AN ACT

To repeal sections 33.103, 166.435, 362.105, 408.032, 408.140, 408.190, 408.232, 432.045, 443.130, and 570.223, RSMo, and to enact in lieu thereof twenty-nine new sections relating to banking, with penalty provisions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section A. Sections 33.103, 166.435, 362.105, 408.032, 408.140, 408.190, 408.232, 432.045, 443.130, and 570.223, RSMo, are repealed and twenty-nine new sections enacted in lieu thereof, to be known as sections 33.103, 166.435, 166.500, 166.505, 166.510, 166.515, 166.520, 166.525, 166.530, 166.540, 166.545, 166.550, 166.555, 166.556, 166.557, 362.105, 362.191, 369.176, 407.1400, 408.032, 408.140, 408.178, 408.190, 408.232, 408.480, 432.045, 443.130, 570.223, and 570.224, to read as follows:

33.103. 1. Whenever the employees of any state department, division or agency establish any voluntary retirement plan, or participate in any group hospital service plan, group life insurance plan, medical service plan or other such plan, or if they are members of an employee collective bargaining organization, or if they participate in a group plan for uniform rental, the commissioner of administration may deduct from such employees' compensation warrants the amount necessary for each

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in boldface type in the above law is proposed language.

employee's participation in the plan or collective bargaining dues, provided that such dues deductions shall be made only from those individuals agreeing to such deductions. Before such deductions are made, the person in charge of the department, division or agency shall file with the commissioner of administration an authorization showing the names of participating employees, the amount to be deducted from each such employee's compensation, and the agent authorized to receive the deducted amounts. The amount deducted shall be paid to the authorized agent in the amount of the total deductions by a warrant issued as provided by law.

2. The commissioner of administration may, in the same manner, deduct from any state employee's compensation warrant:

(1) Any amount authorized by the employee for the purchase of shares in a state employees' credit union in Missouri;

(2) Any amount authorized by the employee for contribution to a fund resulting from a united, joint community-wide solicitation or to a fund resulting from a nationwide solicitation by charities rendering services or otherwise fulfilling charitable purposes if the fund is administered in a manner requiring public accountability and public participation in policy decisions;

(3) Any amount authorized by the employee for the payment of dues in an employee association;

(4) Any amount determined to be owed by the employee to the

state in accordance with guidelines established by the commissioner of administration which shall include notice to the employee and an appeal process;

(5) Any amount voluntarily assigned by the employee for payment of child support obligations determined pursuant to chapter 452 or 454, RSMo; **[**and**]**

(6) Any amount authorized by the employee for contributions to any "qualified state tuition program" pursuant to Section 529 of the Internal Revenue Code of 1986, as amended, sponsored by the state of Missouri; and

(7) Any amount authorized by the employee for the investment in deposits in a state employee's bank or savings and loan association in this state.

3. The commissioner of administration may establish a cafeteria plan in accordance with Section 125 of Title 26 United States Code for state employees. The commissioner of administration must file a written plan document to be filed in accordance with chapter 536, RSMo. Employees must be furnished with a summary plan description one hundred twenty days prior to the effective date of the plan. In connection with such plans, the commissioner may:

(1) Include as an option in the plan any employee benefit, otherwise available to state employees, administered by a statutorily created retirement system;

(2) Provide and administer, or select companies on the

basis of competitive bids or proposals to provide or administer, any group insurance, or other plan which may be included as part of a cafeteria plan, provided such plan is not duplicative of any other plan, otherwise available to state employees, administered by a statutorily created retirement system; and

(3) Reduce each participating employee's compensation warrant by the amount necessary for each employee's participation in the cafeteria plan, provided that such salary reduction shall be made only with respect to those individuals agreeing to such reduction. No such reduction in salary for the purpose of participation in a cafeteria plan shall have the effect of reducing the compensation amount used in calculating the state employee's retirement benefit under a statutorily created retirement system or reducing the compensation amount used in calculating the state employee's compensation or wages for purposes of any workers' compensation claim governed by chapter 287, RSMo.

4. Employees may authorize deductions as provided in this section in writing or by electronic enrollment.

166.435. 1. Notwithstanding any law to the contrary, the assets of the savings program held by the board and the assets of any similar **[**savings program**]** programs sponsored, held, or otherwise authorized by law by this state or any other state or political subdivision thereof and qualified pursuant to Section 529 of the Internal Revenue Code and any income therefrom shall

be exempt from all taxation by the state or any of its political subdivisions. Income earned or received from the fund or any similar program sponsored, held, or otherwise authorized by law by this state or any other state or political subdivision thereof and qualified pursuant to Section 529 of the Internal Revenue Code, by any participant or beneficiary shall not be subject to state income tax imposed pursuant to chapter 143, RSMo, and shall be eligible for any benefits provided in accordance with Section 529 of the Internal Revenue Code. The exemption from taxation pursuant to this section shall apply only to assets and income maintained, accrued, or expended pursuant to the requirements of the **[**savings program established pursuant to sections 166.400 to 166.455, the provisions of this section**]** programs sponsored, held, or otherwise authorized by law of this state or any other state or political subdivision thereof and Section 529 of the Internal Revenue Code, and no exemption shall apply to assets and income expended for any other purposes. Annual contributions made to the savings program held by the board and any similar program sponsored, held, or otherwise authorized by law by this state or any other state or political subdivision thereof qualified pursuant to Section 529 of the Internal Revenue Code, up to and including eight thousand dollars **[**made to the savings program**]** for the taxpayer shall be subtracted **[**from**]** in determining Missouri adjusted gross income pursuant to section 143.121, RSMo.

