persons who have made application are ultimately accepted into the fund. In no case shall owners or operators of aboveground storage tanks make application for participation in the fund prior to July 1, 1997. Applicants shall not be eligible for fund benefits until they are accepted into the fund. This section shall not preclude the owner or operator of petroleum storage tanks coming into service after December 31, 1997, from making application to and participating in the petroleum storage tank insurance fund.

9. (1) The fund shall provide moneys for cleanup of contamination caused by releases from underground storage tanks which have been taken out of use prior to December 31, 1997, provided such sites have been documented by or reported to the department of natural resources prior to December 31, 1997, and provided further that the fund shall make no reimbursements for expenses incurred prior to August 28, 1995. Nothing in sections 319.100 to 319.137 shall affect the validity of any underground storage tank fund insurance policy in effect on August 28, 1996.

(2) An owner or operator who submits a request as provided in this subsection is not required to bid the costs and expenses associated with professional environmental engineering services. The department may disapprove all or part of the costs and expenses associated with the environmental engineering services if the costs are excessive based upon comparable service costs or current market value of similar services. The owner or operator shall solicit bids for actual remediation and clean-up work as provided by rules of the department. The department may, by rule, establish minimum qualifications for bidders of remediation and clean-up work. The environmental engineer retained by the owner or operator shall provide to the department, prior to the acceptance of bids for remediation or clean up, estimates of reasonable anticipated costs of remediation or clean-up work. Bids for any remediation or clean-up work must be submitted to

the department prior to commencement of remediation work and unless disapproved by the department, the contract for remediation or clean-up work shall be awarded to the lowest responsive responsible bidder. The department shall have the right to reject any or all bids for failure to meet minimum qualifications or for submitting a bid in excess of reasonable cost estimates for the project. If hidden or changed conditions are encountered during remediation or clean-up work, which were not stated in the environmental engineer's estimate of costs submitted to the department, the owner or operator shall submit a statement of such additional cost to the department for approval, if reimbursement is requested from the fund.

10. The fund shall provide moneys for cleanup of contamination caused by releases from aboveground storage tanks utilized for the sale of products regulated by chapter 414, RSMo, which have been taken out of use prior to December 31, 1997, provided such sites have been documented by or reported to the department of natural resources prior to December 31, 1997, and provided further that the fund shall make no reimbursements for expenses incurred prior to July 1, 1997.

361.080. 1. **To insure the integrity of the bank examination process,** the director of finance, his deputies, clerks, stenographers, each examiner and every employee shall be bound, under oath, to keep secret all facts and information obtained in the course of all examinations, except so far as the public duty of such officer requires him to report upon or take special action regarding the affairs of any bank, trust company or small loan business, and except when he is called as a witness in any proceeding in a court of justice **relating to such financial institution's safety and soundness or in any criminal proceeding.**

2. In all other circumstances, facts and information obtained by the division of finance in the course of examinations or investigations of a bank or trust company shall be held in confidence and not disclosed absent a court's finding of compelling reasons for disclosure. Such finding shall demonstrate that the need for the information sought outweighs the public interest in free and open communications during the bank examination process. In no event shall a bank, trust company, or any director, officer, employee, or agent thereof be held liable for libel, slander or defamation of character for any good faith communications by such bank, trust company or any director, officer, employee, or agent thereof to the director of finance or his deputies, examiners, or employees. Provided, however, that nothing in this section shall prohibit the disclosure of examination or investigation reports and work papers to a bank or trust company when a dispute arises concerning the examination or investigation of such bank or trust company.

