

FIRST REGULAR SESSION

# HOUSE BILL NO. 479

92ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE BYRD.

Read 1<sup>st</sup> time February 13, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1576L.011

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## AN ACT

To amend chapter 409, RSMo, by adding thereto ten new sections relating to the Missouri corporate governance act, with a penalty provision.

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

Section A. Chapter 409, RSMo, is amended by adding thereto ten new sections, to be  
2 known as sections 409.970, 409.971, 409.975, 409.980, 409.981, 409.985, 409.986, 409.987,  
3 409.988, and 409.989, to read as follows:

**409.970. Sections 409.970 to 409.989 shall be known and may be cited as the**  
2 **"Missouri Corporate Governance Act".**

**409.971. As used in sections 409.970 to 409.989, the following terms shall mean:**

2 **(1) "Federal covered security", a security that is, or upon completion of a**  
3 **transaction will be, a covered security under Section 18(b) of the federal Securities Act of**  
4 **1933, 15 U.S.C. Section 77r(b), and any rules or regulations adopted pursuant thereto;**

5 **(2) "Independent director", a person who is a member of the board of directors of**  
6 **a state covered company and who does not, other than in the capacity as a member of the**  
7 **board of directors or any board committee, accept any consulting, advisory, or other**  
8 **compensatory fee from the state covered company and who is not an affiliated person of**  
9 **the state covered company or any subsidiary thereof;**

10 **(3) "State covered company", any corporation or company that has at least twenty-**  
11 **five beneficial holders of its securities that reside in Missouri and such securities are not**  
12 **federal covered securities.**

**409.975. It is unlawful for any person to offer or sell a security in this state that is**  
2 **issued by a state covered company but is not a federal covered security unless the state**  
3 **covered company maintains at least two independent directors on its board of directors.**

**409.980. 1. It is unlawful for any person to offer or sell a security in this state that is issued by a state covered company but is not a federal covered security, if the state covered company directly or indirectly, including through any subsidiary, has extended or maintained credit, arranged for the extension of credit, or renewed the extension of credit in the form of a personal loan to or for any officer or director of the state covered company or intends to extend or maintain credit, arrange credit, or renew the extension of credit in the form of a personal loan to or for any officer or director of the state covered company.**

**2. The prohibition in this section does not apply to the following:**

**(1) Advances to officers or directors for travel, business expense, or any other similar ordinary operating expenditures;**

**(2) Loans for relocation of officers or directors; provided that the loans or loan guarantees that are ongoing are approved by a majority of the independent directors of the state covered company's board of directors; and**

**(3) Loans made by a state covered company whose primary business is that of consumer credit; provided that:**

**(a) The loans are made or provided in the ordinary course of the consumer credit business of such state covered company;**

**(b) The loans are of a type that are generally made available by such state covered company to the public; and**

**(c) The loans are made by such state covered company on market terms or terms that are no more favorable than those offered by the state covered company to the general public for such extensions of credit.**

**409.981. It is unlawful for any person with intent to avoid, evade, or prevent compliance with, in whole or in part, any request or subpoena issued under this chapter, to remove from anyplace, conceal, withhold or destroy, mutilate, alter, or by any other means falsify any information, documentary material, electronic or physical evidence in the possession, custody, or control of any person which is the subject of any investigation under this chapter.**

**409.985. A person who willfully violates sections 409.970 to 409.989 is guilty of a class A misdemeanor and shall be fined not more than one million dollars. The attorney general or the appropriate prosecuting attorney with or without a criminal reference from the commissioner of securities may institute criminal proceedings under this section.**

**409.986. Pursuant to the authority of section 409.602, the commissioner of securities may conduct such investigations as the commissioner deems necessary to determine whether a person has violated, is violating, or is about to violate any provision of sections**

4 409.970 to 409.989, or any order, rule, or regulation issued or promulgated pursuant  
5 thereto.

2 409.987. If the commission of securities believes that a person has engaged, is  
2 engaging, or is about to engage in an act, practice, or course of business constituting a  
3 violation of sections 409.970 to 409.989, or any order, rule, or regulation issued or  
4 promulgated pursuant thereto, or that a person has, is, or is about to engage in an act,  
5 practice, or course of business that materially aids a violation of sections 409.970 to  
6 409.989, or any order, rule, or regulation issued or promulgated pursuant thereto, the  
7 commissioner of securities may maintain an action for relief authorized pursuant to section  
8 409.603.

2 409.988. If the commissioner of securities determines that a person has engaged,  
2 is engaging, or is about to engage in an act, practice, or course of business constituting a  
3 violation of sections 409.970 to 409.989, or any order, rule, or regulation issued or  
4 promulgated pursuant thereto, or that a person has, is, or is about to engage in an act,  
5 practice, or course of business that materially aids a violation of sections 409.970 to  
6 409.989, or any order, rule, or regulation issued or promulgated pursuant thereto, the  
7 commissioner of securities may issue such orders as authorized pursuant to section 409.604.

2 409.989. Sections 409.970 to 409.989 shall be administered by the commissioner of  
2 securities and employees designated by the commissioner. The commissioner of securities  
3 is hereby empowered to promulgate, alter, amend, or revoke rules and regulations  
4 pursuant to section 409.605 as necessary to carry out the purposes of sections 409.970 to  
5 409.989.