2. If any deductible contributions to or earnings from any savings account are distributed and not used to pay qualified higher education expenses or are not held for the minimum length of time established by the board, the amount so distributed shall be added to the Missouri adjusted gross income of the participant, or, if the participant is not living, the beneficiary.

3. The provisions of this section shall apply to tax years beginning on or after January 1, 1999.

166.500. Sections 166.500 to 166.556 shall be known and may be cited as the "Missouri Higher Education Deposit Program".

166.505. Notwithstanding the provisions of sections 166.400 to 166.456 to the contrary, the higher education deposit program is established as a nonexclusive alternative to the Missouri higher education savings program, and any participant may elect to participate in both programs subject to aggregate Missouri program limitations.

166.510. As used in sections 166.500 to 166.556, except where the context clearly requires another interpretation, the following terms mean:

(1) "Beneficiary", any individual designated by a participation agreement to benefit from payments for qualified higher education expenses at an eligible educational institution;

(2) "Benefits", the payment of qualified higher education expenses on behalf of a beneficiary from a deposit account during

the beneficiary's attendance at an eligible educational institution;

(3) "Board", the Missouri higher education deposit program board established in section 166.515;

(4) "CAMELS rating", the Capital, Assets, Management, Earnings, Liquidity, and Sensitivity rating system of the Federal Financial Institution Examination Counsel (FFIEC);

(5) "Eligible educational institution", an institution of postsecondary education as defined in Section 529(e)(5) of the Internal Revenue Code;

(6) "Financial institution", a depository institution and any intermediary that brokers certificates of deposits;

(7) "Internal Revenue Code", the Internal Revenue Code of 1986, as amended;

(8) "Missouri higher education deposit program" or "deposit program", the program created pursuant to sections 166.500 to 166.556;

(9) "Participant", a person who has entered into a participation agreement pursuant to sections 166.500 to 166.556 for the advance payment of qualified higher education expenses on behalf of a beneficiary;

(10) "Participation agreement", an agreement between a participant and the board pursuant to and conforming with the requirements of sections 166.500 to 166.556;

(11) "Qualified higher education expenses", the qualified

costs of tuition and fees and other expenses for attendance at an eligible educational institution, as defined in Section 529(e)(3) of the Internal Revenue Code of 1986, as amended.

166.515. 1. There is hereby created the "Missouri Higher Education Deposit Program". The program shall be administered by the Missouri higher education deposit program board, which shall consist of the director of the Missouri division of finance, who shall serve as chairman, the commissioner of the department of higher education, the commissioner of the office of administration, and four private members appointed by the governor with the advice and consent of the senate who have demonstrable experience and knowledge in the areas of deposit rate determination and placement of depository certificates of deposit or other deposit investments. The four private members shall be appointed to serve for terms of four years from the date of appointment, with the exception of initial private members. Initial members shall serve terms as follows: one private member shall serve a one-year term; one private member shall serve a two-year term; one private member shall serve a three-year term; and one private member shall serve a four-year term. Once the initial terms have been completed, all such private members may be appointed to serve for an additional four-year term. The members of the board shall be subject to the conflict of interest provisions in section 105.452, RSMo. Any member who violates the conflict of interest provisions shall be removed from the board.

2. In order to establish and administer the deposit program, the board, in addition to its other powers and authority, shall have the power and authority to:

(1) Develop and implement the Missouri higher education deposit program and, notwithstanding any provision of sections 166.500 to 166.556 to the contrary, the deposit programs and services consistent with the purposes and objectives of sections 166.500 to 166.556;

(2) Promulgate reasonable rules and regulations and establish policies and procedures to implement sections 166.500 to 166.556, to permit the deposit program to qualify as a qualified state tuition program pursuant to Section 529 of the Internal Revenue Code and to ensure the deposit program's compliance with all applicable laws;

(3) Develop and implement educational programs and related informational materials for participants, either directly or through a contractual arrangement with a financial institution or other entities for deposit educational services, and their families, including special programs and materials to inform families with children of various ages regarding methods for financing education and training beyond high school;

(4) Enter into an agreement with any financial institution, entity, or business clearinghouse for the operation of the deposit program pursuant to sections 166.500 to 166.556; providing however, that such institution, entity, or

clearinghouse shall be a private for-profit or not-for-profit entity and not a government agency. No more than one board member may have a direct interest in such institution, entity, or clearinghouse. Such institution, entity, or clearinghouse shall implement the board's policies and administer the program for the board and with electing depository institutions and others;

(5) Enter into participation agreements with participants;

(6) Accept any grants, gifts, legislative appropriations, and other moneys from the state, any unit of federal, state, or local government or any other person, firm, partnership, or corporation for deposit to the account of the deposit program;

(7) Invest the funds received from participants in appropriate investment instruments to be held by depository institutions or directly deposit such funds in depository institutions as provided by the board and elected by the participants;

(8) Make appropriate payments and distributions on behalf of beneficiaries pursuant to participation agreements;

(9) Make refunds to participants upon the termination of participation agreements pursuant to the provisions, limitations, and restrictions set forth in sections 166.500 to 166.556 and the rules adopted by the board;

(10) Make provision for the payment of costs of administration and operation of the deposit program;

(11) Effectuate and carry out all the powers granted by

sections 166.500 to 166.556, and have all other powers necessary to carry out and effectuate the purposes, objectives, and provisions of sections 166.500 to 166.556 pertaining to the deposit program;

(12) Procure insurance, guarantees, or other protections against any loss in connection with the assets or activities of the deposit program, as the members in their best judgment deem necessary;

(13) To both adopt and implement various methods of transferring money by electronic means to efficiently transfer funds to depository institutions for deposit, and in addition or in the alternative, to allow funds to be transferred by agent agreements, assignment, or otherwise, provided such transfer occurs within two business days;

(14) To both adopt and implement methods and policies designed to obtain the maximum insurance of such funds for each participant permitted and provided for by the Federal Deposit Insurance Corporation, or any other federal agency insuring deposits, and taking into consideration the law and regulation promulgated by such federal agencies for deposit insurance.