[2.**]** **3.** If any director of finance, deputy, clerk, stenographer or examiner shall disclose the name of any debtor of any bank, trust company or small loan business, or anything relative to the private accounts, affairs or transactions of the bank, trust company or small loan business, or shall disclose any facts obtained in the course of his or their examination of any bank, trust

company or small loan business, except as herein provided, he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a forfeiture of his office and the payment of a fine of not more than one thousand dollars; provided, however, that the director of finance, his deputies, and each examiner may exchange information with the Federal Reserve Board, the federal reserve banks, or with examiners duly appointed by the Federal Reserve Board, or by the federal reserve banks, the Comptroller of Currency of the United States, or with examiners duly appointed by him, the Federal Deposit Insurance Corporation or the examiners duly appointed by it, or any other agency which regulates financial institutions under the laws of the federal government or of this state or any other state when the director of finance determines that the sharing of such information is necessary for the proper performance of the bank examination, supervisory or regulatory duties of such agencies and examiners, that such information will receive protection from disclosure comparable to that accorded by section 361.070 and this section, and such agencies and examiners routinely share such information with the division of finance; and provided, further, that reports shall be made of the condition of the affairs of a bank or trust company ascertained from the examination to the officers and directors of the bank or trust company examined, and to the finance director, and to any holding company owning control of such bank or trust company if authorized by the board of directors of the bank or trust company.

362.044. 1. Stockholders' meetings may be held at such place, within this state, as may be prescribed in the bylaws. In the absence of any such provisions, all meetings shall be held at the principal banking house of the bank or trust company.

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

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

4. Notice of annual or special stockholders' meetings shall state the place, day and hour of the meeting, and shall be published at least ten days prior to the meeting and once a week after the first publication with the last publication being not more than seven days before the day fixed for such meeting, in some daily or weekly newspaper printed and published in the city or town in which the bank or trust company is located, and if there be none, then in some newspaper printed and published in the county in which the bank or trust company is located, and if there be none, then in some newspaper printed and published in an adjoining county. A written or printed copy of the notice shall be delivered personally or mailed to each stockholder at least ten but not more than fifty days prior to the day fixed for the meeting, and shall state, in addition to the place, day and hour, the purpose of any special meeting or an annual meeting at which the stockholders will consider a change in the par value of the corporation stock, the issuance of preferred shares, a

change in the number of directors, an increase or reduction of the capital stock of the bank or trust company, a change in the length of the corporate life, an extension or change of its business, a change in its articles to avail itself of the privileges and provisions of this chapter, or any other change in its articles in any way not inconsistent with the provisions of this chapter. Any stockholder may waive notice by causing to be delivered to the secretary during, prior or after the meeting a written, signed waiver of notice, or by attending such meeting except where a stockholder attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

5. Unless otherwise provided in the articles of incorporation, a majority of the outstanding shares entitled to vote at any meeting represented in person or by proxy shall constitute a quorum at a meeting of stockholders; provided, that in no event shall a quorum consist of less than a majority of the outstanding shares entitled to vote, but less than a quorum shall have the right successively to adjourn the meeting to a specified date no longer than ninety days after the adjournment, and no notice need be given of the adjournment to shareholders not present at the meeting. Every decision of a majority of the quorum shall be valid as a corporate act of the bank or trust company unless a larger vote is required by this chapter.

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

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

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

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

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

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

362.169. For the purpose of determining the legal loan limit in section 362.170, RSMo, the population of the community where the bank or trust company is located shall not include inmates of a correctional institution located in that community.

362.245. 1. The affairs and business of the corporation shall be managed by a board of directors, consisting of not less than five nor more than thirty-five stockholders who shall be

elected annually; except, that trust companies in existence on October 13, 1967, may continue to divide the directors into three classes of equal number, as near as may be, and to elect one class each year for three-year terms. **Notwithstanding any provision of this chapter to the contrary, a director who is not a stockholder shall have all the rights, privileges, and duties of a director who is a stockholder.**

2. Each director shall be a citizen of the United States, and at least a majority of the directors must be residents of this state at the time of their election and during their continuance in office; provided, however, that if a director actually resides within a radius of one hundred miles of the banking house of said bank or trust company, even though his residence be in another state adjoining and contiguous to the state of Missouri, he shall for the purposes of this section be considered as a resident of this state and in event such director shall be a nonresident of the state of Missouri he shall upon his election as a director file with the president of the banking house written consent to service of legal process upon him in his capacity as a director by service of the legal process upon the president as though the same were personally served upon the director in Missouri.

3. If at a time when not more than a majority of the directors are residents of this state, any director shall cease to be a resident of this state or adjoining state as defined in subsection 2 of this section, he shall forthwith cease to be a director of the bank or trust company and his office shall be vacant.

4. **[**Every director of a trust company, and every director of a bank shall be a stockholder of the bank or trust company or of the bank holding company as defined in section 362.910 which controls it; and every person elected to be a director who, after the election, shall hypothecate, pledge or cease to be the owner in his own right of the director's qualifying shares, shall cease to be a director of the bank or trust company and his office shall be vacant, and he shall not be eligible for reelection as a director for a period of one year from the date of the next succeeding annual meeting, and**]** No person shall be a director in any bank or trust company against whom such bank or trust company shall hold a judgment.

5. Cumulative voting shall only be permitted at any meeting of the members or stockholders in electing directors when it is provided for in the articles of incorporation or bylaws.

362.250. 1. Every person elected director of a bank or trust company shall, within thirty days after election, qualify himself as director by filing with the officers of the bank or trust company an oath that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of the bank or trust company, and will not knowingly violate, or willingly permit to be violated, any of the provisions of law applicable to the bank or trust company**[**, and that he is the owner in good faith and in his own right, of shares of stock, subscribed by him or standing in his name on the books of the bank or trust company or of the bank holding company as defined in section 362.910 which controls it and that these shares are not hypothecated or in

any way pledged as security for any loan or debt, and, in case of reelection or reappointment, that the stock was not hypothecated or in any way pledged as security for any loan or debt during his previous term**]**.

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

3. The oath, subscribed by the director making it, and certified by the officer before whom it is taken, shall be immediately transmitted to the director of finance and shall be filed and preserved in his office.

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

362.413. **1.** Anything in **[**section 362.410**] the law** to the contrary notwithstanding, every bank and every trust company organized under the laws of this state and every national banking association and every other bank incorporated under the laws of the United States having its place of business in this state may cause any and all records, memorandum, writings, entries, prints, representations or combinations thereof, of any act, transaction, occurrence, or event kept or recorded by such corporation to be recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, optical disk imaging, or other comparable or different process which accurately reproduces or forms a durable medium for so reproducing the original, and may thereafter cause the originals to be destroyed. Such reproductions shall be deemed to be an original record for all purposes and shall be admissible in evidence in all courts and administrative agencies whether the original is in existence or not. Any enlargement or facsimile of such reproduction, when certified by the president, any vice president, the cashier or secretary, and authenticated by the seal of such corporation, shall be received as prima facie evidence with like effect as such reproduction. The introduction of a reproduced record, or of an enlargement or facsimile of a reproduced record shall **[**not preclude admission of**] be a sufficient substitute for** the original.

2. Any records or copies of records that would be admissible under section 490.250 and sections 490.660 to 490.690 shall be admissible as a business record, subject to other substantive or procedural objections, in any court in this state upon the affidavit of the person who would otherwise provide the prerequisites of section 490.250 and sections 490.660 to 490.690, that the records attached to the affidavit were kept as required by section 490.680.

3. No party shall be permitted to offer such business records into evidence

pursuant to this section unless all other parties to the action have been served with copies of such records and such affidavit at least seven days prior to the day upon which trial of the cause commences.

4. The affidavit permitted by this section may be in form and content substantially as follows:

THE STATE OF .....

COUNTY OF .....