3. Four members of the board shall constitute a quorum. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board. No action shall be taken by the board except upon the affirmative vote of a majority of the members present, except as

otherwise provided by law.

4. The board shall meet within the state of Missouri at the time set at a previously scheduled meeting or by the request of any four members of the board. Notice of the meeting shall be delivered to all other trustees in person or by depositing notice in a United States post office in a properly stamped and addressed envelope not less than six days prior to the date fixed for the meeting. The board may meet at any time by unanimous mutual consent. There shall be at least one meeting in each quarter.

5. The funds shall be invested only in those investments which a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, as provided in section 105.688, RSMo, as a means to hold funds until they are placed in a Missouri depository institution as a deposit. The board may delegate to duly appointed representatives of financial institutions authority to act in place of the board in the investment and reinvestment of all or part of the moneys and may also delegate to such representatives the authority to act in place of the board in the holding, purchasing, selling, assigning, transferring, or disposing of any or all of the investments in which such moneys shall have been invested, as well as the proceeds of such investments and such moneys, however, such investments shall be limited to certificates of

deposit and other deposits in federally insured depository institutions. Such representatives shall be registered as "qualified student deposit advisors on section 529 plans" with the board and such board shall, by rule, develop and administer qualification tests from time to time to provide representatives the opportunity to qualify for this program. In exercising or delegating its investment powers and authority, members of the board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. No member of the board shall be liable for any action taken or omitted with respect to the exercise of, or delegation of, these powers and authority if such member shall have discharged the duties of his or her position in good faith and with that degree of diligence, care, and skill which a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.

6. No board member or employee of the deposit program shall personally receive any gain or profit from any funds or transaction of the deposit program as a result of his or her membership of the board. Any board member, employee, or agent of the deposit program accepting any gratuity or compensation for the purpose of influencing such board member's, employee's, or agent's action with respect to choice of intermediary, including any financial institution, entity, or clearinghouse, for the

funds of the deposit program shall thereby forfeit the office and in addition thereto be subject to the penalties prescribed for bribery. However, a board member who is regularly employed directly or indirectly by a financial institution may state that institution's interest and absent himself or herself from voting.

7. Depository institutions originating the deposit program shall be the agent of the board and offer terms for certificates of deposit and other deposits in such program as permitted by the board, subject to a uniform interest rate disclosure as defined in federal regulations of the Board of Governors of the Federal Reserve System, specifically Federal Reserve Regulation DD, as amended from time to time. The board shall establish various deposit opportunities based on amounts deposited and length of time held that are uniformly available to all depository institutions that elect to participate in the program, and the various categories of fixed or variable rates shall be the only interest rates available under this program. A depository institution that originates the deposit as agent for the board and participates in the program shall receive back the certificate of deposit or other deposit, provided such depository institution has a CAMELS rating of 1 or 2, or a comparable regulatory rating that is the substantial equivalent of the CAMELS rating. Such deposit and certificate of deposit shall be titled in the name of the clearing entity for the benefit of the participant, and shall be insured as permitted by any agency of

the federal government that insures deposits in depository institutions. Any depository institution or intermediary that fails to comply with these provisions shall forfeit its right to participate in this program; provided however, the board shall be the sole and exclusive judge of compliance except as otherwise provided by provisions in Section 529 of the Internal Revenue Code and the Internal Revenue Service enforcement of such section.

166.520. 1. The board may enter into deposit program participation agreements with participants on behalf of beneficiaries pursuant to the provisions of sections 166.500 to 166.556, including the following terms and conditions:

(1) A participation agreement shall stipulate the terms and conditions of the deposit program in which the participant makes contributions;

(2) A participation agreement shall specify the method for calculating the return on the contribution made by the participant as otherwise provided in sections 166.500 to 166.556;

(3) The execution of a participation agreement by the board shall not guarantee that the beneficiary named in any participation agreement will be admitted to an eligible educational institution, be allowed to continue to attend an eligible educational institution after having been admitted or will graduate from an eligible educational institution;

(4) A participation agreement shall disclose to

participants the risk associated with depositing moneys with the board, including information on federal insured deposit availability and coverage and penalties for withdrawal before the deposit has matured;

(5) Participation agreements shall be organized and presented in a way and with language that is easily understandable by the general public; and

(6) A participation agreement shall clearly and prominently disclose to participants the existence of any fee or similar charge assessed against the accounts of the participants for administration or services.

2. The board shall establish the maximum amount which may be contributed annually by a participant with respect to a beneficiary.

3. The board shall establish a total contribution limit for deposit accounts established under the deposit program with respect to a beneficiary to permit the deposit program to qualify as a qualified state tuition program pursuant to Section 529 of the Internal Revenue Code. No contribution may be made to a deposit account for a beneficiary if it would cause the balance of all deposit accounts of the beneficiary to exceed the total contribution limit established by the board. The board may establish other requirements that it deems appropriate to provide adequate safeguards to prevent contributions on behalf of a beneficiary from exceeding what is necessary to provide for the

qualified higher education expenses of the beneficiary.

4. The board shall establish the minimum length of time that contributions and earnings must be held by the deposit program to qualify pursuant to section 166.435. Any contributions or earnings that are withdrawn or distributed from a deposit account prior to the expiration of the minimum length of time, as established by the board, shall be subject to a penalty pursuant to section 166.530.