AFFIDAVIT

Before me, the undersigned authority, personally appeared ....., who, being by me duly sworn, deposed as follows:

My name is ....., I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

I am the custodian of the records of ..... . Attached hereto are ..... pages of records from ..... . These ..... pages of records are kept by ..... in the regular course of business, and it was the regular course of business of ..... for an employee or representative of ..... with knowledge of the act, event, condition, opinion, or diagnosis recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time of the act, event, condition, opinion or diagnosis. The records attached hereto are the original, exact duplicates of the original, or, accurate reproductions of the original records as permitted by subsection 1 of section 362.413, RSMo.

.....

Affiant

In witness whereof I have hereunto subscribed my name and affixed my official seal this ..... day of ....., ...

..... **.....**

(Signed) **(Seal)**

5. Upon compliance with this section, the affiant shall not be required to appear in person before a court to certify and authenticate such documents.

400.3-312. (a) In this section the following shall mean:

(1) "Check", a cashier's check, teller's check, or certified check;

(2) "Claimant", a person who claims the right to receive the amount of a cashier's check, teller's check, or certified check that was lost, destroyed, or stolen;

(3) "Declaration of loss", a written statement, made under penalty of perjury, to the effect that: (i) the declarer lost possession of a check; (ii) the declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's check or teller's check; (iii) the loss of possession was

not the result of a transfer by the declarer of a lawful seizure; and (iv) the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process;

(4) "Obligated bank", the issuer of a cashier's check or teller's check or the acceptor of a certified check.

(b) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if: (i) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check; (ii) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check; (iii) the communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid; and (iv) the claimant provides reasonable identification if requested by the obligated bank. Delivery of a declaration of loss is a warranty of the truth of the statement made in the declaration. If a claim is asserted in compliance with this subsection, the following rules apply:

(1) The claim becomes enforceable at the later of: (i) the time the claim is asserted; or (ii) the ninetieth day following the date of the check, in the case of a cashier's check or teller's check, or the ninetieth day following the date of the acceptance, in the case of a certified check;

(2) Until the claim becomes enforceable it has no legal effect and the obligated bank may pay the check or, in the case of teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check;

(3) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check;

(4) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to section 400.3-302(a)(1), payment to the claimant discharges all liability of the obligated bank with respect to the check.

(c) If the obligated bank pays the amount of a check to a claimant under subsection (b)(4) and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to: (i) refund the payment to the obligated bank if the check is paid; or (ii) pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

(d) If a claimant has the right to assert a claim under subsection (b) and is also a person entitled to enforce a cashier's check, teller's check, or certified check that is

lost, destroyed, or stolen, the claimant may assert rights with respect to the check either under this section or section 400.3-309.

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

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

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

(3) If the contract so provides, a charge for late payment on each installment in default for a period of not less than fifteen days in an amount not to exceed five percent of each installment due or twenty-five dollars, whichever is less; except that, a minimum charge of ten dollars may be made. If the contract so provides, a charge for late payment on each twenty-five dollars or less installment in default for a period of not less than fifteen days shall not exceed five dollars;

(4) Charges or premiums for insurance written in connection with any loan against loss of or damage to property or against liability arising out of ownership or use of property as provided in section 367.170, RSMo, and section 379.405, RSMo; however, notwithstanding any other provision of law, with the consent of the borrower, such insurance may cover property all or part of which is pledged as security for the loan, and charges or premiums for insurance providing life, health, accident, or involuntary unemployment coverage;

(5) Charges assessed by any institution for processing a refused instrument plus a handling fee of not more than fifteen dollars;

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

(7) Provided the debtor agrees in writing, the lender may collect a fee in advance for allowing the debtor to defer up to three monthly loan payments, so long as the fee is no more than the lesser of fifty dollars or ten percent of the loan payments deferred, no extensions are made until the first loan payment is collected and no more than one deferral in a twelve month period is agreed to and collected on any one loan.