166.525. All money paid by a participant in connection with participation agreements shall be deposited as received and shall be promptly invested by the board or may be directly deposited by the board's agents. Contributions and earnings thereon accumulated on behalf of participants in the deposit program may be used, as provided in the participation agreement, for qualified higher education expenses.

166.530. Any participant may cancel a participation agreement at will. The board shall impose a penalty equal to or greater than ten percent of the earnings of an account for any distribution that is not:

(1) Used exclusively for qualified higher education expenses of the designated beneficiary;

(2) Made because of death or disability of the designated beneficiary;

(3) Made because of the receipt of scholarship by the designated beneficiary;

(4) A rollover distribution, as defined in Section 529(c)(3)(C)(i) of the Internal Revenue Code; or

(5) Held in the fund for the minimum length of time established by the board.

166.540. The assets of the deposit program shall at all times be preserved, invested, and expended only for the purposes set forth in this section and in accordance with the participation agreements, and no property rights therein shall exist in favor of the state.

166.545. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is promulgated pursuant to sections 166.500 to 166.556 shall become effective only if it has been promulgated pursuant to the provisions of chapter 536, RSMo. All rulemaking authority delegated prior to August 28, 2004, is of no force and effect and repealed; however, nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to August 28, 2004, if it fully complied with the provisions of chapter 536, RSMo. Sections 166.500 to 166.556 and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

166.550. The Missouri state auditor shall, on a semiannual basis, review the financial status and investment policy of the program as well as the participation rate in the program. The auditor shall also review the continued viability of the program and the administration of the program by the board. The auditor shall report the findings annually to the board, which shall subsequently disclose such findings at a public meeting.

166.555. Money accruing to and deposited in individual deposit accounts shall not be part of total state revenues as defined in sections 17 and 18, article X, Constitution of Missouri, and the expenditure of such revenues shall not be an expense of state government under section 20, article X, Constitution of Missouri.

166.556. All personally identifiable information concerning participants and beneficiaries of accounts established within the Missouri higher education deposit program pursuant to sections 166.500 to 166.556 shall be confidential, and any disclosure of such information shall be restricted to purposes directly connected with the administration of the program.

166.557. Pursuant to section 23.253, RSMo, of the Missouri Sunset Act:

(1) The provisions of the new program authorized under sections 166.500 to 166.557 shall automatically sunset six years after the effective date of sections 166.500 to 166.557 unless reauthorized by an act of the general assembly; and

(2) If such program is reauthorized, the program authorized under sections 166.500 to 166.557 shall automatically sunset twelve years after the effective date of the reauthorization of sections 166.500 to 166.557; and

(3) Sections 166.500 to 166.557 shall terminate on September first of the calendar year immediately following the calendar year in which the program authorized under sections 166.500 to 166.557 is sunset.

362.105. 1. Every bank and trust company created under the laws of this state may for a fee or other consideration, directly or through a subsidiary company, and upon complying with any applicable licensing statute:

(1) Conduct the business of receiving money on deposit and allowing interest thereon not exceeding the legal rate or without allowing interest thereon, and of buying and selling exchange, gold, silver, coin of all kinds, uncurrent money, of loaning money upon real estate or personal property, and upon collateral of personal security at a rate of interest not exceeding that allowed by law, and also of buying, investing in, selling and discounting negotiable and nonnegotiable paper of all kinds, including bonds as well as all kinds of commercial paper; and for all loans and discounts made, the corporation may receive and retain the interest in advance;

(2) Accept for payment, at a future date, drafts drawn upon it by its customers and to issue letters of credit authorizing

the holders thereof to draw drafts upon it or upon its correspondents at sight or on time not exceeding one year; provided, that no bank or trust company shall incur liabilities under this subdivision to an amount equal at any time in the aggregate to more than its paid-up and unimpaired capital stock and surplus fund, except with the approval of the director under such general regulations as to amount of acceptances as the director may prescribe;

(3) Purchase and hold, for the purpose of becoming a member of a Federal Reserve Bank, so much of the capital stock thereof as will qualify it for membership in the reserve bank pursuant to an act of Congress, approved December 23, 1913, entitled "The Federal Reserve Act" and any amendments thereto; to become a member of the Federal Reserve Bank, and to have and exercise all powers, not in conflict with the laws of this state, which are conferred upon any member by the Federal Reserve Act and any amendments thereto. The member bank or trust company and its directors, officers and stockholders shall continue to be subject, however, to all liabilities and duties imposed upon them by any law of this state and to all the provisions of this chapter relating to banks or trust companies;

(4) Subscribe for and purchase such stock in the Federal Deposit Insurance Corporation and to make such payments to and to make such deposits with the Federal Deposit Insurance Corporation and to pay such assessments made by such corporation as will

enable the bank or trust company to obtain the benefits of the insurance of deposits under the act of Congress known as "The Banking Act of 1933" and any amendments thereto;

(5) Invest in a bank service corporation as defined by the act of Congress known as the "Bank Service Corporation Act", Public Law 87-856, as approved October 23, 1962, to the same extent as provided by that act or any amendment thereto;

(6) Hold a noncontrolling equity interest in any business entity that conducts only activities that are financial in nature or incidental to financial activity or that is established pursuant to subdivision (16) of this subsection where the majority of the stock or other interest is held by Missouri banks, Missouri trust companies, national banks located in Missouri, or any foreign bank with a branch or branches in Missouri, or any combination of these financial institutions; provided that if the entity is defined pursuant to Missouri law as any type of financial institution subsidiary or other type of entity subject to special conditions or regulations, those conditions and regulations shall remain applicable, and provided that such business entity may be formed as any type of business entity, in which each investor's liability is limited to the investment in and loans to the business entity as otherwise provided by law;