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

408.145. 1. To encourage competitive equality, lenders issuing credit cards in this state under the authority of sections 408.100 or 408.200, RSMo, may in addition to lawful interest, contract for, charge and collect fees for such credit cards which any lender in any contiguous state is permitted to charge for credit cards issued in such contiguous state by such state's statutes. State charted lenders charging such fees in reliance on this subsection shall file a copy of the pertinent statutes of one contiguous state authorizing credit card fees with the director of finance or such lender's principal state regulator. The director of finance or other principal state regulator shall, within thirty days after receipt of the filing, approve or disapprove of such fees on the sole basis of whether the statutes of such contiguous state permit such fees (and without regard to the restrictions placed upon credit cards by subsection 2). When the lender is chartered by the federal government, or any agency thereunder, or is unregulated, such lender shall file with and be approved by the Missouri attorney general under the same provision as provided a state chartered lender.

2. "Credit card" as used in this section shall mean a credit device defined as such in the Federal Consumer Credit Protection Act and regulations thereunder, except:

(1) The term shall be limited to credit devices which permit the holder to purchase goods and service upon presentation to third parties whether or not the credit card also permits the holder to obtain loans of any other type; and

(2) Such credit device shall only provide credit which is not secured by real or personal property.

3. "Lender" as used in this section shall mean any category of depository or nondepository creditor. Notwithstanding the provisions of section 408.140, RSMo, the lender shall declare on each credit card contract whether the credit card fees are governed by section 408.140, RSMo, or by this section.

408.551. Sections 408.551 to 408.562 shall apply to any credit transaction made **primarily for personal, family or household purposes** pursuant to sections 365.010 to 365.160, RSMo,

and sections 408.100 to 408.370. For the purposes of this section, unless the context requires otherwise, "credit transaction" shall mean any retail installment transaction as defined by section 365.020, RSMo, or any loan subject to section 408.100 or any second mortgage loan as defined by section 408.231 or any retail time transaction as defined in section 408.250.

408.653. 1. A depository institution including any state or federally chartered bank, credit union, savings and loan association or any similar institution may charge no more than fifteen dollars as an overdraft charge or as a charge for a check, draft or similar sight order returned for insufficient or uncollected funds.

2. Any person to whom a check, draft, order or like instrument is tendered may, if such instrument is dishonored or returned unpaid for any reason, charge and collect from the maker or drawer, or the person for whose benefit such instrument was given, the amount of **[**fifteen**]** **twenty** dollars plus an amount equal to the actual charge by the depository institution for the return of each unpaid or dishonored instrument. No such charge will be considered interest, finance charge, time price differential or anything of a similar nature for purposes of any statute in this state.

427.125. 1. Within thirty calendar days following the placement of collateral protection coverage, the creditor shall mail to the debtor at the last known address of any such person, a notice entitled "Notice of Placement of Insurance" in a form substantially similar to the following:

"NOTICE OF PLACEMENT OF INSURANCE

Your credit agreement with us requires you to maintain adequate insurance on your collateral until you pay off your credit agreement. You have not given us proof that you have adequate insurance on your collateral. Under the terms of your credit agreement, we have purchased insurance at your expense to protect our interests in your collateral.

The insurance we purchased will pay claims made by us as the creditor. The insurance we purchased may not pay any claims made by you or against you in connection with your collateral.

You are responsible for the costs of this insurance, including the insurance premium, interest and any other charges we may impose in connection with the purchase of this insurance. The costs of this insurance may be more than insurance you can buy on your own.

You still may obtain insurance of your own choosing on the collateral. If you provide us with proof that you have obtained adequate insurance on your collateral, we will cancel the insurance that we purchased and refund or credit any unearned premiums to you. If, within thirty days after the date this notice was sent to you, you provide us with proof that you had adequate insurance on your collateral as of the date we purchased or placed insurance on this debt and that you continue to have the insurance that you purchased yourself, we will cancel the insurance that we purchased without charging you any costs, interest, or other charges in connection with the insurance that we purchased."