(7) Receive upon deposit for safekeeping personal property of every description, and to own or control a safety vault and

rent the boxes therein;

(8) Purchase and hold the stock of one safe deposit company organized and existing under the laws of the state of Missouri and doing a safe deposit business on premises owned or leased by the bank or trust company at the main banking house and any branch operated by the bank or trust company; provided, that the purchasing and holding of the stock is first duly authorized by resolution of the board of directors of the bank or trust company and by the written approval of the director, and that all of the shares of the safe deposit company shall be purchased and held, and shall not be sold or transferred except as a whole and not be pledged at all, all sales or transfers or pledges in violation hereof to be void;

(9) Act as the fiscal or transfer agent of the United States, of any state, municipality, body politic or corporation and in such capacity to receive and disburse money, to transfer, register and countersign certificates of stock, bonds and other evidences of indebtedness;

(10) Acquire or convey real property for the following purposes:

(a) Real property conveyed to it in satisfaction or part satisfaction of debts previously contracted in the course of its business; and

(b) Real property purchased at sales under judgment, decrees or liens held by it;

(11) Purchase, hold and become the owner and lessor of personal property acquired upon the specific request of and for use of a customer; and, in addition, leases that neither anticipate full purchase price repayment on the leased asset, nor require the lease to cover the physical life of the asset, other than those for motor vehicles which will not be used by bank or trust company personnel, and may incur such additional obligations as may be incident to becoming an owner and lessor of the property, subject to the following limitations:

(a) Lease transactions do not result in loans for the purpose of section 362.170, but the total amount disbursed under leasing obligations or rentals by any bank to any person, partnership, association, or corporation shall at no time exceed the legal loan limit permitted by statute except upon the written approval of the director of finance;

(b) Lease payments are in the nature of rent rather than interest, and the provisions of chapter 408, RSMo, are not applicable;

(12) Contract with another bank or trust company, bank service corporation or other partnership, corporation, association or person, within or without the state, to render or receive services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping,

accounting, statistical, financial counseling, or similar services, or the storage, transmitting or processing of any information or data; except that, the contract shall provide, to the satisfaction of the director of finance, that the party providing such services to a bank or trust company will be subject to regulation and examination to the same extent as if the services were being performed by the bank or trust company on its own premises. This subdivision shall not be deemed to authorize a bank or trust company to provide any customer services through any system of electronic funds transfer at places other than bank premises;

(13) Purchase and hold stock in a corporation whose only purpose is to purchase, lease, hold or convey real property of a character which the bank or trust company holding stock in the corporation could itself purchase, lease, hold or convey pursuant to the provisions of paragraph (a) of subdivision (10) of this subsection; provided, the purchase and holding of the stock is first duly authorized by resolution of the board of directors of the bank or trust company and by the written approval of the director, and that all of the shares of the corporation shall be purchased and held by the bank or trust company and shall not be sold or transferred except as a whole;

(14) Purchase and sell investment securities, without recourse, solely upon order and for the account of customers; and establish and maintain one or more mutual funds and offer to the

public shares or participations therein. Any bank which engages in such activity shall comply with all provisions of chapter 409, RSMo, regarding the licensing and registration of sales personnel for mutual funds so offered, provided that such banks shall register as a broker-dealer with the office of the commissioner of securities and shall consent to supervision and inspection by that office and shall be subject to the continuing jurisdiction of that office;

(15) Make debt or equity investments in corporations or projects, whether for profit or not for profit, designed to promote the development of the community and its welfare, provided that the aggregate investment in all such corporations and in all such projects does not exceed five percent of the unimpaired capital of the bank, and provided that this limitation shall not apply to loans made under the authority of other provisions of law, and other provisions of law shall not limit this subdivision;

(16) Offer through one or more subsidiaries any products and services which a national bank may offer through its financial subsidiaries, subject to the limitations that are applicable to national bank financial subsidiaries, and provided such bank or trust company meets the division of finance safety and soundness considerations. This subdivision is enacted to provide in part competitive equality with national banks' powers under the Gramm-Leach-Bliley Act of 1999, Public Law 106-102;

(17) Notwithstanding any other law to the contrary, purchase and hold a noncontrolling equity interest in any business entity that conducts only activities in an enterprise in which such equity interest is limited to activities that are part of or incidental to the business of banking for a national bank or otherwise authorized for a national bank; the state-chartered bank shall be permitted to either prevent the enterprise from engaging in activities or withdraw its noncontrolling equity interest should such activities not meeting the foregoing standard, such investment must be convenient or useful to the bank in carrying out its business and not a mere passive investment unrelated to the bank's banking business. Any business entity qualifying for such noncontrolling equity interest investment shall be limited as follows: if the entity is defined pursuant to law as any type of financial institution subsidiary or other type of entity subject to special conditions or regulations, those conditions and regulations shall remain applicable, and such business entity may be formed as any type of business entity, provided each lender’s and investor's liability is limited to the loans and investments to such business entity as otherwise provided by law. This subdivision does not authorize a bank or trust company to purchase any interest in a Missouri real estate broker as regulated by chapter 339, RSMo.

2. In addition to the power and authorities granted in subsection 1 of this section, and notwithstanding any limitations

therein, a bank or trust company may:

(1) Purchase or lease, in an amount not exceeding its legal loan limit, real property and improvements thereto suitable for the convenient conduct of its functions. The bank may derive income from renting or leasing such real property or improvements or both. If the purchase or lease of such real property or improvements exceeds the legal loan limit or is from an officer, director, employee, affiliate, principal shareholder or a related interest of such person, prior approval shall be obtained from the director of finance; and

(2) Loan money on real estate and handle escrows, settlements and closings on real estate for the benefit of the bank's customers, as a core part of the banking business, notwithstanding any other provision of law to the contrary.

3. In addition to the powers and authorities granted in **[**subsection**]** subsections 1 and 2 of this section, every trust company created under the laws of this state shall be authorized and empowered to:

(1) Receive money in trust and to accumulate the same at such rate of interest as may be obtained or agreed upon, or to allow such interest thereon as may be prescribed or agreed;

(2) Accept and execute all such trusts and perform such duties of every description as may be committed to it by any person or persons whatsoever, or any corporation, and act as assignee, receiver, trustee and depositary, and to accept and

execute all such trusts and perform such duties of every description as may be committed or transferred to it by order, judgment or decree of any courts of record of this state or other states, or of the United States;

(3) Take, accept and hold, by the order, judgment or decree of any court of this state, or of any other state, or of the United States, or by gift, grant, assignment, transfer, devise or bequest of any person or corporation, any real or personal property in trust, and to execute and perform any and all the legal and lawful trusts in regard to the same upon the terms, conditions, limitations and restrictions which may be declared, imposed, established or agreed upon in and by the order, judgment, decree, gift, grant, assignment, transfer, devise or bequest;

(4) Buy, invest in and sell all kinds of stocks or other investment securities;

(5) Execute, as principal or surety, any bond or bonds required by law to be given in any proceeding, in law or equity, in any of the courts of this state or other states, or of the United States;

(6) Act as trustee, personal representative, or conservator or in any other like fiduciary capacity;

(7) Act as attorney-in-fact or agent of any person or corporation, foreign or domestic, in the management and control of real or personal property, the sale or conveyance of same, the

investment of money, and for any other lawful purpose.

4. (1) In addition to the powers and authorities granted in this section, the director of finance may, from time to time, with the approval of the state banking board, issue orders granting such other powers and authorities as have been granted to financial institutions subject to the supervision of the federal government to:

(a) State-chartered banks and trust companies which are necessary to enable such banks and trust companies to compete;

(b) State-chartered banks and trust companies to establish branches to the same extent that federal law permits national banks to establish branches;

(c) Subsidiaries of state-chartered banks and trust companies to the same extent powers are granted to national bank subsidiaries to enable such banks and trust companies to compete;

(d) State-chartered banks and trust companies to establish trust representative offices to the same extent national banks are permitted such offices.

(2) The orders shall be promulgated as provided in section 361.105, RSMo, and shall not be inconsistent with the constitution and the laws of this state.

5. As used in this section, the term "subsidiary" shall include one or more business entities of which the bank or trust company is the owner, provided the owner's liability is limited by the investment in and loans to the subsidiary as otherwise

provided for by law.

6. A bank or trust company to which authority is granted by regulation in subsection 4 of this section, based on the population of the political subdivision, may continue to exercise such authority for up to five years after the appropriate decennial census indicates that the population of the town in which such bank or trust company is located has exceeded the limits provided for by regulation pursuant to subsection 4 of this section.

362.191. Notwithstanding any other provision of law, the commissioner of administration may, in the same manner as provided in section 33.103, RSMo, deduct from any state employee's compensation warrant any amount authorized by the employee for the investments in deposits in any bank which is located in this state, or has a state charter, and is insured by an agency of the United States government.

369.176. Notwithstanding any other provision of law, the commissioner of administration may, in the same manner as provided in section 33.103, RSMo, deduct from any state employee's compensation warrant any amount authorized by the employee for the investments in deposits in any savings and loan association or savings bank which is located in this state, or has a state charter, and is insured by an agency of the United States government.

407.1400. 1. Deceptive use of a financial institution’s

name in notification or solicitation occurs when a business, or a person acting on its behalf, engages in the following activity:

(1) Through advertisement, solicitation, or other notification, either verbally or through any other means, informs a consumer of the availability of any type of goods or services that are not free;

(2) The name of an unrelated and unaffiliated financial institution is mentioned in any manner;

(3) The goods or services mentioned are not actually provided by the unrelated and unaffiliated financial institution whose name is mentioned;

(4) The business on whose behalf the notification or solicitation is made does not have a consensual right to mention the name of the unrelated and unaffiliated financial institution; and

(5) Neither the actual name nor trade name of the business on whose behalf the notification or solicitation is being made is stated, nor the actual name or trade name of any actual provider of the goods or services is stated, so as to clearly identify for the consumer a name that is distinguishable and separate from the name of the unrelated and unaffiliated financial institution whose name is mentioned in any manner in the notification or solicitation, and thereby a misleading implication or ambiguity is created, such that a consumer who is the recipient of the advertisement, solicitation or notification may reasonably but

erroneously believe:

(a) That the goods or services whose availability is mentioned are made available by or through the unrelated and unaffiliated financial institution whose name is mentioned; or

(b) That the unrelated and unaffiliated financial institution whose name is mentioned is the one communicating with the consumer.

2. Deceptive use of another's name in notification or solicitation occurs when a business, or a person acting on its behalf, engages in the following activity:

(1) Falsely states or implies that any person, product or service is recommended or endorsed by a named third-person financial institution; or

(2) Falsely states that information about the consumer, including but not limited to, the name, address, or phone number of the consumer has been provided by a third-person financial institution, whether that person is named or unnamed.

3. Only the financial institution whose name is deceptively used, as provided in this section, may bring a private civil action and recover a minimum amount of ten thousand dollars, court costs, and attorney fees plus any damages such financial institution may prove at trial.

4. For the purposes of this section, a financial institution includes a commercial bank, savings and loan association, savings bank, credit union, mortgage banker, or

consumer finance company.