2. **Provided the creditor otherwise complies with subsection 1 of this section,** a

creditor may extend a grace period **[**of up to**] for** sixty days **[**for debtors to provide**] or more from the date the debtor defaults on providing** proof of insurance in which case collateral protection insurance placed at the expiration of the grace period may include a premium charge for **such** coverage retroactive to the date the debtor defaulted on the obligation to provide proof of insurance. If such a premium charge is included, the creditor **[**may**] shall** amend the notice **[**of placement of insurance**] required by subsection 1 of this section** to reflect that the creditor will cancel the insurance with no cost to the debtor **only** if the debtor **[**has current**] provides proof of** insurance that was effective as of the first **[**date**] day** of the grace period.

3. The terms for repayment of the costs of the collateral protection coverage, which shall include interest and any other charges imposed by the creditor in connection with the placement of the collateral protection coverage, shall include one or more of the following:

(1) Full payment within thirty days after the date of the Notice of Placement of Insurance;

(2) A final balloon payment within thirty days after the last scheduled payment required by the credit agreement; or

(3) Full amortization over the term of the credit transaction, the term of the collateral protection insurance policy, or the term for which amortization is used by the creditor.

473.543. **1.** Each settlement filed by a personal representative shall state the period for which it is made and, among other things, shall contain a just and true account of all moneys by him collected, the date when collected, from whom collected and on what account collected, whether on claims charged in the inventory or for property sold or otherwise; and it shall show the exact amount of principal and interest collected on each claim, and also the amount and date of each expenditure or distribution, and to whom and for what paid. Such settlement shall also show what interest has been obtained by the personal representative upon any funds in his hands, and when obtained, on what amounts, for what time and at what rate percent. Each expenditure of more than seventy-five dollars for which a personal representative claims credit in any settlement shall be supported by vouchers executed by the person to whom the disbursement was made. The court has discretion to require vouchers for expenditures of less than seventy-five dollars. Every settlement shall be signed by the personal representative.

2. When the law, local probate rule or practice requires the production of original canceled checks or drafts as part of any interim or final settlements of any kind by personal representatives, conservators, or other persons, such information may be retained and reproduced in a form permitted under section 362.413, RSMo; and, provided such information meets the requirements of section 362.413, RSMo, no court may require the production of the original checks and drafts.

490.250. **1.** Copies of all records and papers on file in the office of any company incorporated under the general or special laws of this state, when certified by the secretary or president, and authenticated by the seal of said company, shall be received as prima facie evidence

in all courts of this state, in the same manner and with like effect as the originals.

2. All depository financial institutions and trust companies chartered under the laws of this state or chartered by the federal government and located in this state may provide such copies of all records, papers, and other documents as duplications permitted by subsection 1 of section 362.413, RSMo, provided the financial institutions retain information in a form permitted by subsection 1 of section 362.413, RSMo, so that the front and back side of checks and drafts are available for duplication.

513.430. The following property shall be exempt from attachment and execution to the extent of any person's interest therein:

(1) Household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments that are held primarily for personal, family or household use of such person or a dependent of such person, not to exceed one thousand dollars in value in the aggregate;

(2) Jewelry held primarily for the personal, family or household use of such person or a dependent of such person, not to exceed five hundred dollars in value in the aggregate;

(3) Any other property of any kind, not to exceed in value four hundred dollars in the aggregate;

(4) Any implements, professional books or tools of the trade of such person or the trade of a dependent of such person not to exceed two thousand dollars in value in the aggregate;

(5) Any motor vehicle, not to exceed one thousand dollars in value;

(6) Any mobile home used as the principal residence, not to exceed one thousand dollars in value;

(7) Any one or more unmatured life insurance contracts owned by such person, other than a credit life insurance contract;