408.032. 1. Notwithstanding any provisions of law to the contrary, the recording fees, including actual fees paid to a third party by a creditor, may include the following:

(1) Any fee paid in processing the debtor's liens as provided in section 136.055, RSMo;

(2) Any fee paid to a third party for expediting the debtor's motor vehicle or other title or lien with the department of revenue, provided:

(a) The creditor does not control the third party; and

(b) Both creditor and third party do not share common ownership.

2. Either fee provided for in subdivisions (1) and (2) of subsection 1 of this section may be charged such debtor, and is not included as interest or service charges for the purposes of state usury laws; except that the expeditor fee as provided in subdivision (2) of subsection 1 of this section may not exceed **[**six**]** fifteen dollars.

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 five percent of the principal amount loaned not to exceed seventy-five dollars 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 or minimum payment in default for a period of not less than fifteen days in an amount not to exceed five percent of each installment due or the minimum payment due or fifteen dollars, whichever is greater, not to exceed fifty dollars**[**; 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) If the contract so provides, a charge for late payment for a single payment note in default for a period of not less than fifteen days in an amount not to exceed five percent of the payment due; provided that, the late charge for a single payment note shall not exceed fifty dollars;

(5) 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; 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;

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

(7) 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;

(8) 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; this subdivision applies to nonprecomputed loans only and does not affect any other subdivision;

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

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.

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

408.178. Notwithstanding any other law to the contrary, on loans with an original amount of six hundred dollars or more, and provided the debtor agrees in writing, the lender may collect a fee in advance for allowing the debtor to defer monthly loan payments, so long as the fee on each deferred period is no more than the lesser of fifty dollars or ten percent of the loan payments deferred, however, a minimum fee of twenty-five dollars is permitted, and no extensions are made until the first loan payment is collected on any one loan. This section applies to nonprecomputed loans only.

408.190. Sections 408.120 to 408.180 and 408.200 shall not apply to any loan on which the rate or amount of interest and fees charged or received **[**is**]** are lawful without regard to the rates permitted in section 408.100 and the fees permitted in sections 408.140, 408.145, and 408.178.

408.232. 1. With respect to a second mortgage loan, any person, firm or corporation may charge, contract for, and receive interest in any manner at rates agreed to by the parties computed on unpaid balances of the principal for the time actually outstanding.

2. The term of the loan, for purposes of this section, commences with the date the loan is made. Differences in the lengths of months are disregarded, and a day may be counted as one-thirtieth of a month and one-three hundred sixtieth of a year. When a second mortgage loan contract provides for monthly installments, the first installment may be payable at any time within one month and fifteen days of the date of the loan.

3. For revolving loans, charges may be computed at a daily rate of one-thirtieth of the monthly rate on actual daily balances or at a monthly rate on the average daily balance in each monthly billing cycle.

4. Sections 408.231 to 408.241 shall not apply to any loans on which the rate of interest and fees charged is lawful without regard to the rates permitted in subsection 1 of this section and the fees permitted in section 408.233.

408.480. The changes in sections 408.140, 408.145, 408.190, and 408.232 are remedial and should be given that construction.

432.045. 1. For the purposes of this section, the term "credit agreement" means an agreement to lend or forbear repayment of money, to otherwise extend credit, or to make any

other financial accommodation.

2. A debtor may not maintain an action upon or a defense, regardless of legal theory in which it is based, in any way related to a credit agreement unless the credit agreement is in writing, provides for the payment of interest or for other consideration, and sets forth the relevant terms and conditions, except this subsection shall not preempt other specific statutes that authorize additional protection for consumer credit used in personal, family or household purposes and the limitations on credit agreements in subsection 3 of this section.

3. (1) If a written credit agreement has been signed by a debtor, subsection 2 of this section shall not apply to any credit agreement between such debtor and creditor unless such written credit agreement contains the following language in boldface ten point type: "Oral agreements or commitments to loan money, extend credit or to forbear from enforcing repayment of a debt including promises to extend or renew such debt are not enforceable, regardless of the legal theory upon which it is based that is in any way related to the credit agreement. To protect you (borrower(s)) and us (creditor) from misunderstanding or disappointment, any agreements we reach covering such matters are contained in this writing, which is the complete and exclusive statement of the agreement between us, except as we may later agree in writing to modify it."

(2) The provisions of this section shall not apply to

credit agreements for personal, family, or household purposes when there is already a written contract governing the transaction, and the debtor and creditor orally agree to defer one or more loan payments or make other credit agreement modifications and such deferrals or modifications are limited in duration to not more than ninety days.

4. Nothing contained in this section shall affect the enforceability by a creditor of any promissory note, guaranty, security agreement, deed of trust, mortgage, or other instrument, agreement, or document evidencing or creating an obligation for the payment of money or other financial accommodation, lien, or security interest.

443.130. 1. If **[**any such person**]** the secured party, **[**thus**]** receiving satisfaction for the debt secured pursuant to this chapter, does not, within **[**fifteen business**]** forty-five days after request and tender of costs, **[**deliver to the person making satisfaction**]** submit for recording a sufficient deed of release, such **[**person**]** secured party shall **[**forfeit**]** be liable to the party aggrieved for an amount not to exceed three hundred dollars per day, but no more than ten thousand dollars in the aggregate, plus court costs and attorney fees, provided however, such aggregate shall be limited to ten percent **[**upon**]** of the amount of the security instrument, absolutely, **[**and any other damages such person may be able to prove such person has sustained,**]** to be recovered in any Missouri court of competent jurisdiction. **[**A

business day is any day except Saturday, Sunday and legal holidays.] In the event a document submitted for recording by a secured party is rejected for recording for any reason, such secured party shall have sixty days following receipt of notice that the document has been rejected in which to submit a recordable and sufficient deed of release.

2. To qualify under this section, the mortgagor or his or her agent shall provide the request in the form of a demand letter to the [mortgagee, cestui qui trust, or assignee] secured party by certified mail, return receipt requested or in another form that provides evidence of the date of receipt to the mortgagor. The letter shall include good and sufficient evidence that the debt secured by the deed of trust was satisfied with good funds, and the expense of filing and recording the release was advanced.

3. In any action against such person who fails to release the lien as provided in [subsection] subsections 1 and 2 of this section, the plaintiff, or his or her attorney, shall prove at trial that the plaintiff notified the holder of the note by certified mail, return receipt requested, or as otherwise permitted by subsection 2 of this section.

570.223. 1. A person commits the crime of identity theft if he or she knowingly and with the intent to deceive or defraud obtains, possesses, [transfers,] uses, or attempts to obtain[, transfer] or use, one or more means of identification not

lawfully issued for his or her use.

2. [Identity theft is punishable by up to six months in jail for the first offense; up to one year in jail for the second offense; and one to five years imprisonment for the third or subsequent offense.

3.] The term "means of identification" as used in this section includes the following:

(1) Social Security numbers;

(2) Drivers license numbers;

(3) Checking account numbers;

(4) Savings account numbers;

(5) Credit card numbers;

(6) Debit card numbers;

(7) Personal identification (PIN) codes;

(8) Electronic identification numbers;

(9) Digital signatures;

(10) Any other numbers or information that can be used to access a person's financial resources;

(11) Biometric data;

(12) Fingerprints;

(13) Passwords; or

(14) Parent's legal surname prior to marriage.

3. A person found guilty of identity theft shall be punished as follows:

(1) Identity theft which results in the theft or

appropriation of credit, money, goods, services, or other property not exceeding five hundred dollars in value is a class A misdemeanor;

(2) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding five hundred dollars and not exceeding one thousand dollars in value is a class D felony;

(3) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding one thousand dollars and not exceeding ten thousand dollars in value is a class C felony;

(4) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding ten thousand dollars and not exceeding one hundred thousand dollars in value is a class B felony;

(5) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding one hundred thousand dollars in value is a class A felony.

4. In addition to the provisions of subsection **[**2**]** 3 of this section, the court may order that the defendant make restitution to any victim of the offense. Restitution may include payment for any costs, including attorney fees, incurred by the victim:

(1) In clearing the credit history or credit rating of the

victim; and

(2) In connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising from the actions of the defendant.

5. In addition to the criminal penalties in subsections 3 and 4 of this section, any person who commits an act made unlawful by subsection 1 of this section shall be liable to the person to whom the identifying information belonged for civil damages of up to five thousand dollars for each incident, or three times the amount of actual damages, whichever amount is greater. A person damaged as set forth in subsection 1 of this section may also institute a civil action to enjoin and restrain future acts that would constitute a violation of subsection 1 of this section. The court, in an action brought under this subsection, may award reasonable attorney fees to the prevailing party.

6. If the identifying information of a deceased person is used in a manner made unlawful by subsection 1 of this section, the deceased person's estate shall have the right to recover damages pursuant to subsection 5 of this section.

7. The venue for any civil action brought pursuant to this section shall be the county in which the plaintiff resides or any county in which any part of the alleged violation of subsection 1 of this section took place, regardless of whether the defendant was ever actually present in that county. Civil actions under

this section shall be brought within three years from the date on which the identity of the wrongdoer was discovered or reasonably should have been discovered.

8. Civil action pursuant to this section does not depend on whether a criminal prosecution has been or will be instituted for the acts that are the subject of the civil action. The rights and remedies provided by this section are in addition to any other rights and remedies provided by law.

9. This section shall not apply when:

(1) A person obtains the identity of another person to misrepresent his or her age for the sole purpose of obtaining alcoholic beverages, tobacco, going to a gaming establishment, or another privilege denied to minors;

(2) A person obtains credit information in the course of a bona fide consumer or commercial transaction;

(3) A person exercises, in good faith, a security interest or right of offset by a creditor or financial institution;

(4) A person complies, in good faith, with any warrant, court order, levy, garnishment, attachment, or other judicial or administrative order, decree, or directive, when any party is required to do so.

10. Notwithstanding the provisions of subdivision (1) of subsection 3 of this section, any person who has previously pled guilty to or been found guilty of identity theft, and who subsequently pleads guilty to or is found guilty of identity

theft of credit, money, goods, services, or other property not exceeding five hundred dollars in value is guilty of a class D felony and shall be punished accordingly.

11. The value of property or services is its highest value by any reasonable standard at the time the identity theft is committed. Any reasonable standard includes, but is not limited to, market value within the community, actual value, or replacement value.

12. If credit, property, or services are obtained by two or more acts from the same person or location, or from different persons by two or more acts which occur in approximately the same location or time period so that the identity thefts are attributable to a single scheme, plan, or conspiracy, the acts may be considered as a single identity theft and the value may be the total value of all credit, property, and services involved.

13. In a criminal proceeding pursuant to this section, venue will be proper in any county where the person whose means of identification or financial information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.

570.224. 1. A person commits the crime of trafficking in stolen identities when such person manufactures, sells, transfers, purchases, or possesses, with intent to manufacture, sell, transfer, or purchase identification documents or

identifying information for the purpose of committing identity theft.

2. Possession of five or more identification documents of the same person, or possession of identifying information of five or more separate persons, shall be evidence that the identities are possessed with intent to manufacture, sell, transfer, or purchase identification documents or identifying information for the purpose of committing identity theft.

3. Trafficking in stolen identities is a class B felony.