(8) The amount of any accrued dividend or interest under, or loan value of, any one or more unmatured life insurance contracts owned by such person under which the insured is such person or an individual of whom such person is a dependent; provided, however, that if proceedings under Title 11 of the United States Code are commenced by or against such person, the amount exempt in such proceedings shall not exceed in value five thousand dollars in the aggregate less any amount of property of such person transferred by the life insurance company or fraternal benefit society to itself in good faith if such transfer is to pay a premium or to carry out a nonforfeiture insurance option and is required to be so transferred automatically under a life insurance contract with such company or society that was entered into before commencement of such proceedings. No amount of any accrued dividend or interest under, or loan value of, any such life insurance contracts shall be exempt from any claim for child support. Notwithstanding anything to the contrary, no such amount shall be exempt in such proceedings under any such insurance contract which was purchased by such person within six months prior to the commencement of such proceedings;

(9) Professionally prescribed health aids for such person or a dependent of such person;

(10) Such person's right to receive:

(a) A social security benefit, unemployment compensation or a local public assistance benefit;

(b) A veteran's benefit;

(c) A disability, illness or unemployment benefit;

(d) Alimony, support or separate maintenance, not to exceed five hundred dollars a month;

(e) Any payment under a stock bonus plan, pension plan, disability or death benefit plan, profit-sharing plan, nonpublic retirement plan or any similar plan described, defined, or established pursuant to section 456.072, RSMo, annuity or similar plan or contract on account of illness, disability, death, age or length of service, to the extent reasonably necessary for the support of such person and any dependent of such person unless:

a. Such plan or contract was established by or under the auspices of an insider that employed such person at the time such person's rights under such plan or contract arose;

b. Such payment is on account of age or length of service; and

c. Such plan or contract does not qualify under section 401(a), 403(a), 403(b), 408**, 408A** or 409 of the Internal Revenue Code of 1954 (26 USC 401(a), 403(a), 403(b), 408**, 408A** or 409); except that any such payment to any person shall be subject to attachment or execution pursuant to a qualified domestic relations order, as defined by section 414(p) of the Internal Revenue Code of 1986, as amended, issued by a court in any proceeding for dissolution of marriage or legal separation or a proceeding for disposition of property following dissolution of marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of marital property at the time of the original judgment of dissolution;

(f) Any money or assets, payable to a participant or beneficiary from, or any interest of any participant or beneficiary in, a retirement plan which is qualified under section 401(k), 403(a)(3), 403(b), 408**, 408A** or 409 of the Internal Revenue Code of 1986, as amended, except as provided in this paragraph. Any plan or arrangement described in this paragraph shall not be exempt from the claim of an alternate payee under a qualified domestic relations order; however, the interest of any and all alternate payees under a qualified domestic relations order shall be exempt from any and all claims of any creditor, other than the state of Missouri through its division of family services. As used in this paragraph, the terms "alternate payee" and "qualified domestic relations order" have the meaning given to them in section 414(p) of the Internal Revenue Code of 1986, as amended.

If proceedings under Title 11 of the United States Code are commenced by or against such person, no amount of funds shall be exempt in such proceedings under any such plan, contract, or trust which is fraudulent as defined in section 456.630, RSMo, and for the period such person participated within three years prior to the commencement of such proceedings. For the purposes

of this section, when the fraudulently conveyed funds are recovered and after, such funds shall be deducted and then treated as though the funds had never been contributed to the plan, contract, or trust;

(11) The debtor's right to receive, or property that is traceable to, a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

Section 1. A corporation that makes an election under 26 U.S.C. Section 1362, that is also a banking institution as defined in section 148.020, RSMo, shall pay the annual franchise tax as set forth in section 148.030, RSMo, as modified by this section, and which is substantially equal to the franchise tax which a corporation that has not made such election that is also a banking institution pays, as follows:

(1) For the purposes of calculating the tax due pursuant to section 148.030, RSMo, such electing corporation shall first determine all taxes due treating the electing corporation as a nonelecting corporation, both for federal and state tax purposes, including sections 148.010 to 148.110, RSMo, and excluding section 143.471, RSMo;

(2) The resulting franchise tax due under this calculation is the substitute franchise tax, and shall be paid as the corporation's bank franchise tax.